

**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., KRI
RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE
ON KING INC. AND THE AFFILIATED ENTITIES LISTED IN
SCHEDULE "A" HERETO**

**RESPONDING MOTION RECORD
(returnable June 26, 2018)**

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**AFFIDAVIT OF DANIELLE PECK
(sworn June 6, 2018)**

I, Danielle Peck, of the City of Toronto in the Province of Ontario, MAKE OATH AND
SAY:

1. I am the Senior Legal Counsel of Tarion Warranty Corporation ("Tarion"). I have been in this position for 2 years. Prior to being Senior Legal Counsel, I was Corporate Counsel for 10 years. As such, I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, do verily believe it to be true.

Tarion Warranty Corporation

2. Tarion is a private corporation established in 1976 to protect the rights of new home purchasers and regulate new home builders and vendors. Tarion administers the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O. 31 (together with the regulations promulgated thereunder, the "Act"), which act sets out the warranty protection that new home purchasers are entitled to in the Province of Ontario as well as the scheme for the administration of such warranties. Tarion's mandate is to:

- (a) license new home builders and vendors;
- (b) ensure builders/vendors abide by the Act;
- (c) help educate new home buyers about their warranty rights;
- (d) protect consumers when builders fail to fulfil their warranty obligations;
- (e) resolve disputes about warranty coverage;
- (f) investigate illegal building practices; and
- (g) promote high standards of new home construction.

3. Accordingly, Tarion plays a central regulatory role in the Province of Ontario with respect to the provision of warranty protection to new home purchasers. The Act is consumer protection legislation, and Tarion interprets and carries out its obligations under the Act in a manner consistent with this purpose. Tarion receives no government funding and is financed entirely by fees collected for builder registration and renewal and new home enrolments. Tarion has approximately 370,000 homes under warranty, with 40,000 to 50,000 new home possessions each year.

Warranty Claims Administration and Determination

4. Through powers delegated to it by the Government of Ontario (through the Ministry of Government and Consumer Services), Tarion administers and enforces the Act. Consistent with this role, one of Tarion's core competencies is the administration and determination of warranty claims, including delayed occupancy claims and delayed closing claims,¹ brought under the Act by new home purchasers. Tarion is the sole regulatory body to which these responsibilities have been delegated.

5. Over the course of a typical year, Tarion processes approximately 60,000 new home warranty claims from purchasers. Of these, approximately 2,500 of these claims are related to

¹ Delayed occupancy claims refer to claims made by purchasers of condominium units. Delayed closing claims refer to claims made by purchasers of freehold homes. The balance of this affidavit will refer to delayed closing claims and the corresponding terminology that is relevant to such claims.

delayed closing claims.² In order to handle this large volume of claims, Tarion has a department within its organization that is dedicated to the administration and determination of warranty claims. This infrastructure includes five dedicated personnel and the expertise and experience that is commensurate with this responsibility under the Act.

6. Generally speaking, claims that are capable of being brought under the Act are first asserted by new home purchasers against the vendor of the home (i.e., the project developer). If those claims are not adequately dealt with by that vendor in the relevant prescribed time periods, purchasers may then assert those claims against Tarion. At that point, those claims are administered and determined by Tarion in accordance with the Act. In the event that those claims are determined to be valid, then Tarion will pay out on those claims and seek reimbursement from the vendor regarding such claims (including out-of-pocket amounts and applicable administration fees and other amounts that may be payable), pursuant to the Act and the vendor agreement between Tarion and the vendor. A copy of a sample Urbancorp Vendor Agreement is attached hereto as **Exhibit “A”**.

7. If purchasers dispute Tarion’s determination of their claims, they may file an appeal with the Licence Appeal Tribunal (the “LAT”). The LAT is an independent and impartial tribunal that the Government of Ontario specifically created for consumers to address these disputes, among others. In this way, the Act provides a complete infrastructure for the administration, determination and adjudication of new home purchaser claims.

Delayed Closing Claims

8. Under the Act, new home purchasers have a statutory right to file delayed closing claims in certain situations that are described in the addendum to agreements of purchase and sale for new homes in the Province of Ontario. That addendum is created by regulation under the Act and must be included in all such agreements of purchase and sale. The delayed closing regime is technical and is spelled out in substantial detail in the addendum. A copy of a sample addendum

² Tarion gets involved only if there is a dispute about whether a delay claim is payable. Many, if not most, delay claims are paid directly by vendors without Tarion intervention.

is attached hereto as **Exhibit “B”**. The portions thereof that are most relevant to the claims of purchasers in the Urbancorp case may be summarized as follows:

- (a) A new home vendor is required to provide a purchaser with a statement of critical dates, including an outside occupancy date.
- (b) If the home is not completed by the outside occupancy date, then the purchaser may terminate the transaction during the thirty day period that follows.
- (c) If the purchaser does terminate during this termination period, then the purchaser will be entitled to delayed closing compensation (in addition to a full refund of all monies paid to the vendor).
- (d) Delayed closing compensation is capped at \$7,500, which amount includes: (i) the payment to the purchaser for living expenses of a set amount of \$150 per day for each day of delay until the date of termination; and (ii) any other expenses (supported by receipts) incurred by the purchaser due to the delay.
- (e) Receipts are not required for the living expense component of compensation, as a set daily amount of \$150 is payable. Such expenses are direct living costs such as for accommodation and meals. Receipts are required for the other expenses component, such as for moving and storage costs.
- (f) A purchaser is entitled to assert claims against Tarion in respect of such delayed closing claims to the extent that a vendor and purchaser are unable to agree on whether, and in what amount, delayed closing compensation is owed to the purchaser.
- (g) A purchaser is required to assert such a delayed closing claim against Tarion within one year following the termination of the agreement of purchase and sale.

9. Under the old delayed closing regime that was replaced by the current regime in or about 2008, purchasers were required to provide itemized and detailed receipts to support the living expense component of their delayed closing compensation. This process was administratively time-consuming and expensive. As a result, when the current regime was put in place, the requirement to submit itemized and detailed receipts was eliminated and the set amount of \$150 per day was substituted in its place. Accordingly, under the current addendum that forms part of

the purchase agreement, Tarion multiplies \$150 by the number of days of delay in order to calculate the living expense component of their delayed closing compensation. The addendum does not require, and Tarion does not ask for, any other documentation from the purchaser that would be akin to itemized and detailed receipts – to do so would defeat the purpose of eliminating that requirement in the first place. Itemized and detailed receipts for other expenses are still required to be submitted under the new regime.

10. The LAT has jurisdiction to hear disputes in respect of delayed closing claims, as it does other warranty claims.

The Urbancorp CCAA Cases

11. Each of Urbancorp (Lawrence) Inc., Urbancorp (St. Clair Village) Inc., Urbancorp (Mallow) Inc., Urbancorp (Woodbine) Inc. and Urbancorp (Bridlepath) Inc. are subject to creditor protection proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. During the course of these proceedings (and the precursor proceedings), the project lands on which purchasers' new homes were to have been constructed were sold, and the purchasers' agreements of purchase and sale were vested out by the court orders approving such sale transactions.

12. In its court report filed in connection with this motion, KSV Kofman Inc., in its capacity as monitor of these proceedings (the "Monitor"), states that it has treated the purchasers' agreements of purchase and sale as having been terminated. The Monitor also takes the position that the purchasers have treated their agreements of purchase and sale as having been terminated. To the best of my information and belief, each of the affected purchasers has not confirmed that this is his or her position. Affected purchasers may take different positions that will not be known until such time as purchasers file delayed closing claims (or the deadline for purchasers to file such claims has passed).

13. Furthermore, to the best of my information and belief, no notices of termination have been delivered under any of the purchasers' agreements of purchase and sale by the relevant Urbancorp vendors, the Monitor or the purchasers pursuant to the terms of such agreements. In addition, and to the best of my information and belief, the agreements of purchase and sale were

not expressly terminated pursuant to the approval and vesting orders, nor were they subsequently expressly terminated by any other court order in these proceedings.

14. While in the ordinary course, Tarion would assess and determine delayed closing claims once they had actually been asserted by a purchaser, by virtue of the claims procedure in these proceedings, the timing was such that Tarion had no choice but to consider these claims and the related issues prior to the claims bar date. With reference to the Act and the addendum, Tarion's obligations thereunder, Tarion's consumer protection mandate, and Tarion's standard procedures for delayed claims administration, Tarion concluded the following with respect to Urbancorp delayed closing claims:

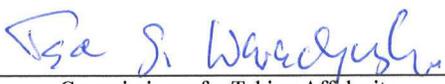
- (a) Purchasers are capable of filing valid delayed closing claims; and
- (b) In the event that such claims are filed by purchasers, the compensation due to purchasers in connection with such claims if found to be owing will be \$7,500 for each home.

15. In considering these issues, Tarion has not pre-determined any specific purchaser's delayed closing claim. Tarion will be required to determine each such claim once it has been asserted. While the facts of the Urbancorp case will likely mean that any such asserted claims will be atypical in the context of delayed closing claims, it does not follow that they are necessarily invalid under the delayed closing regime. The proofs of claim filed by Tarion against the relevant Urbancorp vendors reflect this analysis.

16. To the extent that delayed closing claims are asserted by purchasers and Tarion pays any compensation to such purchasers on account of such claims, Tarion will be entitled to claim back these out-of-pocket amounts, as well as administration fees and other amounts pursuant to the Act and the relevant vendor agreements from the relevant Urbancorp vendors. As agreed to in the minutes of settlement entered into by the Monitor and Tarion, the Monitor does not dispute Tarion's right to recover such amounts in the event that the purchasers' underlying delayed closing claims are capable of being asserted, are asserted and are determined to be valid under the Act. Accordingly, this affidavit does not deal with those issues.

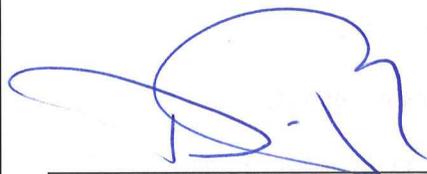
17. By filing delayed claims against the relevant Urbancorp vendors, Tarion does not seek a windfall. Tarion only seeks: (a) the opportunity to administer and determine any such claims that are actually asserted by purchasers, in a manner consistent with the delegation of responsibilities to Tarion by the Province of Ontario under the Act; and (b) to have access to a reserve of fund set up by the Monitor and approved by the court to deal with delayed closing claims that are actually asserted by purchasers and determined to be valid under the Act.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 6th day of June, 2018



Commissioner for Taking Affidavits
(or as may be)

**Ted Weredynski, a Commissioner, etc.,
for the Province of Ontario while being
a licensed paralegal.**



DANIELLE PECK

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.



TABA

This is Exhibit "A" referred to in the
Affidavit of Danielle Peck
sworn before me, this 6th
day of June, 2018.

S. Worsley
A Commissioner, etc.

THIS AGREEMENT made the 26th day of AUGUST, 2013,

BETWEEN: URBANCORP (ST. CLAIR VILLAGE) INC.
(Print the exact legal name of the Vendor)

of the City of TORONTO, in the Province of Ontario

(hereinafter referred to as the "Registrant");

Tarion Warranty Corporation, a private, non-profit corporation, incorporated without share capital, pursuant to the laws of the Province of Ontario

(hereinafter referred to as "Tarion")

VENDOR AGREEMENT

WHEREAS:

1. Tarion is a private, non-profit corporation designated by the Lieutenant Governor in Council to administer the *Ontario New Home Warranties Plan Act*, as amended from time to time (the "Act");
2. the Registrant applied to Tarion for registration as a vendor under the Act;
3. Tarion grants registration conditional upon the Registrant executing this Vendor Agreement (the "Agreement"), which Agreement deals with the Registrant's rights and obligations as a vendor under the Act, the regulations enacted thereunder, as amended from time to time (the "Regulations") and all applicable builder bulletins issued by Tarion from time to time (the "Bulletins");

NOW THEREFORE IN CONSIDERATION OF the registration of the Registrant under the Act, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), Tarion and the Registrant hereby confirm the veracity of the foregoing recitals and that same comprise an integral part of this Agreement, and agree with each other as follows:

VENDOR AGREEMENT

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ARTICLE 1.0 – APPLICATION AND REGISTRATION

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| Authority of the Registrant to enter into the Agreement | 1.1 | The Registrant represents and warrants to Tarion that the Registrant has full capacity, power and authority to enter into this Agreement, holds all necessary licenses and permits required to carry on the business of selling homes in the Province of Ontario and, if a corporation, is a duly organized and validly subsisting corporation under the laws of the Province of Ontario (or alternatively is a duly organized and validly subsisting extra-provincial corporation or federal corporation, and licensed to carry on business in the Province of Ontario). |
| Commitment to true and accurate disclosure | 1.2 | The Registrant further represents and warrants to Tarion that the information set forth in the application for registration of the Registrant under the Act, and in other documents furnished by the Registrant to Tarion in connection with such application, is true and correct in all material respects and does not omit to communicate any fact, circumstance or information that may have a material adverse impact on the Registrant's ability to fulfill its obligations under this Agreement, or that may reasonably have a material affect on the risk assessment undertaken (or to be undertaken), in connection with the registration (or continued registration) of the Registrant under the Act. |
| Commitment to submission of security, financial information and other documentation | 1.3 | The Registrant shall, upon the request of Tarion and at the expense of the Registrant, furnish Tarion with such guarantees, indemnities, surety bonds, letters of credit, deposit trust agreements, undertakings, collateral charges and/or other security instruments as Tarion may reasonably require in accordance with the Act and the Regulations, together with statements of personal net worth, bank statements, drivers' licenses, birth certificates, articles of incorporation, sample signatures, corporate by-laws, financial statements, and/or such other documentation, records and security as Tarion may reasonably require for the purpose of initial registration, renewal of registration and/or securing the obligations imposed upon the Registrant by the Act, the Regulations, this Agreement and/or the Bulletins. Between renewal dates, Tarion shall not require additional documentation or security from or on behalf of the Registrant, unless Tarion reasonably believes that intervening circumstances have arisen which may impair the Registrant's ability to sell homes and/or carry out any requisite after sales service and warranty work. |
| Use of credit information | 1.4 | The Registrant hereby authorizes Tarion to procure and utilize, from time to time, credit information in respect of the Registrant, and agrees that no action, claim or other proceeding shall be instituted or pursued against Tarion in respect of any damages incurred by the Registrant thereby, provided such credit information is not disclosed to any third party, except for credit reporting agencies to whom Tarion owes a duty of disclosure, and except as |

		otherwise required by law.
Vendor's ongoing disclosure obligation	1.5	The Registrant shall be obliged to communicate to Tarion any fact, circumstance or information that may have a material adverse impact on the Registrant's ability to sell homes and/or carry out any requisite after sales service and warranty work.
Tarion's disclosure obligation	1.6	Tarion agrees to advise the Registrant, in writing, of all notices of claims or potential claims that Tarion receives from any purchaser(s) or homeowner(s) relating to any home(s) in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant). Tarion also agrees to provide the Registrant with a reasonable opportunity (as may be specified by the Act, and/or the Regulations from time to time) to rectify or remedy any warrantable work or financial loss claim(s) prior to Tarion initiating any enforcement proceedings or remedial work.
Termination of the Registrant's obligations	1.7	<p>This Agreement, and all obligations of the Registrant hereunder may not be unilaterally terminated by the Registrant, but rather, shall remain in full force and effect and continue to bind the Registrant, notwithstanding any expiry or revocation of the registration of the Registrant under the Act and notwithstanding any amendment, alteration or modification of the Act or the Regulations, until the earlier of the date that:</p> <p>(i) all obligations and liabilities of the Registrant to Tarion have been fulfilled or complied with; or</p> <p>(ii) all applicable warranty or limitation periods have expired, with no claims having been filed with Tarion prior thereto;</p> <p>relating to any homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant).</p>
Consent to transfer or assign the registration	1.8	The registration of the Registrant under the Act is not transferable or assignable by the Registrant, whether by way of power of attorney, sale, amalgamation or otherwise, without the prior written consent of Tarion.
No unauthorized use of the registration number	1.9	The Registrant shall not permit the use of the Registrant's registration number by any other party, and without limiting the generality of the foregoing, the Registrant shall immediately report the use of the Registrant's registration number by any other party to Tarion upon becoming aware of same.
Designation as "Registered Vendor"	1.10	During the term of the registration of the Registrant under the Act, the Registrant shall be entitled to hold itself out as a "Registered Vendor".

ARTICLE 2.0 – LIABILITY AND INDEMNITY

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| Warranty obligations during the warranty periods | 2.1 | The Registrant shall diligently perform the obligations heretofore or hereafter imposed upon the Registrant by the Act, the Regulations, this Agreement and/or the Bulletins and shall indemnify and save Taron harmless from and against all losses, claims, costs, damages and/or liabilities whatsoever heretofore or hereafter suffered or incurred by Taron resulting from (or arising out of) any non-performance or inadequate performance of such obligations, in whole or in part, at the times, (and in the manner) as may be provided or contemplated by the Act, the Regulations, this Agreement and/or the Bulletins, provided written notice of a claim against the Registrant, or relating to any homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant) has been given to Taron within the relevant warranty period(s). |
| Obligations for financial losses of purchasers | 2.2 | The Registrant shall diligently perform the obligations of the Registrant under each purchase agreement heretofore or hereafter entered into by the Registrant relating to any home in respect of which the Registrant acted as Vendor (or that was enrolled by the Registrant). In the event of the failure of the Registrant to perform such obligations, the Registrant shall pay to each purchaser who has made a written claim to Taron (in respect of his or her purchase agreement with the Registrant) prior to the expiration of the applicable limitation period, the amount of the financial loss suffered by such purchaser plus, in the case of a condominium unit, deposit interest which is owing by the Registrant to the purchaser pursuant to the <i>Condominium Act</i> , and shall indemnify and save Taron harmless from and against all losses, claims, costs, damages and/or liabilities whatsoever heretofore or hereafter suffered or incurred by Taron resulting from (or arising out of) any non-payment of such financial loss amount and interest. |
| Obligations of Registrant and Taron for major structural defects | 2.3 | Without limiting the obligations of the Registrant to Taron arising under 2.1 and 2.2 hereof, it is understood and agreed that the Registrant shall indemnify and save Taron harmless from and against all losses, claims, costs, damages and/or liabilities whatsoever heretofore or hereafter suffered or incurred by Taron resulting from (or arising out of) any major structural defect in any home in respect of which the Registrant acted as Vendor (or that was enrolled by the Registrant), provided written notice of such defect (or any other defect which, if left unattended, would ultimately lead to or become a major structural defect) is given to Taron within two years from the effective commencement date of the warranty period applicable to major structural defects. In turn, Taron covenants and agrees to be solely responsible for major structural defects in respect of such home(s) from years three to seven inclusive, from and after the effective commencement date of the warranty period applicable thereto. |

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| Enforcement of obligations | 2.4 | Tarion shall not be obliged to proceed against the builder of any home in respect of which the Registrant acted as Vendor (or that was enrolled by the Registrant), prior to proceeding to enforce the obligations of the Registrant under this Agreement. |
| Vendor obligation to retain Registered Builder | 2.5 | Where the Registrant does not build homes in the ordinary course of the Registrant's business, the Registrant shall at all times maintain in full force and effect an agreement with a builder registered under the Act who does build homes in the ordinary course of its business, whereby such builder agrees to diligently perform the work required to fulfill each and every obligation imposed upon the Registrant by the Act, the Regulations, this Agreement and any Bulletins, in respect of the construction of such home (and completion items) for which the builder has received payment and to maintain its agreement with Tarion to indemnify and save Tarion harmless from and against all losses, claims, costs, damages and/or liabilities heretofore or hereafter suffered or incurred by Tarion resulting from (or arising out of) any non-performance or non-fulfillment of such obligations, in whole or in part. The Registrant shall provide Tarion with a copy of such agreement upon applying for registration under the Act, and shall forthwith advise Tarion should such agreement be terminated, substantially modified or replaced with a similar agreement with another builder. |
| Preservation of rights and claims against others | 2.6 | The Registrant shall preserve all assignable rights and claims that the Registrant may have against manufacturers, suppliers, vendors, builders, contractors, sub-contractors and others in respect of any major structural or other construction defect(s), or with respect to any contravention of the Ontario Building Code, relating to any homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant), and in those circumstances where the Registrant is not diligently enforcing or pursuing such rights and claims, and to the extent permitted by law, the Registrant shall, forthwith upon the request of Tarion, assign and transfer all such rights and claims to and in favour of Tarion, and shall execute and deliver such assignments and other instruments and do such acts and things as Tarion may reasonably require in order to enable Tarion to prosecute and enforce such rights and claims as fully and effectually as the same could be prosecuted and enforced by the Registrant. |
| Administration fee | 2.7 | The Registrant shall pay to Tarion an administration fee equivalent to fifteen (15%) per cent (or such other per cent as may be stipulated from time to time by the Regulations) of each amount paid out by Tarion to any purchaser(s), homeowner(s) or third party contractor(s)/consultant(s) in respect of the obligations imposed upon the Registrant by the Act, the Regulations, this Agreement and/or the Bulletins. |
| Interest on debt | 2.8 | The Registrant shall pay to Tarion interest on any amounts owed to |

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Tarion by the Registrant by virtue of the Act, the Regulations, this Agreement and/or the Bulletins, which interest shall accrue at the rate of eighteen (18%) per cent per annum, calculated annually, not in advance (or such other interest rate as may be stipulated from time to time by the Regulations) and accruing from and after the respective date(s) that any amount(s) is/are so due or owing to Tarion, to and until the date that all such amounts (together with all interest accrued thereon as aforesaid) have been fully paid or remitted to Tarion.

Binding nature of the Agreement	2.9	This Agreement shall extend and enure to the benefit of the successors and assigns of Tarion and shall be binding upon the Registrant and the heirs, estate trustees, legal representatives, successors and permitted assigns of the Registrant.
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ARTICLE 3.0 – ONGOING TERMS AND CONDITIONS OF REGISTRATION

Access to inspect and copy relevant books and records	3.1	Upon reasonable prior notice the Registrant shall allow Tarion free access, during normal business hours, to inspect (and make copies of all relevant portions of) the Registrant's books and records relating to the construction and/or sale of any homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant), to ensure compliance with the Act, the Regulations, this Agreement and/or the Bulletins.
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Provision of documents	3.2	The Registrant shall, at the Registrant's expense and upon the request of Tarion, furnish to Tarion copies of all purchase agreements, construction contracts, insurance contracts, construction reports and such other documents relating to any homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant), and which are in the Registrant's possession or control, as Tarion may reasonably require from time to time.
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Limits on selling or collecting deposits	3.3	The Registrant shall not sell and/or collect deposits on homes sold exceeding the maximum number of homes (if any) permitted to be sold by Tarion, without obtaining the prior written consent of Tarion thereto.
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Written notice in advance of inspections	3.4	The Registrant shall provide to Tarion written notice of the completion of any stage of construction of any homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant), as specified by Tarion as a condition of the registration of the Registrant, in order to allow for whatever inspections Tarion may wish to have carried out with respect to same.
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Obligation for annual renewal of registration	3.5	The Registrant shall annually apply for the renewal of its registration
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under the Act and shall pay the renewal fee as prescribed from time to time by Tarion, notwithstanding the delivery or non-delivery to the Registrant of the prescribed renewal application form.

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| Provision of documents prior to selling condominium units | 3.6 | Without limiting the obligations of the Registrant to Tarion arising under section 1.3 hereof, the Registrant shall, prior to selling any units in a condominium project, furnish to Tarion such documentation, agreements and security as Tarion may require in order to secure the performance and fulfillment of the Registrant's obligations and liabilities to Tarion arising under the Act, the Regulations, this Agreement and/or the Bulletins provided, however, that no security shall be required to be posted or given to Tarion by the Registrant in respect of reservation agreements only. |
| Exclusion of reservation agreements | | |
| Delivery of deposit receipt to Registrant | 3.7 | Following the enrolment of the common elements of a condominium project in respect of which the Registrant acted as Vendor (or that was enrolled by the Registrant), and the provision of any required security acceptable to Tarion in connection therewith, Tarion shall furnish the Registrant with a deposit receipt for every dwelling unit for which deposit security has been provided. |
| Delivery of Certificate of Completion and Possession to owners and Tarion | 3.8 | The Registrant shall properly complete, execute and deliver to the owner of each home, in respect of which the Registrant acted as Vendor, a Certificate of Completion and Possession in the form provided from time to time by Tarion, setting forth the date upon which the home is completed for possession, and shall furnish Tarion with a copy of same within fifteen (15) days after said date. |
| Delivery of duplicate registered declaration of condominium project to Tarion | 3.9 | In the case of a condominium project developed and/or registered by the Registrant, the Registrant shall forward a copy of the duplicate registered condominium declaration to Tarion within fifteen (15) days after the registration of such declaration. |
| Compliance with Builder Bulletins | 3.10 | The Registrant shall diligently comply with the provisions of the Bulletins, issued by Tarion from time to time in accordance with the Act and the Regulations, where applicable to the Registrant, provided Tarion has given the Registrant reasonable prior notice of the provisions of the Bulletins. Tarion confirms and agrees that any Bulletins issued shall not have retroactive effect with respect to any home(s) under construction as at their respective issue dates, unless otherwise required pursuant to any applicable judicial ruling or statutory provision. |
| Notification of business changes to Tarion | 3.11 | The Registrant shall notify Tarion in writing of any change in the mailing address or facsimile number of the Registrant, any change in the members of (or partners in) the Registrant, and/or any change in the officers, directors or shareholders of the outstanding voting shares of the Registrant, within fifteen (15) days after the date of any such change. |

- Inclusion of addendum in purchase agreements 3.12 The Registrant shall include in each purchase agreement entered into by the Registrant, relating to any home in respect of which the Registrant acted as Vendor (or that was enrolled by the Registrant), all addenda prescribed by Tarion, from time to time, provided Tarion has given reasonable prior notice of same to the Registrant.
- Term and condition of registration 3.13 Compliance with the provisions of this Agreement shall form a term and condition of the registration of the Registrant under the Act.

ARTICLE 4.0 – ADMINISTRATIVE MATTERS

- 4.1 *Reserved*
- Notice by Registrant or Tarion 4.2 Any notice desired or required to be given by either of the parties hereto to the other shall be conclusively deemed to have been sufficiently given if delivered by ordinary mail, hand/courier or by telefax only on business days (excluding Saturdays, Sundays and statutory holidays), and shall be deemed to have been received on the fifth business day after any such notice has been mailed/posted, or on the day that same has been delivered by hand/courier or telefaxed, on the express understanding that any notice delivered by hand/courier or telefaxed after 4:30 p.m. shall be deemed to have been received on the next business day following the date of such delivery or such telefax transmission (as the case may be), and provided further that if telefaxed, a confirmation of such telefax transmission must be received by the transmitting party at the time of such transmission, otherwise same shall be deemed not to have been properly or sufficiently telefaxed to the intended party. In the case of the Registrant, any notice given by Tarion shall be delivered to the Registrant's address or telefax number as specified in this Agreement or at such other address or telefax number as the Registrant may, from time to time, designate by way of written notice received by Tarion.
- Tarion reporting of Registrant's performance 4.3 The Registrant hereby authorizes Tarion to report on the Registrant's performance and/or compliance status relating to homes in respect of which the Registrant acted as Vendor (or that were enrolled by the Registrant) in any publication (whether print, electronic or otherwise). Prior to Tarion reporting such information in any such publication, Tarion shall provide the Registrant with prior notice of same and the Registrant shall have fifteen (15) days thereafter within which to challenge, question, rectify or supplement the subject matter of such report. Tarion hereby undertakes and agrees to exercise due diligence in order to ensure the veracity and accuracy of all information so reported and/or published. Tarion shall be entitled to proceed with such reporting or publication notwithstanding any challenge or question, after having thoroughly investigated the matter.
- Due diligence by Tarion to ensure notice and accurate reporting

Tarion disclosure of Registrant's ability to sell and provide after sales service	4.4	The Registrant further authorizes the disclosure of information by Tarion to the general public (and/or any credit reporting agency to whom Tarion owes a duty of disclosure) concerning the Registrant's ability to sell homes and carry out any requisite after sales service and warranty work, where the Registrar of Tarion believes it advisable to do so for the protection of the public. Prior to Tarion disclosing such information, Tarion shall provide the Registrant with prior notice of same and the Registrant shall have fifteen (15) days thereafter within which to challenge, question, rectify or supplement such information. Tarion shall be entitled to proceed with such disclosure, notwithstanding any challenge or question, after having reasonably considered same, provided Tarion honestly believes that the information disclosed is accurate in all material respects.
Misleading advertising	4.5	The Registrant covenants and agrees that it shall not advertise or publish a registration or enrolment number that the Registrant does not have (or that does not exist), and the Registrant shall not promote, publish or advertise a rating or qualification that the Registrant does not have. The Registrant further acknowledges and agrees that a breach of this provision shall entitle the Registrar to obtain and enforce a court order to enjoin and/or restrain such activities.
Provision of Registrant's name, address, telephone and telefax to contact Registrant	4.6	The Registrant authorizes the provision by Tarion of its database containing only the names, business addresses, telephone and telefax numbers of all Registrants, from time to time, to recognized builder associations. In addition, the Registrant authorizes Tarion to provide the name, business address, telephone and telefax number of the Registrant in the <i>Rating for After Sales Service</i> and to anyone desiring to contact the Registrant.
Governance by the laws of Ontario and Canada	4.7	This Agreement shall be construed in accordance with (and be governed by) the laws of the Province of Ontario and the laws of Canada applicable thereto.
Jurisdiction of legal proceedings	4.8	The parties hereto shall attorn to the jurisdiction of the courts of the Province of Ontario, and confirm that any legal proceedings in respect of this Agreement shall be tried at Toronto or such other venue as is proposed by Tarion in any application or originating process initiated by Tarion in respect of this Agreement.
Severability of invalid provisions	4.9	Any provision of this Agreement which is finally determined to be illegal, void or unenforceable in any relevant jurisdiction by a court of competent jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such illegality, voidness or unenforceability without invalidating or in any way impairing the enforceability of the remaining provisions hereof.
Definition of words and expressions	4.10	The words and expressions used in this Agreement shall, unless

		otherwise defined in this Agreement, have the meanings ascribed to them in the Act and the Regulations.
Headings and margin notes	4.11	The insertion of headings and margin notes in this Agreement is for the purpose of convenience of reference only, and shall not affect the construction or interpretation of this Agreement.
English language	4.12	The parties have requested that this Agreement and all related documents and instruments be drawn up in the English language. Les parties confirment leur volonté que la présente convention et tous les documents qui s'y rattachent soient rédigés en anglais.
Gender and number	4.13	This Agreement shall be read and construed with all changes in gender and/or number as may be required by the context.
Receipt of true copy	4.14	The Registrant hereby acknowledges having read and understood this Agreement and having received a true completed copy of this Agreement.

IN WITNESS WHEREOF the Registrant has executed this Agreement, under seal, as of the date first above-mentioned.

SIGNED, SEALED AND DELIVERED

in the presence of



Witness Signature

ANN LAM

Print Name of Witness

120 LYNN WILLIAMS ST., SUITE 2A

Street Address

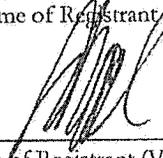
TORONTO, ON M6K 3N6

City, Province, Postal Code

Witness signature is required *unless*
Corporate Seal is affixed.

URBANCORP (ST. CLAIR VILLAGE) INC.

Print Name of Registrant (Vendor)



Per: _____ (seal)
Signature of Registrant (Vendor)

ALAN SASKIN

Print Name of Signing Officer

TARION WARRANTY CORPORATION

Per:  (seal)
The Registrar

Registration effective this 4 day of Sept, 2013

Recommended Covenants Between a Registered Vendor and Registered Builder

Paragraph 2.5 of the Vendor Agreement requires a Vendor which does not build homes in the ordinary course of its business to retain a Registered Builder. Tarion advises Registered Vendors to ensure the following covenants are included in their contracts with Registered Builders:

- an agreement (covenant) by the Registered Builder to diligently perform all work required to fulfill every obligation of a “builder” under the Act, the Regulations and the bulletins in respect of each home intended to be constructed by such party.
- an agreement (covenant) by the Registered Builder to indemnify Tarion against all losses, claims, costs, damages and/or liabilities suffered or incurred by Tarion resulting from (or arising out of) any non-performance or non-fulfillment of such party’s obligations.



TABB

This is Exhibit "B" referred to in the
Affidavit of Danielle Peck
sworn before me, this 6th
day of June, 2018.
Pa S. Wiediger
A Commissioner, etc.



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 thereafter (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).

Agreed and signed 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.



**Freehold Form
(Tentative Closing Date)**

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



**Freehold Form
(Tentative Closing Date)**

(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 (j), (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.



**Freehold Form
(Tentative Closing Date)**

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")



Freehold Form (Tentative Closing Date)

- (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.



**Freehold Form
(Tentative Closing Date)**

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



**Freehold Form
(Tentative Closing Date)**

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.

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

Court File No. CV-16-11389-00CL

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., KRI RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

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Lawyers for Tarion Warranty Corporation

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

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RESPONDING MOTION RECORD
(RETURNABLE JUNE 26, 2018)

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