

Property \_\_\_\_\_

## INFORMATION FOR BUYERS OF PRE-CONSTRUCTION CONDOMINIUM HOMES ABOUT THE POSSIBLE TERMINATION OF PURCHASE AGREEMENT

To: Purchaser(s) of the Property

### 1. Take Note

You are entering into a purchase transaction which relates to a pre-construction condominium unit<sup>1</sup>. You should be aware of the possibility that it may never be completed.

Important information about your purchase is set out in this document.

You should review your purchase agreement including this document with a lawyer familiar with condominium transactions.

Remember that you have a 10-day period to cancel your purchase.<sup>2</sup>

### 2. Be Aware of Timing

The Vendor's best estimate as to when your unit will be ready for occupancy is shown as the "First Tentative Occupancy Date" on the Statement of Critical Dates and is \_\_\_\_\_ (Month/Day/Year). This date may be further extended. Please refer to the Statement of Critical Dates in the Condominium Addendum (which forms part of your Purchase Agreement) for an explanation of how this date may change.

### 3. Completion of Your Purchase Is Not Certain – It Can Be Terminated by the Vendor<sup>3</sup>

Your Purchase Agreement contains early termination conditions which could result in your purchase being terminated. These are set out in detail in the Condominium Addendum. In general terms, the Vendor can end your purchase if:

- a. By \_\_\_\_\_ (Month/Day/Year), a set level of sales for the project has not been achieved.
- b. By \_\_\_\_\_ (Month/Day/Year), certain zoning and/or development approvals have not been obtained.
- c. By \_\_\_\_\_ (Month/Day/Year), satisfactory financing for the project has not been obtained.

This may not list all of the conditions that may exist in the Condominium Addendum.

<sup>1</sup> This information sheet applies to residential units in a standard residential condominium corporation as well as a phased condominium corporation (see paras 6(2) 2 and 4. of the *Condominium Act, 1998*).

<sup>2</sup> See *Condominium Act, 1998*, s.73.

<sup>3</sup> **Note to Vendor:** insert "n/a" in the date area if any of paragraphs 3(a), (b) or (c) do not apply.

Note: In most cases, if your Purchase Agreement is terminated, any deposit monies you have paid must be returned to you with interest at the rate no less than that prescribed by the Condominium Act, 1998<sup>4</sup>. Other recourse (monetary or otherwise) may be limited – you should speak to your lawyer.

## 4. Ownership of Property

The Vendor represents, warrants and declares that the Vendor owns the freehold ownership interest in the Property or has the power to compel transfer of the freehold ownership interest in the Property before closing.

## 5. Title Restrictions

The Vendor represents, warrants and declares that:

- a. The Property is free from any registered title restriction that binds the Project which would prevent completion of the Project and/or sale of your unit to you. YES NO
- b. If No, that is, if such a restriction exists, the Vendor's explanation for how the restriction will be removed so the Project can proceed and/or the sale can be completed is set out below (add attachment, if necessary).

## 6. Zoning Status

The Vendor represents, warrants and declares that:

- a. The Vendor has obtained appropriate Zoning Approval for the Building. YES NO
- b. If No, the Vendor shall give written notice to the Purchaser within 10 days after the date that appropriate Zoning Approval for the Building is obtained.

## 7. Construction Status

The Vendor represents, warrants and declares that:

- a. Commencement of Construction: has occurred; or, is expected to occur by \_\_\_\_\_ (Month/Day/Year).
- b. If commencement has not occurred, the Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

<sup>4</sup> Interest required to be paid on deposit monies returned to a purchaser is governed by the *Condominium Act, 1998* – see section 82, and section 19 of O. Reg. 48/01. In general terms, it is 2 percentage points less than a specified Bank of Canada rate recalculated every 6 months.

## 8. Your Purchase Agreement

This document is to be used for a purchase transaction where the transaction remains conditional and the unit is a condominium unit in respect of a condominium project for which a description is proposed to be registered under the Condominium Act, 1998. This document<sup>5</sup> together with the Condominium Addendum<sup>6</sup>, forms part of your Purchase Agreement. This document, the Condominium Addendum and the balance of your Purchase Agreement are to be signed at the same time. If any conflict or inconsistency exists among these documents, the provisions of the Condominium Addendum shall prevail followed by this document. Terms not defined in this document have the meaning set out in the Condominium Addendum.

## 9. Legal Advice is Important

**Prior to signing the purchase agreement or any amendment to it, you should seek advice from a lawyer with respect to the purchase agreement or any amending agreement to the proposed transaction. Also review with your lawyer the disclosure statement required by the condominium act, 1998.**

DATED \_\_\_\_\_ (Month/Day/Year).

I/We the undersigned acknowledge having received and read this document.

\_\_\_\_\_  
Purchaser Signature

\_\_\_\_\_  
Purchaser Name

\_\_\_\_\_  
Vendor Signature

\_\_\_\_\_  
Vendor Name

<sup>5</sup> HCRA's expectation is that this document be placed at the front of the purchase agreement. Compliance with the requirement to place this document at the front of the Purchase Agreement does not affect enforceability of the purchase agreement.

<sup>6</sup> This is the mandatory condominium addendum required to be attached to this Purchase Agreement and referred to in Regulation 165/08 under the *Ontario New Home Warranties Plan Act*.

## Warranty Information for New Condominium Units

This information sheet provides a basic overview of the warranties and protections that come with your new condominium unit. This warranty is provided to you **by your builder** and backed by Tarion.

Register your purchase agreement! See Important Next Steps below.

For more detailed information, visit [tarion.com](https://www.tarion.com) and log into our online learning hub at <https://www.tarion.com/homeowners/homeowner-resources-hub>

### The Pre-Delivery Inspection (PDI)

Before you take occupancy of your unit, your builder is required to conduct a pre-delivery inspection, (PDI) with you or someone you designate to act on your behalf. If you wish, you may be accompanied by someone who can provide expert assistance. The PDI is important because it is an opportunity to learn about how to operate and maintain parts of your unit, such as the ventilation and heating systems. It is also important because it gives you an opportunity to note items in your unit that are damaged, missing, incomplete, or not working properly before you take occupancy. This record is also very important as it may help show what items may have been damaged before you moved in and helps resolve any disputes relating to whether or not an item of damage was caused by your occupancy and use.

The PDI is only one piece of evidence relating to damaged or incomplete items, and you should note and document (e.g. via photos or video) any concerns or damaged items as soon as you notice them after taking occupancy if they were missed on the PDI. If the damaged items are not addressed by your builder, you can include them in your first warranty form submission to Tarion. Damaged items are covered under the warranty if the damage was caused by the builder.

There is more information about the PDI here:

<https://www.tarion.com/homeowners/homeowner-resources-hub>

### Deposit Protection

The Condominium Act requires your builder to hold the deposit for your condominium unit in trust until the deposit is provided to the person entitled to it or the amount of your deposit is insured, as applicable. If your Agreement of Purchase and Sale is terminated by the builder, except as a result of the Purchaser's default, your deposit must be returned to you in full within 10 days. If your deposit is not returned, you are still protected by Tarion for the return of your deposit, or portion that has not yet been returned, up to \$20,000. This protection includes the money you put down towards upgrades and other extras.

### **Delayed Occupancy Coverage**

Your builder guarantees that your unit will be ready for you to move in by a date specified in the purchase agreement or a date that has been properly extended (if for certain reasons the original occupancy date cannot be met). You may be able to claim up to \$7,500 from your builder in compensation if they do not meet the conditions for an allowable extension that are outlined in the Addendum to your Agreement of Purchase and Sale.

### **Warranty Coverage**

The warranty on work and materials commences on your occupancy date and provides up to a maximum of \$400,000 in coverage. There are limitations on scope and duration as follows. Your builder warrants that your home will, on delivery, have these warranties:

#### **One-Year Warranty**

- Your home is constructed in a workmanlike manner, free from defects in material, is fit for habitation and complies with Ontario's Building Code
- Protects against unauthorized substitution of items specified in the Agreement of Purchase and Sale or selected by you

#### **Two-Year Warranty**

- Protects against water penetration through the basement or foundation walls, windows, and the building envelope
- Covers defects in work and materials in the electrical, plumbing, and heating delivery and distribution systems
- Covers defects in work and materials that result in the detachment, displacement, or deterioration of exterior cladding (such as brick work, aluminum, or vinyl siding)
- Protects against violations of Ontario's Building Code that affect health and safety

### **Seven-Year Warranty**

- Protects against defects in work or materials that affect a structural load-bearing element of the home resulting in structural failure or that materially and adversely compromise the structural integrity; and/or that materially and adversely affect the use of a significant portion of the home.

## **Construction Performance Guidelines**

The Construction Performance Guidelines are a resource to provide advance guidance as to how Tarion may decide disputes between homeowners and builders regarding defects in work or materials. The Construction Performance Guidelines are intended to complement Ontario's Building Code. They are supplemented by any applicable guidelines or standards produced by industry associations. They do not replace manufacturer warranties. The Construction Performance Guidelines are available in several different formats accessible via <https://tarion.com/builders/construction-performance-guidelines>

## **Warranty Exclusions**

Your warranty, provided to you by your builder and backed by Tarion, is a limited warranty, and the protection provided by Tarion is also limited. Exclusions to coverage include: normal wear and tear, damage caused by improper maintenance, damage caused by a third party, secondary damage caused by defects that are under warranty, supplementary warranties, deficiencies caused by homeowner actions, elevators, HVAC appliances, specific defects accepted in writing and damage resulting from an Act of God.

## **The Common Elements Warranty**

For most condominiums, warranty coverage also includes the shared areas, known as the common elements. The common elements warranty is separate from your unit warranty. It begins when the condominium is registered and, unlike your unit warranty, is managed by your condominium corporation. For warranty assistance related to items located outside of the boundaries of your unit, contact your property manager or condominium corporation's Board of Directors. To learn more about your unit and common element boundaries, you can refer

to Schedule C of the proposed declaration in your disclosure statement or, if the condominium is registered, of the registered declaration.

## Important Next Steps

1. Start your new home buying journey off right by registering your purchase agreement for your new home with Tarion. It's simple, fast, and allows Tarion to start providing you with key information on your builder's warranty coverage and other protections before you get the keys to your new home. Register here: <https://myhome.tarion.com/s/purchase-agreement-registration>
2. Visit Tarion's website to learn more about your warranty coverage and the process for getting warranty assistance, as well as your rights, responsibilities, and obligations as a new homeowner.
3. Prepare for your pre-delivery inspection (PDI). Visit Tarion's website for helpful resources, including a PDI Checklist and educational videos.
4. Register for Tarion's **MyHome** right after you take occupancy. MyHome is an online tool you can use from your computer or mobile device that allows you to submit warranty claims and upload supporting documents directly to your builder and Tarion. It also alerts you to important dates and warranty timelines, allows you to receive official correspondence from Tarion electronically, and schedule an inspection with Tarion when you need assistance.

## About Tarion

Tarion is a not-for-profit organization that administers Ontario's new home warranty and protection program. Our role is to ensure that purchasers of new homes receive the warranties and protections, provided by their builder and backstopped by Tarion, that they are entitled to by law.

Contact us at **1-877-982-7466** or [customerservice@tarion.com](mailto:customerservice@tarion.com).



**LIVINGWAY URBAN TOWNS**

**VINCE MAZZA WAY AND SOUTH SERVICE ROAD, HAMILTON - AGREEMENT OF PURCHASE AND SALE  
The Property**

1. The Undersigned

(hereinafter called the "Purchaser") agrees with **DMV WINONA POINT LIMITED PARTNERSHIP** (hereinafter called the "Vendor") to purchase:

Suite # ____ , Unit # ____ Level ____
PARKING: _____ PARKING PURCHASE PRICE: _____
PLAN OPTION: _____ COST: _____
MODEL: _____
ELEVATION: _____
MUNICIPAL BLOCK: _____
MUNICIPAL ADDRESS: _____

located at **1290 South Service Road & 21 & 23 Vince Mazza Way Hamilton, Ontario**, and collectively referred to as the "Unit", in a condominium development (the "Condominium") and an undivided interest in the common elements appurtenant to the Unit, together with the exclusive use of any common element areas which may be designated as for the exclusive use of the Unit (being all hereinafter collectively referred to as the "Property"), all in accordance with condominium plan documentation proposed to be registered against the lands legally described as PT LTS 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83 & 84 AND ALL OF LTS 78 & 79 AND PART OF ELIZABETH STREET AND PART OF UNNAMED STREET (CLOSED BY JUDGE'S ORDER WE847832, AND BY-LAW 12-189 REGISTERED AS WE851071) PLAN 310, PART 1, 62R21675 EXCEPT PART 1, 62R22119; CITY OF HAMILTON, being all of PIN 17369-0915 (LT) (the "Lands").

Parking Units – The specific location and unit numbers of the Parking Units will be designated by the Vendor at a later date, prior to the Occupancy Date. At any time prior to the Title Closing Date, the Vendor shall have the right in its absolute and unfettered discretion to designate and re-designate the location of the Parking Unit(s). The Vendor may give priority as to the location of such Parking Unit(s) to persons with special needs.

2. The purchase price of the Property shall be:

\_\_\_\_\_ CANADIAN  
DOLLARS (\$ \_\_\_\_\_) (inclusive of H.S.T., subject to and as per paragraph 3, of Schedule "X")  
(the "Purchase Price"), payable as follows:

- (a) a sum of **Ten Thousand Dollars (\$10,000.00)** by EFT, if the Purchaser is executing this Agreement during a virtual appointment, within one (1) business day of execution of this Agreement by the Purchaser, as a deposit to be credited on account of the Purchase Price on closing (EFT confirmation must be emailed to the Vendor and the Vendor's solicitors) or by cheque delivered to the Vendor the same day the Purchaser attends the Vendor's offices for their appointment, if the Purchaser is executing this Agreement during an in-person appointment, payable to the Vendor's solicitors, Scarfone Hawkins LLP, in trust, as a deposit to be credited on account of the Purchase Price on closing;
- (b) a sum of **Ten Thousand Dollars (\$10,000.00)**, payable thirty (30) days following the payment provided for in Sub-paragraph 2(a) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust;
- (c) a sum of **Ten Thousand Dollars (\$10,000.00)**, payable sixty (60) days following the payment provided for in Sub-paragraph 2(b) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust;
- (d) a sum of **Ten Thousand Dollars (\$10,000.00)**, payable sixty (60) days following the payment provided for in Sub-paragraph 2(c) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust;
- (e) a sum of **Ten Thousand Dollars (\$10,000.00)**, payable sixty (60) days following the payment provided for in Sub-paragraph 2(d) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust;
- (f) a sum of **Ten Thousand Dollars (\$10,000.00)**, payable sixty (60) days following the payment provided for in Sub-paragraph 2(e) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust;



- (g) a sum representing (together with the deposits provided for in paragraphs 2(a) to 2(f)) **Ten Percent (10%) of the Purchase Price** (unless deposits representing at least 10% of the Purchase Price have previously been provided, in which case no further deposit is required), payable sixty (60) days following the payment provided for in Sub-paragraph 2(f) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust;
- (h) a sum representing (together with the deposits provided for in paragraphs 2(a) to 2(g)) **Fifteen Percent (15%) of the Purchase Price** (unless deposits representing at least 15% of the Purchase Price have previously been provided, in which case, no further deposit is required), payable three hundred sixty-five (365) days following the payment provided for in Sub-paragraph 2(a) above, by post-dated cheque, payable to Scarfone Hawkins LLP, in trust; and
- (i) the balance of the Purchase Price by certified cheque drawn on a solicitor's trust account, subject to adjustments as provided in this Agreement on the Title Closing Date (as hereinafter defined).

All of the deposits in subparagraphs (a) to (h) are herein called the "Deposits". **The failure of any cheque to clear the bank for insufficient funds or as a result of a stop payment shall be a monetary default and the default provisions as set out in paragraph 23 of Schedule "X" shall apply.** Upon this Agreement becoming firm and binding, the Purchaser shall provide the Vendor with the cheque with respect to the Deposit set out in sub-paragraph (b) and post-dated cheques with respect to the Deposits set out in subparagraphs (c) to (h).

**The Tentative Occupancy Date**

3. The Purchaser shall take possession of the Property on or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (this date is referred to as the "**Tentative Occupancy Date**" or the "**Occupancy Date**"), subject to the terms and provisions as set out in the Statement of Critical Dates and Addendum attached as Schedule "T".

**Title Closing Date**

4. The transfer of title to the Property to the Purchaser shall be completed on the later of the Occupancy Date or a date established by the Vendor as set out in Paragraph 1 of Schedule "X" (the "Title Closing Date").

5. The following schedules, which are attached hereto, form a part of this Agreement:

- |   |   |   |                  |
|---|---|---|------------------|
| X | Terms of Agreement                                  | S | Site Plan        |
| O | Occupancy Agreement                                 | W | Warning Clauses  |
| D | Acknowledgement of Receipt of Condominium Documents | B | Bonus Package    |
| E | Standard Features                                   | H | Rental Equipment |
| C | Conditions  | T | Tarion Addendum  |
| P | Floor Plan  |   |                  |

This Agreement shall be irrevocable by the Purchaser until one minute before midnight on the tenth (10th) day after its date, after which time if not accepted this Agreement shall become null and void and the deposit returned to the Purchaser without interest. If this Agreement is accepted by the Vendor, this Agreement shall be deemed to have been executed on the date of such acceptance.

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESS: )  
 )  
 \_\_\_\_\_ ) Purchaser #1  
 )  
 )  
 \_\_\_\_\_ ) Purchaser #2  
 )  
 )  
 \_\_\_\_\_ ) Purchaser #3  
 )

**Purchaser #1 Information\*\***

Address \_\_\_\_\_  
 \_\_\_\_\_  
 Main E-mail \_\_\_\_\_  
 Alt E-mail: \_\_\_\_\_  
 Main Phone #: \_\_\_\_\_  
 Other Phone #: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_

**Purchaser #2 Information\*\***

Address \_\_\_\_\_  
 \_\_\_\_\_  
 Main E-mail \_\_\_\_\_  
 Alt E-mail : \_\_\_\_\_  
 Main Phone #: \_\_\_\_\_  
 Other Phone # \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_

**Purchaser #3 Information\*\***

Address

\_\_\_\_\_

\_\_\_\_\_

Main E-mail \_\_\_\_\_

Alt E-mail: \_\_\_\_\_

Main Phone #: \_\_\_\_\_

Other Phone #: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

**\*\*YOU MUST KEEP THE VENDOR INFORMED OF YOUR CURRENT CONTACT INFORMATION. ANY NOTICES WILL BE DELIVERED TO YOU BY E-MAIL.**

**Purchaser's Lawyer: It is your responsibility to provide the acting lawyer with the Agreement of Purchase and Sale and any notices or amendments.**

**Lawyer Name:** \_\_\_\_\_

**Law Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone No.:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

The Undersigned hereby accepts this Agreement and its terms, and covenants, promises and agrees to and with the Purchaser to duly carry out the same on the terms and conditions contained in this Agreement.

ACCEPTED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**DMV WINONA POINT LIMITED PARTNERSHIP, BY ITS GENERAL PARTNER, DMV WINONA POINT GP INC.**

**Vendor's Solicitors**

James Mahler – Scarfone, Hawkins LLP

1 James Street South - 14<sup>th</sup> Floor

Hamilton, Ontario L8N 3P9

Telephone: 905-523-1333 FAX: 905-523-5878

E-Mail – jmahler@shlaw.ca

Per: \_\_\_\_\_

I have authority to bind the Corporation  
Vendor's Address: 145 Reynolds St., Oakville  
Phone: (905) 849-1360

## Schedule "X"

1. **TITLE CLOSING DATE** - The transfer of title to the Property to the Purchaser shall be completed on the later of the Occupancy Date or a date established by the Vendor as set out in Paragraph 5 (the "Title Closing Date").

2. **DEPOSIT RECEIPTS AND INSURANCE POLICY** - The Vendor is registered under the *Ontario New Home Warranties Plan Act* (which Act, and the regulations thereunder are referred to herein as the "ONHWPA") and is a registered Vendor/Builder with the Home Construction Regulatory Authority ("HCRA"). Deposit receipts will be obtained from the Warranty Corporation (as defined in the Act) and delivered to the Purchaser for all deposit monies paid hereunder by the Purchaser, to a maximum of \$20,000.00 (unless increased by amendment to the ONHWPA). Once deposit receipts are issued by the Warranty Corporation, deposit monies represented by such deposit receipts are released from trust and are the property of the Vendor. Purchase monies in excess of the said \$20,000.00 shall continue to be held in trust pursuant to Section 81 of the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended (the "Act"). However, the deposit monies in excess of the said \$20,000.00 may be released from trust and become the property of the Vendor upon the Vendor obtaining an insurance policy covering such monies, provided that the insurance policy meets the requirements of "prescribed security" under the Act and the regulations thereunder.

The Vendor shall pay the Purchaser interest on all deposits paid by the Purchaser from the date the Purchaser has paid the money to the date of occupancy in accordance with Section 82 of the Act. The interest on the deposit due to the Purchaser shall be credited to the Purchaser by the Vendor as an adjustment on the Title Closing Date.

3. **HARMONIZED SALES TAX/FEDERAL AND PROVINCIAL NEW HOUSING REBATE** - The Vendor and the Purchaser acknowledge and agree that the Purchase Price includes the amount payable pursuant to the *Excise Tax Act*, R.S.C 1985, c E-15, as amended (the "Excise Tax Act"), for Harmonized Sales Tax (H.S.T.) exigible on the sale of the Property to the Purchaser **less the maximum amount refundable in respect of the New Housing Rebates available for the Federal and Provincial portions of the H.S.T.** (collectively, the "Rebate"). The Purchaser shall be solely responsible for payment of all taxes exigible in respect of any extra or other fees and charges not included in the Purchase Price. The Purchaser warrants, covenants and agrees to assign all of its right, title and interest in the Rebate to the Vendor and confirms that the Rebate shall be the sole and absolute property of the Vendor. The Purchaser shall, on demand by the Vendor, execute and deliver on or before closing any assignments, directions, powers of attorney, applications, consents and/or other documents required by the Vendor in respect of the Rebate. The Purchaser hereby irrevocably designates and appoints the Vendor as his sole and lawful attorney with full power as attorney for the purpose of executing any documents contemplated under this paragraph. The Purchaser represents, covenants and agrees that he/she/they qualify for the full amount of the Rebate and in the event that the Vendor does not receive the full amount of the Rebate available under the Excise Tax Act, as amended from time to time, due to the Purchaser failing to qualify for same, the Purchaser shall pay to the Vendor, forthwith upon request by the Vendor, an amount equal to that part of the Rebate which the Vendor has been denied or has not received, and until so paid such amount shall form a charge against the Property, which charge shall be recoverable by the Vendor in the same manner as a mortgage in default. If the Purchaser is unable to execute such documentation as may be required by the Vendor on closing to confirm he is qualified to receive the Rebate, an amount equal to the Rebate shall be payable on closing, in addition to the Purchase Price. Further, in the event the Purchaser desires or is required to claim the Rebate on any portion of an assignment fee or any amounts payable to an assignor pursuant to an assignment of this Agreement (in addition to the Purchase Price paid to the Vendor), an amount equal to the Rebate shall be payable on closing, in addition to the Purchase Price, and the Purchaser may thereafter submit its own application in connection with the Rebate.

4. **CONSENT TO REZONING AND VARIANCES** - The Purchaser hereby covenants and agrees that he or she will not oppose any rezoning or site plan application(s) initiated by the Vendor in respect of the Lands and/or any adjacent lands, nor any other applications ancillary thereto, including, without limitation, any applications made for a minor variance before the relevant committee of adjustment or any other governmental body or authority having jurisdiction, so as to enable a change in the present use of the Lands or adjacent lands, or any portion thereof, or an increase in the density coverage of the dwelling and parking unit count or yield thereof, or for any lawful purpose, and 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. **The Purchaser agrees to execute any additional documents on closing, which the Vendor may require with respect to this covenant and the Purchaser acknowledges that this covenant may be registered on title to the Lands.**

5. **TITLE CLOSING DATE** - If the Property is substantially completed sufficient to permit occupancy by the Occupancy Date, but the Condominium and the by-laws required or desired to be registered by the Vendor have not yet been registered, then the Purchaser shall take occupancy of the Property on that date as a monthly occupant at a monthly occupancy fee, in advance, determined in accordance with the Act, and said monthly occupancy fee shall not be credited as payment towards the Purchase Price. The **Title Closing Date** shall then be extended to a date designated by the Vendor's solicitors as the Title Closing Date, which date shall be at least twenty (20) days after notice in writing is given by the Vendor's solicitors to the Purchaser or his solicitor that the Condominium has been registered. On the Title Closing Date, the Purchaser shall deliver all funds and documents to the Vendor's solicitor as required by this Agreement and any additional documents which may be required by the Vendor in connection the sale and transfer of the Unit.

**The Vendor is not required to entertain any requests for extensions or forbearance and may charge the Purchaser a fee if it agrees to grant an extension of the Occupancy Date or the Title Closing Date at the request of the Purchaser. At a minimum, such fee shall be calculated at a rate of interest of 12% per annum on the outstanding balance due on closing, for each day of such extension.** Failure of the Vendor to exercise any of its rights under this Agreement at any time or times shall not act as a waiver of such rights

6. **INTERIM OCCUPANCY** - The Purchaser shall pay an occupancy fee (the "Occupancy Fee") monthly in advance, during the period commencing on the Occupancy Date and ending on the Title Closing Date, which Occupancy Fee shall be payable pro rata comprised of the components set out in subsection 80(4) of the Act and shall be equal to the maximum amount permitted thereunder. The Purchaser shall only be permitted to elect to pay the full balance of the Purchase Price remaining after deducting the amounts paid under this Agreement before assuming interim occupancy, if the Purchaser notifies the

Vendor or the Vendor's solicitor in writing of his election prior to the expiration of the ten (10) day conditional period, in accordance with section 80(3) of the Act. The Purchaser shall provide any number of postdated cheques with respect to the Occupancy Fee as and when the Vendor may reasonably require same.

**NO PART OF THE OCCUPANCY FEE SHALL BE CREDITED TOWARDS THE PURCHASE PRICE ON THE TITLE CLOSING DATE.**

(a) The Purchaser's occupancy as a monthly user of the Unit shall be based on the terms and conditions of the Vendor's standard occupancy agreement (hereinbefore and hereinafter referred to as the "**Interim Occupancy Agreement**"), a copy of which is attached hereto as Schedule "O".

(b) On the Occupancy Date, the Purchaser shall deliver to the Vendor a clear and up-to-date execution certificate in the Purchaser's name from the Sheriff's Office of Land Registration Office, and/or shall also provide such other information and documentation as may be required in order to enable the Vendor to obtain a clear execution certificate in the Purchaser's name. In addition, on or prior to the Occupancy Date, the Purchaser shall deliver any further documents or agreements which may be required by the Vendor in connection with such occupancy.

(c) No later than ten (10) days prior to the Occupancy Date, the Purchaser shall ensure that all accounts and applicable utilities are in place with the requisite utility providers. The Purchaser agrees and acknowledges that the Purchaser shall provide the Vendor with satisfactory documentation of same at the request of the Vendor.

7. The Purchaser acknowledges and agrees that in the event this Agreement is terminated, other than by way of the final closing of the purchase and sale transaction contemplated hereunder, the provisions of the Interim Occupancy Agreement attached as Schedule "O", shall apply with respect to the termination of the tenancy between the Vendor and the Purchaser hereinbefore provided.

8. **TITLE** - The Purchaser agrees to take title to the Property subject to all restrictions, easements, encroachment agreements, existing encroachments from neighbouring properties, conditions or covenants that run with the Lands, noise attenuation agreements, and subject to all rights, licences and easements now registered or to be registered hereafter for the supply and installation of telephone services, electricity, gas, sewers, water, television and/or cable facilities and other services to or for the benefit of the Condominium or any adjacent or neighbouring properties, or which may be required by the Vendor, the Declarant, or any owners of neighbouring or adjacent properties for access to or entry from such properties (including, without limitation, easements, rights of way, reciprocal easements and cost sharing agreements, and/or other agreements for access, service, support or other amenities), and further subject to all development, site plan, subdivision or other municipal agreements or similar agreements entered into with any other governmental authorities and any agreements by which the Condominium may agree to comply with the terms thereof (all such agreements being hereinafter collectively referred to as the "**Development Agreements**"), and subject to the terms and conditions contained in the registered Condominium Documents (being any and all documents which are or will be registered by the Declarant to create and govern the Condominium) and pursuant to any of the Condominium Documents. The Purchaser further agrees to accept title to the Property subject to the Condominium Documents being registered on title, notwithstanding that they may be amended and varied from the proposed Condominium Documents which were given to the Purchaser when entering into this Agreement. The Purchaser further acknowledges that the registered Condominium Documents and final budget statement for the one (1) year period immediately following registration of the Condominium may vary from the proposed Condominium Documents and budget statement given to the Purchaser when entering into this Agreement, and the Purchaser hereby acknowledges and agrees that in the event there is a material amendment to any of them, the Purchaser's only remedies shall be those provided by the Act, notwithstanding any rule of law or equity to the contrary. The Vendor shall not be obligated to obtain nor register on title to the Property a release of any of the Development Agreements or of the aforementioned registered restrictions or covenants, and the Purchaser shall satisfy himself as to the compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements and all restrictions and covenants registered on title. The Purchaser further acknowledges and agrees that retention by the municipality or by any other relevant governmental authorities of security (in the form of letters of credit, performance bonds, etc. satisfactory to such municipality or governmental authorities) intended to guarantee the fulfillment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be in satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser further agrees to accept title subject to one or more blanket mortgages encumbering the Property, and the Purchaser agrees that the Vendor shall not be obliged to obtain and register (partial) discharges of such mortgages on the Title Closing Date. The Purchaser agrees to accept an undertaking from the Vendor's Solicitor to obtain and register partial discharges of such mortgages, insofar as they encumber the Property, as soon as reasonably possible after the Title Closing Date, subject to the Vendor providing to the Purchaser or to the Purchaser's solicitor the following:

(i) a mortgage statement or letter from the mortgagee(s) confirming the amount required to be paid to the mortgagee(s) to obtain a discharge (or partial discharge) of the mortgage with respect to the Property;

(ii) a direction from the Vendor to the Purchaser to pay said amount(s) to the mortgagee(s) on the Title Closing Date to obtain a discharge (or partial discharge) of the mortgage(s) with respect to the Property; and

(iii) an undertaking from the Vendor's solicitors to deliver said amount(s) to the mortgagee(s) and to register the discharge (or partial discharge) of the mortgage(s) with respect to the Property upon receipt thereof and to advise the Purchaser or the Purchaser's solicitors concerning registration particulars.

9. **TITLE SEARCH** - The Purchaser shall examine the title to the Property at his own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading, certificates, occupancy permits or certificates, nor any other proof or evidence of the title, Building Code compliance or occupiability of the Property, except such copies thereof as are in the Vendor's possession. The Purchaser shall satisfy himself that the Property may be occupied in accordance with applicable municipal requirements and shall be allowed to submit his requisitions as to title and any other matters contemplated hereby, until fifteen (15) days prior to the Title Closing Date, and if within that time the Purchaser shall furnish the Vendor in writing with

any valid objection to title, or to any outstanding work order, which the Vendor shall be unable or unwilling to remove, and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intervening acts or negotiations, be null and void, and the deposits paid shall be returned without interest and without deduction save for any extras or changes ordered by the Purchaser and as yet unpaid, and the Vendor shall have no further obligation hereunder and shall not be liable for any costs or damage to the Purchaser. Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the title to the Property. The Purchaser further agrees to accept title from the registered owner of the Property and to accept such owner's title covenants in lieu of the Vendor's in the event that the Vendor is not the registered owner of the Property on the Title Closing Date. The Vendor shall be entitled to insert in the Transfer/Deed specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to in this Agreement, and in such case, the Purchaser may be required to execute the Transfer/Deed prior to the Title Closing Date, and the Vendor may require in addition that the Purchaser deliver his separate written covenant on the Title Closing Date. The Purchaser shall not register, or cause to be registered, this Agreement on title to the Property and/or the Lands, nor any notice thereof, nor any caution or *lis pendens* with respect thereto, nor any certificate of pending litigation or other similar court process, until after the Title Closing Date, and any registration thereof in contravention of this provision shall constitute a fundamental breach of this Agreement, entitling the Vendor to the rights, remedies and provisions hereinafter set forth. The Purchaser acknowledges that prior to the Title Closing Date, the Building Department for the municipality shall verbally advise that the Unit is occupiable but that a final inspection shall not be conducted until the entire Condominium is substantially complete.

10. **TAXES** - Subject to paragraph 6, the Occupancy Fees paid during the Interim Occupancy Period and realty taxes shall be apportioned and allowed to the Title Closing Date, with that day itself apportioned to the Purchaser. **THE PURCHASER SHALL BE RESPONSIBLE FOR THE PAYMENT OF ALL REALTY TAXES AS SET OUT IN ANY SUPPLEMENTAL TAX BILL OR OMIT TAX BILL ISSUED BY THE RELEVANT MUNICIPALITY, FROM THE DATE OF OCCUPANCY.**

11. **ADJUSTMENTS** - The Purchaser shall, on the Occupancy Date (or on the Title Closing date should it fall on the same date as the Occupancy Date), reimburse the Vendor for the following items. The Vendor reserves the right to defer payment of such charges until the Title Closing Date, as is practical:

a) The enrolment fee for the Property under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, as amended, for enrolment with the Tarion Warranty Corporation (<https://www.tarion.com/builders/enrolment-fees-calculator>);

b) The Home Construction Regulatory Authority Regulatory Oversight Fee for the Property (<https://hcraontario.ca/licensing-compliance/licensing/>);

c) A sum in the amount of \$150.00 plus HST to reimburse to the Vendor for its costs incurred or to be incurred by the Vendor in fulfillment of the requirements of subsection 81(6) of the Act;

d) Two (2) months' estimated common expenses attributable to the Property towards payment of the reserve fund of the Condominium. In addition, the Purchaser agrees to deliver a series of twelve (12) post-dated cheques or execute a pre-authorized chequing plan in an amount estimated by the Vendor to be payable monthly to the Corporation on account of common expenses;

e) Realty taxes (including local improvement rates) on the Unit; in the event that the realty taxes have not been separately assessed in respect of the Unit, the Vendor estimate the realty taxes for the calendar year in which this transaction is completed (and the following calendar year if the transaction is completed on or after the second Tuesday in December of any calendar year) and adjust for such realty taxes upon the Title Closing Date as if such sum had been paid by the Vendor notwithstanding that the same may not by the Title Closing Date have been levied or paid, subject, however, to readjustment upon the actual amount of said realty taxes being ascertained, and, the Purchaser shall forthwith pay to the Vendor any balance owing to the Vendor upon receiving notice in writing thereof and the Vendor shall forthwith return to the Purchaser any balance owing to him. If realty taxes are owing for a period when the Property was assessed and taxed as a single parcel, then any adjustment of realty taxes shall include an amount calculated to attribute a portion of such realty taxes owing in respect of the Property to the Unit based on its common interest. Municipal realty tax reassessment and/or supplementary tax bills relating to the Unit issued subsequent to the Title Closing Date shall be the responsibility of the Purchaser;

f) The parties acknowledge and confirm that the Purchase Price has been determined on the presumption that no tax is or will be exigible on the conveyance of the Property from the Vendor to the Purchaser by any governmental authority or agency, save for any applicable land transfer tax and any applicable retail sales tax chargeable in connection with any chattels being conveyed to the Purchaser along with the Property, both of which are the Purchaser's responsibility for payment. However, it is expressly understood and agreed by the parties hereto that in the event that any tax (whether categorized as a business transfer tax, a modified retail sales tax, or any other type of tax whatsoever) is levied or charged in the future on or with respect to the conveyance of the Property from the Vendor to the Purchaser, or in connection with the purchase and sale transaction contemplated hereunder, by any government authority or agency, then 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 on the Vendor, and the Vendor shall be allowed to charge the Purchaser with the estimated amount of any such tax in the statement of adjustments on the Title Closing Date, notwithstanding that such amount may not have been formally or finally levied and/or payable by the Title Closing Date, and such tax adjustment shall be subject to readjustment, if necessary when the actual final assessment or levy is available or determinable;

g) the Purchaser shall reimburse the Vendor on the Title Closing Date for the amount by which any governmental tax, levy or impost, development charge and/or community benefit charge or levy assessed against or attributable to the Condominium or the Unit increases between the date of acceptance of this Agreement and the Title Closing Date. Without limiting the generality of the foregoing, the Purchaser shall reimburse the Vendor for any new charges or levies or any increase implemented or exacted by any governmental authority following the date of acceptance hereof, including, without limitation, any additional levies incurred pursuant to the *Planning Act*, R.S.O. 1990, c. P.13, as amended, the *Development Charges Act, 1997*, S.O. 1997, c. 27, as amended and any interest charged on development charges from the date of acceptance of this Agreement until the Title Closing Date. In the event any charge referenced in this paragraph is assessed

against the Condominium or any portion thereof, and not against individual Units, the Vendor may, at its sole option, attribute such charge either equally among all residential dwelling units or in accordance with the proportion of percentage of common interests attributable each Unit. Notwithstanding the foregoing, the costs associated with the development charge only shall be capped as follows:

- a. Units including 1 bedroom and/or 1 bedroom plus den shall be capped at \$5,000.00 plus H.S.T.; and
- b. Units including 2 bedrooms or more shall be capped at \$7,500.00 plus H.S.T.

h) in addition to the amount set out in Paragraph 11(g) above, the Purchaser shall reimburse the Vendor on the Title Closing Date for the amount of (i) any cash-in-lieu of parkland dedication payment assessed against or attributable to the Unit by the municipality, a regional municipality, or any other authority having jurisdiction under the *Planning Act*, R.S.O. 1990, c. P.13, and any amendments thereto and any other existing or new legislation, regulation, bylaw and/or policy of a similar nature, plus applicable taxes thereon; and (ii) any levy, charge, payment, contribution, fee or assessment pursuant to Planning Act Section 37 agreements. The amount of the foregoing adjustment shall be determined by a statutory declaration sworn on the part of the Vendor which the Purchaser agrees to accept, and in any event, shall be no greater than \$5,000.00 plus H.S.T. In the event any charge referenced in this paragraph is assessed against the Condominium or any portion thereof, and not against individual Units, the Vendor may, at its sole option, attribute such charge either equally among all residential dwelling units or in accordance with the proportion of percentage of common interests attributable each Unit;

i) A charge of \$70.00 plus H.S.T., for the charge imposed upon the Vendor or its solicitors by the Law Society of Ontario upon the registration of Transfer/Deed of Land or any other instrument;

j) A charge of \$100.00, inclusive of H.S.T., for the cost of providing a status certificate, if provided by the Vendor. Otherwise, such charge shall be paid to the party providing status certificates for the Condominium;

k) The Purchaser agrees to take all necessary steps to assume immediately on closing, charges for hydro and other services required, and the Vendor may recover any payments therefore from the Purchaser. The Purchaser shall pay, or reimburse the Vendor for the cost of, or the charge made for, the cost of hydro, water and gas installation, energization and connection fees, as applicable, in addition to the cost of the sub-metering of the hydro, water and gas. Notwithstanding the foregoing, the costs associated with the connection or energization of the hydro meter and water meter shall be \$1,500.00 plus H.S.T.;

l) The Vendor shall have the option to collect and remit the retail sales tax, if any, payable by the Purchaser on chattels which are purchased in this transaction as a charge on closing and the allocation of such chattels will be estimated, if necessary, by the Vendor;

m) All proper readjustments shall be made after closing, if necessary, forthwith upon request. Any monies owing to the Vendor pursuant to such readjustment or as a result of any expenses incurred by the Vendor arising from a breach by the Purchaser of any of the Purchaser's obligations described in this Agreement shall be payable upon written demand by the Vendor and shall bear interest from the date of written demand at the rate of twenty-four (24%) percent per annum, calculated daily, not in advance and shall be a charge on the Property until paid and such charge shall be enforceable in the same manner as a mortgage in default;

n) The Vendor may reserve a Vendor's Lien, following the Vendor's usual form, for unpaid purchase monies or adjustments or claims herein provided together with the interest thereon as set forth in Paragraph 11 (m) hereof, and the Vendor will upon request deliver to the Purchaser (for registration at the Purchaser's expense) a release of the Vendor's Lien after such monies have been received by the Vendor;

o) The Purchaser agrees to take all necessary steps to assume, or to execute a rental contract for an ERV, heat pump unit, tankless water heater, and furnace for the Unit, immediately on closing. The Purchaser shall pay or reimburse the Vendor for the monthly rental rate of the lease agreement with Enercare Home and Commercial Services Limited Partnership ("**Enercare**") regarding the ERV, heating pump, water heater and furnace in the Unit;

p) The Purchaser acknowledges that the Vendor or Declarant has or will be entering into an Agreement with Rogers Communications Canada Inc. relating to the supply of Internet and telecommunication services to the units in the Condominium, which agreement will be assumed by the Condominium Corporation and costs will be billed to the unit owners in the Condominium by the Condominium Corporation. On the Occupancy Date, the Purchaser agrees to execute and provide any reasonable documents as may be requested by Rogers Communications Canada Inc.;

q) a \$500.00 plus H.S.T. administrative fee shall be charged to the Purchaser for any cheque paid by the Purchaser for a deposit or for any extras or upgrades which are not honoured or accepted by the Purchaser's bank for any reason, including a cheque returned N.S.F. or upon which a "stop payment" has been ordered, if any;

r) the sum of \$510.00 for the fee associated with the cost of boulevard tree planting, as required by the Municipality;

s) the fee charged by the City of Hamilton for the provision of any occupancy certificate or permit with respect to the Unit, the Condominium, or any portion thereof;

t) Sub-Metering Agreement – The Purchaser acknowledges that the Vendor or Declarant has or will be entering into a Sub-Metering Agreement with Provident Energy Management relating to the supply of sub-metering services for electricity, gas and water to the units in the Condominium, including any EV parking units in the Condominium, which agreement will be assumed by the Condominium Corporation. On the Occupancy Date, the Purchaser agrees to execute and provide a Customer Services Agreement, together with such other reasonable documents and provide any security deposits as may be requested by Provident Energy Management from time to time and will be responsible for the payment of resident administration fees in connection with same; and

u) The Purchaser shall reimburse the Vendor on the Title Closing Date for any education levies/educational development charges incurred by the Vendor pursuant to the *Education Act*, R.S.O. 1990, c. E.2, as amended, the *Development Charges Act* (Ontario) S.O. 1997, as amended, and/or any other existing or new legislation, regulation, bylaw, and/or policy of a similar nature, plus applicable taxes, in connection with the Property. Notwithstanding the foregoing, the Vendor confirms that any reimbursements relating to the education levies/educational development charges shall be capped at \$3,500.00 plus H.S.T.

**12. CONDOMINIUM REGISTRATION** - The Purchaser acknowledges that the Condominium Documents may not be registered by the Vendor as at the date of this Agreement. If the Condominium Documents are not registered by the fifteenth (15<sup>th</sup>) month following the Occupancy Date, the Vendor may apply for an order terminating this Agreement pursuant to Section 79(3) of the Act, and if said order is granted, this Agreement shall thereupon be null and void and of no further force or effect and all deposit monies shall be returned to the Purchaser, together with all monies paid to the Vendor as extras, both with interest, and thereafter neither of the parties hereto shall be liable to the other for any costs, damages or liabilities suffered or incurred by them in connection with this Agreement, or the termination thereof, as a result of such non-registration.

**13. RESTRICTION AGAINST SALE OR ASSIGNMENT OF INTEREST BY PURCHASER** - The Purchaser covenants not to offer, list or advertise for sale, lease, transfer or assignment, nor to sell, lease, assign or transfer his interest under this Agreement (or in the Unit) until after the Title Closing Date and the Vendor having received payment of all of the Purchase Price, without the prior written consent of the Vendor, which consent may be withheld in the Vendor's sole and absolute discretion. As a condition of giving its consent the assignee/transferee will be required to execute and deliver to the Vendor the Vendor's standard form of assignment and assumption agreement and to pay to the Vendor on the date of execution and delivery of the assumption agreement the Vendor's administration and processing fee of \$20,000.00, plus H.S.T. together with any other applicable fees, including the Vendor's solicitor's fees in the amount of \$750.00, plus H.S.T. Notwithstanding such assignment, the Purchaser shall not be relieved of its obligations herein and in no event shall the Purchaser list or cause to be listed the Unit for sale, lease or otherwise on a listing service system including, without limitation, the Multiple Listing Service ("MLS"), without the express written consent of the Vendor. The Purchaser further covenants not to offer, transfer or assign this Agreement, nor to sell, assign or transfer his interest under this Agreement (or in the Unit) to any non-Canadian individual or entity, as defined in the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10, s. 235, as amended, while that Act is in effect. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is (or shall be) 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 terminating this Agreement (and the Interim Occupancy Agreement) effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply.

(a) In the event the Vendor consents to an assignment of the Purchaser's interests under this Agreement, the Vendor reserves the right to determine, in its sole discretion, whether its consent to an assignment of this Agreement shall be a consent to publicly list the Unit, or whether such consent to assignment excludes the consent to list the Unit on any listing service system. The Purchaser acknowledges and agrees that the Vendor's consent to assignment, including or excluding its consent to publicly list the Unit, must be provided to the Purchaser in writing and is not effective unless and until the standard form of consent documents are executed by the Parties. The Purchaser acknowledges and agrees that the Vendor's decision on such assignment and/or listing of the Unit shall be in its sole and unfettered discretion and may be unreasonably withheld. The Vendor's decision shall be firm and binding. Any breach of the preceding covenant shall be incapable of rectification and the Vendor shall have the unilateral right and option of terminating this Agreement (and the Interim Occupancy Agreement) effective upon delivery of notice of termination to the Purchaser, or the Purchaser's solicitor.

**14. CONSTRUCTION AND INSPECTIONS** - The Purchaser agrees to meet a representative of the Vendor prior to the Occupancy Date (or the Title Closing Date if possession is being given thereon) to inspect the Property and to list all incomplete items and mutually agreed deficiencies with respect to the Property, on the form of Certificate of Completion and Possession provided for under the ONHWPA (the "**Certificate**"). The Certificate shall be executed by both the Purchaser and a representative of the Vendor forthwith after such inspection and same shall constitute the Vendor's only undertaking with respect to incomplete or deficient work, and such work shall be completed by the Vendor within a reasonable period of time after the Occupancy Date, having regards to weather conditions and the availability of equipment, supplies and labour. The Purchaser further acknowledges and agrees that no further request for the completion or correction of items may be maintained by the Purchaser, and this shall serve as a good and sufficient release of the Vendor in that regard. The Vendor shall arrange for the inspection with the Purchaser and the Purchaser shall be entitled to designate a representative in writing to attend such inspection in his or her place. The Purchaser hereby irrevocably constitutes and appoints the Vendor to be and act as his or her lawful attorney, in the Purchaser's name, place and stead, in order to execute the Certificate of Completion and Possession if the Purchaser (or an appointed representative) fails to attend on the scheduled inspection date. The Purchaser hereby confirms and agrees that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity of the Purchaser.

15. The Vendor shall complete the common elements as soon as reasonably practicable, but the failure of the Vendor to complete the common elements, or to complete the Property beyond the minimum standards required by the local municipality in order to permit occupancy thereof, on or before the Occupancy Date or the Title Closing Date (as the case may be) shall in no event entitle the Purchaser to refuse to take possession of the Property and/or close the within transaction on the Title Closing Date, or to fail to remit to the Vendor the purchase monies required to be paid by the Purchaser hereunder, or to maintain any holdback of any part of the Purchase Price.

16. The Purchaser acknowledges and agrees that the Vendor may from time to time in its discretion, or as required by any governmental authority, change, vary or modify the plans and specifications pertaining to the Property or the Condominium (including architectural, structural, engineering, landscaping, grading, mechanical, site, service or other plans) from the plans and specifications existing at the inception of the project, or as they exist at the time the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure(s), model(s) in the sales office or otherwise, and the Purchaser shall have absolutely no claim or cause of action against the Vendor for any such changes, variances or modifications, nor shall the Purchaser be entitled to any notice thereof. The Purchaser acknowledges that the Vendor may substitute such other materials in the construction of the Property, or the common elements of the Condominium, from time to time, from those specified or contemplated in the aforesaid plans or specifications, provided that any substituted material(s) is equal to or better

than the material(s) originally indicated in said plans or specifications.

17. The Purchaser acknowledges and agrees that the filing of the consulting engineers' certificate with the City of Hamilton (the "**City**"), or the issuance by the City of an occupancy certificate or such other confirmation that the Property may be occupied shall constitute complete and absolute acceptance by the Purchaser of all construction matters, and the quality and sufficiency thereof including, without limitation, all mechanical, structural and architectural matters. The Purchaser further acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Property or the common elements of the Condominium, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be restricted to only those warranties deemed to be given by the Vendor under the ONHWPA, and shall extend only for the time period and in respect of those items covered or provided by the ONHWPA.

18. Notwithstanding the completion of this transaction and for a period of three (3) years thereafter, the Vendor or any of its authorized representatives and/or the developer shall be entitled at all reasonable times to enter the Property in order to make inspections, and to do any work or repairs required by the Vendor in its discretion.

19. (a) The Purchaser agrees that in no event shall the Purchaser be entitled to obtain possession of the Property unless and until the Purchaser has executed the said Certificate of Completion and Possession. In the event that the Purchaser has omitted to execute the said Certificate of Completion and Possession prior to the Occupancy Date, and the Vendor has duly attended at the Property for the purposes of completing the said Certificate and to inspect the Property, the Vendor shall have the unilateral right and option of either completing this transaction and refusing to allow possession of the Property by the Purchaser until such Certificate has been duly executed, or of terminating this Agreement, whereupon all monies paid hereunder as deposits or otherwise shall be forfeited to the Vendor as liquidated damages, and not as a penalty.

(b) The Purchaser acknowledges and agrees that the monies paid to the Vendor as deposits hereunder, and which may hereafter be secured by prescribed security as defined in the Act, shall be recognized and treated for the purposes of Section 1 of the *Construction Act*, R.S.O. 1990, c. C.30, as monies held in trust pursuant to the provisions of Section 81 of the Act, and the Purchaser shall accordingly be deemed and construed to be a "home buyer" within the meaning of Section 1 of the *Construction Act* (and shall not constitute an "owner" as defined in Section 1 of the *Construction Act*) and, as such, the Purchaser shall not be entitled to request or demand that any holdback for construction liens be maintained for any part of the Purchase Price on the Occupancy Date or the Title Closing Date.

## 20. COLOUR AND MATERIAL SELECTION

a) Wherever in this Agreement the Purchaser has the right to choose colours or materials, he shall do so within seven (7) days after notification by the Vendor and the Purchaser shall make his selection of such colours and/or materials, whatever the case may be, from the Vendor's samples and list same on the Vendor's colour selection form. In the event that the Purchaser shall not have made his selection within fourteen (14) days after notification by the Vendor or an extended date acceptable to the Vendor, then the Vendor shall have the option of choosing the colours and materials for and on behalf of the Purchaser and the Purchaser agrees to accept same.

b) In the event that the Purchaser shall have made a choice of colours and/or materials from the Vendor's samples or otherwise as aforesaid and because of lack of supply the installation of such colour choice and material cannot be completed in accordance with the Vendor's construction schedule, the Purchaser shall choose alternate colours and materials within three (3) days of notice and in the event the Purchaser fails to make an alternate selection as aforesaid, the Vendor shall have the option of choosing the colours and materials and the Purchaser shall be obligated to accept same.

c) In the event that by the Title Closing Date the installation of the selected colours and upgraded materials or other work to be performed by the Vendor or its subtrade(s) has not been completed, and as a result thereof the dwelling has not been completed, then the Purchaser shall, notwithstanding such incomplete work, complete the transaction on the Title Closing Date and shall pay the full amount required to be paid on closing in accordance with this Agreement, notwithstanding that an occupancy permit may not be available as a result thereof.

d) Where omissions occur on the original colour selection sheet, the Purchaser acknowledges that selection by the Vendor will be final.

e) Upgrades listed on a standard colour chart will not be deemed to be part of the original Purchase Price included in this Agreement of Purchase and Sale and will be subject to additional charges.

f) The Purchaser agrees that if after having made the original colour selections the Purchaser does make a change erroneously or otherwise, he will be deemed responsible for all errors resulting from any double selections.

g) The Purchaser acknowledges and agrees that any changes made to the original colour selections and/or upgraded materials made by the Purchaser, following submission of the colour chart and extras to the Vendor's head office, shall bear an administration fee of \$500.00 plus H.S.T., payable forthwith.

h) The Purchaser further agrees that in the event that the Vendor has preselected colours prior to the purchase herein of the Property, the prescribed colours shall be final notwithstanding that the Purchaser may have completed a colour selection/chart.

i) The Purchaser acknowledges and agrees that failure to attend an appointment for design or selection, or failure to cancel such appointment without providing the Vendor with 24 hours written notice prior to the scheduled meeting shall bear a fee of \$500.00 plus H.S.T.

j) In the event that any of the terms and conditions stated on any Construction Change Notices and/or Optional Features Upgrade List (the "**Changes**") are in conflict or contradiction of any terms or conditions stated in this Agreement, it is hereby agreed that the terms and conditions stated on the Changes shall take precedence over the terms and conditions of this Agreement.

21. **POWER OF ATTORNEY** - The Purchaser hereby irrevocably constitutes and appoints the Vendor to be and act as his lawful attorney, in the Purchaser's name, place and stead, in order to execute ONHWPA deposit receipt(s), and any excess condominium deposit insurance (and related documents) issued by an insurer providing prescribed security for the Purchaser's deposit monies in excess of \$20,000.00, and in accordance with the provisions of the *Powers of Attorney Act*, R.S.O. 1990, as amended. The Purchaser hereby confirms and agrees that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity of the Purchaser.



22. **LEASE OF UNSOLD DWELLINGS** - The Purchaser acknowledges that the Declarant of the Condominium may from time to time lease any and all unsold dwelling units in the Condominium for residential purposes and this Paragraph shall also constitute notice to the Purchaser as registered owner of the Property after the Title Closing Date pursuant to the provisions of Section 83 of the Act.

23. **DEFAULT BY PURCHASER** - In the event that the Purchaser defaults on any of his obligations contained in this Agreement or in the Interim Occupancy Agreement prior to the Title Closing Date, and fails to remedy such default within five (5) days of his being so notified in writing, then the Vendor, in addition to any other remedies this Agreement provides, may at its option declare this Agreement and the Interim Occupancy Agreement to be terminated, whereupon all deposit monies theretofore paid, together with all monies paid for any extras or changes to the Property, shall be retained by the Vendor as its liquidated damages and not as a penalty. In the event of the termination of this Agreement and the Interim Occupancy Agreement by reason of the Purchaser's default as aforesaid, the Purchaser shall forthwith vacate the Property and shall execute such releases and any other documents or assurances as the Vendor may require with respect to releasing the Purchaser's interest in the Property, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead.

24. **NSF CHEQUES** - Any cheque payable by the Purchaser pursuant to this Agreement, including deposit cheques and cheques for the payment of extras and options at the design centre, which is returned NSF, shall bear an administration fee of \$500.00, plus HST, payable forthwith. In the event the Purchaser does not provide the Vendor with a certified cheque in the amount of the NSF cheque, plus the administration fee, within five (5) days of being notified by the Vendor that a replacement cheque for the NSF is required, the Vendor will forward this matter to its solicitors at which time the Purchaser shall, in addition to the above amount, be responsible for the Vendor's legal fees in the amount of \$500.00, plus HST. The Purchaser shall thereafter be required to pay all amounts owing within ten (10) days receipt of notice from the Vendor's solicitor demanding payment, which notice shall be delivered by courier and e-mail to the last known addresses of the Purchaser ("**Notice for Payment**"). In the event that the Purchaser produces two (2) cheques which are returned NSF, or the Vendor is required to have its solicitors deliver a Notice for Payment and the Purchaser fails to make the required payments as set out in the Notice of Payment, the Vendor shall be permitted to declare this Agreement terminated whereupon all deposit monies theretofore paid, together with all monies paid for any extras or changes to the Property, shall be retained by the Vendor as its liquidated damages and not as a penalty.

25. **NOTICES** - Any notice or document required or desired to be given to the Purchaser shall be deemed to have been sufficiently given if same is in writing and (i) personally delivered to the Purchaser or to his solicitor at the addresses noted in this Agreement; (ii) faxed; (iii) delivered by e-mail; or (iv) mailed by prepaid ordinary post and addressed to the party or to his solicitor. Any such document or notice which is personally delivered or mailed shall be deemed to have been given on the date of personal delivery or the next business day after the date of mailing, as the case may be. Any document or notice sent by fax or e-mail shall be deemed to have been given and received on the day it is sent, provided that if such day is not a business day then the document or notice shall be deemed to have been given and received on the next business day following such day. **In the event that any of the contact information (including the Purchaser's solicitor's information) contained in this Agreement changes at any time during the construction, closing and post-closing processes, the Purchaser covenants and undertakes to immediately advise the Vendor of all such changes. The Vendor will be deemed to have provided all required notices to the Purchaser pursuant to the Agreement if such notices are delivered to the Purchaser at the contact information provided in the Agreement, regardless of whether such notices are returned to the Vendor as undeliverable or otherwise, and the Vendor shall be under no obligation to make enquiries or take any other step to communicate with the Purchaser and/or obtain replacement or other contact information from the Purchaser. Without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that the Vendor shall be entitled to use any of the e-mail addresses listed in this Agreement as the sole method of communication with the Purchaser. The Purchaser shall be responsible to advise the Vendor if any of the e-mail addresses in this Agreement changes at any time during the construction, closing and post-closing processes.**

## **MISCELLANEOUS**

26. This Agreement and the transaction arising herefrom are conditional upon compliance with the subdivision control provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, and any amendments thereto.

27. The Purchaser acknowledges that the size of the dwelling unit as represented by the sale personnel is measured in accordance with industry standards and practice and, accordingly, may differ from measurements made using the unit boundaries set out in the Declaration.

28. The Purchaser's covenants and agreements herein shall not merge on the Title Closing Date, but shall remain in full force and effect according to their terms, notwithstanding the conveyance of title to the Property and the payment of the Purchase Price. The Purchaser agrees to give to the Vendor any further written assurances as to the non-merger of the Purchaser's covenants, on the Title Closing Date, if so required by the Vendor.

29. Each of the Purchaser and Vendor shall pay all costs of registration of their respective documents. The Purchaser shall not register or cause to be registered this Agreement on title to the Property, nor any notice thereof, nor any caution with respect thereto, until after the Title Closing Date and any registration thereof in contravention of this Paragraph shall constitute a fundamental breach of this Agreement.

30. Time shall be of the essence of this Agreement in all respects, and any waiver, extension, abridgment or other modification of any time provisions shall not be effective unless made in writing and signed by the parties hereto or by their respective solicitors who are hereby expressly authorized in that regard. 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.

31. The meanings of the words and phrases used in this Agreement and in any Schedule annexed hereto shall have the meanings ascribed to them in the Act, unless this Agreement or the context otherwise requires a different meaning. This

Agreement shall be read with all changes in gender and number required by the context.

32. All Schedules attached hereto, if any, shall constitute and form part of this Agreement.

33. Any term, condition or provision of this Agreement which is, or shall be deemed to be void, prohibited or unenforceable shall be severable herefrom and be ineffective to the extent of such avoidance, prohibition or unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof and any such avoidance, prohibition or unenforceability shall not invalidate or render unenforceable any other term, condition or provision of this Agreement.

34. The Condominium and all equipment contained therein shall remain at the risk of the Vendor until the Title Closing Date. In the event of damage to the Condominium or to the Property to a degree and by causes as determined by the Vendor in its sole discretion, the Vendor may at its option either repair the damage and finish the building and complete the sale, or may cancel this Agreement and return to the Purchaser all deposit monies theretofore paid, without interest or deduction, and the Vendor shall not be liable for any costs, or damages incurred by the Purchaser thereby.

35. This Agreement as well as any other document to be signed on account of or which is related to or arising out of this Agreement or executed on account of or pursuant to this Agreement (any of which other document is referred to herein as a "**Related Document**"):

- may be executed (including by electronic means) in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one (1) and the same Agreement and/or Related Document, as the case may be; and,
- may be transmitted and delivered by electronic transmission;

and any such delivery of this Agreement and/or Related Document so executed shall be deemed to be the equivalent of the delivery of an executed original of this Agreement and/or Related Document as the case may be.

The parties consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c 17, as amended from time to time with respect to the execution of this Agreement and/or any Related Document, subject only to any requirements of any governmental authority or other third party provider with respect to original documents, which are Related Documents. In the event any Related Document must be an original document, the Vendor will advise the Purchaser and their solicitor in advance.

36. This Agreement, when accepted, shall constitute a binding Agreement of Purchase and Sale. It is agreed and understood that there is no representation, warranty, collateral term or condition affecting this Agreement or the Property, or for which the Vendor or Declarant of the Condominium can be held responsible in any way, whether they be contained in any sales material, brochure, or alleged against any sales representative or agent, other than as expressed herein in writing.

37. **ELECTRONIC REGISTRATION** - The closing of the transaction will be completed by electronic registration pursuant to Part III of the *Land Registration Reform Act*, R.S.O. 1990, c. L.4 and the *Electronic Registration Act*, 1991, S.O. 1991, c. 44, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "**Requisite Deliveries**") and the release thereof to the Vendor and Purchaser will (a) not occur at the same time as the registration of the Transfer/Deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) of the Vendor and the Purchaser receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Vendor and Purchaser irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers. The following terms and conditions shall form part of this Agreement:

- (a) The Purchaser shall retain a solicitor in good standing with the Law Society of Ontario to represent the Purchaser with respect to this Agreement;
- (b) The Purchaser shall direct his/her solicitor to execute an agreement as reasonably required by the Vendor's Solicitor (the "**Solicitor Agreement**") establishing the procedure for completion of this Agreement;
- (c) The Purchaser and Vendor acknowledge that the delivery of documents and/or money may not occur contemporaneously with the registration of the Transfer/Deed of Land and may be delivered in escrow pursuant to the Solicitor's Agreement;
- (d) If the Agreement cannot be completed in escrow pursuant to the Solicitor's Agreement, the Purchaser's solicitor shall attend at the offices of the Vendor's solicitor at such time as directed by the Vendor's solicitor or as mutually agreed upon to complete the Agreement; and
- (e) Tender shall have been validly made by the Vendor when the "Completeness Signatory" for the Transfer/Deed of Land has been electronically "signed" by the Vendor's solicitor and same shall be satisfactory evidence that the Vendor is ready, willing and able to complete the sale.

38. **CHANGES TO COMMON ELEMENTS CONTRACTED FOR PRIOR TO THE TITLE CLOSING DATE** - If the Purchaser has contracted for any items/extras necessitating any addition to or change to any portion of the common elements, the Purchaser shall, on the Title Closing Date or at such later date as required by the Condominium Corporation, enter into an agreement pursuant to Section 98 of the Act in the form prescribed by the Vendor's solicitor or the Condominium Corporation, whereby, among other things, the Purchaser shall be solely responsible for the maintenance, repair and replacement and if required the removal of these items and the restoration of the common elements. The Purchaser shall pay on the Title Closing Date the cost of said agreement including the registration cost of same in the sum of \$250.00.

39. **CHANGES TO COMMON ELEMENTS** - If the Purchaser wishes to contract for any items/extras with a third party necessitating any addition to or change to any portion of the common elements, the Purchaser agrees and understands that he must first apply to the Condominium Corporation (such application to be made after the turn-over meeting held of the unit

owners once the Vendor ceases to be the registered owner of the majority of the units), and enter into an agreement pursuant to Section 98 of the Act in the form prescribed by the Condominium Corporation, whereby, among other things, the Purchaser shall be solely responsible for the maintenance, repair and replacement and if required the removal of these items and the restoration of the common elements. The Purchaser will be required to pay the cost of said agreement including the registration cost of same.

#### 40. ADDITIONAL FINANCIAL TERMS

(a) The Purchaser hereby agrees to submit, within fifteen (15) days following receipt of the acceptance of this Agreement, his/her social insurance number to the Vendor so that the Vendor may issue the requisite tax forms for interest earned by the Purchaser on his/her deposit(s).

(b) The Purchaser is hereby notified that a consumer's report containing credit and/or personal information may be referred to at any time in connection with this transaction and the Purchaser hereby consents to such report being obtained by the Vendor.

(c) In the event that the Purchaser fails to submit the information, evidence and/or documents for approval within the time periods as hereinbefore set forth, and as often as the Vendor or the Vendor's solicitors shall require, or if the information, evidence and/or documentation submitted pursuant to the provisions of this Agreement or any amendment thereto is, in whole or in part, false or misleading, or if the Purchaser fails to disclose any relevant facts pertaining to his financial circumstances or abilities, then the Purchaser shall be deemed to be in default under this Agreement, and the default provisions of this Agreement shall apply.

(d) The Purchaser hereby agrees to submit within ten (10) days of the Vendor's request such information and documentation as required by the Vendor or the Vendor's lender, as the case may be, from time to time, and at any time prior to Title Closing Date, for the purpose of determining and establishing the financial ability of the Purchaser to pay the balance of the Purchase Price due on the Title Closing Date, including, where required and applicable, satisfactory evidence that the Purchaser has been approved for a high ratio insured mortgage, failing which the Vendor shall have the right to terminate this Agreement as a result of default in accordance with paragraph 23 herein.

41. **SECTION 98 AGREEMENT** - If requested by the Vendor, the Declarant and/or the Condominium Corporation, the Purchaser agrees to promptly execute a unanimous agreement pursuant to Section 98 of the Act.

42. **ATTENDANCE PRIOR TO TITLE CLOSING DATE** - Vendor will not allow the Purchaser to do any work and/or supply any material to finish the unit before the Title Closing Date and the Purchaser shall not be entitled to enter onto the Property prior to the Title Closing Date without the express permission of the Vendor or unless otherwise provided for in this Agreement.

43. **EARLY TERMINATION CONDITIONS** - This Agreement includes Early Termination Conditions for the benefit of the Vendor, the details of which are set out in Schedule "T" (if applicable).

44. **PERSONAL INFORMATION** - For the purposes of facilitating compliance with the provisions of any applicable federal and/or provincial privacy legislation (including without limitation, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 as amended), the Purchaser hereby consents to the Vendor's collection and use of the Purchaser's personal information necessary and sufficient to enable the Vendor to proceed with the Purchaser's purchase of the Property, including without limitation, the Purchaser's name, home address, e-mail address, telephone number, telecopier number, age, date of birth, marital status, residency status and social insurance number, as well as the Purchaser's financial information and desired dwelling designs, in connection with the completion of this transaction and for post-closing and after-sales customer care purposes, and to the disclosure and/or distribution of any or all of such personal information to the following entities, on the express understanding and agreement that the Vendor shall not sell or otherwise provide or distribute such personal information to anyone other than the following entities, namely to:

- (a) any relevant governmental authorities, including without limitation, the Land Registry Office, the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and Canada Customs and Revenue Agency (i.e. with respect to H.S.T.);
- (b) Canada Customs and Revenue Agency, to whose attention the appropriate interest income tax information return and/or the 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(l)(b)(ii) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5<sup>th</sup> Supp) , as amended, or for the benefit of the Vendor or its related or parent company where the Purchaser has agreed to provide financial information to the Vendor to confirm the Purchaser's ability to complete the transaction contemplated by this Agreement;
- (c) the Vendor's Solicitors, to facilitate the closing of this transaction, including the closing by electronic means via the ELRS (electronic land registration system), and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (d) the Vendor's accountants and/or auditors who will prepare the Vendor's regular financial statements and audits;
- (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, required in connection with the development and/or construction financing of the Unit and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (f) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-

electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Unit, including without limitation, Rogers Communications Canada Inc., Enercare, and Provident Energy Management, unless the Purchaser advises the Vendor in writing not to provide such personal information to an entity providing such services;

- (g) any companies or legal entities that are associated with, related to or affiliated with the Vendor and are developing one or more other developments 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;
- (h) 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 email or other means) promotional literature/brochures about new developments or projects and/or related services to the Purchaser and/or members of the Purchaser's family;
- (i) any insurance companies providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof), including without limitation, 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;
- (j) 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 Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (k) the Condominium Corporation, for purposes of facilitating the completion of the 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 management/administration functions; and
- (l) any person, where the Purchaser further consents to such disclosure or disclosures required by law;

**45. VENDOR'S LIEN** - The Purchaser agrees that the Vendor shall have a Vendor's Lien on the Property on the Title Closing Date for unpaid purchase monies, adjustments, and/or claims herein provided, together with interest thereon, at the rate of 24% per annum, calculated and compounded daily, until paid in full, and the Vendor shall be entitled to register a Notice of Vendor's Lien against the Property any time after the Title Closing Date. Similarly, if the Purchaser was credited for the HST Rebate on the Title Closing Date but it is subsequently determined that the Purchaser does not qualify for the HST Rebate, the Vendor shall have a Vendor's Lien for the amount of the HST Rebate credited to the Purchaser, plus legal fees and disbursements incurred by the Vendor as a result of the Purchaser's improper claim for the HST Rebate, and the Vendor shall be entitled to register a Notice of Vendor's Lien against the Property. The Vendor will, upon request, deliver to the Purchaser for registration, at the Purchaser's expense, a release of the Vendor's Lien after such monies have been received by the Vendor.

**46. SUBORDINATION AND POSTPONEMENT WITH RESPECT TO CONSTRUCTION FINANCING** - The Purchaser acknowledges 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 to provide services and accesses to the condominium. The Purchaser hereby irrevocably nominates, constitutes and appoints the Vendor as his agent and attorney in fact and in law to execute any consent or other documents required by the Vendor to give effect to this paragraph.

**47. NON-CANADIAN PURCHASER** - The Purchaser represents and warrants to the Vendor that the Purchaser is not a non-Canadian under the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10, s. 235, as amended, while that Act is in effect. If, despite the foregoing, a non-Canadian Purchaser enters into this Agreement (and/or Interim Occupancy Agreement), the Vendor, in addition to any other remedies this Agreement provides, may at its option declare this Agreement (and/or the Interim Occupancy Agreement) to be terminated, and all deposit monies theretofore paid, together with all monies paid for any extras or changes to the Property, shall be retained by the Vendor as its liquidated damages and not as a penalty. In the event of the termination of this Agreement by reason of the Purchaser's status as a Non-Canadian as aforesaid, the Purchaser shall forthwith vacate the Property and shall execute such releases and any other documents or assurances as the Vendor may require with respect to releasing the Purchaser's interest in the Property, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead. In addition, the Purchaser shall indemnify the Vendor for any penalties to which it may be subject under the aforesaid Act, as a result of the Purchaser's status as a non-Canadian.

**48. ONE PURCHASER BINDS ALL PURCHASERS** - In the event that more than one party comprises the Purchaser herein, the obligations of such parties under this Agreement shall be joint and several, and in the event that any one of the parties comprising the Purchaser executes any agreement, amendments, extension agreement, notice, colour or materials or upgrades selections charts or order forms or any other agreement, notice, acknowledgment or matter in respect of this Agreement or the Property, all of the parties comprising the Purchaser shall be bound by the document executed by the one party on behalf of the others and each such party hereby grants a Power of Attorney to the other or others for any such purpose. The Vendor may, but shall not be required, to obtain the signatures or execution of all parties comprising the Purchaser to any other documents as aforesaid.

**49. BINDING OFFER** - By signing this Agreement, the Purchaser is hereby making an irrevocable offer to Purchase the Property on the terms of this Agreement. If the Purchaser's offer is accepted by the Vendor, then a binding agreement of purchase and sale comes into existence immediately upon the Vendor's acceptance. The Purchaser acknowledges that he

or she has received all pages and Schedules to this Agreement.

50. The Vendor shall be permitted to assign its rights and obligations under this Agreement to any person or persons, corporation or corporations as may be designated by the Vendor, without the prior written consent of the Purchaser, and it will be released from any and all liabilities and obligations hereunder.

## SCHEDULE "O"

### TERMS OF INTERIM OCCUPANCY AGREEMENT – LIVINGWAY URBAN TOWNS

1. The transfer of title to the Property shall take place on the Title Closing Date, upon which date, unless otherwise expressly provided for hereunder, the term of this Interim Occupancy Agreement (hereinafter referred to as the "**Interim Occupancy Agreement**" or "**Licence**") shall be determined.
2. The Purchaser shall pay to the Vendor an Occupancy Fee calculated in accordance with Paragraph 6 of Schedule "X" of the Agreement of Purchase and Sale as an occupancy charge on the first day of each month in advance during occupancy. If the Occupancy Date is not the first (1<sup>st</sup>) day of the month, then the Occupancy Fee shall be prorated based upon the number of days in such month and shall be paid, in advance, on the Occupancy Date for the balance of the month. The Purchaser shall deliver to the Vendor on or before the Occupancy Date a series of six (6) post-dated cheques for payment of the monthly Occupancy Fee. The Occupancy Fee may be recalculated by the Vendor, from time to time, based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee following notice from the Vendor.
3. The Purchaser shall be allowed to remain in occupancy of the Property during the Interim Occupancy Period provided the terms of the within Licence and the Agreement of Purchase and Sale have been observed and performed by the Purchaser. In the event the Purchaser breaches the terms of occupancy, the Vendor in its sole discretion and without limitation of any other rights or remedies provided for in the Agreement of Purchase and Sale or in law may terminate the Agreement of Purchase and Sale and revoke this Licence of the Purchaser pursuant to Paragraph 23 of Schedule "X" of the Agreement of Purchase and Sale whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Purchaser acknowledges and agrees that the Purchaser is not a tenant and provisions of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, as amended or replace, shall not apply. If the Purchaser fails to give up vacant possession upon revocation of this Licence, and the Vendor is required to obtain a court order terminating the Purchaser's occupancy of the Property, the Purchaser shall reimburse the Vendor for all costs it may incur in so doing.
4. The Purchaser's occupancy of the Property shall be governed by the provisions of the Condominium Documents, including the provisions restricting occupation and use of the Property as a single family residence, and for no other purpose, in strict compliance with the provisions set forth in the proposed Declaration and rules of the Condominium Corporation.
5. The Purchaser shall pay the Occupancy Fee during the Interim Occupancy Period, and the Vendor shall return all unused postdated Occupancy Fee cheques to the Purchaser on or shortly after the Title Closing Date.
6. The Vendor covenants to proceed with all due diligence and dispatch to register the Condominium Documents. If the Vendor obtains an order as contemplated by section 12 of Schedule "X" to the Agreement of Purchase and Sale, which terminates the Agreement of Purchase and Sale, the Purchaser shall give up vacant possession and pay the Occupancy Fee to such date of termination, after which the Agreement of Purchase and Sale and Licence to occupy shall be terminated and all monies paid to the Vendor on account of the Purchase Price shall be returned to the Purchaser subject to any repair and redecorating expenses of the Vendor necessary to restore the Property to its original state on occupancy, reasonable wear and tear excepted. The Purchaser agrees to provide the Vendor with a release of the Agreement of Purchase and Sale in the Vendor's standard form.
7. The Vendor and the Purchaser covenant and agree notwithstanding the taking of possession that all terms under the Agreement of Purchase and Sale continue to be binding upon them and that the Vendor may enforce the provisions of this Licence separate and apart from the purchase and sale provisions of the Agreement of Purchase and Sale.
8. The Purchaser agrees to maintain the Property in a clean and sanitary condition and not make any alterations, improvements or additions to the Property without the prior written consent of the Vendor which shall not be unreasonably withheld. The Purchaser shall be responsible for any utility, cable T.V., internet, telephone or other charges and expenses billed directly to the occupant of the Property by the supplier of such services, unless same are included in projected monthly common expense contributions.
9. The Purchaser agrees to indemnify the Vendor for all losses, costs and expenses incurred as a result of the Purchaser's neglect, damage or use of the Property or Condominium or by reason of injury to any person or property in or about the units for the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Property or the Condominium as a result of the Purchaser's neglect, damage or use of the Property or the Condominium he will immediately reimburse the Vendor for the cost of doing the same. The determination of the need for such repairs or decoration shall be at the discretion of the Vendor, and such costs may, as the Vendor chooses, be added to the Purchase Price.
10. The provisions set forth in the Agreement of Purchase and Sale, unless otherwise expressly modified by the terms of this Licence, shall be deemed to form an integral part of this Licence. In the event the Vendor elects to terminate this Licence pursuant to Paragraph 34 of Schedule "X" of the Agreement following substantial damage to the Property and/or the Condominium, this Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Property and/or the Condominium can be repaired within a reasonable time following damage as determined by the Vendor (but not, in any event, to exceed One Hundred and Eighty (180) days) and the Property is, during such period of repairs, uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Property and/or the Condominium will all due dispatch and the Occupancy Fee shall abate during the period when the Property remains uninhabitable; otherwise, the Purchaser shall vacate the Property and deliver up vacant possession to the Vendor and all monies, to the extent provided for in the Agreement (excluding the Occupancy Fee paid to the Vendor) shall be returned to the Purchaser. It is understood and agreed that the proceeds of all insurance policies held by the Vendor are for the benefit of the Vendor alone.
11. The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium only and not on any

improvements or betterments made to the Property by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Occupancy Date, to insure improvements or betterments to the Property and to replace and/or repair same if they are moved, injured or destroyed. The Vendor is not liable for the Purchaser's loss occasioned by fire, theft or other casualty, unless caused by the Vendor's willful conduct.

12. In accordance with Section 80 of the Act, subject to strict compliance by the Purchaser with the requirements of occupancy and assignment set forth in the Agreement of Purchase and Sale, the Purchaser shall not have the right to assign, rent, sublet or in any other manner dispose of this Licence to occupy the Property during the Interim Occupancy Period without the prior written consent of the Vendor and, if applicable, the First Mortgagee, which may be arbitrarily withheld. In connection to any other requirements under the Agreement of Purchase and Sale, the Purchaser acknowledges and agrees that it shall be required to deliver the following:

- a) a fully executed Vendor's form of "Intent to Rent", which has been approved and completed to the Vendor's satisfaction;
- b) a fully executed Vendor's form of Acknowledgement of Rules and Regulations; and
- c) payment of the Vendor's administrative processing fee in the amount of \$5,000.00 plus H.S.T.

In the event the Unit is rented, sublet or assigned without the Vendor's consent and/or without the provision of the above noted documents and payment, the Purchaser acknowledges and agrees that the Vendor shall be entitled to immediately terminate the Agreement and this Interim Occupancy Agreement in accordance with Sections 13 and 23 of Schedule "X" of the Agreement of Purchase and Sale. For greater certainty, in the event the Unit is not vacant upon such termination, the Purchaser shall indemnify and hold the Vendor harmless for any and all costs associated with obtaining vacant possession.

13. The Purchaser specifically covenants and agrees that should the Purchaser wish to pay the full amount of the Purchase Price on the day commencing the Occupancy Date, then the Purchaser must have provided prior written notice to the Vendor during the conditional period of this Agreement that the Purchaser intended to do so; otherwise, the Purchaser shall remain responsible to pay the Occupancy Fee throughout the Interim Occupancy Period.

**SCHEDULE "D"**

**ACKNOWLEDGMENT OF AGREEMENT OF PURCHASE AND SALE AND CONDOMINIUM DOCUMENTATION**

**TO: DMV WINONA POINT LIMITED PARTNERSHIP**

**RE: Purchase of Suite # \_\_\_\_, Unit # \_\_\_\_ Level \_\_\_\_**

THE UNDERSIGNED, being (a) Proposed Purchaser(s) of the above-described dwelling unit, hereby acknowledge(s) having received from you on the date set out below the following documents with respect to the purchase of the said Unit.

- 1. The Agreement of Purchase and Sale witnessed and signed by all parties.
- 2. A copy of Ontario's Residential Condominium Buyers' Guide;
- 3. A copy of the Condominium Warranty Information Sheet;
- 4. A copy of the Information for Buyers of Pre-Construction Condominiums Forms;
- 5. The proposed Declaration;
- 6. Proposed By-Law Nos. 1, 2, 3, and 4 of the Condominium Corporation;
- 7. Proposed rules governing the use of the units and common elements;
- 8. Draft Management Agreement;
- 9. The current Disclosure Statement, including, among other things, the following:

- (a) the name and municipal address of the Vendor;
- (b) a general description of the Condominium, including the types and number of buildings, units and recreational and other amenities;
- (c) a brief narrative description of the significant features of the contracts and proposed contracts entered into by the Vendor on behalf of the Condominium Corporation; and
- (d) a Budget Statement prepared by the Vendor for the year immediately following the registration of the Declaration and Description, setting out, among other things, the common expenses, the proposed amount of each expense, particulars of the frequency and level of service to be provided, the projected monthly common expense contribution for each type of unit, a statement of the portion of the common expense to be paid into the reserve fund and a statement of the assumed inflation factor (if any).

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESS:

_____	)	_____
	)	Purchaser #1
	)	
	)	
_____	)	_____
	)	Purchaser #2
	)	
	)	
_____	)	_____
	)	Purchaser #3
	)	



## SCHEDULE “E”

### STANDARD FEATURES – LIVINGWAY URBAN TOWNS

#### Livingway Urban Towns

##### Standard features

##### Distinctive exteriors

- Outstanding architectural features incorporating clay brick, wood look siding with wrap-around soffit, stone sills and headers
- Exterior framing utilizes 2” x 6” wall studs sheathed in water-resistant rigid exterior sheathing
- Advanced floor and wall system exceeds Ontario Building Code’s STC rating standards, offering enhanced soundproofing for greater peace and privacy
- Maintenance free low “e” argon vinyl casement windows. All operating windows have screens
- Quality metal-insulated frosted panel full lite front entry doors and grip set with “Smart” deadbolt lock.
- Modern exterior wall sconce at entry, balcony terrace and roof terrace
- One waterproof electrical outlet at front entry, balcony terrace and roof terrace
- Hose bib: one on front elevation for lower unit and one on roof top for upper unit

##### Grand Interiors

- Nine (9’) foot high ceilings on 1<sup>st</sup> and 3<sup>rd</sup> floor; Eight (8’) foot high ceilings on 2<sup>nd</sup> and 4<sup>th</sup> floor. (excluding bulkheads and drop ceilings where required)
- Single panel shaker style interior door throughout the unit with satin nickel interior levers and hinges
- 2 ¾” flat style casing on all archways, doors and window frames as well as 4 ¼” step bevel baseboards throughout. Painted white
- Oak railings in natural finish, wall mounted 2 ½” x 1 5/16” handrail, 1 5/16” square pickets, as per plan.
- All oak stringers on staircases - natural finish (finished areas only)
- Carpet grades stair throughout.
- Smooth ceilings throughout

##### Energy-smart features

- R-22 to all exterior walls
- High-efficiency gas-fired tankless hot water heater, Energy Recovery Ventilator power vented to exterior. Gas forced-air high-efficiency furnace complete with hot surface ignition, power vented to exterior and Air Conditioning (on a rental basis)
- Composite pipe & ABS plumbing throughout

##### Smart Home Technology

- Smart front door lock with touchpad
- Enhanced home security with integrated doorbell camera with two way talk and motion detection
- Smart thermostat centrally located on main floor
- Convenient USB power plugs in Kitchen and Primary Bedroom

##### A Choice of Flooring

- Luxury Vinyl Plank flooring throughout main floor including entry, living room, kitchen and dinette as per plan
- 12”x12” or 13”x13” ceramic tile from builder’s selections in laundry, powder room, bathrooms, and mechanical room (as per plan)
- 35 oz. Broadloom (or equivalent) with 3/8” under pad on second floor in all non-ceramic or vinyl areas
- 5/8” tongue and groove sub-flooring throughout
- All subflooring, sanded, glued, screwed and nailed to minimize floor squeaks.

##### Gourmet Kitchens

- Kitchen cabinets in a wide choice of styles from builder’s standard samples
- Full depth fridge upper with 1 or 2 gables as per plan
- ¾” Quartz counters in kitchen and bathrooms from builder’s selections
- Single bowl stainless steel undermount sink with upgraded single lever faucet with pull down
- Stainless steel hood exhaust fan with vent to exterior
- Breakfast bar, as per plan.
- Handy electrical outlets at counter level for small appliances
- Modern appliances package with 24” built-in cooktop, 24” built-in wall oven, 24” stainless steel bottom mount fridge and 24” stainless steel dishwasher

##### Bathrooms and Laundry Room

- Step in shower to have 12”x12” or 13”x13” ceramic tile from builder’s selections on wall and standard level mosaic tile base and quartz jam, tiled ceiling with pot light and glass shower door as per plan
- 12”x12” or 13”x13” ceramic tile from builder’s selections in all bathtub enclosures up to ceiling in main bath and ensuite (as per plan)
- Choice of quality cabinetry from builder’s standard package with bottom line drawer included
- ¾” Quartz countertop with matching 4” backsplash on all vanities
- Quality slab mirrors in all bathrooms
- Single-lever faucets with pop-up drains throughout
- Pressure balance temperature control valves in all showers
- Upgraded square undermount sink
- Ground fault interrupter protection in all bathrooms and powder room (as per plan)
- Exhaust fan vented to the outside in all bathrooms
- Privacy door locks on all bathrooms
- Stackable 27” washer and dryer in white
- Laundry room floor tiled with pan and drain
- Water shutoffs under all sinks and plumbing fixtures

##### Security and Electrical systems

- 125 amp electrical service with circuit breaker panel (labelled) and all copper wiring in units
- Interior ceiling mounted light fixtures throughout including all bedrooms, living/dining rooms, kitchen and halls
- Upgraded vanity lighting in all bathrooms and powder room
- Electric door chime installed
- Interconnected smoke and carbon monoxide detectors, one on each floor, and in each bedroom for your family’s added protection
- Rough-in one (1) telephone outlet and two (2) Cat 6 (internet) wiring.
- Sprinkler coverage in accordance the NFPA 13R within the residential 4 storey block will be provided.

##### Your choice

purchasers shall have a choice of colours from the builder’s pre-selected packages (provided that they have not already been installed or ordered at the time the agreement is signed).

1. Kitchen cabinets and countertop
2. Luxury Vinyl Plank Flooring
3. Vanities and vanity tops
4. Ceramic tiles
5. Luxury carpet
6. Paint for decoration of interior walls
6. Optional features list to customize your home at our design studio.

##### Design Studio

You will feel the difference that DeSantis Homes offers when you visit our stylish design studio. Step inside and our in-house designers will open up a world of possibilities to help you personalize your home to suit your taste and lifestyle needs. Feel the difference of our custom-crafted quality features and finishes. With our design savvy and your flare – your DeSantis Homes dream home will become a reality.

##### Warranty

DeSantis Homes warranty is backed by the Tarion warranty program. Our outstanding service history has been acknowledged as an industry leader by Tarion. We guarantee the home is free from defects in workmanship and materials for one (1) year.

**Two-year warranty protection:** The home is free from defects in workmanship including caulking, windows and doors so that the building envelope prevents water penetration. Also covers defects in workmanship and materials in the electrical, plumbing and heating delivery and distribution systems.

**Seven-year warranty protection:** Covers major structural defects. From product and construction warranties to courteous service, you will experience satisfaction and enduring value through every step of the home buying process.

**Notes** the vendor reserves the right to substitute alternative materials and fixtures of equal or better quality. Specifications and conditions subject to change without notice

**SCHEDULE "C"**

**CONDITIONS – LIVINGWAY URBAN TOWNS**

**This Agreement of Purchase and Sale (the "Agreement") is conditional for a period of ten (10) calendar days from the date of acceptance of this Agreement by the Vendor (the "Conditional Period") on:**

- (i) The Purchaser arranging financing for the purchase herein; and**
- (ii) The Purchaser's solicitor approving the terms of this Agreement of Purchase and Sale and all Disclosure Documentation provided to the Purchaser with respect to the Condominium.**

If the conditions in subparagraphs (i) and (ii) above have not been satisfied, then the Purchaser must give written notice to the Vendor before the expiry of the Conditional Period that the condition(s) have not been met, in which case this Agreement shall be at an end, and all deposit monies shall be returned in full without interest or penalty. If the Purchaser does not notify the Vendor in writing before the end of the Conditional Period that this condition has not been met, then, whether or not such condition has in fact been satisfied, the Purchaser shall be deemed to have waived the condition and this Agreement shall be firm and binding.

**Upon this Agreement becoming firm and binding, within six (6) months the Purchaser shall produce to the Vendor a mortgage letter confirming that financing has been arranged.**

**SCHEDULE "P"**

**FLOOR PLAN – LIVINGWAY URBAN TOWNS**

**See attached.**

**SCHEDULE "S"**

**SITE PLAN – LIVINGWAY URBAN TOWNS**

**See attached.**

# SCHEDULE S

## BLOCKS 5,7,9



## SCHEDULE "W"

### WARNING CLAUSES – LIVINGWAY URBAN TOWNS

#### Purchasers are advised as follows:

- a) The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan approval and the development generally, certain requirements may be imposed upon the Vendor by various governmental authorities, such as warning clauses from the municipality, the Ministry of Transportation, Ministry of the Environment, Conservation and Parks, Ministry of Tourism, Culture and Gaming and Ministry of Sport, and the Ministry of Natural Resources, amongst others. 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 and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or Title Closing Date, as determined by the Vendor, 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 the Purchaser shall accept the same, without in any way affecting this transaction.
- b) 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 portion of the Unit nor any betterments or improvements made to the dwelling portion of the Unit nor any furnishings or personal belongings of the Purchaser or other residents of the Unit and accordingly the Purchaser should arrange for his own insurance coverage with respect to the same effective from and after the Occupancy Date at the Purchaser's cost and expense.
- c) 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, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines or airports. 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 Unit Transfer 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), if and when required to do so by the Vendor.
- d) Purchasers are advised that wind conditions on certain porch spaces, front yard patios, balconies, roof top terraces and terraces may impact on the use and enjoyment of said porch spaces, front yard patios, balconies, roof top terraces and terraces. Further, intermittent wind conditions may result in objects being blown around and/or off porch spaces, front yard patios, balconies, roof top terraces and terraces in order to avoid said furniture and fixtures from blowing off of porch spaces, front yard patios, balconies, roof top terraces and terraces, and to not store or leave loose items unattended. The Vendor assumes no responsibility or liability for items that may blow off of porch spaces, front yard patios, balconies, roof top terraces and terraces and either become damaged or cause damage. The Purchasers are advised that the Vendor makes no assertions related to wind velocities on exclusive use and common outdoor porch spaces, front yard patios, balconies, roof top terraces and terraces or outdoor amenity spaces. From time to time, wind velocities and other inclement weather conditions will affect the enjoyment of these outdoor spaces.
- e) Purchasers are advised that there will be signage directing all deliveries and garbage pickup to within the Lands. All mail or courier deliveries shall be received at a designated location. Certain deliveries, such as food deliveries, shall be directed to the nearest visitor parking space available within the vicinity of the residential unit. Purchasers are advised that all lease agreements must stipulate that tenants shall receive deliveries from a designated delivery area internal to the Lands.
- f) Purchasers are advised that the hydro poles and hydro lines existing adjacent to the West of the property, along Winona Road may be subject to modification, alteration or change of the design, appearance, location, height, voltage or amperage of such hydro poles and hydro lines, at the sole and unfettered discretion of Alectra Utilities. Purchasers acknowledge and agree that the Vendor is not responsible for, nor has jurisdiction or power in relation to the hydro poles and hydro lines. Specifically, Purchasers acknowledge and agree that the Vendor is not responsible for the design, appearance, location, height, voltage or amperage of any such hydro poles or hydro lines. Purchasers are advised that at this time, the current hydro poles and hydro lines will remain in place.
- g) Purchasers are advised that the use of the Splash Pad and Ice Rink is at the discretion of Purchasers and/or occupants of the Units. Purchasers are advised that the use of the Splash Pad and Ice Rink may lead to injury. Purchasers acknowledge that the decision to utilize the Splash Pad and/or Ice Rink is at their own risk. The Vendor shall not be liable for any injuries that may arise from a purchaser, resident, occupant or their guests' usage of the Splash Pad or Ice Rink.
- h) Purchasers are advised that the availability of the Splash Pad or Ice Rink for use shall be entirely weather dependent and may not be available in certain weather conditions or temperatures. Purchasers acknowledge that the Vendor shall not be responsible or liable for the availability of the Splash Pad or Ice Rink in such weather conditions or temperatures which deem the Splash Pad or Ice Rink unsuitable for use.
- i) Purchasers are advised that the Ice Rink is a natural ice rink and will not be equipped with cooling equipment and that its availability will be subject to environmental temperatures.
- j) Purchasers are advised that the Ice Rink is to be maintained by the Condominium Corporation and the Vendor shall not be liable for the maintenance and upkeep of the natural Ice Rink. The Ice Rink shall be maintained in the manner of a natural ice rink, including but not limited to manual sweeping and watering of the ice. Purchasers are advised that there is no present intention for the use of electric equipment to maintain such natural ice rink.
- k) Purchasers are advised that the Common Elements and Amenities shall be monitored by closed-circuit cameras ("CCTV") for security purposes. Such cameras shall not face the inside of any residential dwelling unit, however, purchasers are advised that there shall not be any expectation of privacy within the common areas.

- l) Residents of the Condominium are absolutely prohibited from altering the grading and/or drainage patterns established by the Vendor in respect of the Condominium, and subject to the provisions of the declaration, by-laws and rules of the Condominium in force from time to time, residents shall not place any fence, shrub, bush, hedge or other landscaping treatment on any portion of the common elements.
- m) 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 Unit after the Occupancy Date and the Title 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 Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- n) Purchasers/tenants are advised that despite the inclusion of noise control features in this development area and within the building units, sound levels due to increasing road traffic and downtown business during both day and night hours, may on occasion interfere with some activities of the dwelling occupants as the sound levels exceed the Ministry of the Environment's noise criteria. This dwelling has been equipped with a central air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the Ministry of the Environment's noise criteria.
- o) Purchasers/tenants are advised that this development is not serviceable for municipal waste collection as outlined in the City of Hamilton's Solid Waste Management By-law No. 20-221, and a private waste hauler must be arranged for the removal of all waste materials, which may result in additional fees/costs to the buyer.
- p) Purchasers are advised that recycling shall be provided at a centralized facility within the Lands. Purchasers are further advised that there is not a guarantee that a multi-stream waste system can be provided. The location for the bins and system is subject to change without notice, and is subject to final approval from the City of Hamilton.
- q) Purchasers are advised that the home/business mail delivery will be from a designated Centralized Mail Box. The developer/owners will be responsible for officially notifying the Purchaser of the exact Centralized Mail Box locations prior to the closing of any homes sales.
- r) **Type B: Buildings: 1G, 1H, 1I, 1J, 1M, 1N, 1O, 1P, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H:** MECP Type B: Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road and rail traffic may on occasions interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment.
- s) **Type C: Buildings: 1E, 1F, 1G, 1O:** MECP Type C: This dwelling unit has been designed with the provision for adding central air conditioning at the occupant's discretion. Installation of central air conditioning by the occupant in low and medium density developments will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Municipality and the Ministry of the Environment.
- t) **Type D: Buildings: 1A, 1B, 1C, 1H, 1I, 1J, 1M, 1N, 1P, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H:** MECP Type D: This dwelling unit has been supplied with a central air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Municipality and the Ministry of the Environment.
- u) Purchasers are advised that Canadian National Railway (CN) or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject thereof. There may be alterations to or expansions of the rail facilities on such right-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). CN 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.
- v) Purchasers/tenants are advised that the open space on the premises, which forms part of the common elements, may be a privately-owned publicly accessible space, owned and maintained by the Condominium Corporation, with an easement granted to the City of Hamilton. This space may be open to public access and is not limited to the Purchasers/Tenants for use.
- w) Purchasers/tenants are advised that the rooftop terrace has not been designed for the quiet enjoyment of the outdoor environment and does not meet the sound level limits of the City of Hamilton and the Ministry of Environment, Conservation and Parks. Sound levels due to road traffic may interfere with activities occurring at the rooftop terrace.
- x) Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the dwelling 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 sound level limits of the City of Hamilton and the Ministry of the Environment, Conservation and Parks.
- y) Warning: Metrolinx, carrying on business as GO Transit, and its assigns and successors in interest operate commuter transit service within 300 metres from the land which is the subject hereof. In addition to the current use of these lands, there may be alterations to or expansions of the rail and other facilities on such lands in the future including the possibility that GO Transit or any railway entering into an agreement with GO Transit or any railway assigns or successors as aforesaid may expand their 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 the individual dwellings. Metrolinx will not be responsible for any complaints or claims arising from the use of such facilities and/or operations on, over or under these lands.
- z) Purchasers are advised that Electrical Vehicle ("EV") charging is not provided within the parking units. Purchasers may choose to install an EV charger within their parking units, and such charger shall be considered chattel. Purchasers are however advised that the Vendor cannot guarantee the availability of power/hydro, infrastructure or otherwise within the Condominium for the installation or access to an EV charger.

aa) Purchasers are advised that this development is intended to be created in up to three (3) phases. Purchasers shall not oppose any planning, governmental or other approvals the Vendor may be seeking in the creation and building of the remaining phases, including due to minor variances, for any reason whatsoever.

bb) Purchasers are advised that the Condominium is being constructed as part of an overall development site, and the Condominium will be subject to on-going construction works for several years. The timetable for the completion of the Condominium is within the sole discretion of the Vendor, significant noise levels, vibrations, dust, debris and matters of a similar nature may exist during construction and completion of the Condominium. The Purchaser agrees to take occupancy of the Unit notwithstanding such conditions.

cc) Purchasers are advised that by entering into this Agreement of Purchase and Sale, the Purchaser acknowledges and agrees that (i) the heat pump, water heater, furnace, ERV, to be installed in the dwelling will be a rental unit, rented by the Purchaser from Enercare Home and Commercial Services Limited Partnership ("**Enercare**") pursuant to a rental contract with Enercare, and (ii) by entering into this Agreement of Purchase and Sale, the Purchaser does hereby enter into a rental agreement with Enercare on the terms and conditions described in the information contained in Schedule "H" to this Agreement of Purchase and Sale. The Purchaser further acknowledges and agrees that the Purchaser's personal information, including this Agreement of Purchase and Sale, may be disclosed to Enercare and consents to such disclosure and Enercare's collection and use of such personal information.

dd) Purchasers are advised that while the current budget contemplates and includes costs for waste removal, costs for waste removal may increase over time. Purchasers acknowledge and agree that the cost of waste removal shall be the responsibility of the unit owners and any increases to the budget as a result in the increased cost for waste removal shall not be considered a material change, nor shall it entitle the Purchaser to an abatement of the Purchase Price.

ee) Purchasers are advised that the surface parking located on the common elements is to be shared between the commercial units and visitors of the residential units and is on a first come, first serve basis. The use of such surface parking must be shared between the commercial units and visitors of the residential units and may not, at any time, be limited to use solely for visitors' parking, or solely for commercial parking.

ff) Purchasers are advised that the location of the in ground waste system and garbage containers at the property are not yet finalized and are subject to change, at the sole discretion of the Vendor. The Purchaser covenants and agrees that on either the Occupancy Date or the Title Closing Date, as determined by the Vendor, the Purchaser shall accept the location of such in ground waste system and garbage containers, without in any way affecting this transaction. Any changes to the location of the in ground waste system or garbage containers shall not be considered a material change, nor shall it entitle the Purchaser to an abatement of the Purchase Price.



**SCHEDULE "B"**  
**BONUS PACKAGE**  
**(Premium Incentives)**

**See attached.**



**LIVINGWAY**

URBAN TOWNS. HAMILTON

# Premium Incentives

- Quartz countertops in kitchen and bath\*
- 7 Piece Appliance package Modern Stainless Kitchen Appliances: 24" built in Cook Top & Range, 24" Fridge, 24" dishwasher, slim line hoodfan. Stackable Compact Laundry Pair in White.
- Luxury Vinyl Plank Flooring throughout main floor (as per plan)
- 1 Underground Parking Space\*
- Deep Fridge Upper with Gable for Built in Look
- DeSantis Smart Suite - Door Bell Camera, Smart Thermostat, Smart Door Lock
- 9' Ceilings on Main Floor and 8' on bedroom level
- Smooth Ceilings Throughout
- Bathroom Vanity Cabinets with Bottom-line Drawer



**SCHEDULE "H"**

**RENTAL EQUIPMENT**

**ENERCARE RESIDENTIAL HVAC RENTAL CONTRACT**

Purchasers are advised that the cost of the below contract will be \$81.99 a month, for a period of 24 months. After this 24 month period, the cost of said contract will be \$131.99 a month.

**AGREEMENT ATTACHED**

Equipment	Quantity	Manufacturer	Model Number	Current Calendar Year Rental Rate (\$ (excl. taxes)
1.				
2.				
3.				
4.				
5.				
6.				

**1. General**

This Residential HVAC Rental Agreement (the "Agreement") is a legal agreement entered into between Enercare Home and Commercial Services Limited Partnership ("Enercare") and you, our rental customer ("you", "your" or "customer") in respect of the rental HVAC and related equipment described above together with all fittings, parts and connections supplied by Enercare and listed on a schedule attached hereto (the "Equipment") installed or to be installed in your premises (the "Premises"). In this Agreement "we", "our" and "us" means Enercare and/or our authorized service providers.

**2. Term of Rental**

The term of this Agreement commences on the date you agreed to this Agreement (which is either the date of your agreement of purchase and sale or the closing date for the purchase of the Premises). This Agreement (as it relates to a particular piece of Core Equipment Type) will end upon the end of the Useful Life of the applicable Core Equipment Type (but it will continue, as amended as referenced above in the definition of Useful Life, in respect of the remaining Core Equipment Type(s) and related Equipment) unless terminated earlier by you through your buy-out option (see "Your Buy-out Option" below) or by us if you fail to meet any of your commitments (see "Termination of Agreement by Us" below). After this Agreement is terminated, we will not be required to supply, service or maintain, and you will not be required to rent, any replacement equipment. If you want to change the Equipment or rent additional equipment, a new agreement will be required to replace this Agreement and a new rental rate will be calculated. If not fully satisfied, all obligations owned by you prior to the termination of this Agreement shall survive termination until fully satisfied, as determined by us. The "Useful Life" ends when we determine in our reasonable discretion that it is no longer commercially reasonable to repair the Equipment, having regard to the age of the Equipment, the cost of repair or other relevant factors and notice of such determination is given to you. If there is more than one Core Equipment Type marked or listed above (being an air conditioner, furnace and/or boiler), then each such Core Equipment Type will have its own Useful Life. If we determine that less than all Core Equipment Types have reached the end of their Useful Lives, the rental rate(s) set out above will be reduced by us and the list of Equipment above and/or on any schedule attached to this Agreement will be modified by us, in each case, so as to reflect the fact that you will no longer be renting the applicable Core Equipment Type (and all necessary pipes and parts related to the applicable Core Equipment Type as determined by us) that has reached the end of its Useful Life.

**3. Enercare's Commitment**

In consideration of the rent paid by you, we agree:

- i. New Equipment: the Equipment delivered under this Agreement will not be used or reconditioned.
- ii. Installation: to install the Equipment. All normal installation costs will be included within the monthly rental rate, except the cost of any permits or inspections local laws may require and for any extraordinary installation costs incurred by us. We will make reasonable efforts to tell you in advance if there are any additional installation costs, but it may not always be possible for us to do so. You agree to pay all of these additional costs, and understand that we may terminate this Agreement if you do not pay them.
- iii. Service & Maintenance: to provide repair and maintenance on the Equipment during the Useful Life of the applicable Equipment with no service charges or part replacement charges except (i) in the circumstances described in paragraph 4, (ii) if you (or a third party not authorized by us) alter, modify, adjust, damage, service, repair, move or disconnect the Equipment or if repairs are necessary because of use for which the Equipment was not intended, (iii) where venting, piping, wiring, ducting and/or electrical services require cleaning, repair or replacement, or (iv) as described below. Our 24-hour per day, 7-days-per-week emergency phone number is 1-844-enercare.
- iv. Periodic Inspection: to, from time-to-time (which may be more or less frequently than annually), contact you to arrange a mutually agreeable time for us to attend at the Premises to inspect the state of maintenance and repair of the Equipment and to confirm compliance by you with your obligations in this Agreement.
- v. Ancillary Piping, Venting: that you will own any related piping, venting, wiring or ducting we install on the Premises, unless it is expressly itemized and included within the Equipment you are renting. We are not required to remove these items after this Agreement ends and have no responsibility for them if any of the Equipment is removed.

Our commitment specifically does not cover any costs of diagnosis, service, repair, parts replacement or adjustment to the extent that/in respect of, or otherwise cover:

- Repairs needed as a result of abuse, tampering, alterations or repairs by persons other than us;
- Repairs needed as a result of accidental or deliberate damage, loss, theft, freezing weather conditions, subsidence, structural repairs, fire, lightning, explosion, earthquake, tornado, flood, storm, acts of war or other insurable risks;
- The thermostat is not at the proper setting;
- The pilot light has been extinguished by someone other than us;
- The household or building electrical fuse or breaker required for the Equipment is blown;
- The Equipment has been turned off;
- Renovation related work;
- The costs of redecoration and restoration costs required as a result of any work performed in connection with this Agreement, including, but not limited to, wall coverings, drywall, plaster, wallpaper, paint, floor coverings, tile, cabinetry, counter tops, landscaping or repair of any structural or cosmetic defects. If it is necessary for us to dig on your property in connection with work performed in connection with this Agreement, we will fill any holes and leave the ground level or mounded, but we will not restore the original surface or construction, including upgrades or the cost of construction, carpentry, or other modifications made necessary by the Equipment;
- Loss or damage to property caused by the heating, cooling, appliance, electrical or plumbing or drains system breaking down (e.g., damage to furniture caused by water leaks);
- Repairs needed as a result of lack of reasonable maintenance (e.g., pipe bursts due to cold weather or inadequate heating within the home or equipment failure due to a lack of regular filter replacement);
- Service or repairs that are related to design or any modification to the Equipment, unless performed by us under this Agreement;
- Electronic, computerized or energy management systems or devices, such as "Smart House";
- Providing for or closing access to covered items;
- Service, maintenance, repair, or replacement necessitated by any loss or damage resulting from any cause other than normal usage. Loss or damage due to chemical or sedimentary build-up, misuse or abuse, unauthorized repair by others, failure to clean or maintain the Equipment, rust, corrosion, insect infestation, mould, mildew or bacterial manifestations, missing parts, structural change, fire, freezing, electrical failure or surge, water damage, lightning, mud, earthquake, tornado, soil movement, windstorms, hail, theft, negligence (other than by us), intentional acts (other than by us), riot, accidents (other than caused by us), pet or pest damage, acts of God, or failure due to excessive water pressure or any other perils are not considered loss or damage by normal use;
- Preventative maintenance other than to the extent noted above; and
- Consumable items, including but not limited to filters and fuses.

If, after installation, building or other code violations are discovered before or during the diagnosis or repair of Equipment, we will not be required to repair or service such Equipment until the necessary corrective work is completed at your own expense. If additional costs are incurred in order to comply with local, provincial, or federal law, we shall not be responsible for that additional expense and you shall pay for same. We are not responsible for service or repair of Equipment when permits cannot be obtained and we will not pay any costs relating to permits.

Our commitment does not cover any service involving hazardous or toxic materials, asbestos, lead or the disposal of refrigerants or contaminants.

If a thermostat that is included in the Equipment fails, we will provide a replacement thermostat with a make/model, of our choice, that enables like operation of your dependent heating, ventilation and/or air conditioning equipment. Zone thermostats/controls and energy management controls are not covered by our commitment.

We are not responsible for insufficient air distribution due to existing ductwork design or clogged duct work or for insufficient water flow due to existing piping or radiators or clogged piping or radiators. Costs of refrigerant recovery, vacuuming and refill are excluded from our commitment.

If the monthly rental rate includes a charge for duct cleaning performed by us, it is a one-time service and our commitment is limited to a 30-day limited satisfaction guarantee (from the date of performance by us of the duct cleaning), pursuant to which we will redo your duct cleaning.

**4. Customer's Commitment**

In consideration of receiving and using the Equipment, you agree that:

- You will pay your charges billed under this Agreement when due. You agree to pay HST and any other taxes payable in connection with this Agreement.
- You will promptly inform us of any change in i) your mailing address at least 30 days in advance of such change; and/or ii) if previously provided, bank account or credit card information you provided us promptly after such change is made.
- Your charges may be included on your utility bill, or we may choose to bill you separately or through our service provider. Acceptable methods of payment, which currently include pre-authorized payment, payment by cheque, by telephone or in person, or online banking, will be set out on the bill you receive. Should any payment be returned for non-sufficient funds ("NSF"), you agree to pay a NSF charge of \$25. A late payment charge will apply to all overdue amounts on your bill, including applicable federal and provincial taxes. The rate for late payment charges is 1.5% per month or 18% per year (for an effective rate of 19.56% per year). Your bill is due on the date indicated on the bill.
- *Late Payment Charges on your Enbridge Gas Distribution ("EGD") Bill* (applicable only if your charges are included on your EGD bill): A late payment charge will apply to all overdue amounts on your EGD bill, including applicable federal and provincial taxes. The late payment charge will be calculated and applied as approved by the Ontario Energy Board ("OEB"). The current OEB-approved late payment rate is 1.5% per month or 18% per year (for an effective rate of 19.56% per year). Your EGD bill is due when you receive it, which is considered to be three days after the bill date. If you do not pay your bill in full by the late payment effective date on the first page of your EGD bill, a late payment charge equal to the late payment rate multiplied by a total of all unpaid charges will be added to your EGD bill.
- The rate on the date of this Agreement for your monthly rental charge is the amount set out above. You will be responsible for paying rental charges from the date the Equipment is installed or, if you purchased the premises after the Equipment was installed, from the closing date of the purchase. You agree that we may increase our rental rates on January 1 of each calendar year by a percentage up to the percentage increase to CPI plus 2%. For the purposes of this Agreement, "CPI" means the All-items Consumer Price Index (not seasonally adjusted) for Ontario or the equivalent thereof, or any comparable successor index thereof, published by Statistics Canada in October in respect of the immediately preceding September to September period, or by any other equivalent or duly authorized department of the Government of Canada (for clarity, the Consumer Price Index in Canada is expressed in terms of 2002 = 100). We will notify you of any such rental rate increases in advance in bill inserts, by letter or by any method permitted by law. You agree to pay HST and any other taxes payable in connection with this Agreement.
- You will provide us with timely access to the Equipment whenever required by us to perform our obligations or exercise our rights under this Agreement.
- You will use the Equipment safely and responsibly, and in particular you will:
  - i. ensure that no combustible, hazardous or flammable materials are used or stored in the same room as, or near, the Equipment;
  - ii. ensure that the Equipment is not confined in a location where it is difficult to service or remove or where there is inadequate ventilation;
  - iii. ensure that the filters, vents and openings are kept clear and clean and are otherwise kept well maintained by you;
  - iv. provide us with access to the Equipment whenever reasonably required for purposes of inspection, maintenance, repair or removal and in connection therewith will authorize site personnel at your location to permit us access to the Premises; and
  - v. obtain our approval before you connect any add-on equipment, such as air handlers, humidifiers, storage tanks, air duct systems or hydronic baseboards to the Equipment. We are not responsible for the installation or maintenance of any add-on equipment, or for any damage caused by this add-on equipment or the Equipment if the damage occurred because of the add-on equipment.
- You will notify us promptly if the Equipment breaks down or is damaged.
- You will not permit anyone but us to service, repair, modify, move or disconnect the Equipment.
- You will be responsible for any damage to, or loss of, the Equipment, including if caused by you or third parties, unless caused by us or is otherwise part of Enercare's commitment described above. You will also be responsible for any damage to, or loss of, the Equipment if caused by fire, flood, accident or other insurable risks.
- You will maintain in good working order the ancillary piping, venting, wiring or ducting owned by you that relate to, but are not included within the Equipment.
- During the term of this Agreement, the Equipment remains our property, is not intended to become a fixture and you will not tamper with any plate(s), tag(s) or sticker(s) identifying the Equipment as rented Equipment owned by us.
- If you sell, lease or otherwise transfer the Premises, you will, in addition to your obligations in Section 9 (Transferring This Agreement), advise us in advance and advise the transferee that the Equipment is rented pursuant to this Agreement.
- At the end of the Useful Life of any Equipment, you are not obligated to rent and we are not obligated to supply replacement Equipment therefor, unless we mutually agree at the time pursuant to a new agreement.
- If the Equipment is gas-fired, you are required, as the user of the Equipment, under law to ensure that it is maintained in a safe operating condition [Ontario regulation 212/01 Section 15]. In the event that a service or repair is required please call 1-844-enercare.
- This Agreement is binding upon and will enure to your heirs, personal representatives, successors and permitted assigns.

**5. Ownership of Equipment**

- During the term of this Agreement, the Equipment remains the property of Enercare or its assignee and although it may be affixed to the Premises, is not intended to become a fixture.
- You agree to assist in protecting our ownership interest by signing and providing any further documents we may reasonably require and you acknowledge that we may register notices of security or ownership as we deem appropriate, including on title to the Premises.
- You agree to keep the Equipment free of all liens, security interests, mortgages and other claims.

**6. Personal Information About You**

We collect personal information about you in order to establish and manage our, and our authorized service provider's, business relationship with you. We won't knowingly share this information with third parties without your permission, other than to service providers, parties that provide us with credit information, parties to whom we transfer, assign, encumber or otherwise dispose of this Agreement or the Equipment or otherwise in accordance with our Privacy Policy, which is available at [enercare.ca/privacy-policy](http://enercare.ca/privacy-policy) or can be obtained from our Privacy Officer. In light of this, you hereby: (i) consent to the collection, use, disclosure and maintenance of personal information and to receiving commercial electronic messages and promotional offers (such as tips to help you run your home or place of business more efficiently and reliably, special money-saving offers available to our customers and news about products and services that may be of interest to you) in accordance with

the terms of our Privacy Policy (you may opt out at any time by contacting our Privacy Officer using the information below); (ii) authorize us to use and disclose your personal information to: verify your identity when you request information about your account by telephone or email; bill, collect payment, manage your account and/or supply services to you under this Agreement; review information about your bill payments; provide to our authorized technicians and other companies that provide service under this Agreement; comply with law enforcement and/or a legal requirement; process past due accounts of yours which have been passed to a debt collection agency; and undertake a credit reference check and we agree that the results thereof, any other personal information provided by or about you shall be handled by us in accordance with applicable laws and the Privacy Policy; and (iii) if your Equipment is billed by your gas utility, you authorize your gas utility to provide us with any information about your Equipment, including charges and payment. We may record our telephone conversations with you and disclose the recordings to achieve the purposes set out in this section.

You may contact our Privacy Officer to discuss any questions or concerns related to the Privacy Policy, how your information is being handled, or to request that your personal information be revised or removed from our promotional list by telephone at: 416-649-1862, e-mail at: [privacy@enercare.ca](mailto:privacy@enercare.ca), or mail at: Tracy LI, Privacy Officer, Enercare Inc., 7400 Birchmount Road, Markham, ON, L3R 5V4.

#### 7. Your Buy-out Option

- **You may not terminate this Agreement except as provided below.**
- **You may purchase the Equipment at any time. You may not purchase less than all of the Equipment.** You may exercise your buy-out option by notifying us in writing or by calling 1-844-enercare. If you tell us you want to buy the Equipment, we will calculate and tell you the purchase price. The purchase price is based on, among other things, the unpaid cost of the Equipment and related installation, finance, service and maintenance costs.
- When you exercise your buy-out option, you accept the Equipment in "as-is" condition, subject to the balance of any transferable manufacturer's warranty, and you assume responsibility for the Equipment and its repair and maintenance. You also agree to pay the buy-out price, plus any applicable taxes, when invoiced by us.
- Once we receive payment of the buy-out price, this Agreement will terminate and you will have no further obligation to pay rent and we will have no further obligation to you.

#### 8. Removal and Disposal

- If any Equipment has reached the end of its Useful Life and we are not installing replacement equipment and you wish us to disconnect and/or dispose of the Equipment you should contact us by calling 1-844-enercare.
- We will charge you in accordance with our then current fee schedules for removals or disconnections.
- We are not responsible for replacing the Equipment or re-connecting any ancillary or other equipment, venting, piping, wiring or ducting, nor are we responsible for any of such ancillary items.

#### 9. Transferring This Agreement

If you sell or otherwise transfer the Premises, you are required to inform the transferee, at or before the effective date of the sale or transfer, of the existence of this Agreement and the rental Equipment installed in the Premises. We will permit the purchaser to assume your rights and obligations under this Agreement, effective from the date of sale, or other transfer, provided that (i) you or your representative notify the transferee in the sale or transfer agreement that the Equipment is rented and is subject to this Agreement, (ii) you or your representative advise us in advance of the transferee's name and the intended date of sale or other transfer, (iii) you or your representative advise us in advance of the address and telephone number where you can be contacted after the date of sale or transfer, (iv) the transferee agrees in writing or by conduct with us to assume your obligations, and (v) you have paid us all amounts owing under this Agreement. Unless and until these conditions are satisfied, or unless Enercare otherwise waives any or all of these conditions, which we are under no obligation to do, you will remain responsible for the Equipment rental and your obligations under this Agreement, including making all rental payments. You hereby authorize us to respond to information requests relating to your account made by or on behalf of the transferee. We may also accept performance of your obligations (including payment obligations) from other parties (such as tenants) but will not be required to do so.

#### 10. Termination of Agreement by Us

Each of the following will be events of default (a "Default") by you:

- If any bankruptcy, insolvency or receivership proceedings are commenced with respect to you; and/or
- If you breach any provision of, or fail to perform any of your obligations under, this Agreement, including but not limited to any failure to pay any amount when due.

At any time while there is a Default, we may, on 30 days written notice require that you immediately purchase the Equipment at the buy-out price and on the other terms set out in paragraph 7. If we choose not to exercise this option, or if you fail to pay the buy-out price, then we may also exercise one or more of the following rights without further advance notice:

- Terminate this Agreement;
- Enter the Premises and disconnect, remove and use or dispose of the Equipment for our own account; and/or
- Pursue any other remedies we may have at law.

If we choose to terminate this Agreement and/or remove the Equipment as a result of a Default, you agree to pay a removal charge in accordance with our then current fee schedules for removals or disconnections. You also acknowledge that we have no obligation to remove or re-sell the Equipment and you are not entitled to any proceeds of sale.

Upon termination of this Agreement and/or removal of the Equipment, all amounts owing hereunder are due and payable.

#### 11. Protecting Our Rights To The Equipment

To protect our rights to the Equipment, we may register a notice of security or ownership of the Equipment as we deem appropriate, including a notice on title to the Premises. You agree to sign and give us any documents or guarantees we need to preserve our rights to the Equipment and protect us against any claims to it.

#### 12. Warranties

We make no representations, warranties or conditions as to the performance of the Equipment except for those which are given by statute and which you cannot waive and except any express warranties provided by the manufacturer of the Equipment, except as provided below. Subject to you carrying out your obligations under this Agreement (including those under "Customer's Commitment") and subject to the limitations set out under "Limitations of Liability", we hereby warrant that the Equipment will work for the term of this Agreement. We are not the manufacturer of the Equipment and we are not making any warranty or guarantee in respect of it, the supplier or the manufacturer of the Equipment, including whether the Equipment is suitable for you, except as provided above. Any warranties or guarantees provided under applicable legislation are hereby excluded to the extent permitted by law.

#### 13. Limitation on liability

We will not be liable for any loss, damage or injury of any type (including as a result of water leakage or any electrical or natural gas related events) arising out of or related to this Agreement or caused or contributed to in any way by the supply, installation, use and/or operation of the Equipment. We shall not be responsible for any indirect, incidental, special or consequential damages, even if reasonably foreseeable. If we are unable to perform any of our obligations under this Agreement because of circumstances or events beyond our control, we shall be excused from the performance of such obligations for the duration of such circumstances or events and we shall not be liable to you for such failure to perform.

#### 14. Indemnification

You will indemnify us from all claims, losses and costs that we may suffer or pay or may be required to pay, including legal expenses, in connection with this Agreement, including its termination or enforcement, or the supply, use and/or operation of the Equipment including any claims against us for any injury or death to individuals or damage to property, including from your negligence or misuse of the Equipment. This obligation survives the termination of this Agreement for any reason.

#### 15. Insurance

During the term of the Agreement, you are responsible for any loss or damage to the Equipment from any cause, whether or not insured, until all of your obligations under the Agreement have been fulfilled.

#### 16. Assignment

We may transfer, assign, encumber or otherwise dispose of all or any part of our interest in this Agreement and/or the Equipment to another party at any time without notice to you and without your permission. To the extent permitted by law, you will not assert against any transferee any claims, defences, set-offs, deductions or counter-claims which you may now or in the future be entitled to assert against us. Except as otherwise provided in this Agreement, you may not transfer, assign or encumber all or part of your interest in this Agreement or the Equipment without our prior written consent (see Section 9 (Transferring This Agreement)).

#### 17. Invalidity of Provision

If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, such provision shall be severed and the remainder of this Agreement shall continue to remain in full force and effect subject to such modifications as may be necessary to carry out the provisions and intent of this Agreement.

#### 18. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and federal laws of Canada applicable therein.

#### 19. Entire Agreement and Amendments

You understand that this Agreement is the entire agreement between you and us and supercedes all prior agreements, understandings or discussions, whether oral or written, and there are no warranties, representations or other agreements except as specifically set out in this Agreement. This Agreement may be amended from time to time by us by notice in bill inserts, by letter or by any method permitted by law.

#### 20. How To Contact Us:

7400 Birchmount Road  
Markham, Ontario L3R 5V4  
Attention: Customer Operations  
1-844-enercare (1-844-363-7227)  
[Enercare.ca](http://Enercare.ca)

Water Heater Model:	Current Calendar Year Rental Rate:
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**1. Commitment.** “Our”, “us” “we” or “Enercare” means **Enercare Home and Commercial Services Limited Partnership**. Our commitment to you, our rental customer, (“you”, “your” or “customer”), is to provide you with a reliable, trouble- free water heater in accordance with this Residential Water Heater Agreement (the “**Agreement**”). The water heater (“**Water Heater**”) you rent from us, as set out above, is backed by Enercare to the extent provided in this Agreement.

**2. Term.** The term of this Agreement commences on the date you agreed to this Agreement (which is the same as the date of your agreement of purchase and sale for the home). The term of the Water Heater rental ends if this Agreement is terminated by you or us in accordance with its terms (which, for greater certainty, includes you exercising your buyout option in accordance with the terms of this Agreement) or when the useful life of the Water Heater has ended. The useful life of the Water Heater ends when Enercare or its authorized service provider determines, having regard to the relevant factors, including without limitation, the age of the Water Heater and the cost of any repairs to be made to the Water Heater, that it is no longer commercially reasonable to repair the Water Heater. For greater certainty, you do not have any right to subsequently request a different water heater than the one you rent from us under this Agreement.

**3. Our Obligation to You.** Our obligation to you is to service and repair the Water Heater with no service charges or parts replacement charges **except** in the following circumstances:

- a) if you (or a third party not authorized by us) alter, modify, adjust, damage, service, repair, move or disconnect, the Water Heater;
- b) if service or repairs to the Water Heater are necessary because the Water Heater was used for an unintended or unauthorized purpose, including non- residential purposes;
- c) unless you are paying our hard water rental rate, if the Water Heater requires de-liming, flushing or other repair due to water conditions or the quality of the environment in which the Water Heater is situated. For greater certainty, Enercare determines hard water conditions. In such situations, we cover only diagnostic work;
- d) where venting, piping, wiring, plumbing, ducting and/or electric services requires cleaning, repair, replacement or installation, including to meet applicable laws or installation requirements;
- e) where re-setting is required due to FVIR “lock-out” as described below under “Customer Advisory”;
- f) if you fail to maintain the Water Heater in accordance with the requirements set out below under “Customer Obligations - Safety”;
- g) for service charges or parts replacement related to the use of load control devices, peak savings, load timers and all other energy saving devices; or
- h) if you fail to notify us as described below under “Customer Obligations - Duty to Maintain”.

Should you require assistance, our 24-hour per day, 7 days per week emergency phone number is **1-844-enercare**. Should we update this phone number, the updated number can be found on the Enercare website at [www.enercare.ca](http://www.enercare.ca).

**4. Customer Obligations.** In return for fulfilling our obligations to you, you agree that:

- a) Rental Charges** – The rate on the date of this Agreement for your monthly rental charge is indicated above. You will be responsible for paying rental charges from the date the Water Heater is installed or, if you purchased the premises after the Water Heater was installed, from the closing date of the purchase. We may increase our rental rates on January 1 of each calendar year by a percentage up to the percentage increase to CPI plus 2%. For the purposes of this Agreement, “CPI” means the All-items Consumer Price Index (not seasonally adjusted) for Ontario or the equivalent thereof, or any comparable successor index thereof, published by Statistics Canada in October in respect of the immediately preceding September to September period, or by any other equivalent or duly authorized department of the Government of Canada (for clarity, the Consumer Price Index in Canada is expressed in terms of 2002 = 100). We will notify you of any such rental rate increases in advance in bill inserts, by letter or by any method permitted by law.
- b) Payment of Charges** – You will pay your charges billed under this Agreement when due. You agree to pay HST and any other taxes payable in connection with this Agreement. Your charges may be included on your utility bill, or we may choose to bill you separately or through our service provider. Acceptable methods of payment, which currently include pre-authorized payment, payment by cheque, by telephone or in person, or online banking, will be set out on the bill you receive. Should any payment be returned for non- sufficient funds (“NSF”), you agree to pay a NSF charge of \$25. A late payment charge will apply to all overdue amounts on your bill, including applicable federal and provincial taxes. The rate for late payment charges is 1.5% per month or 18% per year (for an effective rate of 19.56% per year). Your bill is due on the date indicated on the bill.
- Late Payment Charges on your Enbridge Gas Distribution (“EGD”) Bill** (applicable only if your charges are included on your EGD bill) – A late payment charge will apply to all overdue amounts on your EGD bill, including applicable federal and provincial taxes. The late payment

charge will be calculated and applied as approved by the Ontario Energy Board (“OEB”). The current OEB- approved late payment rate is 1.5% per month or 18% per year (for an effective rate of 19.56% per year). Your EGD bill is due when you receive it, which is considered to be three days after the bill date. If you do not pay your bill in full by the late payment effective date on the first page of your EGD bill, a late payment charge equal to the late payment rate multiplied by a total of all unpaid charges will be added to your EGD bill.

**c) Access** – You will provide us with timely access to the Water Heater whenever required by us to perform our obligations or exercise our rights under this Agreement.

- d) Safety** – You will use the Water Heater safely and responsibly. In particular, you will:
- i) maintain effective operation of any plumbing and pumping systems supplying water to the Water Heater;
  - ii) ensure that no combustible, hazardous or flammable materials are used or stored in the same room as, or near, the Water Heater;
  - iii) ensure that the Water Heater is not confined in a location where it is difficult to service or remove or where there is inadequate ventilation;
  - iv) provide us with access to the Water Heater whenever reasonably required for purposes of inspection, repair, maintenance or removal;
  - v) inspect the area around the Water Heater on a regular basis for any sign of water leakage;
  - vi) contact us for service if you see any sign of carbon or rust on the bottom or sides of the Water Heater or any signs of water leakage;
  - vii) ensure that the Water Heater is located in an area with sufficient drainage in the vicinity, and that the drainage is open, unrestricted and effective;
  - viii) if the Water Heater is gas-fired, ensure that the vents and openings for combustion air are kept clear and clean and otherwise well-maintained and there is adequate ventilation; and
  - ix) not permit anyone who has not been authorized by us to service, repair, modify, alter, adjust, move or disconnect the Water Heater.

**e) Duty to Maintain** – If the Water Heater is gas-fired, you are required, as the user of the Water Heater, under law to ensure that it is maintained in a safe operating condition [Ontario regulation 212/01 Section 15]. In the event that a service or repair is required please call **1-844-enercare**.

- f) Ownership, Credit and Security Interest.** You agree that:
- i) if more than one customer is named on the account, each of you is individually liable, and all of you are collectively liable, for all obligations imposed on you by this Agreement;
  - ii) during the term of this Agreement, the Water Heater remains our property, does not become a fixture, and you will not tamper with any tag(s) or sticker(s) identifying the Water Heater as rented equipment or that it is owned by us;
  - iii) we may inquire about your credit history and, if necessary, use the personal information you have provided to us to do so. For greater certainty, you authorize any credit reporting agency to give us credit or other personal information about you from time to time during the term of this Agreement. You can withdraw this authorization at any time. If you do or we are not satisfied with the results of any credit check, we may end this Agreement and the provisions of “Termination - Termination by Us” will apply;
  - iv) you will promptly inform us of any change in your: (i) mailing address at least 30 days in advance of such change; and/or (ii) if previously provided, bank account or credit card information promptly after such change is made;
  - v) this Agreement is binding upon and will enure to your heirs, personal representatives, successors and permitted assigns; and
  - vi) we may register, at your expense, our interest in the Water Heater against you and/or against title to the premises. To the extent permitted by law, you agree to waive any right to receive a copy of such registration and appoint us as your lawful attorney for the purpose of doing any such registrations. You agree that the Water Heater will remain personal property even though it may become affixed to the premises. You agree to keep the Water Heater free of all liens, security interests, mortgages and other claims.

**5. Sale of your Home** – If you sell or otherwise transfer the premises, you are required to inform the transferee, at or before the effective date of the sale or transfer, of the existence of this Agreement and the rental Water Heater installed in the premises. We will permit the transferee to assume your rights and obligations under this Agreement, effective from the date of sale or transfer; provided that:

- a) you or your representative notify the transferee in the sale or transfer agreement that the Water Heater is rented and is subject to this Agreement;
- b) you or your representative advise us in advance of the transferee’s name and the intended date of sale or transfer;
- c) you or your representative advise us in advance of the address and telephone number where you can be contacted after the date of sale or transfer;
- d) the transferee agrees in writing or by conduct to assume your

obligations under this Agreement; and

e) you have paid us all amounts owing under this Agreement.

Unless and until these conditions are satisfied, or unless Enercare otherwise waives any or all of these conditions, which we are under no obligation to do, you will remain responsible for the Water Heater rental and your obligations under this Agreement, including making all rental payments. You hereby authorize us to respond to information requests relating to your account made by or on behalf of the transferee.

**6. Customer Advisory.** The Water Heater may be equipped with flammable vapour ignition resistant (“FVIR”) technology. Enercare encourages you to read the Water Heater Use & Care Manual provided to you upon or after installation of the Water Heater. Certain activities such as, without limitation, painting or using solvents could cause the FVIR technology to “lockout” the Water Heater causing it to no longer function until reset by a qualified service technician. Resetting the Water Heater caused by FVIR “lockout” is not covered by Enercare under this Agreement and, if applicable, you will be charged for both parts and labour at our then current rates.

#### 7. Warranties and Liability.

**a) Warranties** – We make no representations, warranties or conditions as to the performance of the Water Heater except for those which are given by statute and which you cannot waive and except any express warranties provided by the manufacturer of the Water Heater, except as provided below. Subject to you carrying-out your obligations under this Agreement (including those under “Customer Obligations”) and subject to the limitations set out under “Liability”, we hereby warrant that the Water Heater will work and provide hot water, and will not leak or rupture, for the term of this Agreement, reasonable wear and tear excepted. We are not the manufacturer of the Water Heater and we are not making any warranty or guarantee in respect of it, the supplier or the manufacturer of the Water Heater, including whether the Water Heater is suitable for you, except as provided above. Any warranties or guarantees provided under applicable legislation are hereby excluded to the extent permitted by law.

**b) Liability** – Except as otherwise expressly provided in this Agreement, we will not be liable for any loss, damage or injury of any type (including as a result of water leakage or any electrical or natural gas related events) arising out of or related to this Agreement or caused or contributed to in any way by the supply, installation, use and/or operation of the Water Heater. We shall not be responsible for any indirect, incidental, special or consequential damages, even if reasonably foreseeable. If we are unable to perform any of our obligations under this Agreement because of circumstances or events beyond our control, we shall be excused from the performance of such obligations for the duration of such circumstances or events and we shall not be liable to you for such failure to perform.

**c) Indemnity** – You will indemnify us from all claims, losses and costs that we may suffer or pay or may be required to pay, including legal expenses, in connection with this Agreement, including its termination or enforcement, or the supply, use and/or operation of the Water Heater including any claims against us for any injury or death to individuals or damage to property, including from your negligence or misuse of the Water Heater. This obligation survives the termination of this Agreement for any reason.

**d) Insurance** – During the term of this Agreement, you are responsible for any loss or damage to the Water Heater from any cause, whether or not insured, until all of your obligations under this Agreement have been fulfilled.

**8. Personal Information About You.** We collect personal information about you in order to establish and manage our, and our authorized service provider's, business relationship with you. We won't knowingly share this information with third parties without your permission, other than to service providers, parties that provide us with credit information, parties to whom we transfer, assign, encumber or otherwise dispose of this Agreement or the Water Heater or otherwise in accordance with our Privacy Policy which is available at [enercare.ca/privacy-policy](http://enercare.ca/privacy-policy) or can be obtained from our Privacy Officer. In light of this, you hereby (i) consent to the collection, use, disclosure and maintenance of personal information and to receiving commercial electronic messages and promotional offers (such as tips to help you run your home or place of business more efficiently and reliably, special money-saving offers available to our customers and news about products and services that may be of interest to you) in accordance with the terms of our Privacy Policy, you may opt out at any time by contacting our Privacy Officer using the information below; (ii) authorize us to use and disclose your personal information to: verify your identity when you request information about your account by telephone or email; bill, collect payment, manage your account and/or supply services to you under this Agreement; review information about your bill payments; provide to our authorized technicians and other companies that provide service under this Agreement; comply with law enforcement and/or a legal requirement; process past due accounts of yours which have been passed to a debt collection agency; and undertake a credit reference check and we agree that the results thereof, any other personal information provided by or about you shall be handled by us in accordance with applicable laws and the Privacy Policy; and (iii) if your Water Heater is billed by your gas utility, you authorize your gas utility to provide us with any information about your Water Heater, including charges and payment information. We may record our telephone conversation with you and disclose the recordings to achieve the purposes set out in this section.

You may contact our Privacy Officer to discuss any questions or concerns related to the Privacy Policy, how your information is being handled, or

to request that your personal information be revised or removed from our promotional list by telephone at 416-649-1862, e-mail at [privacy@enercare.ca](mailto:privacy@enercare.ca), or mail at: Privacy Officer, Enercare Inc., 7400 Birchmount Rd., Markham, ON L3R 5V4.

#### 9. Termination

**Termination by Us** – If you fail to meet any of your obligations (including payment obligations) set out in this Agreement, you agree that we may terminate this Agreement and bill you for the applicable buyout price and on the other terms set out below under “Termination – Termination by You”. You agree to pay the buyout price when invoiced by us.

**Termination by You – Your sole method of terminating this Agreement prior to the end of the useful life of the Water Heater is to purchase the Water Heater.** You may purchase the Water Heater at any time for a buyout price that reflects, among other things, the unpaid cost of the Water Heater and related installation, finance and servicing costs, which buyout price can be found on our website. You can also confirm the buyout price by calling an Enercare Rental Specialist at **1-877-334-1846**. You may exercise your buyout option by notifying us in writing or by calling an Enercare Rental Specialist at **1-877-334-1846**.

When you exercise your buyout option, you accept the Water Heater in an “as-is” condition, subject to the balance of any transferable manufacturer's warranty, and you assume full responsibility for the Water Heater and its repair and maintenance. You also agree to pay the buyout price when invoiced by us.

Once payment has been received for the buyout price, and no other amounts are outstanding pursuant to this Agreement, this Agreement will end for the Water Heater and, as set out more particularly below in the section called “End of this Agreement”, you will have no further obligation to pay rent and we will have no further obligation to you.

**10. End of this Agreement.** At the end of this Agreement (for whatever reason):

**a) Rent** – you are not obligated to rent and we are not obligated to supply replacement equipment (including a water heater), unless we mutually agree at the time and enter into a new water heater rental agreement.

**b) Replacement** – Enercare is not responsible for replacing the Water Heater or re-connecting any ancillary or other equipment including without limitation venting, piping, plumbing, wiring, ducting, and/or electrical services.

**c) Removal and Disposal** – if the Water Heater has reached the end of its useful life and we are not installing a replacement Water Heater, you shall at such time own the Water Heater, and if you wish for us to disconnect and/or dispose of the Water Heater, you must contact us by calling 1-877-334-1846 to make such arrangements. We will charge you in accordance with our then current fee schedules for removals or disposals.

**d) No Further Obligations** – you will have no further obligation to pay rent (other than rent owing prior to the end of this Agreement) and, subject to any statutorily mandated requirements, we will have no further obligations of any kind or manner to you.

**11. Assignments.** We may transfer, assign, encumber or otherwise dispose of all or any part of our interest in this Agreement and/or the Water Heater to another party at any time without notice to you and without your permission. To the extent permitted by law, you will not assert against any transferee any claims, defences, set-offs, deductions or counter-claims which you may now or in the future be entitled to assert against us. Except as otherwise provided in this Agreement, you may not transfer, assign or encumber all or part of your interest in this Agreement or the Water Heater without our prior written consent (see the section called “Sale of your Home”).

**12. Invalidity of Provision.** If any provision of this Agreement or the application thereof to any person or circumstance is held to be invalid or unenforceable, such provision shall be severed and the remainder of this Agreement shall continue to remain in full force and effect subject to such modifications as may be necessary to carry out the provisions and intent of this Agreement.

**13. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and federal laws of Canada applicable therein.

**14. Entire Agreement and Amendments.** You understand that this Agreement is the entire agreement between you and us and supercedes all prior agreements, understandings or discussions, whether oral or written, and there are no warranties, representations or other agreements except as specifically set out in this Agreement. This Agreement may be amended from time to time by us by notice in bill inserts, by letter or by any method permitted by law in which case you will have the option to not accept such amendment and retain this Agreement unchanged.

**15. How to Contact Us.** You may contact us as follows:

Enercare Home Services  
7400 Birchmount Road  
Markham, Ontario L3R 5V4  
Attention: “Rental Administration”  
**1-844-enercare (1-844-363-7227)**  
Visit us at [enercare.ca](http://enercare.ca)

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**SCHEDULE "T"**

**ADDENDUM**

**See attached.**



**Condominium Form  
(Tentative Occupancy Date)**

Property: Livingway Urban Towns

**Statement of Critical Dates  
Delayed Occupancy Warranty**

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**

**NOTE TO HOME BUYERS:** Home buyers are encouraged to refer to the Home Construction Regulatory Authority’s website [www.hcraontario.ca](http://www.hcraontario.ca) to confirm a vendor’s licence status prior to purchase as well as to review advice about buying a new home. Please visit Tarion’s website: [www.tarion.com](http://www.tarion.com) for important information about all of Tarion’s warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. The Warranty Information Sheet, which accompanies your purchase agreement and has important information, is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

**VENDOR** DMV Winona Point Limited Partnership  
Full Name(s)

**PURCHASER** \_\_\_\_\_  
Full Name(s)

**1. Critical Dates**

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the \_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date. the \_\_\_ day of \_\_\_\_\_, 20\_\_.  
Final Tentative Occupancy Date

or

the \_\_\_ day of \_\_\_\_\_, 20\_\_.  
Firm Occupancy Date

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

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

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the \_\_\_ day of \_\_\_\_\_, 20\_\_.

**2. Notice Period for an Occupancy Delay**

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

Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the \_\_\_ day of \_\_\_\_\_, 20\_\_.  
(i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

**3. Purchaser’s Termination Period**

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the **“Purchaser’s Termination Period”**), which period, unless extended by mutual agreement, will end on: the \_\_\_ day of \_\_\_\_\_, 20\_\_.

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

**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 \_\_\_ day of \_\_\_\_\_, 20\_\_.

VENDOR: \_\_\_\_\_

PURCHASER: \_\_\_\_\_

**Condominium Form  
(Tentative Occupancy Date)**

**Addendum to Agreement of Purchase and Sale  
Delayed Occupancy Warranty**

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

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

**The Vendor shall complete all blanks set out below.**

<b>VENDOR</b>	DMV Winona Point Limited Partnership		
	_____		
	Full Name(s) 63447	145 Reynolds Street	
	_____	_____	
	HCRA Licence Number 905-849-1360	Address Oakville	Ontario
	_____	_____	L6J 0A7
	Phone	City	Province
	_____	_____	Postal Code
	289-235-7485	sales@desantishomes.com	
	_____	_____	
	Fax	Email*	
	_____	_____	

<b>PURCHASER</b>	_____		
	Full Name(s)		
	_____		
	Address	City	Province
	_____	_____	Postal Code
	_____	_____	_____
	Phone	_____	
	_____	_____	
	Fax	Email*	
	_____	_____	

**PROPERTY DESCRIPTION**

1290 South Service Road			
_____			
Municipal Address			
Hamilton		Ontario	
_____		_____	
City	Province	Postal Code	
PT LTS 69, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83 & 84 and all of Lots 78 & 79 and Part of Elizabeth Street and Part of Unnamed	_____		
Short Legal Description			
Street (Closed by Judge's Order WE847832; and By-law 12-189 Registered as WE851071) Plan 310, Part 1, 62R21675 except Part 1, 62R22119			
_____			

**INFORMATION REGARDING THE PROPERTY**

The Vendor confirms that:

- (a) The Vendor has obtained Formal Zoning Approval for the Building.  Yes    No  
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.
- (b) Commencement of Construction:  has occurred; or  is expected to occur by the 25 day of September, 2025.

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.**

# **Condominium Form (Tentative Occupancy Date)**

## **SETTING AND CHANGING CRITICAL DATES**

### **1. Setting Tentative Occupancy Dates and the Firm Occupancy Date**

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

### **2. Changing the Firm Occupancy Date – Three Ways**

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

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

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

### **4. Changing Critical Dates – By Mutual Agreement**

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

## **Condominium Form (Tentative Occupancy Date)**

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

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

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

### **5. Extending Dates – Due to Unavoidable Delay**

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

### **EARLY TERMINATION CONDITIONS**

#### **6. Early Termination Conditions**

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

**Condominium Form  
(Tentative Occupancy Date)**

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

**Condition #1 (if applicable)**

Description of the Early Termination Condition:

See Appendix 1, attached.

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

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:

See Appendix 1, attached.

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

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

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

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

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

# **Condominium Form (Tentative Occupancy Date)**

## **MAKING A COMPENSATION CLAIM**

### **7. Delayed Occupancy Compensation**

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

### **8. Adjustments to Purchase Price**

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

## **MISCELLANEOUS**

### **9. Ontario Building Code – Conditions of Occupancy**

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

## **Condominium Form (Tentative Occupancy Date)**

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

### **10. Termination of the Purchase Agreement**

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

### **11. Refund of Monies Paid on Termination**

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

### **12. Definitions**

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

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

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

“**Closing**” means completion of the sale of the home, including transfer of title to the home to the Purchaser.

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

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

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

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

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

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

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

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

“**Occupancy**” means the right to use or occupy the home in accordance with the Purchase Agreement.

“**Occupancy Date**” means the date the Purchaser is given Occupancy.

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

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

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

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

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

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

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

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

### **13. Addendum Prevails**

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

### **14. Time Periods, and How Notice Must Be Sent**

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



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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](http://www.tarion.com)**

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**SCHEDULE A**

**Types of Permitted Early Termination Conditions**

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

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

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

(b) upon:

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

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

**2. The following definitions apply in this Schedule:**

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

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

**3. Each condition must:**

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

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

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

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**SCHEDULE B**

**Adjustments to Purchase Price or Balance Due on Closing**

**PART I Stipulated Amounts/Adjustments**

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

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

See attached Appendix #2.

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

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

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

See attached Appendix #2.

**SCHEDULE "T"**

**APPENDIX #1 TO ADDENDUM - EARLY TERMINATION CONDITIONS  
(SEE PAGE 5 of 12 of the ADDENDUM)**

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

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

1. This Agreement is conditional until **December 31, 2026**, upon receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged.
2. This Agreement is conditional until **December 31, 2026**, upon receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a threshold of 70%.

**SCHEDULE "T"**

**APPENDIX 2 TO ADDENDUM - SCHEDULE "B" - ADJUSTMENTS TO PURCHASE PRICE 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.

<b>No.</b>	<b>DESCRIPTION</b>	<b>SECTION</b>	<b>AMOUNT</b>
1.	Fee for compliance with 81(6) of the Act	11(c)	\$150.00 plus HST
2.	Development Charges – 1 bedroom and/or 1 bedroom + den	11(g)	\$5,000.00 plus HST
3.	Development Charges – 2 bedrooms or more	11(g)	\$7,500.00 plus HST
4.	Parkland Charges	11(h)	\$5,000.00 plus HST
5.	Status Certificate fee	11(j)	\$100.00
6.	LSO Levy	11(i)	\$70.00 plus HST
7.	Installation for any Water, Gas and Hydro Meter	11 (k)	\$1,500.00 plus HST
8.	Fee for NSF Cheques	11(q) and 24	\$500.00 plus HST
9.	Boulevard Tree Planting	11(r)	\$510.00
10.	Education levy	11(u)	\$3,500.00 plus HST
11.	Administration fee for assignments	13	\$20,000.00 plus HST
12.	Vendor's solicitor's fees for assignments	13	\$750.00 plus HST
13.	Changes made to selections	20(g)	\$500.00 plus HST
14.	No-show or cancellation	20(i)	\$500.00 plus HST
15.	Vendor's Legal Fees for Notice of Payment Letter for NSF Cheques	24	\$500.00 plus HST
16.	Section 98 Agreement (if required due to additions to the Common Elements at the request of the Purchaser)	38	\$250.00
17.	Administration fee for leasing during Interim Occupancy	Schedule "O" 12(c)	\$5,000.00 plus HST

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

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

<b>No.</b>	<b>DESCRIPTION</b>	<b>SECTION</b>
1.	HST Rebate in addition to the Purchase Price in the event Purchaser is ineligible	3
2.	Extension of a closing date	5
3.	Adjustment for Tarion Enrolment Fee	11(a)
4.	Adjustment for HCRA Oversight Fee	11(b)
5.	Adjustment for Reserve Fund Contribution	11(d)
6.	Adjustment for Property Taxes	11(e)

<b>7.</b>	Readjustment of any Taxes	<b>11(f)</b>
<b>8.</b>	Adjustments for prepaid utilities, if any.	<b>11(k)</b>
<b>9.</b>	Installation for other utility meters not otherwise noted	<b>11(k)</b>
<b>10.</b>	Development Charges and/ or levies attributable to the Unit or the Property as a whole	<b>11(g)</b>
<b>11.</b>	Readjustment for any sales taxes	<b>11(l)</b>
<b>12.</b>	Interest on monies owing to Vendor	<b>11(m)</b>
<b>13.</b>	Enercare rental fee	<b>11(o)</b>
<b>14.</b>	Bulk Internet fee	<b>11(p)</b>
<b>15.</b>	Fee for Occupancy Certificate or Permit	<b>11(s)</b>
<b>16.</b>	Sub-metering Agreement fee	<b>11(t)</b>
<b>17.</b>	Changes to the common elements	<b>39</b>
<b>18.</b>	Vendor's Lien	<b>11(n) and 45</b>
<b>19.</b>	Fee to indemnify Vendor for any penalties as a result of Purchaser status as Non-Canadian	<b>47</b>
<b>20.</b>	Occupancy Fee	<b>Schedule "O", Section 2</b>