

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C. 43, AS AMENDED**

**SUPPLEMENTARY MOTION RECORD OF KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
(Returnable October 8, 2024)**

October 4, 2024

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Lawyers for KSV Restructuring Inc.,
in its capacity as Court-appointed Receiver

TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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TAB 1



**Supplement to Second Report of
KSV Restructuring Inc.
as Receiver and Manager of 1776411 Ontario
Ltd. and 1333 Weber Street Kitchener LP**

October 4, 2024

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COURT FILE NO.: CV-23-00706813-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

APPLICANT

- AND -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

RESPONDENT

SUPPLEMENT TO SECOND REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

OCTOBER 4, 2024

1.0 Introduction

1. This report (the “**Supplemental Report**”) supplements the Second Report to Court of KSV Restructuring Inc. dated September 27, 2024 (the “**Second Report**”) and should be read in conjunction with the Second Report.
2. Unless otherwise stated, capitalized terms used in this Supplemental Report and not otherwise defined herein have the meanings given to them in the Second Report.

1.1 Purpose of this Supplemental Report

1. The purpose of this Supplemental Report is to update the Court on the Transaction.

1.2 Restrictions

1. This Supplemental Report is subject to the restrictions set out in Section 1.2 of the Second Report.

2.0 Update on the Transaction

2.1 Deposit Return Protocol

1. As described in the Second Report, the Receiver is seeking Court approval on October 8, 2024 of, among other things, a deposit return protocol (the “Deposit Return Protocol”). The Deposit Return Protocol is attached as Appendix “A”.

2. The Deposit Return Protocol, prepared by the two deposit insurers, sets out in detail the steps that Condo Purchasers will have to take in order to make a claim for their deposits if their Pre-Construction Unit APSs are terminated.

2.2 Disclaimers of Existing Agreements of Purchase and Sale

1. The Purchasers have advised the Receiver that: a) they are not prepared to proceed with the Transaction without the contemplated disclaimers and terminations of the Pre-Construction Unit APSs; and b) the Project would not be economically viable with the existing Pre-Construction Unit APSs, other than those associated with Tower C, which the Purchasers intend to assume.
2. A sample Pre-Construction Unit APS, redacted to remove personally identifying information, is provided as Appendix "B".
3. The Receiver continues to recommend that the Court grant an Order authorizing and directing the Receiver to terminate and disclaim the Pre-Construction Unit APSs that are not being assumed by the Purchasers.

2.3 Assignment of Elevate APS

1. The Purchasers have advised the Receiver that they intend to assign the Elevate APS to GFD 1333W Limited Partnership and have the Real Property vest in 1333W Lands Ltd.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

Deposit Return Protocol
For the Elevate Project (the “Protocol”)

- 1) Pursuant to paragraph 9 of the Approval and Vesting Order dated October 8, 2024 (the “**Court Order**”) issued in the receivership proceeding of 1333 Weber Street Kitchener LP and its general partner, 1776411 Ontario Ltd. (together, the “**Partnership**”), certain Unit Purchase Agreements (“**Unit APSs**”) for Tower A of the Elevate project known municipally as 1333 Weber Street, Kitchener, Ontario (the “**Elevate Project**”) may be terminated within 120 days of the Court Order and all of the Unit APSs for Tower B of the Elevate Project will be terminated.
- 2) KSV Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the Partnership shall send letters to the known purchasers under the Unit APSs (the “**Purchasers**”) notifying them when the Unit APSs have been terminated pursuant to the Court Order, notifying them that Aviva Insurance Company of Canada (“**Aviva**”), Tarion Warranty Corporation (“**Tarion**”), and the Receiver have agreed upon a protocol to refund the deposits (which deposit amounts include any amounts that would be a valid deposit claim under the *Ontario New Home Warranties Plan Act* and under Master Deposit Insurance Policy 202310059) that the Purchasers provided under the Unit APSs (the “**Deposits**”) and attaching the Release and Termination Agreement (attached as Schedule “A”). Aviva and Tarion shall be blind copied on, or provided with copies of, the Receiver’s letters to the Purchasers.
- 3) The Deposits, together with all accrued interest thereon, shall be transferred by McCarter Grespan Beynon Weir PC, in its capacity as escrow agent, to Aviva or its authorized agent to be held by Aviva or such authorized agent pursuant to the terms of this Protocol
- 4) The Receiver will provide a Statutory Declaration, in the form attached as Schedule “B”, to Tarion.
- 5) The Partnership will be asked to provide the Statutory Declaration, in the form attached as Schedule “C”, to Tarion. Failure by the Partnership to provide the Statutory Declaration will not prevent the return of the Deposits to the Purchasers and is not a condition of such return.
- 6) The Purchasers will upload their executed Release and Termination Agreement with a copy of their photo ID, a mailing address for the return of their Deposits and a confirmation of the principal amount of the Deposits to be returned to the following website: www.mnp.ca/avivadepositreturn. The Receiver may also provide such materials as provided by Purchasers to Aviva or Aviva’s authorized agent, or to Tarion.

- 7) Aviva or its authorized agent will assemble an electronic brief ("**Brief**") in respect of each of the terminated Unit APSs for the Elevate Project, which Brief will include the following (to the extent available):
 - a) Executed Release and Termination Agreement;
 - b) Copy of Purchaser's photo ID;
 - c) Copy of the first page of the applicable Unit APS; and
 - d) Copy of any assignment of the Unit APS in the Escrow Agent's possession.
- 8) Aviva or its authorized agent will send the completed Briefs to Tarion monthly.
- 9) On a monthly basis, upon Tarion confirming to Aviva or its authorized agent that the documentation in the applicable Briefs is complete and that Aviva's liability to the relevant Purchasers for claims for the return of their respective Deposits will be extinguished once Aviva or its authorized agent releases such Deposits to such Purchasers, Aviva or its authorized agent will release the Deposits to the relevant Purchasers or as any Purchaser may otherwise direct in writing. This process will be carried out on a timely basis, such that Tarion will provide Aviva or its authorized agent with its confirmation within ten business days of receipt of a Brief.
- 10) Aviva or its authorized agent will then distribute, upon receipt of Tarion's confirmation as noted above, the Deposit refund cheques in the names of the applicable Purchasers or as otherwise directed in writing, together with any interest accrued thereon which the Purchaser is entitled to receive pursuant to the provisions of the *Condominium Act, 1998 as amended*.
- 11) Upon the release of Deposits, Aviva or its authorized agent will provide to Tarion confirmation of the release of the Deposit refund cheques in respect of the applicable Unit APSs by providing a Statutory Declaration in the form attached as Schedule "D".
- 12) Upon receipt of the confirmation referred to in paragraph 11 and being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Aviva or its authorized agent on a monthly basis that the Tarion bond (the "**Tarion Bond**") is reduced by the relevant amount on a unit-by-unit basis.
- 13) Aviva or its authorized agent will provide Tarion with a monthly deposit report of the Deposits released and the Deposits not released.
- 14) Once all of the Deposits have been returned to the Purchasers whose Unit APSs have been terminated, and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will correspondingly reduce the amount of the Tarion Bond; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond to cover Tarion's liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished at the time

of any reduction. Upon being satisfied that its liability in respect of amounts secured by the Tarion Bond has been extinguished, Tarion return the Tarion Bond to Aviva for cancellation within 30 calendar days.

SCHEDULE "A" TO THE DEPOSIT RETURN PROTOCOL

FOR THE ELEVATE PROJECT

RELEASE AND TERMINATION AGREEMENT

BETWEEN: 1333 Weber Street Kitchener LP and its general partner, 1776411 Ontario Ltd.
(together the "**Partnership**")

(hereinafter called the "**Vendor**")

- and -

(hereinafter collectively called the "**Purchaser**")

WHEREAS the Purchaser and the Vendor entered into an agreement of purchase and sale dated _____, (the "**Purchase Agreement**") pertaining to the Purchaser's acquisition from the Vendor of DWELLING UNIT ____ on LEVEL _____, _____ () PARKING UNIT(S) and _____ () LOCKER UNIT(S), together with an undivided interest in the common elements appurtenant to such units (all of which are hereinafter collectively defined as the "**Purchased Units**"), in accordance with the condominium plan documentation proposed to be registered against those lands and premises situate in the _____, municipally located at 1333 Weber St., Kitchener and legally described as _____ and more particularly described in the Purchase Agreement (the "**Elevate Project**");

AND WHEREAS pursuant to an Order made by the Superior Court of Justice (Commercial List) for Ontario (the "**Court**") dated the _____, KSV Restructuring Inc. (the "**Receiver**") was appointed as Receiver under the *Bankruptcy and Insolvency Act*;

AND WHEREAS pursuant to an Order made by the Court dated the _____, 2024, the Purchase Agreement between the Vendor and the Purchaser has been terminated;

AND WHEREAS a protocol for the release of deposits back to the purchasers (the “**Protocol**”) has been established upon the terms and provisions as set out herein;

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the mutual covenants and releases hereinafter set forth, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the accuracy and veracity of the foregoing recitals, and do hereby covenant and agree to the following:

1. The Vendor and Purchaser acknowledge that the Purchase Agreement, together with any and all addendums thereto or amendments thereof, has been terminated and is of no further force or effect.
2. In accordance with the Protocol, upon the execution of these presents by both parties hereto and delivery of same to Aviva Insurance Company of Canada or its authorized agent (“**Aviva**”) and following review and approval of same by the Tarion Warranty Corporation (“**Tarion**”), Aviva shall, on behalf of the Vendor, refund and remit to the Purchaser at the mailing address provided by the Purchaser the sum of \$___ representing the aggregate of all deposit monies heretofore paid by the Purchaser to the Vendor on account of the purchase price for the Purchased Units (hereinafter collectively referred to as the “**Deposit Monies**”), together with any interest accruing thereon that the Purchaser is entitled to receive pursuant to the terms and provisions of the Purchase Agreement and/or the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended. For clarity, such accrued interest is ____.
3. The parties hereto hereby mutually release each other, and each of their respective heirs, estate trustees, successors and assigns, from and against any and all costs, damages, actions, proceedings, demands and/or claims whatsoever which either of the parties hereto now has, or may hereafter have, against the other party hereto, by reason of, or in connection with, the Purchase Agreement (and any and all addendums thereto or amendments thereof) and/or the termination thereof pursuant to the provisions hereof.
4. Without restricting the generality of the foregoing, it is expressly understood and agreed that the Purchaser shall not make or pursue any claim(s) or proceeding(s) with respect to the Purchase Agreement, the Purchased Units, the Deposit Monies and/or the Elevate Project, against the Vendor, Tarion, Aviva or its authorized agent, or the Receiver, or any other surety company or companies that have issued one or more bonds to Tarion in connection with the Elevate Project, nor against any party acting as escrow agent or as a prescribed trustee with respect to purchasers’ deposit monies, nor against any other person(s) or corporation(s) entitled to claim (or who might claim) contribution or indemnity from the Vendor in connection with the Purchase Agreement or the termination thereof pursuant to these presents, or in connection with the Elevate Project.
5. The Purchaser acknowledges and confirms that all of the estate, right, title and interest of the Purchaser in and to the Purchased Units and the Elevate Project (both at law and in equity, and whether in possession, expectancy or otherwise) have been released and quit-claimed to and in favour of the Vendor and its successors and assigns forever.
6. In the event that all or any portion of the Deposit Monies heretofore received by the Vendor were drawn on the bank account of a third party who is not the Purchaser (nor one of the individuals who collectively comprise the Purchaser), then the Purchaser shall indemnify and save the Vendor harmless, from and against all costs, claims, damages and/or liabilities which either or both of them may hereafter suffer or incur as a result of the Deposit Monies being refunded directly to the Purchaser in accordance with these presents, rather than being payable and

remitted directly to said third party.

7. The Purchaser agrees to furnish with the execution of this Agreement a clear scan or photocopy of government issued photo identification.
8. The Purchaser acknowledges and confirms having had the opportunity to receive independent legal advice from qualified counsel with respect to all matters herein and has received such advice or has expressly declined or waived the opportunity to do so.
9. This Agreement shall enure to the benefit of, and be correspondingly binding upon, the parties hereto and each of their respective heirs, estate trustees, successors and permitted assigns.
10. This Agreement shall be construed in accordance with (and the parties hereto shall be governed by) the laws of the Province of Ontario, and each of the parties hereto shall attorn to the jurisdiction of the courts of the Province of Ontario.
11. This Agreement shall be read and construed with all changes of gender and/or number required by the context, and if more than one individual comprises the Purchaser, then all of the foregoing covenants and agreements of the Purchaser shall be deemed and construed to be joint and several covenants and agreements thereof.
12. Each of the parties hereto further acknowledges and agrees that these presents may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the undersigned parties shall have the same force and effect as if same were originally executed), and that a photocopy, telefaxed copy or scanned e-mailed copy of this executed Mutual Release and Termination Agreement may be relied upon to the same extent as if it were an original executed version.

IN WITNESS WHEREOF each of the parties hereto has hereunto executed these presents effective this
day of , 2024.

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness Name:

Purchaser Name:

Address:

Phone No.:

1333 WEBER STREET KITCHENER LP

Per: _____

Name:

Authorized Signing Officer

I have the authority to bind the corporation.

1776411 ONTARIO LTD.

Per: _____

Name:

Authorized Signing Officer

I have the authority to bind the corporation.

SCHEDULE "B" TO THE DEPOSIT RETURN PROTOCOL FOR THE ELEVATE PROJECT

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed development of
	)	a condominium project by 1333 Weber Street
	)	Kitchener LP and its general partner, 1776411
PROVINCE OF ONTARIO	)	Ontario Ltd. (the " Owner ") situated in the City of
	)	Kitchener on those lands and premises previously
	)	owned by the Owner located at the address known
	)	municipally as 1333 Weber St., Kitchener Ontario
	)	(the " Property ")
TO WIT:)	
)	

I, <*>, of the City of <*>, DO SOLEMNLY DECLARE THAT:

1. I am a <*> of KSV Restructuring Inc., which was appointed as the Court-appointed receiver of the Owner pursuant to the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act* (the "**Receiver**").
2. To the best of my knowledge and belief, which is based on information provided to the Receiver by the Owner, the Owner owned a 100% interest in the Property prior to it being sold in the Owner's receivership proceedings.
3. To the best of my knowledge and belief, which is based on information provided to the Receiver by the Owner, the Owner is not proceeding with the Project known as the Elevate Project that the Owner had proposed to construct on the Property (the "**Project**").
4. To the best of my knowledge and belief, which is based on information provided to the Receiver by the Owner and McCarter Grespan Beynon Weir PC in its capacity as escrow agent: (i) the Owner was party to ____ agreements of purchase and sale with respect to units in the Project as of _____ (collectively, the "**Condominium Sales Agreements**"), listed on "Exhibit "A" hereto; and (ii) since _____, and aside from the agreement pursuant to which the Property was sold in the receivership proceedings, no other agreements of purchase and sale have been entered into by the Owner or the Receiver in respect of the Project or the Property.
5. Nothing has come to my attention that would suggest that sales of units in the Project were agreed to by the Owner after _____.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath

DECLARED BEFORE ME in)
 City of Toronto, in the Province)
 of Ontario, this <*> day of)
 <*>, 2024.)
)
)

KSV RESTRUCTURING INC. solely in its capacity as the Court-appointed receiver and manager of the Owner, and not in its personal, corporate or any other capacity

_____)
 A COMMISSIONER, ETC.)

 Name:

<*>

Title: <*>

SCHEDULE "C" TO THE DEPOSIT RETURN PROTOCOL FOR THE ELEVATE PROJECT

STATUTORY DECLARATION

CANADA)	IN THE MATTER OF the proposed development of a condominium project by 1333 Weber Street Kitchener LP and its general partner, 1776411 Ontario Ltd. (the " Owner ") situated in the City of Kitchener on those lands and premises previously owned by the Owner located at the address known municipally as 1333 Weber St., Kitchener, Ontario (the " Property ")
)	
PROVINCE OF ONTARIO)	
)	
)	
)	
)	
TO WIT:)	
)	
)	

I, <*>, of the City of Toronto, DO SOLEMNLY DECLARE THAT:

1. I am the <*> of the Owner, and as such have knowledge of the matters hereinafter declared.
2. To the best of my knowledge, the Owner is not proceeding with the Project known as "Elevate Project" that the Owner had proposed to construct on the Property (the "**Project**").
3. To the best of my knowledge, the Owner provided all deposits they received in respect of the sale of condominium units in the Project to McCarter Grespan Beynon Weir PC, the escrow agent for the Owner.
4. To the best of my knowledge, the Owner entered into only <*> agreements of purchase and sale for condominium units in the Project and did not enter into any other agreements of purchase and sale for the condominium units in the Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in)
 City of Toronto, in the Province of)
 Ontario, this <*> day of)

<*>, 2024.)

 A COMMISSIONER, ETC.)

<*>

SCHEDULE "D" TO THE DEPOSIT RETURN PROTOCOL FOR THE ELEVATE PROJECT

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed development of
	)	a condominium project by 1333 Weber Street
PROVINCE OF ONTARIO	)	Kitchener LP and its general partner, 1776411
	)	Ontario Ltd. (the " Owner ") situated in the City of
	)	Kitchener on those lands and premises previously
	)	owned by the Owner located at the address known
	)	municipally as 1333 Weber St., Kitchener, Ontario
	)	(the " Property ")
TO WIT:)	
)	

I, <*>, of the City of <*>, DO SOLEMNLY DECLARE THAT:

1. I am a <*> of Aviva Insurance Company of Canada ("**Aviva**"), the Surety for the Project known as "Elevate" that the Owner had proposed to construct on the Property (the "**Project**").
2. To the best of my knowledge, all deposits paid under agreements of purchase and sale in respect of the Project condominium units numbered <*>, <*> and <*> have been refunded to the respective purchasers of such units by the Escrow Agent.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in)	AVIVA INSURANCE COMPANY OF
City of Toronto, in the Province of)	CANADA
Ontario, this <*> day of)	
<*> , 2024.)	
)	
)	

_____)	Name: <*>
A COMMISSIONER, ETC.)	Title: <*>

Appendix “B”

AGREEMENT OF PURCHASE AND SALE

_____ (the "Buyer") agrees to purchase from 1776411 Ontario Ltd., in its capacity as the general partner of 1333 Weber Street Kitchener LP (the "Seller") proposed Residential Unit _____ proposed Locker Unit(s) in locations to be assigned by the Seller on or before Closing (collectively, the "Unit") of the Seller's proposed condominium (the "Condominium"), as depicted on the Site Plan attached as Schedule F, in the Seller's condominium development at the property legally described in Schedule A hereto and municipally known as 1333 Weber Street East, Kitchener (the "Property").

1. **PURCHASE PRICE:** The Buyer agrees to purchase the Unit for a purchase price equal to the sum of:

Residential Unit Base Price: _____

Parking Unit Base Price: _____

Locker Unit Base Price: _____

Total Purchase Price: _____

\$ -
\$ -

_____ (the "Purchase Price")

- (a) By payment of the following deposits (the "Deposits") by certified cheque, bank draft or wire transfer payable to McCarter Grespan Beynon Weir PC (the "Seller's Lawyer");
- (i) the sum of FIVE THOUSAND DOLLARS (\$5,000.00) upon signing this Agreement which shall form part of the deposit payable in clause (ii) of this subsection;
 - (ii) _____ FIVE PERCENT (5%) of the Purchase Price on or before the 30th day after signing this Agreement;
 - (iii) _____ FIVE PERCENT (5%) of the Purchase Price on or before the 90th day after signing this Agreement;
 - (iv) _____ TWO AND ONE HALF PERCENT (2.5%) of the Purchase Price on or before the 240th day after signing this Agreement;
 - (v) _____ TWO AND ONE HALF PERCENT (2.5%) of the Purchase Price on or before the 365th day after signing this Agreement; and
 - (vi) _____ FIVE PERCENT (5%) of the Purchase Price on or before the Occupancy Date.
- (b) The sum equal to the price for any extras, options, upgrades and changes (the "Extras"), if any (the "Extras Price"), ordered by the Buyer shall be payable in full by cash or certified cheque to the Seller at the time the Extras are ordered or, at the sole option of the Seller, the Extras price is payable on or before the Closing Date; and
- (c) The balance of the Purchase Price, by wire transfer, to the Seller on the Closing Date, subject to the adjustments set out in Schedule C to this Agreement.

2. **HST:** The Purchase Price includes harmonized sales tax ("HST") if the Buyer is eligible for and receives from Canada Revenue Agency the Federal Rebate and the Provincial Rebate (as defined in Schedule D to this Agreement) for homes purchased from a builder and used as a primary place of residence for the Buyer or the Buyer's relation as determined by Canada Revenue Agency, and the Buyer assigns to the Seller all of his/her rights to receive the Federal Rebate and the Provincial Rebate. If the Buyer is not eligible for the Federal Rebate and the Provincial Rebate, then HST is not included in the Purchase Price and the Buyer must pay the HST in addition to the Purchase Price. Please refer to Schedule D for more information about HST.

3. **OCCUPANCY DATE:** The Buyer shall occupy the Unit in accordance with Schedule I—Tariion Statement of Critical Dates and Addendum (the "Occupancy Date"). The Occupancy Date may be extended or accelerated, as appropriate, in accordance with the provisions of this Agreement, including the terms set out in Schedule I. On the Occupancy Date, the Buyer will go into possession of the Unit and shall start to pay the monthly occupancy fee, all utility charges and insurance with respect to the Unit in accordance with the provisions of Schedule H attached to this Agreement.

4. **MONTHLY OCCUPANCY FEE:** From and including the Occupancy Date to and including the day preceding the Closing Date (the "Occupancy Period"), the Buyer shall pay to the Seller, on a monthly basis, in advance, a monthly occupancy fee (the "Occupancy Fee") in accordance with the provisions of Schedule C.

Initials of Seller _____

5. **CLOSING DATE:** The transfer of title to the Unit will occur no later than 5:00 p.m. on the date set out in a notice in writing (the "**Closing Date**") from the Seller's Lawyer to the Buyer's Lawyer. As soon as possible after the registration of the Condominium or, in the case of a phased condominium, following the registration of an amendment to the declaration and description to create a phase which includes the Home as a unit within the Condominium, the Seller's Lawyer will notify the Buyer's Lawyer of the Closing Date. The Closing Date shall not be earlier than the 15th day and not later than 60th day following the registration of the Condominium. At the Seller's sole option, different units within the Condominium may have different Closing Dates.

6. **SCHEDULES:** The following Schedules attached to this Agreement shall form part of this Agreement whether the same are signed or initialed by the parties or not:

- Schedule A – Legal Description
- Schedule B – Colour Selection and Extras
- Schedule C – Terms of the Agreement
- Schedule D – HST
- Schedule E – Specification Sheet
- Schedule F – Site Plan
- Schedule G – Floor Plan
- Schedule H – Terms of Interim Occupancy
- Schedule I – Tarion Statement of Critical Dates and Addendum
- Schedule J – Seller's Conditions

7. **IRREVOCABLE DATE:** This offer shall be irrevocable by the Buyer until 11:59 p.m. on the 13 day of June, 2020 after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer without interest or deduction. If the Seller accepts the Buyer's offer before that time, then this Agreement is binding on the Buyer and the Seller.

DATED AT Kitchener, Ontario, on the 3 day of June, 200

 Witness Signature
 Print Witness Name: _____

_____, Buyer • Seal

 Witness Signature
 Print Witness Name: _____

_____, Buyer • Seal

The Seller hereby accepts the Buyer's offer on the terms and conditions contained in this Agreement.

DATED at KITCHENER, Ontario, on the 103 day of Jun-06-2020 | 3:25 PM EDT, 202

**1776411 Ontario Ltd., in its capacity as the
 general partner of 1333 Weber Street Kitchener
 LP**

Per: Werner Leuschner
 Name: Werner Leuschner
 Office: Authorized Signing Officer

Initials of Seller _____

BUYER 1:Name: _____Address: _____Home Phone: (____) _____ - _____Work Phone: (____) _____ - _____ ext _____Cell Phone: _____E-Mail Address: _____**BUYER 2:**Name: _____Address: _____Home Phone: _____Work Phone: (____) _____ - _____ ext _____Cell Phone: (____) _____ - _____E-Mail Address: _____**BUYER'S LAWYER:**Firm Name: _____Lawyer Name: _____Address: _____Phone: _____Fax: _____E-Mail Address: _____**SELLER'S LAWYER:**

McCarter Grespan Beynon Weir PC

Barristers & Solicitors

Attention: John Weir

675 Riverbend Drive

Kitchener, ON N2K 3S3

Tel: (519)571-8800

Fax: (519)742-1841

E-Mail: jweir@mgbwlaw.com with a copy to: cfortuna@mgbwlaw.com

Initials of Seller _____

SCHEDULE A - COLOUR SELECTION AND EXTRAS**1. ADDRESS OF THE PROPERTY**

The Property is located at 1333 Weber Street East, Kitchener, Ontario.

2. LEGAL DESCRIPTION OF THE PROPERTY

The current legal description of the Property is:

ISTLY: LOTS 29 TO 34, 45 TO 50, 91 PLAN 322, TWP OF WATERLOO; LOT 127 STREETS & LANES KITCHENER (CLOSED BY BYLAW NO. 4061, INST. 175368); PT. LOT 12 TO 17, 43, 44, 86, 87, 89, 90 PLAN 322 TWP OF WATERLOO; PT. LOT 126 STREETS & LANES KITCHENER (BEING PT. OF HERMAN AVE., CLOSED BY BYLAW NO. 4061, INST. 175368); PT. LOT 141 STREETS & LANES KITCHENER (BEING PT. OF HERMAN AVE., CLOSED BY BYLAW NO. 4445, INST. 210008); PT. LOT 173 STREETS & LANES KITCHENER (BEING PT. OF SUNNYSIDE AVE., CLOSED BY BYLAW NO. 5094, INST. 270276) PT. 1 ON 58R-1868; EXCEPT PT. 1 ON 58R-3067 & PT. 34 ON 58R-11552 & PT. 7 ON 58R-12048; S/T 687124; 2NDLY: PT. LOTS 12 TO 17 PLAN 322 TWP OF WATERLOO; PT. LOT 126 STREETS & LANES KITCHENER (BEING HERMAN AVE., CLOSED BY BYLAW NO. 4061, INST. 175368), PT. 7 ON 58R-12048;; CITY OF KITCHENER

Being all of PIN 71410-0535 (LT)

3. LEGAL DESCRIPTION OF THE UNIT

The unit number for the Unit as set out on the first page of this Agreement refers to the unit number as shown on the site plan attached as Schedule F to this Agreement. It is common that the unit numbering on the site plan does not match the legal unit numbering on the description plans to be registered to create the condominium. The Seller's Lawyer will provide the legal description of the Unit to the Buyer's lawyer as soon as reasonably possible after registration of the condominium.

SCHEDULE B - COLOUR SELECTION AND EXTRAS

1. EXTRAS

In this Agreement, the word "Extras" refers to any item or feature over and above the base unit supplied by or on behalf of the Seller and includes any upgrades and/or changes made to the Seller's standard floor plan.

2. FINISHES/SELECTIONS/EXTRAS

The Purchase Price includes all of the specifications and items listed in Schedule E. Any model suite/vignette furnishings, appliances, décor, upgrades, artist's renderings, scale models, improvements, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless expressly set out in Schedule E.

3. COLOUR, MATERIAL, FINISH AND OTHER SELECTIONS

The Buyer shall make and notify the Seller of all interior colour, material, finishes and other selections within twenty-one (21) days after being requested to do so by the Seller. Any additional costs incurred by the Seller because of late selection will be paid by the Buyer. If the Buyer fails to make any colour, material, finish or other selection from the Seller's samples within the time period required by the Seller as aforementioned, the Buyer agrees to accept the Seller's choice of selection of colour, material, finish or other selection. Once the selections are made by the Buyer, the Seller reserves the right to refuse in its sole discretion to make any further changes or alterations to the same that may be requested by the Buyer. Any changes to the selections made by the Buyer and accepted by the Seller shall be subject to an administration fee of \$300.00 plus any applicable HST and any other charge(s) incurred by the Seller in order to carry out and complete the selection change requested by the Buyer.

4. TIME FOR ORDERING EXTRAS

Any changes and/or Extras must be ordered prior to the start of construction. Any requests for changes or Extras by the Buyer after the start of construction shall only be permitted at the sole discretion of the Seller and at the Buyer's expense. In the event of any termination of this Agreement, payments on account of Extras will be refunded to the Buyer if either: (a) the Agreement is terminated before the Seller has ordered, purchased and/or entered into any agreement for the provision of such Extras; or (b) the Seller is able to cancel its order, purchase or agreement for such Extras at no cost to the Seller. In all other cases, payments on account of Extras shall be non-refundable.

5. IF EXTRAS CANNOT BE DELIVERED

Regardless of any other provision in this Agreement, if, upon Closing, any of the Extras ordered by the Buyer cannot be provided for any reason, then there shall be refunded or credited to the Buyer upon Closing the amount paid by the Buyer in connection with such Extras and this shall be accepted by the Buyer as full and final settlement of any claim by the Buyer with respect to the Extras which remain incomplete.

6. SUBSTITUTIONS

In the event any material selected by the Buyer from samples is unavailable, the Seller shall notify the Buyer and the Buyer may choose an alternative for the unavailable selection from the Seller's samples. If the Buyer should fail to make an alternate selection for such unavailable colour, material, finishes or selections within seven (7) days after being requested to do so by the Seller, then the Seller shall substitute any other material which the Seller, in its sole discretion, deems reasonably similar or superior in quality and kind to that of the unavailable sample.

7. REFUSAL TO PROVIDE EXTRAS

The Seller has discretion to refuse any Extras requested by the Buyer. The Seller will refuse any Extras which contravene the approved Grading Control Plan and/or Ontario Building Code.

8. FINISHES

The Buyer acknowledges that with respect to any wood finishes, carpeting, hardwood flooring, tiles (including any marble or granite slabs used for flooring, walls or counter purposes), kitchen and bathroom cabinetry and/or other manufactured finishing materials installed within the Unit:

- (a) the colour, texture, and/or shading of such wood finishes, carpeting, hardwood flooring, tiles, kitchen and bathroom cabinetry and/or other manufactured finishing materials may vary slightly from that of those selected by the Buyer from the Seller's samples, due to minor variations or shading in dye-lots produced or manufactured by the suppliers;
- (b) the colour, finish, grain and/or veining of wood products (including hardwood flooring) and/or natural stone materials may vary slightly from those selected by the Buyer from the Seller's samples and that wood and stone are natural materials which cannot be precisely reproduced or matched with other pieces or samples;
- (c) if different types of flooring will be installed within the Unit, it may result in different floor levels or heights between rooms or areas within the Unit having different floor materials. If this is the case,

Initials of Seller

then the Seller may use or install appropriate reducers in the transitional areas between rooms with different flooring materials;

and the Buyer shall not be entitled to any reduction in Purchase Price, any replacement of the carpet, hardwood flooring, tiles, kitchen cabinetry, manufactured finishing materials or wood products or flooring so installed, and shall not have any claim for compensation from the Seller and/or Taron resulting from these variations.

9. HST ON EXTRAS

If the Buyer qualifies for the Federal Rebate and Provincial Rebate of HST, then the cost of any Extras which will become fixtures in the Unit includes HST at the Owner Occupant Rate. Please refer to Schedule D for more information with respect to HST.

SCHEDULE C - TERMS OF THE AGREEMENT

1. **ENTIRE AGREEMENT:** This Agreement, including the attached Schedules, is the entire Agreement between the Buyer and the Seller. Except as contained in this Agreement, there are no representations, warranties, collateral terms or conditions that affect this Agreement, the Condominium or the Unit, or for which the Seller can be held responsible in any way, whether they be contained in any sales material, brochure, or alleged against any sales representative or agent.

2. **DEFINITIONS:** In this Agreement, the following words will have the following meanings:

- (a) "Act" means the *Condominium Act, 1998*, S.O. 1998, c. 19 and its regulations, as may be amended from time to time;
- (b) "Creating Documents" means the declaration and description required to be registered under the Act in order to create the Condominium and, in the case of a phased condominium, includes all amendments to the declaration and description to create phases;
- (c) "including" means "including but not limited to";
- (d) "Ontario New Home Warranties Plan Act" means *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31;
- (e) "Program" means the warranty program provided by Tarion pursuant to the Ontario New Home Warranties Plan Act; and
- (f) "Tarion" means the Tarion Warranty Corporation.

3. **OCCUPANCY:** The Occupancy Date is the First Tentative Occupancy Date (as defined in Schedule I). This is the date that the Unit is expected to be constructed to a stage of substantial completion to enable possession of the Unit to be taken by the Buyer. The Occupancy Date may be extended or accelerated, as appropriate, in accordance with the provisions of this Agreement, including the terms set out in Schedule I.

For the purposes of this Agreement, a Unit shall be deemed to be substantially completed when the interior work has been finished to permit occupancy even though there remains other work within the Unit to be completed and the Buyer agrees to complete this transaction regardless of any claim submitted to the Seller and/or Tarion in respect of any apparent deficiencies or incomplete work, provided occupancy of the Unit is permitted by the relevant municipality. The Buyer shall not require the Seller to produce or provide an occupancy permit, certificate or authorization from the relevant municipality other than the documentation required by Section 9 of Schedule I. The failure to complete the common elements of the Condominium before the Occupancy Date or the Closing Date shall not be deemed to be a failure to substantially complete or complete the Unit, as applicable. The Buyer shall complete the transaction on the Closing Date without deduction or holdback in the Purchase Price.

4. **OCCUPANCY FEE:** The Occupancy Fee shall be the lesser of:

- (a) \$TBA per month; or
- (b) The total of the following amounts:
 - (i) Where applicable, interest calculated on a monthly basis on the unpaid balance of the Purchase Price at the prescribed rate set out in the Act and/or the regulations to the Act;
 - (ii) An amount reasonably estimated on a monthly basis for municipal taxes attributable to the Unit; and
 - (iii) The projected monthly common expense contribution for the Unit.

The Occupancy Fee shall not be credited by the Seller as part of or as payment against the Purchase Price and the Occupancy Fee shall not be considered as a deposit against the Purchase Price. On the Occupancy Date, the Buyer shall deliver to the Seller a series of postdated cheques as required by the Seller to cover the Occupancy Fees during the interim Occupancy Period. If any tax (which, for certainty, shall include HST) is payable with respect to the monthly Occupancy Fee payable by the Buyer, then the Buyer shall be solely responsible for paying such tax, which shall be added to the monthly Occupancy Fee and paid to the Seller.

5. **ADJUSTMENTS:** On the Closing Date, the Purchase Price shall be adjusted to reflect the following items:

- (a) *Deposits:* On the Closing Date, the Buyer shall receive credit for all Deposits.
- (b) *Occupancy Fees:* An adjustment shall be made to the balance due on the Closing Date so that Occupancy Fees are paid by the Buyer from and after the Occupancy Date to the day immediately prior to the Closing Date.
- (c) *Common Expenses:* An adjustment shall be made to the balance due on the Closing Date in an amount equal to the Buyer's proportionate share of common expenses for the month in which the Closing Date occurs. The Buyer is responsible for the payment of common expenses on the Closing Date.

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- (d) *Realty Taxes*: All realty taxes, including any local improvement or other charges, applicable to the Home for the calendar year in which the Closing Date occurs will be adjusted so that the Seller pays all realty taxes up to the day before the Closing Date and the Buyer shall pay all realty taxes on and after the Closing Date, provided there shall be no duplication of amounts paid by the Buyer as part of the Occupancy Fee towards realty taxes and re-adjusted pursuant to this subsection. The Buyer is responsible for payment of the realty taxes for the Closing Date itself.
- (e) *Administration Charges for NSF Cheques*: Any payment given by the Buyer to the Seller (whether for Deposits, Extras, monthly Occupancy Fees or for any other purpose) and which is returned to the Seller dishonoured for insufficient funds or for any other reason will be subject to a minimum \$150.00 administration fee plus HST for each such returned cheque. If the Buyer fails to include this administration fee in any replacement cheque which it may provide to the Seller, then this fee shall be added to the Statement of Adjustments and will be payable by the Buyer to the Seller on the Closing Date.
- (f) *Tax on Chattels*: If there are chattels involved in this transaction, the allocation of the value of such chattels shall be estimated, where necessary, by the Seller. On the Closing Date, the Buyer shall pay to the Seller any applicable HST based on the estimated value of such chattels.
- (g) *Payment of Tarion Registration*: The Buyer agrees to reimburse to the Seller on the Closing Date the cost of enrolling the Unit under the Program inclusive of any applicable taxes payable on such enrollment cost in full. This amount will be included in the statement of adjustments delivered by the Seller on Closing.
- (h) *HST*: In accordance with Schedule D, if the Buyer does not qualify for the Federal Rebate and the Provincial Rebate, then all or a portion of the HST shall be payable by the Buyer in addition to the Purchase Price.
- (i) *Tax*: If the transaction is subject to any goods and services tax, sales tax, value added tax or any like or similar tax other than HST, then such tax shall be payable by the Buyer in addition to the Purchase Price.
- (j) *Interest*: If applicable, the Seller shall credit the Buyer with any interest owed to the Buyer pursuant to the Act, including any interest payable pursuant to Section 82 of the Act.
- (k) *Reserve Fund Contribution*: On the Closing Date, the Buyer shall pay an amount equal to two (2) months' common expenses for the Unit as an initial contribution to the reserve fund of the Condominium, which amount shall be redirected by the Seller to the Condominium Corporation. Such amount shall be in addition to the monthly common expenses payable by the Buyer to the Condominium Corporation.
- (l) *Development Charges*: The amount of any increase in development charges authorized by the *Development Charges Act* and any increase in education development charges authorized by the *Education Act* paid by the Seller on account of the Unit over and above the rate(s) on account thereof that existed as of the date this Agreement of Purchase and Sale is entered into shall be payable by the Buyer and adjusted on Closing in favour of the Seller on the statement of adjustments. Development charges shall be capped at a maximum of \$2,500.00.
- (m) *Closing Date Extensions*: If the Buyer requests an extension of the Closing Date and the Seller agrees to such extension, an administrative fee of \$300.00 plus HST, together with interest on the Purchase Price at a rate equal to 6% per annum, for each week or part week that the Closing Date is so extended.
- (n) *Parkland*: The Buyer agrees to pay to the Seller \$2,500.00 plus any applicable HST on the Closing Date towards the Seller's costs associated with Parkland works required in connection with the Seller's development.
- (o) *Administration of Deposits*: The Buyer agrees to reimburse to the Seller an administrative fee of \$50.00 plus HST for each cheque tendered pursuant to paragraph 1(a) of this Agreement representing a reasonable reimbursement to the Seller of the costs incurred or to be incurred by the Seller in fulfilment of the requirements of subsection 81(6) of the Act.

If any adjustment cannot accurately be determined at the time of calculation, then the Seller may estimate the adjustment to be made and the Closing shall take place in accordance with this estimate subject to a later and final reconciliation when such adjustment can be accurately determined.

6. REGISTRATION OF THE CREATING DOCUMENTS: There has been no representation or promise made that is binding on the Seller with respect to when the Creating Documents will be registered.

7. REQUIRED DOCUMENTATION: The Buyer will sign and return to the Seller's Lawyer within ten (10) days of the Buyer's or the Buyer's Lawyer's receipt of same all documents that may be reasonably required by the Seller to obtain approvals of any kind relating to the Condominium (including the advance of any mortgage or other funds due to the Seller and including Ontario New Home Warranties Plan Act deposit receipt forms and/or any excess condominium deposit insurance policy and related documents issued by any insurer to provide the prescribed security for the Deposits) failing which the Buyer shall be in default under this Agreement.

8. SUBORDINATION AND POSTPONEMENT: The Buyer covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Seller and any advances under this Agreement from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium documents, including the Creating Documents, and the Buyer agrees to consent to and sign all documentation required by the Seller in this regard within ten (10) days of the Buyer's or its lawyer's receipt of same from the Seller or the Seller's Lawyer.

9. UTILITY AND ENERGY SUPPLIERS: The Buyer acknowledges that it is the Buyer's sole responsibility to make satisfactory financial arrangements with the utility and energy suppliers, including but not limited to the submetering services provider pursuant to any submetering agreement entered into by the Condominium, to set up accounts and for the sale and/or rental of any equipment (such as meters, water heaters and/or water softeners, if any) and agrees to indemnify and hold harmless the Seller from all costs and/or damages resulting from the Buyer's failure to make these arrangements. The Buyer will assume the rental obligations with respect to any appliance or fixture, including but not limited to any meters, water heaters and water softeners, as of the earlier of the Occupancy Date or the Closing Date and will save the Seller harmless with respect to same.

10. NOISE/WARNING PROVISIONS: The Seller anticipates that, in connection with its application to the appropriate governmental authorities for draft plan of condominium approval, additional requirements ("Requirements") may be imposed upon the Seller by various governmental authorities. These Requirements may include warning provisions to be given to buyers in connection with environmental or other concerns, such as warnings relating to noise levels, the proximity of the Condominium to major streets, garbage storage and pickup, school transportation and similar matters. Accordingly, the Buyer covenants and agrees that (i) when requested to do so by the Seller, the Buyer shall sign any and all documents required by the Seller acknowledging, amongst other things, that the Buyer is aware of the Requirements, and (ii) if the Seller is required to incorporate the Requirements into the final Creating Documents and/or other Condominium documents, the Buyer shall accept the same without in any way affecting this transaction.

11. WARRANTY AND TARIION INSPECTION: The Seller represents and warrants that it is a registered builder/vendor with Tarion and that the Unit is or will be enrolled under the Program on the Closing Date. The Buyer acknowledges and agrees that any warranties for workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be limited to only those warranties deemed to be given by the Seller under the Ontario New Home Warranties Plan Act and shall extend only for the time period and in respect of those items as stated in the Ontario New Home Warranties Plan Act.

The Buyer shall inspect the Unit at the request of the Seller with a representative of the Seller at a time and date designated by the Seller prior to the Occupancy Date to conduct a pre-delivery inspection of the Unit (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit on the Ontario New Home Warranties Plan Act Certificate of Completion and Possession form (the "CCP") and the PDI form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the Ontario New Home Warranties Plan Act. The CCP and PDI forms shall be signed by both the Buyer and the Seller's representative at the PDI and shall constitute the Seller's only undertaking with respect to incomplete or deficient work and the Buyer shall not require any further undertaking of the Seller to complete any outstanding items. In the event that the Seller performs any additional work to the Unit in its discretion, the Seller shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations under this Agreement.

The Buyer acknowledges that the Homeowner Information Package as defined in the relevant Tarion bulletin (the "HIP") is available from Tarion and that the Seller further agrees to provide the HIP to the Buyer, at or before the PDI. The Buyer shall sign and provide to the Seller a confirmation of receipt of the HIP immediately upon receipt of the HIP. The Buyer shall be entitled to send a designate to conduct the PDI in the Buyer's place or attend with their designate, provided the Buyer first provides to the Seller a written authority appointing such designate for the PDI prior to the PDI. If the Buyer appoints a designate, the Buyer acknowledges and agrees that the Buyer shall be bound by all of the documentation signed by the designate to the same degree and with the same force and effect as if signed by the Buyer directly. In the event that the Buyer and/or the Buyer's designate fails to attend the PDI or fails to sign the CCP and PDI forms at the conclusion of the PDI, the Seller may declare the Buyer to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement and/or at law.

Alternatively, the Seller may, at its option, complete the within transaction and complete the CCP and PDI forms on behalf of the Buyer and/or the Buyer's designate and the Buyer hereby irrevocably appoints the Seller as the Buyer's attorney and/or agent and/or designate to complete the CCP and PDI forms on the Buyer's behalf and the Buyer shall be bound as if the Buyer had signed the CCP and PDI forms.

12. CHANGES AND VARIATIONS TO THE CREATING DOCUMENTS: The Act requires the Seller to deliver a revised disclosure statement or a notice to the Buyer whenever there is a material change (as defined in the Act) in the information contained in the disclosure statement. The Seller shall have no obligation to notify the Buyer of any changes to the Unit or the Condominium which are not material changes (as defined in the Act).

Subject to the provisions of the Act, the Seller may change the Creating Documents of the Condominium or any other disclosure document in accordance with the Seller's requirements, the requirements of all relevant local, provincial and/or federal governmental authorities and/or any successor of such authority, any mortgage and/or any other regulatory body (which modifications may include the reduction of or increase the number of proposed units within the Condominium) prior to the registration of the Transfer/Deed of the Unit in favour of the Buyer and despite any such changes, this Agreement shall remain binding upon the parties subject to the provisions of the Act.

The Seller shall have the unilateral right to change the number of units within the Condominium by combining one or more proposed units and/or changing the style or type of units and their configuration or increasing the number of units at its sole and absolute discretion. In the event of such changes, the proposed Creating Documents, as well as the final budget statement for the one year period immediately following registration of the Condominium, will be amended accordingly and the Buyer hereby consents to any such changes and agrees to complete this transaction regardless of these changes.

The Buyer further acknowledges that the registered Creating Documents, as well as the final budget statement for the one year period immediately following registration of the Condominium, may vary from the documentation contained in the disclosure package, including the budget statement previously given to the Buyer.

The Buyer acknowledges that if there is a material change (as defined in the Act) to the Creating Documents, any other disclosure document (including the budget statement) or any other document, the Buyer's only remedy shall be those provided by the Act, regardless of any rule of law or equity to the contrary.

13. CHANGES TO THE SITE PLAN AND/OR FLOOR PLAN: Subject to the requirements of the Act and the Ontario New Home Warranties Plan Act, the Seller may, without notice, from time to time in its discretion or as required by any governmental authority, change, vary or modify the plans and specifications pertaining to the common areas of the Condominium (including architectural, structural, engineering, landscaping, grading, mechanical, service or other plans) from the Site Plan attached to this Agreement. The Buyer shall have no claim against the Seller for any such changes, variances or modifications nor shall the Buyer be entitled to notice of any such changes, variances or modifications. Without limiting the generality of the foregoing, the Buyer acknowledges that all service locations including cable, electrical panels, switches and lights and meter locations are at the sole discretion of the Seller and may vary from unit to unit. All dimensions are approximate and actual usable floor area may vary from stated floor area and, as such, the Buyer shall accept the Unit being constructed by the Seller with minor changes in dimensions and, without limiting the generality of the foregoing, any change required by the municipality in order to comply with any building or zoning by-law or other municipal requirements. Illustrations depicted are an artist's concept and may show optional features which may not be included in the Purchase Price. Bulkheads and boxing may be required and the location of same may vary for each plan and from the model unit. All working drawings are the property of the Seller and may not be copied or reproduced in any manner without prior written consent from the Seller.

14. COMPLETION OF OTHER UNITS AND/OR COMMON ELEMENTS: The Buyer shall not interfere with the completion by the Seller of other units and proposed units and the proposed or registered common elements of the Condominium. Until all the units of the Condominium are completed and sold, the Seller may make such use of the unsold units and the proposed or registered common elements as it, in its absolute discretion, deems appropriate to facilitate such completion and sale including maintenance of a sales office, presentation centre, the showing of the units and proposed or registered common elements, storage of materials and equipment and the display of signs. The Buyer agrees that the Seller may, from time to time, lease any and all unsold units within the Condominium for such periods of time permitted under the Act and for the uses permitted by the Creating Documents and other proposed Condominium documents.

15. NO ACCESS TO THE PROPERTY OR THE UNIT DURING CONSTRUCTION: For safety reasons, the Buyer cannot have access to or be permitted to enter any part of the Property or any Unit (including the Unit he/she is purchasing) at any time during the day or night until the earlier of the Occupancy Date and the Closing Date, unless the Buyer has obtained prior written permission of the Seller and then only if accompanied by an authorized representative of the Seller at all times.

16. INSPECTIONS AND RIGHT OF ENTRY: Even though the Buyer may be in occupancy of the Unit on the Occupancy Date and/or the completion of this transaction, the Seller or any persons authorized by it (including municipal building inspectors) shall be entitled, at all reasonable times, to enter the Unit and the common elements of the Condominium to make inspections or to do any work or repairs which may be deemed necessary by the Seller in connection with the completion, rectification or servicing of anything in or forming part of the Unit. A right of entry in favour of the Seller for a period not exceeding five (5) years similar to the foregoing may be included in the Transfer/Deed provided on the Closing Date at the Seller's sole discretion. Acceptance of construction, siting and grading by the municipality or Tarion, where applicable, shall conclusively constitute acceptance by the Buyer. The failure or refusal of the Buyer to permit access to the Unit following reasonable notice by any such inspector or the Seller shall relieve the Seller of any obligation to complete or rectify any items of work outstanding.

17. TITLE: The Buyer shall be allowed until seven (7) days prior to the Closing Date to examine the title to the Unit at his/her own expense and, if within that time, any valid objection is submitted to the Seller's Lawyer in writing, which the Seller is unable or unwilling to remove or which the Seller in its sole discretion does not want to remove and which the Buyer will not waive, then this Agreement shall be null and void, regardless of any intermediate acts or negotiations in respect of such objections, and the Deposits shall be returned by the Seller without interest and neither the Seller nor any of its agents shall be liable to the Buyer for any further costs or damages. Save as to any valid objection made within the time limit provided in this section, the Buyer shall be deemed conclusively to have accepted the title of the Seller to the Unit. Nothing shall permit the Buyer to insist on completion of this transaction with any abatement of the Purchase Price.

Provided that the title to the Unit is good and free from all restrictions, charges, liens, claims and encumbrances, except as otherwise specifically provided in this Agreement, the Buyer agrees to accept title to the Unit subject to the following items, if applicable, and the Buyer covenants and agrees to adhere to the terms and conditions as set out in the following items:

- a. any and all other easements, agreements, restrictions, covenants, conditions and obligations not specifically mentioned below now registered on title to the Unit and/or the Property;
- b. any and all other easements, agreements, restrictions, covenants, conditions and obligations not specifically mentioned below and to be registered on or affecting title to the Unit and/or the Property which do not materially and adversely affect title to the Unit and/or the Property;
- c. the Creating Documents as registered;
- d. any reservation of mineral or other rights or any other matter relating to the fact that a part of the Property or the Condominium may have been owned by a railway company, if applicable;
- e. any subdivision agreement, development agreement, site plan agreement, limiting distance agreement, engineering agreement, lot drainage agreement or occupancy agreement, or other agreement now or subsequently entered into with any municipal or governmental authority or any public utility, including any restrictions contained in such agreements;
- f. any easements, rights-of-way and/or licenses for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable/television, recreational or shared facilities, and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Seller (or by the owner of the Property if not one and the same as the Seller), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners;
- g. any applicable regulations and restrictions of any conservation authority; and
- h. any building or other stipulations, restrictions, provisions and/or covenants that may now or subsequently be registered against the title of the Property, including any restrictions included in the transfer to the Seller, if applicable.

The Buyer shall satisfy him/herself as to compliance with any of the easements, agreements, restrictions, covenants or other matters set out above, if applicable, and the Seller shall not be obligated to obtain a release or certificate of compliance of any agreements, restrictions, covenants or other matters. Further, the Seller shall not be obligated to

obtain nor register on title any releases of any personal property security registrations or provide any proof of compliance with same.

On the Closing Date, the Buyer will accept the Seller's Lawyer's undertaking to discharge any mortgages or security interests registered against the title to the Unit as soon as is reasonably possible after the Closing Date, provided there is compliance with the Law Society of Upper Canada guidelines relating to discharges of mortgages and, provided the foregoing is done, the Seller will not be obliged to obtain and register (partial) discharges insofar as they affect the Unit on the Closing Date. This does not obligate the Seller or the Seller's Lawyer to provide any undertaking or release of an agreement with any municipality or governmental authority.

The Buyer agrees to accept on the Closing Date the Seller's undertaking to comply with any outstanding municipal work orders and to rectify any deficiency notices, building or zoning by-law infractions within a reasonable time after the Closing Date. The Seller hereby consents to the municipality releasing to the Buyer details of all outstanding municipal work orders or deficiency notices affecting the Unit.

The Buyer shall not call for the production of any title deeds or abstracts of title, occupancy permit(s), grading or other certificates, survey, sketch or other proof or evidence of title, nor to have furnished to the Buyer any copies thereof.

The Buyer agrees that the Seller shall have a Seller's lien for any unpaid portion of the Purchase Price on the Closing Date and shall be entitled to register a notice of lien against the Unit anytime on or after the Closing Date.

18. ELECTRONIC REGISTRATION: As the electronic registration system (the "**Teraview Electronic Registration System**" or "**TERS**") is operative in the applicable Land Titles Office in which the Property is registered, the following provisions shall prevail:

- (a) The Buyer shall be obliged to retain a lawyer, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada, to represent the Buyer in connection with the completion of the transaction, and shall authorize such lawyer to enter into an 'escrow closing agreement' with the Seller's Lawyer on the Seller's Lawyer's standard form (the "**Escrow Document Registration Agreement**"), establishing the procedures and timing for completing this transaction and to be signed by the Buyer's Lawyer and returned to the Seller's Lawyer at least ten (10) days prior to the Closing Date.
- (b) The delivery and exchange of documents, monies and keys to the Unit and the release of such items to the Seller and the Buyer, as the case may be:
 - (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registrable documentation); and
 - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the lawyer receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.

The Buyer agrees that keys may be released to the Buyer at the Seller's sales office or other location as determined by the Seller on the Closing Date.

- (c) The Buyer will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on the Closing Date, in accordance with the statement of adjustments, are remitted wire transfer to the Seller's Lawyer (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (d) The delivery of any documents not intended for registration on title to the Unit may be delivered to the other party to this Agreement by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly signed by the appropriate parties/signatories to such documents. Signatures may be made by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document) to the recipient party by overnight courier sent on the Closing Date or within two (2) business days of the Closing Date, if same has been so requested by the recipient party.

19. TENDER: Any tender of documents or money under this Agreement may be made upon the Seller or the Buyer or their respective lawyers on the day set for completion. Money shall be tendered on a lawyer's trust account in the form of a certified cheque, bank draft or by wire transfer.

In the event that the Buyer or the Buyer's Lawyer advises the Seller or the Seller's Lawyer, on or before the Closing Date that the Buyer is unable or unwilling to complete the purchase, the Seller is relieved of any obligation to make any formal tender upon the Buyer or its lawyer, and the Buyer shall immediately be deemed to be in default under this Agreement and the Seller may immediately exercise any and all of its right and remedies provided for in this Agreement and at law.

Regardless of any contrary provision of this Agreement, an effective tender shall be deemed to have been validly made by the Seller upon the Buyer when the Seller's Lawyer has:

- (i) delivered all closing documents and/or funds to the Buyer's Lawyer in accordance with the provisions of the Escrow Document Registration Agreement and this Agreement;
- (ii) keys are delivered to the Buyer's Lawyer or, at the Seller's sole option, made available for the Buyer to pick up at the Seller's sales or customer service office;
- (iii) advised the Buyer's Lawyer, in writing, that the Seller is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (iv) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Seller's Lawyer without the cooperation or participation of the Buyer's Lawyer, and specifically when the "completeness signatory" for the Transfer/Deed has been electronically "signed" by the Seller's Lawyer;

without the necessity of personally attending upon the Buyer or the Buyer's Lawyer with the aforementioned documents, keys and/or funds, and without any requirements to have an independent witness evidencing the foregoing.

20. INSURANCE: All buildings within the Property and the Unit being purchased shall be and remain until closing at the risk of the Seller, subject to the Occupancy Provisions set out in Schedule H. If any part of the Condominium is damaged before the Creating Documents are registered, the Seller may, in its sole discretion either:

- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted by Section 5 of the Taron Addendum contained in Schedule I; or
- (b) terminate this Agreement and return to the Buyer all Deposits paid by the Buyer to the Seller, with interest payable in accordance with the Act if the damage to the Condominium has frustrated this Agreement at law.

It being understood and agreed that all insurance policies and the proceeds of all insurance policies are to be for the benefit of the Seller alone.

21. PLANNING ACT: This Agreement and the transaction contemplated in this Agreement are conditional upon compliance with all the applicable provisions of the *Planning Act*, R.S.O. 1990, c. P.13 on or before Closing.

22. RESIDENCY/FAMILY LAW ACT: The Seller warrants that it is not a non-resident of Canada for the purposes of section 116 of the *Income Tax Act*, R.S.C. 1985, c. 1 (Canada). No officer, director or shareholder of the Seller has ever occupied the Unit as a matrimonial home. The Buyer represents and warrants that it is not a non-resident of Canada for the purposes of section 116 of the *Income Tax Act* (Canada).

23. BUYER'S DEFAULT: Upon default of the Buyer in the completion of this transaction on the Closing Date or the completion of the Buyer's obligations and agreements on the Occupancy Date, or upon other default of the Buyer of any of the other covenants, representations, warranties, acknowledgments and obligations to be performed under this Agreement or such other default continuing for seven (7) days after written notice has been given to the Buyer or the Buyer's Lawyer by the Seller or the Seller's Lawyer, then, in each and every case, in addition to any other rights or remedies which the Seller may have, the Seller, at its option, shall have the right to declare this Agreement terminated and of no further force or effect, and in such event all Deposits paid under this Agreement (including all monies paid to the Seller with respect to Extras or changes to the Unit ordered by the Buyer and with respect to the customization of the Unit) shall be forfeited to the Seller and the Seller may also claim for damages in excess of the Deposits. The Buyer agrees that the forfeiture of the monies shall not be a penalty and it shall not be necessary for the Seller to prove it suffered any damages in order for the Seller to be able to retain the monies. If the Buyer has taken possession of the Unit, the Buyer shall immediately vacate the Unit or otherwise cause the Unit to be vacated (and shall leave the Unit in a clean condition, without any physical or cosmetic damages, and clear of all garbage, debris and any furnishings and/or belongings of the Buyer) and the Seller shall be at liberty to sell the Unit with or without re-entry.

24. NOTICE: Any notice which either party needs to deliver to the other pursuant to this Agreement must be delivered in writing and must be given by:

- a) personal delivery which is effective immediately upon receipt;
- b) delivery by prepaid courier to the address for the party listed below the signature lines at the beginning of this Agreement during regular business hours which notice is effective when delivered;
- c) facsimile or other means of electronic transmission (including email) to the number or email address of the party set out below the signature lines at the beginning of this Agreement. Notice by facsimile or other means of electronic transmission is effective on the date and at the time of transmission if delivered before 5:00 p.m. If notice is given by facsimile or other means of electronic transmission after 5:00 p.m. it will be effective on the first business day after it is sent; or
- d) by mail addressed to the party to whom the said notice is to be given at the address of the party set out immediately after the signature lines at the beginning of this Agreement. Notice by mail is effective on the third (3rd) business day after it is posted. If postal services are interrupted due to strike, lockout or similar event, then during that interruption notices may not be delivered by mail.

The Buyer hereby appoints the Buyer's Lawyer as agent for purposes of giving and receiving notices pursuant to this Agreement. Notices to the Buyer may be given to either the Buyer or the Buyer's Lawyer.

Regardless of the above provision, any notice to be provided pursuant to the Tarion Statement of Critical Dates and Addendum to Agreement of Purchase and Sale attached as Schedule I to this Agreement.

25. ASSIGNMENT OF AGREEMENT: Notwithstanding anything herein to the contrary the Buyer shall not assign or otherwise transfer any right, title, or interest the Buyer may have in or to this Agreement and/or the Property prior to the Closing Date without the prior written consent of the Seller, which consent may be arbitrarily withheld. The Buyer agrees that in consideration for the Seller granting consent to any assignment, such consent shall be subject to such conditions as the Seller, in its discretion, may determine, including, without limitation, that such assignment shall not be advertised and that the Buyer and Assignee shall execute and deliver to the Seller the Seller's form of assignment terms and the Buyer providing to the Seller, at the time of the Buyer's request, a copy of the assignment agreement and a certified cheque or bank draft in the amount of five thousand dollars (\$5,000.00) plus HST to cover the Seller's administrative and other costs and inconvenience.

At any time prior to the Closing Date, the Seller shall be permitted to assign this Agreement (and its rights, benefits, and interests under this agreement) to any person, firm, partnership, or corporation registered as a vendor pursuant to the Ontario New Home Warranties Plan Act and upon any such assignee assuming all obligations under this Agreement and notifying the Buyer or the Buyer's lawyer of such assignment, the Seller named in this Agreement shall be automatically released from all obligations and liabilities to the Buyer arising from this Agreement, and the assignee shall be deemed for all purposes to be the seller as if it had been an original party to this Agreement, in the place and stead of the Seller.

26. INSOLVENCY OF BUYER: In the event of the insolvency or bankruptcy of any Buyer, the Seller may terminate this Agreement by notice to the Buyer or the Buyer's Lawyer and, upon such notice being given, the Deposits and all other monies paid by the Buyer to the Seller are forfeited to the Seller and this Agreement is at an end and of no further force and effect.

27. NO BUYER'S LIENS: This Agreement is a personal agreement between the parties and creates no interest in the Condominium, the Unit, Property, or Extras and as a result does not give rise to a "Buyer's lien" in favour of the Buyer.

28. NO REGISTRATION OF THIS AGREEMENT: The Buyer agrees not to register or deposit this Agreement (or notice of this Agreement), a caution or any other instrument or document of any kind whatsoever against title to the Unit or Property prior to completion on the Closing Date as this would obstruct mortgage advances and cause substantial damage to the Seller and other buyers by delaying registration of the Creating Documents. If the Buyer breaches this provision, he/she is in default pursuant to this Agreement and will immediately sign and provide whatever documentation is required to remove the instrument or deposit from title to the Unit and/or Property.

29. WAIVER: No provision of this Agreement may be waived by the Seller or the Buyer except in writing. The waiver of any of the provisions of this Agreement shall not affect the right of either party to enforce all other provisions not so waived.

30. **SEVERABILITY:** If any clause or section of this Agreement shall be determined by a court of competent jurisdiction to be illegal or unenforceable, then such clause or section shall be considered separate and severable from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect, and shall be binding upon the parties to this Agreement, his/her successors and permitted assigns as though the illegal or unenforceable clause or section had never been included.

31. **MEANINGS OF WORDS AND PHRASES:** The meanings of the capitalized words and phrases used in this Agreement shall have the meanings ascribed to them in the Act, unless this Agreement or the context otherwise requires a different meaning.

32. **JOINT AND SEVERAL LIABILITIES:** If there is more than one Buyer then the obligations of the Buyer to the Seller shall be joint and several.

33. **GENDER AND NUMBER:** The use of the masculine gender in this Agreement shall be deemed to include the feminine and neuter genders and the use of the plural shall be deemed to include the singular wherever the context so requires and vice versa.

34. **MERGER:** The parties agree the covenants implied by section 78 of the Act shall merge on the delivery of a Transfer/Deed to the Buyer and shall not survive the Closing Date. Therefore the covenants do not merge by operation of law but by contract on account of this paragraph of this Agreement. All other provisions of this Agreement shall not merge upon the Closing Date.

35. **TIME OF THE ESSENCE:** Time shall in all respects be of the essence provided that the time for doing or completing of any matter provided for in this Agreement may be extended or shortened by an agreement in writing signed by the Seller and Buyer or by his/her respective lawyer who are specifically authorized in that regard.

36. **HEADINGS:** The headings used in this Agreement are not part of the Agreement and are inserted for reference only.

37. **SUCCESSORS:** This Agreement shall be binding upon the parties to this Agreement and their respective heirs, executors, administrators, successors and permitted assigns.

38. **ELECTRONIC TRANSMISSION:** This Agreement may be signed by electronic signature and/or transmitted in electronic form and the parties to this Agreement consent to such electronic transmission. Any Agreement signed and/or transmitted in electronic form shall be binding on the parties as though it were an original signed signature.

39. **BUYER'S CONSENT TO THE COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION:** For the purposes of facilitating compliance with the provisions of any applicable Federal and/or Provincial privacy legislation (including the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 and its regulations, as may be amended from time to time), the Buyer hereby consents to the Seller's collection and use of the Buyer's personal information necessary and sufficient to enable the Seller to proceed with the Buyer's purchase of the Unit, including the Buyer's names, home address, e-mail address, telefax/telephone number, age, date of birth, and in respect of marital status only for the limited purposes described in paragraphs (a), (e), (f) and (g) below, and in respect of residency status and social insurance number only for the limited purpose described in subparagraph (f) below, as well as the Purchase Price and desired suite design(s) and colour/finish selections, in connection with closing and for post-closing and after-sales customer care purposes, and to the disclosure and/or distribution of the Buyer's names, home address, e-mail address, telefax/telephone number and copies of documents related to this transaction containing the Buyer's names, home address, e-mail address, telefax/telephone number and the financial details of this transaction, including particulars of the Purchase Price, Deposits, financing, and related financial details to the following entities, on the express understanding and agreement that the Seller shall not sell or otherwise provide or distribute such personal information to anyone other than the following entities, namely to:

- a. any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Buyer and/or the Seller, including the Seller's construction lender(s) and/or insurer, required in connection with the development and/or construction financing of the Property and/or the financing of the Buyer's acquisition of the Unit from the Seller and/or Taron and/or any warranty bond provider and/or excess condominium deposit insurer;
- b. any insurance companies providing (or wishing to provide) insurance coverage to the Buyer, the Seller and/or the Condominium Corporation that will be created upon the registration of the Creating Documents with respect to the Property (or any portion of the Property) and/or the common elements of the Condominium, including without limitation, any title insurance companies providing or wishing to provide title insurance to the Buyer or the Buyer's mortgage lender(s) in connection with

closing;

- c. any trades/suppliers or sub-trades/suppliers who have been retained by or on behalf of the Seller who are otherwise dealing with the Seller) to facilitate the completion and finishing of the Unit and the installation of any Extras ordered or requested by the Buyer;
- d. one or more providers of cable television, telephone, telecommunication, security alarm systems, electricity, water, water softening, gas, rental equipment (including rental hot water heating units), service hookups and/or other similar or related services to the Property (or any portion of the Property), the Unit and/or the Condominium;
- e. for the limited purposes of this subparagraph (e), the Buyer specifically consents to the disclosure of the Buyer's date of birth and age in addition to the disclosure of the Buyer's names, marital status, home address, e-mail address, telefax/telephone number to any relevant governmental authorities or agencies, including without limitation, the Ministry of Government Services (i.e. the Land Titles Office in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and Canada Customs & Revenue Agency (i.e. with respect to HST);
- f. for the limited purposes of this subparagraph (f), the Buyer specifically consents to the disclosure of the Buyer's date of birth, age, residency status and social insurance number in addition to the disclosure of the Buyer's names, home address, e-mail address, telefax/telephone number to Canada Customs & Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Buyer's social insurance number or business registration number (as the case may be), as required by subclause 201(1)(b)(ii) of the Income Tax Regulations, C.R.C., c. 945 made pursuant to the *Income Tax Act*;
- g. the Seller's and Buyer's Lawyer and his/her agents to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the TERS, which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- h. the Condominium corporation, for purposes of facilitating the completion of the corporation's voting, leasing and/or other relevant records, and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other Condominium management/administration functions; and/or
- i. any person, where the Buyer further consents to such disclosure or where such disclosure is required by law.

SCHEDULE D - HST

Regardless of any other provision of this Agreement, even those provisions which may contradict this Schedule, the Buyer and the Seller agree as follows:

1. DEFINITIONS

In this Schedule, the following words have the following meanings:

- a. **"Buyer's Portion of HST"** means an amount of HST equal to the total of the Federal Rebate and the Provincial Rebate which would be payable for the Unit if the Buyer were eligible for the Federal Rebate and the Provincial Rebate;
- b. **"CRA"** means the Canada Revenue Agency and includes any successor to the Canada Revenue Agency;
- c. **"Excise Tax Act"** means the *Excise Tax Act*, R.S.C. 1985, c.E-15 as amended from time to time;
- d. **"Federal Rebate"** means the new housing rebate on the federal component of tax payable pursuant to the *Excise Tax Act* for new houses purchased by an individual from a builder for his/her primary residence and not for rental purposes;
- e. **"HST"** means the tax imposed under Part IX of the *Excise Tax Act* and includes both the federal component of tax payable under Part IX of the *Excise Tax Act* that applies in Ontario and the Ontario component of tax payable under Part IX of the *Excise Tax Act* that is imposed, in addition to the federal component, in respect of Ontario as a participating province;
- f. **"Owner Occupant Rate"** means total amount of HST payable for the purchase of the Unit minus an amount equal to the Federal Rebate and the Provincial Rebate;
- g. **"Provincial Rebate"** means any applicable Ontario New Housing Rebate for the Ontario component of HST for new houses purchased by an individual from a builder for his/her primary residence and not for rental purposes that is in addition to the federal component of tax;

2. IF THE BUYER IS AN INDIVIDUAL AND IS PURCHASING THE UNIT AS A PRIMARY RESIDENCE:

- (i) If the Buyer (a) is an individual (and not a corporation); (b) is purchasing the Unit with the intention of being the sole beneficial owner on Closing; (c) intends that the Buyer or one of the Buyer's relations (as interpreted by CRA) will occupy the Unit as his/her primary place of residence for the period of time required by the *Excise Tax Act*; (d) has not claimed for his/her own account any part of the Federal Rebate and/or the Provincial Rebate; and (d) the Buyer is eligible for the Federal Rebate and the Provincial Rebate; then on Closing the Buyer will pay in addition to the Purchase Price the Buyer's Portion of the HST by irrevocably assigning to the Seller all of the Buyer's rights, interests and entitlement to the Federal Rebate and the Provincial Rebate. On Closing, the Buyer will receive a credit on the Statement of Adjustments in an amount equal to the Federal Rebate and the Provincial Rebate and the consideration to be inserted in the Transfer of title to the Unit given by the Seller to the Buyer on Closing will exclude the Owner Occupant Rate of HST. If the Buyer does not qualify for the Federal Rebate and/or the Provincial Rebate, or fails to sign and deliver the documents required from the Buyer under this Schedule to the Seller or the Seller's Lawyer on or before the Closing Date, then the Buyer will pay to the Seller an amount equal to Buyer's Portion of HST in addition to the Purchase Price on the Closing Date.
- (ii) The Buyer must take all steps and sign all documents, if and when required or desired by the Seller or the Seller's Lawyer, to: (i) confirm that the Buyer qualifies for the Federal Rebate and Provincial Rebate; (ii) assign or transfer the benefit of the Federal Rebate and Provincial Rebate to the Seller; and (iii) irrevocably authorize and direct CRA to pay the Federal Rebate and the Provincial Rebate directly to the Seller.
- (iii) If the transaction is closed on the basis that the Buyer is eligible for the Federal Rebate and the Provincial Rebate and the Buyer is not eligible for all or any part of the Federal Rebate and/or the Provincial Rebate then the Buyer shall reimburse the Seller for any and all losses, charges and/or liabilities which the Seller may incur or be charged with as a result of the Buyer's failure to qualify for the Federal Rebate and Provincial Rebate. In addition, the Buyer must immediately pay to the Seller an amount equal to the Federal Rebate and/or Provincial Rebate which was credited to the Buyer on Closing and which the Buyer was not entitled to receive plus interest at the rate of twelve percent (12%) per annum commencing on the Closing Date until full payment of the amount and applicable interest is made by the Buyer to the Seller. As security

for the payment of such amount, the Buyer pledges to the Seller his/her interest in the Unit and grants to the Seller a security interest in the Unit with the intention of creating a lien and charge against the Unit.

- (iv) If, prior to Closing, the Seller, acting reasonably, determines that the Buyer may not be eligible for the Federal Rebate and/or Provincial Rebate, then the Seller may require the Buyer to pay to the Seller on Closing the Buyer's Portion of HST in addition to the Purchase Price by wire transfer in lawful money of Canada. In such case, the Buyer will be entitled to apply for and, if eligible, receive the Federal Rebate and/or Provincial Rebate.

3. IF THE BUYER IS AN INDIVIDUAL AND IS PURCHASING THE UNIT FOR INVESTMENT PURPOSES:

- (i) If the Buyer is an individual purchasing the Property for investment purposes and/or for use as a rental property, then the Buyer is not eligible to receive the Federal Rebate and Provincial Rebate. If the Buyer is an individual and is not for any reason whatsoever eligible to receive the Federal Rebate and the Provincial Rebate, then on Closing, the Buyer must pay to the Seller an amount equal to the Buyer's portion of HST in addition to the Purchase Price by wire transfer in lawful money of Canada.

If the Buyer intends to lease the Unit after Closing, then the Buyer may be eligible for a New Residential Rental Property Rebate and/or other rebates of HST for the purchase of Unit. The Buyer should speak with its tax advisors to determine whether the Buyer is eligible for such rebates and to apply for any applicable rebates.

4. IF THE BUYER IS A CORPORATION AND IS NOT AN HST REGISTRANT:

If the Buyer is a corporation and is not a registrant pursuant to the Excise Tax Act or is not eligible to receive the Federal Rebate and Provincial Rebate for any reason, then on Closing the Buyer must pay to the Seller an amount equal to the Buyer's Portion of HST in addition to the Purchase Price by wire transfer in lawful money of Canada.

If the Buyer intends to lease the Unit after Closing, then the Buyer may be eligible for a New Residential Rental Property Rebate and/or other rebates of HST for the purchase of Unit. The Buyer should speak with its tax advisors to determine whether the Buyer is eligible for such rebates and to apply for any applicable rebates.

5. IF THE BUYER IS A CORPORATION AND IS AN HST REGISTRANT:

If the Buyer is a corporation and a registrant pursuant to the *Excise Tax Act*, then the Purchase Price does not include HST and on Closing the Buyer shall pay to the Seller an amount equal to the HST in addition to the Purchase Price by wire transfer in lawful money of Canada. However, the Seller will not collect the HST on Closing if the Buyer: (i) provides to the Seller a warranty that the Buyer is registered under the *Excise Tax Act* together with the Buyer's *Excise Tax Act* registration number; (ii) the Seller is able to confirm with CRA that the Buyer is registered under the *Excise Tax Act*; (iii) provides to the Seller a warranty that the Buyer shall self-assess and remit the HST and file the prescribed form; and (iv) agrees to indemnify and save the Seller harmless in respect of the HST including any penalties, interest, legal, accounting and/or other amounts which may be payable by or assessed against the Seller as a result of, or in connection with, the Seller's failure to collect and remit any HST applicable on the sale and conveyance of the Property to the Buyer by the Seller. All amounts owed to the Seller on account of this provision shall bear interest at a rate equal to the higher of the rate charged by CRA on overdue HST balances and twelve percent (12%) per annum from the Closing Date until full payment of the amount and applicable interest is made by the Buyer to the Seller. As security for the payment of such amount, the Buyer pledges to the Seller his/her interest in the Unit and grants to the Seller a security interest in the Unit with the intention of creating a lien and charge against the Unit.

6. HST IS NOT APPLICABLE

If for any reason there is no HST payable on account of this transaction, then the Purchase Price (plus the full amount agreed to be paid on account of Extras) does not include any portion of the HST and shall be paid in full by the Buyer on Closing by wire transfer in lawful money of Canada without credit to the Buyer on account of the fact there is no such tax payable.

7. SURVIVAL

The provisions of this Schedule survive the completion of this transaction.

SCHEDULE E - SPECIFICATION SHEET

Warranty: All Units are warranted by Tarion with Tarion's standard one (1) year, two (2) year, and seven (7) year warranties. Tarion's warranty coverage also includes common element areas of the condominium building. As necessary and at the discretion of the Seller, all plans and specifications are subject to reasonable modification.

Building Amenities & Features

- 2 high-speed full-size elevators/per building
- Lobby with communal sitting area in all towers with concierge in Building A
- Interactive Touchscreen Signage
- Commercial and retail in Building C & D
- Electric Car Charging Station
- Separate parcel room
- Shared co-working amenity spaces with warm meeting environments and lounge areas
- Ground floor courtyard off co-working amenity
- Dog Run and Dog Wash Station
- Fitness Room overlooking large outdoor terrace
- Party Room in all towers including a large full kitchen with island, large lounge living area with fireplace and separate dining area
- 5th floor State-of-the-Art amenities with terraces, BBQ areas, and Juice Bars that include: plush lounge seating, portable juice bar, putting green, golf swing practice area, outdoor fitness area, warm-up stretch area, shaded pergolas, green roofs, outdoor dining & grilling area, natural fire pit, portable bar & service station with wide screen TV and manicured gardens (Exterior golf swing and putting green to be completed in phase C)
- Multi Sports Court that includes: Soccer Court, Basketball Court, Tennis Court, Running Track, Table-Tennis, Children's Play Area and Yoga & Stretching Area (Exterior running track and tennis court to be completed in phase B; exterior play area to be completed in phase C)
- Underground parking that is fully covered and secured
- Professionally landscaped exterior with irrigation system
- Underground bike parking with bike repair station
- Personal storage locker (optional)
- Indoor-Outdoor large Yoga and Fitness Studio with change rooms

Suite Features and Finishes

- Wood-look luxury vinyl plank flooring throughout (excluding bathrooms and laundry)
- 9' ceilings in living areas other than where bulkheads are installed
- Custom kitchen and bathroom cabinetry
- Contemporary 5 1/2" baseboards with 2 1/4" casing (excluding laundry)
- 2 Panel Designer white painted doors with contemporary lever style hardware
- Stainless steel appliances
- White paint throughout suite (walls and ceilings)
- Black Roller Shade window coverings as per Vendor's selection
- Wire shelving in closets
- Energy efficient aluminum windows per plan and floor to ceiling glass window walls on some plans
- Smooth finish painted ceilings
- Modern light fixtures as per Vendor's selection
- Glass doors to large balconies and terraces per plan.
- Balcony and terraces, as per plan

Electrical

- White decora switches throughout
- Timers on bathroom ventilation
- Programmable 7-day thermostats (heating and air conditioning included – individual temperature control)
- Modern interior designer selected light fixtures – switched receptacle in living rooms
- Efficient forced air heating and cooling system
- Individual electrical that's separately metered (individual service panel with circuit breakers in suite)
- Electrical GFI receptacles on balconies
- Electrical outlets installed at counter level for countertop appliances

Energy Efficiency

- Timed lights in stairwells/corridors
- High-efficiency LED lighting fixtures
- Energy Star certified appliances included are fridge, washer, dryer, and dishwasher
- High-efficiency windows

Water*

- Individual water service that is separately metered for hot and cold
- Whole building water softening
- Fully sprinklered smoke alarms in all suites
- *Subject to any changes by the utility services provider

Communication

- Suites pre-wired for cable and telephone
- 1Gig High Speed Internet available and roughed in (initial modem provided) through Rogers
- Intercom system with lobby entrance

Safety & Security

- 24-hour secure entry door with in-suite keyed locks
- Controlled access to the 5th Floor Podium
- Concierge service in Tower A
- Touchscreen in Lobby
- Garage door operated by RF controller
- Well-lit parking garage and exit stairwells
- Sprinkler system and full ventilation throughout the underground parking garage, building, and all suites
- Each suite equipped with smoke, heat and carbon monoxide detectors
- Access control system with security monitoring (including cameras) throughout lobby & common areas

Suite Kitchens

- Kitchen package with 4 stainless steel appliances (integrated fridge/ freezer, integrated stove/range, integrated dishwasher and integrated microwave/range hood)
- Samsung Stainless Steel Fridge, large capacity, twin cooling plus, true no-frost technology with recessed door handle, Energy Star certified
- Samsung Stainless Steel Edge design Electric Range with self-clean with large cooking space and great flexibility
- Samsung Stainless Steel Dishwasher with Digital Leak Sensor & Adjustable Rack, Energy Star certified
- Samsung Stainless Steel Microwave with large cooking power and simple clean filter
- Wood look luxury vinyl plank flooring throughout (selection from 3 base suite package options)
- Custom cabinetry (selection from 3 base suite package options)
- Quartz countertops (selection from 3 base suite package options)
- Ceramic tile backsplash (selection from 3 base suite package options)
- Island with seating (for applicable suites) and electrical outlet
- Undermount stainless steel sink with single lever pulldown faucet
- Pot lights in kitchen area and above island

Suite Bathrooms

- Porcelain tile flooring (selection from 3 base suite package options)
- Custom cabinetry upgraded options available (selection from 3 base suite package options)
- Quartz countertops (selection from 3 base suite package options)
- Ceramic/ porcelain tile shower surround (selection from 3 base suite package options)
- Undermount sink with single-handle chrome lavatory faucet
- White toilet
- Chrome accessories (toilet paper holder, towel bars, robe hook) as per Vendor's selection
- Three-light wall-mounted vanity fixture & framed mirror
- Exhaust fan vented to exterior
- Ensuite shower with framed glass enclosure (for applicable suites) and single-handle tub/shower faucet
- Privacy locks on bathroom doors
- White acrylic bathtub with shower (for applicable suites)

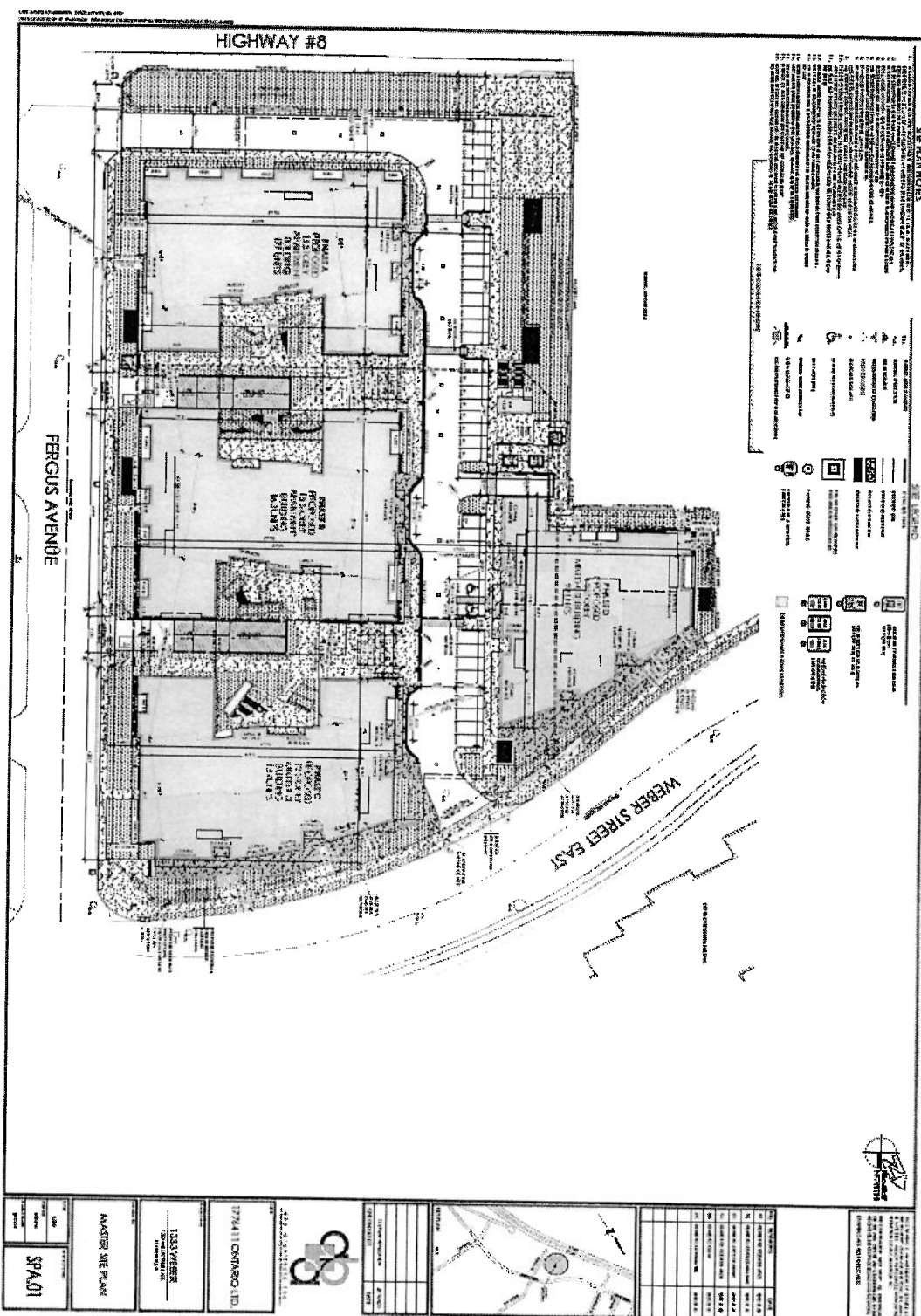
Suite Bedrooms

- Wood look luxury vinyl plank flooring (selection from 3 base suite package options)
- LED flush-mount ceiling fixture
- Closet with wire shelving

Laundry Closet

- Samsung Front-Load Washer with 4.8 cu ft capacity, smart care, self-clean+, Energy Star certified
- Samsung Front-Load Electric Dryer with 7.5 cu ft capacity, smart care, Energy Star certified
- Faucet and separate drain for the washer
- Heavy-duty wiring and vent for dryer
- Vinyl flooring

SCHEDULE F - SITE PLAN



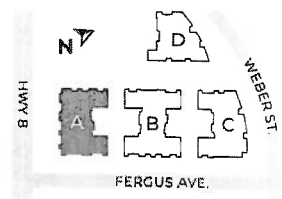
SCHEDULE G - FLOOR PLAN

SUITE P-1C

1 BEDROOM
803 SQ.FT.

INTERIOR: 680 SQ.FT.
EXTERIOR: 123 SQ.FT.

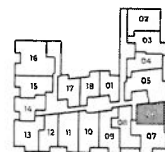
TOWER LAYOUT



AVAILABLE ON FLOORS 1-4



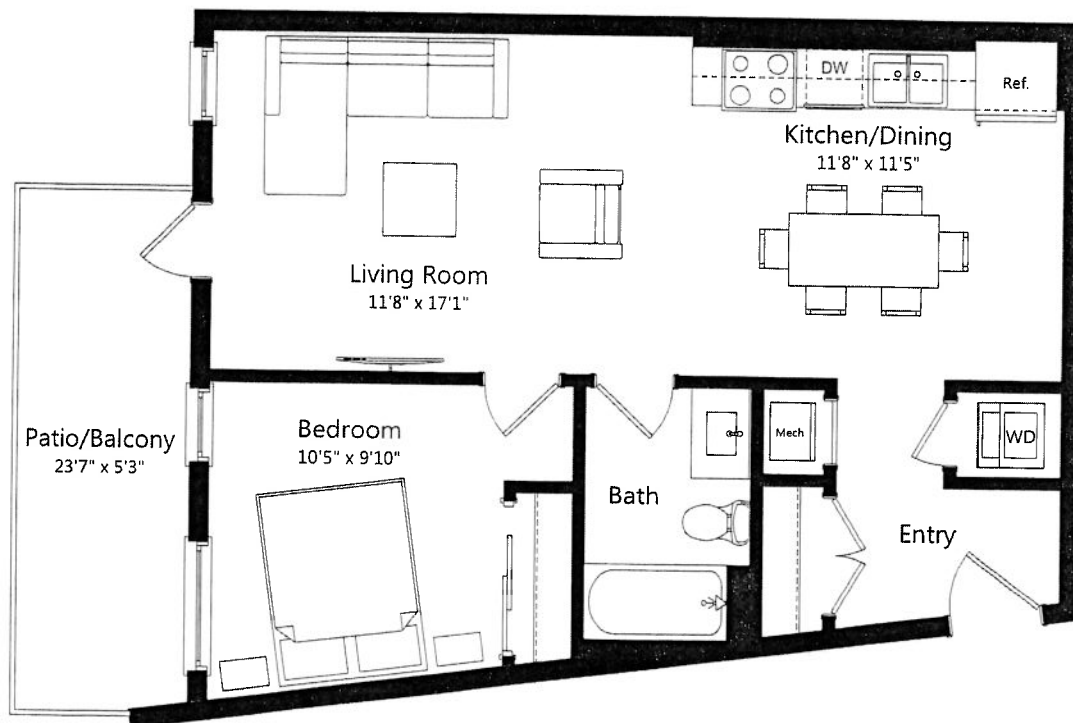
FLOOR 1



FLOOR 2



FLOORS 3-4



ELEVATE

CONDOS AT 1333 WEBER ST

Actual useable space may vary from stated floor plan area.
All elevations, floor plans, site plan and landscaping are artists concepts.
All dimensions are approximate. Layout may be reverse of the unit purchased.
Window locations and window types vary between floors. E&OE.

ElevateCondoLiving.com

SCHEDULE H - TERMS OF INTERIM OCCUPANCY

1. This Agreement requires the Buyer to assume occupancy of the Unit during the Occupancy Period in accordance with the Act, the Ontario New Home Warranties Plan Act and this Agreement.
2. Provided that the Unit is completed on the Occupancy Date, the Buyer will occupy the Unit on the Occupancy Date if the Creating Documents have not been registered on that date and may, at the Buyer's sole option, move into the Unit provided the terms of this Agreement have been observed and performed by the Buyer. The monthly Occupancy Fee is payable on and from the Occupancy Date to the Closing Date regardless of whether or not the Buyer actually takes physical possession of the Unit.
3. During the Occupancy Period, the Buyer will pay the monthly Occupancy Fee in advance on the first day of each month commencing on the Occupancy Date. If the Occupancy Date occurs on a day other than the first day of a month, the monthly Occupancy Fee for such month will be pro-rated on a per diem basis and will be paid, in advance, on the Occupancy Date. The monthly Occupancy Fee will not be credited against the Purchase Price for the Unit. The Buyer shall deliver to the Seller on or before the Occupancy Date a series of post-dated cheques as required by the Seller for the payment of the estimated monthly Occupancy Fee. The monthly Occupancy Fee may be recalculated by the Seller from time to time based on revised estimates of the items which may be lawfully taken into account in the calculation and the Buyer shall pay to the Seller such revised monthly Occupancy Fee following notice from the Seller. All unused post-dated cheques will be returned to the Buyer on the Closing Date or within a reasonable time thereafter.
4. In addition to the monthly Occupancy Fee, the Buyer will, from occupancy, be responsible to pay for electricity, water and gas (provided same are submetered to the Unit) used in the Unit and to pay all telephone expenses, other utility charges, cable television charges, if any, and other charges and expenses capable of being billed directly to the Buyer by the supplier of such service or measured by flow meter, unless same are included as a common expense.
5. If any cheque delivered by the Buyer should not clear the financial institution upon which it is drawn he/she will pay an additional charge of one hundred fifty dollars (\$150.00) plus HST for each cheque that does not so clear which one hundred fifty dollars (\$150.00) plus HST is due immediately upon request by the Seller. Payment of this charge does not in itself relieve the Buyer from liability for default and acceptance of same by the Seller is not a waiver of default.
6. At or prior to the time the Buyer takes possession of the Unit, the Buyer shall sign and deliver to the Seller any documents, directions, acknowledgements, assumption agreements and any and all other documents required by the Seller pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at such time.
7. Prior to registration of the Condominium, the Seller (and after registration, the condominium corporation) maintains replacement cost insurance on the common elements and the standard units (exclusive of improvements) on its behalf and on behalf of the owners against major perils. The standard unit is defined in the draft by-law and it includes only that part of the Unit that is required to be completed in order to permit the Seller to effect registration of the condominium. All finishing items over and above subflooring and drywall are considered improvements to the Units and must be insured by the Buyer pursuant to his or her own insurance policy. Each Buyer should approach an insurance agent knowledgeable in condominium insurance to be properly advised as to what insurance is required. Each Buyer should provide a copy of the proposed standard unit definition from the proposed by-law to his/her insurance agent at the time of obtaining such insurance.
8. The Buyer must obtain his, her or its own additional insurance. The Buyer must insure everything in the Buyer's Unit over and above the standard unit. It is the responsibility of the Buyer after the Occupancy Date to insure the improvements or betterments to the Unit and/or repair same if they are removed, injured or destroyed. Neither the Seller's nor the Corporation's insurance protect the Buyer from many types of loss including public liability (including damages that occur in the outside areas appurtenant to a Unit), loss or damage to personal items and chattels or improvements of the Units. The Seller is not liable for the Buyer's loss occasioned by fire, theft or other casualty, unless caused by the Seller's wilful conduct.
9. Even though the Buyer has taken possession, all of the terms of this Agreement continue to be binding upon them and that the Seller may enforce the provisions of this Schedule separate and apart from the purchase and sale provisions of this Agreement.
10. The Buyer will maintain the Unit in a clean, first class state of repair and condition and will not make any alterations, improvements or additions to the Unit without obtaining the prior written approval of the Seller

which approval may be unreasonably withheld. In any event, such alterations or additions will not be permitted unless the Buyer has submitted to the Seller, prior to any such additions or alterations being made, such detailed architectural plans, blueprints, and any other plans, documents or permits that the Seller deems necessary or appropriate. If any such alteration or addition causes the Seller to have to make amendments to its as built plans required for registration of the Creating Documents then the costs of such changes will be borne by the Buyer.

11. The Buyer will be responsible for all damages to the Unit and/or the Property caused by him/her or his/her agents, servants, workmen, invitees or licensees. The Buyer will reimburse the Seller for the cost of repairs in respect of any such damage, and indemnify and save the Seller harmless from and against all costs, losses, damages, expenses and liabilities suffered or incurred by the Seller as a result of or arising out of his/her use or occupancy of the Unit or having to restore same so that the Unit is put back into a first class condition ready for occupancy.
12. In the case of a Residential Unit, the Buyer will only use the Residential Unit as a single family dwelling and no other person apart from a spouse, children or child of the Buyer(s) will be permitted occupancy or use of the Unit prior to completion on the Closing Date without the prior written consent of the Seller, which consent may be unreasonably or arbitrarily withheld. This paragraph is not meant to preclude two people living in a family relationship from residing in the Unit.
13. The Buyer will comply with the Act, any registered agreements, the proposed and/or registered Creating Documents, any proposed agreement(s) or other document(s) that the proposed condominium corporation will be subject to following registration of those of the Creating Documents to be registered, and will require all other occupants of the Unit to comply with same.
14. If the Buyer breaches the terms of this Agreement, the Seller, at its option, in its sole discretion and without limitation of any other rights or remedies provided in this Agreement or at law, may terminate this Agreement and revoke the occupancy of the Buyer for the Unit and immediately upon such occurrence the Buyer shall be deemed a trespasser and shall immediately give up vacant possession of the Unit. The Buyer agrees that the Seller may take whatever steps it deems necessary to obtain vacant possession of the Unit and the Buyer shall reimburse the Seller for all costs it may incur as a result of doing so, including paying to the Seller the total cost, as estimated by the Seller, of repairing any damage to the Unit and/or the Property caused by him/her and the cost of removing any installations or decorations made by him/her or on his/her behalf so that the Unit is put back into a first class condition ready for occupancy.
15. The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of this Schedule, shall be deemed to form an integral part of this Schedule. In the event this Agreement is terminated for any reason whatsoever, the Buyer's occupancy under the provisions of this Schedule shall terminate upon notice from the Seller to the Buyer.

SCHEDULE I - TARION STATEMENT OF CRITICAL DATES AND ADDENDUM

Condominium Form (Tentative Occupancy Date)

Property 1333 Weber Street
Elevator Co-Op Unit 1333 Weber Street

Statement of Critical Dates Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**
NOTE TO HOME BUYERS: Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

VENDOR 1776411 Ontario Ltd., in its capacity as the general partner of 1333 Weber Street Kitchener LP
Full Name(s) _____

PURCHASER _____
Full Name(s) _____

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is:

the 31st day of August, 2022.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date**.

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date.

the ____ day of _____, 20____.
Final Tentative Occupancy Date

or

the ____ day of _____, 20____.
Firm Occupancy Date

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a **Delayed Occupancy Date** which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is:

the 31st day of July, 2025.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date.

Notice of a delay beyond the First Tentative Occupancy Date must be given no later than:

(i.e., at least 90 days before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

the 2nd day of June, 2022.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on:

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 7, 10 and 11 of the Addendum).

the 2nd day of September, 2025.

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Acknowledged this Jun-06-2020 3:25 PM EDT
____ day of _____, 20____.

VENDOR: Werner Linderer

PURCHASER: _____

Condominium Form
(Tentative Occupancy Date)

Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "ONHWP Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion's **MyHome** on-line portal and visit Tarion's website – tarion.com, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

VENDOR 1776411 Ontario Ltd., in its capacity as the general partner of 1333 Weber Street Kitchener LP

Full Name(s)	47614 8-258 Edgewater Crescent		
Tarion Registration Number	Address	City	Postal Code
519-591-0389	Kitchener	ON	N2A 4M2
Phone	City	Province	Postal Code
519-746-0725			
Fax	leuschner.werner@gmail.com		
	Email*		

PURCHASER

Full Name(s)			
Address	City	Province	Postal Code
Phone			
Fax	Email*		

PROPERTY DESCRIPTION

1333 Weber Street East		
Municipal Address		
Kitchener	ON	N2A 1C2
City	Province	Postal Code
Part of PIN 71410-0535 (LT)		
Short Legal Description		

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

- (a) The Vendor has obtained Formal Zoning Approval for the Building. ☒ Yes ☐ No
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.
- (b) Commencement of Construction: ☐ has occurred; or ☒ is expected to occur by the 30th day of June, 2020.

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

*Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and, to register without delay the declaration and description in respect of the Building.
- (b) **First Tentative Occupancy Date:** The Vendor shall identify the First Tentative Occupancy Date in the Statement of Critical Dates attached to this Addendum at the time the Purchase Agreement is signed.
- (c) **Subsequent Tentative Occupancy Dates:** The Vendor may, in accordance with this section, extend the First Tentative Occupancy Date on one or more occasions, by setting a subsequent Tentative Occupancy Date. The Vendor shall give written notice of any subsequent Tentative Occupancy Date to the Purchaser at least 90 days before the existing Tentative Occupancy Date (which in this Addendum may include the First Tentative Occupancy Date), or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. A subsequent Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (d) **Final Tentative Occupancy Date:** By no later than 30 days after the Roof Assembly Date, the Vendor shall by written notice to the Purchaser set either (i) a Final Tentative Occupancy Date; or (ii) a Firm Occupancy Date. If the Vendor does not do so, the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Vendor shall give written notice of the Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, to the Purchaser at least 90 days before the existing Tentative Occupancy Date, or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, can be any Business Day on or before the Outside Occupancy Date. For new Purchase Agreements signed after the Roof Assembly Date, the Vendor shall insert in the Statement of Critical Dates of the Purchase Agreement either: a Final Tentative Occupancy Date; or a Firm Occupancy Date
- (e) **Firm Occupancy Date:** If the Vendor has set a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date. The Vendor shall give written notice of the Firm Occupancy Date to the Purchaser at least 90 days before the Final Tentative Occupancy Date, or else the Final Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Firm Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (f) **Notice:** Any notice given by the Vendor under paragraph (c), (d) or (e) must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Occupancy Date – Three Ways

- (a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 1, can be changed only:
 - (i) by the Vendor setting a Delayed Occupancy Date in accordance with section 3;
 - (ii) by the mutual written agreement of the Vendor and Purchaser in accordance with section 4; or
 - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 5.
- (b) If a new Firm Occupancy Date is set in accordance with section 4 or 5, then the new date is the "Firm Occupancy Date" for all purposes in this Addendum.

3. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 7.
- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event at least 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 7(c). If notice of a new Delayed Occupancy Date is not given by the Vendor before the Firm Occupancy Date, then the new Delayed Occupancy Date shall be deemed to be the date which is 90 days after the Firm Occupancy Date.
- (d) After the Delayed Occupancy Date is set, if the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 5 or is mutually agreed upon under section 4, in which case the requirements of those sections must be met. Paragraphs (b) and (c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 10.

4. Changing Critical Dates – By Mutual Agreement

- (a) This Addendum sets out a framework for setting, extending and/or accelerating Critical Dates, which cannot be altered contractually except as set out in this section 4. Any amendment not in accordance with this section is voidable at the option of the Purchaser. For greater certainty, this Addendum does not restrict any extensions of the Closing date (i.e., title transfer date) where Occupancy of the home has already been given to the Purchaser.

Condominium Form
(Tentative Occupancy Date)

- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:
- (i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
 - (ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
 - (iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
 - (iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
 - i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
 - ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
 - iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.

Condominium Form
(Tentative Occupancy Date)

- (c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. ☒ Yes ☐ No
- (d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

Condition #1 (if applicable)

Description of the Early Termination Condition:

This Agreement is conditional upon the Vendor entering into binding Agreements of Purchase and Sale for the sale of 75% of the Residential Units within the Condominium.

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #1 is to be satisfied is the 31st day of December, 20 20.

Condition #2 (if applicable)

Description of the Early Termination Condition:

See Schedule J to the Agreement of Purchase and Sale.

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #2 is to be satisfied is the _____ day of _____, 20 _____.

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

- (e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.
- (f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.
- (g) For conditions under paragraph 1(a) of Schedule A the following applies:
- (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
 - (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (h) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
 - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the Purchaser of a set amount of \$150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
 - (i) includes the Vendor's assessment of the delayed occupancy compensation payable;
 - (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
 - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.
- (g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

- (a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
 - (i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
 - (ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.

- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
- (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
 - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
 - (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.
- (c) Notwithstanding paragraphs (a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

"Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

"Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is

Condominium Form
(Tentative Occupancy Date)

not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

"Closing" means completion of the sale of the home, including transfer of title to the home to the Purchaser.

"Commencement of Construction" means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.

"Critical Dates" means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser's Termination Period.

"Delayed Occupancy Date" means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.

"Early Termination Conditions" means the types of conditions listed in Schedule A.

"Final Tentative Occupancy Date" means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).

"Firm Occupancy Date" means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.

"First Tentative Occupancy Date" means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.

"Formal Zoning Approval" occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.

"Occupancy" means the right to use or occupy the home in accordance with the Purchase Agreement.

"Occupancy Date" means the date the Purchaser is given Occupancy.

"Outside Occupancy Date" means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.

"Property" or "home" means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.

"Purchaser's Termination Period" means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).

"Roof Assembly Date" means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.

"Statement of Critical Dates" means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.

"The ONHWP Act" means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

"Unavoidable Delay" means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

"Unavoidable Delay Period" means the number of days between the Purchaser's receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.
- (i) Words in the singular include the plural and words in the plural include the singular.
- (j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.
- (b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com



SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

- (a) upon receipt of Approval from an Approving Authority for:
- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
 - (ii) a consent to creation of a lot(s) or part-lot(s);
 - (iii) a certificate of water potability or other measure relating to domestic water supply to the home;
 - (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
 - (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
 - (vi) allocation of domestic water or storm or sanitary sewage capacity;
 - (vii) easements or similar rights serving the property or surrounding area;
 - (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
 - (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

(b) upon:

- (i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
- (ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;
- (iii) receipt of Approval from an Approving Authority for a basement walkout; and/or
- (iv) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

2. The following definitions apply in this Schedule:

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.

"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

- (a) be set out separately;
- (b) be reasonably specific as to the type of Approval which is needed for the transaction; and
- (c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:

- (a) receipt of a building permit;
- (b) receipt of an occupancy permit; and/or
- (c) completion of the home.

SCHEDULE B

Adjustments to Purchase Price or Balance Due on Closing

PART I Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. Administration Charges: if the Buyer requests, and the Seller accepts, any changes to Extras after the Colour and Option Selection Date - \$300 plus HST, subject to change (Section 3 of Schedule B to the Purchase Agreement).
2. Administration Charges for NSF Cheques: \$150 plus HST for each dishonoured cheque (Subsection 5(e) of Schedule C to the Purchase Agreement).
3. Closing Date Extensions: if the Buyer requests an extension of the Closing Date and the Seller agrees to such extension, \$300 plus HST, together with interest on the Purchase Price at a rate equal to 6% per annum, for each week or part week that the Closing Date is so extended (Subsection 5(m) of Schedule C to the Purchase Agreement).
4. Parkland: The Buyer agrees to pay to the Seller \$2,500 plus any applicable HST on the Closing Date towards the Seller's costs associated with Parkland works required in connection with the Seller's development (Subsection 5(n) of Schedule C to the Purchase Agreement).
5. Administration Charge of \$50 plus HST for each cheque tendered pursuant to paragraph 1(a) of the Purchase Agreement (Subsection 5(o) of Schedule C to the Purchase Agreement).
6. Administration Charge of \$5,000 plus HST if the Buyer wishes to assign or otherwise transfer its interest in this Agreement and/or the Property prior to the Closing Date and the Seller has provided its consent to such assignment or Transfer (Section 25 of Schedule C to the Purchase Agreement).
7. Charge of \$150 plus HST for each cheque provided by the Buyer for Occupancy Fees and which does not clear (Section 5 of Schedule H to the Purchase Agreement).

PART II All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. Deposits (Subsection 5(a) of Schedule C to the Purchase Agreement).
2. Occupancy Fees (Subsection 5(b) of Schedule C to the Purchase Agreement).
3. Common Expenses (Subsection 5(c) of Schedule C to the Purchase Agreement).
4. Realty Taxes (Subsection 5(d) of Schedule C to the Purchase Agreement).
5. Tax on Chattels (Subsection 5(f) of Schedule C to the Purchase Agreement).
6. Tarion Enrollment (Subsection 5(g) of Schedule C to the Purchase Agreement).
7. HST (Subsection 5(h) of Schedule C to the Purchase Agreement and Schedule D to the Purchase Agreement).
8. Tax (Subsection 5(i) of Schedule C to the Purchase Agreement).
9. Interest (Subsection 5(j) of Schedule C to the Purchase Agreement).
10. Reserve Fund Contribution (Subsection 5(k) of Schedule C to the Purchase Agreement).
11. Development Charges (Subsection 5(l) of Schedule C to the Purchase Agreement).
12. Extras (Subsection 1(b) of the Purchase Agreement).
13. Changes to 'As Built' Plans due to Alteration, Improvement and/or Addition (Section 10 of Schedule H to the Purchase Agreement).
14. Repair Costs for Damage During Occupancy Period (Section 11 of Schedule H to the Purchase Agreement).

SCHEDULE J – CONDITIONS

1. The Buyer covenants and agrees to provide the Seller and/or the Seller's lender(s) evidence to confirm that the Buyer has available funds and/or a mortgage commitment sufficient to enable the Buyer to complete the transaction contemplated by this Agreement of Purchase and Sale. Such evidence shall take the form of either:
 - i. a letter addressed to the Seller from a deposit taking institution acceptable to the Seller, acting reasonably, confirming that the Buyer has sufficient clear funds on deposit to complete the transaction, together with an accompanying account statement; or
 - ii. a mortgage commitment letter from a lending institution (not a mortgage agent or broker) acceptable to the Seller, acting reasonably.

(the "**Evidence**") and shall be provided to the Seller within sixty (60) days after signing this Agreement.

The Seller has the right to require the delivery of the Evidence from the Buyer on further occasions throughout the term of this Agreement and the Buyer covenants and agrees to provide the Evidence as required herein within sixty (60) days after each such written request being made of the Buyer by the Seller. Breach of this covenant by the Buyer is a fundamental breach of contract and is therefore grounds for the Seller to terminate this Agreement and any Deposits shall be retained by the Seller as liquidated damages and not as penalty, and the Seller may also claim for damages in excess of the deposit.

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**SUPPLEMENTARY MOTION RECORD OF KSV
RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
(Returnable October 8, 2024)**

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in its capacity as Court-appointed Receiver