

Court File No. CV-15-10882-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF THE APPLICATION MADE BY JADE-KENNEDY  
DEVELOPMENT CORPORATION FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C. 30***

**THIRD REPORT TO THE COURT OF COLLINS BARROW TORONTO LIMITED AS  
CONSTRUCTION LIEN TRUSTEE OF SOUTH UNIONVILLE SQUARE**

**JUNE 1, 2015**

## INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 11, 2015 (the “**Appointment Order**”), Collins Barrow Toronto Limited (“**CBTL**”) was appointed trustee (the “**Trustee**”) pursuant to Section 68(1) of the *Construction Lien Act* (Ontario) (“**CLA**”), of the lands and premises legally described in Schedule “A” of the Appointment Order comprised of commercial and residential condominium units, and vacant land owned by Jade-Kennedy Development Corporation (“**JKDC**”) and commonly known as South Unionville Square (“**SUSQ**”) (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorized the Trustee to, among other things, act as receiver and manager of the Property, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, market any or all of the Property, and sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court.
3. Publicly available information relating to this proceeding has been posted on the Trustee’s website, which can be found at:  
  
<http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>

#### PURPOSE OF THIRD REPORT

4. The purpose of this third report of the Trustee (the "**Third Report**") is to provide further information to the Court in support of the Trustee's motion, which was originally returnable on May 1, 2015 and was adjourned to June 4, 2015, requesting that the Court grant an order authorizing the Trustee to terminate or disclaim two (2) residential agreements of purchase and sale that were entered into by JKRC (as defined below) on the eve of the Trustee's appointment.

#### TERMS OF REFERENCE

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

**RESIDENTIAL DEVELOPMENT – PHASE II**

6. As has been previously reported to the Court in paragraphs 6 to 17 of the Trustee's First Report to the Court dated April 23, 2015 (the "**First Report**"), the SUSQ project was a MADY Group development project located in Markham, Ontario. The project was developed and constructed in three phases, which included, as Phase II, the development and construction of a 12-storey condominium-apartment tower. The tower contains 253 residential units and is known as "The Residences at South Unionville Square". The vendor of the residential units was Jade-Kennedy Residential Corporation ("**JKRC**"). JKRC is a separate legal entity, wholly owned by the same MADY Group entity that owns JKDC.<sup>1</sup>
7. For ease of reference, excerpts of the First Report that are relevant to the issues currently before the Court have been reproduced and are attached hereto as **Appendix "B"**.
8. JKDC commenced the application for the appointment of CBTL as Trustee under the *CLA*, which was supported by the Affidavit of Charles Mady, president of JKDC, sworn February 5, 2015 (the "**Mady Affidavit**"), a copy of which (without exhibits) is attached hereto as **Appendix "C"**. As set out in paragraphs 3 and 40 through 44 of the Mady Affidavit, Mr. Mady deposed that JKDC was insolvent.

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<sup>1</sup> Pursuant to the Order of Justice Pattillo dated May 1, 2015, the Trustee has been empowered and authorized to execute, issue and endorse documents of whatever nature in respect of the Property in the name and on behalf of JKRC and to take all necessary steps in the name and on behalf of JKRC in respect of the Property, for any purpose pursuant to the Appointment Order.

9. The Appointment Order was granted on February 11, 2015, pursuant to which the Trustee was appointed with respect to the Property, which includes six residential units (including units 117 and 218), eight parking units, and six locker units. Copies of the parcel registers for units 117 and 218 (collectively, the "Units") are attached hereto respectively as **Appendix "D"** and **"E"** (collectively, the **"Parcel Registers"**).
10. At the time of its appointment, the Trustee understood, based on information received from JKDC's condominium solicitors Harris Sheaffer LLP (**"Harris Sheaffer"**), that the Units had not been sold.

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

11. As previously disclosed in paragraphs 61 to 68 of the First Report, on February 23, 2015, the Trustee was informed by Harris Sheaffer that they had received copies of the following sale agreements with respect to the Units (collectively, the **"Sale Agreements"**):
  - (a) Agreement of Purchase and Sale dated February 9, 2015 between JKRC and Anna Gayle Andrew for the sale of unit 117 and a parking unit and locker unit, for the purchase price of \$200,000 (inclusive of HST and a deposit of \$5,000), a copy of which is attached hereto as **Appendix "F"**; and
  - (b) Agreement of Purchase and Sale dated February 9, 2015 between JKRC and Roger James Dol for the sale of unit 218 and a parking unit and locker

unit, for the purchase price of \$200,000 (inclusive of HST and a deposit of \$5,000), a copy of which is attached hereto as **Appendix "G"**.

12. The Units are each approximately 598 square feet in size. Harris Sheaffer has confirmed to the Trustee that the firm first learned of the existence of the Sale Agreements on February 23, 2015.
13. The Trustee has been informed by Mr. Jeffrey Bolton, the Controller of MADY Group, that the net purchase price for the Units (net of HST and applicable federal and provincial rebates) would each be \$190,114.07. There would be no commission payable in respect of the transactions under the Sale Agreements. It is anticipated that there will be adjustments to be paid by each purchaser of approximately \$7,000 per unit provided for in the Sale Agreements. Such adjustments will have to be paid by any person that purchases a unit.
14. Pursuant to section 15 of the Sale Agreements, each purchaser:

"...covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time..."
15. Pursuant to section 16 of the Sale Agreements, each purchaser:

"... acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property."
16. Based on discussions with representatives of JKDC and a review of JKDC's books and records, the Trustee understands that:

- (a) at the time of its appointment, unit 117 was listed for sale for \$270,900 and unit 218 was listed for sale for \$271,900; and
- (b) the first sale of a residential unit in The Residences at South Unionville Square occurred on May 29, 2009 at which time JKDC was conducting a “soft sale” period.

17. As set out in the Parcel Registers, mortgages in favour of Laurentian Bank of Canada (“**Laurentian**”), Am-Stat Corporation (“**Am-Stat**”) and Aviva Insurance Company of Canada (“**Aviva**”) were granted by JKDC with respect to the Units.

18. As previously set out in the First Report, the Trustee is of the view that the sale of the Units pursuant to the Sale Agreements, if completed, would constitute improvident sales at amounts materially below fair market value and would be prejudicial to the mortgagees, the lien claimants and other creditors of JKDC. The Trustee based its view on the following:

- (a) JKDC was insolvent at the time the Sale Agreements were executed, and they were entered into on the eve of the appointment of the Trustee;
- (b) the Trustee was approached by a representative of Tradeworld Realty Inc. (“**Tradeworld**”), the previous listing agent for the residential units, who indicated that she had received many inquiries for the Units and that she could bring in an offer for unit 117 at an amount that was materially higher than the net purchase price for unit 117;

- (c) Unit 118, which is the same size as unit 117, sold on June 3, 2014 for a gross sale price of \$270,900, which, net of HST and commission, resulted in a net sale price of \$251,071.76;
- (d) Unit 217, which is the same size as unit 218, sold on April 18, 2013 for a gross sale price of \$266,900, which, net of HST and commission, resulted in a net sale price of \$247,364.54; and
- (e) Unit 318, which is the same size as the Units, sold on April 6, 2014 for a gross sale price of \$272,900, which, net of HST and commission, resulted in a net sale price of \$252,925.38.

19. The Trustee intends to file with the Court a supplemental report that sets out the net sale price Tradeworld indicated it can sell unit 117 for and will be requesting that the supplemental report be sealed as such information is commercially sensitive information that could prejudice any future attempt to sell the Units if the Trustee's request for authority to terminate or disclaim the Sale Agreements is granted by the Court.
20. The Trustee's counsel, Chaitons LLP ("**Chaitons**"), has received written confirmation from counsel to Laurentian, Am-Stat and Aviva, that Laurentian and Am-Stat support, and Aviva does not oppose, the Trustee's motion to terminate or disclaim the Sale Agreements.
21. Chaitons, as counsel to the Trustee, sent letters to the purchasers of the Units dated March 12, 2015, and informed the purchasers that the Sale Agreements



did not represent fair market value for the Units and that the Trustee would be seeking Court authorization to terminate the Sale Agreements. Copies of these letters are collectively attached hereto as **Appendix "H"**.

22. On March 17, 2015, Chaitons received letters from counsel to the purchasers, who indicated that the purchasers would oppose the Trustee's motion and would be seeking an order compelling the Trustee to complete the Sale Agreements. Copies of these letters are collectively attached hereto as **Appendix "I"**.
23. Additionally, on May 7, 2015, Tradeworld listed unit 1521 for sale, which is 565 square feet in size. The Trustee has received an offer for unit 1521 at a purchase price that is materially higher than the net purchase price that would be received for each of the Units if the sale transactions under the Sale Agreements are completed. The Trustee will set out the terms of this offer in its supplemental report.
24. On May 19, 2015, Chaitons received a copy of an affidavit of Christopher Kit Andrew sworn May 19, 2015 (the "**Andrew Affidavit**"), which was sworn in response to the First Report.
25. Mr. Andrew is the husband of Anna Gayle Andrew, the purchaser of unit 117, and the business partner of Roger James Dol, the purchaser of unit 218.
26. Mr. Andrew takes issue with the statement in paragraph 64(a) of the First Report that the Trustee had been informed that Mr. Andrew was a former employee of

JKRC. Mr. Andrew indicates that he is not a former employee, but knows Mr. Mady, who he has had business dealings with over the past few years.

27. The Trustee has spoken with Mr. Mady and it appears that there was a misunderstanding that the Trustee wishes to correct. Mr. Mady has confirmed that Mr. Andrew is not a former employee of the MADY Group, but Mr. Andrew's company was a sub-trade that worked on several MADY Group projects.

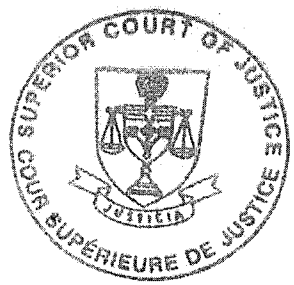
All of which is respectfully submitted to this Court as of this 1<sup>st</sup> day of June, 2015.

**COLLINS BARROW TORONTO LIMITED**  
In its capacity as Trustee under the *Construction Lien Act* of Jade-Kennedy Development Corporation as owner of South Unionville Square and not in its personal capacity

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

Bryan A. Tannenbaum, FCPA, FCA, FCIRP  
President

# APPENDIX "A"



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

THE HONOURABLE Mr. ) WEDNESDAY, THE 11<sup>th</sup> DAY  
 )  
JUSTICE P. H. H. ) OF FEBRUARY, 2015

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

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

**ORDER**  
(appointing trustee)

**THIS APPLICATION** made by the Applicant, Jade-Kennedy Development Corporation, for an Order pursuant to section 68(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "CLA") appointing Collins Barrow Toronto Limited as trustee (the "Trustee") of the Property (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Charles Mady sworn February 5, 2015 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and counsel for those other

parties listed on the Counsel Slip, no one else appearing although duly served as appears from the affidavit of service of Sam Rappos sworn February 9, 2015, and on reading the consent of Collins Barrow Toronto Limited to act as the Trustee,

**SERVICE**

1. **THIS COURT ORDERS** that the time for and manner of 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 68(1) of the CLA, Collins Barrow Toronto Limited is hereby appointed Trustee, without security, of the lands and premises legally described in Schedule "A" attached hereto, and comprised of, among other things, commercial/retail and residential condominium units, and vacant lands, commonly known as South Unionville Square (the "Property").

**TRUSTEE'S POWERS**

3. **THIS COURT ORDERS** that the Trustee 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 Trustee is hereby expressly empowered and authorized to do any of the following where the Trustee considers it necessary or desirable:

- (a) to act as receiver and manager of the Property;
- (b) 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;

- (c) 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 engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;
- (d) to engage consultants, agents, 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 Trustee's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, or other assets to assist with the exercise of the Trustee's powers and duties, including without limitation those conferred by this Order;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Applicant in respect of the Property, and to exercise all remedies of the Applicant in collecting such monies, including, without limitation, to enforce any security held by the Applicant;
- (g) to settle, extend or compromise any indebtedness owing to the Applicant;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Trustee's name or in the name and on behalf of the Applicant, for any purpose pursuant to this Order;
- (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

- 4 -

Applicant, the Property or the Trustee, 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;

- (j) to complete the existing agreements of purchase and sale reproduced in the Confidential Appendix "1" for the 18 pre-sold South Unionville Square Phase II commercial/retail condominium units that forms part of the Property (collectively, the "Sold Units");
- (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 Trustee in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof, with the approval of this Court;
- (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 Trustee deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;

\* Subject to solicitor and client privilege

- 5 -

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to the Property;
- (p) to apply for any permits, licences, approvals, declarations, 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 Trustee, in the name of the Applicant; and
- (q) 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 Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Applicant, and without interference from any other Person.

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

4. **THIS COURT ORDERS** that (i) the Applicant, (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 grant immediate and continued access to the Property to the Trustee.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee 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 Applicant, 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 Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee 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 Trustee 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 Trustee for the purpose of allowing the Trustee 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 Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE TRUSTEE**

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

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

8. **THIS COURT ORDERS** that, subject to the provisions of paragraph 9, no Proceeding against or in respect of the Applicant or the Property, including without limitation any Proceeding commenced under the CLA against the Applicant or mortgagees of the Property, shall be commenced or continued except with the written consent of the Trustee or with leave of this Court and any and all such Proceedings currently under way are hereby stayed and suspended pending further Order of this Court. Any request by construction lien claimants to mortgagees pursuant to section 39 of the CLA for particulars or information with respect to outstanding encumbrances, shall be directed to, and responded by, the Trustee upon being provided the requested information by the mortgagees.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Applicant, the Trustee, or affecting the Property, are hereby stayed and suspended, except with the written consent of the Trustee or leave of this Court, provided that nothing in this paragraph shall (i) empower the Trustee or the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Trustee or the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment, or (iii) prevent the registration of claims for lien, the issuance of statements of claim and the registration of certificates of action by

construction lien claimants, provided that no further steps to enforce the liens may be taken by the lien claimants without consent of the Applicant and Trustee or leave of this Court.

#### **NO INTERFERENCE WITH THE TRUSTEE**

10. **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 Applicant, without written consent of the Trustee or leave of this Court.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

11. **THIS COURT ORDERS** that no Proceeding may be commenced or continued against any of the former or current directors, officers or management of the Applicant, and any person, including an employee or agent of the Applicant, who had effective control of the Applicant or its relevant activities, with respect to any claim against such persons that arose before the date hereof and whereby such persons are alleged under any law to be liable, including the CLA, except with the prior written consent of the Trustee or leave of this Court.

#### **CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, equipment, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Applicant 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 Trustee, and that the Trustee shall be entitled to the continued use of the

Applicant'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 Trustee in accordance with arrangements as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

**TRUSTEE TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Trustee from and after the making of this Order from any source whatsoever, including without limitation the sale(s) 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 Trustee (the "Post Trusteeship Accounts") and the monies standing to the credit of such Post Trusteeship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Trustee 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 Applicant shall remain the employees of the Applicant until such time as the Trustee, on the Applicant's behalf, may terminate the employment of such employees. The Trustee shall not be liable for any employee-related liabilities, including any successor employer liabilities, other than such amounts as the Trustee may specifically agree in writing to pay.

**PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Trustee 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 Trustee, or in the alternative destroy all such information. The purchaser of any part of the 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 Applicant, and shall return all other personal information to the Trustee, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee 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 Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee'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 TRUSTEE'S LIABILITY**

17. **THIS COURT ORDERS** that the Trustee 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. Nothing in this Order shall derogate from the protections afforded the Trustee by any applicable legislation.

#### **ACCOUNTS**

18. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to the Applicant 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 Trustee, counsel to the Trustee and counsel to the Applicant shall be entitled to and are hereby granted a charge (the "**Administration 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 Administration Charge shall form a first charge on the Property in priority to all any and all existing and future security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, construction liens, encumbrances, claims of secured creditors (whether contractual, statutory or

otherwise), executions, or charges, whether or not they have attached or been perfected, registered or filed (collectively, the "Claims") in favour of any Person.

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

20. THIS COURT ORDERS that the Trustee 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 Trustee, its counsel, or counsel to the Applicant, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**BORROWING POWERS**

21. THIS COURT ORDERS that the Trustee 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 \$500,000 (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 Trustee 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 "Trustee's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all Claims in favour of any Person, but subordinate in priority to the Administration Charge.

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

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

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Trustee pursuant to this Order or any further order of this Court and any and all Trustee'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 Trustee's Certificates.

**RETENTION OF LAWYERS**

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

**SERVICE AND NOTICE**

26. **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 <http://www.collinsbarrow.com/en/toronto-ontario/SUSQ>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee 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 Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant 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.

28. **THIS COURT ORDERS** that the Applicant, the Trustee 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).

SEALING

29. THIS COURT ORDERS that Confidential Appendix "1" is hereby sealed and shall not form part of the public record until further order of the Court.

*\* completion of the last transaction \**

*OP*

GENERAL

30. THIS COURT ORDERS that the Trustee 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 Trustee from acting as receiver or trustee in bankruptcy of the Applicant.

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 Trustee 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.

*[Handwritten Signature]*

ENTERED AT / ENREGISTRÉ À TORONTO  
ON / ENREGISTRÉ LE  
LE / DANS LE REGISTRE NO.

FEB 11 2015  
*MB*

**SCHEDULE "A"**

**Phase I Commercial Units**

PIN	Property Description
29759-0060 (LT)	Unit 60, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0073 (LT)	Unit 73, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0074 (LT)	Unit 74, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0075 (LT)	Unit 75, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0403 (LT)	Unit 49, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0492 (LT)	Unit 138, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0500 (LT)	Unit 146, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0528 (LT)	Unit 146, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0535 (LT)	Unit 181, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0563 (LT)	Unit 209, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0604 (LT)	Unit 250, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham

PIN	Property Description
29759-0670 (LT)	Unit 316, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0673 (LT)	Unit 319, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0702 (LT)	Unit 348, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0714 (LT)	Unit 360, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0715 (LT)	Unit 361, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0742 (LT)	Unit 388, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0743 (LT)	Unit 389, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0744 (LT)	Unit 390, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0745 (LT)	Unit 391, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0746 (LT)	Unit 392, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0747 (LT)	Unit 393, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0748 (LT)	Unit 394, Level 2, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham

PIN	Property Description
29759-0774 (LT)	Unit 25, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0805 (LT)	Unit 56, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-0806 (LT)	Unit 57, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham
29759-08014 (LT)	Unit 65, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to easements as set out in Schedule A as in YR1966697; City of Markham

**Unsold Residential Units**

PIN	Property Description
29796-0007 (LT)	Unit 7, Level 1, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0024 (LT)	Unit 14, Level 2, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0146 (LT)	Unit 22, Level 7, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0223 (LT)	Unit 11, Level 11, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0247 (LT)	Unit 15, Level 12, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0250 (LT)	Unit 18, Level 12, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham

PIN	Property Description
29796-0255 (LT)	Unit 4, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0277 (LT)	Unit 26, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0301 (LT)	Unit 50, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0331 (LT)	Unit 80, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0376 (LT)	Unit 125, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0429 (LT)	Unit 178, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0430 (LT)	Unit 179, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0439 (LT)	Unit 188, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0533 (LT)	Unit 282, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0578 (LT)	Unit 327, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0581 (LT)	Unit 330, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0584 (LT)	Unit 333, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham

PIN	Property Description
29796-0586 (LT)	Unit 335, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham
29796-0624 (LT)	Unit 373, Level B, York Region Standard Condominium Plan No. 1265 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR2185723; City of Markham

Phase II Commercial Units

PIN	Property Description
29759-0834 (LT)	Unit 355, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0835 (LT)	Unit 356, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0836 (LT)	Unit 357, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0837 (LT)	Unit 358, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0838 (LT)	Unit 359, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0839 (LT)	Unit 360, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0840 (LT)	Unit 361, Level 1, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0841 (LT)	Unit 85, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham

PIN	Property Description
29759-0842 (LT)	Unit 86, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0843 (LT)	Unit 87, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0844 (LT)	Unit 88, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0845 (LT)	Unit 89, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0846 (LT)	Unit 90, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0847 (LT)	Unit 91, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0848 (LT)	Unit 92, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0849 (LT)	Unit 93, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0850 (LT)	Unit 94, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0851 (LT)	Unit 95, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0852 (LT)	Unit 96, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham
29759-0853 (LT)	Unit 97, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham



PIN	Property Description
29759-0854 (LT)	Unit 98, Level A, York Region Standard Condominium Plan No. 1228 and its Appurtenant interest; Subject to and together with easements as set out in Schedule A as in YR1966697; City of Markham

Vacant Lands

PIN	Property Description
02963-2965 (LT)	Pt Lt 2 PL 2196 Markham, Pt 9 65R27668 ; T/W Row Over Pt Lt 2 PL 2196 Markham, Pts 10, 11 & 12, 65R27668, until such time as said Pts 10, 11 & 12, 65R27668 have been dedicated as part of public highway, as in YR623430 ;; Town of Markham
02963-2972 (LT)	Pt Lt 2 PL 2196 Markham, Pt 8 65R27668 ; T/W Row Over Pt Lt 2 PL 2196 Markham, Pts 2, 3, 5, 6 & 7, 65R27668, until such time as said Pts 2, 3, 5, 6 & 7, 65R27668 have been dedicated as part of public highway, as in YR623430 ;; Town of Markham
02963-3571 (LT)	Pt Lt 2 PL 2196, Being Pts 2 & 3 PL 65R33603 ;; Town of Markham
02963-3579 (LT)	Part Lot 1 Plan 2196, Pts 1 and 2 on 65R33243.; Town of Markham
02963-3587 (LT)	Pt Lt 2 PL 2196, Pt 10 65R33243, S/T Easement in Gross, as in YR767057 ;; Town of Markham

SCHEDULE "B"

TRUSTEE CERTIFICATE

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

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

1. THIS IS TO CERTIFY that Collins Barrow Toronto Limited, the trustee (the "Trustee") of the Property appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 11<sup>th</sup> day of February, 2015 (the "Order") made in an application having Court file number \_\_-CL-\_\_\_\_\_, has received as such Trustee from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Trustee is authorized to borrow under and pursuant to the Order.

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.

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 Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the Claims (as defined in the Order) of any other person, but subject to the priority of the charges set out in the Order, and the right of the Trustee to indemnify itself out of such Property in respect of its remuneration and expenses.

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.

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 Trustee to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

7. The Trustee 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 Trustee of the Property,  
and not in its personal capacity

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

IN THE MATTER OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED  
AND IN THE MATTER OF AN APPLICATION MADE BY JADE-KENNEDY DEVELOPMENT CORPORATION  
FOR THE APPOINTMENT OF A TRUSTEE UNDER SECTION 68(1)  
OF THE CONSTRUCTION LIEN ACT, R.S.O. 1990, c. C.30, AS AMENDED

Court File No. CV-15-10882-00 CL

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

Proceedings commenced at Toronto

**ORDER**  
(appointment of a trustee)

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

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**Lawyers for the Applicant,**  
**Jade-Kennedy Development Corporation**

# **APPENDIX “B”**

Court File No. CV-15-10882-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF THE APPLICATION MADE BY JADE-KENNEDY  
DEVELOPMENT CORPORATION FOR THE APPOINTMENT OF A TRUSTEE  
UNDER SECTION 68(1) OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990, c. C. 30**

**FIRST REPORT TO THE COURT OF COLLINS BARROW TORONTO LIMITED AS  
CONSTRUCTION LIEN TRUSTEE OF SOUTH UNIONVILLE SQUARE**

**APRIL 23, 2015**

## INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated February 11, 2015 (the "**Appointment Order**"), Collins Barrow Toronto Limited ("**CBTL**") was appointed trustee (the "**Trustee**") pursuant to Section 68(1) of the *Construction Lien Act* (Ontario) ("**CLA**"), of the lands and premises legally described in Schedule "A" of the Appointment Order comprised of, among other things, commercial and residential condominium units, and vacant land owned by Jade-Kennedy Development Corporation ("**JKDC**") and commonly known as South Unionville Square ("**SUSQ**") (the "**Property**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**.
2. The Appointment Order authorized the Trustee to, among other things, act as receiver and manager of the Property, and take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property. In addition, the Trustee was authorized to complete the existing agreements of purchase and sale for the 18 pre-sold commercial units in Phase II of the Property and to sell the remaining units in Phases I and II of the Property and the vacant land comprising Phase III.
3. Publicly available information relating to this proceeding has been posted on the Trustee's website, which can be found at:

<http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>

## PURPOSE OF FIRST REPORT

4. The purpose of this first report of the Trustee (the "**First Report**") is to:
- (a) report to the Court on the activities of the Trustee since its appointment;
  - (b) provide the Court with a summary of the Trustee's receipts and disbursements for the period February 11, 2015 to April 10, 2015;
  - (c) request that the Court grant Orders:
    - (A) approving the First Report and the conduct and activities of the Trustee described therein;
    - (B) authorizing and empowering the Trustee to execute, issue and endorse documents of whatever nature in respect of the Property in the name and on behalf of Jade-Kennedy Residential Corporation ("**JKRC**"), and take all necessary steps in the name and on behalf of JKRC in respect of the Property, for any purpose pursuant to the Appointment Order;
    - (C) authorizing the Trustee to terminate or disclaim four (4) residential Agreements of Purchase and Sale that were entered into by JKRC with construction lien claimants prior to the commencement of this proceeding at a time when JKRC and JKDC were insolvent and for no cash consideration;



- (D) authorizing the Trustee to terminate or disclaim two (2) residential Agreements of Purchase and Sale that were entered into by JKRC on the eve of the Trustee's appointment for purchase prices that were substantially below the listing prices and at a time when JKRC and JKDC were insolvent;
- (E) vesting the right, title and interest of JKDC in the Terrace Unit (as defined below) to York Region Standard Condominium Corporation ("YRSCC") No. 1265 pursuant to the Condominium Declaration (as defined below), free and clear of all encumbrances and claims; and
- (F) approving a claims process for the submission, review and determination of all lien claims pursuant to the *CLA* for the provision of services and materials prior to February 11, 2015 with respect to the Property.

## TERMS OF REFERENCE

5. In preparing this First Report and making the comments herein, the Trustee has relied upon unaudited financial information, the books and records of JKDC, discussions with management and employees of JKDC and other companies within the MADY group of companies (the "**MADY Group**"), and information received from other third-party sources (collectively, the "**Information**"). Certain of the information contained in this First Report may refer to, or is based on, the

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

## **BACKGROUND INFORMATION**

6. The MADY Group is a diversified real estate development group with commercial and residential business operations across North America. JKDC was incorporated on January 30, 2008 for the purpose of being the registered owner and developer of the SUSQ project. JKDC is a party that is related to the MADY Group and is an Ontario corporation with its registered office located in Markham, Ontario.
7. The SUSQ project was developed and constructed in three phases:

### **Phase I**

8. Phase I of the project was the development and construction of a T&T Supermarket and a commercial condominium project with units for retail, restaurant, office and medical services. In addition, there are more than 1,250 parking spaces for the supermarket and the commercial units.

9. Construction of Phase I was substantially completed on March 5, 2013 and the condominium declaration was registered on April 17, 2013 (the "**Condominium Declaration**"), when YRSCC No. 1228 was created. The turnover meeting was held on July 8, 2013.
10. There are 18 commercial units that are still to be sold by the Trustee ("**Phase I Commercial Units**").
11. YRSCC 1228 is managed by PH Property Management & Consulting Inc.

## **Phase II**

12. Phase II of the SUSQ project involved the development and construction of a 12-storey condominium-apartment tower, which contains 253 residential units, 21 commercial units located under the residential units ("**Phase II Commercial Units**"), and 312 parking units.
13. Phase II was constructed in two stages. The first stage was the development and construction of the residential units known as "The Residences at South Unionville Square". Construction was substantially complete on June 10, 2014 and the condominium declaration was registered on September 11, 2014, when YRSCC No. 1265 was created. The turnover meeting was held on November 17, 2014. YRSCC No. 1265 is managed by First Service Residential.
14. At the time of the Trustee's appointment, according to the books and records of JKDC, there were six residential units, six lockers and eight parking units still to be sold. However, as noted in further detail below, the Trustee determined that

sale agreements had been entered into for four of these residential units for no cash consideration, and sale agreements were entered into for the remaining two residential units on the eve of the Trustee's appointment at prices that were substantially below the listing prices. The Trustee is seeking the Court's authorization to terminate or disclaim these sale agreements and re-list the six residential units and related parking and lockers units for sale in addition to the two parking units that are available.

15. The second stage of the development and construction of Phase II was with respect to the Phase II Commercial Units. The Appointment Order authorized the Trustee to complete the existing sale agreements for 18 pre-sold Phase II Commercial Units that were scheduled to close February 17, 2015. Harris Sheaffer LLP ("**Harris Sheaffer**"), condominium law lawyers to JKDC and JKRC, assisted the Trustee in completing these transactions. The status of these closings is detailed below. In addition, there are three additional Phase II Commercial Units that were used as offices by JKDC that the Trustee has been authorized to sell.
16. On January 16, 2015, the registered owner of the land where the Phase II Commercial Units were located was transferred from JKDC to YRSCC 1228. In addition, the single parcel of land was divided into 21 separate parcels that comprise the Phase II Commercial Units. As a result of this amendment, the Phase II Commercial Units now form part of YRSCC 1228 and therefore are managed by PH Property Management & Consulting Inc.

**Units Sold Below Fair Market Value**

61. On February 23, 2015, the Trustee was informed by Harris Sheaffer that they had received documentation for the sale of two (2) residential units that were entered into by JKRC on February 9, 2015 and scheduled to close on March 16, 2015. These units were not on the list of pre-sold units that the Trustee was authorized to close pursuant to the Appointment Order, and the Trustee was not previously aware of these sales.

62. The sale agreements for the two residential units in question as are follows:

(a) Agreement of Purchase and Sale dated February 9, 2015 between JKRC and Roger James Dol for the sale of Unit 218 (**Unit 218**) for the purchase price of \$200,000 and a deposit of \$5,000 (the **Unit 218 APS**), a copy of which is attached hereto as **Appendix "K"**; and

(b) Agreement of Purchase and Sale dated February 9, 2015 between JKRC and Anna Gayle Andrew for the sale of Unit 117 (**Unit 117**) for the purchase price of \$200,000 and a deposit of \$5,000 (the **Unit 117 APS**), a copy of which is attached hereto as **Appendix "L"**.

63. Based on discussions with representatives of JKDC, the Trustee understands that Unit 117 had previously been listed for sale for \$270,900 and Unit 218 had been listed for sale for \$271,900.

64. The Trustee:

- (a) has been informed by MADY Group management that the spouse of Anna Andrew is a former employee of JKRC, and Roger James Dol is a friend or acquaintance of the Andrews;
  - (b) was approached by a realtor that indicated that they could bring forward an offer for Unit 117 at an amount that was materially higher than the purchase price under the Unit 117 APS; and
  - (c) has been informed by a realtor that the last sales of similar residential units took place in the Fall of 2014 at substantially higher prices.
65. Chaitons, as counsel to the Trustee, sent letters to the purchasers dated March 12, 2015, and informed the Purchasers that the Sale Agreements did not represent fair market value for the units and that the Trustee would be seeking Court authorization to terminate the sale agreements. Copies of these letters are attached as **Appendix "M"** hereto.
66. Chaitons has been informed that the purchasers have retained counsel and intend to oppose any motion by the Trustee to terminate the agreements and will seek an order compelling the Trustee to complete the sale agreements.
67. Given the facts set out above, and given that the sale agreements were executed by JKRC at a time when JKRC and JKDC were insolvent and only two days prior to the hearing of JKDC's application for the appointment of the Trustee, the Trustee is of the view that such transactions, if completed, would constitute improvident sales at amounts materially below fair market value and would be

# APPENDIX “C”

Court File No.

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

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

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

**AFFIDAVIT OF CHARLES MADY  
(sworn February 5, 2015)**

I, CHARLES MADY, of the City of Markham, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am Chief Executive Officer of MADY Development Corporation (“MADY”) and President of Jade-Kennedy Development Corporation (“JKDC”). The facts set forth herein are within my personal knowledge, determined from the face of the documents attached hereto as exhibits, and from information and advice provided to me by others. Where I have relied upon such information and advice, I have identified its source and I verily believe it to be true.

**Overview**

2. JKDC was the developer of the South Unionville Square condominium project located in Markham, Ontario. JKDC is the registered owner of: (i) 23 commercial/retail units and 4



parking units located in Phase I of the project; (ii) 21 commercial/retail units located in Phase II of the project; (iii) 6 residential units, 8 parking units, and 6 locker units located in Phase II of the project; and (iv) vacant lands originally intended to be used for the construction of 13 freehold townhomes and 2 single detached homes in Phase III of the project.

3. JKDC is insolvent. It is in default of its loan obligations to its mortgagees, which are currently owed in excess of \$5.0 million. There are 18 construction liens totaling approximately \$3.92 million registered against title to all or parts of the properties. The lien claimants have no way of recovering any payment at this time. It is in the best interest of all stakeholders for a construction lien trustee to be appointed to complete the closing of 18 commercial/retail units in Phase II that are scheduled to close on February 17, 2015, sell the vacant lands, market and sell the unsold commercial/retail and residential units in Phase II, market and sell the unsold commercial/retail units located in Phase I, and distribute the sale proceeds pursuant to Court order.

#### The MADY Group and JKDC

4. The MADY Group is a diversified real estate development group with commercial and residential business operations across North America. I am the founder of the MADY Group, which was established over 40 years ago in Windsor, Ontario. The MADY Group currently has offices in Markham and Windsor, Ontario.

5. The MADY Group builds condominiums, mixed-use developments and commercial retail developments, and has a current development portfolio of more than 1,500 condos, over 1.5 million square feet of retail projects, and several retirement communities.

6. The MADY Group also includes a construction division. In many of our projects, we provide construction management services through a member of the MADY Group, Mady Contract Division (2009) Ltd. ("MCDL").

7. JKDC is a party that is related to the MADY Group and is an Ontario corporation with its registered office located in Markham, Ontario. A copy of a Corporate Profile Report for JKDC is attached hereto and marked as Exhibit "A".

**South Unionville Square**

8. One of the MADY Group's current development projects is a mixed-use development project known as "South Unionville Square". South Unionville Square is situated on Kennedy Road, north of Highway 407, in Markham, Ontario. South Unionville Square is bordered by South Unionville Avenue to the south, Castan Avenue to the north, Kennedy Road to the west and Unity Garden Drive to the east. The Vacant Lands (as defined below) are adjacent to South Unionville Square.

9. The development and construction of South Unionville Square and the Vacant Lands was planned to occur in three phases.

**Phase I**

10. Phase I of the project was the development and construction of a T&T Supermarket and a commercial/retail condominium project with units for retail, restaurant, office and medical services. The commercial/retail units are located above the supermarket. Additionally, there are more than 1250 parking spaces for the supermarket and the commercial/retail units. MCDL was the construction manager for Phase I of South Unionville Square.

11. Construction of Phase I was substantially completed as of March 15, 2013. The condominium declaration was registered on April 17, 2013. York Region Standard Condominium Corporation #1228 ("YRSCC 1228") was created on April 17, 2013. The turnover meeting for YRSCC 1228 was held on July 8, 2013.

12. There remain 23 commercial/retail units and 4 parking units from Phase I that are still to be sold (collectively, the "Phase I Commercial Units"). Copies of the parcel registers for the Phase I Commercial Units are collectively attached hereto and marked as Exhibit "B".

13. All of the work on the Phase I Commercial Units has been completed by MCDL.

Phase II

14. Phase II of the project was the development and construction of a 12 storey condominium apartment tower, which contains 253 residential units, 21 commercial/retail units located in the tower under the residential units (collectively, the "Phase II Commercial Units"), and 312 parking units.

15. Construction of Phase II was completed in two stages. The first stage was the development and construction of the residential units, which is known as "The Residences at South Unionville Square". MCDL was the construction manager for The Residences at South Unionville Square.

16. Construction of The Residences at South Unionville Square was substantially completed as of June 10, 2014. The condominium declaration was registered on September 11, 2014. York Region Standard Condominium Corporation #1265 ("YRSCC 1265") was created on September 11, 2014. The turnover meeting for YRSCC 1265 was held on November 17, 2014.

17. There remain 6 residential units, 8 parking units and 6 locker units that are still to be sold (collectively, the "Unsold Residential Units"). Copies of the parcel registers for the Unsold Residential Units are collectively attached hereto and marked as Exhibit "C".

18. All work has been completed on the Unsold Residential Units.

19. The second stage of the development and construction of Phase II is with respect to the Phase II Commercial Units. All of the work on the Phase II Commercial Units, almost all of which has been completed, has been performed by MCDL.

20. Prior to January 6, 2015, the land where the Phase II Commercial Units are located was evidenced by a single parcel register with Parcel Identification Number (PIN) 02963-3694 (LT). The registered owner of the parcel was JKDC. A copy of the parcel register is attached hereto and marked as Exhibit "D".

21. On January 5, 2015, JKDC registered an amendment to the YRSCC 1228 declaration dated April 17, 2013. As a result of the amendment, the Phase II Commercial Units now form part of the YRSCC 1228 declaration. The single parcel register was then retired on January 6, 2015 and was divided into 21 separate parcel registers. Copies of the parcel registers for the 21 PINs that now comprise the Phase II Commercial Units are collectively attached hereto and marked as Exhibit "E".

### Phase III

22. Phase III of the project was the planned development and construction of 13 freehold townhomes and 2 single detached homes on vacant lands owned by JKDC. The vacant lands are located just south of South Unionville Square, and are bordered by Helen Avenue to the south,

South Unionville Avenue to the north, Kennedy Road to the west and Unity Garden Drive to the east. Copies of the parcel registers for the five (5) PINs that comprise the vacant lands are collectively attached hereto and marked as Exhibit "F" (collectively, the "Vacant Lands").

23. On December 9, 2014, JKDC received an agreement of purchase and sale for the Vacant Lands from Primont Homes (Harmony) Inc. The agreement contemplated a closing date of February 6, 2015 and was to become null and void if it was not signed by JKDC by January 21, 2015.

24. Given the financial difficulties faced by JKDC as discussed below, it was determined that JKDC would be unable to complete a sale of the Vacant Lands by February 6, 2015. As a result, JKDC did not sign the agreement.

### Mortgagees

#### Aviva

25. In connection with the proposed development of South Unionville Square, JKDC obtained a \$7.4 million residential deposit insurance facility, a \$2 million commercial deposit insurance facility, and a \$5.0 million Tarion Warranty Corporation Bond from Aviva Insurance Company of Canada ("Aviva"). The facilities and the Tarion Warranty Corporation Bond were obtained to satisfy and secure JKDC's deposit and warranty obligations under the *Ontario New Home Warranties Plan Act*. JKDC also entered into an indemnity agreement in favour of Aviva and agreed to indemnify Aviva from any losses or claims Aviva may suffer in connection with the issuance of the Bond.

26. As security for the obligations JKDC owes to Aviva, JKDC granted:

- (a) a charge/mortgage in the principal amount of \$30,000,000 in favour of Aviva, which charge/mortgage is registered on title to the Phase I Commercial Units and the Phase II Commercial Units as of February 24, 2010, 2011 as Instrument No. YR1444874 (the "First Aviva Charge"). A copy of the First Aviva Charge is attached hereto and marked as **Exhibit "G"**; and
- (b) a charge/mortgage in the principal amount of \$16,500,000 in favour of Aviva, which charge/mortgage is registered on title to the Phase II Commercial Units and the Unsold Residential Units as of October 3, 2011, as Instrument No. YR1721683 (the "Second Aviva Charge"). A copy of the Second Aviva Charge is attached hereto and marked as **Exhibit "H"**;

27. As of February 4, 2015, I am not aware of any claims having been made to Aviva in connection with the Taron Warranty Corporation Bond issued in connection with South Unionville Square.

Laurentian

28. The development and construction of South Unionville Square was financed by credit facilities made available to JKDC by Laurentian Bank of Canada ("Laurentian"). Laurentian has been granted, among other things:

- (a) a charge/mortgage in the principal amount of \$45,000,000, which charge/mortgage is registered on title to the Phase II Commercial Units, certain of the Unsold Residential Units, and the Vacant Lands, as of December 23, 2011 as Instrument No. YR1763873 (the "\$45 Million Laurentian Charge"). A copy of the \$45 Million Laurentian Charge is attached hereto and marked as **Exhibit "I"**;

- (b) a charge/mortgage in the principal amount of \$3,600,000, which charge/mortgage is registered on title to certain of the Phase I Commercial Units as of October 1, 2014 as Instrument No. YR2195650 (the “\$3.6 Million Laurentian Charge”). A copy of the \$3.6 Million Charge is attached hereto and marked as **Exhibit “J”**; and
  - (c) a charge/mortgage in the principal amount of \$2,400,000, which charge/mortgage is registered on title to certain of the Phase I Commercial Units as of October 1, 2014 as Instrument No. YR2195651 (the “\$2.4 Million Laurentian Charge”). A copy of the \$2.4 Million Charge is attached hereto and marked as **Exhibit “K”**.
29. JKDC has repaid Laurentian in full in connection with the \$45 Million Laurentian Charge from net sale proceeds from the sale of residential units in The Residences at South Unionville Square.
30. The \$3.6 Million Laurentian Charge and the \$2.4 Million Laurentian Charge are collateral mortgages that secure the obligations of 144 Park Ltd. (“144”), a company that is related to the MADY Group, under a bridge loan facility from September 2014.
31. Collins Barrow Toronto Limited (“**Collins Barrow**”) was appointed as trustee of the property owned by 144 pursuant to the Order of The Honourable Mr. Justice Penny dated January 22, 2015, a copy of which is attached hereto and marked as **Exhibit “L”**.
32. It is anticipated that Laurentian will receive payment of all indebtedness owed to it by 144 later this year.

33. Additionally, Laurentian is holding approximately \$5.0 million in cash collateral in connection with letters of credit that were issued by Laurentian. It is anticipated that such funds will not be released until sometime in the fall of this year, as certain of the letters of credit have been issued in favour of the City of Markham, and there are certain steps that remain to be completed in connection with JKDC's site plan and certain construction agreements.

Am-Stat Corporation

34. JKDC and related companies obtained financing from Am-Stat Corporation ("Am-Stat") in the amount of \$10,000,000 pursuant to a commitment letter dated August 6, 2013, a copy of which is attached hereto and marked as **Exhibit "M"**.

35. As security for the financing, JKDC granted a charge/mortgage in the principal amount of \$10,000,000 in favour of Am-Stat, which charge/mortgage was registered on title to the Phase II Commercial Units, the Vacant Lands and the Unsold Residential Units as of September 4, 2013 as Instrument No. YR2029025 (the "**Am-Stat Charge**"). A copy of the Am-Stat Charge is attached hereto and marked as **Exhibit "N"**.

MarshallZehr

36. MarshallZehr Group Inc. ("**MarshallZehr**") provided construction financing to 144. As collateral security for payment by 144 of its indebtedness to MarshallZehr, JKDC granted a charge/mortgage in the principal amount of \$8,000,000, which charge/mortgage was registered on title to certain of the Phase I Commercial Units on December 19, 2014 as Instrument No. YR2234798 (the "**MarshallZehr Charge**"). A copy of the MarshallZehr Charge is attached hereto and marked as **Exhibit "O"**.



### Status of South Unionville Square Project

37. Almost all of the work on the Phase II Commercial Units has been completed and sales of 18 of the 21 units are scheduled to close on February 17, 2015. Copies of the agreements of purchase and sale for the 18 Phase II Commercial Units will be provided to the Court in a confidential appendix, and JKDC will be requesting that the appendix be sealed by the Court pending the closing of the sale transactions or further order of the Court.

38. These sale transactions are expected to generate net sale proceeds, including deposits currently being held in trust by counsel to JKDC, of approximately \$4.65 million.

39. These sale transactions cannot close, and sales of the Phase I Commercial Units, the 3 unsold Phase II Commercial Units, the Unsold Residential Units and the Vacant Lands, cannot be completed as a result of the registration of the construction liens discussed below.

### Financial Difficulties

40. In 2014, JKDC began to experience financial difficulties in connection with South Unionville Square as a result of, among other things:

- (a) cost overruns due to missing scope of work in construction documents;
- (b) severe winter weather in 2013/2014 that resulted in delays;
- (c) changes to sitework and landscaping requested by the City of Markham (the "City"); and
- (d) delays in intersection improvements by the City and the Regional Municipality of York causing a delay in sitework commencement.

41. As a result of such financial difficulties, JKDC is in default of its obligations under the Am-Stat commitment letter and the Am-Stat Charge.

42. By a letter dated January 8, 2015, Am-Stat demanded immediate payment of JKDC's obligations under the commitment letter. Am-Stat has also delivered a notice of its intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada). Copies of the demand letter and notice is attached hereto and marked as Exhibit "P".

43. As of January 19, 2015, JKDC was indebted to Am-Stat pursuant to the terms of the commitment letter for principal and interest in the aggregate amount of \$5,005,399.89, as set out in Am-Stat's mortgage statement dated January 19, 2015, a copy of which is attached hereto and marked as Exhibit "Q".

44. The only source of revenue to repay the Am-Stat loan and other amounts owing by JKDC is the sale proceeds of the remaining South Unionville Square project commercial and residential units and the Vacant Lands.

**Construction Lien and Condominium Lien Claimants**

45. I have been informed by Sam Rappos of Chaitons LLP, JKDC's legal counsel, that between November 27, 2014 and February 3, 2015, eighteen (18) construction liens, with an aggregate value of approximately \$3.92 million, have been registered against title to all or parts of the Phase I Commercial Units, the Phase II Commercial Units, the Unsold Residential Units, and the Vacant Lands, as described in further detail below:

- 12 -

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
YR2222182	November 27, 2014	Global Mechanical Ltd.	\$102,625.69	Plumbing, heating and sprinklers
YR2222710	November 28, 2014	Global Fire Protection Ltd.	\$14,464.88	Sprinklers
YR2222713	November 28, 2014	Global Mechanical Ltd.	\$195,011.90	Plumbing, heating and HVAC
YR2230304	December 11, 2014	Frendel Kitchens Limited	\$226,447.41	Supply and install kitchen cabinets and bathroom vanities
YR2232092	December 15, 2014	2050491 Ontario Inc.	\$501,133.07	Supply and install of landscape construction, planting, concrete, irrigation, site works
YR2233490	December 17, 2014	Global Precast Inc.	\$132,901.63	Supply and install of architectural precast concrete work
YR2235281	December 19, 2014	Guest Tile Inc	\$249,916.12	Flooring materials and installation
YR2235938	December 22, 2014	Sereen Painting Ltd.	\$200,000	All painting, wallpaper, supply materials and equipment
YR2236748	December 24, 2014	Triumph Roofing and Sheet Metal Inc.	\$81,519.39	Rubberized asphalt membrane roofing system, flashing, metal fascia, cladding, sheet metal and accessories
YR2237716	December 30, 2014	Dircam Electric Limited	\$822,796.98	Electrical contracting and electrical supplies
YR2237952	December 30, 2014	Great Pyramid Aluminum Ltd.	\$62,154.31	Supply and install frameless shower enclosures, entrance door,

Instrument No.	Registration Date	Lien Claimant	Amount of Lien	Services / Materials
				handrails, guardrails and door lock
YR2238302	December 31, 2014	Guest Tile Inc.	\$249,916.12	Flooring materials and installation
YR2238316	December 31, 2014	Draglam Waste & Recycling Inc.	\$10,825.95	Supply of 40 YD bin service
YR2238636	January 2, 2015	Procan Inc.	\$11,978	Custom passive graphic - electrical
YR2240570	January 8, 2015	CRS Contractors Rental Supply General Partner Inc.	\$37,604.19	Rental and/or sale of construction and related equipment/materials
YR2246193	January 21, 2015	Brody Wall System Ltd.	\$82,529	Supply of material and labour in relation to precast, stucco and wall systems
YR2248368	January 27, 2015	Imperial Trim Supply Ltd.	\$601,565.63	Supply and installation of trim-work, doors and all-related and associated items
YR2249452	January 29, 2015	Aluminium Window Design Installations Inc.	\$333,239.18	Supply and installation of windows, doors and railings

46. Additionally, YRSCC 1265 and YRSCC 1228 have registered the following condominium liens against title to certain of the Phase I Commercial Units and the Unsold Residential Units for unpaid common expenses:

Instrument No.	Registration Date	Lien Claimants	Amount of Lien
YR2195007	October 1, 2014	YRSCC 1228	\$13,139
YR2061499	November 18, 2013	YRSCC 1228	\$839
YR2061500	November 18, 2013	YRSCC 1228	\$839
YR2061501	November 18, 2013	YRSCC 1228	\$839
YR2061503	November 18, 2013	YRSCC 1228	\$917
YR2061504	November 18, 2013	YRSCC 1228	\$917
YR2061505	November 18, 2013	YRSCC 1228	\$917
YR2061506	November 18, 2013	YRSCC 1228	\$917
YR2062936	November 20, 2013	YRSCC 1228	\$2,352
YR2062938	November 20, 2013	YRSCC 1228	\$1,499
YR2062939	November 20, 2013	YRSCC 1228	\$1,499
YR2062940	November 20, 2013	YRSCC 1228	\$1,499
YR2062941	November 20, 2013	YRSCC 1228	\$1,499
YR2062942	November 20, 2013	YRSCC 1228	\$994
YR2062943	November 20, 2013	YRSCC 1228	\$994
YR2195008	October 1, 2014	YRSCC 1228	\$2,470
YR2195009	October 1, 2014	YRSCC 1228	\$2,260
YR2195010	October 1, 2014	YRSCC 1228	\$1,615
YR2195011	October 1, 2014	YRSCC 1228	\$1,629
YR2195012	October 1, 2014	YRSCC 1228	\$1,629
YR2195013	October 1, 2014	YRSCC 1228	\$1,629
YR2195014	October 1, 2014	YRSCC 1228	\$1,615
YR2195015	October 1, 2014	YRSCC 1228	\$1,629

Instrument No.	Registration Date	Lien Claimants	Amount of Lien
YR2195016	October 1, 2014	YRSCC 1228	\$1,615
YR2195017	October 1, 2014	YRSCC 1228	\$2,218
YR2238277	December 31, 2014	YRSCC 1265	\$974.97
YR2238253	December 31, 2014	YRSCC 1265	\$974.97
YR2238229	December 31, 2014	YRSCC 1265	\$1,672.14
YR2238295	December 31, 2014	YRSCC 1265	\$1,879.86
YR2238265	December 31, 2014	YRSCC 1265	\$921.18
YR2238221	December 31, 2014	YRSCC 1265	\$143.55

#### PPSA Secured Creditors and Other Creditors

47. In addition to the mortgagees and construction lien claimants described above, I have been informed by Mr. Rappos that the following parties have registered financing statements under the *Personal Property Security Act* (Ontario), as set out in the copy of the PPSRS Enquiry Response Certificate current as of January 12, 2015 that is attached hereto and marked as Exhibit "R":

- (a) Aviva, with a financing statement registered on December 22, 2009 with respect to collateral classified as Accounts and Other;
- (b) Laurentian, with a financing statement registered on July 4, 2011, as amended, with respect to collateral classified as Inventory, Equipment, Accounts, and Other, and a General Collateral Description of "property now or hereafter used in connection with, situate at, or arising from the ownership, development, use or disposition of the lands municipally known as 8300 Kennedy Avenue, Markham,

Ontario, and those townhomes and single family dwellings located on South Unionville Avenue, Markham, Helen Avenue, Markham, and Unity Gardens Drive, Markham, all of which also form part of the South Unionville Square Phase 2 project as described in a letter of commitment dated December 23, 2011 as amended, and all proceeds thereof.”;

- (c) Morenergy Capital Corporation, with a financing statement registered on September 6, 2012 with respect to collateral classified as Equipment, Accounts and Other, and a General Collateral Description of “building automation equipment and mechanical equipment controls together with common expense payments payable by unit owners in connection with the lease agreement between the debtor and the secured party relating to such equipment and controls together with proceeds of all of the foregoing.” This registration was transferred to YRSCC 1228 on July 5, 2013;
- (d) VW Credit Canada Inc., with a financing statement registered on November 2, 2012 with respect to an amount of \$77,449, collateral classified as Consumer Goods, Equipment, Other and Motor Vehicle Included, and more specifically described as a 2013 Audi A7 Premium; and
- (e) Am-Stat, with a financing statement registered on August 21, 2013 with respect to collateral classified as Inventory, Equipment, Accounts, and Other, and a General Collateral Description of “property located at 8321 and 8323 Kennedy Road/The Residence at South Unionville Square and adjacent townhouse and single family

lots and the development site at the northeast quadrant of Steeles Avenue East and Old Kennedy Road, in the City of Markham”.

48. Additionally, Homelife/Gold Trade Realty Ltd. (“Homelife”) obtained a judgment against JKDC on or about October 30, 2014 in the amount of \$16,452.35 with respect to unpaid commissions. Homelife has registered a writ of seizure and sale against JKDC with the Sheriff of the Regional Municipality of York (Newmarket), which was issued on November 27, 2014 and became effective on December 1, 2014.

**Urgent Need for the Appointment of a Trustee**

49. As a result of the registration of the construction liens against the properties and the execution against JKDC, JKDC cannot close the sales of the Phase II Commercial Units that are scheduled to close on February 17, 2015. As a result, JKDC is seeking the appointment of Collins Barrow as a trustee under section 68 of the *Construction Lien Act* (Ontario). A copy of the consent of Collins Barrow to act as trustee is attached hereto and marked as **Exhibit “S”**.

50. Collins Barrow is well qualified to act as a trustee, as its representatives have acted as a trustee under the *Construction Lien Act* (Ontario) previously and are currently acting as trustee with respect to 144, and it is well versed in the South Unionville Square project as it has been involved in numerous meetings and discussions with MADY on the South Unionville Square project since November 2014.

51. In conjunction with the appointment of Collins Barrow as trustee, JKDC is requesting that the Court grant one or more vesting orders with respect to the sale of the 18 Phase II Commercial Units, such that the purchasers may obtain title to the units free and clear from all



mortgages, construction liens and other encumbrances upon delivery of a trustee's certificate on each closing.

52. Additionally, the relief being sought by JKDC will authorize and empower the trustee to take steps to sell the remaining Phase II Commercial Units, the Vacant Lands, the Phase I Commercial Units, and the Unsold Residential Units. The order will also authorize and empower the trustee to borrow up to \$500,000, if necessary, to take such steps.

53. JKDC is also seeking a charge over the South Unionville Square properties to secure payment of its legal expenses related to this proceeding, and the expenses of the trustee and its legal counsel. JKDC will request that the charge have priority over all existing mortgages, existing and future lien claimants and other encumbrancers.

54. The appointment of Collins Barrow as trustee will be for the benefit of all parties that have an interest in the properties and the South Unionville Square project, as it will:

- (a) allow the trustee to close the sale of the 18 Phase II Commercial Units scheduled for February 17, 2015, which will generate net sale proceeds of approximately \$4.65 million;
- (b) permit the trustee to market and sell the unsold Phase I Commercial Units, the unsold Phase II Commercial Units and the Unsold Residential Units;
- (c) permit the trustee to sell the Vacant Lands;
- (d) provide for the proceeds of sale of the properties to be paid into the trustee's trust account, for distribution to creditors in accordance with creditor entitlement; and

- (e) provide a single forum for the amount and priority of claims of the mortgagees and the construction lien claimants to be determined.

55. As a result of the registration of the execution and the construction liens, JKDC cannot convey good title to purchasers of the Phase II Commercial Units scheduled for closing on February 17, 2015. If the closings do not occur, there will be no source of money available to pay the claims of the mortgagees, the construction lien claimants and other creditors of JKDC. The appointment of the trustee will provide a mechanism to permit the sales to close and complete the sale of unsold condominium units and the Vacant Lands for the benefit of all stakeholders. All sale proceeds will be held by the trustee and distributed in accordance with further Court order.

**SWORN BEFORE ME** at the City of Markham, in the Province of Ontario on February 5, 2015

*Sam Rappos*

Commissioner for Taking Affidavits  
 (or as may be)  
 Sam Rappos

*Charles Mady*  
 CHARLES MADY

# APPENDIX “D”



ServiceOntario

LAND  
REGISTRY  
OFFICE #65

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 7  
PREPARED FOR Defintol  
ON 2015/06/01 AT 14:37:57

29796-0007 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: UNIT 7, LEVEL 1, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1265 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR2185723; CITY OF MARKHAM

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
ABSOLUTE

RECENTLY:  
CONDOMINIUM FROM 02963-3602

EIN\_CREATION\_DATE:  
2014/09/22

OWNERS' NAMES

CAPACITY SHARE

JADE-KENNEDY DEVELOPMENT CORPORATION

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2014/09/22 **</b>						
MA31145	1951/07/26	BYLAW		THE CORPORATION OF THE TOWNSHIP OF MARKHAM		C
		REMARKS: BY-LAW NO. 1309 RE: BUILDING RESTRICTIONS SEE A-528776 (AFFECTS ALL/PT LANDS) ADDED 97/08/18 12:21 BY LOIS YAKIMCHUK				
YR686388	2005/08/18	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: PICKERING AIRPORT SITE ZONING REG. (SOR/10000-636)				
YR686395	2005/08/18	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: AERONAUTICS ACT AND THE PICKERING AIRPORT SITE ZONING REGULATIONS (SOR/10000-636)				
YR694205	2005/08/31	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: AERONAUTICS ACT AND THE PICKERING AIRPORT SITE ZONING REGULATIONS (SOR/10000-636) AFFECTS FIRSTLY LANDS				
YR753574	2005/12/21	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: AERONAUTICS ACT AND PICKERING AIRPORT SITE ZONING REGULATION AFFECTS THIRDLY AND FIFTHLY LANDS				
YR1444874	2010/02/24	CHARGE		*** DELETED AGAINST THIS PROPERTY *** JADE-KENNEDY DEVELOPMENT CORPORATION	AVIVA INSURANCE COMPANY OF CANADA	C
YR1445332	2010/02/25	NOTICE OF LEASE	\$2	JADE-KENNEDY DEVELOPMENT CORPORATION	T. & T. SUPERMARKET INC.	C
YR1495979	2010/06/15	NOTICE	\$2	THE CORPORATION OF THE TOWN OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1495980	2010/06/15	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE TOWN OF MARKHAM	C
		REMARKS: YR1444874 TO YR1495979				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 7

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ON 2015/06/01 AT 14:37:57

29796-0007 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR1499090	2010/06/18	NOTICE REMARKS: PT 4 65R20830 PT 5 65R30830 PT 8 65R20830		THE CORPORATION OF THE TOWN OF MARKHAM AFFECTS FIRSTLY, SECONDLY, FOURTHLY AND FIFTHLY LANDS	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1533099	2010/08/13	POSTPONEMENT REMARKS: YR1444874 TO YR1499090 AFFECTS FIRSTLY, SECONDLY, FOURTHLY AND FIFTHLY LANDS		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE TOWN OF MARKHAM	C
YR1616829	2011/03/02	NOTICE	\$2	THE CORPORATION OF THE TOWN OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATION THE REGIONAL MUNICIPALITY OF YORK	C
YR1616918	2011/03/02	POSTPONEMENT REMARKS: YR1444874 TO YR1616829		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE TOWN OF MARKHAM	C
YR1657121	2011/06/02	TRANSFER EASEMENT	\$2	JADE-KENNEDY DEVELOPMENT CORPORATION	ROGERS COMMUNICATIONS INC.	C
YR1699150	2011/08/22	APL (GENERAL) REMARKS: YR1445332		T & T SUPERMARKET INC.	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1721683	2011/10/03	CHARGE	\$16,500,000	JADE-KENNEDY DEVELOPMENT CORPORATION	AVIVA INSURANCE COMPANY OF CANADA	C
YR1763873	2011/12/23	CHARGE	\$45,000,000	JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1763874	2011/12/23	NO ASSGN RENT GEN REMARKS: YR1763873.		JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1763902	2011/12/23	NO ASSGN RENT SPEC REMARKS: YR1445332.		JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1764062	2011/12/23	POSTPONEMENT REMARKS: YR1721683 TO YR1763873		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
YR1832081	2012/06/01	NOTICE REMARKS: YR1763873	\$2	JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1895409	2012/10/05	NO SEC INTEREST		*** DELETED AGAINST THIS PROPERTY *** MORENERGY CAPITAL CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1928490	2012/12/21	APL ABSOLUTE TITLE REMARKS: YR1841753 AND YR1924688		JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C

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29796-0007 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR1954840	2013/03/13	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATIN	C
YR1954841	2013/03/13	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE CITY OF MARKHAM	
		REMARKS: YR1444874 TO YR1954840				
YR1954842	2013/03/13	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE CITY OF MARKHAM	C
		REMARKS: YR1721683 TO YR1954840				
YR1954844	2013/03/13	POSTPONEMENT		LAURENTIAN BANK OF CANADA	THE CORPORATION OF THE CITY OF MARKHAM	C
		REMARKS: YR1763873 TO YR1954840				
YR1962278	2013/04/04	TRANSFER REL&ABAND	\$1	JADE-KENNEDY DEVELOPMENT CORPORATION	JADE-KENNEDY DEVELOPMENT CORPORATION	C
		REMARKS: YR623490.				
YR2029025	2013/09/04	CHARGE	\$10,000,000	JADE-KENNEDY DEVELOPMENT CORPORATION	AM-STAT CORPORATION	C
YRCP1265	2014/09/11	STANDARD CONDO PLAN				C
YR2185723	2014/09/11	CONDO DECLARATION		JADE-KENNEDY DEVELOPMENT CORPORATION		C
YR2187850	2014/09/16	CONSTRUCTION LIEN		*** DELETED AGAINST THIS PROPERTY *** IMPACT FENCE RENTALS INC.		C
YR2192411	2014/09/26	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
		REMARKS: CONDOMINIUM BY-LAW NO. 1				
YR2192414	2014/09/26	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
		REMARKS: CONDOMINIUM BY-LAW NO. 2				
YR2192417	2014/09/26	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
		REMARKS: CONDOMINIUM BY-LAW NO. 3				
YR2192427	2014/09/26	NOTICE AGREEMENT		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265	JADE-KENNEDY DEVELOPMENT CORPORATION	C
		REMARKS: SHARED FACILITIES AGREEMENT				
YR2192433	2014/09/26	NOTICE AGREEMENT		JADE-KENNEDY DEVELOPMENT CORPORATION		C
		REMARKS: ASSIGNMENT AGREEMENT				
YR2192441	2014/09/26	DISCHARGE INTEREST		*** COMPLETELY DELETED *** MORENERGY CAPITAL CORPORAION	YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265	C

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29796-0007 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2193257	2014/09/29	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** IMPACT FENCE RENTALS INC.		
		REMARKS: YR2187850.				
YR2194472	2014/09/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** AVIVA INSURANCE COMPANY OF CANADA		
		REMARKS: YR1444874.				
YR2216478	2014/11/17	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO 1265		C
		REMARKS: CONDOMINIUM BY-LAW NO. 4				
YR2222182	2014/11/27	CONSTRUCTION LIEN	\$102,626	GLOBAL MECHANICAL LTD.		C
YR2222710	2014/11/28	CONSTRUCTION LIEN	\$14,465	GLOBAL FIRE PROTECTION LTD.		C
YR2222713	2014/11/28	CONSTRUCTION LIEN	\$195,012	GLOBAL MECHANICAL LTD.		C
YR2230304	2014/12/11	CONSTRUCTION LIEN	\$226,447	FRENDEL KITCHENS LIMITED		C
YR2230492	2014/12/11	NO SEC INTEREST	\$2	81 CAPITAL INC.		C
YR2232092	2014/12/15	CONSTRUCTION LIEN	\$501,133	2050491 ONTARIO INC.		C
YR2233490	2014/12/17	CONSTRUCTION LIEN	\$132,902	GLOBAL PRECAST INC.		C
YR2235281	2014/12/19	CONSTRUCTION LIEN	\$249,916	GUEST TILE INC		C
YR2236748	2014/12/24	CONSTRUCTION LIEN	\$81,519	TRIUMPH ROOFING & SHEET METAL INC.		C
YR2237716	2014/12/30	CONSTRUCTION LIEN	\$822,797	DIRCAM ELECTRIC LIMITED		C
YR2237952	2014/12/30	CONSTRUCTION LIEN	\$62,154	GREAT PYRAMID ALUMINUM LTD.		C
YR2238277	2014/12/31	CONDO LIEN/98	\$975	YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
YR2238316	2014/12/31	CONSTRUCTION LIEN	\$10,826	DRAGLAW WASTE & RECYCLING INC.		C
YR2238636	2015/01/02	CONSTRUCTION LIEN	\$11,978	PROCAN INC.		C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 5 OF 7

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29796-0007 (LF)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2242380	2015/01/13	CERTIFICATE		FRENDEL KITCHENS LIMITED	JADE-KENNEDY DEVELOPMENT CORPORATION MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. D. MADY INVESTMENTS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: CERTIFICATE OF ACTION FOR YR2230304				
YR2246193	2015/01/21	CONSTRUCTION LIEN	\$82,529	BRODY WALL SYSTEM LTD.		C
YR2248368	2015/01/27	CONSTRUCTION LIEN	\$601,566	IMPERIAL TRIM SUPPLY LTD.		C
YR2248401	2015/01/27	CERTIFICATE		GLOBAL MECHANICAL LTD.	JADE-KENNEDY DEVELOPMENT CORPORATION AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: YR2222713 & YR2222182				
YR2248965	2015/01/28	CERTIFICATE		GUEST TILE INC.	JADE-KENNEDY DEVELOPMENT CORPORATION AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: CERTIFICATE OF ACTION FOR YR2235281				
YR2249226	2015/01/29	CERTIFICATE		GLOBAL PRECAST INC.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA	C
		REMARKS: YR2233490				
YR2251585	2015/02/03	CERTIFICATE		TRIUMPH ROOFING & SHEET METAL INC.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION FOR YR2236748				
YR2253220	2015/02/06	CERTIFICATE		DIRCAM ELECTRIC LIMITED	JADE-KENNEDY DEVELOPMENT LIMITED 81 CAPITAL INC AM-STAT CORPORATION LAURENTIAN BANK OF CANADA AVIVA INSURANCE COMPANY OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION				

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29796-0007 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR2253274	2015/02/06	CERTIFICATE		2050491 ONTARIO INC.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION				
YR2254098	2015/02/10	CONSTRUCTION LIEN	\$89,648	MJC CONTRACTING 2014 INC.		C
YR2254502	2015/02/10	CERTIFICATE		DRAGLAM WASTE & RECYCLING INC.		C
YR2254630	2015/02/11	CERTIFICATE		GREAT PYRAMID ALUMINUM LTD	81 CAPITAL INC. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA AVIVA INSURANCE COMPANY OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION - YR2237952				
YR2255767	2015/02/13	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	JADE-KENNEDY DEVELOPMENT CORPORATION AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: YR2222710 - CERTIFICATE OF ACTION				
YR2262436	2015/03/03	CONSTRUCTION LIEN	\$11,112	SKYWAY CANADA LIMITED		C
YR2264794	2015/03/09	CERTIFICATE		IMPERIAL TRIM SUPPLY LTD.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. D. MADY INVESTMENTS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: YR2248368				
YR2266157	2015/03/12	CERTIFICATE		BRODY WALL SYSTEM LTD.		C
		REMARKS: YR2246193 CERTIFICATE OF ACTION				
YR2271382	2015/03/27	CERTIFICATE		MJC CONTRACTING 2014 INC.	JADE-KENNEDY DEVELOPMENT CORPORATION HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION THE REGIONAL MUNICIPALITY OF YORK CITY OF MARKHAM AVIVA INSURANCE COMPANY OF CANADA	C

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29796-0007 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
				LAURENTIAN BANK OF CANADA AM-STAT CORPORATION 1475398 ONTARIO INC. 1475398 ONTARIO INC. BMW GROUP FINANCIAL SERVICES CANADA, A DIVISION OF BMW CANADA INC. BMW CANADA INC.		

REMARKS: YR2254098

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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# APPENDIX "E"



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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29796-0024 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: UNIT 14, LEVEL 2, YORK REGION STANDARD CONDOMINIUM PLAN NO. 1265 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN YR2185723; CITY OF MARKHAM

PROPERTY REMARKS:

ESTATE/QUALIFIER:  
FEE SIMPLE  
ABSOLUTE

RECENTLY:  
CONDOMINIUM FROM 02963-3602

EIN CREATION DATE:  
2014/09/22

OWNERS' NAMES  
JADE-KENNEDY DEVELOPMENT CORPORATION

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<b>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 2014/09/22 **</b>						
MA31145	1951/07/26	BYLAW		THE CORPORATION OF THE TOWNSHIP OF MARKHAM		C
		REMARKS: BY-LAW NO. 1309 RE: BUILDING RESTRICTIONS SEE A-528776 (AFFECTS ALL/PT LANDS) ADDED 97/08/18 12:21 BY LOIS YAKIUCHUK				
YR686388	2005/08/18	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: PICKERING AIRPORT SITE ZONING REG. (SOR/10000-636)				
YR686395	2005/08/18	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: AERONAUTICS ACT AND THE PICKERING AIRPORT SITE ZONING REGULATIONS (SOR/10000-636)				
YR694205	2005/08/31	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: AERONAUTICS ACT AND THE PICKERING AIRPORT SITE ZONING REGULATIONS (SOR/10000-636) AFFECTS FIRSTLY LANDS				
YR753574	2005/12/21	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF TRANSPORT		C
		REMARKS: AERONAUTICS ACT AND PICKERING AIRPORT SITE ZONING REGULATION AFFECTS THIRDLY AND FIFTHLY LANDS				
YR1444874	2010/02/24	CHARGE		*** DELETED AGAINST THIS PROPERTY *** JADE-KENNEDY DEVELOPMENT CORPORATION	AVIVA INSURANCE COMPANY OF CANADA	C
YR1445332	2010/02/25	NOTICE OF LEASE	\$2	JADE-KENNEDY DEVELOPMENT CORPORATION	T. & T. SUPERMARKET INC.	C
YR1495979	2010/06/15	NOTICE	\$2	THE CORPORATION OF THE TOWN OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1495980	2010/06/15	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE TOWN OF MARKHAM	C
		REMARKS: YR1444874 TO YR1495979				

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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29796-0024 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERY/ CEKD
YR1499090 REMARKS: PT 4 65R30830 PT 5 65R30830	2010/06/18	NOTICE		THE CORPORATION OF THE TOWN OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1533099 REMARKS: YR1444874 TO YR1499090	2010/08/13	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE TOWN OF MARKHAM	C
YR1616829 REMARKS: YR1444874 TO YR1616829	2011/03/02	NOTICE	\$2	THE CORPORATION OF THE TOWN OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1616918 REMARKS: YR1444874 TO YR1616829	2011/03/02	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE TOWN OF MARKHAM	C
YR1657121 REMARKS: YR1444874 TO YR1616829	2011/06/02	TRANSFER EASEMENT	\$2	JADE-KENNEDY DEVELOPMENT CORPORATION	ROGERS COMMUNICATIONS INC.	C
YR1699150 REMARKS: YR1445332	2011/08/22	APL (GENERAL)		T & T SUPERMARKET INC.	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1721683 REMARKS: YR1763873	2011/10/03	CHARGE	\$16,500,000	JADE-KENNEDY DEVELOPMENT CORPORATION	AVIVA INSURANCE COMPANY OF CANADA	C
YR1763873 REMARKS: YR1763873	2011/12/23	CHARGE	\$45,000,000	JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1763874 REMARKS: YR1763873	2011/12/23	NO ASSGN RENT GEN		JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1763902 REMARKS: YR1445332	2011/12/23	NO ASSGN RENT SPEC		JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1764062 REMARKS: YR1721683 TO YR1763873	2011/12/23	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	LAURENTIAN BANK OF CANADA	C
YR1832081 REMARKS: YR1763873	2012/06/01	NOTICE	\$2	JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1895409 REMARKS: YR1841753 AND YR1924688	2012/10/05	NO SEC INTEREST		*** DELETED AGAINST THIS PROPERTY *** MORENERGY CAPITAL CORPORATION	LAURENTIAN BANK OF CANADA	C
YR1928490 REMARKS: YR1841753 AND YR1924688	2012/12/21	APL ABSOLUTE TITLE		JADE-KENNEDY DEVELOPMENT CORPORATION	LAURENTIAN BANK OF CANADA	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR1954840	2013/03/13	NOTICE		THE CORPORATION OF THE CITY OF MARKHAM	JADE-KENNEDY DEVELOPMENT CORPORATION	C
YR1954841	2013/03/13	POSTPONEMENT		*** DELETED AGAINST THIS PROPERTY *** AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE CITY OF MARKHAM	C
REMARKS: YR1444874 TO YR1954840						
YR1954842	2013/03/13	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	THE CORPORATION OF THE CITY OF MARKHAM	C
REMARKS: YR1721683 TO YR1954840						
YR1954844	2013/03/13	POSTPONEMENT		LAURENTIAN BANK OF CANADA	THE CORPORATION OF THE CITY OF MARKHAM	C
REMARKS: YR1763873 TO YR1954840						
YR1962278	2013/04/04	TRANSFER REL-ABAND	\$1	JADE-KENNEDY DEVELOPMENT CORPORATION	JADE-KENNEDY DEVELOPMENT CORPORATION	C
REMARKS: YR623430.						
YR2029025	2013/09/04	CHARGE	\$10,000,000	JADE-KENNEDY DEVELOPMENT CORPORATION	AM-STAT CORPORATION	C
YRCP1265	2014/09/11	STANDARD CONDO PLAN				C
YR2185723	2014/09/11	CONDO DECLARATION		JADE-KENNEDY DEVELOPMENT CORPORATION		C
YR2187850	2014/09/16	CONSTRUCTION LIEN		*** DELETED AGAINST THIS PROPERTY *** IMPACT FENCE RENTALS INC.		C
YR2192411	2014/09/26	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
REMARKS: CONDOMINIUM BY-LAW NO. 1						
YR2192414	2014/09/26	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
REMARKS: CONDOMINIUM BY-LAW NO. 2						
YR2192417	2014/09/26	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
REMARKS: CONDOMINIUM BY-LAW NO. 3						
YR2192427	2014/09/26	NOTICE AGREEMENT		YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265	JADE-KENNEDY DEVELOPMENT CORPORATION	C
REMARKS: SHARED FACILITIES AGREEMENT						
YR2192433	2014/09/26	NOTICE AGREEMENT		JADE-KENNEDY DEVELOPMENT CORPORATION		C
REMARKS: ASSIGNMENT AGREEMENT						
YR2192441	2014/09/26	DISCHARGE INTEREST		*** COMPLETELY DELETED *** MORENERGY CAPITAL CORPORAION	YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2193257	2014/09/29	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** IMPACT FENCE RENTALS INC.		C
YR2194472	2014/09/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** AVIVA INSURANCE COMPANY OF CANADA		C
YR2216478	2014/11/17	CONDO BYLAW/98		YORK REGION STANDARD CONDOMINIUM CORPORATION NO 1265		C
YR2222182	2014/11/27	CONSTRUCTION LIEN	\$102,626	GLOBAL MECHANICAL LTD.		C
YR2222710	2014/11/28	CONSTRUCTION LIEN	\$14,465	GLOBAL FIRE PROTECTION LTD.		C
YR2222713	2014/11/28	CONSTRUCTION LIEN	\$195,012	GLOBAL MECHANICAL LTD.		C
YR2230304	2014/12/11	CONSTRUCTION LIEN	\$226,447	FRENDEL KITCHENS LIMITED		C
YR2230492	2014/12/11	NO SEC INTEREST	\$2	81 CAPITAL INC.		C
YR2232092	2014/12/15	CONSTRUCTION LIEN	\$501,133	2050491 ONTARIO INC.		C
YR2233490	2014/12/17	CONSTRUCTION LIEN	\$132,902	GLOBAL PRECAST INC.		C
YR2235281	2014/12/19	CONSTRUCTION LIEN	\$249,916	GUEST TILE INC		C
YR2236748	2014/12/24	CONSTRUCTION LIEN	\$81,519	TRIUMPH ROOFING & SHEET METAL INC.		C
YR2237716	2014/12/30	CONSTRUCTION LIEN	\$822,797	DIRCAM ELECTRIC LIMITED		C
YR2237952	2014/12/30	CONSTRUCTION LIEN	\$62,154	GREAT PYRAMID ALUMINUM LTD.		C
YR2238253	2014/12/31	CONDO LIEN/98	\$975	YORK REGION STANDARD CONDOMINIUM CORPORATION NO. 1265		C
YR2238316	2014/12/31	CONSTRUCTION LIEN	\$10,826	DRAGLAM WASTE & RECYCLING INC.		C
YR2238636	2015/01/02	CONSTRUCTION LIEN	\$11,978	PROCAM INC.		C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 5 OF 7  
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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHRO
YR2242380	2015/01/13	CERTIFICATE		FRENDEL KITCHENS LIMITED	JADE-KENNEDY DEVELOPMENT CORPORATION MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. MADY CONTRACT DIVISION LTD. D. MADY INVESTMENTS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: CERTIFICATE OF ACTION FOR YR2230304				
YR2246193	2015/01/21	CONSTRUCTION LIEN	\$82,529	BRODY WALL SYSTEM LTD.		C
YR2248368	2015/01/27	CONSTRUCTION LIEN	\$601,566	IMPERIAL TRIM SUPPLY LTD. GLOBAL MECHANICAL LTD.	JADE-KENNEDY DEVELOPMENT CORPORATION AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
YR2248401	2015/01/27	CERTIFICATE		GLOBAL MECHANICAL LTD.		C
		REMARKS: YR2222713 & YR2222182				
YR2248965	2015/01/28	CERTIFICATE		GUEST TILE INC.	JADE-KENNEDY DEVELOPMENT CORPORATION AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: CERTIFICATE OF ACTION FOR YR2235281				
YR2249226	2015/01/29	CERTIFICATE		GLOBAL PRECAST INC.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA	C
		REMARKS: YR2233490				
YR2251585	2015/02/03	CERTIFICATE		TRIUMPH ROOFING & SHEET METAL INC.		C
		REMARKS: CERTIFICATE OF ACTION FOR YR2236748				
YR2253220	2015/02/06	CERTIFICATE		DIRCAM ELECTRIC LIMITED	JADE-KENNEDY DEVELOPMENT LIMITED 81 CAPITAL INC AM-STAT CORPORATION LAURENTIAN BANK OF CANADA AVIVA INSURANCE COMPANY OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION				

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PAGE 6 OF 7

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
YR2253274	2015/02/06	CERTIFICATE		2050491 ONTARIO INC.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA	C
		REMARKS: CERTIFICATE OF ACTION				
YR2254098	2015/02/10	CONSTRUCTION LIEN	\$89,648	MJC CONTRACTING 2014 INC.		C
YR2254502	2015/02/10	CERTIFICATE		DRAGLAM WASTE & RECYCLING INC.		C
YR2254630	2015/02/11	CERTIFICATE		GREAT PYRAMID ALUMINUM LTD		C
		REMARKS: CERTIFICATE OF ACTION - YR2237952			81 CAPITAL INC. AM-STAT CORPORATION LAURENTIAN BANK OF CANADA AVIVA INSURANCE COMPANY OF CANADA	
YR2255767	2015/02/13	CERTIFICATE		GLOBAL FIRE PROTECTION LTD.	JADE-KENNEDY DEVELOPMENT CORPORATION AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: YR2222710 - CERTIFICATE OF ACTION				
YR2262436	2015/03/03	CONSTRUCTION LIEN	\$11,112	SKYWAY CANADA LIMITED		C
YR2264794	2015/03/09	CERTIFICATE		IMPERIAL TRIM SUPPLY LTD.	JADE-KENNEDY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION LTD. MADY DEVELOPMENT CORPORATION MADY CONTRACT DIVISION (2009) LTD. D. MADY INVESTMENTS INC. AVIVA INSURANCE COMPANY OF CANADA LAURENTIAN BANK OF CANADA AM-STAT CORPORATION	C
		REMARKS: YR2248968				
YR2266157	2015/03/12	CERTIFICATE		BRODY WALL SYSTEM LTD.		C
		REMARKS: YR2246193 CERTIFICATE OF ACTION				
YR2271382	2015/03/27	CERTIFICATE		MJC CONTRACTING 2014 INC.	JADE-KENNEDY DEVELOPMENT CORPORATION HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF TRANSPORTATION THE REGIONAL MUNICIPALITY OF YORK CITY OF MARKHAM AVIVA INSURANCE COMPANY OF CANADA	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR2276999	2015/04/10	CERTIFICATE			LAURENTIAN BANK OF CANADA AM-STAT CORPORATION 1475398 ONTARIO INC. 1475398 ONTARIO INC. BMW GROUP FINANCIAL SERVICES CANADA, A DIVISION OF BMW CANADA INC. BMW CANADA INC.	C
				REMARKS: YR2254098		
				REMARKS: 2015/04/10 CERTIFICATE		
				REMARKS: CERTIFICATE OF ACTION RE: YR2262436	SKYWAY CANADA LIMITED	

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# APPENDIX "F"

**AGREEMENT OF PURCHASE AND SALE**

The undersigned, Anna Gayle Andrew (collectively, the "Purchaser"), hereby agrees with JADE-KENNEDY (RESIDENTIAL) DEVELOPMENT CORPORATION (the "Vendor") to purchase the above-noted unit, as outlined for identification purposes only on the sketch attached hereto as Schedule "A", together with ONE (1) Parking Unit and One (1) Locker Unit which shall be allocated by the Vendor in its sole discretion, being proposed unit(s) in the Condominium, to be registered against those lands and premises situate in the Town of Markham on a parcel of land at the northeast corner of Kennedy Road and a road to be constructed and known as South Unionville Avenue (hereinafter called the "Property"), together with an undivided interest in the common elements appurtenant to such unit(s) and the exclusive use of those parts of the common elements attaching to such unit(s), as set out in the proposed Declaration (collectively, the "Unit") on the following terms and conditions:

1. The purchase price of the Unit (the "Purchase Price") is TWO HUNDRED THOUSAND (\$ 200,000.00 ) DOLLARS in lawful money of Canada, payable as follows:
  - (a) to Harris, Sheaffer LLP, in Trust, (the "Vendor's Solicitors" or "Escrow Agent" or "Trustee") in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Occupancy Date:
    - (i) the sum of FIVE THOUSAND (\$5,000.00) Dollars submitted with this Agreement;
    - (ii) the sum of zero (\$ 0 ) Dollars (which, together with the deposit in paragraph 1(a)(i) represents 5% of the Purchase Price) submitted with this Agreement and post-dated fifteen (15) days following the date of acceptance of this Agreement by the Vendor;
    - (iii) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) submitted with this Agreement and post-dated sixty (60) days following the date of acceptance of this Agreement by the Vendor;
    - (iv) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) submitted with this Agreement and post-dated one hundred and eighty (180) days following the date of acceptance of this Agreement by the Vendor;
    - (v) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) submitted with this Agreement and post-dated two hundred and forty (240) days following the date of acceptance of this Agreement by the Vendor;
  - (b) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) by certified cheque or bank draft to the Vendor's Solicitors on the Occupancy Date;
  - (c) the balance of the Purchase Price by certified cheque on the Title Transfer Date to the Vendor or as the Vendor may direct, subject to the adjustments hereinafter set forth.
  - (d) the Purchaser agrees to pay the sum as hereinbefore set out in paragraph 1 (a) as a deposit by cheque payable to the Escrow Agent with such last-mentioned party to hold such funds in trust as the escrow agent acting for and on behalf of TWC under the provisions of a Deposit Trust Agreement ("DTA") with respect to this proposed condominium on the express understanding and agreement that as soon as prescribed security for the said deposit money has been provided in accordance with Section 81 of the Act, the Escrow Agent shall be entitled to release and disburse said funds to the Vendor (or to whomsoever and in whatsoever manner the Vendor may direct).
2.
  - (a) The Purchaser shall occupy the Unit on the First Tentative Occupancy Date [as defined in the Statement of Critical Dates being part of the Tarion Addendum as hereinafter defined], or such extended or accelerated date that the Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "Occupancy Date");
  - (b) The transfer of title to the Unit shall be completed on the later of the Occupancy Date or a date established by the Vendor in accordance with Paragraph 14 hereof (the "Title Transfer Date");
  - (c) The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is the address set out in the Tarion Addendum;
  - (d) Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within ten (10) days of notification from the Vendor that the Acknowledgement regarding the receipt of the disclosure statement and Agreement is available to be executed by the Purchaser, then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser, whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor.

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

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

DATED, signed, sealed and delivered this 9th day of February, 2015.

SIGNED, SEALED AND DELIVERED in the presence of

[Signature]  
PURCHASER: Anna Gayle Andrew

December 10<sup>th</sup>, 1971  
D.O.B

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

PURCHASER'S SOLICITOR:

Address:

Telephone: Facsimile:

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

DATED, signed, sealed and delivered, this 9th day of February, 2015.

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

JADE-KENNEDY (RESIDENTIAL) DEVELOPMENT CORPORATION

Per: [Signature]  
Authorized Signing Officer  
I have the authority to bind the Corporation.

3. The meaning of words and phrases used in this Agreement and its Schedules shall have the meaning ascribed to them in the *Condominium Act, 1998*, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:

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

**Finishes**

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

**Deposits**

5. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Occupancy Date or Title Transfer Date at the Vendor's sole discretion on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Declarant's solicitor or the trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(8) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted in the Tarion Addendum. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser the Escrow Agent shall be entitled to withdraw such deposit monies from said designated trust account prior to the Title Transfer Date if and only when the Vendor obtains a Certificate of Deposit from TWC for deposit monies up to Twenty Thousand (\$20,000.00) Dollars and with respect to deposit monies in excess of Twenty Thousand (\$20,000.00) Dollars, one or more excess condominium deposit insurance policies (issued by any insurer as may be selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Escrow Agent holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of section 21 of O. Reg. 48/01.

**Adjustments**

6. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:
- (i) all utility costs including electricity, gas and water (unless included as part of the common expenses); and
  - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
- (iii) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall either be remitted to the relevant taxing authority on account of the Unit or held by the Vendor pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted in accordance with subsections 80(8) and (9) of the Act; and
  - (iv) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with paragraph 5 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) if there are chattels involved in this transaction, the allocation of value of such chattels shall be estimated where necessary by the Vendor and retail sales tax may be collected and remitted by the Vendor or alternatively, the

the Vendor or the Vendor's solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or

- (ii) If the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

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

- (i) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the *Excise Tax Act*. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "Reduction"), then the Purchaser shall pay to the Vendor on the Title Transfer Date the amount of (as determined by the Vendor in its sole and absolute discretion) the Reduction.
- (i) An administration fee of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.

#### Title

7. The Vendor or its Solicitor shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "Notification Date"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "Examination Period") to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

#### Direction Re: Title

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

#### Permitted Encumbrances

9. (a) The Purchaser agrees to accept title subject to the following:
- (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser as set out in Schedule "E";
- (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
- (iii) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners, provided that any such easement and cost-sharing agreements or reciprocal agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;
- (iv) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder; and
- (v) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction;
- (b) It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the property a release of (or an amendment to) any of the aforementioned easements, Development Agreements, reciprocal agreements or restrictive covenants or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants registered on title. The Purchaser further

acknowledges and agrees that the retention by the local municipality within which the Property is situate (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfillment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.

- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer Date;
- (d) In the event that the Vendor is not the registered owner of the Property, the Purchaser agrees to accept a conveyance of title from the registered owner together with the owner's title covenants in lieu of the Vendor's.
- (e) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

**Vendor's Lien**

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

**Partial Discharges**

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

**Construction Lien Act**

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

**The Planning Act**

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

**Title Transfer Date**

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

**Purchaser's Covenants, Representations and Warranties**

- 15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing and notwithstanding any other provision in this Agreement to the contrary, within ten (10) days of written demand from the Vendor, the Purchaser agrees to produce evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date. If the Purchaser fails to provide the mortgage approval as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.
- 16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be in default of his or her obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 26 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
- 17. The Purchaser covenants and agrees with the Vendor not to list for sale, advertise for sale, offer for lease, offer for sale, sell, lease, transfer or assign his interest under this Agreement or in the Unit, not less than thirty (30) days prior to the Unit Transfer Date without first: (i)

obtaining the written consent of the Vendor, which consent will not be unreasonably withheld once the Vendor determines that ninety (90%) percent of the units in the Condominium have been sold, which determination shall be made by the Vendor in its sole and unfettered discretion; (ii) acknowledging in writing that the Purchaser shall remain fully responsible for the Purchaser's covenants, agreements and obligations contained in this Agreement; (iii) obtaining an assignment and assumption agreement from the transferee/assignee in a form acceptable to the Vendor acting reasonably; (iv) remitting payment of the sum of Two Thousand Five Hundred (\$2,500.00) Dollars (plus applicable HST) by certified cheque representing an administration fee payable to the Vendor for processing and for allowing such transfer or assignment; (v) and confirming that the listing of such sale, transfer or assignment is not, never was and will not be listed on the Toronto Real Estate Board, Multiple Listing Service ("MLS"); and (vi) obtaining the written consent or approval from any lending institution or mortgagee providing any financing to the Vendor, construction or otherwise, for the development and construction of the Condominium, in the event such consent or approval is required to be obtained by the Vendor as a condition for the advance or continued advance of any funds in respect of such financing. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy License, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. Subject to the foregoing, the Purchaser shall be entitled to direct that title to the Unit be taken in the name of an assignee. Notwithstanding the foregoing, the Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, being limited to parents, siblings or children over the age of eighteen (18) years, and shall not be permitted to direct title to any other third parties.

- 18. The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Lands (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as a well as a site plan approval/development application/draft plan of condominium approval with respect to the Lands, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without adversely affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.
- 19. The Purchaser covenants and agrees that he/she shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration/construction office(s) and model units, and the display of signs located on the Property.

**Termination without Default**

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

**Tarion Warranty Corporation**

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

**Right of Entry**

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

**Occupancy**

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

**Inspection**

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



- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.
- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.
- (e) In the event the Purchaser and/or the Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

**Purchaser's Default**

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

**Common Elements**

- 26. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his/her successors in title against the Vendor. The Vendor may, from time to time, change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any elevations, building specifications or site plans of any part of the Condominium, to conform with any municipal or architectural requirements related to building codes, official plan or official plan amendments, zoning by-laws, committees of adjustment and/or land division committee decisions, municipal site plan approval or architectural control. Such changes may be to the plans and specifications existing at inception of the Condominium or as they existed at the time the Purchaser entered into this Agreement, or as illustrated on any sales material, including without limitation, brochures, models or otherwise. With respect to any aspect of construction, finishing or equipment, the Vendor shall have the right, without the Purchaser's consent, to substitute materials, for those described in this Agreement or in the plans or specifications, provided the substituted materials are in the judgment of the Vendor's architect, whose determination shall be final and binding, of equal or better quality. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications.

**Executions**

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

**Risk**

- 28. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy License attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:
  - (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted in paragraph 7 of the Tarion Addendum;
  - (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, with interest payable under law if the damage to the Condominium has frustrated this Agreement at law; or
  - (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act,

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

**Tender/Termet**

- 29. (a) The parties waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement and subject to the provisions of paragraph 30 of this Agreement shall be validly made by the Vendor upon the Purchaser, by a representative of the Vendor attending at the offices of Harris, Sheaffer, LLP at 12:00 noon on the Title Transfer Date or the Occupancy Date as the case may be and remaining there until 5:00 p.m. and is ready, willing and able to complete the transaction. The Purchaser agrees that keys may be released to the Purchaser as the construction site or sales office on the Occupancy Date or the Title Transfer Date, as applicable. The Vendor's advice that the keys are available shall be valid tender of possession of the Property to the Purchaser. In the event the Purchaser or his or her solicitor fails to appear or appears and fails to close, such attendances by the Vendor's representative (which includes the Vendor's Solicitors) shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and
  - (d) It is further provided that, notwithstanding subparagraph 29 (a) hereof, in the event the Purchaser or his or her solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Title Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his or her solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.
30. As the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or ("TERS") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:
- (a) The Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction. The Purchaser shall authorize such solicitor to, at the option of the Vendor's Solicitors, either execute an escrow closing agreement with the Vendor's Solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement") establishing the procedures and timing for completing this transaction or to otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement.
  - (b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:
    - (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation); and
    - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.
  - (c) If the Purchaser's solicitor is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said solicitor (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's solicitor, at such time on the Title Transfer Date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's solicitor's office, and shall pay a fee as determined by the Vendor's solicitor, acting reasonably for the use of the Vendor's computer facilities.
  - (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
  - (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document pursuant to the *Electronic Commerce Act*) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
  - (f) Notwithstanding anything contained in this agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
    - (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement and keys are made available for the Purchaser to pick up at the Vendor's sales of customer service office;
    - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
    - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's solicitor;

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

**General**

- 31. The Vendor shall provide a statutory declaration on the Title Transfer Date that it is not a non-resident of Canada within the meaning of the ITA.
- 32. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.
- 33. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
- 34. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.
- 35. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one unit from another. NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the TWC. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required, then the ceiling height of the Unit will be less than that

represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.

36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
37. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
38. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.
39. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.
- (g) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for another person or corporation for a disclosed or undisclosed beneficiary or principal (including, without limitation, a corporation to be incorporated), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust as the case may be, shall be deemed and construed to constitute the personal indemnity of such person or persons so signing with respect to the obligations of the Purchaser herein and shall be fully liable to the Vendor for the Purchaser's obligations under this Agreement and may not plead such agency, trust relationship or any other relationships as a defence to such liability.

#### Notice

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

#### Material Change

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

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

#### Cause of Action/Assignment

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

#### Non-Merger

43. The covenants and agreements of each of the parties hereto shall not merge on the Title Transfer Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled.

in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

**Notice/Warning Provisions**

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

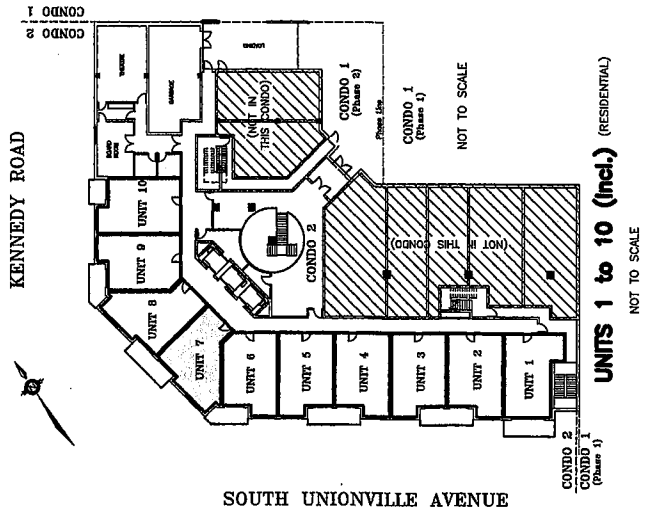
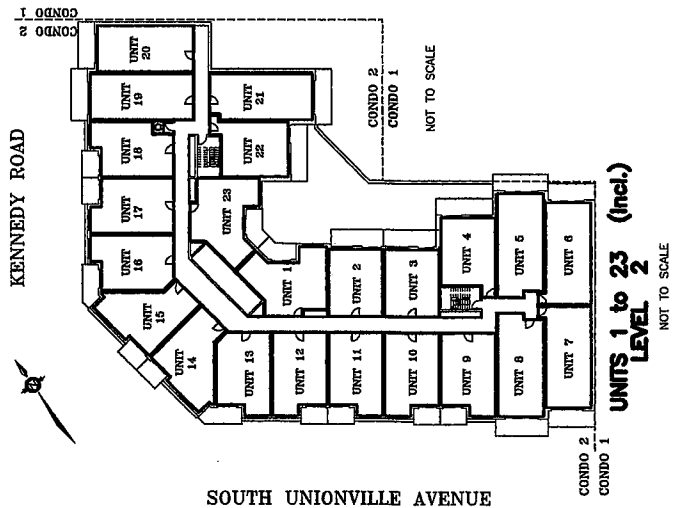
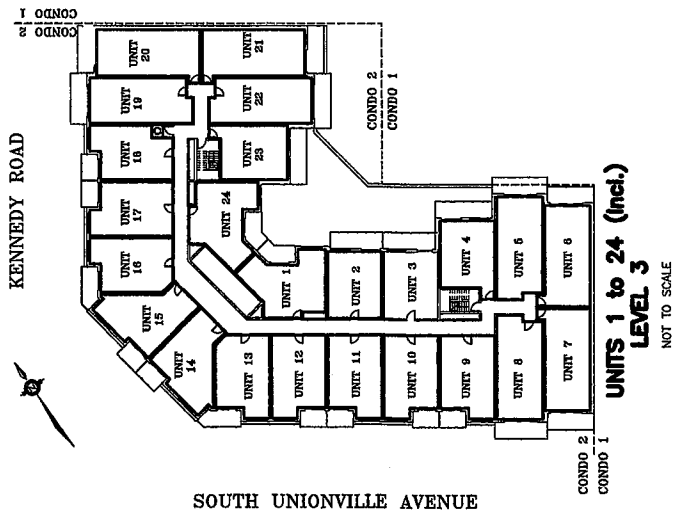
**Purchaser's Consent to the Collection and Limited Use of Personal Information**

45. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Unit, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital and residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired suite design(s), and colour/finish selections. In particular, but without limiting the foregoing, the Vendor may disclose such personal information to:

- (a) Any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency (i.e. with respect to HST);
- (b) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the ITA, as amended;
- (c) The Condominium for the purposes of facilitating the completion of the Condominium's voting, leasing and/or other relevant records and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;
- (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
- (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity surveyor monitoring the Project and its costs, the Vendor's designated construction lender(s), the Tarion Warranty Corporation and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium (collectively, the "Utilities"), unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the Utilities;
- (i) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family, unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to said third party data processing companies;
- (j) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

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

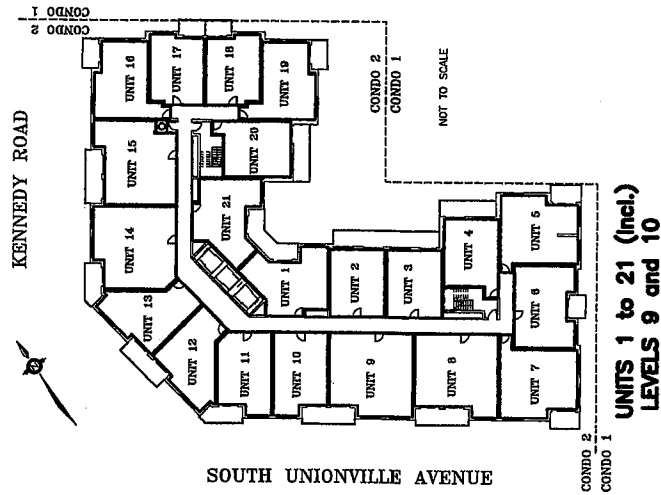
**SCHEDULE "A"**  
**TO THE AGREEMENT OF PURCHASE AND SALE**



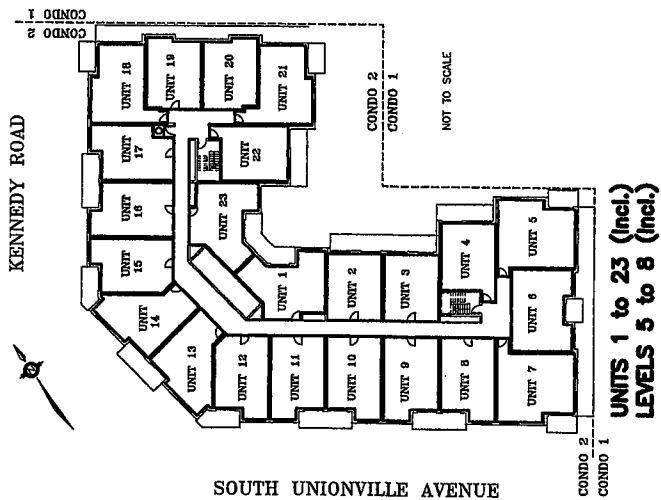
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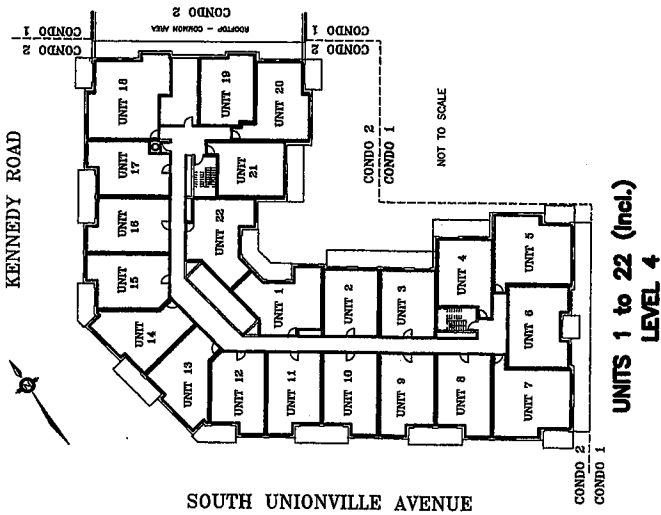
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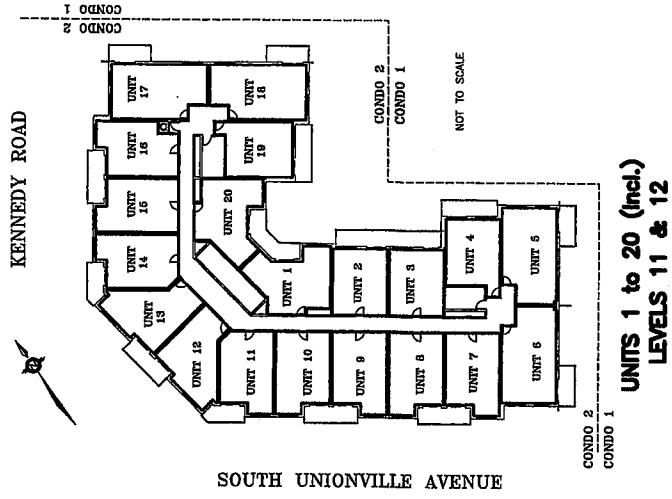
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**SCHEDULE "A"**  
**TO THE AGREEMENT OF PURCHASE AND SALE**



LEVEL \_\_\_\_\_ ○ ○ ○ ○  
UNIT \_\_\_\_\_ ○ ○ ○ ○

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

FEATURES AND FINISHES

The following are included in the Purchase Price:

Suites at *The Residences at South Unionville Square* to include the following standard features and finishes;

- Individual unfitted parking space
- Individual storage locker
- Laminate hardwood in the living, dining and den areas
- 40oz carpet with foam under pad in bedroom(s)
- Ceramic tile in kitchen, laundry and bathroom(s) areas
- Sliding closet/storage areas doors
- In-suite heating and cooling unit with thermostat for individual climate control of suite
- Texture spray finished ceilings, except kitchens and bathrooms which have smooth finished ceilings
- Trim package including nominal 4" painted base, lever passage and privacy sets
- Interior walls are primed and then painted with two coats of off-white, latex paint (bathroom(s), and all woodwork and trim painted with white semi-gloss paint). Paints have low levels of volatile organic compounds (VOCs).
- 6'8" interior doors with lever hardware, complete with casings
- 7' entry door with security peeper
- Balcony and Terrace access via sliding patio door(s)
- Windows - double pane, sealed glazed units
- For non-penthouse units where ceiling bulkheads are installed, the ceiling height will be less than the nominal 9 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 9 feet.
- For penthouse units where ceiling bulkheads are installed, the ceiling height will be less than the nominal 10 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 10 feet.

**Kitchens**

- Stainless steel brand name Energy Star ® refrigerator and dishwasher
- Stainless steel brand name electric range
- Stainless steel brand name high velocity hood vent, vented to the exterior
- Kitchen cabinetry per suite design. Cabinets complete with handles
- Granite kitchen countertop
- Stainless steel sink
- Single lever kitchen faucet, complete with pull out spray

**Bathrooms**

- Cultured marble vanity with integrated basin and single lever faucet for the bathroom(s)
- Vanity mirror in clear finish
- Bathtub with single lever faucet and showerhead
- Ceramic tiles in tub area to ceiling height
- Temperature controlled shower faucet
- Low-flow shower head(s)
- Ceramic tile flooring
- Low consumption toilet(s)

**Laundry**

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



**Safety and Security**

- Concierge service at main level lobby
- Access control system located in the lobby vestibule to communicate with residents from the building lobby entrance. Guests in the lobby vestibule can be viewed on the resident's television.
- Access to enclosed parking areas will be restricted to residents of the building by way of a controlled access card or opener system
- Heat detector(s) connected to fire annunciation panel
- Hard wired smoke alarm(s)

**Electrical Service and Fixtures**

- Individual electrical power service, separately metered
- Builder series receptacles and switches throughout
- Light fixtures in foyer, hallway(s), kitchen, breakfast area, and den per suite design
- Capped ceiling light outlet in bedroom, dining and den areas

**Communications**

- Pre-wired telephone outlet in living room, bedroom(s), den and kitchen
- Pre-wired for high speed Internet access
- Pre-wired for cable television

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

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

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

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SCHEDULE "C" TO AGREEMENT OF PURCHASE AND SALE

TERMS OF OCCUPANCY LICENCE

- C.1 The transfer of title to the Unit shall take place on the Title Transfer Date upon which date, unless otherwise expressly provided for hereunder, the term of this Occupancy Licence shall be terminated.
- C.2 The Purchaser shall pay or have paid to the Vendor, on or before the Occupancy Date, by certified cheque drawn on a Canadian chartered bank the amount set forth in paragraph 1(b) of this Agreement without adjustment. Upon payment of such amount on the Occupancy Date, the Vendor grants to the Purchaser a licence to occupy the Unit from the Occupancy Date.
- C.3 The Purchaser shall pay to the Vendor the Occupancy Fee calculated as follows:
- (a) the amount of interest payable in respect of the unpaid balance of the Purchase Price at the prescribed rate;
  - (b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable by the Vendor to the Unit; and
  - (c) the projected monthly common expense contribution for the Unit;
- as an occupancy charge on the first day of each month in advance during Interim Occupancy, no part of which shall be credited as payments on account of the Purchase Price, but which payments shall be a charge for occupancy only. If the Occupancy Date is not the first day of the month, the Purchaser shall pay on the Occupancy Date a pro rata amount for the balance of the month by certified funds. The Purchaser shall deliver to the Vendor on or before the Occupancy Date a series of post-dated cheques as required by the Vendor for payment of the estimated monthly Occupancy Fee. The Occupancy Fee may be recalculated by the Vendor, from time to time based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee following notice from the Vendor. With respect to taxes, the Purchaser agrees that the amount estimated by the Vendor on account of municipal realty taxes attributed to the Unit shall be subject to recalculation based upon the real property tax assessment or reassessment of the Units and/or Condominium, issued by the municipality after the Title Transfer Date and the municipal tax mill rate in effect as at the date such assessment or reassessment is issued. The Occupancy Fee shall thereupon be recalculated by the Vendor and any amount owing by one party to the other shall be paid upon demand.
- C.3 The Purchaser shall be allowed to remain in occupancy of the Unit during Interim Occupancy provided the terms of this Occupancy Licence and the Agreement have been observed and performed by the Purchaser. In the event the Purchaser breaches the terms of occupancy the Vendor in its sole discretion and without limitation of any other rights or remedies provided for in this Agreement or at law may terminate this Agreement and revoke the Occupancy Licence whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Vendor may take whatever steps it deems necessary to obtain vacant possession and the Purchaser shall reimburse the Vendor for all costs it may incur.
- C.4 At or prior to the time that the Purchaser takes possession of the Unit, the Purchaser shall execute and deliver to the Vendor any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Vendor pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time.
- C.5 The Purchaser shall pay the monthly Occupancy Fee during Interim Occupancy and the Vendor shall destroy all unused post-dated Occupancy Fee cheques on or shortly after the Title Transfer Date.
- C.6 The Purchaser agrees to maintain the Unit in a clean and sanitary condition and not to make any alterations, improvements or additions thereto without the prior written approval of the Vendor which may be unreasonably withheld. The Purchaser shall be responsible for all utility, telephone expenses, cable television service, or other charges and expenses billed directly to the occupant of the Unit by the supplier of such services and not the responsibility of the Corporation under the Condominium Documents.
- C.7 The Purchaser's occupancy of the Unit shall be governed by the provisions of the Condominium Documents and the provisions of this Agreement. The Unit may only be occupied and used in accordance with the Condominium Documents and for no other purpose.
- C.8 The Vendor covenants to proceed with all due diligence and dispatch to register the Creating Documents. If the Vendor for any reason whatsoever is unable to register the Creating Documents and therefore is unable to deliver a registrable Transfer/Deed to the Purchaser within twenty-four (24) months after the Occupancy Date, the Purchaser or Vendor shall have the right after such twenty-four (24) month period to give sixty (60) days written notice to the other, of an intention to terminate the Occupancy Licence and this Agreement. If the Vendor and Purchaser consent to termination, the Purchaser shall give up vacant possession and pay the Occupancy Fee to such date, after which this Agreement and Occupancy Licence shall be terminated and all moneys paid to the Vendor on account of the Purchase Price shall be returned to the Purchaser together with interest required by the Act, subject however, to any repair and redecorating expenses of the Vendor necessary to restore the Unit to its original state of occupancy, reasonable wear and tear excepted. The Purchaser and Vendor each agree to provide a release of this Agreement in the Vendor's standard form. If the Vendor and Purchaser do not consent to termination, the provisions of subsection 79(3) of the Act may be invoked by the Vendor.
- C.9 The Vendor and the Purchaser covenant and agree, notwithstanding the taking of possession, that all terms hereunder continue to be binding upon them and that the Vendor may enforce the provisions of the Occupancy Licence separate and apart from the purchase and sale provisions of this Agreement.
- C.10 The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium including all aspects of a standard unit only and not on any improvements or betterments made by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Occupancy Date to insure the improvements or betterments to the Unit and to replace and/or repair same if they are removed, injured or destroyed. The Vendor is not liable for the Purchaser's loss occasioned by fire, theft or other casualty, unless caused by the Vendor's wilful conduct.
- C.11 The Purchaser agrees to indemnify the Vendor for all losses, costs and expenses incurred as a result of the Purchaser's neglect, damage or use of the Unit or the Condominium, or by reason of injury to any person or property in or upon the Unit or the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, invitees, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Unit or the Condominium as a result of the Purchaser's neglect, damage or use of the Unit or Condominium, he will immediately reimburse the Vendor for the cost of doing same, the determination of need for such repairs or redecoration shall be at the discretion of the Vendor, and such costs may be added to the Purchase Price.
- C.12 In accordance with subsections 80(6)(d) and (e) of the Act, subject to strict compliance by the Purchaser with the requirements of occupancy set forth in this Agreement, the Purchaser shall not have the right to assign, sublet or in any other manner dispose of the Occupancy Licence during Interim Occupancy without the prior written consent of the Vendor which consent may be arbitrarily withheld. The Purchaser acknowledges that an administrative fee will be payable to the Vendor each time the Purchaser wishes to assign, sublet or dispose of the Occupancy Licence during Interim Occupancy.
- C.13 The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of the Occupancy Licence, shall be deemed to form an integral part of the Occupancy Licence. In the event the Vendor elects to terminate the Occupancy Licence pursuant to this Agreement following substantial damage to the Unit and/or the Condominium, the Occupancy Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Unit and/or the Condominium can be repaired within a reasonable time following damages as determined by the Vendor (but not, in any event, to exceed one hundred and eighty (180) days) and the Unit is, during such period of repairs uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Unit and/or the Condominium with all due dispatch and the Occupancy Fee shall abate during the period when the Unit remains uninhabitable; otherwise, the Purchaser shall vacate the Unit and deliver up vacant possession to the Vendor and all moneys, to the extent provided for in paragraph 20 hereof (excluding the Occupancy Fee paid to the Vendor) shall be returned to the Purchaser. It is understood and agreed that the proceeds of all insurance policies held by the Vendor are for the benefit of the Vendor alone.

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

**WARNING CLAUSES**

- (a) The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or the Title Transfer Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction.
- (b) The Purchaser is hereby advised that noise levels caused by the Condominium's mechanical equipment, the loading and unloading of tractor trailers in the adjacent commercial condominium and the daily operation of businesses within Units in the adjacent condominium corporation may occasionally cause noise and inconvenience to Unit occupants.
- (c) The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- (d) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- (e) Purchasers are advised that noise and/or odour levels from surrounding commercial and/or industrial businesses, may be of concern and occasionally interfere with some activities of the Unit occupants as the sound levels may exceed the Municipality's and the Ministry of Environment's noise criteria.
- (f) The Purchaser acknowledges being advised of the following notices:
- (i) Despite the best efforts of the York Region Public School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, the students may later be transferred.
- (ii) Purchasers agree for the purpose of transportation to school if bussing is provided by the York Region Public School Board in accordance with the Board's policy, that students will not be bussed from home to school, but will meet the bus at designated locations in or outside the area.
- (g) The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed, from time to time, by any of the governmental authorities, and that the proximity of the Condominium to major arterial roads (namely, Kennedy Road and Highway 407), as well as to public transit services, and railways may result in noise and/or vibration transmissions to the Property, and cause noise exposure levels affecting the Property to exceed the noise criteria established by the governmental authorities, and that despite the inclusion of noise control features within the Condominium, noise levels from the aforementioned sources may continue to be of concern, occasionally interfering with some activities of the residential occupants in the Condominium. The Purchaser nevertheless agrees to complete this transaction in accordance with the terms hereof, notwithstanding the existence of such potential noise concerns, and the Purchaser further acknowledges and agrees that a noise-warning clause similar to the preceding sentence (subject to amendment by any wording or text recommended by the Vendor's noise consultants or by any of the governmental authorities) may be registered on title to the Property on the Title Transfer Date, if, in fact, same is required by any of the governmental authorities.
- (h) The Vendor reserves the right to increase or decrease the final number of, residential, parking, and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the residential, parking and/or locker units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (i) Purchasers are advised that the Vendor's marketing material and site drawings and renderings ("Marketing Material") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Vendor's design consultants and engineers, and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.
- (j) The Purchaser acknowledges and agrees that the Vendor reserves the right to add or relocate certain mechanical equipment within the Unit, including but not limited to, a heat pump system and ancillary equipment, to be located and placed along either the interior of an outside wall or an interior demising wall, in accordance with engineering and/or architectural requirements.
- (k) It is further acknowledged that one or more of the Development Agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to the Title Transfer Date, and the Purchaser further covenants and agrees to execute, forthwith upon the Vendor's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreement(s), if and when required to do so by the Vendor.
- (l) Residents of the Condominium are absolutely prohibited from altering the grading and/or drainage patterns established by the Vendor in respect of the Condominium, and subject to the provisions of the declaration, by-laws and rules of the Condominium in force from time to time, residents shall not place any fence, shrub, bush, hedge or other landscaping treatment on any portion of the common elements.

- (m) Whereas, despite the best efforts of the York Region Catholic Separate 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 bussed to a school outside the neighbourhood, and further, that students may later be transferred to the neighbourhood school.
- (n) The Purchasers agree that for the purpose of transportation to school, the residents shall agree that children will meet the bus on roads presently in existence or at another designated place designated by the Board.
- (o) The Purchaser acknowledges that the snow removal for the site will not be completed by the local municipality. The Purchaser acknowledges that the property is subject to a Condominium Agreement which must address snow removal.
- (p) The Purchaser acknowledges that garbage removal from the site will be completed by a private contractor unless the local municipality and the Region at their discretion, agree to extend garbage and recycling service to the Condominium. Designated pickup dates and areas will be arranged.

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SCHEDULE "E" TO AGREEMENT OF PURCHASE AND SALE

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

1. A Disclosure Statement dated May 29, 2009 and re-issued May 26, 2011 and accompanying documents in accordance with Section 72 of the Act.
2. A copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and the Purchaser.

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

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

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

DATED at Toronto, this 9<sup>th</sup> day of February, 2015.

WITNESS:

) \_\_\_\_\_  
Purchaser  
  
\_\_\_\_\_  
Purchaser

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Property The Residences of South Unionville Square

Markham, Ontario

### Statement Of Critical Dates Delayed Occupancy Warranty

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

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

**VENDOR** Jade-Kennedy (Residential) Development Corporation  
Full Name(s)

**PURCHASER** ANNA GAYLE ANDREW  
Full Name(s)

#### 1. Critical Dates

The First Tentative Occupancy Date, which is the date that the Vendor anticipates the condominium home will be completed and ready to move in, is: the 16th day of March, 2015.

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

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

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 3 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 9 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The Outside Occupancy Date, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 29th day of April, 2016.

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

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay occupancy one or more times in accordance with section 3 of the Addendum and no later than the Outside Occupancy Date.

Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the 16th day of December, 2014. (i.e., 90 days before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

#### 3. Purchaser's Termination Period

If the condominium home is not complete by the Outside Occupancy Date, and the Vendor and the Purchaser have not otherwise agreed, then the Purchaser can terminate the transaction during a period of 30 days thereafter (the "Purchaser's Termination Period"), which period could end as late as:

the 30th day of May, 2016.

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 9, 11 and 12 of the Addendum).

**Note:** Anytime a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to the most recent agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 7 of the Addendum).

Acknowledged this 9<sup>th</sup> day of February, 2015.

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

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

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

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. It contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

The Vendor shall complete all blanks set out below.

<b>VENDOR</b>			
Jade-Kennedy (Residential) Development Corporation			
Full Name(s)			
39700	8791 Woodbine Avenue, Suite 100		
Tarion Registration Number	Address		
905-944-0907	Markham	Ontario	L3R 0P4
Phone	City	Province	Postal Code
905-944-0916	jbolton@mady.com		
Fax	Email		
<b>PURCHASER</b>			
ANNA GAYLE ANDREW			
Full Name(s)			
10 DONER STREET			
Address			
416-990-1612	ALLISTON	ONTARIO	L9R 1M5
Phone	City	Province	Postal Code
	anna.andrew13@gmail.com		
Fax	Email		
<b>PROPERTY DESCRIPTION</b>			
8323 Kennedy Road (proposed)			
Municipal Address			
Markham		Ontario	TBA
City		Province	Postal Code
Part of Lot 9, Concession 6 (Geographic Township of Markham), Blocks 172, 173 and 174, Plan 65M-3178:			
Short Legal Description			
Part of Lots 1, 2 and 3, Plan 2196, Town of Markham, Regional Municipality of York			
<b>INFORMATION REGARDING THE PROPERTY</b>			
The Vendor confirms that:			
(a) The Vendor has obtained Formal Zoning Approval for the Building.			<input checked="" type="radio"/> Yes <input type="radio"/> No
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.			
(b) Commencement of Construction: <input checked="" type="radio"/> has occurred; or <input type="radio"/> is expected to occur by the _____ day of _____, 20____.			
The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.			

**1. Definitions**

- "Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.
- "Business Day" means any day other than Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.
- "Commencement of Construction" means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.
- "Critical Dates" means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser's Termination Period.
- "Delayed Occupancy Date" means the date, set in accordance with section 6, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.
- "Early Termination Conditions" means the types of conditions listed in Schedule A.
- "Firm Occupancy Date" means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.
- "First Tentative Occupancy Date" means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the condominium home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.
- "Final Tentative Occupancy Date" means the last Tentative Occupancy Date that may be set, in accordance with paragraph 3(d).
- "Formal Zoning Approval" occurs when the zoning by-law required in order to construct the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.
- "Occupancy" means the right to use or occupy a proposed or registered condominium home in accordance with the Purchase Agreement.
- "Outside Occupancy Date" means the latest date that the Vendor agrees, at the time of signing the Purchase Agreement, to provide Occupancy to the Purchaser, as set out in the Statement of Critical Dates.
- "Property" or "condominium home" means the condominium dwelling unit being acquired by the Purchaser from the Vendor, and its appurtenant interest in the common elements.
- "Purchaser's Termination Period" means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 11(b).
- "Statement of Critical Dates" means the Statement of Critical Dates attached to or accompanying this Addendum (in form to be determined by the Tarion Registrar from time to time). The Statement of Critical Dates must be signed by both the Vendor and Purchaser.
- "Tentative Occupancy Date" has the meaning given to it in paragraph 3(c).
- "The Act" means the Ontario New Home Warranties Plan Act including regulations, as amended from time to time.
- "Unavoidable Delay" means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.
- "Unavoidable Delay Period" means the number of days between the Purchaser's receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 7(b), and the date on which the Unavoidable Delay concludes.

**2. Early Termination Conditions**

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs 2(h), (i) and (j) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs 2(h) or (i) is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.
- (c) The Vendor confirms that:

- (i) This Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), will result in the automatic termination of the Purchase Agreement.  Yes  No
- (ii) If yes, the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions:

Condition #1 (if applicable)

Description of the Early Termination Condition: see appendix

The Approving Authority (as that term is defined in Schedule A) is: see appendix

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

Condition #2 (if applicable)

Description of the Early Termination Condition: not applicable

The Approving Authority (as that term is defined in Schedule A) is: not applicable

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

The date for satisfaction of any Early Termination Condition cannot be later than 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following signing of the Purchase Agreement.

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

- (d) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph 2(c)(ii) and any appendix listing additional Early Termination Conditions.
- (e) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions listed in subparagraph 2(c)(ii).
- (f) For conditions under paragraph 1(a) of Schedule A the following applies:
  - (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;



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

- (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
  - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (g) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
  - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
  - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (h) The Purchase Agreement may be conditional until closing (transfer to the Purchaser of the title to the condominium home) upon compliance with the subdivision control provisions (section 50) of the *Planning Act* (Ontario) by virtue of registration of the Building under the *Condominium Act* (Ontario), which compliance shall be obtained by the Vendor at its sole expense, on or before closing.
- (i) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (j) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (i.e., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

**3. Setting Tentative Occupancy Dates and the Firm Occupancy Date**

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

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

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

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

- (a) This Addendum sets out a structure for setting, extending and/or accelerating Occupancy dates, which cannot be altered contractually except as set out in this section 5 and in paragraph 7(c). For greater certainty, this Addendum does not restrict any extensions of the closing date (i.e., title transfer date) where Occupancy of the condominium home has already been given to the Purchaser.
- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend a Firm Occupancy Date or a Delayed Occupancy Date in each case to a new specified calendar date. The amendment must comply with the requirements of section 10.
- (c) The Vendor and Purchaser may at any time after signing the Purchase Agreement mutually agree in writing to accelerate the First Tentative Occupancy Date and correspondingly reset all the Critical Dates provided that:
- (i) the mutual amendment is signed at least 180 days prior to the First Tentative Occupancy Date;
  - (ii) all the Critical Dates including the Outside Occupancy Date are moved forward by the same number of days (subject to adjustment so that Critical Dates fall on Business Days);
  - (iii) a new Statement of Critical Dates is signed by both parties at the time the amendment is signed and a copy is provided to the Purchaser; and
  - (iv) the Purchaser is given a three (3) Business Day period in which to review the amendment after signing and if not satisfied with the amendment may terminate the amendment (but not the balance of the Purchase Agreement), upon written notice to the Vendor within such 3-day period.
- Any such amendment must be by mutual agreement and, for greater certainty, neither party has any obligation to enter into such an amendment.
- (d) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (e) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

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

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 5 and 7 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 9.

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

- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event no later than 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 9(c).
- (d) If a Delayed Occupancy Date is set and the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 7 or is mutually agreed upon under section 5, in which case the requirements of those sections must be met. Paragraphs 6(b) and 6(c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 11.

**7. Extending Dates – Due to Unavoidable Delay**

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 10 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 10 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph 7(c), the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 9 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section must set out the revised next Critical Date and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

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

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

**9. Delayed Occupancy Compensation**

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 5 or 7), then the Vendor shall compensate the Purchaser for all costs incurred by the Purchaser as a result of the delay up to a total amount of \$7,500, which amount includes payment to the Purchaser of \$150 a day for living expenses for each day of delay until the date of Occupancy or the date of termination of the Purchase Agreement, as applicable under paragraph (b).
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraphs 11(b), (c) or (e) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 6(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation within 180 days after Occupancy and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 9 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
  - (i) includes the Vendor's assessment of the delayed occupancy compensation payable;

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

- (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
- (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.

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

- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 9(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sales transaction is terminated under paragraphs 11(b), (c) or (e) in which case, the deadline is 180 days after termination for a claim to the Vendor and one (1) year after termination for a claim to Tarion.

**10. Changes to Critical Dates**

- (a) Whenever the parties by mutual agreement extend or accelerate either the Firm Occupancy Date or the Delayed Occupancy Date this section applies.
- (b) If the change involves acceleration of either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement must set out each of the Critical Dates (as changed or confirmed).
- (c) If the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
  - (i) disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 9 above;
  - (ii) unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"); and
  - (iii) contain a statement by the Purchaser that the Purchaser waives compensation or accepts the above noted Compensation, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.
- (d) If the Purchaser for his or her own purposes requests a change of date or dates, then paragraph 10(c) shall not apply.

**11. Termination of the Purchase Agreement**

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written consent, such written consent to be given at the time of the termination.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set by the Vendor under paragraph 6(b), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates, or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the requirements of section 2.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of delay in Occupancy alone.

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

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), the Vendor shall return all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of return to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor and/or a termination agreement as a prerequisite to obtaining the return of monies payable as a result of termination of the Purchase Agreement under this paragraph.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act*.
- (c) Notwithstanding paragraphs 12(a) and 12(b), if either party initiates legal proceedings to contest termination of the Purchase Agreement or the return of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

**13. Addendum Prevails**

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

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

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5 Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this paragraph 14(b), Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.
- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2, the party shall send written notice of the change of address/contact number to the other party.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.

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

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

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

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

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

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

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

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

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

**3. Each condition must:**

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

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

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

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

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

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

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

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

**The date by which this Condition is to be satisfied is the 60<sup>th</sup> day following the date of acceptance of this Agreement.**

*M:\091090259\Masters\APS - Residential Units (May 2011).DOC*

# APPENDIX "G"

**AGREEMENT OF PURCHASE AND SALE**

The undersigned, Roger James Dol (collectively, the "Purchaser"), hereby agrees with JADE-KENNEDY (RESIDENTIAL) DEVELOPMENT CORPORATION (the "Vendor") to purchase the above-noted unit, as outlined for identification purposes only on the sketch attached hereto as Schedule "A", together with ONE (1) Parking Unit and One (1) Locker Unit which shall be allocated by the Vendor in its sole discretion, being proposed unit(s) in the Condominium, to be registered against those lands and premises situate in the Town of Markham on a parcel of land at the northeast corner of Kennedy Road and a road to be constructed and known as South Unionville Avenue (hereinafter called the "Property"), together with an undivided interest in the common elements appurtenant to such unit(s) and the exclusive use of those parts of the common elements attaching to such unit(s), as set out in the proposed Declaration (collectively, the "Unit") on the following terms and conditions:

1. The purchase price of the Unit (the "Purchase Price") is TWO HUNDRED THOUSAND (\$ 200,000.00 ) DOLLARS in lawful money of Canada, payable as follows:
  - (a) to Harris, Sheaffer LLP, in Trust, (the "Vendor's Solicitors" or "Escrow Agent" or "Trustee") in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Occupancy Date:
    - (i) the sum of FIVE THOUSAND (\$5,000.00) Dollars submitted with this Agreement;
    - (ii) the sum of zero (\$ 0 ) Dollars (which, together with the deposit in paragraph 1(a)(i) represents 5% of the Purchase Price) submitted with this Agreement and post-dated fifteen (15) days following the date of acceptance of this Agreement by the Vendor;
    - (iii) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) submitted with this Agreement and post-dated sixty (60) days following the date of acceptance of this Agreement by the Vendor;
    - (iv) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) submitted with this Agreement and post-dated one hundred and eighty (180) days following the date of acceptance of this Agreement by the Vendor;
    - (v) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) submitted with this Agreement and post-dated two hundred and forty (240) days following the date of acceptance of this Agreement by the Vendor;
  - (b) the sum of zero (\$ 0 ) Dollars (being five (5%) percent of the Purchase Price) by certified cheque or bank draft to the Vendor's Solicitors on the Occupancy Date;
  - (c) the balance of the Purchase Price by certified cheque on the Title Transfer Date to the Vendor or as the Vendor may direct, subject to the adjustments hereinafter set forth.
  - (d) the Purchaser agrees to pay the sum as hereinbefore set out in paragraph 1 (a) as a deposit by cheque payable to the Escrow Agent with such last-mentioned party to hold such funds in trust as the escrow agent acting for and on behalf of TWC under the provisions of a Deposit Trust Agreement ("DTA") with respect to this proposed condominium on the express understanding and agreement that as soon as prescribed security for the said deposit money has been provided in accordance with Section 81 of the Act, the Escrow Agent shall be entitled to release and disburse said funds to the Vendor (or to whomsoever and in whatsoever manner the Vendor may direct).
2.
  - (a) The Purchaser shall occupy the Unit on the First Tentative Occupancy Date [as defined in the Statement of Critical Dates being part of the Tarion Addendum as hereinafter defined], or such extended or accelerated date that the Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "Occupancy Date");
  - (b) The transfer of title to the Unit shall be completed on the later of the Occupancy Date or a date established by the Vendor in accordance with Paragraph 14 hereof (the "Title Transfer Date");
  - (c) The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is the address set out in the Tarion Addendum;
  - (d) Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within ten (10) days of notification from the Vendor that the Acknowledgement regarding the receipt of the disclosure statement and Agreement is available to be executed by the Purchaser, then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser, whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor.

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

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

DATED, signed, sealed and delivered this 9th day of February, 2015.

SIGNED, SEALED AND DELIVERED in the presence of

[Signature]  
PURCHASER: Rogers James Dol D.O.B. August 20<sup>th</sup>, 1965

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

PURCHASER'S SOLICITOR: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

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

DATED, signed, sealed and delivered, this 9th day of February, 2015.

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

JADE-KENNEDY (RESIDENTIAL) DEVELOPMENT CORPORATION  
Per: [Signature]  
Authorized Signing Officer  
I have the authority to bind the Corporation.

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

#### Finishes

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

#### Deposits

5. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Occupancy Date or Title Transfer Date at the Vendor's sole discretion on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Declarant's solicitor or the trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(8) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted in the Tarion Addendum. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser the Escrow Agent shall be entitled to withdraw such deposit monies from said designated trust account prior to the Title Transfer Date if and only when the Vendor obtains a Certificate of Deposit from TWC for deposit monies up to Twenty Thousand (\$20,000.00) Dollars and with respect to deposit monies in excess of Twenty Thousand (\$20,000.00) Dollars, one or more excess condominium deposit insurance policies (issued by any insurer as may be selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Escrow Agent holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of section 21 of O. Reg. 48/01.

#### Adjustments

6. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:
- (i) all utility costs including electricity, gas and water (unless included as part of the common expenses); and
  - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
- (iii) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall either be remitted to the relevant taxing authority on account of the Unit or held by the Vendor pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted in accordance with subsections 80(8) and (9) of the Act; and
  - (iv) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with paragraph 5 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) If there are chattels involved in this transaction, the allocation of value of such chattels shall be estimated where necessary by the Vendor and retail sales tax may be collected and remitted by the Vendor or alternatively, the



Purchaser shall pay as a credit to the Vendor on the Statement of Adjustments, the provincial sales tax paid by the Vendor on account of chattels in Schedule "B";

- (ii) Any new taxes imposed on the Unit by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Unit by such government. Without limiting the generality of any provision of this Agreement, the Purchase Price excludes provincial sales tax which may be payable on the Unit, on its own or as part of a harmonized sales tax and accordingly, if same is payable in respect of the transaction contemplated by this Agreement, it shall be paid by the Purchaser on the Unit Transfer Date in addition to the Purchase Price as an adjustment on closing or as otherwise directed by the Vendor. Without limiting the generality of the foregoing, the Purchase Price excludes Provincial Sales Tax which may be payable on the Unit which, if applicable, shall be paid by the Purchaser in addition to the Purchase Price, as aforesaid;
  - (iii) The sum of \$3,500.00 towards any development charge(s) and/or education development charge(s) assessed against or attributable to the Unit (or assessed against the Property or any portion thereof), pursuant to the *Development Charges Act, 1997*, S.O. 1997, as amended from time to time, and the *Education Act, S.O. 1997*, as amended from time to time.
  - (iv) The sum of \$2,000.00 towards any parks levy or any charges pursuant to a section 37 Agreement (pursuant to the *Planning Act*), levied, charged or otherwise imposed with respect to the Condominium, the Property or the Unit by any governmental authority;
  - (v) The cost of the TWC enrolment fee for the Unit (together with any provincial or federal taxes exigible with respect thereto);
  - (vi) The amount of \$875.00 towards the cost of water meter installations, water and sewer service connection charges and hydro and gas installation and connection or energization charges for the Unit and/or the Condominium, and where such costs or charges or any portion thereof are assessed against the Property and not the Unit separately, then the Purchaser's portion of such installation and/or connection or energization charges and costs shall be calculated by dividing the total amount of such charges and costs by the number of units in the Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs. A letter from the Vendor's engineers certifying the said charges and costs shall be final and binding on the Purchaser.
  - (vii) The cost of any carbon monoxide detector installed in the Unit (if applicable);
  - (viii) The charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument;
  - (ix) A sum of Fifty (\$50.00) Dollars for each cheque tendered pursuant to paragraph 1(a) and 1(b) of this Agreement and for any cheques tendered for upgrades or any other monies paid on account of the Purchase Price up to, but not including the Title Transfer Date representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of subsection 81(6) of the Act;
  - (x) The Purchaser agrees to pay Two Hundred and Fifty (\$250.00) Dollars towards the cost of obtaining (partial) discharges of mortgages not intended to be assumed by the Purchaser; and
  - (xi) The Purchaser shall reimburse the Vendor for a portion of the Vendor's costs of engineering reports prepared to satisfy the requirements of TWC under Bulletin 19 with the Purchaser's portion of such costs either being equal to the percentage allocation referable to the Unit as set forth in Schedule "D" to the Declaration or by dividing same by the number of residential units in the Condominium.
- (e) In the event that the Purchaser desires to increase the amount to be paid to the Vendor's solicitors on the Occupancy Date at any time after the expiry of the initial ten (10) day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested to take title to the Property, or wishes to add or change any unit(s) being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitor's the legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement any of the foregoing changes so requested by the Purchaser (with the Vendor's Solicitors' legal fees for implementing any such changes to any of the interim closing and/or final closing documents so requested by the Purchaser and agreed to by the Vendor being \$250.00 plus HST), but without there being any obligation whatsoever on the part of the Vendor to approve of, or to implement, any of the foregoing changes so requested.
- (f) It is further understood and agreed that the Unit may include a rental or leased furnace/AVAC system or hot water tank and associated components which would remain the property of the appropriate company or other supplier of such item, and in such event, the Purchaser shall pay the monthly rental/lease charges assessed with respect thereto from and after the Occupancy Date, and shall execute all requisite rental documents in connection therewith.
- (g) The Purchaser acknowledges that it may be required to enter into an agreement with the supplier of hydro services to the Condominium (the "Hydro Supplier") on or before the Closing Date. Furthermore, the Purchaser acknowledges that such agreement may require the Purchaser to deliver a security deposit to the Hydro Supplier prior to the Occupancy Date and the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.
- (h) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and, if applicable, the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter referred to as the "HST"), and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the federal and provincial new housing rebates applicable pursuant to the *Excise Tax Act (Canada)*, as may be amended, (collectively, the "Rebate") and further warrants and represents that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on the Title Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Occupancy Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Unit as his primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit. The Purchaser further warrants and represents that he has not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate in connection with the Purchaser's acquisition of the Unit, save as may be otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or Vendor's solicitors request for same (and in any event on or before the Title Transfer Date), all requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the Application for Houses Purchased from a Builder or other similar form as prescribed from time to time (the "Rebate Form"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his interest in the Unit with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:
- (i) If the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's solicitors request for same (and in any event on or before the Title Transfer Date) the Rebate Forms duly executed by the Purchaser, together with all other requisite documents and assurances that

the Vendor or the Vendor's solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or

- (ii) If the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

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

- (i) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the Excise Tax Act. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "Reduction"), then the Purchaser shall pay to the Vendor on the Title Transfer Date the amount of (as determined by the Vendor in its sole and absolute discretion) the Reduction.
- (i) An administration fee of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.

Title

7. The Vendor or its Solicitor shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "Notification Date"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "Examination Period") to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

Direction Re: Title

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

Permitted Encumbrances

- 9. (a) The Purchaser agrees to accept title subject to the following:
  - (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser as set out in Schedule "E";
  - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
  - (iii) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners, provided that any such easement and cost-sharing agreements or reciprocal agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;
  - (iv) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder; and
  - (v) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction;
- (b) It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the property a release of (or an amendment to) any of the aforementioned easements, Development Agreements, reciprocal agreements or restrictive covenants or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants registered on title. The Purchaser further

acknowledges and agrees that the retention by the local municipality within which the Property is situated (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfillment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.

- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer Date;
- (d) In the event that the Vendor is not the registered owner of the Property, the Purchaser agrees to accept a conveyance of title from the registered owner together with the owner's title covenants in lieu of the Vendor's;
- (e) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing, if so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

**Vendor's Lien**

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

**Partial Discharges**

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

**Construction Lien Act**

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

**The Planning Act**

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

**Title Transfer Date**

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

**Purchaser's Covenants, Representations and Warranties**

- 15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing and notwithstanding any other provision in this Agreement to the contrary, within ten (10) days of written demand from the Vendor, the Purchaser agrees to produce evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date. If the Purchaser fails to provide the mortgage approval as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.
- 16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 26 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
- 17. The Purchaser covenants and agrees with the Vendor not to list for sale, advertise for sale, offer for lease, offer for sale, sell, lease, transfer or assign his interest under this Agreement or in the Unit, not less than thirty (30) days prior to the Unit Transfer Date without first: (i)

obtaining the written consent of the Vendor, which consent will not be unreasonably withheld once the Vendor determines that ninety (90%) percent of the units in the Condominium have been sold, which determination shall be made by the Vendor in its sole and unfettered discretion; (ii) acknowledging in writing that the Purchaser shall remain fully responsible for the Purchaser's covenants, agreements and obligations contained in this Agreement; (iii) obtaining an assignment and assumption agreement from the transferee/assignee in a form acceptable to the Vendor acting reasonably; (iv) remitting payment of the sum of Two Thousand Five Hundred (\$2,500.00) Dollars (plus applicable HST) by certified cheque representing an administration fee payable to the Vendor for processing and for allowing such transfer or assignment; (v) and confirming that the listing of such sale, transfer or assignment is not, never was and will not be listed on the Toronto Real Estate Board, Multiple Listing Service ("MLS"); and (vi) obtaining the written consent or approval from any lending institution or mortgagee providing any financing to the Vendor, construction or otherwise, for the development and construction of the Condominium, in the event such consent or approval is required to be obtained by the Vendor as a condition for the advance or continued advance of any funds in respect of such financing. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy License, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. Subject to the foregoing, the Purchaser shall be entitled to direct that title to the Unit be taken in the name of an assignee. Notwithstanding the foregoing, the Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, being limited to parents, siblings or children over the age of eighteen (18) years, and shall not be permitted to direct title to any other third parties.

18. The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Lands (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as well as a site plan approval/development application/draft plan of condominium approval with respect to the Lands, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or silling of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without adversely affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.
19. The Purchaser covenants and agrees that he/she shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration/construction office(s) and model units, and the display of signs located on the Property.

#### Termination without Default

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

#### Tarion Warranty Corporation

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

#### Right of Entry

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

#### Occupancy

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

#### Inspection

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

- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.
- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.
- (e) In the event the Purchaser and/or the Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

#### **Purchaser's Default**

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

#### **Common Elements**

26. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his/her successors in title against the Vendor. The Vendor may, from time to time, change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any elevations, building specifications or site official plan amendments, zoning by-laws, committee of adjustment and/or land division committee decisions, municipal site plan approval or architectural control. Such changes may be to the plans and specifications existing at inception of the Condominium or as they existed at the time the Purchaser entered into this Agreement, or as illustrated on any sales material, including without limitation, brochures, models or otherwise. With respect to any aspect of construction, finishing or equipment, the Vendor shall have the right, without the Purchaser's consent, to substitute materials, for those described in this Agreement or in the plans or specifications, provided the substituted materials are in the judgment of the Vendor's architect, whose determination shall be final and binding, of equal or better quality. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications.

#### **Executions**

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

#### **Risk**

28. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy License attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:
- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted in paragraph 7 of the Tarrion Addendum;
- (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, with interest payable under law if the damage to the Condominium has frustrated this Agreement at law; or
- (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act,

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

**Tender/Termet**

- 29. (a) The parties waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement and subject to the provisions of paragraph 30 of this Agreement shall be validly made by the Vendor upon the Purchaser, by a representative of the Vendor attending at the offices of Harris, Sheaffer, LLP at 12:00 noon on the Title Transfer Date or the Occupancy Date as the case may be and remaining there until 5:00 p.m. and is ready, willing and able to complete the transaction. The Purchaser agrees that keys may be released to the Purchaser as the construction site or sales office on the Occupancy Date or the Title Transfer Date, as applicable. The Vendor's advice that the keys are available shall be valid tender of possession of the Property to the Purchaser. In the event the Purchaser or his or her solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative (which includes the Vendor's Solicitors) shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and
- (d) It is further provided that, notwithstanding subparagraph 29 (a) hereof, in the event the Purchaser or his or her solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Title Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his or her solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.

30. As the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or ("TERS") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:

- (a) The Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction. The Purchaser shall authorize such solicitor to, at the option of the Vendor's Solicitors, either execute an escrow closing agreement with the Vendor's Solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement") establishing the procedures and timing for completing this transaction or to otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement.
- (b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:
  - (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other 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) If the Purchaser's solicitor is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said solicitor (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's solicitor, at such time on the Title Transfer Date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's solicitor's office, and shall pay a fee as determined by the Vendor's solicitor, acting reasonably for the use of the Vendor's computer facilities.
- (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document pursuant to the *Electronic Commerce Act*) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (f) Notwithstanding anything contained in this agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
  - (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement and keys are made available for the Purchaser to pick up at the Vendor's sales of customer service office;
  - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
  - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's solicitor;

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

**General**

- 31. The Vendor shall provide a statutory declaration on the Title Transfer Date that it is not a non-resident of Canada within the meaning of the ITA.
- 32. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.
- 33. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
- 34. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.
- 35. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one unit from another. NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the TWC. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required, then the ceiling height of the Unit will be less than that

represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.

36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
37. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
38. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.
39. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.

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

#### Notice

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

#### Material Change

41. The Purchaser acknowledges and agrees that the Vendor may, from time to time in its sole discretion, due to site conditions or constraints, or for marketing considerations, or for any other legitimate reason, including without limitation any request or requirement of any of the governmental authorities or any request or requirement of the Vendor's architect or other design consultants:

(h) change the Property's municipal address or numbering of the Unit (in terms of the unit number and/or level number ascribed to any one or more of the units comprising the Unit);

(i) change, vary or modify the plans and specifications pertaining to the Unit or the Condominium, or any portion thereof (including architectural, structural, engineering, landscaping, grading, mechanical, site servicing and/or other plans and specifications) from the plans and specifications existing at the inception of the project, or existing at the time that the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure(s), model(s) in the sales office or otherwise, including without limitation, making any change to the total number of dwelling, parking, locker and/or other ancillary units intended to be created within the Condominium, and/or any change to the total number of levels or floors within the Condominium, as well as any changes or alterations to the design, style, size and/or configuration of any dwelling or other ancillary units within the Condominium;

(j) change, vary, or modify the number, size and location of any windows, column(s) and/or bulkhead(s) within or adjacent to (or comprising part of) the Unit, from the number, size and/or location of same as displayed or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser, including the insertion or placement of any window(s), column(s) and/or bulkhead(s) in one or more locations within the Unit which have not been shown or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser (regardless of the extent or impact thereof), as well as the removal of any window(s), column(s) and/or bulkhead(s) from any location(s) previously shown or illustrated in any sales brochure(s), model(s) in the sales office or otherwise; and/or

(k) change the layout of the Unit such that same is a mirror image of the layout shown to the Purchaser (or a mirror image of the layout illustrated in any sales brochure or other marketing material(s) delivered to the Purchaser);

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

#### Cause of Action/Assignment

42. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties. Furthermore, the Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.
- (i) At any time prior to the Title Transfer Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation registered as a vendor pursuant to the ONH/WPA and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor.

#### Non-Merger

43. The covenants and agreements of each of the parties hereto shall not merge on the Title Transfer Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled

in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

**Notice/Warning Provisions**

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

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

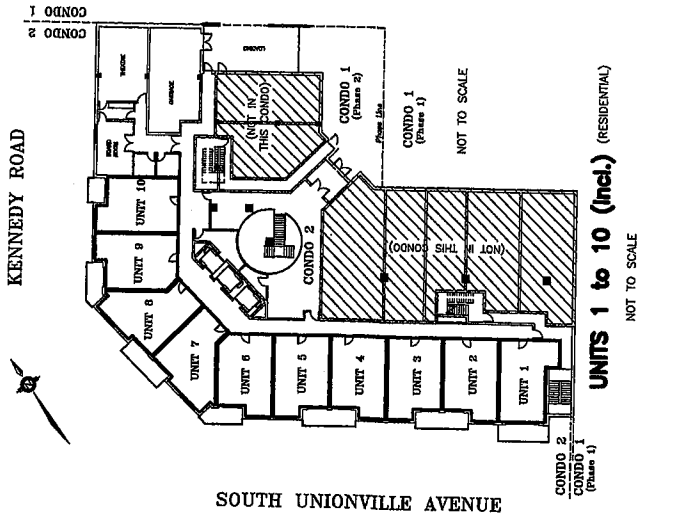
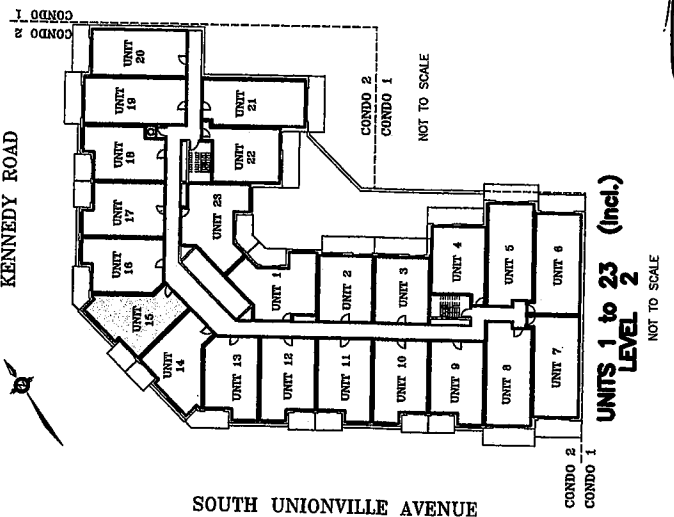
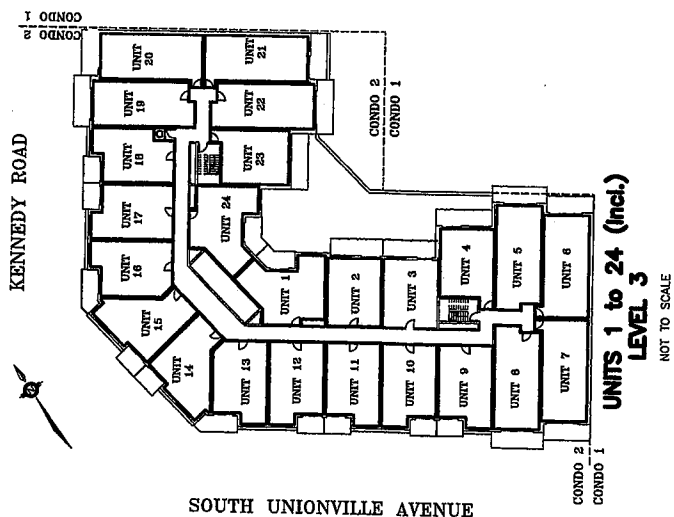
45. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Unit, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital and residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired suite design(s), and colour/finish selections. In particular, but without limiting the foregoing, the Vendor may disclose such personal information to:

- (a) Any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency (i.e. with respect to HST);
- (b) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the ITA, as amended;
- (c) The Condominium for the purposes of facilitating the completion of the Condominium's voting, leasing and/or other relevant records and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;
- (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
- (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity surveyor monitoring the Project and its costs, the Vendor's designated construction lender(s), the Tarion Warranty Corporation and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium (collectively, the "Utilities"), unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the Utilities;
- (i) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family, unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to said third party data processing companies;
- (j) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

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



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

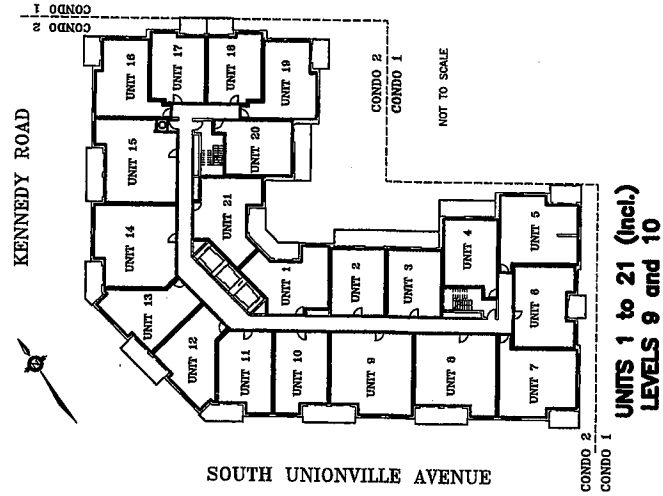


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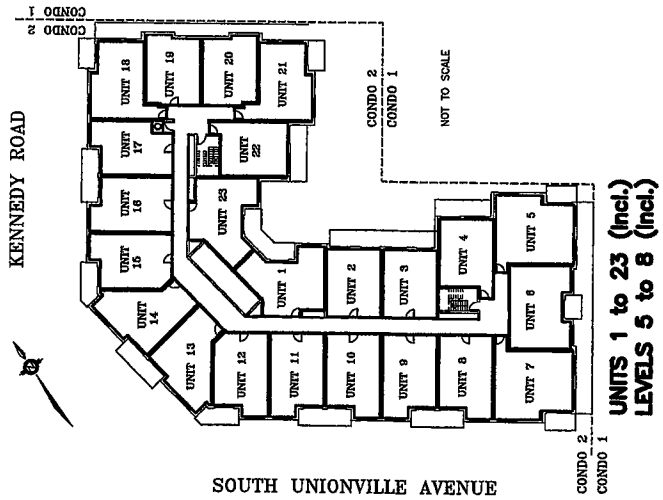
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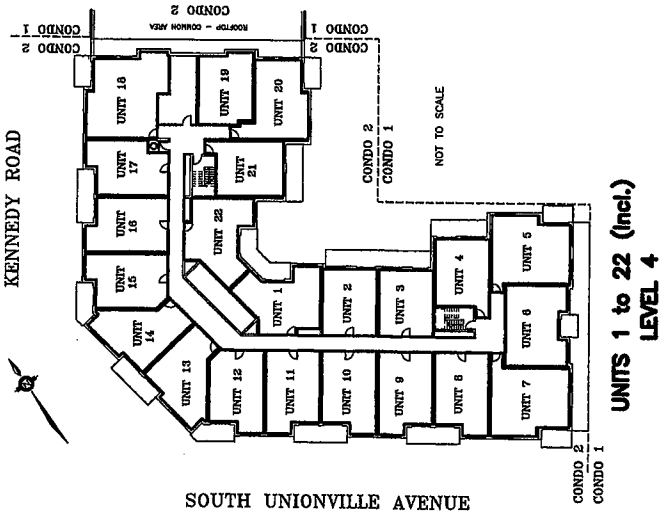
**SCHEDULE "A"**  
**TO THE AGREEMENT OF PURCHASE AND SALE**



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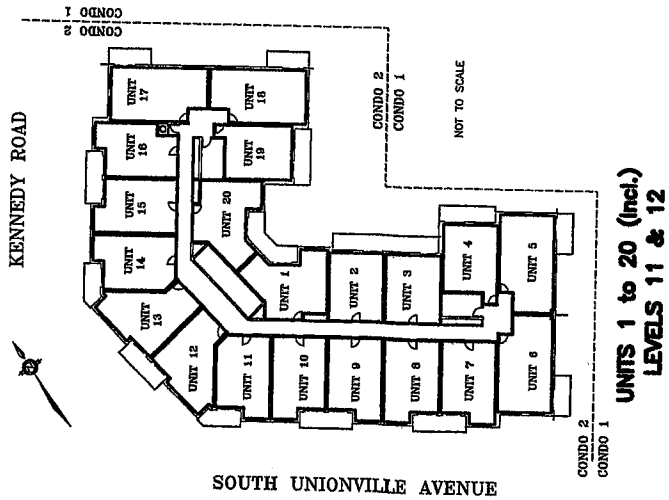


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# SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE



LEVEL \_\_\_\_\_ ○ ○

UNIT \_\_\_\_\_ ○ ○

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

FEATURES AND FINISHES

The following are included in the Purchase Price:

Suites at *The Residences at South Unionville Square* to include the following standard features and finishes;

- Individual unitized parking space
- Individual storage locker
- Laminate hardwood in the living, dining and den areas
- 40oz carpet with foam under pad in bedroom(s)
- Ceramic tile in kitchen, laundry and bathroom(s) areas
- Sliding closet/storage areas doors
- In-suite heating and cooling unit with thermostat for individual climate control of suite
- Texture spray finished ceilings, except kitchens and bathrooms which have smooth finished ceilings
- Trim package including nominal 4" painted base, lever passage and privacy sets
- Interior walls are primed and then painted with two coats of off-white, latex paint (bathroom(s), and all woodwork and trim painted with white semi-gloss paint). Paints have low levels of volatile organic compounds (VOCs).
- 6'8" interior doors with lever hardware, complete with casings
- 7' entry door with security peeper
- Balcony and Terrace access via sliding patio door(s)
- Windows - double pane, sealed glazed units
- For non-penthouse units where ceiling bulkheads are installed, the ceiling height will be less than the nominal 9 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 9 feet.
- For penthouse units where ceiling bulkheads are installed, the ceiling height will be less than the nominal 10 feet. Where dropped ceilings are required, (in areas such as foyers, closets, kitchens, dining rooms, bathrooms, laundry rooms and hallways), the ceiling height will also be less than the nominal 10 feet.

**Kitchens**

- Stainless steel brand name Energy Star ® refrigerator and dishwasher
- Stainless steel brand name electric range
- Stainless steel brand name high velocity hood vent, vented to the exterior
- Kitchen cabinetry per suite design. Cabinets complete with handles
- Granite kitchen countertop
- Stainless steel sink
- Single lever kitchen faucet, complete with pull out spray

**Bathrooms**

- Cultured marble vanity with integrated basin and single lever faucet for the bathroom(s)
- Vanity mirror in clear finish
- Bathtub with single lever faucet and showerhead
- Ceramic tiles in tub area to ceiling height
- Temperature controlled shower faucet
- Low-flow shower head(s)
- Ceramic tile flooring
- Low consumption toilet(s)

**Laundry**

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

#### Safety and Security

- Concierge service at main level lobby
- Access control system located in the lobby vestibule to communicate with residents from the building lobby entrance. Guests in the lobby vestibule can be viewed on the resident's television.
- Access to enclosed parking areas will be restricted to residents of the building by way of a controlled access card or opener system
- Heat detector(s) connected to fire annunciation panel
- Hard wired smoke alarm(s)

#### Electrical Service and Fixtures

- Individual electrical power service, separately metered
- Builder series receptacles and switches throughout
- Light fixtures in foyer, hallway(s), kitchen, breakfast area, and den per suite design
- Capped ceiling light outlet in bedroom, dining and den areas

#### Communications

- Pre-wired telephone outlet in living room, bedroom(s), den and kitchen
- Pre-wired for high speed internet access
- Pre-wired for cable television

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

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

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

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SCHEDULE "C" TO AGREEMENT OF PURCHASE AND SALE

TERMS OF OCCUPANCY LICENCE

- C.1 The transfer of title to the Unit shall take place on the Title Transfer Date upon which date, unless otherwise expressly provided for hereunder, the term of this Occupancy Licence shall be terminated.
- C.2 The Purchaser shall pay or have paid to the Vendor, on or before the Occupancy Date, by certified cheque drawn on a Canadian chartered bank the amount set forth in paragraph 1(b) of this Agreement without adjustment. Upon payment of such amount on the Occupancy Date, the Vendor grants to the Purchaser a licence to occupy the Unit from the Occupancy Date.
- C.3 The Purchaser shall pay to the Vendor the Occupancy Fee calculated as follows:
  - (a) the amount of interest payable in respect of the unpaid balance of the Purchase Price at the prescribed rate;
  - (b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable by the Vendor to the Unit; and
  - (c) the projected monthly common expense contribution for the Unit;

as an occupancy charge on the first day of each month in advance during Interim Occupancy, no part of which shall be credited as payments on account of the Purchase Price, but which payments shall be a charge for occupancy only. If the Occupancy Date is not the first day of the month, the Purchaser shall pay on the Occupancy Date a pro rata amount for the balance of the month by certified funds. The Purchaser shall deliver to the Vendor on or before the Occupancy Date a series of post-dated cheques as required by the Vendor for payment of the estimated monthly Occupancy Fee. The Occupancy Fee may be recalculated by the Vendor, from time to time based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee following notice from the Vendor. With respect to taxes, the Purchaser agrees that the amount estimated by the Vendor on account of municipal realty taxes attributed to the Unit shall be subject to recalculation based upon the real property tax assessment or reassessment of the Units and/or Condominium, issued by the municipality after the Title Transfer Date and the municipal tax mill rate in effect as at the date such assessment or reassessment is issued. The Occupancy Fee shall thereupon be recalculated by the Vendor and any amount owing by one party to the other shall be paid upon demand.
- C.3 The Purchaser shall be allowed to remain in occupancy of the Unit during Interim Occupancy provided the terms of this Occupancy Licence and the Agreement have been observed and performed by the Purchaser. In the event the Purchaser breaches the terms of occupancy the Vendor in its sole discretion and without limitation of any other rights or remedies provided for in this Agreement or at law may terminate this Agreement and revoke the Occupancy Licence whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Vendor may take whatever steps it deems necessary to obtain vacant possession and the Purchaser shall reimburse the Vendor for all costs it may incur.
- C.4 At or prior to the time that the Purchaser takes possession of the Unit, the Purchaser shall execute and deliver to the Vendor any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Vendor pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time.
- C.5 The Purchaser shall pay the monthly Occupancy Fee during Interim Occupancy and the Vendor shall destroy all unused post-dated Occupancy Fee cheques on or shortly after the Title Transfer Date.
- C.6 The Purchaser agrees to maintain the Unit in a clean and sanitary condition and not to make any alterations, improvements or additions thereto without the prior written approval of the Vendor which may be unreasonably withheld. The Purchaser shall be responsible for all utility, telephone expenses, cable television service, or other charges and expenses billed directly to the occupant of the Unit by the supplier of such services and not the responsibility of the Corporation under the Condominium Documents.
- C.7 The Purchaser's occupancy of the Unit shall be governed by the provisions of the Condominium Documents and the provisions of this Agreement. The Unit may only be occupied and used in accordance with the Condominium Documents and for no other purpose.
- C.8 The Vendor covenants to proceed with all due diligence and dispatch to register the Creating Documents. If the Vendor for any reason whatsoever is unable to register the Creating Documents and therefore is unable to deliver a registrable Transfer/Deed to the Purchaser within twenty-four (24) months after the Occupancy Date, the Purchaser or Vendor shall have the right after such twenty-four (24) month period to give sixty (60) days written notice to the other, of an intention to terminate the Occupancy Licence and this Agreement. If the Vendor and Purchaser consent to termination, the Purchaser shall give up vacant possession and pay the Occupancy Fee to such date, after which this Agreement and Occupancy Licence shall be terminated and all moneys paid to the Vendor on account of the Purchase Price shall be returned to the Purchaser together with interest required by the Act, subject however, to any repair and redecorating expenses of the Vendor necessary to restore the Unit to its original state of occupancy, reasonable wear and tear excepted. The Purchaser and Vendor each agree to provide a release of this Agreement in the Vendor's standard form. If the Vendor and Purchaser do not consent to termination, the provisions of subsection 79(3) of the Act may be invoked by the Vendor.
- C.9 The Vendor and the Purchaser covenant and agree, notwithstanding the taking of possession, that all terms hereunder continue to be binding upon them and that the Vendor may enforce the provisions of the Occupancy Licence separate and apart from the purchase and sale provisions of this Agreement.
- C.10 The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium including all aspects of a standard unit only and not on any improvements or betterments made by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Occupancy Date to insure the improvements or betterments to the Unit and to replace and/or repair same if they are removed, injured or destroyed. The Vendor is not liable for the Purchaser's loss occasioned by fire, theft or other casualty, unless caused by the Vendor's willful conduct.
- C.11 The Purchaser agrees to indemnify the Vendor for all losses, costs and expenses incurred as a result of the Purchaser's neglect, damage or use of the Unit or the Condominium, or by reason of injury to any person or property in or upon the Unit or the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, invitees, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Unit or the Condominium as a result of the Purchaser's neglect, damage or use of the Unit or Condominium, he will immediately reimburse the Vendor for the cost of doing same, the determination of need for such repairs or redecoration shall be at the discretion of the Vendor, and such costs may be added to the Purchase Price.
- C.12 In accordance with subsections 80(6)(d) and (e) of the Act, subject to strict compliance by the Purchaser with the requirements of occupancy set forth in this Agreement, the Purchaser shall not have the right to assign, sublet or in any other manner dispose of the Occupancy Licence during Interim Occupancy without the prior written consent of the Vendor which consent may be arbitrarily withheld. The Purchaser acknowledges that an administrative fee will be payable to the Vendor each time the Purchaser wishes to assign, sublet or dispose of the Occupancy Licence during Interim Occupancy.
- C.13 The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of the Occupancy Licence, shall be deemed to form an integral part of the Occupancy Licence. In the event the Vendor elects to terminate the Occupancy Licence pursuant to this Agreement following substantial damage to the Unit and/or the Condominium, the Occupancy Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Unit and/or the Condominium can be repaired within a reasonable time following damages as determined by the Vendor (but not, in any event, to exceed one hundred and eighty (180) days) and the Unit is, during such period of repairs uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Unit and/or the Condominium with all due dispatch and the Occupancy Fee shall abate during the period when the Unit remains uninhabitable; otherwise, the Purchaser shall vacate the Unit and deliver up vacant possession to the Vendor and all moneys, to the extent provided for in paragraph 20 hereof (excluding the Occupancy Fee paid to the Vendor) shall be returned to the Purchaser. It is understood and agreed that the proceeds of all insurance policies held by the Vendor are for the benefit of the Vendor alone.

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

**WARNING CLAUSES**

- (a) The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or the Title Transfer Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction.
- (b) The Purchaser is hereby advised that noise levels caused by the Condominium's mechanical equipment, the loading and unloading of tractor trailers in the adjacent commercial condominium and the daily operation of businesses within Units in the adjacent condominium corporation may occasionally cause noise and inconvenience to Unit occupants.
- (c) The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- (d) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- (e) Purchasers are advised that noise and/or odour levels from surrounding commercial and/or industrial businesses, may be of concern and occasionally interfere with some activities of the Unit occupants as the sound levels may exceed the Municipality's and the Ministry of Environment's noise criteria.
- (f) The Purchaser acknowledges being advised of the following notices:
- (i) Despite the best efforts of the York Region Public School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, the students may later be transferred.
- (ii) Purchasers agree for the purpose of transportation to school if bussing is provided by the York Region Public School Board in accordance with the Board's policy, that students will not be bussed from home to school, but will meet the bus at designated locations in or outside the area.
- (g) The Purchaser specifically acknowledges and agrees that the Condominium will be developed in accordance with any requirements that may be imposed, from time to time, by any of the governmental authorities, and that the proximity of the Condominium to major arterial roads (namely, Kennedy Road and Highway 407), as well as to public transit services, and railways may result in noise and/or vibration transmissions to the Property, and cause noise exposure levels affecting the Property to exceed the noise criteria established by the governmental authorities, and that despite the inclusion of noise control features within the Condominium, noise levels from the aforementioned sources may continue to be of concern, occasionally interfering with some activities of the residential occupants in the Condominium. The Purchaser nevertheless agrees to complete this transaction in accordance with the terms hereof, notwithstanding the existence of such potential noise concerns, and the Purchaser further acknowledges and agrees that a noise-warning clause similar to the preceding sentence (subject to amendment by any wording or text recommended by the Vendor's noise consultants or by any of the governmental authorities) may be registered on title to the Property on the Title Transfer Date, if, in fact, same is required by any of the governmental authorities.
- (h) The Vendor reserves the right to increase or decrease the final number of, residential, parking, and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the residential, parking and/or locker units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more units situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (i) Purchasers are advised that the Vendor's marketing material and site drawings and renderings ("Marketing Material") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Vendor's design consultants and engineers, and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.
- (j) The Purchaser acknowledges and agrees that the Vendor reserves the right to add or relocate certain mechanical equipment within the Unit, including but not limited to, a heat pump system and ancillary equipment, to be located and placed along either the interior of an outside wall or an interior demising wall, in accordance with engineering and/or architectural requirements.
- (k) It is further acknowledged that one or more of the Development Agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to the Title Transfer Date, and the Purchaser further covenants and agrees to execute, forthwith upon the Vendor's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreement(s), if and when required to do so by the Vendor.
- (l) Residents of the Condominium are absolutely prohibited from altering the grading and/or drainage patterns established by the Vendor in respect of the Condominium, and subject to the provisions of the declaration, by-laws and rules of the Condominium in force from time to time, residents shall not place any fence, shrub, bush, hedge or other landscaping treatment on any portion of the common elements.

- 14
- (m) Whereas, despite the best efforts of the York Region Catholic Separate 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 bussed to a school outside the neighbourhood, and further, that students may later be transferred to the neighbourhood school.
  - (n) The Purchasers agree that for the purpose of transportation to school, the residents shall agree that children will meet the bus on roads presently in existence or at another designated place designated by the Board.
  - (o) The Purchaser acknowledges that the snow removal for the site will not be completed by the local municipality. The Purchaser acknowledges that the property is subject to a Condominium Agreement which must address snow removal.
  - (p) The Purchaser acknowledges that garbage removal from the site will be completed by a private contractor unless the local municipality and the Region at their discretion, agree to extend garbage and recycling service to the Condominium. Designated pickup dates and areas will be arranged.

*M:\09\090259\Wasters\APS - Residential Units (May 2011).DOC*



SCHEDULE "E" TO AGREEMENT OF PURCHASE AND SALE

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

- 1. A Disclosure Statement dated May 29, 2009 and re-issued May 26, 2011 and accompanying documents in accordance with Section 72 of the Act.
- 2. A copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and the Purchaser.

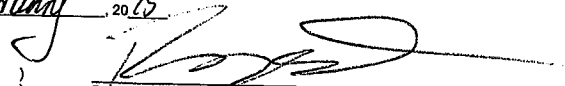
The Purchaser hereby acknowledges that the Condominium Documents required by the Act have not been registered by the Vendor, and agrees that the Vendor may, from time to time, make any modification to the Condominium Documents in accordance with its own requirements and the requirements of any mortgagee,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

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

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

DATED at Toronto, this 9<sup>th</sup> day of February, 2015

WITNESS:

  
 \_\_\_\_\_  
 Purchaser  
 \_\_\_\_\_  
 Purchaser

Property The Residences of South Unionville Square  
Markham, Ontario

## Statement Of Critical Dates Delayed Occupancy Warranty

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

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

**VENDOR** Jade-Kennedy (Residential) Development Corporation  
Full Name(s)

**PURCHASER** ROGER JAMES DOL  
Full Name(s)

### 1. Critical Dates

The First Tentative Occupancy Date, which is the date that the Vendor anticipates the condominium home will be completed and ready to move in, is

the 16th day of March, 2015.

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

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

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 3 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 9 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The Outside Occupancy Date, which is the latest date by which the Vendor agrees to provide Occupancy, is:

the 29th day of April, 2016.

### 2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay occupancy one or more times in accordance with section 3 of the Addendum and no later than the Outside Occupancy Date.

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

the 16th day of December, 2014.

### 3. Purchaser's Termination Period

If the condominium home is not complete by the Outside Occupancy Date, and the Vendor and the Purchaser have not otherwise agreed, then the Purchaser can terminate the transaction during a period of 30 days thereafter (the "Purchaser's Termination Period"), which period could end as late as:

the 30th day of May, 2016.

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 9, 11 and 12 of the Addendum).

**Note:** Anytime a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to the most recent agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 7 of the Addendum).

Acknowledged this 9<sup>th</sup> day of February, 2015.

VENDOR :

PURCHASER :

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

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. It contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

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

**VENDOR** Jade-Kennedy (Residential) Development Corporation  
 Full Name(s)

39700 8791 Woodbine Avenue, Suite 100  
 Tarion Registration Number Address

905-944-0907 Markham Ontario L3R 0P4  
 Phone City Province Postal Code

905-944-0916 jbolton@mady.com  
 Fax Email

**PURCHASER** ROGER JAMES DOL  
 Full Name(s)

6839 7<sup>th</sup> LINE  
 Address

416-717-0209 BEETON ONTARIO L0G1A0  
 Phone City Province Postal Code

0209rdol@gmail.com  
 Fax Email

**PROPERTY DESCRIPTION**

8323 Kennedy Road (proposed)  
 Municipal Address

Markham Ontario TBA  
 City Province Postal Code

Part of Lot 9, Concession 6 (Geographic Township of Markham), Blocks 172, 173 and 174, Plan 65M-3178:  
 Short Legal Description

Part of Lots 1, 2 and 3, Plan 2196, Town of Markham, Regional Municipality of York

**INFORMATION REGARDING THE PROPERTY**

The Vendor confirms that:

(a) The Vendor has obtained Formal Zoning Approval for the Building.  Yes  No  
 If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.

(b) Commencement of Construction:  has occurred; or  is expected to occur by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

**1. Definitions**

- "Building" means the condominium building or buildings contemplated by the Purchase Agreement; in which the Property is located or is proposed to be located.
- "Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is not a Business Day; and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.
- "Commencement of Construction" means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.
- "Critical Dates" means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser's Termination Period.
- "Delayed Occupancy Date" means the date, set in accordance with section 6, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.
- "Early Termination Conditions" means the types of conditions listed in Schedule A.
- "Firm Occupancy Date" means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.
- "First Tentative Occupancy Date" means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the condominium home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.
- "Final Tentative Occupancy Date" means the last Tentative Occupancy Date that may be set, in accordance with paragraph 3(d).
- "Formal Zoning Approval" occurs when the zoning by-law required in order to construct the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.
- "Occupancy" means the right to use or occupy a proposed or registered condominium home in accordance with the Purchase Agreement.
- "Outside Occupancy Date" means the latest date that the Vendor agrees, at the time of signing the Purchase Agreement, to provide Occupancy to the Purchaser, as set out in the Statement of Critical Dates.
- "Property" or "condominium home" means the condominium dwelling unit being acquired by the Purchaser from the Vendor, and its appurtenant interest in the common elements.
- "Purchaser's Termination Period" means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 11(b).
- "Statement of Critical Dates" means the Statement of Critical Dates attached to or accompanying this Addendum (in form to be determined by the Tarion Registrar from time to time). The Statement of Critical Dates must be signed by both the Vendor and Purchaser.
- "Tentative Occupancy Date" has the meaning given to it in paragraph 3(c).
- "The Act" means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.
- "Unavoidable Delay" means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.
- "Unavoidable Delay Period" means the number of days between the Purchaser's receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 7(b), and the date on which the Unavoidable Delay concludes.

**2. Early Termination Conditions**

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs 2(h), (i) and (j) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs 2(h) or (i) is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.
- (c) The Vendor confirms that:
  - (i) This Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), will result in the automatic termination of the Purchase Agreement.
  - (ii) If yes, the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions:
 

Yes    No

Condition #1 (if applicable)  
 Description of the Early Termination Condition: see appendix

The Approving Authority (as that term is defined in Schedule A) is: see appendix

The date by which Condition #1 is to be satisfied is the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Condition #2 (if applicable)  
 Description of the Early Termination Condition: not applicable

The Approving Authority (as that term is defined in Schedule A) is: not applicable

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

The date for satisfaction of any Early Termination Condition cannot be later than 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following signing of the Purchase Agreement.

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

- (d) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph 2(c)(ii) and any appendix listing additional Early Termination Conditions.
- (e) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions listed in subparagraph 2(c)(ii).
- (f) For conditions under paragraph 1(a) of Schedule A the following applies:
  - (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;

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

- (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
- (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (g) For conditions under paragraph 1(b) of Schedule A the following applies:
  - (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
  - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
  - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (h) The Purchase Agreement may be conditional until closing (transfer to the Purchaser of the title to the condominium home) upon compliance with the subdivision control provisions (section 50) of the *Planning Act* (Ontario) by virtue of registration of the Building under the *Condominium Act* (Ontario), which compliance shall be obtained by the Vendor at its sole expense, on or before closing.
- (i) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (j) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (i.e., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

**3. Setting Tentative Occupancy Dates and the Firm Occupancy Date**

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

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

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

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

- (a) This Addendum sets out a structure for setting, extending and/or accelerating Occupancy dates, which cannot be altered contractually except as set out in this section 5 and in paragraph 7(c). For greater certainty, this Addendum does not restrict any extensions of the closing date (i.e., title transfer date) where Occupancy of the condominium home has already been given to the Purchaser.
- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend a Firm Occupancy Date or a Delayed Occupancy Date in each case to a new specified calendar date. The amendment must comply with the requirements of section 10.
- (c) The Vendor and Purchaser may at any time after signing the Purchase Agreement mutually agree in writing to accelerate the First Tentative Occupancy Date and correspondingly reset all the Critical Dates provided that:
  - (i) the mutual amendment is signed at least 180 days prior to the First Tentative Occupancy Date;
  - (ii) all the Critical Dates including the Outside Occupancy Date are moved forward by the same number of days (subject to adjustment so that Critical Dates fall on Business Days);
  - (iii) a new Statement of Critical Dates is signed by both parties at the time the amendment is signed and a copy is provided to the Purchaser; and
  - (iv) the Purchaser is given a three (3) Business Day period in which to review the amendment after signing and if not satisfied with the amendment may terminate the amendment (but not the balance of the Purchase Agreement), upon written notice to the Vendor within such 3-day period.Any such amendment must be by mutual agreement and, for greater certainty, neither party has any obligation to enter into such an amendment.
- (d) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (e) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

**6. Changing the Firm Occupancy Date - By Setting a Delayed Occupancy Date**

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 5 and 7 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 9.

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

- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event no later than 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 9(c).
- (d) If a Delayed Occupancy Date is set and the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 7 or is mutually agreed upon under section 5, in which case the requirements of those sections must be met. Paragraphs 6(b) and 6(c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 11.

**7. Extending Dates – Due to Unavoidable Delay**

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 10 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 10 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly); provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph 7(c), the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 9 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section must set out the revised next Critical Date and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

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

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

**9. Delayed Occupancy Compensation**

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 5 or 7), then the Vendor shall compensate the Purchaser for all costs incurred by the Purchaser as a result of the delay up to a total amount of \$7,500, which amount includes payment to the Purchaser of \$150 a day for living expenses for each day of delay until the date of Occupancy or the date of termination of the Purchase Agreement, as applicable under paragraph (b).
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraphs 11(b), (c) or (e) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 6(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation within 180 days after Occupancy and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 9 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
- (i) includes the Vendor's assessment of the delayed occupancy compensation payable;

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

- (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
- (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.

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

- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 9(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sales transaction is terminated under paragraphs 11(b), (c) or (e) in which case, the deadline is 180 days after termination for a claim to the Vendor and one (1) year after termination for a claim to Tarion.

**10. Changes to Critical Dates**

- (a) Whenever the parties by mutual agreement extend or accelerate either the Firm Occupancy Date or the Delayed Occupancy Date this section applies.
- (b) If the change involves acceleration of either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement must set out each of the Critical Dates (as changed or confirmed).
- (c) If the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
  - (i) disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 9 above;
  - (ii) unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"); and
  - (iii) contain a statement by the Purchaser that the Purchaser waives compensation or accepts the above noted Compensation, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.
- (d) If the Purchaser for his or her own purposes requests a change of date or dates, then paragraph 10(c) shall not apply.

**11. Termination of the Purchase Agreement**

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written consent, such written consent to be given at the time of the termination.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set by the Vendor under paragraph 6(b), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the requirements of section 2.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of delay in Occupancy alone.

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

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), the Vendor shall return all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of return to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor and/or this paragraph as a prerequisite to obtaining the return of monies payable as a result of termination of the Purchase Agreement under this paragraph.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act*.
- (c) Notwithstanding paragraphs 12(a) and 12(b), if either party initiates legal proceedings to contest termination of the Purchase Agreement or the return of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

**13. Addendum Prevails**

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

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

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5 Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this paragraph 14(b), Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.
- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2, the party shall send written notice of the change of address/contact number to the other party.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.

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

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

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

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

(b) upon:

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

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

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

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

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

**3. Each condition must:**

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

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

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



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

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

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

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

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

**The date by which this Condition is to be satisfied is the 60<sup>th</sup> day following the date of acceptance of this Agreement.**

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# APPENDIX “H”



REPLY TO: SAM RAPPOS  
FILE NO.: 56866  
DIRECT: 416-218-1137  
FAX: 416-218-1837  
EMAIL: samr@chaitons.com

March 12, 2015

**VIA REGULAR MAIL AND REGISTERED MAIL**

Anna Gayle Andrew  
c/o Mr. Andrew  
10 Doner Street  
Alliston, ON L9R 1M5

Re: *South Unionville Square – Purchase of 8323 Kennedy Rd., Unit 7, Level 1, Suite 117*

Dear Sir,

We write to you with respect to your recent conversations with Ms. Colleen Delaney of Collins Barrow Toronto Limited. We understand that you are the spouse of Mrs. Anna Gayle Andrew, the purchaser of the unit referenced above pursuant to an agreement of purchase and sale dated February 9, 2015 (the "**Agreement**"), and that you have been authorized by Mrs. Andrew to discuss the Agreement on her behalf.

As you may know, Collins Barrow Toronto Limited was appointed by Order of the Court dated February 11, 2015 as trustee under the *Construction Lien Act* (the "**Trustee**") with respect to property owned by Jade-Kennedy Development Corporation ("**JKDC**") known as the South Unionville Square project. A copy of the Order can be found on the Trustee's website at <http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>. The unit referenced above is subject to the court proceeding and owned by JKDC.

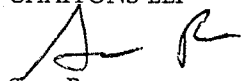
The Trustee has reviewed the Agreement and is of the view that the sale price of \$200,000 for the unit does not represent fair market value and would not be approved by the Court, as is required by the Court order. I understand that you have discussed this matter with Ms. Delaney and informed her on March 11, 2015 that the purchaser will not increase the amount of the purchase price under the Agreement.

As a result, this letter serves as notification to you, on behalf of Mrs. Andrew, that the Trustee intends to seek Court authorization, on notice to Mrs. Andrew, to terminate the Agreement and return the \$5,000 deposit that has been paid.



The Trustee will be entertaining offers for the sale of the unit and is prepared to discuss the sale of the unit with you further if Mrs. Andrew wishes to put forward another offer.

Yours truly,  
CHAITONS LLP



Sam Rappos  
LAWYER

SR/SPR

Cc: *Collins Barrow (via e-mail)*  
*Harris Sheaffer (via e-mail)*



REPLY TO: SAM RAPPOS  
FILE NO.: 56866  
DIRECT: 416-218-1137  
FAX: 416-218-1837  
EMAIL: samr@chaitons.com

March 12, 2015

**VIA REGULAR MAIL AND REGISTERED MAIL**

Robert James Dol  
c/o Mr. Andrew  
10 Doner Street  
Alliston, ON L9R 1M5

Re: *South Unionville Square – Purchase of 8323 Kennedy Rd., Unit15, Level 2, Suite 218*

Dear Sir,

We write to you with respect to your recent conversations with Ms. Colleen Delaney of Collins Barrow Toronto Limited. We understand that you have been authorized by Mr. Robert James Dol, the purchaser of the unit referenced above pursuant to an agreement of purchase and sale dated February 9, 2015 (the "**Agreement**"), to discuss the Agreement on his behalf.

As you may know, Collins Barrow Toronto Limited was appointed by Order of the Court dated February 11, 2015 as trustee under the *Construction Lien Act* (the "**Trustee**") with respect to property owned by Jade-Kennedy Development Corporation ("**JKDC**") known as the South Unionville Square project. A copy of the Order can be found on the Trustee's website at <http://www.collinsbarrow.com/en/cbn/jade-kennedy-development-corporation>. The unit referenced above is subject to the court proceeding and owned by JKDC.

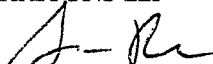
The Trustee has reviewed the Agreement and is of the view that the sale price of \$200,000 for the unit does not represent fair market value and would not be approved by the Court, as is required by the Court order. I understand that you have discussed this matter with Ms. Delaney and informed her on March 11, 2015 that the purchaser will not increase the amount of the purchase price under the Agreement.

As a result, this letter serves as notification to you, on behalf of Mr. Dol, that the Trustee intends to seek Court authorization, on notice to Mr. Dol, to terminate the Agreement and return the \$5,000 deposit that has been paid.



The Trustee will be entertaining offers for the sale of the unit and is prepared to discuss the sale of the unit with you further if Mr. Dol wishes to put forward another offer.

Yours truly,  
CHAITONS LLP

  
Sam Rappos  
LAWYER

SR/SPR

cc: *Collins Barrow* (via e-mail)  
*Harris Sheaffer* (via e-mail)  
Roger James Dol (via regular mail)

# APPENDIX “I”

March 17, 2015

**WITHOUT PREJUDICE**

Mr. Sam Rappos  
Chaitons LLP  
5000 Yonge St, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

Dear Mr. Rappos:

**Re: Anna Gayle Andrew v. Jade-Kennedy (Residential)  
Development Corporation ("JKDC")**

We are litigation counsel to Anna Gayle Andrew and have for response your March 12, 2015 letter.

Ms Andrew entered into a binding agreement of purchase and sale with JKDC on February 9, 2015 to purchase for unit 7, level 1 in the South Unionville development (the "Unit") for \$200,000. The required \$5,000 deposit was delivered by money order dated February 5, 2015.

We have reviewed the February 11, 2015 order of Honourable Mr. Justice Patillo (the "Order").

You appear to rely, in your letter, upon paragraph 3 (l) of the Order which requires Court approval for any sale of property by the Trustee.

We note that your Notice of Application states that the applicant relies on the affidavit of Charles Mady sworn February 5, 2015.

The Agreement was entered into on February 9, 2015 and ought to have been disclosed to the Court on February 11, 2015. Had it been disclosed, it would, we submit, have been included on the confidential appendix "1" and the Trustee would have been empowered to sell the Unit under section 3 (j) of the Order. Can you please advise why this disclosure was not made?

Even accepting your assertion that the sale price in the Agreement does not represent fair market value, we know of no legal authority which would lead the Court to deny approving a binding agreement.

197 Spadina Avenue  
Suite 402  
Toronto, Ontario  
M5T 2C8  
  
Tel: (416) 363-1112  
Fax: (416) 363-5557  
  
www.shillers.com



March 17, 2015

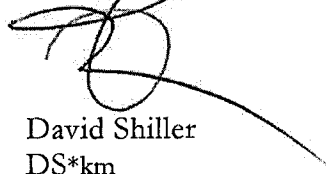
Page 2

We have instructions to oppose your motion for an order terminating the Agreement and to seek an order compelling the Trustee to honour the Agreement and to complete it. We are advised that the Trustee refused to allow our client access to the property to allow her to obtain an appraisal required for the mortgage financing.

We trust that the Trustee will take no steps that will prejudice our client's rights under the Agreement until the matter has been determined by the Court. Please confirm that the Unit will not be sold to any other party. If we do not receive your confirmation, we will be required to seek a certificate of pending litigation.

Yours very truly,

SHILLERS LLP

A handwritten signature in black ink, appearing to be 'David Shiller', written over the printed name and extending to the right.

David Shiller

DS\*km

March 17, 2015

**WITHOUT PREJUDICE**

Mr. Sam Rappos  
Chaitons LLP  
5000 Yonge St, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

Dear Mr. Rappos:

**Re: Roger James Dol v. Jade-Kennedy (Residential)  
Development Corporation ("JKDC")**

We are litigation counsel to Roger James Dol and have for response your March 12, 2015 letter.

Mr. Dol entered into a binding agreement of purchase and sale with JKDC on February 9, 2015 to purchase for unit 15, level 2 in the South Unionville development (the "Unit") for \$200,000. The required \$5,000 deposit was delivered by cheque dated February 4, 2015.

We have reviewed the February 11, 2015 order of Honourable Mr. Justice Pattillo (the "Order").

You appear to rely, in your letter, upon paragraph 3 (l) of the Order which requires Court approval for any sale of property by the Trustee.

We note that your Notice of Application states that the applicant relies on the affidavit of Charles Mady sworn February 5, 2015.

The Agreement was entered into on February 9, 2015 and ought to have been disclosed to the Court on February 11, 2015. Had it been disclosed, it would, we submit, have been included on the confidential appendix "1" and the Trustee would have been empowered to sell the Unit under section 3 (j) of the Order. Can you please advise why this disclosure was not made?

Even accepting your assertion that the sale price in the Agreement does not represent fair market value, we know of no legal authority which would lead the Court to deny approving a binding agreement.

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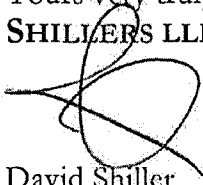
[www.shillers.com](http://www.shillers.com)

March 17, 2015  
Page 2

We have instructions to oppose your motion for an order terminating the Agreement and to seek an order compelling the Trustee to honour the Agreement and to complete it. We are advised that the Trustee refused to allow our client access to the property to allow her to obtain an appraisal required for the mortgage financing.

We trust that the Trustee will take no steps that will prejudice our client's rights under the Agreement until the matter has been determined by the Court. Please confirm that the Unit will not be sold to any other party. If we do not receive your confirmation, we will be required to seek a certificate of pending litigation.

Yours very truly,  
**SHILLERS LLP**



David Shiller  
DS\*km

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

Court File No. CV15-10882-00CL

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

Proceedings commenced at Toronto

**MOTION RECORD  
OF THE TRUSTEE  
(returnable June 4, 2015)**

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

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

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

**Lawyers for the Trustee**