

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

and

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

Respondents

and

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

**MOTION RECORD OF COLLINS BARROW TORONTO LIMITED,  
COURT APPOINTED RECEIVER OF WEST MALL HOLDINGS LTD.**

**Motion Returnable April 28, 2016**

April 21, 2016

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

**David A. Brooker (35787W)**  
Tel: 416-225-2777  
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Lawyers for Collins Barrow Toronto Limited  
court appointed Receiver of West Mall Holdings Ltd.

TO: Service List

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TAB 1

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

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

B E T W E E N:

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

Applicants

and

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

Respondents

and

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

**NOTICE OF MOTION**

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”), will make a Motion to a Judge presiding over the Commercial List on Thursday, April 28, 2016 at 9:30 a.m., or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

- in writing under subrule 37.12.1(1) because it is;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR** an order substantially in the form of the draft attached hereto as Schedule A:

- (a) If necessary, abridgement of the time for service of the Notice of Motion and Motion Record herein and dispensing with further service thereof;
- (b) Approval of the Receiver's activities described in the Third Report of the Receiver dated April 21, 2016 (the "**Third Report**");
- (c) Approval of the Receiver's activities and fees and disbursements and those of its counsel as set forth in the Third Report;
- (d) The discharge of the Receiver;
- (e) The costs of this Motion payable from the estate of the Debtor; and
- (f) Such further and other relief as to this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The Debtor's primary asset was a property which is comprised primarily of a seven-storey multi-tenant office building, comprising approximately 86,000 square feet and an adjacent one-storey single-tenant commercial building comprising approximately 8,000 square feet located on approximately two acres; the office building had approximately 56% occupancy as of August 31, 2015 and the commercial building was vacant as of the date of the First Report of the Receiver dated October 9, 2015 (the "First Report");
- (b) Pursuant to the Order of The Honourable Mr. Justice Penny dated October 20, 2015 (the "Approval and Vesting Order"), the Receiver was authorized and directed to sell the Property in accordance with an agreement of purchase sale between it and Bridgeport West Mall Inc.;
- (c) The sale of the Property to a nominee of Bridgeport West Mall Inc. closed on November 4, 2015;

- (d) Pursuant to the terms of the Approval and Vesting Order, the Receiver was authorized to hold back the sum of \$1,325,000.00 from the proceeds of sale of the Property (the “Holdback”);
- (e) Pursuant to the Order of The Honourable Justice Hailey made March 21, 2016 (the “March 21 Order”), the Receiver was authorized to distribute a portion of the Holdback to tenants of the Property who had made overpayments of TMI to the Receiver during the term of the Receivership;
- (f) The Receiver has made the payments to tenants in accordance with the March 21 Order;
- (g) By way of Order of The Honourable Justice Newbould dated April 18, 2016 (the “April 18 Order”), the Receiver was authorized to pay to 295 The West Mall Portfolio Inc. (“Portfolio”) the remaining amount of the Holdback, less a sum for future fees and disbursements;
- (h) The Receiver has made the payment to Portfolio in accordance with the April 18 Order;
- (i) The Receiver’s activities, statement of receipts and disbursements and its fees and disbursements including the fees and disbursements of its legal counsel, Steinberg Title Hope & Israel LLP, as set forth in the Third Report are reasonable and ought to be approved; and
- (j) Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

- (a) The Third Report of the Receiver;
- (b) The Affidavits of Daniel Weisz sworn April 21, 2016 and of Michael Cass sworn April 21, 2016; and

- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

April 21, 2016

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

TO: **The Service List**



## SCHEDULE A

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

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

THE HONOURABLE	)	THURSDAY, THE 28TH
	)	
JUSTICE	)	DAY OF APRIL, 2016

B E T W E E N:

*(Court Seal)*

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

**ORDER**

**THIS MOTION**, made by Collins Barrow Toronto Limited (“CBTL”), 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 approving the Receiver’s statement of receipts and disbursements attached as Exhibit “J” to the Third Report, approving the Receiver’s activities, fees and disbursements and those of its counsel as set out in the Third Report, discharging Collins Barrow Toronto Limited as the Receiver of the undertaking, property and assets of the Debtor, and

releasing the Receiver from any and all liability as set out in paragraph 6 of this order was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario.

**ON READING** the Third Report and the appendices attached thereto, the Affidavit of Daniel Weisz sworn April 21, 2016 (the “Weisz Fee Affidavit”) and the Affidavit of Michael Cass sworn April 21, 2016 (the “Cass Fee Affidavit”) and on hearing the submissions of the lawyer for the Receiver, 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 and motion record dated April 21, 2016 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **Approval of Activities**

2. **THIS COURT ORDERS** that the (i) Third Report of the Receiver, (ii) the activities of 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.

### **Final Distribution**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute to 295 The West Mall Portfolio Inc. (“Portfolio”) the amount of \$55,106.72, representing the Final Distribution as set out in the Third Report.

### **Vacancy Rebates and HST Refunds**

4. **THIS COURT ORDERS** that notwithstanding the discharge of the Receiver, CBTL is authorized to endorse any cheques it may receive on account of the Vacancy Rebates and the HST Refunds as defined in the Third Report to Portfolio or to otherwise deposit said cheques and remit the amounts thereof to Portfolio.

### **Discharge and Release**

5. **THIS COURT ORDERS** that upon completion of the Remaining Duties as set out in the Third Report (and upon the Receiver filing a certificate certifying that it has completed the Remaining Duties, the Receiver shall be discharged as receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver and Collins Barrow Toronto Limited shall continue to have the benefit of the provisions of all orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Collins Barrow Toronto Limited in its capacity as receiver.

6. **THIS COURT ORDERS AND DECLARES** that Collins Barrow Toronto Limited is hereby released and discharged from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Collins Barrow Toronto Limited while acting in its capacity as receiver herein, save and except for any gross negligence or wilful misconduct on its part. Without limiting the generality of the foregoing, Collins Barrow Toronto Limited is hereby forever released and discharged from any and all liability relating to matters that

were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on its part.

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(Signature of Judge)

RCP-E 59A (July 1, 2007)

**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

**ORDER**

**STEINBERG TITLE HOPE & ISRAEL LLP**

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M2N 6P4

**David A. Brooker (35787W)**

Tel: 416-225-2777

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

RCP-E4C (July 1, 2007)

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

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF MOTION**

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**STEINBERG TITLE HOPE & ISRAEL LLP**

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**David A. Brooker (35787W)**

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

RCP-E4C (July 1, 2007)

**TAB 2**

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**

**THIRD REPORT OF THE RECEIVER OF WEST MALL HOLDINGS LTD.**

**APRIL 21, 2016**



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## I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated February 3, 2015 (the "**Appointment Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd. ("**WMHL**" or the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"). A copy of the Appointment Order is attached hereto as Appendix "**A**".
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property.
3. On October 9, 2015, the Receiver issued its first report to the Court (the "**First Report**") for the purpose of, among other things, seeking an Order of the Court to: a) authorize the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Bridgeport West Mall Inc. ("**Bridgeport**") dated September 8, 2015 together with amendments thereto; b) make an interim distribution to 295 The West Mall Portfolio Inc. ("**Portfolio**") in the amount of the Net Sales Proceeds (as defined in the First Report) less a holdback of \$1,325,000; and c) provide direction for a procedure whereby competing claims to priority could be adjudicated and resolved in order that the Receiver could thereafter make payments to the appropriate parties from the Holdback. A copy of the First Report, without appendices, is attached hereto as Appendix "**B**".

4. On October 15, 2015, the Receiver issued its Addendum to the First Report to provide clarification with respect to the section of the First Report entitled **Payments to 368230 Ontario Limited (“368”)** which appeared at paragraphs 59-63 inclusive of the First Report (the **“Addendum”**). A copy of the Addendum, without appendices, is attached hereto as Appendix **“C”**.
5. By Approval, Vesting and Distribution Order of Justice Penny dated October 20, 2015 (the **“October 20 Order”**), the Court, amongst other relief granted, approved the sale transaction contemplated by the APS and approved the distribution to Portfolio of the net proceeds from the sale transaction, less the Holdback. A copy of the October 20 Order is attached hereto as Appendix **“D”**.
6. On March 10, 2016, the Receiver issued its second report to the Court (the **“Second Report”**) for the purpose of, among other things, seeking an Order of the Court to authorize the Receiver to pay to the tenants, the tenant overpayments on account of operating costs and realty taxes for the period February 1, 2015 to October 31, 2015 (the **“Tenant Receivership Overpayments”**). A copy of the Second Report, without appendices, is attached hereto as Appendix **“E”**.
7. By Order of Justice Hailey dated March 21, 2016 (the **“March 21 Order”**), the Court, amongst other relief granted, authorized the Receiver to disburse the Tenant Receivership Overpayments. A copy of the March 21 Order is attached hereto as Appendix **“F”**.
8. On April 18, 2016, Portfolio made an application to the Court for an Order directing the Receiver to distribute all remaining funds being held by the Receiver

to Portfolio, subject to a holdback of \$75,000 (plus Harmonized Sales Tax) to cover remaining costs of the receivership (the “**Second Interim Distribution**”).

A copy of Portfolio’s Motion Record is attached hereto as Appendix “**G**”.

9. By Order of Justice Newbould dated April 18, 2016 (the “**April 18 Order**”), the Court authorized the Receiver to make the Second Interim Distribution to Portfolio. A copy of the April 18 Order is attached hereto as Appendix “**H**”.
10. The Appointment Order together with related Court documents have been posted on the Receiver’s website, which can be found at <http://www.collinsbarrow.com/en/cbn/West-mall-holdings-ltd>.

#### **Purpose of Third Report**

11. The purpose of this third report of the Receiver (the “**Third Report**”) is to:
  - (a) report to the Court on the activities of the Receiver since the date of the Second Report to April 21, 2016;
  - (b) seek the Court’s approval of the Third Report and the Receiver’s conduct and activities described herein;
  - (c) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period February 3, 2015 to April 20, 2016;
  - (d) seek an order approving the fees and disbursements of the Receiver and of its legal counsel, Steinberg Title Hope & Israel LLP (“**STHI**”) for the period ending April 20, 2016 and estimated to completion;
  - (e) seek an order to pay to Portfolio the Final Distribution (defined below), the Vacancy Rebate, the HST Refunds (defined below) and/or any funds received in connection with the receivership (the total of which is not to

exceed the amounts owing to Portfolio) and to authorize CBTL, as former Receiver, to assist in realizing on these amounts as may be reasonably required; and

- (f) seek an order discharging CBTL from the powers, duties and obligations attendant to its appointment as Receiver subject to the completion of certain minor administrative duties as set out in the Third Report.

### **Terms of Reference**

- 12. In preparing this Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

## **II. BACKGROUND**

- 13. WMHL is an Ontario corporation which was incorporated on November 5, 2012 and is a single purpose corporation.

14. On March 19, 2013, the Debtor purchased 291-295 The West Mall (the "**West Mall Property**") from Portfolio, which the Receiver understands is a single use corporation wholly controlled by H&R Real Estate Investment Trust, for consideration including, among other things, a vendor take-back mortgage.
15. The West Mall Property is comprised primarily of a seven-storey multi-tenant office building and adjacent one-storey single-tenant commercial building located on approximately two acres at 291-295 The West Mall, Toronto, Ontario.
16. The office building encompasses approximately 86,000 square feet, and was 56% occupied as of August 31, 2015. The single-tenant commercial building is approximately 8,000 square feet and had been occupied by The Keg restaurant until August 2015.

### **III. TENANT RECEIVERSHIP OVERPAYMENTS**

17. On March 21, 2016, the Court made an Order authorizing the Receiver to pay the Tenant Receivership Overpayments to the tenants and in the sums as listed in Schedule "A" to the March 21 Order. The Receiver has paid the Post-Receivership Overpayments.

### **IV. PROPERTY TAX VACANCY REBATE**

18. As noted in paragraph 44 of the First Report, a property tax vacancy rebate application was filed on the Debtor's behalf for the period January 1, 2014 to December 31, 2014. As noted in paragraph 23 of the Second Report, a property tax vacancy rebate application for the period January 1 to October 31, 2015 was filed on the Debtor's behalf by Bridgeport.

19. As set out in the applications filed with the City of Toronto, the rebates claimed in respect of the West Mall Property are approximately \$10,000 and \$27,000 to \$34,000 for 2014 and 2015, respectively (the "**Vacancy Rebates**"). Portfolio has informed the Receiver that it will follow up the status of the Vacancy Rebates with the City of Toronto and/or Bridgeport as appropriate.

#### **V. SECOND INTERIM DISTRIBUTION**

20. On April 18, 2016, the Court made an Order directing the Receiver to pay the Second Interim Distribution to Portfolio. The Second Interim Distribution in the amount of \$1,046,307.49 was made on April 19, 2016.

#### **VI. PAYMENTS TO 368230 ONTARIO LIMITED**

21. In the First Report and the Addendum, the Receiver disclosed to the Court that, during the period March 19, 2013 to February 5, 2015, monthly payments totaling \$467,243.08 were made by the Debtor to 368230 Ontario Limited ("**368**") during the time Schonfeld Inc. Receivers + Trustees acted as Manager of the Debtor (the "**Manager**"). As the Receiver has been advised by Portfolio that Portfolio does not want the Receiver to incur any further costs in respect of this matter, the Receiver will not be taking any further action to inquire into these payments.

#### **VII. RECEIVER'S DISCHARGE**

22. As the Receiver's administration of this estate is substantially complete, and in order to avoid the costs of making a further motion to the Court to obtain the Receiver's discharge, the Receiver is presently seeking an order discharging CBTL from the powers, duties and obligations attendant to its appointment as

Receiver. The Receiver is proposing that the Discharge Order become effective on the day that the Receiver files with the Court a certificate in which the Receiver certifies that the Receiver has completed the Remaining Duties (defined below).

23. A copy of the proposed Discharge Order, is attached hereto as Appendix "I".

#### **VIII. REMAINING DUTIES OF THE RECEIVER**

24. The Receiver's remaining duties (the "**Remaining Duties**") in order to finalize the administration of the receivership are:

- (a) filing HST returns for the period ending on the date of the Discharge Order (the "**HST Returns**");
- (b) preparing a final statement of receipts and disbursements; and
- (c) preparing the Final Statement of Receiver pursuant to s.246(3) of the Bankruptcy and Insolvency Act.

25. Once the Receiver has completed its Remaining Duties, the Receiver intends to file with the Court the Receiver Discharge Certificate indicating that the Receiver has completed the Remaining Duties.

#### **IX. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

26. Attached hereto as Appendix "J" to this report is the Receiver's Interim Statement of Receipts and Disbursements ("**R&D**") for the period February 3, 2015 to April 20, 2016. During this period, receipts were \$11,762,992 and disbursements were \$2,027,605, resulting in a cash surplus of \$9,735,386 prior to the interim distributions to Portfolio. The receipts include proceeds of



\$10,000,000 from the closing of the sale transaction and \$356,503 in net funds transferred to the Receiver by the Manager as of February 29, 2016.

27. An interim distribution of \$8,633,972 was made to Portfolio on November 5, 2015. As noted above, a Second Interim Distribution of \$1,046,307.49 was made on April 19, 2016. Following the Second Interim Distribution, and in accordance with the April 18 Order, the balance in the Receiver's bank account is \$84,750.00 after taking into account cheques issued by the Receiver which have not yet cleared the bank.

#### **X. FINAL DISTRIBUTION**

28. Subject to approval by the Court of the Receiver's Accounts and the STHI Accounts below, the Receiver proposes to make a final distribution (the "**Final Distribution**") of \$55,106.72 from the Receiver's bank account representing the \$84,750.00 after payment of fees incurred from April 1, 2016 to April 20, 2016 and estimated to completion.
29. In the event that cheques on account of the Vacancy Rebates and the HST Returns (the "**HST Refunds**") are received at the office of CBTL following its discharge as Receiver, the Receiver proposes that CBTL endorse those cheques to be payable to Portfolio or otherwise deposit the cheques and remit the amounts of the Vacancy Rebates and/or HST Refunds to Portfolio.

#### **XI. PROFESSIONAL FEES**

30. The Receiver's accounts total \$16,871.50 in fees and disbursements plus HST of \$2,193.30 for a total amount of \$19,064.80 for the period from March 1, 2016 to April 20, 2016, plus an accrual of \$6,215.00 (including HST) for estimated fees

and disbursements to be incurred by the Receiver to complete its administration of the receivership (the “**Receiver’s Accounts**”). A copy of the Receiver’s Accounts rendered to April 20, 2016, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn April 21, 2016 that is attached hereto as Appendix “K”.

31. The accounts of the Receiver’s counsel, STHI, total \$10,205.76 in fees and disbursements and \$1,310.24 in HST for a total of \$11,516.00 for the period from March 1, 2016 to April 20, 2016 plus an accrual of \$5,650.00 (including HST) for estimated fees and disbursements to completion (the “**STHI Accounts**”). A copy of the STHI Accounts rendered to April 20, 2016, together with a summary of the personnel, hours and hourly rates described in the STHI Accounts, supported by the Affidavit of Michael Cass sworn April 21, 2016 is attached hereto as Appendix “L”.

## **XII. CONCLUSION**

32. The Receiver respectfully requests that the Court grant an Order:
  - i) approving the conduct and activities of the Receiver since the Second Report to April 21, 2016;
  - ii) approving the Third Report;
  - iii) approving the R&D;
  - iv) approving the fees and disbursements of the Receiver and of STHI for the period March 1 to April 20, 2016 and estimated to completion;

- v) authorizing the Receiver to pay to Portfolio the Final Distribution, the Vacancy Rebate, HST Refunds and/or any funds received in connection with the receivership (the total of which is not to exceed the amounts owing to Portfolio) and to authorize CBTL, as former Receiver, to assist in realizing on these amounts as may be reasonably required; and
- vi) terminating these proceedings and discharging CBTL from the powers, duties and obligations attendant to its appointment as Receiver upon the filing of the Receiver Discharge Certificate indicating that the Receiver has completed the Remaining Duties.

All of which is respectfully submitted to this Court as of this 21<sup>st</sup> day of April, 2015.

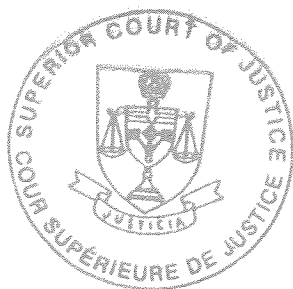
**COLLINS BARROW TORONTO LIMITED**  
In its capacity as Court Appointed Receiver  
of West Mall Holdings Ltd. and  
not in its personal capacity



Per: Daniel Weisz, CPA, CA, CIRP, LIT  
Senior Vice President

**APPENDIX A**

---



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	
JUSTICE NEWBOULD	)	TUESDAY, THE
	)	3 <sup>rd</sup> DAY OF FEBRUARY, 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 EGLINTON CASTLE INC.

Respondents

- and -

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

**ORDER**

**THIS MOTION**, made by Schonfeld Inc. (the "**Manager**") for an Order discharging it from any responsibility for the management, preservation and protection of the property having the municipal address of 291-295 The West Mall (the "**West Mall Property**") AND THIS MOTION made by the Computershare ("**Computershare**") as nominee for Trez Capital Limited Partnership ("**Trez**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Collins Barrow Toronto Limited (the "**Receiver**") as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd. (the "**Debtor**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Manager dated January 12, 2015, Twenty-Fourth Report of the Manager dated January 12, 2015 and appendices thereto (the "**Twenty-Fourth Report**"), the Notice of Motion of Computershare dated January 17, 2015, the Affidavit of Gaetano Coscia sworn January 3, 2014 (the "**Coscia Affidavit**"), the consent of the Receiver to act as Receiver of the Debtor and the West Mall Property and on hearing the submissions of counsel for the Mortgagees and counsel for the Manager in its capacity as manager of certain companies listed at Schedule "B" to the Order of Justice Newbould dated November 5, 2013 (the "**Companies**"),<sup>1</sup> together with the real estate properties owned by the Companies and no one appearing for any other person on the service list:

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

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Collins Barrow Toronto Limited is hereby appointed Receiver, without security, of all lands and premises legally described in Schedule "C", and for of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

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

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the



Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

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

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to

the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and

to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections

81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

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 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.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

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, subsequent in priority to 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 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.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "D" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

24. **THIS COURT ORDERS** that notwithstanding paragraphs 20-23 inclusive, and as alternate thereto, the Receiver is hereby authorized to borrow money to fund the exercise of its powers and duties hereunder by way of advances from the Applicant, which advances shall be secured by Computershare Trust Company of Canada's security on the Property (including without limitation the mortgage registered as Instrument Number AT3258029 attached as exhibit 7 to the Coscia Affidavit), with the same priority that may attach to such security.

#### **GENERAL**

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

27. **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 orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. **THIS COURT ORDERS** that any party who has served a Notice of Appearance, may serve any materials in this proceeding by e-mailing a pdf or other electronic copy of such materials to counsels' e-mail addresses as recorded on the Service List from time to time, in accordance with the e-filing protocol of the Commercial List to the extent practicable.

30. **THIS COURT ORDERS** that future service of materials relating the receivership of the Debtor and the West Mall Property shall be limited to a revised service list established by the Receiver that shall include only those parties with an interest in the receivership of the Debtor and the West Mall Property.

31. **THIS COURT ORDERS** that notwithstanding anything in this Order, the Manager's Charge and the Manager's Borrowing Charge (as defined in the November 5 Order) remain in full force and effect to secure the costs of the Manager and with the exception of the provisions relating to the priority of the Receiver's Charge and the Receiver's Borrowings Charge set out in paragraphs 17 and 20 are not modified by this Order as they relate to the West Mall Property.

32. **THIS COURT ORDERS** that Computershare shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of Computershare's security or, if not so provided by the Computershare's security, then on a substantial indemnity

basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_

ENTREPRENEUR & PROPRIETORS ASSOCIATION OF TORONTO  
ON 4374 160  
LEADERSHIP DEVELOPMENT

FEB 3 2016

MB



## Schedule A Companies

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

## Schedule B Companies

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties Ltd.
5. Liberty Village Lands Inc.
6. Riverdale Mansion Ltd.
7. Royal Agincourt Corp.
8. Hidden Gem Development Inc.
9. Ascalon Lands Ltd.
10. Tisdale Mews Inc.
11. Lesliebrook Holdings Ltd.
12. Lesliebrook Lands Ltd.
13. Fraser Properties Corp.
14. Fraser Lands Ltd.
15. Queen's Corner Corp.
16. Northern Dancer Lands Ltd.
17. Dupont Developments Ltd.
18. Red Door Developments Inc. and Red Door Lands Ltd.
19. Global Mills Inc.
20. Donalda Developments Ltd.
21. Salmon River Properties Ltd.
22. Cityview Industrial Ltd.
23. Weston Lands Ltd.
24. Double Rose Developments Ltd.
25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Royal Gate Nominee Inc.
29. Royal Gate (Land) Nominee Inc.
30. Dewhurst Development Ltd.
31. Eddystone Place Inc.
32. Richmond Row Holdings Ltd.
33. El-Ad (1500 Don Mills) Limited
34. 165 Bathurst Inc.

Schedule "C"  
LEGAL DESCRIPTION OF THE LANDS

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

**SCHEDULE "D"**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the receiver (the "Receiver") of the assets, undertakings and properties of West Mall Holdings Ltd. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_\_ of February, 2015 (the "**Order**") made in an action having Court file number CV-13-10280-00CL has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2015.

Collins Barrow Toronto Limited, solely in its capacity as Receiver of the Property, and not in its personal capacity

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

Name:

Title:

**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**

**ORDER**

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Fax: 416-868-0306

Lawyers for Computershare Trust Company of Canada as  
nominee for Trez Capital Limited Partnership

## **APPENDIX B**

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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**

**FIRST REPORT OF THE RECEIVER OF WEST MALL HOLDINGS LTD.**

**October 9, 2015**



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## I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**") dated February 3, 2015 (the "**Appointment Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd. ("**WMHL**" or the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"). A copy of the Appointment Order is attached hereto as Appendix "**A**".
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property.
3. In addition, the Receiver was expressly empowered and authorized to:
  - (a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
  - (b) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - (i) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

(ii) with the approval of the Court in respect of any transaction in which the purchase price or aggregate purchase price exceeds \$250,000.

4. The Appointment Order together with related Court documents have been posted on the Receiver's website, which can be found at <http://www.collinsbarrow.com/en/cbn/West-mall-holdings-ltd>.

#### **Purpose of First Report**

5. The purpose of this first report of the Receiver (the "**First Report**") is to:
- (a) report to the Court on the activities of the Receiver since the date of its appointment to September 30, 2015;
  - (b) provide to the Court details of the activities leading to receipt of an offer for the Debtor's primary asset, namely the property municipally known as 291-295 The West Mall, Toronto, Ontario and certain chattels (the "**West Mall Property**");
  - (c) seek an order authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Bridgeport West Mall Inc. ("**Bridgeport**" or the "**Purchaser**") dated September 8, 2015 together with amendments thereto (the "**APS**") in connection with the sale of the West Mall Property, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the West Mall Property in the Purchaser, or as it may further direct in writing, upon closing of the purchase agreement and the delivery of the Receiver's Certificate to the Purchaser;

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- (d) seek an Order approving the entering into the agreement with CBRE Limited ("**CBRE**") by the Receiver in connection with the sale of the West Mall Property;
  - (e) seek an Order to vary the Appointment Order in order to grant priority to the Receiver's Charge and the Receiver's Borrowing Charge over all security and other interests in the Debtor's property with effect on and after May 6, 2015;
  - (f) seek an order sealing Appendix "F" to the First Report;
  - (g) provide the Court with details on the status of the Taxes, Maintenance and Insurance ("**TMI**") reconciliations for the years that the West Mall Property has been owned by the Debtor;
  - (h) seek the direction of the Court for a procedure whereby (i) potential competing claims to priority to overpayments of TMI made by tenants to the Debtor, to Schonfeld Inc. Receivers + Trustees as Manager of the Debtor (the "**Manager**"), and to the Receiver as well as other claims of tenants and (ii) claims of DTZ Canada Inc. and Cushman & Wakefield Ltd., may be adjudicated and resolved so that the Receiver may thereafter make orderly payments to the appropriate parties from funds to be held back from the distribution of proceeds from the sale of the West Mall Property, and an appropriate Order with respect to same;
  - (i) provide the Court with details of a potential claim of the Receiver as against 368230 Ontario Limited ("**368230**") and/or DBDC West Mall Holdings Ltd., a shareholder of the Debtor, and/or other corporations

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related to it or to Dr. Stanley Bernstein with respect to payments made by the Debtor to 368230 both prior and subsequent to the Court appointment of the Manager;

- (j) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period February 3, 2015 to August 31, 2015;
- (k) seek an Order authorizing and directing the Receiver to make an interim distribution in the amount of the Net Sales Proceeds (as defined later herein) less a holdback of \$1,325,000 to 295 The West Mall Portfolio Inc. ("**Portfolio**");
- (l) seek the Court's approval of the Receiver's conduct and activities to September 30, 2015; and
- (m) seek an order approving the fees and disbursements of the Receiver and of the Receiver's legal counsel, Steinberg Title Hope & Israel LLP ("**STHI**") to September 30, 2015.

### **Terms of Reference**

6. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards

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pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

7. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

## II. BACKGROUND

8. WMHL is an Ontario corporation which was incorporated on November 5, 2012 and is a single purpose corporation.
9. On March 19, 2013, the Debtor purchased the West Mall Property from Portfolio, which the Receiver understands is a single use corporation wholly controlled by H&R Real Estate Investment Trust, for consideration including, among other things, a vendor take-back mortgage.
10. The West Mall Property is comprised primarily of a seven-storey multi-tenant office building and adjacent one-storey single-tenant commercial building located on approximately two acres at 291-295 The West Mall, Toronto, Ontario.
11. The office building encompasses approximately 86,000 square feet, and was 56% occupied as of August 31, 2015. The single-tenant commercial building is approximately 8,000 square feet and had been occupied by The Keg restaurant until August 2015.

## III. APPOINTMENT OF THE RECEIVER

12. On November 5, 2013, by Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**"), Schonfeld Inc. Receivers + Trustees was appointed as Manager of the Debtor and certain other companies (the "**Schedule B**

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**Corporations**") (the "**Manager Appointment Order**") pursuant to proceedings between the Debtor's principals and shareholders.

13. The Manager took possession and control of the real property of the Schedule B Corporations and retained Briarlane Rental Property Management Inc. ("**Briarlane**") to act as its property manager. The Manager also took delivery of the books and records of certain of the Schedule B Corporations.
14. In its 24<sup>th</sup> report to the Court dated January 12, 2015 ("**Manager's Twenty-Fourth Report**"), the Manager reported to the Court that as a result of a significant tenant recently terminating its lease, the West Mall Property no longer generated enough revenue to pay expenses associated with the operation of the West Mall Property. As the Manager's Charge and the Manager's Borrowing Charge (each as defined in the Manager Appointment Order) ranked behind the mortgages registered against the West Mall Property, and since it was uncertain to the Manager that the sale of the West Mall Property would generate sufficient proceeds to pay the mortgages registered against the property or amounts to pay the Manager's Charge or the Manager's Borrowing's Charge, the Manager advised the Court that there was no funding available for the Manager's continued management, preservation and marketing of the West Mall Property. As a result, the Manager requested of the Court that the Manager be discharged from any further responsibility for the management, preservation and marketing of the West Mall Property.
15. Based on the above, pursuant to a Motion Record dated January 27, 2015, Computershare Trust Company of Canada ("**Computershare**") made an



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application to the Court for the appointment of a receiver over the Debtor. The Appointment Order was granted on February 3, 2015.

### **Secured Lenders**

16. Computershare, as nominee for Trez Capital Limited Partnership (“Trez”), a secured creditor and lender to WMHL, brought the motion seeking to appoint the Receiver. Trez advanced \$1,937,500 to WMHL in March 2013, with the loan secured by a second mortgage on the West Mall Property and a general security agreement, amongst other security granted. As at the date of the Appointment Order, Trez was owed approximately \$2 million in respect of its advances to WMHL.
17. Portfolio is a secured creditor and lender to the Debtor. Prior to the Debtor purchasing the West Mall Property in March 2013, title to the West Mall Property was held by Portfolio. As at the date of the Appointment Order, Portfolio was owed approximately \$9,687,500 in respect of its advances to WMHL. Portfolio’s security consists of a first mortgage on the West Mall Property and a general security agreement. The maturity date of Portfolio’s mortgage was April 5, 2015. As the mortgage was not repaid on that date, the interest rate on the mortgage increased to 25% from 4% in accordance with the terms of its mortgage, resulting in interest payments increasing to approximately \$201,822 per month.
18. The security held by Portfolio is in priority to the security held by Trez. In order for Portfolio to be agreeable to the appointment of the Receiver, it and Trez agreed that the Receiver’s Charge granted in Paragraph 17 of the Appointment Order would form a second charge on the West Mall Property subsequent in priority to

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the Portfolio mortgage, but in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise.

19. The Receiver has received legal opinions from STHI that, subject to the assumptions and qualifications contained in STHI's opinion letters, the security over the real and personal property of WMHL granted in favour of Portfolio and Trez (collectively referred to as the "**Lenders**") pursuant to their mortgages and general security agreements are valid and enforceable against WMHL in accordance with their respective terms.
20. On May 5, 2015, counsel to Portfolio notified the Receiver that, as the mortgage held by WMHL had matured, its client wished to issue power of sale notices and sought the written consent of the Receiver to such proceeding as required under the Appointment Order.
21. On May 6, 2015, counsel to Trez informed the Receiver and Portfolio that, among other things, Trez was no longer willing to fund the receivership.
22. Subsequent to receipt of notice of Portfolio's and Trez's positions, the Receiver engaged in numerous discussions and correspondence with Portfolio and its counsel in connection with the continued administration of the receivership by the Receiver for the period subsequent to May 6, 2015 and, in particular, the subordination by Portfolio of certain claims that may be made against the Receiver. Based on the results of those negotiations, the Receiver did not consider it necessary at that time to incur the costs to make an application to the Court to seek an amendment of the Appointment Order.

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23. The Receiver is now seeking the amendment to the Appointment Order to reflect that the Receiver's Charge and the Receiver's Borrowing Charge is in priority to the Portfolio security with effect on and after May 6, 2015.

#### IV. RECEIVER'S ACTIVITIES TO DATE

##### Possession and Control

24. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
- (a) *Property Manager* - The Receiver entered into an agreement with Briarlane to continue to provide property management services at the West Mall Property. A copy of the management agreement is attached as Appendix "B". Briarlane had been engaged as the property manager by the Manager and the Receiver was of the view that the retention of Briarlane as property manager would cause the least amount of disruption to the ongoing management of the West Mall Property. The services provided by the property manager include collection of rents, dealing with building maintenance and security issues, bookkeeping and preparation of monthly financial statements and reporting.
  - (b) *Cash* – The Receiver has received from the Manager since the date of the Appointment Order amounts totaling \$275,281.25 representing the funds of the Debtor in the Manager's possession. The Receiver has been informed by the Manager that the Manager is currently retaining \$15,000 in its account for any expenses that may arise from its period of management.

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## **Insurance**

25. Prior to the appointment of the Receiver, the Manager had obtained coverage for the West Mall Property under a policy that was scheduled to expire on February 15, 2015. Upon the appointment of the Receiver, the insurer advised the Receiver that it was not willing to extend or renew coverage beyond February 15, 2015. As a result, the Receiver engaged in sourcing alternate insurance coverage. The Receiver has arranged for insurance coverage for the period February 15, 2015 to February 15, 2016 with another insurance provider.

## **Assessment of the Property Condition**

26. Upon its appointment and following its tour of the West Mall Property with representatives of Briarlane, it became apparent to the Receiver that major repairs to the property are required. The Receiver retained CCI Group Inc. ("CCI") to prepare an update of Construction Control Inc.'s property condition assessment report ("PCA") dated December 2012, a copy of which was provided to the Receiver.
27. On March 2, 2015, the Receiver received the PCA dated February 2015 from CCI. Among other things, the PCA identified several building maintenance and repair issues that were required to be addressed by the end of 2017 totaling approximately \$1.4 million, of which \$177,000 was categorized as requiring "immediate" attention (the "PCA List").
28. As part of the PCA, CCI retained KJA Consultants Inc. ("KJA") to conduct a condition assessment of the passenger elevators at the West Mall Property. The KJA report recommended that modernization of the elevators be completed

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within the next two years. The cost of the modernization was estimated to be \$675,000 and is included in the \$1.4 million referenced above.

29. The Receiver, through Briarlane, requested quotes from parties in order to address the repairs and maintenance requirements which were classified as “immediate”. Based on the nature of the work required, it has taken considerable time for the quotes to be received by the Receiver. When quotes were eventually received, the Receiver noted in its review of the quotes that the estimated costs in certain of the quotes provided to the Receiver appeared to address more than the repairs considered to be “immediate”. While certain of the “immediate” repairs have been addressed, the Receiver had not, prior to its entering into of the APS, received satisfactory quotes to address all of those repairs. As the Receiver has entered into the APS, and closing of the transaction is scheduled for on or about November 2, 2015, the Receiver will not pursue the completion of all the “immediate repairs”. In the event that the sale transaction with Bridgeport is not concluded, the Receiver will revisit this issue.

#### **Elevator Maintenance Contract**

30. Prior to the Manager’s appointment, the three elevators at the West Mall Property were maintained by ThyssenKrupp Elevator (Canada) Limited (“**ThyssenKrupp**”). The Receiver was provided with an unsigned maintenance agreement with the Debtor which the Receiver understands was the basis for the ongoing maintenance of the three elevators by ThyssenKrupp.
31. Upon its appointment, the Receiver discovered that one of the elevators had been removed from service by the Toronto Safety Standards Authority (TSSA)

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since November 2014. Subsequently in March 2015, a second elevator was taken out of service due to levelling issues. Since March 2015, the elevators continued to experience numerous operational issues and notwithstanding the property manager's repeated expressions of dissatisfaction to ThyssenKrupp and several onsite attendances by ThyssenKrupp, the two elevators had not been returned to regular service as of May 31, 2015.

32. Due to the length of time that it was taking for the two elevators to return to service, the Receiver retained KJA to conduct a maintenance inspection of the elevators. Upon its inspection of the elevators, KJA identified a number of deficiencies in the maintenance of the elevators. Based on the Receiver's dissatisfaction with the length of time that it was taking for the two elevators to return to service, the frequent recurrences of repair/maintenance issues relating thereto, and taking into account KJA's inspection report, the Receiver was of the view that it would be beneficial for the West Mall Property to consider retaining a different elevator maintenance provider.
33. Based on KJA's expertise, the Receiver retained KJA to assist the Receiver engage a new elevator maintenance provider and in particular, to understand the differences between service proposals received, recommend which of the companies the Receiver should engage to maintain the elevators and perform the required work, assist the Receiver to negotiate the contracts with the selected elevator company and monitor/review their work. On May 6, 2015, the Receiver received KJA's review of two proposals which had been received and on May 7, 2015, forwarded the proposals to both Portfolio and Trez.

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34. On May 14, 2015, the Receiver was advised by Portfolio that it wished for the Receiver to engage Solucore Inc., an elevator consultant and Vertical Motion Inc. ("VMI") as the elevator maintenance provider and provided to the Receiver a maintenance contract with VMI that was satisfactory to Portfolio. The Receiver suggested amendments to the proposed maintenance contract which amendments were acceptable to VMI.
  35. On May 29, 2015, the Receiver executed the maintenance agreement with VMI which was effective from June 1, 2015 at 12:00 am. The Receiver notified ThyssenKrupp that the Receiver was terminating the maintenance contract with ThyssenKrupp for the West Mall Property effective 11:59 p.m. May 31, 2015.
  36. On June 1, 2015, ThyssenKrupp informed the Receiver that ThyssenKrupp "chooses to decline your cancellation notice offer and fulfill the remainder (sic) of the five years (sic) contract obligations". On June 5, 2015, STHI replied to ThyssenKrupp that the Receiver's cancellation notice is valid and in force and set out the reasons for the Receiver's position. ThyssenKrupp has not responded to STHI's letter.
  37. On or about August 14, 2015, all three elevators at the West Mall Property were in service and VMI continues to address any issues with the elevators that are identified.

#### **Elevator Incident**

38. On March 16, 2015, a tenant of the property, Edgebuilder Inc. ("Edgebuilder"), notified Briarlane that one of its employees was injured earlier that day when she stepped out of an elevator and fell, requiring medical attention. Edgebuilder

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alleged that the accident occurred as a result of the elevator not leveling properly. Briarlane immediately brought this matter to the attention of ThyssenKrupp and a technician attended at the West Mall Property and the elevator was taken out of service.

39. On or about March 24, 2015, Edgebuilder wrote to the Receiver to notify it of the March 16, 2015 incident.
40. The Receiver reported the alleged incident and injury to its insurer, who assigned an adjuster to the matter.
41. Thereafter, the adjuster commenced an investigation of the claim, including, to the Receiver's knowledge, conducting interviews, and requested information and documentation from the Receiver, including elevator maintenance records. The Receiver has cooperated with all requests made by the adjuster in its investigation.
42. The Receiver is currently unaware of any formal insurance claims having been filed or of any formal court proceedings being initiated. The Receiver expects that settlement of the claim, if any exists, will be conducted by and through its insurer.

### **Books and Records**

43. The books and records that were delivered to the Manager by Norma Walton, a director and principal of the Debtor, were transferred by the Manager into Briarlane's safekeeping. The Manager has advised that the accounting records pertaining to the various Schedule B companies were intermingled. As the Manager requires access to the records of all the companies to fulfill its mandate



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and Briarlane is acting as property manager on behalf of both the Manager and the Receiver, the Receiver has not asked Briarlane to deliver to the Receiver the WMHL books and records in Briarlane's possession, as the Manager has provided to the Receiver any information that has been requested of the Manager. In the event that the Receiver requires possession of certain records, it will request their delivery by Briarlane.

#### **Property Tax Vacancy Rebate**

44. A property tax vacancy rebate application was filed on the Debtor's behalf for the units that were vacant during the period January 1, 2014 to December 31, 2014. The application was submitted in February 2015 and has not yet been processed by the City of Toronto. It is estimated that the rebate would be 30% of taxes paid on those units for this period or approximately \$10,000. As the 2015 year has not yet ended, the Receiver has not applied for a vacancy rebate for 2015.

#### **TMI Reconciliation**

45. Pursuant to the terms of the tenant leases, as soon as practicable after the expiration of each fiscal period, the landlord is to make a final determination of the amounts payable by the tenant in respect of operating costs and realty taxes (the "**TMI Reconciliation**"). To the extent that the actual costs incurred differ from the amounts paid by the tenant in the prior fiscal period, the appropriate adjustments are to be made.
46. In its review of the operations of the West Mall Property, the Receiver determined that TMI Reconciliations were not completed by WMHL or by the Manager for the

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fiscal periods from March 19, 2013 (the date when WMHL purchased the property) to December 31, 2014.

47. The Receiver has been provided with evidence by Portfolio that Portfolio completed the TMI Reconciliation for the period prior to Portfolio's sale of the West Mall Property and settled all obligations with tenants of the West Mall Property.
48. As Briarlane was the property manager for the West Mall Property for all of 2014, the Receiver arranged for Briarlane to prepare the 2014 TMI Reconciliation based on the books and records maintained by Briarlane for that year. The TMI Reconciliation for 2014 indicates an overpayment by the tenants on account of TMI in the aggregate amount of \$414,793.68.
49. The Receiver also arranged for Briarlane to prepare the TMI Reconciliation for the period March 19, 2013 to December 31, 2013. As Briarlane only became the property manager of the West Mall Property upon the Manager's appointment in November 2013, the TMI Reconciliation for March 19, 2013 to December 31, 2013 is largely based on the limited financial records in Briarlane's possession of The Rose & Thistle Group, which the Receiver understands was the property manager for the West Mall Property prior to the Manager's appointment. The TMI Reconciliation for March 19, 2013 to December 31, 2013 calculated by Briarlane, indicates an overpayment by the tenants in the aggregate amount of \$206,867.45. The Receiver points out that since the TMI Reconciliation for 2013 was based on the limited financial records of The Rose & Thistle Group in the

possession of Briarlane, the TMI Reconciliation for 2013 may not be accurate or complete.

50. Based on the preliminary reconciliation prepared by Briarlane, a summary of the tenant overpayments on account of TMI for the periods March 19, 2013 to December 31, 2013 and January 1, 2014 to December 31, 2014 is set out below. For purposes of the below summary, “existing tenants” represent those tenants who were in occupancy of their leased premises at the West Mall Property on February 3, 2015, being the date the Receiver was appointed. “Former tenants” represent those tenants which were no longer in occupancy as of that date.

TMI Reconciliation Summary of Tenant Overpayments			
	<b>2013</b>	<b>2014</b>	<b>Total</b>
Existing tenants	\$ 133,279	\$ 309,922	\$ 443,201
Former tenants	73,589	104,871	\$ 178,460
<b>Total overpayment</b>	<b><u>\$ 206,867</u></b>	<b><u>\$ 414,794</u></b>	<b><u>\$ 621,661</u></b>

51. Briarlane has prepared a preliminary calculation of the TMI Adjustment for January 1, 2015 to October 31, 2015 and the tenant overpayment for that period is estimated at approximately \$207,000. Attached as Appendix “C” is a detailed schedule based on information provided by Briarlane of the tenant overpayments for 2013, 2014 and 2015 by tenant.

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52. The Receiver has reviewed with STHI whether either, or both of, the existing tenants and former tenants of the West Mall Property may have a claim against the Debtor that would entitle them to receive payment of tenant overpayments for the period March 19, 2013 to February 2, 2015 (“**Pre-receivership Tenant Overpayments**”), in priority to the security held by the Lenders, notwithstanding the intervening receivership. As the Receiver has been in possession of the West Mall Property since February 3, 2015, settlement of the tenant overpayment for the period from February 3, 2015 to the date of closing will have to be addressed by the Receiver.
53. The Receiver has discussed this issue with Portfolio. Portfolio’s counsel has advised the Receiver that Portfolio wishes to review the calculation of the Pre-Receivership Tenant Overpayments and the overpayments for 2015 to determine their accuracy and, notwithstanding that review, it is Portfolio’s position that Pre-receivership Tenant Overpayments are subordinate to the mortgage held by Portfolio. The Receiver is providing no comment on either the accuracy of the tenant overpayment calculations, or on the issue of their priority.
54. The Receiver is of the view that the existing tenants and the former tenants have the opportunity, should they so choose, to assert a claim that the Pre-receivership Tenant Overpayments, if any, have priority to the security held by the Lenders. In this regard, since the tenants under the said leases will continue to be tenants of the West Mall Property after its sale, the Purchaser is concerned that it may be the party that will be called on to pay these obligations either by way of set-off of post-closing rent by the tenants or otherwise. Accordingly, the

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Receiver proposes to hold back from the interim distribution proposed to be made to Portfolio the sum of \$1,325,000 on account of potential TMI overpayments for the period from March 19, 2013 to October 31, 2015 and for other contingencies as discussed later in this report.

### **Brokers' Claims**

55. The Receiver has been informed by two tenants, Edgebuilder and Investors' Group Financial Services ("Investors") that, pursuant to lease extensions that they each signed with the Debtor, the Debtor agreed to pay their respective real estate brokers' commissions as consideration for negotiating and procuring the said extensions. Based on the Receiver's review of the agreement documenting the said lease extensions, there is an obligation on the Debtor to pay those commissions.
56. According to records of the Debtor reviewed by the Receiver, the amounts owing by the Debtor to the two brokers are \$17,431.38 to DTZ Canada Inc. in respect of the Edgebuilder extension, and \$77,812.71 to Cushman & Wakefield Ltd. in respect of the Investors extension (collectively, the "**Brokers Claims**").
57. As the Brokers Claims appear to have arisen under leases, and since the tenants under the said leases will continue to be tenants of the West Mall Property after its sale, the Purchaser is concerned that it may be the party that will be called on to pay these obligations either by way of set-off of post-closing rent by the tenants or otherwise. Accordingly the Receiver has agreed to hold back from the proposed interim distribution \$100,000 on account of the Brokers Claims in order that the brokers may, if they so choose, seek a determination from the Court as

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to their entitlement to receive payment of these amounts in priority to the claims of the Lenders.

58. The proposed interim distribution to Portfolio is discussed later in this report.

#### **Payments to 368230 Ontario Limited**

59. Based on the information set out above, the Receiver estimates that the potential Pre-receivership Tenant Overpayments total approximately \$642,000. No funds for payment of this obligation were, to the knowledge of the Receiver, held back by the Manager to address this potential obligation.
60. Since the appointment of the Receiver, the Manager has paid to the Receiver the sum of \$275,281 and as of September 22, 2015 the Manager is still holding approximately \$15,000 in its account for any expenses that may arise from the period it was managing the West Mall Property.
61. During its review of the books and records maintained by Briarlane for the period prior to the receivership, the Receiver noted that in addition to the monthly interest payments to the Lenders, WMHL made during the period March 19, 2013 to February 5, 2015 monthly payments totaling \$467,243.08 to 368230 including on account of loan interest or other indebtedness which appears to be unsecured. According to a corporate search conducted by the Receiver on September 17, 2015, Dr. Stanley Bernstein is a director of 368230.
62. No payments have been made to 368230 by the Receiver. The Receiver has made inquiries to counsel for Dr. Bernstein and for the Manager as to the reason and basis for the payments to 368230. It is possible that a claim for the amounts

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paid to 368230 may be made by the Receiver and/or the Lenders and existing or former tenants may claim priority to those amounts.

63. The Receiver will consider its position with respect to the payments once it receives a response to its enquiries.

#### **V. TENANCY AT THE WEST MALL PROPERTY**

64. The Manager commenced its marketing process for the West Mall Property in February 2014. At that time, 92% (representing 86,664 square feet of the leasable area of the West Mall Property of approximately 94,000 square feet) was occupied by tenants. Upon the Receiver's appointment on February 3, 2015, the occupancy rate had dropped to 59% and is anticipated to decline further to 36% by December 31, 2015 at which time four additional tenants will have vacated the property, as a result of either the non-renewal of their leases or the tenants electing to terminate their lease agreements prior to their expiration.

#### **VI. MARKETING OF THE WEST MALL PROPERTY**

65. As described in the Manager's Twentieth Report to the Court dated November 21, 2014 ("**Manager's Twentieth Report**"), the Manager solicited proposals from five leading commercial real estate firms to market nine properties, including the West Mall Property. CBRE was retained by the Manager to market those properties. A copy of the Manager's Twentieth Report (without appendices) is attached as Appendix "D" to this report.
66. CBRE commenced the marketing process on February 27, 2014 when CBRE e-mailed a marketing flyer and confidentiality agreement to over 2,000 potential

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purchasers. Advertisements were also placed in the Globe & Mail during the first two weeks of the marketing process.

67. Thirty (30) potential purchasers of the West Mall Property executed confidentiality agreements with CBRE. These purchasers were provided with access to an on-line data room and an electronic copy of the Confidential Information Memorandum for the West Mall Property.
68. A bid date was initially set for April 10, 2014 and the offers received were summarized in Confidential Appendix "B" to the Manager's Twentieth Report. After consultation with Computershare, the second mortgagee, the Manager determined not to proceed with any of the submitted bids and CBRE continued marketing the West Mall Property. A second bid date was set for July 22, 2014. The top bidder, whose bid was conditional upon the bidder obtaining satisfactory financing, did not achieve satisfactory financing and CBRE proceeded with another round of marketing of the West Mall Property.
69. As set out in the Manager's Twenty-Fourth Report, the Manager entered into an agreement of purchase and sale dated November 14, 2014 with West Mall Properties Corp. ("WMPC"). The sale, which was consented to by the Lenders, was scheduled to close on December 15, 2014 and the Manager anticipated that the net proceeds available on closing would be sufficient to satisfy the amounts owed pursuant to the mortgages. WMPC was granted an extension to December 22, 2014, but repudiated the purchase agreement by failing to close on the agreed-upon date. The Manager entered into discussions with WMPC and other stakeholders to explore the possibility of reinstating the purchase agreement but



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those discussions did not result in an acceptable agreement. A copy of the Manager's Twenty-Fourth Report (without appendices) is attached as Appendix "E" to this report.

70. In the Manager's Twenty-Fourth Report, the Manager set out that a significant tenant of the West Mall Property had terminated its lease and relocated resulting in the West Mall Property no longer generating enough revenue to pay expenses associated with the West Mall Property, The Manager also stated that it was not certain if the sale of the West Mall Property would generate sufficient proceeds to pay mortgages registered against the West Mall Property or amounts to pay the Manager's Charge or the Manager's Borrowings Charge which, pursuant to the Manager Appointment Order, were subordinate to the security interests of the Lenders. As a result and as set out earlier herein, the Manager applied to the Court for its discharge and the Receiver was appointed on February 3, 2015.

## **VII. MARKETING AND SALES ACTIVITIES DURING THE RECEIVERSHIP**

71. On February 17, 2015, proposals were solicited by the Receiver from five real estate brokerage firms to list and market the West Mall Property for sale and/or lease. A summary of the proposals was prepared by the Receiver and forwarded to the Lenders on March 6, 2015 for their consideration. The Receiver did not receive any comments from either of the Lenders with respect to the listing proposals circulated and the Receiver did not proceed to engage a real estate brokerage firm at that time as the Manager had recently conducted a formal sales process and the Receiver understood that the Lender(s) were in discussions with prospective purchasers.

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72. During the period February 3 to April 30, 2015, Trez was in discussions with prospective purchasers and the Receiver facilitated requests for site tours and provided information to parties who signed confidentiality agreements. One of the Trez contacts conducted a more in-depth due diligence of the West Mall Property as it obtained core samples from the parking garage and commissioned a modernization survey of the passenger elevators. Ultimately, however, none of the Trez contacts submitted an offer to the Receiver.
  73. As indicated earlier, on May 6, 2015, Trez informed the Receiver that it was no longer willing to fund the receivership and subsequent to that date, Trez did not bring any potential purchasers to the Receiver's attention.
  74. Following May 6, 2015, Portfolio engaged in discussions/negotiations with different prospective purchasers. In one situation, commencing June 15, 2015, the Receiver and Portfolio were involved with extensive negotiations with a prospective purchaser with respect to the terms and conditions of an agreement of purchase and sale. On July 20, 2015, counsel to that purchaser informed Portfolio and the Receiver that his client had elected not to proceed with a purchase.
  75. Shortly thereafter, Portfolio commenced discussions with another purchaser for the sale of the West Mall Property. As a result of negotiations between Portfolio, the Receiver and the prospective purchaser, the APS was entered into between the Receiver and Bridgeport. An amending agreement was subsequently entered into which effectively extended certain dates in the APS. On September 25,

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2015, the Purchaser informed the Receiver that it wished to proceed to complete the sale.

76. Completion of the APS is conditional on the approval of the APS by the Court and the issuance of an Approval and Vesting Order by the Court. The Receiver has prepared a Supplementary Report to the Court on the APS and the agreement entered into by the Receiver with CBRE. The Supplementary Report is attached as Confidential Appendix "F" to this First Report. Subject to the issuance of the Approval and Vesting Order, the Receiver anticipates that closing of the transaction will occur on or about November 2, 2015.
77. A draft copy of the proposed Approval, Vesting and Distribution Order ("**Approval and Vesting Order**") is attached as Appendix "G". The Receiver points out that since the Purchaser is concerned that it may be the party that will be called on to pay the obligations for the potential Pre-receivership Tenant Overpayments and the Brokers' Claims either by way of set-off of post-closing rent by the tenants or otherwise, the proposed Approval and Vesting Order includes clauses precluding tenants from withholding rental payments, setting 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 sale to Bridgeport (collectively, the "**Tenant Claims**"), and that the Tenant Claims are to be included as claims against the net proceeds from the sale of the West Mall Property.

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78. The Receiver recommends to the Court that an Order be issued approving the APS for the following reasons:

- i) A formal marketing and sales process was conducted by the Manager, details of which are set out earlier herein;
- ii) Subsequent to the formal marketing and sales process, both Trez and Portfolio entered into discussions and negotiations with parties which were considered to be potential purchasers, resulting in a further canvassing of the market for potential offers;
- iii) Based on the PCA received by the Receiver, significant repairs and maintenance costs need to be expended on the West Mall Property and that work is best undertaken by an owner of the property; and
- iv) Since the appointment of the Manager, the percentage of vacant space at the West Mall Property continues to increase. The Receiver is concerned that unless the work described in the PCA is undertaken, or there is a new owner of the West Mall Property, tenant vacancies will continue to rise, either as a result of the non-renewal of existing lease agreements or the early termination of lease agreements by tenants which, in the Receiver's view, will negatively impact the quantum of any future offers that will be offered for the West Mall Property.

79. The Receiver has been informed by Portfolio that it supports the approval of the APS and the issuance of the proposed Approval and Vesting Order described above.

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### **Removal of Dated Encumbrance**

80. Pursuant to the terms of the APS, the Receiver has agreed to delete from the property an agreement registered on title in 1958 between Islington Park Limited and Town Planning Consultants Limited for the provision of planning and development services to the owner of the property, bearing Instrument no. EB206290, a copy of which is attached as Appendix "H".
81. The two corporations which are parties to the agreement were dissolved several years ago; copies of searches of the corporations are attached as Appendix "I".
82. Given the age of the encumbrance and the dissolution of the parties to the agreement, the Receiver recommends that the encumbrance be deleted from title to the Property in order to allow the Receiver to comply with the terms of the APS and complete the transaction.

### **VIII. SECURED OR PRIORITY CLAIMS**

83. As of the date of the First Report, the Receiver is not aware of any liens or charges registered against the Property other than the first and second mortgages and general security agreements described above.
84. On April 13, 2015, Canada Revenue Agency ("CRA") notified the Receiver that the Debtor owes CRA \$13,010.73 in respect of a HST liability. The amount owed is on account of penalty and interest and CRA is not asserting a "deemed trust" claim. A trust examination was completed by CRA prior to the Receiver's appointment. A copy of the CRA claim letter is attached as Appendix "J" to this report.

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85. The Receiver has continued to file HST returns to claim input tax credits on expenses incurred during the receivership.

#### **IX. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

86. Attached as Appendix "K" is the Receiver's Interim Statement of Receipts and Disbursements ("R&D") for the period February 3, 2015 to August 31, 2015. During this period, receipts were \$1,322,871 (of which \$225,281 was transferred to the Receiver by the Manager as of August 31, 2015) while disbursements were \$1,002,277, resulting in a net cash balance of \$320,594. As set out earlier in this report, a further amount of \$50,000 was transferred to the Receiver by the Manager on September 16, 2015 and is therefore not reflected on the R&D.

#### **X. INTERIM DISTRIBUTION**

87. According to a statement of account provided to the Receiver by Portfolio, as at September 15, 2015, the Debtor's indebtedness to Portfolio was \$10,925,684.93. A copy of the Portfolio statement of account is attached as Appendix "L". As set out earlier herein, STHI has provided its opinion that the security over the real and personal property of WMHL granted in favour of Portfolio pursuant to its mortgage and general security agreement is valid and enforceable against WMHL in accordance with their respective terms.
88. On the closing of the APS, the Receiver will receive the proceeds from the sale of the West Mall Property. Portfolio has requested that upon the closing of the sale, the Receiver make an interim distribution to it from the net sales proceeds the Receiver receives on closing of the sale ("**Net Sales Proceeds**").

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89. The Receiver is seeking an Order to pay to Portfolio the Net Sales Proceeds less a holdback amount of \$1,325,000 on account of the potential TMI overpayments, the Broker Claims, and a general provision to cover any operating expenses and contingent obligations that the Receiver may be required to pay.
90. The terms of the proposed Approval and Vesting Order set out that any payments that the Receiver may have to make in TMI overpayments or any other claims that exceed the holdback or other sums that may come into the Receiver's hands will form part of the Receiver's Charge such that they will be in priority to Portfolio (and any other interest in the Debtor's property) and accordingly Portfolio will return all such amounts to the Receiver, if any, that were disbursed to it in such circumstances to enable the Receiver to pay the Receiver's unpaid obligations.
91. The proposed Approval and Vesting Order contains provisions which allow any former or existing tenants who may have claims for the potential TMI overpayments, the two brokers claiming entitlement to payment of the Brokers Claims, the Applicants, and the Lenders to apply to Court for such orders and determinations with respect to those claims, which will vest in the Net Sales Proceeds. The Receiver believes that the amount of the holdback will be sufficient to cover payment of any such claims that may have to be made from the Net Sales Proceeds, however, if not, then Portfolio would have to return sufficient amounts to cover those payments as set out in the preceding paragraph. Additionally, and as set out earlier in this First Report, in accordance with the Receiver's obligations under the APS, the proposed Approval and

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Vesting Order states that any current and former tenants may not withhold rent, set off any claim or claim any remedies as against the Purchaser for any claim arising before the closing of the transaction (which would include the Brokers Claims), as those claims will vest in the proceeds from the sale.

## **XI. STATUTORY NOTICES AND REPORTS**

92. Attached as Appendix "**M**" hereto is the Notice and Statement of Receiver prepared pursuant to Sections 245(1) and 246(1) of the Bankruptcy and Insolvency Act.
93. Attached as Appendix "**N**" hereto is the Interim Report of the Receiver prepared pursuant to Section 246(2) of the Bankruptcy and Insolvency Act.

## **XII. PROFESSIONAL FEES**

94. The Receiver's accounts total \$165,424.87 in fees and disbursements plus HST of \$21,505.23 for a total amount of \$186,930.10 from February 3, 2015 to September 30, 2015 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn October 8, 2015 that is attached as Appendix "**O**".
95. The accounts of the Receiver's counsel, STHI, total \$134,160.50 in fees and disbursements and \$17,421.98 in HST for a total of \$151,582.48 (the "**STHI Accounts**") for the period ending September 30, 2015. A copy of the STHI Accounts, together with a summary of the personnel, hours and hourly rates



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described in the STHI Accounts, supported by the Affidavit of Michael Cass sworn October 9, 2015 is attached as Appendix "P".

### **XIII. CONCLUSION**

96. The Receiver respectfully requests that the Court grant an Order which provides for the following:

- i) authorizing and directing the Receiver to enter into and carry out the terms of the APS between the Receiver and the Purchaser dated September 8, 2015 together with amendments thereto, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the West Mall Property in the Purchaser, or as it may further direct in writing, upon closing of the purchase agreement and the delivery of the Receiver's Certificate to the Purchaser;
- ii) approving the entering into the agreement with CBRE by the Receiver in connection with the sale of the West Mall Property;
- iii) sealing Confidential Appendix "F" to the First Report and approving payment of the commission to CBRE referred to therein;
- iv) varying the Appointment Order in order to grant priority to the Receiver's Charge and the Receiver's Borrowing Charge over all security and other interests in the Debtor's property with effect on and after May 6, 2015;
- v) providing direction for a procedure whereby (i) competing claims to priority to overpayments of TMI made by tenants to the Debtor, the

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- Manager and the Receiver, as well as other claims of tenants, and
- (ii) the Brokers Claims may be adjudicated and resolved;
- vi) approving the R&D;
- vii) authorizing and directing the Receiver to make an interim distribution in the amount of the Net Sales Proceeds less a holdback of \$1,325,000 to Portfolio;
- viii) approving the Receiver's conduct and activities since the date of the Receiver's appointment to September 30, 2015; and
- ix) approving the fees and disbursements of the Receiver and of STHI to September 30, 2015.

All of which is respectfully submitted to this Court as of this 9th day of October, 2015.

**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  
Senior Vice President

## **APPENDIX C**

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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**

**ADDENDUM TO  
FIRST REPORT OF THE RECEIVER OF WEST MALL HOLDINGS LTD.**

**October 15, 2015**

1. The purpose of this Addendum to the First Report ("**Addendum**") is to provide clarification with respect to the section of the said report entitled **Payments to 368230 Ontario Limited ("368")** which appears at paragraphs 59 – 63 inclusive of the First Report.
2. All definitions as contained in the within Addendum have the same meaning as set out in the First Report and the Terms of Reference set out in the First Report apply also to the Addendum.
3. The Receiver first became aware of payments made by the Debtor to 368 in March 2015 and, at that time, knew of such payments made by the Manager during the time of its appointment totalling \$230,078.10. Accordingly, the lawyer for the Receiver wrote to Goodmans LLP ("**Goodmans**"), the lawyer for the Manager, and requested details of the said payments. A copy of the letter from STHI to Goodmans dated March 10, 2015 with enclosures is attached as Appendix A.
4. By way of return correspondence dated March 13, 2015, Goodmans provided the Manager's explanation with respect to the payments. The responding letter from Goodmans indicated, among other things, that the Manager had caused the Debtor to make the said payments to 368 as a continuation of payments that had been made prior to the Manager's appointment and set out its understanding of the reason therefore, being interest payments on a loan made by 368 to the Debtor. A copy of that letter together with all enclosures is attached as Appendix B (the entire Manager's 13<sup>th</sup> Report is not attached, but only page 71 thereof as referenced in the letter).
5. Counsel for the Receiver sent further correspondence to both counsel for the Manager and for Dr. Bernstein dated October 1, 2015 seeking any additional information with respect to payments made to 368 since the original findings in March 2015. Attached as Appendix C is a copy of the letter from STHI to Goodmans and to Lenczner Slaght Royce Smith Griffin, counsel for Dr. Bernstein.

6. In response to STHI's letter of October 1, 2015, counsel for the Manager forwarded an email referencing back its original letter of March 13, 2015 as the Manager's explanation with respect to the further inquiries made. A copy of Goodmans' e-mail is attached as Appendix D. The Receiver has not, to date, received a response from counsel to Dr. Bernstein.

All of which is respectfully submitted to this Court as of this 15th day of October, 2015.

**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  
Senior Vice President

## **APPENDIX D**

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

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

THE HONOURABLE *Mr.*  
JUSTICE *Pearny*

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)  
)

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.

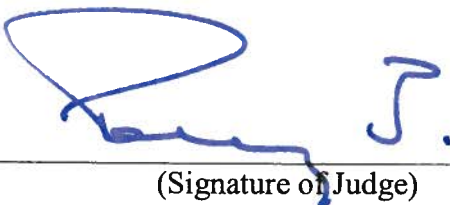
20. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

#### **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.

RCP-E 4C (July 1, 2007)

## 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 carts, 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

**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.

RCP-E 4C (July 1, 2007)

**APPENDIX E**

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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**

**SECOND REPORT OF THE RECEIVER OF WEST MALL HOLDINGS LTD.**

**March 10, 2016**

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## I. INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) dated February 3, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited (“**CBTL**”) was appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd. (“**WMHL**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached to this report as Appendix “**A**”.
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property.
3. In addition, the Receiver was expressly empowered and authorized to:
  - (a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
  - (b) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - (i) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

- (ii) with the approval of the Court in respect of any transaction in which the purchase price or aggregate purchase price exceeds \$250,000.
4. On October 9, 2015, the Receiver issued its first report to the Court (the “**First Report**”) for the purpose of, among other things, seeking an Order of the Court to: a) authorize the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Bridgeport West Mall Inc. (“**Bridgeport**”) dated September 8, 2015 together with amendments thereto (the “**APS**”); b) make an interim distribution to 295 The West Mall Portfolio Inc. (“**Portfolio**”) in the amount of the Net Sales Proceeds (as defined in the First Report) less a holdback of \$1,325,000 (the “**Holdback**”); and c) provide direction for a procedure whereby competing claims to priority could be adjudicated and resolved in order that the Receiver could thereafter make payments to the appropriate parties from the Holdback. A copy of the First Report, without appendices, is attached to this report as Appendix “**B**”.
  5. On October 15, 2015, the Receiver issued its Addendum to the First Report to provide clarification with respect to the section of the First Report entitled **Payments to 368230 Ontario Limited (“368”)** which appeared at paragraphs 59-63 inclusive of the First Report.
  6. By Approval, Vesting and Distribution Order of Justice Penny dated October 20, 2015 (the “**October 20 Order**”), the Court, amongst other relief granted, approved the sale transaction contemplated by the APS and approved the distribution to Portfolio of the net proceeds from the sale transaction, less the

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Holdback. A copy of the October 20 Order is attached to this report as Appendix “C”.

7. The Appointment Order and October 20 Order together with related Court documents have been posted on the Receiver’s website, which can be found at <http://www.collinsbarrow.com/en/cbn/West-mall-holdings-ltd>.

### **Purpose of Second Report**

8. The purpose of this second report of the Receiver (the “**Second Report**”) is to:
  - (a) report to the Court on the activities of the Receiver since the First Report;
  - (b) seek an Order authorizing and directing the Receiver to pay to the tenants the Tenant Receivership Overpayments (defined below);
  - (c) provide the Court with a summary of the Receiver’s cash receipts and disbursements for the period February 3, 2015 to February 29, 2016;
  - (d) seek the Court’s approval of the Second Report and the Receiver’s conduct and activities described herein; and
  - (e) seek an order approving the fees and disbursements of the Receiver and of the Receiver’s legal counsel, Steinberg Title Hope & Israel LLP (“**STHI**”) for the period October 1, 2015 to February 29, 2016.

### **Terms of Reference**

9. In preparing this Second Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the

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Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

10. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

## II. BACKGROUND

11. WMHL is an Ontario corporation which was incorporated on November 5, 2012 and is a single purpose corporation.
12. On March 19, 2013, the Debtor purchased 291-295 The West Mall (the "**West Mall Property**") from Portfolio, which the Receiver understands is a single use corporation wholly controlled by H&R Real Estate Investment Trust, for consideration including, among other things, a vendor take-back mortgage.
13. The West Mall Property is comprised primarily of a seven-storey multi-tenant office building and adjacent one-storey single-tenant commercial building located on approximately two acres at 291-295 The West Mall, Toronto, Ontario.
14. The office building encompasses approximately 86,000 square feet, and was 56% occupied as of August 31, 2015. The single-tenant commercial building is approximately 8,000 square feet and had been occupied by The Keg restaurant until August 2015.



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### III. APPOINTMENT OF THE RECEIVER

15. On November 5, 2013, by Order of the Ontario Superior Court of Justice (Commercial List) ("**Court**"), Schonfeld Inc. Receivers + Trustees was appointed as Manager of the Debtor and certain other companies (the "**Schedule B Corporations**") (the "**Manager Appointment Order**") pursuant to proceedings between the Debtor's principals and shareholders.
16. The Manager took possession and control of the real property of the Schedule B Corporations and retained Briarlane Rental Property Management Inc. ("**Briarlane**") to act as its property manager. The Manager also took delivery of the books and records of certain of the Schedule B Corporations.
17. In its 24<sup>th</sup> report to the Court dated January 12, 2015 ("**Manager's Twenty-Fourth Report**"), the Manager reported to the Court that as a result of a significant tenant recently terminating its lease, the West Mall Property no longer generated enough revenue to pay expenses associated with the operation of the West Mall Property. As the Manager's Charge and the Manager's Borrowing Charge (each as defined in the Manager Appointment Order) ranked behind the mortgages registered against the West Mall Property, and since it was uncertain to the Manager that the sale of the West Mall Property would generate sufficient proceeds to pay the mortgages registered against the property or amounts to pay the Manager's Charge or the Manager's Borrowing's Charge, the Manager advised the Court that there was no funding available for the Manager's continued management, preservation and marketing of the West Mall Property. As a result, the Manager requested of the Court that the Manager be discharged

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from any further responsibility for the management, preservation and marketing of the West Mall Property.

18. Based on the above, pursuant to a Motion Record dated January 27, 2015, Computershare Trust Company of Canada (“**Computershare**”) made an application to the Court for the appointment of a receiver over the Debtor. The Appointment Order was granted on February 3, 2015.

#### **IV. CLOSING OF SALE TRANSACTION**

19. In the First Report, the Receiver provided the Court with details of the proposed sale transaction with Bridgeport. Following the issuance of the October 20 Order, the Receiver proceeded to close the sale transaction.
20. Prior to the closing of the sale transaction, Bridgeport advised that the purchaser would be 295 The West Mall Complex Inc. and the closing documents were prepared accordingly. The sale closed on November 4, 2015.
21. A copy of the Receiver’s Certificate filed with the Court on November 10, 2015 is attached to this report as Appendix “**D**”.

#### **V. PROPERTY TAX VACANCY REBATE**

22. A property tax vacancy rebate application was filed on the Debtor’s behalf for the units that were vacant during the period January 1, 2014 to December 31, 2014. The application was submitted in February 2015 and has not yet been processed by the City of Toronto. It is estimated that the rebate would be 30% of taxes paid on those units for this period or approximately \$10,000.

- 
23. Bridgeport has elected to file the 2015 property tax vacancy rebate on behalf of WMHL for the period January 1 to October 31, 2015 and on its own behalf for the period thereafter, pursuant to its rights under the APS. The property tax vacancy rebate application was submitted on February 29, 2016 by Bridgeport. Included with the application was a letter of direction signed by the Receiver and Bridgeport directing the City of Toronto to pay to the Receiver 83.33% (or 10/12) of the eligible rebate representing the period prior to the closing of the sale.

## VI. TMI RECONCILIATION

24. With reference to tenant overpayments on account of operating costs and realty taxes (the "**TMI Reconciliation**") that was set out in the First Report, subsequent to the sale of the West Mall Property, the Receiver arranged for Briarlane to finalize its calculation of tenant overpayments on account of operating costs and realty taxes for the period January 1, 2015 to October 31, 2015.
25. Based on that calculation, the overpayment by tenants for the period February 1, 2015 (the Appointment Order was made on February 3, 2015) to October 31, 2015 (the "**Receivership Period**") is calculated as \$229,098 (the "**Tenant Receivership Overpayments**"). A summary of the Tenant Receivership Overpayments is set out in Appendix "**E**" to this report, which appendix has been prepared by the Receiver based on information provided by Briarlane. As the Receiver was in possession of the West Mall Property since February 3, 2015, the Receiver is of the view that the Receiver should pay the Tenant Receivership Overpayments to the tenants entitled thereto as set out in Appendix "**E**" to this report.

- 
26. Portfolio has informed the Receiver that Portfolio has not undertaken an audit of the TMI Reconciliation amounts calculated by Briarlane and, as such, has not confirmed the accuracy of such amounts. However, Portfolio has further informed the Receiver that it will not be opposing the requested payments by the Receiver of the \$229,098 of Tenant Receivership Overpayments set out in Appendix "E".
27. In accordance with paragraph 8 of the October 20 Order, on February 12, 2016, the Receiver wrote to each of the tenants who were in occupancy at the time that the sale transaction closed ("**Tenants at Closing**"), to notify them that the TMI reconciliation had been completed. In its correspondence, the Receiver notified each tenant of the amounts of their overpayment on account of operating costs and realty taxes for the period March 19, 2013 to October 31, 2015, and for the Receivership Period.
28. The Receiver further advised each tenant that (i) the Receiver would be making an application to Court in March 2016 for an Order authorizing the Receiver to pay to the tenant its respective portion of the Tenant Receivership Overpayments; and (ii) Portfolio will be bringing an application to Court, which Portfolio advised the Receiver would be in April 2016, requesting payment to Portfolio of all remaining monies held in trust by the Receiver, after payment of the Tenant Receivership Overpayments. Copies of the February 12, 2016 letters sent to the Tenants at Closing are attached to this report as Appendix "F".

- 
29. Letters were not sent to two tenants, Edgebuilder Inc. and Keg Restaurant Ltd., which made overpayments during the Receivership Period as they were not tenants in occupation at the date of closing.
  30. As set out in the First Report, the Receiver held back the Holdback from the interim distribution made to Portfolio. At this time, the Receiver seeks an Order from the Court authorizing the Receiver to pay the Tenant Receivership Overpayments to the tenants entitled thereto as set out in Appendix "E".
  31. Subsequent to the Receiver sending the letters to the Tenants at Closing, Portfolio has advised that its application has been scheduled for April 18, 2016 and that Portfolio will address in its application the issue of tenant overpayments on account of operating costs and realty taxes for the period prior to the Appointment Date.

## **VII. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

32. Attached as Appendix "G" to this report is the Receiver's Interim Statement of Receipts and Disbursements ("R&D") for the period February 3, 2015 to February 29, 2016. During this period, receipts were \$11,758,507 and disbursements were \$1,744,959, resulting in a cash surplus of \$10,013,548 prior to the interim distribution to Portfolio. The receipts include proceeds of \$10,000,000 from the closing of the sale transaction and \$356,503 in net funds transferred to the Receiver by the Manager as of February 29, 2016.
33. An interim distribution of \$8,633,972 was made to Portfolio on November 5, 2015.

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## VIII. PROFESSIONAL FEES

34. The Receiver's accounts total \$44,242.45 in fees and disbursements plus HST of \$5,751.52 for a total amount of \$49,993.97 from October 1, 2015 to February 29, 2016 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Daniel Weisz sworn March 4, 2016 that is attached to this report as Appendix "H".
35. The accounts of the Receiver's counsel, STHI, total \$37,019.77 in fees and disbursements and \$4,116.15 in HST for a total of \$41,135.92 (the "**STHI Accounts**") for the period ending February 29, 2016. A copy of the STHI Accounts, together with a summary of the personnel, hours and hourly rates described in the STHI Accounts, supported by the Affidavit of Michael Cass sworn March 10, 2016 is attached to this report as Appendix "I".

## IX. CONCLUSION

36. The Receiver respectfully requests that the Court grant an Order:
- i) authorizing and directing the Receiver to pay the Tenant Receivership Overpayments to the tenants entitled thereto as set out in Appendix "E";
  - ii) approving the conduct and activities of the Receiver since the First Report to February 29, 2016;
  - iii) approving the Second Report;
  - iv) approving the R&D; and

- 
- v) approving the fees and disbursements of the Receiver and of STHI for the period October 1, 2015 to February 29, 2016.

All of which is respectfully submitted to this Court as of this 10<sup>th</sup> day of March, 2016.

**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, LIT  
Senior Vice President

**APPENDIX F**

---





disbursements attached as Exhibit “H” to the Second Report of the Receiver dated March 10, 2016 (the “Second Report”); and (iii) approving the Receiver’s activities, fees and disbursements as set out in the Second Report, was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario.

**ON READING** the Second Report and the appendices attached thereto, the Affidavit of Daniel Weisz sworn March 4, 2016 (the “Weisz Fee Affidavit”) and the Affidavit of Michael Cass sworn March 10, 2016 (the “Cass Fee Affidavit”) and on hearing the submissions of the lawyer for the Receiver, 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 and motion record dated March 10, 2016 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **Tenant Receivership Overpayments**

2. **THIS COURT ORDERS** that the Receiver is authorized to disburse the Tenant Receivership Overpayments from the Holdback, as defined in the Second Report, to the tenants and in the sums as listed in Schedule “A” to the within order.

**Approval of Activities**

3. **THIS COURT ORDERS** that the (i) Second Report of the Receiver, (ii) the activities of 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.

  
\_\_\_\_\_  
(Signature of Judge)

RCP-E 59A (July 1, 2007)

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

MAR 21 2016

4

**291-295 The West Mall  
Tenant Receivership Overpayments  
February 1 to October 31, 2015**

Name of Tenant	Tenant Overpayment
Canadian Institute of Plumbing and Heating	\$ 13,501
Community Living Toronto	36,899
Dr. Janusz Mierzwa	6,291
Edgebuilder Inc.	17,009
Hudson Group Consulting Inc.	2,275
Investors Group Financial Services Inc.	101,455
Keg Restaurant Ltd.	24,667
Marhen Insurance Brokers Ltd.	2,901
The George Hull Centre for Children and Families	15,898
United Grocers Inc.	8,203
<b>Total amount</b>	<b>\$ 229,098</b>

**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**

**ORDER**

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

RCP-E 4C (July 1, 2007)

DBDC SPADINA LTD. et al.  
Applicants

-and-

March 21, 2016

NORMA WALTON et al.  
Respondents

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

March 24, 2016

ONTARIO

SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

*This Motion is unopposed. I am satisfied that it should be granted on the terms of the attached order. Hainey J*

MOTION RECORD OF COLLINS BARROW TORONTO  
LIMITED, COURT APPOINTED RECEIVER OF WEST  
MALL HOLDINGS LTD.

STEINBERG TITLE HOPE & ISRAEL LLP

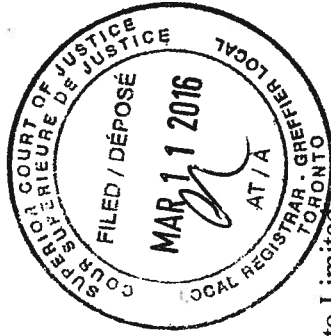
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David A. Brooker (35787W)

Tel: 416-225-2777

Fax: 416-225-7112

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



RCP-E 4C (July 1, 2007)

**APPENDIX G**

---

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 IN SCHEDULE "C" HERETO, TO  
BE BOUND BY THE RESULT

**MOVING PARTY'S MOTION RECORD**  
(hearing scheduled April 18, 2016)

April 7, 2016

**MINDEN GROSS** LLP  
Barristers and Solicitors  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Catherine Francis** (LSUC# 26900N)  
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TO: SERVICE LIST



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Fax: 905-602-1109

## INDEX

TAB	DOCUMENT	PAGE NOS.
1	Notice of Motion dated April 7, 2016	
2	Affidavit of Timothy R. Dunn sworn April 7, 2016	

#2511608 | 4083428

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 IN SCHEDULE "C" HERETO, TO BE  
BOUND BY THE RESULT

**NOTICE OF MOTION**

**295 THE WEST MALL PORTFOLIO LTD.** ("West Mall Portfolio"), a secured creditor of West Mall Holdings Ltd. ("WMHL"), will make a Motion to a Judge presiding over the Commercial List on Monday, the April 18, 2016, at 10:00 a.m. or as soon after that time as the Motion can be heard at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard:

[ ] in writing under subrule 37.12.1(1);

in writing as an opposed motion under subrule 37.12.1(4);

orally.

**THE MOTION IS FOR:**

1. If necessary, an Order abridging the time for service of this Notice of Motion.
2. An Order directing Collins Barrow Toronto Limited (“CBTL”) in its capacity as Court-Appointed Receiver of the assets, undertakings and property of WMHL (the “Receiver”) to distribute all remaining funds being held by it to West Mall Portfolio, subject to a holdback of \$75,000 (plus Harmonized Sales Tax) to cover remaining costs of the receivership;
3. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. WMHL was incorporated on November 5, 2012.
2. On March 19, 2013, WMHL purchased 291-295 The West Mall (the “West Mall Property”) from West Mall Portfolio for consideration which included a first-position vendor take-back mortgage (the “Portfolio Mortgage”).
3. Pursuant to the Portfolio Mortgage, West Mall Portfolio is the first position secured creditor of WMHL.
4. The West Mall Property is comprised of a seven-storey multi-tenant office building of approximately 86,000 square feet and an adjacent one-storey single-tenant commercial building of approximately 8,000 square feet).

5. On November 5, 2013, Schonfeld Inc. Receivers + Trustees (“Schonfeld”) was appointed as Manager of a number of companies and properties, including the West Mall Property, pursuant to legal proceedings between the principals and shareholders of the various Respondent corporations.
6. In its 24<sup>th</sup> report to the Court dated January 12, 2015, Schonfeld reported that, as a result of a significant tenant terminating its lease, the West Mall Property no longer generated enough revenue to pay expenses associated with its operation.
7. As Schonfeld’s charge ranked behind the mortgages registered against the West Mall Property, Schonfeld requested that it be discharged from any further responsibility for the management, preservation and marketing of the West Mall Property.
8. On January 27, 2015, Computershare Trust Company of Canada as nominee for Trez Capital Limited Partnership (“Trez”), a secured creditor of WMHL, applied for the appointment of CBTL as Receiver of the assets, undertakings and property of WMHL. The Receivership Order was granted on February 3, 2015.
9. Trez had advanced \$1,937,500 to WMHL in March 2013 secured by a second mortgage on the West Mall Property, ranking subordinate to the Portfolio Mortgage (the “Trez Mortgage”).
10. As of the date of the Receivership Order, West Mall Portfolio was owed approximately \$9,687,500 under the Portfolio Mortgage.
11. As detailed in the First Report of the Receiver, the Receiver has obtained legal opinions as to the validity of the Portfolio Mortgage and the Trez Mortgage.

12. On May 6, 2015, Trez advised that it was no longer willing to fund the receivership as it was anticipated that there would be insufficient proceeds from the sale of the West Mall Property to pay the Portfolio Mortgage.

13. The Receiver issued its First Report on October 9, 2015. In its First Report, the Receiver sought, among other things, an order approving the sale of the West Mall Property, an Order authorizing the Receiver to hold back a portion of the proceeds and an order authorizing the Receiver to make a partial distribution to West Mall Portfolio.

14. The Receiver's motion was granted by Mr. Justice Penny by Order dated October 20, 2015.

15. The sale of the West Mall Property closed on November 4, 2015 and the Receiver made a partial distribution of funds to West Mall Portfolio.

16. The Receiver issued its Second Report on March 10, 2016.

17. In both the First Report and the Second Report, the Receiver advised that Briarlane Rental Property Management Inc. ("Briarlane"), the property manager, had conducted a reconciliation of payments by tenants on account of operating costs and realty taxes (the "TMI Reconciliation").

18. Based upon the TMI Reconciliation, the Receiver calculated that tenants had overpaid rents in the amount of \$229,098 during the period of the receivership. The Receiver was of the view that it should refund any tenant overpayments made to the Receiver during the period of the receivership.



19. The Receiver brought a motion returnable on March 21, 2016 for authorization to refund the overpayments made during the receivership, supported by the Second Report.

20. West Mall Portfolio has not audited the TMI Reconciliation or confirmed the accuracy of the amounts. However, West Mall Portfolio agreed not to oppose the refund of \$229,098 for overpayments made during the receivership.

21. West Mall Portfolio advised the Receiver that it would be bringing a motion for an order requiring that the Receiver distribute the remaining funds held back from the sale transaction after payment of the \$229,098 and after a reserve for the balance of the Receiver's fees. The Receiver disclosed in its Second Report that West Mall Portfolio had booked a hearing date of April 18, 2016.

22. The Receiver's motion was granted by Mr. Justice Hainey by Order dated March 21, 2016.

23. No other person attended the Receiver's motion other than the Receiver and its counsel and counsel for West Mall Portfolio.

24. The Receiver has distributed the funds which were overpaid during the receivership to tenants as authorized by this Order.

25. West Mall Portfolio seeks an order distributing the balance of funds held back by the Receiver from the closing of the sale transaction to West Mall Portfolio.

26. West Mall Portfolio is the recognized first position secured creditor of WMHL. West Mall Portfolio's security gives it a priority interest in the proceeds from the sale transaction. The debt owing to West Mall Portfolio exceeds the amounts being held by the Receiver.

27. Section 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.

28. Order of Mr. Justice Newbould dated February 3, 2015 appointing CBTL as Receiver and the powers set out therein.

29. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The First and Second Reports of the Receiver (filed previously).

2. The Affidavit of Timothy R. Dunn sworn April 7, 2016.
3. Such further and other evidence as the lawyers may advise and this Honourable Court permit.

April 7, 2016

**MINDEN GROSS** LLP  
Barristers and Solicitors  
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Lawyers for the Moving Party, 295 The West  
Mall Portfolio Ltd.

TO: SERVICE LIST

#2511593 | 4083428

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 IN SCHEDULE "C" HERETO, TO BE  
BOUND BY THE RESULT

**AFFIDAVIT OF TIMOTHY R. DUNN  
(SWORN APRIL 7, 2016)**

I, **Timothy R. Dunn**, of the Town of Erin, in the County of Wellington,  
Province of Ontario, MAKE OATH AND SAY:

1. I am a partner with the law firm of Minden Gross LLP, the lawyers for 295 The West Mall Portfolio Ltd. ("West Mall Portfolio"), and as such I have knowledge of the matters hereinafter deposed to.
2. West Mall Portfolio is the first position secured creditor of West Mall Holdings Ltd. ("WMHL"), one of the Respondents herein.

3. WMHL was incorporated on November 5, 2012.
4. On March 19, 2013, WMHL purchased 291-295 The West Mall (the “West Mall Property”) from West Mall Portfolio for consideration which included a first-position vendor take-back mortgage (the “Portfolio Mortgage”).
5. The West Mall Property is comprised of a seven-storey multi-tenant office building of approximately 86,000 square feet and an adjacent one-storey single-tenant commercial building of approximately 8,000 square feet).
6. On November 5, 2013, Schonfeld Inc. Receivers + Trustees (“Schonfeld”) was appointed as Manager of a number of companies and properties, including the West Mall Property, pursuant to legal proceedings between the principals and shareholders of the various Respondent corporations.
7. In its 24<sup>th</sup> report to the Court dated January 12, 2015, Schonfeld reported that, as a result of a significant tenant terminating its lease, the West Mall Property no longer generated enough revenue to pay expenses associated with its operation.
8. As Schonfeld’s charge ranked behind the mortgages registered against the West Mall Property, Schonfeld requested that it be discharged from any further responsibility for the management, preservation and marketing of the West Mall Property.
9. On January 27, 2015, Computershare Trust Company of Canada as nominee for Trez Capital Limited Partnership (“Trez”), a secured creditor of WMHL, applied for the appointment of Collins Barrow Toronto Limited (“CBTL”) as Receiver of

the assets, undertakings and property of WMHL. The Receivership Order was granted on February 3, 2015.

10. Trez had advanced \$1,937,500 to WMHL in March 2013 secured by a second mortgage on the West Mall Property, ranking subordinate to the Portfolio Mortgage (the "Trez Mortgage").

11. As of the date of the Receivership Order, West Mall Portfolio was owed approximately \$9,687,500 under the Portfolio Mortgage.

12. As detailed in the First Report of the Receiver, the Receiver has obtained legal opinions as to the validity of the Portfolio Mortgage and the Trez Mortgage.

13. On May 6, 2015, Trez advised that it was no longer willing to fund the receivership as it was anticipated that there would be insufficient proceeds from the sale of the West Mall Property to pay the Portfolio Mortgage.

14. The Receiver issued its First Report on October 9, 2015. In its First Report, the Receiver sought the following relief:

- (a) Approval of the Receiver's activities described in the First Report;
- (b) Approval of a sale transaction (the "Transaction") contemplated by an accepted Agreement of Purchase and Sale between the Receiver and Bridgeport West Mall Inc. (the "Purchaser" or "Bridgeport") dated as of September 9, 2015 (the "Bridgeport APS");

- 4 -

- (c) Vesting in the Purchaser or its nominee WMHL's right, title and interest in and to the property as such term is defined in the Bridgeport APS including the West Mall Property;
- (d) Authorizing the Receiver to hold back a portion of the proceeds of the Transaction and to make a partial distribution to West Mall Portfolio;
- (e) Varying portions of the initial order appointing the Receiver to grant it priority to West Mall Portfolio;
- (f) Vesting all potential claims of tenants of the West Mall Property and of certain real estate brokers in the proceeds of the Transaction, with the determination of the entitlement, quantum and priority of the said claims to be adjudicated by the Court at a future date to be determined;
- (g) The costs of its motion payable from the estate of the WMHL; and,
- (h) Such further and other relief as to this Honourable Court may deem just.

15. The Receiver's motion was granted by Mr. Justice Penny by Order dated October 20, 2015.

16. The sale to Bridgestone closed on November 4, 2015 and the Receiver made a partial distribution of funds to West Mall Portfolio.

17. The Receiver issued its Second Report on March 10, 2016. In both the First Report and the Second Report, the Receiver advised that Briarlane Rental Property Management Inc. ("Briarlane"), the property manager for the West Mall Property, conducted a reconciliation of payments by tenants on account of operating costs and realty taxes (the "TMI Reconciliation").

18. Based upon the TMI Reconciliation, the Receiver calculated that tenants had overpaid rents in the amount of \$229,098 during the period of the receivership. The Receiver was of the view that it should refund any tenant overpayments made to the Receiver during the period of the receivership. The Receiver brought a motion returnable on March 21, 2016 for authorization to refund the overpayments made during the receivership.

19. West Mall Portfolio has not audited the TMI Reconciliation or confirmed the accuracy of the amounts. However, West Mall Portfolio agreed not to oppose the refund of \$229,098 for overpayments made during the receivership.

20. West Mall Portfolio advised the Receiver that it would be bringing a motion on April 18, 2016 for an order requiring that the Receiver distribute the remaining funds held back from the Transaction after payment of the \$229,098 and after a reserve for the balance of the Receiver's fees. The Receiver disclosed this in its Second Report.

21. The Receiver's motion was granted by Mr. Justice Hainey by Order dated March 21, 2016.



22. I am advised by my partner, Catherine Francis, and believe that she attended on the motion. No other person attended other than the Receiver and its counsel.

23. I understand from the Receiver's counsel that the Receiver has distributed the funds which were overpaid during the receivership to tenants as authorized by this Order.

24. West Mall Portfolio seeks an order distributing the balance of funds held back by the Receiver from the closing of the Transaction to West Mall Portfolio.

25. In bringing this motion, I undertook to the Receiver to include in the motion material a copy of the overall TMI Reconciliation prepared by Briarlane, which includes the period prior to the receivership. Attached hereto as Exhibit "A" to this my affidavit is a copy of the TMI Reconciliation, which has not been audited or verified by West Mall Portfolio.

26. The position of West Mall Portfolio is that any potential overpayments by tenants made prior to the receivership are unsecured creditor claims ranking subordinate in priority to the rights of West Mall Portfolio.

27. West Mall Portfolio is the recognized first position secured creditor of WMHL. West Mall Portfolio's security gives it a priority interest in the proceeds from the Transaction. The debt owing to West Mall Portfolio exceeds the amounts being held by the Receiver. Accordingly, I am not aware of any reason why the funds being held by the Receiver should not be distributed to West Mall Property.

28. The Receiver does not oppose the distribution of funds, subject to a holdback for further fees.

29. I make this affidavit in support of the relief sought in the Notice of Motion and for no improper purpose.

**SWORN** BEFORE ME at the City of )  
Toronto, in the Province of Ontario )  
this 7<sup>th</sup> day of April, 2016 )



Commissioner for Taking Affidavits  
(or as may be)

#2511612 | 4083428

*Catherine Francis*



**TIMOTHY R. DUNN**

B E T W E E N

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

**AFFIDAVIT OF TIMOTHY R. DUNN**

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Lawyers for the Moving Party,  
295 The West Mall Portfolio Ltd.

**291-295 The West Mall**  
**Summary of TMI Amounts That May Be Owed to Tenants**  
**For the Period March 19, 2013 to October 31, 2015**

Name of Tenant	Pre-Receivership				Receivership	Total
	2013	2014	2015	Subtotal	2015	2013-2015
	Mar 19 - Dec 31	Jan 1 - Dec 31	Jan 1 - 31		Feb 1 - Oct 31	
	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment	Under (Over) Payment
<b>Current tenants</b>						
Canadian Institute of Plumbing and Heating	\$ (11,927)	\$ (19,442)	\$ (1,500)	\$ (32,869)	\$ (13,501)	\$ (46,370)
Community Living Toronto	(32,110)	(51,724)	(4,100)	(87,934)	(36,899)	(124,833)
Dr. Janusz Mierzwa	(5,048)	(8,625)	(699)	(14,372)	(6,291)	(20,663)
Edgebuilder Inc.	(11,922)	(23,297)	(1,890)	(37,110)	(17,009)	(54,119)
Hudson Group Consulting Inc.	(1,346)	(3,330)	(253)	(4,929)	(2,275)	(7,204)
Investors Group Financial Services Inc.	(41,254)	(130,146)	(11,273)	(182,673)	(101,455)	(284,127)
Keg Restaurant Ltd.	(21,683)	(51,842)	(2,741)	(76,265)	(24,667)	(100,932)
Marhen Insurance Brokers Ltd.	(1,671)	(4,259)	(322)	(6,253)	(2,901)	(9,154)
The George Hull Centre for Children and Families	-	(5,669)	(1,766)	(7,435)	(15,898)	(23,334)
United Grocers Inc.	(6,317)	(11,588)	(911)	(18,816)	(8,203)	(27,019)
Sub-total - current tenants	\$ (133,279)	\$ (309,922)	\$ (25,455)	\$ (468,656)	\$ (229,098)	\$ (697,755)
<b>Former tenants</b>						
Energy Profiles	\$ (14,624)	\$ (4,768)	\$ -	\$ (19,392)	\$ -	\$ (19,392)
Shaljero Advisors Inc.	(7,128)	(9,122)	-	(16,250)	-	(16,250)
The Pace Law Firm	(51,837)	(90,982)	-	(142,818)	-	(142,818)
Sub-total - former tenants	\$ (73,589)	\$ (104,871)	\$ -	\$ (178,460)	\$ -	\$ (178,460)
<b>Total amount</b>	<b>\$ (206,867)</b>	<b>\$ (414,794)</b>	<b>\$ (25,455)</b>	<b>\$ (647,116)</b>	<b>\$ (229,098)</b>	<b>\$ (876,215)</b>

This is Exhibit <sup>1474</sup>.....referred to in the  
affidavit of.....*Timothy R. Dunn*.....  
sworn before me, this <sup>7th</sup>.....  
day of.....*April*.....2016.....

.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

**SCHEDULE "A" COMPANIES**

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

**SCHEDULE “B” COMPANIES**

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

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

**SCHEDULE “C” PROPERTIES  
(MUNICIPAL ADDRESSES)**

1. 3270 American Drive, Mississauga, Ontario
2. 2 Kelvin Avenue, Toronto, Ontario
3. 346 Jarvis Street, Suites A, B, E and F, Toronto, Ontario
4. 1 William Morgan Drive
5. 324 Prince Edward Drive, Toronto, Ontario
6. 24 Cecil Street, Toronto, Ontario
7. 30 and 30A Hazelton Avenue, Toronto, Ontario
8. 777 St. Clarens Avenue, Toronto, Ontario
9. 66 Gerrard Street East, Toronto, Ontario
10. 14 College Street, Toronto, Ontario
11. 26 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319 – 321 Carlaw, Toronto, Ontario
14. 0 Lutrell Avenue, Toronto, Ontario
15. 260 Emerson, Toronto, Ontario
16. 44 Park Lane Circle



BETWEEN

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

**MOTION RECORD**

**MINDEN GROSS LLP**  
Barristers and Solicitors  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Catherine Francis** (LSUC# 26900N)  
[cfrancis@mindingross.com](mailto:cfrancis@mindingross.com)  
Tel: 416-369-4137  
Fax: 416-864-9223

Lawyers for the Moving Party, 295 The West Mall  
Portfolio Ltd.

**APPENDIX H**

---

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

MONDAY, THE 18<sup>TH</sup>

MR. JUSTICE NEWBOULD

)

DAY OF APRIL, 2016

B E T W E E N :

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

Applicants

and

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

Respondents

and

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

**ORDER**

**THIS MOTION**, made by **295 The West Mall Portfolio Ltd.** ("West Mall Portfolio"), a secured creditor of West Mall Holdings Ltd. ("WMHL"), for an order directing Collins Barrow Toronto Limited in its capacity as Court-Appointed Receiver of the assets, undertakings and property of WMHL (the "Receiver") to distribute all remaining funds being held by it to West Mall Portfolio, subject to a holdback of \$75,000

(plus Harmonized Sales Tax) to cover remaining costs of the receivership, was heard this day at 330 University Avenue, 8<sup>th</sup> Floor, Toronto, Ontario.

**ON READING** the Notice of Motion herein and the Affidavit of Timothy R. Dunn sworn April 7, 2016, the First Report of the Receiver dated October 9, 2015 and the Second Report of the Receiver dated March 10, 2016 and on hearing the submissions of counsel for West Mall Portfolio and the Receiver, no other person appearing for any other interested party although properly served as appears from the affidavit of service filed herein,

1. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute all remaining funds being held by it to West Mall Portfolio, subject to a holdback of \$75,000 (plus Harmonized Sales Tax) to cover remaining costs of the receivership.



---

#2516983 | 4083428

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

**APR 19 2016**

**PER / PAR:** *Rw*

BETWEEN

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

**ORDER**

**MINDEN GROSS LLP**  
Barristers and Solicitors  
2200 - 145 King Street West  
Toronto, ON M5H 4G2

**Catherine Francis** (LSUC# 26900N)  
[cfrancis@mindengross.com](mailto:cfrancis@mindengross.com)

Tel: 416-369-4137

Fax: 416-864-9223

Lawyers for the Moving Party,  
295 The West Mall Portfolio Ltd.

**APPENDIX I**

---

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY, THE 28TH
	)	
JUSTICE	)	DAY OF APRIL, 2016

B E T W E E N:

*(Court Seal)*

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

**ORDER**

**THIS MOTION**, made by Collins Barrow Toronto Limited (“CBTL”), 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 approving the Receiver’s statement of receipts and disbursements attached as Exhibit “J” to the Third Report, approving the Receiver’s activities, fees and disbursements and those of its counsel as set out in the Third Report, discharging Collins Barrow Toronto Limited as the Receiver of the undertaking, property and assets of the Debtor, and

releasing the Receiver from any and all liability as set out in paragraph 6 of this order was heard this day at the court house, 330 University Avenue, 8th Floor, Toronto, Ontario.

**ON READING** the Third Report and the appendices attached thereto, the Affidavit of Daniel Weisz sworn April 21, 2016 (the “Weisz Fee Affidavit”) and the Affidavit of Michael Cass sworn April 21, 2016 (the “Cass Fee Affidavit”) and on hearing the submissions of the lawyer for the Receiver, 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 and motion record dated April 21, 2016 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **Approval of Activities**

2. **THIS COURT ORDERS** that the (i) Third Report of the Receiver, (ii) the activities of 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.

### **Final Distribution**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute to 295 The West Mall Portfolio Inc. (“Portfolio”) the amount of \$55,106.72, representing the Final Distribution as set out in the Third Report.



### **Vacancy Rebates and HST Refunds**

4. **THIS COURT ORDERS** that notwithstanding the discharge of the Receiver, CBTL is authorized to endorse any cheques it may receive on account of the Vacancy Rebates and the HST Refunds as defined in the Third Report to Portfolio or to otherwise deposit said cheques and remit the amounts thereof to Portfolio.

### **Discharge and Release**

5. **THIS COURT ORDERS** that upon completion of the Remaining Duties as set out in the Third Report (and upon the Receiver filing a certificate certifying that it has completed the Remaining Duties, the Receiver shall be discharged as receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver and Collins Barrow Toronto Limited shall continue to have the benefit of the provisions of all orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Collins Barrow Toronto Limited in its capacity as receiver.

6. **THIS COURT ORDERS AND DECLARES** that Collins Barrow Toronto Limited is hereby released and discharged from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Collins Barrow Toronto Limited while acting in its capacity as receiver herein, save and except for any gross negligence or wilful misconduct on its part. Without limiting the generality of the foregoing, Collins Barrow Toronto Limited is hereby forever released and discharged from any and all liability relating to matters that

were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on its part.

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(Signature of Judge)

RCP-E 59A (July 1, 2007)

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

-and-

**NORMA WALTON et al.**  
Respondents

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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

---

**ORDER**

---

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

RCP-E 4C (July 1, 2007)

## APPENDIX J

---

**IN THE MATTER OF THE RECEIVERSHIP OF  
WEST MALL HOLDINGS LTD.**

**Interim Statement of Receipts and Disbursements  
For the period February 3, 2015 to April 20, 2016**

Receipts	
Cash on hand (1)	\$ 356,503
Commercial Rental Revenue	1,150,490
HST Collected	153,341
Parking Income	57,985
Sale of Property (2)	10,000,000
Other Income	44,673
Total receipts	<u>\$ 11,762,992</u>
Disbursements	
Administration & General	\$ 8,720
Cleaning Services	45,199
Commissions (3)	250,000
Consulting fees	5,965
Elevator repairs	42,853
HST Paid (8)	142,069
HST Remitted	71,778
Insurance	31,147
Interest paid to First Mortgagee (4)	165,528
Legal Fees (5)	186,409
Other Repairs & Maintenance	77,691
Property Management Fees	58,496
Realty Taxes	236,372
Receiver's Fees (6)	231,931
Security	42,934
Tenant Receivership Overpayments	229,098
Utilities	161,632
Wages & Benefits	39,784
Total disbursements	<u>\$ 2,027,605</u>
Excess of Receipts over Disbursements	\$ 9,735,386
Payment to Secured Creditor (7)	
First distribution - November 5, 2015	(8,633,972)
Second distribution - April 19, 2016	(1,046,307)
<b>Net funds on hand</b>	<u><u>\$ 55,107</u></u>

## Notes:

- (1) The cash on hand represents amounts transferred to the Receiver by Schonfeld Inc. which was the Court-appointed Manager of the property prior to the Receiver's appointment.
- (2) Gross sales proceeds from the sale of the property situated at 295 The West Mall.
- (3) Commission payable to CBRE on sale of 295 The West Mall.
- (4) This amount represents March and April interest payable to 295 The West Mall Portfolio Inc. ("**Portfolio**") in respect of its mortgage loan to West Mall Holdings Ltd. No interest payments were made by the Receiver after April 2015.
- (5) Includes an accrual of \$10,785.00 in respect of fees for April 1 to 20, 2016 and estimated to completion.
- (6) Includes an accrual of \$15,259.50 in respect of fees for April 1 to 20, 2016 and estimated to completion.
- (7) Paid to Portfolio.
- (8) Includes accrual of \$3,410.29 for HST payable on accrued legal and Receiver's fees.

*This Appendix forms part of the Receiver's report to the Court dated April 21, 2016  
and should only be read in conjunction therewith.*

**APPENDIX K**

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**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**

**AFFIDAVIT OF DANIEL WEISZ  
(Sworn April 21, 2016)**

I, **DANIEL WEISZ**, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Senior Vice-President of Collins Barrow Toronto Limited ("**CBTL**") and as such I have personal knowledge of the matters to which I hereinafter depose, save and except those matters based upon information and belief, in which case I have stated the source of such facts, all of which I verily believe to be true.

2. Pursuant to an order of the Court dated February 3, 2015, CBTL was appointed receiver (the "Receiver"), without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd.

3. Attached hereto and marked as Exhibit "A" to this my affidavit are copies of invoices issued by CBTL for fees and disbursements incurred by CBTL in the course of the receivership proceedings for the period March 1, 2016 to April 20, 2016. The total fees charged for the period March 1, 2016 to April 20, 2016 are \$16,660.00, plus disbursements of \$211.50 and HST of \$2,193.30 for a total of \$19,064.80.

4. The invoices are a fair and accurate description of the services provided and the amounts charged by CBTL for the period March 1, 2016 to April 20, 2016.

5. Attached hereto and marked as Exhibit "B" is a schedule summarizing the invoices in Exhibit "A" the total billable hours charged, the total fees charged and the average hourly rate charged.

6. I make this affidavit in support of a motion for an Order approving the Receiver's fees and disbursements and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 21<sup>st</sup> day of April, 2016.

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\_\_\_\_\_  
**DANIEL WEISZ**

A Commissioner, etc.,  
Province of Ontario, for Collins Barrow  
Toronto LLP, Chartered Accountants, and  
Collins Barrow Toronto Limited, Trustee in  
Bankruptcy. Expires August 8, 2016.



**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF DANIEL WEISZ SWORN  
BEFORE ME THIS 21<sup>st</sup> DAY OF APRIL, 2016**



---

A Commissioner, etc.

Bryan Allan Tannenbaum, a Commissioner, etc.,  
Province of Ontario, for Collins Barrow  
Toronto LLP, Chartered Accountants, and  
Collins Barrow Toronto Limited, Trustee in  
Bankruptcy. Expires August 8, 2016.



Collins Barrow Toronto Limited  
Collins Barrow Place  
11 King Street West  
Suite 700, PO Box 27  
Toronto, Ontario  
M5H 4C7 Canada

T. 416.480.0160  
F. 416.480.2646

www.collinsbarrow.com

To West Mall Holdings Ltd.  
c/o Collins Barrow Toronto Limited  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

Date April 7, 2016

Client File 300100-26545

GST/HST: 80784 1440 RT 0001

Invoice 15

No. C000244

For professional services rendered with respect to the appointment of Collins Barrow Toronto Limited as Court-appointed Receiver of West Mall Holdings Ltd. (the "Debtor") for the period March 1 to March 31, 2016.

Date	Professional	Description
3/1/2016	Brenda Wong	Update service list.
3/1/2016	Daniel Weisz	Discussion with B. Wong on report to court.
3/2/2016	Brenda Wong	Continue working on draft report; review edits by D. Weisz and send to D. Brooker of Steinberg, Title, Hope & Israel LLP ("STHI") for review.
3/2/2016	Daniel Weisz	Review and update report to court and fee affidavit; review summary of activities.
3/3/2016	Cindy Baeta	Prepare disbursement cheque.
3/3/2016	Brenda Wong	Review and respond to emails from D. Brooker regarding comments on draft report; make revisions to report.
3/3/2016	Daniel Weisz	Review updated version of report and further update; review STHI account.
3/4/2016	Brenda Wong	Make changes to report appendices.
3/4/2016	Daniel Weisz	Review changes to draft report, exchange emails with D. Brooker regarding same; review, finalize and swear fee affidavit; review draft court order and notice of motion and email to D. Brooker regarding same.
3/7/2016	Daniel Weisz	Review emails; respond to D. Brooker regarding enquiry from T. Dunn of Minden Gross LLP regarding possible tenant setoff after review of files; discussion with D. Brooker regarding notifying purchaser with respect to holdback agreement and timing regarding release of report.
3/8/2016	Daniel Weisz	Discussion with D. Brooker regarding draft report to court.
3/9/2016	Daniel Weisz	Discussion with D. Brooker on status of report to court.
3/10/2016	Brenda Wong	Revise report appendices and make edits to report; forward executed copies of report to counsel.
3/10/2016	Daniel Weisz	Discussion with D. Brooker regarding his discussion with T. Dunn; update report to court and forward to D. Brooker; review, finalize and sign report.
3/11/2016	Cindy Baeta	Prepare bank reconciliation.
3/11/2016	Brenda Wong	Respond to email from Cushman & Wakefield regarding DTZ commission.
3/14/2016	Daniel Weisz	Exchange emails with STHI regarding motion materials filed.

April 7, 2016  
 West Mall Holdings Ltd.  
 Invoice 15  
 Page 2

Date	Professional	Description
3/17/2016	Brenda Wong	Review and respond to email from counsel for Energy Profiles.
3/18/2016	Cindy Baeta	Prepare disbursement cheque.
3/21/2016	Brenda Wong	Review cash on hand and prepare paperwork for payment of receivership TMI overpayments; contact United Grocers Inc. for new mailing address and update service list; arrange for posting of revised service list and March 21 Order to Receiver's web page.
3/21/2016	Daniel Weisz	Prepare for and attend in court regarding motion to approve Receiver's second report, activities and fees and distribution of receivership TMI overpayments.
3/22/2016	Brenda Wong	Telephone call from Hudson Group regarding timing of payment of refund in respect of the receivership TMI overpayment.
3/23/2016	Cindy Baeta	Prepare disbursement cheques for receivership TMI overpayments.
3/23/2016	Brenda Wong	Prepare transmittal letter to tenants regarding refund of receivership TMI overpayments; review and sign disbursement cheques.
3/29/2016	Brenda Wong	Finalize letters to tenants regarding TMI refund cheques.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, file organization and written and verbal correspondence to facilitate the foregoing.

April 7, 2016  
 West Mall Holdings Ltd.  
 Invoice 15  
 Page 3

### FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CIRP, LIT	Senior Vice President	8.20	\$ 495	\$ 4,059.00
Brenda Wong, CIRP, LIT	Senior Manager	7.60	\$ 350	2,660.00
Cindy Baeta	Estate Administrator	1.65	\$ 110	181.50
<b>Total hours and professional fees</b>		<b>17.45</b>		<b>\$ 6,900.50</b>
<b>Disbursements</b>				
Couriers			\$ 23.01	
<b>Total disbursements</b>				23.01
<b>Total professional fees and disbursements</b>				<b>\$ 6,923.51</b>
HST @ 13%				900.06
<b>Total payable</b>				<b>\$ 7,823.57</b>

#### PAYMENT BY VISA ACCEPTED

VISA NUMBER \_\_\_\_\_ Expiry Date \_\_\_\_\_  
 Name on Card \_\_\_\_\_ Amount \_\_\_\_\_

#### WIRE PAYMENT DETAILS

For CA\$ Payments: For credit to the account of Collins Barrow Toronto Limited, Account No. 65-84918, Canadian Imperial Bank of Commerce  
 Branch No. 00002, Commerce Court Banking Centre, Toronto, ON M5L 1G9

PLEASE RETURN ONE COPY WITH REMITTANCE

Terms: Payment upon receipt. Interest will be charged at the rate of 12% per annum (1% per month) on overdue accounts.  
 The Collins Barrow trademarks are used under license.



Collins Barrow Toronto Limited  
Collins Barrow Place  
11 King Street West  
Suite 700, PO Box 27  
Toronto, Ontario  
M5H 4C7 Canada

T. 416.480.0160  
F. 416.480.2646

www.collinsbarrow.com

To West Mall Holdings Ltd.  
c/o Collins Barrow Toronto Limited  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

Date April 21, 2016

Client File 300100-26545

GST/HST: 80784 1440 RT 0001

Invoice 16

No. C000255

For professional services rendered with respect to the appointment of Collins Barrow Toronto Limited as Court-appointed Receiver of West Mall Holdings Ltd. (the "Debtor") for the period April 1 to April 20, 2016.

Date	Professional	Description
4/4/2016	Brenda Wong	Telephone call to Canada Revenue Agency ("CRA") regarding HST returns filing frequency, calculate HST on TMI tenant overpayments, file outstanding returns for January, February and March 2016.
4/6/2016	Daniel Weisz	Review summary of activities.
4/7/2016	Daniel Weisz	Discussion with R. Kestenberg and email to R. Kestenberg enclosing court order made on March 21; review email from C. Francis; discussion with D. Brooker of Steinberg, Title, Hope & Israel LLP ("STHI") and review email from D. Brooker to C. Francis; discussion with D. Brooker regarding his discussion with T. Dunn of Minden Gross LLP; review email from C. Francis; discussion with D. Brooker and review email from D. Brooker to C. Francis; discussion with D. Brooker regarding quantum proposed to be distributed to 295 The West Mall Portfolio Inc. ("Portfolio").
4/7/2016	Brenda Wong	Review and file emails regarding Portfolio court application; discussion with D. Brooker regarding remaining funds on hand and remaining duties with respect to administration of receivership.
4/8/2016	Brenda Wong	Review motion for April 18 hearing; arrange for posting to webpage.
4/8/2016	Cindy Baeta	Prepare disbursement cheques; prepare bank reconciliation.
4/8/2016	Daniel Weisz	Discussion with B. Wong on motion materials received; review Portfolio application to court and email to D. Brooker in respect of same.
4/11/2016	Brenda Wong	Review and respond to email from Investors Group regarding cheque received and 2014 and 2015 TMI reconciliation; review draft of Receiver's third report to Court.
4/11/2016	Daniel Weisz	Review D. Brooker email regarding his review of secured lender notice of motion, review file, and discussion with D. Brooker on same; draft third report to Court and discussion with D. Brooker regarding same.
4/12/2016	Brenda Wong	Prepare appendices, make edits to report; emails with D. Brooker regarding inquiry from Investors Group.

April 21, 2016  
 West Mall Holdings Ltd.  
 Invoice 16  
 Page 2

Date	Professional	Description
4/12/2016	Daniel Weisz	Review exchange of emails regarding Receiver's draft report and exchange emails with D. Brooker regarding same; review STHI account rendered; discussion with D. Brooker regarding his discussion with Minden Gross; review draft email to the service list and email to D. Brooker regarding same.
4/13/2016	Daniel Weisz	Exchange emails with D. Brooker regarding letter to be sent by D. Brooker.
4/14/2016	Daniel Weisz	Discussions with D. Brooker regarding motion scheduled for Monday; review draft email to service list.
4/15/2016	Cindy Baeta	Post cheques to Ascend.
4/15/2016	Daniel Weisz	Discussion with D. Brooker regarding motion on Monday; discussion with D. Brooker regarding his discussion with T. Dunn.
4/16/2016	Daniel Weisz	Exchange emails with D. Brooker.
4/18/2016	Daniel Weisz	Discussions today with D. Brooker regarding application to court; attend in court regarding Portfolio's application for distribution of funds; discussion with D. Brooker following application; exchange emails with J. Birken regarding wiring of funds; discussion with R. Kestenberg on finalizing receivership administration; discussion with B. Wong on status and on report; discussion with D. Brooker regarding application to court for discharge of Receiver.
4/18/2016	Brenda Wong	Make changes to draft report.
4/19/2016	Daniel Weisz	Discussion with B. Wong regarding payment to Portfolio; discussion with Bank of Montreal regarding wire transfer and discussion with J. Birken on same; work on report to court and discussion with D. Brooker on same; review court order issued yesterday.
4/19/2016	Brenda Wong	Continue drafting third report; prepare affidavit of fees; prepare R&D and calculate funds available for distribution; prepare letter to BMO regarding transfer of funds to H&R.
4/20/2016	Daniel Weisz	Review draft court order, notice of motion, receiver certificate and discussion with D. Brooker; comments on draft report and email to D. Brooker on same; review and update affidavit of fees; review revised documents.
4/20/2016	Brenda Wong	Update report re vacancy rebate, prepare estimate of fees.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, file organization and written and verbal correspondence to facilitate the foregoing.

April 21, 2016  
 West Mall Holdings Ltd.  
 Invoice 16  
 Page 3

### FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Daniel R. Weisz, CPA, CA, CIRP, LIT	Senior Vice President	13.90	\$ 495	\$ 6,880.50
Brenda Wong, CIRP, LIT	Senior Manager	8.10	\$ 350	2,835.00
Cindy Baeta	Estate Administrator	0.40	\$ 110	44.00
<b>Total hours and professional fees</b>			<b>22.40</b>	<b>\$ 9,759.50</b>
<b>Disbursements</b>				
Couriers			\$ 188.49	
<b>Total disbursements</b>				188.49
<b>Total professional fees and disbursements</b>				<b>\$ 9,947.99</b>
HST @ 13%				1,293.24
<b>Total payable</b>				<b>\$ 11,241.23</b>

#### PAYMENT BY VISA ACCEPTED

VISA NUMBER \_\_\_\_\_ Expiry Date \_\_\_\_\_  
 Name on Card \_\_\_\_\_ Amount \_\_\_\_\_

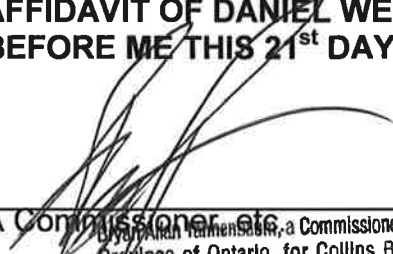
#### WIRE PAYMENT DETAILS

For CA\$ Payments: For credit to the account of Collins Barrow Toronto Limited, Account No. 65-84918, Canadian Imperial Bank of Commerce  
 Branch No. 00002, Commerce Court Banking Centre, Toronto, ON M5L 1G9

**PLEASE RETURN ONE COPY WITH REMITTANCE**

Terms: Payment upon receipt. Interest will be charged at the rate of 12% per annum (1% per month) on overdue accounts.  
 The Collins Barrow trademarks are used under license.

**THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF DANIEL WEISZ SWORN  
BEFORE ME THIS 21<sup>st</sup> DAY OF APRIL, 2016**



A Commissioner, etc.  
Province of Ontario, for Collins Barrow  
Toronto LLP, Chartered Accountants, and  
Collins Barrow Toronto Limited, Trustee in  
Bankruptcy. Expires August 8, 2016.



IN THE MATTER OF THE RECEIVERSHIP OF  
WEST MALL HOLDINGS LTD.

Summary of Receiver's Fees

Invoice Date	Period	Hours	Fees	Disb.	Subtotal	HST	Total	Average Hourly Rate
7-Apr-16	March 1 to 31, 2016	17.45	\$ 6,900.50	\$ 23.01	\$ 6,923.51	\$ 900.06	\$ 7,823.57	\$ 395.44
21-Apr-16	April 1, to 20, 2016	22.40	9,759.50	188.49	9,947.99	1,293.24	11,241.23	\$ 435.69
<b>Total</b>		<b>39.85</b>	<b>\$ 16,660.00</b>	<b>\$ 211.50</b>	<b>\$ 16,871.50</b>	<b>\$ 2,193.30</b>	<b>\$ 19,064.80</b>	<b>\$ 418.07</b>

**APPENDIX L**

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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  
THE RESULT**

**AFFIDAVIT OF MICHAEL CASS  
Sworn April 21, 2016**

I, Michael Cass, of the City of Vaughan, in the Regional Municipality of York, MAKE  
OATH AND SAY:

1. I am a Lawyer with the law firm of Steinberg Title Hope & Israel (“STHI”), the lawyers for the Respondents, and, as such, have knowledge of the matters contained in this affidavit.
2. Pursuant to the Order of the Honourable Mr. Justice Newbould dated February 3, 2015 (the “Appointment Order”), Collins Barrow Toronto Limited was appointed as Receiver of all the

properties, undertakings and assets (the "Purchased Assets") of West Mall Holdings Ltd. as more particularly described in the Appointment Order.

3. This affidavit is made in connection with the Receiver's motion for, *inter alia*, the approval of the fees and disbursements of STHI with respect to legal services rendered as independent counsel to the Receiver in connection with the receivership proceedings during the period from March 1, 2015 to April 20, 2016 (the "Period"). Attached hereto as **Exhibit "A"** is a record of the legal services rendered by STHI to the Receiver together with the disbursements incurred in connection therewith for the Period. To the best of my knowledge, the Record attached as Exhibit "A" provides a fair and accurate description of the activities undertaken and the services rendered by STHI on behalf of the Receiver during the Period.

4. Attached hereto as **Exhibit "B"** is a summary of the names, years of call (where applicable), hourly rates and time expended by the lawyers and other professionals at STHI whose services are reflected in the time dockets in Exhibit "A".

5. To the best of my knowledge, the rates charged by STHI are comparable to the rates charged for the provision of services of a similar nature and complexity by other small to medium sized law firms in the Toronto market.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on April  
21, 2016



Commissioner for Taking Affidavits  
(or as may be)

**DAVID A. BROOKER**



**MICHAEL CASS**

This is Exhibit "A" referred to in the Affidavit of Michael Cass  
sworn April 21, 2016



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*Commissioner for Taking Affidavits (or as may be)*

**DAVID A. BROOKER**

April 21, 2016

**RE:      *Receivership of Property of West Mall Holdings Ltd.***

<b>Mar 01/16</b>	DB	Email exchange with B. Wong re Service List; email to T. Dunn re service of records; review of email from B. Wong re draft report;	0.30
<b>Mar 03/16</b>	DB	Review and revision of draft Second Report; draft of notice of motion and order re distribution to tenants; draft of notice of motion and order and forwarding of same to clients for review;	2.50
<b>Mar 04/16</b>	DB	Review of emails from D. Weisz and B. Wong re finalization of record; review of final version of report; email to T. Dunn with draft documents;	0.70
<b>Mar 07/16</b>	DB	Review of email from T. Dunn re draft report and record; review of email from D. Weisz re holdback agreement for The Keg; email to J. Papes re holdback agreement; email to T. Dunn re set off claim and request for finalization;	0.40
<b>Mar 08/16</b>	DB	Telephone conversation with T. Dunn re upcoming motion and report; telephone conversation with D. Weisz re amendments to report, discussion with T. Dunn re same; further telephone conversation with T. Dunn re amendments to report;	0.70
<b>Mar 09/16</b>	DB	Telephone conversation with B. Weisz re response from T. Dunn; telephone call to T. Dunn re require response so can finalize report; review of email from B. Wong;	0.40
<b>Mar 10/16</b>	DB	Review of email from T. Dunn re finalization of report and records; telephone conversation with T. Dunn re report; telephone conversation with D. Weisz re proposed changes to report; review of revised report; email to T. Dunn with further revisions; finalization of report and; motion record; review of service list;	1.40
<b>Mar 21/16</b>	DB	Attendance at motion for distribution of tenant overpayments at Superior Court (Commercial List) and obtaining of order;	2.20
<b>Apr 07/16</b>	DB	Several email exchanges with secured party counsel re preparation of motion record and information incidental thereto; email exchange with D. Weisz re hold backs and release; review of file re information required for motion and current status of payments;	1.30
<b>Apr 08/16</b>	DB	Summary review of Portfolio motion record; email exchange with D. Weisz re motion record;	0.30

Apr 09/16	DB	Review of Portfolio motion record for April 18 motion; email exchange with D. Weisz re motion record;	0.60
Apr 11/16	DB	Several telephone conversations with D. Weisz re Portfolio motion record; review and revision to draft third report; email exchange with Portfolio counsel;	1.50
Apr 12/16	DB	Telephone conversation with secured creditor counsel re upcoming motion for distribution, material to be filed; review of email from B. Wong re Investors Group; several telephone conversations with D. Weisz re upcoming distribution motion and Receiver's position; draft of letter to Service List re upcoming distribution motion;	1.60
Apr 14/16	DB	Email exchange with creditor counsel re draft letter; email exchange with D. Weisz re letter; telephone conversation with D. Weisz re form of letter, upcoming motion; finalization of letter;	0.70
Apr 15/16	DB	Review of records for secured creditor's distribution motion; email to D. Weisz re [REDACTED] telephone conversation with D. Weisz re [REDACTED] telephone conversation [REDACTED]	1.30
Apr 17/16	DB	Email exchange with D. Weisz re distribution motion; email to T. Dunn;	0.30
Apr 18/16	DB	Attendance at Superior Court Commercial List for secured creditor motion for disbursement of funds before Newbould J. (including travel); email exchange with counsel re motion;	2.00
	DB	Review of email from creditor's counsel with signed order and forwarding of same to client; review and revision of draft third report; draft of notice of motion, order and certificate re discharge; telephone conversation with D. Weisz re discharge motion;	1.40
Apr 19/16	KS	Prepare initial draft of notice of motion and order;	0.30
Apr 20/16	DB	Exchange of several email from D. Weisz re order and notice of motion; email to secured creditor counsel re draft documents; review of email from secured creditor counsel re draft documents; email to D. Weisz and B. Wong re comments and finalization of record; review of email from D. Weisz re finalization of numbers;	1.10

*To our fees*

\$9,870.00

**Taxable Disbursements**

	Photocopies	\$72.76
Omega Process Servers	Conveyancing/Paralegal invoice 4580 To serve motion record returnable March 21	\$76.00
Omega Process Servers	Conveyancing/Paralegal invoice 4579 To file motion record returnable March 21	\$60.00
<b><i>Total Taxable Disbursements</i></b>		\$208.76
<b><i>HST on Disbursements</i></b>		<u>\$27.14</u>

**Non - Taxable Disbursements**

Minister of Finance	Filing Fees - motion record - motion returnable March 21	\$127.00
<b><i>Total Non - Taxable Disbursements</i></b>		<u>\$127.00</u>
<b><i>Total Disbursements &amp; HST</i></b>		\$362.90



This is Exhibit "B" referred to in the Affidavit of Michael Cass  
sworn April 21, 2016



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*Commissioner for Taking Affidavits (or as may be)*

**DAVID A. BROOKER**

**Fees and Disbursements Summary of Steinberg Title Hope & Israel LLP  
for the period from March 1, 2015 to April 20, 2016**

<b>Name of Professional</b>	<b>Initial</b>	<b>Year of Call</b>	<b>Hourly Rate</b>	<b>Total Hours Billed</b>	<b>Total Fees Billed</b>
David A. Brooker	DB	1994	\$475.00	20.70	\$9,832.50
Karen Sampson	KS	Law Clerk	\$125.00	0.30	\$37.50
<b>Total Fees</b>					<b>\$9870.00</b>
Total Disbursements					\$335.76
Total Fees and Disbursements excluding HST					\$10,205.76
HST					\$1,310.24
<b>Total Fees and Disbursements including HST</b>					<b>\$11,516.00</b>

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

**PROCEEDING COMMENCED AT**  
**TORONTO**

**AFFIDAVIT OF MICHAEL CASS**  
**SWORN APRIL 21, 2016**

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

RCP-E.4C (July 1, 2007)

**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

**MOTION RECORD OF COLLINS BARROW TORONTO  
LIMITED, COURT APPOINTED RECEIVER OF WEST  
MALL HOLDINGS LTD.**

**STEINBERG TITLE HOPE & ISRAEL LLP**

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

**David A. Brooker (35787W)**

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RCP-E 4C (July 1, 2007)