

**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

RESPONDING MOTION RECORD OF THE MANAGER, SCHONFELD INC.
(Motion returnable June 19, 2017)

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Brian Empey LSUC#: 30640G
Mark S. Dunn LSUC#: 55510L
Carlie Fox LSUC#: 68414W

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Manager

TO: **SERVICE LIST**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

DBDC SPADINA LTD.,
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FORTY-EIGHTH REPORT OF THE MANAGER, SCHONFELD INC.
(Motion Returnable June 19, 2017)

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I. Introduction

A. Overview

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

B. Purpose of this Report

2. The purpose of this report is to respond to the motion brought by E. Manson Investments Limited, 5 K Investments Inc., Yerusha Investments Inc., National Tire Sales and Service (2011) Ltd., Natme Holdings Ltd., Marvin Teperman, Maxoren Investments Inc., Sheilaco Investments Inc., Errol Gordon, Southern Atlantic Service, Elaine Pepper, B. & M. Handelman Investments Limited and 558678 Ontario Limited (collectively, the “**Handelman Mortgagees**”) for an Order that all of the professional fees incurred by their lawyers be paid by only one of the four Schedule “B” Properties sold by the Handelman Mortgagees by power of sale, rather than allocated to each of the four properties.

3. This Forty-Eighth Report contains facts relevant to the Handelman Mortgagees’ motion.

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

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C. 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.

II. The Manager's concerns

5. The Manager opposes the relief sought because it benefits one group of stakeholders (the Handelman Mortgagees) at the expense of other stakeholders (the Applicants). Fundamentally, the Handelman Mortgagees seek to allocate the legal fees incurred in respect of this matter in a manner that will mitigate losses suffered in respect of one property using the proceeds from another. In the Manager's view, this is not appropriate.

6. The Handelman Mortgagees incurred significant legal fees in these proceedings. They were mortgagees of, among others, four Schedule "B" Properties. Three of the properties at issue were sold for prices that were sufficient to cover the full amount of the mortgages (including related costs and fees). The sale of the fourth property did not generate sufficient proceeds and the mortgagees that invested in that property suffered a shortfall.

7. The Handelman Mortgagees retained the same counsel, Lawrence Zimmerman and Lawrence Wallach, and the present dispute relates to how the fees charged by Messrs. Zimmerman and Wallach for work performed in the early stages of these proceedings should be allocated. The Handelman Mortgagees assert that all of the fees should be allocated to

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profitable properties and that the property that suffered a shortfall should bear no legal costs. The Manager does not agree. The proposed allocation would permit mortgagees with an interest in the unprofitable mortgage to collect legal fees from the proceeds of properties that they have no interest in. The mortgagees that invested in the profitable properties would be effectively subsidizing the legal fees incurred with respect to the unprofitable property to the detriment of other stakeholders that would otherwise be entitled to the funds.

8. The Manager has been holding the disputed funds in trust pending the resolution of this dispute.

B. The properties and parties at issue

9. Syndicates of private lenders led by Stephen Handelman registered mortgages on title to each of the following Schedule “B” Properties (the “**Handelman Properties**”):

- (a) 7-15 Fraser Avenue, Toronto, Ontario (“**7-15 Fraser**”);
- (b) 30 Fraser Avenue, Toronto, Ontario (“**30 Fraser**” together with 7-15 Fraser, the “**Fraser Properties**”);
- (c) 140 Queen’s Plate Drive, Toronto, Ontario (“**140 Queen’s Plate**”);
- (d) 3765 St. Clair Avenue East, Toronto, Ontario (“**3765 St. Clair**”); and
- (e) 78 Tisdale Avenue, Toronto, Ontario (“**78 Tisdale**”).

10. The composition of each syndicate is different. That is, not all mortgagees have mortgages registered against each of the Handelman Properties.

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11. Once the November 5 Order was issued and entered, the Manager obtained contact information for third party mortgagees with interests registered against the Properties and notified these mortgagees of the November 5 Order.

12. Like many other mortgagees, the Handelman Mortgagees retained counsel to represent their interests in these proceedings. The Handelman Mortgagees have, at all times throughout the proceeding, been represented by common counsel.

13. The fees in issue on this motion relate to the early stages of the proceeding, including a motion (which was brought together with several other mortgagees) to either exempt the Handelman Properties from, or substantially vary the terms of, the November 5 Order. The Applicants, the Manager and the moving mortgagees ultimately reached a series of compromises to address the mortgagees' concerns while continuing the Manager's efforts to realize on the assets at issue provided that the mortgages were kept in good standing.

14. On February 3, 2014, the Applicants advised the Manager that they were not prepared to fund any further obligations with respect to the Handelman Properties and several other Properties. The Manager notified the Handelman Mortgagees that the Companies that own the Handelman Properties would no longer be in a position to meet their obligations under the applicable mortgages on February 3, 2014. Each of the Companies that own the Handelman Properties defaulted on its mortgage obligations in early February 2014 by, among other things, failing to make monthly mortgage payments and failing to pay realty taxes.

15. On February 18, 2014, the Handelman Mortgagees commenced power of sale proceedings in respect of 7-15 Fraser, 30 Fraser and 3765 St. Clair. On March 4, 2014, the

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Handelman Mortgagees commenced power of sale proceedings in respect of 140 Queen's Plate. Apart from 78 Tisdale, each of the Handelman Properties was sold by the relevant Handelman Mortgagees in power of sale proceedings.

16. The only Handelman Property to be sold by the Manager was 78 Tisdale. The sale price obtained in respect of 78 Tisdale was sufficient to pay off all of the debt secured against the property and yield net proceeds of \$1,353,152.74.

17. On closing, Messrs. Zimmerman and Wallach asserted that their clients were entitled to payment of legal fees totalling \$13,326 with respect to efforts to realize on the mortgage registered against 78 Tisdale and \$267,116 relating to their representation of their clients in connection with these proceedings. The Handelman Mortgagees asserted that all of these fees should be paid from the proceeds of 78 Tisdale. The Manager did not agree, since the effect of this allocation would be to relieve the mortgagees with interest registered against the other properties of any obligation to pay legal fees that they had incurred.

18. 3765 St. Clair was also sold for a price that was sufficient to allow the mortgagees with an interest in the property to recover all amounts due under the mortgage. The mortgage on 140 Queen's Plate was also paid in full.

19. Unfortunately, the sale of the Fraser Properties did not generate sufficient sale proceeds to pay the mortgage in full. Accordingly, the mortgagees with an interest in the Fraser Properties will not be able to recover the legal fees allocated to the Fraser Properties.

20. Despite this, the Manager's view is that some portion of the legal fees incurred in connection with all of the Handelman Properties should be allocated to the Fraser Properties.

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The Handelman Mortgagees, through their counsel, disagreed and asserted that all of the legal fees should be paid from the proceeds of 78 Tisdale.

21. In order to allow the Manager to complete its mandate efficiently, 25% of the disputed legal fees have been paid from each of 78 Tisdale, 140 Queen's Plate and 3765 St. Clair. Accordingly, 75% of the relevant fees have been paid and 25% of those fees remain outstanding. The Handelman Mortgagees now seek to allocate all of their fees to 78 Tisdale. It is not clear what (if any) effect this would have on the amounts already paid from the proceeds of 140 Queen's Plate and 3765 St. Clair.

III. The effect of the relief sought on the Applicants

22. Each of the Handelman Mortgages was funded by a different syndicate of investors. The investors in the Fraser Mortgage and the Tisdale Mortgage are not identical. In fact, only two investors funded both mortgages.

Tisdale Investors	Fraser Investors
E Manson Investments Limited	E Manson Investments Limited
B&M Handelman Investments Limited	B & M Handelman Investments Ltd.
5 k Investments Inc.	Dan Realty Inc.
Yerusha Investments Inc.	Reiter International Limited
National Tire Sales and Service (2011) Ltd.	Forman, Ann
Natme Holdings Ltd.	1060400 Ontario Inc.
Teperman, Marvin	270379 Ontario Ltd.
Maxoren Investments Inc.	Loutan Richmond Inc.
Sheilaco Investments Inc.	
Gordon, Errol	
Southern Atlantic Service	
Pepper, Elaine	

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Tisdale Investors	Fraser Investors
558678 Ontario Limited	

23. The Tisdale Investors have been repaid principal and interest on the Tisdale Mortgage. The Fraser Investors suffered a loss on the Fraser Mortgage. Since 30 Fraser was sold for a price that was insufficient to repay the Fraser Mortgage in full, no proceeds are available to pay legal fees relating to 30 Fraser. If the relief sought by the Handelman Mortgagees is granted then fees incurred for the benefit of the Fraser Investors will be paid using the proceeds from 78 Tisdale.

24. If this benefit is conferred on the Fraser Investors, the corresponding loss will be suffered by the Applicants. For the reasons described below, the Applicants will be entitled to the remaining proceeds from 78 Tisdale if those funds are not awarded to the Handelman Mortgagees.

25. 78 Tisdale was owned by Tisdale Mews Inc. (“**Tisdale**”). At the outset of this proceeding, the Applicants owned 50% of the shares of Tisdale. The Waltons purported to own the other 50% interest.

26. However, 78 Tisdale is, like all of the other Schedule “B” Properties, subject to the Judgment of Justice Brown dated August 12, 2014. Pursuant to that Order, the Waltons’ shares are limited to those for which they actually paid and any other shares are to be cancelled. The practical effect of this was that most or all of the Waltons’ shares in the Schedule “B” Companies were cancelled. Tisdale was no exception. In its second supplemental report to the Twenty-Second Report, the Manager concluded that the Applicants were entitled to 100% ownership in Tisdale.

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27. The Manager conducted a claims process in respect of Tisdale and all creditor claims have been resolved. Accordingly, if the Handelman Mortgagees' motion is dismissed, the funds held in trust will be available to pay the Applicants.

IV. Statements made by Mr. Zimmerman

28. In his affidavit sworn May 19, 2017, Mr. Zimmerman describes certain facts relevant to this motion. The Manger's response to some of Mr. Zimmerman's evidence is described below.

29. At paragraph 15 of Mr. Zimmerman's affidavit, Mr. Zimmerman states that the Order of Justice Newbould dated November 5, 2013 affected 9 mortgages granted by the Handelman Mortgagees and two mortgages granted by another client, Martha Sorger. This is not correct. Justice Newbould's November 5, 2013 Order only affected the four Schedule "B" Properties described above. The remaining properties described by Mr. Zimmerman were not part of the Manager's mandate until the Judgment of Justice Brown dated August 12, 2014. These properties are not relevant to the fees in dispute on this motion.

30. At paragraphs 49-51 of his affidavit, Mr. Zimmerman asserts that the Handelman Mortgagees' power of sale proceedings "enriched" the Manager. The Manager does not agree with this characterization. The Handelman Mortgagees (and Sorger) enforced their mortgages, as they were entitled to do. As part of these enforcement proceedings, Mr. Wallach and Mr. Zimmerman charged substantial legal fees and these fees were paid from sale proceeds. These fees are summarized in **Appendix "A"**. There is no evidence that the Handelman Mortgagees achieved more, or charged less, than the Manager would have if it had sold the properties.

31. At paragraph 65 of his affidavit, Mr. Zimmerman asserts that the "same work" was going to be required whether he and Mr. Wallach were retained to address one property or two

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properties. This is not necessarily correct. The Manager's experience in this proceeding was that mortgagee involvement – and the legal fees associated with that involvement – varied significantly. In general, mortgagees with more money at stake tended to participate more actively in these proceedings and incur larger fees. This is significant because, if the relief sought by the Handelman Mortgagees is granted, then fees totalling \$282,739 will be allocated to the \$3 million Tisdale Mortgage.² In the Manager's view, these costs are likely disproportionate to the size of the mortgage and the risk that the Handelman Mortgagees would not be paid in full. In addition, as described in the Manager's 9th Report (which is attached as **Appendix "B"**), 78 Tisdale was already subject to an Agreement of Purchase and Sale when the Manager was appointed, so the risk of loss to the Tisdale Investors was relatively low.

32. At paragraphs 65 and 66 of his affidavit, Mr. Zimmerman describes why he and Mr. Wallach did not keep separate dockets by property during the initial period. This appears to be a mischaracterization of the Manager's position. The Manager has never asserted that the Handelman Mortgagees should have tracked all of its time by property. What the Manager has said consistently is that the legal fees incurred during the initial period should be allocated between the properties in some principled manner. The Manager has always been prepared to consider alternatives to an uneven division of fees among the properties, but was not prepared to support an allocation that appeared to be driven by the Handelman Mortgagees' interest in recovery rather than any principled basis.

² As noted above 75% of these fees have already been paid, so this dispute relates to the remaining 25%, which totals \$70,684.

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All of which is respectfully submitted this 14th day of June, 2017.

SCHONFELD INC.

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

Per: 
James Merryweather, CPA, CGA
Authorized Signing Officer

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.

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SCHEDULE "B" COMPANIES

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

32. 165 Bathurst Inc.

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SCHEDULE "C" PROPERTIES

1. 3270 American Drive, Mississauga, Ontario
2. 0 Luttrell Ave., Toronto, Ontario
3. 2 Kelvin Avenue, Toronto, Ontario
4. 346 Jarvis Street, Suites A, B, C, E and F, Toronto, Ontario
5. 1 William Morgan Drive, Toronto, Ontario
6. 324 Prince Edward Drive, Toronto, Ontario
7. 24 Cecil Street, Toronto, Ontario
8. 30 and 30A Hazelton Avenue, Toronto, Ontario
9. 777 St. Clarens Avenue, Toronto, Ontario
10. 252 Carlton Street and 478 Parliament Street, Toronto, Ontario
11. 66 Gerrard Street East, Toronto, Ontario
12. 2454 Bayview Avenue, Toronto, Ontario
13. 319-321 Carlaw, Toronto, Ontario
14. 260 Emerson Ave., Toronto, Ontario
15. 44 Park Lane Circle, Toronto, Ontario
16. 19 Tennis Crescent, Toronto, Ontario
17. 646 Broadview, Toronto, Ontario

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A

Handelman mortgage Legal Fees (Wallach and Zimmerman)

	Description on trust account statement	Date Paid	Amount
Ascalon Lands Ltd			
3765 St. Claire Avenue East	Receivership - pay o/s account	4/Jul/2014	\$ 70,684.92
	Payment to Lawrence F Wallach	9/Jul/2014	\$ 32,530.07
	Paid to Zimmerman Associates (Inv. #9763)	24/Oct/2014	\$ 26,637.75
	Paid to Zimmerman Associates (Inv. #9906)	26/Mar/2015	\$ 4,689.50
	Paid to Lawrence F Wallach	27/Mar/2015	\$ 3,779.18
	Paid to Zimmerman Associates (Inv. #10244)	11/Apr/2016	\$ 2,256.85
			<u>\$ 140,578.27</u>
Fraser Lands Ltd/Fraser Properties Corp			
7,15 and 30 Fraser Avenue	Paid to Zimmerman Associates (Inv. #9830)	16/Dec/2014	\$ 38,486.56
			<u>\$ 38,486.56</u>
Northern Dancer Lands Ltd.			
140 Queen's Plate	Paid to Zimmerman Associates (Inv. #9762)	24/Oct/2014	\$ 32,976.09
	Payment to Lawrence F Wallach	9/Feb/2015	\$ 87,626.98
	Paid to Zimmerman Associates (Inv. #9905)	26/Mar/2015	\$ 12,313.21
	Payment to Lawrence F Wallach (25% of June/14 acct)	27/Mar/2015	\$ 36,965.53
	Paid to Zimmerman Associates (25% of Inv. #9652)	27/Mar/2015	\$ 30,186.65
			<u>\$ 200,068.46</u>
Tisdale Mews			
78 Tisdale Avenue	Goodmans paid to Zimmerman		\$ 70,684.92
			<u>\$ 70,684.92</u>
44 Park Lane Circle			
	Paid to Zimmerman Associates (Inv. #9896)	16/Mar/2015	\$ 146,620.75
	Payment to Lawrence F Wallach	16/Mar/2015	\$ 189,984.92
	Payment to Lawrence F Wallach	29/Apr/2015	\$ 15,368.00
	Payment to Lawrence F Wallach	29/Apr/2015	\$ 35,535.57
	Paid to Zimmerman Associates (Inv. #9915)	29/Apr/2015	\$ 13,432.86
	Paid to Zimmerman Associates (Inv. #10092)	23/Oct/2015	\$ 6,913.04
	Payment to Lawrence F Wallach	23/Oct/2015	\$ 2,929.53
	Payment to Lawrence F Wallach	28/Jan/2016	\$ 14,893.40
			<u>\$ 425,678.07</u>
Cinderella Productions			
1 William Morgan Drive	No legal funds on trust statement, mortgage not paid in full		\$ -
			<u>\$ -</u>
Emerson Developments/St. Clarens Holdings			
	Legal fees paid by mortgagee, added to mortgage		\$ 25,933.50
260 Emerson/777 St. Clarens	Payment to Lawrence F Wallach	1/Apr/2015	\$ 20,214.91
	Payment to Lawrence F Wallach	1/Apr/2015	\$ 106,606.73
	Paid to Zimmerman Associates (Inv. #9902)		\$ 30,032.65
	Paid to Zimmerman Associates (Inv. #9915)	2/Apr/2015	\$ 40,316.58
	Payment to Lawrence F Wallach	23/Oct/2015	\$ 2,929.53
	Paid to Zimmerman Associates (Inv. #10094)	23/Oct/2015	\$ 1,892.08
			<u>\$ 227,925.98</u>

B

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NINTH REPORT OF THE MANAGER, SCHONFELD INC.
(Motion for approval and vesting order with respect to 78 Tisdale Avenue)

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I. Introduction

1. This is the Ninth 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**”),¹ together with the properties owned by the Companies (the “**Properties**”).²

A. Purpose of this Report

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

- (a) an approval and vesting order (the “**Approval and Vesting Order**”) in respect of the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated May 28, 2013 (the “**May 2013 Agreement**”, as amended, the “**Tisdale Agreement**”) between IKH Holdings Inc. (“**IKH**”) and Tisdale Mews Inc. (“**Tisdale**”), assigned by IKH to Sunrise Acquisitions (Tisdale II) Inc. (the “**Purchaser**”), in respect of the property known municipally as 78 Tisdale Avenue in Toronto, Ontario (the “**Tisdale Property**”). A copy of the May 2013 Agreement is attached as Confidential Appendix “A”; and
- (b) an Order permitting the Confidential Appendices to this Report, as described below, to be filed under seal without being served on the Service List.

3. This Report provides a summary of the Transaction and a recommendation that this Honourable Court grant the relief described in the Manager’s Notice of Motion.

B. Terms of reference

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

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

² The Manager was discharged from certain responsibilities with respect to certain of the Properties pursuant to an Order dated April 1, 2014.

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 Tisdale Property if the Transaction is not completed. In particular, and without limiting the generality of the foregoing, it is the Manager's judgment that it would impair the Manager's ability to maximize realization of the Tisdale Property were any information to be made public concerning any discussions of sale process or values of the Tisdale Property among the Manager, the parties or any of their advisers and/or any possible bidders for Tisdale Property or any of them. Accordingly, a number of Appendices to this Report have been identified as Confidential Appendices and will be filed in a separate Confidential Appendix Brief. The Manager respectfully requests an Order authorizing it to file the Confidential Appendices under seal without serving the Confidential Appendix Brief on the Service List.

D. Background

6. The Companies are a group of real estate development corporations incorporated as part of a series of joint ventures between Dr. Stanley Bernstein and companies that he controls (the "**Bernstein Group**") and Norma and Ronald Walton and entities that they control (the "**Walton Group**"). Most of the 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 (the “**November 5 Order**”), 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 Transaction

A. Interested Parties

9. The Tisdale Property is owned by one of the Companies, Tisdale. A mortgage in the amount of \$3,000,000 (the “**Tisdale Mortgagee**”) and a Notice of Assignment of Rents each in favour of E. Manson Investments Limited, 5 K Investments Inc., Yerusha Investments Inc., National Tire Sales and Service (2011) Ltd., Natme Holdings Ltd., Marvin Teperman, Maxoren Investments Inc., Sheilaco Investments Inc., Errol Gordon, Southern Atlantic Service, Elaine Pepper, B. & M. Handelman Investments Limited and 558678 Ontario Limited (collectively, the “**Mortgagees**”) are registered on title to the Tisdale Property.

10. On December 30, 2013, a lien was registered against the Tisdale Property by Her Majesty the Queen in Right of Canada as represented by The Minister of National Revenue (the “**Minister**”) in the amount of \$92,202 (the “**Tax Lien**”). The Tax Lien was registered pursuant to sections 316(1) and (2) of the *Excise Tax Act* to secure unpaid Goods and Services Tax. The Minister subsequently discharged and released the Tax Lien after being advised of the terms of the November 5 Order by the Manager. Copies of the Minister’s Notice of Lien, the Discharge of Lien and a copy of the Parcel Register for the Tisdale Property prepared on May 1, 2014 are attached as Appendix “3”.

B. Power of Sale Proceedings

11. By Order dated January 20, 2014 (the “**January 20 Order**”, a copy of which is attached as Appendix “4”), the terms of the November 5 Order were varied on consent as they related to a number of Properties, including the Tisdale Property. Pursuant to the January 20 Order, the stay of proceedings against any Company subject to the Order would automatically be lifted to permit the relevant mortgagee to enforce its rights if, among other things, the Company failed to comply with its mortgage obligations.

12. The Tisdale Property does not generate revenue. The Manager advised affected stakeholders early in these proceedings that it would not comingle funds between the various

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Companies and, accordingly, the Companies that did not generate revenue required an outside funding source. The Manager and the Applicants agreed that the Applicants would provide funding of approximately \$1.3 million between December 20, 2013 and January 31, 2014. That funding was provided.

13. The Applicants had no obligation to advance further amounts unless they agreed to provide further funding in writing or were ordered to provide funding by the Court. Since January 31, 2014, the Manager has submitted monthly funding requests to the Applicants. The Applicants have assessed these funding requests and determined what obligations they were prepared to fund.

14. On February 3, 2014, the Applicants advised the Manager that they were not prepared to fund any further obligations owed by Tisdale and several other Companies. The Manager notified the Mortgagees that Tisdale would no longer be in a position to meet its obligations under the Tisdale Mortgage on February 3, 2014. Tisdale subsequently breached the Tisdale Mortgage by failing to make the payment due on February 5, 2014. Pursuant to the January 20 Order, this default triggered an automatic lifting of the stay of proceedings to permit enforcement by the Mortgagees.

15. The Mortgagees delivered a Notice of Sale under Mortgage in respect of the Tisdale Property on February 18, 2014. A copy of the Notice of Sale under Mortgage is attached as Appendix "5". The Mortgagees supported the Transaction, accordingly, the Manager and the Mortgagees entered into a Forbearance Agreement dated March 11, 2014 so that the Manager could proceed to complete the Transaction. This Forbearance Agreement provides that the Mortgagees will be entitled to enforce their remedies under the Tisdale Mortgage:

- (a) Ten (10) days after the termination of negotiations between the Manager and the Purchaser without executing the APS; and
- (b) Ten (10) days after the Tisdale Agreement is terminated by either the Manager or the Purchaser prior to closing of the transaction contemplated therein; and
- (c) May 12, 2014, unless such date is extended in writing by agreement of the Manager and the Mortgagees; and

- (d) By Order of the Court upon motion by the Mortgagee or the Manager on notice to the other.

C. The Tisdale Agreement

16. Tisdale entered into the May 2013 Agreement before the Manager was appointed. The May 2013 Agreement was also amended by Tisdale and IKH by: (i) an amendment dated June 28, 2013 (the “**June 2013 Amendment**”, a copy of which is attached as Confidential Appendix “B”) and (ii) an amendment dated July 16, 2013 (the “**July 2013 Amendment**”, a copy of which is attached as Confidential Appendix “C”).

17. Since Tisdale was already subject to the May 2013 Agreement, as amended by the June 2013 Amendment and July 2013 Amendment, when the Manager was appointed, the Manager could not expose the Tisdale Property to the market without first disclaiming the May 2013 Agreement. In order to determine whether to disclaim the May 2013 Agreement, the Manager carefully considered the value of the May 2013 Agreement and discussed it with the Applicants, the Respondents and the Mortgagees. Each of these stakeholders supported the completion of the Transaction and the Manager determined that the May 2013 Agreement should not be disclaimed.

18. The Transaction under the May 2013 Agreement, as amended by the June 2013 Amendment and July 2013 Amendment, remained subject to certain terms and conditions that Tisdale was not capable of completing. In particular, Tisdale agreed to obtain, at its own expense, site plan approval³ from the City of Toronto for between 25-35 unserviced town house lots. Tisdale did not have the ability to fund further development efforts and so the Manager asked IKH to submit an “as is” offer to purchase the Tisdale Property.

19. On January 13, 2014, IKH submitted a revised offer for the Tisdale Property (the “**January 2014 Offer**”) on an “as is” basis with a reduced purchase price. A copy of the January 2014 Offer is attached as Confidential Appendix “D”. The Manager determined that IKH’s revised offer contemplated a price abatement that significantly exceeded the cost of, and risk

³ Site plan approval is a form of development control provided to municipalities under Ontario’s *Planning Act*.

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associated with, obtaining site plan approval. Accordingly, the Manager advised IKH that its revised offer was not be acceptable.

20. On February 11, 2014, IKH submitted a further revised offer for the Tisdale Property (the “**February 2014 Offer**”) on an “as is” basis with an improved purchase price as compared to the January 2014 Offer. A copy of the February 2014 Offer is attached as Confidential Appendix “E”.

21. The Manager retained N. Barry Lyon Consultants Limited (“**NBLC**”), a multi-disciplinary real estate consulting firm with expertise in land development, to review and comment on the February 2014 Offer. Based on NBLC’s review of comparable land transactions and its experience with this property and comparable infill redevelopment, NBLC concluded that the February 2014 Offer represented a value consistent with market trends. A copy of NBLC memorandum regarding the Transaction is attached hereto as Confidential Appendix “F”. Given the scope of the Tisdale Transaction and the support of the affected stakeholders, the Manager determined that the cost of a formal appraisal was not warranted.

22. Following consultation with NBLC, the Applicants, the Respondents and the Mortgagees, the Manager entered into an amendment dated March 21, 2014 (the “**March 2014 Amendment**”, a copy of which is attached as Confidential Appendix “G”). The March 2014 Amendment reflected, among other things, the terms of the February 2014 Offer and a closing date of May 12, 2014.

23. The Applicants, the Respondents and the Mortgagees have advised that they are satisfied with the purchase price set out in the Tisdale Agreement and support completion of the Transaction.

24. In addition, the Manager notes that, if the Tisdale Transaction is not completed, the Mortgagees will be entitled to terminate the Forbearance Agreement and sell the Tisdale Property to the Purchaser or another party in power of sale proceedings. Such proceedings will delay the sale of the Tisdale Property and there is no guarantee that the Mortgagees will obtain a superior purchase price.

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25. Based on all of these factors, the Manager considers that it is commercially reasonable under the circumstances to complete the Transaction.

D. Proposed Distribution of Sale Proceeds

26. The Manager has asked its counsel, Goodmans LLP (“Goodmans”), to provide an opinion with respect to the validity of the Tisdale Mortgage. Goodmans has advised that the Tisdale Mortgage is validly registered.

27. The Manager recommends that the proceeds of the Transaction, net of closing costs, be used to satisfy amounts owed pursuant to the Tisdale Mortgage and 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 Tisdale. The Minister will be given notice of the claims process and the alleged debt that gave rise to the Tax Lien can be addressed through that process.

E. Conclusion and Recommendations

28. 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 1st day of May, 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.

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

DBDC SPADINA LTD., et al.
Applicants

NORMA WALTON, et al.
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD OF THE
MANAGER, SCHONFELD INC.**
(Motion returnable June 19, 2017)

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Brian Empey LSUC#: 30640G
Mark S. Dunn LSUC#: 55510L
Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Manager

File No. 14-0074