

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

B E T W E E N:

**CENTURION MORTGAGE CAPITAL CORPORATION**

Plaintiff

- and -

**BRIGHTSTAR NEWCASTLE CORPORATION, BRIGHTSTAR SENIORS LIVING CORPORATION, THE ESTATE OF ALAN CHAPPLE, JOHN BLACKBURN, JAMES BUCKLER, and LAWYSON GAY**

Defendants

**RESPONDING RECORD OF THE GUARANTEE COMPANY OF NORTH AMERICA**

August 20, 2021

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Defendants

**AFFIDAVIT OF RICHARD LONGLAND  
(Sworn August 20, 2021)**

I, RICHARD LONGLAND, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Vice President of Commercial and Developer Surety at The Guarantee Company of North America (“GCNA”). As such, I have knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge, I have stated the source of my information and believe it to be true.

### A. Overview

2. This affidavit is sworn in response to a motion for directions by BDO Canada Limited (“**BDO**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) over the lands and premises owned by Brightstar Newcastle Corporation (“**Brightstar**” or the “**Debtor**”) that are municipally known as Units 101 (“**Unit 101**”) and 417 (“**Unit 417**”) at 21 Brookhouse Drive, Newcastle, Ontario (the “**Development**” or the “**Project**”).

### B. GCNA’s Role in the Project

3. GCNA’s involvement with the Development arises from its issuance of two credit instruments to Brightstar with respect to the Project.

4. To document the terms and conditions on which these credit instruments would be provided by GCNA to Brightstar, on or around March 27, 2014 GCNA entered into a commitment letter with Brightstar (and with investors in Brightstar) (the “**GCNA Commitment**”) to provide a bond in favour of Tarion Warranty Corporation (the “**Bond**”) for the Project, Excess Condominium Deposit Insurance (“**ECDI**”) policies for the Project, both of which provide credit for the Project (collectively the “**GCNA Credit Facility**”). The GCNA Commitment is attached hereto and marked **Exhibit “A”**.

5. The Bond is required by Tarion Warranty Corporation (“**Tarion**”), an entity created by the *Ontario New Home Warranties Plan Act* (the “**ONHWPA**”) to regulate the development of new homes in Ontario, provide a specified amount of deposit protection for purchasers of new homes in Ontario, and warrant new homes in Ontario for seven years. To secure itself with

respect to the deposit risk and warranty risk assumed on behalf of developers of new homes in Ontario, Tarion requires developers to provide security as a condition to allowing the builder to proceed with the development of new homes. One of the forms of security accepted by Tarion is a surety bond. GCNA agreed to issue the Bond to Brightstar to enable Brightstar to provide the security required by Tarion for the Project. Under the *ONHWPA*, Tarion's deposit obligation to the purchaser of each condominium unit in the Project is limited to \$20,000.00.

6. ECDI is requested by developers of new condominium homes in Ontario to obtain access to deposits paid by condominium home purchasers in excess of \$20,000 (the amount insured by Tarion). ECDI allows developers to use the Deposits (as later defined herein) as a source of financing for the construction of the new condominium homes. The Ontario *Condominium Act* (the "**Act**") requires all condominium Deposits paid by purchasers of condominiums to be held in trust by an authorized trustee unless prescribed security is provided to the trustee, in which case the trustee may release the secured Deposit to the developer to finance the development of the new condominium homes. Prescribed security includes deposit receipts signifying Tarion's agreement to insure the first \$20,000 of Deposits paid by a purchaser of a new condominium, and an insurance policy issued by a licensed insurer to insure all deposit amounts in excess of the \$20,000 that are insured by Tarion. Brightstar appointed its solicitor for the Project, Schneider Ruggiero Spencer Milburn LLP ("**SR Law**" or "**Deposit Trustee**") to hold all Deposits paid on the purchase price of condominium units in the Project in accordance with the requirements of the Act.

7. The deposit trust agreement was dated March 31, 2014 (the "**DTA**") and is attached hereto and marked **Exhibit "B"**.

8. Under the DTA, Brightstar granted GCNA security in respect of the Deposit monies received in the Project, which were required be held in a designated trust account (“**Escrow Account**”) maintained by SR Law. These contractual provisions were in addition to, not in lieu of, SR Law’s statutory obligation under the Act to hold all Deposits paid for Project condominiums in trust until prescribed security was provided to it. In particular, the following is set out at section 3.3 on page 4 of 9 of the DTA:

[Brightstar] hereby grants to [GCNA] a security interest in its ownership of (or beneficial interest in), all Deposits received, together with all interest earned or accrued thereon, less any funds released in accordance with the provisions of Section 4 hereof which security interest shall be and constitute a general and continuing security for the payment and/or performance of all present and future indebtedness, liabilities and/or obligations of the Principal to the Surety incurred or arising under or pursuant to the Indemnity Agreement, the Bond, the EDCI and/or this Agreement.

[Brightstar] hereby covenants and agrees that it shall not create or grant any security interest in the Deposits to or in favour of any third party or parties which would purport to claim priority over (or rank *pari passu* with) [GCNA’s] security interests in and to the Deposits, and hereby expressly acknowledges and agrees that a breach of this covenant shall constitute a breach or an event of default under the Collateral Security Instruments.

9. In section 1.1., “Deposit” and “Deposits” are defined to “have the meaning ascribed to the term “Deposit” in Part I(1) of Regulation 892 to the *ONHWPA*. In turn, Regulation 892 to the ONHWP Act defines “Deposits” as follows:

“deposits” means, in respect of a home, all money received before the date of possession by or on behalf of the vendor from a purchaser on account of the purchase price payable under a purchase agreement, and, in the case of a condominium dwelling unit, includes money received by or on behalf of the vendor after the date of possession and prior to the date of transfer but does not include money,

(a) paid under the purchase agreement as rent or as an occupancy charge and not part of the purchase price, or

(b) specified in the purchase agreement as money paid under [subsection 80\(4\)](#) of the *Condominium Act, 1998*; (“dépôts”).



10. The DTA provided for the release of Deposits from the Escrow Account into the Project in only the following limited circumstance:

If the Principal and the Surety have heretofore agreed (or hereafter agree) that a portion of the Deposits, in respect of which the Surety has a security interest may be released and withdrawn from the Designated Bank Account to assist the Principal in either funding approved project costs or repaying any outstanding indebtedness (in whole or in part) to any prior mortgagee(s) or encumbrancer(s) in respect of the Project, then provided the Principal is not in default of its obligations hereunder (nor with respect to any obligations of the Principal set out in the Indemnity Agreement or any of the Collateral Security Instruments), the Surety will issue an authorization to the Escrow Agent to release the said funds to the Principal (or to such other party or parties as may be directed in writing by the Principal) at such times and in such amounts as so agreed to by the Surety and the Principal. The Principal shall also be required to consent in writing to any such release of Deposits.

11. GCNA registered its security interest in the Deposits on April 9, 2014 in accordance with the Personal Property Security Act of Ontario (the "**PPSA**") as evidenced by registration number 20140409 1100 1862 9166 (the "**GCNA PPSA Charge**"). A copy of the PPSA Search Results noting the GCNA PPSA Charge is attached hereto as **Exhibit "C"**.

12. Roughly 20 months later, GCNA was advised by Brightstar in January 2016 that it would commence construction of the Project in the near future and it was agreed the GCNA Credit Facility would be amended to include the terms and conditions on which ECDI would be provided to Brightstar and Deposits would be released from the trust account of the Deposit Trustee to assist in the financing of the Project.

13. On or around March 29, 2016, GCNA and Brightstar executed an amended and restated Commitment Letter (the "**GCNA Restated Commitment**"). The modifications did not amend GCNA's requirement for a DTA and second-ranking mortgage as security for the Project. The GCNA Restated Commitment is attached hereto and marked **Exhibit "D"**.

14. Under the GCNA Restated Commitment, GCNA agreed to release up to \$3,500,000 of Deposits under the GCNA Credit Facility, subject to various conditions as described therein, to assist in the financing of the Project

15. The GCNA Restated Commitment required the maintenance of GCNA's first ranking security interest under the *PPSA* over the Deposits, as evidenced through the GCNA PPSA Charge and originally provided for in the DTA and in the GCNA Commitment, and also granted GCNA a "second collateral mortgage" registered against the Project lands subordinate only to the mortgage of Meridian while referencing a "third charge" in favour of Centurion.

16. The GCNA Restated Commitment states Meridian is to be repaid in full from condominium unit closings, following which \$780,000 is to be held by SR Law in trust for GCNA as continuing cash collateral security for GCNA's ongoing exposure to loss and expense arising under the Bond and ECDI. Since the Bond indemnifies Tarion for the 7-year warranty coverage provided by Tarion for the Project, and both the Bond and ECDI provide deposit coverage until each sold condominium unit in the Project closes, GCNA would be (and continues to be) exposed to loss and expense under the Bond and ECDI.

17. On or about July 13, 2016 GCNA registered the GCNA Mortgage from Brightstar in favour of GCNA in the principal amount of \$4,100,000 as Instrument No. DR1493303 (the "**GCNA Mortgage**"). The GCNA Mortgage and registered charge are attached hereto at **Exhibit "E"**.

### C. Funds Held in Escrow

18. I have been informed by Lola Fazzalari, Senior Supervising Law Clerk at SR Law, and believe, that as at August 16, 2021, \$1,285,801.56 remained in the Escrow Account. The base amount of the funds held in escrow is \$1,209,264.44, which I confirm is correct. The balance is accumulating interest which I have been advised by Ms. Fazzalari totals \$76,537.12 as at July 31, 2021. The overall total funds in the Escrow Account has since been substantially reduced as a result of the release of funds to the secured lender Centurion on August 19, 2021, as further described below.

19. The amounts held in the Escrow Account represent the closing proceeds from the sale of Project condominium units. GCNA requires the funds currently held in the Escrow Account (together the closing proceeds of the remaining units, namely units 101 and 417) for (i) indemnity with respect to the unpaid premiums owed by Brightstar to GCNA under the GCNA Credit Facility to date, together with interest; (ii) indemnity with respect to the legal expenses incurred by GCNA to date with respect to the priority dispute with Centurion and the receivership of Brightstar with respect to units 101 and 417, with interest; (iii) continuing collateral for GCNA's future premiums that become owing by Brightstar with respect to the GCNA Credit Facility; and (iv) continuing security with respect to GCNA's exposure to future loss and expense under the GCNA Credit Facility.

20. GCNA is also exposed to future loss and expense under the Bond with respect to warranty claims made by purchasers of condominium units and the condominium corporation that owns all of the condominium common property. Brightstar has advised GCNA that additional work needs to be performed to complete the Project and that some of the work

performed on the Project to date is deficient and must be remedied. The extent of such work is material. A principal of Brightstar, Mr. James Buckler, has advised GCNA that Brightstar does not have the financial resources available to pay for the remedial work and the uncompleted work. The Bond indemnifies Tarion for the statutory 7-year warranty that Tarion provides for the Project and we understand Tarion's statutory warranty for the Project will not expire until approximately 2026.

21. Until such time as Tarion's statutory warranty expires or Tarion elects to release GCNA from its obligations under the Bond, GCNA is at risk of receiving claims from Tarion under the Bond with respect to the known deficiencies and uncompleted work and for any deficiencies that may be discovered in future prior to the expiration of Tarion's statutory warranty. GCNA requires the Escrow Fund to be held intact until GCNA's liability under both the Bond and ECDI is extinguished. In this case, these contingent claims are not merely conceptual - GCNA is aware of significant deficiencies on the Project that will require resolution. GCNA considers the likelihood of the claims materializing under the Bond and/or ECDI in future to be strong and it will need to exercise its right to some or all of the remaining funds in the Escrow Account.

22. The following amounts are currently outstanding and owing to GCNA by Brightstar and the other indemnitors: (1) \$85,905 in unpaid premiums; and (2) \$202,787.29 in legal fees, excluding the interest GCNA is entitled to under the GCNA Restated Commitment and related indemnities.

#### D. Mortgage Priorities

23. Meridian Credit Union was Brightstar's primary construction lender for the Project and held the first-ranking mortgage over the Project Lands until it was fully repaid on its mortgage in early 2020, following the successful completion of a number of units.

24. In or around September 2019, as the Project was nearing completion, Centurion and GCNA learned that they both believed they had a second-ranking mortgage over the Project lands. As a result, Centurion, GCNA, SR Law, and Brightstar<sup>1</sup> entered into an Escrow Agreement which provided that GCNA and Centurion agreed to release partial discharges of their respective mortgages in order to permit closings as an accommodation to allow priority payment to Meridian, without prejudice to the rank and priority of their respective mortgages.

25. Centurion commenced this action against the Defendants on October 30, 2020 with respect to amounts owing to it under its contract with Brightstar, and related guarantees (the "**Action**"). Then, in December 2020, Centurion moved to have the priority dispute determined.

26. As a result of the decision of Justice Cavanagh dated July 23, 2021, Centurion's mortgage over the Project lands was held to be secondary ranking. Consequently, on August 19, 2021, SR Law received direction to release funds in the total amount of \$1,003,775.26 to Centurion.

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<sup>1</sup> Including Brightstar's indemnitors Lawson Gay, John Blackburn and James Buckler.

27. Upon the satisfaction of Centurion's mortgage, GCNA will be the prime secured lender on the Project. There are also three mortgages registered on the Project lands that are subordinate to GCNA's mortgage.

#### **E. Unit 417**

28. I have had an opportunity to read the First Report of BDO Canada Limited dated April 14, 2021 (the "**BDO Report**"), and in particular the Loan and Amendment Agreement dated May 29, 2018 that was entered into between Mr. Rasmussen and Brightstar with regard to Unit 417 of the Development (the "**Loan Agreement**") and related correspondence found at Exhibits "K" of the BDO Report. A copy of the Loan Agreement included in the BDO Report is appended hereto, for ease of reference, at **Exhibit "F"**. I note that the Loan Agreement refers to four schedules (A to D) but that the copy in the BDO Report does not contain any schedules. I am advised by Leah Mangano of BLG, GCNA's counsel, that she requested copies of the schedules to the Loan Agreement from the Receiver's counsel, as well as a copy of the amendment to the purchase agreement referred to in the Loan Agreement at paragraph 8; however, these documents have not, to date, been made available to GCNA.

29. I understand that Mr. Rasmussen takes the position that he has paid for the unit in full because of the loan that he provided to Brightstar in the principal sum of \$270,320.00 (the "**Loan**"), as set out in the Loan Agreement. The Loan was paid directly to Brightstar by Mr. Rasmussen via CIBC Bank Draft on June 1, 2018. Mr. Rasmussen moved into Unit 417 on October 20, 2018 and Unit 417 was scheduled to close on November 18, 2019 but Mr. Rasmussen was prevented from closing due to Brightstar's attempt to set-off the amount of the Loan from the amount owed by Mr. Rasmussen under the purchase agreement, which Centurion

objected to and refused to discharge their mortgage on Unit 417. GCNA does not dispute that Mr. Rasmussen made the Loan to Brightstar; GCNA disputes that the Loan is a payment on the purchase price of Unit 417. GCNA also disputes that Brightstar and Mr. Rasmussen can set-off the Loan from the balance of the purchase price owed by Mr. Rasmussen under the purchase agreement for Unit 417, as the Loan Agreement suggests, thereby giving it priority over the GCNA mortgage (and the 3 subordinate mortgages) and depriving GCNA (and the 3 subordinate mortgagees) of repayment from closing proceeds. This undisclosed attempt to “convert” the Loan to a payment on the purchase price of Unit 417 seeks to subvert the order of priority of loans established by the registration of mortgages. For the reasons set out below, GCNA disagrees with Mr. Rasmussen’s position.

30. As an initial point, the concept of a partial payment on the purchase price of a condominium that is not paid into the trust account of a lawyer does not fit within the legal framework for condominium developments. If a “loan” to the developer is allowed to be treated as a partial payment of the purchase price and set-off from the purchase price at closing, that loan would jump ahead of the security provided to the lenders of the condominium project, even though the lenders have priority by reason of their mortgages. The legal framework for condominium developments provides for repayment to project lenders from the closing proceeds of each unit sale. If the purchasers were allowed to loan the balance of the purchase price directly to the developer prior to closing and set off that loan from the purchase price at closing, and thereby avoid the monies being paid into the deposit trust account to held in trust by the deposit trustee in accordance with the governing legislation, no monies would be payable to the lenders at closing, which means the lenders would not be repaid any portion of their loans. Such an outcome undermines the legal structure of commercial loans for the financing of

condominium development projects in Ontario. This same concern applies when only one condominium purchaser loans money to the developer and attempts to characterize it as a payment on the purchase price of the condominium; the proceeds are diverted directly to the developer to effectively defeat the Project lender's repayment, even though the Project lender has a higher-ranking security interest than the unit purchaser.

31. As the ECDI provider, GCNA has an interest in the Deposits made by purchasers of condominium units in the Project and, as such, possesses information with respect to the Deposits paid to SR Law and held by SR Law as the deposit trustee. The only Deposit held by SR Law in relation to Mr. Rasmussen and Unit 417 is his initial \$67,580 Deposit that was paid within one month of the execution of his purchase agreement with Brightstar. GCNA does not agree that the additional \$270,320 Mr. Rasmussen loaned to Brightstar formed a payment on the purchase price of Unit 417 for the reasons that follow.

32. The deposits held by SR Law are set out in SR Law's Deposit schedule. A copy of SR Law's Deposit schedule as at August 31, 2019 is attached hereto at **Exhibit "G"**. In particular, Row 72 of the tab entitled "Deposit Schedule" sets out the Deposit paid by Mr. Rasmussen and insured with respect to Unit 417.<sup>2</sup>

33. According to the Deposit Trustee's records, Mr. Rasmussen bought the Unit for \$337,900 including HST (which is consistent with the purchase agreement). Mr. Rasmussen paid a

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<sup>2</sup> I note that Mr. Rasmussen's suite number on this schedule is 416 and not 417. Brightstar has advised, and I verily believe, that the suite numbers changed during the course of the Project and that is the reason for the discrepancy. The original suite numbers included the number '13' on each floor (e.g. 113, 213, 313, 413). Brightstar then decided to delete the number 13 from the numbering system because some buyers are superstitious. Rasmussen bought suite 416, but that was renamed to suite 417. Mr. Rasmussen's purchase agreement also indicates that he purchased Unit 416; however, I do not understand there to be any dispute that the unit he purchased and took possession of is Unit 417.



Deposit to the Deposit Trustee (SR Law) of \$67,580 – this is the exact amount of Deposit that is required by the original purchase agreement.

34. I have been advised by James Buckler and verily believe that Mr. Rasmussen is a long-time personal friend of John Blackburn, one of the principals of Brightstar, and that Mr. Rasmussen purchased a unit in the Project in order to assist Brightstar's financing of the Project.

35. The Unit 417 purchase agreement requires all Deposits to be made payable to Schneider Ruggiero LLP, In Trust "... pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Closing Date and/or Unit Transfer Date...". It is standard practice within the condominium development industry to require all Deposits on the purchase of a condominium unit to be payable to the deposit trustee, in trust, to ensure the developer and deposit trustee satisfy their obligations under the Act to hold such Deposits in trust. The purchase agreement between Mr. Rasmussen and Brightstar requires all of the required Deposits to be paid to SR Law, in trust. The \$67,580 in Deposits paid by Mr. Rasmussen in accordance with the purchase agreement was paid to the Deposit Trustee, SR Law, who recorded the Deposits as having been paid in their Escrow Account records. The Tarion-insured portion of the Deposit (\$20,000) was insured by Tarion and released from trust to Brightstar on December 1, 2016 and the excess portion of the Deposit (\$47,580) was insured by GCNA and released from trust to Brightstar on March 23, 2017. Consequently, GCNA insured (directly or indirectly) the entire Deposits of \$67,580 and made those Deposits available to Brightstar to assist in financing the cost of developing the Project. If the sale of Unit 417 does not close, Mr. Rasmussen will likely make a claim for the return of his \$47,580 Deposit from GCNA under the ECDI policy and from Tarion under its statutory deposit protection. If Tarion

makes payment of the \$20,000 deposit it insures to Mr. Rasmussen, Tarion will make claim against the Bond for \$20,000 plus HST, Tarion's 15% administration fee, and any accrued interest at the rate of 18% per annum.

36. On May 29, 2018, nearly 3 years and 7 months after entering into the purchase agreement for Unit 417, Mr. Rasmussen entered into the Loan Agreement with Brightstar and three principals of Brightstar – James Buckler, John Blackburn and Lawson Gay. The Loan Agreement cites Brightstar is in need of funds to complete the Project and wishes to borrow certain monies from Mr. Rasmussen to assist the completion of the Project. The opening paragraph of the Loan Agreement characterizes the payment of the \$270,320 as a loan from Mr. Rasmussen to Brightstar. It is clear from the recitals and first paragraph of the Loan Agreement that the purpose of this Loan Agreement was for Mr. Rasmussen to loan money to Brightstar to assist in the financing of the Project; it was not an ordinary-course supplemental payment on the purchase price of Unit 417. If Rasmussen and Brightstar intended this Loan Agreement to be an ordinary-course supplemental payment on the purchase price of Unit 417 there would be no need to enter into this Loan Agreement since Mr. Rasmussen could have simply paid the \$270,320 to the Deposit Trustee, in trust, and the Deposit Trustee would have held the funds in trust pursuant to the *Condominium Act*. Instead, Mr. Rasmussen paid the \$270,320 via a CIBC bank draft directly to Brightstar. It is clear from the Deposit Trustee's records that this loan paid by Rasmussen to Brightstar (\$270,320) was not deposited into the trust account and was not characterized as a Deposit by the Deposit Trustee on its Deposit schedule that it circulated to GCNA and other stakeholders regularly throughout the construction of the Project. A copy of SR Law's Deposit Schedule is attached hereto as **Exhibit "G"**. As such, SR Law could not have

considered the loan to be a Deposit on the purchase price of Unit 417. In particular, if SR Law considered the loan to constitute a Deposit on the purchase price of Unit 417, they would have:

- a. deposited the \$270,320 in the trust account; and
- b. recorded it in their Escrow Deposit Account schedule (which was circulated to Brightstar and GCNA monthly).

37. In fact, none of the above steps were taken by the Deposit Trustee.

38. GCNA was a stranger to the Loan Agreement and had no notice from the parties or the Deposit Trustee or otherwise of the existence or material terms of the Loan Agreement.

39. In or around November 2020, James Buckler, a principal of Brightstar, advised me that SR Law had been involved in the creation of the Loan Agreement. SR Law possesses expertise in condominium development projects, deposits, and the relevant legislation, and is the Deposit Trustee for the Project. Further, paragraph 18 of the Loan Agreement states that "... the Borrower [Brightstar], the Guarantors [Mr. Buckler, Mr. Blackburn, Mr. Gay] and the Lender [Mr. Rasmussen] each acknowledge that they have received independent legal advice prior to executing the herein agreement." The Loan Agreement also contains a notice provision which indicates the lender (Mr. Rasmussen) is to be notified through its lawyer, Schwarz Law LLP (Jayson Schwarz). As such, all parties received legal advice regarding this Loan Agreement, and it is evident that Mr. Rasmussen consulted Schwarz Law LLP in negotiating this Loan Agreement.

40. Given SR Law's expertise in this area, if SR Law intended for the Loan Agreement to be characterized as a payment on the purchase price of Unit 417 I would have expected SR Law to

include provisions stating that the payment of \$270,320 was a payment on the purchase price of Unit 417, the payment was to be made payable to SR Law in trust, and that SR Law would hold the payment in its Project Escrow Account in accordance with the requirements of the *Condominium Act*. However, the Loan Agreement does not characterize the loan as a payment on the purchase price of Unit 417 or as a Deposit (in fact, nowhere in the Loan Agreement is the word “deposit” used) and the Loan Agreement contains provisions and other features that are either unnecessary in regards to Deposits, or contrary to statutory requirements for Deposits. Moreover, the Loan Agreement does not amend the October 30, 2014 purchase agreement between Mr. Rasmussen and Brightstar. As such, GCNA disputes that the Loan reflected in the Loan Agreement constitutes a payment on the purchase price of Unit 417.

41. I note the Loan Agreement is characterized as a “Loan and Amending Agreement” and provides, at paragraph 8, that “the Lender and Borrower agree that the Borrower shall provide an amendment to the APS [Agreement of Purchase and Sale] in a form satisfactory to the solicitor for the Lender....” The Loan Agreement does not state that it is an amendment to the purchase agreement or otherwise indicate how it amends the purchase agreement. As such, although the Loan Agreement is called a “Loan and Amending Agreement” it is not an amendment to the purchase agreement, and we are not aware of any subsequent amendment to the purchase agreement having been executed by Mr. Rasmussen and Brightstar.

42. The purchase agreement, which is contained at **Exhibit “F”** to the BDO Report, is the type of purchase agreement typically used for condominium development projects. The purchase agreement contains the statutory provisions required by the *Condominium Act*: it provides for Deposits at paragraph 4, states that interest on the Deposits is payable at the

prescribed rate under the *Condominium Act*, and that all Deposits shall be held by the Escrow Agent (SR Law) in the designated trust account and released in accordance with Section 81(7) of the *Condominium Act*. As set out above, the \$270,320 which formed the basis of the Loan Agreement did not comply with these provisions because it was not paid into the Escrow Account and was not released by the Escrow Agent to Brightstar after obtaining the prescribed security (deposit insurance).

43. If the Loan Agreement is in fact an amendment to the purchase agreement and the \$270,320 loan is in fact a further payment on the purchase price, the Loan Agreement further violates the *ONHWPA* by including events of default by the Borrower (i.e. the vendor/Brightstar) upon which the Lender may require the unpaid balance of the Loan amount to become immediately due and payable. The purchase agreement does not provide for any events of default by the vendor; in fact, there is no mechanism in the purchase agreement by which the purchaser can declare the vendor in default under the purchase agreement. This is standard practice for condominium purchase agreements. Pursuant to Regulation 165/08 of the *ONHWPA*, Tarion requires the Tarion Addendum to be incorporated into each and every purchase agreement (and it is incorporated in the Unit 417 purchase agreement). Paragraph 10 of the Tarion Addendum outlines the only two circumstances in which the purchaser can terminate the purchase agreement:

- a. First, when the “Outside Occupancy Date” is missed by the developer, the purchaser can terminate the purchase agreement within 30 days of the Outside Occupancy Date.

The outside occupancy date under the purchase agreement occurred in June 2018 and

Mr. Rasmussen did not terminate the purchase agreement within 30 days. As such, the purchase agreement cannot be terminated for this reason now; and

- b. Second, subsection (e) states that “[n]othing 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.”

44. The introduction of events of default that require the borrower/vendor to repay the Loan violates the purchase agreement and the *ONHWPA* if that Loan is in fact a payment on the purchase price under the purchase agreement since many of the events of default in the Loan Agreement do not constitute frustration of contract or fundamental breach.

45. Paragraph 4 of the Loan Agreement provides for the payment of interest on the Loan at the rate of Royal Bank of Canada prime plus five percent (5%). However, interest is not payable on a Deposit unless the Bank of Canada prime rate exceeds 2% (pursuant to the *Condominium Act*). Given SR Law’s expertise, it must have known that interest was not payable on the Deposits and has not been payable on Deposits since 2008 (the last time when the Bank of Canada prime rate exceeded 2%). If the Loan was a payment on the purchase price of Unit 417, which GCNA denies, the interest provision contained in the Loan Agreement would not be enforceable.

46. If Mr. Rasmussen intended for his Loan be a payment on the purchase price of Unit 417, the Loan Agreement would have described the Loan as a payment on the purchase price, stipulated the payment was to be made to the Deposit Trustee, in trust, and confirmed the Loan

was to be insured by ECDI prior to being disbursed to Brightstar by the Deposit Trustee. The Loan Agreement does not describe the Loan as a payment on the purchase price of Unit 417, does not require the Loan to be paid to the Deposit Trustee, in trust (and it was in fact paid to Brightstar), and does not require the Loan to be insured by ECDI prior to being disbursed by the Deposit Trustee.

47. Similarly, if the parties intended the Loan to be a payment on the purchase price of Unit 417, no collateral security would be required for the Loan since the Loan would be held in trust by the Deposit Trustee and disbursed to Brightstar only if ECDI insured the Loan. Instead, the Loan Agreement requires Brightstar to provide a General Security Agreement (“GSA”) as collateral security for the Loan. In addition James Buckler, John Blackburn and Lawson Gay each are required to execute a guarantee and postponement of claim that is secured by a general security agreement for the Loan. All of this collateral security required by the Loan Agreement would be unnecessary since the \$270,320 payment on the purchase price would be deposited into the SR Law Escrow Account and, if released to Brightstar, would be fully insured by ECDI.

48. Paragraph 2 of the purchase agreement states “The Principal Sum [\$270,320] represents the balance due and payable upon occupancy, registration of the condominium and closing of the Dwelling Unit [Unit 417] (“the Closing”) pursuant to the APS”. This paragraph is not a statement that the payment of \$270,320 is a payment on the purchase price of Unit 417. It is a statement that the amount of Mr. Rasmussen’s Loan to Brightstar, \$270,320, is in the same amount as the balance of the purchase price owing by Mr. Rasmussen to Brightstar for the purchase of Unit 417 at the closing. Similarly, the statement in Paragraph 8 of the purchase agreement that “... the Principal Sum advanced [\$270,320] will be applied to the purchase price

of Dwelling Unit [Unit 417] on Closing by way of a credit to the Lender” does not constitute a statement that the Loan of \$270,320 is a payment on the purchase price of Unit 417. It is simply a statement that the loan of \$270,320 by Mr. Rasmussen to Brightstar will be set-off from the amount Mr. Rasmussen owes to Brightstar on closing for the purchase of Unit 417.

49. This affidavit is sworn in response to the Receiver’s motion and for no other or improper purpose.

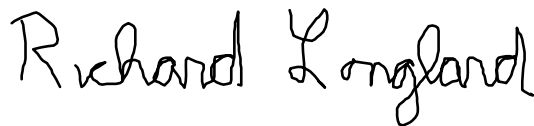
**Sworn or Affirmed before me:** *(select one)*:  in person OR  by video conference

by Richard Longland, at the City of Toronto in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits *(or as may be)*



*Signature of Commissioner (or as may be)*  
**Leah Mangano** (LSO# 78263A)



**RICHARD LONGLAND**



This is Exhibit "A" referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.



\_\_\_\_\_  
A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.



March 27, 2014

BrightStar Newcastle Corporation  
55 St. Clair Avenue West, Suite 205  
Toronto, Ontario  
M4V 2Y7

**Attention: Mr. James Buckler**

Dear Sir:

**Re: Tarion Warranty Corporation Bond Facility**  
**For: BrightStar Newcastle Corporation**  
**Project: Located at 21 Brookhouse Drive, Newcastle, Ontario**  
**and known as "Brookhouse Gate"**

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The Guarantee Company of North America ("The Guarantee") has reviewed your application for a Tarion Bond Facility and is prepared to support your project subject to your acceptance of all terms and conditions outlined in this Commitment Letter.

**ENTITY BONDED:**

The entity named on the Bond will be **BrightStar Newcastle Corporation** (hereinafter referred to as the "Principal"), which entity shall also be the Vendor and Declarant of this condominium project.

**BOND FACILITY:**

To assist with the registration of the Principal and the project with Tarion Warranty Corporation ("Tarion"), The Guarantee will provide a Tarion Bond ("Bond") in the amount of **\$1,560,000** (\$20,000 x 78 units).

**PROJECT DESCRIPTION:**

A 4 storey, 78 unit residential condominium building with underground parking for 102 spaces and 10 surface parking spaces, located at 21 Brookhouse Drive, Newcastle, Ontario, and known as "Brookhouse Gate".

**FEES AND PREMIUMS:**

*Commitment Fee:*

A non-refundable commitment fee of **\$2,500** shall be due and payable and deemed earned upon acceptance of this Commitment Letter.

***Premium:***

The premium charged for the Bond will be based on the annual rate of **1.0%**. The premium for this Bond is **\$15,600** (\$1,560,000 x 1.0%) and will be payable on or prior to the date the Bond is released to the Principal for delivery to Tarion. Future premium term will be billed for a full one year term, unless stipulated otherwise, payable as of the invoice date.

After condominium registration and at the expiry of the next bond invoice term, The Guarantee will entertain reducing the premium term to a minimum of three (3) month term. Should any further reductions in the Bond take place during the reduced terms, adjustments will be considered at the next premium term renewal. ***The minimum premium on any invoice will be \$500.***

The Guarantee reserves the right to deduct outstanding premiums and/or fees from future deposits releases.

***The Guarantee's Legal Work:***

The Principal acknowledges and accepts that the law firm selected to act for The Guarantee with respect to registration of its security, the role of escrow agent and other matters shall be **Mr. David Spencer of Schneider Ruggiero LLP**. The Guarantee reserves the right to appoint another solicitor as a replacement for or successor to **Mr. Ruggiero**.

The Principal shall be responsible for full payment of all legal fees and disbursements when invoiced by this firm. The Principal shall pay all costs with respect to preserving The Guarantee's rights under this mortgage security including all defense costs of any construction lien actions incurred by or on behalf of The Guarantee.

**BROKER:**

Petrela, Winter & Associates Insurance Brokers

**The GUARANTEE'S SECURITY:**

As evidence of and general continuing collateral security for the payment of present and future indebtedness, obligations and liabilities of the Principal to The Guarantee, the following security (hereinafter referred to as "Security Documents") shall be provided to The Guarantee.

***Indemnity Agreement:***

The Principal consents to provide the following indemnities of the Corporations and people as noted below in The Guarantee's standard form, along with other resolutions, etc. deemed necessary by The Guarantee's solicitor.

- BrightStar Newcastle Corporation., as to an unlimited, joint and several indemnity
- BrightStar Seniors Living Corp. as to a joint and several guarantees limited to 50% of all the liabilities and indebtedness of the Principal to The Guarantee
- L.R.G. Corp., as to a joint and several guarantees limited to 50% of all the liabilities and indebtedness of the Principal to The Guarantee
- Lawson R. Gay, as to a joint and several guarantees limited to 60% of all the liabilities and indebtedness of the Principal to The Guarantee
- John Blackburn , as to a joint and several guarantees limited to 16% of all the liabilities and indebtedness of the Principal to The Guarantee
- Jim Buckler, as to a joint and several guarantees limited to 8% of all the liabilities and indebtedness of the Principal to The Guarantee
- Alan Chapple, as to a joint and several guarantees limited to 16% of all the liabilities and indebtedness of the Principal to The Guarantee

***Deposit Trust Agreement:***

The Principal shall execute a Deposit Trust Agreement in The Guarantee's standard form which outlines the control and operation of the trust account into which all deposits will be held.

The Guarantee shall require a first charge and security interest over the trust account and in those deposits contained with that trust account and will require a Financing Statement under the Personal Property Security Act ("PPSA") registered in first position for a term not less than 10 years.

Should prior PPSA registrations exist, The Guarantee shall receive from those parties with prior registrations a postponement and subordination of their position to The Guarantee security interest in the deposits in a form satisfactory to The Guarantee.

***Collateral Mortgage:***

The Principal consents to providing The Guarantee with a collateral **second** mortgage on the subject project in the amount of **\$1,560,000**. The Guarantee will require an opinion from its solicitor that it has a valid and enforceable charge over the project and property.

The Guarantee shall fully postpone and subordinate its mortgage position as follows:

- First charge in favour of Clarnew Developments Inc. in the amount of \$900,000.

The Guarantee will fully postpone its mortgage position to a Construction Lender providing project financing that has been approved in accordance with Project Financing section of this Commitment Letter. The Principal shall not further encumber the project unless approval is given in writing by The Guarantee. The charge in favour of Brightstar Seniors Living Corporation (a related company) in the amount of \$250,000 is to be subordinated to The Guarantee's mortgage.

The Principal shall provide evidence of all risk insurance including course of construction, business interruption, earthquake and flood. The policy(s) shall provide for a full replacement cost on all buildings, equipment, and inventory owned by the Principal and located at the project or located elsewhere and reasonably necessary for the effective implementation, management and administration of the project. Insurance is to include public liability coverage at least equal in scope to commercial general liability form as well as a soft cost endorsement. The Certificate of Insurance evidencing both Builder's Risk and Wrap-up Liability shall note the Construction Lender as First Mortgagee and loss payee, then The Guarantee as Second Mortgagee and loss payee as per The Guarantee's collateral mortgage document.

The Guarantee will discharge its collateral mortgage upon the final closing of each unit and the discharge will be provided at no charge to the Principal, other than legal fees associated with the preparation and discharge of The Guarantee's security, which shall be the Principal's responsibility. The Guarantee shall require evidence of transfer of title from the Principal/Declarant to purchasers as a condition of discharge.

Upon full payment of any prior encumbrances to The Guarantee's mortgage, and at The Guarantee's sole discretion, The Guarantee may require as a condition of executing further partial discharges of additional sold and/or unsold units, the sale revenues from those units to be retained in trust as added security for any outstanding bonds and/or policies.

Prior to the execution of a partial discharge for any units in the Project after the full payment of any prior encumbrances to The Guarantee's mortgage, The Guarantee will require payment in an amount sufficient to bring the trust account balance to equal the face amount of the Tarion Bond. All amounts retained by The Guarantee shall be held as security against any warranty obligations under the Tarion Bond and shall be returned to the Principal upon return of the Tarion Bond to The Guarantee for cancellation, less any costs incurred by The Guarantee on behalf of the Principal.

***Additional Security:***

The Principal consents to provide The Guarantee with all such other certificates, documents and opinion as The Guarantee or its solicitors shall reasonably require.

**PURCHASERS' DEPOSITS RELEASE TERMS:**

All purchaser deposits to remain in the Trust Account.

Upon obtaining satisfactory presales and arranging for a Construction Loan facility, it is understood by the Principal and The Guarantee that a request may be made by the Principal for Excess Condominium Deposit Insurance ("ECDI") and for partial release of Tarion Insured Deposits held in the Trust Account. The Guarantee confirms that it will entertain a future application and outline in a separate terms and conditions letter, the additional security, additional commitment fee of \$2,500, premium rate (in the range of 1.25% per annum) and conditions it will require to consider such request.

Additional security will be in a form of cash holdback of 50% of the Bond amount (\$780,000) to be held in the Trust Account as partial collateral to secure the obligations of the Indemnitors to The Guarantee until the return to The Guarantee the Tarion Bond.

**GENERAL CONDITIONS:**

The Principal agrees to fulfil and satisfy the following conditions:

***The Condominium Act:***

The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder.

***Tarion Warranty Corporation:***

The Principal shall provide The Guarantee with a copy of its Builder Registration Certificate once the Bond has been given to Tarion.

The Principal shall continue to maintain registration with Tarion so long as there are unsold units and it shall comply with all aspects of the *Ontario New Home Warranties Plan Act*, its regulations and bulletins issued pursuant thereto until such time Tarion returns the Bond to The Guarantee.

If the project is governed under Tarion Builder Bulletin #19, the Principal undertakes and agrees to authorize the Field Review Consultant to provide The Guarantee with copies of all reports.

Should the risk assessment determined by Tarion for the Principal change during the period of time the Bond is outstanding, the Principal undertakes to notify The Guarantee immediately of the new risk assessment. The Guarantee reserves the right to increase its security accordingly.

***Purchaser Release, Assignment and/or Default:***

The Principal, when allowing a purchaser to cancel a purchase and sale agreement, shall require the purchaser to execute a Mutual Release and Termination Agreement in The Guarantee's prescribed format as a condition of requesting the deposit to be released from the Trust Account. Should the purchaser's deposit be already insured and released from trust to the Principal, the Principal shall be solely responsible for paying the deposit refund and shall supply The Guarantee with a copy of the negotiated refund cheque.

For purchasers of units who are in default, the Principal shall notify The Guarantee of the default and request permission to remarket the unit. All deposits from the defaulting party shall remain in trust until The Guarantee is satisfied the dispute has been settled. If the deposit monies from the defaulting purchaser have been released to the Principal, deposit monies from new purchasers shall remain in trust until The Guarantee is satisfied the dispute has been settled with the original purchaser.

Should the Principal permit the assignment of a purchase and sale agreement to another party, the Principal agrees to obtain a release in favour of Tarion and The Guarantee and provide details of the assignment to The Guarantee as a condition of insuring the new party's deposit. Additional premium shall be charged should the new deposit be insured and released from trust.

***Project Financing:***

The Principal shall provide The Guarantee with copies of all discussion papers and the final accepted construction loan financing commitment. The terms of those commitments and the selection of the Construction Lender for the project shall be satisfactory to The Guarantee and permit the project to be completed in a timely manner. If the terms of the said commitment do not contemplate the facility provided by The Guarantee, all terms in this facility shall either be re-negotiated or terminated.

The Principal has provided The Guarantee with a copy of a discussion paper from Meridian Credit Union dated January 23, 2014 for the Project.

***Project Construction and Bonding of Major Trades:***

It is understood that the construction of the Project is being performed on a construction management form of administration. The Principal has advised that the construction manager for the Project will be **Gay Company Limited**. A copy of the signed agreement has been (or will be) provided to The Guarantee.

The Principal shall notify The Guarantee of any key construction staff changes and/or changes in the plans regarding the retention of a General Contractor or Construction Manager from those that were contemplated and revealed to The Guarantee prior to these terms being offered.

The Principal acknowledges that under its Tarion Builder Agreement, it shall indemnify Tarion for all claims relating to the building envelope, mechanical and electrical systems for two years after condominium registration. The Guarantee strongly recommends that any major trades involved in these areas provide the Principal contract performance and labour and material payment bonds with a two year maintenance period to offset any liability for deficiencies which may be determined in the first year of condominium performance audit.

The Guarantee reserves the right to request the Bond be replaced by an alternate standard security as prescribed by Tarion at the commencement of the construction phase.

***Project Monitoring:***

The Principal agrees to authorize the cost consultant to provide copies of all reports to The Guarantee as and when provided to the Construction Lender. Both the cost consultant firm and the content of the report shall be acceptable to The Guarantee for the purposes of fulfilling its obligations under this bonding facility.

Occasionally, The Guarantee may request its own project status report, which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.

Representatives of The Guarantee shall be entitled to, subject to reasonable prior notice, attend and inspect the bonded project.

The Principal also undertakes and agrees to provide The Guarantee with a copy of professional liability coverage of all architects/engineers, the amount and form of which is to be approved by The Guarantee.

***Financial Reporting:***

The Principal and each of the corporate Indemnitors listed in the Indemnity Section above, agree to provide The Guarantee with year end financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal Indemnitors shall arrange to supply The Guarantee with updated net worth statements annually.

***Material Change:***

If at any time prior to the execution and/or release of any Bond or policy or release of deposits from trust, The Guarantee determines there is a material adverse change or implication to the information that the Principal had previously supplied to The Guarantee, including, but not limited to, project viability, ownership of the project or financial ability of the Principal and/or the Indemnitors, The Guarantee may suspend the issuance of bonds or policies, releases of monies from trust or the discharge or termination of The Guarantee's Security Documents until the matter is resolved to the satisfaction of The Guarantee.

***Consent and Acknowledgement to Collection, Use and Disclosure of Information:***

The Principal and all Indemnitors consent to The Guarantee obtaining from any person or company, including Credit Reporting Agencies, any information, including personal information, that The Guarantee may require at any time to facilitate the delivery of bonds and policies contemplated under this surety facility. The Principal and all Indemnitors further consents to the disclosure of this information to any credit grantor or reinsurer by The Guarantee if The Guarantee is requested to do so.

***Electronic Execution of Documents:***

Each of the parties hereto further acknowledges and agrees that this Commitment Letter may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Counterparts may be executed and delivered by facsimile or other form of electronic transmission and shall have the same legally binding effect as if they were an original; provided, however that any party providing its signature in such manner shall promptly forward to the other parties an original of the executed copy of this Agreement which was so faxed or electronically transmitted.

**All of the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written consent of The Guarantee. Failure to observe this condition may result in either The Guarantee withdrawing or altering this Commitment Letter.**

If above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning it together with the Commitment Fee payable to The Guarantee Company of North America.

**THE GUARANTEE COMPANY OF NORTH AMERICA**



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Per: Pamela Martin  
Manager, Developer Surety

Accepted this \_\_\_\_\_ day of March, 2014

**BRIGHTSTAR NEWCASTLE CORPORATION**


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Per: Name:  
Title:

---

Per: Name:  
Title:  
I / We have the authority to bind the Corporation





This is Exhibit “B” referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.



A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.

**DEPOSIT TRUST AGREEMENT***(issued in triplicate)*THIS AGREEMENT is effective as of **March 31<sup>st</sup> 2014**.

A M O N G S T:

**BRIGHTSTAR NEWCASTLE CORPORATION**  
(hereinafter referred to as the "Principal")

OF THE FIRST PART

- and -

**THE GUARANTEE COMPANY OF NORTH AMERICA**  
(hereinafter referred to as the "Surety")

OF THE SECOND PART

- and -

**SCHNEIDER RUGGIERO LLP**  
(hereinafter referred to as the "Escrow Agent")

OF THE THIRD PART

- A) **WHEREAS** the Principal intends to construct and develop a 78 unit condominium complex located at **21 Brookhouse Drive** in the City of **Newcastle**, Ontario and marketed or known as "**Brookhouse Gate**" (hereinafter referred to as the "**Project**");
- B) Purchasers of Units have paid (or will pay) Deposits to the Principal's solicitor or a trustee of a prescribed class pursuant to the provisions of the Purchase Agreements, in accordance with Section 81(1) of the Condominium Act;
- C) Section 81(7) of the Condominium Act requires the declarant's solicitor or a trustee of a prescribed class to hold the Deposits in trust, until delivery of prescribed security to the Purchasers for repayment of their respective Deposits;
- D) Deposit receipts executed by the Warranty Corporation that provide for compensation to Purchasers in accordance with Section 22 of Ontario Regulation 48/01, constitute prescribed security pursuant to subsection 20(2)[2] of Ontario Regulation 48/01 to the Condominium Act;
- E) Under the combined Vendor/Builder Agreement or either of the Vendor Agreement or the Builder Agreement heretofore entered into with the Warranty Corporation, the Principal has agreed to perform diligently (or cause to be performed) certain obligations imposed on the Principal under the Act and the Plan, including all obligations imposed under any agreement made by the Principal with the Warranty Corporation;
- F) The Principal has requested the Surety to issue either a bond to the Warranty Corporation (hereinafter referred to as the "**Bond**") and/or Excess Condominium Deposit Insurance Policies (hereinafter collectively referred to as the "**ECDI**");
- G) For the purposes of evidencing and securing the obligations of the Principal to the Surety arising under (or in connection with) the Bond and/or the ECDI, the Principal and one or more indemnitors have entered into (or will hereafter enter into) an agreement pursuant to which they jointly and severally agree to indemnify the Surety (hereinafter referred to as the "**Indemnity Agreement**") from and against any and all losses, claims, expenses and/or liabilities which the Surety may incur or sustain in respect of the Bond and/or the ECDI;
- H) The Principal has agreed with the Surety that all monies heretofore or hereafter payable or owing on account of an agreement of purchase and sale of a proposed unit in the Project shall be made payable to the Escrow Agent, and shall correspondingly be delivered by or on behalf of the Principal to the Escrow Agent forthwith following the expiry of the applicable rescission period contemplated under Section 73 of the Condominium Act and all such monies (together with all interest earned or accrued thereon) shall be held in trust by the Escrow Agent in a separate trust account in Ontario at a bank listed in Schedule I or II to the Bank Act (Canada) R.S.C. 1990, as amended, as may be designated by the Principal with the consent of the Surety (hereinafter referred to as the "**Designated Bank Account**"), in conformity with the provisions of Section 81(4) of the Condominium Act and all such monies (together with all interest earned or accrued thereon) shall continue to be held by the Escrow Agent in trust for the Surety and the Principal in accordance with the terms and provisions of this Agreement; and
- I) The Escrow Agent hereby represents and warrants that it is qualified to act as an escrow agent for Deposits with respect to the Project pursuant to Section 20(1)[1] of Ontario Regulation 48/01, for the purpose of complying with subsections 81(1) and (4) of the Condominium Act and the Escrow Agent agrees to hold all monies received on account of the agreement of purchase and sale of a proposed unit in the Project entered into between the Principal and each of the respective unit purchasers (together with all interest earned or accrued thereon) in the Designated Bank Account, in

trust, as a general and continuing collateral security to the Surety for the payment of the present and future indebtedness and liabilities of the Principal to the Surety arising out of (or in connection with) the Indemnity Agreement, the Bond and/or the ECDI.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the sum of Ten (\$10.00) Dollars of lawful money of Canada now paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the Principal hereby confirms the veracity and accuracy of the foregoing recitals, and the parties hereto hereby covenant and agree, to and with each other, as follows:

## **SECTION I - INTERPRETATION**

### **1.1 Definitions**

In addition to those words, terms or phrases specifically defined elsewhere in this Agreement, the words, terms or phrases set out below shall have the meanings respectively ascribed to them as follows, whenever same are used or referred to in the recitals or elsewhere in this Agreement;

- (a) **"Act"** means the Ontario New Home Warranties Plan Act, or any amendment thereto or substitution therefor;
- (b) **"Agreement"** means this agreement and any other agreement(s) which supplement(s), amend(s) or confirm(s) this agreement;
- (c) **"Builder Agreement"** means any outstanding agreement entered into between the Warranty Corporation and the Principal (in the Principal's capacity as a **builder**, as such term is defined in the Act), pertaining to the obligations of the Principal under the Act, the regulations promulgated thereunder, and any bulletins issued by the Warranty Corporation from time to time which may be applicable to the Principal;
- (d) **"Certificate of Completion and Possession"** has the meaning ascribed to it in Part I(1) of Regulation 892 to the Act;
- (e) **"Condominium Act"** means the Condominium Act 1998, S.O. 1998, C.19 and any amendment thereto or substitution therefor and the regulations made thereunder;
- (f) **"Deposit"** or **"Deposits"** shall respectively have the meaning ascribed to the term **"Deposit"** in Part I (1) of Regulation 892 to the Act;
- (g) **"Deposit Receipt"** means a deposit receipt executed by the Warranty Corporation in accordance with Section 22 of Ontario Regulation 48/01 to the Condominium Act;
- (h) **"Excess Condominium Deposit Insurance Policy"** or **"ECDI"** means the policy of insurance referred to or contemplated in Section 20(2)[1] and Section 21(1) of Ontario Regulation 48/01 to the Condominium Act which insures all deposit monies paid under an agreement of purchase and sale with respect to the acquisition of one or more units in the Project in excess of \$20,000.00 (or in excess of any other amount which may hereafter be covered by the Warranty Corporation under a Deposit Receipt);
- (i) **"hereof"**, **"hereto"**, **"hereunder"** and similar terms mean and refer to this Agreement as a whole, and not to any particular section or subsection;
- (j) **"Plan"** means the Ontario New Home Warranties Plan Act administered by Tarion Warranty Corporation;
- (k) **"Purchase Agreement"** has the meaning ascribed to it in Part I(1) of Regulation 892 to the Act;
- (l) **"Purchaser"** has the meaning ascribed to it in Part I(1) of Regulation 892 to the Act;
- (m) **"Section"** or **"Subsection"** followed by a number, means and refers to the specified section or subsection hereof;
- (n) **"Unit"** has the meaning ascribed to it in Section 1(1) of the Condominium Act;
- (o) **"Vendor Agreement"** means any outstanding agreement entered into between the Warranty Corporation and the Principal (in the Principal's capacity as a **vendor**, as such term is defined in the Act), pertaining to the obligations of the Principal under the Act, the regulations promulgated thereunder, and any bulletins issued by the Warranty Corporation from time to time which may be applicable to the Principal;
- (p) **"Vendor/Builder Agreement"** means any outstanding agreement entered into between the Warranty Corporation and the Principal (in the Principal's capacity as a **vendor** and/or a **builder**, as such terms are respectively defined in the Act), pertaining to the obligations of the Principal under the Act, the regulations promulgated thereunder, and any bulletins issued by the Warranty Corporation from time to time which may be applicable to the Principal; and
- (q) **"Warranty Corporation"** means Tarion Warranty Corporation.

### **1.2 Plural Etc.**

In this Agreement, the singular includes the plural, and vice versa.

1.3 **Headings**

Headings of sections or subsections are provided for convenience of reference only, and do not define, limit or enlarge the construction or interpretation hereof.

1.4 **Currency**

All references to monetary amounts are references to Canadian Dollars.

1.5 **Schedules**

Schedule "A" annexed hereto forms an integral part of this Agreement.

**SECTION 2 - REPRESENTATION AND WARRANTIES**

2.1 **Representations of the Principal**

The Principal hereby represents and warrants to the Surety that, as of the date hereof;

- (a) it is a registered builder and/or vendor under the Act, or has applied to become a registered builder and/or vendor under the Act;
- (b) Schedule "A" contains a full and complete record of all the names of all of the Purchasers of Units in the Project, the Units purchased, the dates of all Purchase Agreements, the amount of all Deposits received by the Principal from such Purchasers with respect to such Units in accordance with their respective Purchase Agreements, and the purchase price with respect to each of such Units;
- (c) the Principal has received value from the Surety;
- (d) no other creditor of the Principal has any security interest or other claim in or to the Deposits ranking prior to or *pari passu* with the security interests granted to the Surety pursuant to this Agreement, and the Principal will obtain and deliver to the Surety from time to time, upon request of the Surety, acknowledgments or postponements, in form and substance satisfactory to the Surety, from creditors of the Principal evidencing that any security interest or other claims of such creditors do not attach or pertain to the Deposits, or rank behind the security interests of the Surety in and to the Deposits; and
- (e) the Principal has (or will have) prior to delivery of any amounts in respect thereof to the Escrow Agent, rights in and to the Deposits.

2.2 **Survival of Warranties**

The representations and warranties contained in Section 2.1 and 2.2 hereof shall survive and continue in full force and effect for the benefit of the Surety, for so long as the Surety has any outstanding obligation or liability (whether vested, contingent or otherwise) to the Warranty Corporation arising under the Bond and/or the ECDI.

**SECTION 3 - THE BANK ACCOUNT**

3.1 **Reports Etc.**

The Principal hereby covenants and agrees with the Surety that:

- (a) as soon as the Principal has received any funds representing a Deposit in respect of any Purchase Agreement, and the corresponding statutory 10 day rescission period with respect thereto (and arising pursuant to Section 73 of the Condominium Act) has expired without the Principal or its solicitor having received any notice of rescission in connection therewith, the Principal shall forthwith deliver such funds to the Escrow Agent for immediate deposit into the Designated Bank Account and to thereafter be held in accordance with the terms of this Agreement;

It is hereby understood and agreed that any default in respect of the foregoing obligation shall constitute a breach or an event of default under the security documentation and instruments now or hereafter executed by the Principal to and in favour of the Surety (which security documentation and instruments are hereinafter collectively referred to as the "Collateral Security Instruments").

- (b) upon the Surety's request, and in any event every two months commencing from and after the effective date of this Agreement, and continuing throughout the duration of this Agreement, the Principal shall provide to the Surety an up-to-date report confirming the amount of all Deposits received by the Principal since the previous bi-monthly report, including all Deposits remitted to the Escrow Agent for deposit in the Designated Bank Account, and which up-dated bi-monthly report shall contain all of the details specified in Subsection 2.1(b) hereof; and
- (c) the Principal shall provide to the Surety copies of all Deposit Receipts issued with respect to the Project under the Act, forthwith after receipt by the Principal thereof.

The Escrow Agent hereby covenants and agrees with the Surety that:

- (d) as soon as the Escrow Agent has received any funds representing a Deposit delivered to it by or on behalf of the Principal in accordance with Section 3.1(a) hereof, the Escrow Agent shall forthwith deposit and retain such funds in the Designated Bank Account at MERIDIAN CREDIT UNION LIMITED (having account number 2942332, BRANCH 837), and within 10 days of depositing any such monies in the Designated Bank Account the Escrow Agent shall, on behalf of the Principal and in accordance with the provisions of subsection 81(6) of the Condominium Act provide to the person or persons who paid such monies written evidence of compliance with subsections 81(1) and (4) of the Condominium Act by completing and delivering to each of them within said time frame a Form 4, as prescribed by Section 39 of Ontario Regulation 49/01 to the Condominium Act; and
- (e) upon the Surety's request, and in any event every two months commencing from and after the effective date of this Agreement, and continuing throughout the duration of this Agreement, the Escrow Agent shall provide to the Surety an up-to-date report confirming the amount of all Deposits received by the Escrow Agent and deposited into the Designated Bank Account.

The Surety hereby consents to the Escrow Agent placing the funds referred to in Section 3.1(d) hereof in a term deposit or guaranteed investment certificate, if so instructed by the Principal, provided that such placement of funds does not contravene the overriding requirement of Section 81(4) of the Condominium Act [in terms of such monies still constituting trust monies held in a separate trust account at a bank listed in Schedule I or II of The Bank Act (Canada)]. The Principal shall be solely responsible for any shortfall in interest required to be repaid to any of the Purchasers, in the event that the Project is cancelled and the Deposits, together with all interest accrued thereon as prescribed by the Condominium Act are to be refunded to any of the Purchasers.

### 3.2 Trust

The Escrow Agent hereby agrees with the Surety to retain and hold all amounts now or at any time hereafter deposited in the Designated Bank Account (currently amounting to \$ 0), on the express understanding that the Designated Bank Account shall be opened and maintained in the name of the Escrow Agent, and whose signing authority for authorizing withdrawals therefrom resides exclusively with the Escrow Agent (and specifically two or more solicitors who are employees, associates or partners of the law firm comprising the Escrow Agent). It is also agreed that the Escrow Agent shall only be required to retain and hold the Deposits received by it, together with all interest earned or accrued thereon, less those funds released in accordance with the provisions of Section 4 hereof.

### 3.3 Security Interest

The Principal hereby grants to the Surety a security interest in its ownership of (or beneficial interest in) all Deposits received, together with all interest earned or accrued thereon, less any funds released in accordance with the provisions of Section 4 hereof, which security interest shall be and constitute a general and continuing security for the payment and/or performance of all present and future indebtedness, liabilities and/or obligations of the Principal to the Surety incurred or arising under or pursuant to the Indemnity Agreement, the Bond, the ECDI and/or this Agreement.

The Principal hereby covenants and agrees that it shall not create or grant any security interest in the Deposits to or in favour of any third party or parties which would purport to claim priority over (or rank *pari passu* with) the Surety's security interests in and to the Deposits, and hereby expressly acknowledges and agrees that a breach of this covenant shall constitute a breach or an event of default under the Collateral Security Instruments.

The Principal and the Escrow Agent agree with the Surety that:

- (a) (i) if the Principal is in breach of any of its obligations contained in the Indemnity Agreement, the Bond, any of the Collateral Security Instruments, the ECDI and/or this Agreement; or
- (ii) A. the interest of the Principal in the Project shall at any time be seized or taken in execution by any creditor of the Principal, and such continues for a period of 10 days; or
- B. if an act of bankruptcy [as defined in the Bankruptcy and Insolvency Act (Canada), as amended or replaced from time to time] shall occur in respect of the Principal, or if the Principal shall become bankrupt or insolvent (in each case as defined in the Bankruptcy and Insolvency Act (Canada) as amended or replaced from time to time); or
- C. if the Principal shall make a general assignment for the benefit of its creditors, or shall liquidate or pass a resolution to liquidate or wind-up its business; or
- D. if a receiver or a receiver/manager in respect of the Principal (or with respect to any substantial part of the Principal's property and assets) is appointed, either with or without the consent or acquiescence of the Principal, and any such appointment shall remain unvacated and unstayed for a period of 30 days thereafter; or if any power of sale, foreclosure or judicial sale proceedings are commenced or initiated by any outstanding mortgagee or other encumbrancer (or by any receiver or manager on behalf of any outstanding mortgagee or other encumbrancer) in respect of the lands (or any portion thereof) upon which the Project is being developed (irrespective of whether such mortgagee or encumbrancer has a registered charge or other encumbrance in priority to, or subordinate to, the charge or other security interests of the Surety thereto), including without limitation, the issuance of any notice of sale under any such outstanding mortgage or other encumbrance affecting such lands or any portion thereof; or

- E. if any construction lien (or any other claim for lien) is now or hereafter registered against the lands (or any portion thereof) upon which the Project is being developed, and such lien (together with any corresponding certificate of action, if applicable) has not been formally discharged or vacated from the title to such lands by a court order or a discharge/release from the lien claimant; or
- F. if any instrument evidencing any claim, interest, restriction, covenant, deficiency notice, stop work order, notice of violation, judicial decree or court order, or any other encumbrance is now or hereafter registered against the lands (or any portion thereof) upon which the Project is being developed, and such instrument prohibits or restricts (or may likely prohibit or restrict) the development and/or completion of the Project on said lands, or the sale and final closing of the unit sale transactions in respect of the Project, in whole or in part;

then, in any of the foregoing circumstances or events, the security interest granted by the Principal to the Surety pursuant to this Agreement shall, at the sole option or discretion of the Surety (which shall not be challenged or questioned under any circumstances whatsoever), become immediately enforceable in accordance with the terms and provisions of this Agreement and the provisions of the Personal Property Security Act R.S.O. 1990, as amended;

- (b) in the event the security interest granted by the Principal to the Surety pursuant to this Agreement has become enforceable, all Deposits received, together with all interest earned or accrued thereon, less any funds previously released in accordance with the provisions of Section 4 hereof (or any part thereof from time to time), shall be released in accordance with Section 4, as and when the Surety thinks fit, and without notice to the Principal, without prejudice to the Surety's rights, powers and/or claims against the Principal for any deficiency;
- (c) the Principal shall not be entitled to withdraw any funds from the Designated Bank Account, by cheque or otherwise;
- (d) the Escrow Agent shall not pay or withdraw any funds from the Designated Bank Account without the prior written consent of the Surety;
- (e) the security created by this Agreement is in addition to, and without prejudice to, any other security now or hereafter held by the Surety; and
- (f) the Escrow Agent shall hold the funds in the Designated Bank Account on behalf of the Surety, for the purpose of perfecting the security interest granted to the Surety in respect of the Deposits, and not as agent of or for the Principal.

#### 3.4 Signing Authority

The Escrow Agent shall have the sole signing authority for withdrawals or cheques drawn on the Designated Bank Account.

#### 3.5 Condominium Act

No transfer or withdrawal of funds representing any Deposit(s) shall be made (or be directed to be made by the Surety or the Principal) which would render the Escrow Agent liable to any of the Purchasers for a breach of Section 81 of the Condominium Act.

### SECTION 4 - RELEASE OF FUNDS

#### 4.1 Deposits Refunded to Purchaser(s) When Purchase Agreement(s) Rescinded or Terminated

Upon request by the Principal made to the Surety in writing, stating that a Purchaser is entitled to a full or partial refund of his or her Deposit(s), and the production of such evidence as the Surety may reasonably require to confirm same, the Surety hereby agrees to promptly deliver a written direction to the Escrow Agent instructing the latter to issue a cheque drawn on the Designated Bank Account payable to the named Purchaser in the amount of such refund, together with all prescribed interest earned or accrued thereon. It will be a condition precedent to the delivery of such cheque to the Purchaser that the Purchaser sign a release in favour of the Principal, the Surety, the Warranty Corporation and the Escrow Agent, in a form approved by the Surety, unless the Purchaser's entitlement to the return of his or her Deposits is predicated on the exercise of the Purchaser's rescission rights pursuant to Section 73 of the Condominium Act in which case no formal release will be required but the Principal shall nevertheless be obliged to confirm in writing to the Surety and the Escrow Agent that such rescission rights have been duly exercised by the Purchaser.

In the event that a purchase and sale transaction has been terminated under circumstances entitling the Principal to retain the Deposit as its liquidated damages, then the Deposit shall nevertheless remain in the Designated Bank Account until such time as:

- (a) The Warranty Corporation has released the Bond for cancellation; or
- (b) The Principal has provided the Surety with a release evidencing or confirming such termination and the corresponding forfeiture of the Purchaser's Deposit(s) to and in favour of the Principal, duly executed by the Purchaser in favour of the Principal, the Surety, the Warranty Corporation and the Escrow Agent, in a form approved by the Surety.

4.2 **Payment to the Warranty Corporation, any Purchaser(s) or the Surety for Claims and/or Costs**

If at any time the Warranty Corporation calls upon the Surety to make a payment under (or in connection with) the Bond, then the Surety shall thereupon be entitled, without notice to (and without the consent of) the Principal, to deliver a written direction to the Escrow Agent instructing the latter to issue one or more cheques drawn on the Designated Bank Account payable directly to the Warranty Corporation in the amount so demanded by it. If at any time a Purchaser makes a claim for payment under (or in connection with) any ECDI issued by the Surety on behalf of the Principal, then the Surety shall thereupon be entitled, without notice to (and without the consent of) the Principal, to deliver a written direction to the Escrow Agent instructing the latter to issue one or more cheques drawn on the Designated Bank Account payable to such Purchaser, in such amounts as may be directed by the Surety (but in no event exceeding the maximum insured amount under said policy). In addition, in the event that the Surety has already made a payment directly to the Warranty Corporation or to any such Purchaser (as the case may be), out of its own funds or resources, or in the event that the Surety has a claim against the Principal for unpaid premiums, legal fees, disbursements and/or any other outstanding expenses or charges incurred by the Surety in respect of the Bond, the ECDI, the Indemnity Agreement, any of the Collateral Security Instruments and/or this Agreement, then in each of such cases the Surety may likewise deliver a written direction to the Escrow Agent, without notice to (and without the consent of) the Principal, instructing the Escrow Agent to issue a cheque drawn on the Designated Bank Account payable to the Surety, in an amount sufficient to reimburse the Surety for all such payments, claims and/or expenses.

4.3 **Deposits Released Into the Project**

If the Principal and the Surety have heretofore agreed (or hereafter agree) that a portion of the Deposits, in respect of which the Surety has a security interest, may be released and withdrawn from the Designated Bank Account to assist the Principal in either funding approved project costs or repaying any outstanding indebtedness (in whole or in part) to any prior mortgagee(s) or encumbrancer(s) in respect of the Project, then provided the Principal is not in default of its obligations hereunder (nor with respect to any obligations of the Principal set out in the Indemnity Agreement or any of the Collateral Security Instruments), the Surety will issue an authorization to the Escrow Agent to release the said funds to the Principal (or to such other party or parties as may be directed in writing by the Principal) at such times and in such amounts as so agreed to by the Surety and the Principal. The Principal shall also be required to consent in writing to any such release of Deposits.

4.4 **Collapsing the Designated Bank Account**

If at any time the Surety ceases to be liable under the Bond and/or the ECDI in accordance with the terms of the Bond and/or the ECDI, then the Surety shall thereupon deliver a written direction to the Escrow Agent instructing the latter to issue:

- (a) a cheque drawn on the Designated Bank Account made payable to the Surety, in an amount equivalent to the aggregate of all remaining or outstanding financial obligations of the Principal to the Surety, including without limitation, the amount of any unpaid fees or premiums payable to the Surety, and the Surety's out of pocket expenses incurred in obtaining and/or enforcing any security held by the Surety under (or in connection with) the Bond, the ECDI, the Indemnity Agreement, any of the Collateral Security Instruments and/or this Agreement; and
- (b) a cheque drawn on the Designated Bank Account made payable to the Principal (or to whomsoever and in whatsoever manner the Principal may in writing further direct), in the amount of all funds remaining in the Designated Bank Account.

4.5 **Compliance with Directions**

The Escrow Agent shall promptly comply with all written directions given by the Surety pursuant to the foregoing provisions of this Section 4.

**SECTION 5 - GENERAL**

5.1 **Further Assurances**

Each of the Principal, the Escrow Agent and the Surety shall, forthwith upon the request of any party or parties hereto made from time to time, do, make and execute all such further documents, acts, matters and/or things as may be required in order to give effect to this Agreement and the transactions referred to herein.

5.2 **Escrow Agent's Liability**

In consideration of **Schneider Ruggiero LLP** acting as the Escrow Agent hereunder, each of the other parties hereto agrees to hold the Escrow Agent free, harmless and fully indemnified from and against all claims which may be made against the Escrow Agent arising out of (or in connection with) the performance of the duties of the Escrow Agent set out in this Agreement, including without limitation, all expenses incurred by the Escrow Agent in complying with the terms and provisions of this Agreement, provided that the Escrow Agent has acted honestly, in good faith and not negligently in the performance and fulfillment of such duties, and is not in breach of any terms or provisions of this Agreement.

5.3 **Notices**

Any notice or other communication required or desired to be given hereunder (a "notice") shall be in writing and may be effectively given by delivering same by courier or personally at the addresses hereinafter set forth, or by sending the same by prepaid registered mail to the parties at such addresses, or by telefax transmission. Any notice so mailed shall be deemed to have been received on the third banking day next following the date of mailing/posting thereof,

provided the postal service is in operation during such time, or on the next business day following the date of such personal delivery (or delivery by courier) or telefax transmission. During any interruption of postal service, all notices shall be delivered personally or by courier, or by telefax transmission. The addresses of the parties for the purposes hereof shall respectively be:

(i) in the case of notice to the Principal:

**BRIGHTSTAR NEWCASTLE CORPORATION**

55 St. Clair Avenue West, Suite 205

Toronto, Ontario

M4V 2Y7

Attention: Mr. James Buckler

Fax No.: 416-362-1218

(ii) in the case of notice to the Surety:

**THE GUARANTEE COMPANY OF NORTH AMERICA**

The Madison Centre

4950 Yonge Street, Suite 1400

Toronto, Ontario

M2N 6K1

Attention: Mr. Richard Longland

Fax No.: 416-223-0997

(iii) in the case of notice to the Escrow Agent:

**SCHNEIDER RUGGIERO LLP**

Barristers & Solicitors

120 Adelaide Street West, Suite 1000

Toronto, Ontario

M5H 3V1

Attention: Mr. David Spencer

Fax No.: 416-363-0645

Any party hereto may from time to time notify each of the other parties hereto, in accordance with the foregoing provision hereof, of any change of address or fax number which thereafter, until changed by like notice, shall be the address or fax number (as the case may be) of such party, for all purposes of this Agreement.

**5.4 Binding on Successors and Permitted Assigns**

This Agreement shall be binding upon, and correspondingly enure to the benefit of, each of the parties hereto and their respective successors and assigns, provided however that neither the Principal nor the Escrow Agent shall be entitled to assign their respective rights and/or obligations under this Agreement to any party or parties without the express written consent of the Surety, and which consent may be denied or withheld arbitrarily and for any reason whatsoever.

**5.5 Governing Law**

This Agreement, the transactions referred to herein, and all other documents delivered hereunder shall be construed and interpreted in accordance with (and shall be correspondingly governed by) the laws of the Province of Ontario, and each of the parties hereto shall attorn to the jurisdiction of the Superior Court of Justice for the Province of Ontario.

**5.6 Time**

Time shall be the essence of this Agreement, and with respect to the performance and fulfillment of all obligations provided or contemplated herein.

**5.7 Not Partners**

Nothing contained herein shall be construed so as to make the Surety, the Escrow Agent and the Principal partners of one another.

**5.8 Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and, except as herein stated and in the documents to be executed and delivered pursuant hereto, this Agreement contains all of the representation, undertakings and agreements of the respective parties hereto.

There are no verbal representations, undertakings or agreements of any kind between or amongst the parties hereto with respect to the subject matter hereof, except as stated herein. This Agreement may not be modified or amended except with the written consent of all parties hereto.

**5.9 Receipt of Copy**

Each of the Principal and the Escrow Agent acknowledges receipt of an executed copy of this Agreement.



IN WITNESS WHEREOF the parties hereto have duly executed this Agreement and it becomes effective as of the day and year first above written.

**BRIGHTSTAR NEWCASTLE CORPORATION**

Per: 

Name: JOHN BLACKBURN  
Title: PRESIDENT

Per: 


Name: JAMES BUCKLER  
Title: CFO

We have authority to bind the Corporation

**THE GUARANTEE COMPANY OF NORTH AMERICA**

Per: 

Pamela Martin, Attorney in Fact

Per: 

Richard Longland, National Vice President  
Commercial & Developer Surety

We have authority to bind the Corporation

**SCHNEIDER RUGGIERO LLP**

Per: 

I have authority to bind the firm acting as Escrow Agent

**NAME OF PARTNER IN (OR PRINCIPAL SOLICITOR OF) ESCROW AGENT  
(INCLUDING FIRST NAME, INITIAL AND LAST NAME)**

Kevin Brock Milburn BIRTH DATE: 16/08/58 (DAY/MONTH/YEAR)

HOME ADDRESS 1159 RUSHBROOK DR, OAKVILLE, ON L6M 1H8

\_\_\_\_\_  
\_\_\_\_\_

## SCHEDULE "A"

***SALES AND DEPOSIT REPORT***

for the period ending \_\_\_\_\_

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

PROJECT: \_\_\_\_\_

Unit No.	Full name(s) as per Purchase Agreement	Purchase Price	Deposit Date	Deposit Amount	Deposits Attached	Total per unit	Balance due on Closing	Anticipated Closing Date
-------------	---	-------------------	-----------------	-------------------	----------------------	-------------------	---------------------------	-----------------------------

This is Exhibit “C” referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.



A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.

**Verification Statement**

Cyberbahn Transaction ID: 5993279

40

**Form  
1C**

Ontario: Financing Statement / Claim for Lien

		Reference File No. <b>695098989</b>				Registration No. <b>20140409110018629166</b>				Expiry Date <b>09 APR 2024</b>		
01		Cautious Filing	Page <b>1</b>	Total Page of <b>2</b>	Motor Vehicle Schedule					PPSA/RSLA <b>P</b>	Registration Period <b>10</b>	
Debtor	02	Individual Debtor		Date of Birth	First Given Name			Initial	Surname			
	03	Business Debtor		Name <b>BRIGHTSTAR NEWCASTLE CORPORATION</b>							Ontario Corporation No.	
			Name cont'd									
04		Address <b>55 ST. CLAIR AVENUE WEST, SUITE 205</b>				City <b>TORONTO</b>			Prov. <b>ON</b>	Postal Code <b>M4V 2Y7</b>		
Debtor	05	Individual Debtor		Date of Birth	First Given Name			Initial	Surname			
	06	Business Debtor		Name							Ontario Corporation No.	
			Name cont'd									
07		Address				City			Prov.	Postal Code		
Secured Party	08	Secured Party <b>THE GUARANTEE COMPANY OF NORTH AMERICA</b>										
	09	Address <b>4950 YONGE STREET, SUITE 1400, MADISON C</b>				City <b>TORONTO</b>			Prov. <b>ON</b>	Postal Code <b>M2N 6K1</b>		
Collateral	10	Section 1: Collateral Classification				Section 2: Vehicle Included		Section 3: Principal Amount Secured		Section 4:		
			Consumer Goods	Inventory	Equipment	Accounts	Other	Type 'X' if Motor Vehicle included	Date of Maturity		No Fixed Date of Maturity	
						X	X		\$ .00			
			Year	Make	Model			Vehicle Identification No.				
		General Collateral Description										
13		<b>PURCHASERS' DEPOSITS AND MONIES PAID PURSUANT TO AGREEMENTS OF</b>										
14		<b>PURCHASE AND SALE AND INTEREST EARNED THEREON HELD IN ESCROW/TRUST</b>										
15		<b>PURSUANT TO A DEPOSIT TRUST AGREEMENT FOR A PROJECT LOCATED AT 21</b>										
Agent	16	Registering Agent <b>SCHNEIDER RUGGIERO LLP (36964/BM)</b>										
	17	Address <b>120 ADELAIDE STREET W., STE. 1000</b>				City <b>TORONTO</b>			Prov. <b>ONT</b>	Postal Code <b>M5H 3V1</b>		

**Verification Statement**

Ontario: Financing Statement / Claim for Lien

		Reference File No. <b>695098989</b>				Registration No. <b>20140409110018629166</b>				Expiry Date <b>09 APR 2024</b>		
01		Caution Filing	Page <b>2</b> of <b>2</b>	Total Page	Motor Vehicle Schedule					PPSA/RSLA	Registration Period	
Debtor	02	Individual Debtor	Date of Birth			First Given Name			Initial	Surname		
	03	Business Debtor	Name									
			Name cont'd									Ontario Corporation No.
04	Address					City			Prov.	Postal Code		
Debtor	05	Individual Debtor	Date of Birth			First Given Name			Initial	Surname		
	06	Business Debtor	Name									
			Name cont'd									Ontario Corporation No.
07	Address					City			Prov.	Postal Code		
Secured Party	08	Secured Party										
	09	Address					City			Prov.	Postal Code	
Collateral	10	<b>Section 1:</b> Collateral Classification				<b>Section 2:</b> Vehicle Included		<b>Section 3:</b> Principal Amount Secured			<b>Section 4:</b>	
		Consumer Goods	Inventory	Equipment	Accounts	Other	Type 'X' if Motor Vehicle included	\$ <b>.00</b>			Date of Maturity	No Fixed Date of Maturity
	11	Year	Make			Model			Vehicle Identification No.			
	12											
	13	General Collateral Description <b>BROOKHOUSE DRIVE, NEWCASTLE, KNOWN AS BROOKHOUSE GATE.</b>										
Agent	16	Registering Agent										
	17	Address					City			Prov.	Postal Code	

**IMPORTANT INFORMATION**

Due to the manner in which registrations are handled by the PPSR system, your original 3C Verification Statement ('Original Verification Statement') produced by the PPSR Registrar may contain warnings or error messages generated by the Ministry of Government Services, Companies and Personal Property Security Branch. Your Cyberbahn verification statement will NOT contain these messages, and Cyberbahn strongly recommends, in all cases, that you review your Original Verification Statement to ensure that you are aware of any potential errors or warnings generated by the PPSA system. Cyberbahn is not responsible for system errors.

Should you have any questions, please do not hesitate to contact Cyberbahn.

This is Exhibit “D” referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.



A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.



March 29<sup>th</sup>, 2016

Brightstar Newcastle Corporation  
55 St. Clair Avenue West, Suite 205  
Toronto, Ontario  
M4V 2Y7

Attention: Mr. Jim Buckler

Dear Mr. Buckler:

**Re: Tarion Warranty Corporation Bond Facility  
Excess Condominium Deposit Insurance Facility  
For: BrightStar Newcastle Corporation  
Project: Located at 21 Brookhouse Drive, Newcastle, Ontario and known as "Brookhouse Gate"**

The Guarantee Company of North America ("The Guarantee") has reviewed your application for a Tarion Bond and Excess Condominium Deposit Insurance ("ECDI") facility for the Brookhouse Gate Project and is pleased to provide the requested facility subject to your acceptance of all terms and conditions outlined in this letter ("Commitment Letter"). Capitalized terms in this Commitment Letter shall have the meaning set out herein.

**PROJECT DESCRIPTION:**

A 4 storey, 78 unit residential condominium building with underground parking for 102 spaces and 10 surface parking spaces, located at 21 Brookhouse Drive, Newcastle, Ontario, and known as "Brookhouse Gate" (hereinafter referred to as the "Project").

**ENTITY BONDED:**

The entity named on the Bond will be BrightStar Newcastle Corporation (hereinafter referred to as the "Principal"), which entity shall also be the Vendor and Declarant of this condominium Project.

**BOND FACILITY:**

It is acknowledged that the Principal and the Project has been registered with the Tarion Warranty Corporation, and The Guarantee has previously provided a Tarion Bond ("Bond") in the amount of \$1,560,000 (\$20,000 x 78 units).

**ECDI FACILITY:**

The Guarantee will provide ECDI policies to enable purchasers' deposits in excess of \$20,000 to be utilized by the Principal for approved Project costs or repayment of the Construction Lender. The aggregate total of ECDI shall not exceed \$2,000,000.

**BROKER:**

Petrela, Winter & Associates

**PROJECT SOURCES AND USES OF FUNDS:**

The Principal represents that the sources and uses of funds for the Project are as follows:

Sources of Funds		Uses of Funds	
Borrower's Equity	\$2,354,203	Land	\$1,250,000
Centurion Mezz Financing	\$1,890,000	Hard Costs	\$16,652,715
Purchasers Deposits	\$3,000,000	Soft Costs	<u>\$7,402,285</u>
Deferred Costs	\$1,650,897		
Construction Loan	\$17,155,000		
Less: Sources Surplus	(745,100)		
<b>Total:</b>	<b>\$25,305,000</b>	<b>Total Project Costs:</b>	<b>\$25,305,000</b>

(hereafter referred to as "Project Sources and Uses of Funds").

**PROJECT FINANCING:**

The Principal has provided The Guarantee with a copy of a signed commitment letter dated December 14<sup>th</sup>, 2015 issued by Meridian Credit Union Limited ("Construction Lender") to provide a \$17,700,000 construction loan facility ("Construction Loan Facility") that is sufficient, when combined with facilities described in this Commitment Letter, the Centurion Mezzanine facility, and the Principal's equity, to finance the construction of the Project. The terms of the Construction Loan Facility are acceptable to The Guarantee.

**FEES AND PREMIUMS:****Commitment Fee:**

A non-refundable commitment fee of \$2,500 shall be due and payable and deemed earned upon acceptance of this Commitment Letter.

**Premium:**

The premium charged for the Bond will be based on the annual rate of 1.15% at the commencement of construction. The premium for this Bond is \$17,940 (\$1,560,000 x 1.15%). All future premium terms will be billed at this rate, unless stipulated otherwise and will be payable as of the invoice date.

After condominium registration and at the expiry of the next bond invoice term, The Guarantee will entertain reducing the premium term to a minimum of three (3) month term. Should any further reductions in the Bond take place during the reduced term, adjustments will be considered at the next premium term renewal.

The premium charged for ECDI on purchasers' Deposits released to the Principal prior to and during interim occupancy shall be at an annual rate of 1.15% of the purchasers' deposits insured. For ECDI released during interim occupancy, The Guarantee will pro-rate the premium over 3 months and will renew the premium monthly thereafter.

The minimum premium on any invoice will be \$250.

The Guarantee reserves the right to deduct outstanding premiums and/or fees from future Deposits releases.

**THE GUARANTEE'S LEGAL WORK:**

The Principal acknowledges and accepts that the law firm selected to act for The Guarantee with respect to registration of its security and other matters shall be David Spencer of SR Law Schneider Ruggiero LLP. The Guarantee reserves the right to appoint another solicitor as a replacement for or successor to David Spencer.

The Principal shall be responsible for full payment of all legal fees and disbursements when invoiced by this firm. The



Principal shall pay all costs with respect to preserving The Guarantee's rights under its mortgage security including all defense costs of any construction lien actions incurred by or on behalf of The Guarantee.

#### **DEPOSIT TRUSTEE:**

The Principal has advised that SR Law Schneider Ruggiero LLP (hereinafter referred to as "**Deposit Trustee**") shall hold in trust all amounts paid on account of the purchase price under a condominium agreement of purchase and sale with respect to the Project ("**Deposits**") in accordance with a Deposit Trust Agreement ("**DTA**") between The Guarantee, the Principal and the Deposit Trustee. The law firm acting as Deposit Trustee is not to be changed without prior written notice to and consent of The Guarantee. Any change to the law firm acting as Deposit Trustee shall be made in accordance with the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder (hereinafter referred to as the "**Act**") and any other applicable legislation.

#### **THE GUARANTEE'S SECURITY:**

As evidence of and general continuing collateral security for the payment of present and future indebtedness, obligations and liabilities of the Principal to The Guarantee, the following security (hereinafter referred to as "**Security Documents**") shall be provided to The Guarantee.

##### *Indemnity Agreement:*

The Principal consents to provide the unlimited, joint and several indemnities of the following Corporations and individuals as noted below in The Guarantee's standard form, along with other resolutions, etc. deemed necessary by The Guarantee's solicitor.

- **BrightStar Newcastle Corporation.**
- **Lawson Gay**
- **John Blackburn**
- **Jim Buckler**
- **Alan Chapple**

##### *Deposit Trust Agreement:*

The Principal shall execute a Deposit Trust Agreement in The Guarantee's standard form which outlines the control and operation of the trust account into which all Deposits will be held.

The Guarantee shall require a first charge and security interest over the trust account and in those deposits contained in that trust account and will require a Financing Statement under the Personal Property Security Act (hereinafter referred to as "**PPSA**") registered in first position for a term not less than 10 years.

Should prior PPSA registrations exist, The Guarantee shall receive from those parties with prior registrations a postponement and subordination of their position to The Guarantee security interest in the deposits in a form satisfactory to The Guarantee.

##### *Collateral Mortgage:*

The Principal consents to providing The Guarantee with a second collateral mortgage on the subject project in the amount of \$4,100,000. The Guarantee will require an opinion from its solicitor that it has a valid and enforceable charge over the property relating to the Project.

The Guarantee shall fully postpone and subordinate its mortgage as follows:

- First charge in favour of the Meridian Credit Union in the amount of \$19,500,000.

The Principal shall not further encumber the Project other than a third charge in favor of Centurion Mortgage Capital Corporation in the amount of \$4,565,000, and all municipal agreements and easements that may be required in connection with the Project unless approval is given in writing by The Guarantee.

The Guarantee will discharge its collateral mortgage upon the final closing of each unit and the discharges will be provided at no charge to the Principal, other than legal fees associated with the preparation and discharge of The Guarantee's mortgage, payment of which shall be the Principal's responsibility. The Guarantee shall require evidence of transfer of title from the Principal/Declarant to purchasers as a condition of discharge.

The Principal shall provide evidence of all risk insurance including course of construction, business interruption, earthquake and flood. The policy(s) shall provide for a full replacement cost on all buildings, equipment, and inventory owned by the Principal and located at the Project or located elsewhere and reasonably necessary for the effective implementation, management and administration of the Project. Insurance is to include public liability coverage at least equal in scope to commercial general liability form as well as a soft cost endorsement. The Certificate of Insurance evidencing both Builder's Risk and Wrap-up Liability shall note the Construction Lender as First Mortgagee and loss payee, then The Guarantee as Second Mortgagee and loss payee as per The Guarantee's collateral mortgage document.

***Warranty Holdback:***

The Principal agrees to provide an undertaking and direction to place in The Guarantee's Deposit Trust account \$780,000 from unit closing proceeds after the Construction Lender has been repaid ("**Warranty Holdback**"). The Warranty Holdback will be held as partial collateral to secure the obligations of the Principal and indemnitors to The Guarantee until the return to The Guarantee of the Tarion Bond and ECDI policies for cancellation. Should the Tarion Bond and ECDI policies be reduced to an aggregate amount less than \$780,000, and so long as The Guarantee is satisfied that no claims have been made or may be made against the Tarion Bond and/or ECDI policies, The Guarantee will release part of the Warranty Holdback to the Principal while ensuring that the aggregate amount of the Tarion Bond and ECDI policies are fully cash collateralized. For greater certainty, when the aggregate amount of the Tarion Bond and ECDI policies is less than \$780,000, The Guarantee shall be fully cash collateralized by the Warranty Holdback. Upon the termination of the Tarion Bond and the ECDI policies, and so long as no claim has been made against the Tarion Bond and ECDI policies, The Guarantee will return the Warranty Holdback to the Principal.

***Priority Agreement:***

A Priority Agreement to be entered into between Meridian Credit Union and The Guarantee that is satisfactory to The Guarantee.

A Priority Agreement to be entered into between Centurion Mortgage Capital Corporation and The Guarantee that is satisfactory to The Guarantee.

***Additional Security Documents:***

The Principal consents to provide The Guarantee with all such other certificates, documents and opinion as The Guarantee or its solicitors shall reasonably require.

**PURCHASERS' DEPOSITS RELEASE TERMS:**

Deposits will be released from trust in two segments to fund Project costs incurred by the Principal or repayment of the construction lender as certified by Intrepid Quantity Surveyors ("**Cost Consultant**").

**Segment No. 1:**

Deposits released under Segment No. 1 shall not exceed \$2,500,000. Deposit releases under Segment No. 1 shall be subject to the satisfaction of all of the following conditions precedent:

- Receipt of the Security Documents provided for herein, in form and substance satisfactory to The Guarantee, registered as required to perfect and maintain the security created thereby and such certificates, authorizations, resolutions and legal opinions as The Guarantee may be reasonably require.
- Satisfactory review of the detailed Project budget prepared by the Cost Consultant.
- The terms and conditions of the approved credit facilities for the Project provided by the Construction Lender have been satisfied.
- Receipt of evidence that the Principal has injected the required equity in the Project, to be a minimum of \$2,354,203 (“**Minimum Equity**”). The Minimum Equity is to be maintained for the duration of the Project.
- Receipt of confirmation from the Cost Consultant that the \$1,890,000 of financing by Centurion Mortgage Capital Corporation has been injected into the project.
- Receipt of evidence that the Principal has entered into pre-sales to bona fide purchasers representing minimum revenue of \$18,800,000 (net of HST). Total contracted deposits at drawdown to be a minimum of \$3,000,000.
- The ratio of Construction Lender’s total advances to Deposits released will be 1 to 1 on hard costs Division 1 through 16 (for greater clarity, \$1 of deposits released for every \$1 advanced by the Construction Lender).
- The Principal shall enrol the Project with Tarion and provide evidence of the enrolment to The Guarantee and its solicitor.
- No default or event of default exists under this Commitment Letter or the Security Documents.
- All Deposits with respect to the Project shall be held in the Trust Account by the law firm of SR Law Schneider, Ruggiero LP (“**Deposit Trustee**”). The Guarantee’s authorization to release funds from trust shall be conditional upon the Deposit Trustee receiving proper prescribed security under the *Condominium Act*, either in the form of a Deposit receipt issued by Tarion or The Guarantee.
- The Guarantee’s authorization to release funds shall be conditional upon the Principal dealing with cost overruns to the satisfaction of both the Construction Lender and The Guarantee.
- Construction of the subject Project proceeding without any major construction problems identified by any consultant which could ultimately affect The Guarantee’s exposure under the bonds or policies.
- The Guarantee is not obligated to release purchasers’ deposits from trust to finance Project costs if there is any construction lien registered against the title of the Project property or if a written notice of construction lien is received by any of The Guarantee, the Construction Lender or the Principal. To the extent there are any claims for lien, such liens must be vacated or discharged in their entirety by the Principal and/or the Indemnitors.

**Segment No. 2:**

Deposits released under Segment No. 2 shall not exceed \$1,000,000. Such amount shall be in addition to the Deposits released under Segment No. 1. Deposit releases under Segment No. 2 shall be subject to the satisfaction of all of the following conditions precedent:

- Satisfaction of all of the Segment 1 Conditions Precedent.
- The project is 75% complete in terms of hard construction cost (Divisions 1 to 16) as certified by the Cost Consultant.

- The construction of the subject Project proceeding without any major construction problems, delays, or cost-overruns identified by any consultant which could ultimately affect The Guarantee's exposure under the bonds or policies;
- At no time are the total deposits injected into the project to exceed the total of advances made by the Construction Lender.

#### **GENERAL CONDITIONS:**

The Principal agrees to fulfil and satisfy the following conditions:

##### ***Additional Underwriting Information:***

The Principal shall provide The Guarantee with the additional underwriting information outlined in Schedule A to this letter, as well as any additional underwriting information that is subsequently deemed required by The Guarantee. Receipt of such information is a condition precedent to the finalization of this agreement, and the underwriting information is to be satisfactory to The Guarantee in its sole discretion.

##### ***The Condominium Act:***

The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder.

##### ***Tarion Warranty Corporation:***

The Principal shall provide The Guarantee with a copy of its Builder Registration Certificate once the Bond has been given to Tarion.

The Principal shall continue to maintain registration with Tarion so long as there are unsold units and it shall comply with all aspects of the *Ontario New Home Warranties Plan Act*, its regulations and bulletins issued pursuant thereto until such time Tarion returns the Bond to The Guarantee.

If the Project is governed under Tarion Builder Bulletin No.19, the Principal undertakes and agrees to authorize the Field Review Consultant to provide The Guarantee with copies of all reports.

Should the risk assessment determined by Tarion for the Principal change during the period of time the Bond is outstanding, the Principal undertakes to notify The Guarantee immediately of the new risk assessment. The Guarantee reserves the right to increase its security accordingly.

The Principal and/or solicitor agree to provide upon final closings of sales, information to Tarion to facilitate the release/reduction of the Bond in accordance with Tarion Builder Bulletin No. 19 and No. 28.

The Principal undertakes to provide The Guarantee with any information or notices required under Tarion Builder Bulletin No. 47.

The Principal shall execute an Authorization directing Tarion to provide The Guarantee with any information that may alter The Guarantee's exposure under the Bond and/or ECDI policies.

##### ***Purchaser Release, Assignment and/or Default:***

The Principal, when allowing a purchaser to cancel a purchase and sale agreement, shall require the purchaser to execute a Mutual Release and Termination Agreement in The Guarantee's prescribed format as a condition of requesting the Deposit to be released from the Trust Account. Should the purchaser's deposit be already insured and released from trust to the Principal, the Principal shall be solely responsible for paying the Deposit refund and shall supply The Guarantee with a copy of the negotiated refund cheque.

For purchasers of units who are in default, the Principal shall notify The Guarantee of the default and request permission to remarket the unit. All Deposits from the defaulting party shall remain in trust until The Guarantee is satisfied the dispute has been settled. If the deposit monies from the defaulting purchaser have been released to the Principal, Deposit monies from new purchasers shall remain in trust until The Guarantee is satisfied the dispute has been settled with the original purchaser.

Should the Principal permit the assignment of a purchase and sale agreement to another party, the Principal agrees to obtain a release in favour of Tarion and The Guarantee and provide details of the assignment to The Guarantee as a condition of insuring the new party's Deposit. Additional premium shall be charged should the new Deposit be insured and released from trust.

***Project Construction and Bonding of Major Trades:***

The Principal has advised that the construction manager will be Gay Company Limited. Wilkinson Construction Services will perform the day to day construction management services and will report to Gay Company Limited. A copy of the signed agreements have been (or will be) provided to The Guarantee.

The registered Builder with Tarion is **BrightStar Newcastle Corporation**. (No. 43604)

The Construction Lender requires contracts aggregating to a minimum 70% of total hard costs to be fixed first prior to the first draw confirmed by signed contracts and/or firm quotes with contractors acceptable to the Construction Lender and the Cost Consultant. Bonding of contractors will be required by the Construction Lender if recommended by the Project Monitor. The Guarantee is agreeable to this condition stipulated by the Construction Lender.

The Principal shall notify The Guarantee of any key construction staff changes and/or changes in the plans regarding the retention of a Construction Manager from those that were contemplated and revealed to The Guarantee prior to these terms being offered.

The Principal acknowledges that under its Tarion Builder Agreement, it shall indemnify Tarion for all claims relating to the building envelope, mechanical and electrical systems for two years after condominium registration. The Guarantee strongly recommends that any major trades involved in these areas provide the Principal contract performance and labour and material payment bonds with a two year maintenance period to offset any liability for deficiencies which may be determined in the first year of condominium performance audit.

***Project Monitoring:***

The Principal agrees to authorize the cost consultant to provide copies of all reports to The Guarantee as and when provided to the Construction Lender. Both the cost consultant firm and the content of the report shall be acceptable to The Guarantee for the purposes of fulfilling its obligations under this bonding facility.

Occasionally, The Guarantee may request its own Project status report, which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.

Representatives of The Guarantee shall be entitled to, subject to reasonable prior notice, attend and inspect the bonded Project.

The Principal also undertakes and agrees to provide The Guarantee with a copy of professional liability coverage of all architects/engineers, the amount and form of which is to be approved by The Guarantee.

***Financial Reporting:***

The Principal and each of the corporate Indemnitors listed in the Indemnity Section above, agree to provide The Guarantee with year end financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal Indemnitors shall arrange to supply The Guarantee with updated net worth statements annually and supplementary information as may be required by The Guarantee.

***Material Change:***

If at any time prior to the execution and/or release of any Bond or policy or release of Deposits from trust, The Guarantee determines there is a material adverse change or implication to the information that the Principal had previously supplied to The Guarantee, including, but not limited to, Project viability, ownership of the Project or financial ability of the Principal and/or the Indemnitors, The Guarantee may suspend the issuance of bonds or policies, releases of monies from trust or the discharge or termination of The Guarantee's Security Documents until the matter is resolved to the satisfaction of The Guarantee.

***Consent and Acknowledgement to Collection, Use and Disclosure of Information:***

The Principal and all Indemnitors consent to The Guarantee obtaining from any person or company, including Credit Reporting Agencies, any information, including personal information, that The Guarantee may require at any time to facilitate the delivery of bonds and policies contemplated under this surety facility. The Principal and all Indemnitors further consents to the disclosure of this information to any credit grantor or reinsurer by The Guarantee if The Guarantee is requested to do so.

***Termination:***

The Guarantee may, at its option, terminate this commitment or modify the terms set out herein if; (i) the conditions of this Commitment Letter are not met, or (ii) if in the opinion of The Guarantee or its solicitors the security has been impaired, or (iii) there is a material adverse change in the risk, the value of the security or the covenants required herein, or (iv) if the representations of the Principal and indemnitors are not correct, or (v) the Security Documents are not registered by the 31<sup>st</sup> day of May 2015 provided that same have been delivered to the Principal and indemnitors or its solicitors in a registerable form.

***Acceptance:***

This commitment shall remain open for acceptance by the Principal and indemnitors until the 11<sup>th</sup> day of April, 2016 after which time, if not accepted, the offer of a Deposit facility as set forth in this Commitment Letter shall be null and void and The Guarantee shall be under no obligation to extend this commitment or consider providing a Deposit facility for the Project and The Guarantee shall not be responsible for any consequential direct or indirect costs or damages incurred by the Principal and indemnitors. Acceptance of this Commitment Letter shall be when this Commitment letter is executed by the Principal and indemnitors and the Commitment fee is received by The Guarantee on or before the date and time that this commitment expires.

***Electronic Execution of Documents:***

Each of the parties hereto further acknowledges and agrees that this Commitment Letter may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Counterparts may be executed and delivered by facsimile or other form of electronic transmission and shall have the same legally binding effect as if they were an original; provided, however that any party providing its signature in such manner shall promptly forward to the other parties an original of the executed copy of this Agreement which was so faxed or electronically transmitted.

**All of the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written consent of The Guarantee. Failure to observe this condition may result in either The Guarantee withdrawing or altering this Commitment Letter.**

If above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning it together with the Commitment Fee payable to The Guarantee Company of North America.

THE GUARANTEE COMPANY OF NORTH AMERICA

Per: Pamela Martin  
Director, Developer Surety

Per: Alastair Cartwright  
Underwriter, Developer Surety

ACCEPTANCE

THE UNDERSIGNED hereby accept the terms and conditions of this Commitment Letter as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

PRINCIPAL AND INDEMNITOR:

BRIGHSTAR NEWCASTLE CORPORATION

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

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

I / We have the authority to bind the Corporation

INDEMNITORS:

Acknowledged and Accepted by the Indemnitors/Guarantors.

\_\_\_\_\_  
Lawson Gay Date

\_\_\_\_\_  
John Blackburn Date

\_\_\_\_\_  
Jim Buckler Date

\_\_\_\_\_  
Alan Chapple Date



*Schedule "A" - Additional Underwriting Information Required*

1. Copy of the most recent financial statements for Brightstar Newcastle Corporation;
2. Copy of the construction management agreement with Wilkinson Construction Services and Gay Company Limited;
3. Please provide a copy of the most recent financial statements for LRG Corp;
4. A copy of any amendments to the Construction Lender's credit facility.



THE GUARANTEE COMPANY OF NORTH AMERICA

Per: *Pamela Martin*  
Director, Developer Surety

Per: *Alastair Cartwright*  
Underwriter, Developer Surety

ACCEPTANCE

THE UNDERSIGNED hereby accept the terms and conditions of this Commitment Letter as of this 31<sup>st</sup> day of March, 2016

PRINCIPAL AND INDEMNITOR:

**BRIGHSTAR NEWCASTLE CORPORATION**

*A. Chapple*  
Per. Name: ALAN CHAPPLE  
Title: CHAIRMAN

*James Buckler*  
Per. Name: James Buckler  
Title: CFO

I / We have the authority to bind the Corporation

INDEMNITORS:

Acknowledged and Accepted by the Indemnitors/Guarantors.

*Lawson Gay*  
Lawson Gay

March 31/16  
Date

*John Blackburn*  
John Blackburn

March 31/16  
Date

*Jim Buckler*  
Jim Buckler

March 31/16  
Date

*Alan Chapple*  
Alan Chapple

March 31 2016  
Date



**BRIGHTSTAR NEWCASTLE CORPORATION**  
 55 ST CLAIR AVE. W., SUITE 205  
 TORONTO, ON M4V 2Y7  
 Tel: (416) 362-5890

**BMO BANK OF MONTREAL**  
 1580 YONGE STREET  
 TORONTO, ON M4T 2S9

000456  
 54

DATE 05042016  
 D D M M Y Y Y Y

\$ \*\*2,500.00

PAY \*\*\*\*\*Two Thousand Five Hundred and 00/100

TO THE ORDER OF  
 The Guarantee Company of North America  
 4950 Yonge St., Suite 1-400  
 Madison Centre  
 Toronto, ON M2N 6K1



BRIGHTSTAR NEWCASTLE CORPORATION  
 PER Karen Paucette  
 PER [Signature]

MEMO commitment letter for deposit facility

⑈000456⑈ ⑆03712001⑆ 19970795⑈

**BRIGHTSTAR NEWCASTLE CORPORATION**

000456

The Guarantee Company of North America

05/04/2016

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
15/03/2016	Bill	Commitment	2,500.00	2,500.00		2,500.00
					Cheque Amount	2,500.00

Bank of Montreal commitment letter for deposit facility

2,500.00

**BRIGHTSTAR NEWCASTLE CORPORATION**

000456

The Guarantee Company of North America

05/04/2016

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
15/03/2016	Bill	Commitment	2,500.00	2,500.00		2,500.00
					Cheque Amount	2,500.00

Bank of Montreal commitment letter for deposit facility

2,500.00

This is Exhibit “E” referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.

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

A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.

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

yyyy mm dd Page 1 of 2

**Properties**

*PIN* 26662 - 0677 LT *Interest/Estate* Fee Simple  
*Description* BLOCK 138, PLAN 40M-2038, PART 4 PLAN 40R26867; MUNICIPALITY OF CLARINGTON  
*Address* CLARINGTON

*PIN* 26662 - 1015 LT *Interest/Estate* Fee Simple  
*Description* PT LT 26 CON 1 CLARKE PT 3, PLAN 40R26867; MUNICIPALITY OF CLARINGTON  
*Address* CLARINGTON

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* BRIGHTSTAR NEWCASTLE CORPORATION  
*Address for Service* 55 St. Clair Avenue West  
 Suite 205  
 Toronto ON M4V 2Y7

I, John Blackburn, President, and I, James Buckler, CFO, have the authority to bind the corporation.

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

**Chargee(s)***Capacity**Share*

*Name* THE GUARANTEE COMPANY OF NORTH AMERICA  
*Address for Service* 4950 Yonge Street  
 Suite 1400, Madison Centre  
 Toronto ON M2N 6K1

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$ 4,100,000.00 *Currency* CDN  
*Calculation Period* See Schedule  
*Balance Due Date* See Schedule  
*Interest Rate* See Schedule  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms*  
*Insurance Amount* full insurable value  
*Guarantor*

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

yyyy mm dd Page 2 of 2

**Signed By**

Kevin Bruce Milburn 1000-120 Adelaide St. W. acting for Signed 2016 07 13  
Chargor(s)  
Toronto  
M5H 3V1

Tel 416-363-2211

Fax 416-363-0645

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

**Submitted By**

SCHNEIDER RUGGIERO LLP 1000-120 Adelaide St. W. 2016 07 13  
Toronto  
M5H 3V1

Tel 416-363-2211

Fax 416-363-0645

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85

Total Paid \$62.85

**File Number**

Chargee Client File Number : 36882/BM

**SCHEDULE "2"**  
**COLLATERAL MORTGAGE**

In pursuance of the *Short Form of Mortgages Act*

Dated: July 13, 2016

Chargor: Brightstar Newcastle Corporation

Chargee: The Guarantee Company of North America

Principal Sum: FOUR MILLION ONE HUNDRED THOUSAND DOLLARS (\$ 4,100,000.00)

Re: Indemnity Agreement dated as of April 7, 2016, between the Chargor, the Chargee and others (the "Indemnity Agreement")

**COLLATERAL SECURITY AS TO DEBT AND NOMINAL INTEREST RATE**

1. (a) FOR VALUE RECEIVED, the Chargor hereby acknowledges and agrees that this Charge is given as continuing collateral security for the payment of all amounts from time to time payable by the Chargor to the Chargee under the Indemnity Agreement (which sums are hereinafter referred to as the "Indebtedness" or the "Principal Sum"). This Charge is given in addition to and not in substitution for any other security held by the Chargee for the Indebtedness. The said Principal Sum shall become due and payable on demand by the Chargee at the Chargee's office as designated in paragraph 20 and the Chargor shall pay interest on the Principal Sum both before and after default as well as before and after judgment at the rate of eighteen (18%) per centum per annum, calculated semi-annually and payable monthly with interest on overdue interest payable in the same manner and at the same rate until such time as the Principal Sum is paid in full.
- (b) In addition to paragraph 1 (a) above, this Charge is given as continuing collateral security for the payment of monies and the performance of obligations of and by the Chargor under a commitment letter dated March 29, 2016, and accepted by the Chargor on March 31, 2016, (the "Commitment Letter"). The provisions of the Commitment Letter are incorporated herein and form part hereof. In the event of any inconsistency or contradiction between the Commitment Letter and this Charge, the applicable provision of the Commitment Letter shall prevail.

**SECURITY**

2. As security for the due payment of all monies payable hereunder, the Chargor hereby:
  - (a) mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Chargee, its successors and assigns its interest in the lands and premises now owned by the Chargor and described or referred to on Page 1 of this Charge to which this Schedule "2" is attached (the "Property"), including all appurtenances, buildings and fixtures now or hereafter situate thereon;
  - (b) mortgages and charges in favour of the Chargee, its successors and assigns its interest in the agreements to lease and leases, both present and future (the "Leases") relating to the Property, including all rents and monies payable under the Property and any extensions or renewals thereof (the "Rents") and including the benefit of all covenants, stipulations and provisions contained in the Leases;

all of such mortgages and charges hereby constituted being sometimes collectively called the "Security" and the subject matter of the Security being sometimes called the "Charged Premises".

**TERM AND DEFEASANCE:**

3. This Charge is to be void upon the payment of the sum of the Principal Sum, in lawful money of Canada, and all of such other sums as the Chargee may be entitled to by virtue of these presents; and is payable on demand; and all taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

**FURTHER ASSURANCES**

4. The Chargor hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, pledges, deeds, mortgages, hypothecs, transfers, assignments and assurances in law or equity as the Chargee may reasonably require for the better assuring, mortgaging, hypothecating, charging, transferring, assigning and confirming unto the Chargee and for perfecting the security interests hereby created in the undertaking, property and assets hereby mortgaged and charged or intended so to be or which the Chargor may hereafter become bound to mortgage, hypothecate, transfer, assign and charge in favour of the Chargee and for the better accomplishing and effectuating of this Charge.

## CHARGOR'S COVENANTS

5. The Chargor covenants and agrees with the Chargee that:
- (a) The Chargor shall keep the Property in good condition and repair such that the value of the Property is not materially adversely affected in any way.
  - (b) The Chargor shall pay the principal, interest and all other monies properly due and owing under the Indemnity Agreement and secured by this Charge and will pay or cause to be paid as they fall due all taxes, rates and assessments, municipal, local, parliamentary and otherwise, which now are or may hereafter be imposed, charged, or levied upon the Property and further, to deliver to Chargee on an annual basis, evidence of payment of realty taxes by the Chargee.
  - (c) The Chargor shall comply with all governmental, statutory or regulatory requirements and any permitted encumbrances related to the Property.
  - (d) The Chargor shall permit the Chargee, whenever the Chargee deems it necessary, by its agent to enter upon and inspect the Property.
  - (e) The Chargor will at its own expense forthwith insure, if not already so insured, and during the continuance of this Charge keep insured in the name of the Chargor, with loss payable to the Chargee as its interest may appear, the Property and each and every building, structure, erection, improvement, fixture or replacement thereof, including without limiting the generality of the foregoing, all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever now on the Property but which may hereafter be erected thereon, both during erection and thereafter (all of the foregoing being collectively the "Premises") in such amounts as the Chargee may from time to time specify but in any event in an amount not less than the full insurable replacement value thereof on a completed value basis, in lawful money of Canada, with a company or companies and by a policy or policies of insurance approved by the Chargee, against all risks of direct physical loss with only such exclusion as the Chargee may approve and, in addition, without limiting the generality of the foregoing, the Chargor shall maintain rental insurance, boiler insurance and insurance against liability imposed for damages, loss or injury to or death of persons or for damage to or loss of property of any person, in such amounts as will in the opinion of the Chargee reasonably protect the Chargor against such losses. If the Property has no insurable structures thereon such insurance will not be required. Such insurance shall, during the course of construction, be in builders "all risk" course of construction form. Such insurance policy shall either be without co-insurance or have a stated or stipulated amount co-insurance clause for an amount equal to the principal amount secured pursuant to this Charge, together with the principal amount of any permitted prior encumbrances. All policies of insurance required hereby shall contain "mortgage clauses" in favour of the Chargee in a form approved by the Chargee acting reasonably.
  - (f) The Chargor shall maintain its corporate existence, and further shall promptly provide written notice to the Chargee of any default respecting any obligations or liabilities of the Chargor.
  - (g) The Chargor shall promptly pay the full amount of:
    - (i) all liens, charges and encumbrances upon the Charged Premises;
    - (ii) all reasonable charges or expenses of the Chargee in inspecting, protecting or valuating the property at any time after realization proceedings have been commenced; and
    - (iii) all costs, fees and disbursements secured by this charge.
  - (h) The Chargor will pay or cause to be paid as soon as the same are due all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, Worker's Compensation assessments or other charges of any nature or kind (collectively the "Claims"), which could in the circumstances constitute a lien or charge having priority over this Charge or any future advance to be secured by this Charge and the Chargor will from time to time on demand provide the Chargee with such books, payrolls, or other records, receipts, certificates and declarations as the Chargee may deem necessary to satisfy itself that the Claims have been paid as soon as the same are due.
  - (i) The Chargor shall forthwith on the happening of any loss or damage, furnish at its own expense all necessary proofs and do all necessary acts to enable the Chargee to obtain payment of the insurance monies; and any insurance monies received may, at the option of the Chargee, be applied in rebuilding, reinstating or repairing the Charged Premises or be paid to the Chargor or any other person appearing by the registered title to be or to have been the owner of the said Charged Premises or to be applied or paid partly in one way and partly in another, or may be applied, in the sole discretion of the Chargee, in whole or in part, on the principal and interest or other monies owing under this Charge then due, or any part thereof, whether due or not then due, notwithstanding any law, equity or statute to the contrary, all rights and benefits of the Chargor thereunder being hereby expressly waived.
  - (j) The Chargor, immediately upon obtaining knowledge of the institution of any proceedings for the expropriation of the Charged Premises, or any part thereof, will notify the Chargee of such proceedings. If the Charged Premises, or any part thereof is taken or damaged in or by such expropriation proceedings or otherwise, the award or compensation payable to the Chargor shall be paid and is hereby assigned to the Chargee.
  - (k) The Chargor, within ten (10) days after receipt of the request to do so, shall certify to the Chargee or any person designated by the Chargee the amount of principal then due hereunder, the date to which interest is paid, that it has no right of set-off against the monies due hereunder, or if it has such a right of set-off, the amount thereof, and that there have been no amendments hereto or, if there has been any such amendment, specifying it. The Chargee shall, upon request, provide mortgage statements to the Chargor within ten (10) days after receipt of such request.

- (l) The Chargor shall obey or cause to be obeyed all laws, rules, regulations and by-laws, whether federal, provincial or municipal, which in any way relate to the Charged Premises or the use thereof.
- (m) All representations and warranties herein shall remain true and of full force and effect throughout the entire term of this Charge.
- (n) The Chargor shall keep the Charged Premises in good condition and repair according to the nature and description thereof respectively, and that the Chargee may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Charged Premises and make such repairs as it deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate or rates aforesaid shall be added to the monies secured by this Charge and be payable forthwith and be a charge upon the Property prior to all claims thereon subsequent to these presents. If the Chargor shall neglect to keep the Charged Premises in good condition and repair, or commit or permit any acts of waste on the Charged Premises (as to which the Chargee shall be sole judge) or make default as to any of the covenants, provisos, agreements or conditions contained in this Charge or in any mortgage to which this Charge is subject, all monies hereby secured shall at the option of the Chargee forthwith become due and payable, and in default of payment of same with interest as in the case of payment before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.
- (o) The Chargor shall not further encumber the Property without the Chargee's prior written consent, such consent not to be unreasonably withheld or unduly delayed.
- (p) The Chargor shall keep the Permitted Encumbrances as defined herein in good standing. "Permitted Encumbrances" are defined in Schedule "A" hereto.
- (q) In the event that the Chargor commits an act of default pursuant to the provisions contained in any encumbrance on the Charged Premises ranking equally with or in priority to this Charge, the Chargor shall be deemed to have committed an event of default hereunder and the Chargee shall be entitled to exercise any and all remedies herein contained.

#### PROVISOS

- 6. Neither the preparation, execution nor registration of this indenture shall bind the Chargee to advance the money hereby secured, nor shall the advance of a part of the monies hereby secured bind the Chargee to advance any unadvanced portion thereof, but nevertheless the estate hereby conveyed shall take effect forthwith upon the execution and delivery of these presents by the Chargor, and the expenses of the examination of the title and of this Charge and of valuation are to be secured hereby in the event of the whole or any balance of the principal sum not being advanced, the same to be a charge hereby upon the Property, and shall be without demand therefor, payable forthwith with interest at the rate or rates provided for in this Charge, and in default, the Chargee's power of sale hereby given, and all other remedies hereunder shall be exercisable.

#### OUTSTANDING TAXES

- 7. The Chargee may, at its option, deduct from any advance of the monies secured by this Charge an amount sufficient to pay any taxes which have become due and payable as at the date of such advance. The Chargor shall transmit to the Chargee the copies of the tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by the Chargor.

#### ASSIGNMENT OF CHARGE BY CHARGE

- 8. The Chargee, without the consent of the Chargor, may assign in whole or in part, this Charge and the benefit of all covenants of the Chargor as therein and herein contained, provided that the security and obligations to which this Charge is collateral is also assigned.

#### DISCRETION OF CHARGE RESPECTING TERMS UNDER CHARGE

- 9. The Chargee, in its discretion and with the consent of the Chargor, may enter into an agreement with the Chargor or with anyone who has assumed this Charge to grant an extension of time; or to change the rate of interest; or to alter in any way the terms of payment of this Charge; or take any additional security, or waive the performance of any covenant herein; and may compound with or release the Chargor or anyone claiming under the Chargor or any other person or persons liable hereunder; or surrender, release or abandon or omit to perfect or enforce any security, remedy or proceeding which the Chargee may now or hereafter hold or have; and may take, acquire or discharge either with or without payment part or all of the said Property and may apply all monies received from the Chargor or others or from any security upon such part of the monies hereby secured as the Chargee may think best, without prejudice to or in any way limiting or lessening the liability of the Chargor, any guarantor or any other person liable for payment. The Chargee shall incur no liability to any person by reason of anything aforesaid, and any agreement or liability aforesaid shall continue in full force as long as any money remains unpaid on this Charge, but the Chargee shall not be bound to exhaust its recourses against the Chargor or other parties, or the security it may hold, before being entitled to payment from any guarantor of the amounts secured hereby.

#### REAL ESTATE COVENANTS

- 10. (a) The implied covenants deemed to be included in the mortgage under sub-section 7(1) of the Land Registration Reform Act, 1984 shall be and are hereby expressly excluded and replaced by the schedule which are covenants by the Chargor and the Chargor's successors with the Chargee and the Chargee's successors and assigns.
- (b) The Chargor covenants that it has good registered title in fee simple to the Property and has the right to charge the Property to the Chargee as herein provided.



- (c) On default the Chargee shall have quiet possession of the Property free from all encumbrances, except as disclosed by the records of the land registry office.
- (d) The Chargor has done no act to further encumber the Property, except as disclosed by the records of the land registry office.

#### DISTRESS

- 11. The Chargee may distrain for arrears of interest. The Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

#### SECURITY WITH RESPECT TO LEASES AND RENTS

- 12. (a) Nothing herein contained shall be deemed to have the effect of making the Chargee responsible for the collection of the Rents or any part thereof or for the performance of any covenants, terms and conditions either by the lessor or by the lessee contained in the Leases and the Chargee shall not by virtue of these presents be deemed a mortgagee in possession of the Property or any of them and that this mortgage shall not of itself create the relationship of landlord and tenant between the Chargee and any lessee.
- (b) The Chargee shall be liable to account for only such monies as shall actually come into its hands by virtue of these presents and that such monies when received by the Chargee shall be applied on account of the monies from time to time due under the primary instruments of indebtedness.
- (c) Nothing herein contained shall be deemed to be a consent on the part of the Chargee to the payment of rent in advance by the lessees or to an alteration of the terms of the Leases without the consent of the Chargee, whether or not a demand has occurred provided that the Chargor is acting in the normal course of its business.
- (d) The Chargee may waive any default or breach of covenant herein and shall not be bound to serve any notice upon the lessees upon the happening of any default or breach of covenant but any such waiver shall not extend to any subsequent default or breach of covenant.
- (e) Until default, the Chargor shall be entitled to receive the Rents and shall not be liable to account therefor to the Chargee; provided, however, after such demand the Chargee shall be entitled to collect all rents falling due subsequent to the date of service of the notice of demand.

#### DEFAULT

- 13. (a) If default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate or rates aforesaid, and in case the interest and compound interest are not paid within one month from the date of default, a rest shall be made and compound interest at the rate or rates aforesaid shall be payable on the aggregate amount then due, as well after as before a maturity and so on from time to time, and all such interest and compound interest shall be a charge upon the Property.
- (b) On default of payment for at least fifteen (15) days, the Chargee may on at least thirty-five (35) days' notice enter on and lease the Property or on default of payment for at least fifteen (15) days may on at least thirty-five (35) days' notice sell the Property. Such notice shall be given to such persons and in such manner and form and within such time as provided in the Mortgages Act (Ontario), as amended, and in accordance with paragraph 15 hereof. Provided further, without prejudice to the statutory powers of the Chargee under the foregoing, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for two (2) months after any payment of either falls due, then the Chargee may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law, then notice shall be given to such persons and in such manner and form and within such time as is so required by law. The whole or any part or parts of the Property may be sold by public auction or private contract or partly one or partly the other, and the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Property or by reason of non-payment or procuring payment of monies secured hereby or otherwise. The Chargee may sell the Property or any part thereof on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper, and may buy in or rescind or vary and contract for the sale of the whole or any part of the Property and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit, the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of the said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

#### RECEIVER

- 14. The Chargee may by writing under the hand of any solicitor or agent authorized on its behalf, upon any default whatsoever on the part of the Chargor in payment of any principal, interest or any other monies owing hereunder, or in the observance of any of the covenants and conditions herein contained, appoint a Receiver or Manager, or Receiver and Manager, or Receiver-Manager (the "Receiver") of the Property or any portion thereof, and every such Receiver shall be deemed the agent of the Chargor, and the Chargor shall be solely responsible for the acts

or defaults of the Receiver save and except for fraud and wilful misconduct and the Receiver shall have power to demand, recover and receive all the income of the Property of which he may be appointed Receiver, by action, distress or otherwise, either in the name of the Chargor or the Chargee, and may give effectual receipts therefor.

Every such Receiver may in writing at the discretion of the Chargee complete the construction of any uncompleted structure substantially in accordance with the Chargor's plans and specifications respecting the Property or carry on the business of the Chargor relating to the said Property or any part thereof and may exercise all the powers conferred upon the Chargee hereunder. The Receiver may be removed in which case and if any Receiver dies or refuses to act or becomes incapable of acting, a new Receiver may be appointed from time to time by the Chargee by writing under the hand of any authorized solicitor or agent as aforesaid. The Chargee may from time to time fix the remuneration of every such Receiver and may recompense every such Receiver for his disbursements properly incurred in carrying out his duties, and his fees and such payments shall be a charge upon the Property, shall be payable on demand and shall bear interest at the rate or rates hereunder.

The Chargee shall not be deemed to be a mortgagee in possession and shall not be accountable except for the monies actually received by it, and the person paying money to or in any way dealing with the Receiver shall not be concerned to enquire whether any cause has happened to authorize the Receiver to act. Subject to the retention of his remuneration and disbursements as aforesaid, the Receiver shall apply all monies received by him in such of the following modes and in such order or priority as the Chargee may from time to time at its option direct in writing, namely, in discharge of all rents, taxes, assessments and outgoings whatsoever affecting the said Property; and in payment of any amounts due under any mortgage or lien; and in payment of any premiums on fire or other insurance, if any, properly payable under this Charge, payment of which is directed or confirmed in writing by the Chargee; and in payment of the costs of executing necessary or proper repairs to the said Property or any part hereof, directed or confirmed in writing by the Chargee; and in payment of the costs of carrying out or executing any of the powers, duties or discretions which vest in or may be vested in the Receiver by reason of the provisions contained in this sub-paragraph; and in payment of the interest accruing due under this Charge, and in or towards the discharge of the principal money or any instalments under this Charge, if and to the extent directed in writing by the Chargee; and shall pay the residue, if any, out of the money received by him to the person who but for the possession of the Receiver would have been entitled to receive the income of which he is appointed Receiver.

#### REMEDIES CUMULATIVE

15. No remedy herein conferred upon or reserved to the Chargee is intended to be exclusive of any other remedy or remedies hereunder or under any security collateral hereto, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given by this Charge or any other security collateral hereto or now or hereafter existing at law or in equity or by statute. Every power and remedy given by this Charge to the Chargee may be exercised from time to time as often as may be deemed expedient by the Chargee.

#### DISCHARGE

16. Upon full satisfaction of all principal, interest and other monies secured hereby and the due performance of all covenants herein by the Chargor, the Chargee shall, within a reasonable time thereafter, execute a discharge of this Charge. All legal and other expenses for the preparation, execution and registration of such discharge shall be borne by the Chargor.

#### SEVERABILITY

17. If any one or more of the provisions contained in this Charge shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any or all other provisions of this Charge, and this Charge shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### DUE ON SALE, TRANSFER

18. In the event the Chargor sells, conveys, transfers or assigns the Property to a purchaser, transferee or an assignee, without first obtaining the consent of the Chargee in writing, at the option of the Chargee all monies secured by the within Charge shall become due and payable upon demand. A sale to an arms length purchaser of a unit to be constructed on the Property is not deemed to be a transfer or assignment within the meaning of this provision.

#### NO FURTHER CHARGE/ENCUMBRANCE

19. In the event that the Chargor further charges, mortgages or encumbers the Property in any way without first obtaining the written consent of the Chargee, then at the option of the Chargee all monies secured by this Charge shall become due and payable on demand.

#### NOTICE

20. Any and all written notices or written communications given or required to be given to a party hereunder may be delivered or, provided postal services shall not be interrupted, mailed by registered mail or sent by telegraph, telex or similar telecommunication device, and shall be deemed: (i) in the case of delivery to such party to have been duly given when the same is personally delivered to an officer of such party; (ii) if addressed to such party at its address for service as set forth on the first page of this document.

(a) in the case of dispatch by registered mail, to have been duly given at 5:00 in the afternoon (local time of the sender) on the second day after the day the same was deposited with the post office (or the first business day thereafter if such second day is a holiday or other non-business day); and

(b) in the case of dispatch by telegraph, telex or similar telecommunication device, to have been given the day after the day on which it is deposited for dispatch in a public office for organization of such telegram, telex or

similar telecommunication device or the business day after the day on which it is dispatched if dispatched by means of private telex or other telecommunication device.

For the purposes of the foregoing, the address for notice of each of the parties hereto shall, until changed by notice in writing by such party to the other parties, be as set out on the first page of the Charge to which this Schedule is attached.

#### NON-MERGER

21. It is agreed that the taking of this security shall not operate as a merger of the remedies of the Chargee for payment of the Indebtedness of the Borrower or of the remedies of the Chargee under the Commitment Letter, and notwithstanding these presents and anything herein contained the said remedies shall remain intact and be capable of enforcement against the Chargor and all other persons liable in respect thereof in the same manner and to the same extent as if these presents had not been executed, and that these presents are and shall be a continuing security to the Chargee for the amount of the Indebtedness and interest thereon, and that this Charge shall be deemed to be taken as security for the ultimate balance of the Indebtedness.

#### APPLICATION OF PROCEEDS

22. And it is further agreed that any and all payments made in respect of any monies hereby secured and the monies or other proceeds realized from any securities held therefor (including this Charge) may be applied, and re-applied notwithstanding any previous application, on such part or parts of the said liability under the Commitment Letter as the Chargee may see fit.

#### PARTIAL DISCHARGES

23. Provided that this Charge is in good standing, the Chargor shall have the privilege of obtaining from the Chargee, without payment therefor, partial discharge (s) of part or parts of the Property as set out and for the purposes stated in Schedule "B" hereto.

#### PLANNING ACT COMPLIANCE

24. Provided that the Chargee may at its discretion, subject to the provisions of the Planning Act, R.S.O.1990, Chapter P.13, at all times release any part or parts of the said lands either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the said lands or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Chargee; it being expressly agreed that every part or lot into which the charged lands are or may hereafter be divided does and shall stand charged with the whole money secured; and that the Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Chargor and all other persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under this Charge.

#### SALE OF EQUITY OF REDEMPTION

25. Provided that no sale or other dealing by the Chargor with the equity of redemption in the said lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of money hereby secured.

#### QUIET POSSESSION PRIOR TO DEFAULT

26. Provided that until default the Chargor shall have quiet possession of the Property.

#### INTERPRETATION

27. In construing these presents the word "Chargor" and the personal pronoun "he" or "his" relating thereto and used therewith, shall be read and construed as "Chargors" or "Chargors", "he", "she", "it" or "they" and "his", "her", "its" or "their" respectively, as the number and gender of the person or persons referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted; all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargee shall be equally binding upon the Chargor's heirs, executors, administrators and assigns or successor and assigns as the case may be; all such covenants, liabilities and obligations shall be joint and several; time shall be of the essence hereof; the headings herein shall not be a guide to the interpretation of this Charge and shall not define, restrict or limit any term or provision hereof; and all provisions hereof shall have effect notwithstanding any statute to the contrary.

#### SHORT FORM OF MORTGAGES ACT

28. If any of the form of words contained herein are substantially in the form of words contained in Column One of Schedule B of the Short Form of Mortgages Act, R.S.O. 1980, c. 474 and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act distinguished by the same number, and this Charge shall be interpreted as if the Short Forms of Mortgages Act were still in full force and effect.

**RECEIPT**

29. The Chargor acknowledges having received a true copy of this Charge.


**HEADINGS**

30. The headings of the paragraphs hereof are inserted for convenience of reference only and shall not affect the interpretation or construction of this Charge.

**IN WITNESS WHEREOF** the Chargor has caused this Charge to be executed under its corporate seal by its duly authorized officers in that behalf on the date noted on page one of Schedule "2" hereof.

BRIGHTSTAR NEWCASTLE CORPORATION

Per: \_\_\_\_\_  
Name: John Blackburn  
Title: President

Per:   
Name: James Buckler  
Title: CFO

We have the authority to bind the corporation.

## SCHEDULE "A"

## PERMITTED ENCUMBRANCES

## PIN 26662-0677 LT

1. A Notice of Agreement between Clarnew Developments Inc. and The Corporation of the Municipality of Clarington registered on August 23, 1999 as Instrument No. LT915816;
2. A Notice of Agreement between Clarnew Developments Inc. and The Regional Municipality of Durham registered on March 29, 2001 as Instrument No. LT1019392;
3. A Notice between The Corporation of the Municipality of Clarington and Clarnew Developments Inc. registered on May 7, 2001 as Instrument No. LR1027388;
4. An Application to Annex Restrictive Covenant registered on September 23, 2013 as Instrument No. DR1212590;
5. A Notice of Agreement between The Corporation of the Municipality of Clarington and Brightstar Newcastle Corporation registered on January 8, 2015 as Instrument No. DR1331040;
6. A Notice of Agreement in favour of The Regional Municipality of Durham registered on June 1, 2016 as Instrument No. DR1478721;
7. A first Charge/Mortgage registered in favour of Meridian Credit Union Limited securing the original principal sum of \$19,500,000.00 registered on July 12, 2016, as Instrument No. DR1492986;
8. A Notice of Assignment of Rents-General in favour of Meridian Credit Union Limited registered on July 12, 2016 as Instrument No. DR1492987;
9. A third Charge/Mortgage registered in favour of Centurion Mortgage Capital Corporation securing the original principal sum of \$4,565,000 registered on May 17, 2016 as Instrument No. DR1474136;
10. A Notice of Assignment of Rents-General in favour of Centurion Mortgage Capital Corporation registered on May 17, 2016 as Instrument No. DR1474137;
11. A fourth Charge/Mortgage registered in favour of Jason Boccinfuso and 1791029 Ontario Inc. securing the original principal sum of \$750,000.00 registered on September 4, 2015; and
12. A fifth Charge/Mortgage in favour of 2153491 Ontario Inc. securing the original principal sum of \$250,000.00 registered on November 14, 2013.

## PIN 26662-1015 LT

1. A Bylaw registered on January 10, 1967 as Instrument No. N31947;
2. A Notice of Agreement between The Corporation of the Municipality of Clarington and 1319164 Ontario Limited registered on May 28, 2004 as Instrument No. DR280082;
3. A Notice between The Corporation of the Municipality of Clarington and 1319164 Ontario Limited registered on March 1, 2006 as Instrument No. DR479667;
4. A Notice between The Regional Municipality of Durham and 1319164 Ontario Limited registered on April 3, 2006 as Instrument No. DR488566;
5. A Notice of Agreement between The Corporation of the Municipality of Clarington and Brightstar Newcastle Corporation registered on January 8, 2015 as Instrument No. DR1331040;
6. A Notice of Agreement in favour of The Regional Municipality of Durham registered on June 1, 2016 as Instrument No. DR1478721;
7. A first Charge/Mortgage registered in favour of Meridian Credit Union Limited securing the original principal sum of \$19,500,000.00 registered on July 12, 2016, as Instrument No. DR1492986;
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12. A fifth Charge/Mortgage in favour of 2153491 Ontario Inc. securing the original principal sum of \$250,000.00 registered on November 14, 2013.

Provided that the Chargor when not in default hereunder shall have the privilege of obtaining from the Chargee upon ten (10) business days' notice therefor, the consent in writing of the Chargee or, where applicable, (1) partial discharges of this Charge or such portions of the lands described hereunder as are required by the Chargor to be dedicated or conveyed to any municipal or governmental authority or agency including road or park dedications; and (2) all documents which may be reasonably required by the Chargor for the purposes of servicing and development of the subject lands including, postponements of this Charge, easements, rights of way, subdivision and development agreements, Planning Act proceedings, provided:

1. That the partial discharge(s) and documents referred to herein are in compliance with the part lot control and subdivision control provisions of the Planning Act; and
2. That such partial discharge(s) and consent(s) will not, in the reasonable opinion of the Chargee's counsel or the Chargee, materially or adversely affect this Charge or the value of the lands charged hereunder; and
3. That the Chargee does not incur any liability thereunder; and
4. That any execution of any such partial discharge or other document by the Chargee is to the extent only of its interest in this Charge;
5. That any consideration payable to the Chargor for such partial discharge or other document shall be paid to the Chargee in reduction of the principal and interest owing hereunder.

IF APPLICABLE, WITH RESPECT TO A PROPERTY BEING DEVELOPED AS A CONDOMINIUM:

Provided that the Chargor when not in default hereunder shall have the privilege, upon thirty (30) days' notice to the Chargee or obtaining a partial discharge of each proposed unit and ancillary parking and locker units, if any, comprising the subject lands (and each actual unit and ancillary parking and locker units as and when the lands are registered under the Condominium Act) without payment of account of principal provided that the following conditions are all complied with, namely:

1. That the partial discharge(s) referred to herein are in compliance with the part lot control and subdivision control provisions of the Planning Act; and
2. That the subject lands are registered as a condominium under the Condominium Act; and
3. That the Chargor delivers or causes to be delivered to a purchaser of such unit(s) a registrable transfer and conveyance of such unit(s); and
4. That the said purchaser registers or causes to be registered on title such transfer and conveyance; and
5. That the Chargee is furnished with a photocopy of the duplicate registered copy of such transfer and conveyance.

A partial discharge from this Charge of any unit or other lands shall automatically constitute and be a discharge from all security documents (excluding guarantees) as may be registered on the title to the charged lands or as recorded under the Personal Property Security Act.

This is Exhibit "F" referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.



A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.

This Loan and Amendment Agreement made this    day of May, 2018

BETWEEN:

**GERRY RASMUSSEN**, of the City of Richmond Hill, in the Province of Ontario  
(Hereinafter "Lender")

-and-

**BRIGHTSTAR NEWCASTLE CORPORATION** ("BNC"), a corporation incorporated under the laws of Ontario and **BRIGHTSTAR SENIORS LIVING CORPORATION**, a corporation incorporated under the laws of Ontario  
(Hereinafter "Borrower")

-and-

**JAMES BUCKLER**, Businessman of the Town of Unionville , **JOHN BLACKBURN**, Businessman of the City of Toronto and **LAWSON GAY**, Businessman of the Town of Bowmanville,  
(Hereinafter the "Guarantors")  
(And together the "Parties")

**WHEREAS** the Lender and BNC entered into an Agreement of Purchase and Sale (the "APS") on the 30<sup>th</sup> day of October 2014, wherein Lender was to purchase a condominium dwelling unit #416 (the "Dwelling Unit"), together with an undivided interest in the common elements appurtenant to such unit, land and premises municipally located at 21 Brookhouse Drive, Newcastle, Ontario (the "Real Property"), and marketed as Brookhouse Gate (the "Project"), all in accordance with condominium plan documents proposed to be registered against the Real Property and Purchase Agreement annexed hereto as Schedule "A";

**AND WHEREAS** Borrower is in need of funds to complete the Project;

**AND WHEREAS** there are a number of mortgages and encumbrances registered against the Real Property as set forth in Schedule "B" hereof;

**AND WHEREAS** Borrower wishes to borrow certain monies from Lender to assist in completion of the Project and Guarantor as shareholders of the Borrower wish to provide comfort and certainty to the Lender and induce the Lender to lend the monies hereinafter set forth;

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the sum of TEN (\$10.00) DOLLARS of lawful money of Canada paid by each of the parties hereto to the other, and in consideration of the mutual covenants, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged each to the other), the parties hereto hereby confirm the accuracy and veracity of the foregoing recitals and do hereby covenant and agree to the following:

1. The Lender agrees to lend to the Borrower and the Borrower agrees to borrow from the Lender the principal sum of TWO HUNDRED AND SEVENTY THOUSAND THREE HUNDRED AND TWENTY DOLLARS (\$270,320.00) of lawful money of Canada (the "Principal Sum") on the date THREE (3) business days



after the execution hereof (the "Date of Advance").

2. The Principal Sum represents the balance due and payable upon occupancy, registration of the condominium and closing of the of the Dwelling Unit (the "Closing") pursuant to the APS;
3. The Principal Sum is to be utilized for project costs.
4. The Principal Sum shall be interest free provided that Closing occurs not more than ~~ONE (1) year~~ <sup>6 MONTHS</sup> from the date of advance hereof. In the event that Closing does not occur within ~~ONE (1) years~~ <sup>6 MONTHS</sup> from the date of advance hereof, then interest shall accrue at the Royal Bank of Canada prime rate plus <sup>7th month</sup> ~~date of advance~~ FIVE percent (5%) until Closing or repayment of the Principal Sum.
5. The Guarantors agree to execute the Guarantee and Postponement of Claim annexed hereto as Schedule "C" and to be bound to the terms of both this Agreement and the said Guarantee and Postponement of Claim.
6. The Guarantors do hereby acknowledge that, the consideration granted for the guarantees provided is sufficient and received.
7. The Borrower and the Guarantors further agree to execute the General Security Agreement annexed hereto as Schedule "D" for all future and present property.
8. The Lender and Borrower agree that the Borrower shall provide an amendment to the APS in a form satisfactory to the solicitor for the Lender, acknowledging that the Principal Sum advanced will be applied to the purchase price of Dwelling Unit on Closing by way of a credit to the Lender. At the time of closing no other purchase funds shall be required save for adjustments provided for in the APS and there shall be no charge for any upgrades or changes.
9. BNC is the absolute owner of the above mentioned lands and either personally or by their tenants been in actual, peaceable, continuous, exclusive, open, undisturbed and undisputed possession and occupation thereof, and of the houses and other buildings used in connection therewith throughout its period of ownership of the property.
10. The Borrower is not aware of any person or corporation having any claim or interest in the said lands or any part thereof adverse to or inconsistent with registered title and are positive that none exists.
11. The possession and occupation of the above lands by the Borrower has been undisturbed throughout by any action, suit or other proceedings or adverse possession or otherwise on the part of any person whomsoever and during such possession and occupation.
12. There are no work orders or deficiency notices outstanding and affecting the subject property and, if any should exist, they shall be rectified at the Borrowers expense forthwith upon demand.
13. The parties hereto hereby confirm that in the event of bankruptcy, loss of business control, and or material change the Funds are to be released to the Purchaser at his absolute discretion and on demand.
14. On the happening of any of the following events of default the Lender may, at its option, require the unpaid balance of the Loan Amount together with all interest accrued to become immediately due and payable:
  - a) In the event that the Borrower should breach any agreement entered into between the Lenders and the Borrower;
  - b) In the event that the Borrower should become bankrupt or insolvent or should the Borrower be subject to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.

*BZS*

*BZS*

B-3, or any other Act for the benefit of creditors or should the Borrower go into liquidation either voluntarily or under an order of a court of competent jurisdiction or make a general assignment for the benefit of its creditors or otherwise acknowledge its insolvency;

- c) In the event that the Borrower should default in the payment of moneys to any other creditor who has supplied credit to the Borrower;
- d) In the event that action is commenced against the Borrower for any reason in any of the Courts of Ontario for an amount greater than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00);
- e) In the event that the Lender, in good faith, believes that the prospect of payment or performance by the Borrower of its obligations under this agreement is impaired or that any collateral provided to the Lender as security for payment of any obligations of the Borrower to the Lender is in danger of being impaired, lost, damaged or confiscated.

15. On the happening of an event of default, as noted in Section 14 above, the Lender shall have the right, without any further demand or notice whatsoever, to exact payments of all amounts whatsoever then outstanding and owing or to become owing by the Borrower to the Lender under any other agreement made between the Lender and the Borrower.

16. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument.

17. This Loan Agreement shall be considered to create a security interest in the assets of the Borrower and Guarantors for the purposes of the Personal Property Security Act, R.S.O. 1990, c. P.10.

18. The Borrower and the Lender each represent and acknowledge that:

- (a) they have read the Agreement in its entirety and have full knowledge of the contents;
- (b) they understand their respective rights and obligations under this Agreement, the nature of this Agreement and the consequences of this Agreement;
- (c) the terms of this Agreement are fair and reasonable;
- (d) they were not subject to any coercion or undue influence in their entering into this Agreement and that they signed same voluntarily;
- (e) the Borrower, the Guarantors and the Lender each acknowledge that they have received independent legal advice prior to executing the herein agreement.

**19. Notices**

- (a) Any notice, designation, communication, request, demand or other document, required or permitted to be given or sent or delivered hereunder to any party hereto shall be in writing and shall be sufficiently given or sent or delivered if it is:
  - (i) delivered personally to an officer or director of such party,
  - (ii) sent to the party entitled to receive it by registered mail, postage prepaid, mailed in Canada, or
  - (iii) sent by telecopy machine.

(b) Notices shall be sent to the following addresses or telecopy numbers:

(i) in the case of the Borrower,

Brightstar Newcastle Corp.  
6 Lansing Square  
Suite 221  
Toronto, ON M2J 1T5

Phone: 416-362-5890 x23

Email: [jbuckler@brightstarcorp.ca](mailto:jbuckler@brightstarcorp.ca)

Attention: Jim Buckler

(ii) in the case of the Lender

c/o Messrs. Schwarz Law LLP,

Barristers & Solicitors,

1984 Yonge Street, Toronto,

Ontario, M4S1Z7 -

Attention: Jayson Schwarz

Phone: (416-486-2040)

Fax No. (416-486-3325)

Email: [schwarz@schwarzlaw.ca](mailto:schwarz@schwarzlaw.ca)

or to such other address or telecopier number as the party entitled to or receiving such notice, designation, communication, request, demand or other document shall by a notice given in accordance with this section, have communicated to the party giving or sending or delivering such notice, designation, communication, request, demand or other document.

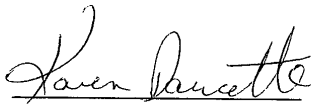
(c) Any notice, designation, communication, request, demand or other document given or sent or delivered as foresaid shall:

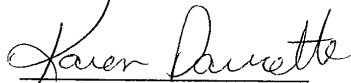
- (i) if delivered as aforesaid, be deemed to have been given, sent, delivered and received on the date of delivery;
- (ii) if sent by mail as aforesaid, be deemed to have been given sent, delivered and received on the fourth Business Day following the date of mailing; and
- (iii) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date of delivery.

20. This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.


Dated at Toronto this 29<sup>th</sup> day of May, 2018.

IN WITNESS WHEREOF the parties have affixed their hands and seals on the date shown above.

  
WITNESS

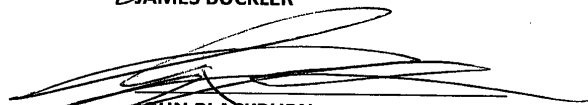
  
WITNESS

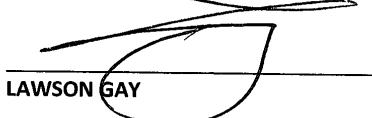
  
WITNESS

  
WITNESS

  
GERRY RASMUSSEN

  
JAMES BUCKLER

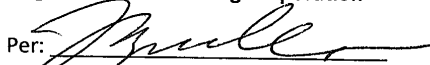
  
JOHN BLACKBURN

  
LAWSON GAY

**Brightstar Newcastle Corporation**

Per:   
Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
I Have Authority To Bind the Corporation

**Brightstar Seniors Living Corporation**

Per:   
Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
I Have Authority To Bind the Corporation

This is Exhibit "G" referred to in the Affidavit of Richard Longland,  
**SWORN REMOTELY** by Richard Longland at the City of Toronto in the  
Province of Ontario, before me at the City of Toronto, Province of Ontario,  
on August 20, 2021, in accordance with [O. Reg. 431/20](#), Administering Oath or  
Declaration Remotely.



A Commissioner for Taking Affidavits

**LEAH MANGANO**  
**LSO# 78263A**

R.L.

BRIGHTSTAR NEWCASTLE CORPORATION - BROOKHOUSE GATE CONDO. PROJECT #36882  
 Clarington, Regional Municipality of Durham  
 Schedule of Deposits (Releases) Report  
 as at August 31, 2019

SUITE	New Suite Number(s) (only for the units noted below)	NAME OF PURCHASER	DATE OF AGREEMENT OF PURCHASE & SALE	TOTAL PURCHASE PRICE (inclusive of HST)	TOTAL AMOUNT OF DEPOSIT MONIES RECEIVED IN THE PREVIOUS MONTH	AMOUNT OF 1ST DEPOSIT	DATE 1ST DEPOSIT MADE	AMOUNT OF 2ND DEPOSIT	DATE 2ND DEPOSIT MADE	AMOUNT OF 3RD DEPOSIT	DATE 3RD DEPOSIT MADE	AMOUNT OF DEPOSIT MONIES REFUNDED THIS MONTH FROM THE DESIGNATED TRUST ACCOUNT	DATE OF REFUND CHQ REPRESENTING DEPOSIT MONIES REFUNDED FROM THE DESIGNATED TRUST ACCOUNT	DEDUCTIONS FROM DESIGNATED TRUST FOR NSF CHQS OR ERRORS, ETC.	DEPOSIT RECEIVED ON OCCUPANCY CLOSING	DATE OCCUPANCY CLOSING DEPOSIT RECEIVED	TOTAL AMOUNT OF DEPOSIT MONIES RECEIVED IN THE DESIGNATED TRUST ACCOUNT	TARION	TARION deposits advanced Aug. 9, 2016	TARION deposits advanced Aug. 31, 2016	TARION deposits advanced Oct. 4, 2016
101		Wilson Construction Services Inc.	December 20, 2018	\$ 569,900.00	\$ -												\$ -	\$ -	\$ -	\$ -	\$ -
102		Edmon Vanlaverbeke	January 30, 2016	\$ 369,900.00	\$ 77,980.00												\$ 77,980.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
103		Deak Bell and Haley Bell	July 19, 2019	\$ 439,900.00	\$ 46,990.00												\$ 46,990.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
104		David Climenhage and Judy Climenhage	July 13, 2015	\$ 439,900.00	\$ 129,963.58												\$ 129,963.58	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
105		Dorina Teller and Kristen Stevens	June 25, 2016	\$ 499,900.00	\$ 499,900.00												\$ 499,900.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
106		Sergio Romano	February 1, 2015	\$ 364,900.00	\$ 66,980.00												\$ 66,980.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
107		John Miller and Douglas David Andrew Bell, Erin Victoria Bell, Honey Leigh Montgomery and Robert Paul Montgomery	October 26, 2014	\$ 294,900.00	\$ 58,980.00												\$ 58,980.00	\$ 20,000.00	\$ 14,745.00	\$ -	\$ -
108		John Miller and Douglas David Andrew Bell, Erin Victoria Bell, Honey Leigh Montgomery and Robert Paul Montgomery	September 20, 2015	\$ 289,900.00	\$ 57,980.00												\$ 57,980.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
109		Gordon Ashley & Nancy Ashley	August 8, 2015	\$ 289,900.00	\$ 57,980.00												\$ 57,980.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
110		Domenic Guida	June 9, 2014	\$ 439,900.00	\$ 87,980.00												\$ 87,980.00	\$ 20,000.00	\$ 20,000.00	\$ -	\$ -
111		Judy Anne Robertson and John Robertson	September 7, 2014	\$ 350,160.87	\$ 61,980.00												\$ 61,980.00	\$ 20,000.00	\$ 10,026.00	\$ 9,974.00	\$ -
112		Michael Paul Sinclair and Marissa Sinclair	January 18, 2015	\$ 334,900.00	\$ 66,980.00												\$ 66,980.00	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -
113	114	Doug Raffai	November 30, 2014	\$ 334,900.00	\$ 66,980.00												\$ 66,980.00	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -
114	115	Marie Parisi, Germano Parisi and Joseph Parisi	October 1, 2016	\$ 489,900.00	\$ 97,980.00												\$ 97,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
115	116	Isabel Peat	July 30, 2019	\$ 399,500.00	\$ 5,000.00		26-Aug-19	\$ 15,000.00		26-Aug-19							\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ -
116	117	Mary Mary McManus	May 2, 2016	\$ 469,900.00	\$ 93,980.00												\$ 93,980.00	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -
117	118	Frank Burke and Diane Burke	July 9, 2019	\$ 449,500.00	\$ 20,000.00												\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ -
118	119	Erin Jacobs and Brenda Jacobs	May 28, 2019	\$ 439,500.00	\$ 20,000.00												\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ -
201		Jana Wilson	October 16, 2016	\$ 549,990.00	\$ 109,980.00												\$ 109,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
202		Rhyanne McCash	September 10, 2014	\$ 342,900.00	\$ 68,580.00												\$ 68,580.00	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -
203		Joyce Harper	May 4, 2016	\$ 489,900.00	\$ 34,290.00												\$ 34,290.00	\$ 20,000.00	\$ -	\$ 20,000.00	\$ -
204		Melissa Lynn Casselman	September 15, 2016	\$ 489,900.00	\$ 97,980.00												\$ 97,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
205		Linda and Corrado Medica	April 15, 2019	\$ 499,900.00	\$ 10,000.00												\$ 10,000.00	\$ 10,000.00	\$ -	\$ -	\$ -
206		Sandra Curry	February 15, 2017	\$ 389,900.00	\$ 77,980.00												\$ 77,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
207		Mary Nelson	February 29, 2017	\$ 399,900.00	\$ 77,980.00												\$ 77,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
208		Nimesh Mathu	January 7, 2017	\$ 319,900.00	\$ 63,980.00												\$ 63,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
209		Michael Westman	November 13, 2014	\$ 254,900.00	\$ 12,745.00												\$ 12,745.00	\$ 12,745.00	\$ -	\$ -	\$ 12,745.00
210		Bernie O'Brien	October 16, 2014	\$ 269,900.00	\$ 53,980.00												\$ 53,980.00	\$ 20,000.00	\$ -	\$ -	\$ 13,495.00
211		Suzan Chesson	October 16, 2014	\$ 269,900.00	\$ 53,980.00												\$ 53,980.00	\$ 20,000.00	\$ -	\$ -	\$ 13,495.00
212		Gail Burrell and Joseph Burrell	October 18, 2014	\$ 269,900.00	\$ 53,980.00												\$ 53,980.00	\$ 20,000.00	\$ -	\$ -	\$ 13,495.00
213	214	Craig Mack and Paul Mack	May 6, 2019	\$ 445,900.00	\$ 20,000.00												\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ -
219	220	Mario Romano	August 19, 2015	\$ 449,900.00	\$ 49,980.00												\$ 49,980.00	\$ 20,000.00	\$ -	\$ -	\$ 12,495.00
220	221	Alan Chappale	October 26, 2014	\$ 409,900.00	\$ 40,980.00												\$ 40,980.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
301		Bernard O'Brien (withheld from #303)	February 18, 2015	\$ 409,900.00	\$ 40,980.00												\$ 40,980.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
302		Sandip Khaira (withheld from #302)	November 14, 2014	\$ 345,900.00	\$ 69,180.00												\$ 69,180.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
303		Jayma Voight	November 14, 2014	\$ 345,900.00	\$ 69,180.00												\$ 69,180.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
304		Joyce Dunn and Victor Dunn	June 9, 2014	\$ 379,900.00	\$ 75,980.00												\$ 75,980.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
305		Nakash Mistry	August 4, 2016	\$ 489,900.00	\$ 97,980.00												\$ 97,980.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
306		Keval Alatia	November 13, 2014	\$ 277,900.00	\$ 13,895.00												\$ 13,895.00	\$ 13,895.00	\$ -	\$ -	\$ 13,895.00
307		Rebecca Rankin	December 28, 2014	\$ 277,900.00	\$ 13,895.00												\$ 13,895.00	\$ 13,895.00	\$ -	\$ -	\$ 13,895.00
308		Helen Carter	June 9, 2014	\$ 257,900.00	\$ 267,900.00												\$ 267,900.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
309		Gary McCullough and Jean Simmens	January 30, 2015	\$ 289,900.00	\$ 58,000.00												\$ 58,000.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
310		Russel Magee	May 3, 2015	\$ 489,900.00	\$ 97,980.00												\$ 97,980.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
311		Fera Miller	September 29, 2014	\$ 272,900.00	\$ 54,580.00												\$ 54,580.00	\$ 20,000.00	\$ -	\$ -	\$ 20,000.00
312		Harold G. Rosborough and Elizabeth Rosborough	June 19, 2016	\$ 379,900.00	\$ 75,980.00												\$ 75,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
313	314	Steve Glogowski and Mary Ann Glogowski	October 16, 2014	\$ 272,900.00	\$ 54,580.00												\$ 54,580.00	\$ 20,000.00	\$ -	\$ -	\$ 1,932.00
317		Steve Glogowski and Mary Ann Glogowski	April 22, 2019	\$ 489,900.00	\$ 20,000.00												\$ 20,000.00	\$ 20,000.00	\$ -	\$ -	\$ -
317	318	Nicholas Boothman and Wendy Boothman	April 9, 2016	\$ 469,900.00	\$ 93,980.00												\$ 93,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
319	320	David Usher and Joanna Usher	July 24, 2014	\$ 240,400.00	\$ 48,080.00												\$ 48,080.00	\$ 20,000.00	\$ -	\$ -	\$ -
320	321	George Johnson Tynes and Susan Voth	July 24, 2014	\$ 240,400.00	\$ 48,080.00												\$ 48,080.00	\$ 20,000.00	\$ -	\$ -	\$ -
401		Nicholas Boothman and Wendy Boothman	November 4, 2014	\$ 429,900.00	\$ 85,980.00												\$ 85,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
402		David Usher and Joanna Usher	October 22, 2014	\$ 359,900.00	\$ 71,980.00												\$ 71,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
403		George Johnson Tynes and Susan Voth	October 15, 2014	\$ 380,900.00	\$ 76,180.00												\$ 76,180.00	\$ 20,000.00	\$ -	\$ -	\$ -
404		Dorothy Harford and David Harford	July 24, 2014	\$ 402,900.00	\$ 81,580.00												\$ 81,580.00	\$ 20,000.00	\$ -	\$ -	\$ -
405		Leah Power and Keith Muir	June 18, 2016	\$ 479,900.00	\$ 95,980.00												\$ 95,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
406		Doug Wood and Stewart Wood	November 15, 2014	\$ 282,900.00	\$ 14,145.00												\$ 14,145.00	\$ 14,145.00	\$ -	\$ -	\$ -
407		Susan Bell and William Bell	July 7, 2014	\$ 282,900.00	\$ 56,580.00												\$ 56,580.00	\$ 20,000.00	\$ -	\$ -	\$ -
408		Doug Wood and Stewart Wood	July 30, 2015	\$ 289,900.00	\$ 57,980.00												\$ 57,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
409		Elisabeth Ann Backburn	October 16, 2014	\$ 269,900.00	\$ 67,475.00												\$ 67,475.00	\$ 20,000.00	\$ -	\$ -	\$ -
410		Mario Romano	July 16, 2015	\$ 439,900.00	\$ 43,990.00												\$ 43,990.00	\$ 20,000.00	\$ -	\$ -	\$ -
411		2335067 Ontario Inc	October 26, 2014	\$ 277,900.00	\$ 13,895.00												\$ 13,895.00	\$ 20,000.00	\$ -	\$ -	\$ -
412		Scott Peterson	November 14, 2014	\$ 277,900.00	\$ 13,895.00												\$ 13,895.00	\$ 13,895.00	\$ -	\$ -	\$ -
413	414	Sherry Rosen	October 27, 2014	\$ 267,900.00	\$ 53,580.00												\$ 53,580.00	\$ 20,000.00	\$ -	\$ -	\$ -
415	416	Gerry Rasmussen	May 31, 2017	\$ 539,900.00	\$ 5,000.00												\$ 5,000.00	\$ 5,000.00	\$ -	\$ -	\$ -
417		Lawson Goy	October 30, 2014	\$ 337,900.00	\$ 67,580.00												\$ 67,580.00	\$ 20,000.00	\$ -	\$ -	\$ -
419		Jeff Ingalls	May 4, 2016	\$ 347,900.00	\$ 34,790.00												\$ 34,790.00	\$ 20,000.00	\$ -	\$ -	\$ -
420		Victor B. Doucet and	January 2, 2017	\$ 339,900.00	\$ 67,980.00												\$ 67,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
420		Domenic Savarino	August 29, 2016	\$ 319,900.00	\$ 63,980.00												\$ 63,980.00	\$ 20,000.00	\$ -	\$ -	\$ -
204		James Buckler - RELEASED	May 6, 2016	\$ 539,900.00	\$ -								21-Jun-19				\$ -	\$ -	\$ -	\$ 20,000.00	\$ -
206		Jason Beccaruso - RELEASED																			



BRIGHTSTAR NEWCASTLE CORPORATION - BROOKHOUSE GATE CONDO. PROJECT #36882  
 Clarington, Regional Municipality of Durham  
 Schedule of Deposits (Releases) Report  
 as at August 31, 2019

CCNA

SUITE	New Suite Numbering (only for the units noted below)	NAME OF PURCHASER	DATE OF AGREEMENT OF PURCHASE & SALE	TOTAL PURCHASE PRICE (inclusive of HST)	TOTAL AMOUNT OF DEPOSIT MONIES RECEIVED IN THE PREVIOUS MONTH	AMOUNT OF 1ST DEPOSIT	DATE 1ST DEPOSIT MADE	AMOUNT OF 2ND DEPOSIT	DATE 2ND DEPOSIT MADE	AMOUNT OF 3RD DEPOSIT	DATE 3RD DEPOSIT MADE	AMOUNT OF DEPOSIT MONIES REFUNDED THIS MONTH FROM THE DESIGNATED TRUST ACCOUNT	DATE OF REFUND CHQ (REPRESENTING G DEPOSIT MONIES)	DEDUCTIONS FROM DESIGNATED TRUST ACCOUNT FOR NSF CHQS OR ERRORS, ETC.	TARIOR DEPOSITS ADVANCED JUN 25, 2018	TARIOR FUNDS ADVANCED (REAPPLYING G DEPOSITS FOR REFUND #101)	TARIOR DEPOSITS ADVANCED JUN 29, 2019	TARIOR deposits remaining in trust	TOTAL ECDI DEPOSITS RECEIVED	ECDI DEPOSITS ADVANCED DEC. 1, 2016	ECDI DEPOSITS ADVANCED DEC. 22, 2016	ECDI DEPOSITS ADVANCED FEB. 8, 2017	
101		Wilkinson Construction Services Inc.	December 20, 2018	\$ 599,900.00	\$ -																		
102		Edmon Vanthruwbeke	January 30, 2016	\$ 389,900.00	\$ 77,980.00														\$ 77,980.00			\$ 18,990.00	
103		Donk Bell and Hilarie Bell	July 18, 2019	\$ 499,900.00	\$ 46,990.00														\$ 46,990.00			\$ 26,990.00	
104		Donk Bell and Valerie Bell	July 13, 2015	\$ 439,900.00	\$ 129,963.58														\$ 109,963.58			\$ 45,985.00	
105		David Climenhage and Judy Climenhage	June 25, 2016	\$ 499,900.00	\$ 499,900.00														\$ 479,900.00			\$ 29,990.00	
106		Donna Teller and Kirsten Stevens	February 1, 2015	\$ 384,900.00	\$ 66,980.00														\$ 46,980.00			\$ 13,490.00	
107		Sergio Romano	October 26, 2014	\$ 294,900.00	\$ 58,980.00													\$ 5,255.00	\$ 58,980.00			\$ -	
108		Julie Miller and Douglas David Andrew Bell, Erin Victoria Bell, Honey Leigh Montgomery and Robert Paul Montgomery	September 20, 2015	\$ 289,900.00	\$ 57,980.00														\$ 57,980.00			\$ 23,485.00	
109		Gordon Ashley & Nancy Ashley	August 8, 2016	\$ 289,900.00	\$ 57,980.00														\$ 37,980.00			\$ 23,485.00	
110		Domenic Guida	June 9, 2014	\$ 439,900.00	\$ 87,980.00														\$ 67,980.00			\$ 45,985.00	
111		Judy Anne Robertson and John Robertson	September 7, 2014	\$ 350,160.87	\$ 61,980.00														\$ 41,980.00			\$ 26,485.00	
112		Michael Paul Sinclair and Rosine Sinclair	January 18, 2015	\$ 334,900.00	\$ 66,980.00														\$ 46,980.00			\$ 16,189.00	
113		Doug Rattai	November 20, 2014	\$ 334,900.00	\$ 66,980.00														\$ 46,980.00			\$ -	\$ 18,641.00
114		Marie Paris, Germano Paris and Joseph Paris	October 1, 2016	\$ 489,900.00	\$ 97,980.00														\$ 77,980.00			\$ -	\$ 28,990.00
115		Isabel Peat	July 30, 2019	\$ 399,500.00	\$ -	\$ 5,000.00	26-Aug-19	\$ 15,000.00	26-Aug-19									\$ 20,000.00	\$ -				
116		Frank Burke and Diane Burke	May 2, 2016	\$ 469,900.00	\$ 93,980.00														\$ 73,980.00			\$ -	\$ 26,990.00
117		Eric Jacobs and Brenda Jacobs	July 8, 2019	\$ 449,900.00	\$ 20,000.00														\$ 20,000.00			\$ -	\$ -
118		Jane Wilson	May 28, 2019	\$ 439,900.00	\$ 20,000.00														\$ -			\$ -	\$ -
201		Shauna McCash	October 16, 2016	\$ 549,980.00	\$ 109,980.00														\$ 89,980.00			\$ -	\$ 34,990.00
202		Joyce Hamper	September 10, 2014	\$ 342,900.00	\$ 68,580.00														\$ 48,580.00			\$ -	\$ -
203		Melissa-Lynn Casselman	May 4, 2016	\$ 442,900.00	\$ 34,290.00														\$ 34,290.00			\$ -	\$ -
204		Linda and Corrado Modica	September 15, 2016	\$ 489,900.00	\$ 97,980.00														\$ 77,980.00			\$ -	\$ 28,990.00
205		Sandra Curry	April 15, 2019	\$ 499,900.00	\$ 10,000.00													\$ 10,000.00	\$ -			\$ -	\$ -
206		Spencer Curry	February 15, 2017	\$ 389,900.00	\$ 77,980.00														\$ 67,980.00			\$ -	\$ -
207		Mary Nelson	February 29, 2017	\$ 389,900.00	\$ 77,980.00														\$ 67,980.00			\$ -	\$ -
208		Nimesh Maitly	January 7, 2017	\$ 319,900.00	\$ 63,980.00														\$ 43,980.00			\$ -	\$ -
209		Bernie O'Brien	November 13, 2014	\$ 254,900.00	\$ 12,745.00														\$ 12,745.00			\$ -	\$ -
210		Suzanne Khadra	October 16, 2014	\$ 269,900.00	\$ 53,980.00														\$ 53,980.00			\$ -	\$ -
211		Gail Burrell and Joseph Burrell	October 16, 2014	\$ 269,900.00	\$ 53,980.00														\$ 53,980.00			\$ -	\$ -
212		Craig Mack and Paul Mack	October 16, 2014	\$ 269,900.00	\$ 53,980.00														\$ 53,980.00			\$ -	\$ -
213		Mario Romano	May 6, 2019	\$ 445,900.00	\$ 20,000.00														\$ 20,000.00			\$ -	\$ -
219		Alan Chapple	August 19, 2015	\$ 249,900.00	\$ 49,980.00														\$ 29,980.00			\$ -	\$ -
301		Bernard O'Brien	October 26, 2014	\$ 409,900.00	\$ 40,990.00														\$ 7,505.00			\$ -	\$ -
302		Sandip Khadra	February 18, 2015	\$ 409,900.00	\$ 40,990.00														\$ 20,990.00			\$ -	\$ -
303		Jonathan Copps	November 14, 2014	\$ 345,900.00	\$ 69,180.00														\$ 49,180.00			\$ -	\$ -
304		Joyce Dunn and Victor Dunn	November 14, 2014	\$ 345,900.00	\$ 69,180.00														\$ 49,180.00			\$ -	\$ -
305		Nish Mishra	June 3, 2014	\$ 379,900.00	\$ 75,980.00														\$ 55,980.00			\$ -	\$ -
306		Keval Adajia	August 4, 2016	\$ 469,980.00	\$ 97,980.00														\$ 77,980.00			\$ -	\$ -
307		Rebecca Ramin	November 13, 2014	\$ 277,900.00	\$ 13,855.00														\$ 13,855.00			\$ -	\$ -
308		Helen Carter	December 28, 2014	\$ 277,900.00	\$ 13,855.00														\$ 13,855.00			\$ -	\$ -
309		Gary McCullough and Jean Simmons	June 9, 2014	\$ 267,900.00	\$ 237,900.00														\$ 237,900.00			\$ -	\$ -
310		Russell Madge	January 30, 2015	\$ 289,900.00	\$ 58,000.00														\$ 38,000.00			\$ -	\$ -
311		Flora Miller	May 5, 2015	\$ 469,900.00	\$ 97,980.00														\$ 77,980.00			\$ -	\$ -
312		Caroline Miller	September 25, 2014	\$ 272,900.00	\$ 54,580.00														\$ 34,580.00			\$ -	\$ -
313		Harold G. Rosborough and Elizabeth Rosborough	June 19, 2016	\$ 379,900.00	\$ 75,980.00														\$ 55,980.00			\$ -	\$ -
317		Steve Glogowski and Mary Ann Glogowski	October 16, 2014	\$ 272,900.00	\$ 54,580.00														\$ 34,580.00			\$ -	\$ -
318		Steve Glogowski and Mary Ann Glogowski	April 22, 2019	\$ 489,900.00	\$ 20,000.00														\$ 20,000.00			\$ -	\$ -
319		Nicholas Boothman and Wendy Boothman	April 1, 2016	\$ 469,900.00	\$ 93,980.00														\$ 73,980.00			\$ -	\$ -
320		George Johnson Tynes and Susan Voth	July 24, 2014	\$ 240,400.00	\$ 48,080.00														\$ 28,080.00			\$ -	\$ 4,040.00
401		Nicholas Boothman and Wendy Boothman	July 24, 2014	\$ 240,400.00	\$ 48,080.00														\$ 28,080.00			\$ -	\$ 4,040.00
402		David Usher and Joanne Usher	November 4, 2014	\$ 429,900.00	\$ 85,980.00														\$ 65,980.00			\$ -	\$ 22,990.00
403		George Johnson Tynes and Susan Voth	October 22, 2014	\$ 359,900.00	\$ 71,980.00														\$ 51,980.00			\$ -	\$ 15,990.00
404		Dorothy Harford and David Harford	October 15, 2014	\$ 380,900.00	\$ 76,180.00														\$ 56,180.00			\$ -	\$ 23,138.00
405		Leah Power and Keith Muir	July 24, 2014	\$ 402,900.00	\$ 81,580.00														\$ 61,580.00			\$ -	\$ -
406		Deep Wood and Stewart Wood	June 18, 2016	\$ 479,900.00	\$ 95,980.00														\$ 75,980.00			\$ -	\$ -
407		Susan Bell and William Bell	November 15, 2014	\$ 282,900.00	\$ 14,145.00														\$ -			\$ -	\$ -
408		Deep Wood and Stewart Wood	July 7, 2014	\$ 282,900.00	\$ 56,580.00														\$ 36,580.00			\$ -	\$ -
409		Deep Wood and Stewart Wood	July 30, 2015	\$ 289,900.00	\$ 57,980.00														\$ 37,980.00			\$ -	\$ -
410		Elisabeth Ann Blackburn	October 16, 2014	\$ 269,900.00	\$ 67,475.00														\$ 47,475.00			\$ -	\$ -
411		Mario Romano	July 16, 2015	\$ 439,900.00	\$ 43,990.00														\$ 23,990.00			\$ -	\$ -
412		2335067 Ontario Inc	October 26, 2014	\$ 277,900.00	\$ 13,855.00														\$ 35,855.00			\$ -	\$ -
413		Scott Patterson	November 14, 2014	\$ 277,900.00	\$ 13,855.00														\$ 13,855.00			\$ -	\$ -
414		TERMINATED	October 27, 2014	\$ 267,900.00	\$ 53,580.00														\$ -			\$ -	\$ -
415		Gerry Rasmussen	October 27, 2014	\$ 267,900.00	\$ 53,580.00														\$ 33,580.00			\$ -	\$ -
416		Jason Gray	May 31, 2017	\$ 539,900.00	\$ 5,000.00								21-Jun-19			\$ (320,000.00)			\$ -		\$ 2,232.00	\$ 31,758.00	\$ -
417		Jeff Ingalls	January 30, 2014	\$ 337,900.00	\$ 67,580.00														\$ 47,580.00			\$ -	\$ -
418		TERMINATED	May 4, 2016	\$ 357,900.00	\$ 34,790.00														\$ 13,790.00			\$ -	\$ -
419		TERMINATED	January 2, 2017	\$ 339,900.00	\$ 67,980.00														\$ 47,980.00			\$ -	\$ -
420		TERMINATED	August 29, 2018	\$ 319,900.00	\$ 63,980.00														\$ 43,980.00			\$ -	\$ -
204		2243270 Ontario Inc. (RELEASED)	January 4, 2015	\$ 389,900.00	\$ -														\$ -			\$ -	\$ -
206		Jason Boczenko (RELEASED)	November 4, 2014	\$ 274,900.00	\$ -														\$ -			\$ -	\$ -
207		Todd Chrysler (RELEASED)	November 12, 2014	\$ 274,900.00	\$ -														\$ -			\$ -	\$ -
208		Krista-Ann Deller (RELEASED)	October 20, 2014	\$ 254,900.00	\$ -					</													





BRIGHTSTAR NEWCASTLE CORPORATION - BROOKHOUSE GATE CONDO. PROJECT #36862  
 Clarington, Regional Municipality of Durham  
 Schedule of Deposits (Releases) Report  
 as at August 31, 2019

CCNA

SUITE	New Suite Number (only for units noted below)	NAME OF PURCHASER	DATE OF AGREEMENT OF PURCHASE & SALE	TOTAL PURCHASE PRICE (Inclusive of HST)	TOTAL AMOUNT OF DEPOSIT MONIES RECEIVED IN THE PREVIOUS MONTH	AMOUNT OF 1ST DEPOSIT	DATE 1ST DEPOSIT MADE	AMOUNT OF 2ND DEPOSIT	DATE 2ND DEPOSIT MADE	AMOUNT OF 3RD DEPOSIT	DATE 3RD DEPOSIT MADE	AMOUNT OF DEPOSIT MONIES THIS MONTH FROM THE DESIGNATED TRUST ACCOUNT	DATE OF REFUND CHG (REPRESENTING DEPOSIT MONIES REFUNDED THIS MONTH FROM THE DESIGNATED TRUST ACCOUNT)	DEDUCTIONS FROM DESIGNATED TRUST ACCOUNT FOR NSF CHGS OR ERRORS, ETC.	ECDI DEPOSIT ADVANCE JUNE 26, 2019	TOTAL ECDI DEPOSITS REMAINING IN TRUST	TOTAL DEPOSIT REMAINING IN TRUST
101		Wilson Construction Services Inc	December 20, 2018	\$ 599,900.00	\$ -											\$ -	\$ -
102		Edmon Vanhaverbeke	January 30, 2016	\$ 389,900.00	\$ 77,980.00											\$ -	\$ -
103		Derek Bell and Hilary Bell	July 19, 2019	\$ 500,000.00	\$ 46,990.00											\$ -	\$ -
104		Don Bell and Valerie Bell	July 13, 2015	\$ 439,900.00	\$ 129,963.58											\$ 0.00	\$ 0.00
105		David Climenhage and Judy Climenhage	June 25, 2016	\$ 499,900.00	\$ 499,900.00											\$ 368,930.58	\$ 368,930.58
106		Donna Teller and Kirsten Stevens	February 1, 2015	\$ 364,900.00	\$ 66,980.00										\$ 11,756.00	\$ 4,989.00	\$ 4,989.00
107		Sergio Romano	October 26, 2014	\$ 234,900.00	\$ 38,980.00											\$ 38,980.00	\$ 38,980.00
108		Jane Miller and Douglas David Andrew Bell, Erin Victoria Bell, Honey Leigh Montgomery and Robert Paul Montgomery	September 20, 2015	\$ 289,900.00	\$ 57,980.00											\$ -	\$ -
109		Gordon Ashley & Nancy Ashley	June 9, 2014	\$ 439,900.00	\$ 87,980.00											\$ -	\$ -
110		Domonic Guida	September 7, 2014	\$ 350,160.87	\$ 61,980.00											\$ -	\$ -
111		Judy Anne Robertson and John Robertson	January 18, 2015	\$ 334,900.00	\$ 66,980.00											\$ -	\$ -
112		Michael Paul Sinclair	November 30, 2014	\$ 334,900.00	\$ 66,980.00											\$ -	\$ -
113	114	Michael Paul Sinclair	November 30, 2014	\$ 334,900.00	\$ 66,980.00											\$ -	\$ -
114	115	Doug Rattai	October 1, 2016	\$ 489,900.00	\$ 97,980.00											\$ 90.00	\$ 90.00
115	116	Marie Parisi, Germano Parisi and Joseph Parisi	July 30, 2019	\$ 399,500.00	\$ 5,000.00		26-Aug-19	\$ 15,000.00			26-Aug-19					\$ -	\$ 20,000.00
118	117	Isabel Peat	May 2, 2016	\$ 499,900.00	\$ 93,980.00											\$ 23,495.00	\$ 23,495.00
117	118	Mary Anne Moynihan	July 9, 2019	\$ 448,500.00	\$ 20,000.00											\$ -	\$ 20,000.00
118	119	Frank Burke and Diane Burke	May 28, 2019	\$ 439,500.00	\$ 20,000.00											\$ -	\$ 20,000.00
201		Eric Jacobs and Brenda Jacobs	October 16, 2016	\$ 549,900.00	\$ 108,980.00											\$ -	\$ -
202		Jane Wilson	September 10, 2014	\$ 342,900.00	\$ 68,580.00											\$ 34,290.00	\$ 34,290.00
203		Shayne McCash	May 4, 2016	\$ 34,200.00	\$ -											\$ -	\$ -
204		Joyce Harper	September 15, 2016	\$ 489,900.00	\$ 97,980.00											\$ -	\$ -
205		Melissa-Lynn Cavasman	April 15, 2019	\$ 499,900.00	\$ 10,000.00											\$ -	\$ -
206		Linda and Corrado Modica	February 15, 2017	\$ 389,900.00	\$ 77,980.00											\$ -	\$ -
207		Sandra Curry	February 20, 2017	\$ 389,900.00	\$ 77,980.00											\$ -	\$ -
208		Mary Nelson	January 7, 2017	\$ 319,900.00	\$ 63,980.00											\$ -	\$ -
209		Nimesh Mishra	November 13, 2014	\$ 254,900.00	\$ 12,745.00											\$ -	\$ -
210		Eric Jacobs	October 16, 2016	\$ 549,900.00	\$ 108,980.00											\$ -	\$ -
211		Bernie O'Brien	October 16, 2014	\$ 269,900.00	\$ 53,980.00											\$ 26,990.00	\$ 26,990.00
212		Sande Khehra	October 16, 2014	\$ 269,900.00	\$ 53,980.00											\$ 26,990.00	\$ 26,990.00
213	214	Suzan Chesson	October 18, 2014	\$ 269,900.00	\$ 53,980.00											\$ 26,990.00	\$ 26,990.00
219	219	Gail Burrell and Joseph Burns	May 6, 2019	\$ 445,900.00	\$ 20,000.00											\$ -	\$ -
219	220	Craig Mack and Paul Mack	August 19, 2015	\$ 249,900.00	\$ 49,980.00											\$ 29,980.00	\$ 29,980.00
220	221	Mary Romano	October 26, 2014	\$ 249,900.00	\$ 49,980.00											\$ 29,980.00	\$ 29,980.00
301		Alan Chapple	February 18, 2015	\$ 409,900.00	\$ 40,990.00											\$ -	\$ -
302		Bernard O'Brien (switched from #302)	November 14, 2014	\$ 345,900.00	\$ 69,180.00											\$ 17,295.00	\$ 17,295.00
303		Sande Khehra (switched from #302)	November 14, 2014	\$ 345,900.00	\$ 69,180.00											\$ 17,295.00	\$ 17,295.00
304		Johna Vopas	June 9, 2014	\$ 379,900.00	\$ 75,980.00											\$ 17,295.00	\$ 17,295.00
305		Joyce Durin and Victor Durin	August 4, 2016	\$ 499,900.00	\$ 97,980.00											\$ -	\$ -
306		Nimesh Mishra	November 13, 2014	\$ 277,900.00	\$ 13,895.00											\$ -	\$ -
307		Kawal Adatia	December 28, 2014	\$ 277,900.00	\$ 13,895.00											\$ -	\$ -
308		Rebecca Ramkin	June 9, 2014	\$ 297,900.00	\$ 29,790.00											\$ -	\$ -
309		Helen Carter	January 30, 2015	\$ 289,900.00	\$ 58,000.00											\$ 206,320.00	\$ 206,320.00
310		Gary McCullough and Jean Simmons	May 5, 2015	\$ 499,900.00	\$ 97,980.00											\$ -	\$ -
311		Russell Knappe	September 25, 2014	\$ 272,900.00	\$ 54,580.00											\$ 27,290.00	\$ 27,290.00
312		Flora Miller	June 19, 2016	\$ 379,900.00	\$ 75,980.00											\$ -	\$ -
313	314	Corina Dellar	October 16, 2014	\$ 272,900.00	\$ 54,580.00											\$ 26,940.00	\$ 26,940.00
317		Harold G. Rosborough and Elizabeth Rosborough	April 22, 2019	\$ 499,900.00	\$ 20,000.00											\$ -	\$ -
317	318	Brook Martin	April 1, 2016	\$ 469,900.00	\$ 93,980.00											\$ -	\$ -
319	320	Steve Glogowski and Mary Ann Glogowski	July 24, 2014	\$ 240,400.00	\$ 48,080.00											\$ 24,040.00	\$ 24,040.00
320	321	Steve Glogowski and Mary Ann Glogowski	July 24, 2014	\$ 240,400.00	\$ 48,080.00											\$ 24,040.00	\$ 24,040.00
401		Nicholas Boothman and Wendy Boothman	November 4, 2014	\$ 429,900.00	\$ 85,980.00											\$ 42,990.00	\$ 42,990.00
402		Nicholas Boothman and Wendy Boothman	October 22, 2014	\$ 359,900.00	\$ 71,980.00											\$ 35,990.00	\$ 35,990.00
403		David Usher and Joanne Usher	October 15, 2014	\$ 380,900.00	\$ 76,180.00											\$ -	\$ -
404		George Johnson Tynes and Susan Voth	July 24, 2014	\$ 402,900.00	\$ 81,580.00											\$ -	\$ -
405		Dorothy Harford and David Harford	June 18, 2016	\$ 479,900.00	\$ 95,980.00											\$ -	\$ -
406		Leah Power and Keith Muir	November 15, 2014	\$ 282,900.00	\$ 14,145.00											\$ -	\$ -
407		Deag Wood and Stewart Wood	July 7, 2014	\$ 282,900.00	\$ 56,580.00											\$ -	\$ -
408		Susan Bell and William Bell	July 30, 2015	\$ 289,900.00	\$ 57,980.00											\$ -	\$ -
409		Deag Wood and Stewart Wood	October 16, 2014	\$ 269,900.00	\$ 67,475.00											\$ 26,990.00	\$ 26,990.00
410		Elizabeth Ann Blackburn	July 16, 2015	\$ 439,900.00	\$ 43,990.00											\$ -	\$ -
411		Mario Romano	October 26, 2014	\$ 272,900.00	\$ 55,585.00											\$ 35,585.00	\$ 35,585.00
412		2335067 Ontario Inc	November 14, 2014	\$ 277,900.00	\$ 13,895.00											\$ -	\$ -
413	414	Scott Paterson	October 27, 2014	\$ 267,900.00	\$ 53,580.00											\$ -	\$ -
415		Sherry Kings	May 31, 2017	\$ 539,900.00	\$ 5,000.00											\$ -	\$ -
416	416	TERMINATED	May 31, 2017	\$ 539,900.00	\$ 5,000.00											\$ -	\$ -
418		Gerry Rasmussen	October 30, 2014	\$ 337,900.00	\$ 67,580.00											\$ -	\$ -
417		Layton Gray	May 4, 2016	\$ 347,900.00	\$ 34,790.00											\$ -	\$ -
419		Jeff Ingalls	January 2, 2017	\$ 339,900.00	\$ 67,980.00											\$ -	\$ -
420		Victor D. Doucet and Sherry Kings	August 20, 2016	\$ 319,900.00	\$ 63,980.00											\$ -	\$ -
101		Domonic Saverno	May 6, 2016	\$ 539,900.00	\$ -									21-Jun-19		\$ -	\$ -
204		James Buckler (RELEASED)	January 4, 2015	\$ 389,900.00	\$ -											\$ -	\$ -
206		2243270 Ontario Inc (RELEASED)	November 4, 2014	\$ 274,900.00	\$ -											\$ -	\$ -
208		Jason Rocchino (RELEASED)	November 12, 2014	\$ 274,900.00	\$ -											\$ -	\$ -
207		Todd Chrysler (RELEASED)	October 20, 2014	\$ 254,900.00	\$ -											\$ -	\$ -
312		Krista-Ann Dellar (RELEASED)	November 12, 2014	\$ 272,900.00	\$ -											\$ -	\$ -
419		Shannon Chrysler (RELEASED)	October 20, 2014	\$ 257,900.00	\$ -											\$ -	\$ -
420		Edward James Dellar (RELEASED)	December 27, 2014	\$ 257,900.00	\$ -											\$ -	\$ -
				\$ 27,915,550.87	\$ 4,636,4												

**CENTURION MORTGAGE CAPITAL  
CORPORATION**  
Plaintiff

- and -

**BRIGHTSTAR NEWCASTLE CORPORATION ET AL.**  
Defendants

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

**AFFIDAVIT OF RICHARD LONGLAND**  
**(Sworn August 20, 2021)**

**BORDEN LADNER GERVAIS LLP**

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22 Adelaide Street West  
Toronto, ON M5H 4E3  
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Lawyers for The Guarantee Company of North America

**CENTURION MORTGAGE CAPITAL  
CORPORATION**  
Plaintiff

- and -

**BRIGHTSTAR NEWCASTLE CORPORATION ET  
AL.**

**Defendants**

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

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**RESPONDING RECORD OF THE GUARANTEE  
COMPANY OF NORTH AMERICA**

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**BORDEN LADNER GERVAIS LLP**

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22 Adelaide Street West  
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