

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

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

B E T W E E N:

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

Applicants

- and -

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

Respondents

- and -

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

**ELEVENTH REPORT OF THE MANAGER, SCHONFELD INC.**

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## **I. Introduction**

1. This is the Eleventh Report of Schonfeld Inc. (the “**Manager**”) in its capacity as Manager of certain companies listed at Schedule “B” to the Order of Justice Newbould dated November 5, 2013 (the “**Companies**”),<sup>1</sup> together with the real estate properties owned by the Companies (the “**Properties**”).

### **A. Purpose of this Report**

2. This Manager has brought a motion for, among other things:

- (a) an approval and vesting order (the “**Meridian Approval and Vesting Order**”) in respect of the sale transaction (the “**Meridian Transaction**”) contemplated by the Agreement of Purchase and Sale dated March 22, 2013 (the “**Meridian Agreement**”), as amended by the the first amendment to agreement of purchase and sale dated as of March 14, 2014 (the “**Meridian Amendment**”) between Munikoti Holdings Inc. (“**Munikoti**”) and the Manager in respect of the property known municipally as 30-34 Meridian Road in Toronto, Ontario (the “**Meridian Property**”). The Meridian Agreement and the Meridian Amendment are attached as Meridian Confidential Appendix “A” and Meridian Confidential Appendix “B” respectively;
- (b) an Order permitting the Confidential Appendices to this Report in respect of the Meridian Transaction (the “**Meridian Confidential Appendix Brief**”) to be filed under seal without being served on the Service List;
- (c) an approval and vesting order (the “**Trent Approval and Vesting Order**”) in respect of the sale transaction (the “**Trent Transaction**”) contemplated by the Agreement of Purchase and Sale dated as of April 22, 2013, as amended by agreements dated May 30, 2013, July 17, 2013, August 19, 2013, September 18, 2013, October 18, 2013 and October 25, 2013 (collectively, the “**Trent Agreement**”), as further amended by the seventh amendment to agreement of purchase and sale

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

dated June 4, 2014 (the “**Trent Amendment**”) between Options for Homes Non-Profit Corporation (Greater Toronto Area) (“**Options for Homes**”) and Hidden Gem Development Inc. in respect of the property known municipally as 14 Trent Avenue in Toronto, Ontario (the “**Trent Property**”). The Trent Agreement and the Trent Amendment are attached as Trent Confidential Appendix “A” and Trent Confidential Appendix “B” respectively;

- (d) an Order permitting the Confidential Appendices to this Report in respect of the Trent Transaction (the “**Trent Confidential Appendix Brief**”) to be filed under seal without being served on the Service List;

3. This Report provides a summary of the Meridian Transaction and the Trent Transaction (collectively, the “**Transactions**”) and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

#### **B. Terms of reference**

4. Based on its review and interaction with the parties to date, nothing has come to the Manager’s attention that would cause it to question the reasonableness of the information presented herein. However, the Manager has not audited, or otherwise attempted to independently verify, the accuracy or completeness of any financial information of the Companies. The Manager therefore expresses no opinion or other form of assurance in respect of any of the Companies’ financial information that may be in this Report.

#### **C. Confidentiality**

5. In the Manager’s judgment, disclosure of some of the documents appended to this Report would negatively impact the Manager’s ability to carry out its mandate by, among other things, interfering with the integrity of any subsequent sales process in respect of the Meridian Property and the Trent Property if either or both of the Transactions are not completed. In particular, and without limiting the generality of the foregoing, it is the Manager’s judgment that it would impair the Manager’s ability to maximize realization of the Meridian Property and the Trent Property were any information to be made public concerning any discussions of sale process or values of the Meridian Property or the Trent Property among the Manager, the parties or any of their advisers and/or any possible bidders for Meridian Property or the Trent Property or any of

them. Accordingly, a number of Appendices to this Report have been identified as Confidential Appendices and will be filed in separate Confidential Appendix Brief. The Manager respectfully requests an Order authorizing it to file the Confidential Appendices under seal without serving the Meridian Confidential Appendix Brief or the Trent Confidential Appendix Brief on the Service List.

#### **D. Background**

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

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

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

### **II. The Meridian Transaction**

#### **A. Interested Parties**

9. The Meridian Property is owned by one of the Companies, Skyway Holdings Ltd. (“**Skyway**”). A mortgage in the amount of \$2,800,000 (the “**Meridian Mortgage**”) and a Notice of Assignment of Rents each in favour of 368230 Ontario Limited (the “**Meridian Mortgagee**”) are registered on title to the Meridian Property. The Meridian Mortgagee is controlled by the Applicants.

10. In addition, construction liens are registered on title to the Meridian Property as follows:

- (a) \$8,138.83 in favour of Macnaughton Hermesen Britton Clarks on Planning Ltd.;
- (b) \$3,420.51 in favour of Laser Heating and Air Conditioning Inc.; and
- (c) \$846.94 also in favour of Laser Heating and Air Conditioning Inc.<sup>2</sup>

**B. The Meridian Agreement**

11. Skyway entered into the Meridian Agreement before the Manager was appointed.

12. Since Skyway was already subject to the Meridian Agreement when the Manager was appointed, the Manager could not expose the Meridian Property to the market without first disclaiming the Meridian Agreement. In order to determine whether to disclaim the Meridian Agreement, the Manager carefully considered the value of the Meridian Agreement. The Manager understands that the Applicants, the Respondents and the Meridian Mortgagee all supported the purchase price set out in the Meridian Agreement when it was entered into. The Meridian Amendment did not vary that purchase price.

13. The Manager has kept the parties apprised of its efforts to complete the conditions precedent to completion of the Meridian Agreement, including its efforts to obtain severance from the City of Toronto.

14. In all, the Manager considered that it is commercially reasonable under the circumstances to complete the Meridian Transaction. Accordingly, the Manager entered into the Meridian Amendment with Munikoti on March 14, 2014.

**C. Timing of the Meridian Transaction**

15. The Meridian Transaction is scheduled to close on the later of: (i) 21 days after receipt of Certificate of Official executed by the Committee of Adjustment for the transfer of the Meridian Property to Munikoti; and (ii) 21 days after receipt of the Meridian Approval and Vesting Order. The Meridian Transaction is subject to an outside completion date of December 1, 2014.

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<sup>2</sup> The Manager paid the amounts outstanding and listed in (b) and (c) above and these liens have been, or will be, discharged.

**D. Stakeholder Approval**

16. The Applicants and the Respondents have been provided with copies of the Meridian Agreement and the Meridian Amendment and have consented to the Meridian Transaction.

**E. Proposed Distribution of Sale Proceeds**

17. The Manager instructed its counsel, Goodmans LLP ("**Goodmans**"), to conduct a review of the Meridian Mortgage. Goodmans has advised the Manager that the Meridian Mortgage is validly registered against the Meridian Property.

18. The Manager recommends that the proceeds of the Meridian Transaction, net of closing costs, be used to partially satisfy the Meridian Mortgage. The net proceeds available on closing will not be sufficient to pay out the amount owed pursuant to the Meridian Mortgage.

**III. The Trent Transaction**

**A. Interested Parties**

19. The Trent Property is owned by one of the Companies, Hidden Gem Developments Inc. ("**Hidden Gem**").

20. A mortgage in the amount of \$2,160,000 (the "**Trent Mortgage**") in favour of the Variety Club of Ontario – Tent 28 (the "**Trent Mortgagee**") is registered on title to the Trent Property.

21. As a result of the Trent Amendment, Options for Homes' right, title and interest in and to the Trent Agreement was assigned to Birchmount Co-Operative Development Corporation (the "**Assignee**").

**B. The Trent Agreement**

22. Hidden Gem entered into the Trent Agreement before the Manager was appointed.

23. Since Hidden Gem was already subject to the Trent Agreement when the Manager was appointed, the Manager could not expose the Trent Property to the market without first disclaiming the Trent Agreement. In order to determine whether to disclaim the Trent Agreement, the Manager carefully considered the value of the Trent Agreement and entered into

extensive negotiations with the purchaser. These negotiations culminated in the Trent Amendment, which provided that Hidden Gem would not fulfill a number of vendor conditions included in the Trent Agreement and, in exchange, the purchase price for the Trent Property would be decreased.

24. The Applicants, the Respondents and the Trent Mortgagee have advised that they are satisfied with the purchase price set out in the Trent Amendment. The proceeds of the Trent Transaction will be sufficient to pay all amounts due under the Trent Mortgage. Based on all of these factors, the Manager considers that it is commercially reasonable under the circumstances to complete the Trent Transaction.

**C. Timing of the Trent Transaction**

25. The Trent Transaction is expected to close on June 26, 2014.

**D. Stakeholder Approval**

26. The Trent Agreement and the Trent Amendment have been provided to the Trent Mortgagee and the Trent Mortgagee has consented to the Trent Transaction.

27. The Applicants and the Respondents have also been provided with copies of the Trent Agreement and the Trent Amendment. The Applicants have consented to the Trent Transaction and the Respondents have advised that they do not oppose the Trent Transaction.

**E. Proposed Distribution of Sale Proceeds**

28. The Manager instructed Goodmans to conduct a review of the Trent Mortgage. Goodmans has advised the Manager that the Trent Mortgage is validly registered against the Trent Property.

29. The Manager recommends that the proceeds of the Trent Transaction, net of closing costs, be used to satisfy the Trent Mortgage. A payout statement with respect to the Trent Mortgage is attached as Appendix "3". The net proceeds available on closing will be sufficient to pay out the amount owed pursuant to the Trent Mortgage. The Manager recommends that any excess proceeds be held in trust by the Manager pending further Order of the Court after the



Manager has conducted a claims process to identify creditors entitled to payment by Hidden Gem.

**F. Conclusion and Recommendations**

30. For reasons set out above, the Manager respectfully recommends that this Honourable Court grant the relief sought by the Manager in its Notice of Motion.

All of which is respectfully submitted this 5<sup>th</sup> day of June, 2014.

**SCHONFELD INC.**

**In its capacity as Manager pursuant to the Order of Newbould, J. dated November 5, 2013**

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

Harlan Schonfeld CPA · CIRP

## **SCHEDULE "A" COMPANIES**

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

**SCHEDULE “B” COMPANIES**

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

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