

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

BETWEEN:

**DBDC SPADINA LTD.,  
and THOSE CORPORATIONS LISTED ON SCHEDULE "A" HERETO**  
Applicants  
(the "Bernstein Group")

- and -

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

Respondents  
(the "Walton Group")

and

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

**MOTION RECORD  
OF NORMA WALTON**

January 5, 2014

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**TAB 1**

**ONTARIO  
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**NOTICE OF MOTION**

The Respondent Norma Walton will make a motion to the Honourable Mr. Justice Newbould on January 6, 2014 at 2:30 p.m. at 330 University Avenue, in Toronto, Ontario.

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

**THE MOTION IS FOR:**

- (a) an Order abridging the time for service and filing of this Motion Record;
- (b) a Direction of the Court that there be a 30-day moratorium from January 15, 2014 to February 15, 2014 on any sale by any means of any of the Bernstein/Walton

Properties to permit any interested party to present an offer for one or all of the properties either individually or as a portfolio of any size so the Court can assess the market interest in the properties;

- (c) a Direction of the Court that the Walton Group and in particular Norma Walton be free to solicit from, provide information to, and obtain firm offers to purchase all or some of the Bernstein/Walton properties, from the four named property development groups mentioned in her Affidavit, namely Kevric, the Kerbel Group, EVTON, and the Madison Group; and any other group that the Respondents may identify and this honourable Court may permit from time-to-time;
- (d) a Direction of the Court, that to the extent that the Manager enters into any listing agreement(s) with real estate sales agent(s), that the agreements be non-exclusive lists any of the Bernstein/Walton Properties with a real estate sales agent, that the Listing Agreement be "non-exclusive" so that no agent is entitled to a commission unless the Court accepts the sale proposed by that agent (on the understanding that any property can be listed for sale with more than one agent, either alone or as a group of properties to be sold to the same purchaser);
- (e) costs of this motion, only if it is opposed; and
- (f) such further and other relief as counsel may advise and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) property development groups -- Kebric, the Kerbel Group, the Madison Group, and Evton -- have submitted or are interested in submitting letters of intent to purchase all of the properties which are the subject of the Manager Order made on November 5, 2013 (the "Bernstein/Walton Properties");
- (b) it would be highly advantageous to sell the Bernstein/Walton Properties as a group;
- (c) removing any of the properties within the Bernstein/Walton portfolio, particularly the income-producing properties that the Manager wishes to list for sale immediately, may preclude the possibility above;
- (d) Rules 1.04, 1.05, 2.01, 3.02, and 37.01 of the *Rules of Civil Procedure*; and
- (e) such further and other grounds as counsel may advise and this Honourable Court permits.

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

- (a) the Affidavit of Norma Walton sworn January 5, 2014, with Exhibits thereto;
- (b) such further and other material as counsel may advise and this Honourable Court permits.

January 5, 2014

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**AND TO:** Other members on the **Service List**, by e-mail

## **TAB 2**

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**AFFIDAVIT OF NORMA WALTON  
SWORN JANUARY 5, 2014**

1. I am one of the Respondents in this matter and as such I have knowledge of the matters to which I herein depose.
2. I swore an Affidavit in this matter on October 31, 2013. The Affidavit was served on the applicants and filed with the court. I repeat the allegations contained in that Affidavit, a copy of which is attached as Exhibit "A" hereto without exhibits.
3. As is apparent from the October 31, 2013 Affidavit, I and Ronauld Walton have personally guaranteed \$205 million of the outstanding debt obligations against the 34 properties

which are discussed below. For this and other reasons set out in my Affidavit, I have a direct personal interest in achieving the highest possible value for the 34 properties in which Dr. Bernstein and his companies are shareholders through corporations set up to hold title to the 34 properties. I set out my experience with this portfolio in my Affidavit of October 31, 2013. As set out below, I am the one who found the properties, presented them to Dr. Bernstein, purchased them, financed them, developed them and variously dealt with the real estate market in this regard. I am profoundly concerned that the present actions of the Manager will not obtain the highest value for the properties either individually or as a portfolio. The Manager has shown a reluctance to engage in the market place in a manner which obtains the highest price. Indeed his negotiations regarding the sale of individual properties such as 1 Royal Gate have led to a process by the Manager whereby the offer price is likely as much as \$4 million less than the \$23 million market value of the property. Dr. Bernstein agrees with me that the property should not be sold for less than \$23 million. Marked as composite Exhibit "E" to this Affidavit are two emails with respect to the above. The proposed portfolio sale that I am encouraging this Court to allow is far more likely to obtain the \$23 million market value for this property and a higher value for all of the other properties in the portfolio. These actions by the Manager indicate a need to have this Court direct a moratorium on any and all sales for 30 days while the marketplace reacts to the interest by one or more large real estate property groups in purchasing the properties as a portfolio. It is my proposal that the Court direct that any purchaser who has an interest in purchasing any of the properties, either individually or as a portfolio, be required to put in offers by February 15, 2014, or some other reasonable date fixed by the Court, so that the Court can gauge the actual market interest in these properties and anyone who wishes to purchase the properties as a portfolio can consider their interest and the values that they wish to attach to the properties. Any other process will defeat the very nature of the Managership which

the Court has put in place, as individual mortgagees take on the responsibilities of the Manager and thereby forever prevent a portfolio sale. The portfolio sale is significant because property development companies find increased value based on synergies inherent in a portfolio that is already existing and where the various properties in this single marketplace have income in some cases, development potential in other cases, and economies of scale. The very essence of a portfolio of such diversity permits the owner/manager the ability to achieve superior results through the real estate brokerage community.

4. The process that I am suggesting, i.e. permitting a 30 day moratorium, is, in my professional view, the only process which protects all stakeholders, including, the Applicants, Respondents, mortgagees, and other creditors and the only process that allows the marketplace a full opportunity to assure the Court that proper values are being achieved.

5. There are other forces at work in the marketplace. Mortgage debt funds are looking to purchase mortgage debt from existing portfolio debt holders in order to put themselves in a position where they can acquire the properties for prices discounted from the actual market price. I alluded to this problem in my Affidavit of October 31, 2013 when I spoke about the dynamic nature of this portfolio. I have seen evidence from two large mortgage funds that this is their interest and they are moving to put it into effect. This will not only diminish or eliminate the equity in the portfolio, but will leave Ronauld and me exposed to our guarantees. The second market force diminishing or eliminating the equity and value in the portfolio has already been presented to the Court through the three motions (with more anticipated) made by existing mortgagees to carve out certain properties for the purposes of power of sale and other possible actions. The failure to give the four large property groups a 30 day opportunity to bring forward a firm transaction at this time will inevitably lead to a fragmentation of the portfolio,

extended litigation and a reality that the appointment of the Manager was not in the best financial interest of the Applicants and the Respondents.

6. I, on behalf of the Walton Group, was the respondent who purchased, developed and managed all of the 34 properties described in my Affidavit attached as Exhibit "A", including the 24 properties now in issue, namely:

- (a) 1500 Don Mills Road;
- (b) 1450 Don Mills Road;
- (c) 7-15 Fraser Avenue;
- (d) 30 Fraser Avenue;
- (e) 1131A Leslie Street;
- (f) 165 Bathurst Street – 620 Richmond Street West;
- (g) 1 Royal Gate Boulevard;
- (h) 5770-5780 Highway 7 West, Vaughan;
- (i) 32 Atlantic Avenue;
- (j) 47 Jefferson Avenue;
- (k) 241 Spadina Avenue;
- (l) 18 Wynford Drive;
- (m) 1185 Eglinton Avenue East;
- (n) 1485 Dupont Road;
- (o) 295 The West Mall;
- (p) 1 Cityview Drive;
- (q) 355 Weston Road;
- (r) 140 and 150 Queen's Plate Drive;
- (s) 14 Dewhurst Boulevard;

- (t) 153 Eddystone Avenue;
- (u) 450 Pape Avenue;
- (v) 0 Trent Avenue;
- (w) 3765 St. Clair Avenue East; and
- (x) 1003 Queen Street East.

7. All of the above 24 properties are owned in conjunction with Dr. Stanley Bernstein and the Applicants herein (the "Bernstein/Walton Properties"), through special corporations incorporated for each property.

8. I controlled and operated the principal real estate arm of the Walton Group called the Rose & Thistle Group Ltd. ("Rose & Thistle"). I developed a large internal staff at Rose & Thistle to identify, finance, purchase, develop and sell commercial properties. In carrying out my duties, I purchased, financed and developed the Bernstein/Walton Properties between the years 2001 and 2013 in conjunction with a number of real estate agents, mortgage brokers, lawyers, property managers, construction experts and other professionals in the purchase and sale, financing, mortgaging, development, leasing and re-sale of the commercial properties. Up to the granting of the Order in this matter appointing Schonfeld Inc. as Manager over the Bernstein/Walton Properties, the enterprise was profitable.

9. As a result of the above, I have an intimate understanding of the Bernstein/Walton Properties, their value, development potential and benefit to other property development groups extant in the Greater Toronto Area.

10. In addition to the Bernstein/Walton Properties developed as set out in paragraph 6 hereof, I developed another set of properties in which Dr. Bernstein and the Applicants were not involved (the "Other Properties"). The Other Properties were purchased, developed and in some

cases sold during the same period as were the Bernstein/Walton Properties. The Other Properties are described in my Affidavit of December 17, 2013, also served and filed in this matter. A copy of my Affidavit of December 17, 2013 is attached as Exhibit "B" hereto without exhibits.

11. I had discussions with the Manager and Dr. Bernstein in December 2013 and January 2014 about the prospect of one or more large property development groups: namely Kevric, The Kerbel Group, The Madison Group, and Evton purchasing all or a large group of the remaining 24 Bernstein/Walton Properties which were not otherwise under negotiation for sale. The Manager and Dr. Bernstein, through his counsel, variously rejected any further dealings with me regarding the prospect of a letter of intent for a large number of properties from one of four purchase groups. After a series of meetings and conversations including those between Ron Walton's counsel, Mr. Cohen, and counsel for the Applicants, between me and Dr. Bernstein, and between me and the Managers, Mr. Harlan Schonfeld and James Merryweather, regarding my proposal to sell the properties as a portfolio as opposed to the Manager's plan of selling the properties individually or in smaller blocks, I met on December 31, 2013 with Messrs. Merryweather and Schonfeld to tell them of the interest of four large property development groups that were interested in bidding on the portfolio of properties described in paragraph 6. This meeting was further to Mr. Schonfeld's consistent position that if an offer came to me to purchase the properties then I should present it to him. I have conducted myself accordingly.

12. Rather than considering a purchase and sale of all or a large number of the Bernstein/Walton Properties, the Manager has indicated that he intends to sign a Listing Agreement with CBRE on Tuesday, January 7, 2014 unless I object. The Manager proposes that the Listing Agreement will include only 9 of the 24 properties, all being income properties as I understood his proposal. By this Affidavit, the Walton Group hereby objects to the Manager

executing the Listing Agreements for the 9 properties. In my opinion, and in the face of a letter of intent to purchase all 24 properties, the sale of 9 income properties is not a reasonable method of proceeding in the face of the information which follows.

13. Three of four of the interested property development groups were introduced to me by Colliers International Real Estate Brokers. I have been in contact with Tim Bristow, Senior Vice President of Colliers and Steve Keyzer, both experienced commercial real estate agents. The three property development groups which Colliers introduced to me are Kevric Real Estate Corporation, Evton Capital Partners, and The Kerbel Group.

14. Kevric is a leader in the Canadian real estate industry, currently having \$1.2 billion in properties either co-owned or under management. It specializes in redevelopment and repositioning of existing properties and the development of new properties primarily in Montreal, Toronto and Ottawa/Gatineau National Capital district. Caisse de Depot is one of Kevric financial partners.

15. Evton Capital Partners is a successful real estate manager, specializing in Canadian commercial real estate. Their years of experience ensure that opportunities are identified intelligently, acted upon quickly and realized successfully. Evton has recent offered for sale their entire portfolio within the fund and are looking to buy new properties to replace the ones they have sold.

16. The Kerbel Group is a prominent and successful real estate group focused largely in the City of Toronto.

17. I also have met with Madison Properties. Madison Properties currently owns and manages approximately 2 million square feet of commercial property, including office, retail and

industrial buildings in the Greater Toronto Area. Madison is a family-run business with over 40 years of experience in the Greater Toronto Area.

18. Evton has delivered to me a letter of intent and a confidentiality agreement which are attached as Exhibits "C" and "D" to my Affidavit. The letter of intent is directed to the Manager for his consideration. Upon acceptance of the letter of intent and the signing of a conditional agreement of purchase and sale, the proposed purchaser will deposit \$1 million in a refundable trust account as a show of its good faith. The letter of intent proposes a 30 business day period in which Evton can complete its due diligence on all 24 properties. The letter of intent was prepared by Evton's lawyers, Blake Cassels & Graydon. I have met with D'Arcy McGee, President of Evton, and believe that he is very interested in proceeding with the letter of intent, subject to the usual due diligence.

19. If the Evton letter of intent were to be accepted and completed, there would remain 8 properties which were previously identified as part of those properties which were owned by Dr. Bernstein and the Walton Group. Of those remaining 8 properties, the first five are already under conditional contracts of sale and the last three properties are currently the subject of agreements of purchase and sale negotiations:

- (a) 9-11 Cityview Drive;
- (b) 115-119 Skyway Drive;
- (c) 30-34 Meridian Drive;
- (d) 78 Tisdale Avenue;
- (e) 14 Trent Avenue;
- (f) 875 and 887 Queen Street East; and
- (g) 65 Heward Avenue.

20. The letter of intent has specified an offer price of \$300 million for the 24 property portfolio. The cost base of the Bernstein/Walton (the 24) properties is approximately \$275 million. If the Evton letter of intent were ultimately made an agreement of purchase and sale and closed at the specified price, all investors would be repaid and there would be a pool of monies left over to satisfy the claims of the Bernstein Group and the Walton Group.

21. It is my belief and experience that the four property development groups understand the value and potential of the Bernstein/Walton Properties. Approximately 11 of these 24 properties enjoy strong rental income and the remaining 13 properties have a high development potential as described in my Affidavit of October 31, 2013. The properties with rental income give the entire portfolio balance along with the development potential of the remaining properties. It is not good sales practice to sell the group of properties separately if there is a reasonable chance to sell a group of both income and development properties to a single purchaser who wants both the income stability and the development potential.

22. In my view, a sale of the Bernstein/Walton Properties as a portfolio of properties (including income and development properties in some numeric combination) for a price in excess of the cost base is a result much to be desired and in the best interests of all parties for the following reasons:

- (a) all lenders will fully recover their investment(s) with interests;
- (b) the significant expenses currently being incurred on lenders' legal fees being added to the mortgage principal amounts will come to an end faster;
- (c) transaction costs particularly commission costs are likely to be lower and possibly much lower than what the Manager is proposing to pay CBRE (and any others)

via their listing process. Attached hereto as composite Exhibit "F" are the commission agreements setting out the commissions that Colliers would charge for finding three of the four groups if one of the three groups buys the portfolio;

- (d) the timeline for the completion of the sale of the 24 properties will be much faster than under the process proposed by the Manager;
- (e) the costs of the Manager's work will be greatly diminished and the Managership will end at the earliest possible date;
- (f) this method is the most able to protect the parties to this litigation as it will result in a pool of money begin available, after payment of all mortgage debt, to satisfy the monies claimed in equity by the Bernstein Group and in equity by the Walton Group to settle all outstanding issues or for the court to determine all outstanding issues;
- (g) the Manager is proposing to list for sale 9 of the 11 income-producing properties which will be the easiest properties to sell. The more challenging properties to sell are the development properties;
- (h) having regard to my experience as the designer, developer and manager of all 24 properties, a portfolio sale is the most advantageous way to market and sell the properties. By selling as a portfolio, it permits us to couple strong income-producing stable properties with development potential properties, thus achieving the highest price for the whole. It prevents us being left only with non-income producing development properties on their own which will be harder to sell, particularly the environmentally contaminated properties;

- (i) a portfolio sale eliminates the risk to the parties that they will be left, at the end of a prolonged sales process, with only the least attractive or highest-risk properties; and
- (j) it provides all parties interested in purchasing all 24 properties as a group an opportunity to do so in an organized and court directed manner without removing any of the pieces during the moratorium that an investor might find desirable.

23. In my view, the proposal of listing 9 income properties for sale as proposed by the Manager is not the preferred method of dealing with the properties as long as there is a reasonable prospect of a sale of a greater portion of the Bernstein/Walton Properties.

24. When the Manager refused to accept my proposal and decided to proceed with listing 9 of the properties for sale immediately, he did not have the letter of intent from the Evton Group. While I am not entirely clear as to the Manager's reasoning, I do not believe he took my proposal seriously because he did not believe that any group would come forward with a letter of intent, as the Evton Group has now done.


25. I also met with Mr. Michael Zenker, an executive at Kevric. I am told by Mr. Keyzer of Colliers that Kevric is in the final stages of completing a letter of intent for 13 of the Bernstein/Walton Properties.

26. I have also met with Miguel Singer and Josh Zagdansky of the Madison Group. Adam Brown, our municipal lawyer, referred the Madison Group to us as a potential purchaser of the Bernstein/Walton portfolio. I believe that they are seriously interested in submitting a letter of intent.

27. I expect that if any others are willing to submit a letter of intent that they will do so by January 15, 2014. It is for this reason that I ask for a moratorium on any sales for 30 days after January 15, 2014.

28. As a result of the above positive prospects for a sale of 24 properties to one purchaser, I seek a direction of the Court that there be a 30-day moratorium from January 15, 2014 to February 15, 2014 on any sale by any means of any of the 24 Bernstein/Walton Properties listed at paragraph 6 above. Further, to the extent that the Manager lists any of the properties with a real estate sales agent(s) that the Listing Agreement(s) be "non-exclusive" so that no agent will be entitled to a commission unless the Court accepts the sale proposed by that agent (on the understanding that any property can be listed for sale with more than one agent, either alone or as a group of properties to be sold to the same purchaser).

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario, this  
5th day of January, 2014.

  
A Commissioner for taking Affidavits, etc.

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NORMA WALTON

**DBDC SPADINA LTD. et al.**

- and -

**NORMA WALTON et al.**

Applicants

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

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

**Proceedings commenced at TORONTO**

**AFFIDAVIT OF NORMA WALTON  
(Sworn January 5, 2014)**

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## **EXHIBIT “A”**

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AFFIDAVIT OF NORMA WALTON  
SWORN OCTOBER 31<sup>ST</sup>, 2013

This is Exhibit.....referred to in the  
affidavit of.....*Norma Walton*.....  
sworn before me, this.....*5<sup>th</sup>*.....  
day of.....*January*.....20..*14*..  
*[Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

I, NORMA WALTON, of the City of Toronto, make oath and say:

1. I am one of the Respondents in this matter and as such I have knowledge of the matters to which I herein depose.
2. This Affidavit is filed in response to the Notice of Application and Notice of Motion filed by the Applicants (hereinafter collectively called the "Bernstein Group"). I am

President and Director and the controlling mind, along with my husband Ronauld Walton, of the Respondents (hereinafter collectively called the "Walton Group").

### **History of the Walton Group - Pre-Involvement with the Bernstein Group**

3. In 2001 the Walton Group began its real estate business. That business consisted of identifying properties which were undervalued due to a lack of development, renovation, inferior leasing, zoning or other factors which could be remedied to increase the value of the subject property. Between 2001 and 2010, the Walton Group purchased approximately three properties per year for a total of 28. This led to the purchase, development and maturity of 28 different properties. With two exceptions, each one of these properties was profitable to the Walton Group. Indeed, nine of the 28 properties continue to be owned by the Walton Group. Eight of these nine properties are stable income-producing ventures which are leased by strong tenants and are in no further need of major development or renovation.

### **Early Involvement of the Bernstein Group with the Walton Group**

4. During the increasing real estate activity carried out by the Walton Group, through its principal real estate arm, The Rose & Thistle Group Limited ("Rose & Thistle Group"), we became connected with a number of lawyers, mortgage brokers, property managers, construction experts, environmental experts, real estate agents and other professionals involved in the purchase and sale, financing, mortgaging, development, leasing and resale of commercial properties. We financed the twenty-eight properties mentioned above largely through debt financing in the form of mortgages and construction financing. The Walton Group used its own equity to purchase properties. In the context of this busy and profitable enterprise, I was introduced to Dr. Bernstein as a debt investor in 2008. Dr. Bernstein invested in approximately eight mortgages in the period of 2008 to 2010 and was thereby introduced to the Walton Group,

its method of operating and, possibly most importantly, its success in purchasing, developing, managing, and reselling commercial properties.

5. Over the ensuing years between 2010 and today, I became familiar with Dr. Bernstein's background. He is a successful practitioner and businessman. His central professional background is as a diet clinician. He was a general practitioner and in approximately 1974 commenced his business with one clinic assisting individuals in their goal of weight loss. He built that business across Canada and today has approximately 68 clinics across Canada. As Dr. Bernstein has made known to me, each clinic in Canada is profitable and annually produces a positive net cash flow which is available to Dr. Bernstein for investment.

6. Prior to Dr. Bernstein's involvement with the Walton Group, Dr. Bernstein and the Bernstein Group invested in first and second mortgages through lawyers and real estate brokers in what was and continues to be a highly profitable enterprise for him. He was highly experienced in the real estate investment field by the time that I first encountered him. I believe that he commenced his investment portfolio in the mid-1980s and has increased its value year by year from that date to today. Dr. Bernstein has strong real estate business acumen and a strong accounting staff assisting him in his various businesses.

7. Through providing the approximately eight mortgages in the period from 2008 to 2010, Dr. Bernstein became aware and apparently impressed by what we were doing in a number of ways. Dr. Bernstein understood that investing through contributions to equity rather than through debt vehicles such as mortgages can be more profitable and allows for a greater number of investments in a greater number of properties with much less money. For example, in a large commercial transaction, Dr. Bernstein could choose to invest in a mortgage in the amount of

\$10 million and receive a return of 7-12% plus a mortgage placement fee of 2%. This same amount of money could be used to invest in the equity of five to ten different projects producing returns in excess of 20%. Additionally, the investment over five to ten projects diminishes the risk of loss over the entire investment.

8. During this same period from 2008 to 2010, Dr. Bernstein became familiar with the method of operations and expected timing for projects with the Walton Group. Usually, a project takes approximately three years from its inception to its maturity. At the date of maturity, the project may be held (for example, the nine projects that the Walton Group continues to hold were developed in the period from 2001 to 2010) or sold (as with the remaining 19 projects developed in the same period). Additionally, beginning in 2010, each project in which Dr. Bernstein was involved with the Walton Group was made the subject of an agreement and a "pro forma" description indicating the financial and development details of the project leading to the time of maturity. Marked as Exhibits "A" (in a separate 31 tab volume served with this Affidavit) is a copy of all of the agreements and pro formas on each of the properties in which Dr. Bernstein invested.

**Bernstein and Walton Groups Investments: 2010 to 2013**

9. From the above, the following major principles can be drawn regarding the Walton Group's relationship with the Bernstein Group after September 2010:

- (a) Dr. Bernstein was invited to participate in virtually every project commenced by the Walton Group after 2010. On some occasions, the Walton Group knew that Dr. Bernstein did not have any further funds and was not invited. Otherwise, Dr. Bernstein was invited and made investments in one of two ways: He always

invested as an equity investor in a separate company incorporated for the purpose of holding the property and he sometimes provided mortgage money;

- (b) each project was described in a pro forma statement and reviewed by Dr. Bernstein before the property was purchased and the Walton/Bernstein relationship was established. The Bernstein Group had a clear vision about the amount of time it would take to complete any particular transaction at the outset. These expectations were amended from time to time as necessary, but the usual period of development was approximately three years from the date of purchase;
- (c) while Dr. Bernstein was an equity investor in the 34 parcels listed in Exhibit "B", on or about the dates indicated in the Exhibit, and for the amounts indicated in the Exhibit, he did not involve himself in the day-to-day pre-purchase analysis, purchase, financing, renovation, leasing, development, rezoning, environmental remediation, property maintenance or management, accounting or other details except by way of reporting. Dr. Bernstein left all of these matters to the Walton Group. As is set out below, the projects as a whole were highly profitable to Dr. Bernstein as they were completed; and
- (d) each of the agreements provided that the Walton Group would make its own equity contribution to each of the projects. Dr. Bernstein knew and understood that the Walton Group contribution would be made as it was needed to complete the project and would be from unbilled services and monies obtained as profits from the projects as they were completed and sold from time to time. He also

knew that his money was to go in first and the Walton Group's contributions would go in as required by the project.

10. While Dr. Bernstein has complained that the Rose & Thistle Group has not made equity contributions in the same amounts as the Bernstein Group, Rose & Thistle is not required to do so. If there is an imbalance in the contributions, the Bernstein Group gets repaid its equity prior to any 50/50 share of net profits. There is therefore no obligation in Rose & Thistle to match the Bernstein equity until and unless needed to complete any particular project.

11. As will be set out below, Dr. Bernstein recovers investments, makes money and profits in three ways. The first way is that he receives premium interest rates on mortgage monies by receiving 8% on a first mortgage along with a 2% placement fee, and by receiving 11% on a second mortgage along with a 2% placement fee. The mortgage is a registered charge against the property and thus a secured investment. The second way is that he contributed equity pursuant to his contractual obligations to provide equity and that equity is to be paid before any profits are distributed to the Bernstein and Walton Groups as shareholders. The third way is that he received 50% of the profits from each project. As it turns out, I expect that Dr. Bernstein has or will receive a profit on all of the projects except one, as I hereinafter set out.

12. Ron and I recover investments, make money and profit in three ways as well. The first way is that we provide through the Rose & Thistle Group work and services to the project property in accordance with the pro formas provided to Dr. Bernstein in advance of a project investment by him. The second way is that we provide equity pursuant to our contractual obligations to provide equity as the project requires it and that equity is paid before any profits

are distributed to the Bernstein/Walton Groups as shareholders. The third way is that we receive 50% of the profits from each project.

13. In addition, Ron and I have the added risk of personally guaranteeing the bulk of all mortgages placed on the property currently in the total amount of approximately \$205 million.

14. There are two major phases in the development of the 34 projects between the Walton and Bernstein Groups in this period. The first phase runs from September 2010 to August 2011. In this first phase, the Walton Group identified and invited the Bernstein Group to participate in five projects. During this period, several of the projects were uniquely successful and all of the projects showed profits. Some of these projects showed very positive returns for Dr. Bernstein and the Walton Group much earlier than the expected three-year development period, and in a shorter time than indicated in the pro forma statements attached to each of the agreements.

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#### **First Phase of 2010 to 2013**

15. Those projects include:

- (a) 241 Spadina, in which the Bernstein Group invested \$1.1 million in equity and provided a \$6.3 million first mortgage, purchased on September 24, 2010. By September 2012, the project was fully developed, renovated and 75% leased. It was fully leased by April 2013. As a result, Dr. Bernstein's first mortgage was repaid in full, and he receives \$6,921 per month as a return on his equity investment. This was a timely and successful project;

- (b) 18 Wynford Drive, in which the Bernstein Group invested \$2.6 million in equity and provided a first mortgage in the amount of \$9.6 million, purchased on February 1, 2011. By July 2012, approximately 20 of the approximately 103 commercial suites we purchased had been sold, giving Dr. Bernstein full repayment of his first mortgage and his equity contribution. The remaining approximately 83 units are expected to be sold through Colliers between now and the spring 2014, producing expected revenues totalling \$16.5 million and expected profits of \$3-4 million. This too was a highly profitable project and started to cash out in a shorter time period than was described in the pro forma or than was expected in light of the general three-year cycle;
- (c) the Riverdale Mansion, in which the Bernstein Group invested \$.47 million on a property purchased on June 27, 2011 and provided a \$3 million first mortgage. The original development and completion plan set out in the pro forma contemplated townhouses and condominiums in this old and valuable historically designated property. During the development, a second property became available at 875 Queen Street. A shelter for abused women and children called the "Red Door Shelter" is located at 875 Queen Street. This space is unrenovated and inadequate for the shelter's present needs. As a result of a complex negotiation, the Walton Group (with the consent of the Bernstein Group) made an agreement to rebuild the Riverdale Mansion based on a \$6.5 million payment from the Red Door Shelter. The payment is made up of \$4.5 million in cash from the Red Door Shelter and a \$2 million contribution from the Bernstein Group and the Walton Group. While this project is now a break even project, 875 Queen

Street will be redeveloped into a seven or eight-storey condominium building which will be sold to a developer in its raw state, who will take on the obligation of building the condominium. The Walton Group has calculated that the Queen Street property will achieve profits of approximately \$2 million. In the interim, Dr. Bernstein has insisted that the first mortgage on Riverdale be paid immediately. The Walton Group met with Firm Capital yesterday and they have agreed to replace the Bernstein mortgage with a new mortgage closing in November 2013;

- (d) the Liberty Village property (municipally known as 32 Atlantic Ave) involved an equity investment by Dr. Bernstein of \$2.25 million, a first mortgage in the amount of \$6.8 million and a \$4.5million construction facility. By approximately August 2012, the first mortgage and the construction facility were fully repaid, the property was fully leased and Dr. Bernstein receives \$12,500 per month return on equity. This was a highly successful project which enhanced the trust that Dr. Bernstein had in the Walton Group and led to intense business activity in 2012 and 2013; and
- (e) the 47 Jefferson property (adjacent to the Atlantic Ave. properties) involved an equity investment by Dr. Bernstein in the amount of \$.396 million and a first mortgage of \$2 million at an 8% interest rate plus a 2% placement fee. The property consists of a 7,000 sq.ft. warehouse on 8,000 sq.ft. of land. Rose & Thistle has obtained rezoning for a 25,000 sq.ft. commercial building. The property is now ready for sale. I have asked Dr. Bernstein to consent to the listing of the property of \$3.5 million with Colliers and in aid of that project provided

Dr. Bernstein with a Colliers valuation justifying the listing price. I have yet to hear back from Dr. Bernstein. In the interim, Dr. Bernstein has insisted that the first mortgages on Jefferson be paid immediately. The Walton Group met with Firm Capital yesterday and they have agreed to replace the Bernstein mortgage with a new mortgage closing in November 2013.

### **Second Phase of 2010 to 2013**

16. The second phase of the investment arrangements between the Bernstein Group and the Walton Group commenced in January 2012. Four properties were purchased in that month and one property was purchased in April 2012.

17. The first was Hwy 7 in which Dr. Bernstein made an equity investment of \$2.3 million. This project involved the purchase of a commercial-industrial building containing 225,000 sq.ft. With minimal difficulty and renovation through Rose & Thistle's leasing of the previously vacant space, the building was almost immediately cash flow positive and provides to Dr. Bernstein a monthly return on equity of \$7,408. From a timing and unique opportunity perspective, this, too, was an unusual exception which the Walton Group identified and brought to fruition to the benefit of the Walton Group and Bernstein Group.

18. The second was 14 Trent Street, in which the Bernstein Group invested \$1.2 million in equity. This is currently a bingo hall which is being rezoned and developed into a 13-storey condominium building. It has been sold conditionally, waiting only upon the completion of the final rezoning. It too is a highly successful project which I hope will be brought to fruition in less than the time period indicated in the pro forma and less than the usual three-year period for a project of this nature.

19. The third was St. Clair Avenue, in which the Bernstein Group invested \$1.2 million in equity and provided a second mortgage in the amount of \$240,000 at 12% interest and with a 1% mortgage placement fee. That project is being developed into 21 townhouses and two detached houses. The Walton Group has achieved rezoning and refinancing. As a result, Dr. Bernstein's second mortgage has been fully repaid. The necessary one-year construction period is tracking to begin in Spring of 2014 and to be completed in the Spring of 2015. Construction financing has been arranged through an institutional construction lender. The Walton Group presently expects at least a \$.5 million profit.

20. The fourth project is Tisdale Mews, purchased by Dr. Bernstein on January 11, 2012, in which the Bernstein Group ultimately invested \$1.7 million in equity and provided a \$3.5 million mortgage at 8% interest with a 2% mortgage placement fee. That mortgage has been repaid. The property has been sold pending site plan approval to be obtained by the Walton Group. It is expected that site plan approval will be received in the Spring of 2014. This is the only project in the 34 properties in which the Bernstein Group is involved that is expected to suffer a loss. The loss is approximately \$300,000.

21. The fifth project is 1131 and 1131A Leslie Street, purchased on April 24, 2012, in which the Bernstein Group invested \$1.4 million in equity. 1131 Leslie has been sold for a profit of approximately \$.5 million. An offer to purchase for 1131A Leslie is being negotiated which if accepted would result in a profit of at least \$.5 million. The total profit from the project will be approximately \$1 million after the equity infusions of the Bernstein and Walton Groups have been repaid.

22. The sixth project is 1003 Queen Street (at Pape), purchased on June 7, 2012, in which the Bernstein Group invested \$.8 million in equity and provided a first mortgage in the amount of \$.4 million. This project was an abandoned condominium development. The Walton Group has re-established its physical integrity and is moving to complete the project of ten residential and two retail units. The project will be completed in the Fall of 2014 and sales are expected to be completed in early 2015. The expected profit ranges from \$.1 million to \$.5 million after all equity infusions have been repaid.

23. The seventh project involves the 875 Queen Street property and the neighbouring property at 887 Queen Street. The Walton Group was put in touch with the Red Door Shelter which itself had its facility situated in the old Woodgreen United Church. The United Church sold the property to The Red Door Shelter and the City of Toronto was to provide financing to renovate the shelter so it could permanently continue a 106-bed facility. With the election of our current Mayor, the financing for the shelter did not materialize. The Walton Group made a complex arrangement to buy Queen Street on behalf of the Red Door Shelter and to develop the Riverdale Mansion as set out above and give the Red Door Shelter a permanent new home. Once that has been completed, the Red Door Shelter will move permanently so that the Queen Street site which includes the entire block bounded by Queen, Logan, Booth and a laneway can be developed into a mid-rise seven-storey residential condominium complex. The first two storeys have been pre-sold for \$13 million. The entire project will then be sold as is to a builder/developer. The project is presently listed for sale and has been the subject of strong market interest. The expected profit after repayment of all equity infusions is at least \$2 million.

24. By this time, the Bernstein Group's confidence in the Walton Group had increased. At this point Dr. Bernstein indicated that he would like to focus his investments on

equity in the projects as opposed to the combination of equity and mortgages. This led to an intense phase of development where in the period from September 4 to 15, 2012, nine properties were purchased whereby the Bernstein Group infused equity in the approximate amount of \$45.5 million. Three of the projects had equity infusions of \$6.5 million, \$11.12 million and \$16.5 million, respectively. Three of the projects were purchased on September 4; three of the projects were purchased on September 13 and the remaining projects were purchased on September 28, October 4 and November 15, respectively. The Walton and Bernstein Groups were also active in 2013. Six new projects were purchased: two on February 14, one on March 14, two on April 10 and 11 and one on June 27, notably three weeks after the Bernstein complaint letter dealing with their concerns about accounting.

25. The eighth project is 1500 Don Mills (Donalda), which comprises a 235,000 sq.ft. commercial building on 5.5 acres of land. The Walton Group bought the project for \$43 million in which the Bernstein Group invested \$11.21 million in equity on September 4, 2012. The commercial building has approximately 14 tenants, producing an annual net income of \$2.9 million. The Walton Group has retained architects, lawyers, surveyors, planners, retail specialists, marketing specialists and zoning consultants and has developed a plan which has been presented to the municipal authorities. The project for the 5.5 acres has been provisionally approved. To the 235,000 sq.ft. commercial building we have obtained approval to add a 130,000 sq.ft. retail complex. This was a much larger success than had been contemplated in the pro forma and by the equity investors. The project has gone from having an end value of \$72 million to an end value of \$146 million. The costs have risen from \$58 million to \$100 million. If the Walton/Bernstein Groups were able to complete the project, it would show profits of approximately \$46 million. The increased construction costs require more financing

than originally contemplated. The Walton Group managed exceptional financing terms from OTERA, the Ontario investing arm of the Quebec Pension Fund known as the Caisse de Depot. A mortgage was obtained in the amount of \$31 million at 3.85% for ten years. The present market rate is approximately 5%. As a result of the rents and the highly attractive financing, the property remains cash flow positive to the shareholders providing \$16,000 per month to Dr. Bernstein as a return on equity. The disputes that have arisen between the Bernstein Group and Walton Group require that this project be sold once it has been developed. We are presently in preliminary discussions, and expect to sell the entire project by the Spring of 2014 in the approximate amount of between \$51 million and \$58 million. In these circumstances the equity investors will share \$1 million to \$8 million in net profits.

26. The ninth project is 1485 Dupont which is a 90,000 sq.ft., three storey, environmentally contaminated industrial building on approximately three quarters of an acre, in which the Bernstein Group has invested \$2.7 million in equity and was purchased on September 4, 2012. The property is partially tenanted and producing net rental income. The plan is to "gut renovate" the entire building and operating systems and remediate the contaminated site. This work is underway and will be completed in two years for an estimated profit of \$1 million. One tenant is an art school which has directed the renovation of the first floor and will be the lead tenant, attracting other art related/ media, studio space. Rezoning has already been provisionally obtained for the art school.

27. The tenth project is 1450 Don Mills, in which the Bernstein Group invested \$6.5 million in equity, purchased on September 4, 2012. The building is a 165,000 sq.ft., three storey commercial office building situated on 4.8 acres of land. It is being leased by the National Post until April 2014. The Walton Group is searching for a new commercial tenant in this highly

attractive location. Rezoning has been provisionally obtained for retail space in the existing parking lots. 1450 Don Mills is physically adjacent to part of 1500 Don Mills, mentioned above. The 1450 Don Mills property has the advantage of providing temporary parking to the 1500 Don Mills development if needed and also provides extra retail space to be part of the 1500 Don Mills project. The project is expected to enjoy a profit of approximately \$1-2 million.

28. The eleventh property is 140 Queen's Plate Drive, in which the Bernstein Group invested \$1.65 million in equity for a property purchased on September 13, 2012. This property interrelates with the property known as Cityview, hereinafter discussed. The property is a 5.25 acre site which was formerly an apple orchard at the corners of Rexdale/Hwy 7/Queen's Plate Drive. The property has been rezoned and is in the final stages of site plan approval for two different projects. 1.3 acres is being sold to the Toronto Fire Department for \$1.65 million. The second parcel of approximately 4 acres has been leased to a private school called MPS Etobicoke. The Walton Group is committed to building a 44,000 sq.ft. school, a 15,000 sq.ft. day care and playing fields. It is expected that the project will provide a profit of approximately \$1-2 million.

29. The twelfth project is 1, 9 and 11 Cityview Drive, in which the Bernstein Group has invested \$.99 million in equity and a first mortgage of \$4 million at 8% with a 2% mortgage placement fee and a second mortgage of \$650,000 at 11% with a 2% mortgage replacement fee on property purchased on September 13, 2012. This project was one six acre parcel of land which has now been severed into two parcels with severance to be effected in November 2013. The parcel at 1 Cityview was a 26,000 sq.ft. industrial building which was designed built for the temporary use of MPS Etobicoke, the private school mentioned above. Once the Queen's Plate Drive property has been built, the MPS Etobicoke will move into the new facility and 1 Cityview

will be sold to a school or other appropriate user. A \$2.8 million mortgage has been arranged on the 1 Cityview property to partially pay out Dr. Bernstein's mortgage. The second parcel is a 50,000 sq.ft. industrial space which has been sold for \$3.2 million. That deal is expected to close, and the severance will be final next month. The \$3.2 million that will be generated will go to pay off a contractor payment to the company that renovated the building for MPS Etobicoke and to pay off a portion of the Bernstein Group's mortgage. Once the new \$2.8 million mortgage and the sale proceeds have been received, the money available will pay out Dr. Bernstein's mortgages and all other costs. This property is currently in controversy as Dr. Bernstein will not approve the \$2.8 million mortgage and insists on payment of full mortgage proceeds prior to the sale and new mortgage being completed. The Bernstein mortgage was due in September and will presently be paid in November if Dr. Bernstein cooperates in what I hope will be a commercially reasonable manner.

30. The thirteenth project is 355 Weston Road, in which the Bernstein Group invested \$2.1 million in equity for a property purchased on September 13, 2012. This is an environmentally contaminated 100,000 sq.ft. industrial building solidly built in the 1980s. It has been a disappointment in that the Walton Group has arranged for environmental remediation and, pending completion, sought to lease the property. There was little market interest. As a result, the Walton Group put the property up for sale. An offer is currently being negotiated. Dr. Bernstein has agreed to sell at \$6.8 million dollars to an active vendor who has offered \$6.6 million. If this property is sold for \$6.8 million, it will produce an estimated profit of \$.4 million.

31. The fourteenth project is 65 Heward Avenue (Double Rose), in which the Bernstein Group invested \$3.332 million in equity and a \$6.5 million mortgage at 8% and a 2%

placement fee. The property consists of three buildings: two 10,000 sq.ft. film studios with 10,000 sq.ft. of ancillary wardrobe, catering, makeup and storage area; a 25,000 sq.ft. heritage building; and a 25,000 sq.ft. general office building. The ground water is environmentally contaminated and bugs have been contracted to eat vinyl chloride in the water. They are busily at work in approximately 40 separate wells dug for that purpose and are being heated to increase productivity. The Walton Group are seeking new long term permanent tenants. The expectation is that approximately \$2.5 million in net profit to the equity owners will be achieved.

32. The fifteenth property is 7, 15 and 30 Fraser Avenue, in which the Bernstein Group invested \$16.5 million in equity for properties purchased on October 4, 2012. The first parcel, municipally known as 30 Fraser, is just north of the Canada Bread Plant site and part of the Liberty Village community. The land was vacant when purchased and was converted to a parking lot, presently producing \$10,000 per month. The property has been provisionally rezoned to construct a 75,000 sq.ft. commercial facility. The second parcel is made up of 7 and 15 Fraser. 7 Fraser is presently used for a bait shop, live/work studios and storage. 15 Fraser is a unique complex in that it has such municipally useful facilities as a mock jail, police station, mock courtroom and torture chamber. It is rented out as a film studio. This site is provisionally rezoned to build a 550,000 sq.ft. commercial structure. The historically listed existing structure will form part of the new structure when completed. As a result of this dispute, the Walton Group has changed the plan and is seeking to sell both parcels. Had the project been completed, it would have produced a profit of approximately \$40 million. The sale is expected to produce a profit of approximately \$7 million. Development is very active on properties on both sides of 30 Fraser, rendering it to be sold at a premium. In aid of the proposed sale of these properties, Colliers has provided a valuation of both parcels of land in the amounts of \$4.5 million and \$33

million respectively. This valuation has been delivered to Dr. Bernstein along with a request that they be listed for sale with Colliers.

33. The sixteenth property is 0 Trent (Salmon River), in which the Bernstein Group has invested \$.398 million in equity and a \$.39 million mortgage at an 8% mortgage, plus a 2% placement fee. The property at 0 Trent is a "clean" property. The Walton Group owns the adjacent property (without the participation of Dr. Bernstein) at 2 Kelvin, which notionally consists of two parcels: one being environmentally contaminated and the second being "clean". The proposal is to sever the "clean" portion of 2 Kelvin and add it to 0 Trent. It has been conditionally approved. The "clean" part of Kelvin will be joined with the clean lot at Trent and is being developed to be either sold as vacant land or a designed build facility. The contaminated portion of Kelvin will be reclaimed and a lessee has shown interest in the site.

34. The seventeenth property is 115-119 Skyway Boulevard and 30-34 Meridian Road, in which the Bernstein Group has made an equity investment in the amount \$.75 million and provided a mortgage in the amount of \$2.8 million at 8% with a 2% placement fee for a property purchased on February 14, 2013. This is a two acre parcel of land which has been severed into two parcels, subject to the completion of certain conditions which are expected to be finalized before the end of 2013. The two severed parcels have been sold subject to the completion of the conditions for a profit of \$.1-.3 million.

35. The eighteenth property is 295 the West Mall, a complex of 1.5 acres, consisting of a 90,000 sq.ft. building in ten storeys and a Keg Restaurant of 8,800 sq.ft. and below ground and above ground parking. The property was purchased for \$15.5 million and produces a net income of \$1.1 million. The proposal is to strata title the Keg Restaurant property and lease it to

a new owner. The Bernstein Group has invested \$4.17 million in equity. It is proposed that the parcels will be sold once the strata title has been effected, producing a profit of approximately \$.5-1 million.

36. The nineteenth property is Royal Gate, a property at Hwy 27 south of Hwy 7. It originally consisted of a 410,000 sq.ft. industrial facility on 16 acres. Since buying the property, the Walton Group has severed it into two parcels: a three acre parcel having a 75,000 sq.ft. building which has been sold, and a 320,000 sq.ft. building on 13 acres which has been appraised at \$26.25 million and is presently on the market for sale. The first parcel was sold for \$5.2 million closing yesterday. It is expected that the remaining parcel will be sold by the first quarter of 2014, providing a profit in excess of \$4 million. This is a highly successful profit in less than one year.

37. The twentieth property is 14 Dewhurst Boulevard, in which the Bernstein Group has invested \$1.4 million in equity. The property is a 21,000 sq.ft. former church on half of an acre of land, just north of the Danforth. The Walton Group rezoned the property for a daycare facility and contracted to design and build a facility for Kids & Co. It would have been a facility that the Walton Group wished to retain over the long term, but due to the present dispute it will be sold once the construction is completed, presently scheduled to be January 2015. The expected profit is \$.5-1 million.

38. The twenty first property is 153 Eddystone Place, which is a property purchased on April 11, 2013 in which the Bernstein Group invested \$1.58 million in equity. The property consisted of a 44,000 sq.ft. industrial space sitting on 1.5 acres. It has been provisionally rezoned as institutional/office. 30,000 sq.ft. have been leased to The Griffin Centre, a non-profit

organization caring for mentally challenged youth and adults. The Walton Group is presently negotiating a lease with Community Living Toronto for the remaining 14,000 sq.ft.. That organization provides service compatible with those services provided by The Griffin Centre. The Walton Group has agreed to design and build out the facility for occupancy in early 2014. Environmentally contaminated soils have been remediated. The building will be sold at an expected profit of \$.5-1 million.

39. The twenty second property is 620 Richmond Street West and 165 Bathurst Street, purchased on June 27, 2013, in which the Bernstein Group invested approximately \$3.8 million in equity. The property consists of a 60,000 sq.ft. heritage building sitting on 10,000 sq.ft. of land and has six storeys at the corner of Richmond and Bathurst. The building will be renovated and leased with two levels of retail and four levels of commercial usage. It is expected that the building will produce a profit of \$2 million.

#### **Conclusions and Overview - Regarding 27 Projects**

40. With respect to all 27 projects described above in paragraphs 15 to 39 there is a dynamic and complex series of steps being taken involving the approximately 40 permanent employees at Rose & Thistle and an additional 20-40 occasional employees engaged in administration, supervision, management, maintenance, construction and related activities. There are also approximately 40 third party different companies and professional groups involved in providing services to the Rose & Thistle projects. The company is deeply engaged with the real estate community including sales agents, mortgage brokers, leasing companies, financial institutions, surveyors, architects, planners, trades, suppliers and construction contractors. The success of the 27 projects described above and the other 21 properties owned exclusively by the Walton Group depends upon the confidence that all of these interrelated

players have in the Group. Any major intervention in the various projects that interferes with the Walton Group's ability to develop and finance its projects will have a negative domino impact upon the entire Group.

**Accounting, Cooperation and Answers to Problems Raised**

41. I now will give evidence about three areas of significance in this application and motion, as follows:

- (a) the accounting issues first arose as Rose & Thistle expanded its portfolio of properties in the years 2011/2012/2013. The ability of Rose & Thistle to give timely and accurate accounting information was severely constrained by the computer program that Rose & Thistle was using up to this year. When Dr. Bernstein rightly complained about a lack of accounting information in June 2013, Rose & Thistle was unable to give him the required accounting information in a timely way because of the volume of activity, the fact that inputting was not up to date, and the inadequacy of the accounting software. I will give evidence explaining the details of this problem and the corrections that were already underway in June 2013. My regret in this regard was not giving the Bernstein Group a full explanation of the issue in June 2013 and leaving the matter until September 2013 when this proceeding was commenced;
- (b) the second issue is the positive evidence of portfolio success and the dynamic environment, the personal stake that Ron and I had in the Bernstein/Walton portfolio of properties through personal guarantees, the cooperation that has occurred among the Bernstein Group, the Walton Group and the Inspector since

October 4, 2013; the attempts by the Walton Group to repay any monies which were used outside the Bernstein portfolio by refinancing 30 and 30A Hazelton; the Walton Group's proposal to Dr. Bernstein to answer one of his complaints about unequal equity infusions and the negative impact of Dr. Bernstein's request for Certificates of Pending Litigation for properties that are not part of the Bernstein Group of properties; and

- (c) an explanation of a series of individual concerns, namely allegations of contempt of court regarding usual course payments after October 4, 2013, the Riverdale credit note, the 355 Weston Road offer to sell, the Tisdale payments, the 140 Queen's Plate mortgage and the two \$3 million loans on the Don Mills properties.

**A. The Accounting Issue**

42. I have described the growth of the Bernstein-Walton projects in the period 2010 to 2013 in paragraphs 15 to 39. These projects include 27 different properties in which the Bernstein Group provided equity investments and sometimes a mortgage investment as described and 21 other projects owned by the Walton Group alone. I have also described in general terms the activity needed to bring these projects to financial and developmental fruition. I think it fair to say that this much development activity was as challenging as it was successful. Rose & Thistle increased its employee numbers in this period so that there are presently 40 full-time employees and 20 to 40 occasional weekly employees. I have also described the number of professional and construction firms retained by Rose & Thistle to manage all the activities within the real estate portfolio.

43. Rose & Thistle used and continues to use an accounting system called Quickbooks. Two things occurred in the time of great growth from 2010 to 2013 that indicated Rose & Thistle needed a new and more robust accounting system. First is that the accounting system and its ability to give accurate reports on so much activity fell behind as my attention and that of my employees concentrated on growth rather than on the accounting function and inputting data. The second is the actual system itself. Beginning in the Spring of 2013, my husband Ron commenced his search for a more robust accounting software system. In the end, he identified two appropriate systems and we have now chosen and purchased the Voyager Accounting Program at a capital cost of \$100,000 and an average monthly fee of \$3,000 to \$4,000. This system is sophisticated and suitable for an enterprise the size of Rose & Thistle. It is in place and is tracking to be operational by the end of 2013 when all the historical inputs will be complete. It will permit real time financial reports combining all receipts and disbursements related to a particular property in one place without having to draw from a number of different sources and files, as has been necessary to date.

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44. I deeply regret that I was unable to give Dr. Bernstein up to date accounting in June 2013 or in September 2013 and more importantly that I did not simply tell him of this accounting problem. To some extent I am the author of my own problems now before the Court by trying to pretend that the accounting system in place was adequate and up-to-date to maintain Dr. Bernstein's confidence in the financial reporting side of the business. This was a mistake. The lack of accurate reporting has combined with other matters dealt with below to cause concern. The evidence set out below is my explanation of my problems and my plan to ensure that none of these issues arise while the Bernstein/Walton portfolio of properties is developed and sold or at all.

**B. Positive Aspects of the Relationship: Cooperation**

45. It appears to be uncontroverted that the Bernstein/Walton portfolio of properties has done well and continues to perform at a high level. This has been accomplished in part because the Walton Group has the freedom to make proposals to and involve Dr. Bernstein when he is in funds. Other projects are purchased by the Walton Group alone. This method of proceeding allows the real estate group to be managed in a dynamic and efficient manner. The Walton Group is seeking investment opportunities, providing financing, developing and managing properties, and giving overall guidance to the successful completion of the project. While I do not wish to ignore the problems addressed below, I do wish to point out that any undue restrictions on the Walton Group's ability to operate (while completing proper reporting and protecting Dr. Bernstein's interests) will diminish my ability to make profits from the existing portfolio and to complete the outstanding projects in a timely manner.

46. Dr. Bernstein's counsel has requested Certificates of Pending Litigation on certain properties in which Dr. Bernstein has no interest. That would restrict my ability to provide the very financing and equity that Dr. Bernstein is insisting be provided. The imposition of such encumbrances will soon be recognized in the marketplace and diminish my ability to bring this portfolio to a profitable conclusion. In addition, I have taken steps (as I indicated in my Affidavit of October 3, 2013) to refinance the Walton Group properties and my personal properties. As is apparent in the e-mail exchange attached as Exhibit "C" to this my Affidavit I have refinanced the properties owned by the Walton Group, namely 30 and 30A Hazelton providing a capital sum of \$1.5 million. I informed Dr. Bernstein of this financing and that I intended to repay certain monies that were diverted from the \$6 million mortgages arrangement outside of the Bernstein Group's interests. I informed the Inspector, Dr. Bernstein and Mr.

Reitan of the contemplated refinancing proceeds and how I intended to apply them, out of courtesy and caution. Dr. Bernstein refused his consent and countered with another proposal. I accepted his proposal on certain conditions which he has yet to consent to. This is a good news story in one sense and an impediment to sensible business decisions on another. I hope overall that it augers well for a continuing series of consensual business decisions.

47. In that regard, I mark as Exhibit "D" a series of e-mail exchanges dealing with my request for the consent to sell 355 Weston Road and 1131A Leslie Street over the last week. As can be seen, the parties have come to agreements on sale prices. This does auger well for the future. At the same time, I have a positive relationship with the Inspector, and Mr. Reitan, in the day to day investigation and the day to day receipts and disbursements activities, respectively.

48. I end this part of my Affidavit by emphasizing the importance of maintaining the greatest amount of freedom to operate. I have been involved in commercial real estate for over 12 years. I had been successful in the marketplace because of my ability to move quickly to purchase properties, recognize their development potential, finance them, develop them and sell them. I have developed relationships with a large array of professionals who want my business at every level of the project. Professionals bring me properties to purchase, want to finance properties that I own and manage, and wish to sell properties which I have developed and managed. If a receiver/manager is appointed or financing impediments are placed on properties which I owned, I believe that the dynamic nature of this portfolio will suffer and in the end cause unnecessary losses. I have tried to show my willingness to work with the Inspector while at the same time operate a very complex real estate business portfolio. I have tried to cooperate with Mr. Reiten and set up systems in keeping with the Court's direction regarding signing authority and other matters. I have tried to live up to the spirit of the Court Order. I do so because it is my

duty and because it is in the interests of the real estate portfolio over which I have responsibilities. I wish to rebuild trust with the Bernstein Group or maintain sufficient controls so that they can be satisfied that their investments are being managed in an appropriate and transparent manner through their right to co-sign and receive real-time information. I therefore urge the Court and Dr. Bernstein to seek minimal requirements to protect their interests while our business relationship is wound down in the context of the above portfolio of properties.

**C. Problems: An Explanation and Commitment**

49. While the accounting issues stimulated Dr. Bernstein's initial concerns, other issues have plainly caused him to lose confidence in my management of the real estate portfolio such that he requires the measures that are currently in place, namely and the Inspector and co-signing authority. These protections have arisen because of my issues and I am willing and committed to making the portfolio profitable while working with these new limitations. While I recognize I must continue to have these limitations in some form, I do not wish to add any further impediments as I address the past concerns and commit to no further repetition of the concerns raised.

50. The first issue relates to two \$3 million mortgages on the Don Mills properties. This should not have been done without Dr. Bernstein's consent. An explanation (as opposed to an excuse) is that I arranged one \$3 million mortgage to be placed on 1450 Don Mills Road along with a second fail safe mortgage also to be registered against 1450 Don Mills because Dr. Bernstein needed a repayment of \$2 million of equity by July 31<sup>st</sup> to facilitate a personal property purchase he was making and I wanted to ensure I had it available. While I do not raise this personal matter as an excuse, it is part of the factual matrix which affects my decision to close the Don Mills mortgages that I was out of the office for one month beginning May 7 until June 5.

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Upon my return, I was working five hour days as opposed to the usual intense work days. I am responsible for the financing of all of the Rose & Thistle Group portfolio of properties. Had I been in the office during the period May 7 to June 5, I would have arranged orderly financing and avoided any of the circumstances which I will hereinafter described. On May 7 I gave birth to my fourth child through caesarian section. I could not attend to business or the office during the four week period up to June 5, 2013. As a result, the orderly arrangement of financing was interrupted. In this context I will now describe the further steps taken in the Don Mills financing.

51. I also initiated the refinancing of St. Clair for the same purpose. In my experience mortgages sometimes do not close and I wanted to ensure I had the funds available to Dr. Bernstein. As it turned out, we were able to repay him sufficient monies from the St. Clair refinancing such that he indicated he did not need any more. The Don Mills mortgages were scheduled to close at the same time. Around the same time I recognized that the joint portfolio required cash urgently to pay some amounts owing. Rather than abandon the closing of the Don Mills mortgage and refinance one of our properties to pay the equity required, or alternatively advise Dr. Bernstein of my intent to refinance Don Mills, I closed the Don Mills mortgages that were already approved by the lender and in process and ready to close and used \$3.3 million of the \$5.5 million net proceeds to satisfy joint portfolio obligations. The monies should not have been diverted and I should have refinanced one of our Walton Group properties instead. On the other hand, the use of the \$6 million was transparent on the books and records of Rose & Thistle and in the recipient enterprises. The Walton Group has considerable equity in both of these properties as does the Bernstein Group. In any final accounting no monies would have been improperly used. This is again not an excuse but required as an explanation as to what

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happened. Exhibit "E" is a copy of an email exchange on September 14, 2013, in which I disclose the mortgages to Dr. Bernstein.

52. Approximately \$2.1 million of the \$6 million was used outside the Bernstein/Walton projects. I have said in my earlier evidence that I would find monies to repay this \$2.1 million and operate all of the 31 investment companies in which the Bernstein Group has an interest as separate companies and businesses unless Dr. Bernstein consents to using money from one project to benefit another project in which he has an interest. My refinancing of 30 and 30A Hazelton is my first step in bringing all of the individual companies into proper and transparent alignment.

53. Dr. Bernstein has complained that the Rose & Thistle Group has not adequately put in equity capital into the real estate projects in which the Bernstein Group has an interest. As is set out above, it was never the expectation that Rose & Thistle would match Dr. Bernstein's equity investments dollar for dollar. Dr. Bernstein was always to provide his equity first and Rose & Thistle was to provide our equity second as the project required. To the extent cash is needed, Rose & Thistle uses monies obtained from profits obtained when projects are sold. Dr. Bernstein knew of this business arrangement. In any event, he has made his complaint about an imbalance in the equity contributions as he sees it. In the face of this concern, I offered Dr. Bernstein a new arrangement whereby he would receive a financial benefit based on the differential between the Bernstein Group's equity infusion and that of the Walton Group. In exchange, Dr. Bernstein agreed to personally guarantee to us the personal guarantees we'd provided on all mortgage debt, recognizing that we were personally liable for the approximately \$205 million of mortgage debt and recognizing that we had shielded him from all personal liability from lenders. Attached as Exhibit "F" is an e-mail exchange between Mr. Reitan and

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me with respect to this. I understood that this was acceptable to Dr. Bernstein and prepared six written agreements on six projects recognizing this. Dr. Bernstein has agreed with one of those new arrangements but not given me his answer on the remaining five. Whatever the result I am attempting to make the business arrangement work by being accommodating and as fair as possible to Dr. Bernstein regarding this arrangement, subject to formal agreements.

54. Dr. Bernstein's counsel has made complaint about \$268,104.57 leaving the Tisdale Mews account to pay off renovation costs at 44 Park Lane, my personal residence. However, Rose & Thistle funded 100% of the \$268,104.57 purchases before any cheques were sent out of the Tisdale Mews account. Overall, Rose & Thistle has a positive net transfer to the Tisdale Mews account of \$2,208,964, as per Exhibit "G" to the Inspector's First Interim Report dated October 21, 2013.

55. Dr. Bernstein has complained that I sent out an offer to sell 355 Weston Road for \$7 million without Dr. Bernstein's consent. Marked as Exhibit "H" to this my Affidavit is an e-mail exchange between me and Dr. Bernstein where I had understood he had consented to making the \$7 million offer.

56. Regarding Queen's Plate Drive, Dr. Bernstein has complained that he approved a \$3.27 million mortgage and I obtained a \$3.35 million mortgage, being \$80,000 greater than Dr. Bernstein's alleged consent. I had understood his approval was for the \$3.35 million mortgage so long as Rose & Thistle paid into the account the \$80,000 difference. That is what we did with the documents in respect of which are attached hereto as Exhibit "H". This was not in contempt of the Court Order as the transaction closed on October 4, 2013 and had been in the works for several weeks before closing.

57. I now recognize that Dr. Bernstein must consent to each and every transaction, properties in which he has an interest. By reason of the Court Order and agreements I certainly intend to live up to that private commitment as well as the Court Order which obliges me in any event.

58. Dr. Bernstein's counsel has alleged that I was in contempt of the Court Order of October 4 because payments over \$50,000 were made after October 4, 2013. The information that was presented to the Court was inaccurate. These payments were already sent to creditors of Rose & Thistle prior to the Order on October 4, 2013. After the Court Order, I informed all ten creditors who had cheques outstanding above \$50,000 that they would not be paid immediately and to hold them pending further advisement. I have not advised these creditors that they can cash their cheques up to this time. I also informed the Meridian Bank to stop pay these cheques out of an abundance of caution. Far from being in contempt of Court, I have tried to fully abide by the Court Order in its spirit and to the letter.

59. Dr. Bernstein's counsel has raised an issue of a \$1 million, approximately, credit note on the Riverdale property. Let me explain. The Riverdale property originally involved the construction of townhouses and condominiums in the Riverdale mansion. Considerable work was done to prepare the site for that construction. Deposits were due to trades for future work contracted. As the work was proceeding, the project was changed as set out above. The townhouse and condominium project was abandoned in favour of the Red Door Shelter for abused women and children. Rose & Thistle was owed certain monies for its work. An invoice for \$1,291,025 inclusive of HST was made. The Inspector thought the amount claimed was too high. I therefore issued a credit note and submitted a lower invoice for \$257,065.62 inclusive of HST that reflected the value of the work done by Rose & Thistle. I was not attempting to

manipulate the books and records of either of the companies but merely forgot to re-do the invoice after the plans changed. I do recognize an error in the valuation.

60. Dr. Bernstein complained that I breached the order or failed to cooperate with the Inspector because a laptop was about to be removed from the Rose & Thistle offices on October 4, 2013. No information regarding the business of Rose & Thistle or the properties in which the Bernstein Group invested or any relevant other information left the premises. That laptop computer was 13 years old and we were disposing of it. One of our occasional workers asked if he could have it and we agreed. This timing was unfortunate. The server information for the company is contained in eight server towers permanently affixed to the premises. There was therefore no improper taking of information from the premises or any breach of the Court Order. My staff and I have completely cooperated with the Inspector with respect to imaging the servers, as the Inspector will confirm and as evidenced by the Inspector's bills provided in his brief wherein he confirms the hours we spent with him the evening of October 4<sup>th</sup> and the Saturday October 5<sup>th</sup> and Sunday October 6<sup>th</sup> ensuring he obtained a full and complete image of the server. We had one of our IT employees on call to assist the Inspector's IT employees and had one of our staff on Friday night assist his IT professional image individual computers.

61. I raised concerns regarding Mr. Reitan with Dr. Bernstein in the summer of 2013. I also raised concerns regarding Mr. Reitan with the Inspector on October 4<sup>th</sup>. Prior to the October 9, 2013 appearance in chambers before Justice Newbould, the Inspector volunteered to ask Mr. Reitan not to return to the premises as we were adjusting to the new work environment. In any event since the endorsement of October 9, 2013, I have fully cooperated with Mr. Reitan and we have developed a cooperative working relationship to the benefit of both parties. In aid of fulfilling our obligations under the Court Order of October 25, 2013 and achieving co-signing

authority for the Bernstein Group, I contacted the Meridian Bank to make those arrangements. The bank advised that Mr. Reitan must be a director of any company over which he has co-signing authority. Mr. Reitan refuses to become a director of any of the relevant owner companies in which he is not yet a director. I believe Dr. Bernstein is a director on only six of the owner corporations. I trust that the Bernstein Group and the bank will find an appropriate accommodation to allow it to be a co-signer at the bank if that continues to be necessary.

### **Obligations and Commitments**

62. I end this part of my Affidavit with evidence concerning the commitment of Ron and myself to the Bernstein/Walton properties. Ron and I have personally guaranteed \$206,057,500 of \$249,019,500 of mortgage debt across the real estate portfolio. Our good credit was necessary to arrange the financing required. While this does not attempt to justify some of the problems and mistakes set out above, it does show that we are responsible and committed to these projects in the ultimate interests of both groups. Any issues surrounding accounting or other matters will be and were always to be dealt with in the final accounting in each project. I do apologize to Dr. Bernstein for operating the portfolio without his consent from time to time. Plainly, that will never occur again as a matter of personal commitment and court order. I am sorry the Court Order was necessary.

### **Future Financing**

63. Dr. Bernstein has called six loans and asked for repayment of the \$6 million mortgaged on the Don Mills properties. In addition, Rose & Thistle Group is required to provide more equity capital to complete the projects in which the Bernstein Group has an interest.

64. I have taken or am taking the following steps to satisfy these obligations:

- (a) As indicated above, I have remortgaged 30 and 30A Hazelton and obtained cash in the amount of \$1.5 million, \$1,072,000 of which I intend to direct to repay a portion of the \$2.1 million that was used in non-Bernstein portfolio projects;
- (b) I am working to arrange financing as set out below to pay back the remaining approximately \$4.9 million portion of the \$6 million mortgages taken out on Don Mills;
- (c) Dr. Bernstein has called his mortgage on Cityview of approximately \$4.65 million. As set out above, arrangements are in place to repay that mortgage in the month of November 2013;
- (d) Dr. Bernstein has called his mortgage on 47 Jefferson in the amount of \$2 million. I have obtained a commitment from Pencor, the same lender as on 32 Atlantic, for \$2.2 million and have sent that commitment to Dr. Bernstein for his approval. ~~His approval has not yet been forthcoming. As a failsafe, I have also obtained~~ yesterday a commitment from Firm Capital to provide mortgage money to repay this loan, to close in November 2013;
- (e) Dr. Bernstein has demanded that his mortgage of \$3 million on the Riverdale Mansion be repaid. I have obtained yesterday a commitment from Firm Capital to provide mortgage money to replace this loan to close in November 2013;
- (f) Dr. Bernstein has asked for repayment of his loan on a property owned exclusively by the Walton Group, namely a second mortgage on 65 Front Street

for \$2.5 million. I have obtained yesterday a commitment from Firm Capital to provide mortgage money to replace this loan, to close in November 2013;

- (g) Dr. Bernstein had called his loan on the Galloway property in the approximate amount of \$1.5 million. I am refinancing and selling properties as set out below to repay this obligation;
- (h) Dr. Bernstein has called his loan on the West Mall property in the amount of approximately \$1.9 million. I am refinancing and selling properties as set out below to repay this obligation;
- (i) Rose & Thistle provide needs to provide further equity financing in the amount of approximately \$4.5 million on the remaining parcels on which the Bernstein Group has an interest;
- (j) I want to remortgage 44 Park Lane (from which I expect to receive approximately \$4 million). I also have an offer to sell 14 College with a profit of approximately \$2.5 million, and have offer/bid dates pending for 646 Broadview, 30 and 30A Hazelton, and 252 Carlton which should produce respectively profits in the amount of \$.5 million, \$5.5 million, and \$1.5 million. That tallies \$14 million.

65. As I calculate the amounts, not including the mortgages which will be replaced by new mortgages from third party lenders, I am in need of approximately \$14 million to meet the above obligations. My present financing plans will produce approximately this amount. Also, once the Bernstein portfolio begins to sell properties as developed, as indicated in the attached Exhibit "B", I expect that the entire portfolio will be fully liquidated by the end of 2015. As the

properties are sold between now and 2015, the Rose & Thistle profits will be used as necessary to fund the later development and other costs.

66. Let me end where I began. I explained in the early development of the projects from 2001 to 2010 and the projects with Dr. Bernstein from 2010 to 2012 the method of efficiently developing properties in a priority system, which permitted time to develop and recover profits to be used in later projects as part of the business plan of Rose & Thistle and the Walton Group. As I have set out above, Dr. Bernstein understood this method of operating. On the plans set out above, I believe that this business proposition remains sound as the Walton Group has continued to develop properties with dexterity and efficiency. I am accelerating the refinancing and sale of certain properties because of the troubles, but the fundamental business propositions remain achievable.

#### **Inspector and Meridian Bank**

67. The Court required Rose & Thistle to produce the municipal addresses connected to companies which are owned by the Walton Group (but in which the Bernstein Group has no interest) and received monies from the Don Mills mortgages. Those companies and municipal addresses are as follows:

- (a) Cinderella Productions Inc. (\$42,900.00) – 1 William Morgan Road
- (b) 6195 Cedar Street Ltd. (\$200.00) – 2 Kelvin Avenue
- (c) Highland Creek Townes Inc. (\$15,100.00) – 232 Galloway Road
- (d) The Old Apothecary Building Inc. (\$17,650.00) – 66 Gerrard Street East

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- (e) Atala Investments Ltd. (\$18,250.00) – 30 Hazelton Avenue
- (f) Academy Lands Ltd. (\$54,000.00) – 2454 Bayview Avenue
- (g) Gerrard House Inc. (\$2,600.00) – 26 Gerrard Street East
- (h) 1780355 Ontario Inc. (\$5,400.00) – 346 Jarvis Street
- (i) Front Church Properties Limited (\$361,750.00) – 65 Front Street East
- (j) Norma Walton (\$460,000.00) – 44 Park Lane Circle
- (k) Carlaw Corner Corp. (\$2,900.00) – 319 Carlaw Street, Suite 107
- (l) Urban King Corp. (\$91,450.00) – 231 – 235 King Street East

68. In the 4 working days since the second Order of Justice Newbould, I and my staff have given the Inspector as much information and documentation as could be reasonably be expected. My staff and I have spent the week operating the business, meeting with my lawyers to prepare an affidavit which covers the history of the company over 13 years, answered questions of the Inspector, directed my staff to meet with the Inspector at his convenience, met with lawyers and mortgage brokers regarding re-financing of the properties to meet the demands of Dr. Bernstein and his accountant, dealt with the Meridian Bank which has informed me that, because Mr. Reitan will not comply with their requests that he become an Officer of the companies in which he intends to become a co-signer of the bank accounts, they are freezing not only the Bernstein Group-related accounts, but all of the Rose and Thistle accounts (except, curiously, 8 accounts randomly selected). At 11:15 a.m. this morning, I was informed that the

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Meridian Bank was only maintaining a freeze on the Bernstein related accounts. This remains a serious problem would ought not to have occurred by reason of the above.

69. In the period since the Court's Order, the Inspector has met with Mark Goldberg, EVP of Real Estate for Rose and Thistle, and spent several hours with him and received all of the documents requested. The Inspector has also met with Yvonne Liu, Project Manager, Construction and has provided to them information that has been requested, along with one construction budget. I am sending to the Inspector over the next three days all remaining budgets. The Inspector has spoken with and met with Mario Bucci, CFO of the Rose and Thistle Group and Mr. Bucci has provided to the Inspector all information requested. I have offered to the Inspector to arrange a meeting with Carlos Carreiro, former Director of Construction of Rose and Thistle but the Inspector has not done so. Steve Williams, VP of Operations has also met with the Inspector and provided what the Inspector requested.

70. The Inspector has stated that they have not been provided with third party invoices, contracts, payroll records, or other contemporaneous documents. Other than the budgets that are being provided by Ms. Liu over the next 3 days, I am not aware of any request made that has not been fulfilled, as best it can be.

71. The Inspector keeps asking which filing cabinet he can review to obtain this information. The information he seeks can only be obtained through discussions with the staff mentioned above as all documentation is on computer and not contained in a filing cabinet.

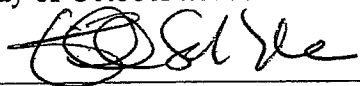
72. As a result of the above, I believe that the Inspector has been given the kind of access to the Rose and Thistle documents that is available and reasonable under the Order of Justice Newbould. Without wishing to criticize the Inspector, I am informed that he expects to

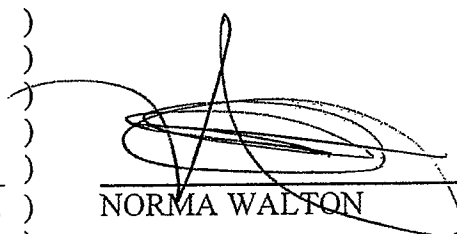
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have "physical copies of documents produced to him from a filing cabinet". This is not the way that Rose and Thistle stores its information. Upon request being made in an orderly manner, the Inspector has and will receive information and documentation as soon as it can be retrieved and ordered in a manner that meets his request.

73. With respect to Ms. Yvonne Liu, she is the Project Manager, Construction of Rose and Thistle. She is presently managing 8 active construction projects. I believe that her answer to the Inspector is reasonable in the circumstances.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
31<sup>st</sup> day of October 2013.

  
\_\_\_\_\_  
A Commissioner for taking Affidavits, etc.  
Guillermo Schille

  
\_\_\_\_\_  
NORMA WALTON

## **EXHIBIT “B”**

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

This is Exhibit.....B.....referred to in the  
affidavit of.....Norma Walton.....  
sworn before me, this.....57.....  
day of.....January.....20.....14

BETWEEN:

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

Applicants  
(the "Bernstein Group")

- and -

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

Respondents  
(the "Walton Group")

and

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

AFFIDAVIT OF NORMA WALTON  
SWORN DECEMBER 17, 2013

1. I am one of the Respondents in this matter and as such I have knowledge of the matters to which I herein depose.

2. This Affidavit is made in response to the Notice of Motion of the Applicants, returnable December 18, 2013 which motion was served only one week ago, on December 11, 2013. My counsel appeared before Justice Newbould on Friday, December 13, 2013. The motion was adjourned to December 18, 2013 to be spoken to. I am compelled to prepare this Affidavit at short notice in order to answer the Applicants' motion. To do so, I have been

compelled to spend three full days preparing this Affidavit. I make this Affidavit further to my Affidavit sworn October 31, 2013.

3. The Applicants are hereafter collectively referred to as the "Bernstein Group" and the Respondents are collectively referred to as the "Walton Group".

#### **History of Walton Group**

4. As set out in my Affidavit sworn October 31, 2013, the Walton Group began developing property in approximately 2001.

5. Between 2001 and 2010, the Walton Group purchased approximately three properties per year for a total of approximately 28 properties. The Walton Group was introduced to Dr. Bernstein in 2008. Dr. Bernstein's involvement with the Walton Group was originally as a debt investor. Dr. Bernstein invested in approximately eight mortgages in the period of 2008 to 2010. In paragraphs 4 to 8 of my Affidavit of October 31, 2013, I set out the growth of The Rose & Thistle Group Limited ("Rose & Thistle Group"), the Walton Group's principal real estate arm, I point out Dr. Bernstein's involvement as an investor and how he became familiar with the Walton Group's operations. It is important to note that I was the sole operating executive officer of Rose & Thistle and the Walton Group in terms of purchase, financing, development and sale of the real estate portfolio. My husband Ronauld had no involvement in the detailed management of the portfolio. He left all of the detailed decisions to me.

6. In 2010, a significant business change occurred in the Walton Group's relationship with Dr. Bernstein and/or the Bernstein Group. They became involved in the Walton Group's acquisition of properties as a shareholder in various holding companies (the Schedule B Companies). From 2010 to 2013, Dr. Bernstein and/or the Bernstein Group were

invited to participate in the Walton Group's real estate acquisitions. In paragraphs 9 to 14 of my Affidavit dated October 31, 2013, I set out the relationship between Dr. Bernstein and the Walton Group where he became an equity investor in properties. I note that he did not involve himself in the day-to-day pre-purchase analysis, purchase, financing, renovation, leasing, development, re-zoning, environmental remediation, property management, accounting or other details except by way of reporting. Dr. Bernstein left all of these matters to me. The projects as a whole were highly profitable to Dr. Bernstein as they were completed.

7. It is important to note that Dr. Bernstein knew and understood that the Walton Group would contribute to the projects by their identification of the properties and carrying out the entire project through to profitable sale. As a result, there was no obligation on the Walton Group or any of its members to match Dr. Bernstein's equity infusion until and unless needed to complete any particular project. Dr. Bernstein knew that the Walton Group and the Rose & Thistle Group did not have the equity to put into projects to match his equity. That is why the agreements provide that we were to provide monies needed to complete a project. Dr. Bernstein knew that if such monies were needed, the Walton Group would have to refinance or sell properties and use their profits on those sales to develop the further properties. All of the borrowings and financings were carried out transparently in that the mortgages replaced on title and the various financings were obvious. All of the debts and obligations were accounted for and any imbalance in contribution was settled or to be settled after the project was sold.

8. Dr. Bernstein is a highly experienced investor in real estate. He has had prior investment relationships litigated in the courts. He is a wealthy man who understood the Walton Group contribution as against his own contribution. He understood that the development of real estate in such a large number of projects was a dynamic enterprise that could only be carried out

by a person like me who has a solid track record of success and an energetic ambition to be successful for both of us. I expressed in my Affidavit of October 31, 2013 in paragraph 41 the dynamic nature of the enterprise of property development. Dr. Bernstein knew of this dynamic enterprise but chose to impose a Receiver/Manager on the properties knowing that it would cause a serious diminution in value and leave the entire portfolio of properties vulnerable to diminution.

9. In some instances, Dr. Bernstein chose to participate in property acquisition and in other cases he declined. Those properties Dr. Bernstein chose to invest in are detailed in my October 31, 2013 Affidavit at paragraphs 15 to 39.

**Effects of the Receiver/Manager, and the Court's Finding of "Theft" and Resulting Publicity**

10. The involvement of the Receiver/Manager has had negative effects on the joint portfolio, the details of which are set out below:

- 
- (a) the appointment of the Receiver/Manager has triggered default in most of the mortgages held within the joint portfolio;
  - (b) mortgagees have served Notices of Appeal and further appearances have been made by mortgagees, resulting in increased legal costs to the portfolio;
  - (c) the *National Post* and the *Toronto Star* have run front page articles detailing the dispute between the parties and thus creating the impression that the joint portfolio is in crisis, suggesting to investors that the properties can be purchased for a discount. Those articles are attached to this affidavit as Exhibits A and B respectively;

- (d) despite receiving over 10 offers to purchase properties within the joint portfolio, the Receiver/Manager has not contracted or signed back any of the offers, and thus the portfolio remains stagnant and purchaser interest is waning;
- (e) significant management costs are being incurred, including the cost of Briarlane's fees and employee costs;
- (f) so-called "Vulture Funds" are actively attempting to purchase the joint portfolio for a significant discount;
- (g) the Walton Group's ability to borrow funds has been significantly reduced; and
- (h) the Walton Group has been excluded from discussions with the brokerage community with respect to the joint portfolio, rendering the Walton Group's knowledge about the portfolio and business connections in the community useless.

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11. In addition, the public nature of this proceeding, including the November 5, 2013 endorsement, has had a negative effect on the Walton Group in the marketplace, the details of which are set out below:

- (a) the appointment of the Receiver/Manager has triggered default in most of the mortgages held by the Walton Group;
- (b) the Walton Group has had to terminate the employment of approximately 25 employees, many of whom have been with the Walton Group for over 15 years. These terminations involve severance obligations;

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- (c) the *National Post* and the *Toronto Star* have run front page articles detailing this dispute between the parties and highlighting the Court's finding of theft, bringing me and the Walton Group into disrepute;
- (d) the Law Society of Upper Canada has sought an undertaking from me that I not practice real estate law and other restrictions related to real estate as a result of the finding of "theft" by Justice Newbould. If I do not sign such an undertaking, I am informed through by law society counsel that an ex parte order enjoining me from practicing real estate law will be sought in committee at the Law Society. This result will gravely impact my reputation and my business;
- (e) the public nature of this dispute has had personal impacts on my family as far reaching as a petition by a parent of a teammate on my child's hockey team that my seven-year-old sons be removed from the team on the basis of the newspaper articles mentioned above;
- (f) investors in non-Bernstein Group projects are concerned and some are demanding to be paid out of their investments, resulting in the requirement to sell properties for less than anticipated profits;
- (g) the Walton Group has had financing offers revoked as a result of the public nature of this litigation resulting in the need to sell properties that the Walton Group originally intended to keep and refinance;
- (h) the Walton Group opened 33 accounts at RBC for non-Bernstein business. Upon receiving copies of the November 5, 2013 endorsement RBC closed all 33

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accounts and advised the Walton Group that it no longer wished to do business with the Walton Group; and

- (i) Meridian Bank refused to open any new business accounts for the Walton Group.

12. The results of the Receiver/Manager Order and finding of theft alone has become the subject of broad comment in the development industry based on the reasons. Further, the two newspaper articles in the *National Post* and *Toronto Star* destroyed my business, legal and personal reputation. The finding of theft was key to this result.

13. I believe that I had a colour of right to borrow the monies that I did and to use those monies in the Bernstein portfolio of companies and in the non-Bernstein portfolio of companies. I certainly had no intent to defraud Dr. Bernstein. I have made no admission to fraud or theft in prior affidavits.

14. The rights of mortgagees and other secured and unsecured security holders in the companies and on the properties over which the Receiver/Manager was given power were not considered by the court, in that they were not served. In particular, the mortgages against the properties may have been placed in default by reason of the Receiver/Manager Order.

15. All of these factors have led to a predictable result, namely the imposition of a Receiver/Manager would destroy value for Dr. Bernstein and me; yet my husband and I are the only ones who have personally guaranteed the majority of the mortgages in the Bernstein portfolio.

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### **Non-Bernstein Group of Properties**

16. As is detailed below, all of the properties over which the Bernstein Group now seeks Certificates of Pending Litigation and injunctive relief are owned by corporations which are not parties to this action. While my husband and I are equity shareholders in those companies, we are not always alone as equity shareholders. Sometimes, there are other equity shareholders, preferred shareholders, mortgagees, suppliers and trades and other stakeholders whose interests must also be considered and who have no formal notice of this motion.

17. In any event, the requests for such relief amounts to a final determination of a claim in breach of contract, orders for specific performance, damages or damages in lieu of specific performance, a *Mareva* Order or other imposition of injunctive relief which cannot properly be dealt with without a proper claim brought within an action and a trial of the issues and certainly not before cross examination has been permitted.

18. The Bernstein Group now seeks Certificates of Pending Litigation over non-Bernstein Group properties (the "Other Properties"). The Bernstein Group also seeks an Order that the Walton Group may not dispose of or encumber any assets held by the Walton Group without further Order of this Court.

19. The particulars of each of the so-called "Other Properties" are set out below. Other than the first two properties listed below (which are already the subject of the Receiver/Manager order), and 319 Carlaw, Suite 107 (incorrectly identified by the Bernstein Group as 321 Carlaw), neither Dr. Bernstein or any member of the Bernstein Group holds an interest in these properties.

20. Each of the Other Properties has many stakeholders, the particulars of which are also set out below. Certain allegations have been made that some monies from the Don Mills mortgages (which allegations are addressed in detail in my October 31, 2013 Affidavit) were used in these properties. Also set out below is the amount used from the Don Mills mortgages and the amounts that the Walton Group has paid back on account of the monies paid. Also detailed below is the source of funding for the purchase of each of the properties. Again, other than the first two properties (which are already under Schonfeld Inc.'s control) the Bernstein Group was not involved in the purchase of the properties listed below, and in many cases, the properties were purchased before the Walton Group was introduced to the Bernstein Group.

(a) 620 Richmond Street West (already subject of Receiver/Manager Order)

(i) Shareholders: Dr. Bernstein through a holding company (50%), Ronauld and Norma Walton (50%)

(ii) Ownership: 165 Bathurst Inc.

(iii) Mortgagees: First mortgage is held by First National (approx. \$4mil), and the second mortgage is held by the vendor, 165 Bathurst Financial Inc. (approx. \$6.5mil)

(iv) Suppliers/Trades and Other Stakeholders: Cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, building superintendent, property managers.

(v) Employees: None

- (vi) Activity: An offer to purchase has been received for \$16 million. The Walton Group has recommended that the Receiver/Manager negotiate this offer.
- (vii) Monies Used from the Don Mills Mortgages: None
- (viii) Monies Paid back on account of this Property: NA
- (ix) Purchased in 2013 with Bernstein Group involvement
- (b) 875 Queen Street East (already subject of Receiver/Manager order)
  - (i) Shareholders: Dr. Bernstein through a holding company (50%), Ronauld and Norma Walton (50%)
  - (ii) Ownership: Red Door Developments Ltd.
  - (iii) Mortgagees: RioCan (approx. \$6.2mil)
  - (iv) Suppliers/Trades and Other Stakeholders: a 106 bed shelter for abused women and children, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
  - (v) Employees: None
  - (vi) Activity: Multiple offers to purchase have been received. The Walton Group has recommended that the Receiver/Manager negotiate these offers.
  - (vii) Monies used from the Don Mills Mortgages: None

- (viii) Monies Paid back on account of this Property: NA
- (ix) Purchased in 2013 with Bernstein Group involvement
- (c) 3270 American Drive
  - (i) Shareholders: Michael and Dr. Christine DeJong through a holding company (50%), Ronauld and Norma Walton (50%).
  - (ii) Ownership: United Empire Lands Ltd.
  - (iii) Mortgagees: Harbour Mortgage as first mortgagee (approx. \$5mil) and the vendor (CENVEO) is the second mortgagee (approx. \$630,000).
  - (iv) Suppliers/Trades and Other Stakeholders: The tenant CENVEO, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
- (v) Employees: None
- (vi) Activity: There are currently no offers to purchase or borrowings being negotiated.
- (vii) Monies used from the Don Mills Mortgages: None
- (viii) Monies Paid back on account of this Property: NA
- (ix) Purchased in 2012 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for this purchase came from the DeJong Family.

(d) 2 Kelvin Avenue

- (i) Shareholders: Ronauld and Norma Walton
- (ii) Ownership: 6195 Cedar Street Inc.
- (iii) Mortgagees: Variety Village (approx. \$1.8mil)
- (iv) Suppliers/Trades and Other Stakeholders: Cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers, general contractors, Toronto District School Board as a proposed tenant, existing tenants Orphan Black and St. Clair Ice cream.
- (v) Employees: None
- (vi) Activity: There are currently no offers to purchase or borrowings being negotiated.
- (vii) Monies used from the Don Mills Mortgages: \$200.00
- (viii) Monies Paid back on account of this Property: \$200.00
- (ix) Purchased in 2012. 2 Kelvin was purchased at the same time as 14 Trent. Some of the Bernstein funding for 14 Trent was used to purchase 2 Kelvin. As set out in Schedule B to the Inspector's Second Interim Report, 14 Trent owes Rose and Thistle approximately \$600,646.00, and therefore any Bernstein funds used in the purchase of 2 Kelvin have since been paid back to the Bernstein Group through contributions to 14 Trent.

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(e) 346 Jarvis Street

- (i) Shareholders: Ronauld and Norma Walton in trust for 1780355 Ontario Inc. The shareholders of 1780355 Ontario Inc. are Ronauld and Norma Walton and the Mintz Family.
  - (ii) Ownership: Ronauld and Norma Walton in trust for 1780355 Ontario Inc.
  - (iii) Mortgagees: 346 Jarvis consists of four separately titled townhouses. 346A and B both have Scotiabank as a mortgagee (collectively approx. \$1.2mil). 346E has Stephen Handelman as mortgagee (approx. \$650,000). 346F has Meridian Credit Union as mortgagee (approx. \$650,000).
  - (iv) Suppliers/Trades and Other Stakeholders: Each of the four townhouses has approximately four individual tenants per townhouse.
  - (v) Employees: None
- 
- (vi) Activity: There are currently no offers to purchase or borrowings being negotiated.
  - (vii) Monies used from the Don Mills Mortgages: \$5,400.00
  - (viii) Monies Paid back on account of this Property: \$5,400.00
  - (ix) Purchased in 2008 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The Funds for the purchase of this property came from the Walton Group.

(f) 3775 St. Clair Avenue East

- (i) The Walton Group purchased this property in approximately 2006 as a vacant piece of land and over three years built 17 individual townhouses. All 17 townhouses were sold to third party purchasers with sales closing in approximately 2009, hence the Walton Group has no further ownership in this property.
- (ii) Monies used from the Don Mills Mortgages: None
- (iii) Monies Paid back on account of this Property: NA
- (iv) Purchased in 2006 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from various investors (common shareholders).

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(g) 14/16 Montcrest Drive (incorrectly named 14/17 Montcrest)

- (i) The Walton Group purchased this property in approximately 2006 along with 646 Broadview. The Walton Group severed off two building lots from 646 Broadview and built two detached houses on those two lots. Third party purchasers purchased those houses in approximately 2008, hence the Walton Group has no further ownership in this property.
- (ii) Monies used from the Don Mills Mortgages: None
- (iii) Monies Paid back on account of this Property: NA

- (iv) Purchased in 2006 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from various investors (common shareholders).
- (h) 1 William Morgan Drive
  - (i) Shareholders: Ronauld and Norma Walton
  - (ii) Ownership: Cinderella Productions Ltd.
  - (iii) Mortgagees: First mortgagee is Equitable Trust (approx. \$2.7mil), and second mortgagee is Stephen Handelman (approx. \$1mil)
  - (iv) Suppliers/Trades and Other Stakeholders: Cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers, general contractors, Lenz Entertainment as a tenant, SPRINT non-profit seniors association as a tenant.
  - (v) Employees: None
  - (vi) Activity: The Walton Group intends to list this property for sale in January 2014 for approximately \$4.65 million, with net sale proceeds expected of approximately \$800,000.
  - (vii) Monies used from the Don Mills Mortgages: \$42,900.00
  - (viii) Monies Paid back on account of this Property: \$42,900.00

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(ix) Purchased in 2012 without Bernstein Group involvement other than as a mortgagee. The Bernstein Group has since been paid out the original mortgage and has no further interest in the property.

(i) 324 Prince Edward Drive

(i) Shareholders: Michael and Dr. Christine DeJong through a holding company (50%), Ronauld and Norma Walton (50%).

(ii) Ownership: Prince Edward Properties Ltd.

(iii) Mortgagees: Vendor CEP Union is the mortgagee (approx. \$1.3mil)

(iv) Suppliers/Trades and Other Stakeholders: The tenant CEP Union, Dr. May dental practice as a tenant, a marketing company as a tenant, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.

(v) Employees: None

(vi) Activity: There are currently no offers to purchase or borrowings being negotiated.

(vii) Monies used from the Don Mills Mortgages: None

(viii) Monies Paid back on account of this Property: NA

- (ix) Purchased in 2013 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). Funds for the purchase of this property came from the DeJong Family.

(j) 24 Cecil Street

- (i) Shareholders: Ronauld and Norma Walton as common shareholders and approximately 10 individual investors as preferred shareholders for the amount of approximately \$1.1 million.
- (ii) Ownership: Cecil Lighthouse Inc.
- (iii) Mortgagees: State Bank of India (approx. \$2.35mil)
- (iv) Suppliers/Trades and Other Stakeholders: Gilda's Club as tenant, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
- 
- (v) Employees: None
- (vi) Activity: The Walton Group intends to list this property for sale in January 2014 for approximately \$4 million, with net sale proceeds expected of approximately \$450,000 (after payment to preferred shareholders).
- (vii) Monies used from the Don Mills Mortgages: None
- (viii) Monies Paid back on account of this Property: NA

- (ix) Purchased in 2011 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). Funds for the purchase of this property came from both the Walton Group and Carlos Carreiro, the co-owner of the property. Mr. Carreiro has since sold his interest in the property to the Walton Group.

(k) 185 Davenport Road

- (i) The Walton Group purchased this property in approximately 2002 as a commercial building. The Walton Group converted the property into five condominiums and all condominiums have since been sold to third parties. The first four sales occurred in approximately 2005 and the final sale occurred in approximately 2010. The Walton Group has no further ownership in this property.

(ii) Monies used from the Don Mills Mortgages: None

(iii) Monies Paid back on account of this Property: NA

- (iv) Purchased in 2002 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group.

(l) 30 Hazelton Avenue

(i) Shareholders: Ronauld and Norma Walton

(ii) Ownership: Atala Investments Ltd.

- (iii) Mortgagees: First mortgagee is Laurentian Bank of Canada (approx. \$2.9mil), and the second mortgagee is Stephen Handelman (approx. \$750,000). Note these mortgages represent half of the blanket mortgage each mortgagee holds over both 30 and 30A Hazelton (i.e. for approx. \$5.8 million and \$1.5 million respectively).
- (iv) Suppliers/Trades and Other Stakeholders: Rose and Thistle Group as tenant, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
- (v) Employees: None
- (vi) Activity: Currently listed for sale for \$12 million for both 30 and 30A Hazelton. Also listed for lease.
- (vii) Monies used from the Don Mills Mortgages: \$18,250.00
- (viii) Monies Paid back on account of this Property: \$18,250.00
- (ix) Purchased in 2001 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group.
- (m) 30A Hazelton Avenue
  - (i) Shareholders: Ronauld and Norma Walton
  - (ii) Ownership: 30A Hazelton Inc.

- (iii) Mortgagees: First mortgagee is Laurentian Bank of Canada (approx. \$2.9mil), and the second mortgagee is Stephen Handelman (approx. \$750,000). Note these mortgages represent half of the blanket mortgage each mortgagee holds over both 30 and 30A Hazelton (i.e. for approx. \$5.8 million and \$1.5 million respectively).
- (iv) Suppliers/Trades and Other Stakeholders: Rose and Thistle Group as tenant on lower level, Israel Foulon as tenant on floors one to five, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
- (v) Employees: None
- (vi) Activity: Currently listed for sale for \$12 million for both 30 and 30A Hazelton. The lower level is listed for lease.

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- (vii) Monies used from the Don Mills Mortgages: None
- (viii) Monies Paid back on account of this Property: NA
- (ix) Purchased in 2001 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group.
- (n) 1246 Yonge Street
  - (i) The Walton Group purchased this property in approximately 2002 as a commercial building. The Walton Group converted the property into 28

condominiums and all condominiums have since been sold to third parties.

The first 23 sales occurred in approximately 2005 and the final five sales occurred in approximately 2008. The Walton Group has no further ownership in this property.

(ii) Monies used from the Don Mills Mortgages: None

(iii) Monies Paid back on account of this Property: NA

(iv) Purchased in 2002 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from various investors.

(o) 777 St. Clarens Avenue

(i) Shareholders: Michael and Dr. Christine DeJong through a holding company (50%), Ronauld and Norma Walton (50%).

(ii) Ownership: St. Clarens Holdings Inc. and Emerson Holdings Inc.

(iii) Mortgagees: Vendor (the Sorger Family) is the mortgagee (approx. \$1.3mil)

(iv) Suppliers/Trades and Other Stakeholders: The tenant Jomar Electrical, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.

(v) Employees: None

- (vi) Activity: There are currently no offers to purchase or borrowings being negotiated.
- (vii) Monies used from the Don Mills Mortgages: None
- (viii) Monies Paid back on account of this Property: NA
- (ix) Purchased in 2013 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the DeJong Family.
- (p) 17 Yorkville Avenue
  - (i) The Walton Group purchased this property in approximately 2006 as a commercial building. The Walton Group converted the property into six condominiums and all condominiums have since been sold to third parties. The six sales occurred in approximately 2009. The Walton Group has no further ownership in this property.
  - (ii) Monies used from the Don Mills Mortgages: None
  - (iii) Monies Paid back on account of this Property: NA
  - (iv) Purchased in 2006 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from various investors.

(q) 252 Carlton Street and 478 Parliament Street

- (i) Shareholders: Ronauld and Norma Walton as common shareholders and approximately 10 individual investors as preferred shareholders for the amount of approximately \$1.1 million.
  - (ii) Ownership: 1793530 Ontario Inc.
  - (iii) Mortgagees: Equitable Trust (approx. \$1.65mil)
  - (iv) Suppliers/Trades and Other Stakeholders: The Salvation Army as tenant, Dance Umbrella of Ontario as tenant, Ginger Restaurant as tenant, Johnny Gs Restaurant as tenant, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
  - (v) Employees: None
- 
- (vi) Activity: The Walton Group has conditionally sold this property for \$3.1 million, with the sale closing expected January 31, 2014, assuming the purchaser waives his conditions before December 25, 2013. The Walton Group is expecting net sale proceeds in the amount of \$250,000.
  - (vii) Monies used from the Don Mills Mortgages: None
  - (viii) Monies Paid back on account of this Property: NA

- (ix) Purchased in 2008 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group.
- (r) 19 Tennis Crescent
  - (i) The Walton Group purchased this property in approximately 2009 as an eight-plex residential building. The Walton Group sold the property in approximately 2011. The Walton Group has no further ownership in this property.
  - (ii) Monies used from the Don Mills Mortgages: None
  - (iii) Monies Paid back on account of this Property: NA
  - (iv) Purchased in 2009 without Bernstein Group involvement other than perhaps as a mortgagee. To the extent that any mortgage was given, the Bernstein Group has since been paid out their original mortgage and the Bernstein Group does not have any further interest in the property.
- (s) 66 Gerrard Street East
  - (i) Shareholders: Ronauld and Norma Walton
  - (ii) Ownership: Gerrard Church 2006 Inc.
  - (iii) Mortgagees: First mortgagee is Penmor (approx. \$4.25mil), and the second mortgagee is Eric Silverberg (approx. \$1.35mil).

- (iv) Suppliers/Trades and Other Stakeholders: Approximately ten tenants including Starbucks, Zteca and Hassle-Free Clinic and various professional offices, one residential tenant, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
  - (v) Employees: None
  - (vi) Activity: This property is listed for sale and the Walton Group is negotiating an offer to purchase by the Conservatory Group for \$6.25 million, with expected net proceeds of \$800,000. The Walton Group has proposed a closing date of February 28, 2014.
  - (vii) Monies used from the Don Mills Mortgages: \$17,650.00
  - (viii) Monies Paid back on account of this Property: \$17,650.00
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- (ix) Purchased in 2010 without Bernstein Group involvement other than as mortgagee. The Bernstein Group has since been paid out their mortgage and has no remaining interest on this property. The funds for the purchase of this property came from the Walton Group and various investors who have since sold their interest in the property to the Walton Group.
  - (t) 646 Broadview Avenue
  - (i) The Walton Group purchased this property in approximately 2006. The Walton Group severed off two building lots to create 14 and 16 Montcrest (mentioned above). The Walton Group transferred their 50% interest in

the property to the co-owners (my parents) on September 3, 2013, hence the Walton Group has no further ownership in this property.

- (ii) Monies used from the Don Mills Mortgages: None
- (iii) Monies Paid back on account of this Property: NA
- (iv) Purchased in 2006 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property were from the Walton Group and my parents along with various investors. The various investors sold their interest to the Walton Group. The Walton Group has since sold its investment to my parents.
- (u) 14 College Street
  - (i) Shareholders: Ronauld and Norma Walton
  - (ii) Ownership: College Lane Ltd.
  - (iii) Mortgagees: First mortgagee is Rocco Marcello (approx. \$5mil), Stephen Handelman as second mortgagee (approx. \$750,000), and Eric Silverberg as third mortgagee (approx. \$1.35mil). Note that Eric Silverberg also has a second mortgage against 66 Gerrard (above) for the same \$1.35 million.
  - (iv) Suppliers/Trades and Other Stakeholders: Main Drug Mart as tenant along with various doctor subtenants, cleaners, maintenance people, HVAC

suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.

(v) Employees: None

(vi) Activity: The Walton Group intends to list this property for sale in January 2014.

(vii) Monies used from the Don Mills Mortgages: None

(viii) Monies Paid back on account of this Property: NA

(ix) Purchased in 2011 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property were from the Walton Group and Windsor Bancorp (with a mortgage that has since been discharged).

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(v) 26 Gerrard Street East

(i) Shareholders: Ronauld and Norma Walton

(ii) Ownership: Gerrard House Inc.

(iii) Mortgagees: First mortgagee is ROI Capital (approx. \$4.2mil), and second mortgagee is the vendor, Ronald McDonald House (approx. \$750,000)

(iv) Suppliers/Trades and Other Stakeholders: Cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and

landscaping, property managers, general contractors, Sterling Group Hotels as tenants.

- (v) Employees: None
  - (vi) Activity: The Walton Group is negotiating with the Sterling Group an agreement of purchase and sale with closing in 2014.
  - (vii) Monies used from the Don Mills Mortgages: \$2,600.00
  - (viii) Monies Paid back on account of this Property: \$2,600.00
  - (ix) Purchased in 2012 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group.
- (w) 3 Post Road
- 

- (i) The Walton Group and the DeJong Family purchased this property in approximately 2006 along with 2 Park Lane. The Walton Group severed off 2 building lots and sold those lots to third parties in approximately 2008. The Walton Group has no further ownership in this property.
- (ii) Monies used from the Don Mills Mortgages: None
- (iii) Monies Paid back on account of this Property: NA
- (iv) Purchased in 2006 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The

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funds for the purchase of this property came from the Walton Group and the DeJong Family.

(x) 2 Park Lane

(i) The Walton Group and the DeJong Family purchased this property in approximately 2006 along with 3 Post Road. The Walton Group severed off 2 building lots and sold those lots to third parties in approximately 2008. The Walton Group has no further ownership in this property.

(ii) Monies used from the Don Mills Mortgages: None

(iii) Monies Paid back on account of this Property: NA

(iv) Purchased in 2006 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group and the DeJong Family.

(y) 2454 Bayview Avenue

(i) Shareholders: Ronauld and Norma Walton as common shareholders and approximately 10 individual investors as preferred shareholders for the amount of approximately \$2.4 million.

(ii) Ownership: Academy Lands Ltd.

(iii) Mortgagees: The mortgagee is BDC (approx. \$6.2mil),

- (iv) Loans: Brian and Diane Johnson (approx. \$1.6mil)
  - (v) Suppliers/Trades and Other Stakeholders: The Junior Academy as tenant, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.
  - (vi) Employees: None
  - (vii) Activity: The Walton Group intends to list this property for sale in January 2014 for approximately \$11 million, with net sale proceeds expected of approximately \$1.35 million (after payment to preferred shareholders).
  - (viii) Monies used from the Don Mills Mortgages: \$54,000.00
  - (ix) Monies Paid back on account of this Property: \$54,000.00
  - (x) Purchased in 2012 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group and the Johnson Family (through the loan mentioned above).
- 
- (z) 319 Carlaw, Suite 107 (incorrectly identified as 321 Carlaw)
    - (i) Shareholders: Ronauld and Norma Walton
    - (ii) Ownership: Carlaw Corner Corp.
    - (iii) Mortgagees: The mortgagee is 368230 Ontario Limited, a Bernstein Group related company (approx. \$220,000)

- (iv) Suppliers/Trades and Other Stakeholders: None
  - (v) Employees: None
  - (vi) Activity: This property is listed for sale for approximately \$289,000.
  - (vii) Monies used from the Don Mills Mortgages: \$2,900.00
  - (viii) Monies Paid back on account of this Property: None
  - (ix) Purchased in 2013 without Bernstein Group involvement other than as mortgagee (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group.
- (aa) 231-235 King St. East
- (i) The Walton Group purchased this property in approximately 2013 with co-investors. The Walton Group began renovating the property and subsequently transferred ownership to the co-owners on approximately December 4, 2013. The Walton Group no longer has any interest in this property. The Walton Group suffered a loss of approximately \$250,000 on the transfer.
  - (ii) Monies used from the Don Mills Mortgages: \$91,450.00
  - (iii) Monies Paid back on account of this Property: \$91,450.00

- (iv) Purchased in 2013 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group and the co-owners who have since purchased the Walton Group's interest.

(bb) 44 Park Lane

- (i) Shareholders: None
  - (ii) Ownership: Ronauld and Norma Walton
  - (iii) Mortgagees: First mortgagee is Home Trust (approx. \$5mil), and the second mortgagee is Stephen Handelman (approx. \$3mil)
  - (iv) Monies used from the Don Mills Mortgages: \$460,000.00
  - (v) Monies Paid back on account of this Property: \$460,000.00
- 
- (vi) Purchased in 2012 without Bernstein Group involvement (i.e. no funding from the Bernstein Group was used for the purchase of the property). The funds for the purchase of this property came from the Walton Group (the particulars of which are discussed in further detail below).

21. As is evidenced in the above list, I personally do not own any property directly (other than my home at 44 Park Lane). All property is owned by companies in which I and others own shares.

22. Any Certificates of Pending Litigation will negatively affect these Other Properties. The imposition of these certificates will put existing mortgages in default. Plainly

this will have a knock on effect forcing me to lose the properties or sell them. A reasonable market price will be difficult to obtain in these circumstances. My ability to fund the Bernstein portfolio of properties or meeting other obligations, such as payroll, through borrowing or sales will therefore be greatly reduced or eliminated. My business depends on my ability to sell or borrow against any and all properties on a rolling basis in order to fund projects and meet the various obligations set out above. An order as requested by Dr. Bernstein will have a major negative impact on the financial security of the various stakeholders listed above. This will have added impact on my present plight where investors in the Other Properties wish to be paid out of their investment as a result of the findings in this litigation.

#### **44 Park Lane**

23. The Bernstein Group alleges that the Walton Group used funds from the Bernstein Group to purchase 44 Park Lane (my family home) and to make various renovations to Park Lane (through the so-called Tisdale account). These allegations are dealt with below.

24. The funds for the purchase of 44 Park Lane came from the Walton Group. The Walton Group secured the funds necessary to purchase 44 Park Lane by developing another property, namely 875 Queen. The Walton Group, in partnership with the Red Door Shelter, entered into a contract to purchase 875 Queen for \$4.5 million in June 2011. Over the course of the following 12 months, the Walton Group developed the Red Door project (as detailed in my October 31, 2013 Affidavit). By June 30, 2012, the value of 875 Queen was approximately \$6.6 million. In June 2012, Dr. Bernstein bought into the 875 Queen Street property at the increased value. Dr. Bernstein invested approximately \$2.5 million in exchange for shares in Red Door Developments, the corporation that owns 875 Queen. Dr. Bernstein became a joint owner in Red Door Developments at that time. Unlike most of the other properties developed in the joint

portfolio, in this case, Dr. Bernstein bought into the Red Door project a year after the Walton Group did at an agreed upon valuation, and thereby the Walton Group was entitled to the increase in value they created over that year. Ronauld and I used the proceeds to purchase our family home.

25. With respect to the allegations that the Walton Group used the Tisdale account to make renovations to 44 Park Lane, the Walton Group responds as follows. As detailed in my October 31, 2013 Affidavit, the Walton Group purchased 78 Tisdale in 2010. The holding company for 78 Tisdale is Tisdale Mews Inc. The purchase price for 78 Tisdale in 2010 was \$1.575 million. Between 2010 and 2012, the Walton Group developed the 78 Tisdale project, increasing the value of the property to approximately \$6.4 million. The Walton Group achieved this increased value by working with planners and the City to rezone and site-plan approve the vacant industrial land into a residential townhouse complex. The Walton Group also addressed the environmental contamination issues on the property with the Ministry of the Environment. In late 2011, the Walton Group obtained two independent offers to purchase the 78 Tisdale property for an average price of approximately \$6.4 million. Rather than accept the independent offers, the Walton Group sold a 50% interest in the 78 Tisdale project to Dr. Bernstein (with the intention of building the townhouse complex). As with 875 Queen, Dr. Bernstein bought into the Tisdale project two years after the Walton Group did at an agreed upon valuation, and thereby the Walton Group was entitled to the increase in value they created over that two year period.

26. Prior to Dr. Bernstein's involvement in the 78 Tisdale project and him becoming a 50% owner in Tisdale Mews, the Walton Group used Tisdale Mews for various business transactions unrelated to 78 Tisdale. After Dr. Bernstein became a 50% owner in Tisdale Mews, the Walton Group continued to use Tisdale Mews for business transactions unrelated to 78

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Tisdale. In all such instances where the Walton Group used Tisdale Mews and its bank accounts for transactions unrelated to 78 Tisdale, the Walton Group always fully covered all such funds, without exception (i.e. transferred into the 78 Tisdale Mews account funds at least equal to those used for business unrelated to the 78 Tisdale property). The Bernstein Group complains that funds were used from the Tisdale Mews account to make certain payments for renovations to 44 Park Lane. The Walton Group did use the Tisdale Mews account in this regard, but first transferred amounts to the Tisdale Mews account from the Rose and Thistle account. At no time was Dr. Bernstein's money used to pay for renovations to 44 Park Lane. Copies of Tisdale Mews Inc.'s bank statements from June, 2012 to August, 2013 are attached hereto as Exhibit C. These bank statements record a number of significant deposits into the account from Tisdale Mews into The Rose and Thistle Group account.

27. The Tisdale Mews Inc. corporation has a positive net transfer from Rose and Thistle Group of \$2,244,914, as per appendix A to the Second Interim Report of the Inspector.

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### **232 Galloway Road and 65 Front Street**

28. The Bernstein Group seeks an order that 232 Galloway Road and 65 Front Street be added to the Receiver/Manager order. Dr. Bernstein is not an owner of these properties nor is he a shareholder in a holding company that owns these properties. The Bernstein Group seeks this order solely on the basis that a non-party company, namely 368230 Ontario Limited, allegedly owned by Dr. Bernstein, is a mortgagee with respect to these properties. I understand it to be common ground that Dr. Bernstein does not have a right to appoint a receiver/manager over these properties pursuant to the mortgage agreements.

29. With respect to 232 Galloway Road, the Walton Group purchased this property in approximately 2008 as a vacant piece of land and over three years built 16 individual

townhouses. This property was purchased before the Walton Group and the Bernstein Group began doing business together. None of the funds used to purchase 232 Galloway were from the Bernstein Group. All 16 townhouses were sold to third party purchasers with sales closing in approximately 2012, hence the Walton Group has no further ownership in this property. It is also alleged that 232 Galloway Road received \$15,100 of the approximately \$2.1 million in Don Mills mortgages alleged to have been improperly taken. The \$15,100 complained of was paid to 368230 Ontario Limited on account of the loan. The Walton Group continues to make monthly interest on the loan.

30. With respect to 65 Front Street East, the particulars are as set out below:

- (i) Shareholders: Ronauld and Norma Walton own the common shares and there are approximately 30 preferred shareholders who collectively own approximately \$3.25 million worth of preferred shares
- (ii) Ownership: Front Church Properties Limited
- (iii) Mortgagees: First mortgagee is Alterna (approx. \$5.8mil), and the second mortgagee is 368230 Ontario Limited, a Bernstein Group related company (approx. \$2.5mil).
- (iv) Suppliers/Trades and Other Stakeholders: Approximately ten tenants including Second Cup, two law firms, one marketing firm, a convenience store and an art gallery, cleaners, maintenance people, HVAC suppliers, electricians, plumbers, contractors, snow removal and landscaping, property managers.

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(v) Employees: None

(vi) Activity: This property is listed for sale and the Walton Group is negotiating an offer to purchase by the Conservatory Group for \$12 million, with net proceeds sufficient to pay back all stakeholders. The Walton Group has proposed a closing date of February 28, 2014.

31. 65 Front was purchased in September 2006, more than two years before the Bernstein Group and the Walton Group began doing business together. None of the funds used to purchase 65 Front were from the Bernstein Group. It is alleged that 65 Front Street received \$361,750 of the approximately \$2.1 million in Don Mills mortgages alleged to have been improperly taken. The Walton Group will repay this money upon the closing of the intended sale noted above.

32. As a result of this litigation, the Walton Group had intended to raise funds to discharge 368230 Ontario Limited's mortgage on the 65 Front property. The Walton Group obtained a term sheet with Stephen Handelman for this purpose with closing expected November 22, 2013. The term sheet is attached to this Affidavit as Exhibit D. The Receiver/Manager sent Stephen Handelman a copy of the November 5, 2013 endorsement of Justice Newbould and a copy of the issued Receiver/Manager order also dated November 5, 2013. As a direct result, Stephen Handelman advised he could not provide the financing.

### **Equity Investments**

33. As I describe in paragraphs 4 to 9 of this Affidavit and in my Affidavit of October 31, 2013, Dr. Bernstein knew and understood that the Walton Group would pay monies into the joint portfolio as and when they were needed and subject to the Walton Group's ability to

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refinance properties or sell properties both within the Bernstein Group of properties and properties which the Walton Group owned with other individuals or alone. Dr. Bernstein knew that the Walton Group's financial capacity to make payments was therefore limited. Dr. Bernstein also allowed me a free hand to choose what properties I refinanced and sold. The agreement contemplated the consent of Dr. Bernstein. The process contemplated in the contracts of obtaining consents prior to initiating and executing on individual transactions was almost never invoked by Dr. Bernstein until September of this year. In virtually all circumstances I informed Dr. Bernstein of what had transpired either before or after the transaction was negotiated or closed. Dr. Bernstein never questioned any transaction.

34. Regarding the Don Mills mortgages, I informed Dr. Bernstein of those mortgages on September 14, 2013, by way of emails.

35. The Bernstein Group seeks an order that my husband and I make equity investments "as required by the agreements in respect of the Schedule B Companies". As detailed in my affidavit of October 31, 2013, it was always understood that the Walton Group's equity contributions in the Schedule B Companies would be in large part a contribution based on work product and as set out above. It was never contemplated that Ronauld and I would match the cash infusions that Dr. Bernstein made and was able to make (in the amount of \$80 million). This process worked successfully and profitably until the appointment of the Receiver/Manager. The request for equity contributions is therefore a fundamental change in the operation of the joint portfolio. It is made after the Receiver/Manager order has been made and the negative publicity has eliminated my ability to raise funds.

36. The Walton Group's contributions have been made, in part, in the form of work that Rose and Thistle has performed, billed for, and not been paid for. The amount due to Rose and Thistle on account of unpaid invoices in respect of the joint portfolio is approximately \$10,332,826 (as set out in Appendix A to the Second Interim Report of the Inspector dated October 31, 2013).

37. In addition, the Walton Group has invested in the joint portfolio in the form of cash infusions. The Walton Group paid \$352,900 as of October 31, 2013 (as set out in Appendix B to the Second Interim Report of the Inspector dated October 31, 2013) and made debt contributions in the form of shareholder loans in the amount of \$1,797,708 (as set out in Appendix B to the Second Interim Report of the Inspector dated October 31, 2013), for a total equity and shareholder loan interest in the joint portfolio of \$2,150,608 as of October 31, 2013 (as set out in Appendix B to the Second Interim Report of the Inspector dated October 31, 2013). The major equity and shareholder loans that the Walton Group contributed are as follows: ~~\$350,000 on account of Twin Dragons Corporation, \$11,351 on account of Liberty Village Properties Ltd., \$684,682 on account of Fraser Properties Corp., and \$1,101,675 on account of Weston Lands Ltd.~~ Note that as the Receiver/Manager continues to review accounts with the Walton Group, the Receiver/Manager has been able to confirm additional equity/shareholder loan contributions of the Walton Group beyond those noted in his Second Interim Report. Specifically, \$190,000 with respect to Cityview Industrial Ltd., \$100,000 with respect to Skyway Holdings Ltd, \$120,000 with respect to Royal Gate Holdings Ltd., \$25,000 with respect to Lesliebrook Holdings Ltd., \$43,307 with respect to Lesliebrook Lands Ltd., and \$414,347 with respect to Royal Agincourt Corp., for a total of \$892,654. This brings the total

equity/shareholder loan contributions by the Walton Group to \$3,043,262. Further amounts will be reviewed and be confirmed as the Receiver/Manager has time to complete this exercise.

38. At the time that the Don Mills mortgages were taken out, the \$3,043,262 recognized by the Receiver/Manager (which amounts represents only those equity/shareholder loans confirmed by the Receiver/Manager to date) was already paid by Walton Group into the joint portfolio, and therefore the Walton Group was borrowing against its own equity investment in the joint portfolio at the time the Don Mills mortgages were taken out.

39. Further, since October 31, 2013, the Walton Group has invested the following additional amounts into the joint portfolio: \$172,250 (for the period from October 17, 2013 to November 4, 2013) and \$710,250 (for the period from November 5, 2013 to present day). Attached hereto is a chart setting out these amounts, marked as Exhibit E. This exhibit was prepared by the Inspector as of December 16, 2013. The sums above are in addition to the \$692,450 the Walton Group paid to Donalda Development Ltd. pursuant to the Direction dated November 6, 2013, discussed in further detail below.

40. In any event, as set out above in this Affidavit, other than our home at 44 Park Lane, my husband and I do not own property, but rather we own shares in companies that own properties.

### **Secured Interest**

41. The Bernstein Group also seeks an order that the shareholder loans provided by the Bernstein Group to the Schedule B Companies be registered on title of the Schedule B Properties as a secured charge, ranking in second priority to any existing charges.

42. Putting further secured interests on the Schedule B Properties will make the Schedule B Properties less attractive in the marketplace, further impeding the Receiver/Manager's ability to obtain the best price for each property. In addition, this will put the Schedule B Companies in default of mortgages already in place. Finally, Dr. Bernstein's amounts should not rank in priority to other trade creditors' and suppliers' claims.

### **Full Accounting**

43. The Bernstein Group alleges that I have failed to provide a "full accounting". I have provided all information/documentation to the Receiver/Manager. I have given him the QuickBooks Accounts and bank statements for all 31 entities and the Rose and Thistle Group, and ongoing online banking and QuickBooks access for all 31 entities. The Receiver/Manager provided reports based on this information. It was my understanding that in doing so, I was meeting the requirements for a "full accounting" as set out in the order. The Receiver/Manager is in possession and control of all financial documents held by the Walton Group in relation to the Schedule B Companies, and all documents related to the Rose and Thistle Group have been provided to him. The Walton Group has only some of that material now, mostly electronically.

### **Direction to Devry Smith Frank LLP**

44. The Bernstein Group complains that the Direction that I gave to Devry Smith Frank LLP on November 6, 2013 was not the same as the draft Direction presented to the court on November 1, 2013. The main differences between the draft Direction and the Final Direction is that the Final Direction did not discharge the amount payable on account of companies Highland Creek (\$15,100), Front Church Properties Limited (\$361,750), and Carlaw Corner Corp (\$2,900), or approximately \$380,000 in total.

45. I knew that the Bernstein Group were seeking Certificates of Pending Litigation on any property which received funds from the Don Mills mortgages. It was in my personal interest therefore to pay whatever monies were available back to Donalda Developments Limited to avoid any future risk of a Certificate of Pending Litigation on my non-Bernstein properties. I therefore made the repayments despite the fact that I believe that I had a colour of right to take out the Don Mills mortgages and use the proceeds as I did. I paid back whatever monies I could to Donalda Developments but had to change the payment direction in order to protect the joint portfolio from mortgage debts and to pay Devry Smith and Frank LLP's fees as indicated below. I made the Final Direction without consulting my husband or any other person, except Devry Smith and Frank LLP.

46. There were various reasons the Walton Group changed the Direction. First, upon reading the November 5, 2013 endorsement, Devry Smith Frank LLP demanded full payment of their account, totalling \$131,432.87, the bulk of which related to the joint portfolio. Therefore the amount paid to Devry Smith Frank LLP was a further Walton Group contribution to the joint portfolio. Secondly, the Walton Group knew that the joint portfolio would have other immediate pressing needs requiring cash infusions. Monies were therefore held back to meet those needs. As detailed above, the Walton Group has put in the following additional amounts into the joint portfolio: \$172,250 (for the period from October 17, 2013 to November 4, 2013) and \$710,250 (for the period from November 5, 2013 to present day). These amounts are in addition to the \$692,450.00 that was paid into the joint portfolio as a result of the Final Direction dated November 6, 2013.

**Response to Allegations in James Reitan's December 10, 2013 Affidavit**

47. James Reitan makes further various allegations in his December 10, 2013 affidavit. Each of those allegations are addressed below:

(a) at paragraph 2(b) and 10 of his Affidavit, Mr. Reitan complains that the Walton Group has failed to repay the outstanding principal amounts on mortgages held by Dr. Bernstein's company (368230 Ontario Limited) which terms have expired. There are 5 properties in issue:

- (i) 65 Front Street, which is dealt with above;
- (ii) 47 Jefferson. The Walton Group has secured a letter of intent from Pencor, the lender for 32 Atlantic, for a \$2.2 million mortgage that would replace 368230 Ontario Limited's \$2 million mortgage on this property. This offer has been forwarded to the Bernstein Group, both before the Receiver/Manager order was put in place, and after the order was put in place. The Bernstein Group has yet to confirm if they want to pursue this option;
- (iii) 450 Pape. Prior to the Receiver/Manager order, the Walton Group met with Firm Capital to obtain a commitment to refinance 450 Pape. After the Receiver/Manager was put in place, the Walton Group was no longer able to pursue the refinancing;
- (iv) 1,9/11 Cityview. This property has been conditionally approved for severance. The conditions include the payment of 2013 property taxes. The Receiver/Manager is currently attempting to close the sale 9 and 11

Cityview for \$3.2 million. 368230 Ontario Limited has \$4.65 in mortgages against 1 and 9/11 Cityview together. Prior to the Receiver/Manager being put in place, the Walton Group and the Bernstein Group had agreed that Dr. Bernstein's company would receive \$2 million in principal payment on the sale of 9 and 11 Cityview, and would keep its \$2.65 million in place against 1 Cityview (worth approximately \$5 million). Prior to the Receiver/Manager being put in place, the Walton Group had also secured a commitment from Atrium Mortgages for \$2.8 million to pay out Dr. Bernstein's company in full, but Dr. Bernstein declined to agree to proceeding in this manner. After the Receiver/Manager was put in place, Dr. Bernstein refused to proceed as agreed, and insists on the Walton Group paying all construction lien amounts (approximately \$1 million) so that the Bernstein Group can be paid out all net proceeds from the sale of 9/11 Cityview. The Walton Group does not have the funds to discharge the construction liens, nor was it ever expected that Dr. Bernstein would receive 100% of the net proceeds of sale of 9/11 Cityview. Dr. Bernstein's new demands are putting at risk the severance and the sale. Note that the liens on the property relate to construction work done by third parties to allow the tenant at 1 Cityview to begin tenancy and paying rent. The Bernstein Group was aware of this work. In one instance, payment via post-dated cheque was made, and subsequently stop-paid by The Rose and Thistle Group as a result of the October 4, 2013 order in the within proceeding (i.e. it was for an amount over \$50,000).

- (v) 232 Galloway. Dr. Bernstein's company does not have a mortgage on 232 Galloway. The specifics of 232 Galloway are dealt with above;
- (b) at paragraph 2(c) of his Affidavit, Mr. Reitan complains the Walton Group has not paid back the Don Mills Mortgages. As detailed above, of the \$2.1 million diverted from the joint portfolio, approximately \$692,450 has been paid back to Donalda Developments Limited, and the additional amounts allegedly owing on account of the \$2.1 million will be paid back as soon as possible. For example, and as noted above, an additional \$361,750 will be paid back if/when the sale of 65 Front closes;
- (c) at paragraphs 4-9 of his Affidavit, Mr. Reitan complains that the mortgages have not been discharged as set out in my October 31, 2013 Affidavit. As noted above, the Walton Group had made arrangements to pay out the mortgages prior to the Receiver/Manager order being in place. Initially, as a result of the lack of response from the Bernstein Group, and subsequently as a result of the Receiver/Manager order, the Walton Group has not been in a position to move forward;
- (d) at paragraphs 11 to 15 of his Affidavit, Mr. Reitan complains about the 1, 9/11 Cityview deal. Mr. Reitan is mistaken in his characterization of the deal. The details of the Cityview deal are as set out above;
- (e) at paragraphs 16 to 19 of his Affidavit, Mr. Reitan complains about the Final Direction. The Final Direction is dealt with in detail above;

- (f) in paragraph 18(d) of his Affidavit, Mr. Reitan attempts to connect the \$460,000 that the Walton Group paid back to Donalda Developments Limited on account of the Don Mills mortgages with the sums paid out to Ronauld and I personally as also set out in the same Final Direction (in the amounts of \$300,000 and \$223,873.14). To clarify, these are separate payments, and all monies set out in the Final Direction were raised by the financing placed on 30 and 30A Hazelton, being a fully Walton Group owned property (i.e. not a Bernstein Group property);
- (g) at paragraph 20 of his Affidavit, Mr. Reitan attempts to connect the \$268,104.57 that he alleges Tisdale Mews paid to 44 Park Lane with the losses projected with respect to the sale of the Tisdale property. These amounts are totally unrelated. As dealt with above, the \$268,104.57 paid from Tisdale to Park Lane was fully funded by the Walton Group;
- (h) at paragraph 25 of his Affidavit, Mr. Reitan insinuates that \$22 million was perhaps diverted from the Schedule B Companies. There has been no diversion of \$22 million. As per Exhibit A to the Second Interim Report of the Inspector, The Rose and Thistle Group has billed \$34,587,390 (inclusive of HST) related to work done for the joint portfolio, \$10,332,826 of which has not yet been paid to Rose and Thistle. The \$22 million referred to involves the payment of invoices;
- (i) at paragraph 26 of his Affidavit, Mr. Reitan complains that the Walton Group has not filed corporate tax returns on behalf of the Schedule B Companies. The Walton Group was working on corporate tax returns when this litigation was

commenced. Regarding property tax payments, there are some amounts owing for 2013;

- (j) at paragraph 27 of his Affidavit, Mr. Reitan complains that the Walton Group has not provided an accounting or backup documentation to substantiate Rose and Thistle Group invoices. The allegations with respect to the accounting are dealt with above. With regards to the backup documentation to substantiate the invoices, the Walton Group has provided, and the Inspector has accepted, the backup documentation with respect to the management fees for all properties, along with the backup documentation related to Tisdale and Red Door. The total amount confirmed is approximately \$8.675 million of the invoices on account of Tisdale and Red Door and approximately \$965,938 in management fees (as set out in Exhibit A to the Inspector's Second Interim Report). The Walton Group has hired Intrepid Quantity Surveyors to assist the Walton Group in providing the balance of backup but the Receiver/Manager has not had an opportunity to deal with further backup because he has been spending his time performing his Receiver/Manager responsibilities;

- (k) at paragraphs 3 and 29 to 33 of his Affidavit, Mr. Reitan complains that the Walton Group continues to act unilaterally contrary to the Receiver/Manager order. The Walton Group has fully complied with the Receiver/Manager order. Any offers to purchase that have been brought to the Walton Group have been forwarded directly to the Receiver/Manager for consideration. With respect to allegations that the Rose and Thistle Group website continued to show Schedule B properties for lease and sale, this is true, as historically it has been the Rose and

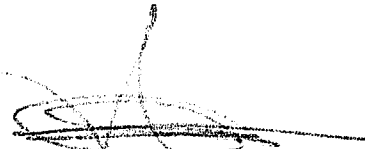
Thistle Group's practice to advertise sales of properties on its website. Upon being advised by the Receiver/Manager that the advertisements should be taken off the website, The Rose and Thistle Group did so. All inquiries with respect to purchasing were forwarded directly to the Receiver/Manager; and

- (l) at paragraphs 34 to 38 of his affidavit, Mr. Reitan makes certain allegations with respect to the purchase of 44 Park Lane. The purchase of 44 Park Lane has been dealt with in detail above.

SWORN BEFORE ME at the City of )  
Toronto, in the Province of Ontario, this )  
17th day of December 2013 )

A Commissioner for taking Affidavits, etc. )


*Emmeline Mors*



NORMA WALTON

## **EXHIBIT “C”**



This is Exhibit <sup>15</sup> C <sup>07</sup> referred to in the 109  
affidavit of Norma Walton  
sworn before me, this 5<sup>th</sup>  
day of January 2014  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

RE: LETTER OF INTENT TO PURCHASE THE FOLLOWING PROPERTIES (THE  
"PROPERTIES")

1. 1500 Don Mills Road, Toronto, Ontario
2. 1450 Don Mills Road, Toronto, Ontario
3. 7-15 Fraser Avenue, Toronto, Ontario
4. 30 Fraser Avenue, Toronto, Ontario
5. 1131A Leslie Street, Toronto, Ontario
6. 165 Bathurst Street/ 620 Richmond Street West, Toronto, Ontario
7. 1 Royal Gate Boulevard, Vaughan, Ontario
8. 5770-5780 Highway 7 West, Vaughan, Ontario
9. 32 Atlantic Avenue, Toronto, Ontario
10. 47 Jefferson Avenue, Toronto, Ontario
11. 241 Spadina Avenue, Toronto, Ontario
12. 18 Wynford Drive, Toronto, Ontario
13. 1185 Eglinton Avenue East, Toronto, Ontario
14. 1485 Dupont Street, Toronto, Ontario
15. 295 The West Mall, Toronto, Ontario
16. 1 City View Drive, Toronto, Ontario
17. 355 Weston Road, Toronto, Ontario
18. 140 and 150 Queen's Plate Drive, Toronto, Ontario
19. 14 Dewhurst Blvd, Toronto, Ontario
20. 153 Eddystone Avenue, Toronto, Ontario
21. 450 Pape Avenue, Toronto, Ontario
22. 0 Trent Avenue, Toronto, Ontario
23. 3765 St. Clair Avenue East, Toronto, Ontario
24. 1003 Queen Street East, Toronto, Ontario

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On behalf of EVTON CAPITAL PARTNERS LTD., or its assigns, (the "Purchaser") Colliers International ("Colliers") hereby submits to SCHONFELD INC. THE COURT APPOINTED MANAGER and to RON AND NORMA WALTON AND DR. STANLEY BERNSTEIN AS BENEFICIAL OWNERS OF THE PROPERTIES (the "Vendor") this Non-Binding Letter of Intent (the "Letter of Intent") to set out the following terms and conditions to be included, among others, in a formal agreement of purchase and sale for the Properties as described in paragraph 4 herein (the "Agreement of Purchase and Sale").

1. **Properties**

See Schedule A for full descriptions (subject to verification by the Purchaser).

2. **Purchase Price & Purchase Terms**

The Purchase Price for the Properties shall be Three Hundred Million Dollars (\$300,000,000.00) all cash, subject to the mortgage assumptions and adjustments referred to herein, (the "Purchase Price"), payable as follows:

- (a) As part of the Purchase Price, the sum of One Million Dollars (\$1,000,000.00) (the "First Deposit") shall be paid by the Purchaser by cheque or bank draft to the Vendor's solicitor, in trust, representing the First Deposit within two (2) business days after mutual execution by the parties of the Agreement of Purchase and Sale. The First Deposit shall be held by the Vendor's solicitor in trust in accordance with the terms of the Agreement of Purchase and Sale;
- (b) As part of the Purchase Price, the sum of One Million Dollars (\$1,000,000.00) (the "Second Deposit") shall be paid by the Purchaser by cheque or bank draft to the Vendor's solicitor, in trust, representing the Second Deposit within two (2) business days after waiver by the Purchaser of its Purchaser's Condition included in the Agreement of Purchase and Sale. The Second Deposit shall be held by the Vendor's solicitor in trust in accordance with the terms of the Agreement of Purchase and Sale;
- (c) The Purchaser shall make arrangements, upon terms satisfactory to the Purchaser in its sole and unfettered discretion during the Due Diligence Period, to assume first mortgages on the following properties: 1500 Don Mills Road, Toronto, Ontario; 241 Spadina Avenue, Toronto, Ontario; 1131A Leslie Street, Toronto, Ontario.
- (d) The Purchaser shall pay the balance of the Purchase Price on closing, subject to the adjustments provided in the Agreement of Purchase and Sale, by wire transfer to be drawn on a Schedule "I" Canadian chartered bank using the large value transfer system.
- (e) The Vendor's solicitor is hereby irrevocably authorized and shall invest the First Deposit (upon execution of the Agreement of Purchase and Sale) and the Second Deposit (collectively the "Deposit") as directed by the Purchaser in an interest bearing term certificate or trust account of a Schedule "I" Canadian bank pending the Closing Date outlined in Section 7, or sooner termination of the Agreement of Purchase and Sale and to hold the Deposit in accordance with the provisions of the Agreement of Purchase and Sale;

- (f) The Deposit, together with all interest earned thereon, shall be held by the Vendor's solicitor pending completion of the transaction contemplated by, or earlier termination of, the Agreement of Purchase and Sale, and shall be credited against the Purchase Price and paid to the Vendor on Closing.

### 3. Deliveries

Upon mutual acceptance by the parties of this Letter of Intent, the Vendor shall make available to the Purchaser the following documents, if in its possession (the "Deliveries"):

- (a) All leases and all lease summaries, if any, for the Properties;
- (b) AutoCAD format as-built drawings and all other plans and specifications for the Properties, if available otherwise, hard copies of same, if available;
- (c) All environmental, roof, structural or other consultants reports related to the physical condition of the Properties in the possession of or under the control of the Vendor;
- (d) Operating statements for the Properties for the full fiscal year expiring December 31st, 2012 and 2011;
- (e) 2013 year to date operating statements for the Properties;
- (f) 2013 operating budget for the Properties;
- (g) Leasing plans, engineering and architectural plans and site plans, both full size and reductions, if possible, for the Properties;
- (h) An aged receivables report for the Properties;
- (i) A survey for the Properties and a certificate of a land surveyor certifying the current location of all improvements and structures, including the number of existing parking spaces, to the extent in the possession of the Vendor;
- (j) A list of chattels;
- (k) Realty tax assessments, notices and tax bills relating to the Properties and copies of any notices of any outstanding realty tax appeals and correspondence relating thereto, including copies of any working papers issued by the applicable assessment authorities used in calculating a notional allocation of the assessment;

- (l) A list of outstanding work orders, notices, directives and letters of non-compliance issued by any governmental or other authority affecting the Properties received by the Vendor, if any, and a copy of each of them;
- (m) All documents relevant to litigation, arbitration, mediation or other proceedings, actual, threatened or pending, if any, against the Properties or against the Vendor affecting the Properties;
- (n) Copies of all contracts (the Purchaser may assume in its sole and unfettered discretion as of the Closing Date all Contracts which have a termination right of not more than thirty (30) days' notice and no termination penalties attached thereto. All Contracts not being assumed by the Purchaser will be terminated on the Closing Date.);
- (o) Copies of the First Mortgage if it is to be assumed and all security collateral thereto and the commitment relating thereto; and
- (p) Copy of the Vendor's form of offer.

The Vendor shall also make available to the Purchaser such additional documents as provided in the Agreement of Purchase and Sale.

4. **Agreement of Purchase and Sale**

Within fifteen (15) business days after receipt of all of the Deliveries, the Vendor and the Purchaser shall attempt, in good faith, to settle and enter into a formal agreement of purchase and sale (the "**Agreement of Purchase and Sale**") based upon the Vendor's form of agreement of purchase and sale and the terms of this Letter of Intent and containing such provisions as are acceptable to the Vendor and the Purchaser, respectively, each in its sole discretion. If such formal Agreement of Purchase and Sale is not entered into between the parties within fifteen (15) business days after receipt of all of the Deliveries, this Letter of Intent shall be at an end.

5. **Due Diligence Period (Purchaser's Condition)**

Upon execution of the Agreement of Purchase and Sale, the Purchaser shall have a further thirty (30) business days thereafter (the "**Due Diligence Period**") to satisfy itself in its sole and unfettered discretion with respect to all matters of interest to the Purchaser relating to the Properties (the "**Purchaser's Condition**"), including, without limitation, title, zoning, environmental matters, related financial matters, condition of the improvements, the Deliveries and any other matters, contracts or obligations related to the Properties. Should at any time during the Due Diligence Period, the Purchaser give notice to the Vendor (or its agent) of the Purchaser's intention not to proceed with the transaction, the Deposit referred to in paragraph 2(a) above, shall be forthwith returned to the Purchaser

with accumulated interest thereon and the Agreement of Purchase and Sale shall be at an end.

**6. Right to Assign**

The Purchaser shall have the right at any time prior to closing, to assign the Agreement of Purchase and Sale to any person, persons or corporation, either existing or to be incorporated, and upon closing, the Purchaser hereinbefore named shall stand released from all further liability hereunder.

**7. Closing Date**

The Closing Date shall take place on the date which is twenty (20) business days after removal of the Purchaser's Condition.

**8. Closing Costs**

The Vendor and Purchaser shall each be responsible for its own customary expenses of Closing.

**9. Properties Until Closing**

The Properties shall be maintained and operated by the Vendor until the Closing Date in a normal and proper manner, as would a prudent owner of Properties of like kind and quality.

**10. Mortgages**

Other than the properties outlined in Section 2(c), the Purchaser shall not be obligated to assume any existing mortgages on the remaining Properties. The Vendor shall discharge, at the Vendor's cost, on or before closing all other mortgages and encumbrances affecting the Properties, or any of them, other than permitted encumbrances set out in the Agreement of Purchase and Sale.

**11. Acknowledgement and Waiver - Dual Agency**

The parties to this transaction acknowledge that Colliers, acting for and representing the interests of the Vendor and the Purchaser, respectively, are in a dual agency relationship. Before entering into any offer negotiations, each of the parties acknowledge that they were advised of the dual agency relationship. The Purchaser has not been introduced to the Properties by another agent and has not retained any other agent to act on his behalf.

The parties to this agreement acknowledge that Colliers has recommended that they obtain advice from their legal counsel prior to signing this document. The parties further acknowledge that the information provided by Colliers is not legal, accounting, environmental or tax advice, and the parties are cautioned not to rely on any such information without seeking specific legal, accounting, environmental or tax advice with respect to their unique circumstances.

**12. Commissions**

The Vendor shall be responsible for payment of a market real estate commission to Colliers, as agreed to between the Vendor and Colliers in a separate agreement, upon closing of the transaction.

**13. Confidentiality**

The Purchaser and the Vendor shall keep the terms of this Letter of Intent in strictest confidence, provided that each party shall be entitled to make disclosure of such information as may be reasonably required in connection with the purposes of the Letter of Intent and the transaction contemplated hereby.

**14. Facsimile and PDF**

The parties hereby acknowledge and agree that, for the purpose of offer, acceptance and execution of this Agreement, an executed facsimile of PDF copy shall constitute an original executed copy.

**15. Non-Binding Letter of Intent with certain paragraphs to survive termination**

This Letter of Intent will be non-binding on the parties except for paragraph 13 which will survive termination of this Letter of Intent.

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The foregoing provisions are not intended to be exhaustive, but rather to provide a mutually agreeable basis for proceeding. Although non-binding, we are hopeful it will form the basis for moving forward to a mutually acceptable and binding agreement.

If the foregoing is acceptable to you, please sign and return one (1) copy of this Letter of Intent no later than January 8<sup>th</sup>, 2014 at 5:00 pm.

PURCHASER

We hereby Agree with the Above Terms and Conditions on this 3rd day of January, 2014

EVTON CAPITAL PARTNERS LTD.

Per: T. Wray Myer  
Authorized Signing Officer

VENDOR

Acknowledged and Accepted this \_\_\_\_\_ day of January, 2014.

SCHONFELD INC. on behalf of itself and the beneficial owners

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

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SCHEDULE "A"  
DESCRIPTIONS

1. General

1. 1500 Don Mills Road, Toronto, Ontario
2. 1450 Don Mills Road, Toronto Ontario
3. 7-15 Fraser Avenue, Toronto, Ontario
4. 30 Fraser Avenue, Toronto, Ontario
5. 1131A Leslie Street, Toronto, Ontario
6. 165 Bathurst Street/ 620 Richmond Street West, Toronto, Ontario
7. 1 Royal Gate Boulevard, Vaughan, Ontario
8. 5770-5780 Highway 7 West, Vaughan, Ontario
9. 32 Atlantic Avenue, Toronto, Ontario
10. 47 Jefferson Avenue, Toronto, Ontario
11. 241 Spadina Avenue, Toronto, Ontario
12. 18 Wynford Drive, Toronto, Ontario
13. 1185 Eglinton Avenue East, Toronto, Ontario
14. 1485 Dupont Street, Toronto, Ontario
15. 295 The West Mall, Toronto, Ontario
16. 1 City View Drive, Toronto, Ontario
17. 355 Weston Road, Toronto, Ontario
18. 140 and 150 Queen's Plate Drive, Toronto, Ontario
19. 14 Dewhurst Blvd, Toronto, Ontario
20. 153 Eddystone Avenue, Toronto, Ontario
21. 450 Pape Avenue, Toronto, Ontario
22. 0 Trent Avenue, Toronto, Ontario
23. 3765 St. Clair Avenue East, Toronto, Ontario
24. 1003 Queen Street East, Toronto Ontario

2. Legal Descriptions

1. 1500 Don Mills Road, Toronto, Ontario

PART LOT 10, CON. 3, EYS (CITY OF NORTH YORK) DESIGNATED AS PARTS 1, 2, 3, 4, 5, 6, 7 & 8 ON PLAN 66R17662. SUBJECT TO TB981024, NY499108, NY765474, TB24553 & TB119624. CITY OF TORONTO

2. 1450 Don Mills Road, Toronto Ontario

PT LT 10 CON 3 EYS TWP OF YORK AS IN TB395970; S/T NY380043; TORONTO (N YORK) , CITY OF TORONTO

3. 7-15 Fraser Avenue, Toronto, Ontario

BLK D, E, F, G PL 1122 CITY WEST; LT 14-17, 31-34, 66 PL 1122 CITY WEST; PT BLK A, C PL 1122 CITY WEST; PT PARDEE AV PL 1122 CITY WEST (CLOSED BY OF55107); PT LT 13, 30, 50, 63-65 PL 1122 CITY WEST AS IN CT538135 (FIRSTLY & SECONDLY) & PT 1 64R14880; PT BLK E PL 1096 CITY WEST; PT BLK 8 PL ORDNANCE RESERVE TORONTO PT 10, 11, 12 64R15422; S/T CA507310; CITY OF TORONTO

4. 30 Fraser Avenue, Toronto, Ontario

PT BLK H PL 1233 TORONTO; PT LT 24-25, 44-45 PL 684 CITY WEST AS IN CT538135 (THIRDLY); CITY OF TORONTO

5. 1131A Leslie Street, Toronto, Ontario

PT LT 3 CON 3 EYS TWP OF YORK PARTS 1, 2, 3, 5, 6, 7 & 9, 64R10086; S/T TB183776; S/T TB189467, TB864493; TORONTO (N YORK), CITY OF TORONTO

6. 165 Bathurst Street/ 620 Richmond Street West, Toronto, Ontario

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

7. 1 Royal Gate Boulevard, Vaughan, Ontario

PCL 6-1 SEC 65M3033; BLOCK 6 PL 65M3033, S/T LT1058556, VAUGHAN ; T/W EASE & ROW OVER PT BLK 4 PL 65M3033, PTS 3 & 4, 65R29851, AS IN YR965279 ; T/W EASE & ROW OVER PT BLK 1 PL 65M3033, PTS 13 & 14, 65R27567 AS IN YR965279 RELEASED BY YR1300456; S/T EASE IN FAVOUR OF BLKS 3 & 4, PL 65M3033, PT BLK 2 PL 65M3033, PT 72 65R26788 & PT LT 5 CON 8 (VGN), PTS 1 TO 49, BOTH INCL., PL 65R26788, AS IN YR965281 ; S/T EASEMENT OVER BLOCK 6, PL 65M3033 AS IN YR1159474 ; T/W EASE OVER PT BLK 5, PL 65M3033 PTS 2,8,9,11,13,14,15,16,18,20,21,24,25,26 & 28, 65R34504 AS IN YR2040234 IN FAVOUR OF PT BLK 6, 65M3033 PTS 38 TO 41, 65R34504 SUBJECT TO AN EASEMENT IN GROSS OVER PT BLK 6 PL 65M3033, PTS 4 & 5 65R32501 AS IN YR1531188

PT OF BLK 5, PL 65M3033 PTS 30 TO 37, 65R34504; S/T LT1058549, LT1058556; T/W EASE & ROW OVER PT BLK 4, 65M3033 PTS 3 & 4, 65R29851 AS IN YR965279; S/T EASE & ROW OVER PTS 1 & 2, 65R29851 IN FAVOUR OF BLK 4, 65M3033 AS IN YR965279; T/W EASE & ROW OVER PT BLK 1, PL 65M3033 PTS 13 & 14, 65R27567 AS IN YR9605279 PARTIALLY RELEASED BY YR1300456; S/T EASE IN FAVOUR OF BLKS 3 & 4, 65M3033 PT BLK 2, PL 65M3033 PT 72, 65R26788 & PT LOT 5 CON 9 VGN

PTS 1 TO 49 INCL. PL 65R26788 AS IN YR965281; S/T EASEMENT OVER BLK 5, 65M3033 AS IN YR1159474; SUBJECT TO AN EASEMENT OVER PTS 2,8,9,11,13,14,15,16,18,20,21,24,25,26 & 28, 65R34501 IN FAVOUR OF PT OF BLKS 5 & 6, PL 65M3033 PTS 30 TO 41, 65R34504 AS IN YR2040234 SUBJECT TO AN EASEMENT OVER PTS 30,31,33,34 & 35, 65R34504 IN FAVOUR OF PT BLK 5, PL 65M3033 PTS 1 TO 29, 65R34504 AS IN YR2039686 CITY OF VAUGHAN

**8. 5770-5780 Highway 7 West, Vaughan, Ontario**

PT LOT 6 CON 8 PTS 4,5 & 6, 65R24437; VAUGHAN; T/W VA37896,VA63377, T/W EASE OVER PT COMMON ELEMENTS PT 1, 65R20425 AS IN LT1434473. T/W R717713; S/T R275852; VAUGHAN

PT LOT 6, CON 8 PTS 1 TO 13 65R18522 EXCEPT PTS 4,5 & 6, 65R24437; T/W VA37896,VA63377, R717713; T/W EASE OVER PT COMMON ELEMENTS PT 1, 65R20425 AS IN LT1434473. S/T R275852 ; CITY OF VAUGHAN

**9. 32 Atlantic Avenue, Toronto, Ontario**

LT 125, 146 PL 765 TORONTO; PT LT 124, 126, 144-145, 147 PL 765 TORONTO; PT LANE PL 765 TORONTO (CLOSED BY WF19788) PT 2 63R3894; CITY OF TORONTO

LOT 123, 148-149 PLAN 765, PART OF LOT 122, 124, 147 PLAN 765, PT LANE PLAN 765 TORONTO (CLOSED BY WF19788), DESIGNATED AS PART 2 ON PLAN 63R3439 CITY OF TORONTO

**10. 47 Jefferson Avenue, Toronto, Ontario**

BLOCK B PLAN 1110 TORONTO, LOT 121 AND PART OF LOT 122 PLAN 765 TORONTO, DESIGNATED AS PART 1 ON PLAN 63R3439 CITY OF TORONTO

**11. 241 Spadina Avenue, Toronto, Ontario**

LOT 4 ON PLAN D60 TORONTO DESIGNATED AS PART 2 ON PLAN 63R4828; CITY OF TORONTO

**12. 18 Wynford Drive, Toronto, Ontario**

CONDO LEGAL DESCRIPTIONS TO BE PROVIDED BY VENDOR

**13. 1185 Eglinton Avenue East, Toronto, Ontario**

PCL A1-2 SEC M834; PT BLK A1 PL M834 NORTH YORK; PT BLK A3 PL M834 NORTH YORK; PT LT 1 CON 3 EYS NORTH YORK; PT RDAL BTN CON 3 FTB & CON 3 EYS

NORTH YORK PTS 1 TO 9 66R7408; T/W A ROW IN COMMON WITH ALL OTHERS ENTITLED THERETO FROM TIME TO TIME FOR PERSONS AND VEHICLES THROUGH, ALONG AND OVER THOSE PTS BLK A1 PL M834 PTS 10 TO 13 & 15 66R7408; T/W AN EASEMENT OR RIGHT IN THE NATURE OF AN EASEMENT IN COMMON WITH ALL OTHERS ENTITLED THERETO FROM TIME TO TIME, TO ENTER UPON THE LAND HEREINAFTER PARTICULARLY DESCRIBED, NAMELY: PT BLK A1 PL M834 PTS 10 TO 12 & 22 66R7408; FOR THE PURPOSE OF LAYING DOWN, CONSTRUCTING, INSTALLING, MAINTAINING, ALTERING, REPAIRING OR RECONSTRUCTING STORM AND SANITARY SEWERS AND WATER MAINS AND PIPES, IN AND UNDER THE SAID LANDS, AND FOR EVERY SUCH PURPOSE THE TRANSFEREE SHALL HAVE ACCESS TO THE SAID LANDS BY ITS CONTRACTORS, SERVANTS, EMPLOYEES AND WORKMEN: T/W AN EASEMENT OR RIGHT IN THE NATURE OF AN EASEMENT TO ENTER UPON THE LAND HEREINAFTER PARTICULARLY DESCRIBED, NAMELY: PT LT 1 CON 3 EYS PTS 20 & 21 66R7408; FOR THE PURPOSE OF LAYING DOWN, CONSTRUCTING, INSTALLING, MAINTAINING, ALTERING, REPAIRING OR RECONSTRUCTING WATER AND GAS MAINS AND PIPES, IN AND UNDER THE SAID LANDS, AND FOR EVERY SUCH PURPOSE THE TRANSFEROR SHALL HAVE ACCESS TO THE SAID LANDS BY ITS CONTRACTORS, SERVANTS, EMPLOYEES AND WORKMEN: T/W ROW OVER PT LT 1 CON 3 EYS PTS 20 & 21 66R7408, FOR THE PURPOSE OF VEHICULAR ACCESS TO THE LANDS HEREBY TRANSFERRED IN CONNECTION WITH THE MAINTENANCE OF HYDRO-ELECTRIC SERVICE TO THE LANDS HEREBY TRANSFERRED; S/T ROW THROUGH, ALONG AND OVER PT BLK A1 PL M834 PTS 8 & 9 66R7408; S/T PTS 8 & 9 66R7408 IN FAVOUR OF PTS 26 TO 28, 30 & 31 66R7408 AS IN A433053; T/W PT BLK A1 & A2, PL M834 & PT RDAL BTN CON 3 EYS & CON 3 FTB OVER PT 14 TO 19 66R7408, TORONTO, CITY OF TORONTO

PCL BLK A1-4 SEC M-834 FIRSTLY: PT BLK A1 PLAN M-834, PT RDAL BTN CON 3 FTB & CON 3 EYS NORTH YORK PTS 17 & 18 66R7408; SECONDLY: PT BLK A1 PL M834 NORTH YORK PTS 14 TO 16 66R7408; T/W A ROW AS IN A193258; S/T PT 15 66R7408 IN FAVOUR OF PT 5 66R7408 AS IN A433053; THIRDLY: PT BLK A2 PL M834 NORTH YORK PT 19 66R7408, S/T PTS 14 TO 19, 66R7408, AS IN E124784; TORONTO, CITY OF TORONTO

**14. 1485 Dupont Street, Toronto, Ontario**

PCL 142-1 SEC M13; PT LT 142 W/S CAMPBELL AV PL M13 TORONTO COMM AT A POINT IN THE WESTERN LIMIT OF CAMPBELL AV MEASURED 16 FT NLY FROM THE SE ANGLE OF SAID LT 142. THENCE NLY ALONG THE WESTERN LIMIT OF CAMPBELL AV 17 FT. THENCE WLY PARALLEL WITH THE SOUTHERN LIMIT OF SAID LT, 125 FT TO THE EASTERN LIMIT OF A LANE. THENCE SLY ALONG THE LAST MENTIONED LIMIT BEING PARALLEL WITH THE EASTERN LIMIT OF CAMPBELL AV 17 FT TO A POINT IN THE SAID EASTERN LIMIT OF LANE 16 FT

NLY FROM THE SLY LIMIT OF SAID LT 142. THENCE ELY AND PARALLEL TO THE SAID LAST MENTIONED LIMIT 125 FT TO THE POC. T/W THE RIGHT TO HAVE THE EAVES OF THE HOUSE ON THE LAND HEREBY CONVEYED PROJECT 8 INCHES OVER THE LAND IMMEDIATELY TO THE N THEREOF AND, S/T THE RIGHT OF THE OWNER OF THE HOUSE TO THE S OF THIS LAND TO HAVE THE EAVES ON THE HOUSE TO THE S OVERHANG THE LAND HEREIN DESCRIBED AS TO THE SAME EXTENT; TORONTO, CITY OF TORONTO

PCL 142-2 SEC M13; PT LT 142 W/S CAMPBELL AV PL M13 TORONTO COMM AT THE NE ANGLE OF SAID LT 142 IN THE W LIMIT OF CAMPBELL AV; THENCE W ALONG THE N LIMIT OF SAID LT 142, 125 FT MORE OR LESS TO A LANE; THENCE S ALONG THE E LIMIT OF SAID LANE 17 FT MORE OR LESS TO A POINT DISTANT 33 FT NLY FROM THE S W ANGLE OF SAID LT; THENCE E PARALLEL TO THE S LIMIT OF SAID LT 142, 125 FT MORE OR LESS TO THE W LIMIT OF CAMPBELL AV; THENCE N ALONG THE W LIMIT OF CAMPBELL AV, 17 FT MORE OR LESS TO THE POB. S/T THE RIGHT OF THE OWNER OF THE HOUSE IMMEDIATELY TO THE S TO HAVE HIS EAVES OVERHANG THESE LANDS TO THE EXTENT OF 8 INCHES; TORONTO, CITY OF TORONTO

PCL 143-1 SEC M13; FIRSTLY: LT 144 W/S CAMPBELL AV PL M13 TORONTO; LT 145 W/S CAMPBELL AV PL M13 TORONTO; LT 146 W/S CAMPBELL AV PL M13 TORONTO; LT 147 W/S CAMPBELL AV PL M13 TORONTO; LT 148 W/S CAMPBELL AV PL M13 TORONTO; SECONDLY: PT LT 143 W/S CAMPBELL AV PL M13 TORONTO BEING THE NLY 20 FT; PT LT 143 PL M13 TORONTO COMM AT A POINT IN THE W LIMIT OF CAMPBELL AV DISTANT 29 FT 7 1/2 INCHES NLY FROM THE S E ANGLE OF SAID LT; THENCE WLY TO AND ALONG THE NLY FACE OF THE MOST NLY WALL OF THE BUILDING ON THE LAND TO THE S OF THIS LAND AND CONTINUING THENCE WLY PARALLEL TO THE S LIMIT OF SAID LT, IN ALL 125 FT MORE OR LESS TO A POINT IN THE REAR OF THE SAID LT, BEING THE E LIMIT OF A LANE, DISTANT 29 FT 5 INCHES NLY FROM THE S W ANGLE OF SAID LT; THENCE NLY 7 INCHES MORE OR LESS TO A POINT DISTANT 20 FT SLY FROM THE N W ANGLE OF SAID LT; THENCE ELY PARALLEL TO THE N LIMIT OF SAID LT 125 FT MORE OR LESS TO A POINT IN THE W LIMIT OF CAMPBELL AV; THENCE SLY ALONG THE W LIMIT OF CAMPBELL AV 4 1/2 INCHES MORE OR LESS TO THE POB; THIRDLY: PT LT 143 W/S CAMPBELL AV PL M13 TORONTO COMM AT A POINT IN THE W LIMIT OF CAMPBELL AV DISTANT 14 FT 9 1/2 INCHES NLY FROM THE S E ANGLE OF SAID LT; THENCE WLY ABOUT PARALLEL TO THE S LIMIT OF SAID LT TO THE ELY END OF THE CENTRE LINE OF WALL BTN THE HOUSE ON THIS LAND AND THAT TO THE S THEREOF AND CONTINUING WLY ALONG THE SAID CENTRE LINE OF WALL TO THE WLY END THEREOF AND CONTINUING FURTHER WLY PARALLEL TO THE S LIMIT OF THE SAID LT, IN ALL 125 FT TO A POINT IN THE WLY LIMIT OF SAID LT DISTANT 14 FT 7 INCHES NLY FROM THE S W ANGLE THEREOF; THENCE NLY ALONG THE W LIMIT OF SAID LT 14 FT 10 INCHES; THENCE ELY PARALLEL TO THE S LIMIT OF

SAID LT TO AND ALONG THE NLY FACE OF THE MOST NLY WALL OF THE BUILDING ON THIS LAND AND CONTINUING ELY THEREFROM PARALLEL TO THE S LIMIT OF THE SAID LT IN ALL 125 FT TO THE W LIMIT OF CAMPBELL AV; THENCE SLY ALONG THE W LIMIT OF CAMPBELL AV 14 FT 10 INCHES TO THE POB; FOURTHLY: PT LT 143 W/S CAMPBELL AV PL M13 TORONTO COMM AT THE S E ANGLE OF THE SAID LT; THENCE NLY ALONG THE W LIMIT OF CAMPBELL AV 14 FT 9 1/2 INCHES; THENCE WLY ABOUT PARALLEL TO THE S LIMIT OF SAID LT TO THE ELY END OF THE CENTRE LINE OF WALL BTN THE HOUSE ON THIS LAND AND THAT TO THE N THEREOF AND CONTINUING WLY ALONG SAID CENTRE LINE OF WALL TO THE WLY END THEREOF AND CONTINUING FURTHER WLY PARALLEL TO THE S LIMIT OF SAID LT IN ALL 125 FT TO THE W LIMIT OF SAID LT; THENCE SLY ALONG THE SAID W LIMIT 14 FT 7 INCHES TO THE S W ANGLE OF SAID LT; THENCE ELY ALONG THE S LIMIT OF SAID LT 125 FT MORE OR LESS TO THE POB; TORONTO, CITY OF TORONTO

15. 295 The West Mall, Toronto, Ontario

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

16. 1 City View Drive, Toronto, Ontario

PT LT 22 CON 2 FRONTING THE HUMBER, AS IN TB80921, S/T TB159922 S/T  
TB79879 ETOBICOKE, CITY OF TORONTO

17. 355 Weston Road, Toronto, Ontario

PT LT 38 CON 3 FTB TWP OF YORK AS IN CY653363; TORONTO (YORK), CITY OF  
TORONTO

18. 140 and 150 Queen's Plate Drive, Toronto, Ontario

PARCEL 29-5, SECTION E23 PT LTS 29 AND 30 CON 2 FRONTING THE HUMBER, PT  
3 66R15341 T/W PT LTS 29 & 30 CON 2 FRONTING THE HUMBER (INCLUDING  
HIGHWAY CLOSED BY EB423623) AND PT LT 31 CON 2 FRONTING THE HUMBER  
BEING PTS 6 & 7 66R15341 AS IN C490576 S/T EASEMENT IN FAVOUR OF  
PINETREE DEVELOPMENT CO. LIMITED AS IN C540413 SUBJECT TO C501914  
ETOBICOKE, CITY OF TORONTO

19. 14 Dewhurst Blvd, Toronto, Ontario

PT LT 220 PL 417E TORONTO AS IN EV533 EXCEPT CT704443; LT 221 PL 417E  
TORONTO; LT 222 PL 417E TORONTO; LT 223 PL 417E TORONTO; LT 224 PL 417E  
TORONTO; LT 225 PL 417E TORONTO; LT 226 PL 417E TORONTO; THE NLY 10 FT

OF THE WLY 50 FT 8 INCHES OF LT 227 PL 417E; T/W EASEMENT OVER THE ELY 70 FT OF THE SAID NLY 10 FT OF SAID LT 227, TORONTO; S/T EV68310; TORONTO; CITY OF TORONTO

20. 153 Eddystone Avenue, Toronto, Ontario

LT 30-31 PL 7530 NORTH YORK; TORONTO (N YORK) , CITY OF TORONTO

21. 450 Pape Avenue, Toronto, Ontario

PT LT 7-8 PL 587E TORONTO AS IN ER20039 & ER40548 EXCEPT CA710160; S/T ER96421; CITY OF TORONTO

22. 0 Trent Avenue, Toronto, Ontario

PT LT 2 CON 1 FTB TWP OF YORK PT 4, 64R14771; TORONTO , CITY OF TORONTO

23. 3765 St. Clair Avenue East, Toronto, Ontario

LT 3 PL 3361 SCARBOROUGH; LT 4 PL 3361 SCARBOROUGH; LT 5 PL 3361 SCARBOROUGH; LT 6 PL 3361 SCARBOROUGH; PT LT 2 PL 3361 SCARBOROUGH AS IN SC233569; TORONTO , CITY OF TORONTO

24. 1003 Queen Street East, Toronto, Ontario

PT LT 5 S/S KINGSTON RD PL D81 TORONTO; PT LT 12 CON BROKEN FRONT TWP OF YORK DESIGNATED AS PT 1 PL 66R23201; CITY OF TORONTO

## **EXHIBIT “D”**

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From: Eaton Capital Partners (the "Purchaser")

To: SCHONFELD INC. as court-appointed manager and RON AND NORMA WALTON AND DR. STANLEY BERNSTEIN as beneficial owners of the following properties (the "Vendor") and Colliers Macaulay Nicolls (Ontario) Inc. (the "Agent")

Re: Confidentiality Agreement for the following properties (the "Properties"):

1. 1500 Don Mills Road, Toronto, Ontario
2. 1450 Don Mills Road, Toronto Ontario
3. 7-15 Fraser Avenue, Toronto, Ontario
4. 30 Fraser Avenue, Toronto, Ontario
5. 1131A Leslie Street, Toronto, Ontario
6. 165 Bathurst Street/ 620 Richmond Street West, Toronto, Ontario
7. 1 Royal Gate Boulevard, Vaughan, Ontario
8. 5770-5780 Highway 7 West, Vaughan, Ontario
9. 32 Atlantic Avenue, Toronto, Ontario
10. 47 Jefferson Avenue, Toronto, Ontario
11. 241 Spadina Avenue, Toronto, Ontario
12. 18 Wynford Drive, Toronto, Ontario
13. 1185 Eglinton Avenue East, Toronto, Ontario

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In connection with our consideration of a transaction involving the Properties, we request, acknowledge and accept that all the information furnished by you or your representatives will be kept confidential and shall not be disclosed by us or by our representatives, or consultants, or any employees of any of them, in any manner whatsoever, in whole or in part, and shall not be used by us or our representatives, or consultants, or any employees of any of them, other than in connection with our consideration of a purchase transaction involving the Properties.

Moreover, we agree to reveal the information only to our representatives who need to know the information for the purpose of evaluation of a purchase transaction involving the Properties, who are informed by us of the confidential nature of the information and who shall agree to be bound by and act in accordance with the terms and conditions of this Agreement to the same extent as though they were parties hereto. Any breach of this Agreement by our representatives, or consultants, or any employees of any of them, shall be our responsibility, and we agree, at our sole expense, to take all reasonable measures to restrain our representatives, or consultants, or any employees of any of them, from prohibited or unauthorized disclosure or use of the information.

We acknowledge that we will not tour the Properties without coordinating said tours with the Agent.

We understand that you have endeavoured to include the information and those materials which you believe to be reliable and relevant for the purpose of our evaluation, but we acknowledge and accept that neither you nor any of your respective representatives makes any representation or warranty either expressed or implied as to the accuracy or completeness of the information.

We agree to indemnify and save harmless the Vendor from any claims, losses, damages and liabilities whatsoever (including legal fees and disbursements) arising out of a breach by us or any of our representatives of any of the terms or provisions of this Agreement.

We hereby acknowledge that we have received the information from the Agent and have not been introduced to the Properties by any other agent. If for any reason whatsoever the purchase is not completed, we will promptly deliver to the Agent all materials or destroy all materials containing information, without returning copies.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

This is Exhibit.....D.....referred to in the  
affidavit of.....Norma Walton.....  
sworn before me, this.....5th.....  
day of.....January.....2014.....  
[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS

Agreed to and accepted this 2 day of January, 2013.

Name: T. Gary McLeod

Position: President

Company: Erton Capital Partners

Address: 1 St. Clair Ave. W. Ste 300

Telephone: 416-513-0360 Fax: \_\_\_\_\_

Email: dmcg ee @ erton. com

Signature: T. Gary McLeod

Date: January 2, 2014

**EXHIBIT "E"**

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This is Exhibit.....E.....referred to in the  
affidavit of.....Norma Walton.....  
sworn before me, this.....5th.....  
day of.....January.....20.14



.....  
A COMMISSIONER FOR TAKING AFFIDAVITS

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**From:** Dr. Stanley Bernstein  
**Sent:** Sunday, January 5, 2014 12:05 PM  
**To:** Norma Walton; Harlan Schonfeld; Jim Reitan; Guillermo Schible; Peter Griffin; Shara N. Roy  
**Cc:** Empey, Brian; Ken Herlin; Jim Merryweather; Howard Cohen; John A. Campion  
**Subject:** RE: 1 Royal Gate Blvd sign back at \$19M

Harlan,  
I agree with the \$23M price.

Dr. Bernstein

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**From:** Norma Walton [nwalton@roseandthistle.ca]  
**Sent:** January-05-14 11:54 AM  
**To:** Harlan Schonfeld; Dr. Stanley Bernstein; Jim Reitan; Guillermo Schible; Peter Griffin; Shara N. Roy  
**Cc:** Empey, Brian; Ken Herlin; Jim Merryweather; Howard Cohen; John A. Campion  
**Subject:** RE: 1 Royal Gate Blvd sign back at \$19M

Dear Harlan,

We are confident that 1 Royal Gate will sell for at least \$23 million to another purchaser. We have four groups at the table willing to pay that amount as part of a portfolio bid. Hence we have no interest in selling for less than that \$23 million price.

Regards,  
Norma

**From:** Harlan Schonfeld [mailto:harlan@schonfeldinc.com]  
**Sent:** Sunday, January 05, 2014 10:37 AM  
**To:** Norma Walton; Dr. S K Bernstein; Jim Reitan; Guillermo Schible; Peter Griffin; Shara N. Roy  
**Cc:** Empey, Brian; Ken Herlin; Jim Merryweather  
**Subject:** 1 Royal Gate Blvd sign back at \$19M

To All:

Last night I received the attached offer resigned back to me at \$19M.

The irrevocable remains the same; Jan 8-14. No other significant changes were made to the offer.

I will connect with our listing agent to determine if he has any updated information on the buyer.

S. Harlan Schonfeld CPA, CA, CIRP

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**SCHONFELD INC. Receivers + Trustees**

438 University Avenue, 21st Floor

Toronto, ON M5G 2K8

Tel 416.862.7785

Cell 416.254.1992

Fax 416.862.2136



**Experience acquired. Experience applied.**

This email may contain confidential information and no rights to privilege have been waived. If you are not the intended recipient, please notify us immediately. Thank you.

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**From:** Norma Walton  
**Sent:** Friday, January 03, 2014 11:45 AM  
**To:** 'Gaetano Coscia'  
**Subject:** 1 Royal Gate

Dear Gaetano,

It is always a pleasure to speak with you. The background on 1 Royal Gate is as follows:

1. We received an offer to purchase from Sandy Minuk who is partners with Carlo Fidani, through Stefano at Capital North Realty. That offer was for \$22 million and we figured we could get Sandy up to \$23.5 to \$24 million in a sign back. We asked the manager to sign back the offer at \$24 million.
2. The manager refused to sign back the offer received and instead waited for approximately three weeks while he prepared his own form of offer.
3. The manager then sent Stefano his offer form and insisted he use that offer form to re-submit. This was back in early December.
4. The manager did not advise me of any results so I emailed Stefano for an update. See his response below (emails are all copied in blue). I continue the chronology further down after the email copied in blue.

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**From:** Stefano [<mailto:landtrader@gmail.com>]  
**Sent:** Sunday, December 22, 2013 12:13 PM  
**To:** Norma Walton  
**Cc:** Mark Goldberg  
**Subject:** Re: Any news on 1 Royal Gate

Hi Norma

Thanks for reaching out

Harlan sent over an agreement which turned my buyer off. As the terms were unreasonable. Quoting Sandy's partner "ridiculous "

I am trying to convince them to re submit on there terms and I think I'll be able to get them to agree but it will be after the holliday's at the earliest. I'll be in the office tomorrow morning if you have time call me pls I'll give you some more details

All the best

And Merry Christmas to you and your family

Sent from from mobile

On Dec 22, 2013, at 11:02 AM, Norma Walton <[nwalton@roseandthistle.ca](mailto:nwalton@roseandthistle.ca)> wrote:

Dear Stefano,

Good morning! Are you progressing in your negotiations with Harlan to purchase 1 Royal Gate? Let me know.

Thanks,  
Norma

5. Thereafter I received an email from Harlan advising that he had received an offer to purchase for \$18.5 million through Michael Bellissimo. See the email chain regarding that offer:

---

**From:** Harlan Schonfeld [mailto:harlan@schonfeldinc.com]  
**Sent:** Wednesday, January 01, 2014 9:48 PM  
**To:** Norma Walton  
**Cc:** James Merryweather  
**Subject:** Re: 1 Royal Gate Crescent APS

Norma:

Do not take, based on our meeting on Tuesday, "that I prefer to sell 13 as a package rather than one at a time".

I listened to you; and we talked about how it might unfold. As you know there may be a meeting tomorrow with Howard Cohen. You should take nothing more than that away from the meeting.

Your "proposal"; if I may call it that; is very aggressive and so is your time line for getting it done. There is a motion on Monday the 6th. As you also know I recommended I list 9 properties with CBRE after the 7th January. There are mortgagees that also will have a voice in what you might wish to happen.

**S. Harlan Schonfeld CPA, CA, CIRP**

**SCHONFELD INC. Receivers + Trustees**  
 438 University Avenue, 21st Floor  
 Toronto, ON M5G 2K8  
 Tel 416.862.7785  
 Cell 416.254.1992  
 Fax 416.862.2136



**Experience acquired. Experience applied.**

This email may contain confidential information and no rights to privilege have been waived. If you are not the intended recipient, please notify us immediately. Thank you.

On Wed, Jan 1, 2014 at 7:29 PM, Norma Walton <nwalton@roseandthistle.ca> wrote:  
 Dear Harlan,

For the four large buyer groups we have included 1 Royal Gate in the proposed offering at a price of between \$23 and \$23.5 million. They are going to be providing LOIs on that basis so I would think at minimum we'd want to sign this one back above \$23 million if you were so inclined? I thought based on our meeting last week that you preferred to sell the 13 as a package rather than one at a time? That way we can focus our energies on selling the remaining 12 that would be left.

The below seems so low as a starting price that given the interest from the larger groups there seems little point in signing it back. That is my take on the situation.

Regards,  
Norma

**From:** Harlan Schonfeld [mailto:[harlan@schonfeldinc.com](mailto:harlan@schonfeldinc.com)]  
**Sent:** Wednesday, January 01, 2014 7:06 PM  
**To:** [cohen@cohensabsay.com](mailto:cohen@cohensabsay.com); Norma Walton; RON WALTON  
**Cc:** Empey, Brian

**Subject:** Fwd: 1 Royal Gate Crescent APS

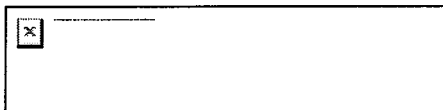
Howard:

I neglected to include you in the below email I just sent.

**S. Harlan Schonfeld CPA, CA, CIRP**

**SCHONFELD INC. Receivers + Trustees**

438 University Avenue, 21st Floor  
Toronto, ON M5G 2K8  
Tel [416.862.7785](tel:416.862.7785)  
Cell [416.254.1992](tel:416.254.1992)  
Fax [416.862.2136](tel:416.862.2136)



**Experience acquired. Experience applied.**

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----- Forwarded message -----

**From:** Harlan Schonfeld <[harlan@schonfeldinc.com](mailto:harlan@schonfeldinc.com)>  
**Date:** Wed, Jan 1, 2014 at 6:52 PM  
**Subject:** Fwd: 1 Royal Gate Crescent APS  
**To:** Norma Walton <[nwalton@roseandthistle.ca](mailto:nwalton@roseandthistle.ca)>, "Dr. S K Bernstein" <[drb@drbdiet.com](mailto:drb@drbdiet.com)>, Jim Reitan <[jim@drbdiet.com](mailto:jim@drbdiet.com)>, "Shara N. Roy" <[sroy@litigate.com](mailto:sroy@litigate.com)>, Peter Griffin <[pgriffin@litigate.com](mailto:pgriffin@litigate.com)>, Guillermo Schible <[guillermo@schiblelaw.com](mailto:guillermo@schiblelaw.com)>, "Empey, Brian" <[bempey@goodmans.ca](mailto:bempey@goodmans.ca)>  
**Cc:** Jim Merryweather <[merryweather@schonfeldinc.com](mailto:merryweather@schonfeldinc.com)>, Ken Herlin <[kherlin@goodmans.ca](mailto:kherlin@goodmans.ca)>

To All:

I am forwarding an offer received for the purchase of 1 Royal Gate Blvd. The offer is for \$18.5M. It is presented on the Managers form of offer with little changed but for the due diligence period. It was changed to 60 days from 30.

This property is listed with Michael Bellissimo of CBRE. His comments to me are:

"Considering the time of year, I am surprised this offer came in so quickly. This group was one of our first tours and was one of the only groups to tour through more than once. I have spoken to the agent regarding the lower offering price. He has informed me that he has represented this client on several occasions and has never lost a deal with this buyer. The agent has been advised that his clients price is lower than the other deal we have been presented with. They are open to negotiating the price and terms to get this property. The size of the deposit and the fact that they have followed our form of offer closely is attractive. I've advised them that the due diligence time can be shortened on the basis of the recently completed environmental reports. The buyer should be able to obtain reliance letters from the environmental consultants and these can be used to satisfy their financiers. Same goes for the construction/building assessment (everything was done in 2013). Apparently they have already started lender discussions. I have reviewed some of the other properties held by this buyer and they are all of a similar character to 1 Royal Gate Blvd. The buyer has several industrial properties in North York and in Vaughan. It seems that he likes to buy older buildings with vacancy and upcoming repair obligations with a buy and hold investment focus. Maybe we should get a list of all his holdings to review? Keeping the above in mind, we should try to get them up as much as possible to compete with the Stefano's offering price. At present I have not heard anything at all from Stefano."

The comments about "Stefano's offering price" is another broker whose client has the Managers form of offer, but has not presented an offer in our form; but did initially present an offer in an unacceptable form for \$22M.

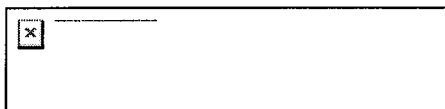
It may be appropriate to sign this offer back at \$22M and reduce the due diligence period to 30 days. There is a mortgage in favour of Trez for \$14.6M.

Is there consensus to do so?

**S. Harlan Schonfeld CPA, CA, CIRP**

**SCHONFELD INC. Receivers + Trustees**

438 University Avenue, 21st Floor  
Toronto, ON M5G 2K8  
Tel 416.862.7785  
Cell 416.254.1992  
Fax 416.862.2136



**Experience acquired. Experience applied.**

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----- Forwarded message -----

From: **Bellissimo, Michael @ Toronto West** <[Michael.Bellissimo@cbre.com](mailto:Michael.Bellissimo@cbre.com)>

Date: Mon, Dec 30, 2013 at 5:01 PM

Subject: Fwd: 1 Royal Gate Crescent APS

To: Harlan Schonfeld <[harlan@schonfeldinc.com](mailto:harlan@schonfeldinc.com)>

Michael A. Bellissimo, MBA  
Associate Vice President, Broker  
CBRE Limited

132

Tel: 416-798-6257  
[michael.bellissimo@cbre.com](mailto:michael.bellissimo@cbre.com)

Begin forwarded message:

**From:** "Goran Brelih" <[goran.brelih@ca.cushwake.com](mailto:goran.brelih@ca.cushwake.com)>  
**To:** "Bellissimo, Michael @ Toronto West" <[Michael.Bellissimo@cbre.com](mailto:Michael.Bellissimo@cbre.com)>  
**Cc:** "Diana Hutton" <[diana.hutton@ca.cushwake.com](mailto:diana.hutton@ca.cushwake.com)>  
**Subject:** 1 Royal Gate Crescent APS

Good afternoon Michael,  
Further to our telephone conversation, please see attached executed Agreement of Purchase and Sale for the property located at 1 Royal Gate Crescent in the City of Vaughan.  
Please give me a call once you had a chance to review the offer,  
Best Regards  
Goran

6. Finally I received the attached email indicating that he was going to be signing it back at \$23 million. See below.

---

**From:** Norma Walton  
**Sent:** Thursday, January 02, 2014 11:00 PM  
**To:** 'Harlan Schonfeld'  
**Cc:** James Merryweather  
**Subject:** RE: 1 Royal Gate Crescent APS

Again, Harlan, thank you for advising. I do not agree with the one off approach, but believe the price for the sign back is in line with what we should receive for this asset in the marketplace.

Thanks again,  
Norma

---

**From:** Harlan Schonfeld [<mailto:harlan@schonfeldinc.com>]  
**Sent:** Thursday, January 02, 2014 5:12 PM  
**To:** Norma Walton  
**Cc:** James Merryweather  
**Subject:** Re: 1 Royal Gate Crescent APS

Norma:

I am providing a copy of the email I received today from Michael Bellissimo.

I will sign the offer back at \$23M with a 30 day and additional 15 day due diligence period, as recommended by him.

*"Harlan*

*Further to our conversation, I would recommend the following as it relates to this buyer specifically:*

*A total due diligence period of 45 business days outlined as per below:*

30 days for buyers sole and absolute discretion of all items required (environmental, building condition, tenants etc)

An additional 15 days to arrange financing (most lenders will need upwards of a month, so the buyer will have to start this process almost as soon as they put the property under contract).

To ensure that they are working diligently, I would also add that the buyer has to waive all their conditions (excluding their financing) within the first 30 days for the 15 days relating to financing to come into effect.

*Irrevocable Period:*

Since they kept their offering so close to your terms, we should be able to get a response from them by middle of next week. How does January 8th @ 5pm for an irrevocable date sound?

*Pricing:*

The highest offer we have seen to date has been \$22M.

To act in the best interest of our clients, we need to try and maximize value on this asset for them.

We should consider providing a response to this buyer in the \$22.5M - \$23M range.

As the agent mentioned to us, he has never lost a deal with this buyer, let's see how high they can go here.

*I am available to discuss at any time."*

**S. Harlan Schonfeld CPA, CA, CIRP**

**SCHONFELD INC. Receivers + Trustees**

438 University Avenue, 21st Floor

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Cell 416.254.1992

Fax 416.862.2136



**Experience acquired. Experience applied.**

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Regards,  
Norma

Norma Walton B.A., J.D., M.B.A.  
THE ROSE AND THISTLE GROUP LTD.  
30 Hazelton Avenue  
Toronto, Ontario, Canada M5R 2E2  
Tel: (416) 489-9790 Ext. 103  
Fax: (416) 489-9973

[www.roseandthistlegroup.com](http://www.roseandthistlegroup.com)

*The Rose and Thistle Group Ltd. is a privately held asset management company that is the parent company of Rose and Thistle Properties, Rose and Thistle Construction, Rose and Thistle Homes, Rose and Thistle Media, Plexor Plastics Corp., Handy Home Products Inc., Palmer Productions Inc., Corporate Communications Interactive Inc., Urban Amish Interiors Inc., Loft Raum Inc. and is affiliated with the law firm of Walton Advocates.*

**EXHIBIT "F"**

One Queen Street East  
Suite 2200  
Toronto, Ontario  
Canada M5C 2Z2

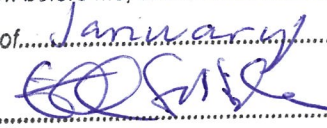
MAIN +1 416 777 2200  
FAX +1 416 777 2277

www.colliers.com



January 3, 2013

Attention: Steve Keyzer & Tim Bristow  
Associate Vice President & Senior Vice President  
Colliers International  
One Queen Street East, Suite 2200  
Toronto, Ontario M5C 2Z2

This is Exhibit.....F.....referred to in the  
affidavit of.....Norma Walton.....  
sworn before me, this.....5th.....  
day of.....January.....2014.....  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

Dear Steve and Tim:

This letter will serve to confirm our understanding regarding commission fees for the transaction involving the following properties (the "Properties"):

1. 1500 Don Mills Road, Toronto, Ontario
2. 1450 Don Mills Road, Toronto Ontario
3. 7-15 Fraser Avenue, Toronto, Ontario
4. 30 Fraser Avenue, Toronto, Ontario
5. 1131A Leslie Street, Toronto, Ontario
6. 165 Bathurst Street/ 620 Richmond Street West, Toronto, Ontario
7. 1 Royal Gate Boulevard, Vaughan, Ontario
8. 5770-5780 Highway 7 West, Vaughan, Ontario
9. 32 Atlantic Avenue, Toronto, Ontario
10. 47 Jefferson Avenue, Toronto, Ontario
11. 241 Spadina Avenue, Toronto, Ontario
12. 18 Wynford Drive, Toronto, Ontario
13. 1185 Eglinton Avenue East, Toronto, Ontario

It is understood and agreed that should an agreement of purchase and sale be concluded for the Properties or a combination thereof with Kevric Real Estate Corporation or an affiliated entity, while this agreement is in effect, Ron and Norma Walton and Dr. Stanley Bernstein (the "Vendor") or an affiliated entity, will pay a commission to Colliers International ("Colliers") as follows:

- One Million Five Hundred Thousand Dollars (\$1,500,000.00), plus applicable HST.
- Should certain properties noted above not be included in the final sale agreement or if other properties are added to the sale Colliers shall be paid a pro-rata commission based upon 0.62% of the final gross sale proceeds.

The commission shall be due and payable upon closing of the transaction. The Vendor grants to Colliers a security interest in the gross sale proceeds including any deposit relating thereto in respect of the commission due to Colliers and irrevocably instructs their acting solicitor to retain and pay such commission from the proceeds of the sale directly to Colliers. This agreement shall be governed by the laws of the Province of Ontario, and any amendments to this agreement are to be in writing, signed by all parties.



This agreement will be in full force and effect until June 30, 2014. If a Sale of the Properties shall not be concluded a commission shall not be paid.

To confirm your agreement with the foregoing, kindly sign in the space provided below.  
Yours very truly,

Ron and Norma Walton and Dr. Stanley Bernstein

This \_\_\_\_ day of \_\_\_\_\_, 2014

**Norma Walton**

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

This \_\_\_\_ day of \_\_\_\_\_, 2014

**Ron Walton**

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

This \_\_\_\_ day of \_\_\_\_\_, 2014

**Dr. Stanley Bernstein**

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

Acknowledged & Agreed,

This \_\_\_\_ day of \_\_\_\_\_, 2014

**COLLIERS INTERNATIONAL**

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

One Queen Street East  
Suite 2200  
Toronto, Ontario  
Canada M5C 2Z2

MAIN +1 416 777 2200  
FAX +1 416 777 2277

www.colliers.com



January 3, 2013

Attention: Steve Keyzer & Tim Bristow  
Associate Vice President & Senior Vice President  
Colliers International  
One Queen Street East, Suite 2200  
Toronto, Ontario M5C 2Z2

Dear Steve and Tim:

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9. 32 Atlantic Avenue, Toronto, Ontario
10. 47 Jefferson Avenue, Toronto, Ontario
11. 241 Spadina Avenue, Toronto, Ontario
12. 18 Wynford Drive, Toronto, Ontario
13. 1185 Eglinton Avenue East, Toronto, Ontario
14. 1485 Dupont Street, Toronto, Ontario
15. 295 The West Mall, Toronto, Ontario
16. 1 City View Drive, Toronto, Ontario
17. 355 Weston Road, Toronto, Ontario
18. 140 and 150 Queen's Plate Drive, Toronto, Ontario
19. 14 Dewhurst Blvd, Toronto, Ontario
20. 153 Eddystone Avenue, Toronto, Ontario
21. 450 Pape Avenue, Toronto, Ontario
22. 0 Trent Avenue, Toronto, Ontario
23. 3765 St. Clair Avenue East, Toronto, Ontario
24. 1003 Queen Street East, Toronto Ontario

It is understood and agreed that should an agreement of purchase and sale be concluded for the Properties or a combination thereof with Evton Capital Partners or an affiliated entity, while this agreement is in effect, Ron and Norma Walton and Dr. Stanley Bernstein (the "Vendor") or an affiliated entity, will pay a commission to Colliers International ("Colliers") as follows:

- One Million Eight Hundred Sixty Thousand Dollars (\$1,860,000.00), plus applicable HST.



- Should certain properties noted above not be included in the final sale agreement or if other properties are added to the sale Colliers shall be paid a pro-rata commission based upon 0.62% of the final gross sale proceeds.

The commission shall be due and payable upon closing of the transaction. The Vendor grants to Colliers a security interest in the gross sale proceeds including any deposit relating thereto in respect of the commission due to Colliers and irrevocably instructs their acting solicitor to retain and pay such commission from the proceeds of the sale directly to Colliers. This agreement shall be governed by the laws of the Province of Ontario, and any amendments to this agreement are to be in writing, signed by all parties.

This agreement will be in full force and effect until June 30, 2014. If a Sale of the Properties shall not be concluded a commission shall not be paid.

To confirm your agreement with the foregoing, kindly sign in the space provided below.  
Yours very truly,

Ron and Norma Walton and Dr. Stanley Bernstein

This \_\_\_\_ day of \_\_\_\_\_, 2014

**Norma Walton**

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

This \_\_\_\_ day of \_\_\_\_\_, 2014

**Ron Walton**

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

This \_\_\_\_ day of \_\_\_\_\_, 2014

**Dr. Stanley Bernstein**

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

Acknowledged & Agreed,

This \_\_\_\_ day of \_\_\_\_\_, 2014

**COLLIERS INTERNATIONAL**

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

**DBDC SPADINA LTD. et al.**

- and -

**NORMA WALTON et al.**

Applicants

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

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

**Proceedings commenced at TORONTO**

**AFFIDAVIT OF NORMA WALTON  
(Sworn January 5, 2014)**

**SCHIBLE LAW**

Adelaide Place/DBRS Tower  
181 University Avenue  
Suite 2200  
Toronto, Ontario  
M5H 3M7

**Guillermo Schible (LSUC# 51584B)**

Tel: 416 601 6813

Fax: 416 352 5454

guillermo@schiblelaw.com

Lawyer for Norma Walton

**DBDC SPADINA LTD. et al.**

- and -

**NORMA WALTON et al.**

Applicants

Respondents

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

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

**Proceedings commenced at TORONTO**

**NOTICE OF MOTION OF NORMA WALTON**

**SCHIBLE LAW**

Adelaide Place/DBRS Tower  
181 University Avenue  
Suite 2200  
Toronto, Ontario  
M5H 3M7

**Guillermo Schible (LSUC#51584B)**

Tel: 416 601 6813

Fax: 416 352 5454

Email: [guillermo@schiblelaw.com](mailto:guillermo@schiblelaw.com)

Lawyer for Norma Walton

**DBDC SPADINA LTD. et al.**

- and -

**NORMA WALTON et al.**

Applicants

Respondents

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

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

**Proceedings commenced at TORONTO**

**MOTION RECORD  
OF NORMA WALTON**

**SCHIBLE LAW**

Adelaide Place/DBRS Tower  
181 University Avenue  
Suite 2200  
Toronto, Ontario  
M5H 3M7

**Guillermo Schible (LSUC# 51584B)**

Tel: 416 601 6813

Fax: 416 352 5454

Email: [guillermo@schiblelaw.com](mailto:guillermo@schiblelaw.com)

Lawyer for Norma Walton