

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF URBANCORP (WOODBINE) INC. AND
URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S
HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC.
AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE
"APPLICANTS")

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED
PARTNERSHIP

**MOTION RECORD
OF THE MONITOR**

(Motion Returnable June 26, 2018 – Tarion Delay Warranty Claim
Dispute)

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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ARRANGEMENT OF URBANCORP (WOODBINE) INC. AND
URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF
HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS
AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC.
(COLLECTIVELY, THE "APPLICANTS")

AND IN THE MATTER OF TCC/URBANCORP (BAY)
LIMITED PARTNERSHIP

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE "APPLICANTS")

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

NOTICE OF MOTION

(Returnable June 26, 2018 – Tarion Delay Warranty Claim)

KSV Kofman Inc. ("**KSV**"), in its capacity as the court-appointed monitor (the "**Monitor**") of the Applicants and TCC/Urbancorp (Bay) Limited Partnership (collectively, the "**CCAA Entities**", and each individually a "**CCAA Entity**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to Mr. Justice Myers sitting as a judge presiding on the Commercial List, on June 26, 2018 at 10:00 a.m., or as soon thereafter as the motion can be heard, at the Courthouse located at 330 University Avenue, Toronto, Ontario, Canada.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

1. if necessary, validating and abridging the time of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;
2. declaring that the delay warranty claim filed by Tarion Warranty Corporation ("**Tarion**") pursuant to the Claims Procedure Order made in these proceedings on October 18, 2016 (the "**Claims Procedure Order**") be disallowed in full; and
3. such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. In response to the Claims Procedure Order, Tarion filed 7 claims totaling approximately \$174 million against the CCAA Entities;
2. On December 9, 2016, the Monitor issued Notices of Revision or Disallowance (the "**Disallowances**") to Tarion disallowing all of its claims. On December 16, 2016, Tarion filed an omnibus notice of dispute in respect of the Disallowances;
3. On April 30, 2018, the Court approved Minutes of Settlement between the Monitor and Tarion (the "**Minutes of Settlement**");

4. Pursuant to the terms of the Minutes of Settlement, the Monitor has resolved all of Tarion's claims other than approximately \$605,000 related to delayed closing compensation (the "**DCC Claim**") and the DCC Claim is to be adjudicated by this Court;

5. Urbancorp (Woodbine) Inc. and Urbancorp (Bridlepath) Inc. (collectively, the "**Property Companies**" and each a "**Property Company**") each held an interest in real property as bare trustees (collectively, the "**Properties**");

6. The Property Companies intended to develop residential homes. In connection with the developments, the Property Companies pre-sold 62 freehold homes and collected deposits from home buyers (the "**Deposits**");

7. The Deposits were spent prior to the commencement of these insolvency proceedings;

8. The Monitor carried out a sale process for the Properties;

9. The approval and vesting orders in respect of each of the sale transactions provided each purchaser with title free and clear of all obligations, including the agreements of purchase and sale entered into between the Property Companies and home buyers (the "**Home Buyer Agreements**");

10. Accordingly, each home buyer had a claim arising from the failure of the Property Companies to perform the Home Buyer Agreements;

11. Pursuant to the terms of the Claims Procedure Orders, home buyers were not required to file proofs of claim. Instead, the Monitor prepared each home buyer's claim and sent it to each home buyer. Home buyers were entitled to accept the claims as determined by the Monitor or to dispute the amount of the claim by filing an objection notice (the "**Home Buyer Objection Notice**");

12. In order to determine the home buyers' claims, the Monitor reviewed the Home Buyer Agreements. Given the terms of the Home Buyer Agreements, the Monitor determined that home buyers only had a claim for the return of their Deposits.

13. Pursuant to the claims process, a number of home buyers filed a Home Buyer Objection Notice claiming damages in addition to their allowed deposit amount;

14. None of these objections claimed any delayed closing compensation;

15. The Monitor referred the damage claims asserted by the home buyers to Court for determination. Pursuant to an endorsement issued by the Honourable Mr. Justice Newbould on April 18, 2017 (the "**April 18 Endorsement**"), the damage claims were disallowed in full;

16. Pursuant to Court orders issued on June 27 and November 30, 2017, the Monitor has repaid all the Deposits to home buyers;

17. As determined by Mr. Justice Newbould in the April 18 Endorsement, the Home Buyer Agreements could no longer be performed as a result of the sale process and vesting orders obtained in these proceedings because no purchaser had assumed

any of the Home Buyer Agreements and the vesting orders provided each purchaser with title free and clear of all obligations, including the Home Buyer Agreements;

18. Accordingly, the April 18 Endorsement confirmed that the Home Buyer Agreements were effectively at an end and terminated;

19. The Home Buyer Agreements were in fact treated by the Monitor as having been terminated by admitting the Deposit claims in the claims process. Likewise, they were treated by the Home Buyers as having been terminated by accepting the return of their Deposits and filing damage claims, primarily for loss of bargain. Pursuant to the Home Buyer Agreements, the Deposit is only refundable upon a termination of the Home Buyer Agreement;

20. Delayed closing compensation is intended to compensate purchasers for costs incurred as a result of a delay in closing the purchase of their homes;

21. A home buyer has up to one year from when the purchase agreement is terminated to make a delayed closing compensation claim. To the Monitor's knowledge, no such claims have been made by any home buyer against Tarion since the April 18 Endorsement. Moreover, no DCC Claims were submitted during the claims process;

22. All of the Properties were sold prior to any of the Outside Closing Dates. Accordingly, it is impossible that a home buyer could have incurred any costs for living, accommodation, storage, moving and other costs as a result of the delay in closing (the "**Delay Costs**");

23. To conclude that the Home Buyer Agreements have not been terminated such that the home buyers may in the future provide termination notices once their Outside Closing Date expires so as to be eligible to claim compensation for Delay Costs would be artificial in this case and unreasonable as it would provide compensation to home buyers for expenses they did not and cannot incur. It is also inconsistent with having repaid the home buyers their Deposits and them having claimed damages for loss of bargain;

24. Section 11 of the CCAA and this Court's equitable and statutory jurisdiction thereunder;

25. Rules 1.04, 2.03, 3.02, 16.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

26. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. the Fifteenth Report of the Monitor dated May 30, 2018; and
2. such further material as counsel may advise and this Court may permit.

May 30, 2018

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Lawyers for the Monitor

TO: The E-Service List found at:

<http://www.ksvadvisory.com/assets/Uploads/insolvency-case-documents/Urbancorp%20Group/CCAA%20Proceedings%20-%20Urbancorp%20%28Bridlepath%29%20Inc.%20and%20Urbancorp%20%28Woodbine%29%20Inc./Service%20List/CCAA%20Bridlepath%20and%20Woodbine%20Service%20List%20as%20at%20October%2025%2C%202016.pdf>

Court File No. CV-11549-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP (WOODBINE) INC.,
ET AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(Returnable June 26, 2018 – Taron Delay Warranty
Claim)

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Lawyers for the Monitor

TAB 2



**Twenty Fifth Report to Court of
KSV Kofman Inc. as CCAA Monitor of
Urbancorp Toronto Management Inc.,
Urbancorp (St. Clair Village) Inc.,
Urbancorp (Patricia) Inc., Urbancorp
(Mallow) Inc., Urbancorp (Lawrence) Inc.,
Urbancorp Downsview Park Development
Inc., Urbancorp (952 Queen West) Inc.,
King Residential Inc., Urbancorp 60 St.
Clair Inc., High Res. Inc., Bridge On King
Inc. and the Affiliated Entities Listed in
Schedule "A" Hereto**

May 30, 2018

and

**Fifteenth Report to Court of KSV Kofman
Inc. as CCAA Monitor of Urbancorp
(Woodbine) Inc., Urbancorp (Bridlepath)
Inc., The Townhouses of Hogg's Hollow
Inc., King Towns Inc., Newtowns at
Kingtowns Inc., Deaja Partner (Bay) Inc.,
and TCC/Urbancorp (Bay) Limited
Partnership**

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COURT FILE NO.: CV-16-11389-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR
VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC.,
URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK
DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING
RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE
ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE AFFILIATED
ENTITIES LISTED IN SCHEDULE "A" HERETO**

TWENTY FIFTH REPORT OF KSV KOFMAN INC.

COURT FILE NO.: CV-16-11549-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED**

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URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE
TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT
KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE
"APPLICANTS")**

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

FIFTEENTH REPORT OF KSV KOFMAN INC.

MAY 30, 2018

1.0 Introduction

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "NOI Entities"). KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee of each of the NOI Entities.
2. Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 18, 2016 (the "Initial Order"), the NOI Entities, together with the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities" and each a "Cumberland CCAA Entity") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor of the Cumberland CCAA Entities (the "Monitor") (the "Cumberland CCAA Proceedings").
3. Certain Cumberland CCAA Entities¹ are known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP ("Cumberland"). Collectively, Cumberland and its direct and indirect subsidiaries are the "Cumberland Entities" and each individually is a "Cumberland Entity". Each Cumberland Entity is a nominee for Cumberland and, as such, the assets and liabilities of the Cumberland Entities are assets and liabilities of Cumberland. The remaining Cumberland CCAA Entities², other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. ("UCI") (collectively, the "Non-Cumberland Entities"). The corporate chart for the Cumberland CCAA Entities and the Non-Cumberland Entities is provided in Appendix "A".
4. On April 25, 2016, Urbancorp (Woodbine) Inc. ("Woodbine") and Urbancorp (Bridlepath) Inc. ("Bridlepath") each filed a NOI. KSV was appointed as the Proposal Trustee of each of Bridlepath and Woodbine.
5. Pursuant to an order made by the Court dated October 18, 2016, TCC/Urbancorp (Bay) Limited Partnership ("Bay LP"), Bridlepath and Woodbine and the entities listed on Schedule "B" (collectively, the "Bay CCAA Entities", and together with the Cumberland CCAA Entities, the "CCAA Entities") were granted protection in a separate CCAA proceeding and KSV was appointed Monitor of the Bay CCAA Entities (the "Bay CCAA Proceedings").
6. Each Bay CCAA Entity is a wholly-owned subsidiary of Bay LP, except Deaja Partner (Bay) Inc., which is the general partner of Bay LP. Each of Bay LP's subsidiaries is a nominee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP. The corporate chart for the Bay CCAA Entities is provided in Appendix "B".

¹ St. Clair., Patricia, Mallow, Lawrence, Urbancorp (952 Queen West) Inc., King Residential Inc., Urbancorp 60 St. Clair Inc., High Res. Inc., Urbancorp Partner (King South) Inc., Urbancorp (North Side) Inc. and Bridge on King Inc.

² Vestaco Homes Inc., Vestaco Investments Inc., Urbancorp Power Holdings Inc., UTMI, Downsview, 228 Queens Quay West Limited, Urbancorp Residential Inc., Urbancorp Realtyco Inc., Urbancorp Cumberland 1 GP Inc.

7. On September 15, 2016, an order was made by the Court establishing a procedure to identify and quantify claims against the Cumberland CCAA Entities and against the current and former directors and officers of the Cumberland CCAA Entities (the "Cumberland Claims Procedure Order").
8. On October 18, 2016, an order was made by the Court establishing a procedure to identify and quantify claims against the Bay CCAA Entities and against the current and former directors and officers of the Bay CCAA Entities (the "Bay Claims Procedure Order, and together with the Cumberland Claims Procedure Order the "Claims Procedure Orders").
9. In response to the Claims Procedure Orders, Tarion Warranty Corporation ("Tarion") filed 21 claims totaling approximately \$5.8 billion against the Cumberland CCAA Entities and seven claims totaling approximately \$174 million against the Bay CCAA Entities.
10. On November 11 and 14, 2016 and December 9, 2016, the Monitor issued Notices of Revision or Disallowance to Tarion disallowing all of Tarion's claims (the "Disallowances"). On December 6 and 16, 2016, Tarion filed omnibus notices of dispute in respect of the Disallowances.
11. On April 30, 2018, the Court approved Minutes of Settlement between the Monitor and Tarion in both the Cumberland CCAA Proceedings and the Bay CCAA Proceedings (jointly, the "Minutes of Settlement"). Copies of the Minutes of Settlement are attached as Appendix "C".
12. Pursuant to the terms of the Minutes of Settlement, the Monitor has resolved all of Tarion's claims other than approximately \$1.805 million related to delayed closing compensation, comprised of approximately \$1.2 million against the Cumberland Entities and approximately \$605,000 against the Bay CCAA Entities (the "DCC Claims"). A motion is returnable on June 26, 2018 to have the DCC Claims determined by the Court.

1.1 Purposes of this Report

1. The purposes of this report ("Report") are to:
 - a) Provide background information on the DCC Claims;
 - b) Discuss the Monitor's rationale for disallowing the DCC Claims; and
 - c) Recommend the Court make an order confirming the Monitor's disallowance of the DCC Claims.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Entities, the books and records of the CCAA Entities and discussions with representatives of the CCAA Entities. The Monitor has not performed an audit or other verification of such information.

2.0 Background

1. The CCAA Entities, together with several affiliates, comprise the Urbancorp Group of Companies (collectively, the "Urbancorp Group"). The Urbancorp Group primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area. The Urbancorp Group also owns geothermal assets, which provide heating and cooling systems to various projects developed by entities in the Urbancorp Group.

2.1 Property Companies

1. Mallow, Lawrence, St. Clair, Bridlepath and Woodbine (collectively, the "Property Companies" and each a "Property Company") each held an interest in real property as bare trustees (collectively, the "Properties"). Each of the Properties was raw land at the date these proceedings commenced. No development activity took place during these proceedings and accordingly, the Properties remained raw land at the date they were sold in these proceedings. The one exception is Bridlepath, which had an unfinished underground parking garage but was otherwise undeveloped.
2. The Property Companies pre-sold 185 freehold homes and collected deposits totalling \$15.6 million from home buyers (the "Deposits"). The Deposits were spent by management of the Urbancorp Group prior to the commencement of these insolvency proceedings.
3. The Monitor carried out a sale process for the Properties. The approval and vesting orders in respect of each of the transactions provided each purchaser with title free and clear of all obligations, including the agreements of purchase and sale entered into between the Property Companies and their home buyers (the "Home Buyer Agreements"). Accordingly, each home buyer had a claim arising from the failure of the Property Companies to complete the Home Buyer Agreements.
4. Each of the Home Buyer Agreements was prepared in a standard form, amended to reflect the details of each sale (purchase price, closing date, unit purchased, purchaser's name, etc.). A sample Home Buyer Agreement is attached as Appendix "D".

5. Each of the Home Buyer Agreements contains an “exclusion of liability” clause whereby the home buyer agreed that if the Property Company could not complete the transaction, the Property Company would not be responsible or liable to the home buyer for any damages, other than as provided for in the Tarion Addendum (the “Addendum”). Based on the terms of the Home Buyer Agreements, the Monitor determined that home buyers only had a claim for the return of their Deposits.
6. Pursuant to the Claims Procedure Orders, home buyers were not required to file proofs of claim. Instead, the Monitor prepared each home buyer’s claim and sent it to each home buyer. The Monitor allowed each Home Buyer’s claim in the amount of its Deposit. Home buyers were entitled to accept the claims as determined by the Monitor or to dispute the amount of the claim by filing an objection notice (the “Home Buyer Objection Notice”).
7. Sixty-four (64) of the 185 home buyers filed a Home Buyer Objection Notice claiming damages in addition to their allowed deposit amount. None of these objections included delay closing compensation. Of the home buyers submitting a Home Buyer Objection Notice, fifty-six (56) were represented by Dickinson Wright LLP (“Dickinson Wright”), which, pursuant to orders issued on August 29, 2016, was appointed as representative counsel to home buyers who “opted in” to representation by Dickinson Wright.
8. The Monitor referred the damage claims asserted by the home buyers to Court for determination. Pursuant to an endorsement issued by the Honourable Mr. Justice Newbould on April 18, 2017 (the “April 18 Endorsement”), the damage claims were disallowed in full. A copy of the April 18 Endorsement is attached as Appendix “E”.
9. Pursuant to Court orders issued on June 27 and November 30, 2017, the Monitor has repaid all Deposits to home buyers.

3.0 The Minutes of Settlement

1. Pursuant to the terms of the Minutes of Settlement:
 - a) the Monitor admitted claims filed by Tarion totalling approximately \$347,000 against the Cumberland CCAA Entities and \$114,000 against the Bay CCAA Entities, as reflected in the table below.

| | Cumberland CCAA Entities | Bay CCAA Entities |
|-------------|--------------------------|-------------------|
| Legal costs | \$ 295,661 | \$ 98,554 |
| Interest | 47,604 | 15,471 |
| Other | 3,390 | - |
| | <u>\$ 346,655</u> | <u>\$ 114,025</u> |

- b) the Monitor and Tarion agreed to refer the DCC Claims to Court for determination; and
 - c) the balance of Tarion's claims were withdrawn.
2. The Monitor has maintained cash holdbacks in the Cumberland CCAA Proceedings and the Bay CCAA Proceedings to fully satisfy the DCC Claims in the event that the Court does not confirm the Monitor's disallowance.

3.1 Tarion Addendum

1. Each of the Home Buyer Agreements contains the Addendum. The Addendum is a compulsory supplement to all purchase agreements for all new homes sold in Ontario pursuant to the *Ontario New Home Warranties Plan Act* and the regulations thereunder. Pursuant to the terms of the Addendum, Tarion, *inter alia*, backstops warranty coverage to new home purchasers, including the delayed closing warranty.
2. The Addendum is a standard form prepared by Tarion. The only section of the Addendum that can be modified by a builder is the Statement of Critical Dates ("SCD"). The SCD determines, *inter alia*, when a home buyer may be eligible for delayed closing compensation. A summary of the dates provided in the SCD is below:

| Critical Date | Explanation |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| First Tentative Closing Date | The date the builder anticipates the home will be completed |
| Second Tentative Closing Date | Can be up to 120 days after the First Tentative Closing Date |
| Firm Closing Date | Can be up to 120 days after the Second Tentative Closing Date |
| Outside Closing Date | Can be up to 365 days after the earlier of the Second Tentative Closing Date and the Firm Closing Date. |
| Purchaser's termination period | If the purchase of the home is not completed by the Outside Closing Date, the purchaser can terminate the transaction during the 30-day period thereafter |

3.2 Delayed Closing Compensation

1. Delayed closing compensation is intended to compensate purchasers for costs incurred as a result of a delay in closing the purchase of their homes.

2. Pursuant to Section 7(a) of the Addendum, a builder warrants that if closing is delayed past the Firm Closing Date, it will compensate a purchaser for a maximum amount of \$7,500, which amount includes: (i) \$150 a day for living expenses³ for each day until closing (which expenses need not be supported by receipts); and (ii) any other expenses such as moving and storage costs incurred by a purchaser (and which are required to be supported by receipts). A sample Delayed Closing Claim form is attached as Appendix "F".
3. Pursuant to Sections 7(b) of the Addendum, delayed closing compensation is only payable if: (i) closing occurs; or (ii) the purchase agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum.
4. Section 10(b) of the Addendum provides that if for any reason (other than breach of contract by the purchaser) closing has not occurred by the Outside Closing Date, then the purchaser has 30 days to terminate the purchase agreement by written notice to the vendor (the "Termination Period").
5. Section 7(b) of the Addendum also states that delayed closing compensation is payable only if the purchaser's claim is made to Tarion in writing within one (1) year after closing, or after termination of the purchase agreement, as the case may be, and otherwise in accordance with this Addendum.
6. To the Monitor's knowledge, no DCC claims have been made against Tarion by any home buyer.

3.3 DCC Claims

1. A breakdown of the DCC Claims filed by Tarion is provided in the table below:

| (unaudited; \$) | Cumberland | | | | Bay CCAA | | |
|--------------------------------------|------------|---------|-----------|---------------|----------|------------|----------|
| | Lawrence | Mallow | St. Clair | CCAA Entities | Woodbine | Bridlepath | Entities |
| Number of Home Buyers | 65 | 17 | 41 | 123 | 22 | 40 | 62 |
| Delayed Closing Claim ⁴ | 487,500 | 127,500 | 307,500 | 922,500 | 165,000 | 300,000 | 465,000 |
| Administration Claim ⁵ | 73,125 | 19,125 | 46,125 | 138,375 | 24,750 | 45,000 | 69,750 |
| Chargeable Conciliation ⁶ | 73,450 | 19,210 | 46,330 | 138,990 | 24,860 | 45,200 | 70,060 |
| Total | 634,075 | 165,835 | 399,955 | 1,199,865 | 214,610 | 390,200 | 604,810 |

³ Living expenses are direct living costs such as accommodation and meals incurred as a result of the delay.

⁴ \$7,500 per Home Buyer Agreement.

⁵ 15% of delayed closing claim. An administration fee of 15% is payable to Tarion on any amounts paid by Tarion to a purchaser.

⁶ \$1,130 per Home Buyer Agreement. A builder is required to pay a fee of \$1,000 plus HST to Tarion if it breaches a statutory warranty and Tarion assesses the conciliation as chargeable to the builder.

2. As determined by Mr. Justice Newbould in the April 18 Endorsement, the Home Buyer Agreements could no longer be performed as a result of the sale process and the vesting orders obtained in these proceedings because no purchaser had assumed any of the Home Buyer Agreements and the vesting orders provided each purchaser with title free and clear of all obligations, including the Home Buyer Agreements. Accordingly, the April 18 Endorsement confirmed that the Home Buyer Agreements were effectively at an end and terminated. The Home Buyer Agreements were in fact treated by the Monitor as having been terminated by admitting the Deposit claims in the claims processes. Likewise, they were treated by the Home Buyers as having been terminated by accepting the return of their Deposits and filing damage claims, primarily for loss of bargain. Pursuant to Section 11 of the Addendum, the Deposit is only refundable upon a termination of the Home Buyer Agreement.
3. As stated above, a home buyer has up to one year from the date a purchase agreement is terminated to file a claim for delayed closing compensation. To the Monitor's knowledge, no such claims have been made by any home buyer against Tarion since the April 18 Endorsement. Moreover, as noted above, no DCC Claims were submitted during the claims processes.
4. All of the Properties were sold prior to any of the Outside Closing Dates. Accordingly, it is impossible that a home buyer could have incurred any costs for living, accommodation, storage, moving and other costs as a result of the delay in closing (the "Delay Costs").
5. To conclude that the Home Buyer Agreements have not been terminated such that the home buyers may in the future provide termination notices once their Outside Closing Date expires so as to be eligible to claim compensation for Delay Costs would be artificial in this case and unreasonable as it would provide compensation to home buyers for expenses they did not and cannot incur. Furthermore, as reflected in the table below, even on such a construction of the contract terms, only certain of the home buyers on Lawrence, Mallow and Bridlepath would be entitled to make such claims at this point in time.

| (unaudited) | Lawrence | Mallow | St. Clair | Woodbine | Bridlepath |
|-----------------------------------------------------------------|------------|-----------|-----------|----------|------------|
| No. of Home Buyer Agreements | 65 | 17 | 41 | 22 | 40 |
| No. of agreements where the Termination Period elapsed | 32 | - | 41 | 22 | - |
| No. of agreements where the Termination Period is in the future | 33 | 17 | - | - | 40 |
| Termination Period for remaining agreements | April 1/19 | Nov 29/18 | n/a | n/a | Sept 27/18 |

6. Given the foregoing, the Monitor recommends that the Court make an order confirming the Monitor's disallowance in respect of the DCC Claims.

⁷ Approximately 50% of all home buyers.

* * *

All of which is respectfully submitted,

KSV Kofman Inc

**KSV KOFMAN INC.
IN ITS CAPACITY AS CCAA MONITOR OF
THE CCAA ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

Schedule "A"

Urbancorp (952 Queen West) Inc.

King Residential Inc.

Urbancorp 60 St. Clair Inc.

High Res. Inc.

Bridge on King Inc.

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

Schedule "B"

The Townhouses of Hogg's Hollow Inc.

King Towns Inc.

Newtowns at Kingtowns Inc.

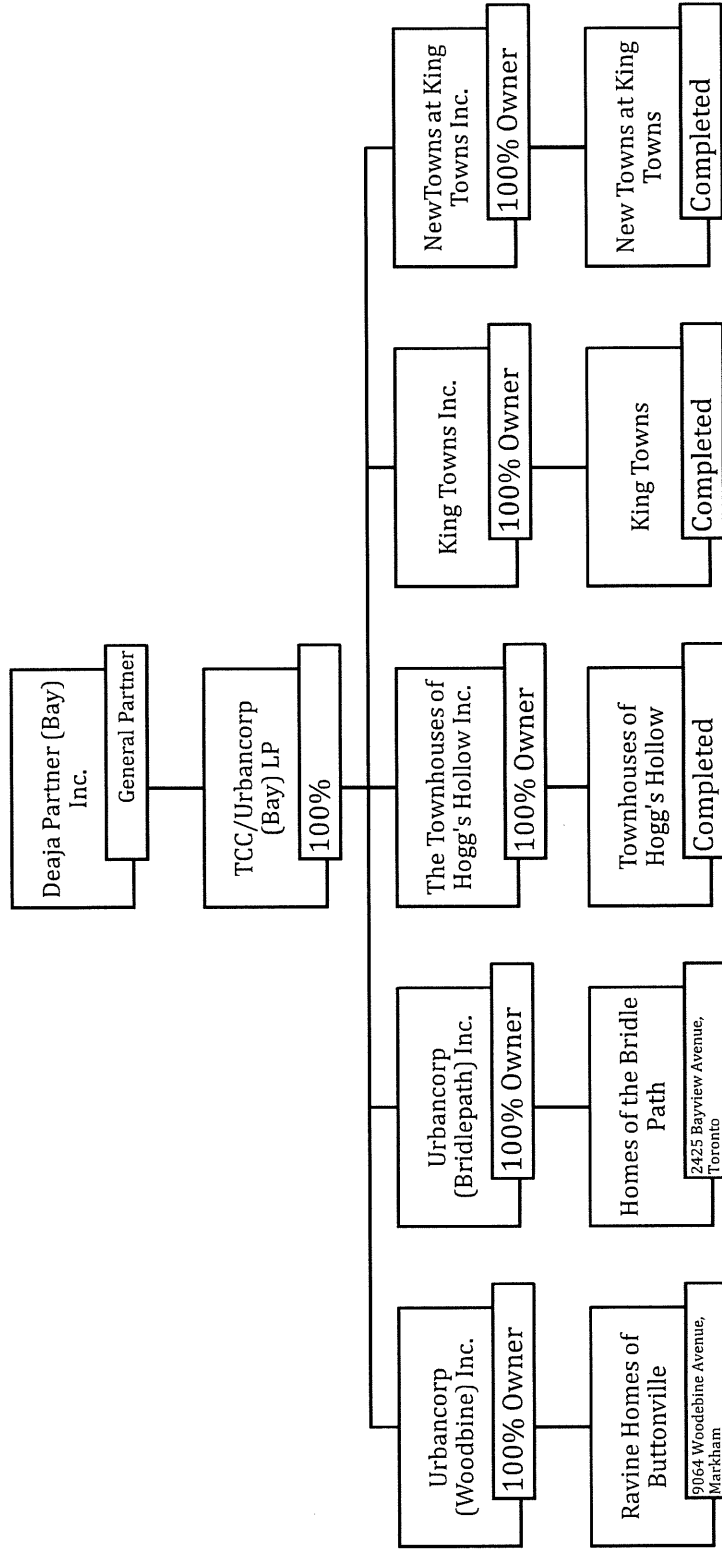
Deaja Partner (Bay) Inc.

TCC Urbancorp (Bay) Limited Partnership

Appendix “A”

Appendix “B”

TCC/URBANCORP (BAY)



Appendix “C”

MINUTES OF SETTLEMENT
(Cumberland CCAA Entities)

WHEREAS On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "NOI Entities"). KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee of each of the Companies.

AND WHEREAS, pursuant to an Order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 18, 2016, the NOI Entities, together with the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities"), were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor of the Cumberland CCAA Entities (the "Monitor");

AND WHEREAS on September 15, 2016 an order (the "Claims Procedure Order") was made by the Court to establish a procedure for the identification and quantification of certain claims against the Cumberland CCAA Entities

and against the current and former officers and directors of the Cumberland CCAA Entities;

AND WHEREAS Tarion Warranty Corporation ("Tarion"), in response to the Claims Procedure Order, submitted claims against each of the Cumberland CCAA Entities, the types and amounts of which are set out in Schedule "B" hereto (collectively, the "Claims");

AND WHEREAS, the Monitor issued a Notice of Revision or Disallowance to Tarion in respect of the Claims disallowing certain of the Claims (the "NOROD");

AND WHEREAS the Monitor and Tarion agreed that Tarion reserved its rights to object to the NOROD pursuant to the Claims Procedure Order by the filing of an Omnibus Notice of Dispute of Notice of Revision or Disallowance;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Monitor and Tarion (together, the "Parties") have agreed to resolve the Claims on the following terms:

1. On the condition that for each of Urbancorp Cumberland 1 LP, UTMI, Urbancorp (North Side) Inc., King Residential Inc., High Res Inc., Urbancorp Cumberland 1 GP Inc., Urbancorp Power Holdings Inc., Vestaco Investments Inc., Urbancorp Partner (King South) Inc., 228 Queens Quay West Limited, Urbancorp Realtyco Inc., Urbancorp Residential Inc., Vestaco Homes Inc., Urbancorp (952 Queen West) Inc., and Patricia, the Monitor delivers to Tarion: (i) a certificate of the Monitor, substantially in the form attached hereto as Schedule "C", certifying, to the best of its knowledge and belief, that such entity did not: (A) build any dwelling units; (B) enter

into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units; and (ii) a statutory declaration from Alan Saskin, substantially in the form attached hereto as Schedule "D", declaring that such entity did not: (A) build any dwelling units; (B) enter into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units, Tarion shall withdraw its objection to the disallowance of its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to claims other than the Legal Costs Claim) in respect of each such entity, such that its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to claims other than the Legal Costs Claim) shall be zero in respect of each such entity.

2. On the condition that for each of Lawrence, St. Clair, and Mallow, the Monitor delivers to Tarion a certificate of the Monitor, substantially in the form attached hereto as Schedule "E", certifying that no appeals under the Claims Procedure Order are outstanding in respect of any Home Buyer Claim Notices (as defined in the Claims Procedure Order) and that all applicable appeal periods in respect of all Home Buyer Claim Notices (as defined in the Claims Procedure Order) have expired, Tarion shall withdraw its objection to the disallowance of its Deposit Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims (but only to the extent that such Chargeable

Conciliation Claims are attributable to any claims other than the Delay Warranty Claims), Administration Claims (but only to the extent that such Administration Claims are attributable to any claims other than the Delay Warranty Claims) and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs Claims) in respect of each such entity, such that its Deposit Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims (but only to the extent that such Chargeable Conciliation Claims are attributable to any claims other than the Delay Warranty Claims), Administration Claims (but only to the extent that such Administration Claims are attributable to any claims other than the Delay Warranty Claims) and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs Claims) shall be zero.

3. In respect of Tarion's Delay Warranty Claims (and any directly related Chargeable Conciliation Claims and Administration Claims) for each of Lawrence, St. Clair and Mallow (collectively, the "Delay Claims"):

- (i) the Monitor shall hold back from any distributions in the CCAA proceedings an amount of \$1,199,865 in respect of such Delay Claims (the "Cumberland Claims Reserve"); and
- (ii) subject to a litigation schedule and plan to be agreed to by the Monitor and Tarion, the Monitor shall bring a motion before the Court as soon as practicable following the issuance of the Approval Order (defined below) for the purposes of: (a) upholding its disallowance of such Delay Claims on the basis that the Lawrence, St. Clair and Mallow home purchasers

do not have delayed occupancy claims and/or delayed closing claims that are capable of being asserted by such purchasers pursuant to their agreements of purchase and sale with Lawrence, St. Clair and Mallow or under the *Ontario New Home Warranties Plan Act* and the regulations promulgated thereunder (collectively, the "ONHWPA"); and (b) determining the basis on which compensation for such claims should be calculated. The Monitor does not now, and shall not later, dispute the validity of the Delay Claims to the extent that: (a) the Court determines that the Lawrence, St. Clair and Mallow home purchasers do have delayed occupancy claims and/or delayed closing claims that are capable of being asserted by such purchasers; and (b) such delayed occupancy claims and/or delayed closing claims are actually asserted by such purchasers and determined to be valid under the ONHWPA in accordance with the procedures set out therein (such claims, the "Asserted and Valid Delay Claims"). The Asserted and Valid Delay Claims shall be allowed and proven claims and the Monitor shall distribute funds from the Cumberland Claims Reserve to Tarion on account of such claims.

4. Tarion hereby withdraws its objection to the disallowance of all of its claims as against Urbancorp 60 St. Clair Inc. (other than Tarion's Legal Costs Claim and Interest Claims to the extent that such Interest Claims are attributable to the Legal Costs Claims against Urbancorp 60 St. Clair Inc.) such that any and all of Tarion's claims (other than Tarion's Legal Costs Claim and Interest Claims to the extent that

such Interest Claims are attributable to the Legal Costs Claims against Urbancorp 60 St. Clair Inc.) as against Urbancorp 60 St. Clair Inc. shall be zero.

5. Tarion and the Monitor agree that Tarion's Legal Costs Claim against the Cumberland CCAA Entities shall be an accepted and proven claim in the amount of \$295,661.36. Tarion hereby withdraws its objection to the disallowance of its Legal Costs Claims that are over and above such amount in respect of the Cumberland CCAA Entities.

6. Tarion and the Monitor agree that Tarion's Interest Claim against the Cumberland CCAA Entities shall be an accepted and proven claim in the amount of \$47,603.93.

7. For Bridge:

(a) On the condition that the Monitor delivers to Tarion: (i) a certificate of the Monitor, substantially in the form attached hereto as Schedule "F", certifying, to the best of its knowledge and belief, that: (A) no original purchaser deposits remain outstanding or otherwise payable by Bridge to any original purchaser of a dwelling unit from Bridge; (B) nothing has come to its attention that would suggest that sales of dwelling units were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into in respect of the same dwelling unit; and (C) no original purchaser had terminated its agreement of purchase and sale by reason of the vendor's delay in closing or by reason of a delay in the purchaser obtaining occupancy; and (ii) statutory declaration from Alan Saskin, substantially in the form attached hereto as Schedule "G", declaring that: (A) no original purchaser

deposits remain outstanding or otherwise payable by Bridge to any original purchaser of a dwelling unit from Bridge; (B) no sales of dwelling units were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into in respect of the same dwelling unit; and (C) no original purchaser had terminated its agreement of purchase and sale by reason of the vendor's delay in closing or by reason of a delay in the purchaser obtaining occupancy, Tarion shall withdraw its objection to the disallowance of its Delay Warranty Claims, Deposit Warranty Claims and Administration Claims (but only to the extent that such Administration Claims are attributable to any claims other than the Dwelling Deficiency Warranty Claims) in respect of Bridge, such that its Delay Warranty Claims, Deposit Warranty Claims and Administration Claims (but only to the extent that such Administration Claims are attributable to any claims other than the Dwelling Deficiency Warranty Claims) in respect of Bridge shall be zero;

(b) Tarion and the Monitor agree that Tarion's Chargeable Conciliation Claim against Bridge shall be an accepted and proven claim in the amount of \$3,390.00;

(c) Tarion's Common Element Deficiency Warranty Claim shall be settled pursuant to a settlement agreement with Toronto Standard Condominium Corporation No. 2302 substantially in the form attached hereto as Schedule "H" (the "Condo Settlement"), and the approval of that settlement by the Court, and its implementation in accordance with its terms, shall be conditions precedent to the effectiveness of these Minutes of Settlement;

(d) Upon and contemporaneous with the implementation of the Condo Settlement, Tarion agrees to reduce the value of the Tarion Bond (defined below) by

\$450,000 in order to permit Travelers Guarantee Company of Canada to provide Harris Sheaffer LLP with all necessary approvals to release the settlement funds to Bridge on King Inc., as required by Section 7 of the Condo Settlement;

(e) Tarion and the Monitor hereby agree that should an owner of a condominium unit at Toronto Standard Condominium Corporation No. 2302 make a dwelling deficiency warranty claim against Tarion on or before April 5, 2020, that is accepted and paid by Tarion in good faith, then Tarion shall recover: (i) any payment made in respect of such dwelling deficiency warranty claim; and (ii) any costs of administering such dwelling deficiency warranty claim, which costs are comprised of administration fees and chargeable conciliations, first, from the Travelers Insurance Company of Canada Surety Bond No. 10024574 originally issued on September 17, 2007 and in the value of \$1,000,000.00 (the "Travelers Bond"), to the extent it is permitted to do so pursuant to the Travelers Bond, until the Travelers Bond is fully utilized and, thereafter, from the Cumberland Claims Reserve (if then available) until the amount of the Cumberland Claims Reserve is fully utilized;

(f) On June 30, 2020, Tarion's Deficiency Warranty Claim, together with any related Administration Claims, shall be deemed to be zero; provided, however, that in the event that any dwelling deficiency warranty claim determinations by Tarion are the subject of any appeals, or possible appeals, by a claimant on June 30, 2020, then the Monitor shall be required to maintain a reserve on account of such claims in an amount, and for a length of time, to be determined by Tarion, acting reasonably, unless otherwise ordered by the Court.

8. On condition that for Downsvew, the Monitor delivers to Tarion: (i) a certificate of the Monitor, substantially in the form attached hereto as Schedule "I", certifying, to the best of its knowledge and belief, that Downsvew: (A) did not build any dwelling units; and (B) is not a party to any agreements for the purchase and sale of any dwelling units that have not otherwise been terminated with any and all deposits having been return in full and full and final releases having been obtained from the respective purchasers; and (ii) a statutory declaration from Alan Saskin, substantially in the form attached hereto as Schedule "J", declaring that Downsvew: (A) did not build any dwelling units; and (B) is not a party to any agreements for the purchase and sale of any dwelling units that have not otherwise been terminated with any and all deposits having been return in full and full and final releases having been obtained from the respective purchasers, Tarion shall withdraw its objection to the disallowance of its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to claims other than the Legal Costs Claim) in respect of Downsvew, such that its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to claims other than the Legal Costs Claim) shall be zero in respect of Downsvew.

9. Notwithstanding the settlement of Tarion's claims described herein in respect of the Cumberland CCAA Entities (all such claims, the "Settled Claims"), any and all of Tarion's claims in respect of the Settled Claims, including, without limitation,

indemnity and guarantee claims, against any third parties (other than the Bay CCAA Entities) (all such claims, the "Third Party Claims") shall be preserved as against those third parties, and Tarion shall be permitted, and reserves its rights, to pursue any and all such Third Party Claims in law or in equity, provided that Tarion shall not make any such Third Party Claims or take any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, from any one or more of the Cumberland CCAA Entities in connection with the Third Party Claims unless and only to the extent that the Settled Claims are not paid in full in the Cumberland CCAA Entities' CCAA proceedings.

10. The Monitor shall bring a motion in the CCAA proceedings as soon as practicable to seek an order approving these Minutes of Settlement and directing the Monitor to execute these Minutes of Settlement and create the Cumberland Claims Reserve (the "Approval Order") and the effectiveness of these Minutes of Settlement shall be conditional on the granting of the Approval Order.

11. The Approval Order shall be in a form and substance satisfactory to the Monitor and Tarion, each acting reasonably.

12. The Parties represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in

any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.

13. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

14. The Parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

15. The Parties agree that any Schedule attached to these Minutes of Settlement forms an integral part of the Minutes of Settlement and that any reference to the Minutes of Settlement includes the Schedule.

16. These Minutes of Settlement constitute the entire agreement between the Parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

17. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the Parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

18. These Minutes of Settlement may be executed by the Parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of

- 12 -

the Parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

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IN WITNESS WHEREOF, the Parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED this day of April, 2018.

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES

By: 

Name: Robert Kofman

Title: President

TARION WARRANTY
CORPORATION

By: 

Name: Tim Schumacher

Title: Vice President &
General Counsel

Schedule "A"

1. Urbancorp (952 Queen West) Inc.
2. King Residential Inc.
3. Urbancorp 60 St. Clair Inc.
4. High Res. Inc.
5. Bridge On King Inc.
6. Urbancorp Power Holdings Inc.
7. Vestaco Homes Inc.
8. Vestaco Investments Inc.
9. 228 Queen's Quay West Limited
10. Urbancorp Cumberland 1 LP
11. Urbancorp Cumberland 1 GP Inc.
12. Urbancorp Partner (King South) Inc.
13. Urbancorp (North Side) Inc.
14. Urbancorp Residential Inc.
15. Urbancorp Realtyco Inc.

Schedule "B"

Tarion Claims
(See Attached Spreadsheet)

Schedule "C"

CERTIFICATE

TO: Tarion Warranty Corporation

RE: Urbancorp Cumberland 1 LP, Urbancorp Toronto Management Inc.,
Urbancorp (North Side) Inc., King Residential Inc., High Res Inc.,
Urbancorp Cumberland 1 GP Inc., Urbancorp Power Holdings Inc.,
Vestaco Investments Inc., Urbancorp Partner (King South) Inc., 228
Queens Quay West Limited, Urbancorp Realtyco Inc., Urbancorp
Residential Inc., Vestaco Homes Inc., Urbancorp (952 Queen West) Inc.,
and Urbancorp (Patricia) Inc. (collectively, the "Entities")

THE UNDERSIGNED hereby certifies that, to the best of its knowledge
and belief, each of the Entities did not: (A) build any dwelling units; (B) enter into any
agreements for the purchase and sale of any dwelling units; or (C) receive any deposit
monies from any person in respect of any dwelling units.

Date:

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES

By:

Name: Robert Kofman

Title: President

Schedule "D"

STATUTORY DECLARATION

CANADA

PROVINCE OF ONTARIO

) IN THE MATTER of Urbancorp Cumberland 1
) LP, Urbancorp Toronto Management Inc.,
) Urbancorp (North Side) Inc., King Residential
) Inc., High Res Inc., Urbancorp Cumberland 1 GP
) Inc., Urbancorp Power Holdings Inc., Vestaco
) Investments Inc., Urbancorp Partner (King South)
) Inc., 228 Queens Quay West Limited, Urbancorp
) Realtyco Inc., Urbancorp Residential Inc.,
) Vestaco Homes Inc., Urbancorp (952 Queen
) West) Inc., and Urbancorp (Patricia) Inc.
) (collectively, the "Entities")
)

I, **ALAN SASKIN**, of the City of Toronto, in the Province of Ontario, **DO SOLEMNLY DECLARE, in my capacity as an officer of the Entities, THAT:**

1. I am the president of each of the Entities and as such have knowledge of the matters hereinafter declared.
2. To the best of my knowledge and belief, each of the Entities did not: (A) build any dwelling units; (B) enter into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me
at the City of Toronto,
in the Province of Ontario.

this 7th day of May, 2018.


A Commissioner, etc.


ALAN SASKIN

Schedule "E"

CERTIFICATE

TO: Tarion Warranty Corporation

RE: Urbancorp (Lawrence) Inc., Urbancorp (Mallow) Inc. and Urbancorp (St. Clair Village) Inc. (collectively, the "Entities")

Defined terms used herein and not otherwise defined shall have the meaning ascribed to them in the Claims Procedure Order.

THE UNDERSIGNED hereby certifies that, with respect to each of the Entities, no appeals under the Claims Procedure Order are outstanding in respect of any Home Buyer Claim Notices and that all applicable appeal periods in respect of all Home Buyer Claim Notices have expired.

Date:

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES

By: _____

Name: Robert Kofman

Title: President

Schedule "F"

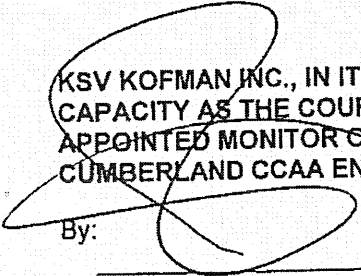
CERTIFICATE

TO: Tarion Warranty Corporation

RE: Bridge on King Inc. ("Bridge")

THE UNDERSIGNED hereby certifies that, to the best of its knowledge and belief: (A) no original purchaser deposits remain outstanding or otherwise payable by Bridge to any original purchaser of a dwelling unit from Bridge; (B) nothing has come to its attention that would suggest that sales of dwelling units from Bridge were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into by Bridge in respect of the same dwelling unit; and (C) no original purchaser from Bridge had terminated its agreement of purchase and sale by reason of the Bridge's delay in closing or by reason of a delay in the purchaser obtaining occupancy.

Date:


KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES

By:

Name: Robert Kofman

Title: President

Schedule "G"

STATUTORY DECLARATION

CANADA) IN THE MATTER of Bridge on King Inc.
) ("Bridge")
PROVINCE OF ONTARIO)
)

I, **ALAN SASKIN**, of the City of Toronto, in the Province of Ontario, **DO SOLEMNLY DECLARE, in my capacity as an officer of Bridge, THAT:**

1. I am the president of Bridge and as such have knowledge of the matters hereinafter declared.
2. To the best of my knowledge and belief, no original purchaser deposits remain outstanding or otherwise payable by Bridge to any original purchaser of a dwelling unit from Bridge
3. To the best of my knowledge and belief, no sales of dwelling units from Bridge were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into by Bridge in respect of the same dwelling unit.
4. To the best of my knowledge and belief, no original purchaser from Bridge had terminated its agreement of purchase and sale by reason of Bridge's delay in closing or by reason of a delay in the purchaser obtaining occupancy.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me)
at the City of Toronto,)
in the Province of Ontario.)
this 26 day of ~~April~~^{MAY} 2018.)

A Commissioner, etc.)



ALAN SASKIN

Schedule "H"

Bridge Common Elements Settlement Agreement

(See Attached)

RELEASE AND SETTLEMENT AGREEMENT

BETWEEN:

BRIDGE ON KING INC.

(hereinafter called the "Developer")

OF THE FIRST PART

-and-

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302**

(hereinafter collectively called the "Corporation")

OF THE SECOND PART

WHEREAS the Developer is the Declarant of the Corporation and has constructed a condominium (the "Building") on the lands described in the Declaration and Description of the Corporation registered pursuant to the to the *Condominium Act, 1998*, S.O. 1998, C 19 (the "Act");

AND WHEREAS the Corporation was created by the registrations of its Declaration and Description;

AND WHEREAS the Developer is currently an applicant in proceedings pursuant to the *Companies' Creditors Arrangement Act* before the Ontario Superior Court of Justice – Commercial List (the "CCA Proceedings");

AND WHEREAS the parties have agreed to enter into this Release and Settlement Agreement (the "Agreement");

NOW THEREFORE in consideration of the sum of (\$398,230.09 plus HST \$51,769.91) \$450,000.00 DOLLARS paid by the Developer to the Corporation and in consideration of the mutual covenants and agreements set out herein, the parties hereto agree as follows:

1. The Corporation on behalf of itself, and for and on behalf of each and every unit owner, insofar as each owner has an undivided interest in the common elements, and its and their respective heirs, trustees, administrators, successors and assigns hereby releases and forever discharges the Developer and Tarion Warranty Corporation ("Tarion") and each of their respective successors and assigns, legal representatives, shareholders, directors, officers, employees and agents (collectively, the "Releasees") of and from all manner of actions, causes of action, suits, debts, dues, accounts, assessments, bonds, covenants, contracts, complaints, warranty claims, claims and demands for damages, monies, losses,

indemnity, costs, fees, claims for return of fees, interest in loss, profits or loss thereof or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Corporation arising out of the development, construction work, design, engineering, consulting, architectural services and other services with respect to the common elements of a residential condominium complex located at 38 Joe Shuster Way in Toronto, Ontario, including, without limitation, any and all alleged deficiencies identified or not identified in the First and Second year Performance Audits and for which any warranty claim could have been initiated, and from any and all actions, causes of action, warranty claims, claims or demands of whatsoever nature, whether in contract or in tort or arising as a result of a fiduciary duty or by virtue of any statute, including, without limitation, the *Ontario New Home Warranties Plan Act* and the regulation promulgated thereunder (together, the "ONHWPA"), or upon or by reason of any damage, loss or injury arising out of the matters set forth above.

2. Without limiting the generality of the foregoing, the Corporation declares that the intent of this Agreement is to conclude all issues arising from the matters set forth above and it is understood and agreed that this Agreement is intended to cover, and does cover, not only all known injuries, losses and damages, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof.
3. Notwithstanding the foregoing, this Agreement shall not affect or apply to: (a) claims in respect of a "major structural defect" that may develop or be discovered after the date of this Agreement and that are made during the remaining applicable warranty period pursuant to the ONHWPA; and, (b) the Developer's obligation to transfer the Bridge Visitor Parking Units, as that term is defined in the Corporation's declaration.
4. Subject to Section 3 hereof, it is agreed and understood that the Corporation will not make any claim or take any proceedings against the Releasees or any of them, or any person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, the ONHWPA and/or under the *Rules of Civil Procedure*, from the Releasees or any of them discharged by this Full and Final Release, in connection with the matters outlined above. It is further agreed and understood that if the Corporation commences such an action, or takes such proceedings, and the Releasees or any of them is added to such proceeding in any manner whatsoever, whether justified in law or not, the Corporation will immediately discontinue the proceedings and/or claims, and the Corporation will be liable to any therein named Releasee for the legal costs incurred in any such proceeding, on a substantial indemnity basis. This Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Corporation with respect to the

matters covered by this Agreement. This Agreement may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by the Corporation in any subsequent action that the other parties in the subsequent action were not privy to formation of this Release.

5. The Corporation further covenants and agrees that in the event the Corporation or any owner or mortgagee of a unit in the Corporation makes any claim or takes or continues any proceedings against any person, partnership or corporation which then claims contribution, indemnity or relief over, against the Releasees, pursuant to the provisions of any statute, agreement or otherwise, with respect to any of the matters which are the subject matter of this Agreement, the Corporation shall indemnify and save harmless the Releasees from any such claims, including all costs on a full indemnity basis of defending such actions.
6. Each of the parties hereto agree to give all such further assurances and execute all such further release documents as may be reasonably required from time to time to effectively accomplish the intent of the Agreement.
7. The Corporation agrees that it will sign this Agreement with the understanding that it shall be delivered to the law firm of Harris Sheaffer LLP ("HS") which shall hold same in escrow until the settlement funds of \$450,000.00 are delivered to the Corporation. The Developer agrees that it will deliver the settlement funds to the Corporation within 30 calendar days of all of the following conditions having been met: (a) the Corporation delivering to the Developer valid and duly authorized board resolutions of the Corporation authorizing and approving the Corporation entering into this Agreement; (b) the Corporation delivering this signed Agreement to HS; (c) the release of the settlement funds to the Developer by HS, which release shall be made upon the receipt by HS of all necessary approvals from Travelers Guarantee Company of Canada ("Travelers"); and (d) the Ontario Superior Court of Justice (Commercial List) issuing an order within the CCAA Proceedings approving this Agreement and the Developer's entering into of same, which order shall be in a form and substance satisfactory to the Developer, the Corporation, Tarion, Travelers, HS and the Court-appointed monitor in the CCAA Proceedings.
8. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.
9. Any notices required to be delivered pursuant to this Agreement shall be delivered and deemed to have been effectively delivered by:

Email transmission:

- (i) to the Developer c/o tedsaskin@gmail.com
- (ii) to the Corporation c/o sunny@goldview.ca

Delivery:

- (i) to the Developer

120 Lynn Williams Street, Suite 2A
Toronto, Ontario, M6K 3N6
- (i) to the Corporation

38 Joe Shuster Way
Toronto, Ontario, M6K 0A5

or at such other address or facsimile number as the Corporation or the Developer advises in writing.

IN WITNESS WHEREOF, we have hereunto affixed our corporate seals attested by the hands of our proper officers, this 19 day of May, 2018

TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302

Kelly Garland

Per:
Name: KELLY GARLAND
Title: VICE PRESIDENT

[Signature]

Per:
Name: ODESSA A. LOPECHUK
Title: PRESIDENT

I/We have authority to bind the Corporation



BRIDGE ON KING INC.

Ref: KSV v. King Inc. in its capacity as Court
Name: appointed Monitor of Bridge of King Inc
Title: and not in its personal capacity
Name: Robert Kaufman
Title: President

**SPECIAL RESOLUTION OF THE DIRECTORS
OF
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2302
(the "Corporation")**

WHEREAS Bridge on King Inc. (the "Developer") is the Declarant of the Corporation;

AND WHEREAS the board of directors, on behalf of the Corporation, and the Developer reached a settlement of the Corporation's claims for defects and deficiencies in connection with the development and construction of the condominium building and premises, including the Corporation's warranty claims made pursuant to the *Ontario New Home Warranties Plan Act*, whereby the Developer will pay to the Corporation the sum of \$450,000.00, inclusive of HST (the "Settlement");

AND WHEREAS the Corporation and the Developer are required to enter into a Release and Settlement Agreement (the "Agreement") to confirm the Settlement and conditions in connection therewith;

BE IT RESOLVED THAT:

1. The board of directors hereby authorizes, approves, ratifies and confirms the Settlement.
2. The board of directors hereby authorizes, approves, ratifies and confirms the form of Agreement appended hereto as Schedule "A".
3. Any one or more of the directors of the Corporation be and they are hereby authorized on behalf of the Corporation to execute and deliver the Agreement with such amendments or variations from the form submitted to this meeting as may be approved by such persons executing the same, whose signatures shall be conclusive evidence of such approval, and such persons are hereby authorized to do such further acts and things and to execute such other deeds, documents, instruments and writings, if any, as may be necessary or desirable in connection with the Settlement and the Agreement, in order to give effect thereto.
4. All deeds, documents, instruments, writing, acts or proceedings in connection with or pertaining to the Settlement or the Agreement which heretofore or hereafter may be executed, made, done, or performed by the Corporation by any director thereof in connection therewith be and they are hereby expressly authorized, approved, ratified and confirmed.

THE FOREGOING RESOLUTION is hereby consented to as evidenced by the signatures of the directors of the Corporation this 26th day of April, 2018.

TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302

Per: Kelly Garland
Name: KELLY GARLAND
Title: Vice president

Per: [Signature]
Name: JESSICA A. LOPEZ
Title: PRESIDENT

Per: [Signature]
Name: Mercedes Sit-roc
Title: Secretary

We have authority to bind the Corporation.

Schedule "A"

RELEASE AND SETTLEMENT AGREEMENT

BETWEEN:

BRIDGE ON KING INC.

(hereinafter called the "Developer")

OF THE FIRST PART

-and-

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302**

(hereinafter collectively called the "Corporation")

OF THE SECOND PART

WHEREAS the Developer is the Declarant of the Corporation and has constructed a condominium (the "**Building**") on the lands described in the Declaration and Description of the Corporation registered pursuant to the to the *Condominium Act, 1998*, S.O. 1998, C 19 (the "**Act**");

AND WHEREAS the Corporation was created by the registrations of its Declaration and Description;

AND WHEREAS the Developer is currently an applicant in proceedings pursuant to the *Companies' Creditors Arrangement Act* before the Ontario Superior Court of Justice – Commercial List (the "**CCAA Proceedings**");

AND WHEREAS the parties have agreed to enter into this Release and Settlement Agreement (the "**Agreement**");

NOW THEREFORE in consideration of the sum of (\$398,230.09 plus HST \$51,769.91) \$450,000.00 DOLLARS paid by the Developer to the Corporation and in consideration of the mutual covenants and agreements set out herein, the parties hereto agree as follows:

1. The Corporation on behalf of itself, and for and on behalf of each and every unit owner, insofar as each owner has an undivided interest in the common elements, and its and their respective heirs, trustees, administrators, successors and assigns hereby releases and forever discharges the Developer and Tarion Warranty Corporation ("**Tarion**") and each of their respective successors and assigns, legal representatives, shareholders, directors, officers, employees and agents (collectively, the "**Releasees**") of and from all manner of actions, causes of action, suits, debts, dues, accounts, assessments, bonds, covenants, contracts, complaints, warranty claims, claims and demands for damages, monies, losses,

indemnity, costs, fees, claims for return of fees, interest in loss, profits or loss thereof or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Corporation arising out of the development, construction work, design, engineering, consulting, architectural services and other services with respect to the common elements of a residential condominium complex located at 38 Joe Shuster Way in Toronto, Ontario, including, without limitation, any and all alleged deficiencies identified or not identified in the First and Second year Performance Audits and for which any warranty claim could have been initiated, and from any and all actions, causes of action, warranty claims, claims or demands of whatsoever nature, whether in contract or in tort or arising as a result of a fiduciary duty or by virtue of any statute, including, without limitation, the *Ontario New Home Warranties Plan Act* and the regulation promulgated thereunder (together, the "ONHWPA"), or upon or by reason of any damage, loss or injury arising out of the matters set forth above.

2. Without limiting the generality of the foregoing, the Corporation declares that the intent of this Agreement is to conclude all issues arising from the matters set forth above and it is understood and agreed that this Agreement is intended to cover, and does cover, not only all known injuries, losses and damages, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof.
3. Notwithstanding the foregoing, this Agreement shall not affect or apply to: (a) claims in respect of a "major structural defect" that may develop or be discovered after the date of this Agreement and that are made during the remaining applicable warranty period pursuant to the ONHWPA; and, (b) the Developer's obligation to transfer the Bridge Visitor Parking Units, as that term is defined in the Corporation's declaration.
4. Subject to Section 3 hereof, it is agreed and understood that the Corporation will not make any claim or take any proceedings against the Releasees or any of them, or any person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, the ONHWPA and/or under the *Rules of Civil Procedure*, from the Releasees or any of them discharged by this Full and Final Release, in connection with the matters outlined above. It is further agreed and understood that if the Corporation commences such an action, or takes such proceedings, and the Releasees or any of them is added to such proceeding in any manner whatsoever, whether justified in law or not, the Corporation will immediately discontinue the proceedings and/or claims, and the Corporation will be liable to any therein named Releasee for the legal costs incurred in any such proceeding, on a substantial indemnity basis. This Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Corporation with respect to the

matters covered by this Agreement. This Agreement may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by the Corporation in any subsequent action that the other parties in the subsequent action were not privy to formation of this Release.

5. The Corporation further covenants and agrees that in the event the Corporation or any owner or mortgagee of a unit in the Corporation makes any claim or takes or continues any proceedings against any person, partnership or corporation which then claims contribution, indemnity or relief over, against the Releasees, pursuant to the provisions of any statute, agreement or otherwise, with respect to any of the matters which are the subject matter of this Agreement, the Corporation shall indemnify and save harmless the Releasees from any such claims, including all costs on a full indemnity basis of defending such actions.
6. Each of the parties hereto agree to give all such further assurances and execute all such further release documents as may be reasonably required from time to time to effectively accomplish the intent of the Agreement.
7. The Corporation agrees that it will sign this Agreement with the understanding that it shall be delivered to the law firm of Harris Sheaffer LLP ("HS") which shall hold same in escrow until the settlement funds of \$450,000.00 are delivered to the Corporation. The Developer agrees that it will deliver the settlement funds to the Corporation within 30 calendar days of all of the following conditions having been met: (a) the Corporation delivering to the Developer valid and duly authorized board resolutions of the Corporation authorizing and approving the Corporation entering into this Agreement; (b) the Corporation delivering this signed Agreement to HS; (c) the release of the settlement funds to the Developer by HS, which release shall be made upon the receipt by HS of all necessary approvals from Travelers Guarantee Company of Canada ("Travelers"); and (d) the Ontario Superior Court of Justice (Commercial List) issuing an order within the CCAA Proceedings approving this Agreement and the Developer's entering into of same, which order shall be in a form and substance satisfactory to the Developer, the Corporation, Tarion, Travelers, HS and the Court-appointed monitor in the CCAA Proceedings.
8. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.
9. Any notices required to be delivered pursuant to this Agreement shall be delivered and deemed to have been effectively delivered by:

Email transmission:

- (i) to the Developer c/o tedsaskin@gmail.com
- (ii) to the Corporation c/o sunny@goldview.ca

Delivery:

- (i) to the Developer
120 Lynn Williams Street, Suite 2A
Toronto, Ontario, M6K 3N6
- (i) to the Corporation
38 Joe Shuster Way
Toronto, Ontario, M6K 0A5

or at such other address or facsimile number as the Corporation or the Developer advises in writing.

IN WITNESS WHEREOF, we have hereunto affixed our corporate seals attested by the hands of our proper officers, this ____ day of ____, 2018

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302**

Per:
Name:
Title:

Per:
Name:
Title:
I/We have authority to bind the Corporation

BRIDGE ON KING INC.

Per:

Name:

Title:

Schedule "I"

CERTIFICATE

TO: Tarion Warranty Corporation

RE: Urbancorp Downsview Park Development Inc. ("Downsview")

THE UNDERSIGNED hereby certifies that, to the best of its knowledge and belief, Downsview: (A) did not build any dwelling units; and (B) is not a party to any agreements for the purchase and sale of any dwelling units that have not otherwise been terminated with any and all deposits having been return in full and full and final releases having been obtained from the respective purchasers.

Date:

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES

By:

Name: *Robert Kofman*

Title: *President*

MINUTES OF SETTLEMENT
(Bay CCAA Entities)

WHEREAS on April 25, 2016, Urbancorp (Woodbine) Inc. ("**Woodbine**") and Urbancorp (Bridlepath) Inc. ("**Bridlepath**") each filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**NOI Proceedings**"). Jointly, Woodbine and Bridlepath are referred to as the "**Companies**". KSV Kofman Inc. ("**KSV**") was appointed as the Proposal Trustee in the NOI Proceedings.

AND WHEREAS, pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 18, 2016 (the "**Initial Order Date**"), Woodbine, Bridlepath, The Townhouses Of Hogg's Hollow Inc., King Towns Inc., Newtowns At Kingtowns Inc., Deaja Partner (Bay) Inc. (the "**Applicants**") and TCC/Urbancorp (Bay) Limited Partnership ("**Bay LP**" and, together with the Applicants, the "**Bay CCAA Entities**") were granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") and KSV was appointed monitor (the "**Monitor**");

AND WHEREAS, on the Initial Order Date, an order (the "**Claims Procedure Order**") was made by the Court to establish a procedure for the identification and quantification of certain claims against the Bay CCAA Entities and against the current and former officers and directors of the Bay CCAA Entities;

AND WHEREAS Tarion Warranty Corporation ("Tarion"), in response to the Claims Procedure Order, submitted claims against each of the Bay CCAA Entities, the types and amounts of which are set out in Schedule "A" hereto (collectively, the "Claims");

AND WHEREAS, the Monitor issued a Notice of Revision or Disallowance to Tarion in respect of the Claims disallowing certain of the Claims (the "NOROD");

AND WHEREAS the Monitor and Tarion agreed that Tarion reserved its rights to object to the NOROD pursuant to the Claims Procedure Order by the filing of an Omnibus Notice of Dispute of Notice of Revision or Disallowance;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Monitor and Tarion (together, the "Parties") have agreed to resolve the Claims on the following terms:

1. On the condition that for each of The Townhouses Of Hogg's Hollow Inc., King Towns Inc., and Newtowns At Kingtowns Inc., the Monitor delivers to Tarion: (i) a certificate of the Monitor, substantially in the form attached hereto as Schedule "B", certifying, to the best of its knowledge and belief, that: (A) no original purchaser deposits remain outstanding or otherwise payable by such entity to any original purchaser of a dwelling unit from such entity; (B) nothing has come to its attention that would suggest that sales of dwelling units were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into in respect of the same dwelling unit; (C) no original purchaser had terminated its agreement of purchase and sale by reason of the vendor's delay in

closing or by reason of a delay in the purchaser obtaining occupancy; and (D) at least 396 days have elapsed since the outside closing date/occupancy date set out in each of the relevant agreements of purchase and sale entered into by the original purchasers; and (ii) a statutory declaration from Alan Saskin, substantially in the form attached hereto as Schedule "C", declaring that: (A) no original purchaser deposits remain outstanding or otherwise payable by such entity to any original purchaser of a dwelling unit from such entity; (B) no sales of dwelling units were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into in respect of the same dwelling unit; (C) no original purchaser had terminated its agreement of purchase and sale by reason of the vendor's delay in closing or by reason of a delay in the purchaser obtaining occupancy; and (D) at least 396 days have elapsed since the outside closing date/occupancy date set out in each of the relevant agreements of purchase and sale entered into by the original purchasers, Tarion shall withdraw its objection to the disallowance of its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to claims other than the Legal Costs Claim) in respect of The Townhouses Of Hogg's Hollow Inc., King Towns Inc., and Newtowns At Kingtowns Inc., such that its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs

Claim) in respect of The Townhouses Of Hogg's Hollow Inc., King Towns Inc., and Newtowns At Kingtowns Inc. shall be zero.

2. On the condition that for each of Deaja Partner (Bay) Inc. and Bay LP, the Monitor delivers to Tarion: (i) a certificate of the Monitor, substantially in the form attached hereto as Schedule "D", certifying, to the best of its knowledge and belief, that such entity did not: (A) build any dwelling units; (B) enter into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units; and (ii) a statutory declaration from Alan Saskin, substantially in the form attached hereto as Schedule "E", declaring that such entity did not: (A) build any dwelling units; (B) enter into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units, Tarion shall withdraw its objection to the disallowance of its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs Claim) in respect of each such entity, such that its Deposit Warranty Claims, Delay Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims, Administration Claims and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs Claim) shall be zero in respect of each such entity.

3. On the condition that for each of Woodbine and Bridlepath, the Monitor delivers to Tarion a certificate of the Monitor, substantially in the form attached hereto

as Schedule "F", certifying that no appeals under the Claims Procedure Order are outstanding in respect of any Home Buyer Claim Notices (as defined in the Claims Procedure Order) and that all applicable appeal periods have expired, Tarion shall withdraw its objection to the disallowance of its Deposit Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims (but only to the extent that such Chargeable Conciliation Claims are attributable to any claims other than the Delay Warranty Claims), Administration Claims (but only to the extent that such Administration Claims are attributable to any claims other than the Delay Warranty Claims) and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs Claims) in respect of each such entity, such that its Deposit Warranty Claims, Dwelling Deficiency Warranty Claims, Common Element Deficiency Warranty Claims, Chargeable Conciliation Claims (but only to the extent that such Chargeable Conciliation Claims are attributable to any claims other than the Delay Warranty Claims), Administration Claims (but only to the extent that such Administration Claims are attributable to any claims other than the Delay Warranty Claims) and Interest Claims (but only to the extent that such Interest Claims are attributable to any claims other than the Legal Costs Claims) shall be zero in respect of each such entity.

4. In respect of Tarion's Delay Warranty Claims (and any directly related Chargeable Conciliation Claims and Administration Claims) for each of Woodbine and Bridlepath:

(a) the Monitor shall hold back from any distributions in the CCAA proceedings an amount of \$604,810.00 in respect of such Delay Warranty Claims (the "Bay Claims Reserve"); and

(b) subject to a litigation schedule and plan to be agreed to by the Monitor and Tarion, the Monitor shall bring a motion before the Court as soon as practicable following the issuance of the Approval Order (defined below) for the purposes of: (i) upholding its disallowance of such Delay Warranty Claims on the basis that the Woodbine and Bridlepath home purchasers do not have delayed occupancy claims and/or delayed closing claims that are capable of being asserted by such purchasers pursuant to their agreements of purchase and sale with Woodbine and Bridlepath or under the *Ontario New Home Warranties Plan Act* and the regulations promulgated thereunder (collectively, the "ONHWPA"); and (ii) determining the basis on which compensation for such claims should be calculated. The Monitor does not now, and shall not later, dispute the validity of the Delay Claims to the extent that: (i) the Court determines that the Woodbine and Bridlepath ~~home purchasers~~^{home purchasers} do have delayed occupancy claims and/or delayed closing claims that are capable of being asserted by such purchasers; and (ii) such delayed occupancy claims and/or delayed closing claims are actually asserted by such purchasers and determined to be valid under the ONHWPA in accordance with the procedures set out therein (such claims, the "Asserted and Valid Delay Claims"). The Asserted and Valid Delay Claims shall be allowed and proven claims and the Monitor shall distribute funds from the Bay Claims Reserve to Tarion on account of such claims.

5. Tarion and the Monitor agree that Tarion's Legal Costs Claim against the Bay CCAA Entities shall be an accepted and proven claim in the amount of \$98,553.79. Tarion hereby withdraws its objection to the disallowance of its Legal Costs Claims that are over and above such amount in respect of the Bay CCAA Entities.

6. Tarion and the Monitor agree that Tarion's Interest Claim against the Bay CCAA Entities shall be an accepted and proven claim in the amount of \$15,470.65.

7. Notwithstanding the settlement of Tarion's claims described herein in respect of the Bay CCAA Entities (all such claims, the "Settled Claims"), any and all of Tarion's claims in respect of the Settled Claims, including, without limitation, indemnity and guarantee claims, against any third parties (other than the Cumberland CCAA Entities) (all such claims, the "Third Party Claims") shall be preserved as against those third parties, and Tarion shall be permitted, and reserves its rights, to pursue any and all such Third Party Claims in law or in equity, provided that Tarion shall not make any such Third Party Claims or take any proceedings against any other person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, from any one or more of the Bay CCAA Entities in connection with the Third Party Claims unless and only to the extent that the Settled Claims are not paid in full in the Bay CCAA Entities' CCAA proceedings.

8. The Monitor shall bring a motion in the CCAA proceedings as soon as practicable to seek an order approving these Minutes of Settlement and directing the Monitor to execute these Minutes of Settlement (the "Approval Order") and the

effectiveness of these Minutes of Settlement shall be conditional on the granting of the Approval Order.

9. The Approval Order shall be in a form and substance satisfactory to the Monitor and Tarion, each acting reasonably.

10. The Parties represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.

11. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the Parties.

12. The Parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

13. The Parties agree that any Schedule attached to these Minutes of Settlement forms an integral part of the Minutes of Settlement and that any reference to the Minutes of Settlement includes the Schedule.

14. These Minutes of Settlement constitute the entire agreement between the Parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

15. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the Parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

16. These Minutes of Settlement may be executed by the Parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of the Parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED this 18th day of April, 2018.

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE BAY
CGAA ENTITIES

By: 

Name: Robert Kofman

Title: President

TARION WARRANTY
CORPORATION

By: 

Name: Tim Schumacher

Title: Vice President &
General Counsel

Schedule "A"

Tarion Claims

(See Attached Spreadsheet)

UrbanCorp
 Tarrion Warranty Corp. Claim Summary - Bay LP
 (\$, unaudited)

| | Hoggs Hollow Inc. | UrbanCorp Deaja Partner (Bay) Inc. | Newtowns at Kingtowns Inc. | King Towns Inc. | TCC/UrbanCorp (Bay) Limited Partnership | UrbanCorp (Bridlepath) Inc. | UrbanCorp | Total |
|-----------------------------------------------|-------------------|------------------------------------|----------------------------|-------------------|-----------------------------------------|-----------------------------|-------------------|--------------------|
| Contingent Deposit Warranty Claim | 2,600,000 | 2,600,000 | 2,600,000 | 2,600,000 | 2,600,000 | 1,480,000 | 1,120,000 | 15,600,000 |
| Contingent Delay Warranty Claim | 487,500 | 487,500 | 487,500 | 487,500 | 487,500 | 277,500 | 210,000 | 2,925,000 |
| Contingent Dwelling Deficiency Warranty Claim | 19,500,000 | 19,500,000 | 19,500,000 | 19,500,000 | 19,500,000 | 11,100,000 | 8,400,000 | 117,000,000 |
| Contingent Chargeable Conciliation Claim | 73,450 | 73,450 | 73,450 | 73,450 | 73,450 | 41,810 | 31,640 | 440,700 |
| Contingent Administration Claim | 3,828,581 | 3,828,581 | 3,828,581 | 3,828,581 | 3,828,581 | 2,179,346 | 1,649,235 | 22,971,488 |
| Contingent Interest Claim | 2,390,265 | 2,390,265 | 2,390,265 | 2,390,265 | 2,390,265 | 1,360,183 | 1,030,082 | 14,341,588 |
| Liquidated Legal Costs Claim | - | - | - | - | - | 34,483 | 34,483 | 68,965 |
| Contingent Legal Costs Claim | 168,965 | 168,965 | 168,965 | 168,965 | 168,965 | 50,000 | 50,000 | 944,826 |
| Contingent Non-Registrants Claim | - | - | - | - | - | - | - | - |
| Total Claim | 29,048,761 | 29,048,761 | 29,048,761 | 29,048,761 | 29,048,761 | 16,523,321 | 12,525,440 | 174,292,567 |

Schedule "B"

CERTIFICATE

TO: Tarion Warranty Corporation

RE: The Townhouses Of Hogg's Hollow Inc., King Towns Inc., and Newtowns At Kingtowns Inc. (collectively, the "Entities")

THE UNDERSIGNED hereby certifies that, to the best of its knowledge and belief: (A) no original purchaser deposits remain outstanding or otherwise payable by any of the Entities to any original purchaser of a dwelling unit from any of the Entities; (B) nothing has come to its attention that would suggest that sales of dwelling units from the Entities were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into by any of the Entities in respect of the same dwelling unit; (C) no original purchaser from any of the Entities had terminated its agreement of purchase and sale by reason of the Entities' delay in closing or by reason of a delay in the purchaser obtaining occupancy; and (D) at least 396 days have elapsed since the outside closing date/occupancy date set out in each of the relevant agreements of purchase and sale entered into by the original purchasers of a dwelling unit from any of the Entities.

Date:

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES**

By:

Name:

Title:

Robert Kofman
President

Schedule "C"


STATUTORY DECLARATION

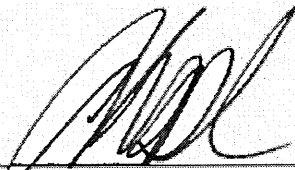
CANADA) IN THE MATTER of The Townhouses Of Hogg's
) Hollow Inc., King Towns Inc., and Newtowns At
PROVINCE OF ONTARIO) Kingtowns Inc. (collectively, the "Entities")
)

I, **ALAN SASKIN**, of the City of Toronto, in the Province of Ontario, **DO SOLEMNLY DECLARE**, in my capacity as an officer of the Entities, **THAT**:

1. I am the president of each of the Entities and as such have knowledge of the matters hereinafter declared.
2. To the best of my knowledge and belief, no original purchaser deposits remain outstanding or otherwise payable by any of the Entities to any original purchaser of a dwelling unit from any of the Entities.
3. To the best of my knowledge and belief, no sales of dwelling units from any of the Entities were agreed to other than those sales to the original purchasers, such that multiple agreements of purchase and sale were not entered into by any of the Entities in respect of the same dwelling unit.
4. To the best of my knowledge and belief, no original purchaser from any of the Entities had terminated its agreement of purchase and sale by reason of the Entities' delay in closing or by reason of a delay in a purchaser obtaining occupancy.
5. To the best of my knowledge and belief, at least 396 days have elapsed since the outside closing date/occupancy date set out in each of the relevant agreements of purchase and sale entered into by the original purchasers of a dwelling unit from any of the Entities.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me)
at the City of Toronto,)
in the Province of Ontario.)
this 14 day of May, 2018.)
)
_____)
A Commissioner, etc.)



ALAN SASKIN

Schedule "D"

CERTIFICATE

TO: Tarion Warranty Corporation

RE: Deaja Partner (Bay) Inc. and TCC/Urbancorp (Bay) Limited Partnership
(collectively, the "Entities")

THE UNDERSIGNED hereby certifies that, to the best of its knowledge and belief, each of the Entities did not: (A) build any dwelling units; (B) enter into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units.

Date:

KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES

By:

Name: Robert Kofman

Title: President

Schedule "E"

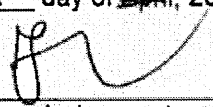
STATUTORY DECLARATION


CANADA) IN THE MATTER of Deaja Partner (Bay) Inc. and
) TCC/Urbancorp (Bay) Limited Partnership
PROVINCE OF ONTARIO) (collectively, the "Entities")
)
)

I, ALAN SASKIN, of the City of Toronto, in the Province of Ontario, DO SOLEMNLY DECLARE, in my capacity as an officer of the Entities, THAT:

1. I am the president of each of the Entities and as such have knowledge of the matters hereinafter declared.
2. Each of the Entities did not: (A) build any dwelling units; (B) enter into any agreements for the purchase and sale of any dwelling units; or (C) receive any deposit monies from any person in respect of any dwelling units.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me)
at the City of Toronto,)
in the Province of Ontario.)
this 7th day of ~~April~~ ^{MAY}, 2018.)
)
_____)
A Commissioner, etc.)



ALAN SASKIN

Schedule "F"

CERTIFICATE

TO: Tarion Warranty Corporation

RE: Urbancorp (Woodbine) Inc. and Urbancorp (Bridlepath) Inc. (collectively, the "Entities")

Defined terms used herein and not otherwise defined shall have the meaning ascribed to them in the Claims Procedure Order.

THE UNDERSIGNED hereby certifies that, with respect to each of the Entities, no appeals under the Claims Procedure Order are outstanding in respect of any Home Buyer Claim Notices and that all applicable appeal periods in respect of all Home Buyer Claim Notices have expired.

Date:

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTED MONITOR OF THE
CUMBERLAND CCAA ENTITIES**

By:

Name: *Robert Kofman*

Title: *President*

Appendix “D”

PAR 7 on the draft reference plan 65R-XXXXX attached hereto as Schedule "C2" (Plot No)

LOT 20 MODEL TYPE Birch ELEVATION Left PACKAGE Gold (B)

AGREEMENT OF PURCHASE AND SALE

1. The undersigned (the "Purchaser"), hereby agrees with URBANCORP (ST. CLAIR VILLAGE) INC. (the "Vendor") to purchase all and singular the lands and premises in the City of Toronto (the "Municipality")...

- (a) by cheque in the amount of FIVE THOUSAND (\$ 5,000.00) DOLLARS submitted with this Agreement.
(b) by cheque in the amount of TWENTY-THREE THOUSAND SIX HUNDRED SIXTY-FIVE (\$23,665.00) DOLLARS submitted with this Agreement, dated on or before Monday February 17, 2014, and
(c) by cheque in the amount of TWENTY-EIGHT THOUSAND SIX HUNDRED SIXTY-FIVE (\$28,665.00) DOLLARS submitted with this Agreement, dated on or before Friday April 16, 2014, and;
(d) by cheque in the amount of TWENTY-FOUR THOUSAND FIVE HUNDRED SEVENTY (\$24,570.00) DOLLARS submitted with this Agreement, dated on or before Tuesday June 17, 2014.

to the Vendor as deposits (collectively, the "Deposit") and covenants, promises and agrees to pay the balance of the Purchase Price by wire transfer from the trust account of the Purchaser's solicitor or by certified cheque drawn on the trust account of the Purchaser's solicitor payable to the Vendor or as the Vendor may direct on the Closing Date (as hereinafter defined) subject to the adjustments hereinafter set out

- 2. This transaction of purchase and sale is to be completed on the First Tentative Closing Date (as defined in the Statement of Critical Dates being a part of the Tarion Addendum as hereinafter defined) or such extended or accelerated date established in accordance with the terms of this Agreement including without limitation, the Tarion Addendum (the "Closing Date" or "Date of Closing")
3. Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within ten (10) days from the date of the Purchaser's execution of this Agreement as set out below, then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser, whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor
4. This Agreement is conditional upon the approval of the terms hereof by the Purchaser's solicitor for a period of ten (10) days from the date of acceptance of this Agreement by the Vendor below (the "Acceptance Date") Unless the Purchaser provides notice to the Vendor, in writing delivered to the Vendor by no later than 11:59 pm on the Acceptance Date, then the Purchaser shall be deemed to have waived this condition and the Agreement shall become firm and binding Should the Purchaser notify the Vendor in the time aforesaid that this Agreement is unacceptable, this Agreement shall become null and void and the Purchaser's deposit shall be returned in full, without interest. This condition is included for the benefit of Purchaser and may be waived at the Purchaser's sole option.
5. The following Schedules of this Agreement, if attached hereto, shall form a part of this Agreement. The Purchaser acknowledges that he has read all Sections and Schedules of this Agreement and the form of Acknowledgement, if any

- Schedule "A" - Additional Terms
Schedule "B" - Standard Features
Schedule "C" - Site Plan
Schedule "C1" - Elevations
Schedule "C2" - Floor Plan
Schedule "D" - Warning Clauses and Notice Provisions
Schedule "E" - Common Elements Condominium Interest
Schedule "F" - Receipt Confirmation
Schedule "G" - Restrictions
Schedule being Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale (collectively the "Tarion Addendum")

6. The Purchaser's address for delivery of any notices pursuant to this Agreement is the address as set out in the Tarion Addendum

DATED the 18 day of January 2014

SIGNED, SEALED AND DELIVERED in the presence of

WITNESS (as to all Purchaser's signatures if more than one purchaser)

PURCHASER DOB SIN
PURCHASER DOB SIN

Address
Telephone Email

PURCHASER'S SOLICITOR:

The Vendor hereby accepts the within offer and agrees to complete this transaction in accordance with the terms hereof

DATED, SIGNED, SEALED AND DELIVERED the 16 day of January 2014

Vendor's Solicitors HARRIS SWEAFFER LLP Suite 610 - 4100 Yonge Street Toronto Ontario M2P 2B5 Attn: Mark L. Kerley Telephone: 416 291 2200

URBANCORP (ST. CLAIR VILLAGE) INC.

Authorized Signatory

SCHEDULE "A"

ADDITIONAL TERMS

DWELLING MATTERS, SITING, MATERIALS CHANGES, ETC

1. The Vendor agrees that it will erect on the Real Property the Dwelling in accordance with plans and specifications (the "Plans") already examined by the Purchaser and in accordance with Schedule "C" attached hereto. The Purchaser acknowledges and agrees that the Vendor may from time to time, in its sole discretion, or as requested or required by the Vendor's architect or any design consultants or by any governmental authority, change, alter, vary or modify the Plans, the siting of the Dwelling and/or the grading of the Real Property without notice thereof to the Purchaser. The Purchaser agrees to accept such changes, alterations, variations or modifications and, without limiting the generality of the foregoing, variations to the lot/block number, municipal address, location, block and elevation mixes, area and frontage or depth of the Real Property without any abatement of the Purchase Price or claim for compensation whatsoever. The Purchaser also acknowledges and agrees that architectural control of exterior elevations, driveway construction, boulevard tree planting, landscaping, corner lot fencing (including the location of such corner lot fencing), exterior colour schemes, or any other material external to the Dwelling designed to enhance the aesthetics of the community as a whole, may be imposed by the Municipality and/or the subdivider and/or the developer. In the event the Vendor is required, in compliance with such architectural control requirements to construct an exterior elevation for the Dwelling other than as specified in this Agreement or amend the driveway construction or location, boulevard tree planting or landscaping plan for the Dwelling and/or Real Property, as the case may be, (all of which is hereinafter referred to as the "Amended Exterior Plans"), the Purchaser hereby irrevocably authorizes the Vendor to complete the Dwelling and/or Real Property, as the case may be, in accordance with the Amended Exterior Plans, and the Purchaser hereby irrevocably agrees to accept such Amended Exterior Plans in lieu of the plans for same specified in this Agreement without any abatement of the Purchase Price or claim for compensation whatsoever. The Vendor shall have the right, in its sole discretion, to construct the Dwelling either as shown on the Plans or to construct such Dwelling on a reverse mirror image plan, including reversal of the garage siting and reversal of the interior floor plan layout. Construction of a reverse mirror image plan is hereby irrevocably accepted by the Purchaser without any right of abatement of the Purchase Price or claim for compensation whatsoever. Further, in the event the Vendor determines, in its sole discretion, to construct the Dwelling at a grade level different than as depicted in the Plans, necessitating a step or series of steps to the front door, side door, rear door, or any door from the garage to the interior of the Dwelling or any elimination of the side door or door from the house to the garage or garage to outside, if any, the Purchaser hereby agrees to accept such change(s) without any abatement of the Purchase Price or claim for compensation whatsoever. The Vendor shall further have the right to substitute other material for that provided for in the Plans, in the sole discretion of the Vendor, for any cause which it may deem reasonable without notice thereof to the Purchaser, provided that such material is, in the sole judgment of the Vendor, of substantially equal or better quality than the material in the Plans and the Purchaser shall accept same without any abatement of the Purchase Price or claim for compensation whatsoever. Without limiting the generality of any other part of this paragraph, in the event of any change, variation, alteration or modification described in this paragraph, the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its sales representatives (whether based or founded in contract, tort or in equity) for any such changes, variations, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications significantly affects the fundamental character, use or value of the Dwelling and/or the Real Property, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same, and where any such change, deletion, alteration or modification to the said plans and specifications significantly affects the fundamental character, use or value of the Dwelling and/or the Real Property, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Closing Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such fundamental change), and the return of the Purchaser's deposit monies without interest. The provisions of this Section may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his successors in title or assigns against the Vendor.
2. The Purchaser acknowledges and agrees that in the event the Dwelling being purchased herein is a semi-detached or townhouse dwelling, the subject lot/block of which the Real Property forms a part will not necessarily be divided equally but may instead be divided in unequal proportions. The Purchaser agrees to accept any such unequal division of the lot/block.

PURCHASER'S SELECTIONS

3. (a) Within seven (7) days of notification by the Vendor to the Purchaser, the Purchaser shall complete the Vendor's colour and material selection form for those items of construction and finishing for which the Purchaser is entitled to make selection pursuant to this Agreement, and in the event such items become unavailable, the Purchaser agrees to re-attend within seven (7) days of notification to make alternate selections from the Vendor's samples. If the Purchaser fails to attend and make selections as aforesaid, the Vendor may make the selections on the Purchaser's behalf and the Purchaser agrees to accept the Vendor's selections. The Purchaser shall have no selection whatsoever insofar as exterior colours, designs and materials are concerned.
 - (b) No changes can be permitted in colours or materials so selected by the Purchaser without the prior written consent of the Vendor (which consent may be unreasonably or arbitrarily withheld). In the event any of the foregoing items in which the Purchaser has a choice, have already been ordered, installed or completed, then the Purchaser shall be deemed to have accepted them. Notwithstanding anything herein contained to the contrary, in no event shall the Purchaser's failure to make such choices within seven (7) days upon request to do so by the Vendor, and the possible consequent inability of the Vendor to substantially complete the Dwelling by the Closing Date entitle the Purchaser to an extension of the Closing Date.
 - (c) The Purchaser specifically acknowledges that in the manufacture and/or production of items, variances may occur from the Vendor's samples and also such items shown as samples may not be subsequently available. The Purchaser hereby agrees to accept any such resulting variations whether as to supplier, brand name, colour and/or otherwise without any abatement of the Purchase Price.
4. The Purchaser acknowledges that he has purchased the Dwelling on the basis of the Plans and not from a model or vignette. The Purchaser acknowledges that the model home(s) or vignettes, if any, are for display purposes only, and that some or all of the features contained therein may not be included in the Dwelling unless the same is specifically provided for in a Schedule forming part of this Agreement. Any item identified as optional or an upgrade in the sales or marketing material(s) is not included in the Dwelling but may be purchased at additional cost under a separate Schedule to this Agreement or by separate agreement. The Purchaser's attention is drawn to Schedule "B" which forms part of this Agreement and which sets out therein the items which will be included in the Dwelling as standard features. The Purchaser hereby acknowledges that the Dwelling will only include those standard features and, accordingly, if the Purchaser requires any clarification or explanation as to items, features or finishes as referred to in Schedule "B" or anywhere else in this Agreement or with respect to any matters

whatsoever which the Purchaser has discussed with the Vendor's sales representative(s) such clarifications or explanations must be made in writing and included in this Agreement, failing which the Purchaser shall be estopped from making a claim for any such clarifications, explanations, items, features, finishes or representations, other than as set out in writing in this Agreement. The Purchaser hereby acknowledges that there are no representations, warranties, guarantees, collateral agreements or conditions whatsoever affecting this Agreement, the Dwelling or the Real Property or supported hereby other than as is expressed in writing in this Agreement.

SUBSTANTIAL COMPLETION OF THE DWELLING/OCCUPANCY

5. In the event that the Dwelling is substantially completed and ready for occupancy by the Closing Date the sale shall be completed on such date without any holdback whatsoever of any part of the Purchase Price and the Vendor shall complete any outstanding items of construction required by this Agreement within a reasonable time thereafter and during normal business hours, having regard to weather conditions and the availability of labour and materials. If there is a detached garage as part of the Real Property substantial completion of the Dwelling shall not include completion of the said garage and the Purchaser shall complete the within transaction notwithstanding the construction of the garage is not completed or even started. For the purpose of this Agreement, the Dwelling shall be deemed to be substantially complete when the interior work has been substantially finished to permit occupancy, notwithstanding that there remains grading or landscaping or other outside work to be completed. The Vendor shall provide evidence that occupancy is permitted in accordance with and only to the extent required by the Tarion Addendum.
6. Provided that in the event the Vendor is unable to deliver to the Purchaser on or before the Closing Date a conveyance of the Real Property free and clear of encumbrances, save and except as provided for in this Agreement, for any reason whatsoever, including, without limitation, failure to register the Condominium prior to the Closing Date, then the Vendor, may, at its option, require the Purchaser to take possession of the Real Property in accordance with Schedule "C" of the Tarion Addendum and the Vendor's undertaking to deliver a conveyance in accordance with the provisions of this agreement within such period of time as the Vendor may require. From and after the date of possession, the Purchaser shall be responsible for the realty taxes, water, hydro, gas and other public and/or private utilities, common expenses and interest on the unpaid balance of the Purchase Price all in accordance with Schedule "C" of the Tarion Addendum until such time as the Vendor delivers a conveyance of the title to the Real Property to the Purchaser. The parties hereto further agree that upon the Vendor delivering to the Purchaser a conveyance in accordance with the terms of this Agreement, any further adjustments that may be required shall be made at the time of the delivery of the conveyance.

TARION WARRANTY CORPORATION

7. (a) The Vendor covenants that on completion of this transaction a warranty certificate for the Dwelling will be requested from Tarion Warranty Corporation ("Tarion"). Such warranty shall contain the only warranties covering the Dwelling. The Purchaser acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Dwelling, 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 Vendor under the *Ontario New Homes Warranties Plan Act*, as may be amended (the "ONHWPA") and shall extend only for the time period and in respect of those items as stated in the ONHWPA, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement, or condition in any way affecting this Agreement, the Dwelling and/or the Real Property other than as expressed herein.
- (b) The Purchaser or the Purchaser's designate as hereinafter provided agrees to meet the Vendor's representative at the date and time designated by the Vendor, prior to the Closing Date, to conduct a pre-delivery inspection of the Dwelling (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 Dwelling on the Tarion Certificate of Completion and Possession (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 ONHWPA. The said CCP and PDI forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work and the Purchaser shall not require any further undertaking of the Vendor to complete any outstanding items. In the event that the Vendor performs any additional work to the Dwelling in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder.
- (c) The Purchaser acknowledges that the Homeowner Information Package as defined in Tarion Bulletin 42 (the "HIP") is available from Tarion and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.
- (d) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (e) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI forms at the conclusion of the PDI, the Vendor may declare the Purchaser 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 Vendor may, at its option complete the within transaction but not provide the keys to the Dwelling to the Purchaser until the CCP and PDI forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI forms.
- (f) In the event the Purchaser and/or the Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser 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.
- (g) The Purchaser further agrees with the Vendor that the Vendor and/or its representatives shall have the right to enter the Dwelling and the Real Property after completion of the purchase in order to complete any of the items listed on the CCP and PDI forms, provided that if the Purchaser fails or refuses to permit the Vendor and/or its representatives such entry, the Vendor's obligations hereunder shall terminate and be at an end. Any such entry shall be deemed not to be a trespass.

- (h) The Purchaser acknowledges that the area of the Dwelling, as may be represented or referred to by the Vendor or any sales representative, or which appears in any sales or marketing material(s) is approximate only, and is measured in accordance with Builder Bulletin No. 22 published by Tarion. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living area within the confines of the Dwelling may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Dwelling purchased hereunder are approximate only, and that there shall be no adjustment of the Purchase Price or claim for compensation whatsoever, whether based upon the ultimate square footage of the Dwelling, or the actual or useable living space within the confines of the Dwelling or otherwise. The Purchaser further acknowledges that notwithstanding any representation of ceiling heights within the Dwelling that where ceiling bulkheads are installed within the Dwelling, and/or where dropped ceilings are required, then ceiling heights of the Dwelling will be less than that represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.
6. The Purchaser covenants and agrees that he will exhaust all the remedies available to him with Tarion with respect to any claim relating to defects in workmanship or materials or with respect to any other claim arising under the ONHWPA or in respect of the Tarion Addendum, prior to pursuing any other means of redress with regard to such claims. In the event the Purchaser does not comply with the provisions of this Section, or takes any unwarranted or unreasonable actions with respect to such claims, the Purchaser shall be held liable for any damages sustained by the Vendor as a result thereof.

TITLE AND CONVEYANCING MATTERS

9. The Purchaser agrees to accept title to the Real Property subject to the following items and the Purchaser covenants and agrees to adhere to the terms and conditions as set out therein. The Purchaser agrees to satisfy himself as to compliance with any of the following items and the Vendor shall not be obligated on the Closing Date or thereafter to obtain any compliance, releases or discharges with respect to any of the following items:
- (a) any subdivision agreement, site plan agreement, development agreement, condominium agreement, financial agreement, encroachment agreement or other agreement entered into with any municipal authority or other governmental authority or with any public or private utility commission or railway company, including any restrictions, covenants, obligations or liabilities contained therein (collectively the "Subdivision Agreements" or "Development Agreements");
 - (b) any building or other restrictions and covenants that may be registered against the title of the Real Property, including, without limitation, those restrictive covenants set out in Schedule "G" hereto and the Purchaser agrees, if required by the Vendor, to sign the transfer/deed of land containing such restrictions and covenants and to extract the same from any subsequent purchasers;
 - (c) a right in the nature of an easement or license for the Vendor and/or the subdivider and/or the developer and their respective successors and assigns and their servants and agents to enter upon the Real Property (without such act being a trespass) at any time prior to the complete acceptance of the subdivision or Condominium Corporation of which the Real Property forms a part (the "Subdivision" or the "Development") by the Municipality or thereafter for completion or correction of grading and surface drainage and in order to permit the Vendor and/or the subdivider and/or the developer to carry out the obligations, if any, under the Subdivision Agreements or as imposed by any governmental authority or bonding company to effect any corrective measures with respect to the Subdivision Agreements applicable to the Real Property and the transfer/deed of land may contain a clause to this effect;
 - (d) such easements or rights-of-way, licenses or leases, permanent or temporary, as exist or may subsequently be granted in favour of the Condominium Corporation, the Municipality, any railway company, any applicable regional municipality, any applicable conservation authority, the subdivider, the developer or any public or private utility, including, but not limited to, any telephone supplier, any hydro supplier and any gas supplier for hydro, fuel, telephone, television, cable, sewers, water, sanitary and storm sewer, municipal or other services or utilities; and, further, the Purchaser covenants and agrees to assume, accept and permit any such easements, rights-of-way, licenses or leases and if such easements, rights-of-way, licenses or leases have not been determined when the Purchaser receives his conveyance, such conveyance may contain a covenant by the Purchaser for himself, and his heirs, executors, administrators, successors and assigns, to grant any additional easements, rights-of-way, licenses or leases as may be required by the Vendor, subdivider or developer, any municipal or other governmental authority or utility or railway company and the Purchaser further covenants and agrees to execute all documents without charge which may be required to convey or confirm any such easement, right-of-way, license or lease and shall exact a similar covenant in any agreement entered into between the Purchaser and any subsequent purchaser from him;
 - (e) such easements as may be required by adjoining owners for maintenance or encroachment purposes and the encroachments permitted thereby;
 - (f) any notice registered pursuant to the *Condominium Act, 1998* in respect to the common interest in the condominium corporation attaching to the Real Property as further provided in Schedule "E" hereto and any other agreements, covenants, or other instruments as herein expressly provided and without limiting the generality of the foregoing the Purchaser acknowledges that the roadway on which the Real Property fronts will form part of a common elements condominium pursuant to the *Condominium Act, 1998* and that in connection therewith the Purchaser further acknowledges that: (i) it is the condominium corporation that shall be fully responsible for the maintenance of all services, including without limitation, the roadway, water mains, storm and sanitary sewers and all other services and facilities contained within the common elements of the condominium or within the Real Property and servicing lands other than the Real Property; (ii) the Purchaser hereby indemnifies and saves harmless the Municipality, its officers, employees and agents of, from and against all manner of actions, suits, claims which may be brought against or made upon the Municipality, its officers, employees and agents, or any of them, and of, from and against all loss, costs, damages and expenses which may be sustained, incurred or paid by the Municipality, its officers, employees and agents or any of them, resulting from the sharing of or access to the aforesaid services and if requested the Purchaser agrees to provide such an indemnity addressed to the Municipality on Closing; and (iii) that the Municipality is not required to assume any of the aforesaid services at any time in the future;
 - (g) any easement or restriction imposed by the local conservation authority;
 - (h) as herein expressly provided; and
 - (i) any minor breaches of any of the foregoing that have been remedied or are in the process of being remedied.

10. Provided that the title to the Real Property shall on the Closing Date be good and free from all encumbrances, except as provided for in this Agreement. The title is to be examined by the Purchaser at his own expense and he is not to call for the production of any deeds or abstracts of title, surveys, proof of evidence of title or to have furnished any copies thereof, other than those in the Vendor's possession or as provided for in this Agreement. The Purchaser is to be allowed until thirty (30) days prior to the Closing Date to examine the title at his own expense and if within that time he shall furnish the Vendor in writing with any valid objections to the title which the Vendor shall be unwilling or unable to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intermediate acts or negotiations, be null and void and the monies paid to the Vendor to that date on account of the Deposit shall be returned as provided for herein and the Vendor shall not be liable for any damages or costs whatsoever, including, without limiting the generality of the foregoing, loss of bargain, relocation costs, loss of income, professional fees and disbursements and any amount paid to third parties on account of decoration, construction or fixturing costs. Save as to any valid objections so made within such time, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Real Property.
11. The Purchaser acknowledges that the Real Property is or will be encumbered by mortgages and/or encumbrances which the Purchaser is not to assume and that the Vendor will not be obligated to obtain and register a discharge of such mortgages and/or encumbrances insofar as they affect the Real Property until a reasonable time after the Closing (as defined in the Tarion Addendum) and the Purchaser shall accept the undertaking of the Vendor's solicitors to obtain and register as soon as reasonably possible after Closing a discharge of such mortgages and/or encumbrances except as provided for herein and further agrees not to refuse to complete this transaction on the grounds that such mortgages and/or encumbrances have not been discharged.
12. The transfer/deed of land shall be prepared at the Vendor's expense and may contain any or all of the provisions set forth in this Agreement and shall be executed by the Purchaser, if required by the Vendor, and the Purchaser shall execute and deliver on the Closing Date a covenant, undertaking or agreement incorporating all or any of the terms contained herein or as may be required by the Vendor. The Purchaser undertakes and agrees to register the transfer/ deed of land at his own expense at the time of Closing. Each party is to pay the cost of registration and taxes on its own documents. The Purchaser shall deliver to the Vendor, on or before Closing, as required by the Vendor the Acknowledgement in the form attached to this Agreement, if any, duly completed and executed. The Purchaser agrees to advise the Vendor or its solicitors within thirty (30) days prior to the Closing Date of the manner in which title is to be taken by the Purchaser, failing which title to the Real Property shall be engrossed in the name of the Purchaser as noted on this Agreement and the Purchaser shall be estopped from requiring any further changes to the manner in which the transfer/deed of land is engrossed.
13. The Purchaser hereby acknowledges the full priority of any mortgage or construction financing arranged by the Vendor and/or secured by the Real Property over his interest as Purchaser for the full amount of the said mortgage or construction financing, notwithstanding any law or statute to the contrary and agrees to execute all acknowledgements or postponements required to give full effect thereto. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Real Property. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph.
14. In the event, that the Municipality does at some point in time provide a release of any of the Subdivision Agreements the Vendor may either provide such release to the Purchaser for registration of such release by the Purchaser at the Purchaser's expense or register the release, if any, in which event the Purchaser shall pay the Vendor the cost of registration of such release forthwith upon request although the Vendor may, at its option, add such cost to the statement of adjustments as a credit to the Vendor. The foregoing provision does not in any way whatsoever require the Vendor to request any such release or impose an obligation on the Vendor to take any steps to obtain any such release.
15. The Purchaser acknowledges that the transfer/deed of land to the Real Property to be given on the Closing Date may emanate from the registered owner of the Real Property and not from the Vendor herein, and the Purchaser agrees to accept same and to accept such owner's title covenants in lieu of the Vendor's, in the event the Vendor is not the registered owner of the Real Property on Closing and the Purchaser hereby releases the registered owner from all obligation, liability and responsibility whatsoever arising out of or associated with the construction of the Dwelling and installation of all other improvements within the lot boundaries of the Real Property, and the Purchaser agrees to execute and deliver on closing a separate acknowledgement and release in favour of the registered owner to this effect.

PLANNING ACT

16. This Agreement shall be conditional upon compliance with the subdivision control provision of the *Planning Act of Ontario*, as may be amended, which compliance shall be obtained by the Vendor, at its sole expense, on or before Closing.

INSURANCE

17. The Purchaser shall place his own insurance on the Real Property for Closing.

ADJUSTMENTS

18. On the Closing Date, the Purchaser shall pay to the Vendor, as an adjustment on the statement of adjustments, in addition to any other monies required to be paid as set out in this Agreement, the following:
 - (a) common expense contributions attributed to the Real Property, apportioned and allowed from the Closing Date, with that day itself apportioned to the Purchaser, with the Purchaser being obliged to provide to the Vendor on or before the Closing Date an executed pre-authorized payment form in the form presented by the Vendor;
 - (b) an amount equal to the Tarion enrolment fee paid by the Vendor for the Real Property;
 - (c) any amounts which remain unpaid and owing to the Vendor on account of upgrades and/or extras and/or changes ordered by the Purchaser;
 - (d) the Vendor's proportionate amount of the realty taxes (including local improvement charges) and tax account administration fee which shall be apportioned and allowed to Closing. Realty taxes (including local improvement charges) shall be estimated by the Vendor for the calendar year in which the transaction is completed and shall be adjusted as if such sum has been paid by the Vendor, notwithstanding that same may not have been levied or paid by the Date of Closing, subject, however, to readjustment when the actual amount of such taxes are ascertained;
 - (e) the costs of any utility check meter, water meter, hydro meter or gas meter installed in or about the Dwelling, as well as a proportionate share of any bulk utility meters within the Condominium, the installation of any such meters, the

connection charges for any such meters and/or sewers and the installation and energization charges, as the case may be, of hydro, water and gas services provided to the Dwelling and/or the Condominium and a fifteen percent (15%) administration charge thereon. A certificate of the Vendor or statutory declaration of an officer of the Vendor specifying the said costs shall be final and binding on the Purchaser;

- (f) all amounts chargeable and billable to the Purchaser for water, hydro, gas, cable T.V. and any other services arising as a result of the Purchaser's failure to make his own contractual arrangements with the relevant public or private utility authorities and suppliers on the Closing Date and for which the Vendor is subsequently charged, it being the express intent of the parties that it shall be the sole responsibility of the Purchaser to notify all relevant utility authorities and make the necessary contractual arrangements to ensure service to the Dwelling;
 - (g) the amount of any increase in development charge(s) and/or education development charge(s) (the "Levies") assessed against or attributable to the Unit (or assessed against the Property or any portion thereof, and attributable to the Real Property by pro-rating same by dividing same by the number of Dwellings in the proposed development, pursuant to the *Development Charges Act 1997*, S.O. 1997, as amended from time to time, and the *Education Act*, S.O. 1997, as amended from time to time, over the amount of such charges that would be exigible as of January 1, 2014 and the amount of any new Levies that were not exigible as of January 1, 2014 with respect to the property and were subsequently assessed against the property or attributable to the Unit;
 - (h) the amount of \$500.00 as security for any damages to or unauthorized changes that the Purchaser may make to the grading of the Real Property and/or the driveway and/or any amounts the Purchaser may owe to the Vendor and/or for any breach of any of the Purchaser's obligations pursuant to this Agreement and any damages, costs and expenses the Vendor may incur as a result thereof. Such security shall be repaid to the Purchaser upon written request from the Purchaser after assumption of the subdivision of which the Real Property forms a part and/or such later date as the Vendor may require provided the Purchaser still owns the Real Property and occupies same as his principal residence less any amounts the Vendor may have to pay to correct or remedy any damages and changes and/or to pay itself any amounts owing to the Vendor and/or to cover any damages, costs and expenses incurred by the Vendor as a result of anything set out above;
 - (i) the cost of any boulevard tree planting, which cost shall not exceed Three Hundred and Fifty (\$350.00) Dollars. The Purchaser acknowledges that there may not be a tree planted in front of the Real Property;
 - (j) the charges imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a transfer/deed of land or charge/mortgage of land or any other instrument;
 - (k) the sum of Three Hundred and Fifty (\$350.00) Dollars as a contribution towards the cost of fees payable by the Vendor to its lenders including the cost of obtaining (partial) discharges of mortgages not intended to be assumed by the Purchaser;
 - (l) any tax, whether categorized as multi-stage sales tax, a business transfer tax, a modified retail sales tax, a value-added tax, or any other type of tax whatsoever that may be levied or charged in the future by any governmental authorities, including, but without limiting the generality of the foregoing the municipal, federal, or provincial governments or any of their agencies, on or with respect to any sale, transfer, lease or disposition of property or any provision of goods or services made in the course of a taxable activity and the Purchaser shall be solely responsible for paying and/or reimbursing the Vendor for such tax, whether or not the legislation imposing such tax places the primary responsibility for payment thereof onto the Vendor, and the Vendor shall be allowed to charge the Purchaser as an adjustment on the Closing Date with the estimated amount of any such tax, notwithstanding that such tax may not have been formally or finally levied and payable with such tax adjustment being subject to readjustment, if necessary, when the actual final assessment or levy is available or determinable; and
 - (m) any other adjustment hereinafter agreed to by the Vendor and the Purchaser in writing.
19. If any of the adjustments to be made on the Closing Date cannot be accurately determined at the time of Closing, then the Vendor may estimate the adjustment to be made and the Closing shall take place in accordance with this estimate. There shall be a later and final adjustment when all the items to be adjusted can be accurately determined.
20. Unless expressly provided in this Agreement, the hot water heater and tank to be installed in the Dwelling is not included in the Purchase Price and shall remain chattel property. The Purchaser shall take all necessary steps to assume immediately on closing, charges for hydro, water and other services, and the Vendor may recover any payments therefore from the Purchaser. In the case of the high velocity heating/cooling system installed in the Dwelling, it is understood and agreed that the Unit will include a rental or leased hot water tank/water heater component of the high velocity system which will remain the property of the appropriate company or other supplier of such item, and accordingly, the Purchaser shall be required to pay the monthly rental/lease charges assessed with respect thereto from and after the Closing Date, and shall execute all requisite rental documents in connection therewith prior to the Closing Date.
- The Purchaser acknowledges that (i) the water heater or water heater/hot water tank/water heater component of the high velocity system is to be non-owned (ii) the terms governing the lease/rental for the water heater/hot water tank/water heater component of the high velocity system will be provided by the Vendor prior to closing and the Purchaser will be required to execute a lease/rental document containing the terms prior to closing; and (iii) the terms of the lease/rental may contain a buy-out option allowing the Purchaser to purchase the water heater or water heater/hot water tank/water heater component of the high velocity system if desired. If any provider of hot water tanks no longer rents the water heater or water heater/hot water tank/water heater component of the high velocity system and if arrangements are not made with another supplier for the installation of the water heater or water heater/hot water tank/water heater component of the high velocity system on a rental basis, then notwithstanding anything to the contrary in this Agreement, the Purchaser shall pay, as an adjustment on closing, the cost of the water heater/tank or water heater/hot water tank/water heater component of the high velocity system, such cost to be determined by statutory declaration sworn on the part of the Vendor. The water meter is not included in the purchase price if it is not property of the Vendor. The Purchaser shall pay, or reimburse the Vendor for the cost of, or the charge made, for water service and installation of the water meter and the cost of the hydro installation and connection fee.
21. In the event any cheque given by the Purchaser is returned after being presented for payment to the financial institution on which it is drawn, by reason of there not being sufficient funds in the account on which said cheque is drawn, the Purchaser shall pay the Vendor for each such returned cheque the sum of \$250.00 plus HST as liquidated damages and not as a penalty which payment shall, at the Vendor's option, be made as an adjustment on the Closing Date in favour of the Vendor or be delivered to the Vendor together with the replacement cheque.

HARMONIZED OR SINGLE SALES TAX

22. (a) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter and hereinafter referred to as the "HST"), and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the federal and provincial new housing rebates applicable pursuant to the *Excise Tax Act* (Canada), as may be amended, (collectively, the "Rebate") and further warrants and represents that the Purchaser is a natural person who is acquiring the Real Property with the intention of being the sole beneficial owner thereof on the Closing Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Closing Date, the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Dwelling as his primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Real Property. The Purchaser further warrants and represents that he has not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate in connection with the Purchaser's acquisition of the Real Property, save as may be otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or Vendor's solicitors' request for same (and in any event on or before the Closing Date), all requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate (by way of assignment or otherwise), including without limitation, the GST/HST New Housing Rebate Application for Houses Purchased from a Builder or other similar form as prescribed from time to time (the "Rebate Form"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his interest in the Real Property with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:

- (i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's solicitors' request for same (and in any event on or before the Closing Date) the Rebate Form duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or
- (ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Closing Date;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor (or to whomsoever the Vendor may in writing direct), by certified cheque delivered on the Closing Date, an amount equivalent to the Rebate in addition to the Purchase Price and in those circumstances where the Purchaser maintains that he is eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to pursue the procurement of the Rebate directly from CRA. It is further understood and agreed that in the event that the Purchaser intends to rent out the Dwelling after the Closing Date, the Purchaser shall not be entitled to the Rebate, but may nevertheless be entitled to pursue, on his own after the Closing Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to Section 256.2 of the ETA, as may be amended, and other applicable legislation relating to the provincial new rental housing rebate.

(b) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the ETA. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "Reduction"), then the Purchaser shall pay to the Vendor on the Closing Date the amount of (as determined by the Vendor in its sole and absolute discretion) the Reduction.

EXTRAS/UPGRADES

23. The Purchaser covenants and agrees that he shall pay to the Vendor in advance for all extras, upgrades or changes ordered by the Purchaser at the time such order is made and the Purchaser further acknowledges and agrees that such payment is non-refundable in the event that this transaction is not completed as a result of the Purchaser's default under any of the terms of this Agreement. If any amount payable for extras, upgrades or changes is owing to the Vendor as of the Closing Date, such amount shall be paid in full on the Closing Date. Notwithstanding anything herein contained to the contrary, the Purchaser acknowledges and agrees that if, upon Closing, any of the extras, upgrades or changes ordered by the Purchaser remain incomplete in whole or in part or if the Vendor shall, in its sole discretion, determine that it will not provide extras, upgrades or changes or cannot complete the extras, upgrades or changes, then there shall be refunded to the Purchaser upon the Closing Date that portion of the amount paid by the Purchaser in connection with such extras, upgrades or changes allocated to those extras, upgrades or changes which remain incomplete in whole or in part as aforesaid, as determined by the Vendor. In the event such extras, upgrades or changes were included at no charge whether or not included as part of this Agreement then the Vendor's cost of completing such incomplete items will be refunded. The Purchaser further acknowledges and agrees that the amount so paid to the Purchaser (or for which, in the alternative, the Purchaser receives credit in the statement of adjustments) shall be accepted by the Purchaser as full and final settlement of any claim by the Purchaser with

respect to the extras, upgrades or changes which remain incomplete as aforesaid. The Purchaser further acknowledges that the Vendor's liability with respect to such incomplete extras, upgrades or changes shall be limited to the return of the amounts referred to aforesaid and, thereafter, there shall be no further liability upon the Vendor in connection with such incomplete extras, upgrades or changes and upon such payment being made or credit being given, the Vendor shall be deemed to have been released from any and all obligations, claims or demands whatsoever with respect to such incomplete extras, upgrades or changes.

NOTICE AND WARNING CLAUSES

24. The Purchaser acknowledges that existing and/or future development agreements and any subsequent agreements to be entered into or registered between the Vendor and the Municipality or any other applicable party may require the Vendor to provide the Purchaser with certain notices or warnings including, without limiting the generality of the foregoing, notices or warnings regarding the use of the Real Property, environmental issues, noise levels from adjacent roadways or otherwise, maintenance of municipal fencing, school transportation and related educational issues, and the status of services and works in the subdivision. The Purchaser acknowledges and agrees that the Vendor may be unable, at this time, to provide the Purchaser with all such notices and warnings. On or before Closing, the Purchaser shall forthwith execute upon request an acknowledgment or amendment to this Agreement containing the required notices and warning clauses. The Purchaser acknowledges and agrees that the Vendor may be unable to sell the Real Property to the Purchaser unless the Purchaser executes such acknowledgments or amendments as aforesaid. In the event that the Purchaser fails to execute such acknowledgments or amendments forthwith upon being requested to do so, the Vendor shall be entitled, at its sole option, to terminate this Agreement and upon such termination, all monies paid to the Vendor hereunder shall be forfeited to the Vendor and this Agreement shall be at an end, and the Purchaser shall not have any further rights hereunder. Without limiting the generality of the foregoing, the Purchaser acknowledges being advised of the notices restrictions as set out in Schedule "D" to this Agreement of Purchase and Sale.

INSURANCE/RISK

25. All buildings and equipment comprising the Dwelling and the Real Property shall be and remain at the risk of the Vendor until Closing and pending completion of the sale, the Vendor will hold all insurance policies and the proceeds thereof for the Vendor's benefit alone. In the event of damage to the Dwelling, the Vendor may either in its sole discretion (a) repair the damage, finish the Dwelling and complete the sale and, if necessary, delay the Closing Date in the manner permitted in the Tarion Addendum; or (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor payable under law if the damage to the Dwelling has frustrated this Agreement at law.

PURCHASER COVENANTS AND AGREEMENTS

26. Notwithstanding the closing of this transaction, the Purchaser hereby authorizes and shall not obstruct or interfere in any way with the Vendor, the subdivider or the developer, the Municipality, the regional municipality, the public and/or private utilities, the telephone and/or cable company or persons authorized by any of them, free access to the Real Property and the Dwelling at all reasonable hours in order to make inspections and to do such work or repairs, including, but not restricted to, correction of sodding and/or grading, installation of catch basins, installation, repair, construction or reconstruction and/or maintenance of any of the municipal services, public and/or private utilities and other services, including sewers and water mains; and for any of the purposes aforesaid or related thereto, such entry on the Real Property and Dwelling by any such persons shall be deemed to not be committing trespass and the Purchaser does hereby give leave and licence to any of such persons for the purposes aforesaid and free access for any such persons shall continue for such period of time as may be set out in the Subdivision Agreements or any other agreements affecting the Real Property or as may be required by the Vendor, the subdivider or the developer and/or any municipal or governmental authority, regulatory body or public or private utility. The Purchaser further covenants to comply with and not to breach any of the Subdivision Agreements or any other such agreements.
27. The Purchaser undertakes and covenants that he will not, at any time either before or after the Closing Date, without the prior written authority of the Vendor and the subdivider or the developer (which may be unreasonably or arbitrarily withheld) interfere with or alter the drainage ditch, obstruct the natural flow of water or obstruct the drainage as designed and engineered by the subdivider or the developer, erect fences, porches, patios, planting, paving, swimming pool, clothes lines or obstructions of any kind, remove top soil or subsoil, cut down living trees or do anything which may change or alter the grading or obstruct the drainage of the Real Property or surrounding lots or lands in any way and if he does, the Vendor or its servants, successors, agents and assigns may enter thereon and correct such grading or remove or relocate such obstructions at the Purchaser's expense and be paid, forthwith upon demand, the cost thereof. The Purchaser shall adhere to the overall drainage patterns of the Subdivision, including such easements as may exist or may be required for the purpose of water drainage upon the Real Property to and from adjoining lands, and the Purchaser agrees to grant such easements as may be required from time to time by the Vendor or subdivider or developer for drainage. The foregoing covenant may, at the option of the Vendor, be included in any transfer of title to the Purchaser and shall run with the land. The Purchaser agrees that he shall be solely responsible for watering and general maintenance of sod from the Closing Date or from the date that sod is laid, whichever shall be later, and the Vendor shall have no obligation in that regard whatsoever. If the Vendor is required by the subdivider, developer or any governmental authority to replace any laid sod as a result of the Purchaser's default under this Section, the Purchaser shall promptly pay the Vendor for same and the Vendor shall not be obliged to do so until payment has been made therefore in full to the Vendor by the Purchaser.
28. The Vendor hereby notifies the Purchaser and the Purchaser acknowledges that the subdivider or the developer has agreed to provide and pay for paved roads, sidewalks, curbs, street lighting, sanitary and storm sewers, street signs and other services as required by the Subdivision Agreements and that such is the responsibility of the subdivider or the developer and not the Vendor. In the event that title to the Real Property is transferred directly from the subdivider or the developer or another party (the "Party") rather than the Vendor the Purchaser covenants and agrees to execute and deliver on the Closing Date an acknowledgement and release in a form satisfactory to the Vendor and/or subdivider and/or developer and/or the Party releasing the subdivider or the developer or the Party, as the case may be, from any and all matters in respect of the within transaction and acknowledging that the subdivider or the developer or the Party, as the case may be, has no liability, obligation or responsibility to the Purchaser.
29. The Purchaser agrees that until all lots or blocks in the Subdivision are sold, the Vendor shall have the exclusive right to maintain model homes, signs, sales staff and marketing material(s) in the Subdivision and to show prospective purchasers through the Subdivision and through any unsold homes and the Purchaser agrees not to display any sign on the Real Property offering the Real Property for sale or rent. In the event that the Purchaser displays any such sign on the Real Property, the Vendor shall have the absolute right to enter on the Real Property and remove such sign without such act being a trespass.
30. The Purchaser agrees that in the event that there is any water leakage into the basement or any other damage of any kind or nature whatsoever which the Vendor shall be required at law or by Tarion to repair, the Vendor shall not be liable for any consequential damage caused by the water or otherwise nor for any damage to any improvements, fixtures, furnishings or

personal property of the Purchaser, but shall be responsible only for the repair of such damage or leakage in accordance with the terms hereof. Further, the Purchaser waives his right to any claim against the Vendor for damage to the Dwelling due to shrinkage, warpage, twisting or settlement or any secondary or consequential damage resulting therefrom. Further, the Vendor shall not be liable for any secondary or consequential damages whatsoever which may result from any defect in materials, design or workmanship related to the Dwelling. The Purchaser further acknowledges that the Vendor is not responsible for the repair of any exterior work resulting from settlement, including driveways, walkways, patio stones or sodded areas or for any damage to interior household improvements or decor caused by material shrinkage, twisting or warpage. The Purchaser agrees that this Section may be pleaded by the Vendor in estoppel of any claims by the Purchaser pursuant to this Section.

31. The Purchaser agrees that prior to the Closing Date he will not in any circumstances enter onto the Real Property without the express written authority of the Vendor and accompanied by a representative of the Vendor and any entry other than as aforesaid shall be deemed to be a trespass and the Vendor shall be entitled to exercise any rights that it may have pursuant to this Agreement or at law as a result of same. In addition, the Purchaser agrees that he will not in any circumstances, either personally or by his agent, servant or authorized representative, perform or have performed any work of any nature or kind whatsoever on the Dwelling or the Real Property prior to the conveyance of the Real Property to the Purchaser and in the event of a breach of this covenant, the Vendor shall be entitled, at its sole option, to deem such breach as an event of default by the Purchaser under this Agreement or to take whatever steps are necessary to remove, correct or remedy any such work, and in such event, at the Vendor's sole option, the costs and expenses thereof plus a fifteen percent (15%) administration fee shall be paid to the Vendor by the Purchaser forthwith upon demand by the Vendor or added to the Purchase Price as an adjustment on the Closing Date. In the event the Vendor completes the sale of the Real Property to the Purchaser all warranties related to any items and/or matters the Purchaser affected by his actions shall be void.
32. The Purchaser acknowledges that due to the nature and extent of construction work which will be required to be undertaken by the Vendor on the Real Property in connection with the excavation, erection, and construction of the Dwelling, one or more trees may be removed from the Real Property and others may or will suffer damage or destruction both before and after Closing, as a result of the removal, interference or the destruction of roots, contact with the trunk by equipment or machinery or otherwise. The Purchaser hereby acknowledges, covenants, and agrees that the Vendor shall not be responsible or liable in any manner, whatsoever, for any loss or destruction to trees or for any loss or destruction to the property of the Purchaser howsoever caused nor shall the Vendor be responsible or liable for the removal of any trees or parts thereof, from the Real Property, at any time, whatsoever. It is understood and agreed that the Vendor has made no representation, warranty, guarantee, collateral agreement or condition whatsoever, regarding the preservation, removal, condition or health of trees on the Real Property.
33. The Purchaser agrees that he will not, for a period of at least two (2) years from the Closing Date, plant any trees, shrubs, vines, hedges or other landscaping on the Real Property without the express written consent of the Vendor which consent may be unreasonably or arbitrarily withheld. The Vendor shall have the right during such period to enter on the Real Property, without notice to the Purchaser, and to remove, without any liability, whatsoever, any such trees, shrubs, vines, hedges or other landscaping planted on the Real Property in contravention of this Section without such act being a trespass.

NON-REGISTRATION AND NO ASSIGNMENT AND NO OBJECTION

34. The Purchaser covenants and agrees that he will at no time register or attempt to register this Agreement on title to the Real Property by way of caution, deposit, assignment or in any way whatsoever, and it is expressly agreed by all parties hereto that any such registration or attempt by the Purchaser or anyone acting for or through him shall constitute an event of default under this Agreement. In the event that this Agreement, a caution, a deposit, an assignment or any other instrument whatsoever is registered against or dealing with the title in contravention of this provision, then the Purchaser hereby appoints the Vendor his true and lawful attorney and/or agent for the purposes of removing the instrument from title, including the giving of any discharge, lifting or release of any caution, deposit or the assignment of any rights pursuant to this Agreement. The Purchaser hereby irrevocably consents to a court order removing any such notice of this Agreement, caution, deposit or any other documents or instruments whatsoever from title to the Real Property. The Purchaser shall bear all costs incurred by the Vendor in the exercise of any of its rights pursuant to this provision. The Purchaser acknowledges that notwithstanding any rule of law to the contrary that by executing this Agreement he has not acquired any equitable or legal interest in the Dwelling or the Real Property.
35. The Purchaser covenants and agrees that he or she will in no way, directly or indirectly, list for sale or lease, advertise for sale or lease, rent, convey, transfer, sell or lease, nor in any way assign his or her interest under this Agreement or the Purchaser's rights and interests hereunder or in the Real Property, nor directly or indirectly permit any third party to list or advertise the Real Property for sale or lease at any time prior to the Closing Date without the prior written consent of the Vendor which consent may be unreasonably or arbitrarily withheld. The Purchaser acknowledges and agrees that once a breach of the preceding covenant and agreements occurs such breach shall be a default hereunder and, at the Vendor's sole option, be deemed incapable of rectification, and accordingly the Purchaser acknowledges and agrees that in the event of such breach the Vendor shall have the unilateral right and option of taking whatever steps are available to the Vendor in the event of the Purchaser's default. The Purchaser shall not be permitted to direct title to any third parties without the prior written consent of the Vendor which consent may be unreasonably or arbitrarily withheld.
36. The Purchaser covenants and agrees that he shall not directly nor indirectly object to nor oppose any official plan amendment(s), rezoning application(s), severance application(s), minor variance application(s) and/or site plan application(s), nor any other applications ancillary thereto relating to the development of the Real Property, or any neighboring or adjacent lands. The Purchaser further acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.
37. The Purchaser covenants and agrees to use the dwelling only for allowable uses under the relevant zoning by-laws applicable to the Property from time to time. The Purchaser acknowledges that it is the Purchaser's sole responsibility to ensure that the Purchaser's use of the Dwelling is in compliance with all municipal by-laws. The Purchaser covenants and agrees that the Purchaser shall not, either before or after closing, utilize or allow the Dwelling to be utilized, and/or apply for or allow any person to apply for any occupancy permit in respect of the Dwelling which shall permit the use thereof contrary to the zoning by-law applicable to the Dwelling. The Purchaser agrees that the allowable uses of the Dwelling shall be further restricted, which restrictions shall be incorporated in restrictive covenants to be registered on title to the Property, a draft of which is attached as Schedule "G" hereto.

ELECTRONIC REGISTRATION AND TENDER

38. The parties waive personal tender and agree that tender in the absence of any other mutually acceptable arrangement and subject to the provisions of this Agreement shall be validly made by the Vendor upon the Purchaser by a representative of the Vendor (which shall include the Vendor's solicitor) attending or being available at the offices of the Vendor's solicitors at 3:30 p.m. on the Closing Date and remain there until 4:30 p.m. of the same date and being ready, willing and able to complete the

subject transaction. In the event the Purchaser or his solicitor fails to appear or appears and fails to close the subject transaction such attendance by the Vendor's representative shall be deemed satisfactory evidence that the Vendor was ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank.

39. Notwithstanding anything contained herein to the contrary, in the event the Purchaser or his Solicitor advise the Vendor or its Solicitors, on or before the Closing Date that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his Solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.
40. Given that the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or "TERS") is operative in the applicable Land Titles Office in which the Real Property is registered, the following provisions shall prevail:
- (a) the Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada, to represent the Purchaser in connection with the completion of this transaction. The Purchaser shall authorize such solicitor to, at the option of the Vendor's solicitor, either execute an escrow closing agreement with the Vendor's solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement") establishing the procedures and timing for completing this transaction or to otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement. If the Vendor's solicitor provides written notice to the Purchaser's solicitor that it accepts and agrees to be bound by the terms of the form of Document Registration Agreement prepared by the Law Society of Upper Canada and adopted by the Joint LSUC - CBAO Committee on Electronic Registration of Title Documents, as may be amended from time to time, the Vendor's solicitor and the Purchaser's solicitor shall be deemed to have executed such form which shall be the Escrow Document Registration Agreement defined in this paragraph and referred to in this Agreement;
 - (b) the delivery and exchange of documents, monies and keys to the Dwelling, and the release thereof to the Vendor and the Purchaser, as the case may be:
 - (i) shall not occur contemporaneously with the registration of the transfer/deed (and other registerable documentation); and
 - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor 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;
 - (c) the Purchaser expressly acknowledges and agrees that he will not be entitled to receive the transfer/deed of land to the Real Property for registration until the balance of funds due on the Closing Date, in accordance with the statement of adjustments, are either remitted by certified cheque(s) via personal delivery or by electronic funds transfer to the Vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the transfer/deed of land for registration;
 - (d) each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Real Property may be delivered to the other party hereto 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 executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same [unless the document is an electronically signed document pursuant to the *Electronic Commerce Act of Ontario*, as may be amended] to the recipient party by overnight courier sent the day after Closing, if same has been so requested by the recipient party; and
 - (e) notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
 - (i) delivered all closing documents to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement or the provisions of this Agreement and keys are also delivered to the Purchaser's solicitor or made available for the Purchaser to pick up at the Vendor's sales office, customer service office or construction site office;
 - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of the Escrow Document Registration Agreement or the provisions of this Agreement; and
 - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor and specifically, when the Transfer of the Real Property is created on the TERS system and messaged to the Purchaser's solicitor under the TERS system,

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

DEFAULT AND REMEDIES

41. (a) The Purchaser shall be deemed to be in default under this Agreement in each and every one of the following events, namely:
- (i) upon the non-payment of all or any portion of the Purchase Price, or any other amount due hereunder;
 - (ii) upon a breach of, or failure in the performance or observance of any covenant, term, agreement, restriction, stipulation or provision of this Agreement to be performed and/or observed by the Purchaser; and
 - (iii) upon any lien, execution or encumbrance arising from any action or default whatsoever of the Purchaser being charged against or affecting the Real Property.

- (b) A certificate of the Vendor or an officer of the Vendor that default has been made and the date of default and that notice, if required, of such default has been given to the Purchaser, shall be conclusive evidence of the facts therein stated. If such default continues for five (5) days after written notice thereof has been given to the Purchaser or the Purchaser's Solicitor, by the Vendor or its solicitors (other than any default by the Purchaser on the Closing Date, for which no notice or period to remedy shall be given or required), then in addition to any other rights or remedies which the Vendor may have, the Vendor, at its option, shall have the rights and remedies as set out below.
- (c) In the event of a default by the Purchaser, then, in addition to any other rights or remedies which the Vendor may have, the Vendor, at its sole option, shall have the right to terminate this Agreement and preserve any rights the Vendor may have against the Purchaser and in such event, all monies paid hereunder (including the deposit monies paid or agreed to be paid by the Purchaser pursuant to this Agreement which sums shall be accelerated on demand of the Vendor), together with any interest earned thereon and monies paid or payable for extras or upgrades or changes ordered by the Purchaser, whether or not installed in the Dwelling, shall be forfeited to the Vendor. The Purchaser agrees that the forfeiture of the aforesaid monies shall not be a penalty and it shall not be necessary for the Vendor to prove it suffered any damages in order for the Vendor to be able to retain the aforesaid monies. The Vendor shall in such event still be entitled to claim damages from the Purchaser in addition to any monies forfeited to the Vendor. In the event the Vendor's solicitors are holding any of the deposit monies in trust pursuant to this Agreement, then in the event of a default, the Vendor's solicitors shall pay to the Vendor the said deposit monies together with any interest accrued thereon, provided the Vendor has delivered to its solicitors a certificate of the Vendor or an officer of the Vendor, certifying that the Purchaser has committed a default pursuant to this Agreement that has not been remedied and that the Vendor has terminated this Agreement and that the Vendor is therefore entitled to the said deposit monies and accrued interest, if any. Thereupon the Purchaser hereby releases the Vendor's solicitors from any obligation to hold the said deposit monies, if any, and interest, if any, in trust, and shall not make any claim whatsoever against the said solicitors and the Purchaser hereby irrevocably authorizes and directs the said solicitors to deliver the said deposit monies, if any, and accrued interest, if any, to the Vendor.
- (d) It is understood and agreed that the rights contained in this Section on the part of the Vendor are in addition to any other rights (whether of a more onerous nature or not) which the Vendor may have at law, in equity or under any other provisions of this Agreement, and the Vendor expressly has the right to exercise all or any one or more of the rights contained in this Agreement, or at law or in equity, without exercising at such time, the remainder of such right or rights and without prejudice to the subsequent right of the Vendor to exercise any remaining right or rights at law, in equity or in this Agreement. In the event the Purchaser fails to make payment of any amount as and when required pursuant to the terms of this Agreement, the payment amount shall bear interest at a rate equal to eight per cent (8%) above the prime rate of the Vendor's bank, calculated from the due date to the date of payment. Prime rate for any day means the prime lending rate of interest expressed as a rate per annum (computed on a year of 365 days) which the Vendor's bank establishes from time to time as the reference rate of interest in order to determine interest rates it will charge for demand loans made in Canada in Canadian dollars as the same is in effect from time to time. In the event of any other default under this Agreement by the Purchaser the Vendor shall have the right, at its sole option, but not the obligation, to take whatever steps are necessary to correct and/or remedy such default and the Purchaser shall pay forthwith to the Vendor upon demand the costs and expenses of the Vendor in doing so plus a fifteen percent (15%) administration fee. In the event the Purchaser fails to pay any of the foregoing amounts to the Vendor after demand the Vendor shall have the right, at its option, to add any of such outstanding amounts to the Purchase Price as an adjustment on the Closing Date.
42. The Purchaser covenants and agrees to pay to the Vendor all amounts to correct and remedy all damage caused by the Purchaser or those for whom he is in law responsible to any services installed within the Subdivision, which services shall, without limitation, include survey stakes, landscaping, trees, curbs, curb cuts, streets, roads, sidewalks, street signs, street lighting, sanitary and storm sewers and any underground services installed by or on behalf of any public or private utilities. The amounts so paid by the Vendor shall form and constitute a Vendor's lien against the Real Property which Vendor's lien may be enforced in the same manner as a mortgage/charge thereon.
43. The Purchaser hereby agrees to indemnify and save harmless the Vendor, its servants and agents, successors and assigns, from all actions, causes of action, claims and demands whatsoever for, upon or by reason of any damage, loss or injury to a person or property of the Purchaser or any of his friends, relatives, workmen, agents or anyone else for whom at law the Purchaser is responsible who have entered on the Real Property or any part of the Subdivision whether with or without the authorization, express or implied, of the Vendor.
44. No waiver by the Vendor of any breach of covenant or default in the performance of any obligation hereunder or any failure by the Vendor to enforce its rights herein shall constitute any further waiver of the Vendor's rights herein, it being the express intent of the parties that any waiver or forbearance in enforcing its rights by the Vendor shall apply solely to that particular breach or failure.
45. Notwithstanding anything contained in this Agreement it is understood and agreed by the parties hereto that in the event that construction of the Dwelling is not completed on or before the Closing Date for any reason or in the event the Vendor cannot complete the subject transaction on the Closing Date, other than as a result of the Purchaser's default, the Vendor shall not be responsible or liable to the Purchaser in any way for any damages or costs whatsoever including without limitation loss of bargain, relocation costs, loss of income, professional fees and disbursements and any amount paid to third parties on account of decoration, construction or fixturing costs other than those costs set out in the Tarrion Addendum.

CAUSE OF ACTION/VENDOR ASSIGNMENT

46. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties.
- (b) At any time prior to the Closing Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the

Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and instead of the Vendor.

NOTICE

47. Any notice required to be delivered under the provisions of the Tarion Addendum shall be delivered in the manner required therein.
48. Any other notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, facsimile transmission or electronic mail to the attention of the Purchaser or the Purchaser's solicitor to their respective addresses set out in this Agreement and to the Vendor at 120 Lynn Williams Street, Suite 2A, Toronto, Ontario M6K 3N6 or the Vendor's solicitors to their respective addresses set out in this Agreement or in all cases such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, facsimile transmission or electronic mail and upon the third day following posting excluding Saturdays, Sundays and statutory holidays. In the event of a mail stoppage or slow down, all notices shall be delivered, sent by facsimile transmission or sent by electronic mail. This Agreement or any amendments or addendum thereto may, at the Vendor's option, be properly delivered, if delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

PURCHASER'S CONSENT TO THE COLLECTION AND LIMITED USE OF PERSONAL INFORMATION

49. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Real Property, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital status, residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired Dwelling design(s) and colour/finish selections. In particular but without limiting the foregoing, the Vendor may disclose such personal information to:
- (a) any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Real Property is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency ("CRA") (i.e. with respect to H.S.T.);
 - (b) CRA, 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 Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the *Income Tax Act (Canada)*, as may be amended;
 - (c) the condominium corporation, for purposes of facilitating the completion of the condominium corporation's voting, leasing and/or other relevant records, and to the condominium corporation's property manager, for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium corporation management/administration functions;
 - (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company, if applicable) and are developing one or more other developments, projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
 - (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family with respect to the Real Property, including without limitation, the Vendor's construction lender(s), the person and/or firm monitoring the project of which the Real Property forms a part (the "Project") and its costs, the Vendor's designated construction lender(s), Tarion and/or any warranty bond provider and/or deposit insurer, required in connection with the development and/or construction financing of the Project and/or the Real Property and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
 - (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Project and/or the Real Property (or any portion thereof) and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
 - (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Dwelling and the Real Property and the installation of any extras or upgrades ordered or requested by the Purchaser;
 - (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, water/chilled water/hot water, gas and/or other similar or related services to the Real Property (or any portion thereof) (collectively, the "Utilities") unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the Utilities;
 - (i) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new developments, projects or communities and/or related services to the Purchaser and/or members of the Purchaser's family unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the aforementioned third party data processing companies;
 - (j) the Vendor's solicitors, to facilitate the closing of this transaction, including the closing by electronic means via the TERS, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation; and
 - (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

Any questions or concerns of the Purchaser with respect to the collection, use or disclosure of his personal information may be delivered to the Vendor at the address set out in the Tarion Addendum to the attention of the Privacy Officer.

KEYS

50. The Purchaser agrees that keys may be released to the Purchaser at the Vendor's sales office, customer service office or construction site office upon completion of this transaction, unless otherwise determined by the Vendor. The Vendor's or its solicitors' advice that keys are available for release to the Purchaser constitutes a valid delivery of keys to the Purchaser.

ONE-TIME UNILATERAL RIGHT TO EXTEND CLOSING

51. The Vendor shall have a one-time unilateral right to extend the Closing Date for one (1) Business Day (as defined in the Taron Addendum) to avoid the necessity of tender where the Purchaser is not ready to close on the Closing Date and delayed closing compensation will not be payable for such period.

CONSTRUCTION LIEN ACT

52. The Purchaser covenants and agrees that he is a "home buyer" within the meaning of the Construction Lien Act of Ontario, as may be amended, and will not claim any lien holdback on the Closing Date.

GENERAL

53. This offer, when accepted, shall constitute a binding agreement of purchase and sale. Time shall in all respects be of the essence of this Agreement. All of the Purchaser's and Vendor's covenants and obligations contained in this Agreement shall survive Closing of this transaction. It is agreed that there is no representation, warranty, guarantee, collateral agreement or condition affecting this Agreement or the Dwelling or the Real Property, except as set forth herein in writing, and this Agreement shall not be amended except in writing. The Purchaser releases and absolves the Vendor of any obligation to perform or comply with any promises or representations as may have been made by any sales representative or in any sales or marketing material(s), unless the same has been reduced to writing herein.
54. This offer and acceptance is to be read with all changes (including gender and number) required by the context, and shall be construed in accordance with the laws of the Province of Ontario.
55. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
56. The parties hereto agree that the signatures and/or initials on this Agreement or its acceptance, rejection or modification can be transmitted by fax transmission or, at the Vendor's option, by email (wherein a copy is scanned and forwarded by email to the other party) and that communication by such means will be legal and binding on all parties hereto.
57. In the event there are any matters provided for in this Agreement which are or may be the Vendor's responsibility pursuant to a municipal, regional or other governmental authority requirement and which the Municipality and/or Region and/or any other governmental authority no longer requires the Vendor to perform, complete, construct or install then such matter(s) shall be deleted from this Agreement and the Vendor shall have no responsibility or obligation in respect thereof.
58. The Purchaser agrees to comply with the terms of any direction re: funds provided by the Vendor or its solicitors in respect of the balance due on the Closing Date and to deliver on the Closing Date certified cheques for the balance due on Closing as directed by the Vendor or its solicitors.
59. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
60. If any provision of this Agreement or the application to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
61. The Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.
62. The Purchaser agrees as follows:
- (a) if any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles Office where the Real Property is registered, and a notarial copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that the said power of attorney has not been revoked) shall be delivered to the Vendor and the Vendor's solicitors along with such documents; and
 - (b) where the Purchaser is a corporation, or where the Purchaser is buying in trust for another person or corporation for a disclosed or undisclosed beneficiary or principal (including, without limitation, a corporation to be incorporated), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust as the case may be, shall be deemed and construed to constitute the personal indemnity of such person or persons so signing with respect to the obligations of the Purchaser herein and shall be fully liable to the Vendor for the Purchaser's obligations under this Agreement and the Purchaser may not plead such agency, trust relationship or any other relationships as a defence to such liability.

ADDITIONAL PROVISIONS

63. The Purchaser acknowledges that certain lots within the development may require catch basins in the rear yard and associated leads and that hydro transformers, street light poles and hydrants may front onto certain lots (including the Property) within the development. The Purchaser agrees to accept the Property subject to any retaining walls, catch basins, noise fencing, privacy fencing, decorative fencing, other fencing, landscaping or other development enhancement features required pursuant to the municipally approved plans. Any fencing, retaining walls or noise barriers or other items of a similar nature erected by the Vendor or the Municipality on, adjacent to or abutting the Real Property shall be maintained by the Purchaser, after Closing, without any modification or alteration whatsoever and in good order and tidy appearance and any landscaping provided by the Vendor in connection therewith shall be maintained by the Purchaser in good order and condition.
64. The Purchaser acknowledges and agrees that notwithstanding references in this Agreement (or in any Schedules to this Agreement) to features of land, such as landscaping, trees, sod, fencing, yard(s) etc., the Vendor does not covenant, represent or warrant that the Real Property or the site plan will contain any such features, unless such features are specifically set out in Schedule B or Schedule C to this Agreement.

65. The Purchaser hereby acknowledges that complete engineering data in respect of the municipally approved final grading of the Real Property may not, as yet, be completed. Accordingly, it may either (i) not be possible to construct the Dwelling with a walkout basement, lookout basement, backsplit or rear deck or (ii) the Vendor may be required to construct the Dwelling with a walkout basement, lookout basement, backsplit or rear deck even though one was not contemplated. In the event that this Agreement calls for a walkout basement, lookout basement, backsplit or rear deck and the Municipality will not permit the walkout basement, lookout basement, backsplit or rear deck, the Vendor shall provide written notice of same to the Purchaser and the Purchaser shall accept the Real Property without the walkout basement, lookout basement, backsplit or rear deck and be entitled to an abatement in the Purchase Price on Closing of the amount paid for the consideration of the walkout basement, lookout basement, backsplit or rear deck, as determined solely by the Vendor and evidenced by a certificate of the Vendor or statutory declaration of an officer of the Vendor. In the event that this Agreement does not call for a walkout basement, lookout basement, backsplit or rear deck, and the Municipality requires the construction of a walkout basement, lookout basement, backsplit or rear deck, the Vendor shall provide written notice of same to the Purchaser and the Purchaser shall accept the walkout basement, lookout basement, backsplit or rear deck and pay the Vendor's actual costs of such additional construction for same without mark up but include the cost of all associated construction equipment, labour and materials as an adjustment on the Closing Date (which costs shall be determined solely by the Vendor and evidenced by a certificate of the Vendor or statutory declaration of an officer of the Vendor). In dwellings where a lookout basement is required, a deck with steps and larger rear wall basement windows may be required. The Vendor may install such deck with steps and windows and the Purchaser shall pay to the Vendor, as an adjustment on the Closing Date, an amount equal to the Vendor's actual costs to supply and install such deck with steps and larger rear wall basement windows without mark up, but include the cost of all associated construction equipment, labour and materials (which costs shall be determined solely by the Vendor and evidenced by a certificate of the Vendor or statutory declaration of an officer of the Vendor). In addition, in dwellings where a walkout basement, lookout basement or backsplit is required, lot grading circumstances may require that the patio doors on the main floor be constructed with wrought iron installed on its exterior and may require one (1) patio door and one (1) window be installed in the rear wall of the basement and the costs associated with same shall be dealt with in the same manner as set out above.
66. If the Municipality requires the installation of an air conditioning unit or any additional improvements not otherwise included in the Purchase Price of the Real Property and Dwelling (the "Municipal Additional Requirements") in or about the Dwelling, the Purchaser covenants and agrees to pay to the Vendor for the cost of the Municipal Additional Requirements and for the installation thereof. The Purchaser shall pay such cost forthwith upon request from the Vendor or as an adjustment on the Closing Date to the credit of the Vendor, at the Vendor may decide.
67. The Purchaser agrees to provide the Vendor, from time to time, a copy of his mortgage commitment from a financial institution and/or confirmation from the applicable lender that such mortgage commitment remains in good standing within seven (7) business days of this request by the Vendor, failing which the Purchaser will be in default under this Agreement. In the event such mortgage commitment is terminated or not in good standing at any time prior to Closing the Purchaser shall be deemed to be in default under this Agreement. If a copy of the mortgage commitment or confirmation as contemplated above are provided by a mortgage broker or other party on behalf of the financial institution/applicable lender then the mortgage broker or other party shall be satisfactory to the Vendor in its sole discretion failing which the Purchaser shall be deemed to be in default under this Agreement.
68. In the event that prior to Closing, the Purchaser's lender withdraws its approval of the Purchaser for a loan to purchase the Real Property due to any default, act or omission of the Purchaser or the Purchaser advises the Vendor that he cannot obtain financing for the purchase of the Real Property then the Purchaser shall be deemed to be in default under this Agreement. The Vendor shall also have the right, but not the obligation, at its sole option to take back or arrange financing whether a first and/or second mortgage directly from the Purchaser for an amount determined by the Vendor for a one year term payable interest only on the outstanding principal balance of such mortgage at a rate of interest not to exceed the prime rate of interest of the Vendor's bank plus five per cent per annum calculated and payable monthly with any adjustments to the prime rate being made as same occur. The mortgage(s) shall be on the Vendor's or arranged mortgagee's standard form of mortgage and contain a due on sale clause and payment of monthly instalments of interest by post-dated cheque or pre-authorized payment clause and the Purchaser covenants and agrees to execute and deliver such mortgage(s) on the Closing Date. The Purchaser shall also forthwith upon request do all acts and execute and deliver all documents both before and after Closing as may be required by the Vendor or the arranged mortgagee in connection with the taking back or giving of such mortgage(s). The Purchaser covenants that his spouse shall execute all such additional documents as may be required including a guarantee of the repayment of such mortgage(s).
69. The Purchaser covenants and agrees that he will not obstruct or interfere in any manner whatsoever with the water box or sewage clarifier tank located on the Real Property (collectively the "Equipment"). If the Purchaser defaults in respect of such covenant and agreement or in any way damages the Equipment or in way prevents the Vendor and its agents and contractors from having free and uninterrupted access to the Equipment for repair(s) thereto and/or maintenance thereof prior to the acceptance of the Subdivision services in the Subdivision by the Municipality the Purchaser shall be responsible for any and all damages, costs and expenses of the Vendor and its agents and contractors as a result thereof and shall pay for same upon demand by the Vendor. In addition, the Vendor and its agents and contractors are hereby authorized by the Purchaser to take whatever steps the Vendor may determine that is required to access and deal with the Equipment for repair(s) and/or maintenance and the Purchaser shall be responsible for any and all costs and expenses of the Vendor and its agents and contractors in respect thereof. The Vendor and its agents and contractors shall have access to the Real Property at all times for the purposes of this provision without same being a trespass. It is understood and agreed that the Vendor shall not be responsible to repair any damage to the Real Property caused by it or its agents and contractors in carrying out any of their rights under this provision. If the Purchaser does not pay any amounts due to the Vendor and its agents and contractors hereunder the Vendor may use any security deposit provided for in this Agreement to obtain such payment and if the Subdivision services have not been assumed or accepted by the Municipality the Purchaser shall deliver a cheque to the Vendor to cover the difference between the required security deposit amount and the actual security deposit amount held by the Vendor after deduction of any amounts taken by the Vendor as permitted hereunder.
70. The Purchaser acknowledges that while the Vendor has applied or will be applying to the municipality for rezoning of the Real Property in order to allow for separate legal basement apartments within the dwellings in the development, the Vendor expressly does not make any representations or warranties regarding the use of a basement apartment as such. Notwithstanding the generality of the foregoing, the Vendor expressly does not represent nor warrant that the dwelling will include a basement apartment that is permitted by the local bylaws, complies with the fire code, building code or electrical safety requirements or will be registered with the municipality or other applicable governmental authority.
71. The Purchaser acknowledges and agrees that the elevations of the adjacent/neighbouring dwellings in the development will be subject to the elevation selections made by the purchasers of such adjacent/neighbouring dwellings. The Vendor reserves the right to revise/create elevation selections made available to purchaser(s), which selections may not be available to the Purchaser at the time of the Purchaser's elevation selection. The Vendor expressly makes no representations or warranties as to the elevations of the dwellings adjacent to or neighbouring the Purchaser's dwelling.

BIRCH
Gold Package (B)

SCHEDULE " B"
TO AGREEMENT OF PURCHASE AND SALE
HOMES OF ST. CLAIR WEST
FEATURES AND FINISHES

Architectural Features

- All brick facades as per plan and model elevations.
- Architecturally selected energy efficient windows complete with thermal glazing.
- Architecturally selected exterior front entry door with high security locking mechanism.

Kitchen Features

- Contemporary European design cabinetry in selection of stained and coloured finishes from Vendor's samples.
- Stone countertops in a selection of granites from Vendor's samples.
- Undermount double stainless steel sink with pull out faucet.
- Matching designer back splash in selection of tiles from Vendor's samples.
- Designer selected ceiling mount lighting.
- Kitchen appliance package including:
 - Stainless steel finish gas cooktop
 - Stainless steel finish combination wall oven and microwave
 - Stainless steel finish refrigerator
 - Stainless steel finish dishwasher
 - Stainless steel finish hood fan exhausted to exterior

Bathroom Features

- Contemporary European design cabinetry in selection of stained and coloured finishes from Vendor's samples.
- Custom marble vanity tops with integrated basin from Vendor's samples.
- Stone vanity top in a selection of marbles and granites with white undermount sinks in master bedroom ensuite bathroom from Vendor's samples.
- Temperature controlled mixing valve to tub/shower.
- Vanity mirrors above basin vanity.
- Ceramic tile tub/shower surround from Vendor's samples.
- Ceramic tile flooring from Vendor's samples.
- Privacy locks on all bathroom doors.
- Designer selected wall mounted lighting at vanity.

Laundry Area Features

- Ceramic tile flooring.
- White laundry sink complete with water connection.
- Full size white side by side washer and dryer.

General Features

- 10'-0" ceiling height on main floor and 8'-0" ceiling height on 2nd and 3rd floor **
- 8'-0" ceiling height on basement floor **
- Prefinished engineered hardwood flooring on main floor from Vendor's samples.
- Carpet with underpadding on 2nd & 3rd floors and all staircase and staircase landing from Vendor's samples.
- Metal handrails, pickets and posts throughout.
- Gas fireplace with paint grade surround.
- Interior doors painted white with contemporary style hardware.
- 4" contemporary baseboards throughout with 2 1/2" casings on all doorways.
- Sliding panel doors to closets complete with shelving.
- Stipple finished ceilings except kitchen and bathrooms.

Engineering Features

- 100 Amp service panels with circuit breakers.
- Pre-wired Television outlets in bedrooms and family room as per plans.
- Designer selected lighting fixtures in main entrance, kitchen and bathrooms.
- Pre-wired telephone outlets in kitchen, family room and bedrooms.
- Smoke and carbon monoxide detectors as per code.
- High efficiency furnace and central heating and air conditioning system.
- Individually meter hydro, gas and water.

Exterior Features

- Garage complete with overhead door and automatic opener with garage remote.
- Exterior sliding door leading to rear yard as per plan.
- Exterior duplex outlet.
- Exterior non-freeze hose connection.
- Exterior gas barbecue connection.
- Exterior rear deck terrace as per plan.
- Rear yard fencing as per plan.

BIRCH
Gold Package (B)

Basement Features

- Drywall and paint on walls.
- Carpet with underpadding on floors
- Stipple finished ceilings except bathroom.
- 3" baseboards throughout basement with 2 1/4" casings on all doors.
- Interior doors painted white with contemporary style hardware.
- Sliding panel doors to closets complete with shelving
- Kitchens in basement to include:
 - o Contemporary European design cabinetry in selection of stained and coloured finishes from Vendor's samples
 - o Laminate countertop from Vendor's samples.
 - o Single sink with faucet.
 - o White refrigerator and electric range
- Bathroom in basement to include:
 - o Contemporary European design cabinetry in selection of stained and coloured finishes from Vendor's samples
 - o Laminate vanity top from Vendor's samples
 - o White vanity sink, toilet and bathtub
 - o Wall mounted lighting and mirror above vanity.
 - o Temperature controlled mixing valve to tub/shower
 - o Ceramic tile tub/shower surround and ceramic tile flooring from Vendor's samples
 - o Privacy lock on door.

* Ceiling Heights in some areas may be lower due to bulkheads.

N.B. Subject to paragraph 4 of the Agreement of Purchase and Sale of which this Schedule "B" forms part, the Vendor shall have the right to substitute other products and materials for those listed in this Schedule or provided for in the plans and specifications provided that the substituted products and materials are of a quality equal to, or better than, the products and materials so listed or so provided.

Floors and specific finishes will depend on Vendor's package as selected. All specifications, dimensions and materials are subject to change without notice.

1. Marble and wood are subject to natural variations in colour and grain. Ceramic tile and brickwork are subject to pattern, shade and colour variations. Floors and specific finishes will depend on Vendor's package as selected. All specifications, dimensions and materials are subject to change without notice.

2. If the Dwelling is at a stage of construction which will enable the Vendor to permit the Purchaser to make colour and material choices from the Vendor's standard selections, then the Purchaser shall have until the Vendor's date designated by the Vendor (of which the Purchaser shall be given at least seven (7) days prior to notice) to properly complete the Vendor's colour and material selection form. If the Purchaser fails to do so within such time period, the Vendor may irrevocably exercise all of the Purchaser's rights to colour and material selections hereunder and such selections shall be binding upon the Purchaser. No changes whatsoever shall be permitted in colours or materials so selected by the Vendor, except that the Vendor shall have the right to substitute other materials and items for those provided in this Schedule provided that such materials and items are of equal quality to or better than the materials and items set out herein.

3. The Purchaser acknowledges that there shall be no reduction in the price or credit for any standard feature listed herein which is omitted at the Purchaser's request.

4. References to model types or model numbers refer to current manufacturer's models. If these types or models shall change, the Vendor shall provide an equivalent model.

5. All dimensions, if any, are approximate.

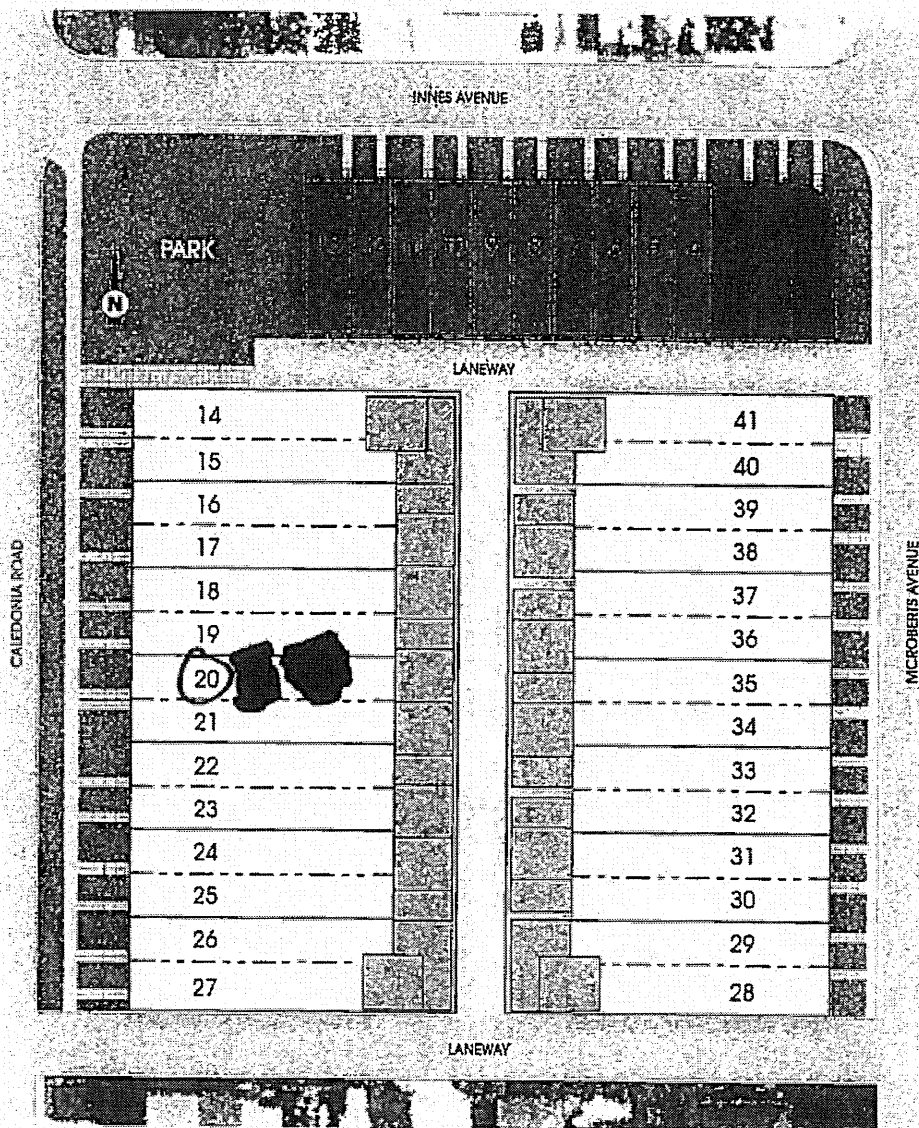
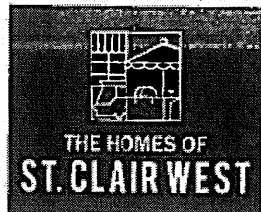
6. All specifications and materials are subject to change without notice.

7. Pursuant to this Agreement or this Schedule or pursuant to a supplementary agreement or purchase order the Purchaser may have requested the Vendor to construct an additional feature within the Dwelling or the Building, the Vendor is not able to construct such extra, then the Vendor may, by written notice to the Purchaser, terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.

8. Floor and specific features will depend on the Vendor's package as selected.

Actual usable floor space may vary from the stated floor area. E & O E.

SCHEDULE "C"



Purchaser(s): [REDACTED]

Date: January 18, 2014

Lot: 20

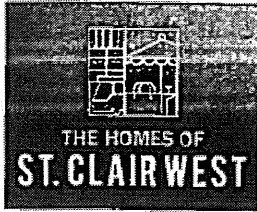
Part: 7

Model: Birch

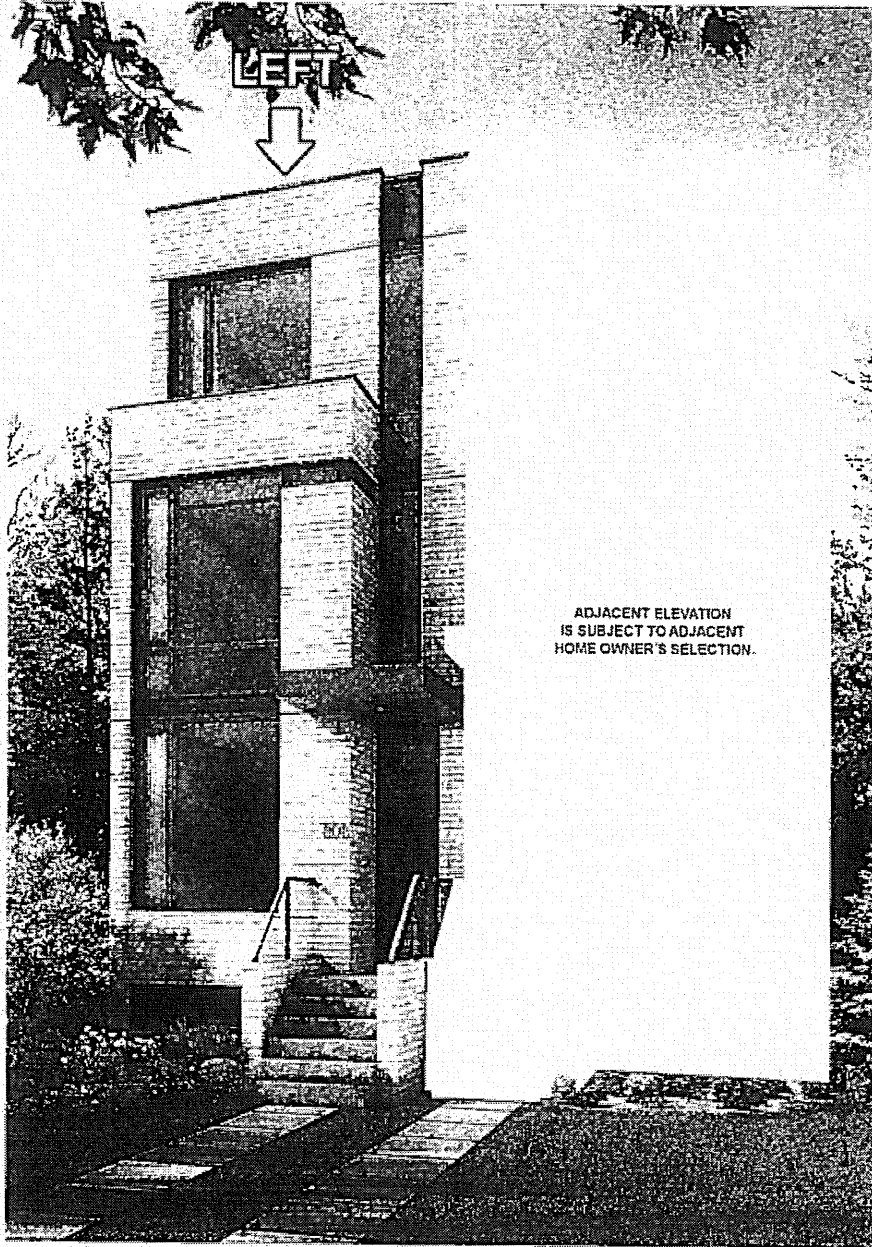
Elevation: Left

Purchaser(s) Initials:

[REDACTED]



SCHEDULE "C1"
BIRCH
ELEVATION: LEFT



Purchaser(s): _____

Date: January 18, 2014

Lot: 29

Part: 7

Purchaser(s) Initials: _____

Developments are subject to change without notice.

SCHEDULE "C2"

Birch (Gold (B))

Purchasers:

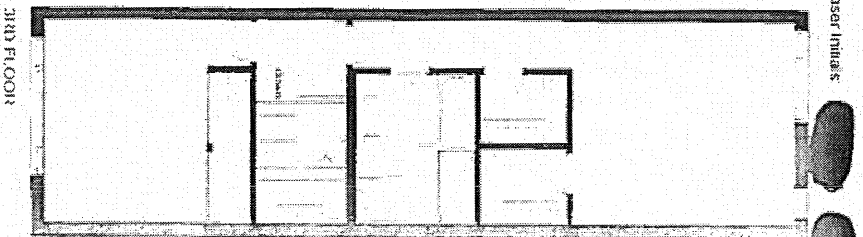
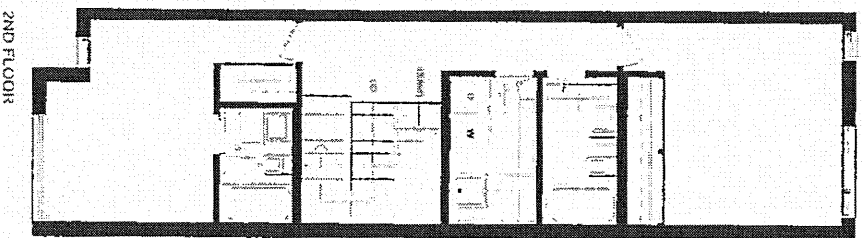
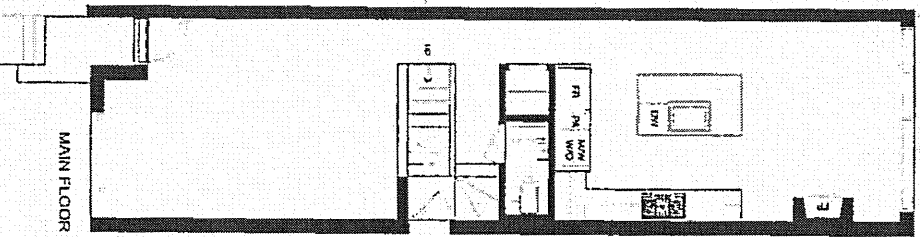
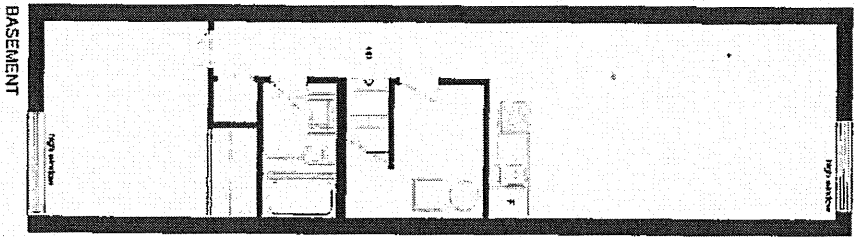


Date: January 18, 2014

Lot: 20

Pad: 7

Purchaser Initials:



14. The Purchaser shall be responsible for the cost of the survey and the cost of the title insurance. The title insurance shall be issued by the title insurance company named in the contract. The title insurance shall be issued in the name of the Purchaser. The title insurance shall be issued in the name of the Purchaser. The title insurance shall be issued in the name of the Purchaser.

SCHEDULE "D"

WARNING CLAUSES AND NOTICE PROVISIONS

The Purchaser acknowledges that:

- 1 It is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval and site plan approval, certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers 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 Purchaser covenants and agrees that (1) on the Closing Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents and/or register the Requirements on title, the Purchaser shall accept the same, without in any way affecting this transaction.
- 2 It is further acknowledged that one or more of the Development Agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, sanitary sewers, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to the Closing Date, and the Purchaser further covenants and agrees to execute forthwith upon the Vendor's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreement(s) as and when required to do so by the Vendor.
- 3 With respect to public roads, the Purchasers/Tenants are advised that overnight street parking may not be permitted unless an overnight street parking system is implemented by the City of Toronto (the "City").
- 4 The Purchasers are advised that no owner of any part of the said lands shall alter or interfere with the grading and drainage levels and patterns as approved by the City with respect to the said lands and/or surrounding properties and, without limiting the generality of the foregoing, no owner of any part of the said lands shall alter, fill, fence, stop up or allow to become clogged or fall into a state of disrepair, any rear or side yard drainage depression or swale, catchbasin or other drainage channel, facility or installation, as such alteration or other action as stated above may cause a failure of the drainage system in the area which will result in civil liability. The owner hereby agrees to indemnify and save the City harmless from all actions, causes or actions, suits, claims and demands whatsoever which may arise directly or indirectly, by reason of such alteration or other action as stated above.
- 5 Purchasers/Tenants are advised that mail delivery will be from designated community mailboxes. Purchasers are advised that the proposed location of the mailboxes is in proximity to the public park, which is in proximity to Pott No. 1 and Pott No. 41. Prior to Canada Post confirming and inspecting the community mailbox location, Purchasers/Tenants are advised that mail delivery may be from the closest Canada Post station.
- 6 The Purchasers are advised that despite the inclusion of noise attenuation features within the development area within the individual building units, noise levels will continue to increase occasionally interfering with some activities of the building's occupants.
- 7 Purchasers are advised that uses such as unauthorized private picnics, barbeque or garden areas and/or the dumping of refuse (e.g. grass/garden clippings, household compostable goods, garbage, etc.) are not permitted on the common areas.
- 8 The Purchasers/Tenants of all Potts are advised that despite the inclusion of noise control features within this development area and within the building units, sound levels from increasing road traffic on Caledonia Road, Innes Avenue and McRoberts Avenue may continue to be of concern, occasionally interfering with some activities of the dwelling occupants as the sound level exceeds the Municipality's and the Ministry of Environment's noise criteria.
- 9 Purchasers are advised that noise and dust from a concrete plant in the vicinity of the Condominium and the Potts may be of concern and may interfere with some activities of the dwelling occupants.
- 10 Purchasers acknowledge and accept all risks and consequences of the location of the Condominium and their Unit(s) being in proximity to a public park. Without limiting the generality of the foregoing, Purchasers accept the risks and consequences of (i) increased noise arising from the public park and/or activities in or around the public park, (ii) odours and/or smells coming from the public park and/or activities in or around the public park, (iii) projectile balls, bats, clubs and/or other related things and (iv) increased animal or creature activity.
- 11 The Purchasers/Tenants are hereby put on notice that telephone and telephone communications facilities and services are authorized by the CRTC under the Telecommunications Act, and as such these services may be provided by telecommunication carriers other than the traditional carriers for such services. Purchasers and tenants are advised to satisfy themselves that such carriers servicing the lands provide sufficient service and facilities to meet their needs.
- 12 The Purchasers/Tenants are advised that if an air conditioning unit is to be installed at a later date, the outdoor unit shall be located in a noise sensitive location. The final installation shall meet the Ministry of Environment criteria in Publication NPC-216 and other applicable levels specified by the Municipality.
- 13 The Condominium may be subject to various assessments in the nature of a right-of-way in favour of adjoining and/or neighbouring land owners for utilities, construction and to permit ingress and egress to those properties.

14. Purchasers are advised that their Dwellings may be subject to various easements in the nature of a right of way in favour of the Condominium utility providers and/or adjoining Dwelling owners for the purpose of maintenance and repair and to permit ingress and egress to their Dwelling and adjoining Dwellings.
15. The City does not require off site snow removal; however, in the case of heavy snow falls, the limited storage space available on the property may make it necessary to truck the snow off site and the cost of same will be included in the common expense fees.
16. Purchasers of Dwellings are advised and hereby put on notice that if required by the City of Toronto noise attenuation fencing, privacy fencing, decorative fencing, stone column entrance features, directional signage and address features (collectively the "Features") may be located on the property or within lands adjacent to or across the street from their Dwelling. Any and all Features if any, shall not be altered or removed. The Condominium Corporation shall maintain and repair any Features and any berm/retaining walls.
17. All Dwellings shall have individual utility meters and/or check meters servicing the Dwelling, which will be located within or on the exterior of the Dwelling. The locations of the utility meters on the Dwellings are currently preliminary and are subject to approval and/or variation by the local utility providers. The Vendor reserves the right to gang meters within one or more Pools to be determined by the Declaration in its sole discretion.
18. Purchasers shall be solely responsible for watering of all sod and for general maintenance of all hard and soft landscaping within their Pool and/or within exclusive use common element areas appurtenant to their Pool (if applicable).
19. The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium) and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and will not cover the Dwelling, any betterments or improvements made to the Purchaser's Pool, nor any furnishings or personal belongings of the Purchaser or other residents of the Pool and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Closing Date, all at the Purchaser's sole cost and expense.
20. The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Purchaser's Pool after the Closing Date from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Purchaser's Pool and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
21. The Purchaser acknowledges being advised of the following notices:
- i. Despite the best efforts of the Toronto District School Board and the Toronto Catholic District School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area and further, the students may later be transferred.
 - ii. Purchasers agree for the purpose of transportation to school if bussing is provided by the Toronto District School Board or the Toronto Catholic District School Board in accordance with the policies of each such School Board that students will not be bussed from home to school, but will meet the bus at designated locations in or outside the area.
22. Purchasers are advised that each dwelling may contain a sump pump and that in such case the owners are responsible for the maintenance and/or replacement of such sump pumps. Purchasers are further advised that the sump pump is not equipped with an emergency generator or backup battery service.
23. The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed from time to time, by any of the governmental authorities and that the proximity of the Condominium to major arterial roads (Caledonia Road), a railway west of Caledonia Road, as well as TTC bus transit operations may result in noise transmissions to the Property and cause noise exposure levels affecting the Property to exceed the noise criteria established by the governmental authorities, and that despite the inclusion of noise control features within the Condominium, noise levels from the aforementioned sources may continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. Purchasers acknowledge and agree that a noise-warning clause similar to the preceding sentence (subject to amendment by any wording or text recommended by the Vendor's noise consultants or by any of the governmental authorities) may be registered on title to the Property. Without limiting the generality of the foregoing, Purchasers specifically are advised that the following noise warning clause has been included herein: "Purchasers and Tenants are advised that despite the inclusion of noise control measures in the development and within the building units, sound levels due to increasing road traffic may on occasion interfere with some activities of the dwelling occupants as the sound levels exceed the Municipality's and the Ministry of the Environment's noise criteria. Glazing constructions have been selected and this residential unit has been supplied with a central air conditioning system which will allow exterior doors and windows to remain closed so that the indoor sound levels are within the criteria of the Ministry of the Environment's noise criteria."
24. The Purchaser specifically acknowledges and agrees that the proximity of the development of the lands (the "Development") to TTC bus transit operations may result in transmissions of noise, vibration, electromagnetic interference, stray current and smoke and particulate matter (collectively referred to as the "Interferences") to the Development and despite the inclusion of control features within the Development, Interferences from such transit operations may continue to be of concern, occasionally interfering with some activities of the occupants in the Development. Notwithstanding the above, the Purchaser agrees to release and save harmless the City of Toronto and the Toronto Transit Commission from all claims, losses, judgments or actions arising or resulting from any and all Interferences. Furthermore, the Purchaser acknowledges and agrees that electromagnetic, stray current and noise warning clause similar to the one contained herein shall be inserted into any succeeding lease, sublease or sales agreement and that this requirement shall be binding not only on the parties hereto but also on their respective successors and assigns and shall not be waived by the signing of the transaction.

- 25 Warning Canadian Pacific Railway or its assigns or successors in interest has or have rights-of-way within 300 metres from the land the subject hereof. There may be alterations to or extensions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CPR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.
- 26 Purchasers are advised that certain Potli garages adjacent to the Condominium lane(s), to be determined by the Vendor in its sole and absolute discretion, may be mounted with a light fixture for the purposes of illuminating such lane(s). Purchasers are further advised that Potli owners may be individually responsible for the use of energy require to power such applicable light located on their Potli and that they will be restricted from altering or removing such lights or in any way interfering with the illumination of the lane(s).
- 27 This development may be required to accommodate traffic calming devices, which may include any or all of the following: bump-outs, speed bump or other similar devices as determined by the City of Toronto. The location of these devices may directly affect the garage access in the vicinity of these devices. The Owner agrees that all traffic control devices be in place prior to first occupancy. The decision to provide for traffic calming shall be at the sole discretion of the City of Toronto.

NOTE: All references to Potlis in this Schedule are based on the numbering shown on the plan attached as Schedule "C" to this Agreement.

SCHEDULE "E"

PURCHASE OF AN INTEREST IN A COMMON ELEMENTS CONDOMINIUM

1. The meaning of words and phrases used in this Schedule and in this Agreement shall have the meaning ascribed to them in the *Condominium Act, 1998, S.O. 1998, C.19*, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:
 - (a) "Agreement" shall mean the Agreement of Purchase and Sale to which this Schedule is attached including all other Schedules attached hereto and made a part hereof,
 - (b) "Condominium Documents" shall mean the Creating Documents (as hereinafter defined), the by-laws and rules of the Condominium Corporation, the disclosure statement and budget statement, as may be amended from time to time,
 - (c) "Condominium Corporation" shall mean the Common Element Condominium Corporation created upon registration by the Vendor of the Creating Documents
 - (d) "Creating Documents" means the declaration and description (as such terms are defined in the Act), which are intended to be registered against title to the lands comprising the Condominium Corporation and which will serve to create the Condominium Corporation, as may be amended from time to time
2. In addition to purchasing the Real Property, the Purchaser hereby agrees to purchase a common interest in the Condominium Corporation as more particularly described in the Condominium Documents on the terms and conditions set out in this Schedule "E"
3. The Purchase Price for the common interest in the Condominium Corporation is Two (\$2 00) Dollars which is payable on the Closing Date
4. There is no deposit payable by the Purchaser for the purchase of the common interest in the Condominium Corporation.
5. The Purchaser agrees to accept title subject to the Condominium Documents notwithstanding that same may be amended or varied from the proposed condominium documents provided to the Purchaser and acknowledges that upon receipt of a Transfer/Deed of Land to the Real Property the common interest in the Condominium Corporation cannot be severed from the Real Property upon any subsequent sale of the Real Property
6. The Vendor's proportionate amount of the common expenses attributable to the Real Property shall be apportioned and allowed to the Closing Date
7. The Purchaser acknowledges that the Condominium Corporation and the purchase of a common interest in the Condominium Corporation are not warranted by the *Ontario New Home Warranties Plan Act*
8. The Purchaser acknowledges that the common elements of the Condominium Corporation will be constructed to standards and/or the requirements of the Municipality. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his successors in title against the Vendor. The Vendor may from time to time change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any part of the Condominium to conform with any municipal requirements related to official plan or official plan amendments, zoning by-laws, committee of adjustment and/or land division committee decisions, municipal site plan approval. Such changes may be to the plans and specifications existing at inception of the Condominium Corporation or as they existed at the time the Purchaser entered into this Agreement or as illustrated on any sales brochures or otherwise. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications
9. Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within fifteen (15) days from the date of the Purchaser's execution of this Agreement as set out below then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor

SCHEDULE "F"

THE UNDERSIGNED being the Purchaser(s) of the PctI hereby acknowledges having received from the Vendor with respect to the purchase of the PctI the following documents on the date noted below:

- 1 A Disclosure Statement dated January 14, 2014 and accompanying documents in accordance with Section 72 of the Act.
- 2 A copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and Purchaser.

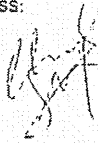
The Purchaser hereby acknowledges that receipt of the Disclosure Statement and accompanying documents referred to in paragraph 1 above may have been in an electronic format and that such delivery satisfies the Vendor's obligation to deliver a Disclosure Statement under the Act.

The Purchaser hereby acknowledges that the Condominium Documents required by the Act have not been registered by the Vendor, and agrees that the Vendor may, from time to time, make any modification to the Condominium Documents in accordance with its own requirements and the requirements of any mortgagee, governmental authority, examiner of Legal Surveys, the Land Registry Office or any other competent authority having jurisdiction to permit registration thereof.

The Purchaser further acknowledges and agrees that in the event there is a material change to the Disclosure Statement as defined in subsection 74(2) of the Act, the Purchaser's only remedy shall be as set forth in subsection 74(6) of the Act, notwithstanding any rule of law or equity to the contrary.

DATED at Bellevue, this 10th day of JANUARY, 2014

WITNESS:



)
)
)
)
)


Purchaser

Purchaser

SCHEDULE "G"
RESTRICTIONS

The burden of each of the covenants hereinafter set out shall run with each and every lot, part lot and/or block located on Plan 55M- registered in the name of the Applicant on the date of registration of this Application including each and every Parcel of Tied Land ("POTL") appurtenant to Toronto Common Elements Condominium Plan No. ____ (the "Common Elements Condominium"). The Purchaser for itself, its successors and assigns covenants with the Vendor, its successors and assigns, that the Purchaser and the Purchaser's successors in title from time to time of all or any part or parts of the said lands will observe and comply with the stipulations, restrictions, provisions and covenants set forth below, namely

- 1 The Purchaser hereby irrevocably covenants and agrees to abide by and observe each and every one of the covenants and restrictions set out in this Schedule and, further, in the event of the sale of the POTL and house by the Purchaser, the deed from the Purchaser for the home shall contain a copy of this Schedule of Restrictive Covenants
- 2 All owners of a POTL having an appurtenant common interest in the Common Elements Condominium are advised that the title to a portion of each POTL may be subject to an outstanding easement which will allow the Condominium Corporation to install, inspect, maintain and/or repair the above and below grade municipally-approved services, and that the use of the front property portion adjacent to any such POTL may be limited by the siting of street lights, cable television boxes, hydro vaults and any other municipally-approved structures and fixtures, including any below grade services, situated within or beneath such front property (the "Easements"). Owners shall not disrupt such Easements.
- 3 No changes to the exterior finishes of the Dwelling in any manner whatsoever are permitted including but not limited to, roofing shingles, vents to roof and walls, soffit, fascia, eavesstrouthing, brick, siding and trim, windows, exterior doors, stone veneer, decks, privacy screens and railings. In addition, nothing shall be affixed, attached to, hung displayed or placed on the exterior walls, including awnings and/or storm shutters, doors or windows. In the event of maintenance to or replacement being required of any of the exterior finishes the owner(s) shall not use building materials, unless same are identical to, or as close as possible to the as-constructed materials with regard to colour, shape, size and texture.

Owners shall not change, maintain or replace any exterior finishes of the dwelling unless and until they have co-ordinated such with all other owners of the building of which the dwelling forms part, so as to ensure uniform colour, texture, shape and size to the finishes of the entire building at all times. Furthermore, owners shall not change, maintain or replace any exterior finishes of the dwelling unless such work is in compliance with the heritage design guidelines, by-laws or agreements with the City of Toronto.
- 4 No motor vehicle, including without limitation a boat, snowmobile, camper van, trailer (including trailer with living sleeping or eating accommodation), used building, commercial truck or similar vehicle, motor home, boats, ATV, snowmobiles or any personal vehicles not used on a daily basis, or any other vehicle, other than an automobile or motorcycle, shall be parked, placed, located, kept or maintained upon the subject lands or any part thereof unless concealed in a wholly enclosed garage
- 5 No repairs to any automobile or to any other vehicle or equipment shall be carried out on the Lands and no automobile or any other vehicle or equipment that is undergoing repairs of any nature or not capable of operation shall be parked or located upon the Lands or any part thereof unless concealed in a wholly enclosed garage
- 6 No owner(s) shall, without the prior written authority of the municipality (which may be arbitrarily withheld), interfere with or alter any above or below ground drainage, catch basin or storm water management system or lead, or obstruct the natural flow of water, or obstruct the drainage as designed and engineered to a POTL and/or any of the adjoining lands. No owner shall alter the grading or change the elevation or contour of a POTL and/or any of the adjoining lands except in accordance with drainage and grading plans approved by the municipal public works department. No owner shall alter the overall drainage patterns of the POTL water drainage upon the POTL or to and from adjoining lands, and each owner agrees to grant and shall not refuse to grant such easements as may be required from time to time by the owner of adjoining lands for drainage purposes
- 7 No alteration of the grading or drainage pattern of the Lands or any part thereof shall be made and no construction or installation of any shrubbery, gates, pools, patios, fences, sheds or similar structures shall be made prior to the final grading approval of the Municipality without the consent of URBANCORP (ST. CLAIR VILLAGE) INC (the "Vendor"). The Owner shall not fail to repair minor settlement of the subject lands or to care for sod, shrubs and other landscaping if any, provided by the Vendor, its contractors and subcontractors or to replace any of it that dies from time to time. No construction of any fences shall be permitted at any time
- 8 Notwithstanding anything contained herein, the Vendor shall have the right, by instrument in writing, from time to time to waive, alter or modify the covenants, provisions and restrictions contained herein with respect to all or any part of the Lands hereinbefore described, without notice to or the consent of any Transferee or owner
- 9 The owner shall not breach any provision contained in the Subdivision Agreement as it relates to the Lands, the buildings constructed thereon, or the grading with respect thereto
- 10 Each of these covenants and restrictions shall be deemed independent and severable in whole or in part, and the invalidity or unenforceability of any one covenant or restriction or any portion thereof shall not affect the validity or enforceability of any other covenant or restriction or remaining portion thereof

The burden of these covenants and restrictions shall run with each and every lot, part lot and/or block located on Plan 55M- registered in the name of the Applicant on the date of registration of this Application including all POTLs to the Condominium Corporation and the benefit of these covenants and restrictions may be annexed to and run with each and every lot, part lot and/or block located on Plan 55M- registered in the name of the Applicant on the date of registration of this Application including all POTLs to the Condominium Corporation. All owners their respective successors and assigns, in title from time to time of the POTLs shall keep, observe, perform and comply with the stipulations, provisions and covenants set forth herein.



**Freehold Form
(Tentative Closing Date)**

Property LOT: 20
Birch (Left)

**Statement of Critical Dates
Delayed Closing 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 Closing 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 Closing of your purchase.

VENDOR Urbancorp (St. Clair Village) Inc
Full Name(s)

PURCHASER [Redacted]
Full Name(s)

1. Critical Dates

The First Tentative Closing Date, which is the date that the Vendor anticipates the home will be completed and ready to move in, is the 16th day of December, 2016.

A Second Tentative Closing Date can subsequently be set by the Vendor by giving proper written notice at least 90 days before the First Tentative Closing Date. The Second Tentative Closing Date can be up to 120 days after the First Tentative Closing Date, and so could be as late as the 18th day of April, 2017.

The Vendor must set a Firm Closing Date by giving proper written notice at least 90 days before the Second Tentative Closing Date. The Firm Closing Date can be up to 120 days after the Second Tentative Closing Date and so could be as late as the 16th day of August, 2017.

If the Vendor cannot close by the Firm Closing Date, then the Purchaser is entitled to delayed closing compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Closing Date.

The Vendor can set a Delayed Closing Date that is up to 365 days after the earlier of the Second Tentative Closing Date and the Firm Closing Date. This Outside Closing Date could be as late as the 18th day of April, 2018.

2. Notice Period for a Delay of Closing

Changing a Closing date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Closing twice by up to 120 days each time by setting a Second Tentative Closing Date and then a Firm Closing Date in accordance with section 1 of the Addendum but no later than the Outside Closing Date.

Notice of a delay beyond the First Tentative Closing Date must be given no later than the 16th day of September, 2016.

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

Notice of a second delay in Closing must be given no later than the 18th day of January, 2017.

(i.e., at least 90 days before the Second Tentative Closing Date), or else the Second Tentative Closing Date becomes the Firm Closing Date.

3. Purchaser's Termination Period

If the purchase of the home is not completed by the Outside Closing Date, then the Purchaser can terminate the transaction during a period of 30 days (hereafter the "Purchaser's Termination Period"), which period, unless extended by mutual agreement, will end on the 18th day of May, 2018.

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

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 18 day of January 2014

VENDOR [Redacted]

PURCHASER [Redacted]



**Freehold Form
(Tentative Closing Date)**

**Addendum to Agreement of Purchase and Sale
Delayed Closing 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 purchase is in substance a purchase of freehold land and residential dwelling. This Addendum contains important provisions that are part of the delayed closing 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 CLOSING 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 Urbancorp (St. Clair Village) Inc.

Full Name(s) 43212 120 Lynn Williams St. Suite 2A

Tarion Registration Number 416-928-5001 Toronto Ontario M6K 3N6

Phone 416-925-9501 City Province Postal Code

Fax _____ Email* _____

PURCHASER _____

Full Name(s) _____

Address _____ City Province Postal Code

Phone _____

Fax _____ Email* _____

PROPERTY DESCRIPTION

Municipal Address _____

Toronto Ontario

City _____ Province _____ Postal Code _____

Part of Block X, Plan 1335D Toronto as in CA731963; Toronto, City of Toronto being part of F I N 21319-0110 (LT)

Short Legal Description _____

Number of Homes in the Freehold Project 41 (if applicable - see Schedule A)

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that

- (a) The Property is within a plan of subdivision or a proposed plan of subdivision Yes No
 If yes, the plan of subdivision is registered Yes No
 If the plan of subdivision is not registered, approval of the draft plan of subdivision has been given Yes No
- (b) The Vendor has received confirmation from the relevant government authorities that there is sufficient (i) water capacity, and (ii) sewage capacity to service the Property Yes No

If yes, the nature of the confirmation is as follows _____
 if the site is in Toronto _____
 if the availability of water and sewage capacity is uncertain, the issues to be resolved are as follows _____

- (c) A building permit has been issued for the Property Yes No
- (d) Commencement of Construction has occurred or is expected to occur by the 15 day of Mar 2015

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 Closing Dates and the Firm Closing Date

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the home on the Property and to Close without delay.
- (b) **First Tentative Closing Date:** The Vendor shall identify the First Tentative Closing Date in the Statement of Critical Dates attached to the Addendum at the time the Purchase Agreement is signed.
- (c) **Second Tentative Closing Date:** The Vendor may choose to set a Second Tentative Closing Date that is no later than 120 days after the First Tentative Closing Date. The Vendor shall give written notice of the Second Tentative Closing Date to the Purchaser at least 90 days before the First Tentative Closing Date, or else the First Tentative Closing Date shall for all purposes be the Firm Closing Date.
- (d) **Firm Closing Date:** The Vendor shall set a Firm Closing Date, which can be no later than 120 days after the Second Tentative Closing Date or, if a Second Tentative Closing Date is not set, no later than 120 days after the First Tentative Closing Date. If the Vendor elects not to set a Second Tentative Closing Date, the Vendor shall give written notice of the Firm Closing Date to the Purchaser at least 90 days before the First Tentative Closing Date, or else the First Tentative Closing Date shall for all purposes be the Firm Closing Date. If the Vendor elects to set a Second Tentative Closing Date, the Vendor shall give written notice of the Firm Closing Date to the Purchaser at least 90 days before the Second Tentative Closing Date, or else the Second Tentative Closing Date shall for all purposes be the Firm Closing Date.
- (e) **Notice:** Any notice given by the Vendor under paragraphs (c) and (d) above, must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Closing Date – Three Ways

- (a) The Firm Closing Date, once set or deemed to be set in accordance with section 1, can be changed only:
 - (i) by the Vendor setting a Delayed Closing 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 Closing Date is set in accordance with section 4 or 5, then the new date is the "Firm Closing Date" for all purposes in this Addendum.

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

- (a) If the Vendor cannot Close on the Firm Closing Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Closing Date in accordance with this section, and delayed closing compensation is payable in accordance with section 7.
- (b) The Delayed Closing Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Closing Date but not later than the Outside Closing Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Closing Date as soon as the Vendor knows that it will be unable to Close on the Firm Closing Date, and in any event at least 10 days before the Firm Closing Date, failing which delayed closing compensation is payable from the date that is 10 days before the Firm Closing Date, in accordance with paragraph 7(c). If notice of a new Delayed Closing Date is not given by the Vendor before the Firm Closing Date, then the new Delayed Closing Date shall be deemed to be the date which is 90 days after the Firm Closing Date.
- (d) After the Delayed Closing Date is set, if the Vendor cannot Close on the Delayed Closing Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Closing 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 Closing 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.
- (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 closing compensation payable, and

(v) if the change involves extending either the Firm Closing Date or the Delayed Closing Date, then the amending agreement shall:

- i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed closing 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 closing compensation payable by the Vendor for the period up to the new Firm Closing Date or Delayed Closing Date.

If the Purchaser for his or her own purposes requests a change of the Firm Closing Date or the Delayed Closing Date, then subparagraphs (b)(i), (ii) 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 Closing Date or Delayed Closing 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 Closing Date or Delayed Closing Date, as the case may be. Delayed closing 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 closing 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 Closing Date or Delayed Closing 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 Closing Date or Delayed Closing 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 closing compensation payable under section 7 is payable from the existing Firm Closing 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 (c), (k) and (l) 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 (j), (k) and (l) 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.
- (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"



**Freehold Form
(Tentative Closing Date)**

Condition #1 (if applicable)

Description of the Early Termination Condition:

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

The date by which Condition #1 is to be satisfied is the _____ day of _____, 20____.

Condition #2 (if applicable)

Description of the Early Termination Condition:

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

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 Closing Date, and will be deemed to be 90 days before the First Tentative Closing Date if no date is specified or if the date specified is later than 90 days before the First Tentative Closing 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 (f) 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) If a Purchase Agreement or proposed Purchase Agreement contains Early Termination Conditions, the Purchaser has three (3) Business Days after the day of receipt of a true and complete copy of the Purchase Agreement or proposed Purchase Agreement to review the nature of the conditions (preferably with legal counsel). If the Purchaser is not satisfied, in the Purchaser's sole discretion, with the Early Termination Conditions, the Purchaser may revoke the Purchaser's offer as set out in the proposed Purchase Agreement, or terminate the Purchase Agreement, as the case may be, by giving written notice to the Vendor within those three Business Days.
- (j) 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*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (k) 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.
- (l) 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 Closing Compensation

- (a) The Vendor warrants to the Purchaser that, if Closing is delayed beyond the Firm Closing 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 date of Closing, 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 closing compensation is payable only if: (i) Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed closing compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Closing, 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 Closing Date to the Purchaser less than 10 days before the Firm Closing Date, contrary to the requirements of paragraph 3(c), then delayed closing compensation is payable from the date that is 10 days before the Firm Closing 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 closing compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed closing compensation in connection with a claim.
- (e) If delayed closing compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Closing 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 closing 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 closing 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 delay 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 Closing. 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.

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 Closing

- (a) On or before Closing, 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 closing 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 Closing, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the date of Closing.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Closing Date (or new Delayed Closing 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 Closing Date (or new Delayed Closing Date), the Vendor shall comply with the requirements of section 3, and delayed closing compensation shall be payable in accordance with section 7. Despite the foregoing, delayed closing compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(i) above 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) Closing has not occurred by the Outside Closing 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 Closing Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Closing Date.
- (c) If calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Closing 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 Closing 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 is 2% less than the minimum rate at which the Bank of Canada makes short-term advances to members of Canada Payments Association, as of the date of termination of the Purchase Agreement.
- (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

"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 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 the completion of the sale of the home including transfer of title to the home to the Purchaser, and "Close" has a corresponding meaning.

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

"Critical Dates" means the First Tentative Closing Date, the Second Tentative Closing Date, the Firm Closing Date, the Delayed Closing Date, the Outside Closing Date and the last day of the Purchaser's Termination Period.
"Delayed Closing Date" means the date, set in accordance with section 3, on which the Vendor agrees to Close, in the event the Vendor cannot Close on the Firm Closing Date.
"Early Termination Conditions" means the types of conditions listed in Schedule A.
"Firm Closing Date" means the firm date on which the Vendor agrees to Close as set in accordance with this Addendum.
"First Tentative Closing Date" means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that it will be able to close, as set out in the Statement of Critical Dates.
"Outside Closing Date" means the date which is 365 days after the earlier of the Firm Closing Date; or Second Tentative Closing Date, or such other date as may be mutually agreed upon in accordance with section 4.
"Property" or "home" means the home including lands being acquired by the Purchaser from the Vendor.
"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).
"Second Tentative Closing Date" has the meaning given to it in paragraph 1(c).
"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 Closing 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 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) subject to paragraph 1(c), receipt by the Vendor of confirmation that sales of homes in the Freehold Project have exceeded a specified threshold by a specified date;
- (ii) subject to paragraph 1(c), receipt by the Vendor of confirmation that financing for the Freehold 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 walk-out; 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.

(c) the following requirements apply with respect to the conditions set out in subparagraph 1(b)(i) or 1(b)(ii):

- (i) the 3 Business Day period in section 6(i) of the Addendum shall be extended to 10 calendar days for a Purchase Agreement which contains a condition set out in subparagraphs 1(b)(i) and/or 1(b)(ii);
- (ii) the Vendor shall complete the Property Description on page 2 of this Addendum;
- (iii) the date for satisfaction of the condition cannot be later than 9 months following signing of the purchase Agreement; and
- (iv) until the condition is satisfied or waived, all monies paid by the Purchaser to the Vendor, including deposit(s) and monies for upgrades and extras: (A) shall be held in trust by the Vendor's lawyer pursuant to a deposit trust agreement (executed in advance in the form specified by Tarion Warranty Corporation, which form is available for inspection at the offices of Tarion Warranty Corporation during normal business hours), or secured by other security acceptable to Tarion and arranged in writing with Tarion; or (B) failing compliance with the requirement set out in clause (A) above, shall be deemed to be held in trust by the Vendor for the Purchaser on the same terms as are set out in the form of deposit trust agreement described in clause (A) above.

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 Closing 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).

"Freehold Project" means the construction or proposed construction of three or more freehold homes (including the Purchaser's home) by the same Vendor in a single location, either at the same time or consecutively as a single coordinated undertaking.

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 Closing permit; and/or
- (c) completion of the home.

**SCHEDULE B TO ADDENDUM
ADJUSTMENT 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.

| | DESCRIPTION | SECTION IN SCHEDULE "A" OF THE PURCHASE AGREEMENT | AMOUNT |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|---------------------------------|
| 1 | Security for any damages, any unauthorized changes, any amounts the Purchaser may owe and/or any breach of obligations and any related damages, costs and expenses | 18(h) | \$500 plus any applicable taxes |
| 2 | Contribution towards the cost of obtaining (partial) discharges of mortgages | 18(k) | \$350 plus any applicable taxes |
| 3 | Cheque returned NSF | 21 | \$250 plus any applicable taxes |

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.

| | DESCRIPTION | SECTION IN SCHEDULE "A" OF THE PURCHASE AGREEMENT |
|----|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| 1 | Upgrades and/or extras and/or changes | 4; 18(c); 23 |
| 2 | Occupancy fee | 6 |
| 3 | Release registration | 14 |
| 4 | Common expense contributions | 18(a); Section 6 in Schedule "E" of APS |
| 5 | Tarion enrolment fee | 18(b) |
| 6 | Realty taxes | 18(d) |
| 7 | Charges, costs, fees and/or other amounts for meters, installations of meters, connections for meters and/or sewers, energization, etc. | 18(e) |
| 8 | Utility authorities/suppliers amounts and charges | 18(f) |
| 9 | Increases in amount of Levies and the amount of new Levies | 18(g) |
| 10 | Cost of any boulevard tree planting | 18(i) |
| 11 | Charges imposed upon the Vendor or its solicitors by the Law Society of Upper Canada | 18(j) |
| 12 | Any tax that may be levied or charged in the future with respect to any sale, transfer, lease or disposition of property | 18(l) |
| 13 | Any other adjustment agreed to by the Vendor and the Purchaser | 18(m) |
| 14 | Re-adjustments | 19 |
| 15 | Rental hot water heater and tank/water heater components amounts, charges, payments, costs, fees, buyout amounts and/or other amounts | 20 |
| 16 | HST Rebate where Purchaser does not qualify for the Rebate or does not provide Rebate Forms | 22(a) |
| 17 | HST on adjustments, extras, upgrades, changes, etc. and the amount of the Reduction | 22(b) |
| 18 | Correcting certain Purchaser actions | 27; 31; 41(d); 42; 69 |
| 19 | Removing unauthorized title registrations | 34 |
| 20 | Interest and liquidated damages | 41(d) |
| 21 | Purchaser indemnity for entry | 43 |
| 22 | Costs and/or amounts for basements, decks, steps, windows, doors and associated construction equipment, labour and materials | 65 |
| 23 | Cost of the Municipal Additional Requirements and for the installation | 66 |
| 24 | Take back financing | 68 |

**APPENDIX TO ADDENDUM
TO AGREEMENT OF PURCHASE AND SALE
EARLY TERMINATION CONDITIONS**

The Early Termination Conditions referred to in paragraph 6 (d) of the Tarion Addendum are as follows:

CONDITIONS PERMITTED IN PARAGRAPH 1 (a) OF SCHEDULE "A" TO THE TARIION ADDENDUM

N/A

CONDITIONS PERMITTED IN PARAGRAPH 1 (b) OF SCHEDULE "A" TO THE TARIION ADDENDUM

1 Description of Early Termination Condition:

This Agreement is conditional upon the Vendor being satisfied, in its sole and absolute discretion, with the credit worthiness of the Purchaser. The Vendor shall have sixty (60) days from the date of acceptance of this Agreement by the Vendor to satisfy itself with respect to such credit worthiness. The Purchaser covenants and agrees to provide all requisite information and materials including proof respecting income and source of funds or evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor, confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Closing Date, as the Vendor may require to determine the Purchaser's credit worthiness.

The date by which this Condition is to be satisfied is the 60th day following the acceptance of the Agreement.

Appendix “E”

CITATION: Re Urbancorp, 2017 ONSC 2356
COURT FILE NO.: CV-16-11389-00CL
CV-16-11549-00CL
DATE: 20170418

**SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE)
INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP
(LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC.,
URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST.
CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (collectively, the "Applicants") AND
THE AFFILIATED ENTITIES IN SCHEDULE "A" HERETO

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE
TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT
KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE
"APPLICANTS")
AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

BEFORE: Newbould J.

COUNSEL: *Robin B. Schwill*, for the Monitor

Lisa S. Corne and Michael J. Brzezinski, for Certain Home Buyers

Edmond Lamek, for the Urbancorp CCAA Entities

Neil S. Rabinovitch, for the Guy Gissin, the Israeli Functionary of Urbancorp Inc.

Vern W. DaRae, for Stefano Serpa and Adrian Serpa

Adam M. Slavens, for Tarion Warranty Corporation

Dominique Michaud, for Terra Firma Capital Corporation

Benjamin Rouse, in person

HEARD: April 13, 2017

ENDORSEMENT

[1] The Monitor moves for an order declaring that any claim for damages by a home buyer made in the claims process in these CCAA proceedings be disallowed in full. It is opposed by a number of the home buyers who filed claims for damages resulting from their purchase agreements not being performed by the relevant Urbancorp entity which contracted to build and sell residential units.

[2] There are five Urbancorp entities involved in this dispute, being Urbancorp (St. Clair Village) Inc., Urbancorp (Mallow) Inc., Urbancorp (Lawrence) Inc., Urbancorp (Bridle Path) Inc. and Urbancorp (Woodbine) Inc. Each held an interest in real property as bare trustees and intended to develop residential homes. They pre-sold 185 freehold homes and collected deposits totalling \$15.6 million from home buyers. The deposits were spent prior to the commencement of these insolvency proceedings. There was no statutory or other requirement that the deposits be held in trust or otherwise segregated.

[3] At the commencement of the CCAA proceedings, these companies were in the process of obtaining, and in some cases had obtained, approvals required to develop each of their projects. With the exception of Bridlepath, all were holding raw land. Construction of an underground garage had been commenced by a prior owner of Bridlepath.

[4] On March 4, 2016, Tarion Warranty Corporation issued to each of the vendors a Notice of Proposal to Refuse to Renew Registration pursuant to the *Ontario New Home Warranty Plan Act*. This was a precipitating factor in the vendors taking insolvency proceedings. On April 25, 2016

the Urbancorp companies in question filed notices of intention (NOI) to make a proposal under the BIA. On May 18, 2016 they moved for relief under the CCAA, at which time the Monitor was appointed.

[5] On June 30, 2016 a sales process order was made authorizing the Monitor to take steps to sell the property owned by each Urbancorp company. The properties were sold to buyers who refused to take an assignment of the purchase agreements made with the home buyers. The sales were approved by court order and vesting orders were provided to each buyer with title free and clear of all obligations, including the agreements of purchase and sale entered into between the Urbancorp companies and the home buyers.

[6] There is no dispute that the home buyers are entitled to the return of their deposits and no dispute that they will be paid their deposits. The issue is whether any of the home buyers are entitled to damages for the loss of their bargain in their purchase agreements not being completed. The value of real estate has increased substantially since the agreements were made in 2014 and the home buyers have lost the value of this increase. Some have bought other homes at much higher prices than would have been the case in 2014 when they made their agreements with Urbancorp.

[7] The Monitor conducted a claims process under which the home buyers were not required to file proofs of claim. Instead, the Monitor prepared each home buyer's claim and sent it to each home buyer. Home buyers were entitled to accept the claims as determined by the Monitor or dispute the amount of the claim by filing an objection notice. After reviewing the purchase agreements made with the home buyers and an exclusion of liability provision in clause 45 which provided that if the vendor could not complete the transaction for any reason, the purchaser had no claim for damages, the Monitor determined that the home buyers had a claim only for the return of their deposits and sent the claims to the home buyers that reflected that conclusion. Sixty-four of the 185 home buyers have disputed the Monitor's position and claim damages.

[8] The damage claims being asserted by the objecting home buyers are (i) the difference between the purchase price of their home and the market value of the home as at the closing date set out in their purchase agreement; (ii) additional costs and expenses incurred in connection with

obtaining and relocating to alternative residential properties; and (iii) legal, appraisal, and other professional fees.

Analysis

[9] The issue is whether the exclusion of liability clause as properly construed prevents a damage claim and if so whether the clause should not be enforced on various equitable grounds. The clause in all of the purchase agreements is as follows:

45. Notwithstanding anything contained in this Agreement, it is understood and agreed by the parties hereto that in the event that construction of the Dwelling is not completed on or before the Closing Date for any reason or in the event the Vendor cannot complete the subject transaction on the Closing Date, other than as a result of the Purchaser's default, the Vendor shall not be responsible or liable to the Purchaser in any way for any damages or costs whatsoever including without limitation loss of bargain, relocation costs, loss of income, professional fees and disbursements and any amount paid to third parties on account of decoration, construction or fixturing costs other than those costs set out in the Tarion Addendum.

[10] The analysis to be undertaken in considering the applicability of exclusion of liability clauses was settled in *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, [2010] 1 S.C.R. 69. While the Court was split on the outcome of the case, there was agreement on the analysis to be undertaken and described by Justice Binnie as follows:

121 The present state of the law, in summary, requires a series of enquiries to be addressed when a plaintiff seeks to escape the effect of an exclusion clause or other contractual terms to which it had previously agreed.

122 The first issue, of course, is whether as a matter of interpretation the exclusion clause even *applies* to the circumstances established in evidence. This will depend on the Court's assessment of the intention of the parties as expressed in the contract. If the exclusion clause does not apply, there is obviously no need to proceed further with this analysis. If the exclusion clause applies, the second issue is whether the exclusion clause was unconscionable at the time the contract was made, "as might arise from situations of unequal bargaining power between the parties" (*Hunter*, at p. 462). This second issue has to do with contract formation, not breach.

123 If the exclusion clause is held to be valid and applicable, the Court may undertake a third enquiry, namely whether the Court should nevertheless refuse to enforce the valid exclusion clause because of the existence of an overriding public policy, proof of which lies on the party seeking to avoid enforcement of the clause, that outweighs the very strong public interest in the enforcement of contracts.

(i) Does clause 45 apply?

[11] The Monitor says that the clause is unambiguous and that it covers any situation in which construction is not completed on the closing date for any reason or the vendor cannot complete the transaction on the closing date. The Monitor says that occurred in this case and the claims of the home buyers are clearly covered by the exclusion of claims for loss of bargain.

[12] It is argued by the home buyers that the clause by its terms only applies when there has been a delay in closing and not when there has been a failure to close. The language certainly does not say that. It is argued however that the last sentence of the clause that excludes damages and costs makes an exception for "those costs set out in the Tarion Addendum". It is argued that section 7 in the Tarion Addendum to the purchase agreements provides for compensation for delayed occupancy, but only if the purchase closes, which is said to be an indication that clause 45 was meant to apply only to a delay in occupancy, not a failure to provide occupancy.

[13] I do not agree. Each of the purchase agreements for the five developments contained the same Tarion Addendum as set out in the agreed statement of facts. Before paragraph 7 of the Addendum is a heading "MAKING A COMPENSATION CLAIM". Section 7 begins with the heading Delayed Occupancy Compensation. It provides for payment of \$150 per day of delay and for other things such as moving and storage and moving costs. Paragraph 12 under the same general heading is headed Refund of Monies Paid on Termination and provides for a refund on termination of any deposit made and money paid for upgrades and extras.

[14] I think it an unwarranted stretch of the last proviso in clause 45 of the purchase agreements to say that the costs referred to are only the types of costs set out in section 7 and not to those referred to in section 12 of the Tarion Addendum.

[15] In any event, the language of clause 45 does not permit an interpretation that it only applies to a delay and not a failure to close. Excluded from claims are claims for loss of bargain, relocation costs and any amount paid to third parties on account of decoration, construction or fixturing costs. There would be no realistic claim for these things if late occupancy were given. They would realistically apply only if no occupancy were given.

[16] The home buyers also argue that the *contra proferentum* rule applies so that any ambiguity is to be held against Urbancorp. I think it right to say that the contracts, in so far as the fine print is concerned, including clause 45, can be considered to be contracts of adhesion and that the *contra proferentum* rule would apply if there were an ambiguity. However, I do not find there is an ambiguity giving rise to that rule.

[17] The home buyers rely on the case of *Aita v Silverstone Towers Ltd.* (1978), 19 O.R. (2nd) 618 (C.A.) involving a sale of a condominium that the vendor refused to close by taking steps held to be a repudiation of the agreement. The purchase agreement had a clause which provided:

In the event the transaction is not completed by reason of default on the part of the Vendor, the liability of the Vendor shall be limited to the return to the Purchaser of the deposit monies herein.

[18] It was held that on the vendor's interpretation of the clause, the vendor could capriciously or wrongfully refuse to complete the transaction without any liability. In order to prevent such a result, the clause was interpreted to apply only to a default in carrying out a term of the agreement rather than a repudiation of the agreement. Arnup J.A. stated:

I do not accept the defendant's construction of that paragraph as limiting its liability, even in the event of its arbitrary refusal to carry out the contract. In my view, the paragraph was intended to cover default by the defendant in carrying out a term of the contract that required it to do something. This is the ordinary meaning of the word "default". The paragraph was not intended to cover a complete and outright repudiation of the entire contract.

[19] I do not think that case is apt to the circumstances of this case. Apart from the fact that the clause in that case was not the same as the Urbancorp clause, there was no arbitrary action or repudiation by Urbancorp of the purchase agreements. What occurred was as a consequence of the Israeli bond issuance, the later Israeli and CCAA proceedings and a court-approved sales process.

[20] In late December, 2015 or early in 2016, Urbancorp Inc. raised approximately \$64 million by issuing its Israeli bonds. The bond offering was to deleverage the Urbancorp balance sheet and to provide the capital to arrange construction financing. It was subordinated debt so that the banks would count it as part of the equity of Urbancorp. Of the net funds received, \$54 million was used to pay existing secured obligations of various Urbancorp entities and the balance was used for working capital purposes. Urbancorp clearly intended to complete the construction and close the purchase agreements with the home buyers.

[21] After Tarion issued its Notice of Proposal to Refuse to Renew Registration for each project, the Urbancorp entities in question filed their NOI proceedings under the BIA. The bondholders of Urbancorp Inc. in Israel considered that there had been default under the terms of the bonds and on April 25, 2016 the Israeli court appointed Mr. Gus Gissin as the functionary of Urbancorp Inc. As a result, these CCAA proceedings were filed by the relevant Urbancorp entities.

[22] In his affidavit in support of the CCAA filing, Mr. Saskin stated his view that the primary challenge facing the Urbancorp entities was their inability to raise the necessary financing to advance their major projects beyond their current stages of development and that the subsidiaries of Urbancorp Inc., which include the relevant subsidiaries on this motion, had significant net asset value in excess of obligations to creditors so long as the assets were properly restructured or sold in an orderly manner. He further stated that the Monitor should be given enhanced powers that would enable it to make all material decisions in respect of the operation of the business and the conduct of a SISF. That enhanced power was given to the Monitor.

[23] As stated, the sales process undertaken by the Monitor resulted in the projects being sold as raw land with no purchaser being willing to take an assignment of the purchase agreements of the home buyers and with vesting orders being provided to the buyers giving them free title. That left the Urbancorp entities with no ability to complete the purchase agreements. I cannot, however, find that there was some unlawful repudiation of those purchase agreements by Urbancorp.

[24] Nor is this a situation such as existed in *1465152 Ontario Limited v. Amexon Development Inc.*, 2015 ONCA 86; leave to appeal refused [2015] S.C.C.A. No 102 (S.C.C.), in which a landlord

rescinded the bargain and evicted a tenant in an effort to make more money because something better had come along.

[25] To suggest that Mr. Saskin took the steps that he did to make money for himself as the owner of the various Urbancorp entities flies in the face of the evidence. It is quite clear that there is no money from the Urbancorp entities that sold homes to the home buyers that will end up in Mr. Saskin's pocket. The balance available after the creditors of these subsidiaries are paid will go to partially pay money owing on the Israeli bonds. Mr. Saskin has himself filed NOI proceedings under the BIA.

[26] I find that clause 45 applies in the circumstances of this case. Once the Monitor sold the properties to buyers who would not take an assignment of the purchase agreements and who obtained vesting orders that provided that title was taken free of any obligations under the purchase agreements, Urbancorp could not complete construction or close the purchase agreements as referred to in clause 45. Thus the damages claimed by the home buyers are excluded by the language of clause 45.

(ii) Unconscionability

[27] Unconscionability is a doctrine that permits a party to void a contract that is manifestly unfair. In order to demonstrate unconscionability, a contracting party must show that the other party 1) enjoyed unequal bargaining power, and 2) a substantially unfair bargain resulted. The inquiry is directed at whether the contract was manifestly unfair at the time the contract was entered into. See *Re Tercon* (Binnie J.) at para. 122; *Morrison v. Coast Fin. Ltd.* (1965), 54 W.W.R. 257, 55 D.L.R. (2d) 710 (B.C.C.A.); *Harry v. Kreutziger* (1978), 9 B.C.L.R. 166, 95 D.L.R. (3d) 231 (C.A.).

[28] *Tercon* offers little guidance on the scope of the unconscionability test. See Hall, Geoff R., *Canadian Contractual Interpretation Law*, Third Edition, 2016: LexisNexis Canada at p. 330, §9.12.2.3. The author states that it appears that unconscionability provides a relatively high bar that is difficult to meet to invalidate a limitation of liability provision. Case law supports this conclusion.

[29] In *Titus v. William F. Cooke Enterprises Inc.*, 2007 ONCA 573, MacPherson J.A. adopted the following test for unconscionability:

38 In a recent case dealing with the doctrine of unconscionability in a wrongful dismissal context, *Cain v. Clarica Life Insurance Co.*, *supra*, Côté J.A. reviewed the leading cases and academic commentary and concluded, at para. 32:

Those authorities discuss four elements which appear to be necessary for unconscionability ...

1. a grossly unfair and improvident transaction; and
2. victim's lack of independent legal advice or other suitable advice; and
3. overwhelming imbalance in bargaining power caused by victim's ignorance of business, illiteracy, ignorance of the language of the bargain, blindness, deafness, illness, senility, or similar disability; and
4. other party's knowingly taking advantage of this vulnerability.

[30] See also *Fraser Jewellers (1982) Ltd. v. Dominion Electric Protection Co.*, [1997] O.J. No. 2359 (C.A.) in which Robins J.A. stated:

34 ... Mere inequality of bargaining power does not entitle a party to repudiate an agreement. The question is not whether there was an inequality of bargaining power. Rather, the question is whether there was an abuse of the bargaining power.

[31] It is argued that there was an inequality of bargaining power because at the time the purchase agreements were made by the home buyers, it was a seller's market in that there were more buyers than product available and that Urbancorp had greater expertise in selling residential units than the relative unsophistication of the buyers and lack of experience in buying homes. I do not accept this assertion.

[32] The homes in question were sold by third party agents in sales offices for each project employed by International Home Marketing Group Limited, a fully integrated sales management and marketing company that works with various developers in the Greater Toronto Area and assists them with marketing projects to the public and staffing sales offices when the projects are first

made available to the public for purchase. Recognizing that the projects were marketed in varying ethnic communities and to varying potential purchasers, particularly real estate investors with a Chinese background, IHM staffed the sales offices and events with IHM sales agents who would be able to communicate with potential purchasers in their native language, including several dialects of Mandarin. The sales offices or events for the projects were all very well attended by potential purchasers who lined up on the first day that homes were made available to them.

[33] The evidence of Mr. Saskin, not really challenged, was that for a number of years most condominium buyers have been investors who buy the homes and rent them out. There were usually five or six persons available for every unit sold. Usually all units for a project sold out in one day.

[34] The majority of the home buyers from St. Clair signed their purchase agreements on January 18, 2014. Approximately half of the home buyers from Lawrence represented by Dickinson & Wright signed their purchase agreements on April 18, 2015. The home buyer from Mallow represented by Dickinson & Wright signed on October 18, 2014. With the exception of one home buyer, all of the home buyers from Woodbine represented by Dickinson & Wright signed their purchase agreements on May 24, 2014. A substantial majority of home buyers from Bridlepath signed their purchase agreements on May 24, 2014.

[35] The Monitor prepared a questionnaire that was sent to the objecting home buyers who were ordered to complete it. The responses reflect that of the objecting home buyers who completed the Monitor's questionnaire:

- (a) 74% have a college or university degree or equivalent;
- (b) 84% can read and understand English;
- (c) 89% are employed or self-employed, of which the substantial majority have white-collar jobs;
- (d) 71% had previously entered into at least one agreement of purchase of sale to purchase a home and more than 53% had previously entered into more than one agreement of purchase of sale to purchase a home;

- (e) 58% stated that they were represented by a real estate agent. (This is contrary to the CCAA Entities' books and records, which reflect that approximately 86% of the objecting home buyers were represented by a real estate agent);
- (f) 26% had a lawyer review their Home Buyer Agreement during the 10-day rescission period.

[36] There is no evidence that any pressure was put on the home buyers by the sales agents. What generally took place was that pressure on a buyer, if any, was because of the large number of other persons who would be willing to purchase the unit if he or she did not commit to purchasing the unit. That is, any pressure was caused by the market and not by Urbancorp or the agents.

[37] I cannot find that the purchase agreements signed by the home buyers were grossly unfair or improvident. There is no evidence that they were. Moreover there was no overwhelming imbalance in bargaining power caused by the situation of the home buyers or, more importantly, any evidence of Urbancorp or the sales agents knowingly abusing any bargaining power or taking advantage of any vulnerability of a home buyer.

[38] The home buyers argue that the clause should not be applied because there is an onus to point out a term in a printed form which differs from what the consumer might reasonably expect and they rely on the case of *Tilden Rent-A-Car Co. v. Clendenning* (1978), 18 O.R. (2nd) 601 (C.A.). In that case, Dubin J.A. referred to a statement of Professor Waddams that case law suggested that there was an onus on a supplier to point out any terms in a printed form which differ from what a consumer might reasonably expect. He stated that in cases in which the party relying on the contract knew or ought to have known that the signature of the party does not represent the true intention of the signer who is unaware of the stringent and onerous provisions, the provision cannot be relied on unless the party relying on it must have taken reasonable measures to draw such terms to the attention of the other party.

[39] I do not see the statements of Dubin J.A. as being applicable in this case. There is no evidence that a purchaser would not reasonably expect an exclusion of liability clause in an agreement such as this to purchase a home to be constructed on vacant land. What evidence there

is on the record is to the contrary. On his cross-examination, Mr. Saskin, the principal of the Urbancorp companies, said that such clauses were used by most builders and standard in agreements. The Monitor expressed the view in its report that such a clause is a common provision in home buyer agreements when purchasing a residential home from a developer. Dickenson & Wright sent a questionnaire to all of its clients asking a number of questions. It did not include a question as to the clients' expectations about an exclusion of liability clause.

[40] Generally, it has been held that there is an obligation on a party who signs a contract to read it and failure to do so is not a reasonable basis for refusing to abide by the contractual terms absent unconscionability, good faith and a fiduciary standard if applicable. See *978011 Ontario Ltd. v. Cornell Engineering Co.*, [2001] O.J. No. 1446 (C.A.) at para 32-33. This case dealt with a term other than an exclusion clause and was prior to *Tercon*. In an exclusion clause case prior to *Tercon*, it was held that in a commercial setting, in the absence of fraud or other improper conduct inducing the plaintiff to enter into the contract, the onus rests on the plaintiff to review the document before signing it. See *Fraser Jewellers (1982) Ltd. v. Dominion Electric Protection Co.*, [1997] O.J. No. 2359 (C.A.) at para. 32. The principles governing exclusion clause exceptions are now discussed in *Tercon* which holds that the exceptions to enforcement of an exclusion clause are unconscionability and public policy.

[41] With such a high number of persons represented by real estate agents, and the intelligence level of the purchasers, I find it difficult to accept that the agents for Urbancorp in the sales pavilions were obliged to point out an exclusion of liability clause that on the evidence was common to such purchase agreements. With respect to 16% of people who said they cannot read and understand English, they were able to complete the questionnaires and they must have had assistance in doing so. There is no evidence they did not have such assistance when they signed their purchase agreements. Moreover, there were several interpreters in the sales pavilions and I cannot imagine a person who could not read and understand English to sign a purchase agreement for a substantial sum without some assistance from someone such as an agent or lawyer. There is no evidence that these persons did not understand what they were doing.

[42] In these circumstances, I cannot find that any failure to point out the exclusion of liability clause was unconscionable.

[43] I find that there was no unconscionability giving rise to a finding that clause 45 of the purchase agreements are unenforceable.

(iii) Public Policy

[44] The issue as described in *Tercon* is to determine if there is some overriding public policy that outweighs the strong public interest in enforcement of contracts. In *Tercon*, Binnie J. said that the public policy exception will rarely be exercised. He stated:

115 I agree with Professor Waddams when he writes:

[I]t is surely inevitable that a court must reserve the ultimate power to decide when the values favouring enforceability are outweighed by values that society holds to be more important. [para. 557]

116 While memorably described as an unruly horse, public policy is nevertheless fundamental to contract law, both to contractual formation and enforcement and (occasionally) to the court's relief against enforcement. As Duff C.J. observed:

It is the duty of the courts to give effect to contracts and testamentary dispositions according to the settled rules and principles of law, since we are under a reign of law; but there are cases in which rules of law cannot have their normal operation because the law itself recognizes some paramount consideration of public policy which over-rides the interest and what otherwise would be the rights and powers of the individual.

(*Re Millar Estate*, [1938] S.C.R. 1, at p. 4)

See generally B. Kain and D. T. Yoshida, "The Doctrine of Public Policy in Canadian Contract [page121] Law", in T. L. Archibald and R. S. Echlin, eds., *Annual Review of Civil Litigation*, 2007 (2007), 1.

117 As Duff C.J. recognized, freedom of contract will often, but not always, trump other societal values. The residual power of a court to decline enforcement exists but, in the interest of certainty and stability of contractual relations, it will rarely be exercised. Duff C.J. adopted the view that public policy "should be invoked only in clear cases, in which the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds" (p. 7). While he was referring to public policy considerations pertaining to the nature of the entire contract, I accept that there may be well-accepted public policy considerations that relate directly to the nature of the breach,

and thus trigger the court's narrow jurisdiction to give relief against an exclusion clause.

[45] The home buyers rely on a number of cases, such as *Hurley v. Roy* (1921), 50 O.L.R. 251 (C.A.), which hold that a party cannot take advantage of a rescission clause if it has not acted reasonably in fulfilling a condition of a contract. I have considerable doubt that the principles of this case fall under the public policy exception enunciated in *Tercon*, but if they do, I see no evidence in this case that Urbancorp engaged in any such conduct.

[46] The home buyers contend that recklessness of a party in the making of a contract will disentitle that party to rescind the contract, and rely on cases such as *Suntract Holdings Ltd. v. Chassis Service & Hydraulics Ltd.* (1997), 36 O.R. (3rd) 328 and *Great Jordan Realty Group v. Genesis Marketing Organization, Ltd.* (1977), 15 O.R. (2nd) 701 for that proposition. Again, I have doubt that the principles of those cases fall under the public policy exception enunciated in *Tercon*, but if they do, I see no evidence in this case that Urbancorp engaged in any such conduct.

[47] The home buyers contend that the dates for closing and the extensions for closing put in the purchase agreements were not achievable and that Urbancorp was reckless in setting those dates. They point to evidence of a normal time for various steps in the process of taking raw land through to completed construction and say that all of those steps could not possibly be completed within the closing dates put in the purchase agreements. They say that Urbancorp knew or ought to have known that construction of the homes could not be completed by the closing dates.

[48] This issue is completely irrelevant to what happened in this case. The time for construction had nothing to do with the purchase contracts not being completed and was not a cause of the liquidity crisis in which Urbancorp could not raise the necessary financing to advance their major projects. In any event, the contention of the home buyers is not supported by any cogent evidence. Notably, they have not provided the evidence of any person knowledgeable in the business to support their argument that the closing and extension closing dates in the purchase agreements were reckless. The evidence was the assertion put to Mr. Saskin on his cross-examination. His response was that the assertion was wrong, that when Urbancorp goes to market it comes up with

occupancy dates that it believes are achievable and if subsequent events cause delays, Urbancorp avails itself of these extensions.

[49] So far as public policy is concerned, Tarion, which was set up under provincial legislation and regulations, provides in the Tarion Addendum that the consequences of a developer being unable to deliver a home by an outside date are that the purchaser can rescind the purchase agreement and be entitled to a return of his or her deposit. There is no provision that if a home cannot be delivered on time the vendor will be unable to rely on an exclusion of liability clause or be liable for more than the costs thrown away by the purchaser. Nor is there any provision preventing the use of an exclusion of liability clause.

[50] The home buyers refer to *Bhasin v. Hrynew*, and say that the organizing principle of good faith means that Urbancorp had an obligation to conduct its business in a financially responsible manner so as to meet its financial obligations and to take all steps to maintain its registration with Tarion. I think they take *Bhasin* too far. That case established a common law duty of honest performance of contracts. It did so under a general organizing principle of good faith as the objectionable conduct did not fit within any of the existing situations or relationships in which duties of good faith have been found to exist. In so far as the organizing principle of good faith is concerned, Justice Cromwell described it as follows:

63 The first step is to recognize that there is an organizing principle of good faith that underlies and manifests itself in various more specific doctrines governing contractual performance. That organizing principle is simply that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily.

64 As the Court has recognized, an organizing principle states in general terms a requirement of justice from which more specific legal doctrines may be derived. An organizing principle therefore is not a free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations: [citations omitted] It is a standard that helps to understand and develop the law in a coherent and principled way.

65 The organizing principle of good faith exemplifies the notion that, in carrying out his or her own performance of the contract, a contracting party should have appropriate regard to the legitimate contractual interests of the contracting partner.

While "appropriate regard" for the other party's interests will vary depending on the context of the contractual relationship, it does not require acting to serve those interests in all cases. It merely requires that a party not seek to undermine those interests in bad faith. This general principle has strong conceptual differences from the much higher obligations of a fiduciary. Unlike fiduciary duties, good faith performance does not engage duties of loyalty to the other contracting party or a duty to put the interests of the other contracting party first. (Underling added)

[51] There is no evidence that Urbancorp was not acting honestly or acting in bad faith in taking the steps that it did to obtain financing or in dealing with Tarion in in filing under the CCAA. There was no duty on Urbancorp as argued that it had a duty to the home buyers to ensure its financial success.

[52] I see no public policy doctrine in play in this case to prevent Urbancorp from relying on the exclusion provision in clause 45 of the purchase agreements.

Conclusion

[53] The motion of the Monitor is allowed. Clause 45 of the purchase agreements is valid and enforceable. Any claims by any of the home buyers for damages are disallowed



Newbould J.

Date: April 18, 2017

Appendix “F”

STATUTORY WARRANTY FORM



Delayed Closing/Occupancy Claim Form (for homes with a purchase agreement signed on or after July 1, 2008)

TO NOTIFY TARION OF AN OUTSTANDING WARRANTY CLAIM, COMPLETE AND SUBMIT THIS FORM UP TO ONE (1) YEAR AFTER POSSESSION.

Submit this Form to Tarion Warranty Corporation located at 5160 Yonge Street, 12th Floor, Toronto, Ontario M2N 6L9, in person, by regular mail, registered mail, or courier. Send a copy of the completed form to your builder and keep a copy for yourself. Please print all information.

Home Identification Information (Refer to your Certificate of Completion and Possession to complete this box.)

| | | |
|-------------------------------------------------------------|------------------|----------------------------------|
| 2017-03-31 | [REDACTED] | [REDACTED] |
| Date of Possession (YYYY/MM/DD) | Vendor/Builder # | Enrolment # |
| Civic Address (address of your home under warranty): | | |
| [REDACTED] | [REDACTED] | |
| Street Number | Street Name | Condo Suite # (if applicable) |
| TORONTO | M3K 0A8 | |
| City/Town | Postal Code | Lot # |
| | | Project/Subdivision Name |
| Contact Information of Homeowner(s): | | |
| [REDACTED] | | Homeowner's Name (if applicable) |
| Homeowner's Name | | |
| [REDACTED] | | Daytime Phone Number |
| Daytime Phone Number | | |
| | | Evening Phone Number |
| | | |
| | | Fax Number |
| | | |
| | | Email Address |
| | | |

Mailing Address for Correspondence to Homeowner (if different from Civic Address above)

| | | |
|---------------|-------------|-------------------------------|
| [REDACTED] | [REDACTED] | |
| Street Number | Street Name | Condo Suite # (if applicable) |
| Toronto | ON | |
| City/Town | Province | Postal Code |

STATUTORY WARRANTY FORM



Delayed Closing/Occupancy Claim Form
(for homes with a purchase agreement signed on or after July 1, 2008)

Enrolment # XXXXXXXXXX

Claim Calculations - Please complete the section below for all expenses claimed.

Living Expenses

The closing date or date of occupancy was delayed by 134 days (insert this number in the next line as well).

\$150 x 134 days = \$ 20100 (this is the amount for Total Living Expenses).

Note: This amount is based on set fee per day of delay to compensate for possible living expenses incurred due to delay such as meals and accommodation. No receipts are required.

Other Expenses

The following lists all other expenses which the Purchaser has actually incurred as a result of the delay:

| | |
|--------------------------------------|----------|
| Additional Moving Expenses (if any) | \$ _____ |
| Additional Storage Expenses (if any) | \$ _____ |
| Other (if any) | \$ _____ |
| Total Other Expenses | \$ _____ |

Note: Attach actual receipts with proof of payment in support of expenses.

Insufficient Notice Amount

\$150 x 10 days = \$ 1500.00 (for insufficient notice of a Delayed Closing/Occupancy Date).

Note: This amount applies only if the vendor failed to give at least 10 days notice of the Delayed Closing/Occupancy Date.

(Refer to your Tarion Addendum to Agreement of Purchase and Sale for more information.)

Total Claim

| | |
|-----------------------------------------------------------------------------------------------------|--------------------|
| Total Costs Incurred (Total Living Expenses + Total Other Expenses + Insufficient Notice Amount) | \$ <u>20100.00</u> |
| Total Claim Amount (if total expenses exceed \$7,500.00, enter \$7,500.00) | \$ <u>7500.00</u> |

The maximum claim allowed for delayed closing/occupancy under the Ontario New Home Warranties Plan Act is \$7,500.00.

STATUTORY WARRANTY FORM



Delayed Closing/Occupancy Claim Form

(for homes with a purchase agreement signed on or after July 1, 2008)

Enrolment #

Required information and documentation

Check the applicable boxes within the appropriate categories below to support your claim and the calculation of the number of days delayed.

| | |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Copy of pages 1 and 2 of the Tarion Addendum for Delayed Closing/Occupancy Warranty. Page 1 is the Statement of Critical Dates, page 2 is information related to your home. <i>*Note: If the Tarion Addendum is not available, provide a copy of the complete Agreement of Purchase and Sale.</i> |
| <input type="checkbox"/> | Copy of all notices, correspondence, agreements or amendments regarding the closing/occupancy date from your vendor or its agents. |
| <input type="checkbox"/> | Copy of receipts and proof of payment for expenses being claimed. |

FORM ATTACHMENTS

| File Name | Description |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Copy of pages 1 and 2 of the Tarion Addendum for Delayed Closing/Occupancy Warranty. Page 1 is the Statement of Critical Dates, page 2 is information related to your home. <i>*Note: If the Tarion Addendum is not available, provide a copy of the complete Agreement of Purchase and Sale.</i> |
| <input type="checkbox"/> | No Files Attached |
| <input type="checkbox"/> | Copy of all notices, correspondence, agreements or amendments regarding the closing/occupancy date from your vendor or its agents. |
| <input type="checkbox"/> | No Files Attached |
| <input type="checkbox"/> | Copy of receipts and proof of payment for expenses being claimed. |
| <input type="checkbox"/> | No Files Attached |

Signature – Please sign and date below. You may be asked to provide additional information in support of your claim.

I declare that the information provided is true, correct and complete. I understand that if I make a false declaration, or fail to disclose all information material to my claim, that my Delayed Closing/Occupancy claim may be denied.

Submitted online by

Homeowner's Signature

2018-03-22

Date of Signature (YYYY/MM/DD)

Homeowner's Signature (if applicable)

Remember to send a copy of this completed Form to your Vendor.

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 26TH
)
JUSTICE MYERS) DAY OF JUNE, 2018
)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE "APPLICANTS")

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

ORDER
(Tarion Delay Warranty Claim)

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants and TCC/Urbancorp (Bay) Limited Partnership (collectively, the "**CCAA Entities**", and each individually a "**CCAA Entity**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, among other things, declaring that the claim filed by Tarion Warranty Corporation ("**Tarion**") in respect of delayed closing compensation pursuant to the Claims Procedure Order made in these proceedings on October 18, 2016 (the

"**Claims Procedure Order**") be disallowed in full, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Fifteenth Report of the Monitor dated May 30, 2018 (the "**Report**"), the Responding Motion Record of Tarion, and on hearing the submissions of respective counsel for the Monitor, Tarion, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service as filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

CLAIM DETERMINATION

2. **THIS COURT ORDERS AND DECLARES** that the DCC Claim (as defined in the Report) filed by Tarion in these proceedings pursuant to the Claims Procedure Order be and is hereby disallowed in full.

AID AND RECOGNITION

3. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully

requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C.1985, c. C-36, AS AMENDED

Court File No. CV-16-11549-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE "APPLICANTS")

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

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

Proceeding commenced at Toronto

**ORDER
(TARION DELAY WARRANTY CLAIM)**

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Lawyers for the Monitor

Court File No. CV-16-11549-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE "APPLICANTS")
AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)**

**MOTION RECORD
(Returnable June 26, 2018 – Taron Delay
Warranty Claim Dispute)**

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KSV Kofman Inc.**