

**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**

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

**Motion Returnable October 20, 2015**

October 15, 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 of West Mall Holdings Ltd.

TO: Service List

## I N D E X

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

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

**Applicants**

- and -

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

**Respondents**

- and -

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

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

**October 15, 2015**

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

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

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

**COLLINS BARROW TORONTO LIMITED**

In its capacity as Court Appointed Receiver  
of West Mall Holdings Ltd. and  
not in its personal capacity



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

# APPENDIX A

# STEINBERG TITLE HOPE & ISRAEL LLP

BARRISTERS & SOLICITORS • TRADEMARK AGENTS

**IRWIN STEINBERG**

B.A., LL.B.

**JACK W. HOPE**

LL.B.

**DAVID M. ISRAEL**

B.A., LL.B.

**M. MICHAEL TITLE\***

B.A., J.D.

**MICHAEL E. CASS**

B.A., LL.B.

**SHELLEY BRIAN BROWN**

B.C.L., LL.B., LL.M.

**PATRICIA VIRC**

LL.B., LL.M., C. Dir.

**DERRICK M. FULTON\***

B.A. (Hons.), LL.B., LL.M.

**TARAS KULISH\*■**

B.C.L., LL.B.

**DAVID A. BROOKER**

B.Sc., LL.B.

**ELI LEIBOWITZ**

B.A.S., J.D.

**DARIA KRYSIK**

B.A. (Hons.), J.D.

March 10, 2015

Brian Empey / Mark Dunn  
Goodmans LLP  
Barristers and Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Dear Sirs:

**Re: *West Mall Holdings Ltd.***

As you are aware, Collins Barrow Toronto Limited has been appointed as the Receiver over the assets and property of West Mall Holdings Ltd. (the “Debtor”) (the “Receiver”) and I enclose herein a copy of the Order of Justice Newbould dated February 3, 2015. I can advise that this firm is appointed as counsel to the Receiver.

The Receiver has been advised by the property manager for the West Mall properties, Briarlane Rental Property Management Inc. (“Briarlane”), who also provided property management services to your client, Schonfeld Inc. (the “Manager”), when it was manager of the Debtor that during its tenure as manager, monthly payments were made to a company known as 368230 Ontario Limited in the amount of \$15,338.54, for a total of \$230,078.10 from November 2013 through to February 2015. Further, Briarlane has included, in its initial draft budget prepared for the Receiver, payments to 368230 Ontario Limited and a review by the Receiver of the preliminary December 31, 2014 balance sheet that was initially received from Briarlane upon the Receiver’s appointment appears to set out the alleged debt from the Debtor to 368230 Ontario Limited as a loan payable (to an unidentified party).

Upon inquiry as to the basis for the payment, the Receiver has been advised by the property manager of the following which is apparently based upon information it, in turn, received from Jim Merriweather of the Manager:

1. that 368230 Ontario Limited is either owned or in some capacity controlled by Dr. Bernstein;
2. that through an agreement made between Dr. Bernstein and Norma Walton that was not in writing, but that was apparently confirmed via email exchange between Ms. Walton and Dr. Bernstein (although never shown to Briarlane) the Debtor was to make monthly payments of interest only to 368230 on the following basis:

*David A. Brooker Ext. 214*  
*Karen Sampson (Legal Assistant/Clerk) Ext. 218*  
*e-mail: dbrooker@sthilaw.com*

**SENT BY EMAIL TO:**  
**bempey@goodmans.ca**  
**mdunn@goodmans.ca**



- (i) That, after the mortgage commitment was made for the Trez mortgage, but before the funds were advanced to the Debtor, 368230 loaned it funds equal to the amount of the Trez mortgage;
- (ii) The Debtor was to pay 368230 back the amount of the loan once the funds under the Trez mortgage were advanced;
- (iii) Once the Trez advance was received by the Debtor it did not pay back the alleged loan to 368230; and
- (iv) It was apparently agreed as between Ms. Walton and Dr. Bernstein that monthly payments of interest would be made on the funds.

Again, the Receiver has not found any records of the Debtor indicating that this loan was made or that any security was ever given for it by the Debtor nor anyone else. At this point the Receiver will not be making any further payments to 368230 with respect to the alleged loan or for any other amount. In the past week, the Receiver has been given the attached revised trial balance from Briarlane for 2014. The trial balance would appear to indicate that account code 1906 (Shareholder Loan Payable) represents the amount allegedly advanced by 368230 of \$1,937,500.00, and that account code 9302 (First Mortgage Interest) represents interest not only paid on the first mortgage, but also the second (Trez) mortgage as well as funds paid to 368230 for the year.

In light of the above, I would ask that you please provide information outlining the details and rationale with respect to the said payments, together with any documentation evidencing same; I have copied this letter to Shara Roy, Dr. Bernstein's lawyer, in the event that her office is able to provide any details of these transactions. Once I have received any further details, the matter will be reviewed by the Receiver and a position given at that time.

I look forward to hearing from you.

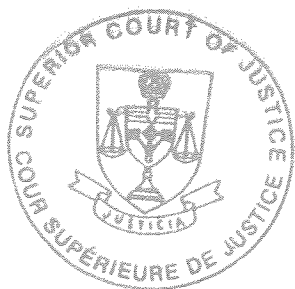
Yours very truly,  
**STEINBERG TITLE HOPE & ISRAEL LLP**



David A. Brooker  
DAB/ks  
Encl.

cc: Shara Roy

Collins Barrow Toronto Limited  
Attn: Daniel Weisz / Brenda Wong



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	TUESDAY, THE
JUSTICE NEWBOULD	)	
	)	3 <sup>rd</sup> DAY OF FEBRUARY, 2015

**BETWEEN:**

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

Applicants

- and -

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

Respondents

- and -

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

**ORDER**

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

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

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

#### **APPOINTMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

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

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

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

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

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

#### **CONTINUATION OF SERVICES**

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

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

### **RECEIVER TO HOLD FUNDS**

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

### **EMPLOYEES**

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

### **PIPEDA**

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



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

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

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

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

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

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

### **RECEIVER'S ACCOUNTS**

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

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

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

### **FUNDING OF THE RECEIVERSHIP**

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the

Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, subsequent in priority to the First Mortgage and in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

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

#### **GENERAL**

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

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from 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.

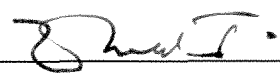
30. **THIS COURT ORDERS** that future service of materials relating the receivership of the Debtor and the West Mall Property shall be limited to a revised service list established by the Receiver that shall include only those parties with an interest in the receivership of the Debtor and the West Mall 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 CENTRE TORONTO  
CN 1077 107  
LEADERSHIP CENTRE  
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

General Ledger System  
 Trial Balance: Accrual  
 Company : TB West Mall Holdings Ltd.  
 Period Ending: 12/31/2014  
 Scope : YTD  
 Comp Currency: CDN  
 Alternate Master Code : no  
 Show Zero Balances : no

02/25/2015 Page: 1  
 2:27PM suel

Drill Down Column (\*): Account Code  
 Division(s): \*  
 Sub-Ledger(s): \*

-----  
 Balance Sheet Accounts  
 -----

* Account Code	Account Name	Cur	Opening Balance	Debit	Credit	Closing Balance
0101	Bank		0.00	2,841,899.26	-2,537,316.22	304,583.04
0301.10	Accounts Receivable - Commercial		-18,875.49	3,270,986.41	-3,294,772.02	-42,661.10
0304	Due from Superintendent		0.00	2,933.22	0.00	2,933.22
0350	Tenants Clearing		0.00	28,201.78	-28,201.78	0.00
0502.100	Land Commercial		0.00	8,023,098.78	0.00	8,023,098.78
0503.100	Building Commercial		0.00	8,023,098.79	0.00	8,023,098.79
0503.400	Building Improvements		0.00	125,000.00	0.00	125,000.00
1401	Intercompany		0.00	1,118,042.01	0.00	1,118,042.01
1602	Trade Accounts Payable		0.00	1,971,628.08	-2,032,674.04	-61,045.96
1603	Accrued Liabilities		0.00	2,620.01	-1,174.74	1,445.27
1606.150	Prepaid Rent Deposits Commercial		-19,837.32	0.00	-17,564.40	-37,401.72
1610	Interest Payable		0.00	0.00	-52,812.50	-52,812.50
1613	Payroll Clearing		0.00	1,070.53	-28.00	1,042.53
1621	Other Payable		0.00	187,711.37	-295,360.84	-107,649.47
1680	Initialization-Accounts Receivable		18,875.49	0.00	-18,875.36	0.13
1681	Initialization - Prepaid Rent		19,837.32	0.00	-19,837.32	0.00
1684	Initialization - Bank Account		0.00	47,469.58	-47,469.58	0.00
1691	H.S.T. - Payable		0.00	391,379.73	-152,191.86	239,187.87
1691.100	H.S.T. - Paid		0.00	98,242.13	-5,369.03	92,873.10
1691.200	H.S.T. - Collected		0.00	15,308.59	-342,400.08	-327,091.49
1901	First Mortgage Payable		0.00	0.00	-9,687,500.00	-9,687,500.00
1902	Second Mortgage Payable		0.00	0.00	-1,937,500.00	-1,937,500.00
1906	Shareholder Loan Payable		0.00	0.00	-1,937,500.00	-1,937,500.00
2901.001	Capital Stock - Class "A" Shares		0.00	0.00	-2,849,163.00	-2,849,163.00
2902	Contribution / Distribution		0.00	119,415.42	0.00	119,415.42
2904	Retained Earnings		0.00	0.00	-413,502.82	-413,502.82
	PROFIT (CURRENT YEAR)					-596,892.10
	Total Balance Sheet Accounts		0.00	26,268,105.69	-25,671,213.59	0.00

-----  
 Profit & Loss Accounts  
 -----

* Account Code	Account Name	Cur	Opening Balance	Debit	Credit	Closing Balance
3200	Commercial Basic Rent		0.00	27,960.79	-1,254,916.90	-1,226,956.11
3204	Commercial Base Free Rent		0.00	12,964.88	0.00	12,964.88
3205	Commercial Parking		0.00	0.00	-133,948.21	-133,948.21
3210	Commercial - Recoverables		0.00	19,244.29	-1,333,258.81	-1,314,014.52
3213	Insurance Recoverable		0.00	511.66	-16,092.52	-15,580.86
3230	Commercial - Utility Recovery		0.00	0.00	-3,025.00	-3,025.00
3250	Sundry Income		0.00	0.00	-12,301.94	-12,301.94
3290	Commercial - Vacancies		0.00	196,497.99	-19,836.00	176,661.99

Continued on next page...

General Ledger System  
 Trial Balance: Accrual  
 Company : TB West Mall Holdings Ltd.  
 Period Ending: 12/31/2014  
 Scope : YTD  
 Comp Currency: CDN  
 Alternate Master Code : no  
 Show Zero Balances : no

02/25/2015 Page: 2  
 2:27PM suel

Drill Down Column (\*): Account Code  
 Division(s): \*  
 Sub-Ledger(s): \*

* Account Code	Account Name	Cur	Opening Balance	Debit	Credit	Closing Balance
4101	Realty Taxes		0.00	298,316.77	0.00	298,316.77
4102	Realty Taxes - Prior Years		0.00	216,904.40	-187,711.37	29,193.03
4201	Insurance		0.00	33,360.89	0.00	33,360.89
4301	Wages, Superintendent		0.00	49,311.78	0.00	49,311.78
4303	EI Expense		0.00	1,375.09	-40.04	1,335.05
4306	Group Insurance		0.00	2,721.84	0.00	2,721.84
4308	CPP Expense		0.00	2,397.46	0.00	2,397.46
4401	Elevator		0.00	19,355.02	0.00	19,355.02
4403	Plumbing		0.00	2,487.71	0.00	2,487.71
4404	Drains		0.00	405.00	0.00	405.00
4405	Electrical		0.00	3,173.81	0.00	3,173.81
4406	Heating Controls		0.00	1,890.79	0.00	1,890.79
4407	Heating Equipment		0.00	6,814.60	0.00	6,814.60
4409	Pumps and Motors		0.00	1,648.41	0.00	1,648.41
4410	Landscaping		0.00	16,738.35	0.00	16,738.35
4411	Snow Removal		0.00	10,716.00	0.00	10,716.00
4415	Light & Fixtures		0.00	339.25	0.00	339.25
4416	Locks		0.00	1,756.15	0.00	1,756.15
4417	Cleaning Services		0.00	61,437.31	0.00	61,437.31
4418	Cleaning Supplies		0.00	10,943.99	0.00	10,943.99
4419	Window Cleaning		0.00	2,650.00	0.00	2,650.00
4420	Carpet Cleaning		0.00	1,568.00	0.00	1,568.00
4434	Garage Doors		0.00	1,721.55	0.00	1,721.55
4436	Miscellaneous Doors		0.00	1,700.00	0.00	1,700.00
4437	Chemical Heating Hot Water		0.00	2,264.00	0.00	2,264.00
4438	Ventilation		0.00	8,239.50	0.00	8,239.50
4446	Exterminators / Pest Control		0.00	2,954.25	0.00	2,954.25
4448	Garbage Disposal		0.00	9,416.48	0.00	9,416.48
4449	Signs		0.00	1,677.00	0.00	1,677.00
4452	Emergency Systems / Fire protectio		0.00	24,146.00	-637.17	23,508.83
4457	Air Conditioning		0.00	9,262.64	0.00	9,262.64
4467	Stove Supplies		0.00	903.05	0.00	903.05
4468	Security Contract		0.00	56,138.89	0.00	56,138.89
4601	Heat		0.00	22,808.80	0.00	22,808.80
4701	Water		0.00	31,467.43	0.00	31,467.43
4702	Hydro		0.00	234,413.40	-40,663.08	193,750.32
4901	Management Fees		0.00	92,582.27	0.00	92,582.27
5001	Legal - leasing matters		0.00	5,970.79	0.00	5,970.79
5002	Leasing Commission		0.00	5,123.05	0.00	5,123.05
5002.100	Leasing Commission - Commercial		0.00	45,678.06	0.00	45,678.06
5201	Telephone		0.00	9,112.66	-9.88	9,102.78
5204	Other		0.00	139.61	0.00	139.61

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General Ledger System  
 Trial Balance: Accrual  
 Company : TB West Mall Holdings Ltd.  
 Period Ending: 12/31/2014  
 Scope : YTD  
 Comp Currency: CDN  
 Alternate Master Code : no  
 Show Zero Balances : no

02/25/2015 Page: 3  
 2:27PM suel

Drill Down Column (\*): Account Code  
 Division(s): \*  
 Sub-Ledger(s): \*

* Account Code	Account Name	Cur	Opening Balance	Debit	Credit	Closing Balance
5206	Rental Office		0.00	2,510.00	0.00	2,510.00
5207	Travel Expense		0.00	307.44	0.00	307.44
5208	Office Supplies		0.00	5.24	0.00	5.24
5210	Bad Debts - Commercial		0.00	0.12	-0.02	0.10
5401	Consulting & Prof. Fees		0.00	4,907.80	0.00	4,907.80
9302	First Mortgage Interest		0.00	768,893.08	-13,268.38	755,624.70
9311	Other Interest and Penalty		0.00	62.32	0.00	62.32
9401	Special Maintenance		0.00	71,729.99	0.00	71,729.99
9508	Bank charges		0.00	142.00	0.00	142.00
9509	Courier		0.00	160.39	0.00	160.39
9511	Payroll Processing		0.00	887.18	0.00	887.18
Total Profit & Loss Accounts			0.00	2,418,817.22	-3,015,709.32	-596,892.10
Total Report			0.00	28,686,922.91	-28,686,922.91	0.00

# APPENDIX B

March 13, 2015

Our File No.: 14.0074

**DELIVERED VIA E-MAIL**

Steinberg Title Hope & Israel LLP  
Yonge Street, Suite 1100  
Toronto, Ontario  
M2N 6P4

**Attention: David A. Brooker**

Dear Mr. Brooker:

**Re: West Mall Holdings Ltd.**

I write in response to your letter dated March 10, 2015.

As you note, the Manager caused West Mall Holdings Ltd. ("West Mall") to pay interest earned and owing on a loan made to 368230 Ontario Limited ("368") during the course of its mandate. The Manager understands that the origins of the loan are as follows:

- By e-mail dated March 12, 2013, Norma Walton e-mailed Dr. Bernstein and advised that the "second mortgagee and the vendor first mortgagee are bickering about wording on the second mortgage" and that, as a result, purchase of 295 The West Mall (the "West Mall Property") had been delayed. Dr. Bernstein agreed to advance \$1,923,750 as a loan until the second mortgage was advanced (see Tab "A" for the relevant correspondence);
- 368 advanced this loan (the "368 Loan") by cheque dated March 13, 2013, a copy of which is attached at Tab "B"; and
- The relevant funds were not repaid when the second mortgage was advanced and interest continued to accrue. Before the Manager's appointment, interest was paid on a monthly basis.

After its appointment, the Manager continued to pay interest earned on the 368 Loan as it was earned on a monthly basis. These payments were shown on bi-weekly cash flow reports provided to Trez Capital Limited Partnership ("Trez"), an example of which is attached as Tab "C". Similar reporting was provided to the first mortgagee. The payments were also reported to

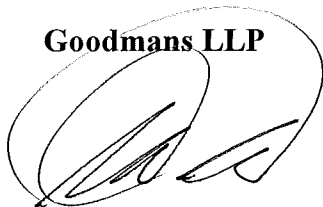


the Court as part of the receipts and disbursements appended to the Manager's 13<sup>th</sup> Report (see page 71 of tab "D") and approved by Order of Justice Brown dated June 18, 2014 (see paragraph 7 of tab "E").

We trust this answers your concerns, please feel free to contact us with any further questions.

Yours truly,

**Goodmans LLP**

A handwritten signature in black ink, appearing to be 'Mark Dunn', is written over the text 'Goodmans LLP'.

Mark Dunn  
MSD/cr  
6432076

**Jacque Rabinowitz**

---

**From:** Dr. Stanley Bernstein  
**Sent:** Wednesday, March 13, 2013 6:59 AM  
**To:** Jacquie Rabinowitz  
**Subject:** FW: 295 The West Mall

document for funds for mortgage if required

---

**From:** Norma Walton [nwalton@roseandthistle.ca]  
**Sent:** March-12-13 7:06 PM  
**To:** Dr. Stanley Bernstein  
**Subject:** RE: 295 The West Mall

Dear Stan,

Of course, I'll arrange to pick up tomorrow if convenient for you. Let me know once ready. Please make it payable to West Mall Holdings Ltd. I'll hold it and advise if we are going to need it.

Thanks again, and safe travels,  
 Norma

---

**From:** Dr. Stanley Bernstein [mailto:drb@drbdiet.com]  
**Sent:** Tuesday, March 12, 2013 6:26 PM  
**To:** Norma Walton  
**Subject:** RE: 295 The West Mall

Dear Norma,  
 I suggest you pick up a cheque tomorrow or Wed and hold it if you need it.  
 I may be going to Fla Thursday or Friday.  
 If you don't use the cheque, you can always destroy it.

Or Warren should be at Kern Friday - but I want to ensure you have the funds if you need them.

Cheers,  
 Dr. Bernstein

---

**From:** Norma Walton [nwalton@roseandthistle.ca]  
**Sent:** March-12-13 5:11 PM  
**To:** Dr. Stanley Bernstein  
**Subject:** RE: 295 The West Mall

Dear Stan,

I am still hopeful reason will win out, but given the nature of the vendor I don't want to depend upon my negotiating abilities to get it done and then find on Monday we are stuck. Leave it with me and I'll come back to you Friday with an update.

Thanks so much for your accommodation. You do make it easy to be your partner. ☺

Regards,  
 Norma

---

**From:** Dr. Stanley Bernstein [mailto:drb@drbdiet.com]  
**Sent:** Tuesday, March 12, 2013 5:05 PM  
**To:** Norma Walton  
**Subject:** RE: 295 The West Mall

Dear Norma,

Your suggestion is good - I can advance the funds as a loan as long as necessary.  
I'm at Kern early tomorrow morning.

Be Well,  
Stan

---

**From:** Norma Walton [nwalton@roseandthistle.ca]  
**Sent:** March-12-13 5:02 PM  
**To:** Dr. Stanley Bernstein  
**Subject:** 295 The West Mall

Dear Stan,

Hope you are having a great day!

The closing of the purchase of 295 The West Mall has been delayed to this Monday March 18<sup>th</sup> because the second mortgagee and the vendor first mortgagee are bickering about wording on the second mortgage and one of the lawyers is away for March Break. Hence I have a question for you: if they cannot come to terms before Monday, would you be able and willing to advance the \$1,937,500 to the project as a loan, being the amount we would have received from the second mortgagee, so we can close. We'd need the money for up to six weeks as during that time I will either mediate the differences between the first and second and arrange to pay you out or will find a new second that is agreeable to the first mortgagee and pay you out? Let me know if possible.

The plan would be to pay you a lump sum at the end of the six weeks (or whatever earlier time frame I can arrange) equal to 9.5% accrued interest plus 2% mortgage fee.

If that is not possible, no worries, but if it is it allows us to close the purchase without any more hassle from the vendor and then come up with a solution once we know we own the property. As discussed previously, the vendor is a bit of a horse's ass. ☺

Cheers,  
Norma

368230 ONTARIO LIMITED  
DR STANLEY K BERNSTEIN  
21 KERN RD  
TORONTO, ON M3B 1S9

000762

DATE 2013-03-13  
Y Y Y Y M M D D

PAY to WEST MALL HOLDINGS LTD  
the order of

\$ 1,937,500<sup>00/100</sup>

ONE MILLION NINE HUNDRED & THIRTY-SEVEN THOUSAND FIVE HUNDRED

100 DOLLARS  Security features included

 **Canada Trust**  
TORONTO-DOMINION CENTRE BRANCH  
55 KING ST. W. & BAY ST.  
TORONTO, ONTARIO M5K 1A2

368230 ONTARIO LIMITED

Ⓜ Ⓜ  
Ⓜ Ⓜ

RE THE WEST MALL

PER 

⑈000762⑈ ⑆10202⑈004⑆ 0690⑈0333900⑈

West Mall Holdings  
Cashflow Accounting  
November 5, 2013 to December 19, 2014

	13 weeks ended 31-Jan-14	13 weeks ended 2-May-14	13 weeks ended 1-Aug-14	13 weeks ended 31-Oct-14	52 weeks ended 31-Oct-14	Week Ended							7 weeks ended 19-Dec-14	59 weeks ended 19-Dec-14
						7-Nov-14	14-Nov-14	21-Nov-14	28-Nov-14	5-Dec-14	12-Dec-14	19-Dec-14		
OPENING CASH	167,480	218,995	324,368	514,557	167,480	427,257	454,941	455,805	467,363	459,211	347,400	330,127	427,257	167,480
<b>Receipts</b>														
The Keg	85,642	128,463	128,463	128,463	471,033	42,821				42,821			85,642	556,675
100 United Grocers	10,873	21,746	10,873	16,309	59,800	5,436					5,436		10,873	70,673
105,700 Investors	84,449	193,469	140,771	33,474	452,163	26,377						46,924	73,301	525,464
116 PKB Leaseholds	3,904	3,814			7,718									7,718
118 Shaljero Advisors	10,211	15,514	19,256	12,091	57,072									57,072
120 Dr. Mierwza	7,235	14,470	10,852	7,235	39,792	3,812			3,812	3,547			11,171	50,963
203 George Hull Centre					10,498									10,498
204 Community Living	37,770	56,655	57,275	38,080	189,781	19,040				19,040			38,080	227,861
215 Hudson Group	4,421	8,842	4,421	6,632	24,316	2,211				2,211			4,421	28,737
Pace Law Firm	149,049	223,574	223,574	260,890	857,086									857,086
410 Edgebuilder	26,901	53,803	43,184	31,614	155,502	15,807				15,807			31,614	187,115
412 Marhen Insurance	7,135	10,702	11,259	11,036	40,131		3,679				3,679		7,357	47,488
501-503 Energy Profiles	9,785	14,677			24,461									24,461
504 Cdn Institute of Plumbers	26,475	39,713	39,713	39,713	145,614	13,238				13,238			26,475	172,089
Other to be allocated	82,203	8,518	4,732	7,140	102,592	565			1,632	283			2,479	105,071
Parking Canada Auto Parks Mgmt	25,976	37,859	37,084	35,341	136,260			11,565				5,912	17,477	153,737
<b>TOTAL RECEIPTS</b>	<b>572,029</b>	<b>831,819</b>	<b>731,457</b>	<b>638,516</b>	<b>2,773,820</b>	<b>129,307</b>	<b>3,679</b>	<b>11,565</b>	<b>5,443</b>	<b>143,870</b>	<b>9,115</b>	<b>5,912</b>	<b>308,890</b>	<b>3,082,710</b>
<b>Disbursements</b>														
Mortgage 295 the West Mall Portfolio	64,583	129,167	96,875	96,875	387,500	32,292				32,292			64,583	452,083
TREZ Capital	46,016	46,016	46,016	46,016	184,062	15,339				15,339			30,677	214,740
Prop Taxes Treasurer, City of Toronto	50,000	207,803	46,838	310,580	615,221									615,221
CRA GST		84,392	65,681	57,265	207,338					184,088			184,088	391,426
Payroll tax		1,087		1,087										1,087
Utilities Bell	2,196	3,904	1,637	2,513	10,249		728		113		728		1,568	11,817
Enbridge	7,965	10,442	6,954	573	25,934	439				(1,175)	4,908		4,171	30,105
Toronto Hydro	30,321	58,785	60,780	36,310	186,196	18,349					14,506		32,855	219,052
Treasurer, City of Toronto	9,732	7,786	9,324	10,992	37,833				2,548				2,548	40,381

West Mall Holdings  
Cashflow Accounting  
November 5, 2013 to December 19, 2014

	13 weeks ended 31-Jan-14	13 weeks ended 2-May-14	13 weeks ended 1-Aug-14	13 weeks ended 31-Oct-14	52 weeks ended 31-Oct-14	Week Ended							7 weeks ended 19-Dec-14	59 weeks ended 19-Dec-14
						7-Nov-14	14-Nov-14	21-Nov-14	28-Nov-14	5-Dec-14	12-Dec-14	19-Dec-14		
Operating														
Payroll	7,606	13,050	14,970	14,114	49,741		2,088		2,043		2,558		6,689	56,429
Adrian Ilie				307	307									307
Air Equipment Company			323		323									323
Andrei Antoche				35	35			6				6		41
Applied Systems Tech	2,522	7,188	4,754	627	15,092	214			1,955			2,169		17,261
Aura Epure				76	76									76
Cameron Landscaping	3,835				3,835									3,835
Cushman and Wakefield	19,453				19,453									19,453
Davies Lock & Door			340	88	428	293			142			435		863
Delta Controls	1,243	4,129	5,680	1,959	13,012									13,012
Dunrite Window Cleaning	2,791			2,995	5,786									5,786
Facility Services	17,909	12,313	25,501	18,964	74,687					268		268		74,955
Forest City Fire		305	6,136		6,442									6,442
G4 Secure	31,290	10,088	21,119	12,228	74,725	2,292			4,888			7,180		81,905
GAL Power System	2,155			1,763	3,918									3,918
GDI Services	26,097				26,097									26,097
Gentech		986	147		1,133									1,133
GFL Environmental	3,950	2,081	1,445	2,889	10,364			722		722		1,445		11,809
Global Sanitation		1,981	2,454	2,221	6,657	1,428			423			1,850		8,507
GMC Plumbing									78			78		78
H D Supply			1,020		1,020									1,020
Inter Plant & Design	102	514	315	315	1,246	106				105		211		1,457
J Montemayor		257	472	1,071	1,799									1,799
J N O Consultants		192	96	141	429									429
Jordache	68,930				68,930									68,930
Krzysztof Gil Electrical		2,663	2,974	546	6,183	182						182		6,365
Lambert Oil	743				743									743
Land-Con	4,344	8,945	904		14,193									14,193
Lazer Electric	835			228	1,063									1,063
Magical Pest Control	845	845	1,381	577	3,647	103						103		3,750
Measure Masters Ontario						5,546						5,546		5,546
Minden Gross						6,080						6,080		6,080
Morrison Brown Sosnovitch			667		667									667
Ontario Lamp Recyclers	638				638									638
Paul Wolf Lighting	2,233				2,233									2,233
Perfect Fuel Preservation	1,356				1,356									1,356
Pre-System Technical		3,437		1,783	5,220									5,220
Real Star Security		2,740	209		2,949									2,949
Rochester Midland	904	678	940	470	2,992	235						235		3,227
Royal Flush Plumbing			720		720									720
Service Master	332	443	332	332	1,440	332			316			649		2,088
Sigma Fire & Security		11,011	1,537		12,548	124						124		12,672
Sign One				454	454	514						514		968
Silver Stone Landscaping			9,373	3,712	13,085	1,695						1,695		14,780
Superchem Industries	6,251	812	731		7,793									7,793
T Kassabian		59	88		147									147
ThyssenKrupp Elevator	5,364	1,526	7,628	6,372	20,889			358				358		21,247
Titan Plumbing		2,193	2,508	458	5,159					998		998		6,157
Trane Canada	2,215	369	369	2,584	5,537									5,537
TSSA			360		360									360
United Messengers		24	33	83	140						8	8		148
Loan	368,230	46,016	46,016	46,016	184,062	15,339				15,339		30,677		214,740
Equity	368,230	26,537			26,537									26,537
Prop Mgmt	Briarlane Prop Mgmt	22,422	28,005	33,899	33,751				8,429		3,681	12,109		130,186
Insurance		14,169	11,690	7,502	33,361									33,361
Bank Fees	Meridian	786	45	33	895				9			9		904
<b>TOTAL DISBURSEMENTS</b>	520,514	726,445	541,268	725,816	2,514,043	101,623	2,815	6	13,596	255,680	26,388	400,108		2,914,150
<b>CLOSING CASH</b>	218,995	324,368	514,557	427,257	427,257	454,941	455,805	467,363	459,211	347,400	330,127	336,040	336,040	336,040

**Bernstein/Walton Jointly Owned Compe  
Cashflow**

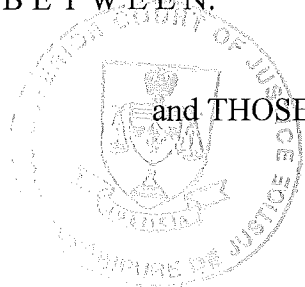
36  
Actual

	Week Ended														Actual 30 wks ended 30-May-14
	Actual 28-Feb-14	Actual 7-Mar-14	Actual 14-Mar-14	Actual 21-Mar-14	Actual 28-Mar-14	Actual 4-Apr-14	Actual 11-Apr-14	Actual 18-Apr-14	Actual 25-Apr-14	Actual 2-May-14	Actual 9-May-14	Actual 16-May-14	Actual 23-May-14	Actual 30-May-14	
<b>Twin Dragon</b>															
Opening Balance	125,979	153,949	146,180	127,738	127,459	119,896	1,673,743	1,671,837	1,668,076	1,657,272	1,621,489	1,614,434	1,612,098	112,098	68,016
Deposits															
Leasing Revenue	30,739	63,367	0	0	848	93,918	0	0	0	0	0	0	0	0	494,218
Funding-Manager	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sale Proceeds to Manager	0	0	0	0	0	(600,000)	0	(2,924)	0	0	0	0	0	0	(602,924)
Funding-Walton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sale of Real Property (net)	0	0	0	0	0	2,147,536	0	2,924	0	0	0	0	0	0	2,150,459
Disbursements															
Mortgages	0	(46,633)	0	0	0	(46,633)	0	0	0	0	0	0	0	0	(233,165)
Property Taxes	0	(22,222)	0	0	0	(22,220)	0	0	0	0	0	0	0	0	(74,442)
GST	0	0	0	0	0	(10,303)	0	0	0	(32,607)	0	0	0	0	(42,910)
Utilities	(273)	0	0	0	(7,453)	(93)	(141)	(6,355)	(793)	(793)	(168)	0	0	0	(27,659)
Operating Suppliers	(2,486)	(2,281)	(14,194)	(274)	(957)	(157)	(1,906)	(3,620)	(2,567)	(2,373)	(7,055)	(2,168)	0	(934)	(76,199)
Project Suppliers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Equity Return/Shareholder Loan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(13,843)
Property Management	0	0	(4,248)	0	0	0	0	0	(1,882)	0	0	0	0	(422)	(21,782)
Insurance	0	0	0	0	0	(8,185)	0	0	0	0	0	0	0	0	(8,185)
Bank Fees	(10)	0	0	(5)	0	(15)	0	0	0	(10)	0	0	0	0	(844)
GIC Purchase (Redemption)													(1,500,000)	(10)	(1,500,010)
Closing Balance (Funding Need)	153,949	146,180	127,738	127,459	119,896	1,673,743	1,671,837	1,668,076	1,657,272	1,621,489	1,614,434	1,612,098	112,098	110,732	110,732
<b>West Mall</b>															
Opening Balance	306,561	312,495	404,146	324,271	323,594	330,449	457,733	375,705	370,424	358,062	324,368	358,640	355,360	367,171	167,480
Deposits															
Leasing Revenue	8,723	241,561	1,409	1,735	11,821	231,755	5,144	0	12,080	92,392	136,225	3,567	12,171	0	1,555,811
Funding-Manager	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Funding-Walton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Sale of Real Property (net)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Disbursements															
Mortgages	0	(47,630)	0	0	0	0	(47,630)	0	0	0	(47,630)	0	0	0	(333,411)
Property Taxes	0	(52,601)	(50,000)	0	0	(52,601)	0	0	0	(52,601)	0	0	0	0	(257,803)
GST	0	0	0	0	0	(18,574)	0	0	0	(65,819)	0	0	0	0	(85,479)
Utilities	0	(22,249)	(2,483)	0	(1,722)	(19,115)	(4,064)	0	0	(2,207)	(23,671)	0	0	0	(154,802)
Operating Suppliers	(2,776)	(12,091)	(19,275)	(2,407)	(3,244)	0	(20,140)	(5,281)	(14,926)	(5,450)	(15,314)	(3,575)	(360)	(19,541)	(272,630)
Project Suppliers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(68,930)
Interest on S/T Loan	0	(15,339)	0	0	0	0	(15,339)	0	0	0	(15,339)	0	0	0	(107,370)
Equity Return/Shareholder Loan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(26,537)
Property Management	0	0	(9,519)	0	0	0	0	0	(9,517)	0	0	0	0	(9,512)	(59,938)
Insurance	0	0	0	0	0	(14,169)	0	0	0	0	0	(3,273)	0	0	(17,441)
Bank Fees	(14)	0	(5)	(5)	0	(13)	0	0	0	(9)	0	0	0	0	(831)
GIC Purchase (Redemption)	0	0	0	0	0	0	0	0	0	0	0	0	0	(11)	(11)
Closing Balance (Funding Need)	312,495	404,146	324,271	323,594	330,449	457,733	375,705	370,424	358,062	324,368	358,640	355,360	367,171	338,108	338,108
<b>Weston Lands</b>															
Opening Balance	18,326	16,174	9,906	8,495	8,495	7,347	874	874	1,874	4,913	2,253	1,424	3,044	3,044	118
Deposits															
Leasing Revenue	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Funding-Manager	0	0	0	0	0	4,000	0	1,000	4,000	3,000	0	4,000	0	4,000	104,000
Funding-Walton	0	0	0	0	0	0	0	0	0	0	0	0	0	0	25,950
Sale of Real Property (net)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Disbursements															
Mortgages	0	0	0	0	0	0	0	0	0	0	0	0	0	0	(71,189)
Property Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GST	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Utilities	0	(5,725)	0	0	(254)	(4,079)	0	0	0	(4,879)	(22)	0	0	0	(25,572)
Operating Suppliers	(2,147)	(542)	(451)	0	(893)	0	0	0	0	(772)	(807)	(904)	0	(893)	(13,032)
Project Suppliers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Property Management	0	0	(961)	0	0	0	0	0	(961)	0	0	0	0	(961)	(6,243)
Insurance	0	0	0	0	0	(6,390)	0	0	0	0	0	(1,476)	0	0	(7,866)
Bank Fees	(5)	0	0	0	0	(5)	0	0	0	(10)	0	0	0	0	(977)
GIC Purchase (Redemption)	0	0	0	0	0	0	0	0	0	0	0	0	0	(6)	(6)
Closing Balance (Funding Need)	16,174	9,906	8,495	8,495	7,347	874	874	1,874	4,913	2,253	1,424	3,044	3,044	5,185	5,185

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

THE HONOURABLE MR. )  
 ) WEDNESDAY, THE 18<sup>th</sup> DAY  
 )  
 )  
 JUSTICE D.M. BROWN ) OF JUNE, 2014

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 Schonfeld Inc. (the "**Manager**") in its capacity as Manager appointed pursuant to the Order of Justice Newbould dated November 5, 2013 (the "**November 5 Order**") for an Order, *inter alia*: (i) abridging the time for service of the Notice of Motion and the materials filed in support of the Motion and dispensing with further service thereof; (ii) approving the fees and disbursements of the Manager and its counsel; (iii) authorizing and directing repayment to the Applicants of amounts advanced to fund the Manager's mandate; (iv) discharging the Manager from any responsibility for the management, preservation or protection of the Properties at 1185 Eglinton Avenue East and 14 Dewhurst Boulevard (collectively, the "**Discharge Properties**"); (v) approving the claims process proposed by the Manager (the



“**Proposed Claims Process**”) to facilitate the identification and evaluation of outstanding third party claims against Companies where the sale of their Properties results in net proceeds that may be available for distribution towards such claims, substantially in the form of draft Order provided; and approving the Thirteenth Report of the Manager dated June 12, 2014 (the “**Thirteenth Report**”) and the activities described therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Thirteenth Report, the Affidavit of Harlan Schonfeld sworn June 10, 2014 and the Affidavit of Brian Empey dated June 12, 2014 and on hearing submissions from counsel to the Manager, the Applicants, the Respondents.

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.

2. **THIS COURT ORDERS** that the fees and disbursements of the Manager for the period January 1, 2014 to May 31, 2014, in the amount of \$684,053.86 including HST and the fees and disbursements of the Manager’s counsel, Goodmans LLP, for the period December 9, 2013 to May 27, 2014, in the amount of \$1,308,360.03 including HST, are hereby approved.

3. **THIS COURT ORDERS** that the payment of the Manager’s fees and disbursements (including its counsel’s fees and disbursements) from the proceeds of the sale of properties owned by the companies listed at Schedule “B” to the November 5 Order (the “Proceeds”) is hereby approved. For greater certainty, nothing in this Order affects the relative priority of any security interest in the Properties, including interests established by the November 5 Order.

4. **THIS COURT ORDERS** that this Order is without prejudice to the right of any creditor or shareholder of any of the Schedule B corporations to raise any issue concerning the allocation of the Manager’s fees and disbursements (including its counsel’s fees and disbursements) approved herein to any particular schedule B corporation or its properties and all

issues concerning the allocation of such fees and disbursements are hereby reserved for later hearing notwithstanding any term of this Order.

5. **THIS COURT ORDERS** that for the purposes of repaying the amounts advanced by the Applicants to fund the Manager's mandate, the payment of \$2,825,179 (plus interest from June 18, 2014 to the date of payment) to the Applicants, on terms consistent with paragraph 32 of the Thirteenth Report and satisfactory to the Manager and the Applicants, is hereby authorized and directed.

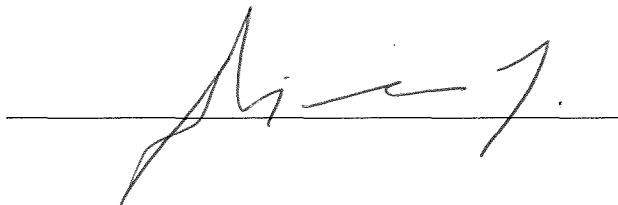
6. **THIS COURT ORDERS** that the Manager has duly and properly discharged its duties, responsibilities and obligations as the Manager and is hereby absolutely discharged and released from any and all responsibility for the management, preservation or protection of the Discharge Properties and any and all liability in respect of any act done by the Manager in respect of its responsibility for the management, preservation or protection of the Discharge Properties.

7. **THIS COURT ORDERS** that the Thirteenth Report and the activities of the Manager described therein are hereby approved.

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



JUN 25 2014



**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.

43 DBDC SPADINA LTD., - and - NORMA WALTON, et al.  
et al  
Applicants Respondents

6341642

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**Goodmans LLP**

Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, ON M5H 2S7

Brian Empey LSUC#: 30640G  
Mark Dunn LSUC#: 55510L

Tel: 416.979.2211  
Fax: 416.979.1234

Lawyers for the Manager

# APPENDIX C

# STEINBERG TITLE HOPE & ISRAEL LLP

BARRISTERS & SOLICITORS • TRADEMARK AGENTS

IRWIN STEINBERG

B.A., LL.B.

JACK W. HOPE

LL.B.

DAVID M. ISRAEL

B.A., LL.B.

M. MICHAEL TITLE\*

B.A., J.D.

MICHAEL E. CASS

B.A., LL.B.

SHELLEY BRIAN BROWN

B.C.L., LL.B., LL.M.

PATRICIA VIRC

LL.B., LL.M., C. Dir.

DERRICK M. FULTON\*

B.A. (Hons.), LL.B., LL.M.

TARAS KULISH\*<sup>■</sup>

B.C.L., LL.B.

DAVID A. BROOKER

B.Sc., LL.B.

ELI LEIBOWITZ

B.A.S., J.D.

DARIA KRYSIK

B.A. (Hons.), J.D.

David A. Brooker Ext. 214  
Karen Sampson (Legal Assistant/Clerk) Ext. 218  
e-mail: [dbrooker@sthilaw.com](mailto:dbrooker@sthilaw.com)

October 1, 2015

Shara Roy / Danielle Glatt  
Lenczner Slaght  
130 Adelaide Street West  
Suite 2600  
Toronto, Ontario  
M5H 3P5

**SENT BY EMAIL TO:**  
**[sroy@litigate.com](mailto:sroy@litigate.com)**  
**[dglatt@litigate.com](mailto:dglatt@litigate.com)**

Mark Dunn / Brian Empey  
Goodmans LLP  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario  
M5H 2S7

**SENT BY EMAIL TO:**  
**[mdunn@goodmans.ca](mailto:mdunn@goodmans.ca)**  
**[bempey@goodmans.ca](mailto:bempey@goodmans.ca)**

Dear Counsel:

**Re: *Receivership of Property of West Mall Holdings Ltd. (the “Debtor”)***

As you may recall, I act for Collins Barrow Toronto Limited (the “Receiver”), the court appointed Receiver for the above noted Debtor who is a Schedule “B” Company in the proceedings initially started by the various Dr. Bernstein Corporations, appointed by way of Order dated February 3, 2015.

In the course of reviewing the records of the Debtor, the Receiver has discovered that payments were made to a corporation known as 368230 Ontario Limited (“368”) totalling \$467,243.08 during the period from March 2013 until February 2015 (prior to the Receiver’s appointment). It is the Receiver’s understanding that 368 is a corporation either wholly owned or otherwise controlled by Dr. Bernstein. I enclose herein the following records evidencing the payments:

Report titled “*All Transactions for 368230 Ontario Limited*” showing payments in 2013;

Report titled “*Transactions by Account – As of December 31, 2013*” for Account 76500 – Financial Expenses;



Report titled “*Transactions by Account – As of December 31, 2013*” for Account 27020 – Shareholder Loans;

General Ledger Report for Account 9302 for period January 1, 2014 to December 31, 2014; and

General Ledger Report for Account 9302 for period January 1, 2015 to December 31, 2015.

As you can see from the documentation, some of the amounts were paid by the Debtor prior to the appointment of the Manager while others were paid subsequent thereto. It also appears that, subject to clarification, the sums paid were somehow related to DBDC West Mall Ltd., as a Schedule “A” Company.

I can advise that the Receiver has entered into an Agreement of Purchase of Sale with a third party to sell the main asset of the Debtor, being an office building and adjacent restaurant located at 291 – 295 The West Mall, Toronto (the “Property”). You will each be receiving shortly a motion record seeking, among other relief, an approval and vesting order which will provide information with respect to the sale as well as other matters dealing with the Receivership. Among the issues that will be raised in the Receiver’s report to be contained in the record is that of overpayments of TMI made by tenants of the Property from the period commencing from the date of the purchase of the Property by the Debtor up to and including the present, which includes the time when the Property was managed directly by the Debtor, by the Manager and by the Receiver (the report will also set out the Receiver’s understanding that no reconciliation of TMI was conducted at either the end of 2013 or 2014). Related to the issue of these overpayments, which will be addressed in the forthcoming report, is whether or not some or all of the overpayments will have to be refunded to the said tenants in priority to the payments made to secured creditors at least for the period from the Debtor’s purchase of the Property in March 2013 until the appointment of the Receiver in February 2015. The Receiver expects that a hearing to address the priority issue will be scheduled and those parties with an interest therein will be able to make submissions to the Court who will then render a decision with which obviously the Receiver will comply and make payments, if any, that may be ordered by the Court to be made.

As you can see from the enclosed documents, the payments made to 368 were done at a time when TMI overpayments were being collected by the Debtor. Accordingly, there may be an issue as to whether or not the said sums were paid to 368 in contravention of the priorities of the various creditors of the Debtor, including those tenants who had made overpayments of TMI and who may have been entitled to a refund in priority to 368. The Receiver at the present time is taking no position on the priority issue *vis-a-vis* the tenant overpayments and the amounts paid to 368; the purpose of this correspondence is only to seek information with respect to the reason and nature of the payments that were made. Accordingly, I would ask that you please provide me as soon as possible with details as to the characterization and nature of the said payments and the reasons therefore including, but not limited to, the following:

1. any signed documentation with respect to the said payments;
2. at whose instruction and direction the payments were made;

3. why the payments were made and if they were made to repay any debt owed to DBDC West Mall Holdings Ltd., then the reason therefore;
4. any other information or details which you feel may assist the Receiver in understanding the basis for the said payments and why the Manager considered them proper during the term of its appointment.

Further, if the Manager had addressed the matter of the payments to 368 in any of its reports, please advise on the specifics of this, including which report(s).

Again, I wish to repeat that no accusations are being made as against either of your respective clients with respect to the said payments. Further, it is expected that you will, if required, have an opportunity to address the issue *vis-a-vis* the TMI overpayments in court in the future and, of course, your respective offices will be kept apprised of all relevant information and court dates with respect to same.

I look forward to hearing from you.

Yours very truly,

**STEINBERG TITLE HOPE & ISRAEL LLP**



David A. Brooker

DAB/ks

Enclosures

cc: Collins Barrow Toronto Limited  
Attn: Daniel Weisz and Brenda Wong

**West Mall Holdings Ltd.**  
**All Transactions for 368230 Ontario Limited**

*Payments in  
2013*

Type	Num	Date	Account	Amount
Cheque	184	01/05/2014	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	25	12/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	51	12/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	177	12/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	23	11/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	50	11/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	171	11/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	21	10/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	49	10/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	97	10/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	19	09/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	48	09/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	96	09/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	17	08/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	47	08/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	59	08/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	15	07/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	46	07/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	58	07/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	13	06/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	45	06/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	57	06/05/2013	10100 · Meridian - 098074011	-15,338.54
Bill Pmt -Cheque	11	05/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	44	05/05/2013	10100 · Meridian - 098074011	-13,268.38
Cheque	56	05/05/2013	10100 · Meridian - 098074011	-25,718.32
Bill Pmt -Cheque	9	04/05/2013	10100 · Meridian - 098074011	0.00
Bill Pmt -Cheque	43	04/05/2013	10100 · Meridian - 098074011	-13,268.38
Bill	April - Dec Equity	03/19/2013	20000 · Accounts Payable	-119,415.42

Total

$-119,415.42 = 1 \rightarrow 9.$   
 $= 9 \times 13268.58/mk$

West Mall Holdings Ltd.  
Transactions by Account  
As of December 31, 2013

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance
<b>76500 - Financial Expenses</b>								
Loan Interest								
Cheque	06/05/2013	57	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	15,338.54
Cheque	07/05/2013	58	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	30,677.08
Cheque	08/05/2013	59	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	46,015.62
Cheque	09/05/2013	96	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	61,354.16
Cheque	10/05/2013	97	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	76,692.70
Cheque	11/05/2013	171	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	92,031.24
Cheque	12/05/2013	177	368230 Ontario Lim...	Loan Payable		10100 · Meridi...	15,338.54	107,369.78
General Journal	12/31/2013	J11/1...		Loan Payable		27520 · Accru...	12,864.58	120,234.36
Total Loan Interest							120,234.36	120,234.36
Total 76500 - Financial Expenses							120,234.36	120,234.36
<b>TOTAL</b>							<b>120,234.36</b>	<b>120,234.36</b>

1:52 PM

09/29/15

Accrual Basis

**West Mall Holdings Ltd.**  
**Transactions by Account**  
**As of December 31, 2013**

Type	Date	Num	Name	Memo	Cir	Split	Amount	Balance
<b>27020 - Shareholder Loans</b>								
General Journal	01/07/2013	J01/13 - 12	DBDC West Mall Holdings...	To reclassify to shareholde...		30110 - DBDC Wes...	599,900.00	0.00
General Journal	02/13/2013	J02/13 - 13	DBDC West Mall Holdings...	Reclassify to shareholder l...		30110 - DBDC Wes...	600,000.00	599,900.00
General Journal	03/07/2013	J03/13 - 14	DBDC West Mall Holdings...	Reclassify to shareholder l...		30110 - DBDC Wes...	1,649,063.00	1,199,900.00
Bill	03/19/2013	April - Dec Equity	368230 Ontario Limited	equity Payout amounts		20000 - Accounts P...	-119,415.42	2,848,963.00
General Journal	12/31/2013	J11/13 - 28				30110 - DBDC Wes...	-2,729,547.58	2,729,547.58
Total 27020 - Shareholder Loans							0.00	0.00
<b>TOTAL</b>							<b>0.00</b>	<b>0.00</b>

09/29/2015 Page: 1  
1:11PM suel

General Ledger System  
 General Ledger Report  
 Company : Accrual Ledger  
 Period : TB West Mall Holdings Ltd.  
 Show Zero Activity : no  
 Show Net Trans./Bal Fwd : Yes  
 Division(s) : 295  
 Account(s) : 9302  
 Sub-Ledger(s) : \*

Currency: CDN

Account Code	Div. Code	Sub-Ledger	Posting Date	Jr Memo[1]	RC	Amount	Total Period	Account Balance
9302	295			First Mortgage Interest				0.00
9302	295		01/01/2014	GJ Reverse Dec accrual		-27,083.34		-27,083.34
9302	295		01/05/2014	PJ Inv.:JAN5/14-TB:295 The West		32,291.67		5,208.33
9302	295		01/05/2014	CD Payment:27:295 The West Mall		0.00		5,208.33
9302	295		01/05/2014	CD Payment:184:368230 Ontario Li		13,268.38		18,476.71
9302	295		01/05/2014	CD Payment:185:368230 Ontario Li		15,338.54		33,815.25
9302	295		01/06/2014	GJ West Mall Holdings Ltd. PAP T		15,338.54		49,153.79
9302	295		01/17/2014	GJ West Mall Holdings Ltd. - re		-13,268.38	35,885.41	35,885.41
9302	295		02/05/2014	PJ Inv.:FEB5/14-TB:368230 Ontario		15,338.54		51,223.95
9302	295		02/05/2014	PJ Inv.:FEB5/14-TB:295 The West		32,291.67		83,515.62
9302	295		02/05/2014	CD Payment:28:295 The West Mall		0.00		83,515.62
9302	295		02/05/2014	GJ West Mall Holdings Ltd. Trez		15,338.54	62,968.75	98,854.16
9302	295		03/05/2014	PJ Inv.:MAR5/14-TB:295 The West		32,291.67		131,145.83
9302	295		03/05/2014	PJ Inv.:030514-TB:368230 Ontario		15,338.54		146,484.37
9302	295		03/05/2014	CD Payment:29:295 The West Mall		0.00		146,484.37
9302	295		03/05/2014	GJ West Mall Holdings Ltd. - Tre		15,338.54	62,968.75	161,822.91
9302	295		04/05/2014	PJ Inv.:APR5/14-TB:295 The West		32,291.67		194,114.58
9302	295		04/05/2014	CD Payment:30:295 The West Mall		0.00		194,114.58
9302	295		04/05/2014	PJ Inv.:040514-TB:368230 Ontario		15,338.54		209,453.12
9302	295		04/07/2014	GJ West Mall - TREZ Capital LP		32,291.67	62,968.75	224,791.66
9302	295		05/05/2014	PJ Inv.:MAY5/14-TB:295 The West		0.00		257,083.33
9302	295		05/05/2014	CD Payment:31:295 The West Mall		15,338.54		272,421.87
9302	295		05/05/2014	GJ West Mall Trez Capital LP		15,338.54		287,760.41
9302	295		06/05/2014	PJ Inv.:JUN5/14-TB:295 The West		32,291.67	62,968.75	320,052.08
9302	295		06/05/2014	CD Payment:32:295 The West Mall		0.00		320,052.08
9302	295		06/05/2014	PJ Inv.:060514-TB:368230 Ontario		15,338.54		335,390.62
9302	295		06/05/2014	GJ West Mall Holdings Trez Capit		15,338.54	62,968.75	350,729.16
9302	295		07/05/2014	PJ Inv.:JUL5/14-TB:295 The West		32,291.67		383,020.53
9302	295		07/05/2014	CD Payment:33:295 The West Mall		0.00		383,020.53
9302	295		07/05/2014	PJ Inv.:070514-TB:368230 Ontario		15,338.54		398,359.07
9302	295		07/07/2014	GJ Pre-Authorized Trez Capital L		15,338.54	62,968.45	413,697.61
9302	295		08/05/2014	PJ Inv.:AUG5/14-TB:295 The West		32,291.67		445,989.28
9302	295		08/05/2014	CD Payment:34:295 The West Mall		0.00		445,989.28
9302	295		08/05/2014	PJ Inv.:080514-TB:368230 Ontario		15,338.54	62,968.75	461,327.82
9302	295		08/05/2014	GJ Pre-Authorized-Trez Capital L		15,338.54		476,666.36
9302	295		09/05/2014	PJ Inv.:SEP5/14-TB:295 The West		32,291.67		508,958.03
9302	295		09/05/2014	CD Payment:35:295 The West Mall		0.00		508,958.03
9302	295		09/05/2014	PJ Inv.:090514-TB:368230 Ontario		15,338.54	62,968.75	524,296.57
9302	295		09/09/2014	GJ Pre-Authorized Trez Capital L		15,338.54		539,635.11
9302	295		10/05/2014	PJ Inv.:OCT5/14-TB:295 The West		32,291.67		571,926.78
9302	295		10/05/2014	CD Payment:36:295 The West Mall		0.00		571,926.78
9302	295		10/05/2014	PJ Inv.:100514-TB:368230 Ontario		15,338.54	62,968.75	587,265.32
9302	295		10/06/2014	GJ West Mall Pre-Authorized Trez		15,338.54		602,603.86

Continued on next page...

General Ledger System  
 General Ledger Report  
 Company : TB West Mall Holdings Ltd.  
 Period : 01/01/2014 to 12/31/2014  
 Show Zero Activity : no  
 Show Net Trans./Bal Fwd : yes  
 Division(s) : 295  
 Account(s) : 9302  
 Sub-Ledger(s) : \*

Currency: CDN

Account Code	Div. Code	Sub-Ledger	Posting Date	Jr Memo[1]	RC	Amount	Total Period	Account Balance
9302	295		11/05/2014	PJ Inv.:NOV5/14-TB:295 The West		32,291.67		634,895.53
9302	295		11/05/2014	CD Payment:37:295 The West Mall		0.00		634,895.53
9302	295		11/05/2014	PJ Inv.:110514-TB:368230 Ontario		15,338.54		650,234.07
9302	295		11/05/2014	GJ Pre-Authorized Trez Capital I		15,338.54	62,868.75	665,572.61
9302	295		12/05/2014	PJ Inv.:DEC5/14-TB:295 The West		32,291.67		697,864.28
9302	295		12/05/2014	CD Payment:38:295 The West Mall		0.00		697,864.28
9302	295		12/05/2014	PJ Inv.:120514-TB:368230 Ontario		15,338.54		713,202.82
9302	295		12/05/2014	GJ Pre-Authorized Trez Capital I		15,338.54		728,541.36
9302	295		12/31/2014	GJ Reallocate interest expense		-368,124.96	-305,156.21	360,416.40
Total Account .....						360,416.40	360,416.40	360,416.40
Total Report...						360,416.40	360,416.40	360,416.40

General Ledger System  
 General Ledger Report  
 Company : TB West Mall Holdings Ltd.  
 Period : 01/01/2015 to 12/31/2015  
 Show Zero Activity : no  
 Show Net Trans./Bal Fwd : yes  
 Division(s) : 295  
 Account(s) : 9302  
 Sub-Ledger(s) : \*

Currency: CDN

Account Code	Div. Code	Sub-Ledger	Posting Date	Jr Memo[1]	RC	Amount	Total Period	Account Balance
9302	295		01/02/2015	GJ Pre-Authorized Trez Capital		15,338.54		0.00
9302	295		01/05/2015	PJ Inv.:JAN5/15-TB:295 The West		32,291.67		15,338.54
9302	295		01/05/2015	PJ Inv.:010515-TB:368230 Ontario		15,338.54	62,968.75	47,630.21
9302	295		02/05/2015	PJ Inv.:FEB5/15-TB:295 The West		32,291.67		62,968.75
9302	295		02/05/2015	PJ Inv.:020515-TB:368230 Ontario		15,338.54		95,260.42
9302	295		02/05/2015	GJ Pre-Authorized Trez Capital		15,338.54	62,968.75	110,598.96
9302	295			Total Account .....		125,937.50	125,937.50	125,937.50
				Total Report...		125,937.50	125,937.50	125,937.50



# APPENDIX D

**From:** [Dunn, Mark](#)  
**To:** [David Brooker](#)  
**Cc:** [Empey, Brian](#); [Danielle Glatt](#); [Karen Sampson](#); [Paul-Erik Veel \(pveel@litigate.com\)](mailto:pveel@litigate.com)  
**Subject:** RE: Receivership of West Mall Holdings Ltd.  
**Date:** October-02-15 9:26:58 AM  
**Attachments:** [image001.png](#)  
[FW Collins Barrow Toronto Limited West Mall Holdings \(420 KB\).msg](#)  
[Letter to Goodmans \[March.10.15\].pdf](#)

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David,

I am writing further to the letter that you sent this afternoon. Today's letter is framed as an initial request for information concerning why certain payments were made by 295 The West Mall and 368. You ask, among other things "why the payments were made and if they were made to repay any debt owed to DBDC West Mall Holdings Ltd."

Your letter appears to overlook the contents of your letter on March 10, 2015 (which is attached for ease of reference). In that letter, you explained your client's understanding of why the payments were made and asked for details and documentation relating to the payments. I responded on March 13, 2015 and advised why the payments were made and provided supporting documentation relating thereto. I also advised that the payments were disclosed to, and approved by, the Court as part of the approval of the Manager's receipts and disbursements.

In light of the foregoing, I believe the questions posed in your letter to day were answered in March.

Regards,  
Mark

\*\*\*\*\* Attention \*\*\*\*\*

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at [privacyofficer@goodmans.ca](mailto:privacyofficer@goodmans.ca) and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, [www.goodmans.ca](http://www.goodmans.ca). You may unsubscribe to certain communications by clicking [here](#).

---

**From:** Karen Sampson [mailto:karen@sthilaw.com]  
**Sent:** October 1, 2015 4:36 PM  
**To:** Shara N. Roy <sroy@litigate.com>; Danielle Glatt <dglatt@litigate.com>; Dunn, Mark <mdunn@goodmans.ca>; Empey, Brian <bempey@goodmans.ca>  
**Cc:** David Brooker <dbrooker@sthilaw.com>  
**Subject:** Receivership of West Mall Holdings Ltd.

Counsel,

Please see attached letter to your attention from David Brooker dated October 1, 2015.

Karen Sampson  
Assistant to David A. Brooker

**STEINBERG TITLE HOPE & ISRAEL LLP**

**BARRISTERS & SOLICITORS • TRADEMARK AGENTS**

Yonge Norton Centre, 5255 Yonge Street | Suite 1100

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email: [karen@sthilaw.com](mailto:karen@sthilaw.com)

Website: [www.sthilaw.com](http://www.sthilaw.com)

**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

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

**STEINBERG TITLE HOPE & ISRAEL LLP**

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

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

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)