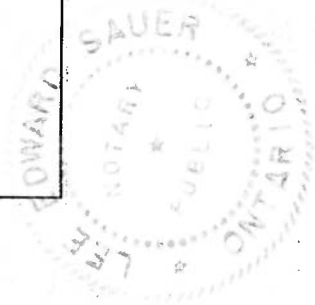


**THIS IS EXHIBIT "H" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*



## DEFICIENCY AGREEMENT

**TO: MARSHALLZEHR GROUP INC. ("MZG")**

**RE: MarshallZehr Group Inc. corporate financing with  
Dunsire (Landsdown) Inc., guaranteed by Dunsire Inc. and Shawn Keeper  
24, 26, 28 and 32 Landsdown Drive, Guelph**

IN CONSIDERATION of MZG making credit facilities available to Dunsire (Landsdown) Inc. (the "Borrower"), pursuant to a letter agreement between the Borrower, as borrower, MZG, as lender, Shawn Keeper and Dunsire Inc., as guarantors, dated May 25, 2016, as such agreement may be amended, replaced, supplemented, superseded, restated, renewed, extended, modified or varied from time to time (collectively, the "Commitment Letter") and the payment of Two Dollars (\$2.00) now paid by MZG to the undersigned and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the undersigned), the undersigned hereby jointly and severally irrevocably and unconditionally undertakes to personally fund any and all shortfall of costs not included, or in excess of, forecasted expenditures in relation to the development of the above property, if and or when required by MZG, in its sole and absolute discretion.

The undersigned hereby acknowledge(s), confirm(s), covenant(s) and agree(s) to and with MZG as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Commitment Letter.
2. This Undertaking shall be joint and several among the undersigned and be a continuing undertaking and agreement by the undersigned to MZG until all obligations of the Borrower are repaid and satisfied in full and shall apply and have effect notwithstanding default under or enforcement of MZG's security under the Commitment Letter or otherwise. MZG shall not be bound to exhaust its recourse against the Borrower or others or any securities it may at any time hold before being entitled to require the undersigned to make payment as noted herein. This Undertaking is in addition to and not in substitution for any other undertaking, covenant or guarantee given by the undersigned, or by whomsoever otherwise given, at any time held by MZG.
3. This Undertaking shall not be affected by, and shall operate and have effect irrespective of, the rights and interests, direct or indirect, of the undersigned in the Borrower or the Borrower's business or the Property, or any change in such rights or interests at any time, or by any other change in the Borrower or the Borrower's business or the Property at any time.
4. The undersigned agrees to be bound by any statement of costs issued by MZG in connection with this Undertaking unless it shall be proven subsequently to have been issued in error, and in the meantime, notwithstanding any dispute in the calculation thereof, except only in the case of manifest error, the undersigned shall not reduce or delay in making any payment required by MZG to be made pursuant to this Undertaking.
5. No suit based on this Undertaking shall be instituted until demand for payment has been made. The undersigned shall be liable to MZG for all legal costs (on a solicitor and client basis) incurred by or on behalf of MZG resulting from any action instituted on the basis of this Undertaking.
6. If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Undertaking, but this Undertaking shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.
7. The undersigned shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered every further act, deed, transfer, assignment, security agreement and assurance as MZG may require, acting reasonably, for better giving effect to the provisions of this Undertaking.

8. This Undertaking may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

9. This Undertaking shall extend to and enure to the benefit of MZG and its respective successors and assigns, and shall extend to and bind the undersigned and his respective successors and assigns.

10. This Undertaking shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and the undersigned irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.

DATED this 15 day of June, 2016.

DUNSIRE (LANDSDOWN) INC.

Per: Shawn Keeper c/s  
Name: Shawn Keeper  
Title: President  
*I have authority to bind the Corporation*

DUNSIRE INC.

Per: Shawn Keeper c/s  
Name: Shawn Keeper  
Title: President  
*I have authority to bind the Corporation*

WITNESS:

T. Christie

Shawn Keeper ls  
Shawn Keeper

FORTRESS REAL DEVELOPMENTS INC.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/we have authority to bind the Corporation.*

8. This Undertaking may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

9. This Undertaking shall extend to and ensure to the benefit of MZG and its respective successors and assigns, and shall extend to and bind the undersigned and his respective successors and assigns.

10. This Undertaking shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and the undersigned irrevocably attorns and submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.

DATED this        day of June, 2016.

DUNSIRE (LANDSDOWN) INC.

Per: \_\_\_\_\_ c/s  
Name: Shawn Keeper  
Title: President  
*I have authority to bind the Corporation*


DUNSIRE INC.

Per: \_\_\_\_\_ c/s  
Name: Shawn Keeper  
Title: President  
*I have authority to bind the Corporation*

WITNESS:

\_\_\_\_\_ is  
Shawn Keeper

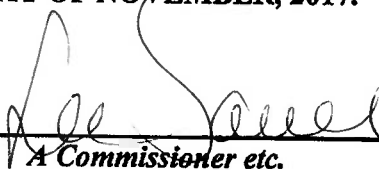
FORTRESS REAL DEVELOPMENTS INC.

Per:   
Name: Vincenzo Petrosza  
Title: Vice President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/we have authority to bind the Corporation.*

**THIS IS EXHIBIT "I" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
A Commissioner etc.



LRO # 61 Postponement Of Interest

Received as WC472884 on 2016 06 28 at 08:49

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

**Properties**

**PIN** 71505 - 0993 LT  
**Description** PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; CITY OF GUELPH  
**Address** LANDSDOWN DRIVE  
 GUELPH

**Source Instruments**

Registration No.	Date	Type of Instrument
WC394834	2014 01 17	Charge/Mortgage

**Party From(s)**

**Name** SORRENTI LAW PROFESSIONAL CORPORATION  
**Address for Service** 3800 Steeles Avenue West, Suite 400  
 Vaughan, ON, L4L 4G9

I, Derek Sorrenti, Authorized Signing Officer, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Name** OLYMPIA TRUST COMPANY  
**Address for Service** 125 9th Avenue SE, Suite 2200  
 Calgary, Alberta  
 T2G 0P6

I, Johnny Luanj, Team Lead and Kelly Revol, Manager, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Party To(s)**

**Capacity**

**Share**

**Name** MARSHALLZEHR GROUP INC.  
**Address for Service** 465 Phillip Street, Suite 206  
 Waterloo, ON, N2L 6C7

**Statements**

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number WC472889 registered on 2016/06/27

Schedule: The applicant postpones the rights under the selected instrument to the rights under an instrument registered as Instrument No. WC472889 and to each and every advance made thereunder.

This document relates to registration no.(s) WC394889, WC399284, WC400369, WC420513, WC452190

**Signed By**

Karen Grace Larocque 31 Union Street East acting for Signed 2016 06 28  
 Waterloo Party From(s)  
 N2J 1B8  
 Tel 519-576-0480  
 Fax 519-576-3234

I have the authority to sign and register the document on behalf of the Party From(s).

LRO # 61 Postponement Of Interest

Received as WC472884 on 2016 06 28 at 08:49

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

**Submitted By**

SORBARA, SCHUMACHER, MCCANN LLP

31 Union Street East  
Waterloo  
N2J 1B8

2016 06 28

Tel 519-876-0480

Fax 519-576-3234

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85

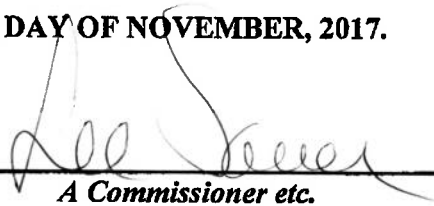
Total Paid \$62.85

**File Number**

Party From Client File Number : 75044

Party To Client File Number : 75044

**THIS IS EXHIBIT "J" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*







PERSONAL PROPERTY SECURITY  
REGISTRATION SYSTEM (ONTARIO)  
ENQUIRY RESULTS

Prepared for :	Chaitons LLP - Christina Clark
Reference :	41259
Docket :	41259
Search ID :	665352
Date Processed :	11/20/2017 9:35:42 AM
Report Type :	PPSA Electronic Response
Search Conducted on :	DUNSIRE (LANDSDOWN) INC.
Search Type :	Business Debtor

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE  
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT  
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: DUNSIRE [LANDSDOWN] INC.

FILE CURRENCY: November 19, 2017

RESPONSE CONTAINS: APPROXIMATELY 1 FAMILIES and 1 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS  
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME  
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE  
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT  
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY  
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER  
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS  
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE  
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR  
 CONDUCTED ON: DUNSIRE [LANDSDOWN] INC.  
 FILE CURRENCY: November 19, 2017

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 1 OF 1

SEARCH : BD : DUNSIRE [LANDSDOWN] INC.

00 FILE NUMBER : 689442192 EXPIRY DATE : 14AUG 2018 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :  
 REG NUM : 20130814 0915 1862 1901 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: DUNSIRE [LANDSDOWN] INC.  
 OCN :  
 04 ADDRESS : 465 PHILLIP STREET, UNIT 203A  
 CITY : WATERLOO PROV: ON POSTAL CODE: N2L 6C7  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 MARSHALLZEHR GROUP INC.

09 ADDRESS : 465 PHILLIP STREET, SUITE 206  
 CITY : WATERLOO PROV: ON POSTAL CODE: N2L 6C7  
 CONS. MV  

GOODS	INVTY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	DATE OF MATURITY	OR NO FIXED MAT DATE
10	X	X	X	X	X			X
YEAR MAKE				MODEL			V.I.N.	

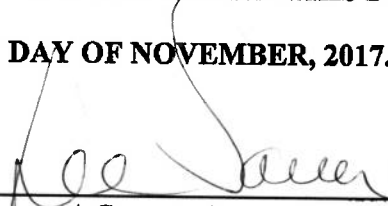
11  
 12  
 13 GENERAL COLLATERAL DESCRIPTION

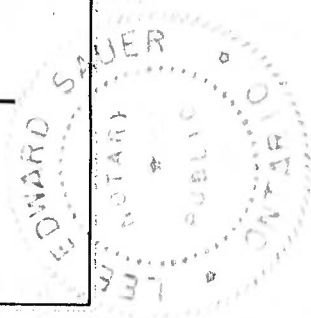
14  
 15

16 AGENT: SORBARA, SCHUMACHER, MCCANN LLP  
 17 ADDRESS : 300 VICTORIA STREET NORTH, 2ND FLOOR  
 CITY : KITCHENER PROV: ON POSTAL CODE: N2H 6R9  
 LAST SCREEN

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

**THIS IS EXHIBIT "K" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*





AGREEMENT OF PURCHASE AND SALE
DUNSIRE (LANDSDOWN) INC.

Summary / Buyer Contact Information

Date of Agreement (mm/dd/yyyy): 11/07/2015

Buyer(s)'s Full Legal Name(s) (hereinafter, the "Buyer"):

Buyer 1: [Redacted] DOB (mm/dd/yyyy): [Redacted]

Address and Postal Code: [Redacted]

Email: [Redacted] Telephone: [Redacted] Driver's Licence: [Redacted]

Buyer 2: [Redacted] DOB (mm/dd/yyyy): [Redacted]

Address and Postal Code: [Redacted]

Email: [Redacted] Telephone: [Redacted] Driver's Licence: [Redacted]

Description of the proposed condominium unit to be purchased by the Buyer in accordance with the terms and conditions contained in this Agreement:

Summary of Unit, Model and Elevation:

Proposed vacant land unit number (the "Unit"), in the proposed freehold vacant land condominium plan on the lands municipally located on Landsdown Drive, Guelph, and legally described as Lot 10 and Part of Lots 6, 9 and 13, Registered Plan 488, City of Guelph, County of Wellington, being all of PINS 71505-0877, 71505-0875, 71505-0350 and 71505-0346, subject to any necessary dedications to the City of Guelph (such lands being referred to herein as the "Lands").

Unit Number: 1
Model: Chestnut
Sq. Ft.: 3247
Elevation: B
Swing: Right

Purchase price to be paid by the Buyer in consideration for the Property (as defined in this Agreement) in accordance with the terms and conditions contained in this Agreement:

Base Price: [Redacted]

Lot Premium: [Redacted]

Options: [Redacted]

Total Purchase Price: [Redacted] (the "Purchase Price")

Buyer's Solicitor (if known):

Solicitor:
Address:
Phone Number:
Email:
Fax:

Seller's Solicitor:

Sorbara, Schumacher, McCann LLP
31 Union Street East
Waterloo, Ontario N2J 1B8
Attention: Seth Jutzi
Phone: (519) 741-8010 ext. 254
Fax: (519) 576-3234
Email: sjutzi@sorbaralaw.com

Seller's Address:

c/o Dunsire Developments Inc.
54-5100 South Service Road
Burlington, Ontario L7L 6A5
Attention: Misha Allard
Phone: 1 (888) 519-2346
Fax: 1 (888) 540-1172
Email: misha.allard@dunsire.com

Handwritten initials: J.A. and a signature

The Buyer hereby agrees to and with Dunsire (Landsdown) Inc. (the "Seller") to purchase the Unit as described above on page 1 of this Agreement together with the dwelling to be constructed thereon (the "Dwelling") and an undivided interest in the common elements appurtenant to the Unit, all in accordance with condominium plan documentation proposed to be registered against the Lands (collectively, the Unit, Dwelling and the undivided interest in the common elements appurtenant to the Unit are hereinafter referred to as the "Property"), on the following terms and conditions:

1. **Irrevocable Date.** This Agreement shall be irrevocable by the Buyer until 6:00 p.m. on the 10<sup>th</sup> calendar day following the date of this Agreement (the "Irrevocable Date"), after which time, if not accepted by the Seller, this Agreement shall be null and void and the deposit shall be returned to the Buyer without interest or deduction. Acceptance of this Agreement shall be deemed to be sufficiently made if this Agreement is executed by the Seller prior to the Irrevocable Date.
2. **Purchase Price and Payment.** In consideration for the Property, the Buyer agrees to pay to the Seller the Purchase Price as set out on page 1 of this Agreement. Subject to the provisions in this Agreement and Schedule D attached hereto, the Purchase Price is inclusive of the harmonized sales tax ("HST") payable on account of this transaction provided the Buyer qualifies for and assigns all potentially available HST rebates to the Seller, as determined by the Seller (or its solicitor) in its sole discretion. However, in the event that the Buyer does not qualify for or is unable to assign all potentially available rebates of HST, as determined by the Seller (or its solicitor) in its sole discretion, the Buyer must pay such HST amount (as calculated by the Seller and/or its solicitor in their sole discretion) in addition to the Purchase Price.

The Purchase Price shall be paid by the Buyer to the Seller as follows:

- a. A first deposit of \$5,000.00 is to be paid upon execution of this Agreement, payable to Dunsire (Landsdown) Inc.;
- b. A second deposit of \$35,000.00 is to be paid ten (10) days from the later of (i) the date that the Buyer receives the Condominium Documents (as defined in Schedule I attached hereto), and (ii) the date that the Buyer receives a copy of this Agreement executed by the Vendor, payable to Dunsire (Landsdown) Inc.; and
- c. A third deposit of 0 is to be paid thirty (30) days after the acceptance of this agreement payable to Dunsire (Landsdown) Inc. for selected options.
- d. The balance of the Purchase Price on Closing, subject to the usual adjustments and such adjustments, if any, set out in this Agreement. The Buyer agrees to pay the balance of the Purchase Price, as adjusted, on completion with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque, or wire transfer using the Large Value Transfer System. The Buyer's solicitor, will, prior to Closing, if funds are directly deposited into the Seller's solicitor's bank account, provide a copy of the certified cheque so deposited and the signed guarantee of funds form required by the Seller's solicitor to the Seller's solicitor.

All deposits shall be payable to Dunsire (Landsdown) Inc. For any deposits that are to be paid after the initial deposit, post-dated cheques for all of the same shall be provided to the Seller at the time of the delivery of the initial deposit. No interest shall be earned, received, or paid on the deposits, save and except for as required by law. Notwithstanding, any cheque given by the Buyer to the Seller, and which is returned to the Seller, dishonoured or N.S.F., will be subject to a minimum administration fee of \$250.00 payable by the Buyer. If the administration fee is not included in the replacement cheque, the \$250.00 administration fee will be added to the final adjustments on the closing statement of adjustments. The Buyer is hereby directed to pay the Seller's solicitor Sorbara, Schumacher, McCann LLP or as they further direct, the whole of the proceeds due on closing with respect to this transaction in trust. This direction can only be cancelled by an instrument in writing executed on behalf of the Seller and delivered to the Buyer or its solicitor. The full Purchase Price must be paid in full on Closing; no holdback of the Purchase Price is permitted for any reason.

3. **Closing.** This transaction shall be completed ("Closing" or "closing") on the date that is the later of:
  - a. the Occupancy Date (as defined below); or,
  - b. a date designated by the Seller's solicitor following the registration of the condominium plan which includes the Unit, which date so designated shall be not less than ten (10) days after written notice is given to the Buyer or the Buyer's solicitor of such registration.

This date is referred to herein as the "Closing Date". On the Closing Date, the Seller shall transfer title to the Property to the Buyer in exchange for payment of the balance of the Purchase Price (as adjusted if required).

4. **Occupancy.** The Buyer shall take possession and occupy the Property on the First Tentative Occupancy Date (as defined in the Statement of Critical Dates being part of the Taron Addendum as hereinafter defined), or such extended or accelerated date in accordance with the terms of this Agreement including, without limitation, the Taron Addendum (the "Occupancy Date"). The Buyer shall start to pay the Monthly Occupancy Fee (as defined below) as of the Occupancy Date, as well as all other charges (including all utilities) with respect to the Property, in accordance with Schedule H (Terms of Interim Occupancy) attached hereto. The Buyer's possession of the Property on the Occupancy Date shall be governed by Schedule H (Terms of Interim Occupancy) attached hereto.

If the condominium plan is registered by the Occupancy Date and the Closing Date (as designated by the Seller's solicitor in accordance with sub-paragraph 3(b) above) is a date that is earlier than the Occupancy Date, completion of the transaction described herein (the exchange of the balance of the Purchase Price for a Transfer/Deed) will take place on the Occupancy Date, and, upon said completion on the Occupancy Date, there will be no period of interim occupancy nor no Monthly Occupancy Fee charged to the Buyer.

5. **Monthly Occupancy Fee.** The monthly occupancy fee (the "Monthly Occupancy Fee") shall be the total of:
- interest calculated on a monthly basis on the unpaid balance of the Purchase Price at the prescribed rate;
  - the projected monthly common expense contribution for the Unit; and
  - an amount reasonably estimated by the Seller on a monthly basis for real property/municipal taxes attributable to the Unit.

In accordance with section 80(9) of the *Condominium Act, 1998*, S.O. 1998, c.19, if the portion of the Monthly Occupancy Fee that the Buyer has paid on account of municipal taxes attributable to the Unit is insufficient to pay the amount actually assessed against the Unit, the Seller may require the Buyer to pay the difference between the two amounts.

On Closing, adjustments will be made (if necessary):


- to reflect the difference between the estimated Monthly Occupancy Fee and the actual Monthly Occupancy Fee taking into consideration the actual prescribed interest rate and the actual amount of municipal taxes assessed against the lands on which the condominium is being constructed; and/or
  - to reflect any increase or decrease in the amount of the Purchase Price (including amounts for extras and upgrades, if any).
6. **Buyer's Conditions.** If applicable, this Agreement is subject to the conditions set out in the attached Schedule E (Buyer's Conditions).
7. **Tarion Warranty Corporation Registration Number.** The Seller represents and warrants that it is registered under the Tarion Warranty Corporation (registration number 43884) and that the Dwelling is or will be enrolled under the program on Closing. Dunsire Developments Inc.'s registration number is 41825.
8. **Seller As Agent.** Dunsire (Landsdown) Inc. is acting as Seller herein but may not be the owner or sole owner of the Property on Closing, in which case Dunsire (Landsdown) Inc. will be acting as authorized agent for all other owners of the Property. Dunsire (Landsdown) Inc. acknowledges and agrees that the warranties prescribed by the *Ontario New Home Warranties Plan Act* will be the responsibility of Dunsire (Landsdown) Inc. to honour and fulfill. The Buyer acknowledges and agrees that the Transfer/Deed in favour of the Buyer will be signed by the owner(s) of the Property, who may be different than Dunsire (Landsdown) Inc.
9. **Schedules.** This Agreement shall include the following Schedules that shall be integral to this Agreement:

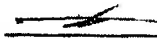
- Schedule A - Remarkable Features
- Schedule B - General Terms and Conditions of the Agreement
- Schedule C - Special Provisions
- Schedule D - HST Rules and Rebates
- Schedule E - Buyer's Conditions
- Schedule F - Plans and Specifications
- Schedule G - Stage of Construction
- Schedule H - Terms of Interim Occupancy
- Schedule I - Acceptance of Schedules to Agreement of Purchase and Sale
- Schedule - Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale (the "Tarion Addendum")

The Buyer acknowledge that they have read and understand this Agreement and all Schedules attached hereto inclusive of the terms, conditions, limits and warranty exclusions.

10. If accepted, this offer shall constitute a binding agreement of purchase and sale between the parties and their respective heirs, administrators, executors, successors and assigns. The Buyer acknowledges that the Buyer shall be responsible for determining whether the Seller has accepted the Buyer's offer. In this regard, the Buyer shall contact the Seller or the Seller's sales agent to determine whether this offer has been accepted by the Seller. The Buyer acknowledges and agrees that the Seller shall not be responsible for notifying the Buyer that this offer has been accepted by the Seller, nor shall the Seller be responsible for delivering a fully executed copy of this Agreement to the Buyer. The Buyer shall be responsible for obtaining a copy of the fully executed Agreement from the Seller or the Seller's sales agent.

**SIGNED, SEALED AND DELIVERED**  
In the presence of

  
\_\_\_\_\_  
(Witness)

  
\_\_\_\_\_  
(Buyer) (seal) (date 11/11/14)  
MM DD YYYY


\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Buyer) (seal) (date   /  /  )  
MM DD YYYY

If the Buyer is a corporation, provide name and title of each signatory above, and seal or confirm:  
  
I/We have authority to bind the corporation.

DUNSIRE (LANDSDOWN) INC., hereby accepts the above offer and its terms and covenants, promises and agrees to and with the above-named Buyer to duly carry out the same on the terms and conditions set out herein;

PER:

  
\_\_\_\_\_  
Name: (date 11/11/14)  
MM DD YYYY

Title:  
I have the authority to bind the corporation.



**SCHEDULE "A"**  
**REMARKABLE FEATURES**

I/we acknowledge receipt of 2 pages of this Schedule "A"  
Buyer's Initials:   J.B.  

**EXTERIOR**

- DUNSIRE'S WHITE CEDAR ESTATES in GUELPH is a new home project inspired by the sense of neighbourhood. House sitings and exterior colours and will be architecturally coordinated.
- Elevations include Stone, Board and Batten Siding, Shakes and Architectural features in other materials as per elevation.
- Entry-resistant framing on all perimeter doors (excluding patio doors).
- Aluminum maintenance-free soffit, downspouts, fascia and eaves-trough.
- Self-sealing shingles (United Lifetime manufacturer's warranty).
- Insulated entry and exterior door(s) with weather-stripping and deadbolt lock (excluding patio doors).
- All vinyl casement windows, or fixed windows all around. All windows as per Dunsire's specifications and caulked on exterior.
- All windows including patio doors to have Low E and Argon Gas, excluding entry door glazing.
- All opening windows and patio doors are complete with screens.
- Sliding patio door as per plan.
- Glazed panel in front entry door or side light(s) as per elevation.
- Steel insulated door from house to garage, if grade permits, with safety door closer, as per as per plan.
- Moulded steel insulated sectional roll-up garage doors equipped with heavy duty springs and long-life, rust-resistant door hardware, as per elevation.
- Entire lot sodded except walkways, under decks and paved areas.
- Pre-cast concrete slab walkway to front door entry, pre-cast step(s) at front door as required.
- Two exterior hose bibs, one in garage and one at rear.
- Two exterior weatherproof electrical outlets with ground fault interrupter one at front of home and one at rear.
- Brushed Nickel finish front door entry set, plaque-style house number, black front coach light(s) on front, as per elevation.
- Dunsire will install a two coat asphalt driveway.

**KITCHEN**

- Purchaser's choice of cabinets with taller uppers, granite or quartz countertop and ceramic backplash including islands and breakfast bars as shown on plan. From Dunsire's standard selection.
- Colour coordinated kick plates to compliment kitchen cabinets.
- Double stainless steel undermount kitchen sink with ledge-back and spillway includes single lever faucet with pull-out spray, as per Dunsire's standard specifications.
- Shut-off valve to the kitchen sink.
- Stainless Steel finish kitchen exhaust fan with 6" duct vented to exterior.
- Heavy duty receptacle for future stove and dedicated electrical receptacle for future refrigerator.
- Split receptacle(s) at counter level for future small appliances.
- Dishwasher space provided in kitchen cabinets with rough-in wiring and drains. (Wire will not be connected to electrical panel and no cabinet will be supplied).

**BATHS**

- Water resistant board to approximately 60" high on separate shower stall walls.
- Purchasers' choice of cabinets and laminate countertops in all bathroom(s). (Excluding powder room). All choices from Dunsire's standard selection.
- Colour coordinated kick-plates to compliment vanity cabinets.
- Energy efficient water saver shower head and toilet tank.
- Decorative lighting in all bathrooms and powder room.
- Mirrors are 42" high to all bathroom(s) and powder room.
- White bathroom fixtures from Dunsire's standard selection.
- White Acrylic bathtubs in all bathrooms, as per plan.
- Electrical outlets for future small appliances beside all vanities and pedestal sink include ground fault interrupter as per plan.
- Exhaust fans vented to exterior in all bathroom(s) and powder room.

- Privacy locks on all bathroom and powder room doors.
- Chrome washer-less faucets with pop up drains in all bathroom and powder room sinks.
- Pedestal sink in powder room, as per plan.
- 6" x 6" or 6" x 8" ceramic or glazed porcelain wall tile for tub/shower enclosure(s) up to the ceiling and separate shower stalls including ceiling, from Dunsire's standard selection.
- 12" x 12" or 13" x 13" ceramic or glazed porcelain floor tile for ensuite soaker tub deck, skirt and splash from Dunsire's standard selection where applicable, as per plan.
- Bathroom and Powder Room accessories to include towel bar and toilet tissue holder.
- Pressure balance valves to all shower stalls and tub/showers as per plan.
- Shut off valves for all bathroom and powder room sinks.

**INTERIOR TRIM**

- Oak handrail and pickets with oak finished stairs in clear finish from Dunsire's standard selection where applicable, as per plan.
- Standard kneewalls, ledges and window seats to be capped with white painted MDF (medium density fibreboard) trim detailing.
- Classique or colonial moulded panel interior passage doors throughout finished areas. (Purchaser's choice of one style throughout).
- 4" Colonial baseboard throughout, 3/8" profiled door stop trim in all tiled areas.
- 2-3/4" Colonial trim casing on all swing doors, flat archways up to 7" deep, windows throughout in all finished areas, foyer and linen closets where applicable as per plan.
- All drywall applied with screws using a minimum number of nails.
- Brushed Nickel finish lever handles and hinges (unpainted) on all interior doors in finished areas, as per plan.
- Wire shelving installed in all closets.

**LAUNDRY**

- Laundry tub with chrome finish dual knob faucet installed in finished laundry room with base cabinets and laminate counter as per plan, unfinished basement or unfinished storage / utility room, as per plan. Shut-off valves in finished laundry room.
- Heavy duty electrical outlet and exterior vent for future dryer. Electrical outlet for future washer.

**ELECTRICAL**

- Décora style switches and receptacles throughout finished areas.
- 100 Amp service with circuit breaker type panel.
- All wiring in accordance with Ontario Hydro standards.
- One electrical outlet under electrical panel if located in unfinished area.
- Electrical outlet(s) in all bathroom(s) and powder room include ground fault interrupter.
- One electrical outlet in garage. One ceiling outlet in garage for future garage door opener.
- Ceiling mounted light fixture(s) in kitchen/breakfast area, den, halls, finished laundry room, family room / great room, dining room and all bedrooms where applicable, as per plan. (Rooms having sloped or ceiling heights over 9' to have switch controlled receptacle).
- Switch controlled receptacle in living room.
- Smoke Detectors and Carbon Monoxide Detectors installed as per Ontario Building Code.
- Electronic door chime at front door.
- 2-Cable TV rough in. 1 each in family room or great room and master bedroom.
- 2-Telephone rough ins. 1 each in kitchen or family room and master bedroom.
- Rough-in central vacuum outlets. All pipes brought to central location in garage.

**PAINTING**

1. Washable latex paint on interior walls throughout finished areas. (one colour throughout, from Dunsire's standard selection).
2. Interior trim and doors to be painted with white semi-gloss paint.
3. Smooth painted ceilings in all finished main and second floor finished rooms.

**FLOORING**

1. Choice of 12" x 12" or 13" x 13" ceramic or glazed porcelain floor tile in foyer, main hall, kitchen, breakfast area, powder room, bathroom(s) and finished laundry room where applicable, as per plan from Dunsire's standard selection.
2. Berber like broadloom in all finished areas with high density chip 7lb foam under-pad from Dunsire's standard selection. (Excluding tiled areas).
3. Engineered hardwood flooring in great room and dining room, as per plan from Dunsire's standard selection.
4. Engineered floors with tongue and groove, oriented strand board (OSB) sub-flooring throughout to be glued down.
5. Concrete lower floor with drain.

**ADDITIONAL FEATURES**

1. 9' high ceilings on main level and 8' high ceilings on second floor level, except in areas where architectural designs, mechanicals or ductwork require ceiling height to be lowered. Taller basement walls to accommodate future finished basement space.
2. Garage floor and driveway sloped for drainage.
3. Concrete garage floor where applicable with re-enforced grade beams.
4. All windows installed with expandable foam to minimize air leakage.
5. Poured concrete foundation walls.
6. Poured concrete front porch as per plan.
7. Architecturally pre-determined sitings and exterior colours in conformance with applicable zoning and architectural control guidelines.
8. Ducts Professionally Cleaned.
9. Gas fireplace with cabinet style mantel
10. Builder standard deck or patio slabs, as per plan, and as required by grade
11. Tarion Warranty Enrolment Fee.

**ENERGY EFFICIENCY FEATURES**

1. Windows LOW E and ARGON with insulated spacers. Windows installed with expandable foam at perimeter and caulked on the exterior.
2. Insulation to exterior walls R22, attic space R50.
3. Spray foam insulation in garage ceiling below livable space in addition to cantilevered areas with living space above. (R31).
4. Exposed main ductwork to be sealed with foil tape or mastic sealant.
5. Forced air heating and ventilation system.
6. Energy Star qualified hot water tank power vented to exterior. Hot water tank is a rental unit. Purchaser to execute agreement with designated supplier prior to closing.
7. Programmable thermostat centrally located on main floor.
8. Air Conditioning and Heat Recovery Ventilator (HRV) to be installed as per Dunsire's standard specifications.
9. Compact fluorescent lighting in all standard interior light fixtures, excluding fixtures on optional dimmer switches, pot lights, all walk-in closets and finished laundry rooms as per plan.
10. Energy Star qualified exhaust fans in all bathrooms including powder room (where applicable)

**WARRANTY**

DUNSIRE's Warranty backed by TARION ensures that the home is free from defects in workmanship and materials for One (1) Year.

**Two Year Warranty Protection:** The home is free from defects in workmanship and materials including caulking, windows and doors so that the building prevents water penetration. Defects in workmanship and materials in the electrical, plumbing, heating delivery and distribution systems - Defects in workmanship and materials which result in the detachment, displacement or deterioration of exterior cladding, leaving to detachment or serious deterioration. Violations of the Ontario Building Code's Health and Safety provisions.

**Seven Year Warranty Protection (Major Structural Defects):** A major structural defect is defined by TARION as a defect in workmanship and materials that results in the failure of the load-bearing part of the homes structure, or any defect in workmanship or materials that adversely affects your use of the building as a home.

Specifications and Terms subject to change, E. & O.E. September 25, 2014.

Purchaser shall have the right to select floor coverings, cabinets and countertops, bathroom fixtures and purchase upgrades from the Dunsire's samples subject to their timely availability from the Dunsire's normal supplier and provided that the same have not already been ordered for this house. Variations from Dunsire's samples may occur in exterior materials, finishing materials, kitchen and vanity cabinets, floor and wall finishes due to normal production process. The Purchaser is notified that the laundry room may be lowered to accommodate side yard drainage, in extraordinary cases, door(s) from laundry room will be eliminated at Dunsire's discretion. Steps where applicable, may vary at any exterior or interior entranceway due to grading variance. Corner lots and priority lots may have special treatments which may require window changes and minor interior modifications to balance and improve the elevations of the house exposed to the street. The Purchaser accepts these changes as necessary. When purchaser is buying a house already under construction, Purchaser acknowledges that there may be deviations from the floor plan, elevation or layout of this model and Purchaser agrees to accept such changes as constructed. The house erected or to be erected on the above lot shall contain the features listed above. The floor plan shall be that plan illustrated in the Dunsire's latest sales display for the model type purchased. The purchaser acknowledges that the Dunsire's model homes have been decorated for public display purposes and may contain certain features, upgrade finishes and augmented services which may not be included in the basic model type. All electrical services included in the basic model type are illustrated on architectural plans available at the Dunsire's sales office. Most additional features on display in the model homes are available as extras. Front elevations are modified where alternate floor plans selected. The Purchaser is notified due to siting, grading, and paving conditions, roof lines may vary due to structural roof framing conditions, and may not be exactly as shown. Due to conditions, risers may be necessary at the front entry. Purchaser is notified that all lots have Architectural Control applied to them and that exterior architectural features may be added or altered at the Dunsire's discretion to comply with Architectural Control Guidelines, Dunsire reserves the right to use visual representations of your home, taken both during construction and after occupancy, for the purposes of Public Relations and Advertising, and I/we hereby consent to the same.

All specifications and materials are subject to availability and change without notice. The Seller shall have the right to substitute products and materials, of no lesser quality, for those listed above or provided in the plans and specifications. Natural materials such as wood, marble, granite and stone will have variations in colour and pattern from samples. Features and finishes in each will depend on finish package selected by Buyer. All dimensions, if any, are approximate. E&OE

J.A

**SCHEDULE "B"**  
**GENERAL TERMS AND CONDITIONS OF THE AGREEMENT**

I/we acknowledge receipt of 17 pages of this Schedule "B"

Buyer's Initials: S. A

**1. DEFINITIONS**

Throughout this Agreement (including all Schedules), terms shall have the meanings ascribed to them in the Act unless this Agreement specifies otherwise and, in any case, unless there is something in the subject matter or context inconsistent therewith and, in particular:

- a. "Act" means the *Condominium Act, 1998*, S.O. 1998, c.19, and the regulations thereunder and any amendments thereto;
- b. "Corporation" means the condominium corporation created upon registration by the Seller of the declaration and description under the Act;
- c. "Condominium Documents" means the declaration and description and any disclosure documents required to be provided under the Act (including the bylaw(s) and rules proposed by the Seller), including any amendments thereto; and
- d. "Project" means the condominium to be created on the Lands upon the registration of the Condominium Documents.

**2. FINANCING**

The Buyer shall deliver to the Seller a copy of a binding commitment for a mortgage loan for the balance of the Purchase Price or evidence satisfactory to the Seller, acting reasonably, of the Buyer's ability to finance the balance of the Purchase Price on Closing, within 21 days of the date of execution of this Agreement by the Buyer and subsequently upon request of the Seller, failing which the Seller may (but in no way is obligated to), in its sole, subjective and absolute discretion either: (1) terminate this Agreement and return any deposit paid by the Buyer without interest or deduction and in such event both parties shall have no further liability hereunder; or (2) make alternative arrangements, on reasonable commercial terms to provide financing to the Buyer from the Seller or a financial institution for any shortfall in the financing that the Buyer is able to arrange for the balance of the Purchase Price. If no mortgage is needed by the Buyer, a letter from the Buyer's financial institution indicating that the Buyer has the funds and means to close is required.

**3. CREDIT CHECK AND PRE-APPROVAL**

This Agreement is conditional upon the Seller being satisfied, in its sole and absolute discretion with the credit worthiness of the Buyer. The Seller shall have thirty (30) days from the date of acceptance of this Agreement by the Seller to satisfy itself with respect to such credit worthiness. This condition is included for the sole benefit of the Seller and may be waived by it, at its sole option, at any time. The Buyer covenants and agrees to provide all requisite information and materials including proof respecting income and source of funds as the Seller may require to determine the Buyer's credit worthiness. The Seller must notify the Buyer in writing that this condition has not been waived or satisfied prior to midnight on the 30th day following the date of acceptance of this Agreement by the Seller, failing which the Seller shall be deemed to have waived said condition and this Agreement shall be firm and binding. If the Seller so notifies the Buyer in writing that the condition has not been satisfied or waived, this Agreement shall be null and void and all deposit monies shall be returned to the Buyer in full without interest and without deduction. The Buyer acknowledges that it may be necessary for the Seller to obtain credit or other information in order to satisfy itself as to the Buyer's credit worthiness and authorizes the Seller to obtain any consumer reports or other information it may require and any consumer reporting agency or credit bureau is hereby authorized to release such information as the Seller may request.

**4. TENTATIVE OCCUPANCY DATE AND LEVEL OF COMPLETION**

The Dwelling shall be deemed to be complete when all work has been finished to the extent allowed by the municipality or local municipal authority such that the Dwelling may be lawfully occupied notwithstanding that there remains grading or landscaping or any other inside or outside work to be completed with respect to the Dwelling, the Property and/or the common elements. The Buyer shall accept the Seller's undertaking to complete such outstanding work. The Buyer shall not require the Seller to provide or produce an occupancy permit, certificate or authorization from the municipality, unless the Seller is required to do so by a governmental authority. The Buyer shall occupy the Property on the Occupancy Date pursuant to Schedule H (Terms of Interim Occupancy) attached hereto if the Dwelling is completed to the standard described in this paragraph on the Occupancy Date. The Buyer shall complete the transaction contemplated in this Agreement without holdback, deduction or abatement of any part of the Purchase Price if the Dwelling is completed to the standard described in this paragraph on the Closing Date. Subject to the provisions of the Tarion Addendum, if for any reason, the Dwelling is not completed as aforesaid on or before the Occupancy Date, the Buyer agrees to grant such extensions of time for completion of the work as may be required by the Seller, and the Occupancy Date shall be extended accordingly.

The Seller is only obligated to complete the building component of the Dwelling to the extent set out in this Agreement. Anything not clearly set out in this Agreement as being completed by the Seller is the responsibility of the Buyer to complete at the expense of the Buyer.

**5. TITLE**

The Buyer shall be allowed until ten (10) days prior to the Closing Date to examine the title to the Property at the Buyer's own expense and, if within that time, any valid objection to title is submitted to the solicitor for the Seller in writing, which the Seller is unable or unwilling to remove and which the Buyer will not waive, this Agreement shall be null and void,

notwithstanding any intermediate acts or negotiations in respect of such objections, and the Buyer's deposits shall be returned by the Seller after deducting any payments due to the Seller by the Buyer and neither the Seller nor any of its agents shall be liable to the Buyer for any further costs or damages and the Seller shall have no further liability or obligation hereunder. Save as to any valid objection made within such time, the Buyer shall be deemed conclusively to have accepted the title of the Seller to the Property. Nothing shall permit the Buyer to insist on completion of this transaction with an abatement of the Purchase Price. The Buyer acknowledges and agrees that the Seller shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Buyer through the use of a standard title memorandum or title advice statement prepared by the Seller's solicitor, and that same shall constitute a satisfactory manner of responding to the Buyer's requisitions, thereby relieving the Seller and the Seller's solicitor of the requirement to respond directly or specifically to the Buyer's requisitions.

6. **PERMITTED ENCUMBRANCES**

The Buyer agrees to accept title to the Property subject to the following items, if applicable, and the Buyer covenants and agrees to adhere to, observe and comply with the terms and conditions as set out therein:

- a. the Condominium Documents as registered notwithstanding any amendments or revisions thereto from the documentation previously provided to the Buyer;
- b. any subdivision agreement, condominium agreement, *Condominium Act* Section 98 agreement, and any agreements pursuant to the *Planning Act* or otherwise with any municipality or other authority or other party now or to be registered or applicable to the Property, including any development agreement, site plan agreement, and any amendments thereto and any related agreements;
- c. any and all easements, encroachments, agreements, restrictions, covenants, conditions and obligations now or to be registered on or affecting title to the Property and/or the Land;
- d. any reservations or restrictions contained in the original grant from the crown;
- e. any building or other stipulations, restrictions, provisions and covenants that may now or hereafter be registered against the title of the Property and/or the Land, including any restrictions attached hereto or included in the transfer from the Seller, if applicable;
- f. a right in the nature of an easement or license for the Seller (or any predecessor in title), the municipality or other government authority, public or private utilities, their respective successors and assigns, and servants or agents to enter upon the Unit and/or Property any time to permit the Seller and/or any of the aforementioned parties to carry out the obligations under any agreement;
- g. all restrictive covenants, building scheme provisions and/or warning clauses whether contained herein or as required as a condition of condominium plan approval and/or site plan approval;
- h. any blanket utility easements over the Project granted by the Seller to the suppliers of utilities required to service the Project for gas, electricity, water, telephone and other communication services and/or other utility;
- i. any charge or mortgage which is not to be assumed by the Buyer, provided the Seller provides, on or before Closing, its solicitor's undertaking to discharge and remove any such encumbrance from title within a reasonable time after Closing and provided there is compliance with the Law Society of Upper Canada guidelines relating to discharges of mortgages;
- j. any environmental notice, warning, agreement, record of site condition, risk assessment, etc., with the Ministry of the Environment, any municipality or other authority now or to be registered on or affecting title to the Property and/or the Land (the "Environmental Requirements"), provided that the Seller shall have complied with the Environmental Requirements;
- k. any regulations and restrictions of any conservation authority; and
- l. anything else specifically set out in this Agreement and the Condominium Documents

(collectively, the "Restrictions and Registered Agreements").

The Seller will not provide proof of compliance with or obtain a release of the Restrictions and Registered Agreements but will provide a statutory declaration as to compliance from one of its officers on Closing if requisitioned by the Buyer. The Buyer agrees to be bound by any Restrictions and Registered Agreements and further agrees to accept title subject to such modifications to same as may be required by the municipality, conservation authority, other governmental authority, and/or subdivision developer from time to time. Furthermore, the Buyer agrees to execute all documents and do all things requisite for this purposes, either before or after the Closing Date.

The Transfer/Deed shall be prepared by the Seller at its expense save for the Land Transfer Tax Affidavit and the Seller shall be entitled to insert in the Transfer/Deed specific covenants by the Buyer pertaining to the Restrictions and Registered Agreements and, in such case, the Buyer shall, if requested by the Seller's solicitor, execute the Transfer/Deed and deliver same to the Seller's solicitor prior to Closing and execute such separate written covenants as the Seller's solicitor may reasonably require with respect to the observance and compliance with the Restrictions and Registered Agreements and to deliver same to the Seller's solicitor prior to Closing.

The Buyer agrees that it shall not have the right to call for the release of any Personal Property and Security Act registrations. The Buyer will accept title subject to same.

**7. TITLE DOCUMENTS, DISCHARGES, SURVEYS**

The Buyer shall not call for the production of any title deed, abstract, survey, grading or other certificates, or other evidence of title to the Property. In the event that a discharge of any mortgage or charge held by a corporation incorporated pursuant to the *Trust and Loan Companies Act (Canada)*, Chartered Bank, Trust Company, Credit Union or Insurance Company and which is not to be assumed by the Buyer on completion, is not available in registrable form on completion, the Buyer agrees to accept the Seller's solicitor's personal undertaking to obtain, out of the closing funds, a discharge or cessation of charge in registrable form and to register same on title within a reasonable period of time after completion. The Buyer hereby agrees to submit to the Seller or the Seller's solicitor on the earlier of the Occupancy Date and ten (10) days prior to the Closing Date, a written direction as to how the Buyer intends to take title to the Property, including the Buyer's date(s) of birth and marital status, and the Buyer shall be required to close the transaction in the manner so advised unless the Seller otherwise consents in writing, which consent may be arbitrarily withheld. If the Buyer does not submit such confirmation within the required time as aforesaid the Seller shall be entitled to tender a Transfer/Deed on the Closing Date engrossed in the name of the Buyer as shown on the face of this Agreement.

**8. NON INTERFERENCE**

The Buyer shall not interfere with the completion by the Seller of other proposed or registered units, the proposed or registered common elements, and/or other dwellings. Until all of the units of the Project are completed and sold, the Seller may make such use of the unsold proposed or registered units and the proposed or registered common elements as it in its absolute discretion deems appropriate to facilitate such completion and sales, including but not limited to, for maintenance of sales offices, use of units as models, for maintenance of presentation centres, for showing of the units and proposed or registered common elements, for parking for the Seller's staff and customers, for storage of materials and equipment and for display of signs.

**9. RIGHT OF ENTRY**

Notwithstanding the Buyer occupying the Property on the Occupancy Date and/or the closing of this transaction and the delivery of title to the Property to the Buyer, as applicable, the Seller or any person authorized by it shall be entitled at all reasonable times and upon reasonable prior notice to the Buyer to enter the Property and any part of 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 Seller in connection with the Property 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 Seller for a period not exceeding five (5) years similar to the foregoing may be included in the Transfer/Deed provided on the Closing Date and acknowledged by the Buyer at the Seller's sole discretion.

The Buyer agrees that municipal building inspectors, as well as the Seller and its employees, consultants and agents, may enter upon the Property and the Land including any part of the common elements and obtain reasonable access to the Property at any time after possession or completion of the sale to inspect the construction and mechanical systems pursuant to the Building Code, as well as complete any deficiencies and/or work in order to satisfy all municipal requirements and bring any violations into compliance with the Building Code. Acceptance of construction, siting and grading by the municipality, the mortgagee or the Tarion Warranty Corporation, where applicable, shall conclusively constitute acceptance by the Buyer. The failure or refusal of the Buyer to permit access to the Property following reasonable notice by any such inspector or the Seller, shall relieve the Seller of any obligation to complete or rectify any items of work outstanding or pursuant to any work order.

**10. GRADING**

The Buyer agrees that it will not alter the grading or change the elevation or contour of the land comprising the Property except in accordance with drainage plans approved by the municipality. The Buyer agrees to adhere to the overall drainage patterns of the Lands, including such easements as may exist or may be required for the purpose of water drainage to and from adjoining lands and the Buyer agrees to grant such easements as may be required from time to time for drainage purposes. The Buyer shall permit the Seller, its employees, consultants and agents, the right, at any time after occupancy and the date of closing, to enter upon the Property for the purposes of re-grading, rectifying grading, repairing sanitary and storm sewers and water mains. The foregoing covenants may be included in any conveyance in respect of the Property and any breach of the said covenants which requires rectification may be carried out by the Seller or the subdivider or the municipality at the sole expense of the Buyer payable forthwith upon demand.

**11. SETTLEMENT / WARRANTIES**

The Buyer acknowledges that there will be some ground and foundation settlement due to soil disturbances and shrinkage of construction materials and hereby releases the Seller from any liability for any damage to the interior or exterior of the Dwelling, including driveways, patio stones, walkways, decks or sodded areas and from all liability for water or other damage to basement or other improvements and chattels in the Dwelling including consequential damages as a result of any such settlement or shrinkage, and the Seller shall be under no obligation to repair same. The Buyer further agrees that the warranties provided pursuant to the *Ontario New Home Warranties Plan Act / Tarion Warranty Corporation* shall be the only warranty by the Seller. This covenant shall survive and not merge on the closing of this transaction.

**12. INSURANCE**

The Unit shall be and remain at the risk of the Seller until the Closing Date, subject to the Terms of Interim Occupancy attached hereto as a Schedule. Until completion of this Agreement, the Seller shall hold all insurance policies and the proceeds thereof in trust for the parties as their interest may appear. In the event of substantial damage, the Seller may, at its sole option, either terminate this Agreement and return to the Buyer all amounts theretofore paid by the Buyer without interest or deduction or repair the damage and complete the Property and the within transaction in accordance with the

terms hereof. No insurance shall be transferred on completion. Save and except for as provided in the Terms of Interim Occupancy attached hereto as a Schedule, it is the Buyer's responsibility after Closing to insure the Property.

**13. THE PLANNING ACT**

This Agreement is conditional until Closing upon compliance with Section 50 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended or restated from time to time, and the registration of the Condominium Documents under the Act which compliance shall be obtained by the Seller at its sole expense.

**14. ADJUSTMENTS**

The Purchase Price shall be increased or adjusted as of Closing on account of the following:

- a. any rents, mortgage interest, realty taxes including local improvements, water, fuel, hydro, gas and any other municipal service or utility, occupancy charges (including the Monthly Occupancy Fee), common expense contributions and other charges, as applicable, shall be apportioned and allowed to the Closing Date, with the Closing Date itself to be apportioned to the Buyer. The Seller may reasonably estimate the amount of any item which is not separately billed or assessed on Closing, subject to readjustment after the Closing upon the actual amount of such item being ascertained;
- b. from and after the Closing Date, the Buyer shall assume responsibility for and pay all taxes, assessments, local improvement rates or other like charges assessed from time to time against the Property and pay all charges for utility consumption in connection with the construction and maintenance of the Property. Should the Property not have an individually assigned roll number on Closing, the Seller shall estimate taxes, including local improvements, for the calendar year in which the Closing Date occurs and collect, as a Closing adjustment, such sums as estimated by the Seller for the year in question notwithstanding that the property taxes may not have been levied or paid as of the Closing Date. Such amounts shall be subject to readjustment after the Closing Date and upon the actual amount of such taxes, local improvements or other charges having been determined. The Buyer is advised that the municipality may issue a realty/property tax bill for supplementary assessment following Closing, which taxes may be in addition to those adjusted with the Seller and shall be the responsibility of the Buyer. In addition, the Buyer shall lodge with the Seller a refundable deposit of \$1,500.00, to be held by the Seller as security for compliance by the Buyer of its obligations to pay realty/property taxes after Closing. The monies so collected will be applied on account of property taxes that accrue from Closing until such time as taxes are separately assessed against the Property. Any excess of monies over what is paid by the Seller on account of the Property from such adjustment as collected will be returned to the Buyer. Any deficiency with respect to the same is to be made up for and paid by the Buyer as soon as such deficiency is known and requested of the Buyer by the Seller;
- c. a refundable grading deposit of \$750.00 shall be charged to the Buyer as security for the due performance of the Buyer's obligations under the provisions of this Agreement (the "Grading Deposit"). The Grading Deposit, if not forfeited to the Seller as a result of the Buyer's breach of the Buyer's obligations under the provisions of this Agreement, shall be released back to the Buyer upon delivery by the municipality to the Seller of a letter fully releasing the Seller from any further grading obligations with respect to the Property and/or Lands and releasing back to the Seller any security held by the municipality related thereto. The sum of \$750.00 shall in no way be deemed to limit the liability of the Buyer. Upon a breach of the Buyer's obligations under the provisions of this Agreement, the Buyer shall have forfeited as liquidated damages, and without prejudice to the right of the Seller to seek such further and other damages, the Buyer's right to the return of any amounts held by the Seller on account of the Grading Deposit;
- d. all additional or increased charges and levies (including existing or newly imposed levies, development charges, education development charges or any impost or other charges, whether authorized by the *Development Charges Act*, the *Education Act*, or otherwise) imposed or assessed in connection with the development of the Property, the Lands and/or the Project by any approving authority, municipal, regional or other governmental authorities and/or public utility corporation from the date this Agreement is first executed until Closing;
- e. any new taxes imposed on or payable with respect to the transaction contemplated herein by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Property by such government;
- f. any charges related to connection, energization, or the installation of meters used to measure the consumption rate of gas, hydro, water or other utilities and/or any charges paid to a utility company or entity for the connection of services or the cost and installation of meters;
- g. any prepaid or current expense, such as insurance premiums, gas, electricity, fuel, water, etc. shall be adjusted by attributing the Buyer's Unit its share of such expenses, as determined by its common interest together with charges paid by the Seller to a utility which are attributable to the Unit;
- h. any extras and upgrades ordered by the Buyer (and not yet paid at Closing);
- i. in the event that the Buyer arranges mortgage financing with the financial institution recommended by the Seller (the "Lender"), all legal fees and disbursements charged by the Lender's solicitor relating to such mortgage loan transaction;

- j. any HST payable because the Buyer has not qualified for and/or assigned the potentially available rebates to the Seller as described in this Agreement;
- k. a \$250.00 administration fee shall be charged to the Buyer for any cheque which is returned N.S.F. or otherwise dishonoured;
- l. the Buyer acknowledges and agrees that the Buyer shall pay all amounts chargeable and billable to the Buyer for water, hydro, gas, cable T.V. and any other services arising as a result of the Buyer's failure to make his or her own contractual arrangements with the relevant public or private utility authorities and suppliers on Closing or occupancy and for which the Seller is subsequently charged, it being the express intent of the parties that it shall be the sole responsibility of the Buyer to notify all relevant utility authorities and make the necessary contractual arrangements to ensure service to the Dwelling;
- m. a \$100.00 fee if the Buyer requests a paper copy of a Status Certificate attributable to the Unit on Closing. However, an electronic version of the Status Certificate will be made available by the Seller on a secure website accessible by the Buyer's lawyer on or prior to Closing;
- n. an amount equal to the Buyer's proportionate share of common expenses for the month in which the Closing Date occurs. For greater certainty, the Buyer acknowledges that the Closing Date shall be allocated to the Buyer. In addition, on Closing the Buyer shall deliver to the Seller a series of three (3) post-dated cheques to cover the common expense contribution attributable to the Unit for the first three (3) months following the month in which the Closing Date occurs;
- o. an amount equal to the projected monthly common expense contribution attributable to the Unit for three (3) months as an initial contribution towards the Corporation's reserve fund, which amount shall be redirected by the Seller to the Corporation on the Closing Date from the balance due on Closing for deposit into the reserve fund of the Corporation. Such amount shall be in addition to the monthly common expenses payable by the Buyer to the Corporation and the adjustment relating thereto referred to in above;
- p. an amount equal to the Unit's percentage share of the common expenses multiplied by the amount of the first insurance premium paid or payable on account of the insurance costs in light of the fact there may be insufficient funds in place at the time of the registration of the condominium plan to pay this premium. If the Seller has paid any of the Seller's funds towards the costs of such insurance premium, the Seller may to the extent it has made payment of the same on account of the Corporation retain the amount paid pursuant to this sub-paragraph. Otherwise the amount so paid will be delivered to the Corporation by the Seller;
- q. any other adjustments required or contemplated by this Agreement.

The Seller and the Buyer hereby mutually undertake to readjust any of the items referred to above, if necessary, after Closing. This undertaking shall not merge but shall survive Closing and remain in full force and effect thereafter.

There shall be no adjustment on Closing for, and the Seller shall not be required to pay interest or account for interest earned on, any funds paid in advance to the Seller by the Buyer as a deposit or otherwise.

#### 15. SELLER'S APPLICATIONS

The Buyer acknowledges that the Seller is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Property and 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 Property and the Lands, in order to permit the development and construction of the Project thereon. The Buyer acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the Dwelling may shift from that originally proposed or intended, the proposed unit or lot lines may vary from that originally proposed or intended, the number of units and dwellings may vary, and the location of the condominium's proposed amenities and/or common elements may likewise be altered, and the Buyer 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 Buyer 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, nor any other applications with respect to abutting or neighbouring lands owned by the Seller, including without limitation, any application submitted or pursued by or on behalf of the Seller to lawfully permit the development and registration of the Project, 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 Buyer expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Buyer thereto.

#### 16. RESTRICTIONS

The Buyer acknowledges and accepts that certain restrictions and covenants including noise warning clauses may be registered against the title to the Property. It is understood and agreed that the Seller has the right to amend, vary, waive, cancel or remove or modify any of the restrictions or covenants without the Buyer's consent and the Buyer agrees, if required by the Seller, to sign the Transfer/Deed containing such restrictions and to extract the same covenants from any subsequent purchasers or transferees. The Buyer agrees to satisfy himself or herself as to the compliance with any such restrictions and covenants. The Transfer/Deed to the Buyer may contain a noise-warning clause as required by any government, governmental authority or agency and a clause providing that no chemicals may be sprayed or placed on the Lands.

**17. EASEMENTS**

The Buyer acknowledges and agrees that the subject Property may be subject to and together with maintenance and access easements which may be reflected in the Transfer/Deed and agree to accept title to the Property subject to said easements. The Buyer further acknowledges and agrees that the Seller may locate the premises without a side yard, on or within the property lines at the Seller's discretion in accordance with current zoning by-laws and regulations. If applicable, townhomes may have both side and rear easements to allow middle units access to maintain the front and rear of the property.

**18. DWELLING PLANS AND SPECIFICATIONS**

Except as this Agreement may otherwise provide, the Seller has or will construct the Dwelling substantially in accordance with the plans and specifications attached hereto as Schedule A (Remarkable Features) and Schedule F (Plans and Specifications) and the Buyer hereby acknowledges having reviewed and approved said plans and specifications. Only those chattels specifically identified in Schedule A shall be included in the Purchase Price. The Buyer further acknowledges and agrees that all of the sketches and plans attached hereto as plans and specifications are intended for general depiction purposes only. Illustrations depicted are an artist's concept and may show optional features which may not be included in the base price. Bulkheads and boxing may be required and the location of same may vary for each plan and from the model home. All working drawings are the property of the Seller and may not be copied or reproduced in any manner without written consent from the Seller. The Buyer may be requested to sign on a drawing approval as required by the Seller and failure to do so may result in the extension of the Closing Date.

The Buyer agrees that there is no warranty (including no Tarion Warranty Corporation warranty) with respect any Seller installed paved driveway, if a paved driveway is required within this Agreement, such that there is no warranty coverage for cracking, lifting, settling, shrinking, or otherwise. For clarity, the Seller is not responsible to install a paved driveway unless the specifications forming a Schedule to this Agreement clearly specify that a paved driveway is included in the Purchase Price.

**19. VARIATIONS IN DWELLING**

The Buyer shall accept the Dwelling being constructed by the Seller with minor changes in dimensions and, without limiting the generality of the foregoing, any change required by the municipality in order to comply with any building or zoning by-laws or other municipal requirements including grading requirement whereby stairs might have to be added to the exterior or interior of the Dwelling. In particular, the Buyer acknowledges that the front elevation plans of the Dwelling and the floor plan may be reversed by the Seller in order to accommodate curb cuts set in locations that have been specified by the municipality at the time the plan of condominium, plan of subdivision, or other planning document, was approved. The Buyer acknowledges that all service locations including cable, electrical panels, switches, lights, and meter locations are at the sole discretion of the Seller and may vary from model to model. Notwithstanding the provisions herein, the Seller specifically reserves the right to refuse to make or complete any changes or alterations to the plans and specifications that may be requested by the Buyer if the proposed changes or alterations would result in the contravention of the approved grading control plan and/or the Building Code. Furthermore, the Buyer agrees to accept the Dwelling, if under construction or completed at the date of this Agreement on a where is, as is basis. All dimensions are approximate and actual usable floor area may vary from stated floor area. Any elevations or illustrations conceptual only and may show optional features which may not be included in the Dwelling. Bulkheads and boxing may be required and the location of same may vary from model to model. All working drawings are the property of the Seller and may not be copied or reproduced in any manner without written consent from the Seller.

**20. MATERIALS**

Subject to the provisions of the *Ontario New Home Warranties Plan Act*, the Seller shall have the right to substitute any materials used in the construction of the Dwelling, provided that the materials so substituted are of equal or better quality than those in the plans and specifications.

**21. CHANGES**

The Buyer acknowledges that the Condominium Documents, as well as the actual budget statement for the Corporation's first year following registration of the Condominium Documents and all other disclosure documents provided to the Buyer as required by the Act, may vary from the proposed documentation previously given to the Buyer. The Buyer acknowledges that if there is a material amendment to any of those documents the Buyer's only remedy shall be that provided by the Act, notwithstanding any rule of law or equity to the contrary.

The Seller may, subject to the requirements of the *Ontario New Home Warranties Plan Act*/Tarion Warranty Corporation, from time to time in its discretion or as required by any governmental authority or any mortgagee, change, vary or modify the plans and specifications pertaining to the Unit, Property, Lands and/or Project, 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 Buyer 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 units, parking spaces, and/or amenities intended to be created within the Project, and/or any changes or alterations to the design, style, size, height and/or configuration of any units (including the dwellings thereon) and/or common elements within the Project. The Buyer shall have no claim against the Seller for any such changes, variances or modifications nor shall they be entitled to notice thereof and none of the same shall be considered a material change pursuant to the Act. The foregoing is subject to the provision that the changes must attempt, to the extent reasonably possible, to maintain the overall concept of the development as presented to the Buyer.

The Buyer acknowledges and agrees that the Buyer shall have absolutely no claim or cause of action whatsoever against the Seller or its employees or sales representatives (whether based or founded in contract, tort or in equity) for any such changes, deletions, alterations or modifications, nor shall the Buyer 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, the Property and/or the Project, in which case the Seller shall be obliged to notify the Buyer in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Seller 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 Buyer's only recourse and remedy shall be the termination of this Agreement prior to the Closing Date (and specifically within 10 days after the Buyer is notified or otherwise becomes aware of such material change), and the return of the Buyer's deposit monies, together with interest accrued thereon at the rate prescribed by the Act.

## 22. REGISTRATION OF CONDOMINIUM

There has been no representation or promise made that is binding on the Seller with respect to when the Condominium Documents will be registered.

The Seller may change the Condominium Documents, in accordance with its requirements, the requirements of all relevant local and regional municipal authorities, any relevant provincial or federal Ministry, or any mortgagee or any regulatory body (which modifications may include the reduction or increase of the number of proposed units within the proposed condominium) and despite any such changes this Agreement shall remain binding upon the parties subject to the provisions of the Act and no such change shall be considered a material change pursuant to the Act.

Specifically, the Buyer acknowledges the following:

- a. the Seller reserves the right to adjust the size, configuration, and unit mix of the proposed condominium plan;
- b. the Seller reserves the right to proceed with the Project in two or more separate condominium registrations and to thereafter amalgamate the condominiums, or to proceed with the Project as a phased condominium. In either event, unit owners, specifically including the Buyer, are required to consent to and execute all such documentation as is reasonably required by the Seller, including but not limited to any documentation required to effect the amalgamation of any resulting condominium corporations;
- c. the Seller reserves the right to register the Condominium Documents and Project in a single registration;
- d. the Seller is not required to create any proposed phase after the registration of the Condominium Documents that will create the Unit being purchased; and
- e. the Seller reserves the right to acquire additional nearby or abutting lands and adjust the size, configuration, and unit mix of the proposed condominium plan and/or to grant easements, rights of ways or shared service agreements over all or part of the Property in favour of the aforementioned nearby or abutting lands, or vice versa.

The Buyer acknowledges and agrees that none of the items set out in subparagraphs (a) to (e) above shall be considered a material change pursuant to the Act. The provisions of this paragraph, and the Buyer's obligations hereunder, shall survive the completion and Closing of this transaction and shall not merge on such completion and Closing.

Subject to the other terms of this Agreement, the Buyer shall not sell, transfer, assign, or otherwise dispose of the Property or the Buyer's interest therein, directly or indirectly, in whole or in part, without having first obtained from any purchaser, transferee, or assignee an agreement in writing in favour of the Seller agreeing to be bound by the foregoing provisions and upon obtaining such agreement the purchaser, transferee, or assignee shall become liable under the terms of the foregoing provision as if it had been an original signatory hereto.

## 23. WARNING CLAUSES

The Buyer acknowledges that it is anticipated by the Seller that in connection with the Seller's application to the appropriate governmental authorities for draft plan of condominium approval and/or other governmental approval certain requirements may be imposed upon the Seller by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to the Buyer in connection with environmental or other concerns (such as warnings in relation to noise levels, the proximity of the Project to major streets, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Buyer covenants and agrees that (1) on either the Occupancy Date or the Closing Date, as determined by the Seller, the Buyer shall execute any and all documents required by the Seller acknowledging, inter alia, that the Buyer is aware of the Requirements, and (2) if the Seller is required to incorporate the Requirements into the final Condominium Documents, the Buyer shall accept the same, without in any way affecting this transaction. Notwithstanding the generality of the foregoing, the Buyer agrees to be bound by the warnings, if any, set forth in Schedule "C" hereto.

## 24. COMPLIANCE WITH WORK ORDERS

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

## 25. BUYER'S SELECTIONS

The Buyer shall have thirty (30) days from a date to be determined by the Seller to choose from the Seller's designated colour, material and feature sample selections, any options which may be available to the Buyer by the terms of this Agreement, failing which the Seller may make the required selections and the Buyer shall be bound thereby as though the Buyer had made the required selections himself or herself. In the event any selections made by the Buyer are for any reason unavailable, the Buyer shall have a further five (5) days after notice of the unavailability of the selections within which to

make an alternate selection from the Seller's designated samples and/or suppliers, failing which the Seller may exercise the Buyer's rights and make the required selection.

**26. EXTRAS**

Any changes/upgrades ("Extras") requested by the Buyer and agreed to in writing ("Change Order") by the Seller, shall be paid for by the Buyer at the time of making the request, and all such payments shall be non-refundable in the event that this transaction is not completed for any reason whatsoever, save and except where the termination is on account of the default of the Seller or otherwise provided for in this Agreement. The Buyer acknowledges and agrees that the failure to pay for any Extras within five (5) business days of receipt of written notice from the Seller that same is outstanding shall constitute a material breach of the terms of this Agreement and, at the Seller's sole option, the Seller may terminate this Agreement, refuse to carry out the Change Order or add the cost to the balance due on Closing. Notwithstanding the foregoing, the Buyer acknowledges and agrees that this Agreement shall be final and binding when accepted by the Seller and the Seller is under no obligation to agree to any requests for Extras and shall have the sole and unfettered discretion to refuse to accept any and all requests for Extras. It is further agreed that the Change Order shall be subject to the specific terms, if any, specifically set out in writing on the Change Order and those terms shall prevail in the event of a conflict with the terms herein contained. Further, it is acknowledged and agreed that each Change Order shall be subject to the right of the Seller to cancel the Change Order at any time if in the Seller's sole opinion, acting reasonably, it is impractical or would cause undue delay or expense to complete the Change Order. If necessary, on Closing adjustments will be made to reflect any increase or decrease in the amount of the Purchase Price on account of any Extras.

**27. ELECTRONIC REGISTRATION AND TENDER**

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, the following provisions shall apply:

- a. The Buyer 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 Buyer in connection with the completion of the transaction, and shall authorize such solicitor to enter into such escrow closing agreement as the Seller's solicitor may reasonably require (hereinafter referred to as the "Escrow Document Registration Agreement"), establishing the procedures and timing for completing this transaction and to be executed by the Buyer's solicitor and returned to the Seller's solicitor at least ten (10) days prior to the Closing Date.
- b. The delivery and exchange of documents, monies and keys to the Property and the release thereof to the Seller and the Buyer, as the case may be:
  - i. shall not occur contemporaneously with the registration of the Transfer/Deed (and other registrable documentation); and
  - ii. shall be governed by the Escrow Document Registration Agreement, pursuant to which the 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. In the event that this transaction cannot be completed in escrow pursuant to the terms of the Escrow Document Registration Agreement, the Buyer's solicitor (or the authorized agent thereof) shall be obliged to personally attend at the offices of the Seller's solicitor or, at the sole option of the Seller's solicitor, at the Land Registry Office and at such time as the Seller's solicitor may direct to complete the transaction.
- d. The Buyer expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Property 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 Seller'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 Property may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet including email), 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) to the recipient party by overnight courier sent the day of closing or within two (2) 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 Seller upon the Buyer when the Seller's solicitor has:
  - i. delivered all closing documents, keys and/or funds to the Buyer's solicitor in accordance with the provisions of the Escrow Document Registration Agreement;
  - ii. advised the Buyer's solicitor, in writing, that the Seller is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

- iii. has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Seller's solicitor without the cooperation or participation of the Buyer's solicitor, and specifically when the "completeness signatory" for the Transfer/Deed has been electronically "signed" by the Seller's solicitor;

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

The Buyer agrees that keys may be released to the Buyer at the sales office or other location as determined by the Seller upon the Closing Date of the transaction. The Seller's advice that the keys are available shall be valid tender of possession of the Property to the Buyer.

- g. Tender upon the Seller may only be made on its solicitor at its solicitor's offices (in the absence of written agreement to the contrary) between the hours of 2:00pm and 3:00pm on the Closing Date and only following at least eight hours oral and written notice to such solicitor of the Buyer's intention to tender being given to such solicitor. Money must be tendered by negotiable cheque certified by a chartered bank or trust company or bank draft or as otherwise required by the Seller's solicitor as set out above.
- h. It is further provided that, notwithstanding this section, in the event the Buyer or the Buyer's solicitor advise the Seller or the Seller's solicitor, on or before the Closing Date that the Buyer is unable or unwilling to complete the purchase transaction, the Seller, at its sole option, shall be relieved of any obligation to make any formal tender upon the Buyer or the Buyer's solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.

**28. WATERSAVING**

If applicable, the Buyer acknowledges that due to the elevation of this Property, the Property may be fitted with water pressure reduction devices.

**29. ATTENDANCE AT SITE**

Unscheduled visits to the construction site are not permitted due to safety and security reasons. All visitors will be asked by the Seller's staff or security personnel to leave immediately. The Buyer is not allowed to visit the construction site at any time prior to occupancy without a pre-arranged appointment scheduled with a Seller's representative. The Seller, at its sole discretion, may refuse to provide a site visit. Furthermore, no one other than the Buyer or the Buyer's representative (as authorized in writing) is permitted to attend at the construction site.

By entering into this Agreement, the Buyer agrees that, if the Buyer or the Buyer's representative suffers any injury or loss because of the contravention by the Buyer (or anyone for whom the Buyer is responsible) of any of the foregoing policies, the Buyer will completely release the Seller from any liability on account of such injury or loss. In addition, if the Buyer or anyone for whom the Buyer is responsible contravenes any of the foregoing policies, the Buyer agrees by entering into this Agreement that he or she will indemnify and save the Seller harmless from any costs, claims, damages, losses or expenses incurred on account of such contravention.

J.P.  
Buyer's Initials

**30. HUMIDITY IN NEW HOMES**

The Seller recommends the use of a dehumidifier within the house to remove moisture and reduce humidity subsequent to completion and to operate the ventilation fans installed within the washrooms on a frequent basis.

**31. PAVED ASPHALT DRIVEWAY**

A paved asphalt driveway will be installed adhering to zoning by-laws, and subdivision or development agreement requirements and at the sole option of the Seller within three (3) seasons of sidewalks being installed or final grading approval where sidewalks are not present.

**32. EXTERIOR IMPROVEMENTS**

The Buyer acknowledges that, without the written consent of the Seller, no exterior improvements including decks, patios, fences, clothes lines, sheds, children's entertainment centres, pools, ponds, gardens, planting of trees or shrubs, and/or any other grading work or exterior improvements will be completed by the Buyer until the later of (a) the Closing Date, (b) the date following which the Seller obtains final grade approval and completes all sod work, and (c) the date following which the Seller advises the Buyer in writing that the municipality or Corporation (as applicable) has released all related security and has assumed responsibility for all roads, sidewalks, grading, water and sewer services. It is the Buyer's responsibility to research and satisfy all easements and by-law regulations before constructing any exterior improvements or alterations. In addition the Seller assumes no responsibility for damage to the Buyer's exterior improvements at any time until final grade, sod and construction of adjoining lots is complete and the municipality or Corporation has assumed responsibility for all roads, sidewalks, grading, water and sewer services. The Buyer acknowledges that the municipality may have restrictions on the amount of permitted lot coverage and shall satisfy himself or herself that the restrictions will permit the said exterior improvements prior to executing this Agreement.

In the event of a violation of this clause by the Buyer, the following shall apply:

- a. the Seller shall be authorized by the Buyer and permitted to enter on the Property and complete all remedial work, including without limitation, altering the landscaping, removal of any landscape features, shrubs, trees, hedges, structures or fences (the "Work"), as may be necessary to bring the Property into compliance with the lot grading requirements of the municipality, the region or any other approval authority;
- b. the Buyer will be deemed to have requested the Seller to complete the Work and hereby consents to the Work being done;
- c. in so carrying out the Work, the Seller shall not be held responsible in any way for any damages to any improvements installed by the Buyer;
- d. the Buyer shall be fully responsible for all direct and indirect cost and expense of the Work carried out by the Seller and shall pay the Seller for such Work within fifteen days of being invoiced for the same. The Seller may deduct its direct and indirect costs from the Grading Deposit, however the Grading Deposit shall in no way be deemed to limit the liability of the Buyer; and
- e. in the event that the Buyer does not pay the invoice within fifteen days as required, the Seller shall enjoy all rights afforded to it under the *Construction Lien Act* and the Buyer is deemed to have retained the Seller to complete the Work for the Buyer's direct benefit.

In the event that any sod, grass, shrubs, trees or other landscaping have died and require replacement in order to satisfy any by-law, subdivision, condominium or development agreement requirements, the Buyer shall be fully responsible for the same and shall carryout such works immediately upon being notified by the Seller. In the event that the Buyer does not complete the replacement upon request by the Seller, the Seller shall be authorized by the Buyer and permitted to enter on to the Property to carry out the replacement on behalf of the Buyer and at the Buyer's sole cost and expense. The Buyer shall pay the Seller for such work within fifteen days of being invoiced for the same, failing which the Seller shall have all rights afforded to it under the *Construction Lien Act*.

### 33. UTILITY AND ENERGY SUPPLIERS

The Buyer acknowledges that it is his or her sole responsibility to make satisfactory financial arrangements with the utility and energy suppliers in the municipality for the sale and/or rental of water heaters, drain water heat recovery unit, and water softeners and agrees to indemnify and hold harmless the Seller from all costs and/or damages resulting from the Buyer's failure to make the said arrangements.

### 34. BUYER'S COVENANTS WITH SELLER

In addition to all other terms and conditions contained in this Agreement, the Buyer covenants and agrees with the Seller as follows:

- a. that, if the Buyer does not Close this transaction through the Buyer's default, all monies paid hereunder (including the deposit monies paid or agreed to be paid by the Buyer pursuant to this Agreement which sums shall be accelerated on demand of the Seller), together with any interest earned thereon and monies paid or payable for extras or upgrades or changes ordered by the Buyer, whether or not installed in the Dwelling or on the Property, shall be forfeited to the Seller. The Buyer agrees that the forfeiture of the aforesaid monies shall not be a penalty and it shall not be necessary for the Seller to prove it suffered any damages in order for the Seller to be able to retain the aforesaid monies. The Seller shall in such event still be entitled to claim damages from the Buyer in addition to any monies forfeited to the Seller. The aforesaid retention of monies is in addition to (and without prejudice to) any other rights or remedies available to the Seller at law or in equity;
- b. that neither the Buyer nor the Buyer's family, guests, servants, agents, workmen or invitees will go on, traverse or in any way move about the Project prior to occupancy except with the prior written consent of the Seller, and after occupancy will not enter or traverse on any part of the Project that is under construction;
- c. if applicable, the Buyer will assume the rental with respect to any appliance or fixture (including without limiting the generality of the foregoing, any rented water heater, water softener, furnace air conditioner, air cleaner or components of the same), as of the earlier of the Buyer's occupancy or the Closing Date and will save the Seller harmless with respect to same;
- d. that the obligation of the Seller to close is conditional on the Seller receiving final approval of draft plan of condominium and/or exemption and upon compliance with Section 50 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended or restated from time to time, and the registration of the Condominium Documents under the Act which compliance shall be obtained by the Seller at its sole expense;
- e. that the home/business mail delivery will not be door to door service but from a community mail box located on the condominium plan, the exact location of which shall be determined by the Seller in its sole discretion;
- f. that, notwithstanding Closing, all warranties, obligations and covenants of the Buyer or any provisions of this Agreement which require fulfillment by the Buyer after the Closing Date shall not merge but shall survive Closing and remain in full force and effect thereafter;
- g. to be solely responsible for watering and general maintenance of all sod, trees, plants and shrubs after the Occupancy Date or from the date that sod is laid, or trees, plants or shrubs are planted, whichever is later;

- h. to take all necessary steps to assume immediately upon possession of the Unit all charges for hydro, gas, water and other services and utilities;

J.A  
Buyer's Initials

- i. to observe and fully comply with the terms and conditions of any condominium or development agreement to which the Property may be subject and all covenants and restrictions registered against title to the Property;
- j. to comply with all obligations and requirements of the *Ontario New Home Warranties Plan Act / Tarion Warranty Corporation*;
- k. to not register any notice of this Agreement against title to the Property prior to Closing;
- l. to complete this transaction;
- m. to sign and return to the Seller's solicitor, all documents reasonably required by the Seller's solicitor, either before, on, or following the Occupancy Date and/or the Closing Date as required and determined by the Seller and its solicitor;
- n. to not interfere with the installation of the services to the Lands, Project or Property or any adjacent or nearby properties owned by the Seller, or with the completion of the Lands, Project or Property or any adjacent or nearby properties owned by the Seller;
- o. to accept the decision of the consulting engineer of the Seller and the municipality engineering department as to compliance with the Seller's obligations under this Agreement, the certificate of whom will be proof of such compliance and will be binding on both parties;
- p. that notwithstanding any rights which the Buyer might otherwise have at law or in equity arising out of this Agreement, the Buyer 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 Seller herein, even though the Seller 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 Buyer in any action, suit, application or proceeding brought by or on behalf of the Buyer to assert any of such rights, claims or causes of action against any such third parties; and
- q. to advise the Seller at least 15 days prior to the Closing Date as to the full name and birth date of the Buyer and the manner in which title to the Property will be taken so a Transfer/Deed may be properly prepared.

**35. SELLER'S WARRANTIES**

The Seller warrants that it is not a non-resident of Canada for the purposes of Section 116 of the *Income Tax Act (Canada)*. No officer, director or shareholder of the Seller has ever occupied the Property as a matrimonial home. Spousal consent is not necessary to this transaction under the provisions of the *Family Law Act, R.S.O. 1990*.

**36. DELIVERY TO BUYER'S SOLICITOR**

The Buyer acknowledges that delivery of this Agreement and any related documentation to the Buyer's solicitor and/or financial institution is the sole responsibility of the Buyer.

**37. BUYER'S CONSENT TO THE COLLECTION AND LIMITED USE OF PERSONAL INFORMATION**

For the purposes of facilitating compliance with the provisions of any applicable Federal and/or Provincial privacy legislation (including without limitation, the *Personal Information Protection and Electronic Documents Act, S.C. 2000, c.5, as amended*), the Buyer hereby consents to the Seller's collection and use of the Buyer's personal information necessary and sufficient to enable the Seller to proceed with the Buyer's purchase of the Property, including without limitation, the Buyer's name, home address, e-mail address, telefax/telephone number, age, date of birth, and in respect of marital status only for the limited purposes described below, as well as the Buyer's financial information and desired house design(s) and colour/finish selections, in connection with the completion of this transaction and for post-closing and after-sales customer care purposes, and to the disclosure and/or distribution of any or all of such personal information to the following entities, on the express understanding and agreement that the Seller shall not sell or otherwise provide or distribute such personal information to anyone other than the following entities, namely to:

- a. any companies or legal entities that are associated with, related to or affiliated with the Seller, other home builders that are likewise associated with, related to or affiliated with the Seller (or with the Seller's parent/holding company) and are developing one or more other residential housing projects or communities that may be of interest to the Buyer or members of the Buyer's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Buyer and/or members of the Buyer's family;
- b. one or more third party data processing companies which handle or process marketing campaigns on behalf of the Seller or other companies that are associated with, related to or affiliated with the Seller, and who may send (by e-

mail or other means) promotional literature/brochures about new housing projects and/or related services to the Buyer and/or members of the Buyer's family;

- c. any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Buyer and/or members of the Buyer's family, including without limitation, the Seller's construction lender(s), the project monitor, the Seller's designated construction lender(s), the Taron Warranty Corporation in connection with the development and/or construction financing of the housing project and/or the financing of the Buyer's acquisition of the Property from the Seller;
- d. any insurance companies providing (or wishing to provide) insurance coverage with respect to the Property including without limitation, any title insurance companies providing (or wishing to provide) title insurance to the Buyer or the Buyer's mortgage lender(s) in connection with the completion of this transaction;
- e. any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Seller (or who are otherwise dealing with the Seller) to facilitate the completion and finishing of the Property and the installation of any extras or upgrades ordered or requested by the Buyer;
- f. one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water/ gas and/or other similar or related services to the Property (or any portion thereof) unless the Buyer advises the Seller in writing not to provide such personal information to an entity providing security alarm systems and services;
- g. any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (for the region in which the Property is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and Canada Revenue Agency (i.e. with respect to HST);
- h. the Seller's solicitor, to facilitate the 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; and
- i. any person, where the Buyer further consents to such disclosure or disclosures required by law.

**38. BROKER AS SELLER'S AGENT**

Unless otherwise specified in this Agreement, it is understood that all brokers and realtors involved in this transaction are working for the Seller. The Buyer acknowledges and agrees that he or she was at liberty to seek agency representation from a broker or realtor under separate contract. The Buyer acknowledges and agrees that he or she has had the opportunity to review this Agreement with his or her own representative prior to signing this Agreement. The Buyer acknowledges and agrees that in the event that the Buyer has entered into an agency representation with a broker or realtor (or any other party), written confirmation of said agency representation was provided to the Seller immediately upon the Buyer's attendance at the Seller's sales centre and prior to the commencement of any negotiations related to the transaction contemplated in this Agreement. In the event that said written proof was not provided to the Seller as set out herein, the Buyer acknowledges and confirms that he or she has not sought agency representation and is not represented by a broker or realtor. Compensation for any cooperating brokerage will be at the Seller's sole and absolute discretion.

J.B.  
Buyer's Initials

**39. ONTARIO NEW HOME WARRANTIES PLAN ACT AND TARION WARRANTY CORPORATION ("TWC") INSPECTION**

- a. The Seller covenants that the Dwelling is or will be at Closing registered under the *Ontario New Home Warranties Plan Act*. No further warranty or guarantee is or shall be given by the Seller. Accordingly, the Buyer acknowledges and agrees that the only warranties provided by the Seller are those required and provided under the *Ontario New Home Warranties Plan Act*.
- b. The Buyer or the Buyer's designate as hereinafter provided agrees to meet the Seller's representative at the date and time designated by the Seller, prior to taking possession of the Property to conduct a Pre-Delivery Inspection of the Dwelling (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Dwelling, on the 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 *Ontario New Home Warranties Plan Act*, as amended. The said CCP and PDI Forms shall be executed by both the Buyer or the Buyer's designate and the Seller's representative at the PDI and shall constitute the Seller's only undertaking with respect to incomplete or deficient work and the Buyer shall not require any further undertaking of the Seller to complete any outstanding items. Provided that the execution of the CCP and PDI Forms by the Seller shall not be deemed an acknowledgement or admission by the Seller of its obligation to complete any items listed by the Buyer thereon and the Seller specifically reserves its right to refuse to complete same. In the event that the Seller performs any additional work to the Dwelling in its discretion, the Seller shall not be deemed to have waived the provision of this section or otherwise enlarged its obligation hereunder.
- c. The Buyer acknowledges that the Homeowner Information Package as defined in TWC Builder Bulletin 42 (the "HIP") is available from TWC and that the Seller further agrees to provide the HIP to the Buyer or the Buyer's designate by electronic delivery or otherwise, at or before the PDI. The Buyer or the Buyer's designate agrees to execute and provide to the Seller the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.

- d. The Buyer shall be entitled to send a designate to conduct the PDI in the Buyer's place or attend with their designate, provided the Buyer first provides to the Seller written authority appointing such designate for the PDI prior to the PDI. If the Buyer appoints a designate, the Buyer acknowledges and agrees that the Buyer shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Buyer directly.
- e. The Buyer acknowledges that he or she shall not be entitled to take possession of the Property unless and until he or she has executed the aforesaid CCP and PDI Forms. In the event the Buyer and/or the Buyer's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Seller may declare the Buyer to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Seller may, at its option, complete the within transaction but not provide the keys to the Dwelling to the Buyer until the CCP and PDI Forms have been executed by the Buyer and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Buyer and/or the Buyer's designate and the Buyer hereby irrevocably appoints the Seller the Buyer's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Buyer's behalf and the Buyer shall be bound as if the Buyer or the Buyer's designate has executed the CCP and PDI Forms.
- f. In the event the Buyer and/or the Buyer's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Seller may declare the Buyer to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.
- g. The Buyer agrees that the Seller shall have the right to enter upon the Property including the Dwelling after completion of the transaction during normal business hours in order to complete such items as are included in the CCP and PDI Forms. Further the Seller and the developer shall have the right for itself and its respective servants or agents, to enter upon the Property for completion or correction of grading and drainage and to carry out any outstanding obligations contained in any agreements with local or regional municipalities or county, utilities or any other affecting authority.

#### 40. DEFAULT

- a. The Buyer shall be in default under this Agreement if any lien, execution and/or encumbrance arising from any action or default of the Buyer is registered against title to the Unit, Property or Lands, prior to Closing. In the event that the Seller pays any money and/or incurs any damages or charges on account of said lien, execution and/or encumbrance, the Buyer shall reimburse the Seller for all amounts paid/incurred by it within five (5) days of demand by the Seller.
- b. In addition to all other remedies available to the Seller, the Seller may, in its sole option, terminate this Agreement upon default of any kind by the Buyer with respect to any of his or her obligations contained in this Agreement (or any of them if there is more than one Buyer), including but not limited to the Terms of Interim Occupancy. In such event, the Seller is under no further obligation to the Buyer under the terms of this Agreement and the Seller is entitled to retain all deposits and monies (including any interest earned thereon) paid by the Buyer to the Seller (the aforementioned deposits and monies having been forfeited by the Buyer to the Seller).
- c. In addition to all other remedies and rights in favour of the Seller which arise on account of the default of the Buyer, if the Buyer defaults in any of its obligations under this Agreement, then the Seller has the right to accelerate the payment of the deposits and additions, deletions, options, extras, and upgrades agreed to be paid by the Buyer pursuant to this Agreement or otherwise by delivering a written demand upon the Buyer to pay the balance of the said deposits and additions, deletions, options, extras, and upgrades, and same are hereby agreed to be paid by the Buyer within seven days of the Seller's demand for same.
- d. The Buyer agrees that the forfeiture of the aforesaid monies shall not be a penalty and it shall not be necessary for the Seller to prove it suffered any damages in order for the Seller to be able to retain the aforesaid monies. The Seller shall in such event still be entitled to claim damages from the Buyer in addition to any monies forfeited to the Seller. The aforesaid retention of monies is in addition to (and without prejudice to) any other rights or remedies available to the Seller at law or in equity.
- e. In the event of any termination of this Agreement, the Buyer shall execute and complete such documents as may be necessary to clear the title to the Unit, the Property and the Project and to allow a resale of the Property.

#### 41. COSTS AND INTEREST IF AGREEMENT IS NOT TERMINATED

If the Seller chooses not to terminate this Agreement on account of default described in the foregoing paragraphs but a new Occupancy Date and/or Closing Date is established, or if the Buyer requests an extension of the Occupancy Date and/or Closing Date and if the Seller agrees in writing to extend the Occupancy Date and/or Closing Date (which the Seller is not obligated to agree to) then, for each such extension of the Occupancy Date and/or Closing Date to which the Seller so agrees, there shall be a charge to the Buyer which shall be adjusted in favour of the Seller on Closing of One Thousand Dollars (\$1,000.00) for each week or part week that the Occupancy Date and/or Closing Date is so extended in addition to all other readjustments and charges on account thereof, plus interest on the unpaid Purchase Price on a per diem basis at a rate equal to the greater of 8% or the Seller's cost of borrowing with its bank.

#### 42. WAIVER OF DAMAGES

Notwithstanding anything contained in this Agreement to the contrary, the Buyer acknowledges and agrees that the Seller shall not be responsible for costs, expenses or any other damages whatsoever suffered or incurred, including in respect of

alternate accommodation, storage and movers, by the Buyer as a result of any delay in occupancy and/or Closing or extension of the Occupancy Date and/or Closing Date save and except as provided for by the provisions of the *Ontario New Home Warranties Plan Act* and the regulations thereunder.

The Buyer acknowledges and agrees that the Seller shall not be liable for and the Buyer shall hold the Seller harmless with respect to any damage which may occur to basement improvements, whether made by the Seller prior to Closing or independently by the Buyer after Closing, and/or any property stored in the basement or any other consequential damage arising directly or indirectly from condensation or basement foundation wall leakage regardless that same may occur during any warranty period.

**43. CONSTRUCTION LIEN**

The Buyer agrees to accept, on closing, the Seller's representation and warranty that all subtrades, labourers, and other potential lien claimants have been and/or will be paid in full and the Seller's agreement to indemnify and save the Buyer harmless from any reasonable costs incurred by the Buyer as a result of any construction liens registered on the title to the Property on account of work or materials supplied to the Seller prior to Closing. The Buyer shall have no right to call for any other proof of Seller's compliance with the *Construction Lien Act* and/or any other proof that the Property is not subject to construction liens.

**44. REBATES, REFUNDS OR INCENTIVES**

The Buyer acknowledges and agrees that the Seller shall be the beneficiary of and shall receive the entirety of any and all rebates, refunds and/or incentives related to the Lands, Project, Property and/or Unit provided by the federal government, a provincial or municipal government or an agency of any such government whether or not the aforementioned rebates, refunds and/or incentives are received before or after closing. The Buyer will execute and return to the Seller's solicitor within ten calendar (10) days of the Buyer's or the Buyer's solicitor's receipt of same all documents that may be required by the Seller and/or its solicitor relating to any rebates, refunds and/or incentives related to the Lands, Project, Property and/or Unit. In the event that any rebate, refund and/or incentive (or any part thereof) are received by the Buyer, such rebate, refund and/or incentive shall be received and held by the Buyer in trust for the Seller and shall be provided to the Seller forthwith. The provisions of this paragraph, and the Buyer's obligations hereunder, shall survive the completion and Closing of this transaction and shall not merge on such completion and Closing.

**45. STREET FURNITURE**

Certain services and/or utility suppliers such as telephone, electricity, cable television/internet, other communications systems, gas, municipal fire and/or other services and suppliers may or will be placing or have placed some of their equipment on or near any unit within this development including the Unit being conveyed to the Buyer herein. Such equipment may include, by way of example only, above and below ground piping, valves, culverts, conduits and wiring, street lamps and other site lighting, above ground poles, lines and transformers, above ground pedestals, switch and connection boxes, transformers, pad mounts, underground vaults, above and below ground fire water storage tanks and vaults, entrance features and related lighting and landscaping, roadway, site, fire route, parking, amenities and other signage, storm drains, swales, pond aeration, grounds irrigation, pump houses and stations, irrigation wells, garbage and recycling enclosures, storm water and sanitary systems and treatment facilities, landscaping features, fencing, bollards, items required by municipal development agreements and restrictions on title, etc. ("street furniture"). In addition, Canada Post has the right to place mailboxes and/or related kiosks throughout the development. The Buyer accepts that such equipment, mailboxes, kiosks and/or other "street furniture" may be located in front of, to the side, behind or otherwise on or appurtenant to the Buyer's Unit and agree to accept the same without complaint. It is possible that the location of the any of the foregoing may not be accurately shown or shown at all on any or all plans of the development viewed by the Buyer. The Seller cannot alter the location of those items. The location of certain features such as for example, driveway width and location can be affected by these items.

**46. PRIORITY, SUBORDINATION AND POSTPONEMENT**

The Buyer will execute and return to the Seller forthwith all documents that may be reasonably required by the Seller to obtain approvals of any kind related to the condominium and/or development project described in this Agreement. The Buyer acknowledges that the Seller is or may be borrowing money from a financial institution to be secured by one or more charges registered or to be registered against the Property and the Lands and the Buyer agrees that this Agreement, any interest of the Buyer in this Agreement (whether such interests are in equity or at law), and any and all deposits paid or to be paid by the Buyer pursuant to this Agreement and any purchaser's lien arising by the terms of this Agreement or from the payment of any deposit pursuant to this Agreement or arising by operation of law is hereby subordinated and postponed to and will be subordinated and postponed to any mortgages, charges, debentures and trust deeds registered or to be registered against title to the Property and any advances thereunder, made from time to time, and to any easement, license or other agreements to provide services to the Property, the Lands or to any lands adjacent thereto. The Buyer agrees to execute any and all documentation necessary to give full force and effect to same forthwith after being requested to do so by the Seller.

**47. NON-ASSIGNABILITY AND REGISTRATION OF AGREEMENT, DEATH OF BUYER/INSOLVENCY OF BUYER**

This Agreement is personal to the Buyer and is non-transferable other than:

- a. to the Buyer's spouse or to an immediate member of the Buyer's family that is of the age of majority on the condition that, prior to said assignment, the proposed assignee delivers to the Seller a copy of a binding commitment for a mortgage loan for the balance of the Purchase Price or evidence satisfactory to the Seller, acting reasonably, of the assignee's ability to finance the balance of the Purchase Price on Closing; or
- b. with the prior written consent of the Seller, which consent may be unreasonably withheld.



The Buyer shall not list for sale, advertise for sale or sell, prior to Closing, any of his or her interest and/or rights under this Agreement without the prior written consent of the Seller which consent may be unreasonably withheld. The Buyer agrees not to register this Agreement, or notice thereof, or any other instrument or document of any kind, against the title to the Property, prior to Closing. If the Buyer breaches this provision, the Buyer shall immediately attend to the removal of any such registration from title, and the Buyer hereby irrevocably appoints, in accordance with the *Powers of Attorney Act*, the Seller as the Buyer's attorney for all purposes necessary to effect the removal of any such registrations. All costs, expenses and damages incurred directly or indirectly by the Seller on account of any such registrations and effecting the removal thereof shall be immediately paid by the Buyer and if not paid in full prior to Closing shall be added as an adjustment to the balance due on Closing.

In the event of the death of the Buyer, the Seller may terminate this Agreement by returning the monies paid hereunder (inclusive of monies paid for extras and upgrades) to the estate of the Buyer or the Buyer's solicitor without interest or deduction within thirty (30) days of being advised in writing of or otherwise ascertaining the death of the Buyer. In the absence of termination pursuant to this clause on account of the death of the Buyer, the estate thereof shall remain bound by this Agreement.

In the event of the insolvency or bankruptcy of the Buyer or any of them if there are more than one, the Seller may terminate this Agreement by notice to the Buyer or the Buyer's solicitor and upon such notice being given the deposits and all monies paid by the Buyer to the Seller are forfeit to the Seller and this Agreement is at an end.

Where the Buyer is a corporation, the Buyer agrees that any direct or indirect change of control of the Buyer (whether by transfer or issuance of shares in the capital of the Buyer or otherwise) shall constitute a prohibited transfer or assignment hereunder and shall trigger the remedies of the Seller for Buyer's default including those set out herein.

**48. SPECULATION**

The Buyer represents to the Seller, upon which representation the Seller has relied in accepting the Buyer's offer, that the Buyer is purchasing the Property for the Buyer's own personal use and not for short-term speculative investment purposes. In the event that the foregoing resolution is inaccurate, the Purchase Price shall be adjusted by increasing the Purchase Price by the sum of all potentially available tax rebates, as contemplated by this Agreement, and the Buyer shall be responsible for all of the Seller's costs, if any, incurred to adjust the Purchase Price.

**49. RIGHT TO EXTEND OCCUPANCY DATE**

In accordance with the Tarion Addendum, the Seller has 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 (as such terms are defined in the attached Tarion Addendum) to avoid the necessity of the Seller having to tender on the Buyer where the Buyer is not ready to complete this transaction on the said Firm Occupancy Date or Delayed Occupancy Date, as the case may be. This does not detract from the Seller's right to not have to tender on the Buyer if the Buyer is clearly unable or unwilling to complete this transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, or the Closing Date if the Buyer commits an anticipatory breach of this contract that entitles the Seller to terminate this Agreement and the Seller accepts such breach of contract and terminates this Agreement.

**50. REPRESENTATIONS AND WARRANTIES**

It is agreed and understood that other than as expressed herein in writing, there is no representation, warranty, collateral term or condition affecting this Agreement or the Unit, the Project or the Property, or for which the Seller can be held responsible in any way, whether they be contained in any sales material, brochure, or alleged against any sales representative or agent.

**51. MERGER**

The parties agree the covenants implied by Section 78 of the Act shall merge on the delivery of a Transfer/Deed to the Buyer and shall not survive the completion of the transaction contemplated by this Agreement. Therefore the said covenants do not merge by operation of law but by contract on account of this paragraph of this Agreement. All other provisions of this Agreement shall survive Closing and not merge thereon.

**52. TIME OF ESSENCE**

Time shall in all respects be of the essence hereof provided that the time for doing or completion of any matter provided for herein may be extended or abridged by an agreement in writing signed by the Seller and the Buyer or by their respective solicitors who may be specifically authorized in that regard.

**53. ENTIRE AGREEMENT**

This Agreement, including any and all Schedules (specifically including but not limited to the Addendum), shall constitute the entire Agreement between the Buyer and the Seller. There is no representation, warranty, collateral agreement or condition, whether direct or collateral or expressed or implied, which induced any party hereto to enter into this Agreement or on which reliance is placed by any such party or which affects this Agreement or the Property or supported hereby, other than as expressed herein. The headings herein do not compose any part of the Agreement and are inserted for reference only. This Agreement shall be read with all changes of gender or number required by the context. This Agreement shall be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

**54. AMENDMENTS MUST BE IN WRITTEN MEMORANDUM**

This agreement shall not be amended, altered or qualified except by a memorandum in writing signed by the parties hereto or their solicitors or by an exchange of letters confirming any such amendment, alteration or qualification by their respective solicitors.

**55. INTERPRETATION**

This Agreement, including all Schedules and other documents annexed hereto, is to be read with all changes of gender or number required by the context. All headings are for convenience of reference only and have no bearing or meaning in the interpretation of any particular clause in this Agreement. Any reference to a time and date in this Agreement shall mean the time and date where the Property is located.

**56. NOTICES**

Any communication or notice given for the purposes of this Agreement shall be in writing and shall be sufficiently given if personally delivered or delivered by courier or sent by prepaid registered mail or by facsimile transmission (or other electronic transmission including e-mail) to the receiving party or its solicitor at the address, facsimile number or e-mail address listed on page 1 of the Tarion Addendum, or such other address as such person shall have last notified to the person giving the same in the manner provided in the Tarion Addendum. Any communication or notice sent shall be deemed to have been given in accordance with the terms set out in the Tarion Addendum.

**57. BENEFIT**

Subject to the terms herein, this Agreement shall be binding upon the heirs, executors, administrators, successors and permitted assigns of each party.

**58. APPLICABLE LAW**

This Agreement shall be governed by, and shall be construed in accordance with, the laws of the Province of Ontario.

**59. UNENFORCEABLE PROVISIONS**

If any part of this Agreement is found to be invalid or unenforceable under applicable law, such part will be ineffective to the extent of such invalid or unenforceable part only, without affecting the remaining parts of this Agreement in any way.

**60. WAIVER**

No waiver of any of the provisions of this Agreement will be deemed to constitute a waiver of any other provision nor shall such a waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

**61. JOINT AND SEVERAL LIABILITY**

If there is more than one Buyer, their obligations to the Seller on account of this Agreement are joint and several.

**62. PLANNING STATUS**

- a. As of the date of this Agreement, the final site plan relating to the Land showing the actual siting of the Dwelling on the Land may not have been completed by the Seller or approved by the municipality. Consequently, the Buyer acknowledges and agrees that the Seller shall have the right to construct the Dwelling on the Land in a location or angle different than as depicted in any sales brochures, renderings and other plans and specifications reviewed by the Buyer at the time of entering into this Agreement, without notice to the Buyer and without compensation or abatement to the Purchase Price.
- b. The Buyer hereby acknowledges that, as of the date of this Agreement, final grading plans relating to the Land may not have been completed by the Seller or approved by the municipality. Consequently, the Buyer acknowledges and agrees that the Seller shall have the right to construct the Dwelling at a grade level different than as depicted in any sales brochures, renderings and other plans and specifications reviewed by the Buyer at the time of entering into this Agreement, without notice to the Buyer and without compensation or abatement to the Purchase Price.
- c. In the event that the Dwelling is constructed at a grade level different than as depicted in any sales brochures, renderings and other plans and specifications reviewed by the Buyer at the time of entering into this Agreement necessitating a step or series of steps to the front door, side door, rear door or any other door of the Dwelling, the Buyer hereby irrevocably agrees to accept such change without notice, without any right of abatement to the Purchase Price and in full satisfaction of the Seller's obligations with respect to the construction of the Dwelling.
- d. As of the date of this Agreement, the final grading plan relating to the Land may not have been completed by the Seller or approved by the municipality. Consequently, the Buyer acknowledges and agrees that the grading of the Land may require the use of retaining walls on the Land or on adjoining properties. The Buyer acknowledges and agrees that the Seller shall have the right to construct such retaining walls without notice to the Buyer and without compensation or abatement to the Purchase Price. In addition, the Buyer acknowledges and agrees that the Seller may construct any fences and/or beams on or near the Lands, as may be required.

**63. LOOKOUT AND WALKOUT**

In addition to any other provision set out in this Agreement, the Buyer shall accept minor modifications which the Seller or the municipality may require, including walkouts, lookouts, narrowed driveway entrances, decks, side porches or reverse layout (mirror image which may cause side windows to align with neighbouring home's windows). The Buyer also agrees to accept the grading and drainage of the Property, including the installation of rear-yard concrete swales or infiltration galleries, as completed in compliance with the grading and drainage requirements of the Seller and the municipality. None of the above will be cause for an abatement of the Purchase Price or any other claim of any kind by the Buyer.

The Buyer acknowledges that if the Property is a unit on a plan of condominium or a lot on a plan of subdivision which has not yet been registered at the Land Registry Office, unit or lot size and dimension may be subject to change without notice provided that they are not substantially varied.

The Buyer acknowledges that if the final grading requirements for the Property are not available to the Seller at the time of executing this Agreement and the final grading requirements cause the Dwelling to be built as a lookout or a walkout unit/lot, then the Purchase Price shall be adjusted upward or downward, as applicable, in accordance with the Seller's standard charge for the as-completed dwelling type in this community.

**SCHEDULE "C"**  
**SPECIAL PROVISIONS**

I/we acknowledge receipt of 2 pages of this Schedule "C"  
Buyer's Initials: S.A

Notwithstanding anything to the contrary contained in the Agreement to which this Schedule is attached, the Buyer (sometimes referred to in this Schedule as the "Purchaser" or "purchaser") and the Seller (sometimes referred to in this Schedule as the "Vendor" or "vendor") agree that the following provisions form part of the Agreement:

1. The Buyer acknowledges that it is anticipated by the Seller that in connection with the Seller's application to the appropriate governmental authorities for draft plan of condominium approval and/or other governmental approval certain requirements may be imposed upon the Seller by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Buyer in connection with environmental or other concerns (such as warnings relation to noise levels, the proximity of the project to major streets, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Buyer covenants and agrees that (1) on either the Occupancy Date or the Closing Date, as determined by the Seller, the Buyer shall execute any and all documents required by the Seller acknowledging, inter alia, that the Buyer is aware of the Requirements, and (2) if the Seller is required to incorporate the Requirements into the final Condominium Documents, the Buyer shall accept the same, without in any way affecting this transaction.
2. The Buyer acknowledges being advised of the following notices which may form part of the Requirements:
  - a. This development has private road access, Service de transport de Wellington-Dufferin Student Transportation Services does not run school buses on private roadways and therefore potential busing students will be required to meet the bus at a congregated bus pick-up point.
  - b. Purchasers and/or tenants of all lots or units are advised that sump pumps will be required for every lot or unit unless a gravity outlet for the foundation drain can be provided on the lot or unit in accordance with a certified design by a Professional Engineer. Furthermore, all sump pumps must be discharged to the rear yard.
  - c. Purchasers and/or tenants of all lots or units are advised that if any fee has been paid by the purchaser to the developers for the planting of trees on City boulevards in front of residential units does not obligate the City nor guarantee that a tree will be planted on the boulevard in front or on the side of a particular residential dwelling.
  - d. Purchasers and/or tenants of all lots or units located in the condominium plan, are advised prior to the completion of home sales, of the time frame during which construction activities may occur, and the potential for residents to be inconvenienced by construction activities such as noise, dust, dirt, debris, drainage and construction traffic.
  - e. Purchasers and/or tenants of advised that the stormwater management block has been vegetated to create a natural setting. Be advised that the City will not carry out routine maintenance such as grass cutting. Some maintenance may occur in the areas that are developed by the City for public walkways, bikeways and trails.
  - f. Purchasers and/or tenants of all lots or units are advised that the Open Space Block has been retained in its natural condition. Be advised that the City will not carry out routine maintenance such as grass cutting.
  - g. Purchasers and/or tenants of all lots or units are advised that the Open Space Block has been vegetated to create a natural setting. Be advised that the City will not carry out routine maintenance such as grass cutting. Periodic maintenance may occur from time to time to support the open space function and public trail system. Some maintenance may occur in the areas that are developed by the City for public trails.
  - h. Purchasers and/or tenants of all lots or units are advised that the boundaries of the open space and stormwater management block will be demarcated in accordance with the City of Guelph Property Demarcation Policy. This demarcation will consist of living fences and property demarcation markers adjacent to certain lot or unit numbers and black vinyl chain link fence adjacent to other lot or numbers.
  - i. Units/Lots: 1, 2, 11, 12, 16 and 17: Purchasers and/or tenants are advised that storm water will flow in the drainage swale located in the sideyard adjacent to the dwelling and is designated as an overland flow route to convey high levels of storm water during heavy rainfall events. Be advised that this drainage swale must not be blocked or obstructed with any buildings or structures.
  - j. Purchasers and/or tenants of all lots or units abutting City owned lands are advised that abutting City owned lands may be fenced in accordance with the current standards and specifications of the City.
  - k. Purchasers and/or tenants of all lots or units abutting City owned lands are advised that no private gates will be allowed into Units/Lots 1-12 into City owned lands.
  - l. Purchasers and/or tenants of all lots or units are advised that a public trail may be installed or exists abutting or in close proximity to Units/Lots 1 to 12 and that public access to this trail will occur close to these Units/Lots.

- m. Purchasers and/or tenants of all lots or units are advised that the lands adjacent to this development may be utilized for agricultural activities such as herbicide application, planting and harvesting of various crops which may affect the living environment of residents living in close proximity to the farming operations.
- n. The developer agrees to eliminate the use of any covenants that would restrict the use of clotheslines and that prior to the registration of all or any portion of the plan, the developer's lawyer shall certify to the General Manager of Planning and Building Services that there are no restrictive covenants which restrict the use of clotheslines.
- o. The developer shall include a restrictive covenant to be registered on title to lots/units yet to be identified, whereby the owner agrees and acknowledges that the stormwater infiltration galleries shall not be damaged, removed, blocked, diverted or interfered with in any manner. Furthermore, the Developer shall place a notice in all offers of purchase and sale for those lots/units advising the purchasers that there is a stormwater infiltration gallery across the rear of the lot/unit and furthermore, that the stormwater infiltration gallery shall not be damaged, removed, blocked, diverted or interfered with in any manner.
- p. It is anticipated that infiltration galleries and easements will be located on parts of the proposed condominium plan, including the common elements and/or the units. At the time of drafting of this Agreement of Purchase and Sale, the proposed infiltration galleries and easements are to be located on part of units 1 to 3 (inclusive), 5 to 20 (inclusive), and 23 to 26 (inclusive) on the proposed condominium plan. The purchasers of said units are advised that their use of these units may be limited as a result of the proposed infiltration galleries and easements. For example, structures or installations (including but not limited to hot tubs, fountains, ponds and decking) may not be permitted to be constructed on that portion of the unit that is affected by the aforementioned infiltration galleries and easements. Prior to construction, the purchasers of the affected units must review and obtain approval of all proposed construction plans with respect to any structures and installations with/from the Board, the Municipality and any other approval authority. Furthermore, the purchasers of the affected units are advised that the infiltration galleries shall not be damaged, removed, blocked, diverted or interfered with in any manner.
- q. Whereas the Upper Grand District School Board has designated this development as a Development Area for the purposes of school accommodation, and despite the best efforts of the Upper Grand District School Board, sufficient accommodation may not be available for all anticipated students from the area, you are hereby notified that students may be accommodated in temporary facilities and/or bused to a school outside the area, and further, that students may in future have to be transferred to another school.
- r. The developer shall satisfy all requirements and conditions of Canada Post including advisories and suitable mailbox locations. The developer shall ensure that the eventual lot/unit/home owner is advised in writing by the developer/subdivider/builder that Canada Post has selected the municipal easement to their lot for a Community Mail Box installation and the developer shall be responsible for the installation of concrete pads in accordance with the requirements of Canada Post, in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes.

**SCHEDULE "D"**  
**HARMONIZED SALES TAX RULES FOR INCLUSION IN THE PURCHASE PRICE WITH**  
**ALL REBATES ASSIGNED/SELLER RESPONSIBLE TO REMIT**

I/we acknowledge receipt of 3 pages of this Schedule "D"  
 Buyer's Initials: J.A

Notwithstanding anything to the contrary contained in the Agreement to which this Schedule is annexed the parties hereby expressly acknowledge and agree to the following:

**DEFINITIONS:**

"Act" or "Excise Tax Act" means the Excise Tax Act, R.S.C. 1985, c. E-15, as amended from time to time and as it read on December 15, 2009;

"CVAT" means the federal component of tax payable under Part IX subsection 165(1) of the Excise Tax Act that applies in Ontario;

"Federal New Housing Rebate" or "Federal Rebate" means the new housing rebate on the CVAT portion of the HST as is authorized by Section 254 of the Act;

"Harmonized Sales Tax" or "HST" or "New Harmonized Value-Added Tax" means the tax imposed under subsection 165(2) of the Excise Tax Act comprised of the CVAT and PVAT in respect of the Province of Ontario defined in the Act as a participating province;

"Provincial Rebate" or "Provincial New Housing Rebate" means any applicable Province of Ontario New Housing Rebate on the PVAT portion of the HST and the Provincial Sales Tax Transitional Housing Rebate or Transitional Rebate;

"Provincial Sales Tax" means the amount of Ontario provincial retail sales tax paid by the Seller in the construction of the Dwelling;

"Provincial Sales Tax Transitional Housing Rebate" or "Transitional Rebate" means any applicable Ontario new housing rebate related to the construction of a residential Dwelling which is completed in whole or in part prior to July 1, 2010 that has Provincial Retail Sales Tax embedded in the Purchase Price;

"PVAT" means the Ontario component of tax payable under Part IX of the Excise Tax Act that is imposed, in addition to the CVAT, in respect of Ontario as a participating province.

1. Any references in the Agreement to the Purchase Price including a component equivalent to the CVAT exigible with respect to this Agreement shall for all purposes be deemed and construed to mean: CVAT less the applicable Federal Rebate, and any references in the Agreement to the Purchase Price including a component equivalent to the PVAT exigible with respect to this Agreement shall for all purposes be deemed and construed to mean: PVAT less any Provincial Rebate, whether or not the Buyer herein qualifies for the said Federal Rebate or Provincial Rebate.
2. Subject to the Buyer's compliance with the provisions within this Schedule, the Seller agrees to be solely responsible for the payment of the HST to the Canada Revenue Agency ("CRA") in connection with the completion of this Agreement, net of any and all Federal Rebate and Provincial Rebate applicable or available with respect thereto.
3. The Buyer and Seller acknowledge and agree that the Purchase Price is inclusive of the HST payable pursuant to Part IX of the Act but upon the basis that the Buyer is eligible for and has assigned all Federal Rebates and Provincial Rebates to the Seller. The consideration to be inserted in the deed/transfer of land at Box 4 being used to transfer title to the Property on Closing shall reflect the exclusion of the HST as adjusted for the Federal Rebate and Provincial Rebate as determined in the sole discretion of the Seller following guidelines as available under the Act. The Seller shall be responsible to remit the HST applicable to this transaction after Closing, as required by the Act. If the Buyer is not eligible for or is unable to assign the Federal Rebates and Provincial Rebates to the Seller, as determined in the sole discretion of the Seller (or its solicitor), then the amount of such Federal Rebate and the Provincial Rebate shall be payable by the Buyer to the Seller on Closing in addition to the Purchase Price otherwise payable by the Buyer.
4. The Buyer shall be credited on the statement of adjustments with the Federal Rebate in respect of the Property and the Provincial Rebate if authorized by the Act or other relevant Federal or provincial legislation. In consideration of such credit, the Buyer hereby irrevocably releases, assigns and transfers to the Seller all of the Buyer's rights, interest and entitlements to the Federal Rebate and Provincial Rebate. The Buyer hereby irrevocably authorizes and directs CRA to pay or credit the Federal Rebate and Provincial Rebate directly to the Seller. Subject to the terms of any amendments to the Act after December 15, 2009 or any other relevant Ontario legislation, the Buyer acknowledges that the value of the Federal Rebate and Provincial Rebate assigned to the Seller shall be shown on the statement of adjustments as a corresponding and offsetting credit to the Seller. The Buyer represents and warrants that it has not claimed, and covenants that it shall not hereafter claim, for his or her own account, any part of the Federal Rebate and/or Provincial Rebate in respect of the Property. Prior to closing, the Buyer shall sign and return to the Seller and/or its solicitor any documentation that is required by the Seller and/or its solicitor related to the release, assignment and transfer of the Federal Rebate and Provincial Rebate described herein.
5. The Buyer represents and warrants to the Seller that with respect to this transaction, the Buyer qualifies for the Federal Rebate and Provincial Rebate and in particular represents and warrants that he or she is a natural person purchasing the Property as principal for his or her own use and account of his or her relation as defined in the Act and the Property is not

being purchased as agent, trustee or otherwise on behalf of or for any other party and that he or she shall forthwith following the completion of the within transaction (or in the event the Property constitutes a residential condominium unit, he or she shall forthwith following the escrow Closing of the within transaction), personally occupy the Property or cause one or more of his or her relations (as defined in the Act) to occupy the Property as his or her or their primary place of residence (as defined in the Act) for such period of time as shall then be required in order to entitle the Buyer to the Federal Rebate and Provincial Rebate in respect of his or her purchase of the Property.

6. The Buyer shall indemnify and save the Seller harmless from and against any loss, charge and/or liability which the Seller may suffer, incur or be charged with as a result of the Buyer's failure to qualify for the Federal Rebate and Provincial Rebate or failure to validly assign to the Seller any Federal Rebate and Provincial Rebate or as a result of the Federal Rebate and/or Provincial Rebate or the release and assignment thereof, being in any way disallowed by the applicable governmental authorities administering the Act, (or if the Buyer initially qualifies for same, but subsequently, the Buyer's entitlement hereto is challenged or questioned by the Seller, acting reasonably, because of any attempt by the Buyer to rent out (or advertise for rent) the Dwelling unit to a third party, or because the Seller reasonably believes that the Buyer or a member of the Buyer's immediate family has failed to personally occupy the Property as a primary place of residence forthwith following the completion of the interim occupancy or final Closing of this transaction, whichever is the earlier). If Closing occurs on the basis that the Buyer is entitled to any Federal Rebate and Provincial Rebate referred to herein and it is later determined that the Buyer is not entitled to the same or a portion thereof, the Buyer will immediately pay to the Seller any amount of any such Federal Rebate and Provincial Rebate credited to them or for which additional monies would have been claimed by the Seller on Closing if such non entitlement was known on Closing plus interest at the rate of 12% per annum thereon calculated from Closing until full payment of the same is made. As security for the payment of such amount, the Buyer does hereby charge and pledge his or her interest in the Property with the intention of creating a lien and charge against the Property.
7. If the Seller believes for whatever reason that the Buyer does not qualify for any of the rebates described herein, regardless of any documentation provided by or on behalf of the Buyer (including any statutory declaration sworn by the Buyer) to the contrary, and the Seller's belief or position on this matter is communicated to the Buyer or the Buyer's solicitor on or before Closing, then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Buyer shall be obliged to pay to the Seller (or to whomever the Seller may in writing direct), by certified cheque delivered on Closing in the same manner as the balance due on Closing, an amount equivalent to the aforementioned rebates, in addition to the outstanding balance of the Purchase Price, and in those circumstances where the Buyer maintains that he or she is eligible for the aforementioned rebates despite the Seller's belief to the contrary, the Buyer shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to file the necessary rebate forms directly with, and pursue the aforementioned rebates directly from, the Canada Revenue Agency.
8. Any adjustments payable by the Buyer pursuant to this Agreement, or any extras or upgrades purchased, ordered or chosen by the Buyer from the Seller which are not specifically set forth in this Agreement, shall have had the price adjusted to include the HST, Federal Rebate and Provincial Rebate.
9. The Buyer shall take all steps and shall execute all documents, if and when required or desired by the Seller or the Seller's solicitor to:
  - a. qualify for all federal and all provincial new housing rebates including but not limited to the Federal Rebate and the Provincial Rebate;
  - b. evidence and confirm to the Seller and CRA that the Buyer is entitled to all federal and all provincial new housing rebates including but not limited to the Federal Rebate and the Provincial Rebate;
  - c. assign or transfer the benefit of all federal and all provincial new housing rebates to the Seller on or before the Closing of this transaction including but not limited to the Federal Rebate and Provincial Rebate.
10. If there is any Transitional Rebate available to the Buyer with respect to the Property the Buyer agrees to assign any such Transitional Rebate to the Seller on Closing. The amount of any potentially available Transitional Rebate which would have been available if the Buyer had qualified for the Transitional Rebate and validly assigned it to the Seller on Closing shall be paid by the Buyer to the Seller on Closing in addition to the Purchase Price otherwise payable by the Buyer pursuant to this Agreement.
11. If the Buyer is purchasing the Property for residential rental purposes (i.e. an investor Buyer), then for the purposes of this Agreement it is assumed that the Buyer does not qualify for the Federal Rebate and the Provincial Rebate and cannot validly assign the Federal Rebate and Provincial Rebate to the Seller and as such the amount of the Federal Rebate and the Provincial Rebate shall be payable by the Buyer to the Seller on Closing in addition to the Purchase Price otherwise payable by the Buyer; this is the case even if the Buyer does qualify for the Federal Rebate and the Provincial Rebate but no assignment to the Seller on Closing is possible.
12. The Buyer is responsible for all HST payable with respect to any items that the Buyer purchases from someone other than the Seller and no rebate is available therefore.
13. If for any reason there is no HST payable on account of this transaction, then the Purchase Price on the face of this Agreement (plus the full amount agreed to be paid on account of extras) will still be paid without credit to the Buyer on account of the fact there is no such tax payable.

14. All terms and provisions contained in the Agreement, save and except for those which conflict with (or are inconsistent with) the foregoing terms and provisions of this Schedule, shall remain the same, and shall continue to be binding upon each of the parties hereto and their respective heirs, estate trustee, successors and permitted assigns.
15. The provisions of this Schedule shall survive the completion and Closing of this transaction and shall not merge on such completion and Closing.



**SCHEDULE "E"**  
**BUYER'S CONDITIONS**

I/we acknowledge receipt of 1 page of this Schedule "E"  
Buyer's Initials: JA

Notwithstanding anything to the contrary contained in the Agreement to which this Schedule is attached, the parties hereby expressly acknowledge and agree to the following:

**1. Approval of terms by the Buyer's Solicitor**

This Agreement is conditional upon the approval of the terms hereof by the Buyer's solicitor. If, by no later than 5:00 pm on such date that is ten (10) calendar days following the date of this Agreement (the "Approval Date"), the Buyer's lawyer has not approved the provisions of this Agreement (which includes all its Schedules) and the Buyer has provided clear written evidence of such lack of approval to the Seller, the Buyer may terminate this Agreement by giving written notice to the Seller prior to the Approval Date. Upon such notice being given as aforesaid, this Agreement shall be at an end and all monies paid for deposits and extras will be returned to the Buyer and the Seller will not be liable for any costs or damages whatsoever.

In the absence of written notice of termination being received by the Seller prior to the Approval Date, the Buyer will be deemed to have waived the Buyer's right of termination as set out in this section and shall complete this Agreement.

**2. Upon Buyer arranging Financing**

This Agreement is conditional upon the Buyer obtaining satisfactory financing at the Buyer's own expense. If, by no later than 5:00 pm on such date that is ten (10) calendar days following the date of this Agreement (the "Financing Date"), the Buyer has not obtained satisfactory financing and the Buyer has provided clear written evidence of such to the Seller, the Buyer may terminate this Agreement by giving written notice to the Seller prior to the Financing Date. Upon such notice being given as aforesaid, this Agreement shall be at an end and all monies paid for deposits and extras will be returned to the Buyer and the Seller will not be liable for any costs or damages whatsoever.

In the absence of written notice of termination being received by the Seller prior to the Financing Date, the Buyer will be deemed to have waived the Buyer's right of termination as set out in this section and shall complete this Agreement.

**SCHEDULE "F"  
PLANS AND SPECIFICATIONS**

I/we acknowledge receipt of 1 page of this Schedule "F"  
(plus additional pages attached at the end of this Agreement)  
Buyer's Initials: J.P.

This Schedule contains the following documents which form part of the Agreement:

1. floor plan – attached at the end of this Agreement
2. elevation plan – attached at the end of this Agreement
3. draft site plan – attached at the end of this Agreement

**SCHEDULE "G"  
STAGE OF CONSTRUCTION**

I/we acknowledge receipt of 2 pages of this Schedule "G"  
Buyer's Initials: J.A.

The Buyer acknowledges and agrees that notwithstanding the provisions of this Agreement, including but not limited to the provisions of all Schedules attached hereto, the Dwelling purchased hereunder may be under construction. If the Dwelling is at a stage of construction, the stage of construction is noted below and is initialled by both the Buyer and the Seller for identification purposes, as follows:

**STAGE OF CONSTRUCTION:**

A. J.A. (Initials)

**DWELLING IS BETWEEN PRE-EXCAVATION ("IN PRODUCTION") AND DRYWALL**

The stage of construction of the Dwelling is presently between the pre-excavation ("in production") and drywall stage and therefore, any changes or modifications to the Dwelling will be minimal. Any such changes or modifications made to the Dwelling will be subject to the Seller's prior approval in accordance with Schedule B. The Buyer will be permitted to make certain interior colour and material selections (which may include bonus or promotional dollars) with the Seller's prior approval in accordance with Schedule B.

Any requests for such options and custom changes must be submitted to the Seller for review in accordance with the terms referred to in Schedule B, and if approved by the Seller, a Change Order shall be completed. As a result of the ongoing construction of the Dwelling, it is in the Buyer's best interests to make his or her requests to the Seller as soon as possible. Nothing in this section, however, is intended to limit the provisions of the *Ontario New Home Warranties Plan Act* and the coverages provided thereunder for the Dwelling.

B. (Initials)

**DWELLING IS BETWEEN DRYWALL AND COMPLETION**

The stage of construction of the Dwelling is presently between the drywall and completion stage.

The Buyer acknowledges and agrees that notwithstanding the provisions of the Agreement, including but not limited to the provisions of all Schedules attached hereto, the Buyer will not be permitted to make any interior colour or material selections for the Dwelling, unless otherwise agreed to by the Seller in its sole discretion. The Buyer further acknowledges that he or she will not be entitled to receive any bonus or promotional dollars. Nothing in this section, however, is intended to limit the provisions of the *Ontario New Home Warranties Plan Act* and the coverages provided thereunder for the Dwelling.

C. (Initials)

**DWELLING IS COMPLETE**

The Dwelling is complete and is being sold to the Seller "as-is".

The Buyer acknowledges and agrees that notwithstanding the provisions of the Agreement, including but not limited to the provisions of all Schedules attached hereto, the Dwelling purchased hereunder is fully completed and the Buyer will not be permitted to make any interior colour or material selections for the Dwelling. The Buyer further acknowledges that he or she will not be entitled to receive any bonus or promotional dollars. The Buyer acknowledges and agrees that he or she has viewed the Dwelling as constructed and accepts the colours and materials as installed. Nothing in this section, however, is intended to limit the provisions of the *Ontario New Home Warranties Plan Act* and the coverages provided thereunder for the Dwelling.

D. (Initials)

**DWELLING IS A "MODEL HOME"**

The Dwelling is a model home and will be continued to be used as a model home until \_\_\_\_\_

The Buyer acknowledges and agrees that notwithstanding any provision contained in the Agreement, the Dwelling being purchased has been used as a model home for a period of time and thus cannot be restored to absolutely new home conditions and the Buyer further acknowledges that he or she will not be permitted to make any interior colour or material selections for the Dwelling. The Buyer further acknowledges that he or she will not be entitled to receive any bonus or promotional dollars. Unless otherwise agreed to by the Seller, the Seller will refurbish the interior features of the Dwelling as deemed necessary by the Seller in its sole discretion, in a good and workmanlike manner, and the Buyer acknowledges that the Seller will not undertake to repair or replace those items which are not in new home condition as a result of the Dwelling's exposure to traffic during its period as a model home. On Closing, the Seller covenants that it will execute and deliver to the Buyer the Tarion Warranty Corporation "Certificate of Completion and Possession" regarding the structural soundness of the Dwelling. The Buyer acknowledges that the effective date for the Certificate of Completion and Possession shall be the Closing Date.

**SCHEDULE "H"**  
**TERMS OF INTERIM OCCUPANCY**

I/we acknowledge receipt of 2 pages of this Schedule "H"

Buyer's Initials: JA

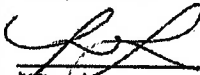
1. The transfer of title to the Property shall take place on the Closing Date upon which date, unless otherwise expressly provided for hereunder, the Terms of Interim Occupancy shall be terminated.
2. The Buyer shall pay or have paid to the Seller, on or before the Occupancy Date, by certified cheque drawn on a Canadian chartered bank the amount set forth in paragraph 2 of the Agreement required to be paid on the Occupancy Date, if any, without adjustment. Upon payment of such amount on the Occupancy Date, the Seller grants to the Buyer a licence to occupy the Property from the Occupancy Date.
3. The Monthly Occupancy Fee set out earlier in this Agreement is based on the Purchase Price as it now exists. If there is any increase or decrease in the Purchase Price, the amount of the Monthly Occupancy Fee will be adjusted on Closing or occupancy at the option of the Seller to reflect the same.
4. The Buyer will occupy the Property on the Occupancy Date if the Condominium Documents have not been registered on that date. The Monthly Occupancy Fee is payable on and from the Occupancy Date regardless of whether or not the Buyer actually take physical possession of the Property.
5. From the Occupancy Date until the Closing Date (the "Interim Occupancy Period") the Buyer will pay the Monthly Occupancy Fee (as set out on in the opening pages of this Agreement) in advance on the first day of each month commencing on the Occupancy Date. If the Occupancy Date occurs on any day other than the first day of a month, the Monthly Occupancy Fee for such month will be pro-rated on a per diem basis based on a thirty (30) day month and will be paid, in advance, on the Occupancy Date. The Monthly Occupancy Fee will not be credited against the Purchase Price.
6. On the Occupancy Date the Buyer will deliver to the Seller a series of six (6) post-dated cheques to cover the Monthly Occupancy Fee for the six (6) months next following the Occupancy Date and, subsequently, such further post-dated cheques to cover the Monthly Occupancy Fee as may be requested by the Seller. All unused post-dated cheques will be returned to the Buyer on the Closing Date or within a reasonable time thereafter.
7. The Buyer shall be allowed to remain in occupancy of the Property during the Interim Occupancy Period provided the Terms of Interim Occupancy and the Agreement have been observed and performed by the Buyer. In the event the Buyer breaches the Terms of Interim Occupancy, the Seller 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 licence to occupy the Property whereupon the Buyer shall be deemed a trespasser and shall give up vacant possession forthwith. The Seller may take whatever steps it deems necessary to obtain vacant possession and the Buyer shall reimburse the Seller for all costs it may incur.
8. At or prior to the time that the Buyer takes possession of the Property, the Buyer shall execute and deliver to the Seller any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Seller pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time.
9. If this Agreement is terminated, the provisions of the *Residential Tenancies Act, 2006* as amended, apply with respect to the termination of the Buyer's right of occupancy and the Buyer will forthwith vacate the Property (or proposed Property if the condominium plan is not yet registered) and pay to the Seller the total cost, as estimated by the Seller, of repairing any damage to the Property (or proposed Property if the condominium plan is not yet registered) caused by the Buyer or anyone for whom the Buyer is responsible and the cost of removing any installations or decorations made by the Buyer or on its behalf so that the Property is put back into a first class condition ready for occupancy.
10. The Buyer will maintain the Property in a clean, first class state of repair and condition and will not make any alterations, improvements or additions to the Property without obtaining the prior written approval of the Seller which approval may be withheld. In any event such alterations or additions will not be permitted unless the Buyer has submitted to the Seller, prior to any such additions or alterations being made, such detailed architectural plans, blueprints, and any other plans, documents or permits that the Seller deems necessary or appropriate. If any such alteration or addition causes the Seller to have to make amendments to its as built plans required for registration of the Condominium Documents the costs of such amendments will be borne by the Buyer.
11. The Buyer will be responsible for all damages to the Property (or proposed Property if the condominium plan is not yet registered), caused by them or their agents, servants, workmen, invitees or licensees. The Buyer will reimburse the Seller for the cost of repairs in respect of any such damage, and indemnify and save the Seller harmless from and against all costs, losses, damages, expenses and liabilities suffered or incurred by the Seller as a result of or arising out of their use or occupancy thereof or having to restore same so that the Property is put back into a first class condition ready for occupancy.


12. The Buyer will only use the property as a single family dwelling and no other person apart from a spouse, children or child of the Buyer will be permitted occupancy or use of the Property prior to completion on the Closing Date without the prior written consent of the Seller, which consent may be withheld. This paragraph is not meant to preclude two people living in a family relationship or otherwise from residing in the Property.
13. The Buyer will comply with the Act, any registered agreements, the proposed Condominium Documents, any proposed agreement(s) that the proposed condominium corporation will be subject to following registration of the Condominium Documents, as well as the rules of the proposed condominium corporation and will require all other occupants of the Property to comply with same.
14. In addition to the Monthly Occupancy Fee, the Buyer will, from the Occupancy Date, be responsible to pay for all utilities used in the Property (including but not limited to electricity, water and gas) and to pay all telephone expenses, other utility charges, cable television charges, if any, and other charges and expenses capable of being billed directly to the Buyer by the supplier of such service or measured by sub-meter.
15. The Buyer will permit the Seller, including any of its employees, consultants and agents, full and free access to the Property in order to complete the construction of the Property or any other construction on the Lands or any surrounding properties owned by the Seller, including but not limited to grading and sodding.
16. The Buyer agrees that, by taking possession of the Property, the Buyer is deemed to have acknowledged that the Dwelling has been constructed in accordance with the Agreement.
17. The Buyer will occupy the Property on the Occupancy Date, if in the opinion of the Seller the Property is substantially complete and ready for occupancy.
18. If any cheque delivered by the Buyer should not clear the financial institution upon which it is drawn the Buyer will pay an additional charge of Two Hundred and Fifty Dollars (\$250.00) for each cheque that does not so clear, which Two Hundred and Fifty Dollars (\$250.00) is due immediately upon request by the Seller. Payment of the Two Hundred and Fifty Dollars (\$250.00) charge does not in itself relieve the Buyer from liability for default and acceptance of same by the Seller is not a waiver of default.
19. The Buyer shall as at the Occupancy Date insure the Property for the full replacement value thereof and provide a copy of the insurance certificate to the Seller. The Seller is not liable for the Buyer's loss occasioned by fire, theft or other casualty, unless caused or contributed to by the Seller.

**SCHEDULE "I"**  
**ACCEPTANCE OF SCHEDULES TO AGREEMENT OF PURCHASE AND SALE**

1. By executing this Schedule, the Buyer acknowledges and agrees that all of the Schedules (as defined below) attached to this Agreement (specifically including but not limited to the Tarion Addendum) form an integral part of this Agreement.
2. Specifically, by executing this Schedule I, the Buyer acknowledges and agrees that he or she has received, reviewed, fully understands, and agrees to comply with and be bound by all of the terms contained in the following Schedules:
  - Schedule "A" - Remarkable Features;
  - Schedule "B" - General Terms and Conditions of the Agreement;
  - Schedule "C" - Special Provisions;
  - Schedule "D" - HST Rules and Rebates;
  - Schedule "E" - Buyer's Conditions;
  - Schedule "F" - Plans and Specifications;
  - Schedule "G" - Stage of Constructions;
  - Schedule "H" - Terms of Interim Occupancy
  - Schedule "I" - Acceptance of Schedules to Agreement of Purchase and Sale; and
  - Schedule - Tarion Statement of Critical Dates and Addendum to Agreement of Purchase and Sale
 (collectively referred to as the "Schedules").
3. Furthermore, the Buyer hereby acknowledges receipt of the following documents:
  - a. Disclosure Statement and Table of Contents;
  - b. Proposed Condominium Documents - Declaration, By-Law and Rules;
  - c. Proposed Budget Statement for the First Year of Operations;
  - d. Proposed Indemnity Agreement
 (collectively, the "Condominium Documents")
4. The Buyer hereby acknowledges that the Condominium Documents required by the Act have not been registered by the Seller, and agrees that the Seller 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.
5. The Buyer 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 Buyer'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.

**SIGNED, SEALED AND DELIVERED**  
In the presence of

  
\_\_\_\_\_  
(Witness)

 (seal) (date 11/07/15)  
\_\_\_\_\_  
(Buyer) MM DD YYYY

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Buyer) (seal) (date   /  /  )  
MM DD YYYY

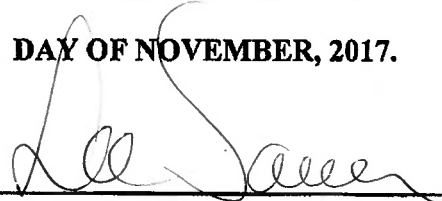
If the Buyer is a corporation, provide name and title of each signatory above, and seal or confirm:  
 I/We have authority to bind the corporation.



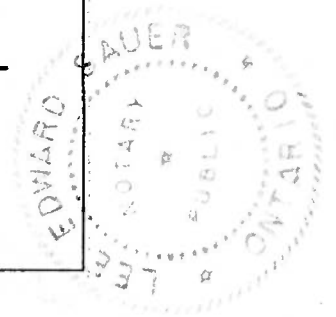
Dunsire (Landsdown) Inc.  
Agreement of Purchase and Sale

Revision Date: September 26, 2014

**THIS IS EXHIBIT "L" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*



**Recommended Draft Plan of Vacant Land Condominium (23CDM-1307)  
Conditions and Zoning Regulations**

**PART A: DRAFT PLAN OF VACANT LAND CONDOMINIUM CONDITIONS**

THAT the application by Astrid J. Clos Planning Consultants on behalf of Dunsire (Landsdown) Inc. for approval of a proposed Draft Plan of Vacant Land Condominium applying to property municipally known as 24, 26, 28 and 0 Landsdown Drive and legally described as Lot 10 and Part of Lots 6, 9 and 13, on Plan 488, designated as Parts 1, 2, 3 and 4 on Reference Plan 61R-20544, City of Guelph, save and except those lands shown as "Proposed Lot" on Schedule A, be **APPROVED**, subject to the following conditions:

**CITY CONDITIONS**

This approval applies to a **Draft Plan of Vacant Land Condominium Application** prepared by Astrid J. Clos Planning Consultants (Project No. 1323), on behalf of Dunsire (Landsdown) Inc. dated December 3, 2014, identifying 26 single detached dwellings within a condominium and one lot for a freehold single detached dwelling at 28 Landsdown Drive, including the following minor adjustment to the draft plan of condominium: include new common element blocks that contain any shared services (watermain, sanitary sewer and stormwater infiltration galleries) located on or shared between individual units.

**Conditions to be met prior to grading and site alteration**

1. The Developer shall complete a **tree inventory, preservation and compensation plan**, satisfactory to the General Manager of Planning, Urban Design and Building Services and City Engineer, in accordance with the City of Guelph By-law (2010)-19058, prior to any tree removal, grading or construction on the site.
2. The Developer shall obtain a **Site Alteration Permit** in accordance with City of Guelph By-law (2007)-18420 to the satisfaction of the City Engineer if grading/earthworks is to occur prior to the approval of the required engineering studies plan, plans and reports.
3. The Developer agrees that no work, including, but not limited to **tree removal, grading or construction**, will occur on the lands until such time as the Developer has obtained written permission from the City Engineer or has entered into a Condominium Agreement with the City.
4. The Developer shall prepare and implement a **construction traffic access and control plan** for all phases of servicing and building construction to the satisfaction of the City Engineer. Any costs related to the implementation of such a plan shall be borne by the Developer.
5. Prior to any construction or grading on the lands, the Developer shall provide to the City, to the satisfaction of the General Manager/City Engineer, any of the **following studies, plans and reports;**



- i) a revised functional servicing report including a stormwater management report that is certified by a Professional Engineer in accordance with the City's Guidelines and the latest edition of the Ministry of the Environment's "Stormwater Management Practices Planning and Design Manual", which addresses the quantity and quality of stormwater discharge from the site together with a monitoring and maintenance program for the stormwater management facility to be submitted;
  - ii) revised grading, drainage and servicing plan prepared by a Professional Engineer for the site;
  - iii) and a detailed erosion and sediment control plan, certified by a Professional Engineer, that indicates the means whereby erosion will be minimized and sediment maintained on-site throughout grading and construction.
6. The Developer shall, to the satisfaction of the General Manager/City Engineer, address and be responsible for **adhering to all the recommended measures** contained in the plans, studies and reports outlined in subsections 5 i) to 5 iii) inclusive.
7. The Developer shall retain a **qualified environmental inspector**, satisfactory to the General Manager of Planning, Urban Design and Building Services and the City Engineer, to inspect the site during all phases of development and construction including grading, servicing and building construction. The environmental inspector shall monitor and inspect the erosion and sediment control measures and procedures on a weekly or more frequent basis if required. The environmental inspector shall report on their findings to the City on a monthly or more frequent basis.
8. The Developer shall ensure that any **domestic wells as well as all boreholes and monitoring wells installed for environmental, hydrogeological or geotechnical investigations are properly decommissioned** in accordance with current Ministry of the Environment Regulations (O. Reg. 903 as amended) and to the satisfaction of the City Engineer, prior to site plan approval and prior to any construction or grading on the lands.
9. The Developer shall prepare an **off-site private domestic well monitoring program** to the satisfaction of the City and shall implement the program to the satisfaction of the City. The program will be used for pre-development, during construction and post-development monitoring.
10. The Developer shall **stabilize all disturbed soil** within 90 days of being disturbed, control all noxious weeds and keep ground cover to a maximum height of 150 mm (6 inches) until the completion of the landscaping within the unit boundary.
11. The Developer shall prepare an **Environmental Implementation Report (EIR)** based on terms of reference approved by the City and Grand River Conservation Authority (GRCA).
  - a. The EIR will provide details with respect to: stormwater management and wetland water balance mitigation; hydrogeological related details confirming that predevelopment infiltration rates will be maintained post

development, including a post construction monitoring program and baseline information; discussion of soils and topography in relation to drainage, detailed tree management plans including compensation plans, detailed habitat management plans including any invasive species management, buffer enhancement/design, detailed landscape plans (by an accredited landscape architect), detailed design and mitigation plans to support the trail and detailed trail design, a salt management plan, a dewatering plan and, a monitoring plan with identified thresholds as well as any other information to implement recommendations from the Environmental Impact Study dated July 2014, the EIS Addendum dated December 2014 and the 2<sup>nd</sup> EIS Addendum dated July 2, 2015. As well, the EIR will include: grading, drainage and erosion and sediment control plans, baseline data to inform an effectiveness monitoring program and will address the Grand River Conservation Authority comments from their letter dated April 30, 2015. The EIR will also address comments from Beacon Environmental dated June 16, 2015.

- b. The Developer will undertake a post-development monitoring program as detailed in the Environmental Implementation Report to the satisfaction of the General Manager of Planning, Urban Design and Building Services. The Developer shall provide the City with a letter of credit to cover the City approved cost estimate for the post-development monitoring program to the satisfaction of the General Manager of Planning.
  - c. The Developer shall implement all recommendations of the EIR to the satisfaction of the City and GRCA.
12. The Developer acknowledges that the City does not allow **retaining walls higher than 1.0** metre abutting existing residential properties without the permission of the City Engineer.
13. The Developer shall be responsible for the **actual cost of any service laterals** required for the lands and furthermore, prior to any grading or construction on the lands, the Developer shall pay to the City, the estimated cost as determined by the City Engineer of any service laterals.
14. The Developer shall pay the **actual cost of removing or decommissioning** to the satisfaction of the General Manager/City Engineer, any existing sanitary sewers, storm sewers, manhole and/or watermains that are not going to be used for service laterals. Furthermore, prior to any grading or construction on the lands, the Developer shall pay to the City, the estimated cost (as determined by the City Engineer) of the Developer's share of the cost of the removals and decommissioning works.
15. The Developer shall pay to the City the **actual cost of the construction of the new driveway entrance and required curb cut and/or curb fill**. Furthermore, prior to any grading or construction on the lands, the Developer shall pay to the City, the estimated cost as determined by the City Engineer of the construction of the new driveway entrance and required curb cut and/or curb fill.

16. The Developer shall pay the **actual cost of the removal of the existing driveway entrance** including the asphalt pavement and gravel within the road allowance, the restoration of the boulevard with topsoil and sod including the required curb fill, with the estimated cost of the works as determined by the City Engineer being paid, prior to any grading or construction on the lands.
17. The Developer acknowledges that all **electrical services** to the lands shall be underground and the Developer shall make satisfactory arrangements with Guelph Hydro Electric Systems Inc. for the servicing of the lands, as well as provisions for any easements and/or rights-of-way for their plants, prior to any construction or grading on the lands.
18. The Developer shall make satisfactory arrangement with **Union Gas** for the servicing of the lands, as well as provisions for any easements and/or rights-of-way for their plants, prior to any construction or grading on the lands.
19. The Developer shall ensure that all **telephone service and cable TV service** in the plan shall be underground. The Developer shall enter into a servicing agreement with the appropriate service providers to provide for the installation of underground utility services for the lands prior to any construction or grading on the lands.
20. The Developer shall ensure that the Lands marked as "Proposed Lot" on the attached Schedule A are excluded from the draft plan of vacant land condominium and the description of the condominium shown in the declaration.

**Conditions to be met prior to execution of the Condominium Agreement**

21. The Developer shall be responsible for the cost of design and development of the **demarcation** of all lands conveyed to the City in accordance with the City of Guelph Property Demarcation Policy. This shall include the submission of drawings for approval by the City and the administration of the construction contract up to the end of the warrantee period by an Ontario Association of Landscape Architects (OALA) member to the satisfaction of the Deputy CAO of Public Services. The Developer shall provide the City with **cash or letter of credit** to cover the City approved estimate for the cost of development of the demarcation for the City lands to the satisfaction of the Deputy CAO of Public Services.
22. The Developer shall be responsible for the cost of design and implementation of the **Open Space Works and Restoration** in accordance with the "Environmental Implementation Report" to the satisfaction of the Deputy CAO of Public Services. This shall include the submission of drawings and the administration of the construction contract up to the end of the warrantee period completed by a full member of Ontario Association of Landscape Architects (OALA) for approval to the satisfaction of the Deputy CAO of Public Services. The Developer shall provide the City with **cash or letter of credit** to cover the City's estimate for the cost of the Open Space works and restoration for the City lands to the satisfaction of the Deputy CAO of Public Services.
23. The Developer shall be responsible for the cost of detailed design of the **Pedestrian Trail System** for the Storm Water Management & Open Space Blocks.

This shall include obtaining any required permits, submitting drawings for approval, identifying the trail system, interpretative signage and trail design details, to the satisfaction of the Deputy CAO of Public Services and the City Engineer. This shall include the submission of drawings for approval completed by a full member, with seal, of Ontario Association of Landscape Architects (OALA) member to the satisfaction of the Deputy CAO of Public Services.

24. The Developer shall be responsible for the cost of design and development of the **"Basic Trail Development"** as per the City of Guelph current "Specifications for Basic Trail Development", which includes rough grading and drainage, any associated infrastructure (bridges and abutments, guard and hand rails, retaining walls) and sodding/ seeding to the satisfaction of the Deputy CAO of Public Services. The Developer shall provide the City with **cash or letter of credit** to cover the City approved estimate for the cost of development of the Basic Trail Development to the satisfaction of the Deputy CAO of Public Services.
25. The Developer shall provide Public Services and Infrastructure, Development and Enterprise with a **digital file** in either AutoCAD - DWG format or DXF format containing the following final approved information: parcel fabric, street network, grades/contours and landscaping of the trail corridor open space blocks.
26. The Developer shall install, at no cost to the City, a 1.5m high black vinyl chain link fence adjacent to Units/Lots 1-12. The Developer further agrees that the fencing will be installed following grading operations of the Vacant Land Condominium in accordance with the current standards and specification of the City and to the satisfaction of the Deputy CAO of Public Services. Further, all property lines must be accurately surveyed and clearly marked in the field prior to establishing all fence line locations. Fences shall be erected directly adjacent to the established property line within the City owned lands.

**Conditions to be met prior to registration of the plan**

27. The Developer acknowledges and agrees that the suitability of the land for the proposed uses is the responsibility of the Developer and/or the owner of the lands. The Developer shall retain a Qualified Person as defined in Ontario Regulation 153/04 to prepare and submit a **Phase One Environmental Site Assessment** and any other subsequent phases required, in accordance with Ontario Regulation 153/04, to assess any real property to ensure that such property is free of contamination. If contamination is found, the consultant will determine its nature and the requirements for its removal and disposal at the Developer's expense. Prior to site plan approval, a Qualified Person shall certify that all properties to be developed are free of contamination.
28. If **contamination** is found, the Developer shall:
  - a. submit all environmental assessment reports prepared in accordance with the **Record of Site Condition** (O. Reg. 153/04) describing the current conditions of the land to be conveyed to the City and the proposed remedial action plan to the satisfaction of the City;
  - b. complete any necessary remediation work in accordance with the accepted remedial action plan and submit certification from a Qualified Person that the

- lands to be conveyed to the City meet the Site Condition Standards of the Intended land use; and
- c. file a Record of Site Condition (RSC) on the Provincial Environmental Registry for lands to be developed.
29. The Developer shall obtain approval of the City with respect to the availability of **adequate water supply and sewage treatment capacity**, prior to the registration of the plan, or any part thereof.
30. That all **easements, blocks and rights-of-way** required within or adjacent to the proposed vacant land condominium be conveyed free and clear of any encumbrances to the satisfaction of the City of Guelph, Guelph Hydro Electric Systems Inc. and other Guelph utilities. Every Transfer Easement shall be accompanied by a Postponement, satisfactory to the City Solicitor, for any mortgage, charge or lease and such Postponement shall be registered on title by the City at the expense of the Developer.
31. The Developer shall ensure that all **buildings and structures shown in the Declaration and Description** as being included in the common elements shall be constructed prior to final approval and registration of the Plan of Condominium.
32. Prior to final approval and registration of the Plan of Condominium, the Developer shall provide **certification** to the General Manager of Engineering/City Engineer that all buildings, structures, facilities and services (including landscaping and grading) shown on the Plan of Condominium as being included in the common elements have been completed, installed, and provided in accordance with the requirements of the *Condominium Act, 1998*.
33. Should all facilities and services (including landscaping and grading) not be installed and provided prior to final approval, the Developer shall have his professional engineer provide a written, detailed estimate of 100% of the cost to install and provide the facilities and services shown in the Plan of Condominium to be included in the common elements, to the City's satisfaction, and provide security in the accepted amount plus 25% for administration and contingencies in a form acceptable to the City Treasurer.
34. That prior to registration of the Plan of Condominium the Developer shall provide the City with a **certificate from a Professional Engineer** certifying that the sanitary sewers, building drains, building sewers, building storm drains, building storm sewers, watermains, water distribution system, hydrants, catchbasins, roadways, driveways, parking areas and sidewalks that are to become part of the common elements and areas, are in good repair, free from defects and functioning properly.
35. That prior to registration of the Plan of Condominium the Developer shall provide the City with a **drainage certificate from an Ontario Land Surveyor or a Professional Engineer** stating that the buildings constructed and the grading of the units is in conformity with the drainage plan and that any variance from the plan has received the prior approval of the City Engineer.

36. That prior to the registration of the Plan of Condominium the Developer shall have the **Professional Engineer who designed the storm water management system certify** to the City that he/she supervised the construction of the storm water management system, and that the storm water management system was approved by the City and that it is functioning properly.
37. The Condominium Declaration shall contain appropriate provisions setting out responsibility for maintaining, repairing and replacing services which serve:
- More than one unit, whether or not those services are within the common elements or within a unit;
  - An owner's unit only, that are located within the owner's unit or another unit; and
  - The owner's unit only, that are located within the common elements.
38. The Developer shall pay any **outstanding debts** owed to the City.
39. The Developer shall pay **Development Charges** to the City in accordance with By-law Number (2014) - 19692, as amended from time to time, or any successor thereof and in accordance with the Education Development Charges By-laws of the Upper Grand District School Board (Wellington County) and the Wellington Catholic District School Board as amended from time to time, or any successor by-laws thereto, prior to the issuance of any building permits, at the rate in effect at the time of issuance of a building permit.
40. That prior to the registration the owner shall provide the City with a **drainage certificate from an Ontario Land Surveyor or a Professional Engineer** stating that the buildings constructed and the grading of the units is in conformity with the drainage plan and that any variance from the plan has received the prior approval of the City Engineer.
41. That prior to the registration the owner shall provide the City with a **certificate from a Professional Engineer** certifying that the sanitary sewers, building drains, building sewers, building storm drains, building storm sewers, watermains, water distribution system, hydrants, catchbasins, roadways, driveways, parking areas and sidewalks that are to become part of the common facilities and areas, are in good repair, free from defects and functioning properly.
42. That a **Professional Engineer and/or Ontario Land Surveyor identifies** all the sanitary sewers, building drains, building sewers, building storm drains, storm sewers, stormwater management system, watermains and water distribution system serving the site and also identifies the locations where easements are required prior to registration.
43. That prior to the registration, an **independent lawyer shall certify that the proposed vacant land condominium has valid easements and reciprocal maintenance agreements registered with and certified by the Land Registry Office** for all the sanitary sewers, building drains, building sewers, building storm drains, storm sewers, stormwater management system, watermains and water distribution system serving the vacant land condominium, which are located on private lands other than the lands included in the Plan of Condominium.

44. That prior to the registration of the Plan of Condominium the Developer shall have the **Professional Engineer who designed the storm water management system certify** to the City that he/she supervised the construction of the storm water management system, and that the storm water management system was approved by the City and that it is functioning properly.
45. Prior to registration, the Developer is required to **reimburse the City Engineering Department for the cost of reviewing development plans** at a rate of 5% of the estimated cost of all the site works.
46. The Developer shall erect and maintain **signs** at specified entrances to the subdivision showing the proposed land uses and zoning of all the units/lots and blocks within the proposed subdivision and predominantly place on such signs the wording "For the zoning of all lands abutting the condominium, inquiries should be directed to Planning, Urban Design and Building Services, City Hall". The signs shall be resistant to weathering and vandalism.
47. The Developer shall place the following **notifications** in all offers of purchase and sale for all lots/units and agrees that these same notification shall be placed in the Condominium Agreement between the Developer and the City and shall be registered on title, as well as the Condominium Declaration:
- a. "Purchasers and/or tenants of all Units/Lots abutting City owned lands are advised that abutting City owned lands may be fenced in accordance with the current standards and specifications of the City."
  - b. "Purchasers and/or tenants of all Units/Lots abutting City owned lands are advised that no private gates will be allowed from Units/Lots 1-12 into City owned lands."
  - c. "Purchasers and/or tenants of all Units/Lots are advised that a public trail will be installed or exists abutting or in close proximity to Units/Lots 1 to 12 and that public access to this trail will occur close to these Units/Lots."
  - d. "Purchasers and/or tenants of all Units/Lots are advised that the Open Space Block has been vegetated to create a natural setting. Be advised that the City will not carry out routine maintenance such as grass cutting. Some maintenance may occur in the areas that are developed by the City for public trails."
  - e. "Purchasers and/or tenants of all Units/Lots are advised that the Open Space Block has been retained in its natural condition. Be advised that the City will not carry out routine maintenance such as grass cutting. Periodic maintenance may occur from time to time to support the open space function and public trail system."
48. The Developer shall place the following **notification** in all offers of purchase and sale for units/lots 1, 2, 11, 12, 16 and 17 and agrees that this same notification shall be placed in the Condominium Agreement between the Developer and the City and shall be registered on title:
- a. "Purchasers and/or tenants are advised that storm water will flow in the drainage swale located in the sideyard adjacent to the dwelling and is designated as an overland flow route to convey high levels of storm water

during heavy rainfall events. Be advised that this drainage swale must not be blocked or obstructed with any buildings or structures.”

49. The Owner shall prior to or upon registration of the plan register on title to the said lands to the satisfaction of the City Solicitor, or create pursuant to Section 20 of the Condominium Act, 1998, **rights of easement for access and servicing** in favour of the property located directly north of the said lands, municipally known as 16 Landsdown Drive. Such easement shall provide for the opportunity, but not any obligation, for the property 16 Landsdown to use the roads and access, watermain and sanitary sewer on the said lands, subject to an appropriate payment of a share of the costs for the use of these facilities, to ensure the potential use of shared facilities and reciprocal rights of easements to roads and services is available to allow for further future development on the private lands to the north of the said lands.
50. The Developer agrees to provide **temporary signage** describing the existing/proposed open space, trail and required fencing on all entrance signs for the development, at the street frontage of open space blocks and entrance/exits of trails, to the satisfaction of the Deputy CAO of Public Services. The signage shall:
- a. Advise prospective purchasers of dwellings in the area of the type of open space and/or trail and level of maintenance of these parcels of land owned by the City;
  - b. Clearly state that the maintenance of the trail are the responsibility of the Developer until such time as the City accepts the trail, and partially releases the associated Letter of Credit;
  - c. Clearly state that all questions relating to the maintenance of the trail shall be directed to both Developer; and,
  - d. Be erected when rough grading on and adjacent to the building lots has begun and must be maintained by the Developer until acceptance of the Blocks by the City. The Developer further agrees that the proposed open space block, trails and fencing be identified on any marketing or promotional material.
51. The Developer shall **dedicate to the City** lands owned by the Developer that are adjacent to the Draft Plan of Vacant Land condominium that form part of the wetlands, buffers and open space. Furthermore, the Developer shall demarcate the boundaries of any lands conveyed to the City in accordance with the policies of the City.
52. The Developer shall pay **cash-in-lieu of parkland dedication** for the entire development, in accordance with Section 51.1(1) of The Planning Act.
53. To determine the value of the cash-in-lieu of parkland payment, the property shall be appraised by a qualified real estate appraiser appointed by the City and the **Developer shall pay for such appraisal.**
54. The Developer agrees to eliminate the use of any **covenants that would restrict the use of clotheslines** and that prior to the registration of all or any portion of the plan, the Developer’s lawyer shall certify to the General Manager of Planning,



Urban Design and Building Services that there are no restrictive covenants which restrict the use of clotheslines.

55. The Developer shall pay to the City, the total cost of reproduction and distribution of the **Guelph Residents Environmental Handbook**, to all future residents within the plan of condominium, with such payment based on a cost of one handbook per residential dwelling unit as determined by the City.
56. The Developer acknowledges and agrees that the dwelling units on the subject property will be constructed to a standard that promotes energy efficiency in order to comply with the **Community Energy Initiative**, to the satisfaction of the City in accordance with the letter attached as Attachment 12 in Infrastructure, Development and Enterprise Report 15-62 dated July 20, 2015.
57. The Developer shall enter into a **Condominium Agreement** with the City, to be registered on title, to the satisfaction of the City Solicitor and General Manager/City Engineer which includes all requirements, financial and otherwise as noted to the satisfaction of the City of Guelph.

**Conditions to be met prior to the issuance of a building permit**

58. Prior to the issuance of a building permit, the Developer shall provide a **Waste Management Plan** in accordance with the Waste Management By-law (2011) - 19199 outlining how the three stream sorting requirements and provision of information to potential users of the program will be met. The waste management plan will be required to provide a description of the program including how storage, handling and collection of the anticipated volumes of waste will be conducted whether provided by the City or by a private collection service.
59. The Developer constructs the new dwellings at such an elevation that the **lowest level of the new dwellings** can be serviced with gravity connection to the sanitary sewer.
60. The Developer shall ensure that homes built on **Lots 1, 2, 11, 12, 16 and 17 be constructed without any basement or at-grade openings** on the building elevation directly adjacent to the overland flow route as shown on the Site Grading Plan prepared by Strik Baldinell Moniz (Sheet C5) and dated March 27, 2015.
61. The Developer shall grade, develop and maintain the site including the **storm water management facilities** designed by a Professional Engineer, in accordance with the grading and drainage, site servicing and stormwater management plans and report that has been submitted to and approved by the General Manager/City Engineer.
62. The Developer shall provide the City with written confirmation from the Engineering Department of **Guelph Hydro Electric Systems Inc.** that the vacant land condominium hydro servicing has been completed to the satisfaction of Guelph Hydro.
63. The Developer shall submit a report prepared by a Professional Engineer to the satisfaction of the Chief Building Official certifying that all **fill** placed below

proposed building locations has adequate structural capacity to support the proposed building. All fill placed within the allowable Zoning By-law envelope for building construction shall be certified to a maximum distance of 30 metres from the street line. This report shall include the following information: lot number, depth of fill, top elevation of fill and the area approved for building construction from the street line.

64. The Developer shall submit a report prepared by a Professional Engineer to the satisfaction of the Chief Building Official providing an opinion on the presence of **soil gases (Radon and Methane)** in the plan in accordance with applicable provisions contained in the Ontario Building Code.

**AGENCY CONDITIONS:**

65. Prior to any grading or construction on the site and prior to the registration of the plan or any phase thereof, the owners or their agents shall submit the following plans and reports to the satisfaction and approval of the **Grand River Conservation Authority**:
- a. A detailed stormwater management report in accordance with the 2003 Ministry of the Environment Report entitled, "Stormwater Management Practices Planning and Design Manual. This report should include geotechnical information addressing the infiltration potential on the site. In addition, a storm-servicing plan for the site should be included.
  - b. An erosion and siltation control plan in accordance with the Grand River Conservation Authority Guidelines for sediment and erosion control, indicating the means whereby erosion will be minimized and silt maintained on site throughout all phases of grading and construction.
  - c. Detailed lot grading and drainage plans showing existing and proposed grades.
  - d. Plans illustrating that no basement windows are proposed on the sides of dwellings adjacent to the proposed overland flow routes.
  - e. An Environmental Implementation Report (EIR) to the satisfaction of the GRCA in consultation with the City. The EIR should include the above noted reports and monitoring, recommendations, and mitigation outlined in these reports.
  - f. The approval and issuance of a Permit from the GRCA for any development within the regulated areas on the subject lands pursuant to Ontario Regulation 150/06 (Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation).
66. The Developer and the **Wellington Catholic School Board** shall reach an agreement regarding the supply and erection of signage, at the Developer's expense, affixed to the subdivision sign advising potential Separate School supporters of the location of schools serving the area and the current practice of busing students outside the immediate area should schools in the area be at capacity.
67. The Developer agrees to provide the **Upper Grand District School Board** with a digital file of the plan of subdivision in either ARC/INFO export or DXF format containing the following information: parcel fabric and street network.

68. The Developer agrees in the Condominium Agreement to **advise all purchasers** of residential units and/or renters of same, by inserting the following clause in all offers of Purchase and Sale/Lease, until such time as a permanent school is assigned:

- "Whereas the Upper Grand District School Board has designated this subdivision as a Development Area for the purposes of school accommodation, and despite the best efforts of the Upper Grand District School Board, sufficient accommodation may not be available for all anticipated students from the area, you are hereby notified that students may be accommodated in temporary facilities and/or bused to a school outside the area, and further, that students may in future have to be transferred to another school."
- "This development has private road access, Service de transport de Wellington-Dufferin Student Transportation Services does not run school buses on private roadways and therefore potential busing students will be required to meet the bus at a congregated bus pick-up point."

69. The Developer and the **Upper Grand District School Board** shall reach an agreement regarding the supply and erection of a sign (at the developer's expense and according to Upper Grand District School Board specifications) affixed to the permanent development sign advising perspective residents that students may be directed to schools outside the neighbourhood.

70. The Developer agrees in the Condominium Agreement to advise the future **Condominium Corporation** that adequate sidewalks, lighting and snow removal must be provided to allow children to walk safely to school or a congregated bus stop.

71. The Developer shall satisfy all requirements and conditions of **Canada Post** including but not limited to: advisories and suitable mailbox locations. The Developer shall ensure that the eventual unit/homeowner is advised in writing by the developer / subdivider / builder that Canada Post has selected the municipal easement to their lot for a Community Mail Box installation and the developer shall be responsible for the installation of concrete pads in accordance with the requirements of Canada Post, in locations to be approved by Canada Post to facilitate the placement of Community Mail Boxes.

**NOTES:** That this **Draft Plan Approval shall lapse** at the expiration of 3 years from the date of issuance of Draft Plan approval.

That prior to the registration of all or any portion of the plan, the **Grand River Conservation Authority** shall advise the City in writing how conditions 11 and 65 have been satisfied.

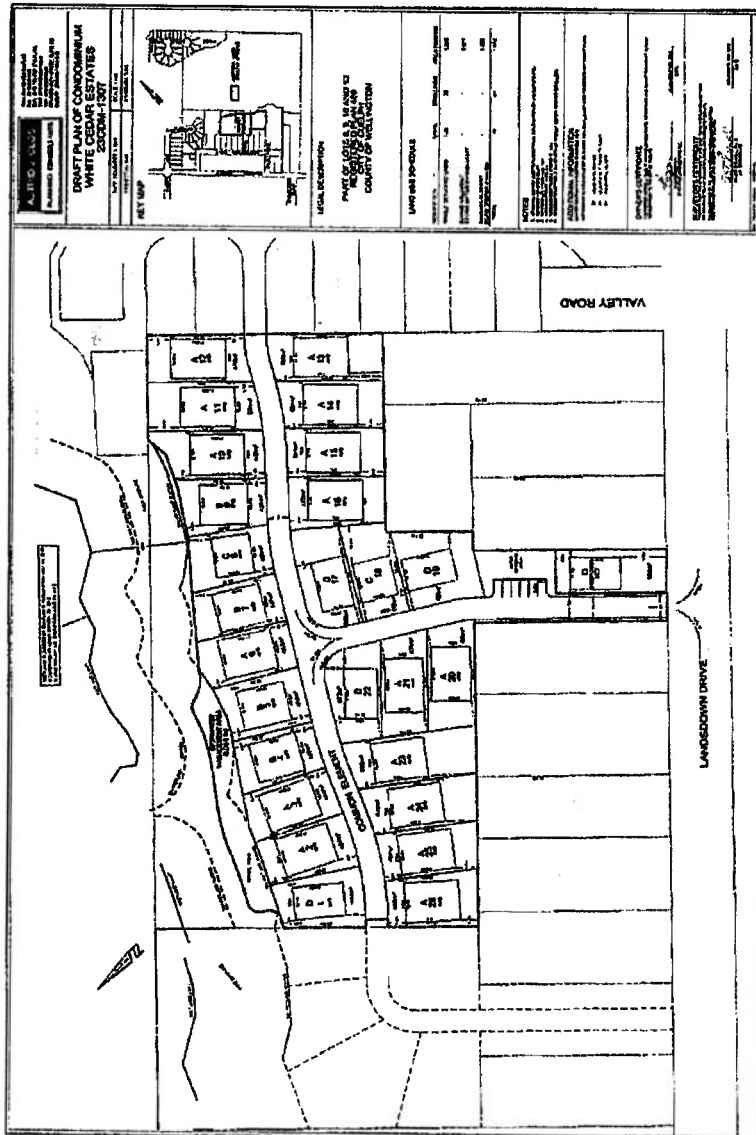
That prior to the registration of all or any portion of the plan, the **Wellington Catholic District School Board** shall advise the City in writing how condition 66 has been satisfied.

That prior to the registration of all or any portion of the plan, **Upper Grand District School Board** shall advise the City in writing how conditions 67, 68, 69 and 70 have been satisfied.

That prior to the registration of all or any portion of the plan, **Guelph Hydro Electric Systems Inc**, shall advise the City in writing how conditions 17, 30 and 62 have been satisfied.

That prior to the registration of all or any portion of the plan, **Canada Post** shall advise the City in writing how condition 71 has been satisfied.

**Schedule 'A'**



**AND**

**PART B: ZONING REGULATIONS**

That the Zoning By-law Amendment application be approved and that City Staff be instructed to prepare the necessary amendment to Zoning By-law Number (1995)-14864, as amended, to

transfer the subject lands from the "Residential Single Detached (R.1B) Zone with a "Lands Adjacent to Provincially Significant Wetlands Overlay", as follows:

**PROPOSED ZONING**

The following zoning is proposed for the subject lands:

**R.1B - ? (H) (Specialized Residential Single Detached with a Holding Provision) Zone (Lots 1,2,3,6, 7, 8, 11-19, 23, 24, 25)**

In accordance with Section 5.1 of Zoning By-law (1995)-14864, as amended.

Permitted Uses

In accordance with Section 5.1.1 of Zoning By-law (1995) – 14864, as amended.

Regulations

In accordance with Section 5.1.2 of Zoning By-law (1995) – 14864, as amended (see excerpt of Table 5.1.2 below), with the following exceptions:

Despite Section 4.1, development in this zone may occur on a privately owned **Street**.

Despite Table 5.1.2, Row 3, the minimum **Lot Area** shall be 425 square metres.

Despite Table 5.1.2, Row 5, and Section 4.18, the maximum **Building Height** shall be two storeys plus a partially exposed walk out or look out basement as required for grading.

Despite Table 5.1.2, Row 6, and Sections 4.6, 4.24, 5.1.2.3, 5.1.2.4 and 5.1.2.7, the minimum **Front Yard** shall be 4.5 metres to habitable floor space and 6 metres to the front wall of the garage.

Despite Table 5.1.2, Row 7, and Sections 5.1.2.8, 5.1.2.1 and 5.1.2.2, the minimum **Side Yard** shall be 1.2 m including the **Exterior Side Yard** of corner lots on a private road.

Despite Table 5.1.2, Row 8, and Section 5.1.2.4, the minimum **Rear Yard** shall be 4.5 metres.

In addition to the requirements of Table 5.1.2, no **Buildings, Structures or Swimming Pools** (excluding fences) shall be located or constructed within 2.4 metres of the Rear Lot Line in order to protect the underground infiltration storm gallery.

**R.1B - ?? (H) (Specialized Residential Single Detached) Zone (Lots 1,2,3,6, 7, 8, 11-19, 23, 24, 25) (Lots 4, 5, 9, 10, 20-22, 26)**

In accordance with Section 5.1 of Zoning By-law (1995)-14864, as amended.

Permitted Uses

In accordance with Section 5.1.1 of Zoning By-law (1995) – 14864, as amended.

Regulations

In accordance with Section 5.1.2 of Zoning By-law (1995) – 14864, as amended (see excerpt of Table 5.1.2 below), with the following exceptions:

Despite Section 4.1, development in this zone may occur on a privately owned **Street**.

Despite Table 5.1.2, Row 3, the minimum **Lot Area** shall be 425 square metres.

Despite Table 5.1.2, Row 5, and Section 4.18, the maximum **Building Height** shall be two storeys plus a partially exposed walk out or look out basement as required for grading.

Despite Table 5.1.2, Row 6, and Sections 4.6, 4.24, 5.1.2.3, 5.1.2.4 and 5.1.2.7, the minimum **Front Yard** shall be 4.5 metres to habitable floor space and 6 metres to the front wall of the garage.

Despite Table 5.1.2, Row 7, and Sections 5.1.2.8, 5.1.2.1 and 5.1.2.2, the minimum **Side Yard** shall be 1.2 m including the **Exterior Side Yard** of corner lots on a private road.

Despite Table 5.1.2, Row 8, and Section 5.1.2.4, the minimum **Rear Yard** shall be 4.5 metres.

**R.1B - ??? (H) (Specialized Residential Single Detached) Zone (Lot D, currently known municipally as 28 Landsdown Drive)**

In accordance with Section 5.1 of Zoning By-law (1995)-14864, as amended.

Permitted Uses

In accordance with Section 5.1.1 of Zoning By-law (1995) – 14864, as amended.

Regulations

In accordance with Section 5.1.2 of Zoning By-law (1995) – 14864, as amended (see excerpt of Table 5.1.2 below), with the following exceptions:

Despite Section 4.1, development in this zone may occur on a privately owned **Street**.

Despite Table 5.1.2, Row 3, the minimum **Lot Area** shall be 425 square metres.

Despite Table 5.1.2, Row 4, and Section 5.1.2.6, the minimum **Lot Frontage** shall be 13 metres.

Despite Table 5.1.2, Row 5, and Section 4.18, the maximum **Building Height** shall be two storeys plus a partially exposed walk out or look out basement as required for grading.

Despite Table 5.1.2, Row 6, and Sections 4.6, 4.24, 5.1.2.3, 5.1.2.4 and 5.1.2.7, the minimum **Front Yard** shall be 4.5 metres to habitable floor space and 6 metres to the front wall of the garage.

Despite Table 5.1.2, Row 7, and Sections 5.1.2.8, 5.1.2.1 and 5.1.2.2, the minimum **Side Yard** shall be 1.2 metres and the **Exterior Side Yard** on a private road shall be 0.9 metres.

Despite Table 5.1.2, Row 8, and Section 5.1.2.4, the minimum **Rear Yard** shall be 4.5 metres.

Holding Provision

Purpose: To ensure that development of the subject lands does not proceed until the following conditions have been met to the satisfaction of the **City** related to the subject development.

Prior to the removal of the 'Holding' (H) provision, the Developer shall complete the following conditions to the satisfaction of the City:

- a. The Developer's solicitor certifies that the **easements/right-of-ways** in favour of the Developer on 15 Valley Road for access and servicing has been granted and are registered on title.
- b. That a **Reference Plan** is prepared and deposited indicating the boundaries of the easements/rights-of-ways on 15 Valley Road (Wellington Vacant Land of Condominium Corporation No. 169).
- c. The **servicing/cost-sharing agreement between Dunsire (Landsdown) Inc. and Wellington Vacant Land of Condominium Corporation No. 169** be registered on title. Furthermore, prior to the removal of the (H), the Developer's solicitor certifies that the agreement has been registered on title.
- d. The Developer shall pay to the City, their share of the **frontage assessment costs** for the existing sanitary sewer main and existing watermain and the actual costs associated with the installation of the sanitary sewer lateral and the water service lateral to the property line, on Landsdown Drive across the frontage of 28 Landsdown Drive as determined by the General Manager/City Engineer.

Severability Provision

The provisions of this By-law shall continue to apply collectively to the whole of the subject lands in this zone, despite any future severance, phase of registration, partition or division for any purpose.

**EXCERPT FROM TABLE 5.1.2 - REGULATIONS GOVERNING R.1B ZONE**

1	Residential Type	Single Detached Dwellings
2	Zone	<b>R.1B</b>
3	Minimum Lot Area	460 m <sup>2</sup>
4	Minimum Lot Frontage	15 metres and in accordance with Section 5.1.2.6.
5	Maximum Building Height	3 Storeys and in accordance with Section 4.18.
6	Minimum Front Yard	6 metres and in accordance with Sections 4.6, 4.24, 5.1.2.3, 5.1.2.4 and 5.1.2.7.
6a	Minimum Exterior Side Yard	4.5 metres and in accordance with Sections 4.6, 4.24, 4.28, 5.1.2.3, 5.1.2.4 and 5.1.2.7.
7	Minimum Side Yard 1 to 2 Storeys Over 2 Storeys	1.5 metres 2.4 metres and in accordance with Sections 5.1.2.8, 5.1.2.1 and 5.1.2.2.

8	Minimum Rear Yard	7.5 metres or 20% of the <i>Lot Depth</i> , whichever is less and in accordance with Section 5.1.2.4.
9	Accessory Buildings or Structures	In accordance with Section 4.5
10	Fences	In accordance with Section 4.20.
11	Off-Street Parking	In accordance with Section 4.13.
12	Minimum Landscaped Open Space	The <i>Front Yard</i> on any <i>Lot</i> , excepting the <i>Driveway (Residential)</i> shall be landscaped and no parking shall be permitted within this <i>Landscaped Open Space</i> . Despite the definition of <i>Landscaped Open Space</i> , a minimum area of 0.5 metres between the <i>Driveway (Residential)</i> and nearest <i>Lot Line</i> must be maintained as landscaped space in the form of grass, flowers, trees, shrubbery, natural vegetation and indigenous species.
13	Garbage, Refuse and Storage	In accordance with Section 4.9.
14	Garages	For those <i>Lots</i> located within the boundaries indicated on Defined Area Map Number 66, attached <i>Garages</i> shall not project beyond the main front wall of the <i>Building</i> . Where a roofed porch is provided, the <i>Garage</i> may be located ahead of the front wall of the dwelling (enclosing <i>Habitable Floor Space</i> on the first floor) equal to the projection of the porch to a maximum of 2 metres.

**P.1 (Conservation Land) Zone**

In accordance with Section 9.1.1 of Zoning By-law (1995)-14864, as amended.

**WL (Wetland) Zone**

In accordance with Section 13.2 of Zoning By-law (1995)-14864, as amended.



**THIS IS EXHIBIT "M" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*





September 22, 2017

Fortress Real Developments  
25 Brodie Drive, Unit 1  
Richmond Hill, Ontario  
L4B 3K7

&

Dunsire (Landsdown) Inc.  
54-1000 South Service Road  
Burlington, Ontario  
L7L 6A5

**ATTN: Vince Petrozza & Shawn Keeper**

**RE: White Cedar Estates MZGI-87 Interest Payment Default**

We refer to the Commitment Letter agreement dated May 25, 2016 (the "Agreement") signed by Dunsire (Landsdown) Inc. (the "Principal Borrower"), in relation to the financing (the "Loan") arranged and administered by MarshallZehr Group Inc. ("the Lender").

By virtue of Fortress Real Development's 50% ownership in the Principal Borrower, its obligations (and that of the Principal Borrower) per Section 4.1(a) under the Agreement are as follows:

***Punctual Payment*** – *The Borrower shall duly and punctually pay the principal of all advances made to it under the Loan, all interest thereon and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.*

By virtue of Fortress Real Development's 50% ownership in the Principal Borrower, its obligations (and that of the Principal Borrower) per Section 5.1(b) under the Agreement are as follows:

***Payment of Interest and Fees*** – *if the Borrower defaults in the payment of:*

- i. Any interest (including, if applicable, default interest) due on any Advance under this Commitment;*
- ii. Any fee with respect to this commitment, including Lender fee, Admin Fee, Draw Fee, etc.*
- iii. Any other amount not specifically referred to herein payable by Borrower to the Mortgage Agent or the Lenders (or any of them) hereunder when due and payable;*
- iv. And such default continues for three (3) Business Days after notice of such default has been given by the Lender to the Borrower.*



The August 2017 interest payment was to be made no later than September 1, 2017 but as of today no such payment has been received. Based on this Agreement, these obligations have not been satisfied, and as a result the Principal Borrower is formally in default of this Loan.

Please be advised that the Lender does not waive compliance with the condition and that the Lender preserves all rights and remedies under any and all agreements and security provided in connection with the Loan.

To rectify this default, this payment is to be deposited into our Trust account via certified funds no later than October 2, 2017 in addition to the September 2017 interest payment.

Please contact Murray Snedden at 519-342-1000 ext. 232 immediately to confirm this will be resolved.

We thank you for your assistance in this matter.

Yours truly,

A handwritten signature in black ink, appearing to read 'Cecil Hayes', written over a horizontal line.



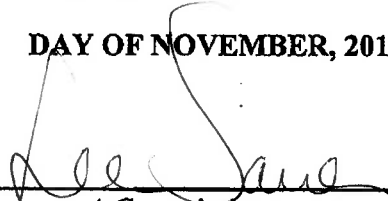
Financing Efficiency = Opportunity

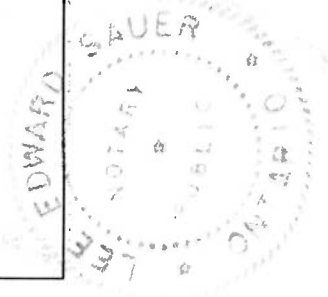
**Cecil Hayes** CIM  
Chief Operating Officer

T 519 342 1000 X 233  
C 519 590 3810

[marshallzehr.com](http://marshallzehr.com) email

**THIS IS EXHIBIT "N" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*





LAWYER: EVA LAKE  
REPLY TO: NICOLE LEMON,  
LAW CLERK  
FILE NO.: 41259  
DIRECT: 416-218-1863  
FAX: 416-224-5706  
EMAIL: nicolel@chaitons.com

October 4, 2017

VIA REGULAR AND REGISTERED MAIL

Personal & Confidential  
Dunsire (Landsdown) Inc.  
54 – 5100 South Service Road  
Burlington, Ontario  
L7L 6A5

**Re: *Indebtedness of Dunsire (Landsdown) Inc. (the "Company") to MarshallZehr Group Inc. (the "Lender")***  
***Project Name: White Cedar Estates MZGI-87***  
***Landsdown Drive, Guelph, Ontario (the "Property")***

We are the lawyers representing the Lender with respect to the above-referenced matter.

Pursuant to a Charge dated June 27, 2016, the Company is indebted to the Lender in the amount of \$4,757,511.86 as at October 16, 2017.

Interest continues to accrue on the indebtedness from October 16, 2017 to the date of payment at the rate of 6.00% per annum with respect to Tranche A and 14.00% per annum with respect to Tranche B, both calculated monthly, as further described below.

Payment of the amount due is secured, *inter alia*, by a General Security Agreement dated June 15, 2016, an Assignment of Material Contracts dated June 15, 2016, a General Assignment of Leases and Rents dated June 27, 2016, and registered as Instrument No. WC472870, and a Charge dated June 27, 2016 registered against title to the Property as Instrument Number WC472869.

Notice of default was given to the Company by the Lender on September 22, 2017 and has continued for more than three (3) business days.

The indebtedness remains in default and is outstanding. The full balance is accordingly due in the amount of \$4,757,511.86 as at October 16, 2017, calculated as follows:

Principal Balance (Tranche A)	\$2,415,269.00
Interest to October 16, 2017 (Tranche A)	30,295.03
Three months' interest (Tranche A)	36,091.80
Principal Balance (Tranche B)	2,119,891.00



Interest to October 16, 2017 (Tranche B)	62,373.10
Three months' interest (Tranche B)	74,901.60
Site visit fee	390.33
Administration fee	10,000.00
Discharge fee	800.00
Solicitors' costs and disbursements (inc. HST)	7,500.00
<b>Total</b>	<b>\$4,757,511.86</b>

We have been instructed and do hereby demand payment of the Company's indebtedness to our client. Unless you pay this amount by **October 16, 2017**, together with additional accrued interest and legal costs actually incurred to the date of payment or satisfactory arrangements therefor are made forthwith, the Lender shall enforce its security and take such steps as it deems necessary or advisable to recover payment of the Company's indebtedness in full without further demand upon or notice to the Company. Such proceedings will include, without limitation, the issuance of a Notice of Sale under Charge.

Enclosed please find our client's Notice of Intention to Enforce Security which is served upon the Company pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*.

Yours truly,  
CHAITONS LLP

Eva Lake  
LAWYER

EL/nl  
Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Subsection 244(1))**

**TO: DUNSIRE (LANDSDOWN) INC., insolvent person**

**TAKE NOTICE THAT:**

1. **MARSHALLZEHR GROUP INC., a secured creditor, intends to enforce its security on the property of the insolvent person described below:**

- i) **All assets, property and undertaking of Dunsire (Landsdown) Inc.; and**
- ii) **PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; CITY OF GUELPH;**

2. **The security that is to be enforced is in the form of a General Security Agreement dated June 15, 2016, an Assignment of Material Contracts dated June 15, 2016, a General Assignment of Rents dated June 27, 2016 and registered as Instrument No. WC472870, and a Charge dated June 27, 2016, and registered as Instrument No. WC472869.**

3. **The total amount of the indebtedness secured by the security is \$4,757,511.86 as at October 16, 2017.**

4. **The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.**

**DATED at Toronto, Ontario this 4th day of October, 2017.**

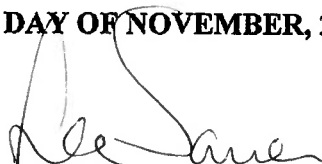
**MARSHALLZEHR GROUP INC.**  
by its solicitors  
Chaitons LLP

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

  
Eva Lake

Inquiries to: **Nicole Salviato**  
**(416) 218-1863**

**THIS IS EXHIBIT "O" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*







LAWYER: EVA LAKE  
REPLY TO: NICOLE LEMON,  
LAW CLERK  
FILE NO.: 41259  
DIRECT: 416-218-1863  
FAX: 416-224-5706  
EMAIL: nicolel@chaitons.com

October 4, 2017

VIA REGULAR AND REGISTERED MAIL

Personal & Confidential  
Fortress Real Developments Inc.  
25 Brodie Drive  
Suite #1  
Richmond Hill, Ontario L4B 3K7

Re: *Indebtedness of Dunsire (Landsdown) Inc. (the "Company") to MarshallZehr Group Inc. (the "Lender")*

Dear Sir/Madame,

We are the lawyers representing the Lender. Enclosed please find a copy of our letter dated October 4, 2017 to the Company demanding payment of its indebtedness to the Lender.

We refer you to your written Deficiency Agreement dated June 15, 2016, whereby you undertook payment of the indebtedness and liability of the Company to the Lender.

We hereby demand payment of your indebtedness to the Lender under the Deficiency Agreement. Unless payment of the total amount owing together with additional interest accrued and legal costs actually incurred to the date of payment or satisfactory arrangements therefore are made by October 16, 2017, the Lender shall take such steps as it deems necessary or advisable to recover payment of your indebtedness in full without further demand upon or notice to you.

Yours truly,

CHAITONS LLP

Eva Lake  
LAWYER

EL/nl  
Encl.



LAWYER: EVA LAKE  
REPLY TO: NICOLE LEMON,  
LAW CLERK  
FILE NO.: 41259  
DIRECT: 416-218-1863  
FAX: 416-224-5706  
EMAIL: nicole@chaitons.com

October 4, 2017

VIA REGULAR AND REGISTERED MAIL

**Personal & Confidential**  
Dunsire (Landsdown) Inc.  
54 – 5100 South Service Road  
Burlington, Ontario  
L7L 6A5

**Re: *Indebtedness of Dunsire (Landsdown) Inc. (the "Company") to MarshallZehr Group Inc. (the "Lender")***  
***Project Name: White Cedar Estates MZGI-87***  
***Landsdown Drive, Guelph, Ontario (the "Property")***

We are the lawyers representing the Lender with respect to the above-referenced matter.

Pursuant to a Charge dated June 27, 2016, the Company is indebted to the Lender in the amount of \$4,757,511.86 as at October 16, 2017.

Interest continues to accrue on the indebtedness from October 16, 2017 to the date of payment at the rate of 6.00% per annum with respect to Tranche A and 14.00% per annum with respect to Tranche B, both calculated monthly, as further described below.

Payment of the amount due is secured, *inter alia*, by a General Security Agreement dated June 15, 2016, an Assignment of Material Contracts dated June 15, 2016, a General Assignment of Leases and Rents dated June 27, 2016, and registered as Instrument No. WC472870, and a Charge dated June 27, 2016 registered against title to the Property as Instrument Number WC472869.

Notice of default was given to the Company by the Lender on September 22, 2017 and has continued for more than three (3) business days.

The indebtedness remains in default and is outstanding. The full balance is accordingly due in the amount of \$4,757,511.86 as at October 16, 2017, calculated as follows:

Principal Balance (Tranche A)	\$2,415,269.00
Interest to October 16, 2017 (Tranche A)	30,295.03
Three months' interest (Tranche A)	36,091.80
Principal Balance (Tranche B)	2,119,891.00



Interest to October 16, 2017 (Tranche B)	62,373.10
Three months' Interest (Tranche B)	74,901.60
Site visit fee	390.33
Administration fee	10,000.00
Discharge fee	800.00
Solicitors' costs and disbursements (Inc. HST)	7,500.00
<b>Total</b>	<b>\$4,757,511.86</b>

We have been instructed and do hereby demand payment of the Company's indebtedness to our client. Unless you pay this amount by **October 16, 2017**, together with additional accrued interest and legal costs actually incurred to the date of payment or satisfactory arrangements therefor are made forthwith, the Lender shall enforce its security and take such steps as it deems necessary or advisable to recover payment of the Company's indebtedness in full without further demand upon or notice to the Company. Such proceedings will include, without limitation, the issuance of a Notice of Sale under Charge.

Enclosed please find our client's Notice of Intention to Enforce Security which is served upon the Company pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*.

Yours truly,  
CHAITONS LLP

  
Eva Lake  
LAWYER

EL/nl  
Encl.

**NOTICE OF INTENTION TO ENFORCE SECURITY**  
**(Subsection 244(1))**

TO: DUNSIRE (LANDSDOWN) INC., insolvent person

TAKE NOTICE THAT:

1. MARSHALLZEHR GROUP INC., a secured creditor, intends to enforce its security on the property of the insolvent person described below:
  - i) All assets, property and undertaking of Dunsire (Landsdown) Inc.; and
  - ii) PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; CITY OF GUELPH;
2. The security that is to be enforced is in the form of a General Security Agreement dated June 15, 2016, an Assignment of Material Contracts dated June 15, 2016, a General Assignment of Rents dated June 27, 2016 and registered as Instrument No. WC472870, and a Charge dated June 27, 2016, and registered as Instrument No. WC472869.
3. The total amount of the indebtedness secured by the security is \$4,757,511.86 as at October 16, 2017.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, Ontario this 4th day of October, 2017.

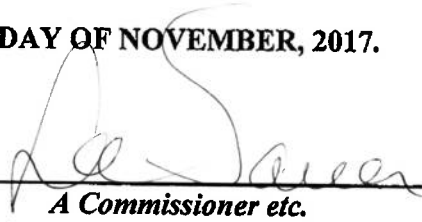
MARSHALLZEHR GROUP INC.  
by its solicitors  
Chaitons LLP

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

Eva Lake

Inquiries to: Nicole Salviato  
(416) 218-1863

**THIS IS EXHIBIT "P" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**

  
\_\_\_\_\_  
*A Commissioner etc.*



## NOTICE OF SALE UNDER CHARGE/MORTGAGE OF LAND

TO: THE PARTIES NAMED IN SCHEDULE "A" ATTACHED HERETO

TAKE NOTICE that default has been made in payment of monies due under a certain charge/mortgage of land dated June 27, 2016, made between:

**DUNSIRE (LANDSDOWN) INC.**

as Chargor

- and -

**MARSHALLZEHR GROUP INC.**

as Chargee

on the security of:

PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC492853; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC498736; SUBJECT TO AN EASEMENT AS IN WC500683; CITY OF GUELPH

City of Guelph, County of Wellington  
PIN 71505-0993 (LT)

Municipally known as Landsdown Drive, Guelph, Ontario

which charge/mortgage of land was registered on June 27, 2016 in the Land Registry Office for the Land Titles Division of Wellington (No. 61) as Instrument No. WC472869.

AND WE hereby give you notice that the amount due on the charge/mortgage for principal, interest, site visit fee, administration fee, discharge fee, appraisal fees, and costs respectively, are made up as follows:

For principal (Tranche A)	\$2,415,269.00
For interest to October 17, 2017 (Tranche A)	\$30,696.05

-2-

Administration fee	\$10,000.00
Discharge fee	\$250.00
Appraisal fees	\$5,706.50
Costs prior to issuance of Notice of Sale	\$7,500.00
For costs	\$2,500.00
<b>TOTAL DUE AS AT OCTOBER 17, 2017</b>	<b><u>\$4,766,401.62</u></b>

(such amount for costs being up to and including the service of the notice only and thereafter such further costs and disbursements will be charged as may be proper) together with interest at the rate of 6.00% per annum for Tranche A, on the principal, interest and costs hereinbefore mentioned, and with interest at the rate of 14.00% per annum for Tranche B, on the principal, interest and costs hereinbefore mentioned, from October 18, 2017, to the date of payment.

**AND UNLESS** the said sums are paid, on or before **November 23, 2017** the undersigned shall sell the property covered by the said charge/mortgage of land under the provisions contained in it.

This Notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

DATED at Toronto, Ontario, this 17th day of October, 2017.

**MARSHALLZEHR GROUP INC.**  
by its solicitors

Chaitons LLP

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

Eva Lake

**SCHEDULE "A"****PARTIES TO WHOM THIS NOTICE IS SERVED:**

**PERSONAL & CONFIDENTIAL**  
DUNSIRE (LANDSDOWN) INC.  
54 – 5100 South Service Road  
Burlington, Ontario L7L 6A5

**PERSONAL & CONFIDENTIAL**  
DUNSIRE (LANDSDOWN) INC.  
c/o Shawn Keeper  
54 – 5100 South Service Road  
Burlington, Ontario L7L 6A5

**PERSONAL & CONFIDENTIAL**  
DUNSIRE INC.  
54 – 5100 South Service Road  
Burlington, Ontario L7L 6A5

**PERSONAL & CONFIDENTIAL**  
DUNSIRE INC.  
c/o Shawn Keeper  
54 – 5100 South Service Road  
Burlington, Ontario L7L 6A5

**PERSONAL & CONFIDENTIAL**  
SHAWN KEEPER ALSO KNOWN AS SHAWN ROLAND KEEPER  
54 – 5100 South Service Road  
Burlington, Ontario L7L 6A5

**PERSONAL & CONFIDENTIAL**  
SHAWN KEEPER ALSO KNOWN AS SHAWN ROLAND KEEPER  
15 Devitt Avenue South, Suite 101  
Waterloo, Ontario N2J 1Y6

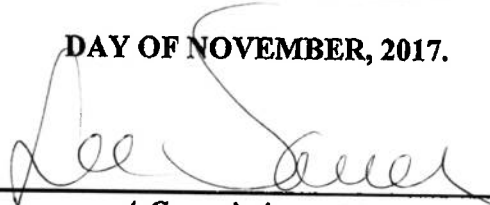
**PERSONAL & CONFIDENTIAL**  
FORTRESS REAL DEVELOPMENTS INC.  
25 Brodie Drive, Suite #1  
Richmond Hill, Ontario L4B 3K7

**PERSONAL & CONFIDENTIAL**  
SORRENTI LAW PROFESSIONAL CORPORATION (TRUSTEE)  
3300 Highway 7, Suite 310  
Vaughan, Ontario L4K 4M3

**PERSONAL & CONFIDENTIAL**  
OLYMPIA TRUST COMPANY (TRUSTEE)  
125 9<sup>th</sup> Avenue SE, Suite 2200  
Calgary, Alberta T2G 0P6



**THIS IS EXHIBIT "Q" TO  
THE AFFIDAVIT OF MURRAY SNEDDEN  
SWORN BEFORE ME THIS 24<sup>TH</sup>  
DAY OF NOVEMBER, 2017.**



*A Commissioner etc.*



Court File No.

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**DUNSIRE (LANDSDOWN) INC.**

Respondent

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

**CONSENT**

**COLLINS BARROW TORONTO LIMITED ("CBTL")** hereby consents to act as Court-appointed receiver, without security, of all of the assets, undertakings and properties of the Respondent pursuant to subsection 243(1) of *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, in accordance with an order substantially in the form requested by the Applicant, or as such order may be amended in a manner satisfactory to CBTL.

DATED this 23<sup>rd</sup> day of November, 2017

**COLLINS BARROW TORONTO LIMITED**

By: 

Name: Bryan A. Tannenbaum

Position: President

I have authority to bind the corporation

# TAB 3

Court File No. CV-17-587118-00CL

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

THE HONOURABLE	)	FRIDAY, THE 1 <sup>ST</sup>
	)	
JUSTICE	)	DAY OF DECEMBER, 2017

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**DUNSIRE (LANDSDOWN) INC.**

Respondent

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

**ORDER  
(appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Collins Barrow Toronto Limited ("**Collins Barrow**") as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of Dunsire (Landsdown) Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Murray Snedden sworn November 24, 2017 and the Exhibits thereto and the report of Collins Barrow in its capacity as proposed receiver dated November ●, 2017, and on hearing the submissions of counsel for the Applicant and ●, no one appearing for the other parties listed on the service list although duly served as appears from the affidavit of service of Antoinette De Pinto sworn November ●, 2017 and on reading the consent of Collins Barrow to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Collins Barrow is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”), which includes, without limitation, the real property municipally known as Landsdown Drive, Guelph, Ontario and legally described as set out in **Schedule “A”** hereto (the “**Real Property**”).

### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to take all steps necessary to satisfy the conditions of Draft Plan of Vacant Land Condominium (23CDM-1307) for the Real Property and thereafter register the Vacant Land Condominium;

- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court, and in such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,



and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court

upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the

collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not

complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### INTEREST PAYMENTS

18. **THIS COURT ORDERS** that, subject to further Order of this Court, the Receiver is authorized and directed to, out of the monies in its hands, pay all interest arrears and thereafter make all monthly interest payments as they become due and owing by the Debtor to the Applicant, or as it may direct in writing, in connection with the indebtedness owed by the Debtor under Tranche A of Facility 1 and secured by the charge/mortgage registered on title to the Real Property on June 27, 2016 as Instrument No. WC472869 (the "**MZ Charge**").

### RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory

or otherwise, in favour of any Person, but subordinate in priority to the MZ Charge to the extent of the Tranche A indebtedness (inclusive of principal, interest, fees and other charges), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$4,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or



otherwise, in favour of any Person, but subordinate in priority to the MZ Charge, the Receiver's Charge, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **RETENTION OF LAWYERS**

26. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

**SERVICE AND NOTICE**

27. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.collinsbarrow.com/en/cbn/current-engagements-toronto/dunsirelandsdown>

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

30. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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**SCHEDULE "A"**

PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC492853; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC498736; SUBJECT TO AN EASEMENT AS IN WC500683; CITY OF GUELPH

City of Guelph, County of Wellington

PIN 71505-0993 (LT)

**SCHEDULE "B"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

36. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties Dunsire (Landsdown) Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 1<sup>st</sup> day of December, 2017 (the "**Order**") made in an application having Court file number CV-17●●●●●-00CL-, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

37. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

38. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

39. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

40. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

41. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

42. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

COLLINS BARROW TORONTO LIMITED,  
solely in its capacity as Receiver of Dunsire  
(Landsdown) Inc., and not in its personal  
capacity

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

Name:

Title:

# TAB 4



Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. ~~\_\_\_\_\_~~ CV-17-587118-00CL

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

THE HONOURABLE ) ~~WEEKDAY~~FRIDAY, THE # 1<sup>st</sup>  
) )  
JUSTICE ) DAY OF ~~MONTH~~DECEMBER, ~~20~~YR2017

**MARSHALLZEHR GROUP INC.**

**PLAINTIFF<sup>1</sup>**

Plaintiff

Applicant

- and ==

**DEFENDANT**

Defendant

**DUNSIRE (LANDSDOWN) INC.**

Respondent

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

**ORDER**  
**(appointing Receiver)**

<sup>1</sup> ~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

**THIS MOTION APPLICATION** made by the **Plaintiff<sup>2</sup> Applicant** for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing ~~{RECEIVER'S NAME}~~ Collins Barrow Toronto Limited ("Collins Barrow") as receiver ~~{and manager} (in such capacities,~~ (the "**Receiver**") without security, of all of the assets, undertakings and properties of ~~{DEBTOR'S NAME}~~ Dunsire (Landsdown) Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of ~~{NAME}~~ Murray Snedden sworn ~~{DATE}~~ November 24, 2017 and the Exhibits thereto and the report of Collins Barrow in its capacity as proposed receiver dated November ●, 2017, and on hearing the submissions of counsel for ~~{NAMES}~~ the Applicant and ●, no one appearing for ~~{NAME}~~ the other parties listed on the service list although duly served as appears from the affidavit of service of ~~{NAME}~~ Antoinette De Pinto sworn ~~{DATE}~~ November ●, 2017 and on reading the consent of ~~{RECEIVER'S NAME}~~ Collins Barrow to act as the Receiver,

## SERVICE

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<sup>2</sup> ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated<sup>3</sup> so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

#### APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~RECEIVER'S NAME~~Collins Barrow is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the ~~"Property"~~"Property"), which includes, without limitation, the real property municipally known as Landsdown Drive, Guelph, Ontario and legally described as set out in Schedule "A" hereto (the "Real Property")).

#### RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

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<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to take all steps necessary to satisfy the conditions of Draft Plan of Vacant Land Condominium (23CDM-1307) for the Real Property and thereafter register the Vacant Land Condominium;
- (g) ~~(f)~~ to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the Debtor;

- (i) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business;

~~(i) without the approval of this Court in respect of any transaction not exceeding \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; and~~

~~(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds~~

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<sup>4</sup> ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

~~the applicable amount set out in the preceding clause; and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,<sup>5</sup> shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.]~~

- (m) ~~(h)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (q) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability

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<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

to enter into occupation agreements for any property owned or leased by the Debtor;

(r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

(s) ~~(t)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations~~s~~.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.



7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

**PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

*Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTEREST PAYMENTS**

18. **THIS COURT ORDERS** that, subject to further Order of this Court, the Receiver is authorized and directed to, out of the monies in its hands, pay all interest arrears and thereafter make all monthly interest payments as they become due and owing by the Debtor to the Applicant, or as it may direct in writing, in connection with the indebtedness owed by the Debtor under Tranche A of Facility 1 and secured by the charge/mortgage registered on title to the Real Property on June 27, 2016 as Instrument No. WC472869 (the "**MZ Charge**").

## RECEIVER'S ACCOUNTS

19. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a ~~first~~ charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but ~~subject to~~ subordinate in priority to the MZ Charge to the extent of the Tranche A indebtedness (inclusive of principal, interest, fees and other charges), and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

20. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. ~~20.~~ **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the

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<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

22. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~4,000,000~~ 4,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the MZ Charge, the Receiver's Charge ~~and~~, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. ~~22.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "AB"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### RETENTION OF LAWYERS

26. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

### **SERVICE AND NOTICE**

27. ~~25.~~ **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the



following URL ~~“@”~~: <https://www.collinsbarrow.com/en/cbn/current-engagements-toronto/dunsirelandsdown>

28. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## GENERAL

30. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. ~~29.~~ **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. ~~31.~~ **THIS COURT ORDERS** that the PlaintiffApplicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the PlaintiffApplicant's security or, if not so provided by the PlaintiffApplicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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DOCSTOR: 1771742/8

**SCHEDULE "A"**

PT LT 13 PL 488 PT 3, 61R20544; LT 10 PL 488 PT 4, 61R20544; PT LT 6 PL 488 PT 1 ON 61R20544; PT LT 9 PL 488 PT 2, 61R20544; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS CONDO PL NO. 169 AS IN WC458323; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC492853; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1 61R20870 AS IN WC498736; SUBJECT TO AN EASEMENT AS IN WC500683; CITY OF GUELPH

City of Guelph, County of Wellington

PIN 71505-0993 (LT)

SCHEDULE "B"

## RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

36. ~~1.~~ THIS IS TO CERTIFY that ~~{RECEIVER'S NAME}~~ Collins Barrow Toronto Limited, the receiver (the "**Receiver**") of the assets, undertakings and properties ~~{DEBTOR'S NAME}~~ Dunsire (Landsdown) Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 1<sup>st</sup> day of December, 2017 (the "**Order**") made in an ~~action~~ application having Court file number CV-17-00000-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

37. ~~2.~~ The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

38. ~~3.~~ Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

- 2 -

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

39.    ~~4.~~ All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

40.    ~~5.~~ Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

41.    ~~6.~~ The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

42.    ~~7.~~ The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

~~[RECEIVER'S NAME]~~ COLLINS BARROW  
TORONTO LIMITED, solely in its capacity as  
Receiver of ~~the Property~~ Dunsire (Landsdown)  
Inc., and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

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<b>Total changes</b>	<b>186</b>

MARSHALLZEHR GROUP INC.  
Applicant

-and-

DUNSIRE (LANDSDOWN) INC.  
Respondent

Court File No. CV-17-587118-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD**

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