

**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 October 20, 2015

October 13, 2015

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

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Lawyers for Collins Barrow Toronto Limited
court appointed Receiver 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

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NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE
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“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 Tuesday, October 20, 2015 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 First Report of the Receiver dated October 2, 2015 (the "First Report");
- (c) Approval of the 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");
- (d) Vesting in the Purchaser or its nominee the Debtor's right, title and interest in and to the property as such term is defined in the Bridgeport APS (the "Property") including the lands and buildings situated thereon and municipally known as 291 - 295 The West Mall, Toronto, Ontario;
- (e) Authorizing the Receiver to hold back a portion of the proceeds of the Transaction and to make a partial distribution to the first secured creditor 295 The West Mall Portfolio Inc. ("Portfolio"), a Schedule "C" Company;
- (f) Varying portions of the initial order appointing the Receiver to grant it priority to Portfolio;
- (g) Vesting all potential claims of tenants of the 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 this Honourable Court at a future date to be determined;
- (h) The costs of this Motion payable from the estate of the Debtor; and,
- (i) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Debtor's primary asset is the 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 has approximately 56% occupancy and the commercial building is currently vacant.
- (b) Pursuant to the Order of The Honourable Mr. Justice Newbould dated February 3, 2015 (the "Appointment Order"), the Receiver was authorized and directed to market the Property including negotiation of such terms and conditions of sale as the Receiver in its discretion deemed appropriate.
- (c) Attempts to sell and market the Property had previously been undertaken by the court-appointed Manager for the Debtor, Schonfeld Inc. Receivers + Trustees (now discharged) without success.
- (d) Shortly after the Receiver's appointment, an interested party was introduced to the Property by the second mortgagee Computershare Trust Company of Canada as nominee for Trez Capital Limited Partnership ("Trez"), however no agreement was entered into despite negotiations with that party.
- (e) Soon after the negotiations with the Trez introduced party had ended, Trez, who was the original applicant on the motion to appoint the Receiver, advised that it would no longer fund the Receivership.
- (f) Thereafter Portfolio introduced a new interested party to the Property and negotiations ensued, but did not lead to a signed agreement.
- (g) Upon the negotiations with the first interested party falling through, Portfolio introduced a second interested party to the Property, which, after negotiations, led to the signing of the Bridgeport APS.
- (h) Accordingly, the Receiver had never marketed the Property since its appointment, as there had been almost continuous negotiations with serious interested parties since that time.

- (i) Additionally, the occupancy rate of the Property has fallen substantially and it is in need of extensive repairs, such that its value may decrease as time passes if a marketing process were engaged.
- (j) Accordingly, for reasons as set forth in more detail in the First Report, the Receiver recommends that its acceptance of the Bridgeport APS be approved as it represents the best recovery possible in the circumstances.
- (k) Since the time of purchase of the Property by the Debtor there have been unreconciled overpayments of TMI by both current and existing tenants, as well as claims by two real estate brokers against the Debtor whose claims arise from leases with tenants (collectively the “Tenant Claims”). Some or all of Tenant Claims may be in priority to the secured lenders, and accordingly the Receiver wants to hold back a sufficient sum from the proceeds of the Transaction to cover any potential payments (as well as other possible expenses) and insure a process for their timely adjudication and resolution. Further, in order to insure that none of the tenants claim a set off as against the Purchaser with respect to the Tenant Claims, they must vest only in the proceeds of the Transaction.
- (l) The original order appointing the Receiver granted it priority over all of the Debtor’s security except that held by Portfolio, who has agreed to vary the order to prioritize the Receiver’s Charge.
- (m) 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 First Report are reasonable and ought to be approved.
- (n) 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 First Report of the Receiver;
- (b) The Affidavits of Daniel Weisz and Michael Cass, each sworn October 9, 2015;
and

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

October 9, 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.

TO: **The Service List**

SCHEDULE A

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
 JUSTICE) DAY OF , THE
) , 2015

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

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 “ ” to the First Report of the Receiver of West Mall Holdings Inc. dated October 2, 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 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 Affidavit of Daniel Weisz sworn _____, 2015 (the “Weisz Fee Affidavit”) and the Affidavit of Michael Cass sworn _____, 2015 (the “Cass Fee Affidavit”) and on hearing the submissions of the lawyer for the Receiver, the Purchaser, and The West Mall Portfolio Inc. _____ (or 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 the motion record dated _____, 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 and Vesting Order.

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

8. **THIS COURT ORDERS** that upon completion of the Tenant Reconciliations, the Receiver shall notify the said tenants listed therein as well as any former tenants of the Real Property who were not in occupation of their leased premises as of the closing date of the Transaction 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 Overpayments including, but not limited to, lenders having security over the Purchased Assets, all those with Tenant Claims, the Applicants herein, and those tenants who have received notice pursuant to the said paragraph 8, may apply to This Honourable Court 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 Obligations 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 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 until the Receiver is discharged or upon further order of the Court.

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, including personal information of those employees listed on Schedule " " to the Bridgeport APS. 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, (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)

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, RONALD 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).

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

DRAFT

TREZ CAPITAL LIMITED PARTNERSHIP ET AL
Applicants

-and-

WEST MALL HOLDINGS LTD.
Respondents
Court File No. CV-14-10493-00CL

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 AND VESTING ORDER

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M2N 6P4

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Tel: 416-225-2777
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Lawyers for Collins Barrow Toronto Limited,
court appointed receiver for West Mall Holdings Ltd.

RCP-E 4C (July 1, 2007)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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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**

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

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

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**

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 24th 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

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

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.

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

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)

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 yeas (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

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

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

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

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

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

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

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

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

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,

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.

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.

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

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

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.

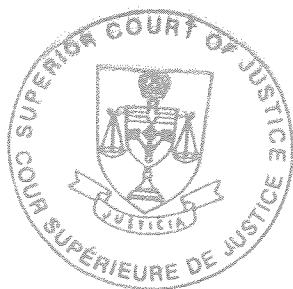
All of which is respectfully submitted to this Court as of this 9th day of October, 2015.

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 A



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	TUESDAY, THE
JUSTICE NEWBOULD)	
)	3 rd 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**"),¹ 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

¹ 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 an 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 & CO. INC. TORONTO
ON M5H 1R7
LEADERSHIP GROUP INC.

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

ROBINS APPLEBY LLP
Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto ON M5H 1T1

Irving Marks LSUC #19979H
imarks@robapp.com
Tel: 416-360-3329

Dominique Michaud LSUC #56871V
dmichaud@robapp.com
Tel: 416-360-3795
Fax: 416-868-0306

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

APPENDIX B

PROPERTY MANAGEMENT AGREEMENT

THIS AGREEMENT is made as of the 3rd day of February, 2015

BETWEEN:

COLLINS BARROW TORONTO LIMITED, solely in its capacity as the Court-Appointed Receiver, without security of all of the assets, undertakings and properties of West Mall Holdings Ltd. with no personal or corporate liability
(the "Receiver")

and .

Briarlane Rental Property Management Inc.

(the "Manager")

WHEREAS:

- A. Collins Barrow Toronto Limited is the Court-Appointed Receiver, without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd.:
- B. The Manager has represented to the Receiver that it is engaged in the business of real property management and has acquired expert knowledge in this field and personnel to fulfill its covenants and obligations hereunder; and
- C. The parties have agreed that the Manager shall manage and operate the Property in accordance with the terms and conditions contained herein.

NOW THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge the parties hereto covenant and agree as follows:

ARTICLE I GENERAL CONTRACT PROVISIONS

1.1 Definitions. In this agreement, unless there is something in the context or subject matter inconsistent therewith:

"Adjusted Gross Revenue" means, without duplication, Gross Revenue actually received by the Receiver with respect to the Term but, in each case, excluding:

- (a) any funds received in the nature of tax refunds, reductions or abatements;
- (b) any expropriation or insurance proceeds;



- (c) any proceeds arising out of awards, settlements or any other disposition of any arbitration, lawsuit or legal proceeding except to the extent the net amount of such proceeds remaining after accounting for all costs and expenses, including legal fees, in obtaining such proceeds represents Gross Revenue from the Property on which the Manager would otherwise be entitled to be paid the Management Fees;
- (d) proceeds of any sale, financing and/or Disposition of the Property or any portion thereof;
- (e) capital improvements except to the extent paid by Tenants as part of additional rent under their Leases;
- (f) security or other deposits, except for the portion actually applied as rent; and
- (g) all applicable taxes collected in connection with Gross Revenue, including, without limitation, harmonized sales tax under Part IX of the *Excise Tax Act* (Canada).

“Agreement” means this agreement together with any amendments hereto, provided that such amendments are in writing and signed by all parties;

“Approved” means duly authorized and approved in writing by the Receiver;

“Approved Budget” means the most recent annual budget relating to the Property, and any Approved revision thereof;

“Business day” means every day except Saturday, Sunday and statutory holidays in the Province of Ontario;

“Common Areas” means all of those interior and exterior areas of the Property not being intended to be leased to Tenants including, without restriction, all elevators, escalators, landscaped areas, parking areas, driveways, points and areas of access to and egress from the Property, all structural components of the Property, all sidewalks surrounding the Property (which sidewalks are located upon the lands comprising the Property), the Receiver’s interest in all pedways, grade, above grade and below grade connections to adjacent lands and premises and all exterior plate glass forming part of the Property;

“Court” means the Ontario Superior Court of Justice (Commercial List) or another court of competent jurisdiction in the province of Ontario;

“Disposition” means a sale, foreclosure and/or other transfer of the Property or circumstances where the Receiver no longer has the authority to deal with the Property;

“Effective Date” means February 3, 2015;

“Emergency” means a condition or circumstance occurring in or about the Property which, in the Manager’s opinion, acting reasonably, would result in personal injury or property damage if not remedied without delay;

“Fiscal Year” means that period of twelve months adopted by the Receiver for the preparation of West Mall Holdings Ltd.’s financial statements or for reporting purposes;

“Generally Accepted Accounting Principles” means those accounting principles recommended by the Canadian Institute of Chartered Accountants and includes any recommendations in its Handbook concerning accounting treatment or statement presentation, such principles and recommendations to be regarded as the only generally accepted accounting principles applicable to the circumstances that they cover;

“Gross Revenue” means, for any period during the Term and without duplication, the gross income actually received by or on behalf of the Receiver in such period with respect to the use or occupancy of any space in the Property, whether as rent, percentage rent, escalation rent, additional rent (including, without limitation, payments for operating expenses, insurance, taxes and similar recoveries from Tenants), parking income, fees, charges or otherwise, but excluding deposits and pre-paid rent but only until such security deposits or pre-paid rents are actually applied on account of rent;

“Hazardous Substance” means, but is not limited to, used oil, any contaminants, pollutants, dangerous substances, liquid wastes, industrial wastes, hauled liquid wastes, toxic substances, hazardous wastes, hazardous materials, or hazardous substances as defined in or pursuant to any law, regulation or order;

“Leases” means all written lease agreements entered into between the Receiver, or its predecessors in title as landlord with Tenants which bind the Receiver relating to the rental, use or occupancy of space in the Property;

“Licences” means any and all permits, licences or governmental approvals of any kind required for the proper and lawful operation of the Property including, without restriction, business licences, elevator and boiler permits, fire department permits and any permits required by the municipal authorities;

“Management Fees” means the fees payable to the Manager pursuant to section 3.2 calculated in accordance with schedule 2 hereto. In addition, the Manager shall be entitled to the supervisory fee and the leasing fee contemplated in paragraph 2 of Schedule 2 hereto;

“Net Cash Flow” means the difference between Gross Revenue and Permitted Expenditures which have been made by the Manager, calculated on a monthly basis;

“Permitted Expenditures” means all expenses, inducements, costs and reserves of any nature whatsoever which relate to the Property and are actually expended and which are either:

- (a) included in an Approved Budget, on a quantifiable basis and without duplication on account of:
 - (i) the aggregate of all realty taxes, rates, charges and assessments, levied and payable in respect of the Property,
 - (ii) the cost of all natural gas, oil, power, electricity, water, sewer, communications, cleaning, janitorial and all other utilities and services payable in respect of the Property,
 - (iii) fair market salaries and fair market benefits, or fair market management fees, of personnel and/or property managers employed or retained by the Manager exclusively on site for the operation and management of the Property (but not the salaries or benefits of any other personnel or employees of the Manager),
 - (iv) the cost for the day-to-day operation, repair and maintenance of the systems for heating, ventilating, air-conditioning, servicing and maintaining the building on the Property,
 - (v) taxes and fees for Licences payable in connection with the Property,
 - (vi) the cost of all liability, property damage, boiler and machinery, rental or business interruption and other insurance in respect of the Property,
 - (vii) the cost of cleaning, removing snow and garbage and for servicing, maintaining, operating, repairing, replacing, supervising and policing (and the cost of all supplies, labour, wages and fees to independent contractors relating thereto) paid by the Manager in respect of the Property,

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- (viii) the cost of reasonable legal, accounting and other professional fees in respect of the Property (which must be Approved by the Receiver on an individual expenditure basis),
 - (ix) the cost of advertising and all types of direct leasing and marketing costs, including leasing commissions payable to brokers for the leasing of vacant space in the Property and Tenant allowances and inducements and other amounts payable to Tenants in connection with the leasing of such space (which must be Approved by the Receiver on an individual expenditure basis),
 - (x) the Management Fees,
 - (xi) debt service with respect to any Approved financing for the Property, and
 - (xii) the cost of all postage, photocopying, printing, deliveries, and long distance telephone calls incurred or paid by the Manager in relation to the Property. But Permitted Expenditures shall always exclude (A) depreciation, and (B) income taxes;
- (b) otherwise Approved, or
 - (c) reasonably expended in an Emergency;

“Property” means the land and building described in schedule 1 hereto and other West Mall Holdings Ltd. fixtures situate thereon but only for so long as the Receiver has the authority to deal with them;

“Subsidiary” has the meaning ascribed thereto in the Business Corporations Act (Ontario); and

“Tenants” means all those persons now occupying or who, from time to time in the future, occupy premises in the Property pursuant to the terms of a Lease.

1.2 Assignment. This agreement and all of the rights hereunder may be assigned by the Receiver without the consent of the Manager but, in recognition of this being an agreement for professional services which is personal to the Manager, may not be assigned by the Manager to a third party without the prior written consent of the Receiver, which consent may be unreasonably and arbitrarily withheld by the Receiver. The Manager shall not delegate any duties or obligations arising hereunder or subcontract its services, or any portion thereof, unless such action has been Approved.

1.3 Waiver by the Receiver. No consent or waiver, expressed or implied, by the Receiver to or of any breach or default by the Manager in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by the Manager. Failure by the Receiver to complain of any act or failure to act of the Manager or to declare the Manager in default, irrespective of how long such failure continues, shall not constitute a waiver by the Receiver of its respective rights hereunder.

1.4 Governing Law. This agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the courts of the Province of Ontario and of Canada shall have exclusive jurisdiction with respect to any dispute, matter or thing arising here from.

1.5 Interpretation. Wherever the singular, plural, masculine, feminine or neuter gender is used throughout this agreement, the same shall be construed as meaning the singular, plural, masculine, feminine, neuter, body politic or body corporate where the fact or context so requires.

1.6 Notices. Any notice, request, demand or other communication or delivery provided for or given hereunder shall be in writing and shall be deemed to have been duly given only if personally delivered or

telecopied as follows:

to the Receiver:
 Attention: Mr. Daniel Weisz
 Telecopier: (416) 480-2646

to the Manager:
 Briarlane Rental Property Management Inc.
 Attention: Brad Smith
 Telecopier:(905) 944-9083

All notices delivered or telecopied shall be deemed to have been given on the date of delivery or transmission if delivered or transmitted by 5:00 p.m. or, if not delivered or transmitted by such time, on the next business day following the date of delivery or transmission. Any party to this agreement may change its address by giving notice of the change of address to the other party.

1.7 Unenforceable Terms. If any term, covenant or condition of this agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining term, covenant or condition of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

1.8 Further Acts. Each of the parties shall, at the request and expense of the other party execute and deliver any further documents and do all things necessary as may be reasonably required to carry out the true intent and meaning of this Agreement.

1.9 Entire Agreement. This agreement constitutes the entire and only agreement between the Receiver and the Manager pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written.

1.10 Confidentiality. All information respecting the Receiver, West Mall Holdings Ltd. or the Property received by the Manager pursuant to this Agreement shall be kept in confidence by the Manager and shall not be disclosed by the Manager to any other person except as required by law or with the written consent of the Receiver. The Manager acknowledges and agrees that the Receiver as an Officer of the Court may have a duty to publicly disclose the Agreement and/or the contents hereof.

ARTICLE 2 APPOINTMENT

2.1 Appointment. The Receiver hereby appoints the Manager to administer, manage, operate and maintain the Property in accordance with and subject to the terms and conditions hereof. The Manager hereby accepts such appointment and agrees to be bound by the terms and conditions hereof. The Manager shall administer, manage, operate and maintain the Property in a faithful, diligent and honest manner and in accordance with first-class professional standards as would be expected from any reasonable and prudent property manager experienced in performing like services and functions, taking into account the Approved Budget and actual funding made available to the Manager. For greater certainty, the Manager is an independent contractor and nothing herein contained creates or shall be construed as creating the relationship of employer-employee or establishing any trust, partnership or joint venture arrangement between the Receiver and the Manager. Nothing herein shall be construed as requiring the Manager to bear any portion of any losses or gains arising out of or connected with the ownership or operation of the Property.

2.2 Term. Subject to Section 4.1 hereof, this agreement shall commence on the Effective Date and shall continue until the earlier of:

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- (a) Two months after the Effective Date (the “**Initial Term**”), provided, however, that at the expiration of the Initial Term, this Agreement shall be automatically renewed for additional periods of one (1) year each (each, a “**Renewal Term**”), unless either party notifies the other party in writing of its intent not to renew this agreement at least 60 days prior to the end of the Initial Term or any Renewal Term as applicable. The date on which this agreement expires or is terminated is referred to herein as the “**Termination Date**”. “**Term**” shall mean the period from the Effective Date through the Termination Date. Notwithstanding the foregoing or anything else contained herein, at any time following the expiration of the Initial Term, either party shall have the option of terminating this Agreement with sixty (60) days prior written notice to the other party without cause or penalty;
- (b) the date that the Receiver sells or no longer has authority to deal with the Property; and
- (c) the date that a party terminates this agreement in accordance with section 4.1.

2.3 Authority. The Manager is hereby given specific authority to operate and manage the Property in accordance with the terms of this Agreement and in accordance with any directions, consents, authorizations, approvals or decisions of the Receiver and in accordance with all applicable municipal, provincial and federal laws and ordinances and all requirements of insurance policies related to the Property. The Manager is hereby given specific authority to retain (as employees of the Manager) personnel and property managers to assist with the operation and management of the Property in accordance with the terms of this Agreement.

2.4 Scope of Authority.

- (a) The Manager shall have the authority to lease and keep leased all leasable premises within the Property and negotiate and settle the terms of all new Leases, renewals and/or extensions of Leases and amendments thereto for the Property and to execute such Leases, renewals extensions and amendments, provided that all Leases, renewals and/or extensions of leases and/or amendments thereto are first Approved by the Receiver in writing.
- (b) The Manager shall negotiate, settle and execute all contracts as may be reasonably necessary for the operation and maintenance of the Property provided that any expense to be incurred thereby is provided for in the current Approved Budget or is otherwise Approved and also provided that each such contract is capable of termination without penalty on not more than thirty days’ prior notice.
- (c) The Manager may expend funds for all expenses provided for in the Approved Budget and shall make all Permitted Expenditures provided that all expenses in excess of \$10,000 in the aggregate (such as but not limited to capital expenditures) shall be incurred only on a “cost to complete” basis such that there shall at all times be a sufficient amount remaining unpaid to pay for the completion of the relevant item or work.
- (d) In the event of an Emergency when the Receiver cannot be consulted, after reasonable efforts by the Manager, the Manager is authorized and instructed to proceed with such immediate steps as in its discretion are reasonably necessary for the protection or preservation of the Property from any loss, damage, penalty or other liability. Upon the happening of any Emergency the Manager shall promptly give notice thereof to the Receiver.

2.5 Limitations and Restrictions. The Manager shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation on behalf of the Receiver with respect to any of the following matters unless and until the same has been Approved:

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 (11)

- (a) construction of any improvements or the making of any capital improvements, repairs, alterations or changes in, to or of the Property in excess of \$10,000.00 in the aggregate except to the extent that it is set forth in an Approved Budget;
- (b) making any expenditure or incurring any obligation other than in accordance with the authority to make expenditures granted to the Manager or which would result in a cost overrun for any particular Approved expenditure or budgeted item;
- (c) preparation and release of all promotional and advertising material relating to any commercial premises in the Property;
- (d) the retention of counsel for the Property or the institution of any legal action;
- (e) expending more than what the Manager in good faith believes to be the fair and reasonable fair value at the time and place of contracting for any goods purchased or leased or services engaged on behalf of the Receiver or otherwise in connection with the Property; and
- (f) knowingly entering into any agreement or other arrangement for the furnishing to the Property of goods or services with any person or entity not dealing at arm's length and *bona fide* with the Manager.

2.6 Leasing. In furtherance of its obligation to operate and manage the Property in a proper and efficient manner, to the extent that it is reasonably capable of so doing and to the extent that the costs incurred are Permitted Expenditures, the Manager shall carry out the duties set out below:

(a) **Lease Administration**

The Manager shall, as requested by the Receiver, work with the broker to be retained by the Receiver to develop and implement plans concerning the acquisition of Tenants. Unless requested by the Receiver in writing, the Manager shall have no responsibility for the acquisition of tenants.

(b) **Promotion and Leasing**

If requested in writing by the Receiver, advertise the Property, display signs thereon and promote the leasing of the Property.

(c) **Notices to Tenants**

Be responsible for the giving and collection of all notices and statements required to be given to or obtained from Tenants under the terms of the Leases and all applicable laws.

(d) **Collect Rents**

Use reasonable efforts to collect all rents, percentage rents, escalation rents, additional rents and other amounts payable by Tenants.

(e) **Security Deposits**

Accept and deal with security deposits in trust on behalf of the Receiver according to all applicable laws and in accordance with any instructions provided by the Receiver to the Manager from time to time including (if required by the Receiver) the operation of a separate trust account or accounts for such security deposits.

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(f) Legal Actions

If requested in writing by the Receiver, sign and serve such notices as the Manager deems necessary in order to collect rents and other amounts in arrears, terminate tenancies and obtain vacant possession of any premises within the Property and institute and prosecute actions, proceedings or suits for such purposes and, when expedient, settle, compromise and release any such actions, proceedings or suits, or reinstate tenancies, all in accordance with standard industry practice.

(g) Lease Obligations

Use reasonable efforts to ensure compliance by the Tenants with the terms and conditions of all contractual and statutory obligations with respect to the Leases, and do or cause to be done all such things as are necessary to enable or facilitate compliance by the Receiver, as landlord, with all of the terms and conditions of the Leases and the obligations of the Receiver, as Landlord, under all applicable laws and regulations.

(h) Rules and Regulations

Implement rules and regulations for the better or more efficient operation of the Property, and use its reasonable efforts to cause whatever rules and regulations to be observed by the Tenants.

(i) Inspection

At least once in each Fiscal Year, carry out physical inspections of the interior and exterior of the building and structure forming part of the Property and make a written report of the results of such inspections to the Receiver.

(j) Insurance

The Manager shall use commercially reasonable efforts to (i) obtain from all Tenants certificates of insurance and renewals thereof required to be furnished by the terms of their leases, (ii) make electronic copies of the certificates available to the Receiver, and (iii) establish systems and procedures to enforce Lease requirements with regard to insurance certificates and the Manager shall advise the Receiver on a timely basis of any insurance certificates not obtained.

(k) Additional Rent

If requested by the Receiver, the Manager shall prepare an annual reconciliation of the property taxes and common area or other expenses charged as Additional Rent to tenants.

(l) Property Tax Vacancy Rebate

The Manager shall prepare the Application for Vacant Unit Rebate and ensure such application(s) are properly filed with the City of Toronto in advance of the required deadline. The Manager shall respond to any enquiries made by the City of Toronto for the production of supporting documentation in respect of such application(s).

2.7 Financial Matters.**(a) Initial Budget**

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The Manager shall deliver to the Receiver, for its approval, an operating budget for the balance of the current fiscal year, on a monthly basis, which shall set forth both anticipated revenues and expenses on an accrual basis;

(b) Annual Budgets and Leasing Plan

The Manager shall prepare and submit to the Receiver, for its approval, the following materials:

- (i) an annual operating budget for the Property, broken down on a monthly basis, which shall set forth both anticipated revenues and expenses on an accrual basis, including, without limitation, details of anticipated expenses for non-capital repairs and maintenance, materials and supplies, and legal and audit fees, and
- (ii) an annual capital expenditure budget for the Property with supporting details.

Where there are duties or obligations of the Manager under this agreement which are to be observed or performed only upon the request of the Receiver, these shall be reviewed at least annually and the decision to direct the Manager to observe or perform such obligations, or not to do so, shall be recorded in the appropriate budget or plan;

(c) Reports

The Manager shall prepare and provide to the Receiver, on a monthly basis:

- (i) a bank reconciliation and bank statement for the preceding month,
- (ii) an income statement (on an accrual basis) and report on the financial results of the previous month and the year-to-date,
- (iii) a current rental schedule, and a rental arrears report together with comments on collection procedures either taken or to be taken by the Manager.

All monthly reports shall be provided to the Receiver within fifteen days of the end of each calendar month;

(d) Annual Financial Statements

Within sixty days after the end of each Fiscal Year, the Manager shall prepare and provide to the Receiver a profit and loss statement for the Property prepared on an accrual basis in accordance with Generally Accepted Accounting Principles;

(e) Banking

The Manager shall administer all banking necessary for the due performance of the accounting and administrative functions of the Manager under this agreement which shall include the following:

- (i) the Manager shall be responsible for the management of cash balances held by the Manager for the Receiver in connection with the operations of the Property from time to time during the course of each month, and shall deposit in a separate interest bearing account or

accounts, to be maintained by the Manager in the Receiver's name and to be designated as trust accounts, all Gross Revenue including all cash, cheques and other negotiable instruments received by the Manager pursuant to this agreement,

- (ii) all interest earned on the funds in such account or accounts shall accrue to the benefit of the Receiver,
- (iii) the Manager shall deal with such Gross Revenue including cash, cheques and negotiable instruments in accordance with sound management practices so that the Receiver's right, title and interest is fully protected,
- (iv) all cheques drawn on such account or accounts shall be signed by the Receiver, and
- (v) no funds shall be disbursed from any such account or accounts except in accordance with this agreement;
- (f) Provision of Funds.

The Manager shall not be required to and shall not overdraw the bank account or accounts operated by it in connection with the operation of the Property. If the amount of the Permitted Expenditures exceed at any time the amount held by the Manager for the Receiver, the Manager shall immediately notify the Receiver and the Receiver shall forthwith furnish to the Manager sufficient funds to enable it to make such expenditures. If the Receiver fails to furnish such funds, the Manager shall not be required to expend its own funds and shall have no liability whatsoever for any consequences arising from such failure by the Receiver. The Receiver shall Indemnify and save harmless the Manager from any and all actions by third parties arising from the failure to make any expenditures by reason of the Receiver's failure to provide funds.

- (g) Books of Account

The Manager shall maintain appropriate, separate and proper books of account and records with respect to the Property and all transactions entered into in performance of this Agreement, all of which shall be and remain at all times the property of the Receiver. At reasonable times and intervals the Receiver may obtain information with respect to the Property and cause inspections and audits of the books and records maintained by the Manager pursuant to this Agreement to be performed and the Manager shall provide all reasonable assistance to the Receiver's employees and auditors. Following the expiration or earlier termination of the Term, the Manager shall deliver all books and records to the Receiver. Accounting for the Property shall be prepared on one of the following bases, as directed in advance by the Receiver: cash, modified cash or accrual basis (not a combination thereof). The Manager shall endeavor to implement appropriate controls over accounting and financial transactions as is reasonably required to protect the Receiver's assets from theft, error or fraudulent activity. The Receiver or its representatives may conduct examinations, upon reasonable prior notice, of the books and records maintained for the Receiver by the Manager as well as all additional audit tests relating to the Manager's activities, either at the Property or at the office of the Manager; provided such audit tests are directly related to those activities performed by the Manager for the Receiver and do not unduly interfere with the performance of the Manager's duties under this Agreement. Should the Receiver discover weaknesses in internal controls or errors in record keeping, the Manager shall correct discrepancies either upon discovery or within a reasonable period of time after the audit.

- (h) Disbursement of Net Cash Flow

Not later than ten days after the end of each calendar month, the Manager shall remit to the

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Receiver the Net Cash Flow for the preceding month, subject to maintaining a reasonable reserve for accounts payable and anticipated expenses which has been pre-approved by the Receiver acting reasonably and without delay. The Receiver shall have the right to require the transfer to the Receiver at any time of funds in the bank account pertaining to the Property considered by the Receiver to be in excess of an amount reasonably required by the Manager for disbursement or compensation purposes in connection with the management and operation of the Property. However, if the Manager, acting reasonably, believes that the amount requested by the Receiver would leave an insufficient amount to pay the anticipated expenses, including the Manager's Fees and any then outstanding supervisory fees for the next thirty (30) day period, it may, provided it has obtained the Receiver's prior written approval, acting reasonably and without delay, retain a holdback for said anticipated expenses in the bank account maintained for the Property for up to sixty (60) days and thereafter remit said holdback amounts to the Receiver less any amounts properly expended in connection with said anticipated expenses.

(i) Duty of Care

The Manager shall exercise such control over accounting and financial transactions as is reasonably required to protect the Receiver's assets from loss or diminution due to negligence, recklessness, willful misconduct, fraud or criminal acts on the part of the Manager or its agents, contractors, subcontractors, associates or employees.

(j) Due Diligence Matters

The Manager will provide reasonable assistance to the Receiver in satisfying the Court and any proposed purchaser, transferor, mortgagee or lender in respect of the Property that conducts due diligence investigations. This will be done without any additional cost to the Receiver, except for reasonable out of pocket expenses approved in writing by the Receiver, acting reasonably, including reasonable disbursements for copying, scanning and printing documents using the Manager's equipment and will include, without limitation, using commercially reasonable efforts (but not including litigation or the payment of legal fees or any monies to the Tenants) to obtain estoppel certificates (prepared by third parties) signed by the Tenants and making available copies of all documents relating to the Property for delivery to prospective purchasers, transferees or lenders under the terms of any applicable agreement of purchase and sale or financing. For greater certainty, the Manager shall not be responsible for negotiating any material amendments to the aforementioned estoppel certificates. Without limiting the foregoing, the Manager will execute in its capacity as manager of the Property and deliver such estoppels, postponements, documents and agreements prepared by third parties as are reasonably required by the Court and/or the Receiver and/or the Property's lenders and/or purchasers from time to time to facilitate the financing and/or sale of the Property from time to time provided that the same shall not impose any financial liabilities or obligations on the Manager.

(k) Confidentiality

The Manager shall hold in confidence and not use or disclose to third parties any confidential or proprietary information of the Receiver which is disclosed to the Manager, including but not limited to any confidential data, information, plans, programs, processes, costs, or operations information, provided, however, the confidentiality obligations hereunder shall not apply to the extent such information (i) is available to the general public or generally known within the real estate industry; (ii) has been received by the Manager from a party under no duty of confidentiality to the Receiver; (iii) is independently developed by the Manager, or (iv) is required to be disclosed pursuant to law, court order or subpoena (with notice to the disclosing party). This confidentiality provision will survive the expiration or termination of this Agreement for any reason.

2.8 Repairs and Operations.

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(a) Repairs and Alterations

To the extent that the costs thereof are Permitted Expenditures, the Manager shall make all repairs and replacements to the Property and all alterations and redecoration which may become necessary or desirable to: (i) improve the rentability of the Property, (ii) comply with the policies from time to time established by the Receiver; (iii) comply with all regulations of any governmental authority having jurisdiction. Where the Manager is requested by the Receiver to coordinate the construction of substantial improvements to the Property, and the Manager is competent to supervise such work, the Manager shall be entitled, subject to the amount thereof being Approved prior to the commencement of such work, to be paid a fee for such services in addition to the fees otherwise payable to the Manager hereunder, subject to the Receiver's written approval.

(b) Climate Control

The Manager shall ensure that the buildings on the Property are heated and cooled to reasonable temperatures, according to the season and shall cause the heating, ventilating and air-conditioning equipment to be operated, maintained and kept in repair in conformity with the obligations of the Receiver to Tenants.

(c) Cleaning

The Manager shall maintain the interior and exterior Common Areas of the Property clean and, where open to the elements, reasonably free from snow and ice.

(d) Protection of the Property if Vacant

To the extent the Property or portions thereof are vacant, the Manager shall regularly attend at the Property and ensure that the Property is properly secured and free from garbage. In the event that there has been any damage or mischief done to the Property, the Manager shall forthwith apprise the Receiver of same.

In addition, the Manager shall forthwith recommend the steps that should be taken to safeguard the property from unauthorized access and will, upon the written instruction of the Receiver, arrange for, at the Receiver's cost, the installation of the protective measures approved by the Receiver. This will be done without any additional cost to the Receiver, except for reasonable out of pocket expenses approved in writing by the Receiver, acting reasonably, including reasonable disbursements.

(e) General

To the extent that the costs thereof are Permitted Expenditures the Manager shall perform and contract for all things necessary for the proper and efficient management, operation and maintenance of the Property.

2.9 Personnel. The Manager shall be responsible for hiring and making available such of its administrative and other employees (who shall not for any purpose be, or be deemed to be, employees of the Receiver) as shall be necessary and desirable for the performance by the Manager of its obligations under this agreement. The full costs of such employees and all out of pocket expenses for which such employees are reimbursed shall be at the Manager's sole cost and expense.

2.10 Insurance Management. If directed by the Receiver, the Manager shall supervise and use all reasonable efforts to place or cause to be placed all insurance required by the Receiver with respect to the Property. Such supervision shall include, without limitation, recommending the amount and type of insurance coverage to be placed, settling of insurance contracts, renewing the insurance coverage, filing of claims, liaison with insurance adjusters, compliance with all statutory conditions and otherwise generally carrying out the duties of an insurance

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manager. All insurance shall be Approved as to type, amounts and underwriters with whom the insurance is placed and shall comply with the requirements of any agreements which are known to the Manager.

The Receiver shall insure the Premises with fire and all perils property damage insurance, rental income, boiler, machinery and pressure vessel insurance with such limits, exclusions and other terms as the Receiver determines, acting reasonably, having regard to the Manager's recommendations. Such policies of insurance shall contain a provision whereby the insurer waives its right of subrogation against the Manager, the employees of the Manager and those parties for whom the Manager is at law responsible. The Receiver shall also be liable to insure against all liability to third parties and employees which may arise in respect of the ownership, use and operation of the Premises with such limits, exclusions and other terms as the Receiver determines, acting reasonably, having regard to the Manager's reasonable recommendations. Such policies of insurance shall name the Manager, the employees of the Manager and those parties for whom the Manager is at law responsible as additional insured thereunder. The Manager shall at the request of the Receiver acquire the policies of insurance which the Receiver is obligated to obtain and all such policies of insurance shall provide that the insurer not cancel them without at least thirty (30) days' prior written notice to the Receiver and the Manager. The Manager shall have the power and authority on behalf of the Receiver to comply to the extent that it is so empowered hereunder with all conditions of such policies of insurance. The Receiver's insurance coverage shall be primary to that of the Manager's on any claim.

ARTICLE 3 FEES

3.1 Compensation. During the term of this agreement, the Manager shall not be entitled to any fees, commissions or other compensation for the performance of its obligations hereunder, save and except for the fees referred to herein and any fee which may be Approved. Except as may be Approved, the Manager shall not accept for its own account in the execution of its duties and obligations hereunder any fees, commissions, reductions, finder's fees or other concessions or compensation whatsoever from tradesmen, suppliers, contractors, insurers, Tenants or others. The Manager shall try to obtain such concessions on behalf of the Receiver and any such concession received shall be remitted to or credited to the Receiver forthwith. The Manager in performing its duties under this Agreement acts in a fiduciary capacity. Accordingly, the Manager will not accept for its own account in the execution of its duties under this Agreement any commissions, reductions, finder's fees or other concessions from tradesmen, suppliers, contractors, insurers or tenants. If such concessions are received by the Manager, then in addition to all rights and remedies of the Receiver under this agreement, such concessions shall be remitted to or credited to the Receiver immediately after receipt.

3.2 Payment of Management Fees. The Receiver shall pay or caused to be paid to the Manager the Management Fees as well as the supervisory fees contemplated in Schedule 2 hereof. . The Manager shall also be reimbursed by the Receiver for any reasonable arm's length expenses incurred by it in the performance of its duties hereunder provided and only to the extent that such expenses are Permitted Expenditures. Provided it is not in default under this Agreement, the Manager shall be entitled, to pay itself, on a monthly basis as a Permitted Expenditure, the Management Fees. The parties acknowledge that the Management Fees are intended to cover all of the Manager's head office, management and other costs and expenses.

3.3 Receipts.

All revenues from the Property, including minimum rent, percentage rent and additional rent and other miscellaneous income, shall be received and collected by the Manager, in trust on behalf of the Receiver and for the account of the Receiver. The Manager shall deposit all such monies in an account or accounts of such types in such forms and names and in such chartered banks or trust companies as are approved by the Receiver from time to time. The bank accounts established for the benefit of the Receiver shall only be used in respect of the Property and the Manager cannot co-mingle funds and unrelated funds.

ARTICLE 4

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TERMINATION

4.1 Termination This Agreement may be terminated:

- (a) by the Receiver giving notice to the Manager in the event that:
 - (i) the Manager is in breach of its duties hereunder and has failed to correct such breach within five (5) business days of being apprised of such breach;
 - (ii) immediately, if the Manager acts in a dishonest or fraudulent manner;
 - (iii) an order is made, an effective resolution is passed or a petition is filed for the winding up or dissolution of the Manager, or an application for a bankruptcy order is filed against the Manager, or the Manager goes into liquidation, either voluntarily or under an order of any court of competent jurisdiction, or the Manager becomes insolvent, commits an act of bankruptcy or makes a general assignment for the benefit of its creditors, or a liquidator, receiver or receiver/manager is appointed with respect to the Manager, or any execution, distress or any other process of the court becomes enforceable against the Manager; or
 - (iv) if at any time upon one (1) day's prior written notice to the Manager from time to time if:
 - (A) the Court order and/or the Receiver's appointment in connection with the Property is restricted, rescinded, revoked, suspended or terminated;
 - (B) the Receiver is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction;
 - (C) a court of competent jurisdiction or other governmental or regulatory authority issues an order, decree or ruling, or takes any other action restraining, enjoining or otherwise prohibiting the matters contemplated hereby, which order, decree, ruling or other action is not stayed or dismissed in its entirety;
 - (D) any person entitled to redeem the Property (including, without limitation, each of the mortgagees and/or other secured creditors) pursuant to any statute or rule of law or equity does so;
 - (E) any mortgagee exercises its power of sale remedy and/or any other rights or remedies with respect to the Property;
 - (F) if the building on the Property is destroyed and the Receiver, for any reason, elects not to rebuild the building, then this Agreement shall terminate on the date following written notice to the Manager that the Receiver has elected not to rebuild the building after such destruction;
 - (G) if there is a condemnation/expropriation of all or any substantial part of the Property, then this Agreement shall automatically terminate as of the date of such taking or condemnation; or
- (b) by the Manager giving notice to the Receiver if the Receiver is in breach of its obligations hereunder to pay the Management Fee or to pay any expenses incurred by the Manager in the performance of its duties hereunder for which it is entitled to be reimbursed and such breach has not been corrected within a

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reasonable time, and such default continues for a period of 10 days after written notice thereof by the Manager to the Receiver; or

- (c) by either party hereto without cause or penalty and for any reason, after the Initial Term by such party providing the other party hereto with sixty (60) days' prior written notice and without the payment of any termination or similar fee.

4.2 Deliveries. On the expiration or earlier termination of this agreement, the Manager shall promptly deliver to the Receiver:

- (a) all financial reports and all books of account and records with respect to the Property in its possession;
- (b) all original Leases and contracts relating to supplies or services in its possession together with assignments of the Manager's rights, title and interest therein (if requested by the Receiver);
- (c) all cheques, negotiable instruments or cash in its possession in respect of the Gross Revenue;
- (d) all keys to all of the Property in its possession; and
- (e) all unpaid invoices in its possession with respect to the Property.

4.3 Disposition of Property. Notwithstanding the foregoing or anything else contained herein or elsewhere, the Receiver may, without cause or penalty, Dispose of the Property in the Receiver's sole, absolute and unreviewable discretion provided that if the Property is Disposed of and the closing occurs during the Initial Term, then other than those circumstances described in Section 4.1 (a)(iv) herein (in which event the Manager will not be entitled to the Management Fee), the Manager shall remain entitled to the Management Fee for the Property for the balance of the Initial Term and the Receiver shall pay same unless a third party such as the purchaser of the Property agrees to do so. Provided that the Receiver shall provide the Manager with notice of any of the proceedings described in section 4.1(a)(iv) herein forthwith after receipt of notice of same.

4.4 Liability for Existing Management Fees. Notwithstanding the foregoing or anything herein contained, upon termination of this Agreement for any cause, the Receiver shall remain liable for all expenses properly incurred for the Property until said termination and the Management Fee (as well as all outstanding supervisory fees) payable up to the effective date of termination. Provided further if there are any third party contracts affecting the Property which were approved by the Receiver and which cannot be terminated upon the Disposition of the Property, the Receiver will either cause a third party such as the purchaser of the Property to assume the same or will be liable for any direct costs payable to the other party to the contract for terminating said contracts.

ARTICLE 5 INDEMNITY

5.1 Indemnification by Receiver. Without prejudice to any other rights or remedies available to the Manager, the Receiver hereby indemnifies and saves harmless the Manager from and against any and all claims, suits, demands, losses, costs, damages and expenses (including legal costs) arising directly or indirectly, in whole or in part, out of the Manager's appointment hereunder and out of the Manager's lawful and proper performance of its duties hereunder, provided that this indemnity shall not extend to or apply in the case of:

- (a) any negligence by the Manager or its employees or agents;

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- (b) any act of commission or omission by the Manager or its employees or agents which is in breach of this agreement; or
- (c) fraud or other dishonest or illegal acts of the Manager or its employees or agents.

The aforementioned indemnity by the Receiver shall not be personal to the Receiver, and the Manager shall have recourse only to the Property, as defined in the February 3, 2015 order appointing the Receiver (the "Appointment Order") in realizing on such indemnity, and will be subordinate to the following interests in the Property, which shall, in any event, have priority over the said indemnity:

- (a) Any secured interests currently registered as against the Property;
- (b) The Receiver's Charge, as defined in the Appointment Order;
- (c) The Receivers' Borrowing Charge, as defined in the Appointment Order;
- (d) The Manager's Charge and the Manager's Borrowing Charge, as defined in the Appointment Order (for the purpose of this subparagraph "Manager" is defined as set out in the Appointment Order and the November 5 Order referenced therein);and
- (e) Any further deemed priority or super priority as mandated by operation of law or statute;

5.2 Indemnification by Manager. Without prejudice to any other rights or remedies available to the Receiver, the Manager hereby indemnifies and saves harmless the Receiver from and against any and all claims, suits, demands, losses, costs, damages and expenses (including legal costs) arising directly or indirectly, in whole or in part, out of the Manager's or its employees or agents' negligence or the Manager's failure to perform its duties hereunder or the Manager or its employees or agents otherwise breaching this agreement or the Manager or its employees or agents conducting any fraudulent, dishonest or illegal act in connection with this Agreement or its employees or agents so doing.

5.3 Non-Merger. The indemnities set forth herein shall survive the expiration or earlier termination of this agreement, with the exception that, despite this, or any other provision of this Agreement, any indemnity by the Receiver shall not survive the Receiver's discharge or the appointment of a new receiver for the Property.

ARTICLE 6 MISCELLANEOUS

6.1 Further Assurances. Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other party, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

6.2 Capacity. Notwithstanding anything else contained herein or elsewhere, the Manager acknowledges and agrees that: (a) Collins Barrow Toronto Limited is entering into this Agreement and all related documentation from time to time solely in its capacity as the Court appointed receiver, without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd. from time to time with no personal or corporate liability; (b) Collins Barrow Toronto Limited

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[Handwritten Signature]

and its agents, officers, directors, partners and employees have no and shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, at law, in equity or otherwise as a result of or in any way connected with the Property, this Agreement or as a result of the Receiver performing or failing to perform any of its obligations hereunder; and (c) in respect of any obligations and liabilities of the Receiver hereunder, the Manager shall have recourse only to the interests of the Receiver in the Property, if any, and such obligations and liabilities are not otherwise personally binding upon nor shall resort be had to any other assets or property of the Receiver and/or its agents, officers, directors, partners and/or employees.

6.3 Counterparts. This Agreement may be executed in counterpart and transmitted by fax or email and the reproduction of any signature in counterpart and by fax or email will be treated as though such reproduction was an executed original signature.

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IN WITNESS WHEREOF the parties hereto have executed this agreement.

Collins Barrow Toronto Limited solely in its capacity as the Court-Appointed Receiver, without security, of all of the assets, undertakings and properties of West Mall Holdings Ltd. with no personal or corporate liability

Per: 
DANIEL WEITZ, SENIOR VICE PRESIDENT c/s

~~Briarlane Rental Property Management Inc.~~

Per: 
ANDRUS KUNG V.P. OPERATIONS c/s

SCHEDULE I

291 and 295 The West Mall, Toronto, Ontario




SCHEDULE 2**Management Fees**

1. The Management Fees payable by the Receiver to the Manager pursuant to this agreement shall be competitive to those generally charged in the industry and shall be changed from time to time to reflect the fair market fee. The current fees are equal to the following applicable percentage of Adjusted Gross Revenue:

(a) (3.75 %) of Adjusted Gross Revenue plus HST per month;

Such fees shall be payable monthly, in advance, on the first day of each calendar month and shall include an estimate and Adjusted Gross Revenue from the preceding calendar month.

2. The Manager shall also be paid a fee equal to five percent (5%) of the amount of all costs incurred in respect of any capital repair and replacement which the Manager oversees and is greater than \$25,000 in value. Such fee shall be paid monthly as such costs are paid.
3. The Manager shall also be paid a reasonable leasing fee in respect of the leasing of rental space arranged by or through the Manager. Such fee shall be competitive with those charged by third party brokers and, if a third party broker is involved, will be competitive with those paid to a listing broker. No fee shall be paid in respect of existing tenants exercising existing options to renew at predefined rents. No fee shall be paid in respect of new tenants who have been identified by the rental agent engaged by the Receiver.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE NEWBOULD

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TUESDAY, THE
3rd 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.

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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**"),¹ 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

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

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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

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- (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

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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

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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

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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



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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

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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

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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.

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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.



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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.

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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:

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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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nominee for Trez Capital Limited Partnership

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 5 th DAY
)	
JUSTICE NEWBOULD)	OF NOVEMBER, 2013

B E T W E E N:

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

Applicants

and

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

Respondents

and

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

ORDER

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

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

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

SERVICE

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

CONTINUING ORDERS

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

APPOINTMENT

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

MANAGER'S POWERS

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

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

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

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- (iii) Sterling Karamar;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Schedule "B" Corporations or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Schedule "B" Corporations and to exercise all remedies of the Schedule "B" Corporations in collecting such monies, including, without limitation, to enforce any security held by any of the Schedule "B" Corporations, ~~provided that the Manager shall give prior notice to the Parties of any enforcement of security;~~ ✓ 2/15
- (h) subject to paragraph 4 below, to settle, extend or compromise any indebtedness owing to any of the Schedule "B" Corporations, ~~provided that the Manager shall give prior notice to the Parties of the settlement of any material indebtedness;~~ ✓ 2/15
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Manager's name or in the name and on behalf of the Schedule "B" Corporations, for any purpose pursuant to this Order;
- (j) to undertake environmental investigations, assessments, engineering and building condition or other examinations of the Real Estate;
- (k) subject to paragraph 12 below, to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Schedule "B" Corporations, the Property or the Manager, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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



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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MANAGER

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

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

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

NO PROCEEDINGS AGAINST THE MANAGER

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

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

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

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE MANAGER

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

CONTINUATION OF SERVICES

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

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MANAGER TO HOLD FUNDS

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE MANAGER'S LIABILITY

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

MANAGER'S ACCOUNTS

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

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

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

FUNDING OF THE MANAGERSHIP

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

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GENERAL

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



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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

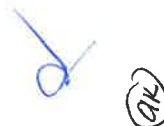
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SCHEDULE "A" COMPANIES

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



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

1. Twin Dragons Corporation
2. Bannockburn Lands Inc. / Skyline – 1185 Eglinton Avenue Inc.
3. Wynford Professional Centre Ltd.
4. Liberty Village Properties 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.

A handwritten signature in blue ink, followed by the initials "AK" enclosed in a circle.

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25. Skyway Holdings Ltd.
26. West Mall Holdings Ltd.
27. Royal Gate Holdings Ltd.
28. Dewhurst Developments Ltd.

29. Eddystone Place Inc.
30. Richmond Row Holdings Ltd.

31. El-Ad Limited
32. 165 Bathurst Inc.

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SCHEDULE "C"
MANAGER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

DATED the ____ day of _____, 20____.

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

Per: _____

Name:

Title:

(914) 9

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

-and- NORMA WALTON et al.

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Fax: (416) 865-3973
Email: sroy@litigate.com

Lawyers for the Plaintiffs

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APPENDIX C

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	2015	2014	2013	Total
	Jan 1 - Oct 31 Under (Over) Payment**	Under (Over) Payment	Mar 19 - Dec 31 Under (Over) Payment	Under (Over) Payment
Current tenants				
Canadian Institute of Plumbing and Heating	\$ (10,171.15)	\$ (19,442.05)	\$ (11,926.98)	\$ (41,540.19)
Community Living Toronto	(33,663.79)	(51,724.02)	(32,109.87)	(117,497.68)
Dr. Janusz Mierzwa	(5,652.16)	(8,624.79)	(5,048.07)	(19,325.02)
Edgebuilder Inc.	(12,068.86)	(23,297.31)	(11,922.44)	(47,288.61)
Hudson Group Consulting Inc.	(1,531.61)	(3,329.89)	(1,346.27)	(6,207.78)
Investors Group Financial Services Inc.	(96,930.28)	(130,145.80)	(41,254.03)	(268,330.11)
Keg Restaurant Ltd.	(22,247.69)	(51,841.54)	(21,683.05)	(95,772.28)
Marhen Insurance Brokers Ltd.	(1,909.41)	(4,259.48)	(1,671.36)	(7,840.26)
The George Hull Centre for Children and Families	(11,641.07)	(5,668.90)	-	(17,309.97)
United Grocers Inc.	(6,930.43)	(11,588.50)	(6,316.58)	(24,835.50)
Sub-total - current tenants	\$ (202,746.45)	\$ (309,922.28)	\$ (133,278.66)	\$ (645,947.39)
Former tenants				
Energy Profiles	\$ -	\$ (4,768.14)	\$ (14,623.99)	\$ (19,392.12)
Shaljero Advisors Inc.	-	(9,121.70)	(7,128.26)	(16,249.96)
The Pace Law Firm	-	(90,981.57)	(51,836.54)	(142,818.11)
Sub-total - former tenants	\$ -	\$ (104,871.40)	\$ (73,588.79)	\$ (178,460.19)
Total amount	\$ (202,746.45)	\$ (414,793.68)	\$ (206,867.45)	\$ (824,407.58)

** The 2015 TMI reconciliation is in part based on projected costs, which by their nature are dependent on future events. Actual costs will vary from the information presented and the variations may be material.

*This Appendix forms part of the Receiver's report to the Court dated October 9, 2015
and should only be read in conjunction therewith.*

This schedule has been prepared based primarily on the books and records of West Mall Holdings Ltd. and other information available to Briarlane Rental Property Management Inc. The Receiver has not reviewed or otherwise verified the accuracy and completeness of this information.

APPENDIX D

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N:

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

Applicants

- and -

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

Respondents

- and -

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

TWENTIETH REPORT OF THE MANAGER, SCHONFELD INC.
(Motion for approval and vesting order with respect to 291-295 The West Mall)

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C.	Confidentiality	3
D.	Background	3
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B.	The Marketing Process	4
C.	Timing of the Transaction.....	6
D.	Stakeholder Approval	6
E.	Proposed Distribution of Sale Proceeds.....	6
III.	Conclusion and Recommendations.....	6

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I. Introduction

1. This is the Twentieth Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of (i) certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Schedule B Companies**”),¹ together with the real estate properties owned by those companies (the “**Schedule B Properties**”); and (ii) the properties listed at Schedule “C” to the Judgment and Order of Justice Brown dated August 12, 2014 (the “**Schedule C Properties**” and together with the Schedule B Properties, the “**Properties**”).

A. Purpose of this Report

2. This Manager has brought a motion for, among other things:
- (a) an approval and vesting order in respect of the sale transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated November 14, 2014 (the “**West Mall Agreement**”) between West Mall Properties Corp. (the “**Purchaser**”) and the Manager in respect of the Property known municipally as 291-295 The West Mall, Toronto, Ontario (the “**West Mall Property**”) A copy of the West Mall Agreement is attached as Confidential Appendix “A”; and
 - (b) an Order permitting the confidential appendices to this Report (the “**Confidential Appendices**”) to be filed under seal without being served on the Service List.
3. This Report provides a summary of the Transaction and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

B. Terms of reference

4. Based on its review and interaction with the parties to date, nothing has come to the Manager’s attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the Schedule

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

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B Companies or of the companies that own the Schedule C Properties (collectively, the “**Companies**”). The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies’ financial information that may be in this Report.

C. Confidentiality

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

D. Background

6. The Schedule B Companies are a group of real estate development corporations incorporated as part of a series of joint ventures between Dr. Stanley Bernstein and companies that he controls (the “**Bernstein Group**”) and Norma and Ronald Walton and entities that they control (the “**Walton Group**”). Most of the Schedule B Companies were incorporated to purchase and develop a particular Schedule B Property.

7. In the summer and fall of 2013, the relationship between the Walton Group and the Bernstein Group broke down amid allegations that the Walton Group had, among other things, placed mortgages on jointly-held properties without the Bernstein Group’s consent and failed to provide reporting required by the agreements that govern the joint venture. The dispute between the Walton Group and Bernstein Group is described in more detail in the Endorsement of Justice Newbould dated November 5, 2013, which is attached as Appendix “1”.

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

9. The Manager’s mandate was further expanded to include certain other real estate properties owned by the Walton Group, being the Schedule C Properties, pursuant to the Reasons of Justice Brown dated August 12, 2014, which are attached as Appendix “3”, and the Judgment and Order of Justice Brown dated August 12, 2014, which is attached as Appendix “4”.

II. The Transaction

A. Interested Parties

10. The West Mall Property is owned by one of the Schedule B Companies, West Mall Holdings Ltd. (“**West Mall Holdings**”).

11. A mortgage in the amount of \$9,687,500 (the “**First Mortgage**”) and a Notice of Assignment of Rents General each in favour of 295 The West Mall Portfolio Inc. (the “**First Mortgagee**”) are registered on title to the West Mall Property.

12. A second mortgage in the amount of \$1,937,500 (the “**Second Mortgage**”, together with the First Mortgage, the “**Mortgages**”) and a Notice of Assignment of Rents General each in favour of Computershare Trust Company of Canada (the “**Second Mortgagee**”, together with the First Mortgagee, the “**Mortgagees**”) are also registered on title to the West Mall Property.

13. The Manager has asked its counsel, Goodmans LLP, to conduct a security review of the Mortgages and has been advised that both Mortgages are properly registered.

B. The Marketing Process

14. The Manager solicited proposals from five leading commercial real estate firms to market nine properties, including the West Mall Property. These Properties were, in the Manager’s judgment, in a state of development that would facilitate expeditious sales. The Manager retained CBRE Limited (“**CBRE**”) to market these Properties. CBRE was subsequently retained to market a number of Properties that are outside the scope of this Report.

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15. The marketing process for the West Mall Property commenced February 27, 2014, when CBRE e-mailed a marketing flyer and confidentiality agreement to over 2,000 potential purchasers. The West Mall Property was also advertised in the Globe & Mail during the first two weeks of the marketing process.

16. A total of 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.

17. CBRE conducted seven tours of the West Mall Property. The prospective purchasers that toured the properties were generally experienced participants in the Toronto commercial real estate market. These parties are listed in CBRE's marketing report (the "**CBRE Report**"), which is attached as Confidential Appendix "B".

18. After consultation with CBRE, the Manager determined that a six-week marketing campaign was appropriate for the West Mall Property since it was being sold on an as-is, where-is basis and the Manager was not able to provide updated reports relating to all aspects of the environmental and physical condition of the West Mall Property. Accordingly, the bid date for the West Mall Property was April 10, 2014. The offers received on the bid date are summarized at Appendix B of the CBRE Report.

19. The Manager received three first round offers for the purchase of the West Mall Property. However, after consultation with 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.

20. The initial three bidders each resubmitted their bids with improved pricing. The Manager received and reviewed these offers (which are summarized at Appendix C of the CBRE Report) based on both pricing and terms. After its review of the second round offers, and after consultation with the Second Mortgagee, the Manager advised the top bidder that it was the preferred bidder. This bid was conditional upon the bidder obtaining satisfactory financing, which was ultimately not achieved. As a result, CBRE then proceeded with another round of marketing of the West Mall Property.

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21. The Manager ultimately reached a deal with the Purchaser and the Manager and Purchaser executed the West Mall Agreement on November 14, 2014.

C. Timing of the Transaction

22. The Transaction is scheduled to close on December 15, 2014.

D. Stakeholder Approval

23. The West Mall Agreement has been provided to the Mortgagees and the Mortgagees have consented to the Transaction. The Applicants have also been provided with copies of the West Mall Agreement.

E. Proposed Distribution of Sale Proceeds

24. The Manager recommends that the proceeds of the Transaction, net of closing costs, be used to satisfy the amounts owed to the Mortgagees, and that any excess proceeds be held in trust by the Manager pending further Order of the Court. The Manager anticipates that the net proceeds available on closing will be sufficient to satisfy the amounts owed pursuant to the Mortgages

III. Conclusion and Recommendations

25. As set out above, the Transaction is the result of a transparent and competitive marketing process. Accordingly, for the reasons set out in the above report, the Manager respectfully recommends that this Honourable Court grant the relief sought in the Manager's notice of motion.

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All of which is respectfully submitted this 21st day of November, 2014.

SCHONFELD INC.

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013
and the Judgment and Order of Brown, J. dated August 12, 2014**

Per: _____

Harlan Schonfeld CPA · CIRP