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

#### ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

BETWEEN:

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

- and -

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

Respondents

- and -

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

#### MOTION RECORD OF THE MANAGER, SCHONFELD INC.

(Motion for a declaration relating to security held in relation to 1003 Queen Street East, returnable on a date to be determined)

#### 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

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

Lawyers for the Manager

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### INDEX

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Court File No.: CV-13-1 0280-00CL

## ONTARIO SUPERIOR COURT OF JUSTICE

(Commercial List)

BETWEEN:

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

**Applicants** 

- and -

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

Respondents

- and -

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

#### NOTICE OF MOTION

(Motion for a declaration relating to security held in relation to 1003 Queen Street East, returnable on a date to be determined)

Schonfeld Inc., in its capacity as manager (the "Manager") of (i) certain companies listed in Schedule "B" to the Order of Justice Newbould dated November 5, 2013 (the "Schedule "B" Companies"), together with the real estate properties owned by the Companies (the "Schedule "B" Properties"), as amended by Order of Justice Newbould dated January 16, 2014, and (ii) the properties listed at Schedule "C" to the Order of Justice Brown dated August 12, 2014 (the "Schedule "C" Properties", together with the Schedule "B" Properties, the "Properties") will make a motion to a judge presiding on the Commercial List on a date to be determined, at 330 University Avenue, Toronto.

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

#### THE MOTION IS FOR:

- 1. a declaration that Queen's Corner Corp. ("Queen's Corner"), and not Kartelle 1003 Queen East Inc. ("Kartelle"), is entitled to \$200,000 (the "Security") which is currently held by Tarion Warranty Corporation ("Tarion") to secure Queen's Corner's obligations relating to a proposed development at 1003 Queen Street East (the "Queen East Property");
- 2. an order that Kartelle pay to the Manager its costs, on a full indemnity basis, for its attendance at the Manager's motion heard October 25, 2016;
- 3. costs of the within motion; and
- 4. such further and other relief as this Court deems just.

#### THE GROUNDS FOR THE MOTION ARE:

- I. Queen's Corner is entitled to the Security
- a. Queen's Corner paid the Security
- 5. Queen's Corner is a Schedule "B" Company that owned the Queen East Property. When Queen's Corner purchased the Queen East Property, construction of a condominium (the "Queen East Condo") had commenced but had not been completed.
- 6. On or around June 7, 2013, Queen's Corner paid the \$200,000 Security to Tarion. The Manager understands that the Security was paid to Tarion by Queen's Corner to provide security for any claims made by purchasers of the Queen East Condo. The Manager has obtained an Order of this Court authorizing it and Tarion to conduct a claims process to identify any such purchasers that may have a claim against Tarion (the "Queen's Corner Claims Process"). Upon completion of the Queen's Corner Claims Process, the Security, less any amount held back in respect of claims, is to be held by the Manager in trust.

#### b. Queen's Corner sold the Queen East Property to Kartelle

7. After the Manager was appointed, Queen's Corner sold the Queen East Property (including the partially constructed Queen East Condo) to Kartelle pursuant to an Agreement of Purchase and Sale dated April 21, 2014 (the "Queen East APS").

- 8. The Security is not conveyed by or even referenced in the Queen East APS. Nor can there have been any binding pre-contractual representations or collateral warranties, since the Queen East APS contains a clear entire agreement clause. Pursuant to the Queen East APS, Kartelle purchased Queen's Corner's interest in the Queen East Property. It did not purchase Queen's Corner's rights to the Security.
- B. The Manager's costs were thrown away as a result of Kartelle's conduct
- a. Kartelle ignored the Manager's request to explain the basis of its claim
- 9. Kartelle attempted to claim the Security from Tarion. It has refused to explain or substantiate its claim.
- 10. The Manager wrote to Kartelle's counsel over a period of five months seeking the basis for Kartelle's claim to the Security before finally being advised by Kartelle's counsel that he would attempt to obtain instructions from his client. The Manager heard nothing at all in response for months, and has never received a substantive answer to its inquiries.

#### b. Kartelle's late-breaking opposition to the Manager's motion

- 11. The Manager's motion was heard on October 25, 2016. Without any prior notice, Kartelle's president, Mr. Leyzac, attended the hearing of the motion. After arriving more than thirty minutes after the motion was scheduled to begin, Mr. Leyzac asked that the issue of entitlement to the Security be deferred so that Kartelle could retain litigation counsel. Mr. Leyzac represented to the Court that he had been unaware of the Manager's numerous attempts to contact Kartelle because he had been in Spain and unable to contact his counsel until he returned to Toronto on Thursday, October 20, 2016. Based on these representations, Justice Newbould held that Kartelle's entitlement (if any) to the Security would be considered on a separate motion.
- 12. As a result of Kartelle's conduct, this additional motion is now required. As there is no reason for other stakeholders to bear the costs resulting from this conduct, Kartelle should bear the costs of the Manager's attendance.

#### II. Miscellaneous

- 13. Rules 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
- 14. Such further and other grounds as counsel may advise and this Honourable Court permit.

# THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- 15. The Forty-Sixth Report of the Manager dated October 31, 2016;
- 16. Such further and other material as counsel may advise and this Honourable Court may permit.

Date: October 31, 2016 GOODMANS LLP

333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7

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

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

Lawyers for the Manager

#### **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.
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- 11. Lesliebrook Holdings Ltd.
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- 14. Fraser Lands Ltd.
- 15. Queen's Corner Corp.
- 16. Northern Dancer Lands Ltd.
- 17. Dupont Developments Ltd.
- 18. Red Door Developments Inc. and Red Door Lands Ltd.
- 19. Global Mills Inc.
- 20. Donalda Developments Ltd.
- 21. Salmon River Properties Ltd.
- 22. Cityview Industrial Ltd.
- 23. Weston Lands Ltd.
- 24. Double Rose Developments Ltd.
- 25. Skyway Holdings Ltd.
- 26. West Mall Holdings Ltd.
- 27. Royal Gate Holdings Ltd.
- 28. Royal Gate Nominee Inc.
- 29. Royal Gate (Land) Nominee Inc.
- 30. Dewhurst Development Ltd.
- 31. Eddystone Place Inc.

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

#### **SCHEDULE "C" 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

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

**DBDC SPADINA LTD. et al.** 

NORMA WALTON et al.

and

Applicants Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

(Commercial List)

Proceeding commenced at Toronto

#### **NOTICE OF MOTION**

((Motion for a declaration relating to security held in relation to 1003 Queen Street East, returnable on a date to be determined)

#### GOODMANS LLP

Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7

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

Tel: 416.979.2211 Fax: 416.979.1 234

Lawyers for the Manager

6626618

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

# ONTARIO SUPERIOR COURT OF JUSTICE

(Commercial List)

BETWEEN:

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

**Applicants** 

- and -

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

Respondents

- and -

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

#### FORTY-SIXTH REPORT OF THE MANAGER, SCHONFELD INC.

(Motion for a declaration relating to security held in relation to 1003 Queen Street East)

## Contents

I.	Introduction	1
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	Kartelle claimed the security	
	Kartelle ignored the Manager for six months	
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#### I. Introduction

1. This is the Forty-Sixth 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").

#### II. Purpose of this Report

- 2. The Manager has brought a motion for a declaration that Queen's Corner Corp. ("Queen's Corner"), and not Kartelle 1003 Queen East Inc. ("Kartelle"), is entitled to \$200,000 (the "Security") held by Tarion Warranty Corporation ("Tarion") to secure Queen's Corner's obligations relating to a proposed development at 1003 Queen Street East (the "Queen East Property").
- 3. This Forty-Sixth Report contains facts relevant to the Manager's motion, including certain facts previously described in the Manager's Forty-Fourth Report, which are reproduced below for ease of reference.

#### **III.** The Security

4. Queen's Corner Corp. is a Schedule "B" Company that owned the Queen East Property. When Queen's Corner purchased the Queen East Property, construction of a condominium (the "Queen East Condo") had commenced but had not been completed.

Schedule "B" was amended by Order dated January 16, 2014.

- 5. On or around June 7, 2013, Queen's Corner paid the \$200,000 Security to Tarion.
- 6. Tarion is a private, not-for profit corporation that was established in 1976 to protect the rights of new home purchasers and regulate new home builders and vendors in Ontario. Pursuant to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c.O.31 (the "*Warranties Act*"), Tarion is authorized to establish a Guarantee Fund and to make payments from the Guarantee Fund to new home purchasers under the *Warranties Act*. Payments can be made in respect of, among other things, construction defects in a new home and deposits paid to secure an agreement to purchase a new home that is not ultimately constructed.
- 7. When it makes a payment to a new home purchaser under the *Warranties Act*, Tarion is authorized to look to the builder of that home to recover the payment. Tarion is authorized to take security from builders and vendors of new homes to protect the Guarantee Fund against the risk of non-payment.
- 8. The Manager understands that the Security was paid to Tarion by Queen's Corner to provide security for any claims made by purchasers of the Queen East Condo.
- 9. Queen's Corner's books and records show that no units of the Queen East Condo were sold by Queen's Corner before the Manager's appointment. The Manager did not sell any units in the Queen East Condo.
- 10. A copy of Tarion's Conditions of Registration dated April 24, 2013, which is executed by Ms. Walton, is attached hereto as **Appendix "A"**. The Conditions of Registration provide that the Security will be maintained until all warranty obligations are met.

#### IV. The Sale

- 11. After the Manager was appointed, Queen's Corner sold the Queen East Property (including the partially constructed Queen East Condo) to Kartelle pursuant to an Agreement of Purchase and Sale dated April 21, 2014 (the "Queen East APS"). The Queen East APS is attached as Appendix "B".
- 12. Kartelle purchased Queen's Corner's interest in the Queen East Property. It did not purchase Queen's Corner's rights to the Security. The Queen East APS provides:

Upon and subject to the terms and conditions of this Agreement, the Seller will sell, and the Purchaser will purchase, the **Purchased Assets** in consideration of the payment of the Purchase Price. [emphasis added]

...

"Purchased Assets" means all of the Company's right, title and interest, if any, in and to the Property (no Chattels included). [emphasis added]

• •

"Property" means the Lands and all existing buildings on the Lands.

13. The Security is not conveyed by – or even referenced in – the Queen East APS. Nor can there have been any binding pre-contractual representations or collateral warranties, since the Queen East APS contains a clear entire agreement clause:

This Agreement and any agreements instruments and other documents herein contemplated to be entered into between by or including the parties hereto constitute the entire agreement between the parties hereto pertaining to this Agreement and supersede all prior agreements understandings negotiations and discussions whether oral or written with respect thereto and there are no warranties or representations and no other

agreements between the parties hereto in connection with the agreement of purchase and sale provided for herein.

#### V. Kartelle claimed the security

- 14. In order to complete its mandate, and maximize recovery for Queen's Corner's stakeholders, the Manager wrote to Tarion asking that the Security be returned to it. However, Tarion will not release the Security because:
  - (a) Unbeknownst to the Manager, Kartelle asked Tarion to pay the Security to it; and
  - (b) Tarion is of the view that the Security should be held as long as there is any possibility that a claim in respect of the Queen East Condo will be made.
- 15. The latter concern was addressed in the Manager's 44<sup>th</sup> Report and the Order of Justice Newbould dated October 25, 2016.

#### VI. Kartelle ignored the Manager for six months

- 16. The Manager was (and is) unaware of any legitimate basis for Kartelle's claim. Accordingly, Goodmans LLP ("Goodmans") wrote on behalf of the Manager to Kartelle's lawyer on April 25, 2016 demanding that Kartelle withdraw its claim. This letter is attached as **Appendix "C"**.
- 17. Kartelle did not respond to the Manager's letter, despite a follow-up e-mail from Goodmans on July 8, 2016. Goodmans wrote again on September 10, 2016 as follows:

We have now been seeking a justification for your client's attempt to claim \$200,000 paid by Queen's Corner Corp. to Tarion for approximately five months. We will be serving motion materials early next week to address this issue. This correspondence, and your failure to respond, will be included in these materials. We will ask the Court to infer from your silence that your client has no support for its position.

- 18. This email is attached as **Appendix "D"**.
- 19. Counsel to Kartelle responded "We will, once again, attempt to obtain instructions from our client and advise." This e-mail, received almost five months after the Manager's original inquiry and attached as **Appendix "E"**, is the only communication the Manager or its counsel received from or on behalf of Kartelle.
- 20. On Monday, October 17, 2016, the Manager served Kartelle with a motion seeking, among other things, an Order that the Security be paid to it by Tarion upon completion of the claims process for purchasers (if any) of units of the Queen East Condo, as described in the 44<sup>th</sup> Report.
- 21. Ten minutes after being served, Kartelle's lawyer e-mailed counsel to the Manager to advise that Kartelle had not provided instructions regarding the security, that he assumed Kartelle would not oppose the Manager's motion, and to request confirmation that the Manager would not be seeking costs as against Kartelle. This e-mail is attached as **Appendix "F"**.
- 22. Kartelle's counsel followed up with a phone call that afternoon, at which time he advised the Manager's counsel that he expected Kartelle would retain litigation counsel and attend the Manager's motion.
- 23. The Manager did not hear further from Kartelle in advance of the motion and Kartelle did not file responding materials.

#### VII. Kartelle's late-breaking opposition to the Manager's motion

24. The Manager's motion was heard on October 25, 2016. Without any prior notice, Kartelle's president, Mr. Leyzac, attended the hearing of the motion. After arriving more than

thirty minutes after the motion was scheduled to begin, Mr. Leyzac asked that the issue of entitlement to the Security be deferred so that Kartelle could retain litigation counsel. Mr. Leyzac represented to the Court that he had been unaware of the Manager's numerous attempts to contact Kartelle because he had been in Spain and unable to contact his counsel until he returned to Toronto on Thursday, October 20, 2016. Based on these representations, Justice Newbould held that Kartelle's entitlement (if any) to the Security would be considered on a separate motion.

#### VIII. The Manager's costs thrown away

- 25. In the Manager's view, it is appropriate for Kartelle to bear the cost of the October 25, 2016 attendance. Having had approximately six months to communicate with the Manager so that any dispute relating to entitlement to the Security could be resolved in an orderly manner, Kartelle ignored the Manager's request until the day its motion was heard. Moreover, Kartelle's real estate lawyer had apparently been advised on October 17, 2016 that Kartelle intended to retain litigation counsel to attend the motion, yet when the motion was heard one week later, Kartelle represented that it had only learned about the motion on October 20, 2016 and had been unable to retain litigation counsel prior to the hearing of the motion. As a result of Kartelle's conduct, a second motion date will be required. In the Manager's view, there is no reason for other stakeholders to bear the costs resulting from this conduct.
- 26. In addition, it remains unclear how Kartelle could have remained ignorant of issues relating to the Security for six months, as alleged by Mr. Leyzac. Kartelle holds itself out as a substantial real estate development and construction company with numerous employees other than Mr. Leyzac. It claims to be developing and building seven major projects in the Greater

Toronto Area. Excerpts from Kartelle's website, downloaded on October 27, 2016, are attached as **Appendix "G"**. Even if Mr. Leyzac was abroad, as alleged, it seems highly likely that he was either in touch with his staff in Toronto or delegated authority to conduct Kartelle's affairs to someone who was available.

All of which is respectfully submitted this 31st day of October, 2016.

#### 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.
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- 29. DBDC Richmond Row Holdings Ltd.

#### **SCHEDULE "B" COMPANIES**

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- 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.

#### **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

|6625765



#### **Tarion Warranty Corporation**

5160 Yonge Street, 12th Floor Toronto, Ontario M2N 6L9 Toll-Free: 1-877-982-7466

April 24, 2013

Norma Jean Walton Queen's Corner Corp. 30 Hazelton Ave. TORONTO ON M5R 2E2

Dear Norma Jean Walton:

Re: Conditions of Registration

Reference No. 42455 - Queen's Corner Corp.

Common Element No. 1869233 - 10 Unit Type D Condominium Project

I refer to your application received for registration with Tation Warranty Corporation ("Tarion"). Under the guidelines of Builder Bulletin 28 (Revised), Tarion has completed its assessment for security purposes, on your company who is proposing to build a 10 unit Type D condominium project known as "Queen's Corner", located at 1003 Queen St. E., TORONTO.

I propose to make your registration with Tarion subject to the following conditions:

- 1. During the term of your registration you shall not, without prior written consent, market, sell, and/or build more than TEN (10) condominium units.
- 2. The amount of security required as determined by the Risk Assessment is \$20,000.00 per unit. Therefore, the total required security to be provided is \$200,000, based upon 10 units x \$20,000.00 per unit. Please be advised that the security will be held for a minimum of 2 years after condominium registration. In addition, the release of security will not be in accordance with Builder Bulletin 28 (Revised).

As Builder Bulletin 19 reporting is required for the above project, Tarion may not release security where such reporting is considered late or unacceptable.

Please be advised, if Tarion does not receive all Builder Bulletin 19 reports, it may continue to hold the vendor/builder's security for a maximum of seven years or until all warranty issues are resolved. Completion and compliance with Builder Bulletin 19 reporting is mandatory.

3. You will provide Tarion with any reports provided by GRG Building Consultants with respect to the technical audit they have conducted. This includes any additional work they will be conducting, such as the April 10, 2013 scope that GRG provided your corporation.

We highlight that security must be submitted prior to the commencement of marketing (the taking of deposits and/or signing of Agreements of Purchase and Sale) or construction, whichever occurs first.

The security can be in the form of an irrevocable letter of credit, surety bond or certified cheque.

At each renewal, a risk assessment will be conducted to review security requirements. Should complaints or claims exist against the vendor or builder it would have a negative impact on the release of the security.

If you do not maintain an active registration, any security held will be maintained until all warranty obligations are met.

As a reminder, you may not construct or market any units until your application is finalized and security has been provided. All units must be enrolled at least THIRTY (30) days before construction begins.

I am prepared to consider your registration with Tarion if the foregoing conditions are acceptable to you. These conditions of registration do not restrict the Registrar from placing further conditions on your registration that are deemed to be appropriate.

Please confirm your acceptance of these conditions of registration by signing and returning the duplicate copy of this letter by May 07, 2013. Your application will not be approved until a signed copy of the terms and condition letter is returned and the required security of \$200,000 is received by Tarion. If you have any questions, please contact Ada Mai at 416-229-9200 ext. 3144 or toll free at 1-877-982-7466.

Sincerely, John Bewello

John Becevello, CA Deputy Registrar

CONSENTED AND AGREED TO:

Vendor/Builder:

Queen's Corner Corp.

Reference No.:

42455

(Corporate seal where applicable) Signature of Authorized Signing Officer

Norma Walten

Print Name of Authorized Signing Officer

#### AGREEMENT OF PURCHASE AND SALE

(FOR USE IN THE PROVINCE OF ON TARIO)	
BUYER 2288750 Ontario Inc. in this for a	complant to be species to purchase from
	Corn (the "Coursey")
without security and not its personal Capacity (Full light searce of all Sallers)	Cont. (tes Collowing
REAL PROPERTY:	
Address 1003 Queza Sineet East	ide of
in the	
boving a floridge of manufacture and a second secon	mere or less and legally described as
See Schedule A	(the "preperty") W
PURCHASE PRICE: Two Million CNE HVX 25 ED 1 Dollars (C)	7 2000
DEPOSIT:	N. E. D. C.
Boyer submits HEREWITH Dollars (C)	ONE ("First Deposit")
(Harrish Vices accustator)	, , , , , , , , , , , , , , , , , , ,
cash or segotiable certified cheque payable to	in be seld in trust pending completion or
other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer agrees to pay the	e balance as follows: sot out in Schedule A hereto
A D O A B	
SCHEDULE(S) A. B. C and D attached hereto form(s) pert of this agreement.	
1. CHATTELS INCLUDED: None	
2. FIXTURES EXCLUDED: All tenant property excluded	The residence of the commencer of the comment of th
HIS MAN AND CONTROL OF THE PROPERTY OF THE PRO	
<ol> <li>RENTAL FEMS: The following equipment is runted and not included in the Purchase Price. The Buyer agrees</li> </ol>	
	Y
4. IRREVOCABILITY: This Offer shall be irrevocable by	APRIL 14
after which there, if not accepted, this Offer shall be not! and wold and the deposit shall be returned to the Bayer in	full without interest.
5. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the	on Date
Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in	his Agreement.
6. NOTICES: Coller hereby appoints the Litting Broker to Agent for the purpose of giving and receiving notice	s personn to this Agreement. Only if the Co operating
Broker represents the interests of the Buyer in this transmitten, the Buyer hardly appoints the Co-operation notices pursuant to this Agreement. Any notice relating foreto or provided for herein shall be in writing. This of	tiroiser as Agent for the purpose of giving and resolving
notice shall be desmed given and received, when hand delivered to the address for service provided in the A	sknowledgemers below, or whose a florimile number is
provided berein, when transmitted electrocipally to that faccinally number	

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Agreement are fulfilled or otherwise undered or otherwise under the early contents to the numericality or other governmental agreement and dash the principal building may be served against educ of the solder broke to the numericality or other governmental agreement all outstanding mark-orders affecting the grapestry and failer agrees to recent and relieve such further outstanding to this engine as buyer may reasonably require.

PUTTINE USE: Seler and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be favoured as may be specificably provided. One in this Agreement. 10. TETLE of Provided that the title to the property or pool and first formal expensed convictions, charges, lierc, and ecountriesses covered as a design of the company of the property of the property of the company of the company

documents and/or money will be required to hold them in this said not release them except in accordance with the terms of a winton agreement current in the parameters and the property and the parameters are assembled feeling. If equation by they are property with a collect control to the total property and the parameters are assembled feeling. If equation is a property with a collect control to the property of the mort goal and the property of the mort goal and the property of the mort goal and to obtain the discharge to the property of the mort goal and the property of the mort goal and the collect finals, and the property of the mort goal and the property of the p

amount required to obtain the discharge out of the boliance due on completion.

13. INSPECTION: Buyer acknowledges having had the opportunity to inspect the property and-understands that upon acceptance of this offer there shall be a binding agreement of proclases and ask between Buyer and Selter.

14. INSURANCE: All buildings on the property and all other things being purchased dual be and remain until completion at the risk of Selter. Pending completion, Selter shall be did illustrance policies, if any, and the proceeds thereof in tost for the parties as their interests may oppear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monitors paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No incurance shall be toundered on or extensive being the shall be toundered on the process of the take the proceeds of any insurance and complete the purchase. No incurance shall be toundered on consumers to purchase to the process of the sales of the sales of the process of the sales o

Transfer/Deed, it will accept a Vesting Order.
RESIDENCY: Buyer shall be eredited tow

Transcrived, it was necessary for Buyer to Develop the Committee of the Amount, if any accessory for Buyer to pay-to Despite Liability in report of the populable by Celler under the non-residency provisions of the Amount—law Art peases at Seller delivers accomplaints the present prode conflictance are attempted, delocation that Seller in refer them a non-residency of Carabia.

18. ADJUSTMENTS: Any rests, mortgage interest, really taxes including local improvement rates and unmerced public or private willty charges and unmeltered as applicable, shall be apportioned and allowed to the day of completion, be day of completion had it to be apportioned to Buyer.

19. TIME LIMITS: Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided the nection may be abilitied by an agreement in whiting algorithm by Soller and Buyer on the time reportive inverses who may be provided by an allowed in their region.

20. TENDER: Any tender of documents or mency hereather may be under upon Soller or Buyer or their respective lawyers on the day set for completion. Me tendered by benth early of exclusive they of Chartered Bank. Trust Company. Province of Omario Savings Office. Credit Union or Desire Populaire.

21.—IFFI Soller represents and warrants—the approach consent is not necessary to this intensiveles under the province of the panely. Law A.A.B. Sol. 1900 to approach the content of the property and the intensive and the property of the province of the panely Law A.A.B. Sol. 1900 to approach the content of the property of the province of the panely Law A.A.B. Sol. 1900 to approach the content of the property of the province of the property of the province of the panely of the province of the province of the property as the province of the property of the province of the property of the province of the province of the province of the province of the property of the province of the pro 24. CONSUMER REPORTS: The Bayer is hereby notified that a consumer report consuming creat amover persons intermination and, with this transaction.
25. AGRNCY: It is understood that the brokers involved in the transaction represent the parties as set out in the Confirmation of Representation 26. AGREEMENT IN WRNTING: If there is confire or discrepancy between my provision added to his Agreement (including any Schedule attached hereof, that added provision shall superade the standard pre-set provision to the extent of see Agreement including any Schedule attached hereof, that all constitute the entire Agreement between Buyer and Seller. There is no representant or condition, which effects this Agreement to that an expressed herein. For the purposes of this Agreement, Seller means were This Agreement shall be read with all changes of gender or number requires by the context.
27. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms in DATE 21 - DU- 2014. the Undersigned Seller, agree to the Services Tax and any other lasers 30 time; and self-with applicable Goeds and Services Tax and any other lasers 30 time; and self-with the completion, and advised by the Self-with the Self-None DGEMENT ACKNOW lacknowledge moving of my signed copy of this accepted Agreement of Furchase and Sale and I authorize the Agent to forward a copy to my lawyer. (Beyer) Address for Service; ... Select Largest Continued LLP, ASP, Ken Hedia. Tel No. ( ) .

Address 133 Bays Sures, Surice Mod., Toronto, Ontario. MSF9 257.

(416. 1937-4158. (418. ) . 939-1234.

Tel No. PAX No. FAX No. ( ....... )...... Tel No.

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#### SCHEDULE A LEGAL DESCRIPTION

PIN 21056-0426 (LT) - 1003 Queen Street East, Toronto

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



## SCHEDULE B ADDITIONAL PROVISIONS

#### 1. **DEFINITIONS**

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

- "Adjustments" means the adjustments to the Purchase Price provided for and determined pursuant to Section 18 of the Printed Form, as modified by Section 11 hereof;
- "Agreement" means collectively the Printed Form as amended by this Schedule B and by any other schedules attached thereto as said agreement may be amended in writing from time to time;
- "Appointment Order" means the order of the Couri dated November 5, 2013 appointing Schonfeld Inc. (the "Manager") as the manager, without security of Queen's Corner Corp. (the "Company") and other entities, as said order may be varied, altered and/or replaced from time to time;
- "Approval and Vesting Order" means an approval and vesting order of the Court, in form and substance required by the Seller and to which the Buyer has no reasonable objection, pursuant to which the transaction is approved by the Court and pursuant to which all of the Company's right, title and interest in and to the Purchased Assets shall be vested in and to the Buyer on the Completion Date subject to the Ensumbrances (save and except for the Existing Charges);
- "Business Day" means any day, other than a Saturday, Sunday or legal holiday in Toronto, Ontario;
- "Buyer's Solicitor" means Pollock and Pollock or such other law firm licensed to practice in the Province of Ontario as is retained by the Buyer from time to time and notice of which is provided to the Seller;
- "Chattels" None:
- "Closing" means the closing and consummation of the agreement of purchase and sale for the Purchased Assets, including without limitation the payment of the Purchase Price and the delivery of the Closing documents, on the Completion Date at the offices of the Seller's Solicitor;
- "Completion Date" means June 24, 2014 subject to the Soller's right to extend the Completion Date from time to time and the Buyer's right to advance the Completion Date pursuant to Subsection 7(d) hereof;
- "Court" means the Ontario Superior Court of Justice (Commercial List);
- "Deposit" means collectively, the First Deposit and the Second Deposit;
- "Encumbrances" means all mortgages, claims, pledges, charges, liens, prior liens, debentures, hypothecs, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, or against title to, such Purchased Assets or any part thereof or interest therein, and any agreements, leases, options, easements, rights of way, servitudes, restrictions, executions or other charges or encumbrances (including notices or other registrations in respect of any of the foregoing) against title to the Purchased Assets or any part thereof or interest therein;
- "Execution Date" means the date upon which this Agreement is executed and delivered by the Seller,
- "Existing Charges" means those charge/mortgage(s) of land and other Encumbrances to the extent each is specifically identified in Schedule D hereto;
- "Governmental Authority" means any government, regulatory authority, government department, agency, utility, commission, board, tribunal or court having jurisdiction on behalf of any nation, province or state or other subdivision thereof or any municipality, district or other subdivision thereof;
- "Lands" means the lands legally described in Schedule A hereto;
- "Off-Title Compliance Matters" means open permits or files, work orders, notices of violation and/or other outstanding matters or matters of non-compliance with the zoning and/or other requirements of any Governmental Authorities;
- "Printed Form" means the printed form of Agreement of Purchase and Sale as amended in writing, which the Buyer and the Seller have executed and to which this Schedule B is attached;
- "Property" means the Lands and all existing buildings on the Lands;



"Purchased Assets" means all of the Company's right, title and interest, if any, in and to the Property (no Chattels included): and

"Seller's Solicitor" means Goodmans LLP (Attention: Brian Empey/Ken Herlin) or such other law firm licensed to practice in the Province of Ontario retained by the Seller from time to time and notice of which is provided to the Buyer.

#### 2. AGREEMENT OF PURCHASE AND SALE

#### (a) Purchase and Sale of Purchased Assets

Upon and subject to the terms and conditions of this Agreement, the Seller will sell, and the Buyer will purchase, the Purchased Assets in consideration of the payment of the Purchase Price. This Agreement shall be completed on the Completion Date at the offices of the Seller's Solicitor in Toronto, subject to real property registrations being electronically effected.

#### (b) Acknowledgement of Buver as to Condition of Purchased Assets

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Buyer acknowledges and agrees that:

- (i) on the Completion Date, title to the Purchased Assets shall be subject to each of the Encumbrances in effect as of Execution Date save and except for the Existing Charges. In that regard, the Buyer confirms that it has satisfied itself as to all aspects of the Purchased Assets, including without limitation, as to title to the Purchased Assets, the Encumbrances and all Off-Title Compliance Matters. Without limiting the foregoing, the Buyer shall execute and deliver: (A) such documentation and assurances required in connection with any of the Encumbrances including, without limitation, the assumption agreements and the like contemplated in the municipal and/or regional agreements registered against title to the Lands; and (B) assumption agreement(s) with respect to the Encumbrances.
- (ii) in entering into this Agreement, the Buyer has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Purchased Assets, including without limitation, the physical and environmental condition of the Purchased Assets and the review of the documentation made available to the Buyer prior to or pursuant to this Agreement, and the Buyer acknowledges it is not relying on any information furnished by the Seller or any other person or entities on behalf of or at the direction of the Seller in connection therewith;
- (iii) the Purchased Assets are being purchased and assumed by the Buyer on an "as is, where is" hasis as of the Completion Date with no representations or warranties (expressed or implied), including there being no representations or warranties with respect to title, completeness, quality, quantity, description, fitness for purpose, merchantability, future development, compliance with the requirements of Governmental Authorities, the Encumbrances, as to Off-Title Compliance Matters and as to development fees, imposts, lot levies, sewer charges and the like, and without any express or implied agreement, representation or warranty of any kind whatsoever as to the title, condition, area, suitability for development, physical characteristics, profitability, use or zoning, the existence of latent defects, any environmental matter or as to the accuracy, currency and/or completeness of any information or documentation supplied or to be supplied in connection with the Purchased Assets and without limiting the foregoing, any and all conditions or warranties expressed or implied pursuant to the Sale of Goods Act (Ontario) will not apply and are hereby waived by the Buyer;
- (iv) the term "Seller" as used herein shall have no inference or reference to the present registered owner of the Purchased Assels. Without limiting the foregoing, the Buyer may not call for the production of any title documents or abstracts of title by the Seller other than the Approval and Vesting Order and, only if required to register, a transfer/deed of land for the Property (other than the Land Transfer Tax affidavit);
- (v) the Seller will deliver possession of the improvements and fixtures as same may be found on the Property on Closing without a bill of sale, representation, warranty or other title documentation and shall make no adjustment in the Purchase Price with respect thereto;

NA

- (vi) if any statement, error or omission shall be found in the particulars of the legal and/or Purchased Assets' description, the same shall not annul the sale or entitle the Buyer to be relieved of any obligation hereunder, nor shall any compensation be allowed to the Buyer in respect thereof; and
- (vii) the Seller has and shall have no obligations or responsibility to the Buyer after Closing with respect to any matter relating to the Purchased Assets or the condition thereof.

This Subsection 2(b) shall survive and not merge on Closing.

#### 3. PURCHASE PRICE AND PAYMENT

The Purchase Price shall be paid and satisfied by the Buyer as follows:

- (a) the Buyer shall pay to the Seller's Solicitor, in trust, a deposit of \$200,000.00 (the "Deposit") by certified cheque or bank wire from a Schedule I Canadian bank upon execution of this Agreement to be held by the Seller's Solicitor in trust in a separate interest bearing trust account of a Schedule I Canadian bank and to be applied against the Purchase Price on closing or otherwise applied in the manner contemplated herein; and
- (b) the Buyer shall pay the balance of the Purchase Price to the Seller by wire transfer from a Schedule I Canadian bank on closing subject to Adjustments. If any portion of the Purchase Price is paid to the Seller's Solicitor, said payment must only be made to the Seller's Solicitor by way of wire transfer from a Schedule I Canadian bank.

Notwithstanding any other provision of this Agreement, if this Agreement is terminated or the transaction contemplated herein is not completed in a timely manner, in either case, due to the default of the Buyer, the entire Deposit and all interest carned thereon shall (and the Seller's Solicitor is hereby irrevocably and unconditionally directed by each of the parties hereto to do so) be forthwith delivered and forfeited to and retained by the Seller provided however that said delivery, forfeiture and retention of the entire Deposit shall not be the sole right or remedy of the Seller, at law or in equity, with respect to such default of the Buyer, and the Seller shall have all of its other rights and remedies at law or in equity pursuant to this Agreement or otherwise against the Buyer. If the transaction contemplated hereby is not completed for any reason except for the default of the Buyer, the Deposit, to the extent paid to the Seller's Solicitor (together with all interest thereon) and all interest earned thereon shall (and the Seller's Solicitor is hereby irrevocably and unconditionally directed by each of the parties hereto to do so) be forthwith delivered to the Buyer. If the transaction contemplated herein is completed in a timely manner, interest on the Deposit shall be paid by the Seller's Solicitor to the Buyer within a reasonable time following Closing This provision shall survive and not merge on any termination of this Agreement, the transaction not closing or this Agreement otherwise becoming null and void.

#### 4. EXISTING DOCUMENTS

Following the Execution Date, the Seller agrees that it will deliver to the Buyer photocopies of each of the documents identified in Schedule C hereto to the extent in the Seller's possession and control on a confidential basis. Each of the foregoing deliveries is delivered to the Buyer solely as a courtesy and without any representations or warranties of any kind by the Seller and the Seller has no liability for any errors or inaccuracies in such deliveries.

#### 5. ACCESS

The Seller shall deliver to the Buyer, within two (2) Business Days after receipt thereof from the Buyer's Solicitor, authorizations, in writing, to the City of Toronto and any other Governmental Authority to release from its files to the Buyer relevant information of all outstanding work orders or deficiency notices from existing files, if any, affecting the Purchased Assets, such searches being restricted to release of-existing information only and shall specifically prohibit inspections or access to the Property.

#### 6. TITLE

The Buyer confirms that is has inspected the Property and is satisfied with the Purchased Assets in all respects including, without limitation, being satisfied with: (i) the condition and suitability of the Property, including but not limited to, building and environmental inspections; (ii) all Encumbrances; and (iii) Off-Title Matters; (iv) the financial feasibility and costs associated with the use and/or development of the Property. The Buyer hereby accepts the title to the Property as of the Execution Date save and except for (collectively, the "Exceptions"): (A) the Existing Charges; (B) any material adverse matters which affects the Company's root of title to the Property but only to the extent that it originated after the Execution Date; and (C) Instrument No. AT403626, being Restrictive Covenants which have expired, and which Seller's Solicitor shall attend to deletion or vesting off thereof on or before Closing; (D) save as otherwise contemplated herein, any material adverse registration against title to the Property on the Completion Date which originated after the Execution Date and was not caused by the Buyer. In that regard, the Buyer shall not be required to accept title to the Property on the Completion Date subject to



any of the Exceptions unless the Seller elects in its sole, absolute and unfettered discretion to remedy, discharge and/or cure the relevant matter constituting the Exceptions in all material respects on or before the Completion Date, failing which this Agreement shall be at an end (save and except for the Buyer's releases, indemnities, covenants and obligations pursuant to each of Sections 5, 9, 13 and 14(f) hereof which shall remain in full force and effect), the First Deposit returned to the Buyer and each of the parties hereto shall otherwise have no further covenants or obligations hereunder. Following the Exceution Date, save and except for the Exceptions, the Buyer will and may not raise any objections and shall be deemed to be satisfied with the Purchased Assets. Furthermore, the Buyer shall execute and deliver such documentation and assurances required in connection with any of the Encumbrances.

#### 7. CLOSING CONDITIONS

#### (a) Conditions in favour of Seller

The obligation of the Seller to complete this Agreement shall be subject to the following conditions:

#### (i) Intentionally deleted;

- (ii) by the Completion Date, the Purchase Price is paid to the Seller in its entirety and all of the other terms, covenants and conditions of this Agreement to be complied with or performed by the Buyer shall have been complied with or performed in all material respects;
- the Seller has not terminated this Agreement in accordance with subsection 13(d) hereof; and
- (iv) by the Completion Date, the Court has issued the Approval and Vesting Order,

Each of the conditions set forth in this Section 7(a) is for the sole benefit of the Seller and may be waived in whole or in part by the Seller by Notice to the Buyer prior to the Completion Date.

#### (b) Conditions in favour of Buyer

The obligation of the Buyer to complete this Agreement shall be subject to the following conditions:

- (i) intentionally deleted; and
- (ii) by the Completion Date, the Court has issued the Approval and Vesting Order.

Each of the conditions set forth in this Section 7(b) is for the sole benefit of the Buyer, and may be waived in whole or in part by the Buyer by Notice to the Seller prior to the Completion Date.

#### (c) Non-Satisfaction of Conditions

The conditions set out in Subsections 7(a) and 7(b) above are not conditions precedent to the existence or the enforceability of this Agreement. If the condition in Subparagraph 7(a)(ii) is not satisfied by the Buyer or waived by the Seller (in the Seller's sole, absolute and unfettered discretion) on or before the Completion Date, then, the Buyer shall be in default hereunder and, in addition to each of the Seller's other rights and remedies contained herein or otherwise at law, the Deposit and all interest thereon shall forthwith be automatically released to the Seller in its entirety (and the Seller's Solicitor is hereby irrevocably and unconditionally directed to do so) and the Seller shall be released from each of its covenants and obligations under this Agreement. If each of the conditions in Subsections 7(a)(i), 7(a)(iii), 7(b)(i) and/or 7(b)(ii) is not satisfied or waived by the relevant party, on or before the relevant date, this Agreement shall (subject to the balance of this Subsection 7(c)) be of no further force or effect and (subject to the balance of this Subsection 7(c)), the Deposit and all interest thereon shall be returned to the Buyer and each of the Seller and the Buyer shall otherwise be released from each of its covenants and obligations hereunder. Notwithstanding the foregoing or anything else contained herein or elsewhere, the Buyer acknowledges and agrees in favour of the Seller that each of the Buyer's releases, indemnities, covenants and obligations pursuant to each of Sections 5, 9, 13 and 14(f) hereof shall remain in full force and effect).

#### (d) Efforts to Satisfy Conditions

Without derogating from either of the party's other covenants and obligations under this Agreement (including, in the case of the Buyer, the obligation to pay the Purchase Price as provided for in this Agreement) it is agreed that each of the Seller and the Buyer shall act in good faith and use reasonable commercial efforts to satisfy, or cause to be satisfied, the conditions set forth in Section 7 hereof. In furtherance of the foregoing and notwithstanding anything else contained herein, the Buyer acknowledges and agrees that, if the Seller, acting reasonably, deems

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it necessary in order to obtain the Approval and Vesting Order from time to time, the Seller may, in its sole, absolute and unfettered discretion, elect from time to time to extend the Completion Date by up to 30 days in the aggregate by giving the Buyer, on each occasion, at least five (5) days Notice to this effect prior to extending the Completion Date from time to time. Provided, however, that the Seller shall notify the Buyer forthwith upon receipt of the Approval and Vesting Order, and the Buyer shall thereafter have the one time right, upon ten (10) Business Days written notice, to advance the Completion Date to a date earlier than the currently scheduled Completion Date.

#### 8. CLOSING DOCUMENTS

#### (a) Seller's Closing Documents

On or before Closing, subject to the provisions of this Agreement, the Seller shall deliver or cause to be delivered to the Buyer the following:

- conveyance of the Purchased Assets pursuant to the Approval and Vesting Order together with the Seller's Certificate to the extent contemplated by the Approval and Vesting Order;
- (ii) a direction as to the payee or payees of the Purchase Price;
- (iii) a statement of Adjustments; and
- (iv) a certificate of the Manager, as to its residency pursuant to Section 116 of the Income Tax Act of Canada.

#### (b) Buyer's Closing Documents

On Closing, subject to the provisions of this Agreement, the Buyer shall deliver or cause to be delivered to the Seller's Solicitor the following:

- (i) the balance of the Purchase Price;
- (ii) a general assumption agreement and where required specific assumptions of Encumbrances in connection with the transfer of any of the Purchased Assets, including, without limitation, the Buyer's assumption of the Encumbrances and each of the other agreements identified in Schedule C hereto;
- (iii) the HST undertaking and indemnity referred to in Section 7 of the Printed Form;
- (iv) an acknowledgement confirming the provisions of Sections 2(b) and 13 hereof;
   and
- (v) the Realty Tax Agreement and Direction.

#### (c) Form of Documents

Subject always to Section 13 hereof, all documentation referred to in this Section 8 shall be in form and substance acceptable to the Buyer and the Seller each acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Seller or the Buyer than those expressly set forth in this Agreement.

#### (d) Registration and Other Costs

The Buyer shall be solely responsible for and pay any municipal and provincial land transfer taxes payable on the transfer of the Purchased Assets, all registration fees payable in respect of registration by it of any documents on Closing (other than the discharge or deletion of the Existing Charges, which shall be the responsibility of the Seller) and all federal and provincial sales and other taxes payable by a purchaser upon or in connection with the conveyance or transfer of the Purchased Assets, including, retail sales tax, goods and services tax and harmonized sales tax.

#### (e) Escrow Closing and Registration

(i) All matters of payment and the execution and delivery of Closing documents by each party to the other shall be deemed to be concurrent requirements and it is specifically agreed that nothing will be complete at the Closing until everything required at the Closing has been paid, executed and delivered.



- (ii) All Closing documents and monies shall be delivered in escrow on the Completion Date as reasonably required by the solicitors for the parties together with receipt of such evidence as they shall reasonably request that all conditions of this Agreement have been satisfied.
- (iii) The Seller and Buyer covenant and agree to cause their respective solicitors to enter into a document registration agreement (the "DRA") in the form recommended by the Law Society of Upper Canada to govern the electronic submission of the conveyance of the Lands pursuant to the Approval and Vesting Order in the applicable Land Registry Office.
- (iv) Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Buyer's Solicitor on behalf of the Buyer and by the Seller's Solicitor on behalf of the Seller and any tender of Closing documents and the balance of the Purchase Price may be made upon the Seller's Solicitor and the Buyer's Solicitor, as the case may be. It is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been made by either party (the "Tendering Party") upon the other party (the "Receiving Party") when the solicitor for the Tendering Party has completed, in addition to all other requirements to effect a valid tender in accordance with the provisions of this Agreement and the DRA, all steps required by electronic registration in order to complete this transaction that can be performed or undertaken by the Tendering Party's solicitor, and specifically when the Tendering Party's solicitor has, whenever possible, electronically "signed" the document to effect the conveyance of the Purchased Assets and all other instruments to be registered against title to the Lands at the time of Closing for completion and granted access to the Receiving Party's solicitor.

#### 9. CONFIDENTIALITY

- (a) Notwithstanding the foregoing or anything else contained herein or elsewhere, the Buyer covenants and agrees in favour of the Seller that the Buyer and each of its representatives, agents, solicitors, lenders, employees, advisors and those for whom it is at law responsible from time to time (collectively the "Buyer's Agents") shall keep this Agreement, all deliveries by or on behalf of the Seller from time to time, the results of all Inspections and, in each case, the results and contents thereof (collectively, the "Information") in strict confidence provided the Buyer may disclose this Agreement to its solicitors, employees, directors and bona fide lenders and advisors on a confidential basis. Furthermore, the Buyer may not issue any press release or other public announcement or release information with respect to this Agreement or the Propertyto the public unless the same has been pre-approved in writing by the Seller.
- (b) In the event that the transaction contemplated herein is terminated or is not successfully completed for any reason whatsoever, the Buyer shall, within 48 hours of termination or non-completion, turn over to the Seller all original copies of the Information and all reproductions thereof and the Buyer's Agents shall also continue to retain in strict confidence the Information and the contents thereof.
- (c) The Buyer's covenants and obligations pursuant to this Section 9 shall survive the expiration or termination of this Agreement for any reason or if this transaction contemplated herein is terminated or is not successfully completed in a timely manner for any reason whatsoever.

#### 10. REPRESENTATIONS, WARRANTIES

#### (a) Representations and Warranties of the Seller

The Seller represents and warrants to and in favour of the Buyer that, as of the date of this Agreement and as of the Completion Date that the Seller is the court-appointed manager and/or receiver without security of the Company and, subject to the further approval of the Court, has the power, authority and capacity to enter into this Agreement and all other agreements, documents and certificates contemplated hereby to be executed by Seller and to carry out the transaction contemplated horeby and thereby.

#### (b) Representations and Warranties of the Buyer

The Buyer represents and warrants to and in favour of the Seller that, as of the date of this Agreement and as of the Completion Date:

 the Buyer is a corporation existing under the laws of Province of Ontario and has the necessary corporate authority, power and capacity to own the Purchased

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Assets and to enter in this Agreement and to carry out the agreement of purchase and sale constituted on the execution and delivery of this Agreement and the documents and transactions contemplated herein on the terms and conditions herein contained:

- (ii) the agreement of purchase and sale constituted on the execution and delivery of this Agreement and the obligations of the Buyer hereunder and the documents and transaction contemplated herein have been authorized by all requisite corporate proceedings and constitute legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their terms;
- (iii) it is not a non-resident pursuant to Section 116 of the Income Tax Act of Canada;
- (iv) the person or persons who at Closing purchase the beneficial interests in the Purchased Assets (each of which must be the Buyer) will be registrants for the purposes of Part IX of the Excise Tax Act (Canada) and by virtue of paragraph 221(2)(b) of such law, the Seller is not obliged to collect the GST and/or HST from the Buyer or to pay GST and/or HST; and
- (v) the Buyer has not retained the services of any real estate broker or agent in connection with the transaction contemplated by this Agreement and has not dealt with any broker or agent in connection with the transaction.

#### 11. ADJUSTMENTS

- (a) Adjustments shall be made on Closing for: (i) realty taxes, (ii) water arrears added to the realty tax roll, (iii) utility charges, and (iv) save as otherwise set out herein, any other usual adjustable items. Fire and other insurance shall not be transferred or adjusted. The day of Closing shall be for the account and expense of the Buyer. The Seller shall provide to the Buyer the statement of Adjustments at least two (2) Business Days before Closing. The Buyer acknowledges and agrees that there shall be no further Adjustments or readjustments following the date which is ninety (90) days after the Completion Date.
- (b) In the event that there are any realty or business tax appeals for 2013 or any prior calendar year, the Seller shall, at its option, be entitled to continue such appeals and shall remain entitled to receive all payments, rebates, refunds, credits, readjustments and the like in connection therewith from time to time (each being a "Tax Refund"). The Buyer agrees to co-operate with the Seller with respect to all such appeals at no cost to the Seller. To the extent the Buyer receives any Tax Refund on or after the Completion Date with respect to any such prior period, the Buyer shall receive and hold the entire Tax Refund in trust for the Seller and forthwith remit the entire Tax Refund to the Seller. In conjunction with the Closing, the Buyer shall execute and deliver to the Seller a realty tax agreement confirming the foregoing as well as an irrevocable and unconditional direction to the municipality and the applicable authorities confirming the foregoing (collectively, the "Realty Tax Agreement and Direction").
- (c) The provisions of this Section 11 shall survive the closing of the transaction contemplated herein.

#### 12. <u>INTENTIONALLY DELETED</u>

#### 13. SELLER'S CAPACITY

Notwithstanding anything else contained herein or elsewhere, the Buyer acknowledges and agrees that:

- (a) Schonfeld Inc. is entering into this Agreement and all related documentation from time to time solely in its capacity as the Court appointed manager and/or receiver, without security, of the Company from time to time but with no personal or corporate liability;
- (b) Schonfeld Inc. and its agents, officers, directors, partners and employees have no and shall have no personal or corporate liability of any kind whatsoever, in contract, in tort, at law, in equity or otherwise as a result of or in any way connected with the Purchased Assets, this Agreement or as a result of the Seller and/or and Schonfeld Inc. performing or failing to perform any of its covenants or obligations bereunder;
- (c) in respect of any covenants or obligations of the Seller hereunder, the Buyer shall have recourse only to the interests of the Company and Schonfeld Inc. in the Purchased Assets, if any, and such covenants or obligations are not otherwise personally binding upon nor shall resort be had to any other assets or property of the Schonfeld Inc. and/or its agents, shareholders, officers, directors, partners and/or employees: and
- (d) the Seller may, upon one (1) day's prior written notice to the Buyer elect to terminate this Agreement, without liability, if: (i) the Appointment Order and/or the Manager's appointment in connection with the Purchased Assets is restricted, rescinded, revoked, suspended or terminated;

nf

(ii) the Manager is restricted in or enjoined from dealing with the Company and/or the Purchased Assets by a court of competent jurisdiction; (iii) a court of competent jurisdiction or other governmental or regulatory authority issues an order, decree or ruling, or takes any other action restraining, enjoining or otherwise prohibiting the matters contemplated hereby, which order, decree, ruling or other action is not stayed or dismissed in its entirety; (iv) any person entitled to redeem the Property (including, without limitation, each of the mortgagees and/or other secured creditors) pursuant to any statute or rule of law or equity does so; and/or (v) any mortgagee exercises its power of sale remedy and/or any other rights or remedies with respect to the Property. In such an event, this Agreement shall (subject to the balance of this Subsection 13(d)) be of no further force or effect and (subject to the balance of this Subsection 13(d)), the Deposit and all interest thereon shall be returned to the Buyer and each of the Seller and the Buyer shall otherwise be released from each of its covenants and obligations hereunder. Notwithstanding the foregoing or anything else contained herein or elsewhere, the Buyer acknowledges and agrees in favour of the Seller that each of the Buyer's releases, indomnities, covenants and obligations pursuant to each of Sections 5, 9, 13 and 14(f) hereof shall remain in full force and effect).

This Section 13 shall survive and not merge upon the closing of the transaction contemplated herein or if the transaction contemplated herein does not close for any reason.

#### **GENERAL**

#### (a) Notice

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery during regular business hours on any Business Day or by telecopier, facsimile transmission or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject

(i) Buyer:

> 2288750 Ontario Inc. c/o 2323 Yonge Street, Suite 205 Toronto, Ontario M4P 2C9

Attention: Facsimile: Wei Ji

(647) 288-5545

Email:

pierce.wei.ji@gmail.com

with a copy to the Buyer's Solicitor:

Pollock and Pollock 2323 Yonge Street, Suite 205 Toronto, Ontario M4P 2C9

Attention:

Rob Pollock

(416) 488-3716 Facsimile:

Email:

pollockandpollock@rogers.com

Seller:

Schonfeld Inc. Receivers + Trustees 438 University Avenue, 21st Floor Toronto, Ontario M5G 2K8

Attention:

Harlan Schonfeld

Facsimile:

416.862.2136

Email:

harlan@schonfeldinc.com

with a copy to the Seller's Solicitor:

Goodmans LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, Ontario M511 2S7

Attention:

Brian Empey/Ken Herlin 416.979.1234

Facsimile: Email:

kherlin@goodmans.ca

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by telecopier, facsimile transmission, email (PDF) or other electronic communication with confirmation of transmission prior to 5:00 p.m.,

shall be deemed to have been validly and effectively given and received on the Business Day it was sent unless the confirmation of transmission was after 5:00 p.m. in which case it shall be deemed to have been received on the next following Business Day.

#### (b) Survival

Except and only to the extent as otherwise expressly set out herein, this Agreement shall merge with the closing of the transaction contemplated herein and except and only to the extent as otherwise expressly set out herein, none of the representations, warranties, covenants or agreements of either the Seller or the Buyer shall survive Closing. This provision survives Closing.

#### (c) Successors and Assigns

All of the covenants and agreements in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement. The Buyer shall have no right to assign and/or encumber its rights and/or obligations hereunder in whole or in part or to effect a "change of control" so as to indirectly effect the foregoing, without in each case first obtaining the approval in writing of the Seller, which approval may be arbitrarily and unreasonably withheld by the Seller.

#### (d) No Third Party Beneficiaries

Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person or entity, other than the parties hereto, and no person or entity, other than the parties hereto, shall be entitled to rely on the provisions hereof.

#### (e) Conflict

For certainty, the Buyer and the Seller acknowledge and agree that to the extent there is any conflict or inconsistency between the terms of this Schedule B and the terms of the Printed Form to which this Schedule B is attached and/or any other schedule to this Agreement, this Schedule B will govern to the extent of such conflict or inconsistency.

#### (f) No Registration of Agreement

The Buyer covenants and agrees that it will not register or cause or permit to be registered this Agreement and that no reference to or notice of it or any caution, certificate of pending litigation or other similar court process in respect thereof shall be registered on title to the Property and the Buyer shall be deemed to be in default under this Agreement if it makes any registration or causes or permits any registration to be made on title to the Property prior to the successful completion of the transaction contemplated herein on the Completion Date.

#### (g) Commissions

Upon the successful completion of the transaction contemplated herein, the Seller shall be responsible for all commissions payable to CBRE Limited (the "Seller's Agent") in accordance a written agreement between the Seller and the Seller's Agent.

#### (h) Actions to be Performed on a Business Day

Whenever this Agreement provides for or contemplates that a covenant or obligation is to be performed, or a condition is to be satisfied or waived on a day which is not a Business Day, such covenant or obligation shall be required to be performed, and such condition shall be required to be satisfied or waived on the next Business Day following such day.

#### (i) Entire Agreement

This Agreement, and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the parties hereto constitute the entire agreement between the parties hereto pertaining to this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no warranties or representations and no other agreements between the parties hereto in connection with the agreement of purchase and sale provided for herein.

#### (j) Facsimile or PDF Transmission

This Agreement and any notice or agreements in connection therewith may be executed in counterpart and transmitted by telecopying device or email (PDF) and the reproduction of signatures by way of telecopying device or email (PDF) will be treated as though such reproductions were executed originals.

M,

DATED with effect as of the date of the Printed Form.

Per:

Name:
Title:

Name:
Title:

SCHONFELD INC. RECEIVERS + TRUSTERS, asolely in its capacity as Court appointed manager of Queen's Corner Corp. without security and not in its persunal or corporate capacity

Per:

Name:

Name:
Title:

Per;

Name: Title:

A

SCHEDULE C OTHER DOCUMENTS

. None

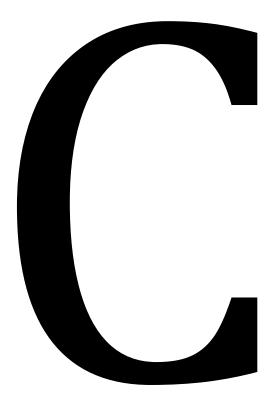
S.

#### SCHEDULE D EXISTING CHARGES

- Charge in the original principal amount of \$4,000,000 in favour of 368230 Ontario Limited registered on July 26, 2012 as Instrument No. AT3084734;
- Notice of Assignment of Rents General in favour of 368230 Ontario Limited registered on July 26, 2012 as Instrument No. AT3084743; and
- Construction Lien filed by Stephenson's Rental Services Inc. on February 19, 2014 as Instrument No. AT3523278.
- Certificate of Action filed by Stephenson's Rental Services Inc. on April 2, 2014 as Instrument No. A73551068.

6309194.2

11:40 am 28-04-2010



Goodmans

Barristers & Solicitors

Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, Ontario M5H 2S7

Telephone: 416.979.2211 Facsimile: 416.979.1234

goodmans.ca

Direct Line: 416.849.6895 mdunn@goodmans.ca
Our File No.: 14.0074

April 25, 2016

VIA E-MAIL (pollockandpollock@rogers.com)

Robert Pollock 2323 Yonge Street, Suite 205 Toronto, Ontario M4P 2C9

Dear Mr. Pollock:

Re: Kartelle 1003 Queen Street East Inc.

As you know, we are the lawyers for Schonfeld Inc. (the "Manager") in its capacity as the Manager of, among other companies, Queen's Corner Corp. ("Queen's Corner"). In an attempt to complete its mandate, the Manager has been seeking the return of a \$200,000 deposit paid by Queen's Corner to Tarion Warranty Corporation ("Tarion"). We were recently advised by Tarion that, unbeknownst to the Manager, your client, Kartelle 1003 Queen Street East Inc., has attempted to claim these funds.

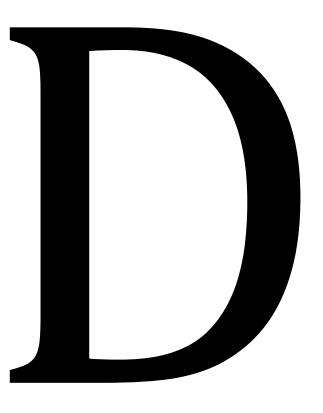
Your client did not negotiate for – and is not entitled to – the deposit funds. Moreover, your client has not even attempted to articulate to the Manager or the Court any basis at all for its apparent position. Its attempt to obtain funds paid by, and belonging to, Queen's Corner without any notice to Queen's Corner, the Manager or any other stakeholder is troubling and inappropriate.

In light of the foregoing, we have been instructed to demand that your client immediately withdraw its claim and consent to the release of the deposit to the Manager so it can be distributed to stakeholders of Queen's Corner. If we have not received confirmation of this withdrawal by April 28, 2016, we will proceed to bring a motion to have the funds released on the earliest available date and will look to your client for all related costs.

Yours very truly,

**Goodmans LLP** 

Mark Dunn MD/en



From: Dunn, Mark

To: "pollockandpollock@rogers.com"

Cc: Fox, Carlie

Subject: RE: DBDC Spadina Ltd. et al v. Norma Walton et al (Court File No. CV-13-10280-00CL)

Date: Saturday, September 10, 2016 8:30:51 AM

Mr. Pollock.

We have now been seeking a justification for your client's attempt to claim \$200,000 paid by Queen's Corner Corp. to Tarion for approximately five months. We will be serving motion materials early next week to address this issue. This correspondence, and your failure to respond, will be included in these materials. We will ask the Court to infer from your silence that your client has no support for its position.

Leaving all of that aside, I would have expected a response as a matter of professional courtesy.

Regards, Mark

From: Fox, Carlie

**Sent:** July 8, 2016 4:35 PM

To: 'pollockandpollock@rogers.com' <pollockandpollock@rogers.com>

Cc: Dunn, Mark < mdunn@goodmans.ca>

Subject: FW: DBDC Spadina Ltd. et al v. Norma Walton et al (Court File No. CV-13-10280-00CL)

Mr. Pollock,

We have not received a response to our letter dated April 25, 2016. The Manager intends to serve motion materials to address the issues set out in our letter, which is attached for ease of reference.

Regards,

#### **Carlie Fox**

Goodmans LLP

416.849.6907 cfox@goodmans.ca goodmans.ca

From: Nobert, Elyse

Sent: Monday, April 25, 2016 11:29 AM To: 'pollockandpollock@rogers.com'

Cc: Dunn, Mark; Fox, Carlie

Subject: DBDC Spadina Ltd. et al v. Norma Walton et al (Court File No. CV-13-10280-00CL)

Mr. Pollock,

Please find attached correspondence of Mr. Dunn.

Thank you,

#### **Elyse Nobert**

Assistant to Daniel Cappe and Mark Dunn

Goodmans LLP

416.840.2578 x 4515 enobert@goodmans.ca

Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 goodmans.ca From: Rob Pollock <pollockandpollock@rogers.com>
Sent: Saturday, September 10, 2016 10:07 AM

To: Dunn, Mark
Cc: Fox, Carlie

**Subject:** Re: DBDC Spadina Ltd. et al v. Norma Walton et al (Court File No. CV-13-10280-00CL)

Mr. Dunn;

We will, once again, attempt to obtain instructions from our client and advise.

RP

Sent from my iPhone

On Sep 10, 2016, at 8:30 AM, Dunn, Mark < mdunn@goodmans.ca > wrote:

Mr. Pollock,

We have now been seeking a justification for your client's attempt to claim \$200,000 paid by Queen's Corner Corp. to Tarion for approximately five months. We will be serving motion materials early next week to address this issue. This correspondence, and your failure to respond, will be included in these materials. We will ask the Court to infer from your silence that your client has no support for its position.

Leaving all of that aside, I would have expected a response as a matter of professional courtesy.

Regards, Mark

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

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

From: Fox, Carlie

Sent: July 8, 2016 4:35 PM

To: 'pollockandpollock@rogers.com' <pollockandpollock@rogers.com>

Cc: Dunn, Mark < mdunn@goodmans.ca >

Subject: FW: DBDC Spadina Ltd. et al v. Norma Walton et al (Court File No. CV-13-10280-00CL)

Mr. Pollock,

We have not received a response to our letter dated April 25, 2016. The Manager intends to serve motion materials to address the issues set out in our letter, which is attached for ease of reference.

#### Regards,

#### **Carlie Fox**

Goodmans LLP

416.849.6907 <u>cfox@goodmans.ca</u> <u>goodmans.ca</u>

From: Nobert, Elyse

**Sent:** Monday, April 25, 2016 11:29 AM **To:** 'pollockandpollock@rogers.com'

Cc: Dunn, Mark; Fox, Carlie

Subject: DBDC Spadina Ltd. et al v. Norma Walton et al (Court File No. CV-13-10280-00CL)

Mr. Pollock,

Please find attached correspondence of Mr. Dunn.

Thank you,

#### **Elyse Nobert**

**Assistant to Daniel Cappe and Mark Dunn**Goodmans LLP

416.840.2578 x 4515 enobert@goodmans.ca

Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 goodmans.ca From: Rob Pollock
To: Fox, Carlie

Subject: Re: DBDC Spadina et al. v. Walton et al. Date: Monday, October 17, 2016 12:41:18 PM

#### HI Carlie

Thanks for the note. Our client never provided us with instructions regarding the Tarion security and I assume he is not going to engage counsel to appear at the motion

Can you please confirm that you are not seeking a cost award against our client

Rgds, RP

Robert Pollock, LL.M.
Pollock and Pollock
Barristers and Solicitors
2323 Yonge Street
Suite 205
Toronto, Ontario
M4P 2C9
416.488.5323 ext. 29 (T)
416.488.3716 (F)

From: "Fox, Carlie" <cfox@goodmans.ca>

**Cc:** 'Harlan Schonfeld' <Harlan@schonfeldinc.com>; 'James Merryweather' <jmerryweather@schonfeldinc.com>; "Empey, Brian" <bery@goodmans.ca>; "Dunn, Mark" <mdunn@goodmans.ca>

**Sent:** Monday, October 17, 2016 12:31 PM **Subject:** DBDC Spadina et al. v. Walton et al.

All.

Please find the Manager's motion record for its motion returnable October 25, 2016 at the link below:

#### https://spaces.hightail.com/receive/4w2vR

Please let us know if you are unable to access the file.

Best regards,

#### **Carlie Fox**

Goodmans LLP

416.849.6907 cfox@goodmans.ca

Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 goodmans.ca

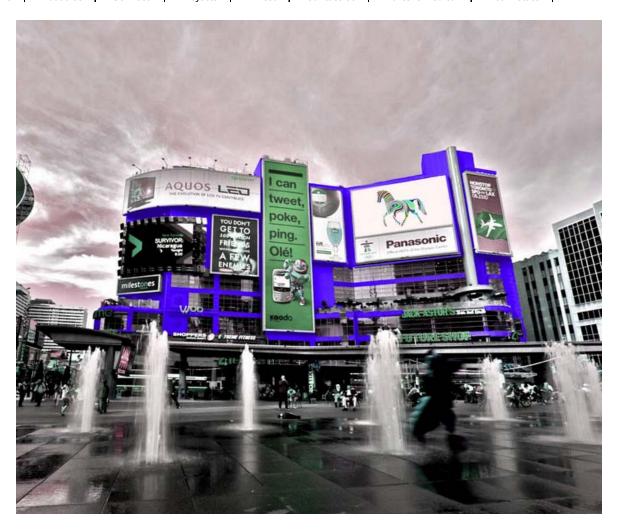
\*\*\*\* Attention \*\*\*\*

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

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# KARTELLE C O R P O R A T I O N

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Click below to learn more about Kartelle Lofts On Queen, Kartelle Medical & Kartelle Real Estate Inc.









Kartelle Corporation - 1880 O'Connor Drive - 5th Floor - Toronto ON - M4A 1W9 - t. 416.357.5539 - f. 647.288.5545 - info@kartelle.ca

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#### **About Us**



Kartelle Corporation engages in the acquisition of prime urban real estate sites for re-development of new Commercial Office and state-of-the-art Medical Buildings, Retirement Facilities and high-rise Residential Condominium Towers. Kartelle utilizes meticulous planning to create communities that make living, playing and working more functional. We coordinate the purchase & sale of commercial and residential real estate, land assemblies and commercial leasing and sales operations through our real estate brokerage Kartelle Real Estate Brokerage Inc. We provide Creative, Intelligent, and Flexible real estate solutions including: Acquisition Use Analysis and Development Approvals, Comprehensive Development, Construction, Budgeting, Project Management, Planning & Consultant Management.

#### **Team**

### Steven S. Leyzac President & CEO

Steven Leyzac is the founding director of Kartelle Corporation. Mr. Leyzac has 25+ years experience in the acquisition, development, construction, valuation, improvement and disposition of real estate assets. Responsible for the overall leadership and management of Kartelle Corporation and its subsidiaries, Mr. Leyzac plays an active role in the acquisition program along with major asset management, development and construction activities.

#### Pierce Ji

#### Vice President Finance

Mr. Ji holds a Management degree, specialized in accounting from The University of Toronto and leads Kartelle's finance, joint-venture and international partnership & investment efforts. He supports the firms efforts through offshore & local market capital sourcing and partnership structuring.

#### Eric Yu

#### **Vice President Capital Investments**

Mr. Yu is a veteran real estate financier, and a prominent mortgage professional. Mr. Yu oversees Kartelle's long term capital investment programs.

#### **Doru Vasile**

#### **Architect - Vice President Planning**

Mr. Vasile is the creative talent behind each of our designs. His background extends through 3 decades and is highlighted by major Toronto landmark projects including the iconic Metropolis building at Dundas Square, and the Metro Toronto Convention Center.

#### Kartelle Real Estate Inc., Brokerage

Our in-house real estate brokerage provides us with resources exclusive to Toronto Real Estate Board members. This resource allows us to explore the potential of all target opportunities, as well as the value added service of managing the sales and marketing of our projects.

#### **Experience**

Kartelle personnel have over 50 years experience in developing, designing and constructing shopping malls, iconic centres, urban skyscrapers, commercial office towers and /medical buildings, with an accumulated value worth over 2.0 Billion Dollars.

#### Reliability

Kartelle has earned a reputation of completing complex projects, through our depth of experience, which enables us to complete projects on time and on budget.

#### **History**

Kartelle Corporation was founded in 2007. Our President & CEO Steven S. Leyzac founded Kartelle Corporation to fill a void in the Toronto marketplace. Kartelle Corporation fulfills all aspects of the development process, including real estate sales, construction, and financing facilitation. Mr. Leyzac has an extensive history in Canadian and International real estate procurement, development and construction. Mr. Leyzac has held several senior positions serving the development industry with Penequity Management Corporation (Senior Vice President Construction & Development), Filmport (Senior Vice President Construction & Development) and formerly, the President & Senior Executive of Lewis Builds Corporation. Mr. Leyzac has been involved in numerous significant landmark projects, including:

**Trump International Hotel + Tower**, Toronto a 59 storey tower located at Bay and Adelaide, an ultra-luxurious development by Talon International.

**Toronto Life Square** at Yonge and Dundas, 300,000 sq. ft. urban metropolis that revitalized the heart of Toronto with a leading-edge electronic signage board, the first of it's kind in Canada

**Filmport Studios** nicknamed Hollywood North, this facility includes the largest soundstage in Canada. Renamed Pinewood Studios when sold to the famous film-house, this project is an important part of Canada's

film industry..

Parkway Forest Master planned community at Don Mills & Sheppard. 300,000 sq.ft. new apartment buildings by El-Ad Canada.

65 Lillian a new luxury apartment building in Midtown Toronto owned by Great West Life Co.

1000 Mount Pleasant luxury rental building located in the Leaside community.

Horton Plaza San Diego California. Steven spent eight years constructing this billion dollar shopping mall and entertainment complex.

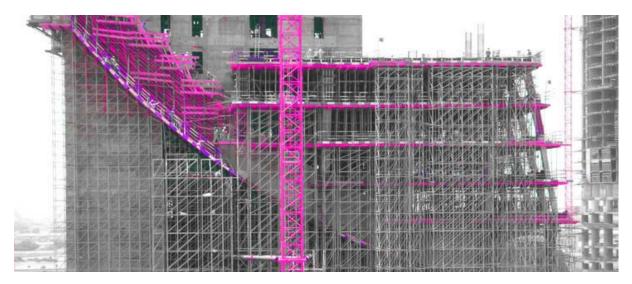
New World Centre Hong Kong was one of Mr. Leyzac's first endeavours as a construction executive. This remarkable tower was constructed using typical Hong Kong techniques including bamboo scaffolding that rose to 200 feet.



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## **Projects**



### **Current Projects**

**Urban Lofts, Leslieville** 





Register Today
Click Here

### Retail / Medical - Victoria Park & Eglinton, North York

Situated on one of the highest points in the city, this development has spectacular city views from all levels and is a walk away from the future Eglinton Subway LRT station. This gateway site will be home to a retail ground floor & medical center with an urgent care centre, slated for completion in 2016.





#### **COMING SOON**

# Assisted Retirement Living - Victoria Park & Eglinton, North York

Brand new Assisted Living Retirement Building with 150 suites and a complimentary activity center and state of the art facilities. Located in the gateway to North York and Scarborough, in the heart of Toronto. Scheduled for completion Winter 2016.



#### **COMING SOON**

# Medical Center, York Mills & Don Mills Phase I & Phase II

200,000 sf Medical Building Development. Existing Medical Site to be redeveloped to offer the only new Class A facility to this business park area. Adjacent land will be further developed to include a 100,000 SF complimentary assisted living retirement residence with 200 suites.



# High Rise Condominium Development Avenue Road & 401

Luxury Residential Condominium development at HWY 401 and Avenue Rd.

This is the only site that has been approved for high rise in a neighbourhood of multi-million dollar homes.

Click here To Register



### Mixed Use D Mount Pleas

Mixed use development Located right on the full 80,000sf development

For more information of







Kartelle Corporation - 1880 O'Connor Drive - 5th Floor - Toronto ON - M4A 1W9 - t. 416.357.5539 - f. 647.288.5545 - info@kartelle.ca

Website powered by Network Solutions®

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

# ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

THE HONOURABLE	)		, THE
JUSTICE	)	DAY OF	, 2016
BETWEEN:			
and THOSE CORPORATI	DBDC SPADINA I ONS LISTED ON S		.o
			Applicants
	- and -		
NORMA WALTON, RONA LTD. a	AULD WALTON, T and EGLINTON CA		LE GROUP

Respondents

- and -

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

#### ORDER

(Motion returnable

, 2016)

THIS MOTION, made by Schonfeld Inc. in its capacity as the manager (the "Manager") appointed pursuant to the Order of Justice Newbould dated November 5, 2013 for a declaration that Queen's Corner Corp. is entitled to \$200,000, plus accrued interest, held by Tarion Warranty Corporation as security for Queen's Corner's obligations in respect of a development located at 1003 Queen East was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Forty-Sixth Report of the Manager dated October 31, 2016, and on hearing the submissions of counsel for the Manager, the Applicants and Kartelle 1003 Queen East Inc.:

- 1. THIS COURT HEREBY DECLARES that Queen's Corner Corp., not Kartelle 1003 Queen East Inc., is entitled to the \$200,000, plus any accrued interest, which is currently held by Tarion Warranty Corporation to secure Queen's Corner Corp.'s obligations relating to a proposed development at 1003 Queen Street East. For greater certainty, nothing in the within Order alters the procedure or priorities established by the Order of Justice Newbould dated October 25, 2016.
- 2. THIS COURT ORDERS that Kartelle 1003 Queen East Inc. pay to the Manager costs thrown away in relation to the attendance on October 25, 2016 in the amount of \$\_\_\_\_\_.
- 3. THIS COURT ORDERS that Kartelle 1003 Queen East Inc. pay to the Manager, Schonfeld Inc., costs of this motion in the total amount of \$\_\_\_\_\_.

#### **Schedule A Companies**

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

#### **Schedule B Companies**

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

- 33. El-Ad (1500 Don Mills) Limited
- 34. 165 Bathurst Inc.

#### **Schedule C 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

**DBDC SPADINA LTD. et al.** 

NORMA WALTON et al.

and

**Applicants** 

Respondents

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

# ONTARIO SUPERIOR COURT OF JUSTICE

(Commercial List)

Proceeding commenced at TORONTO

#### **ORDER**

(Motion returnable

, 2016)

#### GOODMANS LLP

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Lawyers for the Manager

# ONTARIO SUPERIOR COURT OF JUSTICE

(Commercial List)

Proceeding commenced at Toronto

# MOTION RECORD OF THE MANAGER, SCHONFELD INC.

(Motion for a declaration relating to security held in relation to 1003 Queen Street East, returnable on a date to be determined)

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File No. 14-0074