

# **APPENDIX “G”**

**AGREEMENT OF PURCHASE AND SALE**

The undersigned, \_\_\_\_\_ (collectively, the "Purchaser"), hereby agrees with 144 PARK LTD. (the "Vendor") to purchase the above-noted unit, as outlined for identification purposes only on the sketch attached hereto as Schedule "A", together with \_\_\_\_\_ Parking Unit(s) and \_\_\_\_\_ Locker Unit(s), all of which shall be allocated by the Vendor in its sole discretion being (a) proposed unit(s) in the Condominium, to be registered against those lands and premises situate on the north east corner of Allen Street and Park Street in the City of Waterloo, and which is proposed to be municipally known as 144 Park Street, Waterloo, Ontario (hereinafter called the "Property"), together with an undivided interest in the common elements appurtenant to such unit(s) and the exclusive use of those parts of the common elements attaching to such unit(s), as set out in the proposed Declaration (collectively, the "Unit") on the following terms and conditions:

1. The purchase price of the Unit (the "Purchase Price") is \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS in lawful money of Canada, payable as follows:
  - (a) to Harris, Sheaffer LLP, in Trust, (the "Vendor's Solicitors" or "Escrow Agent" or "Trustee") in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Occupancy Date:
    - (i) the sum of FIVE THOUSAND (\$5,000.00) Dollars submitted with this Agreement;
    - (ii) the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars submitted with this Agreement and post-dated fifteen (15) days following the date of execution of this Agreement by the Purchaser, and which sum together with the deposit payable under Section 1(a)(i) above represents 5% of the Purchase Price;
    - (iii) the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars submitted with this Agreement and post-dated forty-five (45) days following the date of execution of this Agreement by the Purchaser, being 5% of the Purchase Price;
    - (iv) the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars submitted with this Agreement and post-dated ninety (90) days following the date of execution of this Agreement by the Purchaser, being 5% of the Purchase Price;
    - (v) the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars submitted with this Agreement and post-dated one hundred and twenty (120) days following the date of execution of this Agreement by the Purchaser, being 5% of the Purchase Price;
  - (b) the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars by certified cheque or bank draft to the Vendor's Solicitors on the Occupancy Date, being 5% of the Purchase Price;
  - (c) the balance of the Purchase Price by certified cheque on the Title Transfer Date to the Vendor or as the Vendor may direct, subject to the adjustments hereinafter set forth.
  - (d) the Purchaser agrees to pay the sum as hereinbefore set out in paragraph 1 (a) as a deposit by cheque payable to the Escrow Agent with such last-mentioned party to hold such funds in trust as the escrow agent acting for and on behalf of TWC under the provisions of a Deposit Trust Agreement ("DTA") with respect to this proposed condominium on the express understanding and agreement that as soon as prescribed security for the said deposit money has been provided in accordance with Section 81 of the Act, the Escrow Agent shall be entitled to release and disburse said funds to the Vendor (or to whomsoever and in whatsoever manner the Vendor may direct).
2.
  - (a) The Purchaser shall occupy the Unit on the First Tentative Occupancy Date [as defined in the Statement of Critical Dates being part of the Tarion Addendum as hereinafter defined], or such extended or accelerated date that the Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "Occupancy Date");
  - (b) The transfer of title to the Unit shall be completed on the later of the Occupancy Date or a date established by the Vendor in accordance with Paragraph 14 hereof (the "Title Transfer Date");
  - (c) The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is the address set out in the Tarion Addendum;
  - (d) Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within fifteen (15) days from the date of the Purchaser's execution of this Agreement as set out below, then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser, whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor.

The following Schedules of this Agreement, if attached hereto, shall form a part of this Agreement. If there is a form of Acknowledgement attached hereto same shall form part of this Agreement and shall be executed by the Purchaser and delivered to the Vendor on the Closing Date. The Purchaser acknowledges that he has read all Sections and Schedules of this Agreement and the form of Acknowledgement, if any:

- Schedule "A" - Unit Plans/Sketch
- Schedule "B" - Features & Finishes
- Schedule "C" - Occupancy Licence
- Schedule "D" - Warning Provisions
- Schedule "E" - Receipt Confirmation
- Schedule being the Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale (collectively the "Tarion Addendum") and such other Schedules annexed hereto and specified as Schedule "\_\_\_\_\_".

DATED, signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNED, SEALED AND DELIVERED in the presence of \_\_\_\_\_ PURCHASER: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
 \_\_\_\_\_ PURCHASER: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
 WITNESS: \_\_\_\_\_ PURCHASER'S SOLICITOR: \_\_\_\_\_  
 (as to all Purchaser's signatures, if more than one purchaser) \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

The undersigned accepts the above offer and agrees to complete this transaction in accordance with the terms thereof.

DATED, signed, sealed and delivered, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Vendor's Solicitors:  
 HARRIS, SHEAFFER LLP  
 Suite 610 - 4100 Yonge Street  
 Toronto, Ontario, M2P 3B5  
 Attn: Mark L. KAROLY  
 Telephone: (416) 250-5800 Fax: (416) 250-5300

144 PARK LTD.  
 Per: \_\_\_\_\_  
 Authorized Signing Officer  
 I have the authority to bind the Corporation.

3. The meaning of words and phrases used in this Agreement and its Schedules shall have the meaning ascribed to them in the *Condominium Act, 1998*, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:
- (a) "Agreement" means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
  - (b) "Condominium" means the condominium which will be registered against the Property pursuant to the provisions of the Act;
  - (c) "Condominium Documents" means the Creating Documents, the by-laws and rules of the Condominium, the disclosure statement and budget statement together with all other documents and agreements which are entered into by the Vendor on behalf of the Condominium or by the Condominium directly prior to the turnover of the condominium, as may be amended from time to time;
  - (d) "CRA" means the Canada Revenue Agency or its successors;
  - (e) "Creating Documents" means the declaration and description which are intended to be registered against title to the Property and which will serve to create the Condominium, as may be amended from time to time;
  - (f) "Interim Occupancy" shall mean the period of time from the Occupancy Date to the Title Transfer Date;
  - (g) "Occupancy Licence" shall mean the terms and conditions by which the Purchaser shall occupy the Unit during Interim Occupancy as set forth in Schedule "C" hereof;
  - (h) "Occupancy Fee" shall mean the sum of money payable monthly in advance by the Purchaser to the Vendor and calculated in accordance with Schedule "C" hereof;
  - (i) "Property" shall mean the lands and premises upon which the Condominium is constructed or shall be constructed and legally described in the Condominium Documents; and
  - (j) "TWC" means Tarion Warranty Corporation or its successors.

#### Finishes

4. The Purchase Price shall include those items listed on Schedule "B" attached hereto. The Purchaser acknowledges that only the items set out in Schedule "B" are included in the Purchase Price and that model suite/vignette furnishings and appliances, decor, upgrades, artist's renderings, scale model(s), improvements, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless specified in Schedule "B". The Purchaser agrees to attend and notify the Vendor of his/her choice of finishes within fifteen (15) days of being requested to do so by the Vendor. In the event colours and/or finishes subsequently become unavailable, the Purchaser agrees to re-attend at such time or times as requested by the Vendor or its agents, to choose from substitute colours and/or finishes. If the Purchaser fails to choose colours or finishes within the time periods requested, the Vendor may irrevocably choose the colours and finishes for the Purchaser and the Purchaser agrees to accept the Vendor's selections.

#### Deposits

5. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Occupancy Date or Title Transfer Date at the Vendor's sole discretion on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Declarant's solicitor or the trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(6) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted in the Tarion Addendum. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser the Escrow Agent shall be entitled to withdraw such deposit monies from said designated trust account prior to the Title Transfer Date if and only when the Vendor obtains a Certificate of Deposit from TWC for deposit monies up to Twenty Thousand (\$20,000.00) Dollars and with respect to deposit monies in excess of Twenty Thousand (\$20,000.00) Dollars, one or more excess condominium deposit insurance policies (issued by any insurer as may be selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Escrow Agent holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of section 21 of O. Reg. 48/01.

#### Adjustments

6. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:

- (i) all utility costs including electricity, gas and water (unless included as part of the common expenses); and
  - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
- (i) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall either be remitted to the relevant taxing authority on account of the Unit or held by the Vendor pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted in accordance with subsections 80(8) and (9) of the Act; and
  - (ii) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with paragraph 5 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) If there are chattels involved in this transaction, the allocation of value of such chattels shall be estimated where necessary by the Vendor and retail sales tax may be collected and remitted by the Vendor or alternatively, the Purchaser shall pay as a credit to the Vendor on the Statement of Adjustments, the provincial sales tax paid by the Vendor on account of chattels in Schedule "B";
  - (ii) Any new taxes imposed on or payable in respect to the purchase of the Unit by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Unit by such government;
  - (iii) The amount of any parks levy levied, charged or otherwise imposed with respect to the Condominium, the Property or the Unit by any governmental authority, not to exceed One Thousand Five Hundred (\$1,500.00) Dollars plus G.S.T. per unit;
  - (iv) The cost of the TWC enrolment fee for the Unit (together with any provincial or federal taxes exigible with respect thereto);
  - (v) The cost of utility meters, water meter installations, hydro and gas meter or check meter installations, water and sewer service connection charges and hydro and gas installation and connection or energization charges for the Condominium and/or the Unit, the Purchaser's portion of such installation and/or connection or energization charges and costs to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs;
  - (vi) The cost of any carbon monoxide detector installed in the Unit (if applicable);
  - (vii) The charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument;
  - (viii) A sum of Fifty (\$50.00) Dollars for each cheque tendered pursuant to paragraph 1(a) and 1(b) of this Agreement and for any cheque tendered for upgrades or any other monies paid on account of the Purchase Price up to, but not including the Title Transfer Date representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of subsection 81(6) of the Act;
  - (ix) The Purchaser agrees to pay Three Hundred (\$300.00) Dollars towards the cost of obtaining (partial) discharges of mortgages not intended to be assumed by the Purchaser;
- (e) In the event that the Purchaser desires to increase the amount to be paid to the Vendor's solicitors on the Occupancy Date at any time after the expiry of the initial ten (10) day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested to take title to the Property, or wishes to add or change any unit(s) being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitor's the legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement any of the foregoing changes so requested by the Purchaser (with the Vendor's Solicitors' legal fees for implementing any such changes to any of the interim closing and/or final closing documents so requested by the Purchaser and agreed to by the Vendor being \$350.00 plus G.S.T.), but without there being any obligation whatsoever on the part of the Vendor to approve of, or to implement, any of the foregoing changes so requested.

- (f) It is further understood and agreed that the Unit may include a rental or leased furnace or hot water tank or HVAC equipment and associated components which would remain the property of the appropriate company or other supplier of such item, and in such event and where the cost of same does not comprise a common expense of the Condominium, the Purchaser shall pay the monthly rental/lease charges assessed with respect thereto from and after the Occupancy Date, and in any event shall execute all requisite rental or security documents in connection therewith.
- (g) The Purchaser acknowledges that it may be required to enter into an agreement with the supplier of hydro services to the Condominium (the "Hydro Supplier") on or before the Closing Date. Furthermore, the Purchaser acknowledges that such agreement may require the Purchaser to deliver a security deposit to the Hydro Supplier prior to the Occupancy Date and the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.
- (h) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and, if applicable, the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter referred to as the "HST"), and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the new housing rebate applicable pursuant to Section 254 of the *Excise Tax Act* (Canada), as may be amended, and the new housing rebate announced by the Ontario Ministry of Revenue (collectively, the "Rebate"), in its Information Notice dated June 2009 - No. 2 (the "Ontario Circular") and further warrants and represents that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on the Title Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Occupancy Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Unit as his primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit. The Purchaser further warrants and represents that he has not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate or the RST transitional housing rebate referred to in the Ontario Circular (the "Transitional Rebate") in connection with the Purchaser's acquisition of the Unit, save as otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate and the Transitional Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate and the Transitional Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate and the Transitional Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or Vendor's solicitors' request for same (and in any event on or before the Title Transfer Date), all requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate and the Transitional Rebate (by way of assignment or otherwise), including without limitation, the New Housing Application for Rebate of Goods and Services Tax Form as prescribed from time to time (the "Rebate Forms"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate and the Transitional Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate or the Transitional Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate or the Transitional Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his interest in the Unit with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:
- (i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's solicitors' request for same (and in any event on or before the Title Transfer Date) the Rebate Forms duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate and the Transitional Rebate; or
- (ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

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

- (i) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement,

and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the *Excise Tax Act*. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "Reduction"), then the Purchaser shall pay to the Vendor on the Title Transfer Date the amount of (as determined by the Vendor in its sole and absolute discretion) the Reduction.

- (j) An administration fee of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.

Title

7. The Vendor or its Solicitor shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "Notification Date"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "Examination Period") to examine title to the Unit at the Purchaser's 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 or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

Direction Re: Title

8. The Purchaser hereby agrees to submit to the Vendor or the Vendor's Solicitors on the earlier of the Occupancy Date and twenty (20) days prior to the Title Transfer Date, a written direction as to how the Purchaser intends to take title to the Unit, including, the date(s) of birth and marital status and the Purchaser shall be required to close the transaction in the manner so advised unless the Vendor otherwise consents in writing, which consent may be arbitrarily withheld. If the Purchaser does not submit such confirmation within the required time as aforesaid the Vendor shall be entitled to tender a Transfer/Deed on the Title Transfer Date engrossed in the name of the Purchaser as shown on the face of this Agreement.

Permitted Encumbrances

9. (a) The Purchaser agrees to accept title subject to the following:
- (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser as set out in Schedule "E";
  - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
  - (iii) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners, provided that any such easement and cost-sharing agreements or reciprocal agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;
  - (iv) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder; and
  - (v) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same

has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction;

- (b) It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the property a release of (or an amendment to) any of the aforementioned easements, Development Agreements, reciprocal agreements or restrictive covenants or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Property is situate (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.
- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer Date;
- (d) In the event that the Vendor is not the registered owner of the Property, the Purchaser agrees to accept a conveyance of title from the registered owner together with the owner's title covenants in lieu of the Vendor's.
- (e) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

#### Vendor's Lien

- 10. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies on the Title Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Unit any time after the Title Transfer Date.

#### Partial Discharges

- 11. The Purchaser acknowledges that the Unit may be encumbered by mortgages (and collateral security thereto) which are not intended to be assumed by the Purchaser and that the Vendor shall not be obliged to obtain and register (partial) discharges of such mortgages insofar as they affect the Unit on the Title Transfer Date. The Purchaser agrees to accept the Vendor's Solicitors' undertaking to obtain and register (partial) discharges of such mortgages in respect of the Unit, as soon as reasonably possible after the Title Transfer Date subject to the Vendor or its solicitors providing to the Purchaser or the Purchaser's Solicitor the following:
  - (a) a mortgage statement or letter from the mortgagee(s) (or from their respective solicitors) confirming the amount, if any, required to be paid to the mortgagee(s) to obtain (partial) discharges of the mortgages with respect to the Unit;
  - (b) a direction from the Vendor to the Purchaser to pay such amounts to the mortgagee(s) (or to whomever the mortgagees may direct) on the Title Transfer Date to obtain a (partial) discharge of the mortgage(s) with respect to the Unit; and
  - (c) an undertaking from the Vendor's Solicitors to deliver such amounts to the mortgagees and to obtain and register the (partial) discharge of the mortgages with respect to the Unit upon receipt thereof and within a reasonable time following the Title Transfer Date and to advise the Purchaser or the Purchaser's Solicitor concerning registration particulars by posting same on the internet.

#### Construction Lien Act

- 12. The Purchaser covenants and agrees that he/she is a "home buyer" within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.C.30 and will not claim any lien holdback on the Occupancy Date or Title Transfer Date. The Vendor shall complete the remainder of the Condominium according to its schedule of completion and neither the Occupancy Date nor the Title Transfer Date shall be delayed on that account.

#### The Planning Act

- 13. This Agreement and the transaction arising therefrom are conditional upon compliance with the provisions of section 50 of the *Planning Act*, R.S.O. 1990, c.P.13 and any amendments thereto on or before the Title Transfer Date.

Title Transfer Date

14. (a) The provisions of the Taron Addendum reflect the TWC's policies, regulations and/or guidelines on extensions of the First Tentative Occupancy Date, but it is expressly understood and agreed by the parties hereto that any failure to provide notice(s) of the extension(s) of the First Tentative Occupancy Date, Subsequent Tentative Occupancy Dates or Firm Occupancy Date, in accordance with the provisions of the Taron Addendum shall only give rise to a damage claim by the Purchaser against the Vendor up to a maximum of \$7,500.00, as more particularly set forth in the Regulations to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, as amended (the "ONHWPA"), and under no circumstances shall the Purchaser be entitled to terminate this transaction or otherwise rescind this Agreement as a result thereof, other than in accordance with the Taron Addendum.
- (b) The Vendor's Solicitors shall designate a date not less than twenty (20) days after written notice is given to the Purchaser or his or her solicitor of the registration of the Creating Documents as the Title Transfer Date. The Title Transfer Date once designated may be extended from time to time by the Vendor's Solicitors provided that it shall not be more than twenty-four (24) months following the Occupancy Date.

Purchaser's Covenants, Representations and Warranties

15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing and notwithstanding any other provision in this Agreement to the contrary, within ten (10) days of written demand from the Vendor, the Purchaser agrees to produce evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date. If the Purchaser fails to provide the mortgage approval as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.
16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be in default of his or her obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 26 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
17. The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Unit, nor directly or indirectly permit any third party to list or advertise the Unit for sale or lease, at any time until after the Title Transfer Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld. 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 Occupancy License, 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. The Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, and shall not be permitted to direct title to any other third parties.
18. The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Lands (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as well as a site plan approval/development application/draft plan of condominium approval with respect to the Lands, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without adversely affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.



19. The Purchaser covenants and agrees that he/she shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration/construction office(s) and model units, and the display of signs located on the Property.

**Termination without Default**

20. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee. The Vendor shall be entitled to require the Purchaser to execute a release of any surety, lender or any other third party requested by the Vendor in its discretion prior to the return of such monies. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor as a complete defence to any such claim.

**Tarion Warranty Corporation**

21. The Vendor represents and warrants to the Purchaser that the Vendor is a registered vendor/builder with the TWC. The Purchaser acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be limited to only those warranties deemed to be given by the Vendor under the ONHWPA and shall extend only for the time period and in respect of those items as stated in the ONHWPA, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement, or condition precedent to, concurrent with or in any way affecting this Agreement, the Condominium or the Unit, other than as expressed herein. The Purchaser hereby irrevocably appoints the Vendor his/her agent to complete and execute the TWC Certificate of Deposit and any excess condominium deposit insurance documentation in this regard, as required, both on its own behalf and on behalf of the Purchaser.

**Right of Entry**

22. Notwithstanding the Purchaser occupying the Unit on the Occupancy Date or the closing of this transaction and the delivery of title to the Unit to the Purchaser, as applicable, the Vendor or any person authorized by it shall be entitled at all reasonable times and upon reasonable prior notice to the Purchaser to enter the Unit and the common elements in order to make inspections or to do any work or replace therein or thereon which may be deemed necessary by the Vendor in connection with the Unit or the common elements and such right shall be in addition to any rights and easements created under the Act. A right of entry in favour of the Vendor for a period not exceeding five (5) years similar to the foregoing may be included in the Transfer/Deed provided on the Title Transfer Date and acknowledged by the Purchaser at the Vendor's sole discretion.

**Occupancy**

23. (a) The Unit shall be deemed to be substantially completed when the interior work has been finished to the minimum standards allowed by the Municipality so that the Unit may be lawfully occupied notwithstanding that there remains other work within the Unit and/or the common elements to be completed. The Purchaser shall not occupy the Unit until the Municipality has permitted same or consented thereto, if such consent is required and the Occupancy Date shall be postponed until such required consent is given. The Purchaser shall not require the Vendor to provide or produce an occupancy permit, certificate or authorization from the Municipality other than the documentation required by paragraph 8 of the Tarion Addendum. Provided that the Vendor complies with paragraph 8 of the Tarion Addendum, the Purchaser acknowledges that the failure to complete the common elements before the Occupancy Date shall not be deemed to be failure to complete the Unit, and the Purchaser agrees to complete this transaction notwithstanding any claim submitted to the Vendor and/or to the TWC in respect of apparent deficiencies or incomplete work provided, always, that such incomplete work does not prevent occupancy of the Unit as, otherwise, permitted by the Municipality.
- (b) If the Unit is substantially complete and fit for occupancy on the Occupancy Date, as provided for in subparagraph (a) above, but the Creating Documents have not been registered, (or in the event the Condominium is registered prior to the Occupancy Date and closing documentation has yet to be prepared), the Purchaser shall pay to the Vendor a further amount on account of the Purchase Price specified in paragraph 1(b) hereof without adjustment save for any pro-rated portion of the Occupancy Fee described and calculated in Schedule "C", and the Purchaser shall occupy the Unit on the Occupancy Date pursuant to the Occupancy Licence attached hereto as Schedule "C".

**Inspection**

24. (a) The Purchaser or the Purchaser's designate as hereinafter provided agrees to meet the Vendor's representative at the date and time designated by the Vendor, prior to the Occupancy Date, to conduct a pre-delivery inspection of the Unit (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit, on the TWC Certificate of Completion and Possession (the "CCP") and the PDI Form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the ONHWPA. The said CCP and PDI Forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work and the Purchaser shall not require any further undertaking of the Vendor to complete any outstanding items. In the event that the Vendor performs any additional work to the Unit in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder.
- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.

- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.
- (e) In the event the Purchaser and/or the Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

#### Purchaser's Default

25. (a) In the event that the Purchaser is in default with respect to any of his or her obligations contained in this Agreement (other than paragraph 2(d) hereof) or in the Occupancy License on or before the Title Transfer Date and fails to remedy such default forthwith, if such default is a monetary default and/or pertains to the execution and delivery of documentation required to be given to the Vendor on the Occupancy Date or the Title Transfer Date, or within five (5) days of the Purchaser being so notified in writing with respect to any other non-monetary default, then the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained herein (including without limitation, the right to make colour and finish selections with respect to the Unit as hereinbefore provided or contemplated), and/or unilaterally declare this Agreement and the Occupancy License to be terminated and of no further force or effect. All monies paid hereunder (including the deposit monies paid or agreed to be paid by the Purchaser pursuant to this Agreement which sums shall be accelerated on demand of the Vendor), together with any interest earned thereon and monies paid or payable for extras or upgrades or changes ordered by the Purchaser, whether or not installed in the Dwelling, shall be forfeited to the Vendor. The Purchaser agrees that the forfeiture of the aforesaid monies shall not be a penalty and it shall not be necessary for the Vendor to prove it suffered any damages in order for the Vendor to be able to retain the aforesaid monies. The Vendor shall in such event still be entitled to claim damages from the Purchaser in addition to any monies forfeited to the Vendor. The aforesaid retention of monies is in addition to (and without prejudice to) any other rights or remedies available to the Vendor at law or in equity. In the event of the termination of this Agreement and/or the Occupancy License by reason of the Purchaser's default as aforesaid, then the Purchaser shall be obliged to forthwith vacate the Unit (or cause same to be forthwith vacated) if same has been occupied (and shall leave the Unit in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser), and shall execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser does not have (and the Purchaser hereby covenants and agrees that he/she does not have) any legal, equitable or proprietary interest whatsoever in the Unit and/or the Property (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his or her lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead, and in accordance with the provisions of the *Powers of Attorney Act*, R.S.O. 1990, as amended, the Purchaser hereby declares that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity on the part of the Purchaser. In the event the Vendor's Solicitors or an Escrow Agent is/are holding any of the deposits in trust pursuant to this Agreement, then in the event of default as aforesaid, the Purchaser hereby releases the said solicitors or Escrow Agent from any obligation to hold the deposit monies, in trust, and shall not make any claim whatsoever against the said solicitors or Escrow Agent and the Purchaser hereby irrevocably directs and authorizes the said solicitors or Escrow Agent to deliver the said deposit monies and accrued interest, if any, to the Vendor.
- (b) Notwithstanding subparagraph (a) above, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which are due and payable by the Purchaser to the Vendor pursuant to this Agreement are not made and/or paid on the date due, but are subsequently accepted by the Vendor, notwithstanding the Purchaser's default, then such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to eight (8%) percent per annum above the bank rate as defined in subsection 19(2) of O. Reg. 48/01 to the Act at the date of default.

#### Common Elements

26. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his/her successors in title against the Vendor. The Vendor may, from time to time, change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any elevations, building specifications or site plans of any part of the Condominium, to conform with any municipal or architectural requirements related to building codes, official plan or official plan amendments, zoning by-laws, committee of adjustment and/or land division committee decisions, municipal site plan approval or architectural control. Such changes may be to the plans and specifications existing at inception of the Condominium or as they existed at the time the Purchaser entered into this Agreement, or as illustrated on any sales material, including without limitation, brochures, models or otherwise. With respect to any aspect of

construction, finishing or equipment, the Vendor shall have the right, without the Purchaser's consent, to substitute materials, for those described in this Agreement or in the plans or specifications, provided the substituted materials are in the judgment of the Vendor's architect, whose determination shall be final and binding, of equal or better quality. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications.

Executions

27. The Purchaser agrees to provide to the Vendor's Solicitors on the Occupancy Date a clear and up-to-date Execution Certificate confirming that no executions are filed at the local Land Titles Office against the individual(s) in whose name title to the Unit is being taken.

Risk

28. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy Licence attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:

- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted in paragraph 7 of the Taron Addendum;
- (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, with interest payable under law if the damage to the Condominium has frustrated this Agreement at law; or
- (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act,

it being understood and agreed that all insurance policies and the proceeds thereof are to be for the benefit of the Vendor alone.

Tender/Termet

29. (a) The parties waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement and subject to the provisions of paragraph 30 of this Agreement shall be validly made by the Vendor upon the Purchaser, by a representative of the Vendor attending at the offices of Harris, Sheaffer, LLP at 12:00 noon on the Title Transfer Date or the Occupancy Date as the case may be and remaining there until 5:00 p.m. and is ready, willing and able to complete the transaction. The Purchaser agrees that keys may be released to the Purchaser as the construction site or sales office on the Occupancy Date or the Title Transfer Date, as applicable. The Vendor's advice that the keys are available shall be valid tender of possession of the Property to the Purchaser. In the event the Purchaser or his or her solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative (which includes the Vendor's Solicitors) shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and
- (b) It is further provided that, notwithstanding subparagraph 29 (a) hereof, in the event the Purchaser or his or her solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Title Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his or her solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.
30. As the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or ("TERS") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:
- (a) The Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction. The Purchaser shall authorize such solicitor to, at the option of the Vendor's Solicitors, either execute an escrow closing agreement with the Vendor's Solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement") establishing the procedures and timing for completing this transaction or to otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement.
  - (b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:
    - (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation); and
    - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.
  - (c) If the Purchaser's solicitor is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said solicitor (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's solicitor, at such time on the Title Transfer Date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's solicitor's office, and shall pay a fee as determined by the Vendor's solicitor, acting reasonably for the use of the Vendor's computer facilities.

- (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document pursuant to the *Electronic Commerce Act*) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (f) Notwithstanding anything contained in this agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
- (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement and keys are made available for the Purchaser to pick up at the Vendor's sales of customer service office;
  - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
  - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's solicitor;
- without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

**General**

31. The Vendor shall provide a statutory declaration on the Title Transfer Date that it is not a non-resident of Canada within the meaning of the ITA.
32. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.
33. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
34. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.
35. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one unit from another. NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the TWC. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required, then the ceiling height of the Unit will be less than that represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.
36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
37. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
38. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.
39. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered

copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.

- (b) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for another person or corporation for a disclosed or undisclosed beneficiary or principal (including, without limitation, a corporation to be incorporated), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust as the case may be, shall be deemed and construed to constitute the personal indemnity of such person or persons so signing with respect to the obligations of the Purchaser herein and shall be fully liable to the Vendor for the Purchaser's obligations under this Agreement and may not plead such agency, trust relationship or any other relationships as a defence to such liability.

#### Notice

40. (a) Any notice required to be delivered under the provisions of the Tarion Addendum shall be delivered in the manner required by paragraph 14 of the Tarion Addendum.
- (b) Any other notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, facsimile transmission or electronic mail to the attention of the Purchaser or to the Purchaser's solicitor to their respective addresses indicated herein or to the address of the Unit after the Occupancy Date and to the Vendor at 8791 Woodbine Avenue, Suite 100, Markham, Ontario, L3R 0P4, or to the Vendor's Solicitors at the address indicated in this Agreement or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, by electronic mail or by facsimile transmission and upon the third day following posting, excluding Saturdays, Sundays and statutory holidays. This agreement or any amendment or addendum thereto may, at the Vendor's option, be properly delivered if it delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

#### Material Change

41. The Purchaser acknowledges and agrees that the Vendor may, from time to time in its sole discretion, due to site conditions or constraints, or for marketing considerations, or for any other legitimate reason, including without limitation any request or requirement of any of the governmental authorities or any request or requirement of the Vendor's architect or other design consultants:
- (a) change the Property's municipal address or numbering of the Unit (in terms of the unit number and/or level number ascribed to any one or more of the units comprising the Unit);
- (b) change, vary or modify the plans and specifications pertaining to the Unit or the Condominium, or any portion thereof (including architectural, structural, engineering, landscaping, grading, mechanical, site servicing and/or other plans and specifications) from the plans and specifications existing at the inception of the project, or existing at the time that 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, including without limitation, making any change to the total number of dwelling, parking, locker and/or other ancillary units intended to be created within the Condominium, and/or any change to the total number of levels or floors within the Condominium, as well as any changes or alterations to the design, style, size and/or configuration of any dwelling or other ancillary units within the Condominium;
- (c) change, vary, or modify the number, size and location of any windows, column(s) and/or bulkhead(s) within or adjacent to (or comprising part of) the Unit, from the number, size and/or location of same as displayed or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser, including the insertion or placement of any window(s), column(s) and/or bulkhead(s) in one or more locations within the Unit which have not been shown or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser (regardless of the extent or impact thereof), as well as the removal of any window(s), column(s) and/or bulkhead(s) from any location(s) previously shown or illustrated in any sales brochure(s), model(s) in the sales office or otherwise; and/or
- (d) change the layout of the Unit such that same is a mirror image of the layout shown to the Purchaser (or a mirror image of the layout illustrated in any sales brochure or other marketing material(s) delivered to the Purchaser);

and that the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its sales representatives (whether based or founded in contract, tort or in equity) for any such changes, deletions, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications is material in nature (as defined by the Act) and significantly affects the fundamental character, use or value of the Unit and/or the Condominium, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same), and where any such change, deletion, alteration or modification to the said plans and specifications is material in nature, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Title Transfer Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such material change), and the return of the Purchaser's deposit monies, together with interest accrued thereon at the rate prescribed by the Act.

#### Cause of Action/Assignment

42. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for

innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties. Furthermore, the Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.

- (b) At any time prior to the Title Transfer Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation registered as a vendor pursuant to the ONHWPAA and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor.

#### Non-Merger

43. The covenants and agreements of each of the parties hereto shall not merge on the Title Transfer Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

#### Notice/Warning Provisions

44. 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 of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or Title Transfer 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. Notwithstanding the generality of the foregoing, the Purchaser agrees to be bound by the warnings set forth in Schedule "D" hereto.

#### Purchaser's Consent to the Collection and Limited Use of Personal Information

45. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Unit, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital and residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired suite design(s), and colour/finish selections. In particular, but without limiting the foregoing, the Vendor may disclose such personal information to:
- (a) Any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency (i.e. with respect to GST);
  - (b) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the ITA, as amended;
  - (c) The Condominium for the purposes of facilitating the completion of the Condominium's voting, leasing and/or other relevant records and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;
  - (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
  - (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity surveyor monitoring the Project and its costs, the Vendor's designated construction lender(s), the Tarion Warranty Corporation and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
  - (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;

- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof ) and/or the Condominium (collectively, the "Utilities"), unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the Utilities;
- (i) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family, unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to said third party data processing companies;
- (j) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

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

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**SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE**

**SKETCH**



## SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

### FEATURES AND FINISHES – TOWER UNITS

#### The following are included in the Purchase Price:

- Engineered hardwood flooring in living, dining and den areas
- 40oz carpet with foam under pad in bedroom(s)
- Ceramic tile in kitchen, laundry, bathroom(s), and entrance areas
- Bi-fold doors for all closet/storage areas, painted white
- Digital Thermostat(s) for individual climate control of suite
- Smooth finished ceilings
- Contemporary trim package including nominal 4" painted base, lever passage and privacy sets
- Interior walls are primed and then painted with two coats of off-white, latex paint (bathroom(s), and all woodwork and trim painted with durable white semi-gloss paint). Paints have low levels of volatile organic compounds (VOCs).
- 6'8" foot interior doors with lever hardware, complete with contemporary casings
- 7 foot solid wood entry door with security peeper, lever set hardware and suite number on the escutcheon plate for floors 4-13. 8 foot solid wood entry door with security peeper, lever set hardware and suite number on the escutcheon plate for floors 14-19.
- Balcony and Terrace access via sliding patio door(s)
- Balcony to have one exterior electrical receptacle.
- Thermally broken aluminum window frames with double pane, sealed glazed units, with designated operable windows.
- Where ceiling bulkheads are installed, the ceiling height will be less than the nominal 9 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 9 feet.

#### **KITCHENS**

- Stainless steel brand name Energy Star ® refrigerator and dishwasher
- Stainless steel brand name electric range, combination microwave/hood vent,
- Kitchen cabinetry with one bank of drawers, pantry per suite design. Cabinets complete with contemporary handles.

- Granite kitchen countertop with polished square edge and stainless steel under mounted double sink.
- Single lever kitchen faucet, complete with pull out spray.
- 4" granite backsplash

#### **BATHROOMS**

- White bathroom fixtures throughout.
- Cultured marble vanity with integrated basin and single lever faucet for the bathroom(s)
- Vanity mirror in clear finish
- 5' acrylic soaker tub with single lever faucet.
- Ceramic tiles in tub area to ceiling height
- Temperature controlled shower faucet.
- Low-flow shower head(s).
- Ceramic tile flooring
- Low consumption toilet(s).

#### **LAUNDRY**

- Brand name stackable washer & dryer combination unit
- Heavy-duty wiring and receptacle for dryer.
- Dryer vented to exterior.

#### **SAFETY and SECURITY**

- Heat detector(s) connected to fire annunciation panel.
- Hard wired smoke alarm(s).

#### **ELECTRICAL SERVICE and FIXTURES**

- Individual electrical power service, separately metered
- Decora series receptacles and switches throughout.
- Light fixtures in foyer, hallway(s), kitchen, breakfast area, and den.
- Capped ceiling light outlet in dining room.

#### **COMMUNICATIONS**

- Pre-wired cable outlet in living room, bedroom(s), den and kitchen
- Pre-wired telephone outlet in living room, bedroom(s), den and kitchen.

- N.B. Subject to paragraph 4 of the Agreement of Purchase and Sale attached hereto, the Vendor shall have the right to substitute other products and materials for those listed in this Schedule or provided for in the plans and specifications provided that the substituted products and materials are of a quality equal to, or better than, the products and materials so listed or so provided.
1. Marble and wood are subject to natural variations in colour and grain. Ceramic tile and broadloom are subject to pattern, shade and colour variations.
  2. If the Unit is at a stage of construction which will enable the Vendor to permit the Purchaser to make colour and material choices from the Vendor's standard selections, then the Purchaser shall have until the Vendor's date designated by the Vendor (of which the Purchaser shall be given at least seven (7) days prior to notice) to properly complete the Vendor's colour and material selection form. If the Purchaser fails to do so within such time period, the Vendor may irrevocably exercise all of the Purchaser's rights to colour and material selections hereunder and such selections shall be binding upon the Purchaser. No changes whatsoever shall be permitted in colours or materials so selected by the Vendor, except that the Vendor shall have the right to substitute other materials and items for those provided in this Schedule provided that such materials and items are of equal quality to or better than the materials and items set out herein.
  3. The Purchaser acknowledges that there shall be no reduction in the price or credit for any standard feature listed herein which is omitted at the Purchaser's request.
  4. References to model types or model numbers refer to current manufacturer's models. If these types or models shall change, the Vendor shall provide an equivalent model.
  5. All dimensions, if any, are approximate.
  6. All specifications and materials are subject to change without notice.
  7. Pursuant to this Agreement or this Schedule or pursuant to a supplementary agreement or purchase order the Purchaser may have requested the Vendor to construct an additional feature within the Unit which is in the nature of an optional extra (such as, by way of example only, a fireplace); if, as a result of building, construction or site conditions within the Unit or the Building, the Vendor is not able to construct such extra, then the Vendor may, by written notice to the Purchaser, terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.
  8. Floor and specific features will depend on the Vendor's package as selected.

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

FEATURES AND FINISHES – TOWNHOUSE UNITS

The following are included in the Purchase Price:

- Engineered hardwood flooring in living, dining and den areas
- 40oz carpet with foam under pad in bedroom(s)
- Ceramic tile in kitchen, laundry, bathroom(s), and entrance areas
- Bi-fold doors for all closet/storage areas, painted white
- Digital Thermostat(s) for individual climate control of suite
- Smooth finished ceilings
- Contemporary trim package including nominal 4" painted base, lever passage and privacy sets
- Interior walls are primed and then painted with two coats of off-white, latex paint (bathroom(s), and all woodwork and trim painted with durable white semi-gloss paint). Paints have low levels of volatile organic compounds (VOCs).
- 6'8" foot interior doors with lever hardware, complete with contemporary casings
- 7 foot solid wood entry door with security peeper, lever set hardware and suite number on the escutcheon plate for town houses 1 – 9.
- Balcony and Terrace access via sliding patio door(s)
- Balcony to have one exterior electrical receptacle.
- Thermally broken aluminum window frames with double pane, sealed glazed units, with designated operable windows.
- Where ceiling bulkheads are installed, the ceiling height will be less than the nominal 9 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 9 feet.
- Individual elevator as per suite design.

**KITCHENS**

- Stainless steel brand name Energy Star ® refrigerator and dishwasher
- Stainless steel brand name electric range, combination microwave/hood vent,
- Kitchen cabinetry with one bank of drawers, pantry per suite design. Cabinets complete with contemporary handles.

- Granite kitchen countertop with polished square edge and stainless steel under mounted double sink.
- Single lever kitchen faucet, complete with pull out spray.
- 4" granite backsplash

**BATHROOMS**

- White bathroom fixtures throughout.
- Cultured marble vanity with integrated basin and single lever faucet for the bathroom(s)
- Vanity mirror in clear finish
- 5' acrylic soaker tub with single lever faucet.
- Ceramic tiles in tub area to ceiling height
- Temperature controlled shower faucet.
- Low-flow shower head(s).
- Ceramic tile flooring
- Low consumption toilet(s).

**LAUNDRY**

- Brand name stackable washer & dryer combination unit
- Heavy-duty wiring and receptacle for dryer.
- Dryer vented to exterior.

**SAFETY and SECURITY**

- Heat detector(s) connected to fire annunciation panel.
- Hard wired smoke alarm(s).

**ELECTRICAL SERVICE and FIXTURES**

- Individual electrical power service, separately metered
- Decora series receptacles and switches throughout.
- Light fixtures in foyer, hallway(s), kitchen, breakfast area, and den.
- Capped ceiling light outlet in dining room.

**COMMUNICATIONS**

- Pre-wired cable outlet in living room, bedroom(s), den and kitchen
- Pre-wired telephone outlet in living room, bedroom(s), den and kitchen.

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

1. Marble and wood are subject to natural variations in colour and grain. Ceramic tile and broadloom are subject to pattern, shade and colour variations.
2. If the Unit is at a stage of construction which will enable the Vendor to permit the Purchaser to make colour and material choices from the Vendor's standard selections, then the Purchaser shall have until the Vendor's date designated by the Vendor (of which the Purchaser shall be given at least seven (7) days prior to notice) to properly complete the Vendor's colour and material selection form. If the Purchaser fails to do so within such time period, the Vendor may irrevocably exercise all of the Purchaser's rights to colour and material selections hereunder and such selections shall be binding upon the Purchaser. No changes whatsoever shall be permitted in colours or materials so selected by the Vendor, except that the Vendor shall have the right to substitute other materials and items for those provided in this Schedule provided that such materials and items are of equal quality to or better than the materials and items set out herein.
3. The Purchaser acknowledges that there shall be no reduction in the price or credit for any standard feature listed herein which is omitted at the Purchaser's request.
4. References to model types or model numbers refer to current manufacturer's models. If these types or models shall change, the Vendor shall provide an equivalent model.
5. All dimensions, if any, are approximate.
6. All specifications and materials are subject to change without notice.
7. Pursuant to this Agreement or this Schedule or pursuant to a supplementary agreement or purchase order the Purchaser may have requested the Vendor to construct an additional feature within the Unit which is in the nature of an optional extra (such as, by way of example only, a fireplace); if, as a result of building, construction or site conditions within the Unit or the Building, the Vendor is not able to construct such extra, then the Vendor may, by written notice to the Purchaser, terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.
8. Floor and specific features will depend on the Vendor's package as selected.

## SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

### FEATURES AND FINISHES – TOWER PENTHOUSE UNITS

#### The following are included in the Purchase Price:

- Engineered hardwood flooring in living, dining and den areas
- 40oz carpet with foam under pad in bedroom(s)
- Ceramic tile in kitchen, laundry, bathroom(s), and entrance areas
- Bi-fold doors for all closet/storage areas, painted white
- Digital Thermostat(s) for individual climate control of suite
- Smooth finished ceilings
- Lever passage and privacy sets
- Interior walls are primed and then painted with two coats of off-white, latex paint (bathroom(s), and all woodwork and trim painted with durable white semi-gloss paint). Paints have low levels of volatile organic compounds (VOCs).
- 6'8" foot interior doors with lever hardware, complete with contemporary casings
- 8 foot solid wood entry door with security peeper, lever set hardware and suite number on the escutcheon plate.
- Nominal 8" baseboards in living, dining, den, bedroom(s) and bathroom(s) areas.
- Nominal 8" crown molding in living, dining, den and hallway areas
- Balcony and Terrace access via sliding patio door(s)
- Balcony to have one exterior electrical receptacle.
- Thermally broken aluminum window frames with, double pane, sealed glazed units, with designated operable windows.
- Where ceiling bulkheads are installed, the ceiling height will be less than the nominal 10 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 10 feet.

#### **KITCHENS**

- Stainless steel brand name Energy Star ® refrigerator and dishwasher
- Stainless steel brand name natural gas range, combination microwave/hood vent
- Kitchen cabinetry with one bank of drawers, pantry per suite design. Cabinets complete with contemporary handles.
- Granite kitchen countertop with polished square edge and stainless steel under mounted double sink.

- Single lever kitchen faucet, complete with pull out spray.
- 4" granite backsplash

#### **BATHROOMS**

- White bathroom fixtures throughout.
- Cultured marble vanity with integrated basin and single lever faucet for the bathroom(s)
- Vanity mirror in clear finish
- 5' acrylic soaker tub with single lever faucet.
- Ceramic tiles in tub area to ceiling height
- Temperature controlled shower faucet.
- Low-flow shower head(s).
- Ceramic tile flooring
- Low consumption toilet(s).

#### **LAUNDRY**

- Brand name stackable washer & dryer combination unit
- Heavy-duty wiring and receptacle for dryer.
- Dryer vented to exterior.

#### **SAFETY and SECURITY**

- Heat detector(s) connected to fire annunciation panel.
- Hard wired smoke alarm(s).

#### **ELECTRICAL SERVICE and FIXTURES**

- Individual electrical power service, separately metered
- Decora series receptacles and switches throughout.
- Light fixtures in foyer, hallway(s), kitchen, breakfast area, and den.
- Capped ceiling light outlet in dining room.

#### **COMMUNICATIONS**

- Pre-wired cable outlet in living room, bedroom(s), den and kitchen
- Pre-wired telephone outlet in living room, bedroom(s), den and kitchen.

#### **CUSTOM DESIGN**

- 10 hours of design time with interior designer,
- 2 hours of design time with architect.

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

1. Marble and wood are subject to natural variations in colour and grain. Ceramic tile and broadloom are subject to pattern, shade and colour variations.
2. If the Unit is at a stage of construction which will enable the Vendor to permit the Purchaser to make colour and material choices from the Vendor's standard selections, then the Purchaser shall have until the Vendor's date designated by the Vendor (of which the Purchaser shall be given at least seven (7) days prior to notice) to properly complete the Vendor's colour and material selection form. If the Purchaser fails to do so within such time period, the Vendor may irrevocably exercise all of the Purchaser's rights to colour and material selections hereunder and such selections shall be binding upon the Purchaser. No changes whatsoever shall be permitted in colours or materials so selected by the Vendor, except that the Vendor shall have the right to substitute other materials and items for those provided in this Schedule provided that such materials and items are of equal quality to or better than the materials and items set out herein.
3. The Purchaser acknowledges that there shall be no reduction in the price or credit for any standard feature listed herein which is omitted at the Purchaser's request.
4. References to model types or model numbers refer to current manufacturer's models. If these types or models shall change, the Vendor shall provide an equivalent model.
5. All dimensions, if any, are approximate.
6. All specifications and materials are subject to change without notice.
7. Pursuant to this Agreement or this Schedule or pursuant to a supplementary agreement or purchase order the Purchaser may have requested the Vendor to construct an additional feature within the Unit which is in the nature of an optional extra (such as, by way of example only, a fireplace); if, as a result of building, construction or site conditions within the Unit or the Building, the Vendor is not able to construct such extra, then the Vendor may, by written notice to the Purchaser, terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.
8. Floor and specific features will depend on the Vendor's package as selected

**SCHEDULE "C" TO AGREEMENT OF PURCHASE AND SALE**

**TERMS OF OCCUPANCY LICENCE**

- C.1 The transfer of title to the Unit shall take place on the Title Transfer Date upon which date, unless otherwise expressly provided for hereunder, the term of this Occupancy Licence shall be terminated.
- C.2 The Purchaser shall pay or have paid to the Vendor, on or before the Occupancy Date, by certified cheque drawn on a Canadian chartered bank the amount set forth in paragraph 1(b) of this Agreement without adjustment. Upon payment of such amount on the Occupancy Date, the Vendor grants to the Purchaser a licence to occupy the Unit from the Occupancy Date.

The Purchaser shall pay to the Vendor the Occupancy Fee calculated as follows:

- (a) the amount of interest payable in respect of the unpaid balance of the Purchase Price at the prescribed rate;
- (b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable by the Vendor to the Unit; and
- (c) the projected monthly common expense contribution for the Unit;

as an occupancy charge on the first day of each month in advance during Interim Occupancy, no part of which shall be credited as payments on account of the Purchase Price, but which payments shall be a charge for occupancy only. If the Occupancy Date is not the first day of the month, the Purchaser shall pay on the Occupancy Date a pro rata amount for the balance of the month by certified funds. The Purchaser shall deliver to the Vendor on or before the Occupancy Date a series of post-dated cheques as required by the Vendor for payment of the estimated 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. With respect to taxes, the Purchaser agrees that the amount estimated by the Vendor on account of municipal realty taxes attributed to the Unit shall be subject to recalculation based upon the real property tax assessment or reassessment of the Units and/or Condominium, issued by the municipality after the Title Transfer Date and the municipal tax mill rate in effect as at the date such assessment or reassessment is issued. The Occupancy Fee shall thereupon be recalculated by the Vendor and any amount owing by one party to the other shall be paid upon demand.

- C.3 The Purchaser shall be allowed to remain in occupancy of the Unit during Interim Occupancy provided the terms of this Occupancy Licence and the Agreement 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 this Agreement or at law may terminate this Agreement and revoke the Occupancy Licence whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Vendor may take whatever steps it deems necessary to obtain vacant possession and the Purchaser shall reimburse the Vendor for all costs it may incur.
- C.4 At or prior to the time that the Purchaser takes possession of the Unit, the Purchaser shall execute and deliver to the Vendor any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Vendor pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time.
- C.5 The Purchaser shall pay the monthly Occupancy Fee during Interim Occupancy and the Vendor shall destroy all unused post-dated Occupancy Fee cheques on or shortly after the Title Transfer Date.
- C.6 The Purchaser agrees to maintain the Unit in a clean and sanitary condition and not to make any alterations, improvements or additions thereto without the prior written approval of the Vendor which may be unreasonably withheld. The Purchaser shall be responsible for all utility, telephone expenses, cable television service, or other charges and expenses billed directly to the occupant of the Unit by the supplier of such services and not the responsibility of the Corporation under the Condominium Documents.
- C.7 The Purchaser's occupancy of the Unit shall be governed by the provisions of the Condominium Documents and the provisions of this Agreement. The Unit may only be occupied and used in accordance with the Condominium Documents and for no other purpose.
- C.8 The Vendor covenants to proceed with all due diligence and dispatch to register the Creating Documents. If the Vendor for any reason whatsoever is unable to register the Creating Documents and therefore is unable to deliver a registrable Transfer/Deed to the Purchaser within twenty-four (24) months after the Occupancy Date, the Purchaser or Vendor shall have the right after such twenty-four (24) month period to give sixty (60) days written notice to the other, of an intention to terminate the Occupancy Licence and this Agreement. If the Vendor and Purchaser consent to termination, the Purchaser shall give up vacant possession and pay the Occupancy Fee to such date, after which this Agreement and Occupancy Licence shall be terminated and all moneys paid to the Vendor on account of the Purchase Price shall be returned to the Purchaser together with interest required by the Act, subject however, to any repair and redecorating expenses of the Vendor necessary to restore the Unit to its original state of occupancy, reasonable wear and tear excepted. The Purchaser and Vendor each agree to provide a release of this Agreement in the Vendor's standard form. If the Vendor and Purchaser do not consent to termination, the provisions of subsection 79(3) of the Act may be invoked by the Vendor.
- C.9 The Vendor and the Purchaser covenant and agree, notwithstanding the taking of possession, that all terms hereunder continue to be binding upon them and that the Vendor may enforce the provisions of the Occupancy Licence separate and apart from the purchase and sale provisions of this Agreement.
- C.10 The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium including all aspects of a standard unit only and not on any improvements or betterments made by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Occupancy Date to insure the improvements or betterments to the Unit and to

replace and/or repair same if they are removed, 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.

- C.11 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 Unit or the Condominium, or by reason of injury to any person or property in or upon the Unit or the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, invitees, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Unit or the Condominium as a result of the Purchaser's neglect, damage or use of the Unit or Condominium, he will immediately reimburse the Vendor for the cost of doing same, the determination of need for such repairs or redecoration shall be at the discretion of the Vendor, and such costs may be added to the Purchase Price.
- C.12 In accordance with subsections 80(6)(d) and (e) of the Act, subject to strict compliance by the Purchaser with the requirements of occupancy set forth in this Agreement, the Purchaser shall not have the right to assign, sublet or in any other manner dispose of the Occupancy Licence during Interim Occupancy without the prior written consent of the Vendor which consent may be arbitrarily withheld. The Purchaser acknowledges that an administrative fee will be payable to the Vendor each time the Purchaser wishes to assign, sublet or dispose of the Occupancy License during Interim Occupancy.
- C.13 The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of the Occupancy Licence, shall be deemed to form an integral part of the Occupancy Licence. In the event the Vendor elects to terminate the Occupancy Licence pursuant to this Agreement following substantial damage to the Unit and/or the Condominium, the Occupancy Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Unit and/or the Condominium can be repaired within a reasonable time following damages as determined by the Vendor (but not, in any event, to exceed one hundred and eighty (180) days) and the Unit is, during such period of repairs uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Unit and/or the Condominium with all due dispatch and the Occupancy Fee shall abate during the period when the Unit remains uninhabitable; otherwise, the Purchaser shall vacate the Unit and deliver up vacant possession to the Vendor and all moneys, to the extent provided for in paragraph 20 hereof (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.

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## SCHEDULE "D" TO AGREEMENT OF PURCHASE AND SALE

### WARNING CLAUSES

1. The Purchaser acknowledges that it is anticipated by the Declarant that in connection with the Declarant's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Declarant by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, hydro transmission lines, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Closing Date or Unit Transfer Date, (as set out in the Agreement of Purchase and Sale executed by the Purchaser) as determined by the Declarant, the Purchaser shall execute any and all documents required by the Declarant acknowledging, inter alia, that the Purchaser is aware of the Requirements, and (2) if the Declarant is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction.
2. The Purchaser is hereby advised that the Declarant'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 the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Closing Date, all at the Purchaser's sole cost and expense.
3. The Purchaser acknowledges and agrees that the Declarant (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 Closing, from time to time, in order to enable the Declarant to correct outstanding deficiencies or incomplete work for which the Declarant 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.
4. The Purchaser acknowledges being advised of the following notices:
  - (i) Prospective purchasers are advised that pupils may be accommodated in temporary facilities and/or be directed to schools outside of the area;
  - (ii) Purchasers are advised that sufficient accommodation may not be available for students residing in this area and that you are notified that students may be accommodated in temporary facilities and/or bussed to existing facilities outside the area. The local District School Board may designate pick up points for the children to meet the bus on roads presently in existence or other pick up areas convenient to the Board.
  - (iii) This dwelling unit has been fitted with a forced air heating system and air conditioning. Air conditioning will allow window and exterior doors to remain closed, thereby ensuring that indoor sound levels are within the Municipality's and the Ministry of the Environment's noise criteria.
5. Without limiting the generality of the preceding subparagraph, the Purchaser is hereby advised that:
  - (i) noise levels caused by the Condominium's emergency generator, bank of elevators, garbage chutes, mechanical equipment, chiller/cooling tower, move-in bays and ancillary moving facilities and areas, and by the Condominium's indoor recreation facilities, may occasionally cause noise and inconvenience to the residential occupants; and
  - (ii) as and when other residential units in the Condominium are being completed and/or moved into, excessive levels of noise, vibration, dust and/or debris are possible, and same may accordingly temporarily cause noise and inconvenience to the residential occupants.
6. The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed from time to time by any Governmental Authorities and the proximity of the Lands to Park Street, Allen Street and King Street, and proposed Grand River Transit light rail operations may result in noise, vibration, electromagnetic interference, and stray current transmissions ("Interferences") to the Property and despite the inclusion of control features within the Condominium. Interferences from transit operations may continue to be of concern, occasionally interfering with some activities of the dwelling occupants in the Condominium. Purchasers are advised that Regional Municipality of Waterloo proposes to construct light rail operations along King Street and/or Caroline Street in the future.
7. It is further acknowledged that one or more of the Development Agreements may require the Declarant 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 Title Transfer Date, and the Purchaser further covenants and agrees to execute, forthwith upon the Declarant'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 Declarant.
8. The Purchaser acknowledges that the Declarant reserves the right to increase or decrease the final number of residential, parking, locker, and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the residential units ultimately comprised within the Condominium which have not yet been sold by the Declarant to any unit purchaser(s), all in the Declarant's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the residential/parking/locker and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the residential, parking and/or

locker units sold by the Declarant to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more residential units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall residential unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Declarant to the Purchaser in connection with this transaction.

9. The Purchaser hereby acknowledges and agrees that the Declarant cannot guarantee (and will not be responsible for) the arrangement of a suitable move-in time for purposes of accommodating the Purchaser's occupancy of the residential unit on the Closing Date, (or any acceleration or extension thereof as hereinbefore provided), and that the Purchaser shall be solely responsible for directly contacting the Declarant's customer service office in order to make suitable booking arrangements with respect to the Condominium's service elevator, if applicable (with such booking being allotted on a "first come, first served" basis), and under no circumstances shall the Purchaser be entitled to any claim, refund, credit, reduction/abatement or set-off whatsoever against any portion of the Purchase Price, or against any portion of the common expenses or other adjustments with respect thereto (nor with respect to any portion of the monthly occupancy fees so paid or payable, if applicable) as a result of the service elevator not being available to accommodate the Purchaser moving into the Condominium on (or within any period of time after) the Closing Date, (or any acceleration or extension thereof, as aforesaid).
10. The Declarant/Vendor shall have the right to substitute any level in the Condominium with an alternative floor plate containing a modified design of units and/or number of units on the level. In the event that such modification becomes necessary, there shall be a reallocation of each owner's proportionate percentage and the Budget shall be modified accordingly. The Purchaser acknowledges that none of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Declarant to the Purchaser in connection with this transaction.
11. Purchasers of Residential Units located on Levels 1, 4 and 5 of the Condominium acknowledge being advised that it is the Declarant's current intention to incorporate the Condominium's amenity space and Parking Facility within or adjacent to this level, and accordingly, Purchasers are advised that typical noise associated with the use of the amenity space and Parking Facility may occasionally interfere with some activities within the Unit. Purchasers acknowledge that they have reviewed the draft condominium plan provided to them within the Disclosure Book and, in consideration of both their location on a particular level and their location in relation to the amenities and parking facility are satisfied with respect to their proximity to same.
12. Purchasers of Residential Units located on Level 1 of the Condominium acknowledge being advised that it is the Declarant's current intention to incorporate the Condominium's parking facility and amenity space, and to locate certain mechanical facilities, loading area and refuse holding room within areas adjacent to said Units, and accordingly, Purchasers are advised that typical noise associated with the use of foregoing may occasionally interfere with some activities within the Unit. Purchasers acknowledge that they have reviewed the draft condominium plan provided to them within the Disclosure Book and, in consideration of both their location on a particular level and their location adjacent to the parking facility, amenities, mechanical facilities, loading area and refuse holding room, are satisfied with respect to their proximity to same.
13. Purchasers of Residential Units 1 to 9 on Level 1 are advised that they may be required to bring their refuse from their respective units to the refuse holding room in Level 1 of the Condominium.
14. Purchasers are advised that the Condominium is located in proximity to the Trans-Canada Trail.
15. Purchasers are notified that the Property is located in proximity to businesses and restaurants, including the Brick Brewery, which may produce odours that may be noticed by occupants of the Property from time to time.
16. Purchasers are advised that the Declarant's marketing material and site drawings and renderings ("Marketing Material") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Declarant's design consultants and engineers, and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.

SCHEDULE "E" TO AGREEMENT OF PURCHASE AND SALE

THE UNDERSIGNED being the Purchaser of the Unit hereby acknowledges having received from the Vendor with respect to the purchase of the Unit the following document on the date noted below:

1. A Disclosure Statement dated April 27th, 2009, and a Supplemental Disclosure dated April 1, 2010 and accompanying documents in accordance with Section 72 of the Act.
2. A copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and the Purchaser.

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

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

The Purchaser further acknowledges having been advised that the Purchaser shall be entitled to rescind or terminate the Agreement to which this Schedule is attached and obtain a refund of all deposit monies paid thereunder (together with all interest accrued thereon at the rate prescribed by the Act, if applicable), provided written notice of the Purchaser's desire to so rescind or terminate the Agreement is delivered to the Vendor or the Vendor's Solicitors within 10 days after the date set out below.

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

WITNESS:

)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

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

The Early Termination Conditions referred to in paragraph 2 (c) (ii) of the Tarion Addendum are as follows:

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

1. **Description of Early Termination Condition:**

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

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

Property 144 Park - Uptown Waterloo  
Waterloo, Ontario

**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.

**NOTE TO HOME BUYERS:** Please visit Tarion's website: [www.tarion.com](http://www.tarion.com) for important information about all Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your condominium unit.

**VENDOR** 144 Park Ltd.  
 Full Name(s)  
**PURCHASER** \_\_\_\_\_  
 Full Name(s)

**1. Critical Dates**

The First Tentative Occupancy Date, which is the date that the Vendor anticipates the condominium home will be completed and ready to move in, is: the 2nd day of June, 2014.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent Tentative Occupancy Date, in accordance with section 3 of the Addendum by giving proper written notice as set out in section 3.

By no later than 30 days after completion of the roof slab or of the roof trusses and sheathing, as the case may be, with 90 days prior written notice, the Vendor shall set either (i) a Final Tentative Occupancy Date; or (ii) a 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 3 below.

*If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 9 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 2nd day of June, 2015.

**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 3 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 4th day of March, 2014. (i.e., 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 condominium home is not complete by the Outside Occupancy Date, and the Vendor and the Purchaser have not otherwise agreed, then the Purchaser can terminate the transaction during a period of 30 days thereafter (the "Purchaser's Termination Period"), which period could end as late as: the 2nd day of July, 2015.

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 9, 11 and 12 of the Addendum).

*Note: Anytime 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 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 7 of the Addendum).*

Acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

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

## 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. It 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 "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.**

The Vendor shall complete all blanks set out below.

<b>VENDOR</b>			
144 Park Ltd.			
Full Name(s)			
39278	8791 Woodbine Avenue, Suite 100		
Tarion Registration Number	Address		
905-944-0907	Markham	Ontario	L3R 0P4
Phone	City	Province	Postal Code
905-944-0916	jbolton@maty.com		
Fax	Email		
<b>PURCHASER</b>			
Full Name(s)			
Address			
Phone	City	Province	Postal Code
Fax	Email		
<b>PROPERTY DESCRIPTION</b>			
21 Allen Street West (current) - 144 Park (proposed)			
Municipal Address			
Waterloo		Ontario	N2L 1C7
City		Province	Postal Code
Lots 1-6, inclusive, on Plan 186, save and except Parts 1 and 1 on 58R-10656:			
Short Legal Description			
Waterloo being all of the PIN NO. 22417- 0127(LT)			
<b>INFORMATION REGARDING THE PROPERTY</b>			
The Vendor confirms that:			
(a) The Vendor has obtained Formal Zoning Approval for the Building.		<input checked="" type="radio"/> Yes <input type="radio"/> 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: <input checked="" type="radio"/> has occurred; or <input type="radio"/> is expected to occur by the _____ day of _____, 20_____.			
The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.			

**1. 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 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.
- "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 6, 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.
- "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 condominium home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.
- "Final Tentative Occupancy Date" means the last Tentative Occupancy Date that may be set, in accordance with paragraph 3(d).
- "Formal Zoning Approval" occurs when the zoning by-law required in order to construct 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 a proposed or registered condominium home in accordance with the Purchase Agreement.
- "Outside Occupancy Date" means the latest date that the Vendor agrees, at the time of signing the Purchase Agreement, to provide Occupancy to the Purchaser, as set out in the Statement of Critical Dates.
- "Property" or "condominium home" means the condominium dwelling unit being acquired by the Purchaser from the Vendor, and its appurtenant interest in the 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 11(b).
- "Statement of Critical Dates" means the Statement of Critical Dates attached to or accompanying this Addendum (in form to be determined by the Tarion Registrar from time to time). The Statement of Critical Dates must be signed by both the Vendor and Purchaser.
- "Tentative Occupancy Date" has the meaning given to it in paragraph 3(c).
- "The 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 7(b), and the date on which the Unavoidable Delay concludes.

**2. 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 2(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 2(i) or (j) is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.
- (c) The Vendor confirms that:
- (i) This Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), will result in the automatic termination of the Purchase Agreement.  Yes  No
  - (ii) If yes, 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:
- Condition #1 (if applicable)  
Description of the Early Termination Condition: see appendix
- The Approving Authority (as that term is defined in Schedule A) is: see appendix
- The date by which Condition #1 is to be satisfied is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- Condition #2 (if applicable)  
Description of the Early Termination Condition: not applicable
- The Approving Authority (as that term is defined in Schedule A) is: not applicable
- The date by which Condition #2 is to be satisfied is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
- The date for satisfaction of any Early Termination Condition cannot be later than 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 signing of the Purchase Agreement.
- Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.*
- (d) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph 2(c)(ii) and any appendix listing additional Early Termination Conditions.
- (e) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions listed in subparagraph 2(c)(ii).
- (f) 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;

**2. Early Termination Conditions (continued)**

- (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.
- (g) 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.
- (h) The Purchase Agreement may be conditional until closing (transfer to the Purchaser of the title to the condominium home) upon compliance with the subdivision control provisions (section 50) of the *Planning Act* (Ontario) by virtue of registration of the Building under the *Condominium Act* (Ontario), which compliance shall be obtained by the Vendor at its sole expense, on or before closing.
- (i) 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.
- (j) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (i.e., 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.

**3. 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 condominium 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 no later than 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 completion of the roof slab or of the roof trusses and sheathing of the Building, as the case may be, 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 no later than 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.
- (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 no later than 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 revised Critical Date, as applicable, and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

**4. Changing the Firm Occupancy Date – Three Ways**

- (a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 3, can be changed only:
  - (i) by the mutual written agreement of the Vendor and Purchaser in accordance with section 5;
  - (ii) by the Vendor setting a Delayed Occupancy Date in accordance with section 6; or
  - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 7.
- (b) If a new Firm Occupancy Date is set in accordance with section 5 or 7, then the new date is the "Firm Occupancy Date" for all purposes in this Addendum.

**5. Changing Critical Dates – By Mutual Agreement**

- (a) This Addendum sets out a structure for setting, extending and/or accelerating Occupancy dates, which cannot be altered contractually except as set out in this section 5 and in paragraph 7(c). For greater certainty, this Addendum does not restrict any extensions of the closing date (i.e., title transfer date) where Occupancy of the condominium home has already been given to the Purchaser.
- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend a Firm Occupancy Date or a Delayed Occupancy Date in each case to a new specified calendar date. The amendment must comply with the requirements of section 10.
- (c) The Vendor and Purchaser may at any time after signing the Purchase Agreement mutually agree in writing to accelerate the First Tentative Occupancy Date and correspondingly reset all the Critical Dates provided that:
  - (i) the mutual amendment is signed at least 180 days prior to the First Tentative Occupancy Date;
  - (ii) all the Critical Dates including the Outside Occupancy Date are moved forward by the same number of days (subject to adjustment so that Critical Dates fall on Business Days);
  - (iii) a new Statement of Critical Dates is signed by both parties at the time the amendment is signed and a copy is provided to the Purchaser; and
  - (iv) the Purchaser is given a three (3) Business Day period in which to review the amendment after signing and if not satisfied with the amendment may terminate the amendment (but not the balance of the Purchase Agreement), upon written notice to the Vendor within such 3-day period.Any such amendment must be by mutual agreement and, for greater certainty, neither party has any obligation to enter into such an amendment.
- (d) 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.
- (e) 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.

**6. 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 5 and 7 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 9.

**6. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date (continued)**

- (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 no later than 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 9(c).
- (d) If a Delayed Occupancy Date is set and 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 7 or is mutually agreed upon under section 5, in which case the requirements of those sections must be met. Paragraphs 6(b) and 6(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 11.

**7. 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: 10 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 10 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 7(c), the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 9 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section must set out the revised next Critical Date and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

**8. Building Code – Conditions of Occupancy**

- (a) On or before the date of Occupancy, the Vendor shall deliver to the Purchaser:
  - (i) where a registered code agency has been appointed for the building or part of the building under the *Building Code Act* (Ontario), a final certificate with respect to the condominium home that contains the prescribed information as required by s. 11(3) of the *Building Code Act*; or
  - (ii) where a registered code agency has not been so appointed, either:
    - (A) an Occupancy Permit (as defined in paragraph (d)) for the condominium home; or
    - (B) a signed written confirmation by the Vendor that: (I) provisional or temporary occupancy of the condominium home has been authorized under Article 1.3.3.1 of Division C of the *Building Code*; or (II) the conditions for residential occupancy of the condominium home as set out in s. 11 of the *Building Code Act* or Article 1.3.3.2 of Division C of the *Building Code*, as the case may be (the "Conditions of Occupancy") have been fulfilled.
- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for certain Conditions of Occupancy (the "Purchaser Obligations"):
  - (i) the Purchaser may not refuse to take Occupancy on the basis that the Purchaser Obligations have not been completed;
  - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling the Conditions of Occupancy (other than the Purchaser Obligations), a signed written confirmation that the Vendor has fulfilled such Conditions of Occupancy; and
  - (iii) if the Purchaser and Vendor have agreed that the Conditions of Occupancy (other than the Purchaser 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 date of Occupancy.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(iii), then 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)(iii), 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 6, and delayed occupancy compensation shall be payable in accordance with section 9. 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)(iii) is because the Purchaser has failed to satisfy the Purchaser Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written 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 the fact that authority to occupy the condominium home has been granted.

**9. 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 5 or 7), then the Vendor shall compensate the Purchaser for all costs incurred by the Purchaser as a result of the delay up to a total amount of \$7,500, which amount includes payment to the Purchaser of \$150 a day for living expenses for each day of delay until the date of Occupancy or the date of termination of the Purchase Agreement, as applicable under paragraph (b).
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraphs 11(b), (c) or (e) 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 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 6(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 within 180 days after Occupancy 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 9 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;

**9. Delayed Occupancy Compensation (continued)**

- (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.

A true copy of the acknowledgement (showing clearly the municipal address and enrolment number of the condominium home on the first page) shall be provided to Tarion by the Vendor within 30 days after execution of the acknowledgement by the parties.

- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 9(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 sales transaction is terminated under paragraphs 11(b), (c) or (e) in which case, the deadline is 180 days after termination for a claim to the Vendor and one (1) year after termination for a claim to Tarion.

**10. Changes to Critical Dates**

- (a) Whenever the parties by mutual agreement extend or accelerate either the Firm Occupancy Date or the Delayed Occupancy Date this section applies.
- (b) If the change involves acceleration of either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement must set out each of the Critical Dates (as changed or confirmed).
- (c) 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 9 above;
  - (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 (the "Compensation"); and
  - (iii) contain a statement by the Purchaser that the Purchaser waives compensation or accepts the above noted Compensation, 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.
- (d) If the Purchaser for his or her own purposes requests a change of date or dates, then paragraph 10(c) shall not apply.

**11. Termination of the Purchase Agreement**

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written consent, such written consent to be given at the time of the termination.
- (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 by the Vendor under paragraph 6(b), 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 requirements of section 2.
- (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 delay in Occupancy alone.

**12. Return of Monies Paid on Termination**

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), the Vendor shall return 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 return to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor and/or a termination agreement as a prerequisite to obtaining the return of monies payable as a result of termination of the Purchase Agreement under this paragraph.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act*.
- (c) Notwithstanding paragraphs 12(a) and 12(b), if either party initiates legal proceedings to contest termination of the Purchase Agreement or the return of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

**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.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5 Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this paragraph 14(b), 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, the party shall send written notice of the change of address/contact number to the other party.
- (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.

For more information please visit [www.tarion.com](http://www.tarion.com)

**SCHEDULE A**  
**Types of Permitted Early Termination Conditions**  
(Section 2)

**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.



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

The Early Termination Conditions referred to in paragraph 2 (c) (ii) of the Tarion Addendum are as follows:

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

1. **Description of Early Termination Condition:**

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

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

# **APPENDIX “H”**

<b>Suite #</b>	<b>Date of APS</b>	<b>Parking Spots</b>
101	August 28, 2010	2
102		
103	December 19, 2012	1
104	July 5, 2013	1
105	May 28, 2009	2
106		
107		
108	May 27, 2009	2
401	December 15, 2009	1
402	November 16, 2009	2
403	October 17, 2009	1
404	February 21, 2010	1
405	October 5, 2010	1
406	January 31, 2010	1
407	February 21, 2010	1
408	October 9, 2010	1
409	June 6, 2010	1
501	September 14, 2010	1
502		
503		
504	February 17, 2010	1
505	April 20, 2010	1
506	February 21, 2010	1
507	January 5, 2010	1
508	August 24, 2010	1
509	August 25, 2010	1
510	March 20, 2010	1
601	December 15, 2009	1
602	April 17, 2010	1
603	October 17, 2009	1
604	December 2, 2009	1
605	November 7, 2009	1
606	November 19, 2009	1
607	December 8, 2009	1

<b>Suite #</b>	<b>Date of APS</b>	<b>Parking Spots</b>
608	July 25, 2010	1
609	May 3, 2010	2
610	February 21, 2010	1
701	January 22, 2011	1
702		
703	June 3, 2009	1
704	November 28, 2009	1
705	April 17, 2010	1
706		
707	December 14, 2009	1
708	August 24, 2010	1
709	August 25, 2010	1
710		
801	February 27, 2010	1
802	February 28, 2010	2
803	October 29, 2009	1
804	December 2, 2009	1
805	March 16, 2010	1
806	October 31, 2009	1
807	December 14, 2009	1
808	October 11, 2010	1
809		
810		
901	January 29, 2011	1
902	February 21, 2010	2
903	January 27, 2010	1
904	December 6, 2009	1
905	January 16, 2010	2
906	May 31, 2009	1
907	February 20, 2010	1
908	August 10, 2010	2
909	March 27, 2010	1
910	December 8, 2009	1
1001	December 21, 2010	1

<b>Suite #</b>	<b>Date of APS</b>	<b>Parking Spots</b>
1002	September 28, 2009	1
1003	May 21, 2009	1
1004	February 11, 2010	1
1005	January 13, 2010	1
1006	November 25, 2009	1
1007	February 22, 2010	1
1008	March 15, 2010	1
1009	May 25, 2010	1
1010	May 26, 2009	2
1101	October 10, 2010	1
1102	February 20, 2010	2
1103	October 26, 2009	1
1104	December 9, 2009	2
1106	December 9, 2009	1
1107	February 22, 2010	1
1108	April 12, 2010	1
1109	March 28, 2010	1
1110		
1201	February 14, 2010	2
1202	September 27, 2009	1
1203		
1204	December 3, 2009	1
1205	November 19, 2009	1
1206	February 22, 2010	1
1207	January 13, 2010	1
1208	October 6, 2009	2
1209	April 25, 2010	1
1210	June 5, 2011	1
1301	June 11, 2011	1
1302	November 8, 2010	1
1303	July 31, 2010	1
1304	January 20, 2011	1
1305	August 3, 2010	1
1306		
1307	October 16, 2010	1
1308	October 14, 2010	1

<b>Suite #</b>	<b>Date of APS</b>	<b>Parking Spots</b>
1309	August 25, 2010	1
1310	May 25, 2009	2
1401	June 11, 2011	1
1402	November 10, 2010	1
1403	November 30, 2010	1
1404	December 12, 2010	1
1405	August 24, 2010	1
1406	September 12, 2010	2
1407	November 4, 2010	1
1408	October 14, 2010	1
1409	July 17, 2010	1
1410	May 25, 2009	1
1501	March 20, 2010	2
1502	October 31, 2009	1
1503		
1504	January 27, 2010	2
1505	May 16, 2011	1
1506		
1507	July 13, 2013	1
1601	March 16, 2010	1
1602	April 25, 2010	1
1603	May 20, 2009	2
1604	September 11, 2012	1
1605	June 7, 2011	1
1606	July 23, 2011	1
1607		
1701	March 7, 2013	2
1702	June 17, 2010	1
1703	June 3, 2009	2
1704	February 18, 2010	1
1705	April 24, 2013	1
1706	August 8, 2010	1
1707		

<b>Suite #</b>	<b>Date of APS</b>	<b>Parking Spots</b>
1801	May 25, 2009	2
1802	August 28, 2010	1
1803	March 30, 2011	2
1804	October 9, 2010	2
1805	July 5, 2013	1
1806	June 29, 2013	1
1807		
1901	June 8, 2009	2
1902	April 2, 2011	2
1903		
1904		

# **APPENDIX “I”**



Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**FIRST REPORT OF THE TRUSTEE**

**April 17, 2015**

## INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 22, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) (“**CLA**”) trustee (the “**Trustee**”) with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “**Property**”). A copy of the Appointment Order is attached as **Appendix “A”**.
  
2. The Appointment Order authorized the Trustee to, among other things:
  - a) act as receiver and manager of the Property;
  
  - b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  
  - c) complete and register the condominium declaration and do whatever else is necessary in order to cause the registration of the proposed condominium at the Property; and
  
  - d) complete the existing agreements of purchase and sale for the 129 pre-sold condominium units and related lockers and parking units that form part of the Property.
  
3. In addition, pursuant to paragraph 23 of the Appointment Order, the Trustee was authorized to borrow up to \$500,000 (or such greater amount as the Court may further authorize), and any such borrowings, together with interest and charges thereon, is

secured by a fixed and specific charge over the whole of the Property, in priority to all claims in favour of any person, including construction lien and trust claims, but subordinate in priority to the Administration Charge.

#### **PURPOSE OF FIRST REPORT**

4. The purpose of the first report of the Trustee (the “**First Report**”) is to:

- a) provide to the Court details of the Trustee’s activities since its appointment on January 22, 2015;
- b) request that the Court grant an Order or Orders:
  - i. approving the Trustee’s activities as set out in the First Report;
  - ii. authorizing the Trustee to terminate or disclaim an agreement of purchase and sale for a residential unit that was entered into by 144 (as defined below) with a construction lien claimant prior to the commencement of this proceeding for no cash consideration;
  - iii. increasing the amount that the Trustee may borrow from \$500,000 to \$750,000 and authorizing and empowering the Trustee to borrow such funds from MarshallZehr Group Inc. (“**MarshallZehr**”) on the terms and subject to the conditions of the commitment letter dated April 2, 2015 between the Trustee and MarshallZehr;
  - iv. approving an agreement entered into by the Trustee for the transfer of certain parking spaces to the Property; and

- v. approving a claims process for the submission, review and determination of all lien claims pursuant to the *CLA* for the provision of services and materials prior to January 22, 2015 with respect to the Property, and establishing a committee to assist the Trustee in the review of the claims.

## **TERMS OF REFERENCE**

5. In preparing this First Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park Ltd. (“144”), discussions with management and employees of 144 and other companies within the MADY Group (“MADY”), and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by 144 or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

## **BACKGROUND**

6. This proceeding was commenced by way of application by 144, the registered owner of the Property. The Property was acquired by 144 in September 2011 for the purpose of developing the lands and constructing a 19 story residential condominium project containing 149 total units (the “**144 Park Project**”). 144 is part of the MADY Group, a

diversified real estate development group with commercial and residential business operations across North America.

7. The 144 Park Project has been completely constructed and 129 units within it have been sold to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings.
8. There remain 20 unsold units in the 144 Park Project consisting of two (2) penthouse units, 15 apartment style units, and three (3) townhouse units (collectively, the "Unsold Units"). All work has been completed on the Unsold Units, other than the installation of flooring, kitchen and bathroom cabinets, and countertops. The remaining work requires input from purchasers as it involves selecting the materials and finishes to be used.
9. 144 commenced this proceeding as it was insolvent. Over \$3.0 million in construction liens had been registered against the 144 Project, and it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of the 129 pre-sold units, complete the sale of the Unsold Units, and distribute the sale proceeds pursuant to Court order.
10. Additional information with respect to the 144 Project can be found in the Affidavit of Greg Puklicz sworn January 16, 2015, a copy (without exhibits) of which is attached hereto as **Appendix "B"**. A copy of the affidavit with exhibits can be found on the Trustee's website at: <http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd>

## **TRUSTEE'S ACTIVITIES TO DATE**

11. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since its appointment, with the primary focus being on taking all steps necessary to register to condominium plan for the 144 Park Project:

### **Operational**

- a) opened the Trustee's trust account with Laurentian Bank of Canada;
- b) closed the HST account of 144 and opened the Trustee's HST account;
- c) caused to be deposited the occupancy cheques for January and February 2015, and collected and deposited occupancy cheques for March 2015;
- d) coordinated requests for April 2015 occupancy cheques to be sent to the Trustee by occupants, which have now been deposited;
- e) attended at the offices of Harris Sheaffer LLP, condominium law lawyers for 144, to discuss matters and coordinate tasks;
- f) attended at and toured the 144 Park Project;
- g) attended to re-establishment and supply of required building services including concierge, security, snow removal and salting, property cleaning and property management;
- h) attended to obtaining building insurance and updating insurance coverage;
- i) facilitated required major overdue maintenance of HVAC system, which primarily involved top-up of the glycol level in the HVAC system;

- j) facilitated required inspection of and repairs to the boiler system as a result of residents reporting a lack of hot water;
- k) attended to amending the Shared Facilities Agreement and Condominium Declaration;
- l) attended to the issue of leakage from windows in various suites;
- m) attended to the issue of a leaking pipe in parking garage;
- n) attended two meetings with Tarion Warranty Corporation to discuss the status of the project and a plan to deal with outstanding deficiencies;
- o) contacting and engaging contractors to attend to in suite deficiencies;

**Building Permit Issues Addressed**

- p) completed fire stopping;
- q) attended to ordering and installation of two PH mechanical room doors;
- r) attended to issues with smoke detector protective caps;
- s) attended to issue with paint on emergency speakers;
- t) attended to installation of missing caps and sleeves on sprinklers and fire safety system;
- u) attended to fire inspection and backflow inspection;

- v) arranged for landscape inspection and received approval from the City for same;  
an
- w) arranged for relocation of a sprinkler head based on direction from the City's building inspector. The City's building inspector has advised that he is satisfied with all of the items in the building.

**City and Region Clearance Conditions**

- x) held discussions with and coordinated completion of work and execution of a required declaration with Acoustical Engineer, with respect to garage silencer, which declaration was required for City and Region clearance;
- y) held discussions with the Structural Engineer of record and coordinated execution of required declaration for City and Region clearance;
- z) held discussions with the Architect of record and coordinated execution of required declaration (to be delivered just prior to registration);
- aa) received clearance from City on Plan of Condominium;
- bb) received clearance from Region for easements regarding utilities and drainage;
- cc) received clearance from Region on electrical services provided by Waterloo North Hydro;
- dd) received clearance from Region on Undertaking regarding Excess Lands;
- ee) received clearance from Region regarding Certification Letter;



- ff) received clearance from Region on Undertaking regarding miscellaneous units;
- gg) received approval from the City for an amended Shared Facilities Agreement with One 55 Mady Ltd. (“One 55”) and Condominium Declaration;
- hh) caused to be registered the Shared Facilities Agreement;
- ii) submitted Region Development Agreement for signing and registration on title;
- jj) submitted City Warning Agreement for signing and registration;
- kk) submitted Surveyor’s final draft plans to City for approval; and
- ll) negotiated with the City for the construction and installation of public art at the 144 Park Project.

12. Based on information received from the City on April 16, 2015, the Trustee understands that the items set out below are the remaining outstanding items to obtain the City’s approval for formal registration of the Condominium Plan. The status of such issues is also set out below:

- a) Architect’s Report – Barring any unforeseen issues, the architect should have the report completed and submitted to the City by the end of next week.
- b) Payment of Property Taxes – the City is in the process of generating a statement, which shall be paid by the Trustee as soon as possible.
- c) Undertaking for Public Art – the City is to confirm the revised wording for the necessary undertaking from the Trustee.

- d) Low Steady Water Flow – the City is looking into the issue of a low steady water flow running into the building’s sanitary sewer that was recently discovered.
- e) Construction Lien on City Land – the City’s solicitor has indicated that regardless of clearing all conditions, no formal approval should be provided until the lien is lifted. This issue is discussed in further detail below.

**Flooding at the Property**

- 13. On the evening of March 20, 2015, the Trustee was advised by on-site personnel that a flooding incident had occurred at the Property, which was the result of a ball valve breaking in an unoccupied unit on the fifth floor of the 144 Park Project. The ball valve was connected to a heat pump, which is part of the HVAC system installed in the Property by Nelco Mechanical Ltd. (“Nelco”).
- 14. The ball valve break resulted in significant leakage of a mixture of water and glycol, a chemical used in the HVAC system, accumulating in the unoccupied unit and spreading to adjacent units on the fifth floor, certain units on the fourth floor, the third floor and in-suite elevators of two townhouse units and a portion of the third floor parking garage. A total of six units in the Property, portions of the hallways on the fourth and fifth floors and the ceiling of third floor parking garage were damaged. The Trustee was advised that the fire department was on site and was providing direction to on site staff and residents.
- 15. Upon being advised of the incident, the Trustee immediately directed on site staff to contact Nelco to attend at the Property to stop the flooding and replace the ball valve in the fifth floor suite and an emergency restoration services provider to attend to doing what was necessary to clean up the discharge and commence drying out affected units

and common areas. Nelco and IBX Services (“IBX”), an emergency services provider, attended the same evening to attend to matters.

16. On March 21, 2015, the Trustee notified its insurer (the “Insurer”) of the incident and advised that an emergency services provider had been called out to attend to clean up and damages. The Insurer confirmed with the Trustee that all measures taken by the Trustee were appropriate, that an incident report had been logged and that a representative of the Insurer would be in contact with the Trustee on March 23, 2015 to discuss the matter.
17. On March 24, 2015, the Trustee attended at 144 Park with two representatives of the Insurer and the Insurer’s emergency services provider, Strone Restoration Services (“Strone”) to view the damages and determine how to best proceed. The Insurer advised that it wished to continue emergency and restoration services with Strone rather than IBX, which the Trustee consented to. The Trustee toured the affected areas with the Insurer, Strone and on-site staff. Strone advised that it would take approximately 6-8 weeks to deal with the emergency work and restore the suites and common areas of the Property to the state they were in prior to the flooding incident. The insurer advised that under the building insurance policy, the Trustee’s deductible would be \$50,000 and that the Insurer may require that the deductible be paid immediately. The Insurer has not yet advised the Trustee to pay the deductible.
18. Since that time, Strone has been working diligently to attend to remedying the damage that occurred as a result of the flood. The Insurer re-attended at the Property during the week of April 6-10, 2015 to view the work Strone had completed to date and obtain a

detailed understanding of the remaining work to be done. The Insurer has advised that restoration of the affected areas is progressing as expected.

**Occupancy Fees**

19. Occupancy fees from various residents continue to be outstanding for certain months.

These residents have informed the Trustee that they are of the view that they do not need to pay occupancy fees as a result of their dissatisfaction with the following:

- a) the fact that registration of the condominium plan has not yet occurred and that the period of time that has elapsed from the time initial occupancy was provided has been excessive;
- b) the delay in rectifying in-suite deficiencies. The Trustee has engaged a number of trades and they are currently working through rectifying in-suite deficiencies; and
- c) the delay in rectifying common area deficiencies. The Trustee will attend to common area deficiencies after registration.

20. The Trustee continues to pay for utilities and other services required to appropriately maintain the property with occupancy fees that have been paid and from funds borrowed by the Trustee. The Trustee intends to recoup the unpaid occupancy fees upon closing of the units.

**TERMINATION OR DISCLAIMER OF AGREEMENT FOR UNIT 1503**

21. Pursuant to an agreement of purchase and sale dated December 5, 2014 (the "1503 APS"), Brody Wall System Ltd. ("Brody") agreed to purchase Unit 1503 ("Unit 1503")

in the 144 Park Project from 144. The 1503 APS lists a purchase price of \$324,000. A copy of the 1503 APS with all schedules and amendments is attached as **Appendix "C"**.

22. Schedule "X" to the 1503 APS provides that the consideration for the purchase of Unit 1503 is the partial satisfaction the indebtedness of 144 and other MADY entities to Brody in the amount of \$324,000. As a result, no cash consideration is contemplated in the 1503 APS.

23. Brody is a construction contractor that performed work on the 144 Park Project and other MADY projects. According to the books and records of 144, Brody is owed \$32,532.50. Brody registered a construction lien against the Property on January 21, 2015 in the amount of \$113,327.50, a copy of which is attached as **Appendix "D"**.

24. The 1503 APS was entered into less than sixty (60) days prior to the appointment of the Trustee and at a time when 144 was insolvent.

25. In the Trustee's view, the sale of Unit 1503 to Brody pursuant to the 1503 APS, if completed, would result in Brody obtaining an unjust preference over other creditors of 144. As a result the Trustee is seeking the Court's authorization to terminate or disclaim the 1503 APS.

26. In the event that the Court authorizes the Trustee to terminate or disclaim the 1503 APS, the Trustee intends to market Unit 1503 for sale in order to realize the maximum value for all stakeholders.

## **PARKING AGREEMENT**

27. As noted above, 144 acquired the Property in September 2011. Another company in the MADY Group, One 55, acquired the lands adjacent to the Property and municipally known as 155 Caroline Street South, Waterloo (the "**155 Caroline Lands**") in May 2011.
28. One 55 was to construct a 19 story residential condominium tower on the 155 Caroline Lands containing 178 residential units ("**155 Uptown Waterloo Project**"). It was intended that the 155 Uptown Waterloo Project would constitute a second phase to the 144 Park Project, and the two projects would share certain facilities, including parking.
29. One 55 has pre-sold 83 units in the 155 Uptown Waterloo Project. Because of the MADY Group's financial difficulties, no construction work has been commenced on the 155 Caroline Lands.
30. With respect to parking, there are presently 149 parking units located at the 144 Park Project, which was originally comprised of 132 parking units for residents of 144 Park and 17 visitor parking spaces. It was originally contemplated that certain unit owners in the 144 Park Project would be allocated permanent parking units in the 155 Uptown Waterloo Project.
31. The 17 visitor parking spaces in the 144 Park Project were eventually converted to parking units, and 144 has agreed to sell these units to purchasers of the 129 pre-sold residential units.

32. To date, 144 has agreed to sell a total of 156 parking units to the purchasers of the 129 pre-sold residential units. As a result, 144 has sold 7 more parking units to the purchasers of the 129 pre-sold residential units than are currently available at the 144 Park Project.
33. The Unsold Units will also require a number of parking units in order for them to be effectively marketed for sale. Some of the Unsold Units are penthouse units and larger suites, which will likely each require two parking units. The Trustee, in consultation with Charles Mady, the President of 144, has determined that a total of 28 parking units are required for the Unsold Units.
34. Therefore, the 144 Park Project currently requires an additional 35 parking units.
35. Following numerous discussions between One 55 and the Trustee, the parties have agreed, pursuant to an agreement dated April 17, 2015, a copy of which is attached as **Appendix "E"** (the "**Parking Agreement**") and is subject to the approval of the Court, that One 55 will transfer, when constructed, 35 parking units to 144 for consideration of \$250,000 (inclusive of HST).
36. The acquisition of the additional parking units is necessary in order for the Trustee to market and complete the sales of the Unsold Units.
37. If the Court approves the agreement with One 55, the Trustee intends to register the agreement on title to the 155 Caroline Lands, so that any purchaser of the 155 Caroline Lands will be required to take title to the lands subject to the agreement and will be bound by its terms.

### **TURNER ARCHITECTS**

38. The Trustee has been informed by representatives of the Corporation of the City of Waterloo (the “City”) that a construction lien has been registered against lands owned by the City adjacent to the Property and the 155 Caroline Lands by Turner Fleischer Architects (“Turner Architects”). Based on Turner Architects’ construction lien, the Trustee understands that Turner Architects provided architectural services to One 55. A copy of Turner’s construction lien is attached hereto as **Appendix “F”**.

39. As noted above, the Trustee has been focused since its appointment on completing the necessary steps for registration of the condominium plan for the 144 Park Project in order to close the 129 pre-sold units. Although the work completed by Turner Architects had nothing to do with the 144 Park Project, the City has taken the position that the Trustee must have the lien removed from the City lands before it is prepared to finally approve the condominium plan for the 144 Park Project..

40. If the Parking Agreement is approved by the Court, the Trustee and One 55 have agreed that the funds One 55 will receive will be used in part to bond off the Turner Architects construction lien registered against the City lands. This will allow for the final steps for the registration of the condominium plan to be completed, which is to the benefit of all of 144’s stakeholders.

### **TRUSTEE BORROWINGS**

41. In accordance with the authority granted to it under the Appointment Order, to date the Trustee has borrowed \$500,000 from MarshallZehr pursuant to the commitment letter



dated April 2, 2015 (the “**Commitment Letter**”), a copy of which is attached hereto as **Appendix “G”**.

42. So that the Trustee may complete the agreement with One 55 with respect to the parking units, it requires additional financing. As a result, the Trustee is requesting that the Court increase the borrowings available to the Trustee under the Appointment Order from \$500,000 to \$750,000, and approve the Trustee borrowing such funds from MarshallZehr on the same terms of the Commitment Letter.

43. As set out in the Commitment Letter:

- a) the purpose of the facility is to fund the costs of this proceeding;
- b) the term of the facility is the earliest of demand and 3 months from the date of the initial advance;
- c) the annual rate of interest is 12% calculated on the daily outstanding balance of the facility and compounded monthly, not in advance and with no deemed reinvestment of monthly payments; and
- d) a facility fee of 5% (\$37,500) shall be payable to MarshallZehr (the “**Facility Fee**”).

#### **CONSTRUCTION LIEN CLAIM PROCESS AND VETTING COMMITTEE**

44. As noted above, 144 sought the appointment of the Trustee to take all necessary steps to register the condominium plan and complete the sale of the 129 pre-sold units. In the event that the relief sought by the Trustee on this motion is granted by the Court, the

Trustee expects for the condominium plan to be registered in May 2015 and the sale of the 129 pre-sold units to close in early June 2015.

45. As set out in paragraph 5 of the Appointment Order, the Trustee, as soon as practical following the sale of at least 65 of the 129 pre-sold units, is required to bring a motion for interim distribution of the net proceeds.
46. As noted above, at the time 144 commenced these proceedings there were approximately \$3.0 million in construction liens registered against the Property. The Trustee has been informed by its counsel that, as of March 30, 2015, 21 lien claimants had registered construction liens against the Property in a total aggregate amount of approximately \$4.33 million.
47. As a result of the existence of the construction liens, and the need for all construction liens against the Property to be asserted so that the Trustee can make a recommendation to the Court as to the parties entitled to the net sale proceeds, it is necessary, in the Trustee's view, to establish a claims process for the submission, review and determination of all *CLA* lien claims for the provision of services and materials prior to January 22, 2015 with respect to the Property, and that this process be the exclusive process by which all construction lien claims and their priority are determined.
48. The Trustee is proposing the following construction lien claim process be approved by the Court:

- a) a claims bar date of May 15, 2015 be established, by which date all lien claimants must provide to the Trustee specified documentation with respect to their claims, otherwise their claims are forever barred and extinguished;
- b) counsel for three construction lien claimants, along with counsel to Laurentian Bank of Canada as first mortgagee (or its assignee or successor) and counsel to the Trustee, be appointed as a committee (the “Vetting Committee”) to, in consultation with and subject to the supervision of the Trustee, administer the claim process, including the review, determination, acceptance, revision, disallowance and/or settlement of any claim;
- c) the Vetting Committee shall, if it reaches a consensus with respect to a claim, recommend to the Trustee to accept, revise and/or disallow a claim by delivering a notice of determination to the claimant including the reasons for such determination;
- d) any determination or disposition by the Trustee, based on a recommendation made by the Vetting Committee, shall have the same force and effect as if made by a court of competent jurisdiction pursuant to the *CLA*;
- e) a claimant may appeal the revision and/or disallowance of its claims as set out in a notice of determination by delivering a dispute notice to the Trustee within 10 days of delivery of the notice of determination from the Trustee. Any claimant who does not deliver a dispute notice within 10 days of delivery of the notice of determination with respect to its claim shall be deemed to have accepted the

determination as set out in the notice of determination, which shall be final and binding; and

- f) any appeal of a notice of determination as set out in a dispute notice for which the Vetting Committee and the Trustee cannot reach a consensus with the claimant, shall either be referred to a claims officer to be appointed by further order of the Court in recommendation by the Vetting Committee and the Trustee, or be heard by the Court. Any appeal hearing before the claims officer shall be conducted as a hearing *de novo* and any appeal of any decision of the claims officer shall be heard by this Court on a timetable approved by this Court.

49. The Trustee is of the view that the construction lien claim process and the establishment of the Vetting Committee will allow for a timely and cost effective adjudication of the claims of the construction lien claimants, and is in the best interest of all of 144's stakeholders.

#### **TRUSTEE'S REQUEST TO THE COURT**

50. Based on the foregoing, the Trustee respectfully requests that the Court issue an Order:

- a) approving the First Report and the Trustee's conduct and activities for the period from January 22, 2015 to April 16, 2015 as described therein;
- b) authorizing the Trustee to terminate or disclaim the 1503 APS;
- c) approving the increase of the Trustee's borrowings amount from \$500,000 to \$750,000 and approving the MarshallZehr Commitment Letter and payment of the Facility Fee;

- d) authorizing the Trustee to enter into the Parking Agreement with One 55; and
- e) approving the Construction Lien Claims Process and the establishment of the Vetting Committee.

All of which is respectfully submitted to this Court as of this 17<sup>th</sup> day of April, 2015.

**COLLINS BARROW TORONTO LIMITED,**  
in its capacity as Court appointed Trustee of  
the Property and not in its personal capacity

Per: 

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP

Title: President

I have the authority to bind the corporation

# **APPENDIX “J”**

Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**SECOND REPORT OF THE TRUSTEE**

**June 23, 2015**

## **INTRODUCTION AND PURPOSE OF THE SECOND REPORT**

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated January 22, 2015 (the “Appointment Order”), Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee (the “Trustee”) with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “Property”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**. Copies of the two parcel registers that constituted the Property as of June 14, 2015 are collectively attached hereto and marked as **Appendix “B”**.
  
2. The purpose of the second report of the Trustee (the “Second Report”) is to:
  - (a) report to the Court on the Trustee’s activities since April 17, 2015, being the date of the Trustee’s last report to the Court;
  
  - (b) request that the Court grant an Order:
    - (i) authorizing the Trustee, for an on behalf of 144 Park Ltd. (“144”), to appoint Bryan A. Tannenbaum, Daniel R. Weisz, and Arif N. Dhanani (collectively, the “Directors and Officers”) of Collins Barrow Toronto Limited as directors and officers of the Condominium Corporation (as defined below) in accordance with s. 42(1) of the *Condominium Act* (Ontario) (the “CA”);



- (ii) indemnifying the Directors and Officers against any and all obligations and liabilities that they may incur as directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct;
- (iii) directing that the Administration Charge (as defined below) stand as security for the indemnity granted to the Directors and Officers; and
- (iv) approving a form of vesting order to be used by the Trustee to complete the sale of 95 pre-sold residential units and related parking units and storage units and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons LLP upon delivery of a Trustee certificate confirming the name(s) of the purchaser(s) and the legal description of the property as set out in each vesting order.

#### **TERMS OF REFERENCE**

3. In preparing this Second Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144, discussions with management and employees of 144 and other companies within the MADY Group ("MADY"), and information received from third-party sources (collectively, the "Information"). Certain of the information contained in this Second Report may refer to, or is based on, the Information. As the Information has been provided by 144 or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the

Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

## **BACKGROUND**

4. This proceeding was commenced by way of application brought by 144, the registered owner of the Property. A copy of the Affidavit of Greg Puklicz sworn January 16, 2015 (the "Puklicz Affidavit"), without exhibits, with respect to the application is attached hereto and marked as **Appendix "C"**. A complete copy of 144's Application Record can be found on the Trustee's website at:

<http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd>

5. The Property was acquired by 144 in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 149 residential units (the "144 Park Project").
6. 144 is part of the MADY Group, a diversified real estate development group with commercial and residential business operations across North America.
7. At the time of the commencement of this proceeding:
  - (a) 144 was insolvent;

- (b) the 144 Park Project had been completely constructed but the condominium declaration had yet to be finalized and registered;
  - (c) 129 residential units had been sold to purchasers, with the vast majority of purchasers in interim occupancy and awaiting final closings;
  - (d) there were approximately 20 unsold residential units that all work had been completed on, other than the installation of flooring, kitchen and bathroom cabinets, and countertops, which are typically completed with purchaser input;
  - (e) over \$3.0 million in construction liens had been registered against the 144 Park Project; and
  - (f) it was necessary for a trustee to be appointed to complete the remaining steps to register the condominium declaration, complete the closing of the pre-sold residential units, complete the sale of the unsold residential units, and distribute the net sale proceeds pursuant to Court order.<sup>1</sup>
8. Pursuant to the Appointment Order, the Trustee was authorized and empowered to, among other things:
- (a) act as receiver and manager of the Property;
  - (b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and

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<sup>1</sup> In accordance with a request made by construction lien claimants at the hearing of 144's application, the Appointment Order does not authorize or empower the Trustee to market the unsold units.

- (c) complete the existing agreements of purchase and sale for the pre-sold residential units and related parking units and storage units that form part of the Property.
  
- 9. The Appointment Order also provided that the Trustee, its counsel, and counsel to 144 were granted a charge over the Property (the “**Administration Charge**”) as security for payment of their respective fees and disbursements.
  
- 10. Additionally, the Court authorized and empowered the Trustee to complete and register the condominium declaration and do whatever else was necessary in order to cause the registration of the proposed condominium at the Property. The steps necessary to complete the registration of the condominium were set out in Schedule “B” of the Appointment Order.
  
- 11. The Trustee filed its first report to the Court dated April 17, 2015 (the “**First Report**”) in connection with the Trustee’s motion that was heard on April 23, 2015. A copy of the First Report, without appendices, is attached hereto and marked as **Appendix “D”**. A complete copy of the First Report can be found on the Trustee’s website.
  
- 12. As set out in the First Report, the Trustee reported to the Court on its activities since the date of its appointment, and requested that the Court approve its conduct and activities as set out in the First Report. The Trustee also sought orders from the Court:
  - (a) authorizing it to terminate or disclaim an agreement for purchase and sale for a residential unit that was entered into with a lien claimant for no cash consideration;

- (b) approving the increase of its borrowings amount from \$500,000 to \$750,000 and approving the related commitment letter and payment of a facility fee thereunder;
  - (c) authorizing it to enter into an agreement related to parking for the 144 Park Project; and
  - (d) approving a construction lien claims process.
13. Pursuant to the Order of Mr. Justice Wilton-Siegel dated April 23, 2015, the Court approved the Trustee's conduct and activities as set out in the First Report, and approved a commitment letter and authorized the Trustee to borrow and perform its obligations thereunder. A copy of the Order dated April 23, 2015 is attached hereto and marked as **Appendix "E"**.
14. Justice Wilton-Siegel also granted an Order (re Construction Lien Claims Process) dated April 23, 2015, a copy of which is attached hereto and marked as **Appendix "F"**. With respect to the two Orders, Justice Wilton-Siegel issued a hand-written Endorsement, a copy of which is attached hereto and marked as **Appendix "G"**.
15. As referenced in the Endorsement, the matters relating to the approval of the parking agreement and the termination or disclaimer of the agreement of purchase and sale for a residential unit were adjourned to April 30, 2015.
16. The Trustee filed a supplement to the First Report dated April 29, 2015 (the **"Supplementary Report"**) in connection with the adjourned matters. A copy of the Supplementary Report is attached hereto and marked as **Appendix "H"**.

17. Following discussions with the relevant parties, the Trustee determined that it would not proceed to seek the relief with respect to the parking agreement. The relief related to the termination of the agreement of purchase and sale went ahead unopposed. Attached hereto and marked as **Appendix "I"** is a copy of the Order of Mr. Justice McEwen dated April 30, 2015 approving the conduct and activities of the Trustee as set out in the Supplementary Report and authorizing the Trustee to terminate or disclaim the agreement of purchase and sale.

#### **TRUSTEE'S ACTIVITIES SINCE THE FIRST REPORT**

18. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since April 17, 2015, being the date of the First Report:
- (a) coordinating and collecting occupancy fees for the months of May and June 2015;
  - (b) reviewing and executing on behalf of 144 the final Plan of Condominium 30CDM-13406 (the "Plan");
  - (c) clearing all conditions for registration of the Property, including:
    - (i) coordinating completion and submission to the City of Waterloo (the "City") of an architect's report in accordance with the *Building Code Act* (Ontario);
    - (ii) payment of all outstanding property taxes;
    - (iii) doing all things necessary, including making a payment of \$26,180 to Turner Fleischer Architects Inc., to vacate its lien on City lands for non-

payment of amounts owed to it by One 55 Mady Ltd., a related party to 144, which issue was discussed in the First Report;

- (iv) coordinating the attendance at the Property by a representative of the City to review the matter of a low steady water flow into the sanitary sewer of the Property and obtaining confirmation from the City that there is no issue in this regard;
  - (v) caused to be published on May 14, 2015 in the Daily Commercial News, Form 24 – Notice of Intention to Register a Condominium in accordance with the *CA*, under s. 33.1 of the *CA*;
  - (vi) obtaining clearance from the Regional Municipality of Waterloo to proceed to register the condominium declaration and the Plan on May 20, 2015;
  - (vii) submitting materials to and obtaining confirmation from the Land Registry Office of the successful registration of the condominium declaration and the Plan on May 25, 2015;
- (d) continuing to engage trades and hourly labourers to address in-suite and certain common area deficiencies;
- (e) responding to calls from creditors requesting an update on the proceedings;
- (f) attending to and facilitating operating matters, including:
- (i) start-up of the cooling tower;

- (ii) installation of a "wind break" at the front door of the Property;
  - (iii) modification and servicing of the handicapped lift;
  - (iv) installation of a fob reader at the side door of the building;
- (g) reviewing and discussing with Canada Revenue Agency ("CRA") its correspondence notifying the Trustee of its intention to examine the Trustee's Harmonized Sales Tax returns and supporting documentation thereto for the months of March and April 2015 and doing all things necessary to assemble the information requested by CRA and release it to them, prior to their 30 day deadline;
- (h) reviewing and approving closing documentation for various purchasers;
- (i) reviewing lien claims and supporting documentation from lien claimants, comparing information submitted to the books and records of 144 and contacting counsel for lien claimants for further information or clarification of items included in lien claims;
- (j) corresponding and discussing with the Trustee's insurer, Northbridge Insurance (the "Trustee's Insurer"), the equipment ("Equipment") failure in unit 502 that resulted in a flooding incident (the "Flooding Incident") on March 20, 2015. The Flooding Incident is further discussed in the First Report as well as below;
- (k) attending numerous conference calls and meetings regarding the sale by 144 of parking units in excess of availability in the Property and the manner in which to



proceed with contacting and dealing with purchasers to attempt to resolve the situation;

- (l) attending to completion of the Second Report; and
- (m) posting various documents to the Trustee's website in accordance with the Commercial List E-Service Protocol.

### **Flooding at the Property**

19. As discussed in detail in the First Report, on the evening of March 20, 2015, the Trustee was advised by on-site personnel that a flooding incident occurred at the Property as a result of a ball valve breaking in unit 502, an unoccupied unit, on the fifth floor of the project. The Trustee had an emergency services provider attend immediately at the Property to commence clean-up work and the Trustee's Insurer was notified.
20. On March 24, 2015, the Trustee attended at the Property with the Trustee's Insurer and its contractor ("Strone") to review the damage and obtain an estimate and timeframe for the repair work to be completed, which timeframe was estimated to be approximately 6-8 weeks. The Trustee's Insurer obtained an estimate for repair of the damaged suites and common areas, which estimate totaled approximately \$140,000. In accordance with the terms of its insurance policy, the Trustee has paid to Strone the insurance deductible of \$50,000.
21. On May 1, 2015, the Trustee's Insurer contacted the Trustee to advise that its engineer, Robert G. McEwen & Associates Ltd. ("McEwen"), had prepared a report (the "Engineer's Report") and caused to be conducted a metallurgical analysis on the

Equipment. The Trustee's Insurer has not publicly released the Engineer's Report as it will be relying on the report to make a claim against the relevant parties that manufactured, distributed and/or installed the Equipment. On this basis, the Engineer's Report has not been attached hereto; however, should the Court require it, the Trustee will request of the Trustee's Insurer that it provide the Court with a copy on a confidential basis.

22. The Trustee's Insurer recommended that the Trustee have a qualified professional examine the Equipment in other suites of the Property to determine whether the same Equipment had been used throughout the building. The Trustee requested of Strone that it inspect the Equipment in five other suites, being those suites affected by the Flooding Incident. Strone conducted a visual inspection of the Equipment in the other suites and confirmed that the same Equipment had been used. On this basis, the Trustee's Insurer advised that it was likely that the same Equipment had been used throughout the Property and recommended that the Trustee contact Nelco Mechanical Limited ("**Nelco**") to request that it replace the Equipment throughout the building. The Trustee's Insurer also caused McEwen to provide to the Trustee a letter (the "**Engineer's Letter**") summarizing the findings in the Engineer's Report in order to support the Trustee's request of Nelco. A copy of the Engineer's Letter is attached hereto and marked as **Appendix "J"**.
23. On May 21, 2015, the Trustee wrote to Nelco to advise it of the situation and to request that Nelco confirm by May 22, 2015 that it would replace the Equipment. A copy of the Trustee's correspondence to Nelco (the "**Nelco Letter**") is attached hereto and marked as **Appendix "K"**. Nelco contacted the Trustee on May 21, 2015 to advise that they could not possibly respond to the Trustee's request by May 22, 2015 and would need additional

time to consider same. The Trustee responded to Nelco and advised that it would give Nelco until noon on May 25, 2015 to respond.

24. On May 22, 2015, legal counsel for HTS Engineering Ltd. (“HTS”), the supplier of heat pumps that contain the Equipment, contacted the Trustee to advise of the following:

- (a) HTS’ counsel had reviewed the Nelco Letter and the Engineer’s Letter; and
- (b) The chain of supply for the Equipment involved the sale of the Equipment from Noble Trade to Omega Heat Pumps, who subsequently sold it to HTS. HTS then sold the Equipment to Nelco, who installed it.

25. HTS’ counsel further advised that HTS required a reasonable opportunity to:

- (a) investigate this matter;
- (b) retain an engineer; and
- (c) inspect the failed valve and the alleged defective valves in the other units.

26. On May 25, 2015, Nelco advised that its insurance provider was in contact with the Trustee’s Insurer in addition to several other suppliers, heat pump manufacturers, valve suppliers and HTS. Nelco informed the Trustee that its insurance company advised that Nelco was not to change out any valves until a complete investigation can be carried out by all parties involved.

27. On May 25, 2015, counsel to the Trustee advised that it should allow a reasonable time for Nelco, HTS and others (the “Equipment Suppliers”) to conduct their investigation into the Equipment. On June 8, 2015, the Trustee was contacted by HTS’ counsel to

request that an expert retained by HTS be granted access to two suites in order to inspect the Equipment therein, which request the Trustee granted. As at June 18, 2015, the Equipment Suppliers' investigation continues and correspondence between HTS' insurer and the Trustee's Insurer was exchanged wherein HTS's insurer was requesting that the Equipment be made available for inspection by its expert. The Trustee will report further details in respect of this matter in its next report to the Court.

**Unit 610**

28. On May 4, 2015, the Trustee received documentation setting out that the purchasers of Unit 610 (the "610 Purchaser"), Mary and Brian Sweeny, had filed a joint consumer proposal under the *Bankruptcy and Insolvency Act* (Canada) from the 610 Purchaser's proposal trustee (the "Proposal Trustee").
29. On June 2, 2015, the Trustee wrote to the 610 Purchaser to request that it confirm whether its intention was to close the sale of unit 610. On June 4, 2015, the 610 Purchaser wrote back to the Trustee to confirm that it would not be able to close.
30. The Trustee has filed an unsecured claim with the Proposal Trustee for, among other things, unpaid occupancy fees, penalty amounts for returned cheques and replacement of flooring in the unit which was damaged as a result of the 610 Purchaser's negligence, which damage is not warranted by Tarion Warranty Corporation. The Trustee has also filed a secured claim with the Proposal Trustee, who has requested an accounting for the subsequent sale of the unit.

**Public Art**

31. In 2011, an agreement pursuant to S. 37 of the Planning Act (the "Agreement") was signed between Allen Street Holdings Inc. ("Allen Street") and the City with regard to the construction and installation of certain public art that is the subject of article 4 of the Agreement. The Trustee further understands that subsequent to execution of the Agreement, 144 took on the obligations of Allen Street under the Agreement. Article 4.5 of the Agreement sets out that the owner agrees that it will make a Public Art contribution equal to one percent (1%) of the Gross Construction Cost of the building to the City. 144 posted a letter of credit (the "LC") in favour of the City in the amount of \$229,420 and provided the City with certain drawings and specifications of the Public Art it intended to complete and install, which drawings and specifications were approved by the City.
32. The Agreement set out that the Public Art was to be completed and installed prior to the City granting occupancy to residents; however, the Public Art was not completed and installed by 144, nor was this condition enforced by the City. Purchasers had been in occupation from as early as March 2014.
33. After the Trustee's appointment, the City advised the Trustee that the completion and installation of the Public Art was a condition of registration. In order to clear this condition and proceed to obtain clearance from the City for registration, the Trustee executed an undertaking dated May 1, 2015 to have the public art completed and installed.

34. On or about May 8, 2015, Laurentian Bank of Canada ("LBC") advised that the LC was about to expire and requested that the Trustee confirm whether it intended to renew the LC or allow it to be cancelled. On the basis that the matter of the Public Art issue was ongoing, the Trustee instructed LBC to renew the letter of credit and on May 12, 2015, LBC sent to the Trustee an invoice for renewal of the LC for \$4,638.40.
35. On May 11, 2015, the City advised the Trustee that it intended on drawing on the LC and, pursuant to its rights under the Agreement, it intended on keeping the residual funds from the LC beyond those required to fund the costs of completion and installation of the public art (the "Residual Funds").
36. On May 13, 2015, the City informed the Trustee that it had been in contact with Waterloo North Hydro ("WNH") regarding the specifications for installation of the Public Art it had approved and that WNH had advised that it did not approve the specifications as they did not meet WNH's clearance requirements for separation between the art structure and electrical conductors or power lines. The City advised the Trustee that it should not do anything further at that time in respect of the Public Art. On this basis, the Trustee advised the City that it did not think drawing on the LC was appropriate until such time as the matter of the Public Art was resolved. The City proceeded to discuss with WNH clearance requirements for the Public Art to be installed.
37. On May 14, 2015, the Trustee convened a conference call with the City and a representative of MarshallZehr Group Inc. ("MZ") to discuss the matter of the Public Art, including modification to the specifications and costs associated with same. The City proposed that it would fund the following costs from the LC:

- (a) artist's costs to complete and install the Public Art, which amount was yet to be determined as modifications to the specifications were required to be made;
  - (b) LC renewal fee of \$4,638 with LBC;
  - (c) the fees of the Trustee up to \$10,000 for the time and effort expended with respect to dealing with the Public Art; and
  - (d) the fees of MZ up to \$10,000 for the time and effort expended with respect to dealing with the Public Art.
38. During the call with the City and MZ, the Trustee raised its concern with respect to the City's position that it was going to keep the Residual Funds in light of the fact that secured and unsecured creditors of 144 are owed significant amounts, which are unpaid.
39. On the evening of May 19, 2015, LBC advised, to the Trustee's surprise, that the City had drawn on the full amount of the LC on May 13, 2015. There was no mention by the City of its draw on the LC on the May 14, 2015 conference call with the Trustee.
40. After some discussion with the City regarding its draw on the LC and the Trustee's concern in this regard as terms and conditions with respect to the completion and installation of the Public Art had not been finalized, the City agreed to raise as an agenda item at the next City Council meeting whether the Residual Funds should be kept by the City or returned to the Trustee for the benefit of 144's creditors. The City undertook to write a report (the "CW Report") to City Council and requested of the Trustee that it write a letter (the "CC Letter") in respect of the situation that the City could attach to its report for the purposes of providing background and information to City Council on the

matter. Both the CW Report and CC Letter are respectively attached hereto and marked as Appendix "L" and "M".

41. On June 15, 2015, City Council convened and considered the CW Report, the CC Letter and the issue at hand. The Trustee was unable to attend the meeting; however, a representative of MZ attended to voice its position on the matter. City Council voted 5-2 in favour of retaining the Residual Funds in an art fund and not returning them to the Trustee for the benefit of 144's creditors. The City has offered to provide the Trustee with copies of the meeting minutes when they are available. The Trustee is continuing to work with the City towards the completion and installation of the Public Art for which the total costs are estimated to be:

Artist's costs and fees	\$79,891
Trustee's fees	11,300
MZ fees	10,000
LC renewal fee	<u>4,638</u>
Total	<u>\$105,829</u>

\* all amounts are inclusive of applicable HST, if any

42. The City will retain for the benefit of its art fund \$123,591.

#### Condominium Corporation

43. As referenced above, the condominium declaration and Plan were registered on May 25, 2015. As a result of the registration, Waterloo Standard Condominium Corporation No. 591 (the "Condominium Corporation") was established pursuant to the provisions of the CA.
44. The Trustee has been informed by Harris Sheaffer LLP, condominium counsel to 144 ("Harris Sheaffer") that:



- (a) section 42 of the *CA* requires that a first board of directors of the Condominium Corporation is to be appointed by the declarant, in this case the Trustee on behalf of 144, and that the first board of directors:
    - (i) shall consist of three or more persons;
    - (ii) shall hold office until a new board is elected at a turn-over meeting; and
  - (b) the initial board of directors is required to sign bylaws and enter into any necessary agreements, such as management agreements, metering agreements and assumption agreements, which must be entered into prior to the closing of sale transactions.
45. The Trustee understands that a turnover meeting is typically scheduled to be held to transfer control of the Condominium Corporation to the owners of units in the condominium once at least fifty per cent (50%) of the units have been conveyed to purchasers. As discussed below, it is expected that over 50% of the units will be conveyed to purchasers by July 9, 2015, and based on that, Harris Sheaffer expects to hold the turnover meeting in late August after the necessary notice periods have expired.
46. So that the sale of the condominium units may be completed for the benefit of all of 144's stakeholders, it is necessary for at least three individuals to be appointed as directors on the initial board of directors of the Condominium Corporation, as well as officers of the corporation. Bryan A. Tannenbaum, Daniel R. Weisz and Arif N. Dhanani of the Trustee's office are prepared to act as Directors and Officers, provided that they are indemnified against any and all obligations and liabilities that they may incur as

directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's and officer's gross negligence or wilful misconduct. They are also asking that the indemnification be secured by the Administration Charge previously granted by this Court over the Property as security for the fees and disbursements of the Trustee, its counsel, and counsel to 144.

#### **SALE TRANSACTIONS FOR THE SOLD UNITS**

47. As a result of the registrations, among other things, the Land Registry Office created 461 new parcel registers to represent the residential units, parking units, and storage units located at the 144 Park Project.
48. As previously reported to the Court in the Puklicz Affidavit, there are 148 residential units in the 144 Park Project and one guest unit. Prior to the appointment of the Trustee, 144 had entered into agreements of purchase and sale with purchasers for the sale of 129 residential units and parking units and storage units to be allocated by 144 to the purchasers.
49. One of the sale transactions was an agreement of purchase and sale with a lien claimant, Brody Wall System Ltd., dated December 5, 2014, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of Justice McEwen dated April 29, 2015.
50. As a result, there remain 128 units that are the subject of agreements of purchase and sale with 144 (the "Sold Units"). The Sold Units are comprised of:
  - (a) five of the eight townhouse suite units located on level 1;
  - (b) 115 of the 130 apartment style units located on levels 4 through 17;

- (c) six of the seven penthouse suite units located on level 18; and
- (d) two of the four greater penthouse suite units located on level 19.

51. The agreements of purchase and sale with respect to the Sold Units were entered into by 144 between May 20, 2009 and July 13, 2013, with the vast majority of the agreements entered into in 2009 and 2010. Attached hereto and marked as **Appendix "N"** is a copy of the standard form agreement of purchase and sale that was used by 144 as the basis for each sale transaction. Attached hereto and marked as **Appendix "O"** is a spreadsheet prepared by Harris Sheaffer LLP, condominium counsel to 144, which sets out the following details with respect to the 95 Sold Units: suite number, unit number, floor level, name of purchaser(s), date of agreement, final closing date, parking units and storage units.
52. Subject to obtaining Court approval, the sale transactions for 76 of the 128 Sold Units are expected to close by July 7, 2015 and 19 of the 128 Sold Units are expected to close by July 9, 2015, totaling 95 Sold Units. There remain 33 Sold Units that currently do not have a set date for closing.
53. The reason for this is an issue with parking. As described in greater detail in the First Report, in connection with the Sold Units, 144 sold seven more parking units to the purchasers of the Sold Units than currently are available at the 144 Park Project and there are no parking units available in the building for the 20 unsold units.
54. Harris Sheaffer sent letters to purchasers with two parking units to advise them of the Trustee's inability to deliver the contracted number of parking units. The Trustee, in

consultation with MZ, has offered to amend the agreements of purchase and sale (“APS”) of these purchasers to buy back one of the two parking units of each purchaser at its cost of \$30,000 plus HST and to reduce the purchase price of their units accordingly. Attached hereto and marked as **Appendix “P”** is a redacted copy of such a letter sent to purchasers.

55. The Trustee is requesting that the Court grant vesting orders with respect to the sale of the 95 Sold Units and related parking units and storage units, such that the purchasers may obtain title to the units free and clear from all mortgages, construction liens and other encumbrances upon delivery of a Trustee’s certificate on each closing.
56. In an effort to make practical and efficient use of judicial resources, the Trustee proposes that, as opposed to requesting that the Commercial List Judge hearing the Trustee’s motion issue 95 separate vesting orders with respect to the sale transactions that are to close by July 9, 2015, the Trustee is requesting that the Court approve a form of vesting order to be used in connection with each of the 95 sale transactions.
57. The form of vesting order will substantially be in the form of the Model Approval and Vesting Order. However, the form of vesting order will leave the following information blank: (a) name of purchaser(s) in the vesting order and in the draft Trustee’s Certificate attached to the form of vesting order; and (b) legal descriptions of the residential unit, parking unit(s) and storage unit(s) to be conveyed to the purchaser(s).
58. The Trustee is requesting that the Court authorize a representative of Chaitons LLP (“**Chaitons**”), counsel to the Trustee, to insert the name of the purchasers or its/their nominee(s) and the legal property descriptions into the separate vesting orders for each of

the sale transactions for the 95 Sold Units, and authorize and direct the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons upon presentation of a Trustee's certificate to the Registrar confirming the name(s) of the purchaser(s) and the legal description of the property set out in each vesting order.

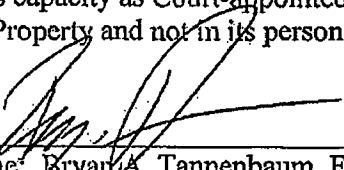
#### **TRUSTEE'S REQUEST TO THE COURT**

59. Based on the foregoing, the Trustee respectfully requests that the Court issue Orders:
- (a) authorizing the Trustee, for and on behalf of 144, to appoint the Directors and Officers as directors and officers of the Condominium Corporation in accordance with s. 42(1) of the *CA*;
  - (b) indemnifying the Directors and Officers against any and all obligations and liabilities that they may incur as directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct;
  - (c) directing that the Administration Charge stand as security for the indemnity granted to the Directors and Officers; and
  - (d) approving a form of vesting order to be used by the Trustee to complete the sale of the Sold Units and related parking units and storage units and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons upon

delivery of a Trustee's certificate confirming the name(s) of the purchaser(s) and  
the legal description of the property set out in each vesting order.

All of which is respectfully submitted to this Court as of this 23<sup>rd</sup> day of June, 2015.

**COLLINS BARROW TORONTO LIMITED,**  
in its capacity as Court-appointed Trustee of  
the Property and not in its personal capacity

Per:   
Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP  
Title: President

I have the authority to bind the corporation

# **APPENDIX “K”**

Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,**  
**R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.**  
**FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE**  
***CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**SUPPLEMENT TO THE FIRST REPORT OF THE TRUSTEE**

**April 29, 2015**



## INTRODUCTION

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) dated January 22, 2015, Collins Barrow Toronto Limited was appointed *Construction Lien Act* (Ontario) trustee with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule "A" to the Appointment Order.
2. This report (the "**Supplementary Report**") is a supplement to the First Report of the Trustee dated April 17, 2015 (the "**First Report**"), and should be read together with the First Report. Capitalized terms used and not otherwise defined herein have the meanings ascribed to such terms in the First Report.
3. The purpose of the Supplementary Report is to provide an update to the Court on the status of matters related to Turner Architects and the Parking Agreement.

## TURNER ARCHITECTS

4. As noted in the First Report, Turner Architects provided architectural services to One 55 and registered a construction lien against lands owned by One 55, and the City in the amount of \$165,886.80 (the "**Construction Lien**").
5. The City took the position that the Trustee was required to have the Construction Lien removed from the City lands before it would be prepared to fully approve and formally register the condominium plan for the 144 Park Project.
6. The Trustee, One 55, the City and Turner Architects have agreed to the following steps taking place with respect to the Construction Lien:

- (a) the Trustee will pay, on behalf of One 55, \$26,180 to Turner Architects, the payment of which shall reduce the amount of the Construction Lien. The Trustee shall pay such amount from funds that have been borrowed from MarshallZehr;
  - (b) Turner Architects will consent to an order to be obtained by the Trustee vacating the Construction Lien against the City lands and dismissing Turner Architect's action against the City without costs; and
  - (c) One 55 shall grant a charge to the Trustee over the 155 Caroline Lands as security for its obligation to repay \$26,180 to the Trustee.
7. This agreement will allow for the final steps for the registration of the condominium plan to be completed, which is to the benefit of all of 144's stakeholders.

#### **PARKING AGREEMENT AND TRUSTEE'S BORROWINGS**

8. In the First Report, the Trustee requested that the Court approve the increase of the Trustee's borrowings amount from \$500,000 to \$750,000 and authorize the Trustee to enter into the Parking Agreement. The increase in the borrowings was necessary so that the Trustee could complete the transaction for parking units set out in the Parking Agreement.
9. The relief sought by the Trustee with respect to the Parking Agreement was opposed by COB GP Inc., a mortgagee of the 155 Caroline Lands. As a result of the opposition, the Trustee agreed to an adjournment of matters related to the Parking Agreement and the Trustee's borrowings to April 30, 2015.

10. At this time, the parties continue to discuss the possibility of a resolution that would be acceptable to all parties and would result in a parking agreement being entered into that would be registered on title to the 155 Caroline Lands and result in parking units being available to residents of the 144 Park Project once the 155 Caroline Lands are eventually developed. The Trustee remains committed to finding a solution to the parking situation at the 144 Park Project.
  
11. As a result, the Trustee is not seeking approval of the existing Parking Agreement or an increase in the borrowings amount at this time.

All of which is respectfully submitted to this Court as of this 29th day of April, 2015.

**COLLINS BARROW TORONTO LIMITED,**  
in its capacity as Court-appointed Trustee of  
the Property and not in its personal capacity

Per: 

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP  
Title: President

I have the authority to bind the corporation

# **APPENDIX “L”**

# HARRIS, SHEAFFER LLP

BARRISTERS & SOLICITORS

YONGE CORPORATE CENTRE  
4100 YONGE STREET, SUITE 610, TORONTO, ONTARIO M2P 2B5  
TELEPHONE (416) 250-5800 / FACSIMILE (416) 250-5300

June 15, 2015  
File No.: 090328  
Contact: Karen McNeill at 416-250-3695

Delivered by Facsimile Only (Fax Number)

Name and Address of Purchaser's Counsel

Dear Sirs:

RE: 144 Park Ltd. by its Court Appointed Trustee, Collins Barrow Toronto Limited sale to  
Name of Purchaser(s)  
Unit X, Level X, WSCP 591  
Suite X, 144 Park Street, Waterloo, Ontario N2L 0B6

We are pleased to advise that the Declaration and Description creating the condominium were registered in the Land Registry Office for the Land Titles Division of Waterloo on May 25, 2015 pursuant to Instrument Number WR882241 thereby creating Waterloo Condominium No. 591.

We also wish to advise you that Collins Barrow Toronto Limited was appointed by court order as Trustee of the property owned by 144 Park Ltd., including the units in the condominium. The court order was registered on title to said property on January 23, 2015 as Instrument No. WR863820.

At the time of execution of the Agreement of Purchase and Sale, the Vendor agreed to sell to the Purchaser(s) a second Parking Unit. Unfortunately there are not sufficient parking units available to be sold in this project. Accordingly, the Court Appointed Trustee is requesting that the Purchaser(s) agree to amend the Agreement of Purchase and Sale to delete the second Parking Unit and correspondingly reduce the Purchase Price by the amount of \$33,900.00 (inclusive of HST). If your client is agreeable to same, please sign and return a copy of this letter to us by no later than 5:00 p.m. on June 22, 2015 and we will then be in a position to set a final closing date. If we do not hear from you by that time or if your client is not agreeable to the Amendment, the Trustee may seek a Court Order terminating the Agreement of Purchase and Sale.

Yours very truly,  
Harris, Sheaffer LLP

Mark Karoly\*

Mark Karoly

\*Executed pursuant to the Electronic Commerce Act

The undersigned agrees to amend the Agreement of Purchase and Sale in the manner described above. Dated this \_\_\_\_\_ day of June, 2015.

Name of Purchaser(s), by his/her/their solicitor

Name of Solicitor

Per \_\_\_\_\_

Name of Solicitor

BARRY ROSENBERG

GARY H. HARRIS

ROBERT D. SHEAFFER

PHILIP J. DRAPER

MARK E. FRIEDMAN  
(1981 - 2009)

JEFFREY P. SILVER

STEPHEN M. KARR

MARTIN P. HOUSER

MARK L. KARDIN

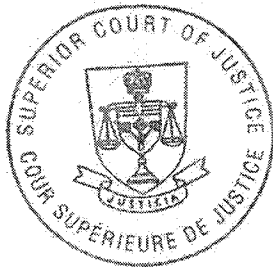
MICHAEL J. BAUM

AIN M. KATZ

RAZVAN NICOLAE

ROBERT SHORE

# **APPENDIX “M”**



Court File No. CV15-10843-00CL

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

THE HONOURABLE MR. ) FRIDAY, THE 26<sup>th</sup> DAY  
 )  
JUSTICE NEWBOULD ) OF JUNE, 2015

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**ORDER**

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Trustee**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Trustee dated June 23, 2015 (the "**Second Report**") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee,

no one else appearing although duly served as appears from the affidavit of service of Lynn Lee sworn June 24, 2015, filed,

**SERVICE**

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

**APPROVAL OF FORM OF VESTING ORDER**

2. **THIS COURT ORDERS** that the form of vesting order attached hereto as **Schedule "A"** be and is hereby approved for use by the Trustee in completing the sale transactions with respect to the Sold Units (as such term is defined in the Second Report).

3. **THIS COURT ORDERS** that Chaitons LLP ("**Chaitons**"), counsel to the Trustee, is hereby authorized to insert into each draft vesting order the following information:

(a) the name(s) of the purchaser(s) or their nominees in the first preamble paragraph of each draft vesting order and in Schedule "A" to each draft vesting order (the Trustee's Certificate); and

(b) the legal description of the applicable Purchased Assets on Schedule "B" to each draft vesting order.

4. **THIS COURT ORDERS** that, upon completion of a draft vesting order by Chaitons with respect to a Sold Unit in accordance with paragraph 2 hereof (a "**Completed Vesting Order**"), a representative of Chaitons shall present each Completed Vesting Order to the Registrar of the Ontario Superior Court of Justice (Commercial List), along with a certificate



signed by the Trustee confirming the name(s) of the purchaser(s) and the legal description of the property contained in the Completed Vesting Order. The Registrar is authorized, empowered and directed to sign, issue and enter each Completed Vesting Order as presented to it by Chaitons.

**DIRECTORS AND OFFICERS OF CONDOMINIUM CORPORATION**

5. **THIS COURT ORDERS** that the Trustee is authorized, for and on behalf of 144 Park Ltd., to appoint Bryan A. Tannenbaum, Daniel R. Weisz, and Arif N. Dhanani (collectively, the “**Directors and Officers**”) of Collins Barrow Toronto Limited as directors and officers of Waterloo Standard Condominium Corporation No. 591 (the “**Condominium Corporation**”) in accordance with s. 42(1) of the *Condominium Act* (Ontario) (the “**CA**”).

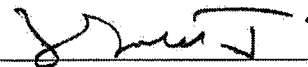
6. **THIS COURTS ORDERS** that the Directors and Officers are indemnified against any and all obligations and liabilities that they may incur as directors and officers of the Condominium Corporation, except to the extent that the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

7. **THIS COURT ORDERS** that the Directors and Officers are entitled to the benefit of the Administration Charge granted pursuant to the Order of Mr. Justice Penny dated January 22, 2015, as security for the indemnity provided in paragraph 5 of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 26 2015

MJ



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

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_\_ DAY  
 )  
JUSTICE ) OF \_\_\_\_\_, 2015

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**VESTING ORDER**

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "Trustee") for an order vesting in \_\_\_\_\_ (the "Purchaser") the right, title and interest of 144 Park Ltd. (the "Debtor") in and to the property described in Schedule "B" hereto (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Trustee dated June 23, 2015 (the "Second Report") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee:

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of 144's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, certificates of action, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated January 22, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

2. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kitchener (Waterloo) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Assets identified in Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the Purchased all of the Claims listed in Schedule "C" hereto.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS AND DECLARES** that the sale of the Purchased Assets is exempt from the application of the *Bulk Sales Act* (Ontario).

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

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Schedule "A" – Form of Trustee's Certificate

Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,**  
**R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.**  
**FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE**  
***CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**TRUSTEE'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice dated January 22, 2015, Collins Barrow Toronto Limited was appointed as trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

B. Pursuant to an Order of the Court dated June 26, 2015 (the "Vesting Order"), the Court provided for the vesting in \_\_\_\_\_ (the "Purchaser") of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; and (ii) the transaction has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Vesting Order.

**THE TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Trustee has received the purchase price for the Purchased Assets; and
3. The Transaction has been completed to the satisfaction of the Trustee.
4. This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**COLLINS BARROW TORONTO LIMITED,  
in its capacity as Trustee of the Property, and  
not in its personal capacity**

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

Name:

Title:

**Schedule "B" – Purchased Assets**



**Schedule "C" – Claims to be deleted and expunged from title to Purchased Assets**

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR611290	May 2, 2011	Notice	\$2	Allen Street Holdings Inc.	Allen Street Holdings Inc., 2184038 Ontario Inc., 144 Park Ltd., COB GP Inc.
WR639367	September 1, 2011	Transfer	\$2,200,000	144 Park Ltd.	Allen Street Holdings Inc.
WR639368	September 1, 2011	Charge	\$8,500,000	144 Park Ltd.	Aviva Insurance Company of Canada
WR639369	September 1, 2011	Charge	\$3,000,000	144 Park Ltd.	Allen Street Holdings Inc.
WR660381	December 13, 2011	Charge	\$2,887,696	144 Park Ltd.	MarshallZehr Group Inc.
WR690395	May 25, 2012	Charge	\$40,000,000	144 Park Ltd.	Laurentian Bank of Canada
WR690396	May 25, 2012	No Assgn Rent Gen		144 Park Ltd.	Laurentian Bank of Canada
WR690416	May 25, 2012	Postponement		Allen Street Holdings Inc.	Laurentian Bank of Canada
WR690422	May 25, 2012	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
WR690423	May 25, 2012	Postponement		MarshallZehr Group Inc.	Laurentian Bank of Canada
WR759234	June 13, 2013	APL Absolute Title		144 Park Ltd.	
WR847447	October 24, 2014	Construction Lien	\$301,592	Global Fire Protection Ltd.	
WR849030	October 31, 2014	Construction Lien	\$88,883	694643 Ontario Limited cob as O'Connor Electric	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR854810	December 1, 2014	Construction Lien	\$537,286	J & I Gaweda Construction Ltd.	
WR854978	December 2, 2014	Construction Lien	\$26,889	Bast Home Comfort Inc.	
WR856621	December 10, 2014	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR856756	December 11, 2014	Construction Lien	\$328,260	Frendel Kitchens Limited	
WR857239	December 12, 2014	Construction Lien	\$436,314	T.I.C. Contracting Ltd.	
WR857322	December 15, 2014	Construction Lien	\$188,393	Global Precast Inc.	
WR857462	December 15, 2014	Construction Lien	\$110,716	2050491 Ontario Inc. o/a The Downsview Group	
WR857468	December 15, 2014	Construction Lien	\$104,009	Sam Tortola Enterprises Inc.	
WR857793	December 16, 2014	Construction Lien	\$15,870	CRS Contractors Rental Supply General Partner Inc.	
WR857850	December 16, 2014	Construction Lien	\$83,436	Adlers Main Tile & Carpet Co. Ltd.	
WR858473	December 19, 2014	Construction Lien	\$30,851	Turner Fleischer Architects Inc.	
WR858748	December 19, 2014	Construction Lien	\$46,043	Hammerschlag & Joffe Inc.	
WR858991	December 22, 2014	Construction Lien	\$345,952	Sereen Painting Ltd.	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR859188	December 23, 2014	Construction Lien	\$176,771	Weston Flooring Limited	
WR859941	December 30, 2014	Construction Lien	\$32,381	Great Pyramid Aluminum Ltd.	
WR860525	January 5, 2015	Construction Lien	\$139,287	Adlers Main Tile & Carpet Co. Ltd.	
WR860757	January 6, 2015	Certificate of Action		Freudel Kitchens Limited	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., D. Mady Investments Inc., MarshallZehr Group Inc., Allen Street Holdings Ltd., Aviva Insurance Company of Canada, Laurentian Bank of Canada
WR861891	January 13, 2015	Certificate of Action		Bast Home Comfort Inc.	
WR862054	January 14, 2015	Certificate of Action		J & I Gaweda Construction Ltd.	
WR862055	January 14, 2015	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR862500	January 16, 2015	Certificate of Action		694643 Ontario Limited	
WR863268	January 21, 2015	Certificate of Action		Turner Fleischer Architects Inc.	Mady Contract Division Ltd., Mady Contract Division (2009) Ltd., Mady

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Development Corporation, 144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group Inc., Laurentian Bank of Canada
WR863291	January 21, 2015	Construction Lien	\$113,328	Brody Wall System Ltd.	
WR863296	January 21, 2015	Certificate of Action		T.I.C. Contracting Ltd.	
WR863658	January 23, 2015	Construction Lien	\$4,258	Skyway Canada Limited	
WR863814	January 23, 2015	Construction Lien	\$210,190	DKS Stone Fabrication & Design Inc.	
WR863820	January 23, 2015	APL Court Order		Ontario Superior Court of Justice (Commercial List)	Collins Barrow Toronto Limited
WR864339	January 28, 2015	Construction Lien	\$752,632	Clonard Group Inc.	
WR864365	January 28, 2015	Certificate of Action		Hammerschlag & Joffe Inc.	
WR864655	January 29, 2015	Construction Lien	\$260,447	Aluminum Window Design Installations Inc.	
WR865440	February 2, 2015	Certificate of Action		Great Pyramid Aluminum Ltd.	144 Park Ltd.
WR865713	February 4, 2015	Certificate of Action		Global Precast Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR865936	February 5, 2015	Certificate of Action		Adlers Main Tile & Carpet Co. Ltd.	
WR866373	February 9, 2015	Certificate of Action		2050491 Ontario Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group Inc., Laurentian Bank of Canada
WR867197	February 13, 2015	Certificate of Action		Weston Flooring Limited	
WR867757	February 19, 2015	Certificate of Action		Screen Painting Ltd.	
WR868712	February 26, 2015	Certificate of Action		Sam Tortola Enterprises Inc.	
WR870655	March 11, 2015	Certificate of Action		Aluminum Window Design Installations Inc.	
WR870768	March 12, 2015	Certificate of Action		CRS Contractors Rental Supply General Partner Inc.	
WR870844	March 12, 2015	Certificate of Action		Brody Wall System Ltd.	144 Park Ltd.
WR874856	April 8, 2015	Certificate of Action		DKS Stone Fabrication & Design Inc.	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR875305	April 10, 2015	Certificate of Action		Skyway Canada Limited	

**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Purchased Assets**

**(unaffected by the Vesting Order)**

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR625222	July 7, 2011	Notice	\$2	The Corporation of the City of Waterloo	Allen Street Holdings Inc.
WR655113	November 17, 2011	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR666363	January 18, 2012	Transfer Easement	\$2	144 Park Ltd.	Rogers Cable Communications Inc.
58R17836	June 13, 2013	Plan Reference			
58R18116	February 7, 2014	Plan Reference			
58R18429	November 27, 2014	Plan Reference			
WR856168	December 8, 2014	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR864508	January 29, 2015	Transfer Easement	\$2	144 Park Ltd.	Waterloo North Hydro Inc.
WR867313	February 17, 2015	Notice	\$2	The Regional Municipality of Waterloo	
WR876062	April 16, 2015	Notice	\$2	144 Park Ltd.	One 55 Mady Ltd.
WCP591	May 25, 2015	Standard Condo Plan			
WR882241	May 25, 2015	Condo Declaration		144 Park Ltd.	

**IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(D) OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**

**CHATTONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos (LSUC #51399S)**  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

**Lawyers for the Trustee**



# APPENDIX “N”

Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,**  
**R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.**  
**FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE**  
***CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**THIRD REPORT OF THE TRUSTEE**

**July 30, 2015**

## INTRODUCTION AND PURPOSE OF THE THIRD REPORT

1. Pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 22, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited (“**Collins Barrow**”) was appointed *Construction Lien Act* (Ontario) trustee (the “**Trustee**”) with respect to lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario, and legally described in Schedule “A” to the Appointment Order (the “**Property**”). A copy of the Appointment Order is attached hereto and marked as **Appendix “A”**.
  
2. The purpose of the third report of the Trustee (the “**Third Report**”) is to:
  - (a) report to the Court on the Trustee’s activities since June 23, 2015, being the date of the Trustee’s second report to the Court (the “**Second Report**”), a copy of which (without appendices) is attached hereto and marked as **Appendix “B”**;
  
  - (b) request that the Court grant an Order(s):
    - (i) approving the Second Report and the activities and conduct of the Trustee as set out therein;
  
    - (ii) approving a form of vesting order to be used by the Trustee to complete the sale of the remaining 33 pre-sold residential units and related parking units and storage units and authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons LLP (“**Chaitons**”) upon delivery of a Trustee certificate confirming the name(s) of the

purchaser(s) and the legal description of the property as set out in each vesting order;

- (iii) authorizing the Trustee to engage Mint Realty Inc. Brokerage (“**Mint Realty**”) to market any or all of the Unsold Units (as defined below) on the terms of the Mint Realty Proposal (as defined below), including advertising and soliciting offers in respect of the Unsold Units or any part or parts thereof;
- (iv) authorizing the Trustee to sell, convey, or transfer the Unsold Units or any part or parts thereof without the approval of the Court if the purchase price is within 95% of the listing price for the residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property;
- (v) approving the fees and disbursements of the Trustee, its insolvency counsel Chaitons, and its condominium counsel Harris Sheaffer LLP (“**Harris Sheaffer**”), as set out in the Third Report and the fee affidavits attached as appendices hereto;
- (vi) authorizing the Trustee to retain net sale proceeds in the amount of \$5.4 million in respect of the lien claims pending further order of the Court;
- (vii) authorizing the Trustee to make an interim distribution of \$14 million of the net sale proceeds on hand to Laurentian Bank of Canada (“**LBC**” or the “**Bank**”); and

- (viii) directing Nelco Mechanical Limited (“**Nelco**”) to deliver to the Trustee the manuals for the heating, ventilation and air conditioning (“**HVAC**”) system installed by Nelco at the Property, so that such manuals may be provided by the Trustee to the residents at the turnover meeting for the condominium corporation (“**WSCC 591**” or the “**Condominium Corporation**”).

### **TERMS OF REFERENCE**

3. In preparing this Third Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of 144 Park Ltd. (“**144**”), discussions with management and employees of 144 and other companies within the **MADY** group of companies (“**MADY Group**”), and information received from third-party sources (collectively, the “**Information**”). Certain of the information contained in this Third Report may refer to, or is based on, the Information. As the Information has been provided by 144 or other parties, the Trustee has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the Information.

## BACKGROUND

4. This proceeding was commenced by way of application brought by 144, the registered owner of the Property. A complete copy of 144's Application Record, along with all other Court materials, can be found on the Trustee's website at:

<http://www.collinsbarrow.com/en/cbn/restructuring-and-recovery-engagements/144-park-ltd>

5. 144 is part of the MADY Group, a diversified real estate development group with commercial and residential business operations across North America.
6. The Property was acquired by 144 in September 2011 for the purpose of developing and constructing a 19 story residential condominium project containing 148 residential units and 1 guest unit (the "**144 Park Project**").
7. 144 sought the appointment of the Trustee in January 2015 as it was insolvent and was not in a position to:
  - (a) take the necessary steps to have the condominium declaration finalized and registered;
  - (b) complete the sale transactions for the 129 residential units that had been pre-sold; and
  - (c) complete the marketing and sale of the unsold 19 residential units.
8. Pursuant to the Appointment Order, the Trustee was authorized and empowered to, among other things:

- (a) act as receiver and manager of the Property;
- (b) take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property; and
- (c) complete the existing agreements of purchase and sale for the pre-sold residential units and related parking units and storage units that form part of the Property.

#### **TRUSTEE'S ACTIVITIES SINCE THE SECOND REPORT**

9. The Trustee served its Second Report on the service list on June 23, 2015. As noted above, a copy of the Second Report (without appendices) is attached hereto as Appendix "B".
10. The Trustee is seeking approval of the Second Report and its activities and conduct as set out in the Second Report. To date, the Trustee has received no adverse comments on the Second Report.
11. The Trustee has undertaken the following activities in accordance with the terms of the Appointment Order since the date of the Second Report:
  - (a) discussing with Harris Sheaffer the responsibilities of the directors and officers of a condominium corporation, including payment of common element fees by the Trustee, and attending at Harris Sheaffer's offices to review and sign required documents in relation to WSCC 591;
  - (b) reviewing invoices from various trades engaged by the Trustee to rectify in-suite and common element deficiencies and approve payments therefor;

- (c) attend conference calls with various stakeholders to apprise them of ongoing developments;
- (d) communicating with Tarion Warranty Corporation regarding the validity of delayed occupancy claims made by unit purchasers, reviewing supporting documentation in this regard and directing Harris Sheaffer to make adjustments to closing documents, as appropriate;
- (e) communicating with 81 Capital Inc. regarding the lease agreement to be entered into by WSCC 591 for the HVAC system installed at the Property;
- (f) doing all things necessary to complete the closings of 66 residential units, including reviewing all final statements of adjustments, providing direction to Harris Sheaffer as required, executing Trustee's Certificates and meeting with Chaitons regarding same;
- (g) communicating with residents with two parking units to request that the sale transaction be completed with only one unit with a discount to the purchase price of their residential unit and reallocating parking units to various residents in order to provide permanent parking units to those with temporary parking units and to provide for parking spaces for Unsold Units;
- (h) responding to correspondence from counsel to numerous purchasers regarding various issues raised and providing responses with respect to their information requests;



- (i) communicating with Canada Revenue Agency (“CRA”) regarding its examination of harmonized sales tax (“HST”) credits claimed by the Trustee for March and April 2015;
- (j) preparing documentation as requested by CRA for its examination of the HST credits claimed by the Trustee for May and June 2015;
- (k) communicating with MarshallZehr Group Inc. (“MarshallZehr”) regarding its account statement for funds borrowed from it (the “Trustee’s Borrowings”), reviewing the associated documentation received and repaying the Trustee’s Borrowings and paying associated facility fee;
- (l) drafting materials for the Third Report, reviewing and amending same; and
- (m) doing all things necessary to administer and operate the Property.

## **SALE TRANSACTIONS**

12. As of the date of the appointment of the Trustee, the Property was comprised of two parcel registers, bearing PINs 22417-0134 and 22417-0135. As previously reported to the Court, the condominium declaration was registered on May 25, 2015. As a result of the registration, parcel register PIN 22417-0134 was retired and was divided into, among other things, 461 new parcel registers to represent the 148 residential units, 1 guest unit, 149 parking units, 150 storage units and 13 miscellaneous units located at the 144 Park Project. The Trustee has been advised by Harris Sheaffer that parcel register PIN 22417-0135 is land that is adjacent to, and does not form part of, the 144 Park Project.

13. With respect to the sale of residential units, as of January 22, 2015, 144 had entered into agreements of purchase and sale with purchasers for the sale of 129 residential units and parking and storage units to be allocated by 144 to the purchasers.
14. One of the sale transactions was an agreement of purchase and sale with a lien claimant, Brody Wall System Ltd., dated December 5, 2014, which was terminated by the Trustee on May 4, 2015 in accordance with the Order of Justice McEwen dated April 29, 2015.
15. As a result, there were 128 units that were the subject of agreements of purchase and sale with 144 (the “**Sold Units**”) and 20 unsold units (the “**Unsold Units**”). The Sold Units were comprised of:
  - (a) five of the eight townhouse suite units located on level 1;
  - (b) 115 of the 130 apartment style units located on levels 4 through 17;
  - (c) six of the seven penthouse suite units located on level 18; and
  - (d) two of the four greater penthouse suite units located on level 19.
16. In the Second Report, the Trustee reported that the sale transactions for 95 of the 128 Sold Units were expected to close by July 9, 2015, and there remained 33 Sold Units that did not have a set date for closing.
17. The Trustee requested that the Court approve a form of vesting order to be used in connection with each of the 95 sale transactions. On June 26, 2015, Mr. Justice Newbould granted an Order approving a form of vesting order, a copy of which is attached hereto and marked as **Appendix “C”**.

18. Following the granting of the Order, the Trustee closed the sale of 66 residential units and related parking and storage units. As a result of the closing of these sale transactions, the Trustee has received sale proceeds (net of HST and property taxes to be paid) of approximately \$18,506,491.
19. By July 9, 2015, the Trustee was only able to close 66 of the 95 sale transactions, as the closing of the vast majority of the remaining 29 sale transactions were delayed as a result of issues relating to parking. Some purchasers were occupying temporary parking spaces that could not be conveyed. In addition, parking units were not allocated to Unsold Units. To close transactions and convey title to parking units and to make parking units available for sale along with Unsold Units, it was necessary for the Trustee to re-allocate parking units.
20. The re-allocation process has been completed and the Trustee intends to close the sale transactions to certain purchasers on or about August 10, 2015. The Trustee anticipates that it can close 36 additional residential units on or around August 10, 2015, with another residential unit scheduled to close on or about September 17, 2015.
21. If these transactions are finalized as anticipated, then as of September 17, 2015, the sales of 103 of the 128 pre-sold units will have been completed. The majority of the remaining 25 pre-sold units that have not closed to date are as a result of a separate parking issue, as such purchasers agreed to purchase two parking units from 144, and there are insufficient parking units in the 144 Park Project for such purchasers to each receive two parking units and to allocate a parking unit to each of the Unsold Units. The marketability of the

Unsold Units will be greatly diminished if they do not have parking units available to purchasers.

22. As previously reported to the Court, in an effort to resolve the matter, the Trustee offered to complete the sale of the residential units with one parking unit rather than two parking units and to reduce the purchase price accordingly. A number of purchasers of residential units with two parking units have accepted the Trustee's offer. The Trustee will return to Court for such relief as may be appropriate in the event that it is unable to resolve the issue with the purchasers of remaining residential units with two parking units.
23. As noted above, the Court previously approved a form of vesting order to be used for 95 of the Sold Units. It is necessary at this time to have the Court approve a form of vesting order for use in connection with the sale of the remaining 33 Sold Units and related parking and storage units.

## **UNSOLD UNITS**

### ***Mint Realty***

24. As set out in the Second Report, the Appointment Order does not authorize or empower the Trustee to market or sell the Unsold Units.
25. The Trustee has been approached by Mint Realty, which the Trustee understands is a reputable and well known real estate brokerage in the Kitchener-Waterloo area, with a proposal to market and sell the Unsold Units. Mint Realty has indicated that their objective is to provide a complete marketing, sales and design solution for the Unsold Units, which includes, among other things, setting market prices for each type of unit, staging model suites for purchasers to attend and view, approaching potential purchasers

to negotiate transactions which will be subject to final approval by the Trustee, setting up a sales centre for purchasers to be able to select upgrades and engaging its own trades people to finish the Unsold Units.

26. In its proposal, Mint Realty has indicated that it will be seeking a sales management and listing fee, a selection and upgrade consultation fee, a staging and décor fee for model suites, and a marketing budget. A copy of Mint Realty's proposal (the "**Mint Realty Proposal**"), with Mint Realty's proposed fees redacted, is attached hereto as **Appendix "D"**. An unredacted copy of the Mint Realty Proposal will be provided to the Court as **Confidential Appendix "1"**. The Trustee will be requesting that the Court grant a sealing order with respect to the unredacted proposal, as the Trustee believes that it is appropriate to keep confidential Mint Realty's proposed fees so as not to prejudice Mint Realty in the market place with regard to the fees it has quoted or will quote on other similar assignments. The Trustee is of the view that Mint Realty's proposed fees are commercially reasonable.
27. The Trustee believes that utilizing Mint Realty as its agent to complete the sales of the Unsold Units is appropriate for the following reasons:
- (a) Mint Realty has significant experience in the real estate industry and specifically in the condominium market in the Kitchener-Waterloo area;
  - (b) having Mint Realty court purchasers, including showing purchasers model suites, dealing with upgrades and trades, and completing transactions, will significantly reduce the professional fees of the Trustee;

- (c) much of Mint Realty's proposed compensation is based on commissions earned on the purchase price and value of upgrades they are able to sell, which will provide Mint Realty with the incentive to maximize selling prices and upgrades, the proceeds from which will be for the benefit of 144's creditors. The Trustee believes that the proposed fees of Mint Realty are fair and reasonable; and
- (d) the Trustee has spoken to representatives from LBC and MarshallZehr, the first and second mortgagees on the Property, regarding the engagement of Mint Realty for the purposes set out herein, and both parties are in agreement with the Trustee retaining Mint Realty on the terms of the Mint Proposal.

***Parking***

- 28. As has previously been reported to the Court, there were no parking units in the 144 Park Project that were allocated by 144 to the Unsold Units, as 144 intended to allocate parking units to the Unsold Units in a project to be built adjacent to the 144 Park Project by another company in the MADY Group.
- 29. The Trustee, in an attempt to have parking units available to be allocated to the Unsold Units, took steps to re-allocate various existing parking units and requested that purchasers that had intended to purchase two parking units from 144 agree to close their sale transactions with only one parking unit and a reduction to the purchase price.
- 30. As a result of the Trustee's actions, there are now 9 parking units that are available to be allocated to the Unsold Units. As noted above, the Trustee continues to have discussions with purchasers with two parking units in an attempt to have them close their sale transactions with only one parking unit.

**FEES AND DISBURSEMENTS OF THE TRUSTEE AND ITS COUNSEL**

31. Pursuant to paragraph 20 of the Appointment Order, the Trustee, its counsel, and counsel to 144 are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 21 of the Appointment Order, the Trustee and its counsel shall pass their accounts.
32. The total fees for Collins Barrow and the Trustee for the period of November 18, 2014 to June 30, 2015 were \$287,393.10, plus disbursements of \$0, plus HST of \$37,361.11, for a total of \$324,754.21. The time spent by Collins Barrow and the Trustee is more particularly described in the Affidavit of Bryan Tannenbaum sworn July 30, 2015, which is attached hereto and marked as **Appendix "E"** and contains copies of invoices that set out the services provided during this time period.
33. The total fees of Chaitons, as insolvency counsel to 144 and the Trustee, for the period of December 15, 2014 to June 30, 2015, were \$152,914.80, plus disbursements of \$4,974.39, plus HST of \$20,353.69, for a total of \$178,242.88. The time spent by Chaitons is more particularly described in the Affidavit of Maya Poliak sworn July 30, 2015, which is attached hereto and marked as **Appendix "F"** and contains, among other things, copies of invoices that set out the services provided during this period of time.
34. The total fees of Harris Sheaffer, as condominium counsel to the Trustee, for the period of January 2, 2015 to July 24, 2015, were \$59,814.50, plus disbursements of \$2,677.49, plus HST of \$8,079.65, for a total of \$70,571.64. The time spent by Harris Sheaffer is more particularly described in the Affidavit of Ari Katz sworn July 29, 2015, which is

attached hereto and marked as **Appendix "G"** and contains, among other things, copies of invoices that set out the services provided during this period of time.

35. The Trustee is of the view that the fees and disbursements charged by Chaitons and Harris Sheaffer are fair and reasonable.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

36. Attached hereto and marked as **Appendix "H"** is a copy of a statement of receipts and disbursements prepared by the Trustee for the period from January 22 to July 24, 2015.

#### **CONSTRUCTION LIEN CLAIMS PROCESS**

37. Pursuant to the Order (re Construction Lien Claims Process) of Mr. Justice Wilton-Siegel dated April 23, 2015, the Trustee is to implement and administer a construction lien claims process. Pursuant to the terms of the Order, parties were to provide all required information to the Trustee by May 29, 2015. A copy of the Order is attached hereto and marked as **Appendix "I"**.
38. As of the date of this report, construction liens had been registered against the Property in a total amount of approximately \$4.3 million. The Trustee has been, and continues to be, in discussions with the lien claimants in connection with their claims, including with respect to matters related to holdback amounts specific to each claimant, as each party directly contracted with 144.
39. At this time, the Trustee is not in a position to provide any recommendation to the Court regarding the lien claims and their priorities vis-à-vis the mortgagees. However, the Trustee is recommending that it be authorized by the Court to retain the amount of \$5.4



million pending further Order of the Court, which amounts represents approximately 125% of the total face value amounts of the lien claims.

#### **DISTRIBUTION TO LBC**

40. As has previously been reported to the Court, LBC financed the development of the 144 Park Project and registered a charge/mortgage against the Property in the principal amount of \$40 million on May 25, 2012. As a result of postponements registered in favour of the Bank by the then three prior registered mortgagees (Allen Street Holdings, Aviva Insurance Company of Canada and MarshallZehr), the Bank has the first ranking mortgage against the Property.
41. The Trustee has been informed by LBC that, as of July 16, 2015, 144's indebtedness to the Bank that is secured by the charge/mortgage is in the amount of \$40,132,278. Attached hereto and marked as **Appendix "J"** is a copy of a statement received from the Bank.
42. The Trustee has obtained an opinion from Chaitons that, subject to customary qualifications and assumptions, the Bank has a valid and enforceable first mortgage against the Property.
43. As a result, the Trustee is seeking the authorization of the Court to make an interim distribution to LBC in the amount of \$14 million. The Trustee is of the view that the interim distribution is to the benefit of 144's stakeholders, as it reduces the indebtedness of 144 to the Bank which continues to accrue interest, and there is no prejudice to the lien claimants given the \$5.4 million that is to be retained by the Trustee pending further Order of the Court.

**NELCO MECHANICAL LIMITED**

44. Nelco Mechanical Limited (“Nelco”) supplied and installed the heating, ventilation and air conditioning (“HVAC”) system at the Property. Based on an accounts payable subledger provided by 144, Nelco is owed \$682,588 and was paid in excess of \$4.0 million by 144 for services provided. The Trustee has been advised by Chaitons that Nelco has not registered a lien claim against the Property and accordingly, Nelco is an unsecured creditor.

***Transfer of Manuals***

45. The Trustee has been advised by Harris Sheaffer that, in accordance with the *Condominium Act* (the “CA”), there is a requirement to turn over the Condominium Corporation to the new owners after fifty percent (50%) of the units have been transferred to the purchasers. The Trustee anticipates that on August 10, 2015, the fifty percent threshold will be met. The turnover meeting must be called within 21 days after the sale of units and must be held within 21 days thereafter. The CA requires delivery of certain information to the purchasers at or within 30 days of the turnover meeting, which includes all manuals, warranties and maintenance requirements for the common elements of the building for the safe operation of the systems in the building.
46. The Trustee has been informed by its on-site person at the 144 Park Project that she had been informed by Nelco that it intends to withhold the manuals for the HVAC system required for turnover to the Condominium Corporation in order to obtain payment from the Trustee for its arrears which, as previously stated, total \$682,588. The Trustee is requesting that the Court grant an Order directing Nelco to deliver the HVAC manuals to the Trustee for the following reasons:

- (a) non-provision of the required manuals may result in compromising the safety and security of the residents of the Property and staff working on-site;
- (b) the manuals are required for the preservation and protection of the Property;
- (c) none of the trade suppliers or lien claimants have been paid for their arrears. In certain circumstances, certain professionals such as architects, engineers and planners were paid in order to gain their cooperation to assist the Trustee with producing certificates and other documentation, which was required for registration of the Property; however, the amounts paid in these cases were not significant when compared to the amount owed to Nelco; and
- (d) payment of Nelco's arrears would prejudice the lien claimants, secured lenders and other stakeholders of 144 and constitute a preference.

47. As a result, the Trustee is requesting that the Court grant an Order requiring Nelco to deliver the HVAC manuals to the Trustee, so that the Trustee can provide the manuals to the residents at the turnover meeting for the Condominium Corporation

#### **TRUSTEE'S REQUEST TO THE COURT**

48. Based on the foregoing, the Trustee respectfully requests that the Court issue Orders:
- (a) approving the Second Report and the activities and conduct of the Trustee as set out therein;
  - (b) approving a form of vesting order to be used by the Trustee to complete the sale of the remaining 33 Sold Units and related parking units and storage units and

authorizing and directing the Registrar of the Ontario Superior Court of Justice (Commercial List) to sign, issue and enter each vesting order as completed by Chaitons upon delivery of a Trustee certificate confirming the name(s) of the purchaser(s) and the legal description of the property as set out in each vesting order;

- (c) authorizing the Trustee to engage Mint Realty to market any or all of the Unsold Units pursuant to the terms of the Mint Realty Proposal;
- (d) authorizing the Trustee to sell, convey, or transfer the Unsold Units or any part or parts thereof without the approval of the Court if the purchase price is within 95% of the listing price for the residential unit or the Trustee has obtained the written consent of the first mortgagee of the Property;
- (e) approving the fees and disbursements of the Trustee, Chaitons and Harris Sheaffer;
- (f) authorizing the Trustee to retain \$5.4 million pending further order of the Court;
- (g) authorizing the Trustee to make an interim distribution of \$14 million to LBC;  
and
- (h) directing Nelco to deliver to the Trustee the manuals for the HVAC system installed by Nelco at the Property, so that such manuals may be provided by the Trustee to the residents at the turnover meeting for the Condominium Corporation.

All of which is respectfully submitted to this Court as of this 30<sup>th</sup> day of July, 2015.

**COLLINS BARROW TORONTO LIMITED,**

in its capacity as Court-appointed Trustee of  
the Property and not in its personal capacity

Per: 

Name: Bryan A. Tannenbaum, FCPA, FCA, FCIRP

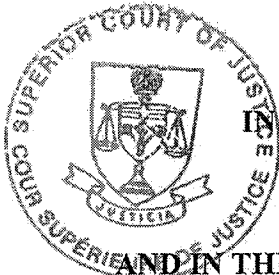
Title: President

I have the authority to bind the corporation

# APPENDIX “O”

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

THE HONOURABLE MR. ) WEDNESDAY, THE 5<sup>th</sup> DAY  
)  
JUSTICE NEWBOULD ) OF AUGUST, 2015



**IN THE MATTER OF THE CONSTRUCTION LIEN ACT,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**ORDER**

**THIS MOTION** made by Collins Barrow Toronto Limited (“**CBTL**”), in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario (the “**Property**”) pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the “**Trustee**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report of the Trustee dated July 30, 2015 (the “**Third Report**”) and the Appendices thereto, including the Second Report of the Trustee dated June 23, 2015 (the “**Second Report**”), the Affidavit of Maya Poliak sworn July 30, 2015 (the “**Poliak**”

**Affidavit**”), the Affidavit of Bryan Tannenbaum sworn July 30, 2015 (the “**Tannenbaum Affidavit**”) and the Affidavit of Ari Katz sworn July 29, 2015 (the “**Katz Affidavit**”), and on hearing the submissions of counsel for the Trustee and other counsel listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Lynn Lee sworn July 31, 2015, filed,

### **SERVICE**

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

### **APPROVAL OF FORM OF VESTING ORDER**

2. **THIS COURT ORDERS** that the form of vesting order attached hereto as **Schedule “A”** be and is hereby approved for use by the Trustee in completing the sale transactions with respect to the remaining 33 Sold Units (as such term is defined in the Third Report).

3. **THIS COURT ORDERS** that Chaitons LLP (“**Chaitons**”), counsel to the Trustee, is hereby authorized to insert into each draft vesting order the following information:

- (a) the name(s) of the purchaser(s) or their nominees in the first preamble paragraph of each draft vesting order and in Schedule “A” to each draft vesting order (the Trustee’s Certificate); and
- (b) the legal description of the applicable Purchased Assets on Schedule “B” to each draft vesting order.



4. **THIS COURT ORDERS** that, upon completion of a draft vesting order by Chaitons with respect to each of the remaining 33 Sold Units in accordance with paragraph 2 hereof (a "Completed Vesting Order"), a representative of Chaitons shall present each Completed Vesting Order to the Registrar of the Ontario Superior Court of Justice (Commercial List), along with a certificate signed by the Trustee confirming the name(s) of the purchaser(s) and the legal description of the property contained in the Completed Vesting Order. The Registrar is authorized, empowered and directed to sign, issue and enter each Completed Vesting Order as presented to it by Chaitons.

#### **APPROVAL OF SECOND REPORT AND ACTIVITIES**

5. **THIS COURT ORDERS** that the Second Report, and the conduct and activities of the Trustee as set out in the Second Report, be and are hereby approved.

#### **SEALING**

6. **THIS COURT ORDERS** that Confidential Appendix 1 to the Third Report is hereby sealed and shall not form part of the public record pending further order of the Court.

#### **DISTRIBUTION TO LAURENTIAN BANK OF CANADA**

7. **THIS COURTS ORDERS** that the Trustee is hereby authorized and directed to make an interim distribution of \$14 million to Laurentian Bank of Canada.

#### **TRUSTEE TO RETAIN \$5.4 MILLION**

8. **THIS COURTS ORDERS** that the Trustee is hereby authorized and directed to retain \$5.4 million in an interest bearing account in respect of lien claims pending further order of the Court.

**APPROVAL OF FEES AND DISBURSEMENTS**

9. **THIS COURT ORDERS** that the fees and disbursements of CBTL and the Trustee for the period November 18, 2014 to June 30, 2015, as described in the Third Report and the Tannenbaum Affidavit, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of counsel to 144 Park Ltd. (“144”) and the Trustee, Chaitons, for the period December 15, 2014 to June 30, 2015, as described in the Third Report and the Poliak Affidavit, are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of counsel to 144 and the Trustee, Harris Sheaffer LLP, for the period January 2, 2015 to July 24, 2015, as described in the Third Report and the Katz Affidavit, are hereby approved.

**UNSOLD UNITS**

12. **THIS COURT ORDERS** that the Trustee is authorized to retain and engage Mint Realty Inc. Brokerage to market any of the Unsold Units (as defined in the Third Report) on the terms of the Mint Realty Proposal (as defined in the Third Report).

13. **THIS COURT ORDERS** that the Trustee is authorized to sell, convey or transfer the Unsold Units or any part of parts thereof without approval of the Court if:

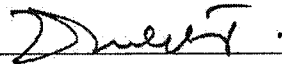
(a) the purchase price of the sale transaction is at least 95% of the listing price for the residential unit; or

(b) the Trustee has obtained the written consent of the first mortgagee of the Property,

otherwise with approval of the Court.

**NELCO**

14. **THIS COURT ORDERS** that Nelco Mechanical Limited ("Nelco") is hereby directed to deliver to the Trustee, within 3 business days of the date of this Order, all manuals, documents, records and information of any kind related to the heating, ventilation and air conditioning system installed by Nelco at the Property.

  
\_\_\_\_\_

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



AUG 0 5 2015

**SCHEDULE "A"**

Court File No. CV15-10843-00CL

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

THE HONOURABLE ) WEDNESDAY, THE 5<sup>TH</sup> DAY  
)  
JUSTICE ) OF AUGUST, 2015

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,  
R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**VESTING ORDER**

**THIS MOTION** made by Collins Barrow Toronto Limited, in its capacity as Court-appointed trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "Trustee") for an order vesting in \_\_\_\_\_ (the "Purchaser") the right, title and interest of 144 Park Ltd. (the "Debtor") in and to the property described in **Schedule "B"** hereto (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Trustee dated July 30, 2015 (the "Third Report") and the Appendices thereto, and on hearing the submissions of counsel for the Trustee:

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Trustee's Certificate**"), all of 144's right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, certificates of action, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Penny dated January 22, 2015; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

2. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Kitchener (Waterloo) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Purchased Assets identified in

Schedule "B" hereto in fee simple, and is hereby directed to delete and expunge from title to the Purchased all of the Claims listed in Schedule "C" hereto.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Trustee's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS AND DECLARES** that the sale of the Purchased Assets is exempt from the application of the *Bulk Sales Act* (Ontario).

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

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Schedule "A" – Form of Trustee's Certificate

Court File No. CV15-10843-00CL

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

**IN THE MATTER OF THE *CONSTRUCTION LIEN ACT*,**  
**R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD.**  
**FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1) OF THE**  
***CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C.30, AS AMENDED**

**TRUSTEE'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice dated January 22, 2015, Collins Barrow Toronto Limited was appointed as trustee over the lands and premises known municipally as 142, 144 and 148 Park Street and 21 Allen Street West, Waterloo, Ontario pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

B. Pursuant to an Order of the Court dated August 5, 2015 (the "Vesting Order"), the Court provided for the vesting in \_\_\_\_\_ (the "Purchaser") of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Purchased Assets; and (ii) the transaction has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Vesting Order.



**THE TRUSTEE CERTIFIES** the following:

1. The Purchaser has paid and the Trustee has received the purchase price for the Purchased Assets; and
3. The Transaction has been completed to the satisfaction of the Trustee.
4. This Certificate was delivered by the Trustee at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**COLLINS BARROW TORONTO LIMITED,  
in its capacity as Trustee of the Property, and  
not in its personal capacity**

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

Name:

Title:

**Schedule "B" – Purchased Assets**

**Schedule "C" – Claims to be deleted and expunged from title to Purchased Assets**

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR611290	May 2, 2011	Notice	\$2	Allen Street Holdings Inc.	Allen Street Holdings Inc., 2184038 Ontario Inc., 144 Park Ltd., COB GP Inc.
WR639367	September 1, 2011	Transfer	\$2,200,000	144 Park Ltd.	Allen Street Holdings Inc.
WR639368	September 1, 2011	Charge	\$8,500,000	144 Park Ltd.	Aviva Insurance Company of Canada
WR639369	September 1, 2011	Charge	\$3,000,000	144 Park Ltd.	Allen Street Holdings Inc.
WR660381	December 13, 2011	Charge	\$2,887,696	144 Park Ltd.	MarshallZehr Group Inc.
WR690395	May 25, 2012	Charge	\$40,000,000	144 Park Ltd.	Laurentian Bank of Canada
WR690396	May 25, 2012	No Assgn Rent Gen		144 Park Ltd.	Laurentian Bank of Canada
WR690416	May 25, 2012	Postponement		Allen Street Holdings Inc.	Laurentian Bank of Canada
WR690422	May 25, 2012	Postponement		Aviva Insurance Company of Canada	Laurentian Bank of Canada
WR690423	May 25, 2012	Postponement		MarshallZehr Group Inc.	Laurentian Bank of Canada
WR759234	June 13, 2013	APL Absolute Title		144 Park Ltd.	
WR847447	October 24, 2014	Construction Lien	\$301,592	Global Fire Protection Ltd.	
WR849030	October 31, 2014	Construction Lien	\$88,883	694643 Ontario Limited cob as O'Connor Electric	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR854810	December 1, 2014	Construction Lien	\$537,286	J & I Gaweda Construction Ltd.	
WR854978	December 2, 2014	Construction Lien	\$26,889	Bast Home Comfort Inc.	
WR856621	December 10, 2014	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR856756	December 11, 2014	Construction Lien	\$328,260	Frendel Kitchens Limited	
WR857239	December 12, 2014	Construction Lien	\$436,314	T.I.C. Contracting Ltd.	
WR857322	December 15, 2014	Construction Lien	\$188,393	Global Precast Inc.	
WR857462	December 15, 2014	Construction Lien	\$110,716	2050491 Ontario Inc. o/a The Downsview Group	
WR857468	December 15, 2014	Construction Lien	\$104,009	Sam Tortola Enterprises Inc.	
WR857793	December 16, 2014	Construction Lien	\$15,870	CRS Contractors Rental Supply General Partner Inc.	
WR857850	December 16, 2014	Construction Lien	\$83,436	Adlers Main Tile & Carpet Co. Ltd.	
WR858473	December 19, 2014	Construction Lien	\$30,851	Turner Fleischer Architects Inc.	
WR858748	December 19, 2014	Construction Lien	\$46,043	Hammerschlag & Joffe Inc.	
WR858991	December 22, 2014	Construction Lien	\$345,952	Sereen Painting Ltd.	

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
WR859188	December 23, 2014	Construction Lien	\$176,771	Weston Flooring Limited	
WR859941	December 30, 2014	Construction Lien	\$32,381	Great Pyramid Aluminum Ltd.	
WR860525	January 5, 2015	Construction Lien	\$139,287	Adlers Main Tile & Carpet Co. Ltd.	
WR860757	January 6, 2015	Certificate of Action		Frendel Kitchens Limited	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., D. Mady Investments Inc., MarshallZehr Group Inc., Allen Street Holdings Ltd., Aviva Insurance Company of Canada, Laurentian Bank of Canada
WR861891	January 13, 2015	Certificate of Action		Bast Home Comfort Inc.	
WR862054	January 14, 2015	Certificate of Action		J & I Gaweda Construction Ltd.	
WR862055	January 14, 2015	Certificate of Action		Global Fire Protection Ltd.	144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., Laurentian Bank of Canada, MarshallZehr Group Inc.
WR862500	January 16, 2015	Certificate of Action		694643 Ontario Limited	
WR863268	January 21, 2015	Certificate of Action		Turner Fleischer Architects Inc.	Mady Contract Division Ltd., Mady Contract Division (2009) Ltd., Mady

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Development Corporation, 144 Park Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group Inc., Laurentian Bank of Canada
WR863291	January 21, 2015	Construction Lien	\$113,328	Brody Wall System Ltd.	
WR863296	January 21, 2015	Certificate of Action		T.I.C. Contracting Ltd.	
WR863658	January 23, 2015	Construction Lien	\$4,258	Skyway Canada Limited	
WR863814	January 23, 2015	Construction Lien	\$210,190	DKS Stone Fabrication & Design Inc.	
WR863820	January 23, 2015	APL Court Order		Ontario Superior Court of Justice (Commercial List)	Collins Barrow Toronto Limited
WR864339	January 28, 2015	Construction Lien	\$752,632	Clonard Group Inc.	
WR864365	January 28, 2015	Certificate of Action		Hammerschlag & Joffe Inc.	
WR864655	January 29, 2015	Construction Lien	\$260,447	Aluminum Window Design Installations Inc.	
WR865440	February 2, 2015	Certificate of Action		Great Pyramid Aluminum Ltd.	144 Park Ltd.
WR865713	February 4, 2015	Certificate of Action		Global Precast Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group

Instrument No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
					Inc., Laurentian Bank of Canada
WR865936	February 5, 2015	Certificate of Action		Adlers Main Tile & Carpet Co. Ltd.	
WR866373	February 9, 2015	Certificate of Action		2050491 Ontario Inc.	144 Park Ltd., Mady Contract Division (2009) Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Ltd., MarshallZehr Group Inc., Laurentian Bank of Canada
WR867197	February 13, 2015	Certificate of Action		Weston Flooring Limited	
WR867757	February 19, 2015	Certificate of Action		Sereen Painting Ltd.	
WR868712	February 26, 2015	Certificate of Action		Sam Tortola Enterprises Inc.	
WR870655	March 11, 2015	Certificate of Action		Aluminum Window Design Installations Inc.	
WR870768	March 12, 2015	Certificate of Action		CRS Contractors Rental Supply General Partner Inc.	
WR870844	March 12, 2015	Certificate of Action		Brody Wall System Ltd.	144 Park Ltd.
WR874856	April 8, 2015	Certificate of Action		DKS Stone Fabrication & Design Inc.	144 Park Ltd., Mady Development Corporation, Mady Contract Division (2009) Ltd., Mady Contract Division Ltd., Aviva Insurance Company of Canada, Allen Street Holdings Inc., MarshallZehr Group

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
					Inc., Laurentian Bank of Canada
WR875305	April 10, 2015	Certificate of Action		Skyway Canada Limited	



**Schedule "D" – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Purchased Assets**

**(unaffected by the Vesting Order)**

<b>Instrument No.</b>	<b>Registration Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
WR625222	July 7, 2011	Notice	\$2	The Corporation of the City of Waterloo	Allen Street Holdings Inc.
WR655113	November 17, 2011	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR666363	January 18, 2012	Transfer Easement	\$2	144 Park Ltd.	Rogers Cable Communications Inc.
58R17836	June 13, 2013	Plan Reference			
58R18116	February 7, 2014	Plan Reference			
58R18429	November 27, 2014	Plan Reference			
WR856168	December 8, 2014	Notice		The Corporation of the City of Waterloo	144 Park Ltd.
WR864508	January 29, 2015	Transfer Easement	\$2	144 Park Ltd.	Waterloo North Hydro Inc.
WR867313	February 17, 2015	Notice	\$2	The Regional Municipality of Waterloo	
WR876062	April 16, 2015	Notice	\$2	144 Park Ltd.	One 55 Mady Ltd.
WCP591	May 25, 2015	Standard Condo Plan			
WR882241	May 25, 2015	Condo Declaration		144 Park Ltd.	

**IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

**ORDER**

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton (LSUC #21592F)**  
Tel: (416) 218-1129  
Fax: (416) 218-1849  
E-mail: harvey@chaitons.com

**Sam Rappos (LSUC #51399S)**  
Tel: (416) 218-1137  
Fax: (416) 218-1837  
E-mail: samr@chaitons.com

**Lawyers for the Trustee**

# **APPENDIX “P”**

# HARRIS, SHEAFFER LLP

BARRISTERS & SOLICITORS

YONGE CORPORATE CENTRE  
4100 YONGE STREET, SUITE 610, TORONTO, ONTARIO M2P 2B5  
TELEPHONE (416) 250-5800 / FACSIMILE (416) 250-5300

July 21, 2015

## FAX COVER SHEET:

To:

[REDACTED]

From:

Karen McNeill

Direct Line: 416-250-3695

Number of pages including cover sheet: 1

RE: 144 Park Ltd. s/t [REDACTED]

Occupancy Date: [REDACTED]

Closing Date: [REDACTED]

Our File No: 090328

Please be advised that Collins Barrow Toronto Limited was appointed by court order as trustee (the "Trustee") of the property owned by 144 Park Ltd., including the units in the condominium. The court order was registered on title to the property on January 23, 2015 as Instrument No. WR863820.

The Trustee has been working with lenders and other stakeholders in this project, including certain members of the Ad Hoc Purchasers' Committee and the potential developer of 155 Uptown Waterloo, to find a meaningful parking solution to the current shortage of parking in 144 Park. In connection therewith, the Trustee has reached a potential solution that balances the many stakeholder interests. The allocation of some of the Parking Units in this project are now being reallocated in order to achieve this solution.

In this regard, your client has now been allocated a new Parking Unit and this allocation will take effect at noon on July 24, 2015. Your client's new Parking Unit allocation is Unit [REDACTED], Level [REDACTED]. Please advise your client that arrangements must be made to move vehicles from the previously allocated Parking Unit at noon on July 24, 2015 because the previously allocated Parking Unit has been reallocated for someone else's use commencing at noon on July 24, 2015. Please be further advised that if your client agreed to purchase more than one Parking Unit, you must check the re line of this fax to verify which Parking Unit has been reallocated.

In the event your client requires any assistance in locating their new Parking Unit, kindly speak to the Trustee's site representative, Ms. Karla Roelofs. The Trustee is most grateful for your cooperation and assistance in effecting this allocation. The Trustee intends to schedule a Title Transfer Date as soon as possible.

Warning: The information contained in this fax is confidential, and may be subject to solicitor-client privilege. It is intended solely for the use of the party to whom it is addressed. Any distribution, copying or disclosure of this fax, other than by its intended recipient, is strictly prohibited. If you received this fax in error, please advise us immediately by telephone, and return the original transmission to us by mail without making a copy.

■  
BARRY ROTENBERG

■  
GARY H. HARRIS

■  
ROBERT D. SHEAFFER

■  
PHILIP J. DRAPER

■  
MARK E. FREEDMAN  
(1981 - 2009)

■  
JEFFREY P. SILVER

■  
STEPHEN M. KARR

■  
MARTIN P. HOUSER

■  
MARK L. KAROLY

■  
MICHAEL J. BAUM

■  
ARI M. KATZ

■  
RAZVAN NICOLAE

■  
ROBERT SHORE

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# **APPENDIX “Q”**



condocure  
CONDOMINIUM SALES MARKETING

the condocure team


mint REALTY

## our experience

The CondoCulture team at Mint Realty has vast experience in all areas of the local condo market. As Kitchener-Waterloo's only exclusive condo sales and marketing company, we have dedicated ourselves to knowing every aspect of the local condo market and providing a deeper level of expertise to our clients. Condos are all we do and this dedication has provided us with the reputation and opportunity to be involved with the sales and development of some of the areas largest condominium projects. These projects include:


- Midtown Lofts
- RED Condominium
- 144 Park
- 155 Uptown
- One Hundred
- 1 Victoria
- BPR Lofts

Our experience and service capabilities with new projects is diverse and includes: site selection, project acquisitions, new project creation and consulting, pricing strategy and analysis, bulk investment sales, and complete project sales management.



Waterloo Region's  
only dedicated  
condominium  
sales and marketing  
company.





We are active in  
every top condo-  
minium building in  
Kitchener-Waterloo

## our advantage

In addition to our experience in new condominium projects, our local resale division is active in every top condominium within the Kitchener-Waterloo core areas providing direct pulse on unit values, buyer preferences and changing trends within the marketplace. Our resource-based approach provides buyers and sellers with an opportunity to search our online database of condos and lofts from home or visit our condo retail store to search all local condos in one spot and learn everything there is to know about the local condominium market.

### highlights

#### The CondoCulture Store

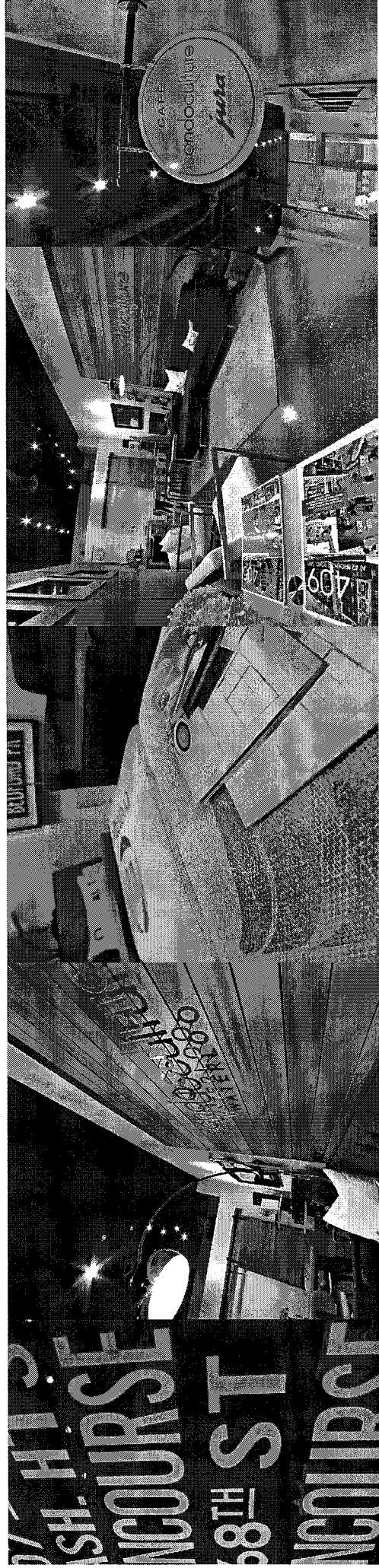
- The area's only dedicated condo retail store
- Complete condo resource centre providing information on all of the areas top condominiums
- Located in one of the most visited and influential urban areas of Waterloo
- Located directly across the street from the 144 Park Project

#### CondoCulture.ca

- The most popular condo search platform in Kitchener-Waterloo
- Searchable database of all of the areas top condominium projects
- Highly ranked across Google and all popular online search platforms
- Targeted, highly relevant users searching for a condominium in the local area
- Consistently among top search results for the 144 Park Project.

## who we are

CondoCulture is Kitchener-Waterloo's only dedicated condominium real estate & lifestyle company. Through our local condo-specific retail store, in-depth local market knowledge, and direct experience consulting and providing sales support for some of the area's top condominium developments, we provide advice, add value and produce results that extend beyond the capabilities of a traditional real estate company. We are a progressive collective of research, sales, finance, marketing and consulting whose expertise extends beyond sales to create impeccably positioned projects with a focus on great design, fast absorption and maximum returns.





# ALL LOCAL CONDOS ONE SPOT.™

[condoculture.ca](http://condoculture.ca)

# **APPENDIX “R”**

August 17, 2015

Arif Dhanani  
COLLINS BARROW TORONTO LLP, TRUSTEE  
Collins Barrow Place  
11 King Street West, Suite 700  
Toronto, ON M5H 4C7

Dear Mr. Dhanani,

Re: 144 Park Ltd. Unsold Condominium Units

This letter is in response to your request for a market price evaluation of the twenty (20) unsold condominium units at the 144 Park project in Waterloo, Ontario. The attached market price evaluation has been completed under two assumptions for each condominium unit ("Condominium"), market value with one (1) parking unit ("Parking") and market value without any parking.

In summary, the inclusion of Parking is critical in maintaining the full market value of each Condominium. The value of a Condominium without Parking is greatly reduced when compared to the same Condominium with Parking. In our opinion, the effect of this reduction relative to the unsold units at 144 Park is between \$100,746.75 up to a \$263,900.00 reduction. This range is largely dependent on the size and market positioning of each Condominium. The aggregate difference in value of all 20 unsold Condominiums when comparing the two parking scenarios is \$3,784,438.50.

It is important to note that although accurate market evaluations have been provided there is no commercial evidence to support that these Condominiums are and will be salable in the Kitchener/Waterloo market without Parking. The Kitchener/Waterloo market is conservative in nature and generally unwilling to take unnecessary risk. It should be further noted that the majority of the market values without Parking have been derived using a rental cash flow analysis and actual market values achievable on the resale market could be substantially lower. We are also of the belief that although the three Brownstone units (102, 106, 107) and two Grand Penthouse Units (1903, 1904) have been valued to reflect a reasonable discount when Parking is not included, these Condominiums are likely "not saleable" given the end user nature of the product, reduced utility and appeal among the target market and the cost to carry for an investor given higher municipal taxes and condominium fees.

It is our recommendation that each of the 20 Condominiums be sold with Parking in order to avoid a significant reduction in overall market value.

If you have any questions please don't hesitate to contact me at 519-498-7223.

Sincerely,



Jeff P. Gibson  
Managing Partner, Founder & Broker of Record

SUITES	SIZE (SQ.FT.)	PARKING UNITS	MARKET VALUE	PARKING	MARKET VALUE	MARKET VALUE
			(Standard Finished Unit)	UNITS	(Standard Finished Unit)	(Standard Finished Unit)
			with 20 Parking Units		with 0 Parking Units	Difference
102	1835	1	\$629,990.00	0	\$391,090.00	\$238,900.00
106	1876	1	\$634,990.00	0	\$396,090.00	\$238,900.00
107	1972	1	\$644,990.00	0	\$406,090.00	\$238,900.00
502	1152	1	\$419,990.00	0	\$241,494.25	\$178,495.75
503	690	1	\$309,990.00	0	\$209,243.25	\$100,746.75
702	1152	1	\$419,990.00	0	\$241,494.25	\$178,495.75
706	712	1	\$309,990.00	0	\$209,243.25	\$100,746.75
710	1108	1	\$399,990.00	0	\$229,994.25	\$169,995.75
809	1034	1	\$389,990.00	0	\$224,244.25	\$165,745.75
810	1108	1	\$399,990.00	0	\$229,994.25	\$169,995.75
1110	1108	1	\$404,990.00	0	\$232,869.25	\$172,120.75
1203	690	1	\$314,990.00	0	\$212,618.25	\$102,371.75
1306	712	1	\$314,990.00	0	\$212,618.25	\$102,371.75
1503	1286	1	\$499,990.00	0	\$262,494.75	\$237,495.25
1506	1486	1	\$524,990.00	0	\$275,619.75	\$249,370.25
1607	1262	1	\$449,990.00	0	\$247,494.50	\$202,495.50
1707	1262	1	\$449,990.00	0	\$247,494.50	\$202,495.50
1807	1262	1	\$459,990.00	0	\$252,994.50	\$206,995.50
1903	1785	1	\$699,990.00	0	\$436,090.00	\$263,900.00
1904	1900	1	\$799,990.00	0	\$511,090.00	\$263,900.00
<b>20 SUITES</b>		<b>20 TOTAL PARKING UNITS</b>	<b>\$9,479,800.00 TOTAL MARKET VALUE</b>	<b>0 TOTAL PARKING UNITS</b>	<b>\$5,670,361.50 TOTAL MARKET VALUE</b>	<b>\$3,784,438.50</b>

# APPENDIX “S”

Collins Barrow Toronto Limited  
Collins Barrow Place  
11 King Street West  
Suite 700, PO Box 27  
Toronto, Ontario  
M5H 4C7 Canada

August 12, 2015

T. 416.480.0160  
F. 416.480.2646

[www.collinsbarrow.com](http://www.collinsbarrow.com)

**TO: PURCHASERS OF CONDOMINIUM UNITS WITH TWO PARKING UNITS**

Dears Sirs/Mesdames:

**Re: 144 Park Ltd.**

As you know, Collins Barrow Toronto Limited was appointed trustee (the "Trustee") of the 144 Park condominium project on January 22, 2015 pursuant to an Order of the Ontario Superior Court of Justice.

Each of you entered into an agreement of purchase and sale with 144 Park Ltd. to purchase a residential unit and two parking units. As you were previously made aware, there are insufficient parking units available to transfer two parking units to you.

The Trustee has given careful and considerable thought to possible solutions to the parking shortage. The Trustee previously offered you a purchase price reduction of \$33,900 (inclusive of HST) for the return of one parking unit, which offer has not been accepted to date. It has become apparent that there is no circumstance where the Trustee will be in a position to transfer two parking units to you.

The Trustee is bringing a motion on September 2, 2015 to seek the advice and direction of the Court with respect to parking matters. We would like to meet with you to discuss the parking shortage and possible solutions. Details of the date, time and place of the meeting are set out below. We ask that you confirm by return e-mail to [andhanani@collinsbarrow.com](mailto:andhanani@collinsbarrow.com) by 12:00 pm on Monday August 17, 2015 whether you and/or your legal counsel intend to attend the meeting.

Date of Meeting: August 17, 2015  
Time: 7:00 pm  
Place: Waterloo Inn  
475 King Street North  
Waterloo, Ontario, N2J 2Z5  
Rosedale Room

Yours truly,

**COLLINS BARROW TORONTO LIMITED**  
in its capacity as Trustee under the Construction Lien Act  
of 144 Park and not in its personal or corporate capacity

Per: 

Arif Dhanani, CPA, CA, CIRP



# **APPENDIX “T”**

August 19, 2015

Via email

**144 PARK**

**TO PURCHASERS OF UNITS THAT HAVE CLOSED ("Closed Purchasers")**

Dear Sirs/Mesdames:

**Re: Parking Units Required**

As you are aware, Collins Barrow Toronto Limited was appointed trustee (the "**Trustee**") of the property known as 144 Park by the Ontario Superior Court of Justice.

We are writing to you in connection with an issue that the Trustee is looking to address, and with which you may be able to assist.

There is a parking shortage at 144 Park wherein more parking was sold by the developer to residents of the building than was available. As a result, the Trustee is only in a position to provide one parking unit to those purchasers who had contracted to purchase two parking units from the developer ("**Pending Purchasers**").

In an effort to deal with his situation, the Trustee met last evening with a number of the Pending Purchasers to discuss the parking issue. At that meeting, the Trustee agreed to send a letter to the Closed Purchasers to see if they would be interested in either selling the parking unit they purchased or, alternatively, making that parking unit available for rent to Pending Purchasers.

Please note that the Trustee is sending this e-mail in order to facilitate a possible solution to the parking issue. The Trustee does not intend to be involved in any transaction between Closed Purchasers and Pending Purchasers and is sending this letter with the sole purpose of seeing whether it can assist with the situation currently being faced by Pending Purchasers.

If you are interested in either selling or renting your parking unit, we ask that you please respond to the Trustee by writing to the undersigned at [andhanani@collinsbarrow.com](mailto:andhanani@collinsbarrow.com) by no later than Monday, August 24, 2015 at noon. We will consider the responses received and will provide you with additional information at that time. If you are not interested in either of the above two options, no reply is required.

We thank you for your consideration and should you have any questions or require any additional information, please do not hesitate to contact the writer.

Yours truly,

**COLLINS BARROW TORONTO LIMITED**

in its capacity as Trustee under the Construction Lien Act  
of 144 Park and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP

**IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

**AND IN THE MATTER OF AN APPLICATION MADE BY 144 PARK LTD. FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED**

Court File No. CV15-10843-00CL

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

Proceedings commenced at Toronto

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**MOTION RECORD**  
(re Parking Matters)  
(returnable October 5, 2015)

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**Lawyers for the Trustee**