

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

Applicants

and

**NORMA WALTON, RONAULD WALTON, THE ROSE & THISTLE GROUP
LTD., EGLINTON CASTLE INC., and THOSE CORPORATIONS LISTED ON
SCHEDULE C HERETO**

Respondents

and

**THOSE CORPORATIONS LISTED ON SCHEDULE B HERETO, TO BE BOUND BY THE
RESULT AND THE REAL PROPERTY LISTED ON SCHEDULE C HERETO, TO BE
BOUND BY THE RESULT**

and

**SUCH OTHER RESPONDENTS FROM TIME TO TIME AS ARE ON NOTICE OF THESE
PROCEEDINGS AND ARE NECESSARY TO EFFECT THE RELIEF SOUGHT**

**RESPONDENTS' RESPONSE
TO APPLICANT'S ARGUMENT**

August 1, 2016

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Ronald Walton, The Rose & Thistle Group
Ltd. and Eglinton Castle Inc.

TO: THE SERVICE LIST

The Walton Position

1. The Waltons' support the submissions of the DeJongs and the Condoses as it relates to the issues recently raised by the Bernstein Applicants.

Dr. Bernstein's requested finding of Fraudulent Misappropriation

2. At paragraph 264 of his reasons, Justice Brown drew conclusions with respect to various claims of relief. He found that the Waltons breached their contractual obligations and their fiduciary duties to Schedule B companies by pooling funds advanced by the Applicants to the Schedule B companies with Rose and Thistle and Schedule C Companies. He then goes on to list instances of amounts of Schedule B money used to purchase or discharge encumbrances on Schedule C properties. The court quantified the total transfers for eight properties, including 44 Park Lane Circle, to be \$8,127,425.00. The court then concludes further that the use of the funds to acquire Schedule C properties, or discharge encumbrances, resulted in the unjust enrichment of the Waltons. In the broad context Justice Brown concluded the Waltons breached their contractual obligations to the Applicants, and in some cases, he found that transfers amounted to fraud. These limited examples were specifically in relation to 78 Tisdale and 875/887 Queen Street East. At no time and in no respect did Justice Brown conclude that there were fraudulent misrepresentations at large, which in law require acts or declarations that are made with the intent to deceive over the investment relationship as a whole, and thus are seminally connected to the sustaining of financial loss in the context of the entire portfolio.

3. A basic provision of the proformas indicates that Dr. Bernstein was to be consulted on any decision concerning the increase in the total amount of equity required to complete each project. Ostensibly this is the reason for the need to move money around. Virtually all properties required more money than the original contributions to develop fully. These decisions were made on a virtual daily basis, and as such, were part of Norma Walton's perceived mandate to operate the portfolio in a commercially viable manner.
4. The so-called diversion of funds is a term that has little significance when seen in the full context and particularly from the perspective of Norma Walton, who has stated ab initio that her virtually unfettered discretion to manage the portfolio, including her belief in her ability to move money around, based on the simple quid pro quo that Dr. Bernstein cared about anonymity and profits and protection from personal liability.
5. That is to say that Walton's position is that the strict written terms of the contract were not acted upon by either party in that the exigencies of the process on the road to development really dictated what, in fact, the terms of the contract amounted to. This simple notion was given credence by Justice Brown who said in his decision at paragraph 178 that,

"Although this course of conduct would prevent Dr. Bernstein from relying on the Respondents' failure to provide monthly reports in the early part of their relationship as an event of default under the agreements, Dr. Bernstein most certainly did not waive his entitlement to receive any reports under the agreements. When Dr. Bernstein began to request them, he was entitled to receive them."

6. Dr. Bernstein, therefore, cannot insist on the allegation that the contract was breached by the Respondents at the outset. The court's observations and finding on this point clearly shows that the Applicant cannot take the position that their damage claim in the amount of \$66,000,000.00 is the result of a fraud scheme based on misrepresentations. This is precisely why Judge Brown did not characterize the movement of equity across the portfolio as fraud, even though fraud was not pleaded until after his decision was rendered.
7. Moreover, and at the very least, a trial would determine whether the parties attempted to rectify the original contracts just prior to the onset of litigation. That is more in keeping with Justice Brown's analysis of the contractual issues that have emerged in the dispute. Indeed Mr. Reitan's letter of June 7th, 2013, appended hereto at Tab "A", seeks to transfer responsibility for financial administration of the projects to Dr. Bernstein. Additionally, Reitan recommends that the projects be jointly managed by Ms. Walton and Dr. Bernstein. A mere six days later, Dr. Bernstein was specifically told that funds were being pooled in answer to Reitan's June 7th letter.
8. Dr. Bernstein's assertion that no monies would have been advanced if he had known what Ms. Walton was going to do with the funds is another reason why the Respondents have sought a trial of the issue since this simple assertion is another apparent component upon which Dr. Bernstein is seeking a finding of fraudulent misrepresentation.

9. In point of fact the evidence does not support this protest. Firstly, the exchange of correspondence between the parties, most particularly the one that disclose the involvement of Jackie Rabinowitz, in the operation of the portfolio, clearly show that any questions that were asked were answered, and that Ms. Walton provided reports to Dr. Bernstein on a timely basis.
10. It is abundantly clear that Dr. Bernstein and his staff chose not to rely upon the strict terms of the contract, therefore it is not as if Ms. Walton clandestinely hid these facts from Dr. Bernstein. Rather, it is a situation where as Ms. Walton has attempted to establish Dr. Bernstein was content that she ran the portfolio as he saw fit, and he was happy as long as he was a silent partner and he was making profits.
11. Additionally, major pieces of evidence do not support the Applicant's position, specifically:
 - a. The Reitan letter to Ms. Walton dated June 7, 2013, appended herewith at Tab "A", clearly states, as is indicated above, that changes need to be made.
 - b. On June 13, 2013, as is indicated above, Ms. Walton responded by letter where she clearly disclosed that she was pooling funds between the various accounts to smooth out cash flow, appended herewith at Tab "B".
 - c. From there a great deal of communication, including meetings, occurred.
 - d. On June 27, 2013, Dr. Bernstein provided to Ms. Walton \$3,200,000 to close the purchase of 620 Richmond Street West, Toronto, Ontario, appended herewith at Tab "C" is a copy of the Richmond Row Holdings Agreement.

Hence Dr. Bernstein knew on June 13, 2013 that pooling of funds was occurring yet he still insisted on investing in Richmond Row Holdings Ltd. on June 27, 2013.

12. Secondly, Dr. Bernstein signed two agreements concerning the Dewhurst property and the Eddystone property, both agreements, appended herewith at Tabs “D” and “E”, and paragraph 12 and 13 was amended in those agreements to reflect the actual reporting occurring on the properties as opposed to the wording from the original agreements which agreements were followed by both parties more in the breach than the observance.
13. As Justice Brown outlines in paragraph 178 of his August 2014 judgment, where he clearly recognizes that the parties were not following the written contracts. It can be said that Dr. Bernstein was being disingenuous in his protests. He must have known that Ms. Walton was signing cheques for more than \$50,000.00. This is yet another example of the many issues connected to the fraud application which motivated the Respondent to seek a trial. Moreover, a trial is clearly necessary as a result of the issues that have arisen and readdressed by the Applicant in the context of the proper manner in which to distribute Schedule C funds available. Additionally the Waltons have clearly denied that any fraud was committed against Schedule C investors.
14. Dr. Bernstein also claimed that Ms. Walton misappropriated funds from him. In her October 31, 2013 affidavit, Ms. Walton swore evidence that she diverted funds of his. In fact, they were not his funds but were the joint equity of the parties in two of the properties they jointly owned. The term “diverted” used in Ms. Walton’s affidavit, sworn

October 31st was done in error. Nonetheless, this Court alleged “akin to theft” on the basis of that wording without permitting Ms. Walton to explain, and all of Ms. Walton’s subsequent evidence has been called into question by Dr. Bernstein’s counsel BUT they have not cross-examined Ms. Walton on those subsequent affidavits. As such, given that this is an application, her evidence is uncontroverted on that subject matter.

15. Further, Ms. Walton has provided evidence from five individuals substantiating the approximately \$25 million of work done by Rose and Thistle to the joint portfolio, for which they were paid \$22.6 million and for which the joint portfolio increased by \$44 million in appraised value. Those sworn affidavits are uncontested because Dr. Bernstein chose not to cross-examine those affiants despite having three years in which to do so. Those affiants are Carlos Carreiro, Steve Williams, Mario Bucci, Yvonne Liu, and Mark Goldberg. There can be no finding of misappropriation due to the evidence about the construction work done being uncontested.

16. At the time Dr. Bernstein requested the receivership supported by the Manager at the hearing date, even though the Manager’s report made no such recommendation, the property portfolio was vibrant and profitable and there was \$170 million of equity therein.

Duty to Mitigate

17. Dr. Bernstein seeks to recover Schedule C money.

18. However, his efforts in that regard must be seen in light of his stated objective from December 2013 to make Ms. Walton bankrupt and put her in jail. He has acted contrary to his own economic interests and contrary to Ms. Walton's economic interests and contrary to the 42 non-Bernstein investors' interests as a result of his stated objective. Dr. Bernstein had a duty to mitigate his damages. Instead by his actions within the litigation he has caused his damages and gravely imperiled the economic stability of the Schedule C properties. If the matter had been dealt with privately pursuant to the mediation and arbitration clauses in all of the agreements, the \$170 million of equity across the Walton portfolio would have been preserved and the parties could have sold the properties for \$500 million and everyone would have benefitted and made money, and the Schedule C investors would not be involved in the litigation. Instead this litigation has resulted in a financial debacle for all parties involved.

Ron Walton had no involvement in the matter

19. Ron Walton was a Director of the companies. Bernstein refused to become a director.

20. Ron Walton was a joint owner of the Waltons' 50% component of the joint properties.

21. Ron Walton played no active role in any capacity within Rose and Thistle during the relevant 2010 to 2013 time frame.

22. Ron Walton had no dealings with Dr. Bernstein and other than a couple of social occasions, never spoke with him.

23. Dr. Bernstein never cross-examined Ron Walton.

24. All evidence concerning Mr. Walton's complete lack of involvement in the partnership relationship between Ms. Walton and Dr. Bernstein is uncontroverted.

25. There is thus no evidence to support any damages award or fraud finding against Mr. Walton.

26. The Applicant also refers to an email from Ms. Walton to Tom Trklja asking Mr. Trklja to make some transfers of shares. Dr. Bernstein seeks to have the Court conclude from that email that none of the Schedule C Investors listed in that email provided money to the properties mentioned. That is incorrect, as evidenced by Mr. Smith's work as Ms. Walton's personal receiver. Indeed, the whole premise of the Applicant's position that the Respondents 'fraudulently' preferred the interests of other creditors over the Applicant's, does not properly recognize the simple fact that Ms. Walton was properly synchronizing dates of earlier transactions such as the issuing of shares. She was trying to catch the paperwork up to the financial transactions. The email was a housekeeping email to ensure that all of her investors were protected with share certificates evidencing where their ownership interests lay based on the monies they had invested up to that time. This process is similar to similar actions in the realm of efforts to catch up on bookkeeping matters.

27. This particular email has not been examined upon or previously referred to and is another example of why the contest between the Applicant and Schedule C investors requires a trial.

Criminal Charges

28. The additional argument raised by the Applicant further illustrates the point raised by the Respondent at the hearing of the motion on June 3rd, 2016. That is to say, a trial of the issue of fraud is required for a multiplicity of reasons relating to the civil matter and is not to be avoided because of the ongoing criminal matter as suggested by counsel for the Applicant, i.e. "Why would she want a trial now," presumably implying that Ms. Walton would not want to create a testimonial record in civil court that could be used against her in the criminal trial. Her right to remain silent has already been violated. That point, among other things, already alluded to misses the potential for a civil trial to result in a favourable disposition in the criminal matter, and to, of course, rectify the grave injustice that has been done to the Waltons by bringing these charges at this late date without notice to the civil court.

Order being sought

29. The Waltons support an Order that all monies that Schonfeld has in trust related to the sale of Schedule C properties should be distributed to the DeJongs as to their entitlements in St. Clarens and Prince Edward, to the Condoes as to their entitlements in Cecil, to the Levytams as to their entitlements in Cecil, with the balance to be divided pro rata

between the 42 Schedule C investors in accordance with the Schedule attached to Ms. Walton's Factum and copied again here.

30. The Waltons support an Order that all monies that Schonfeld has in trust related to the sale of the Schedule B properties be distributed to Dr. Bernstein or otherwise as the Court deems just, noting that any monies he receives will impact the quantum if any of his damages claim.

31. The Waltons seek an Order that Dr. Bernstein's claim for damages and for a finding of fraud be put over to a trial date to be scheduled.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 1, 2016



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Group Ltd. and Eglinton Castle Inc.

SCHEDULE A – LIST OF SCHEDULE C INVESTMENTS

Ange Boudle	\$ 408,880
Triane Boudle	\$ 126,150
Barb Naglie	\$ 117,778
Harvey Naglie	\$ 225,788
Howard Beck	\$ 101,472
Carlos Carreiro	\$ 300,000
Dian Cohen	\$ 105,050
Duncan Coopland	\$ 756,000
Christine De Jong	\$2,995,318
Michael De Jong	\$ 786,775
Dennis Condos	\$ 367,500
Peggy Caldwell Condos	\$ 10,500
John and Sheila Korchynski	\$ 105,050
Sheila Korchynski	\$ 52,500
Paul and Carmen Duffy	\$ 409,601
Vane Plesse	\$ 117,675
John Geikins	\$ 52,500
Gerry Gotfrit	\$ 259,713
Gideon and Irene Levytam	\$ 746,000
Ken and Grace Bugg	\$ 682,825
Joe and Teresa Memme	\$ 401,050
Mark Goldberg	\$ 150,000
Jill Penny	\$ 173,300
Judith and Phil Aber	\$ 105,050
John and Myrne Rawlings	\$ 568,850
John and Michele Rocha	\$ 65,971

Saul Spears	\$ 67,648
Joel Schachter	\$ 351,822
Danny and Gabi Servos	\$ 356,907
Cary Silber	\$ 16,912
Michelle Tessaro	\$ 162,680
Fareed Ansari	\$2,040,250
Mike Cowan	\$ 3,800
John O'Dwyer	\$ 100,000
Steve Kollins	\$ 595,221
Matthias Ohm	\$ 200,000
Deborah McKeown	\$ 20,000
 Total:	 \$ 14,106,536

SCHEDULE “A” COMPANIES

2.

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

SCHEDULE “B” COMPANIES

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

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

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

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

TAB "A"

Dr. BERNSTEIN

Diet & Health Clinics



June 7, 2013

Norma Walton
The Rose and Thistle Group LTD.
30 Hazelton Avenue
Toronto, ON
M5R 2E2

RE: Bernstein/Walton Projects

Norma:

Dr. Bernstein (Bernstein) requested I undertake a review of the activities of equity investments (the "Projects") that are owned jointly with Norman and Ron Walton ("Walton"). The Projects are owned and operated by numerous corporations that are each jointly owned by Bernstein and Walton. My review was limited to the Projects up to December 31, 2011, the latest date for which financial records for the Projects have been made available to me by Walton. This is a compilation of findings, conclusions, and recommendations resulting from that review.

Bernstein has relied on Walton's knowledge and representations of the Projects when considering investment terms. There is a general understanding that the Bernstein investments are secured by sound assets that will in time be sold at a profit. This review focused on the various agreements (the "Agreements") and historical information for 2011 financial statement purposes. There has been no attempt to confirm market values or anticipated revenues, nor did I undertake an audit of the Projects, both of which would have been outside the scope of my review. Nevertheless, I believe my review indicates significant cause for concern and action on Bernstein's part to protect his investments, which at the time of this letter, total approximately \$110 million on a cash basis.

Summary

The following is a summary of conclusions:

- 1) Walton is not making her own equity investments in the Projects in equal proportion to Bernstein despite an understanding that she was to do so.
- 2) Walton is taking on third party investors, which is expressly prohibited in the Agreements.
- 3) Walton has significant related party transactions with the Projects, the magnitude of which Bernstein had not been made aware of.
- 4) Project expenditures have not been presented for approval by Bernstein, as required in the Agreements.
- 5) Lack of reporting has limited the ability to assess historical information in an effort to improve our understanding of same and affect Project outcomes.
- 6) Project properties were sold without the required pay down of associated mortgages.

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There is interrelated support for this in the following areas:

- 1) Equity
- 2) Mortgages
- 3) Fees
- 4) Business Plan
- 5) Reporting & Control

It is my recommendation that:

- 1) Walton responds to the satisfaction of Bernstein to concerns herein.
- 2) Equity and mortgage deficiencies are rectified.
- 3) Responsibility for Financial and Corporation Administration for the projects is moved to Bernstein.
- 4) Projects are jointly managed by Walton and Bernstein, with Bernstein approval required at any and all steps and for all expenditures.

The next several pages are GENERAL INDICATIONS, DETAILED FINDINGS, and CONCLUSIONS for each area. The last page herein contains detailed RECOMMENDATIONS.

Resolution of the issues and implementation of the recommendations is my highest priority. Please contact me immediately so that we can move forward in an expeditious manner.

Very truly,



James O. Reitan

Director of Accounting and Finance

1) Equity

a. General Indications:

- i. At December 31, 2011, the equity investment split was 79% Bernstein and 21% Walton.

Equity	Company	Bernstein	Walton	Grand Total
1185 Eglinton	Bannockburn Lands Inc.	2,225,000	73,717	2,298,717
18 Wynford	Wynford Professional Centre Ltd.	1,034,830	0	1,034,830
241 Spadina	Twin Dragons Corporation	1,120,500	350,000	1,470,500
32 Atlantic	Liberty Village Lands Inc.	396,736	0	396,736
	Liberty Village Properties Ltd.	1,851,434	839,266	2,690,700
450 Pape	Riverdale Mansion Ltd.	470,473	250,021	720,494
5770/5780 Hwy 7 West	Royal Agincourt Corp	2,257,500	987,800	3,245,300
Grand Total		9,366,473	2,600,803	11,967,276

- b. Detailed Findings – It should be noted that the findings are as based on the Projects' records. If deposit for purchase of property or equity contributions have in some way been made outside Project records, and is not reflected in the Project general ledger, it will not be taken into account in these comments. I am unaware of any such deposits or contributions.

- i. 18 Wynford; Wynford Professional Centre Ltd. ("Wynford")

- The agreement calls for equity contributions from the partners as follows:

- Walton and Bernstein have each provided ½ of the \$450,000 deposit to purchase the Property.

- The balance of equity in the amount of \$4,659,180 each will be paid as follows:

- Bernstein will provide to the Company the sum of \$1,700,000 on or before February 3, 2011;
- Walton will provide the sum of \$1,700,000 to the Company in a timely manner as required as the Project is completed; and
- Bernstein and Walton will provide the remaining sum of \$1,259,180 in a timely manner as required.

- Equity contributions to February 4, 2011 were as follows:

		Bernstein	Walton
Deposit	11/10/10	\$225,000	
Bernstein due 2/3/11; Walton due on a timely basis	02/03/11	1,700,000	
Remaining sum due from each partner at 50%	02/04/11	300,000	
Total Equity Investment		\$2,225,000	\$0

Walton has not made the equity contributions as required. Bernstein is into the third level of funding with no equity investment by Walton.

ii. 241 Spadina; Twin Dragons Corporation

- The agreement calls for equity contributions from the partners as follow:

7. Walton has already provided \$300,000 as a deposit to purchase the Property. Bernstein will provide to the Company the sum of \$1,120,500 on or before October 14, 2010. Walton will provide a further \$820,500 to the Company in a timely manner as required as the Project is completed.
8. Walton and Bernstein will each provide 50% of whatever additional capital over and above the \$1,120,500 each that is required to complete the Project, if any, in a timely manner.

- As of December 31, 2011, equity contributions are as follows:

		Bernstein	Walton
Gideon & Irene Levytam	09/01/10		50,000
Ange Boudle	09/30/10		50,000
Initial Deposit	10/15/10	1,120,500	
Teresa & Joe Memmo	10/27/10		100,000
Duncan Coopland	10/29/10		150,000
		1,120,500	350,000

The equity applied to Walton was received from third parties after execution of the agreement. In one instance the memo on the cheque states:

IRENE & GIDEON LEVYTAM
MEMO INVESTMENT IN 241 SPADINA

iii. 1185 Eglinton; Bannockburn Lands, Inc./Skyline

- The agreement calls for equity contributions from the partners as follows:

9. Walton and Bernstein have each provided 1/2 of the \$300,000 deposit to purchase the Property.
10. The balance of equity in the amount of \$2,351,900 each will be paid as follows:
 - a. Bernstein will provide to the Company the sum of \$1,750,000 on or before December 17, 2010;
 - b. Walton will provide the sum of \$1,750,000 to the Company in a timely manner as required as the Project is completed;
 - c. If and when the vendor take back mortgage of \$500,000 is required to be paid back prior to the completion of the Project, both Bernstein and Walton will provide a further \$250,000 each as required to pay out the vendor take back mortgage;
 - d. If and when the land transfer tax is required to be paid, Bernstein and Walton will each contribute the sum of \$127,500 or whatever amount equals 50% of the total amount due; and
 - e. Bernstein and Walton will provide the remaining sum of \$224,400 in a timely manner as required.

- As of December 31, 2011, equity contributions are as follows:

		Bernstein	Walton
Deposit	11/01/2010	\$150,000	
10 a installment	12/17/2010	1,750,000	
Deposit	12/31/2010		560,804
10 b installment	08/03/2011	325,000	
Deposit	12/31/2011		12,914
		\$2,225,000	\$573,718

Walton has not completed the equity deposit as required by the agreement. Bernstein is into the third level of funding with no equity investment by Walton.

IV. 32 Atlantic; Liberty Village Lands Inc & Liberty Village Properties Inc.

- The agreement calls for equity contributions from the partners as follows:
 - 7. Walton originally provided the original deposit and Bernstein has reimbursed Walton such that each party has now provided $\frac{1}{2}$ of the \$300,000 deposit to purchase the Property, which amount will form part of the equity contributions.
 - 8. The balance of equity in the amount of \$4,196,340 will be paid as follows:
 - a. Bernstein will provide to the Company the sum of \$2,098,170 on or before August 29, 2011; and
 - b. Walton will provide the sum of \$2,098,170 to the Company in a timely manner as required as the Project is completed.
- As of December 31, 2011, equity contributions are as follows:

		<u>Bernstein</u>	<u>Walton</u>
Deposit	01/01/2010		\$100
Deposit	11/10/2010	150,000.00	
Due 8/29/11	08/22/2011	246,736.00	
Due 8/29/11	08/22/2011	1,851,434.00	
Deposit & due on timely basis	12/31/2011		<u>839,165.69</u>
		\$2,248,170	\$839,266

Walton has not completed the equity deposit as required by the agreement on a timely basis.

V. 450 Pape; Riverdale Mansion Ltd.

- The agreement calls for equity contributions from the partners as follows:
 - 7. Walton has provided the \$75,000 deposit to purchase the Property, which amount will form part of Walton's equity contributions.
 - 8. The balance of equity in the amount of \$865,946 will be paid as follows:
 - a. Bernstein will provide to the Company the sum of \$470,473 on or before July 4, 2011; and
 - b. Walton will provide the sum of \$395,473 to the Company in a timely manner as required as the Project is completed.
- As of December 31, 2011, equity contributions are as follows:

		<u>Bernstein</u>	<u>Walton</u>
Installment	06/27/2011	\$470,473	
Deposit/timely Installment	12/31/2011		\$250,021

Walton has not completed the equity deposit as required by the agreement on a timely basis.

vi. 5770/5780 Hwy 7 West; Royal Agincourt Corp.

- The agreement calls for equity contributions from the partners as follows:

7. Walton and Bernstein each paid \$475,000 towards the deposit and due diligence items.
8. Walton and Bernstein have or will pay as follows:
 - a. Bernstein provided to the Company the sum of \$1,782,500 on December 15, 2011; and
 - b. Walton will provide the sum of \$1,782,500 in a timely manner as required as the Project is completed.
9. Walton and Bernstein will each provide 50% of whatever additional capital over and above the \$2,257,500 each that is required to complete the Project, if any, in a timely manner.

- Equity ownership is limited to Bernstein & Walton.

5. The ownership of the Company will be as follows:

- a. 50% to Bernstein; and
- b. 50% to Ron and Norma Walton as they may direct between each other or alternatively to be held by a completely Walton-owned and controlled company, provided that all covenants and agreements of Walton herein shall continue in full force and effect and such company executes an agreement to be bound by the provisions of the within Agreement.

- As of December 31, 2011, equity contributions are as follows:

		Bernstein	Walton
Deposit	11/25/11	\$475,000	
Funds due 12/15/11	12/05/11	1,782,500	
Preferred Shares?			
1607544 Ontario Inc. (Ansari)	12/31/11		100,000
1768371 Ontario Inc.	12/31/11		100,000
Barbara Nagle	12/31/11		100,000
Cory Silber	12/31/11		50,000
Grace and Ken Bugg	12/31/11		100,000
Joel & Renee Schachter	12/31/11		175,000
John Rocha and Michele Pang	12/31/11		62,000
Ormsby Investment Limited	12/31/11		100,000
Staddon & Bush P.M.I. Inc	12/31/11		100,000
Vane Plesse	12/31/11		100,000
		<u>\$2,257,500</u>	<u>\$987,000</u>

Walton's equity appears to be funded by 3rd parties and appear to be made after Bernstein's deposit and 8.a. installment

C. Conclusions

- i. Walton has not made deposit equity contributions as required by the Agreements.
- ii. Walton has not made progress equity contributions as required by the Agreements to be made in a timely manner.
- iii. Walton appears to be funding equity requirements using third party investments directly into the projects in violation of the Agreements.
- iv. The lack of balance between shareholders of funds invested is significant and consistent throughout the group companies.

2) Mortgages

a. General Indications

- i. A sale occurred without mortgage pay off.

b. Detailed Findings

i. 18 Wynford; Wynford Professional Centre Ltd.

- The mortgage for this property was held by 368230 Ontario Ltd (a Bernstein controlled company).
 - A sale in the amount of \$3,100,000 for a number of suites was closed in 2011. The mortgage agreement for this property states the following:
SALE BY CHARGOR:
In the event of the Chargor(s) selling, conveying, transferring or entering into any agreement of sale or transfer of the title of the said lands, or if the Chargor is a corporation, the sale, transfer or assignment of any shares of the corporation, to any purchaser, grantee, transferee, or assignee, all monies hereby secured, together with all accrued interest and prepayment penalty set out above, shall forthwith become due and payable, at the option of the Chargee(s).
 - The mortgage became due and payable as a result of the sale.
- Equity was returned to Bernstein and credited against Walton's receivable rather than paid down against the mortgage. This is a violation of the mortgage terms.*

c. Conclusion

- i. Mortgage terms are not being followed.

3) Fees

a. General Indications

- i. Services for build out and management charges are provided by Walton. The build out charges are billed by type of expense with the exception of Wynford, which was a square foot charge for the project. Charges by company and type are as follows:

Row Labels	Bannockburn Lands	Liberty Village Properties	Riverdale Mansion	Twin Dragons Corporation	Wynford Professionals Centre	Grand Total
Actual-Sq. Ft.						
Labour					3,550,000	3,550,000
Management Fees					355,000	355,000
Actual-Breakdown						
Labour		537,000	220,777	103,131		860,908
Doors					12,321	12,321
Painting					1,500	1,500
Demolition		350,000				350,000
Electrical		208,500				208,500
Elevator		102,500				102,500
Fire System		262,500				262,500
Flooring		77,500				77,500
Framing		310,000	125,390			435,390
HVAC		198,000				198,000
Plumbing		167,500				167,500
Roofing		97,500	38,500			136,000
Windows Installation		159,000				159,000
Advertising and Promotion			800			800
Brickwork			34,500			34,500
Management Fees	9,177	91,500	114,632	115,000		330,310
Landscaping			7,702			7,702
Materials			275,846			275,846
Professional Fees Architectural			295,000			295,000
Professional Fees Consulting Fees	90,300		71,000	2,500		163,800
Grand Total	99,477	2,581,500	1,184,147	220,631	3,918,821	7,984,576

b. Detailed Findings

- i. 18 Wynford; Wynford Professional Centre Ltd.

Fees charged by Walton to the partnership during the period were:				
	<u>Cost of Sale-ON Lung</u>	<u>Capitalized</u>	<u>Total</u>	<u>Plan</u>
Build out	\$313,821	\$3,250,000	\$3,563,821	\$2,525,000
Management	30,000	325,000	355,000	252,500
	\$343,821	\$3,575,000	\$3,918,821	\$2,777,500
Management fees are billed to the partnership at 10% of build out.				
<i>Although the build out fee is at \$50/sf appears reasonable, there are several issues here:</i>				
- Was the arrangement of Walton providing these services approved by Bernstein as required by the Agreements?				
- What exactly is the role of Walton's company in providing these services?				
- Who is performing the work, Walton, or sub-contractors?				
- Are there third party invoices supporting these charges?				
- What is the method of invoicing, i.e.: cost plus, per sf based on market rates?				
- Why did management charges increase automatically with the cost of build out?				

c. Conclusions

- i. Significant related party transactions are occurring without proper approval.

4) Business Plan

a. General Indications

- i. Differences between the Business Plans as set forth in the Agreements and the actual results are not explained but they appear to indicate that the original budgets were inflated to maximize Bernstein's investment and eliminate a need for equal investments by Walton.

b. Detailed Findings

i. 18 Wynford; Wynford Professional Centre Ltd.

- The Business Plan summarizes anticipated profits as follows:

Anticipated Profit		
Value of 18 Wynford:	\$	19,904,370
Less Project Costs:	\$	14,709,180
Projected Profit:	\$	5,195,190

- The Business Plan details show the following capital requirements:

Purchase	\$9,045,000
Renovation net cost	-
Tenant improvements/inducements/allowances	2,777,500
Total capital required	\$11,822,500
Less: Projected operating income	(\$896,031)
Net capital	\$10,926,469

- The partner equity investment requirements appear to be based on:

Project Costs	\$14,709,180
Less: Existing mortgage	9,600,000
Partner Equity Investment Requirement Total	\$5,109,180
Partner Equity Investment Requirement Split	\$2,554,590

- *The Project costs (\$14,709,180) are significantly in excess of the Total Capital Required (\$11,822,500).*
- *Based on the method of shareholder accounting, the excessive Project cost projection in the plan (\$2,886,680) results in Share Subscription Receivable (unfunded equity investment) from Walton (\$2,554,590).*

ii. 241 Spadina; Twin Dragons Corporation

- The following are results through 12/31/11 compared to plan capital requirements:

	<u>Actual</u>	<u>Plan</u>
Purchase	\$4,722,128	\$4,791,000
Professional fees	<u>inc</u>	160,000
Renovation costs	2,713,989	2,550,000
Carrying costs	-	1,040,000
Total capital required	\$7,436,117	\$8,541,000

- The partner equity investment requirements appear to be based on:

Project Costs	\$8,541,000
Less: Mortgage	<u>6,300,000</u>
Partner Equity Investment Requirement Total	\$2,241,000
Partner Equity Investment Requirement Split	\$1,120,500

The Total Capital Required (\$8,541,000) appears to be excessive in as much as Walton has contributed \$350,000 through the end of 2012.

iii. 1185 Eglinton; Bannockburn Lanks, Inc./Skyline

- The following are results through 12/31/11 compared to plan capital requirements:

	<u>Actual</u>	<u>Plan</u>
Purchase	\$11,833,355	\$8,949,000
Demolition	Inc.	854,920
Development	Inc.	1,760,000
Carrying costs	Inc.	1,639,880
Total capital required	\$11,833,355	\$13,203,800

- The partner equity investment requirements appear to be based on:

Project Costs	\$13,203,800
Less: Mortgage	<u>8,200,000</u>
Partner Equity Investment Requirement Total	\$5,003,800
Partner Equity Investment Requirement Split	\$2,501,900

The Total Capital Required (\$13,203,800) appears to be exaggerated in as much as Walton has contributed \$73,717 through the end of 2012.

IV. 32 Atlantic; Liberty Village Lands Inc & Liberty Village Properties Inc.

- The Business Plan details show the following capital requirements:

	<u>Actual</u>	<u>Plan</u>
Purchase	\$12,350,596	\$9,038,500
Professional Fees	inc	515,000
Development	inc	4,500,000
Carrying costs	inc	1,742,840
Total capital required	\$12,350,596	\$15,796,340

- The partner equity investment requirements appear to be based on:

Project Costs	\$15,796,340
Less: Mortgage	11,300,000
Partner Equity Investment Requirement Total	\$4,496,340
Partner Equity Investment Requirement Split	\$2,248,170

The Total Capital Required (\$15,796,340) appears to be exaggerated in as much as Walton has contributed \$839,266 through the end of 2012.

V. 5770/5780 Hwy 7 West; Royal Agincourt Corp.

- The Business Plan details show the following capital requirements:

	<u>Actual</u>	<u>Plan</u>
Purchase	\$14,983,000	\$14,974,500
Professional fees	Inc.	575,202
Tenant fixtures	Inc.	440,000
Carrying costs 1/1/12 to 4/30/12		125,298
Total Capital Required	\$14,983,000	\$16,115,000

- The partner equity investment requirements appear to be based on:

Project Costs	\$16,115,000
Less: Existing mortgage	11,600,000
Partner Equity Investment Requirement Total	\$4,515,000
Partner Equity Investment Requirement Split	\$2,257,500

The Total Capital Required (\$16,115,000) appears to be exaggerated in as much as Walton has contributed \$1,127,800 through the end of 2012 (assuming you accept "Preferred Share" contributions to be Walton's.

C. Conclusions

- There is an appearance of effort to manipulate the equity requirements and business plan representations in the agreements such that Walton capital requirements are minimized. This may be a reason the difference between the business plans and the actual results have not been explained.

5) Reporting & Control

a. General Indications

- i. Reporting is not being performed on a timely basis.
- ii. Bank reconciliations are not being performed on a timely basis.
- iii. Approvals are not being performed.

b. Detailed Findings

i. The following clause is generally stated in each company's agreement.

13. Walton will provide a written report to Bernstein each month detailing the following:

- a. copies of invoices for work completed;
- b. the bank statement for that month; and
- c. if the bank statement does not have a copy of cancelled cheques, then Walton will also provide a complete listing of all cheques written, including payees, dates and amounts.

At Bernstein's request, Walton will provide whatever other back-up information he requests. Any cheque or transfer over \$50,000 will require Bernstein's signature or written approval before being processed.

There has been no reporting or approvals as required by this clause.

ii. 241 Spadina; Twin Dragons Corporation.

v. Legal and Accounting Support

- Drafting and filing legal documents
- Litigation
- The conversion of commercial rental units to commercial and/or residential condominium properties and the implementation of condominium sales programs
- Zoning, by-law and legislative compliance
- Severance and variance applications
- Representation at municipal zoning, fire, building and by-law hearings
- Insurance management and advice on appropriate coverage

- Centralized accounting and finance functions, including financial statements and audit, accounts receivable, accounts payable, payroll, cash and tax management
- Weekly, monthly or quarterly occupancy and collection reporting
- Weekly, monthly or quarterly financial report
- Annual budget preparation
- Unit turnover costs
- Capital expenditures
- Operating and labour costs
- Revenue

- Partnership distributions as directed

. With the exception of late, notice to reader Balance Sheets and Statement of Operations, there has been no reporting of the above after what were initially requests, which progressed to demands for same.

c. Conclusions

- i. Lack of reporting and control has resulted in unauthorized payments and no ability to assess historical information in an effort to improve our understanding of and have effect on Project outcomes.

Recommendations

The following recommendations should be put into effect immediately.

- 1) Walton must provide response through clarification and if appropriate, actions to these concerns:
 - a. Clarification of the status of these outside investors.
 - b. Correction of mortgages.
 - c. Rectification of equity in the projects to reflect actual equity invested.
 - d. All related party transactions are documented and approved in advance.
- 2) Leverage the strengths of investors by dividing responsibilities.
 - a. Walton retain responsibility for:
 - i. Business development
 - ii. Project administration
 - iii. Property administration
 - b. Bernstein takes control of:
 - i. Corporate Books
 - ii. Accounting
 - iii. Finance administration
 1. Cheques signed by Dr Bernstein or Warren Bernstein
 - iv. Legal affairs
- 3) Walton makes recommendations, Bernstein retains authority to act.
- 4) Reporting requirements previously imposed on Walton will be imposed on both Walton and Bernstein.
- 5) The terms of agreements should be modified to reflect the above.

TAB "B"

June 13, 2013

Mr. Jim Reitan
Director of Accounting and Finance
Dr. Bernstein Diet and Health Clinics
21 Kern Road
Toronto, ON M3B 1S9

Dear Jim,

Re: Joint Bernstein-Walton Portfolio

In reviewing your 13 page litany of complaints provided to us on Friday, June 7, it struck me that you do not appreciate the role we play in this partnership. Your comment that Dr. Bernstein has cause for concern and action on his part to protect his investment is wholly offensive. We own 57 properties in Toronto, of which 32 are jointly owned with Dr. Bernstein. We have approximately 50 full-time staff and another 25 to 40 subcontractors and trades on regular pay to complete the joint project mandates for these projects. We spend every hour of every weekday of every week of every month of every year ensuring that the portfolio is performing at or above pro forma. We challenge you to point to any investment or business in Toronto or Canada or the world for that matter that has returned the 30% plus ROE that this portfolio has thus far returned with its completed projects. Furthermore, those returns are accelerating as evidenced by how our 1 Royal Gate project is tracking. That investment by Dr. Bernstein of \$5 million is tracking to be worth double that inside of twelve months from date of investment. How can you beat that, and how can you complain about our performance given those realities?

The joint portfolio is worth in excess of \$330 million and a number of projects are poised to cash out with stellar returns above the 30% threshold in the next twelve months. Within that context, I would suggest that the issues you raise, even if they were accurate which they largely are not, are minor in nature. Dr. Bernstein has been well served to date by this partnership as have we. We have done an outstanding job of performing our role within this partnership, with the only area where improvement is needed being the area of financial reporting. For you to focus solely on that area without any acknowledgement or appreciation of how phenomenally well we have managed the joint portfolio is blinkered in the extreme.

We are known in the city of Toronto as proven money makers in real estate. The Rose and Thistle Group have a reputation for delivering the best returns in the business over the past three years. We are the envy of the real estate street and as a result we have a

queue of investors looking to partner with us to make them money in real estate like we have with Dr. Bernstein. We have declined to engage them because we understand and appreciate Dr. Bernstein's role within our partnership and are loyal to him as a result. We expect the same from him, otherwise this partnership is not going to thrive going forward. We have performed exceptionally well and it would be a tragedy if the tenor and tone taken in your correspondence ruins what should continue to provide outsized returns going forward, particularly given how well it has done to date and the momentum it currently enjoys.

Within the partnership we provide the following services:

1. We find the properties;
2. We negotiate the agreements of purchase and sale;
3. We arrange financing;
4. We personally guarantee financing as required and protect Dr. Bernstein from exposure in this regard;
5. We prepare the project plan;
6. We deal with lawyers to close the purchase;
7. We implement the project plan, which may include:
 - a. Engaging architects, engineers, interior designers, surveyors, cost consultants, planners, and various other consultants;
 - b. Obtaining rezoning, severance, condominium registration, and building permits as required;
 - c. Performing ourselves or supervising construction and renovation of the properties in question;
 - d. Negotiating prices and contracts with and paying all employees and trades engaged in fulfilling the project plan;
 - e. Engaging the city of Toronto for all municipal approvals required, including attending numerous meetings with the city politicians and staff to ensure our project plans are approved;
 - f. Creating marketing material and sales material to attract tenants and purchasers to our projects;
 - g. Meeting with real estate brokers to negotiate deals with prospective tenants and purchasers;
 - h. Fulfilling all conditions to close those deals;
 - i. Arranging refinancing of the properties once the project plan is implemented;
 - j. Repaying debt and equity upon project completion;
8. Managing and maintaining the property going forward;
9. Performing all administration, financial and accounting services required by the joint portfolio;
10. Reporting to Dr. Bernstein on a daily, weekly and monthly basis as to the status of all investments; and
11. Any and everything else required to ensure the portfolio thrives.

We are not prepared to change the contract terms to cede control of accounting and finance as you have suggested. We are prepared, as we've already indicated, to provide you and Anjela and anyone else you wish unfettered access to the accounting records and

books related to our joint portfolio as they are updated and checked for accuracy so you can report to Dr. Bernstein as frequently as desired how the portfolio is doing. In that vein, we are looking to change the corporate structure of the joint portfolio to make this task easier and also purchase software to make reporting on a current basis easier.

You have raised a number of allegations, some of which are accurate and some of which are not. Let me address those:

1. We share funds across the joint portfolio to smooth out cash flow. That is in keeping with the joint objective of creating one financial vehicle, whether a private REIT or some other entity, to permit the most efficient tax planning to occur and to simplify and streamline our portfolio's operations to everyone's benefit. In that vein, we are focused on completing our 2012 financial statements and then meeting with your accountant and ours along with legal tax experts to ensure this structure functions effectively. Despite the sharing of funds, we account for each property separately so property performance can be assessed accurately for each joint investment;
2. Dr. Bernstein is contractually obligated to provide his cash first, with our cash to be provided as the project requires. Hence your comment that as of December 31, 2011 we have not put in as much cash as Dr. Bernstein is accurate. That is in keeping with the arrangement we've negotiated. Undoubtedly those numbers will become closer to even in 2012 and beyond because we began to invest together in 2010 and most of our projects have 30 to 36 month timelines. Eglinton is a good example of this. We invest \$150,000 per month to carry Eglinton pending our successfully completing rezoning and sale of that property. Dr. Bernstein has no further obligation to invest in Eglinton so his equity will not increase, whereas ours increases every month;
3. Your comment that we inflate our project pro formas to extract maximum money from Dr. Bernstein up front and thus reduce our financial obligation is both offensive and completely uninformed. You have neither the real estate expertise nor property experience that we have. You have no basis for your views other than your comment that we have beat our pro formas in some of our projects. First of all, all of those projects are not yet completed and secondly, if that is the case, that event should be celebrated, not criticized. We prepare project pro formas at the time we negotiate to purchase the properties. We use our vast real estate expertise to as accurately as possible prepare the pro forma. We never want to have to come back to Dr. Bernstein to increase his equity beyond what we initially forecast, and we take that responsibility very seriously. The fact that unlike most pro formas, we have been able to better some of ours in reality is a fabulous track record and shows our ability to outperform our own expectations. Please don't criticize us in areas where we have far more experience than you and you are merely postulating a premise that is wholly inaccurate and frankly quite offensive;
4. We do not have outside investors in the properties we jointly own with Dr. Bernstein. As Mario explained, before Dr. Bernstein became a 50% owner of Spadina and Highway 7, we had attracted investment from third parties. The

moment he became an investor, we shifted all of those responsibilities over to The Rose and Thistle Group Ltd. and that is where they currently remain. We would not dilute ownership in a project with Dr. Bernstein.

5. Your comment about Wynford's mortgage not being properly discharged in the OLA transaction has been explained to you. I don't know if Dr. Bernstein ever signed the Acknowledgements to Discharge, but I am certain that we advised him of our intention to discharge his mortgages and divide the \$3.1 million as equity reimbursement instead of mortgage pay-down and he agreed. We have subsequently refinanced that property and fully paid out Dr. Bernstein for this loan, so I am not sure why you continue to harp on this issue. Further, we now run all such transactions through Devry Smith so that they can fully protect Dr. Bernstein's interests and fully report to him on those transactions, so if this ever was an issue, it has been resolved going forward;
6. Your comment about us using The Rose and Thistle Group Ltd. to provide services to our joint portfolio is 100% accurate and fully disclosed and expected. We are able to perform construction and renovation at wholesale prices. Even after we add a project management fee, we are far under market for these services, to the significant benefit of the joint properties and the pro formas. Further, we always pay to Dr. Bernstein at least fair market value for his mortgage services, being 8% interest on first mortgages with a 2% fee, and 11% on second mortgage with a 2% fee. Hence both The Rose and Thistle Group Ltd. and 3658230 Ontario Limited benefit from the joint portfolio, which is as it should be.
7. We are fully on board with providing Anjela access to the full joint portfolio as evidenced by our actions to date, and in fact we have her doing a lot more than just reviewing. In fact, she is now booking purchases, reconciling property tax, and obtaining access to more and more of the joint portfolio as the books and records are updated.

The only area where we have not been able to comply with our contractual obligations to Dr. Bernstein relates to the provision of accounting records on a monthly basis and the expense approvals set out in the earlier agreements. We are working to rectify this by providing the access he desires and by amending the terms of the agreements to reflect the current reality given the size and scope of our joint portfolio. That is why we changed the wording of that clause in the Dewhurst and Eddystone agreements to better reflect the financial reporting access and expense oversight that was in reality occurring. We are open to your comments on our proposed changes to those clauses, but the original clauses in the agreements are not feasible now given the size of the portfolio.

We thoroughly enjoy being in business with Dr. Bernstein. Together we have had very good fortune in business thus far, and the momentum appears to be only accelerating. We have appreciated your involvement with our business thus far and look forward to

together making our financial reporting systems better going forward. We are happy to respond to your queries and questions on an ongoing basis so you and Dr. Bernstein has an accurate an understanding as possible about our joint portfolio. We keep Dr. Bernstein apprised of all goings on with the portfolio on a daily, weekly and monthly basis and we are confident with your and Anjela's involvement, his understanding will only improve and become more fulsome as he layers in detailed financial knowledge of what is happening on the ground.

We would like to hit \$1 billion in joint properties together over the next five years. If that is to occur, each of us needs to respect and appreciate what the other brings to the partnership. We are hopeful that is Dr. Bernstein's desire as well, and if so look forward to many more years of successful partnership and collaboration to mutual benefit.

Yours truly,
THE ROSE AND THISTLE GROUP

Norma Walton

TAB "C"

AGREEMENT

Between:

DBDC Richmond Row Holdings Ltd.

"Bernstein"

- and -

Ron and Norma Walton

"Walton"

- and -

Richmond Row Holdings Ltd.

the "Company"

WHEREAS Bernstein and Walton intend to purchase 620-624 Richmond Street West /165 Bathurst Street, Toronto, Ontario (the "Property") on or about June 27, 2013 and put ownership of the Property in the Company's name;

AND WHEREAS Bernstein and Walton, or whoever Bernstein and Walton may direct will each hold 100 shares in the Company;

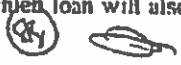
AND WHEREAS Bernstein and Walton will each provide the sum of \$5,820,388 to the Company for the purposes of purchasing, renovating, leasing and then refinancing the property (the "Project");

AND WHEREAS Walton will manage and supervise the Project and ensure it is completed according to the excel spreadsheet attached as Exhibit "A" to this Agreement;

THEREFORE the parties agree as follows:

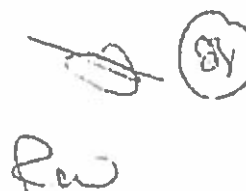
1. Walton has contracted to purchase the Property and the purchase is scheduled to close on June 27, 2013.
2. Walton has commenced pre-planning for the securing of new retail tenants; the securing of commercial tenants; the renovation of the common areas and creation of a model suite to attract those commercial tenants; vacating of the live-work tenants; renovation of the property to design-build for the new commercial and retail tenants; followed by refinancing of the property once the new tenants are in occupancy.
3. Walton intends to purchase, renovate, lease and refinance the Property in accordance with Exhibit "A".



4. Walton anticipates that each party will need to provide the sum of \$5,820,388 in shareholders loans to the Company to complete the project. Shareholders loans will attract interest of 10% compounded monthly. Shareholders loans will be paid back at the time of project refinancing, sale or completion, before any profits are distributed.
5. Bernstein wishes to own 50% of the shares in the Company in exchange for providing 50% of the equity and his portion of the shareholder's loan required to complete the Project. The Company will issue sufficient shares such that Bernstein has 100 and Walton has 100 voting shares of the same class, and Bernstein and Walton will each pay \$100 for those 100 shares.
6. The ownership of the Company will be as follows:
 - a. 50% to Bernstein; and
 - b. 50% to Ron and Norma Walton as they may direct between each other or alternatively to be held by a completely Walton-owned and controlled company, provided that all covenants and agreements of Walton herein shall continue in full force and effect and such company executes an agreement to be bound by the provisions of the within Agreement.
7. Walton will be managing, supervising and completing the Project in accordance with the attached Exhibit "A".
8. Bernstein has provided the sum of \$650,000 cover the deposit costs, mortgage fees, and due diligence expenses to purchase the Property. This amount is a shareholders loan. Bernstein will provide on June 27, 2013 the sum of \$3,200,000 as a further shareholders loan, which loan will also attract interest of 10% calculated semi-annually, MONTHLY. 
9. Bernstein will provide the remaining sum of \$1,970,388 as a shareholders loan once a commercial tenant has been secured or once the building renovations begin.
10. Walton will provide the sum of \$5,820,388 in shareholders loans thereafter as the project requires.
11. Walton and Bernstein will each provide 50% of whatever additional shareholder loans over and above the \$5,820,388 each that is required to complete the Project, if any, in a timely manner.
12. In addition to managing, supervising and completing the Project, Walton will be responsible for supervising the renovations of the building on the Property, hiring of all consultants, designers, architects and engineers to complete the Project, finance, bookkeeping, office administration, accounting, information technology provision, filing tax returns for the Company, and fulfilling all active roles required to complete the Project in accordance with Exhibit "A".




13. Bernstein will not be required to play an active role in completing the Project. Notwithstanding that, any decisions concerning the selling or the refinancing of the Property will require his approval; any decisions requiring an increase in the total amount of equity required to complete the Project will require his approval; and any significant decisions that vary from the Project plan described in Exhibit "A" will require his approval.
14. Walton will provide to Bernstein ongoing reports at minimum monthly detailing all items related to the Property including the progress in moving the plan forward.
15. Walton will provide a written report to Bernstein each month detailing the following:
- a. copies of invoices for work completed;
 - b. the bank statement for that month; and
 - c. If the bank statement does not have a copy of cancelled cheques, then Walton will also provide a complete listing of all cheques written, including payees, dates and amounts.
- At Bernstein's request, Walton will provide whatever other back-up information he requests. Any cheque or transfer over \$50,000 will require Bernstein's signature or written approval before being processed.
16. Once the Project is substantially completed to the point that all of the Property has been leased and refinanced and/or sold, both parties will be paid out their shareholders loan capital plus interest then profits will be distributed in accordance with ownership. Once the property is sold, Walton will retain the Company for potential future use.
17. The Board of Directors of the Company will be composed of two directors, being Bernstein and Norma Walton, provided that initially the two directors will be Norma and Ron Walton until the financing is in place and the purchase has closed. The only shares to be issued in the Company will be as set out above, and neither party may transfer his or her shares to another party without the consent of all the other parties, which consent may be unreasonably withheld. Bernstein shall have the option of being paid out his share of capital and profits from the Project and once he has been paid out in full, he will surrender his share certificate, he will concurrently resign from the Board of Directors and Norma Walton and the Company will accept such resignation. At such time Bernstein shall be released of all obligations and liability related to the Company and shall be indemnified by Walton with respect to all liabilities, claims and obligations whatsoever of the Company up to the date at which Bernstein has been paid out his capital and profits from the Project.

A handwritten signature, possibly "RW", is written below a circled "84".

18. The Company will only be used to purchase, renovate, lease and refinance the property at 620-624 Richmond Street West /165 Bathurst Street, Toronto, Ontario or such other matters solely relating to the Project and the Property.

19. If the parties disagree on how to manage, supervise and complete the Project in accordance with Exhibit "A" and cannot reach agreement amongst themselves, each of them undertakes to attend a minimum of four hours of mediation in pursuit of reaching an agreement. After mediation, if there are any remaining issues to be determined, those issues in dispute shall be determined by a single arbitrator in as cost-effective a manner as possible, with no right of appeal. All costs of such mediation and/or arbitration will be borne equally by Bernstein and Walton.

20. The above represents all deal terms between the parties.

Dated at Toronto, Ontario this 27 day of JUNE 2013



DBDC Richmond Row Holdings Ltd.
Per A.S.O.



Richmond Row Holdings Ltd.
Per A.S.O.



Ron Walton



Norma Walton

TAB "D"

AGREEMENT

Between:

DBDC Eddystone Place Ltd.

"Bernstein"

- and -

Ron and Norma Walton

"Walton"

- and -

Eddystone Place Inc.

the "Company"

WHEREAS Bernstein and Walton intend to purchase 153 Eddystone Avenue, Toronto, Ontario (the "Property") on or about April 15, 2013 and put ownership of the Property in the Company's name;

AND WHEREAS Bernstein and Walton, or whomever Bernstein and Walton may direct in accordance with the provisions of paragraph 5 herein, will each hold 1,582,810 shares in the Company;


AND WHEREAS Bernstein and Walton will each provide the sum of \$1,582,810 to the Company for the purposes of purchasing and renovating the space for tenants (the "Project");

AND WHEREAS Walton will manage and supervise the Project and ensure it is completed according to the excel spreadsheet attached as Exhibit "A" to this Agreement;

THEREFORE the parties agree as follows:

1. Walton has contracted to purchase the Property and the purchase is scheduled to close on April 15, 2013.
2. Walton has contracted with The Griffin Centre to occupy 30,000 SF of the Property. Walton is seeking another tenant to occupy the remaining 14,000 SF of the Property.
3. Walton intends to design-build the building to suit The Griffin Centre and the second tenant in accordance with Exhibit "A".



4. Bernstein wishes to own 50% of the shares in the Company in exchange for providing 50% of the equity required to complete the Project. The Company will issue sufficient shares such that Bernstein has 1,582,810 and Walton has 1,582,810 voting shares of the same class.
 5. The ownership of the Company will be as follows:
 - a. 50% to Bernstein; and
 - b. 50% to Ron and Norma Walton as they may direct between each other or alternatively to be held by a completely Walton-owned and controlled company, provided that all covenants and agreements of Walton herein shall continue in full force and effect and such company executes an agreement to be bound by the provisions of the within Agreement.
 6. Walton will be managing, supervising and completing the Project in accordance with the attached Exhibit "A".
 7. Walton has fronted the deposits, due diligence and environmental analysis costs in the amount of \$250,000 and Bernstein has provided the sum of \$130,000 to defray those costs. These amounts will form part of each of their equity contributions.
 8. The balance of equity in the amount of \$2,915,620 will be paid as follows:
 - a. Walton will provide whatever amount is required on April 15, 2013 to close the Purchase;
 - b. Bernstein will provide to the Company the sum of \$1,452,810 as soon as he is able to; and
 - c. Walton will provide the balance remaining in a timely manner as required to complete the Project.
 9. Walton and Bernstein will each provide 50% of whatever additional capital over and above the \$1,582,810 each that is required to complete the Project, if any, in a timely manner.
 10. In addition to managing, supervising and completing the Project, Walton will be responsible for supervising the tenancy of the building, hiring of all consultants, designers, architects and engineers to complete the Project, finance, bookkeeping, office administration, accounting, information technology provision, filing tax returns for the Company, and fulfilling all active roles required to complete the Project in accordance with Exhibit "A".
 11. Bernstein will not be required to play an active role in completing the Project. Notwithstanding that, any decisions concerning the selling or the refinancing of the Property will require his approval; any decisions requiring an increase in the total amount of equity required to complete the Project will require his approval; and any significant decisions that vary from the Project plan described in Exhibit "A" will require his approval.
- 

12. Walton will provide to Bernstein ongoing reports detailing all items related to the Property including the progress in moving the plan forward.

13. Walton will provide a written report to Bernstein detailing the following:

- a. Copies of invoices upon request;
- b. The bank statements; and
- c. A complete listing of all cheques written, including payees, dates and amounts.

At Bernstein's request, Walton will provide whatever other back-up information he requests.

14. Once the Project is substantially completed to the point that all of the Property has been either leased or sold, both parties will be paid out their capital plus profits if sold and whatever portion of their capital plus profits if leased, and Walton will retain the Company for potential future use.

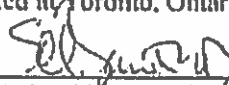
15. The Board of Directors of the Company will be composed of two directors, being Bernstein and Norma Walton. The only shares to be issued in the Company will be as set out above, and neither party may transfer his or her shares to another party without the consent of all the other parties, which consent may be unreasonably withheld.

16. The Company will only be used to purchase, renovate and sell and/or lease the property at 153 Eddystone Avenue, Toronto, Ontario or such other matters solely relating to the Project and the Property.


17. If the parties disagree on how to manage, supervise and complete the Project in accordance with Exhibit "A" and cannot reach agreement amongst themselves, each of them undertakes to attend a minimum of four hours of mediation in pursuit of reaching an agreement. After mediation, if there are any remaining issues to be determined, those issues in dispute shall be determined by a single arbitrator in as cost-effective a manner as possible, with no right of appeal. All costs of such mediation and/or arbitration will be borne equally by Bernstein and Walton.

18. The above represents all deal terms between the parties.

Dated at Toronto, Ontario this 10th day of APRIL, 2013/


DBDC Eddystone Place Ltd.
Per A.S.O.


Ron Walton


Eddystone Place Inc.
Per A.S.O.


Norma Walton

Anticipated Profit		
Building Value:	\$	5,823,714
Less Project Cost:	\$	5,040,621
Projected Profit:	\$	783,094

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153 Eddystone Avenue CAPITAL REQUIRED			
Purchase Costs			
Purchase Price	2,500,000		
Mortgage fee	0		
Lender's legal fee	10,000		
Ontario Land Transfer Tax	37,500		
Municipal Land Transfer Tax	37,500		
Other fees and disbursements for appraisal, reliance letters for environmental reports, municipal enquiries and fees, etc.	20,000		
Total Purchase Price		\$	2,605,000
Hard Construction Costs			
To design-build to tenant's specifications (\$42.50 PSF)	\$ 1,860,905		
Project management fees:	\$ 186,091		
Total Hard Construction Costs		\$	2,046,996
Environmental Remediation Costs			
To remove contaminated soil, risk assess and obtain RSC	\$ 130,000		
Project management fees:	\$ 13,000		
Total Environmental Remediation Costs		\$	143,000
Professional Fees			
Architectural, engineering, interior design fees	\$ 60,000		
Cost Consultant	\$ 20,000		
Surveyor's and permit fees	\$ 20,000		
Total Professional Fees:		\$	100,000
Carrying Costs			
Property tax, mortgage interest, utilities, insurance	\$ 145,625		
Total Carrying Costs:		\$	145,625
Total Capital Required		\$	5,040,621
Mortgage from vendor:	37.20%	3.50%	\$ 1,875,000
Dr. Bernstein equity:	31.40%		\$ 1,582,810
Walton equity:	31.40%		\$ 1,582,810



Projected Net Income	
Anticipated net revenues:	
The Griffin Centre (30,200 SF X \$9 NET)	\$271,800
Second tenant (13,585 SF X \$10 NET)	\$135,860
Projected net income:	\$407,660
Projected Building Value	
7% capitalization rate:	\$5,823,714

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Projected Investor Return Formula for Profit Division	
Dr Bernstein's investment:	1,582,810
Wallons' investment:	1,582,810
Cash out date:	On or before July 15, 2014
Projected profits:	783,094
Refinance property:	
New mortgage (75% of new value):	4,367,786
Less existing mortgage:	1,875,000
Balance available:	2,492,786
Pay out:	
Dr. Bernstein:	1,246,393
Wallons:	1,246,393
Balance of equity in property:	
Dr. Bernstein:	336,417
Wallons:	336,417
Percentage return on investment:	24.74%
Compounded annual return:	19.50%
Total investment period:	15 months
An investment of \$100,000 on April 15, 2013 is projected to be worth \$124,740 on July 15, 2014	




TAB "E"

AGREEMENT

Between:

DBDC Dewhurst Developments Ltd.

"Bernstein"

- and -

Ron and Norma Walton

"Walton"

- and -

Dewhurst Developments Ltd.

the "Company"

WHEREAS Bernstein and Walton intend to purchase 14 Dewhurst Boulevard, Toronto, Ontario (the "Property") on or about April 15, 2013 and put ownership of the Property in the Company's name;

AND WHEREAS Bernstein and Walton, or whomever Bernstein and Walton may direct in accordance with the provisions of paragraph 5 herein, will each hold 1,411,000 shares in the Company;

AND WHEREAS Bernstein and Walton will each provide the sum of \$1,411,000 to the Company for the purposes of purchasing and renovating the space for tenants (the "Project");

AND WHEREAS Walton will manage and supervise the Project and ensure it is completed according to the excel spreadsheet attached as Exhibit "A" to this Agreement;

THEREFORE the parties agree as follows:

1. Walton has contracted to purchase the Property and the purchase is scheduled to close on April 15, 2013.
2. Walton is negotiating with Kids & Co. to occupy at least 16,000 SF of the property at a rental rate of \$24 net to start, and Walton is seeking another tenant for the remainder of the space in the amount of approximately 4,000 SF.
3. Walton intends to build-to-suit the property for Kids & Co. and the second tenant and improve the building and the site in accordance with Exhibit "A".

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4. Bernstein wishes to own 50% of the shares in the Company in exchange for providing 50% of the equity required to complete the Project. The Company will issue sufficient shares such that Bernstein has 1,411,000 and Walton has 1,411,000 voting shares of the same class.
5. The ownership of the Company will be as follows:
 - a. 50% to Bernstein; and
 - b. 50% to Ron and Norma Walton as they may direct between each other or alternatively to be held by a completely Walton-owned and controlled company, provided that all covenants and agreements of Walton herein shall continue in full force and effect and such company executes an agreement to be bound by the provisions of the within Agreement.
6. Walton will be managing, supervising and completing the Project in accordance with the attached Exhibit "A".
7. Walton fronted the deposits and due diligence costs in the amount of \$225,000 and Bernstein has provided the sum of \$125,000 to partially defray those costs. These amounts will form part of each of their equity contributions.
8. The balance of equity in the amount of \$2,597,000 will be paid as follows:
 - a. Bernstein will provide to the Company the sum of \$1,286,000 on or before April 15, 2013; and
 - b. Walton will provide the sum of \$1,311,000 in a timely manner as required to complete the Project.
9. Walton and Bernstein will each provide 50% of whatever additional capital over and above the \$1,411,000 each that is required to complete the Project, if any, in a timely manner.
10. In addition to managing, supervising and completing the Project, Walton will be responsible for supervising the tenancy of the building, hiring of all consultants, designers, architects and engineers to complete the Project, finance, bookkeeping, office administration, accounting, information technology provision, filing tax returns for the Company, and fulfilling all active roles required to complete the Project in accordance with Exhibit "A".
11. Bernstein will not be required to play an active role in completing the Project. Notwithstanding that, any decisions concerning the selling or the refinancing of the Property will require his approval; any decisions requiring an increase in the total amount of equity required to complete the Project will require his approval; and any significant decisions that vary from the Project plan described in Exhibit "A" will require his approval.
12. Walton will provide to Bernstein ongoing reports detailing all items related to the Property including the progress in moving the plan forward.



13. Walton will provide a written report to Bernstein detailing the following:
- Copies of invoices upon request;
 - The bank statements; and
 - A complete listing of all cheques written, including payees, dates and amounts.

At Bernstein's request, Walton will provide whatever other back-up information he requests.

14. Once the Project is substantially completed to the point that all of the Property has been leased, the property will be refinanced and both parties will be paid out as much of their capital as possible from the refinancing plus profits and the parties will keep the Property in their joint portfolio. If the Property is sold, the parties will be re-paid the balance of their capital plus share equally the profits. Walton will then retain the Company for potential future use.

15. The Board of Directors of the Company will be composed of two directors, being Bernstein and Norma Walton. The only shares to be issued in the Company will be as set out above, and neither party may transfer his or her shares to another party without the consent of all the other parties, which consent may be unreasonably withheld.

16. The Company will only be used to purchase, renovate and sell and/or lease the property at 14 Dewhurst Boulevard, Toronto, Ontario or such other matters solely relating to the Project and the Property.

17. If the parties disagree on how to manage, supervise and complete the Project in accordance with Exhibit "A" and cannot reach agreement amongst themselves, each of them undertakes to attend a minimum of four hours of mediation in pursuit of reaching an agreement. After mediation, if there are any remaining issues to be determined, those issues in dispute shall be determined by a single arbitrator in as cost-effective a manner as possible, with no right of appeal. All costs of such mediation and/or arbitration will be borne equally by Bernstein and Walton.

18. The above represents all deal terms between the parties.

Dated at Toronto, Ontario this 10th day of APRIL 2013


DBDC Dewhurst Developments Ltd.

Per A.S.O.


Ron Walton


Dewhurst Developments Ltd.

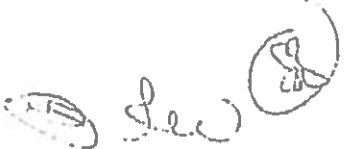
Per A.S.O.


Norma Walton

Anticipated Profit		
Building Value:	\$	6,297,386
Less Project Cost:	\$	5,522,000
Projected Profit:	\$	775,386

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14 Dewhurst CAPITAL REQUIRED				
Purchase Costs				
Purchase Price		2,800,000		
Mortgage fee		54,000		
Lender's legal fee		15,000		
Ontario Land Transfer Tax		42,000		
Municipal Land Transfer Tax		42,000		
Other fees and disbursements for appraisal, reliance letters for environmental reports, municipal enquiries and fees, etc.		15,000		
Total Purchase Price			\$	2,968,000
Hard Construction Costs				
To design-build to tenant's specifications (\$100 PSF)	\$	2,100,000		
Project management fees:	\$	210,000		
Total Hard Construction Costs			\$	2,310,000
Professional Fees				
Architectural, engineering, interior design fees	\$	50,000		
Cost Consultant	\$	15,000		
Surveyor's and permit fees	\$	15,000		
Total Professional Fees:			\$	80,000
Carrying Costs				
Property tax, mortgage interest, utilities, insurance	\$	264,000		
Less Rent from vendor	\$	(100,000)		
Total Carrying Costs:			\$	164,000
Total Capital Required			\$	5,522,000
Mortgage - acquisition portion:	38.03%	8.50%	\$	2,100,000
Mortgage - construction portion:	10.87%	8.50%	\$	600,000
Dr. Bernstein equity:	25.55%		\$	1,411,000
Walton equity:	25.55%		\$	1,411,000



Projected Net Income	
Anticipated net revenues:	
Basement - 7212 SF @ \$16	\$115,392
Ground floor - 7475 SF @ \$25	\$186,875
Second floor - 5542 SF @ \$25	\$138,550
Projected net income:	\$440,817
Projected Building Value	
7% capitalization rate:	\$6,297,386



Projected Investor Return Formula for Profit Division	
Dr. Bernstein's investment	1,411,000
Rose and Thistle's investment	1,411,000
Projected profits:	775,386
Refinance property	
New mortgage (75% of new value):	4,723,039
Less existing mortgage:	2,700,000
Balance available:	<u>2,023,039</u>
Use balance to pay back part of investor capital:	2,023,039
Balance of equity invested in property after refinancing:	
Dr. Bernstein:	399,480
Waltons:	399,480
Percentage return on investment:	27.48%
Compounded annual return:	21.50%
Total investment period:	15 months
An investment of \$100,000 on April 15, 2013 is projected to be worth \$127,480 on July 15, 2014	

DBDC SPADINA LTD. et al.
Applicants

-and-

NORMA WALTON et al.
Respondents

NORMA WALTON et al.
Applicants by Counterapplication

-and-

DBDC SPADINA LTD. et al.
Respondents by Counterapplication

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

(Proceeding Commenced at Toronto)

**RESPONDENTS' RESPONSE
TO APPLICANT'S SUPPLEMENTARY SUBMISSION**

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Walton, The Rose & Thistle Group Ltd. and Eglinton Castle
Inc.