Court File No. CV-20-00650557-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

- and -

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

Defendants

MOTION RECORD

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Email: george@chaitons.com

Lawyers for BDO Canada Limited, in its capacity as Court-Appointed Receiver

TO: SERVICE LIST

Service List

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Email: george@chaitons.com

Lawyers for BDO Canada Limited, in its capacity as Court-Appointed Receiver

ROBINS, APPLEBY LLP
2600-120 Adelaide Street West
Toronto, ON M5H 1T1

Dominique Michaud
Email: dmichaud@robapp.com
Tel: 416-360-3795

Joseph Jamil
Email: jjamil@robapp.com
Tel: 416-360-3783

Lawyers for Centurion Mortgage Capital Corporation

RICHARD J. MAZAR
115 King Avenue West
Newcastle, Ontario L1B 1L3

Richard Mazar
Email: rmazar@mazarlaw.com
Tel: (905) 987-1550 ext. 112

Lawyer for Brightstar Newcastle Corporation, Brightstar Seniors Living Corporation, The Estate of Alan Chapple, John Blackburn, James Buckler, Lawson Gay and 2153491 Ontario Inc.

MACK LAWYERS
146 Simcoe Street North
Oshawa, ON L1G 4S7

Paul Mack
Email: pmack@macklawyers.ca
Tel: (905) 571-1405

Lawyers for Jason C. Boccinofuso and 1791029 Ontario Inc.

BORDEN LADNER GERVAIS LLP
3400-22 Adelaide Street West
Toronto, ON M5H 4E3

Alex MacFarlane
Email: AMacfarlane@blg.com
Tel: (416) 367-6305

Robert Antenore
Email: RAntenore@blg.com
Tel: (416) 367-6553

Bevan Brooksbank
Email: BBrooksbank@blg.com
Tel: (416) 367-6604

Leah Mangano
Email: LMangano@blg.com
Tel: (416) 367-6120

Lawyers for The Guarantee Company of North America

FOGLER, RUBINOFF LLP
77 King Street West
Suite 3000, P.O. Box 95
Toronto, ON M5K 1G8

Kenneth W. Movat
Email: kmovat@folgers.com
Tel: (416) 365-3720

Alexander Evangelista
Email: aevangelista@foglers.com
Tel: (416) 864-9700

Lawyers for Maple Terrazzo Marble & Tile Partnership o/a Stoneworx

GERALD RASMUSSEN
21 Brookhouse Drive, Unit 417
Newcastle, Ontario
L1B 0V4

Email: gerryrasmussen@gmail.com

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON
40 Temperance Street
Bowmanville, ON L1C 3A6

Email List

george@chaitons.com
dmichaud@robapp.com
jjamil@robapp.com
rmazar@mazarlaw.com
pmack@macklawyers.ca
amacfarlane@blg.com
rantenore@blg.com
bbrooksbank@blg.com
lmangano@blg.com
kmovat@folgers.com
aevangelista@foglers.com
gerryrasmussen@gmail.com

INDEX

Court File No. CV-20-00650557-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

- and -

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

Defendants

INDEX

Tab		Document
1		Notice of Motion
A		Zoom Link
2		Second Report of BDO Canada Limited
A		Receivership Order
B		First Report dated April 14, 2021
	F	Agreement of Purchase and Sale - Unit 417 (shown as Unit 416)
	G	Loan and Amendment Agreement
	H	Trust Ledger Statement from Valentine Lovekin Barrister & Solicitor
	I	Letter from Schneider Ruggiero LLP dated October 16, 2018
	J	Final Closing Statement of Adjustments - Unit 417
	K	Correspondence from Gerry Rasmussen
C		Priority Ruling
D		Letter from Chaitons LLP dated August 4, 2021

E	Email from BLG sent August 9, 2021
F	Reply from Mr. Rasmussen sent August 15, 2021

TAB 1

Court File No. CV-20-00650557-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

- and -

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

Defendants

NOTICE OF MOTION

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**")[1] and 417 ("**Unit 417**")[2] at 21 Brookhouse Drive, Newcastle, Ontario, will make a motion to a judge presiding over the Superior Court of Justice, Commercial List (the "**Court**") on Monday, August 23, 2021, at 9:30 a.m., or as soon after that time as the motion can be heard, by videoconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as **Schedule "A"** hereto in order to attend the motion and advise if you intend to join the motion by emailing George Benchetrit at george@chaitons.com.

[1] The definition of Unit 101 includes the condominium unit, 1 parking space and 1 locker.

[2] The definition of Unit 417 includes the condominium unit, 1 parking space and 1 locker.

THE PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. advice and directions in relation to Unit 417, in particular with respect to the completion of a transaction with Gerald Rasmussen under the Unit 417 APS (as defined below); and

2. such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Brightstar is a corporation incorporated pursuant to laws of the Province of Ontario. Brightstar developed a 78-unit condominium building known as "Brookhouse Gate" located at the address municipally known as 21 Brookhouse Drive, Newcastle, ON, L1B 1N7 (the "**Project**"). Prior to the Receiver's appointment, Brightstar had completed sales for 76 of the 78 condominium units in the Project, i.e., all units other than Unit 101 and Unit 417.

2. The Receiver completed the sale of Unit 101 on or about May 12, 2021 in accordance with an Approval and Vesting Order issued by this Court on April 21, 2021.

3. Set out below is a summary of the charges[3] that were registered against Units 101 and 417 as of the date of the Receiver's appointment:

[3] These charges are presented based on the apparent priority shown by way of title registrations, including registered postponements. The Receiver has not otherwise conducted a priority analysis.

3

Chargee	Principal Amount	Instrument
Centurion	$4,565,000.00	DR1474136
The Guarantee Company of North America	$4,100,000.00	DR1493303
Boccinfuso, Jason C. and 1791029 Ontario Inc.	$750,000.00	DR1399636 DR1423350 (transfer of charge)
The Corporation of the Municipality of Clarington	$596,466	DR1623323
1791029 Ontario Inc.	$2,500.000.00	DR1667164
2153491 Ontario Inc.	$250,000.00	DR1225975 DR1234323 (transfer of charge)

4. Pursuant to the terms of a Commitment Letter dated March 3, 2016, and subsequent amendments thereto, Centurion loaned Brightstar the principal sum of $5,965,000 (the "**Centurion Loan**") to finance the Project. As of the date of the Receiver's appointment, the amount owed by Brightstar under the Centurion Loan was approximately $750,000 plus legal fees and other disbursements.

5. There was a dispute (the "**Priority Dispute**") between Centurion and The Guarantee Company of North America ("**GCNA**"), which underwrote the deposit insurance and excess deposit insurance on the Project, with respect to priority to the proceeds of sale from the condominium units in the Project. To deal with the Priority Dispute, Centurion and GCNA entered into an Escrow Agreement wherein proceeds from the sale of certain units are being held in trust

4

(the "**Escrowed Funds**") by Schneider Ruggiero Spencer Milburn LLP ("**SR Law**") pending resolution of the dispute[4].

6. A motion was argued before the Court on March 22, 2021 to deal with the Priority Dispute, and the decision of the Court was released on July 23, 2021 (the "**Priority Ruling**") declaring that the registered charge of GCNA is subordinate to the registered charge of Centurion. The Receiver's understanding is that GCNA will not be appealing the Priority Ruling, the effect of which will be to allow for the repayment to Centurion from the Escrowed Funds of its total outstanding indebtedness under the Centurion Loan.

Unit 417

7. Brightstar entered into an agreement of purchase and sale for Unit 417[5] with Gerry Rasmussen ("**Rasmussen**") dated October 30, 2014 (the "**Unit 417 APS**").

8. Rasmussen took possession of Unit 417 on October 16, 2018 during the "interim occupancy period" and has apparently upgraded and renovated the unit. Rasmussen currently lives in Unit 417 and maintains that he owns the unit given that he has fulfilled his financial obligations under the Unit 417 APS, but never received title to the property.

9. Rasmussen has asked that the Receiver provide him with title to Unit 417 as soon as possible as he has health issues and is looking to sell the property to move closer to his treatment hospital.

[4] The Receivership Order expressly excludes the Escrowed Funds from the property over which the Receiver is appointed.

[5] Original unit numbers on the 4th floor increased by one digit, so the original agreement of purchase and sale for Unit 417 shows unit 416.

5

10. The Receiver contacted Rasmussen and James Buckler (Brightstar) to acquire information in support of Rasmussen's claim that he has fulfilled all his financial obligations under the Unit 417 APS.

11. The purchase price under the Unit 417 APS is $337,900. Pursuant to the Unit 417 APS, Rasmussen was required to provide deposits to Brightstar totaling $67,580, with the balance of $270,320, plus closing cost adjustments, due on the sale closing.

12. Rasmussen has provided the Receiver with evidence of the payment of the deposits totaling $67,580 by providing "Evidence of Compliance" certificates (pursuant to subsection 81(6) of the *Condominium Act*, 1998) signed by SR Law, in its capacity as escrow agent for Brightstar on the Project.

13. Brightstar provided the Receiver with a Loan and Amendment Agreement dated May 29, 2018 between Rasmussen as Lender and Brightstar as Borrower (the "**Rasmussen Loan Agreement**"), pursuant to which Rasmussen was to lend to Brightstar the principal sum of $270,320 "to assist in completion of the Project".[6] The Rasmussen Loan Agreement also includes the following terms:

i. *"The Principal Sum represents the balance due and payable upon occupancy, registration of the condominium and closing of the Dwelling Unit (the 'Closing') pursuant to the APS"*;

ii. *"The Principal Sum is to be utilized for project costs"*; and

iii. *"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*

[6] The Receiver does not have copies of the schedules to the Rasmussen Loan Agreement or of any amendment to the Unit 417 APS. The Receiver has requested copies of these documents from Brightstar and from Mr. Rasmussen.

6

> *purchase funds shall be required save for adjustments provided for in the APS and there shall be no charge for any upgrades or changes."*

14. The Receiver has confirmed Rasmussen's advance of $270,320 pursuant to the Rasmussen Loan Agreement and the subsequent deposit of the advance into Brightstar's bank account.

15. Based on the information reviewed by the Receiver as described above, the Receiver is of the view that Rasmussen appears to be an arm's length purchaser for value who has satisfied his obligations under the Unit 417 APS and the Rasmussen Loan Agreement.

16. By letter dated August 4, 2021, the Receiver notified counsel for the parties with registered mortgages on title to Unit 417 as follows (*inter alia*):

a) Mr. Rasmussen has maintained his position that he is entitled to obtain title to Unit 417; and

b) subject to hearing from any of them that they are taking a contrary position, the Receiver would seek an order of the Court approving the transfer of Unit 417 to Mr. Rasmussen and vesting title free of all claims and encumbrances, provided that Mr. Rasmussen pays certain closing and occupancy-related amounts to the Receiver. The Receiver is in the process of determining what those amounts should be and will be engaging with Mr. Rasmussen to confirm that he is prepared to pay them on closing.

17. Counsel for GCNA has notified the Receiver that GCNA disputes that the $270,320 loaned to Brightstar by Mr. Rasmussen should be treated as a deposit under the Unit 417 APS.

18. As of the date of the Second Report, the Receiver has not heard back from any of the other recipients of the August 4, 2021 letter.

19. The Receiver has encouraged Mr. Rasmussen to retain a lawyer to deal with this matter, but to date he has not done so. Nevertheless, given Mr. Rasmussen's circumstances, the Receiver is of the view that it is appropriate to address the matter in court and to give Mr. Rasmussen and all potential stakeholders an opportunity to assert any legal positions they choose to advance.

20. To that end, the Receiver secured a 30-minute appointment with the Court on August 23, 2021. The Receiver will coordinate with the relevant parties to determine whether some or all of their issues can be resolved prior to that date and/or to discuss a mutually acceptable expedited timetable for any outstanding issues to be determined by the Court.

Other Grounds

1. Rules 2.03, 3.02, 16.01 and 37 of the *Rules of Civil Procedure* (Ontario).

2. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Second Report of the Receiver dated August 16, 2021.

2. Such further and other material as counsel may advise and this Honourable Court may permit.

8

August 16, 2021

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 218-1841
Email: george@chaitons.com

Lawyers for BDO Canada Limited, in its capacity as Court-Appointed Receiver

TO: SERVICE LIST

Schedule "A" - Zoom Link

https://us02web.zoom.us/j/4169172121?pwd=OFgrTkREeUFTWmQ1bTc4aWJQMVZmdz09

Meeting ID: 416 917 2121

Passcode: 999439

TAB 2

Court File No.: CV-20-00650557-00CL
Estate Number: 31-459107

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the
Courts of Justice Act and Section 243 of the *Bankruptcy and Insolvency Act*

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

- and -

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

Defendants

SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY AS COURT APPOINTED RECEIVER
AUGUST 16, 2021

TABLE OF CONTENTS

INTRODUCTION 1
Introduction 1
Purpose of this Report 1
Disclaimer 1
BACKGROUND 2
UNIT 417 4

APPENDICES

A	Receivership Order
B	First Report dated April 14, 2021 (with Appendices F to K)
C	Priority Ruling
D	Letter dated August 4, 2021
E	Email from BLG dated August 9, 2021
F	Response from G. Rasmussen dated August 15, 2021

INTRODUCTION

Introduction

1. By Order of the Honourable Justice Koehnen of the Superior Court of Justice (the "**Court**") dated November 25, 2020 (the "**Receivership Order**"), BDO was appointed as receiver and manager (in such capacity, 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**")[1] and 417 ("**Unit 417**")[2] at 21 Brookhouse Drive, Newcastle, Ontario. A copy of the Receivership Order is attached hereto as **Appendix "A"**.

2. The Receiver delivered its First Report dated April 14, 2021 (the "**First Report**") in connection with its motion returnable April 21, 2021. A copy of the First Report is attached hereto as **Appendix "B"**[3]. At that motion, the Receiver obtained an approval and vesting order with respect to Unit 101 and certain relief ancillary thereto.

Purpose of this Report

3. The purpose of this Second Receiver dated August 16, 2021 (the "**Second Report**") is to provide information to the Court in connection with the Receiver's motion for advice and directions in relation to Unit 417.

Disclaimer

4. In preparing this Second Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors' books

---

[1] The definition of Unit 101 includes the condominium unit, 1 parking space and 1 locker.
[2] The definition of Unit 417 includes the condominium unit, 1 parking space and 1 locker.
[3] With Appendices F to K only attached, as these are the appendices relating to Unit 417.

and records, discussions with management of the Debtors ("**Management**"), and information from third-party sources (collectively, the "**Information**"). Except as described in this Second Report:

a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

b) the Receiver has prepared this Second Report in its capacity as a Court-appointed officer in connection with its motion for advice and directions with respect to Unit 417. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

5. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

BACKGROUND

6. Brightstar is a corporation incorporated pursuant to laws of the Province of Ontario. Brightstar developed a 78-unit condominium building known as "Brookhouse Gate" located at the address municipally known as 21 Brookhouse Drive, Newcastle, ON, L1B 1N7 (the "**Project**"). Prior to the Receiver's appointment, Brightstar had completed

sales for 76 of the 78 condominium units in the Project, i.e., all units other than Unit 101 and Unit 417.

7. Set out below is a summary of the charges[4] that are registered against Unit 417:

Chargee	**Principal Amount**	**Instrument**
Centurion	$4,565,000.00	DR1474136
The Guarantee Company of North America	$4,100,000.00	DR1493303
Boccinfuso, Jason C. and 1791029 Ontario Inc.	$750,000.00	DR1399636 DR1423350 (transfer of charge)
The Corporation of the Municipality of Clarington	$596,466	DR1623323
1791029 Ontario Inc.	$2,500.000.00	DR1667164
2153491 Ontario Inc.	$250,000.00	DR1225975 DR1234323 (transfer of charge)

8. Pursuant to the terms of a Commitment Letter dated March 3, 2016, and subsequent amendments thereto, Centurion loaned Brightstar the principal sum of $5,965,000 (the "**Centurion Loan**") to finance the Project. As of the date of the Receiver's appointment, the amount owed by Brightstar under the Centurion Loan was approximately $750,000 plus legal fees and other disbursements.

9. There was a dispute (the "**Priority Dispute**") between Centurion and The Guarantee Company of North America ("**GCNA**"), which underwrote the deposit insurance and excess deposit insurance on the Project, with respect to priority to the

---

[4] These charges are presented based on the apparent priority shown by way of title registrations, including registered postponements. The Receiver has not otherwise conducted a priority analysis.

proceeds of sale from the condominium units in the Project. To deal with the Priority Dispute, Centurion and GCNA entered into an Escrow Agreement wherein proceeds from the sale of certain units are being held in trust (the "**Escrowed Funds**") by Schneider Ruggiero Spencer Milburn LLP ("**SR Law**") pending resolution of the dispute[5].

10. A motion was argued before the Court on March 22, 2021 to deal with the Priority Dispute, and the decision of the Court was released on July 23, 2021 (the "**Priority Ruling**") declaring that the registered charge of GCNA is subordinate to the registered charge of Centurion. A copy of the Priority Ruling is attached hereto as **Appendix "C"**. The Receiver's understanding is that GCNA will not be appealing the Priority Ruling, the effect of which will be to allow for the repayment to Centurion from the Escrowed Funds of its total outstanding indebtedness under the Centurion Loan.

UNIT 417

11. In its First Report, the Receiver detailed its review of the circumstances relating to Unit 417. To summarize:

a) Brightstar entered into an agreement of purchase and sale for Unit 417[6] with Gerry Rasmussen ("**Rasmussen**") dated October 30, 2014 (the "**Unit 417 APS**").

b) Rasmussen took possession of Unit 417 on October 16, 2018 during the "interim occupancy period" and has apparently upgraded and renovated the unit. Rasmussen currently lives in Unit 417 and maintains that he owns the unit given

[5] The Receivership Order expressly excludes the Escrowed Funds from the property over which the Receiver is appointed.
[6] Original unit numbers on the 4th floor increased by one digit, so the original agreement of purchase and sale for Unit 417 shows unit 416.

that he has fulfilled his financial obligations under the Unit 417 APS, but never received title to the property.

c) Rasmussen has asked that the Receiver provide him with title to Unit 417 as soon as possible as he has health issues and is looking to sell the property to move closer to his treatment hospital.

d) The Receiver contacted Rasmussen and James Buckler (Brightstar) to acquire information in support of Rasmussen's claim that he has fulfilled all of the financial obligations under the Unit 417 APS.

e) The purchase price under the Unit 417 APS is $337,900. Pursuant to the Unit 417 APS, Rasmussen was required to provide deposits to Brightstar totaling $67,580, with the balance of $270,320, plus closing cost adjustments, due on the sale closing.

f) Rasmussen has provided the Receiver with evidence of the payment of the deposits totaling $67,580 by providing "Evidence of Compliance" certificates (pursuant to subsection 81(6) of the *Condominium Act*, 1998) signed by SR Law, in its capacity as Escrow Agent for Brightstar on the Project.

g) Brightstar provided the Receiver with a Loan and Amendment Agreement dated May 29, 2018 between Rasmussen as Lender and Brightstar as Borrower (the "**Rasmussen Loan Agreement**"), pursuant to which Rasmussen was to lend to

Brightstar the principal sum of $270,320 "to assist in completion of the Project".[7]

The Rasmussen Loan Agreement also includes the following terms:

i. *"The Principal Sum represents the balance due and payable upon occupancy, registration of the condominium and closing of the Dwelling Unit (the 'Closing') pursuant to the APS"*;

ii. *"The Principal Sum is to be utilized for project costs"*; and

iii. *"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."*

12. The Receiver has confirmed Rasmussen's advance of $270,320 pursuant to the Rasmussen Loan Agreement and the subsequent deposit of the advance into Brightstar's bank account.

13. Based on the information reviewed by the Receiver as described above, the Receiver is of the view that Rasmussen appears to be an arm's length purchaser for value who has satisfied his obligations under the Unit 417 APS and the Rasmussen Loan Agreement.

14. By letter dated August 4, 2021, a copy of which is attached hereto as **Appendix "D"**, the Receiver notified counsel for the parties with registered mortgages on title to Unit 417 as follows (*inter alia*):

---

[7] The Receiver does not have copies of the schedules to the Rasmussen Loan Agreement or of any amendment to the Unit 417 APS. The Receiver has requested copies of these documents from Brightstar and from Mr. Rasmussen.

a) Mr. Rasmussen has maintained his position that he is entitled to obtain title to Unit 417; and

b) subject to hearing from any of them that they are taking a contrary position, the Receiver intended to seek an order of the Court approving the transfer of Unit 417 to Mr. Rasmussen and vesting title free of all claims and encumbrances, provided that Mr. Rasmussen pays certain closing and occupancy-related amounts to the Receiver. The Receiver is in the process of determining what those amounts should be and will be engaging with Mr. Rasmussen to confirm that he is prepared to pay them on closing.

15. Counsel for GCNA has notified the Receiver that GCNA disputes that the $270,320 loaned to Brightstar by Mr. Rasmussen should be treated as a deposit under the Unit 417 APS. Attached hereto as "**Appendix E**" is a copy of an email from GCNA's counsel sent August 9, 2021 setting out its position. Attached hereto as "**Appendix F**" is a copy of a reply from Mr. Rasmussen sent August 15, 2021 to the aforesaid August 9, 2021 email.

16. As of the date of this Second Report, the Receiver has not heard back from any of the other recipients of the August 4, 2021 letter.

17. The Receiver has encouraged Mr. Rasmussen to retain a lawyer to deal with this matter, but to date he has not done so. Nevertheless, given Mr. Rasmussen's circumstances, the Receiver is of the view that it is appropriate to address the matter in court and to give Mr. Rasmussen and all potential stakeholders an opportunity to assert any legal positions they choose to advance.

18. To that end, the Receiver secured a 30-minute appointment with the Court on August 23, 2021. The Receiver will coordinate with the relevant parties to determine whether some or all of their issues can be resolved prior to that date and/or to discuss a mutually acceptable expedited timetable for any outstanding issues to be determined by the Court.

All of which is respectfully submitted this 16th day of August, 2021.

BDO CANADA LIMITED.
Solely in its capacity as Court-appointed Receiver of Brightstar Newcastle Corporation, and not in a personal or corporate capacity
Per:

Name: Gary Cerrato, CIRP, LIT
Title: Senior Vice-President

APPENDIX A

Court File No.: CV-20-00650557-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF Section 101 of the
Courts of Justice Act and Section 243 of the *Bankruptcy and Insolvency Act*

THE HONOURABLE	)	WEDNESDAY, THE 25th
	)	
JUSTICE KOEHNEN	)	DAY OF NOVEMBER, 2020

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

-and-

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

Defendants

ORDER
(Appointing Receiver)

THIS MOTION made by the Plaintiff, Centurion Mortgage Capital Corporation (the "**Plaintiff**" or "**Centurion**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing BDO Canada Limited as receiver and manager (in such capacities, the "**Receiver**") over the lands and premises owned by Brightstar Newcastle Corporation (the "**Debtor**") that are municipally known as Units 101 ("**Unit 101**") and 417 ("**Unit 417**") at 21 Brookhouse Drive, Newcastle, Ontario that are legally

described in Schedule "A" (the "**Properties**"), among other things, was heard this day by way of video-conference as a result of the Covid-19 Pandemic.

ON READING the Notice of Motion of the Plaintiff, the affidavit of Ryan Buzzell sworn November 13, 2020 and the Exhibits thereto, and on hearing the submissions of counsel for the Plaintiff, and such other parties as were present, no one else appearing although duly served as appears from the Notice of Motion of the Plaintiff, and on reading the consent of BDO Canada Limited and of the Defendants for BDO Canada Limited to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO Canada Limited ("**BDO**") is hereby appointed Receiver without security, of the Properties, including any assets acquired for, or used in relation to the Properties, or any proceeds resulting therefrom (collectively with the Properties, the "**Property**") save and except BDO shall not be appointed as Receiver in respect of the funds held, in trust, (the "**Escrowed Funds**") by the law firm of Schneider Ruggiero Spencer Milburn LLP (the "**Escrow Agent**") pursuant to the agreements between the Debtor, Centurion, and The Guarantee Company of North America ("**GCNA**"), including without limitation, those trust funds held pursuant to the Omnibus Agreement dated November 1, 2019 (the "**Escrow Agreement**").

RECEIVER'S POWERS

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

a. to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

b. to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

c. to terminate any lease and/or agreement of purchase and sale in respect of the Properties, as applicable, with the approval of this Court;

d. to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

e. to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Property or any part or parts thereof;

f. to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in respect of the Property and to exercise all remedies of the Debtor in respect of the Properties in collecting such monies, including, without limitation, to enforce any security held by the Debtor in respect of the Property, save and except the Receiver shall have no right to receive or collect the Escrowed Funds;

g. to settle, extend or compromise any indebtedness owing to the Debtor in respect of the Property;

h. to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

i. to undertake environmental assessments of the Property;

j. to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor in respect of the Property, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

k. to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

l. to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding $50,000.00, provided that the aggregate consideration for all such transactions does not exceed $250,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;.

m. to apply for any vesting order or other orders necessary to convey the Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

n. to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

o. to register a copy of this Order and any other Orders in respect of the Property against title to any of the Properties;

p. to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor in respect of the Property;

q. to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

r. to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. Notwithstanding the foregoing, none of the parties to the Escrow Agreement shall be required to grant to the Receiver access to the Escrowed Funds, nor shall GCNA or Centurion be required to advise the Receiver or grant

access to the Receiver with regard to any information or documentation that is the subject matter of a dispute between Centurion and GCNA as to the priority to the Escrowed Funds.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. Notwithstanding the foregoing, GCNA or Centurion shall not be required to advise the Receiver or grant to the Receiver access to, or use of any information, documentation, or Records that is the subject matter of a dispute between Centurion and GCNA as to the priority to the Escrowed Funds.

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

Centurion shall not be required to grant access to the Receiver for the purpose of allowing the Receiver to copy any information, documentation, or Records that is the subject matter of a dispute between Centurion and GCNA as to the priority to the Escrowed Funds.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, save and except that the Receiver's Charge shall not attach to the Escrowed Funds.

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

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

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, save and except that the Receiver's Borrowings Charge shall not attach to the Escrowed Funds.

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

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

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

24. **THIS COURT ORDERS** that notwithstanding paragraphs 20-23 inclusive, and as alternate thereto, the Receiver is hereby authorized to borrow money to fund the exercise of its powers and duties hereunder by way of advances from the Plaintiff, which advances shall be secured by the Plaintiff's security on the Property (including without limitation the Mortgage as defined and attached as an exhibit to the Affidavit of Ryan Buzzell), with the same priority that may attach to such security.

SERVICE AND NOTICE

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

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

day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RETENTION OF LAWYERS

27. **THIS COURT ORDERS** that the Receiver may retain lawyers, including the Plaintiff's lawyers, to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. Such lawyers may be the lawyers for the Plaintiff herein, in respect of any aspect, where the Receiver is satisfied that there is no actual or potential conflict of interest.

GENERAL

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

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

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

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

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

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

SCHEDULE "A"

THE PROPERTY

UNIT 101

PIN 27312-0001

UNIT 1, LEVEL 1, DURHAM STANDARD CONDOMINIUM PLAN NO. 312 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN DR1802470; MUNICIPALITY OF CLARINGTON

PIN 23712-0128

UNIT 50, LEVEL A, DURHAM STANDARD CONDOMINIUM PLAN NO. 312 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN DR1802470; MUNICIPALITY OF CLARINGTON

PIN 27312-0173

UNIT 95, LEVEL A, DURHAM STANDARD CONDOMINIUM PLAN NO. 312 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN DR1802470; MUNICIPALITY OF CLARINGTON

UNIT 417

PIN 27312-0074

UNIT 16, LEVEL 4, DURHAM STANDARD CONDOMINIUM PLAN NO. 312 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN DR1802470; MUNICIPALITY OF CLARINGTON

PIN 23712-0079

UNIT 1, LEVEL A, DURHAM STANDARD CONDOMINIUM PLAN NO. 312 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN DR1802470; MUNICIPALITY OF CLARINGTON

PIN 27312-0253

UNIT 175, LEVEL A, DURHAM STANDARD CONDOMINIUM PLAN NO. 312 AND ITS APPURTENANT INTEREST; SUBJECT TO EASEMENTS AS SET OUT IN SCHEDULE A AS IN DR1802470; MUNICIPALITY OF CLARINGTON

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. ______________

AMOUNT $______________________

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver (the "**Receiver**") over the lands and premises owned by Brightstar Newcastle Corporation (the "**Debtor**") that are municipally known as Units 101 (“**Unit 101**”) and 417 (“**Unit 417**”) at 21 Brookhouse Drive, Newcastle, Ontario (collectively the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ● day of ●, 2020 (the "**Order**") made in a motion having Court file number CV-20-00650557-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $___________, being part of the total principal sum of $___________ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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

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

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

DATED the _____ day of ______________, 20__.

BDO Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: ________________________________

Name: Josie Parisi

Title: Senior Vice-President

robapp\6261200.1

CENTURION MORTGAGE CAPITAL CORPORATION	- and-	**BRIGHTSTAR NEWCASTLE CORPORATION et al.**
Plaintiff		*Defendants*

Court File No.: CV-20-00650557-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the *Courts of Justice Act* and Section 243 of the *Bankruptcy and Insolvency Act*

PROCEEDING COMMENCED AT TORONTO

ORDER
(Appointing Receiver)

ROBINS APPLEBY LLP
Barristers+ Solicitors
2600 - 120 Adelaide Street West
Toronto ON M5H 1T1

Dominique Michaud LSO No. 56871V
Email: dmichaud@robapp.com
Tel: 416-360-3795

Joseph Jamil LSO No. 74614L
Email: jjamil@robapp.com
Tel: 416-360-3783
Fax: 416-868-0306

Lawyers for the Plaintiff

APPENDIX B

Court File No.: CV-20-00650557-00CL
Estate Number: 31-459107

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the
Courts of Justice Act and Section 243 of the Bankruptcy and Insolvency Act

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

\- and -

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

Defendants

FIRST REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY AS COURT APPOINTED RECEIVER
APRIL 14, 2021

TABLE OF CONTENTS

INTRODUCTION....1
Introduction....1
Purpose of this Report....1
Disclaimer....2
BACKGROUND....3
Brightstar....3
Registered Mortgages and Liens....3
Unit 101....5
Unit 417....6
ACTIVITIES OF THE RECEIVER....7
Termination of Unit 101 APS....7
Marketing and Sale of Unit 101....7
FEES AND DISBURSEMENTS....15
RECOMMENDATIONS....16

APPENDICES

A	Receivership Order
B	Mutual Release and Termination Agreement
C	Summary of Listing Proposals and Copies of Listing Proposals
D	Agreement of Purchase and Sale - Unit 101
E	Remax Marketing & Activity Report
F	Agreement of Purchase and Sale - Unit 417 (shown as Unit 416)
G	Loan and Amendment Agreement
H	Trust Ledger Statement from Valentine Lovekin Barrister & Solicitor
I	Letter from Schneider Ruggiero LLP dated October 16, 2018
J	Final Closing Statement of Adjustments - Unit 417
K	Correspondence from Gerry Rasmussen
L	Affidavit of Gary Cerrato Sworn April 14, 2021
M	Affidavit of Christopher Staples Sworn April 13, 2021

INTRODUCTION

Introduction

1. By Order of the Honourable Justice Koehnen of the Superior Court of Justice (the "**Court**") dated November 25, 2021 (the "**Receivership Order**") BDO Canada Limited ("**BDO**") was appointed as receiver and manager (in such capacity, 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**")[1] and 417 ("**Unit 417**")[2] at 21 Brookhouse Drive, Newcastle, Ontario. A copy of the Receivership Order is attached hereto as **Appendix "A"**. The within proceeding is referred to herein as the "**Receivership Proceeding**".

Purpose of this Report

2. The purposes of the first report of the Receiver dated April 14, 2021 (the "**First Report**") is to provide information to the Court with respect to:

   a) background information in respect of Brightstar;

   b) the Receiver's activities since its appointment, for which the Receiver seeks approval;

   c) the sale process conducted by the Receiver with respect to Unit 101;

   d) the agreement of purchase sale dated February 8, 2021 (the "**101 APS**") entered into by Roger and Jill Fayle (the "**Purchasers**") and the Receiver with respect to Unit 101, subject to the approval of this Court;

   e) the Receiver's motion for an Order of this Court (the "**Approval and Vesting Order**"):

---

[1] The definition of Unit 101 includes the condominium unit, 1 parking space and 1 locker.
[2] The definition of Unit 417 includes the condominium unit, 1 parking space and 1 locker.

i. approving and authorizing the 101 APS, and approving the transaction set out therein (the "**Transaction**");

ii. vesting the Debtor's right, title and interest, if any, in and to Unit 101 free and clear of all encumbrances, subject to the terms of the 101 APS;

iii. approving the activities of the Receiver as described in this First Report; and

iv. approving the fees and disbursements of the Receiver and its legal counsel, Chaitons LLP ("**Chaitons**"), as set out in this First Report.

Disclaimer

3. In preparing this First Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors' books and records, discussions with management of the Debtors ("**Management**"), and information from third-party sources (collectively, the "**Information**"). Except as described in this First Report:

a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

b) the Receiver has prepared this First Report in its capacity as a Court-appointed officer to support the Court's approval of the relief being sought by the Receiver.

Parties using the First Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

4. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

BACKGROUND

Brightstar

5. Brightstar is a corporation incorporated pursuant to laws of the Province of Ontario. Brightstar developed a 78-unit condominium building known as "Brookhouse Gate" located at the address municipally known as 21 Brookhouse Drive, Newcastle, ON, L1B 1N7 (the "**Project**"). Prior to the Receiver's appointment, Brightstar had completed sales for 76 of the 78 condominium units in the Project.

Registered Mortgages and Liens

6. Pursuant to the terms of a Commitment Letter dated March 3, 2016, and subsequent amendments thereto, Centurion Mortgage Capital Corporation ("**Centurion**") loaned Brightstar the principal sum of $5,965,000 (the "**Centurion Loan**"). The purpose of the Centurion Loan was to finance the Project. Brightstar failed to repay the Centurion Loan on its maturity date and committed other defaults under the Centurion Loan. The current balance owed by Brightstar to Centurion in respect of the Centurion Loan is in excess of $750,000.

7. The Defendants, Brightstar Seniors Living Corporation, the Estate of Alan Chapple, John Blackburn, James Buckler ("**Buckler**") and Lawson Gay ("**Gay**") (collectively, the "**Guarantors**") guaranteed repayment of the debts of Brightstar under the Centurion Loan.

8. Set out below is a summary of the charges that are registered against Unit 101 and Unit 417:

Chargor	Amount	Instrument
Centurion	$4,565,000.00	DR1474136
The Guarantee Company of North America	$4,100,000.00	DR1493303
Boccinfuso, Jason C. and 1791029 Ontario Inc.	$750,000.00	DR1399636 DR1423350 (transfer of charge)
The Corporation of the Municipality of Clarington	$596,466	DR1623323
1791029 Ontario Inc.	$2,500.000.00	DR1667164
2153491 Ontario Inc.	$250,000.00	DR1225975 DR1234323 (transfer of charge)

9. There is a dispute (the "**Priority Dispute**") between Centurion and The Guarantee Company of North America ("**GCNA**"), which underwrote the deposit insurance and excess deposit insurance on the Project, with respect to priority to the proceeds of sale from the condominium units in the Project. To deal with the Priority Dispute, Centurion and GCNA entered into an Escrow Agreement wherein proceeds from the sale of certain units are being held in trust (the "**Escrowed Funds**") by Schneider Ruggiero Spencer Milburn LLP ("**SR Law**") pending resolution of the dispute[3]. The Receiver understands that a motion was argued before the Court on March 22, 2021 to deal with the Priority Dispute, and that the decision of the Court is under reserve.

[3] The Receivership Order expressly excludes the Escrowed Funds from the property over which the Receiver is appointed.

10. Maple Terrazzo Marble & Tile Partnership operating as Stoneworx ("**Maple**") commenced a lien action and registered a lien against Unit 101 (the "**Lien Action**") in the amount of $50,735.41. On February 6, 2020, Maple registered a Claim for Lien as instrument DR1870231 against Unit 101 (the "**Maple Lien**"). The Maple Lien has not been discharged from title and the Lien Action is currently subject to the stay of proceedings under the Receivership Order. Maple's position is that the mortgages in favour of Centurion and GCNA are "building mortgages" within the meaning under the Construction Act (Ontario), and accordingly that its lien ranks in priority to both mortgages.

Unit 101

11. Brightstar entered into an agreement of purchase and sale for Unit 101 with Wilkinson Construction Services Inc. ("**Wilkinson**") dated December 20, 2018 (the "**Wilkinson APS**"). The Receiver understands that Wilkinson provided construction services on the Project and Brightstar agreed to grant a credit towards the purchase price of Unit 101 for amounts owed to Wilkinson. Centurion was apparently not aware and did not approve of the credit and refused to provide a partial discharge of the Centurion Mortgage to allow the sale of Unit 101 to close under the Wilkinson APS.

12. Prior to the Receivership Proceeding, Wilkinson took possession of Unit 101 during the "interim occupancy period" and staged the unit with furniture and engaged a real estate broker to sell the condominium unit. Wilkinson did not pay to Brightstar any interest on the unpaid balance of the purchase price under the Wilkinson APS, condominium fees (common element fees) or property taxes (collectively the "**Occupancy Fees**").

13. Prior to the Receivership Proceeding, Wilkinson commenced an action ("**Wilkinson Action**") seeking, among other things, specific performance of the Wilkinson APS. Brightstar had commenced a prior separate action against Wilkinson seeking damages for negligence and breach of contract with respect to construction management services at the Project.

Unit 417

14. Brightstar entered into an agreement of purchase and sale for Unit 417[4] with Gerry Rasmussen ("**Rasmussen**") dated October 30, 2014 (the "**Unit 417 APS**"). Similar to Unit 101, Centurion refused to provide a partial discharge of the Centurion Mortgage based on Brightstar appearing to provide unauthorized credits and/or discounts to the purchaser resulting in the sale being below market value with the net proceeds being insufficient to repay the Centurion Loan.

15. Rasmussen took possession of Unit 417 on October 16, 2018 during the "interim occupancy period" and has apparently upgraded and renovated the unit. Rasmussen currently lives in Unit 417 and maintains that he owns the unit given that he has fulfilled his financial obligations under the Unit 417 APS, but never received title to the property. Rasmussen has asked that the Receiver provide him with title to Unit 417 as soon as possible as he has health issues and is looking to sell the property to move closer to his treatment hospital.

---

[4] Original unit numbers on the 4th floor increased by one digit, so the original agreement of purchase and sale for Unit 417 shows unit 416.

ACTIVITIES OF THE RECEIVER

Termination of Unit 101 APS

16. The Receiver contacted Wilkinson to determine if Wilkinson would consensually agree to terminate the Wilkinson APS so that the Receiver could realize on Unit 101 pursuant to its mandate under the Receivership Order.

17. Wilkinson agreed to terminate the Wilkinson APS on the following conditions: i) Wilkinson could remove its staging furniture from Unit 101; ii) the parties would provide mutual releases to each other in connection with the Wilkinson APS; and iii) Wilkinson was not prohibited from pursuing its monetary claims under the Wilkinson Action, subject to the stay of proceedings under the Receivership Order. Attached as **Appendix "B"** is a copy of the executed Mutual Release and Termination Agreement.

Marketing and Sale of Unit 101

18. Among the powers set out in the Receivership Order, the Receiver is empowered and authorized in Paragraph 3(k) to market any or all of the Debtors' property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

19. The Receiver obtained three listing proposals to market and list Unit 101 for sale from the following real estate brokers with local offices in Newcastle, ON:

i. Remax Rouge River Realty Ltd. ("**Remax**");
ii. Royal Service Real Estate Inc; and
iii. Vatandoust Sirs Team from Keller Williams Energy Real Estate Brokerage.

Each of the above listing proposals contained a suggested list price based on a comparable analysis, sale commission structure, proposed marketing efforts and relevant experience. A table summarizing the salient details of the listing proposals together with copies of the proposals is attached hereto as **Appendix** "C".

20. The Receiver selected Remax's listing proposal and engaged Remax to list Unit 101 for sale at a price of $549,900. The Remax agent, Kimberly Alldread, had extensive experience and knowledge of the units at the Project and had sold 23 of the 78 units. Additionally, the Remax proposal contained the most favourable commission structure if the agent represented both the buyer and the seller. Representatives from Centurion, GCNA and Brightstar were contacted by the Receiver and supported the Receiver's decision to engage Remax as the listing agent at a list price of $549,900. The Receiver executed the listing agreement with Remax on January 27, 2021.

21. Remax completed its listing landing page, full online launch (feed posts, stories, album and virtual 3D tour page) and listed Unit 101 on MLS on January 28, 2021.

22. Remax presented the Receiver with four offers for consideration for Unit 101 on February 9, 2021 (the "**Offers**"). Each of the Offers was at or above the list price of $549,900. The highest offer received was $2,000 above the Purchasers' offer. The Purchasers' offer came through an agent representing her parents and the agent agreed to waive her sales commission, less a $500 fee.

23. The Receiver accepted the Purchasers' offer given that it was the cleanest offer received and provided the highest net recovery after taking into consideration the reduced sales commission.

24. A copy of the 101 APS is attached hereto as **Appendix "D"**. The 101 APS includes the following terms and conditions: i) the transaction is subject to court approval and issuance of a court order vesting title to Unit 101 in the Purchasers free and clear of claims and encumbrances; ii) Unit 101 is being sold by the Receiver on an "as is, where is" and "without recourse" basis; iii) a $10,000 deposit was payable by the Purchasers upon acceptance of the offer; iv) a closing date of May 12, 2021; and v) the offer and was conditional on a Status Certificate Review (the "**Status Certificate Condition**") on or before February 12, 2021.

25. Following the Receiver's acceptance of the Purchasers' offer they paid the $10,000 deposit to Remax and waived the Status Certificate Condition on February 12, 2021.

26. Attached hereto as **Appendix "E"** is Remax's weekly marketing and activity report dated February 8, 2021. The marketing and activity report shows that during the 11 days Unit 101 was listed for sale by Remax, there were 267 visitors and 329 virtual tours on the Remax website including 20 site tours ultimately resulting in the Offers presented to the Receiver by Remax.

27. As stated earlier, Wilkinson had previously engaged a real estate broker to sell Unit 101. Through that broker Unit 101 had been listed on MLS for 274 days prior to the Receivership Proceeding. The following is a summary of the dates of the previous listings for Unit 101 provided by one of the real estate agents contacted by the Receiver for a listing proposal:

Dates	Days on Market	List price
Oct 18, 2019 to Nov 25, 2019	38	$ 599,900
Nov 25, 2019 to April 1, 2020	127	$ 539,900
April 14, 2020 to Aug 2, 2020	109	$ 529,000
	274	

28. Given that Unit 101 had been listed for sale for 274 days prior to the Receivership Proceeding, including the 11 days during the Receivership Proceeding, the Receiver is of the view that Unit 101 was sufficiently exposed to the market for a reasonable period of time.

29. In the Receiver's opinion, the sale price under the 101 APS is commercially reasonable when compared to the prices received for other similar Brookhouse Gate units sold as disclosed in Remax's listing proposal and when considering the pre-receivership MLS listings for Unit 101.

30. Centurion and GCNA support completion of the transaction under the 101 APS.

31. Accordingly, for the reasons set out above, the Receiver recommends that the Court approve the 101 APS and authorize the Receiver to the close the transaction as contemplated under the 101 APS.

Unit 417

32. The Receiver contacted Rasmussen and Buckler from Brightstar to acquire financial information in support of Rasmussen's claim that he has fulfilled all of the financial obligations under the Unit 417 APS.

33. A copy of the Unit 417 APS is attached hereto as **Appendix "F"**. The purchase price for Unit 417 as stated in the Unit 417 APS is $337,900. Pursuant to the Unit 417

APS, Rasmussen was required to provide deposits to Brightstar totaling $67,580, including the initial deposit of $5,000 submitted with Rasmussen's offer, with the balance of $270,320, plus closing cost adjustments, due on the sale closing.

34. Rasmussen has provided the Receiver with evidence of the payment of the deposits totaling $67,580 by providing "Evidence of Compliance" certificates (pursuant to subsection 81(6) of the Condominium Act, 1998) signed by SR Law, in its capacity as Escrow Agent for Brightstar on the Project.

35. Brightstar provided the Receiver with a Loan and Amendment Agreement dated May 29, 2018 between Rasmussen as Lender and Brightstar as Borrower (the "**Rasmussen Loan Agreement**"). A copy of the Rasmussen Loan Agreement is attached hereto as **Appendix "G"**.

36. Pursuant to the Rasmussen Loan Agreement, Rasmussen loaned Brightstar the principal sum of $270,320 (the "**Principal Sum**"). The purpose of the Rasmussen Loan was to fund construction on the Project. The Rasmussen Loan Agreement includes the following terms:

a) "The Principal Sum represents the balance due and payable upon occupancy, registration of the condominium and closing of the Dwelling Unit (the 'Closing') pursuant to the APS";

b) "The Principal Sum is to be utilized for project costs";

c) "The Principal Sum shall be interest free provided that Closing occurs not more than 6 months from the date of advance hereof. In the event that Closing does not occur within 6 months from the date of advance hereof, then interest shall accrue at the Royal Bank of Canada prime rate plus FIVE percent (5%) from the 7th month until Closing or repayment of the Principal Sum"; and

d) "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."

37. The Receiver has confirmed Rasmussen's advance of $270,320 pursuant to the Rasmussen Loan Agreement and the subsequent deposit of the advance into Brightstar's bank account.

38. Attached as **Appendix "H"** is a Trust Ledger Statement from Valentine Lovekin Barrister & Solicitor dated November 18, 2019 reporting $23,230.91 paid by Rasmussen to his solicitor to close the sale transaction for Unit 417. After payment of the land transfer tax of $3,864.59, condominium corporation fees of $545.42 and legal fees of $937.28, the balance of $17,883.62 was paid to Brightstar to close the sale transaction for Unit 417.

39. Attached as **Appendix "I"** is correspondence from SR Law dated October 16, 2018 which confirms the closing of Unit 417 on an Interim Occupancy basis. The letter confirms payment by way of certified cheque payable to Brightstar of $2,506.51 in respect of Occupancy Fees paid to Brightstar for which Rasmussen would receive a credit on the Statement of Adjustments.

40. Attached as **Appendix "J"** is a Statement of Adjustments for Unit 417. The Statement of Adjustments reports a final closing date of November 20, 2019 (the "**Closing Date**"), nearly a year and a half (537 days) past the date of the advance of the Principal Sum under the Rasmussen Loan Agreement.

41. Rasmussen has accounted for payment of all of the costs listed in the Statement of Adjustments, except for a credit of $26,139.16 with regard to "Extras/Upgrades". The Receiver notes that the Rasmussen Loan Agreement contemplates that "…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". Additionally, the Receiver notes that the interest payable to Rasmussen pursuant to the Rasmussen Loan Agreement up to the Closing Date is calculated to be $23,464.52 (RBC prime rate was 3.95% from December 1, 2018 to November 20, 2019 giving rise to an annual loan interest rate of 8.95% on the Principal Sum of $270,320 or a per diem rate of interest of $66.28 outstanding for 354 days).

42. Attached as **Appendix "K"** is correspondence received by the Receiver from Rasmussen during the Receivership Proceeding with the latest correspondence dated April 4, 2021 wherein Rasmussen again reiterates to the Receiver that he requires title to Unit 417 as soon as possible as he has health issues and is looking to sell the property to move closer to his treatment hospital.

43. Based on the information reviewed by the Receiver as described above, the Receiver is of the view that Rasmussen appears to be an arm's length purchaser for value who has satisfied his obligations under the Unit 417 APS and the Rasmussen Loan Agreement.

44. The Receiver is in the process of discussing the Unit 417 APS with existing stakeholders in order to determine how to proceed in respect of the position taken by Rasmussen.

Summary of Activities

45. The following is a summary of the activities of the Receiver since the date of its appointment:

(a) corresponding with the Debtor and its counsel to obtain available books and records for the Receiver to carry out its mandate under the Receivership Order;

(b) preparing and issuing the prescribed Notices and Statements of the Receiver pursuant to sections 245 (1) and 246 (1) of the Bankruptcy and Insolvency Act, which were forwarded to the Office of the Superintendent of Bankruptcy and the known creditors;

(c) setting up the Receiver's case website at the following URL: https://www.bdo.ca/en-ca/extranets/brightstar/.

(d) taking possession of Unit 101 and changing the locks;

(e) negotiating the termination of the Unit 101 APS with Wilkinson;

(f) arranging to have the staging furniture removed from Unit 101 and returned to Wilkinson;

(g) corresponding with Rasmussen and Buckler to obtain financial information to support Rasmussen's assertion that he has fulfilled all the financial obligations under the Unit 417 APS;

(h) obtaining listing proposals from three real estate brokers to list Unit 101 for sale;

(i) coordinating and discussions with the listing agent;

(j) reviewing offers for Unit 101;

(k) negotiating the sale of Unit 101 with the Purchaser; and

(l) preparing the First Report.

FEES AND DISBURSEMENTS

46. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements which are more particularly described in the affidavit of Gary Cerrato sworn April 14, 2021 (the "**BDO Affidavit**") and detailed invoices attached hereto as **Appendix "L"**.

47. The detailed time descriptions contained in the invoices provide a fair and accurate description of the services provided and the amounts charged by BDO as Receiver. Included with each separate invoice is a summary of the time charges of Partners and Staff, whose services are reflected in the invoices, including the total fees and hours billed.

48. Additionally, the Receiver has incurred legal fees of its counsel in respect of this proceeding, as detailed in the affidavit of Christopher Staples sworn April 13, 2021 (the "**Chaitons Affidavit**") and exhibits attached hereto as **Appendix "M"**.

49. The Receiver has reviewed the Chaitons Affidavit and believes that the fees incurred to date by Chaitons are fair and reasonable in the circumstances.

50. The Receiver requests that the Court approve its accounts for the period from November 17, 2020 to April 13, 2021 in the amount of $25,291.76 for fees and disbursements including HST of $3,287.93 for a total of $28,579.69.

51. The Receiver also requests that the Court approve the accounts of its legal counsel for the period November 20, 2020 to April 12, 2021 in the amount of $13,447.00 plus disbursements of $67.04, plus HST of $1,752.68 for a total of $15,266.72.

RECOMMENDATIONS

52. Based on the foregoing, the Receiver respectfully requests that the Court grant the relief described in paragraph 2e) above.

All of which is respectfully submitted this 14th day of April 2021.

BDO CANADA LIMITED.
Solely in its capacity as Court-appointed Receiver of Brightstar Newcastle Corporation, and not in a personal or corporate capacity
Per:

Name: Gary Cerrato, CIRP
Title: Senior Vice-President

TAB F

SUITE #: 416	SUITE TYPE: 2 Bedroom + Den Crandell
Number of Parking Unit(s): one	Number of Locker Unit(s): one

BROOKHOUSE GATE

AGREEMENT OF PURCHASE AND SALE

The undersigned, Gerry Rasmussen (collectively, the "**Purchaser**"), hereby agrees with **BRIGHTSTAR NEWCASTLE CORPORATION** (the "**Vendor**") to purchase Unit 16, Level 4, being Suite 416, (the "**Dwelling Unit**" and with the Dwelling Unit and any other units sold to the Purchaser pursuant to this agreement and their appurtenant common interests collectively referred to as the "**Unit**" or "**Units**"), being proposed unit(s) in the freehold standard residential condominium, to be developed on those lands and premises described as Block 138, Plan 40M-2038, designated as Part 4 on Reference Plan 40R-26867, being all of PIN: 26662-0677 (LT) and Part Lot 26, Concession 1 Clarke, designated as Part 3 on Referenced Plan 40R-26867, being all of PIN: 26662-1015 (LT), all in the Municipality of Clarington, in the Regional Municipality of Durham, in the Land Registry Office for the Land Titles Division for Durham (No. 40), municipally known as 21 Brookhouse Drive, Newcastle, Ontario, L1B 1N8 (the "**Property**"), on the following terms and conditions:

1. a. The purchase price of the Unit(s) (the "**Purchase Price**") is: Three hundred + thirty Seven thousand, Nine hundred - DOLLARS ($337,900.00) (Canadian), which amount shall be inclusive of HST (as hereinafter defined) less the Rebates (as hereinafter defined), as hereinafter set out and with the Purchase Price being adjusted in accordance with this agreement.

   b. The following amounts comprising part of the Purchase Price shall be payable to Schneider Ruggiero LLP, ~~In Trust,~~ as deposits 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 (as such terms are hereinafter defined):

   (1) the sum of $ 5,000.00 by cheque or bank draft submitted with this Agreement;

   (2) the sum of $ 62,580.00, being ~~5%~~ 20% of the Purchase Price less ~~$5,000~~ $5000.00, submitted with this Agreement, by a cheque post-dated one (1) month following the execution of this Agreement by the Purchaser;

   (3) the sum of $ -, being 5% of the Purchase Price payable on the earlier of three (3) months following the date of execution of this Agreement by the Purchaser, or ten (10) days after the Vendor delivers notice that it intends to commence construction activities on the Property;

   (4) the sum of $ -, being 5% of the Purchase Price payable on the earlier of six (6) months following the date of execution of this Agreement by the Purchaser, or ten (10) days after the Vendor delivers notice that it intends to commence construction activities on the Property;

   (5) the sum of $ -, being 5% of the Purchase Price submitted within ten (10) days of the Purchaser being notified that the construction of the roof assembly of the building has commenced;

   c. The balance of the Purchase Price to the Vendor (or as it may further direct) by certified cheque, bank draft or wire transfer (using Large Value Transfer protocols) on the Unit Transfer Date (as hereinafter defined), subject to the adjustments hereinafter set forth. The Purchaser acknowledges and agrees that the location of all Parking Units (if included in the agreement of purchase and sale) shall be assigned by the Vendor as it may, in its sole discretion, deem appropriate.

2. Paragraphs 3 through 81 and Schedules "A" (Standard Finishes), "B" (Unit and Floor Plans), "C" (Terms of Occupancy), "D" (Warning Clauses), as well as all other schedules, addendums and amendments attached to this agreement together with the TARION Warranty Corporation's Statement of Critical Dates and 'Addendum to Agreement of Purchase and Sale', together with the appendices and/or schedules to the Addendum outlining permitted Early Termination Conditions and Adjustments (collectively referred to as the "**Addendum**") are attached to this Agreement and form an integral part of the Purchase Agreement. The Purchaser confirms it has read and agrees to be bound by the Schedules, the Statement of Critical Dates, the Addendum and the schedules/appendices to the Addendum outlining permitted Termination Conditions and permitted adjustments as set out in this Agreement. The Purchaser acknowledges that she/he has read all paragraphs and schedules of this Agreement and the Addendum. The Purchaser is hereby notified that a credit report containing credit and/or personal information may be requested at any time in connection with this transaction. This Agreement represents the entire agreement as between the Vendor and the Purchaser.

DATED at Toronto, this 30 day of October, 2014.

[signature]	[signature]	aug 7/44	441 023 330
Witness	Purchaser	Date of Birth	S.I.N
Witness	Purchaser	Date of Birth	S.I.N

Purchaser's Address: 6 Leonard Street Townhouse #19 Richmond Hill Ontario L4C 0L6

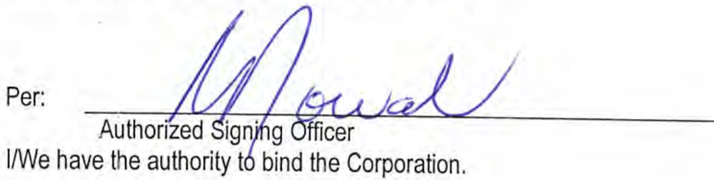
Purchaser's E-Mail Address: gerryrasmussen@gmail.com

Telephone: Res: 905-787 0944 Cell

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

DATED at Toronto, this 30 day of October, 2014.

BRIGHTSTAR NEWCASTLE CORPORATION

Per: 

Authorized Signing Officer

I/We have the authority to bind the Corporation.

Purchaser's Solicitor

____
____
____
____
____

Tel: ________________________________

Fax: ________________________________

Email:________________________________

Vendor's Solicitor:
Schneider Ruggiero LLP,
120 Adelaide Street West,
Suite 1000,
Toronto, Ontario,
M5H 3V1 Attention: David Spencer
Tel.: 416-363-2211
Fax.: 416-363-0645
Email: dspencer@srlawpractice.com

Purchaser and Vendor Contact Information:

Definitions

3. The meaning of capitalized words and phrases used in this Agreement and its Schedules shall firstly have the meaning ascribed to them in the *Condominium Act* 1998, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "**Act**"), or the Addendum. Provided however that the following words, terms and phrases shall have meaning ascribed to them as follows:

   a) "**Act**" shall mean the *Condominium Act, 1998 S.O. 1998* as amended;

   b) "**Agreement**" or "**Purchase Agreement**" means this Agreement of Purchase and Sale including the Addendum and all Schedules attached hereto and made a part hereof and all amendments thereto;

   c) "**Closing Date**", "**Closing**", "**closing date"** or "**closing"** shall mean whichever of the Firm Occupancy Date, Delayed Occupancy Date and/or the Outside Occupancy Date on which the Vendor gives the Purchaser legal occupancy of the Dwelling Unit (as hereinafter defined), in accordance with the terms of this Agreement and the Addendum. Provided that in the event that the Purchaser has already been provided with occupancy of the Unit (as hereinafter defined), then such terms shall mean the Unit Transfer Date;

   d) "**Condominium**" means the condominium corporation containing the Units which will be constructed upon and registered against the Property pursuant to the provisions of the Act;

   e) "**Condominium Documents**" means the Creating Documents (as hereinafter defined), the by-laws, any agreement authorized by by-law and rules of the Condominium, and budget statement together with all other documents and agreements which are entered into by the Vendor on behalf of the Condominium or by the Condominium directly prior to the turnover of the condominium, as may be amended from time to time;

   f) "**Corporation**" shall mean the Standard Condominium Corporation created upon registration by the Vendor of the Creating Documents;

   g) "**Creating Documents**" means the declaration and description plan which are intended to be registered against title to the Real Property and which will serve to create the Condominium, as may be amended from time to time;

   h) "**Declarant**" shall mean the declarant of the Condominium and the Declarant and the Vendor may or may not be the same party. If the Declarant is not the Vendor the Purchaser agrees to accept title to the Unit from the Declarant on the Unit Transfer Date;

   i) "**Default**" or "**default**" or "**event of default**" or "**Event of Default**" shall mean any breach of this Agreement, the Occupancy Licence (as hereinafter defined) and/or any Unit Agreement (as hereinafter defined) by the Purchaser that would entitle the Vendor to the exercise of its remedies hereunder;

   j) **Escrow Agent**" shall mean Schneider Ruggiero LLP or such other solicitors or prescribed party designated by the Vendor to hold deposits in trust;

   k) "**Extras**" or "**extras**" shall mean those finishes, wall coverings, floor coverings, fixtures, appliances and/or upgrades of any of the foregoing not specified in the schedule of standard suite finishes or schedule of upgrades. The costs of the Extras may or may not be included in the Purchase Price but where such Extras are payable in addition to the Purchase Price stipulated on Page 1 hereof, same shall be paid to the Escrow Agent in trust at the time of the ordering of the Extras, notwithstanding that same may not be monies applied in respect of the Purchase Price, as such monies are monies paid on account of an agreement of purchase and sale of a proposed unit in accordance with Section 81(1) of the Act;

   l) "**Governmental Authorities**" shall mean the Municipality (as hereinafter defined) as well as the provincial and federal government and any other governmental agency, tribunal, body or otherwise having jurisdiction or rights with respect to the development of the Condominium, as well as any private or public utility or service provider providing utility, communication, natural gas or other services to the Property and/or Condominium and "Governmental Authority" shall mean any one of them as the context shall indicate;

   m) "**HST**" or "**Harmonized Sales Tax**" shall mean the harmonized and/or blended Ontario Retail Sales Tax (the "**RST**") and federal Goods and Services Tax (the "**GST**"). Purchasers are advised that the rate of HST applicable to this transaction is 13 percent being comprised of five per cent GST and eight percent RST; The Purchaser acknowledges that the Vendor, in its sole discretion, shall have the right to relocate the Parking/Locker Unit to another location in the building prior to the Unit Transfer Date and same shall not be considered a material change;

   n) "**Interim Occupancy**" shall mean the period of time from the Closing Date to the Unit Transfer Date;

   o) "**Locker Unit**" means a storage unit in the Condominium Provided that there is no warranty or guarantee that there is any Locker Unit being sold pursuant to this agreement unless specifically provided for in a schedule. Provided that the Vendor shall have the right to re-locate or re-designate the Locker Unit before the Unit Transfer Date and same shall not be deemed to be a material change; ;

   p) "**Municipality**" shall mean The Municipality of Clarington;

   q) "**Net HST**" shall mean the HST applicable to this transaction net of all Rebates which latter amounts are deemed to be the maximum potential Rebates based on the Purchase Price set out herein (as adjusted and/or with all other applicable amounts required for the calculation of total consideration being added thereto), based on the assumption that the Purchaser qualifies for such Rebates in full;

   r) "**Occupancy Licence**", "**Occupancy Agreement**" "**Licence Agreement**", "**Interim Occupancy Licence**" and/or "**Interim Occupancy Agreement**" shall mean the agreement setting out the terms and conditions by which the Purchaser shall occupy the Unit during Interim Occupancy as substantially set forth in Schedule "C" forming part of this Agreement. Provided that the Vendor reserves the right to amend or vary such terms and conditions and the Purchaser agrees to accept such revisions and amendments. The Purchaser shall execute the Interim Occupancy Licence on or before the Closing Date;

   s) "**Occupancy Fee**" or "**Occupancy Fees**" shall mean the sum or sums of money payable monthly in advance by the Purchaser to the Vendor and calculated in accordance with Schedule "C" hereof;

   t) "**ONHWPA**" shall mean the *Ontario New Homes Warranty Plan Act, R.S.O., 1990* as amended;

DocuSign Envelope ID: 150D1CD0-17EC-4618-81BB-3D3FE649D55A

u) "Parking Unit" means the parking unit(s) included in this Agreement (if any) in a location to be specified by the Vendor in its sole discretion prior to the Closing Date. Provided that there is no warranty or guarantee that there is any Parking Unit being sold pursuant to this agreement unless specifically provided for in a schedule The Purchaser acknowledges that the Vendor, in its sole discretion, shall have the right to relocate the Parking Unit to another location in the building prior to the Unit Transfer Date and same shall not be considered a material change;

v) "Prescribed Rate" or "prescribed rate" shall mean the rate of interest applicable to Purchaser's deposits, as set out in the Act and/or Section 19(3) of Regulation 48/01 of Ontario as amended from time to time;

w) "Purchaser's Designate" shall mean the person appointed in writing by the Purchaser to conduct the PDI (as hereinafter defined) and the Purchaser covenants and agrees to be bound by the decisions and selections of the Purchaser's Designate;

x) "Purchase Price" for the purposes of the calculation of the applicable HST, shall mean the contract price set out on page 1 of this Agreement, as increased by any amount(s) as set out herein reimbursable and/or payable by the Purchaser to the Vendor (hereinafter defined as "Additional Charges") for the purposes of calculating the total value of consideration for the purposes of HST and Land Transfer Tax;

y) "Rebate" or "Rebates" shall mean any provincial and/or federal new housing purchase rebate and/or transitional rebate applicable to this purchase transaction (regardless whether such transitional rebate is initially claimable by the Purchaser or the Vendor), and shall include any refund, credit, rebate of any form or nature of such HST applicable to this purchase transaction but specifically shall not include any new housing residential rental or leasing rebate whatsoever, and such Rebates shall be fully assignable to the Vendor as hereinafter set out;

z) "Residential Unit" or "Dwelling Unit" means the dwelling unit described on page 1 of the Agreement;

aa) "service provider" or "Service Provider" shall mean any party providing any service or utility to the Unit and/or Condominium

bb) "Unit" or "Units" means collectively the Residential Unit described in page 1 of the Agreement, as well as all other Locker Unit and Parking Unit(s) (if any) included in this Agreement, regardless whether the costs of same are included in or in addition to the Purchase Price, together with their appurtenant common interests;

cc) "Unit Transfer Date" shall mean the date, after the registration of the Condominium, on which a registrable transfer/deed of the Unit shall be given to the Purchaser, in accordance with the terms of this Agreement; and

dd) "Warranty Program" or "Tarion" or "TARION" shall mean the Tarion Warranty Corporation which body administers the terms and provisions of the ONHWPA.

Deposits

4. a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Closing Date or Unit Transfer Date (with such date selected by the Vendor at its sole discretion) on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Escrow Agent until the Closing Date. No interest shall be payable for the period from the Closing Date to the Unit Transfer Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(6) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser herein. The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada)* and shall not be a non-resident on the Closing Date and/or Unit Transfer Date. If the Purchaser is not a resident of Canada for the purposes of the *Income Tax Act (Canada)* (the "ITA"), the Vendor shall be entitled to withhold and remit to Canada Revenue Agency the appropriate amount of interest earned on account of the deposits paid hereunder, for any withholding taxes.

b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of Section 81(7) of the Act and the regulations thereto, as amended. The Escrow Agent shall be entitled to pay such deposit monies to such other party as may be authorized to hold such monies in accordance with the Act provided that such party confirms and acknowledges that such deposit monies are held in trust by it pursuant to the provisions of this Agreement and the Act. Upon delivery of prescribed security in accordance with the Act to the Escrow Agent, the Escrow Agent shall be entitled to release the deposits to the Vendor or as it may direct. The Purchaser hereby irrevocably authorizes and directs the Escrow Agent to release the deposit monies as aforesaid and hereby releases and forever discharges the Escrow Agent from any liability in this regard. The foregoing may be pleaded as an estoppel or bar to any future action by the Purchaser. The Purchaser hereby irrevocably appoints the Vendor as his agent and lawful attorney, in the Purchaser's name, place and stead to complete any prescribed security obtained by the Vendor, if any, including without limitation all deposit insurance documentation, policies, deposit receipts, receipts, etc., and in accordance with the *Powers of Attorney Act* R.S.O. 1990 as amended, and the Purchaser confirms and agrees that this power of attorney may be executed by the Vendor during any subsequent legal incapacity of the Purchaser. Without limiting the generality of the foregoing, the Purchaser acknowledges that the Escrow Agent may be holding deposit funds in trust as an escrow agent acting for and on behalf of the Warranty Program or deposit insurance company under the provisions of a Deposit Trust Agreement ("DTA") with respect to the Condominium on the express understanding and agreement that as soon as prescribed security for said deposit monies has been provided in accordance with the Act, the Escrow Agent shall be entitled to release and disburse said funds to the Vendor (or to whomsoever and in whatsoever manner the Vendor may direct).

Adjustments

5. In addition to the Purchase Price and/or any other adjustments, charges or obligations as hereinafter provided, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect of the Unit from and after the Closing Date, namely:

a. all utility costs including electricity, gas and water (unless included as part of the common expenses), as well as the costs of telephone service and cable television services; and

b. the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Unit Transfer Date (if applicable);

6. The Purchaser shall, in addition to the Purchase Price, pay and/or adjust and/or provide the following items or amounts to the Vendor on the Closing Date and/or Unit Transfer Date (as determined by the Vendor) and the Purchase Price shall be adjusted to reflect the following items. The reimbursable amounts and/or adjustments listed in this Agreement are exclusive of all applicable taxes and any applicable taxes shall be added to

the adjustments and/or reimbursed amounts set out in this Agreement at the rate applicable to this Agreement. In the event that the Vendor receives any rebate, credit, recovery, adjustment, discount or similar benefit from any party or parties in respect of any item that the Vendor is entitled to charge the Purchaser for in accordance with this Agreement, then the Vendor shall be entitled to retain any such rebate, credit, recovery, adjustment, discount or similar benefit for its own use and as its own property absolutely and shall not be obliged to credit or adjust with the Purchaser for any such rebate, credit, recovery, adjustment, discount or similar benefit. All adjustable items (as opposed to reimbursable items or specific charges payable by the Purchaser as hereinafter set out) shall be apportioned and allowed to the Closing Date and/or the Unit Transfer Date, as the case may be, with that day itself apportioned to the Purchaser. The following are the items or amounts to be readjusted with the Vendor or paid/reimbursed by the Purchaser to the Vendor on the Closing Date and/or Unit Transfer Date (as selected by the Vendor), namely:

a. realty taxes (including local improvement charges) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority, for the calendar year of, and subsequent year after, the Unit Transfer Date, notwithstanding the same may not have been levied or paid on or by the Unit Transfer Date, or may adjust on the basis of land taxes only if the Unit is not separately assessed and an invoice has been issued for property taxes in respect of same. If the Vendor has not paid all of the taxes credited to it on the statement of adjustments then it shall cause its solicitors to retain the difference between the amounts paid by it and amounts credited to it to be applied to any future supplementary or omit bill for the Property in accordance with its solicitor's undertaking and with the residue, if any after such payment, to be returned to the Purchaser. In addition to the foregoing, if the Municipality requires that the Vendor pre-pay or provide security for any estimated, assessed or invoiced realty taxes for any period beyond the Unit Transfer Date, then the Purchaser shall reimburse Vendor for such amount pre-paid and/or secured and the Vendor shall be entitled to be credited on the Statement of Adjustments on the Unit Transfer Date with such amount (notwithstanding that same may not have been levied or paid). The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Unit Transfer Date, pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted;

b. common expense contributions attributable to the Unit for the month of occupancy closing, with the Purchaser also being obliged to provide the Vendor on or before the Unit Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Unit Transfer Date as determined by the Vendor (but in no event for more than one year);

c. any other taxes or any increase in any existing taxes imposed on the Unit or this transaction by the federal, provincial, or municipal government, together with the levy and its applicable HST imposed on the Vendor or its solicitor by the Law Society of Upper Canada;

d. In the event that the Vendor, as a prerequisite to the procurement and provision of continuous utility services to the Condominium common elements is required to pay or provide the utility service providers and/or local public authorities (for hydro, gas and/or water) with cash security or a letter of credit (hereinafter called the "**Utility Security Charge**") then in such circumstances the Vendor shall be entitled to a reimbursement of the Utility Security Charge from the Purchaser, by charging the Purchaser in the statement of adjustments his or her proportionate share of the Utility Security Charge. The "proportionate share" shall be calculated by dividing the total amount of such Charges and/or Utility Security Charge by the number of dwelling units in the Condominium (the "**proportionate share**"). A letter from the Vendor confirming the said charges and costs shall be final and binding on the Purchaser;

e. the amount of any increase after May 1, 2014, in any development charge(s) or levies and/or education development charge(s) or levies and/or any sewer impost charges and/or any fees, levies (including parks, cash-in-lieu, and public art levies), parkland levies, Go Transit or other transportation levies, as well as all other levies, charges, obligations or assessments assessed against or attributable to the Unit or assessed against the Property or any portion thereof pursuant to *The Development Charges Act 1997*, S.O. 1997, as amended, the *Education Act S.O. 1997*, as amended, the *Planning Act, R.S.O., 1990* as amended (including any Section 37 thereof), and/or pursuant to any other relevant legislation, regulation, policy or authority (collectively referred to as the "**Levies**" or individually as a "**Levy**"). Moreover, the Purchaser shall reimburse the Vendor for the costs of any planting, hard and soft landscaping, landscape furniture or other aesthetic or architectural treatment on the building or Property or public lands adjacent or proximate thereto (the "**Exterior Aesthetics**") required by Governmental Authorities in respect of the Property or Condominium in general. The costs of any Exterior Aesthetics shall be determined by the Vendor and a letter or certificate from the Vendor with respect to such costs shall be final and binding with respect to same. In the event that the Exterior Aesthetics and/or Levies are levied against the Property or any portion thereof, the amount to be reimbursed by the Purchaser in respect of this transaction shall be the amount of the Levy attributable to the type of unit or if the Levies, Levy or Exterior Aesthetic Charges are invoiced against the Condominium as a whole, the Purchaser shall pay his or her proportionate share of the Levies, Levy or Exterior Aesthetic charges;

f. the cost of the Tarion enrolment fee for the Unit (together with any provincial or federal taxes exigible with respect thereto);

g. an administration fee of TWO HUNDRED ($200.00) DOLLARS shall be charged to the Purchaser for any cheque delivered to the Vendor's Solicitors or Vendor and not accepted/dishonoured by the Purchaser's and/or Vendor's and/or Vendor's Solicitors' bank for any reason;

h. the sum of fifty ($50.00) dollars plus applicable taxes for each cheque provided by the Purchaser to the Escrow Agent in trust for Deposits, Extras, occupancy fees and/or adjustments in accordance with the terms and conditions of this Agreement, for the administration costs for providing the statement(s) to the Purchaser required by Section 81(6) of the Act;

i. all legal fees, disbursements and taxes charged by the Vendor's solicitor for amendments and/or changes to and/or assignments of this Agreement, amendments thereto and/or any closing documents or facilitating any purchaser originated extension of the Closing Date and/or Unit Transfer Date and/or as any of the foregoing may be occasioned by any act, omission or request of the Purchaser;

j. the costs of Extras (if not pre-paid), costs incurred by the Vendor in permitting and/or facilitating any third party installations of finishes not supplied by the Vendor, the costs of re-decorating, repairing and/or renovating the Unit where the Purchaser defaults under this Agreement;

k. the Purchaser shall pay, on the Unit Transfer Date to the Condominium Corporation, by certified cheque, an amount equal to two months estimated common expenses attributed to the Property, to be directed for the Reserve Fund of the Condominium;

l. any assignment fee charged by the Vendor's solicitor as consideration for allowing the Purchaser to assign this agreement of purchase and sale while this shall not be deemed to be any warranty or guarantee that the Vendor shall permit any assignment of this agreement unless specifically agreed in writing; and

m. any and all taxes applicable to any adjustment and/or reimbursement

7. The Purchaser acknowledges and agrees to pay for cable television, internet and telephone services directly to the service provider for such services and such costs shall not be included in the common expenses attributable to the Unit, nor in the Purchase Price.

8. The Purchaser acknowledges that supply of electricity and water to each Dwelling Unit may be individually metered (the "**Unit Meter(s)**") for consumption within the Dwelling Unit and the Purchaser will be invoiced for such consumption and all service or administration charges relating thereto (the "**Unit Invoices**") either by one or more utility providers and/or private corporations providing re-sale, meter reading, payment and invoicing services to the Corporation and Purchaser and/or by a water or hydro-electricity service provider or re-seller (collectively the "**Service Provider**"). This shall not be deemed to be a representation and/or guarantee that there shall be individually metered and invoiced waterand/or electricity to the Units, and the Purchaser should refer to the disclosure statement provided with respect to Condominium in this regard. The Unit Invoices, in such event, will include the costs of all water and/or electrical power consumed by the Dwelling Unit as well as service charges based on per litre or gallon of water, or per kilowatt per hour electricity consumed and other administration charges applicable to the metering and/or re-selling service (with the costs of electricity, and other service charges hereinafter collectively referred to as the "**Unit Services**"). The Purchaser shall be responsible to pay the Unit Invoices in respect of the Unit Services as and when same is due and payable and such amounts, after the registration of the Creating Documents, shall be in addition to the common expenses payable by the Purchaser and shall not be included in the said common expenses. The cost of such Unit Services shall constitute an additional charge and such payment will not be credited against such Purchaser's obligation to pay occupancy fees in respect of the Purchaser's occupation of the Dwelling Unit. In addition to the Unit Invoices, the Service Provider may oblige the Purchaser to provide and/or replenish a security deposit, from time to time, in respect of Unit Services and such security deposit may be collected by the Vendor on Closing and/or Unit Transfer Date. In the event that the Purchaser fails to pay the Unit Invoices on the due date, the Service Provider shall have the right to use the security deposit to satisfy the Unit Invoices and/or the right to terminate the supply of the Unit Service to the Dwelling Unit, and not to commence supplying such Unit Services again unless and until the Purchaser provides or replenishes the security deposit and pays the Unit Invoices. The Purchaser covenants and agrees to execute, upon request, any metering/invoicing/leasing/service or utility supply agreement, or assumption of acknowledgment of same, as required by the Service Provider and/or Vendor.

Harmonized Sales Taxes

9. a) The Purchase Price set out above includes the HST net of Rebates as assigned to the Vendor, and the Purchase Price has been established on the basis that Purchaser will qualify for the full amount of the Rebate or Rebates, as applicable, and that the Rebate or Rebates will be assigned to the Vendor, in addition to such Purchase Price. The current rate of HST is 13 percent and this is the rate that is applicable to this contract before netting out the Rebates from such HST. Purchasers are advised that the Purchase Price offered to the Purchaser has been calculated on the basis that the Purchaser shall qualify for and assign to and/or reimburse the Vendor the maximum Rebate based on the Purchase Price set out herein as adjusted, save and except as hereinafter set out to the contrary. This can also be stated as (and with the Purchaser acknowledging and agreeing to) the HST being applicable to this Agreement being calculated on the basis of the Purchase Price less the Net HST. The Purchaser shall assign and/or transfer all Rebates to the Vendor and/or reimburse the Vendor for such Rebates. The Purchaser warrants and represents that he/she qualifies for the full amount of the possible Rebate with respect to this purchase transaction and that either he or she or a blood relation, as set out in the ITA, shall be occupying the Unit from and after the Closing Date and Unit Transfer Date.

b) If the rate of HST is increased or decreased or the percentage of calculation of the Rebate is amended/reduced, or the rate or thresholds in respect of the HST exemptions or rebate entitlement are changed between the date of this Agreement and the Closing Date or Unit Transfer Date, with the result that the net amount of the HST to be remitted by the Vendor increases, then the Purchaser shall pay the Vendor an amount on the Closing Date or Unit Transfer Date equal to such additional HST payable by the Vendor. A statutory declaration of any officer of the Vendor as to the alteration, increase amendment, etc., as hereinbefore set out shall be determinative in this regard.

c) If the rate of the HST is reduced between the date of this Agreement and the Closing Date and/or Unit Transfer Date but such reduction is for the benefit of the Purchaser and not the Vendor (the "**HST Credit**"), then the Purchaser hereby assigns all right, benefit and entitlement to such HST Credit and shall execute any and all forms, documents, assignments, etc., as required by the Vendor in this regard in the Vendor's absolute discretion. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the HST Credit (and concomitantly releases all of the Purchaser's claims to or interests in the HST Credit, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the HST Credit directly to the Vendor.

d) The Purchaser covenants and warrants (which covenant and warranty shall survive the completion of this Agreement) that he/she has not made any claim and will not make any claim for any Rebate or HST Credit in respect of the Unit.

e) Notwithstanding any other provision in this Agreement to the contrary, the Purchaser agrees that the Purchase Price for the Units, set out on page 1 of this Agreement, does not include HST on closing adjustments and amounts payable for Extras and/or upgrades purchased or ordered by the Purchaser (whether as part of this Agreement or otherwise) payable under this Agreement and that same are subject to HST on the Closing Date and/or the Unit Transfer Date and that such HST shall be chargeable and payable by the Purchaser in addition to any other HST included in the Purchase Price. The Purchaser acknowledges and agrees that the HST payable in respect of such adjustments and/or Extras and/or upgrades shall be at the rate of HST otherwise applicable to this Agreement.

10. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims to or interests in the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate directly to the Vendor. The Purchaser shall receive a credit on Closing and/or Unit Transfer Date for such Rebate (provided to the extent he/she qualifies for same) if required by law in order for such Rebate to be assigned, transferred or reimbursed to the Vendor. The Purchaser represents and warrants that the Purchaser is acquiring the Units for his or his blood relative's primary place of residence within the meaning of the _Excise Tax Act (Canada)_ or _Income Tax Act (Canada)_ or any replacement statute and is entitled to the maximum amount of the Rebate applicable to purchase transactions of this nature at the Purchase Price set out in this Agreement. In the event that there are separate assignments and rebates of the provincial and/or federal portion of the HST with respect to this transaction, the Purchaser shall execute and deliver all applications, assignments, declarations, documents and/or other assurances (in the form required by the Vendor or the Government of Canada and/or the Province of Ontario) to the Vendor required to establish and assign all of his or her right, title and interest in the Rebate or any portion thereof. The Purchaser covenants and agrees that the Vendor shall have the right to determine whether the Purchaser qualifies for any Rebates and the Vendor's determination of such entitlement shall be final and binding. The Purchaser hereby covenants, warrants and/or represents to the Vendor, with respect to this transaction, that:

a) the Purchaser is a natural person who is acquiring the Units with the intention of being the sole beneficial owner thereof on the Unit Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties),

b) upon the Closing Date and continuing up to and including the Unit Transfer Date, and continuing thereafter, the Purchaser or one or more of the Purchaser's blood relations, as determined in accordance with the _Excise Tax Act (Canada)_ and _Income Tax Act (Canada)_, shall personally occupy the Unit as his, her or their primary place of residence, for such period of time as shall be required by the applicable legislation in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit; and

c) he or she has not claimed (and hereby covenants not to hereafter claim), for the Purchaser's own account, any part of the Rebate in connection with the Purchaser's acquisition of the Unit, save as otherwise hereinafter expressly provided or contemplated or permitted.

11. The Purchaser acknowledges and agrees that:

a) the total consideration for the calculation of HST includes not only the Purchase Price but all other taxable supplies charged to the Purchaser pursuant to this Agreement or otherwise including without limitation, Extras, upgrades, applicable adjustments and/or reimbursements charged by the Vendor under this Agreement such as Tarion Enrolment fees, connections fees, as well as any charge for development charge levies and education levies or other levies and charges, etc. (with such additional amounts hereinafter referred to as the "**Additional Charges**"), the costs of which the Vendor may charge to the Purchaser. The Additional Charges and applicable HST shall constitute part of the taxable supply with respect to the said transaction and shall be added to the Purchase Price to determine the total consideration upon which HST is calculated; and

b) any Extras or Additional Charge(s) is/are part of the single supply of the home and for HST purposes constitutes a change in the price being paid for the home and for the purposes of HST shall be deemed to form part of the Purchase Price.

12. If it is determined by the Vendor that the Purchaser is not entitled to the maximum permitted Rebate or any portion thereof (including any portion of same the Purchaser becomes disentitled to as a result of an increase in the total consideration payable hereunder as a result of any Additional Charges, Extras, etc., purchased or payable by the Purchaser), the Purchaser agrees to pay to the Vendor, in addition to any other amounts stipulated in this Agreement, the amount of the Rebate to which the Purchaser becomes disentitled, (which shall be paid on the Closing Date or Unit Transfer Date as a requirement of closing), and until so paid, such amount shall form a charge/vendor's lien against the Units and/or Property, which charge shall be recoverable by the Vendor in the same manner as a mortgage in default. The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including without limitation, legal fees and disbursements, and an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the maximum permitted Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor) and such amounts shall be deemed to comprise a Vendor's lien registrable on title to the Unit and/or Property. If the Vendor determines that the Purchaser is not entitled to the Rebate at any time prior to the Unit Transfer Date then it shall be entitled to demand and the Purchaser shall pay, an additional deposit equal to an amount that is 20% of the Purchase Price as set out on Page 1 of this Agreement and all deposits set out on Page 1 of this Agreement.

13. The Purchaser covenants and agrees that in the event of any amendment, revival, novation, re-instatement of this Agreement, acquisition of Extras or upgrades, or any other action of the Purchaser results in the Rebate or HST Credit not being assignable, in whole or in part, then the Purchaser shall pay to the Vendor on the Closing Date or Unit Transfer Date the amount of the Rebate or HST Credit which the Vendor does not receive or become entitled to.

14. The Purchaser covenants and agrees that any breach by it of the provisions as set out in these foregoing sections dealing with HST shall be deemed to be a fundamental breach by the Purchaser and the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained herein (including without limitation, the right to make colour and finish selections with respect to the Unit as hereinbefore provided or contemplated), and/or may unilaterally declare this Agreement and the Occupancy License to be terminated and of no further force or effect, whereupon all deposit monies theretofore paid, together with all monies paid for any extras or changes to the Unit, may be retained by the Vendor as its liquidated damages, and not as a penalty, in addition to (and without prejudice to) any other rights or remedies available to the Vendor at contract, law or in equity.

Title

15. The Vendor or its Solicitor shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "**Notification Date**"). The Purchaser shall be allowed until 5 p.m. on the 10th day prior to the originally scheduled Unit Transfer Date (the "**Examination Period**") to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession or as are required by the Addendum. If within the Examination Period, any valid objection to title is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

16. The Purchaser hereby agrees to submit to the Vendor or the Vendor's Solicitors on the earlier of 30 days prior to the Closing Date and 20 days prior to the Unit Transfer Date, a written direction as to how the Purchaser intends to take title to the Unit, including, the date(s) of birth and marital status and the Purchaser shall be required to close the transaction in the manner so advised unless the Vendor otherwise consents in writing, which consent may be arbitrarily withheld. If the Purchaser does not submit such confirmation within the required time as aforesaid the Vendor shall be entitled to tender a Transfer/Deed on the Unit Transfer Date engrossed in the name of the Purchaser as shown on the face of this Agreement. Provided however that the Vendor shall not be obliged to endorse the transfer/deed with respect to the Units in any name other than a Purchaser.

17. The Purchaser shall execute and deliver on the Closing Date and/or Unit Transfer Date, such undertakings, declarations, affidavits, acknowledgments, covenants and/or agreements in such form as determined by the Vendor, agreeing to be bound by and comply with the terms and obligations of the following documents, agreements, licences, restrictions, by-laws, regulations, conditions and/or covenants. Purchaser agrees to accept title to the Property subject to the following:

   a. the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Condominium Documents delivered to the Purchaser, as well as all agreements authorized by same;

   b. all easements, rights-of-way, encroachments, reciprocal easement and cost sharing agreements, crane swing agreements, tie-back agreements, encroachment agreements, registered agreements, licences, and registered restrictions, by-laws, regulations, conditions or covenants that run with the Property, as well as all easements in favour of any governmental authorities, private of public utilities or service providers and\or adjacent or neighbouring land owner(s), provided same have been complied with. The Purchaser shall execute on the Unit Transfer Date, such undertakings and/or agreements in such form as determined by the Vendor agreeing to be bound by and comply with the terms and obligations of these agreements, licences, restrictions, by-laws, regulations, conditions and/or covenants;

   c. all easements, rights-of-way and/or licences now registered (or to be registered hereafter), including easements for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television and/or any other service(s) to or for the benefit of the Condominium (or to any other properties), including any easement(s) which may be required by the Vendor, or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such the Property, Units and\or properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owner, provided same have been complied with. The Purchaser shall execute on the Unit Transfer Date, such undertakings and/or agreements in such form as determined by the Vendor agreeing to be bound by and comply with the terms and obligations of these agreements and covenants;

   d. registered municipal and/or development agreements and registered agreements with private or publicly regulated utilities or service providers and/or with local ratepayer associations, including without limitation, any development, site plan, subdivision, engineering, site plan, heritage easement agreements and/or other municipal agreement (or similar agreements entered into with any governmental authorities), provided same have been complied with. The Purchaser shall execute on the Unit Transfer Date, such undertakings and/or agreements in such form as determined by the Vendor agreeing to be bound by and comply with the terms and obligations of these agreements, licences, restrictions, by-laws, regulations, conditions and/or covenants;

   e. municipal agreements, development agreements, subdivision and condominium agreements, site plan agreements, Section 37 Planning Act Agreements, notices of leases, notices of security interests or other documentation or registrations relating to any equipment serving and benefitting the units and common elements of the Condominium in any manner , including without limitation, metering, submetering and/or check metering equipment, or relating to the supply of utility services , (with all of such agreements as set out in (d) and (e) being hereinafter collectively referred to as the "**Development Agreements**"), provided same have been complied with. The Purchaser shall execute on the Unit Transfer Date, such undertakings and/or agreements in such form as determined by the Vendor agreeing to be bound by and comply with the terms and obligations of these agreements, licences, restrictions, by-laws, regulations, conditions and/or covenants;

   f. any shared facilities agreements, reciprocal and/or cost sharing agreements, or other agreements, easements or rights-of-way benefitting the Property and/or adjoining or neighbouring properties, provided same have been complied with. The Purchaser shall execute on the Unit Transfer Date, such undertakings and/or agreements in such form as determined by the Vendor agreeing to be bound by and comply with the terms and obligations of these agreements, licences, restrictions, by-laws, regulations, conditions and/or covenants;

   g. leases, notices of leases, notices of security interests or other documentation or registrations relating to any equipment serving and benefitting the units and common elements of the Condominium in any manner, including without limitation, metering, submetering and/or check metering equipment, or relating to the supply of utility services;

   h. any registered restrictions; and/or

   i. all reservations contained in the Crown Patent;

   (and with all of the aforesaid items in this Section that the Purchaser shall be obligated to take title to collectively referred to as "**Permitted Encumbrances**").

18. It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the Units and/or Property a release of (or an amendment to) any of the aforementioned Development Agreements, Permitted Encumbrances, easements, agreements, reciprocal agreements or restrictive covenants or any other documents, etc., as noted above, nor shall the Vendor be obliged to have any of same deleted from the title to the Units and/or Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith and the Vendor shall not be required to provide any letter of compliance or releases or discharges with respect thereto. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants and all other agreements or documents registered on title. The Purchaser further acknowledges and agrees that the retention by the Municipality or Governmental Authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other Governmental Authorities) intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the telephone system, internet system, and cable television system serving the Condominium are (or may be) owned by the local cable television, telephone and/or internet supplier, or by a company associated, affiliated with or related to the Vendor. The Purchaser acknowledges that any primary boilers, domestic water heaters, any primary heating and air-conditioning or air handling equipment, if any, for the common elements of the Condominium as well as any individual heating and air-conditioning units for the amenity areas and/or rooms will be owned or leased by the Condominium and maintained through service contracts, the cost of which are included in the first year operating budget of the Condominium. The Purchaser covenants and agrees to consent to the matters relating to title referred to above and to execute all documents and do all things requisite for this purpose, either before or after the Unit Transfer Date. The Purchaser covenants and agrees to consent to the matters relating to title referred to above and to execute all documents and do all things requisite for this purpose, either before or after the Unit Transfer Date, at the request of the Vendor and/or its solicitor

19. The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required

to deliver separate written covenants on Closing and/or Unit Transfer Date. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies and/or any other monies payable hereunder, on the Unit Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Unit any time after the Unit Transfer Date. The Purchaser further agrees to accept title from the registered owner of the Property and to accept such owner's title covenants in lieu of the Vendor's, in the event that the Vendor is not the registered owner of the Property on the Unit Transfer Date. The Vendor shall be entitled to insert in the transfer specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to in this Agreement, and in such case, the Purchaser may be required to execute the transfer prior to the Unit Transfer Date, or the Vendor may require that the Purchaser deliver his separate written covenants on the Unit Transfer Date.

20. The Purchaser acknowledges that the Unit may be encumbered by mortgages (and collateral security thereto) which are not intended to be assumed by the Purchaser and that the Vendor shall not be obliged to obtain and register (partial) discharges of such mortgages insofar as they affect the Unit on the Unit Transfer Date. The Purchaser agrees to accept the Vendor's Solicitors' undertaking to register (partial) discharges of such mortgages in respect of the Unit, upon receipt, subject to the Vendor or the Vendor's Solicitors providing to the Purchaser or the Purchaser's solicitor the following:

    a. a mortgage statement or letter from the mortgagee(s) (or from their respective solicitors) confirming the amount, if any, or the terms if an amount is not applicable, required to be paid to the mortgagee(s) to obtain (partial) discharges of the mortgages with respect to the Unit;

    b. a direction from the Vendor to the Purchaser to pay such amounts to the mortgagee(s) (or to whomever the mortgagees may direct) on the Unit Transfer Date to obtain a (partial) discharge of the mortgage(s) with respect to the Unit; and

    c. an undertaking from the Vendor's Solicitors to deliver such amounts to the mortgagees and to register the (partial) discharge of the mortgages with respect to the Unit upon receipt thereof and to advise the Purchaser or the Purchaser's solicitor concerning registration particulars which notification can be performed by posting same on the world wide web in a location given to the Purchaser or his solicitor.

21. The Purchaser covenants and agrees that he/she is a "home buyer" within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.30, as amended. and will not claim any lien holdback on the Closing Date or Unit Transfer Date. The Vendor shall complete the remainder of the Condominium according to its schedule of completion and neither the Closing Date nor the Unit Transfer Date shall be delayed on that account. The Purchaser agrees to close this transaction notwithstanding any construction liens or certificates of action which may have been registered on title to the Unit or the Condominium provided that the Vendor undertakes to remove such registrations as soon as possible after Closing and/or Unit Transfer Date and to indemnify and save the Purchaser harmless with respect to same.

Closing Date and Unit Transfer Date

22. The Addendum attached to this Agreement sets out the terms and conditions of the establishment and/or extension of the Closing Date and the Addendum shall prevail over any term or provisions relating to the Closing Date set out in this Agreement, and if any such term or provision exists in this Agreement that shall conflict or be inconsistent with the Addendum, then such terms and provisions shall be deemed to be severed and deleted from this Agreement without affecting the validity and enforceability of the balance of this Agreement. The Vendor, at its discretion and without obligation, shall be permitted a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessary tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. The Vendor shall only be obliged to complete that portion of the Dwelling Unit and/or common elements as are required by the Addendum for the purposes of providing legal occupancy of the Dwelling Unit and the Purchaser shall close on such date notwithstanding that there are portions of the Dwelling Unit or common elements that are not completed on such Closing Date and/or Unit Transfer Date, all without holdback or abatement. In the event that the Parking Unit, Parking/Locker Unit and/or Locker Unit [if any] is not available on the Closing Date, then provided not prohibited by the Addendum, the Purchaser agrees that it shall close the transaction provided that the Vendor provides alternate, temporary parking and/or storage facilities all without holdback or abatement of any monies due to the Vendor including occupancy fees. In addition to any other documents that the Purchaser must provide the Vendor, the Purchaser agrees that on the Closing Date and/or Unit Transfer Date as stipulated by the Vendor, the Purchaser agrees to deliver to the Vendor:

    a. a series of 12 post-dated cheques (or such greater number as the Vendor may require), each in the amount of the said monthly rental or occupancy fee, for the next 12 months (or more) commencing the month immediately following the month after Stub Period (as defined herein), together with two copies of the Occupancy License, executed by the Purchaser. The Purchaser shall pay the Vendor occupancy fees for the entire Interim Occupancy in accordance with the terms of the Act and this Agreement;

    b. a clear and up-to-date execution certificate in respect of the Purchaser's name (and guarantors' name if same is required for the Purchaser's financing of this transaction) from the Land Titles Office in which the Lands are registered, and if a clear execution certificate cannot be obtained from the said Land Titles Office because of any outstanding execution(s) filed against a person or persons with a name similar or identical to that of the Purchaser or guarantor, then the Purchaser or guarantor shall be obliged to deliver an unqualified statutory declaration of his/her solicitor, confirming that the Purchaser is not one and the same person as the judgment debtor(s) named in the said execution(s) [and shall also provide such other information and documentation as the Vendor's solicitor may reasonably require in order to be satisfied, in the Vendor's solicitor's sole discretion, that the Purchaser or guarantor is not one and the same person as the particular execution debtor(s) named in the outstanding execution(s)].

    c. an executed electricity and/or gas supply contract or assumption of contract, a water metering contract, (if required), in the Vendor's or Service Provider's (as hereinafter defined) form for the supply of Unit Services (as hereinafter defined) to the Units or any one or more of them, together with a security deposit for the provision of electrical, water and/or natural gas services, as may be required by the Service Provider(s);

    d. a certified cheque for the occupancy fees in respect of the month of occupancy and, at the discretion of the Vendor, the next month (the "**Stub Period**");

    e. an irrevocable direction to the Vendor indicating and confirming the manner in which the Purchaser wishes to take title to the Units, accompanied by the date of birth and social insurance number of each person approved by the Vendor to take title to the Units supported by a copy of their respective birth certificates (issued by the Department of Vital Statistics), if so requested by the Vendor, and any other documentation, agreements or Authorizations required by the Vendor's solicitors;

    f. a copy of a current financing commitment from a bank, trust company, credit union or institutional mortgage lender confirming, without qualification that the Purchaser has been approved for bank financing in an amount equal to the difference between the Purchase Price and

the amount of a) the deposits; and b) any other amount that the Purchaser can provide evidence acceptable to the Vendor that he or she will be able to pay on the Unit Transfer Date or any other such evidence satisfactory to the Vendor in its sole discretion that the Purchaser has the requisite funds or financial capability to complete the transaction contemplated herein (the "**Financial Information**"). The failure of the Purchaser to provide the Financial Information as required above shall be an event of default by the Purchaser entitling the Vendor to its remedies herein, including, *inter alia*, the termination of this Agreement and the forfeiture of all deposit monies or other monies paid by the Purchaser pursuant to this Agreement;

g. all HST Rebate Forms, assignments of rebate, assurances, undertakings and other closing documents as the Vendor may require in its complete discretion: and,

h. evidence satisfactory to the Vendor that the Purchaser has liability insurance in place with respect to the occupancy of the unit by the Purchaser in an amount of not less than $2,000,000.00 per occurrence and the Vendor may, in its discretion, require that it be named as additional insured in that policy.

23. The Purchaser hereby acknowledges and agrees that the Vendor cannot guarantee and will not be making any arrangements for a suitable move-in time and elevator access for the purposes of accommodating the Purchaser's occupancy of the Residential Unit on the Closing Date, and that the Purchaser shall be solely responsible for directly contacting the Vendor's customer service office or property manager to make suitable booking arrangements with respect to move–in elevator services, if applicable (with such booking being allotted on a "first come, first serviced" basis). The Purchaser agrees that under no circumstances shall the Purchaser be entitled to any claim, refund, credit, reduction/abatement or set-off whatsoever against any portion of the Purchase Price, or against any portion of the common expenses, occupancy fees of other adjustments with respect thereto as a result of the service elevator not being available to accommodate the Purchaser moving into the Residential Unit on the Closing Date. The Vendor shall not be obligated to provide the Purchaser with the Parking Unit, Parking/Locker Unit and/or Locker Unit on the Closing Date and may provide the Purchaser with alternative parking and/or storage and the Purchaser shall have no claim as against the Vendor and must pay the entire amounts due and payable by Purchaser as provided in this Agreement as and when due without abatement or set-off and notwithstanding the foregoing there shall be no abatement in the occupancy fees. In addition the Purchaser acknowledges and agrees that he/she shall be personally responsible for making all arrangements for the supply of gas and electricity services [and/or water services, if applicable] to the Unit and that in the event that he/she fails to make such arrangements on or before the Closing Date, that the service provider may refuse to provide such utility or service to the unit on or after the Closing Date. Notwithstanding that such utility or service may not be provided to the Unit on the Closing Date due to the failure of the Purchaser to arrange for same:

a. the Purchaser shall close on the Closing date; and

b. under no circumstances shall the Purchaser be entitled to any claim, refund, credit, reduction/abatement or set-off whatsoever against any portion of the Purchase Price, or against any portion of the common expenses, Occupancy Fees or other adjustments with respect thereto;

save and except if provided in the Addendum to the contrary.

24. After the registration of the Creating Documents, the Vendor's Solicitors shall designate a date as the Unit Transfer Date by delivery of written notice of such date to the Purchaser or his Solicitor. If the Unit Transfer Date falls on a day when the relevant Land Registry Office is not open for business, the Unit Transfer Date shall be the day next following when the Land Registry Office is open for business. Provided that in no event shall the Unit Transfer Date occur more than 24 months after the Closing Date on which the Purchaser took occupancy of the Unit save and except as specifically provided for herein. Save and except if prohibited by the Addendum, the Vendor shall have the right to extend the Unit Transfer Date one or more times upon 5 days prior notice, provided that such date shall occur no later than the expiry of the 24 month period set out above, and the Purchaser shall not be entitled to any compensation for the extension of the Unit Transfer Date. In the event that the Unit Transfer Date does not occur within 24 months of the Closing Date, then the Purchaser shall have the right after the expiration of the said 24 months, to terminate this Agreement by notice in writing given to the Vendor or its solicitors, and which notice shall also terminate the Occupancy Agreement effective the last day in the month following the month in which said notice is given. Upon the Purchaser so vacating the Units, the Purchaser shall be entitled to the return of his deposits and any monies paid to the Vendor for Extras, with interest on such monies if required pursuant to the Act and at the rate prescribed by the Act, if any, and the Vendor shall not be liable for any costs or damages suffered or incurred by the Purchaser. The Unit Transfer Date shall not occur prior to the Closing Date. If the Closing Date is scheduled to occur not less than three weeks after the registration of the Creating Documents, then the Closing Date shall also be the Unit Transfer Date and any extension of the Closing Date shall be deemed to be an extension of the Unit Transfer Date.

Purchaser's Covenants, Representations and Warranties

25. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents as well as all Permitted Encumbrances. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consent or other documents required by the Vendor to give effect to this paragraph. **The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction**. The Purchaser agrees to attend at the Vendor's offices on or before a date specified by the Vendor, which date may be on or before 10 days after the date that the Vendor executes this Agreement, and the Purchaser shall on such date deliver to the Vendor or the Vendor's designated representative, such post-dated deposit cheques as set out in this Agreement as well as all necessary financial and personal information and/or mortgage approvals required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price as required by this Agreement. Such evidence as required by the Vendor, may include a mortgage commitment from a lender, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. The Purchaser further agrees to re-fresh and/or provide such information, upon request by the Vendor, from time to time prior to the Unit Transfer Date and to execute within five days of receipt of written request from the Vendor, all mortgage application forms required by the Vendor, together with all documents required to comply with the provisions of *The Family Law Act R.S.O. 1990, as amended.* The Purchaser agrees to complete and execute the mortgage application forms to be provided by the Vendor truthfully and to the best of his ability. The Purchaser hereby specifically authorizes and directs any mortgagee or financial institution giving the Purchaser purchase financing for the Units, to provide to the Vendor a copy of all mortgage commitments and ancillary financial information in respect of same and all revisions thereto, together with all other associated documentation. In the event that the Purchaser fails to submit the information, evidence and/or documents for approval within the time periods as hereinbefore set forth, or if the information, evidence and/or documentation submitted pursuant to the provisions of this Agreement or any amendment thereto is, in whole or in part, false or misleading, or if the Purchaser fails to disclose any relevant facts pertaining to his financial circumstances or abilities, then the Purchaser shall be deemed to be in default under this Agreement, and the default provisions of this Agreement shall apply.

26. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be

in default of his obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance without prejudice to any other remedy available to the Vendor in the event of a Purchaser's default. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitors' fees on a solicitor and client basis).

27. The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Unit, nor directly or indirectly permit any third party to list or advertise the Unit for sale or lease, at any time until after the Unit Transfer Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy License, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. In the event the Vendor consents to an assignment or transfer of the Purchaser's interest under this Agreement, the Purchaser shall pay the Vendor any assignment fee as determined by the Vendor in its discretion, plus applicable HST.

28. The Purchaser covenants and agrees that he/she shall not directly or indirectly object to nor oppose any official plan amendment(s), rezoning application(s), severance application(s), minor variance application(s) and/or site plan application(s), nor any other applications relating to the development of the Property and/or any application under the Act,, *Planning Act, R.S.O. 1990* as amended, the *Building Code Act* or any other application under any legislation, including applications relating to the development of other condominium developments upon the lands owned by the Vendor or its assigns, whether such lands are above, below, proximate and/or adjacent to the Property and/or Lands. The Purchaser further acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto. The Vendor shall be entitled to insert the foregoing covenants and restrictions in the Transfer/Deed and/or the Purchaser may be required to deliver a separate covenant on the Unit Transfer Date. The Purchaser shall be required to obtain a similar covenant (enforceable by and in favour of the Vendor) from any subsequent transferee of the Unit and/or in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

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

Delays

30. The Vendor shall be permitted extensions of the Closing Date in accordance with the terms and provisions of the Addendum dealing with Unavoidable Delay (as defined in the Addendum). If an event of Unavoidable Delay occurs after the Closing Date but before the registration of the Creating Documents, then subject to the terms of the Addendum to the contrary, the date for the occurrence of the Unit Transfer Date shall be extended on a day for day basis for the period of the delay resulting from the occurrence of Unavoidable Delay.

Finishes

31. The Purchase Price shall include those items listed on the Vendor's schedule of standard finishes (if any). The Purchaser acknowledges that only the items set out in that Schedule are included in the Purchase Price and that model suite furnishings and appliances, decor, upgrades, artist's renderings, scale model(s), improvements, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless specified in that Schedule. The Purchaser may choose the finish selections, including the broadloom, flooring and cabinet finishes desired for the Residential Unit from the Vendor's samples, and acknowledges that the Residential Unit shall be pre-painted in the Vendor's standard (one only) colour. The model, size and type of any appliances included in this offer, if any, shall be determined by the Vendor in its sole and absolute discretion. The Vendor shall not be responsible for shade differences occurring in the manufactured items including, inter alia, such as, but not limited to, finishing materials or products such as cushion floor, carpet, fireplace marble, roof shingles, stucco and/or brick and/or stone, aluminum and/or vinyl siding, bath tubs and/or showers, water closets, sinks and other such products where the producer manufacturing same establishes the standard for such finishes. The Vendor is also not responsible for colour variations in natural products or the finishes on natural products such as, but not limited to, flooring, kitchen cabinets, trim as well as stains or finishes applied to any of the aforesaid which colours may vary when finishes are applied to them. In addition, the Vendor shall not be responsible for shade differences in the colour of components manufactured from different materials but which components are designed to be assembled into either one product or installed in conjunction with another product such as, but not limited to, plastic toilet seats, china toilets, enamel tubs and showers, melamine cabinet finishes and paint and in these circumstances the product, as manufactured, shall be accepted by the Purchaser. The Purchaser further acknowledges that the Vendor shall only be required to provide the amenities to the Condominium as specifically set out in the Condominium Documents, notwithstanding any artist renderings, scale models, displays, any advertising or marketing material or otherwise to the contrary. The foregoing may be pleaded by the Vendor as a bar or estoppel to any subsequent action by the Corporation or the Purchaser in this regard. The Purchaser agrees to attend and notify the Vendor of his/her choice of colours, finishes, materials and/or appliances from the Vendor's selection within seven days of being requested to do so by the Vendor or its agent. In the event colours, finishes. materials and/or applicance selections subsequently become unavailable, the Purchaser agrees to re-attend at such time or times as requested by the Vendor or its agents, to choose from substitute colours materials and/or applicances and/or finishes. If the Purchaser fails to choose colours or finishes within the time periods requested, the Vendor may, in addition to any of the remedy provided for in this Agreement, irrevocably choose the colours and finishes for the Purchaser and the Purchaser agrees to accept the Vendor's selections or may note the Purchaser in default of his/her obligations hereunder and in such event the Vendor shall be entitled to its remedies as set out herein.

32. The floor to ceiling heights indicated in the Vendor's sales materials are approximate only and measured from the top of floor to the underside of the ceiling (based on the average ceiling height exclusive of bulkheads). The inclusion of noise attenuation control features, floor finishings, ceiling details, lighting and HVAC grilles will affect the actual finished floor to ceiling heights of the Unit. In addition, some of the rooms in the Unit may have dropped ceilings or bulkheads to accommodate plumbing or mechanical systems, electrical and HVAC equipment which will also affect the finished floor to ceiling heights of some or all of the rooms in the Unit and such items, conditions, or installations shall not diminish or affect the Purchaser's obligations hereunder, and the Purchaser shall have no right to terminate this agreement and shall further have no right to any abatement with respect to the Purchase Price nor any claim for damages.

33. The Purchaser acknowledges and agrees that insofar as the wood finishes, carpeting, flooring, tiles (including any stone used for flooring, walls or counter purposes), vinyl flooring, kitchen and bathroom cabinetry and/or manufactured finishing materials installed within the Unit are concerned:

a. the colour, texture and/or shading of any wood finishes, laminates, carpet, vinyl flooring, flooring, tiles, kitchen and bathroom cabinetry or other manufactured finishing materials may vary slightly from that of those selected by the Purchaser from the Vendor's samples due to minor variations or shading in dye-lots produced or manufactured by the suppliers;

b. the colour, finish, grain and/or veining of wood or laminate products (including flooring) and/or natural stone materials may vary slightly from that of the wood laminates and/or stone materials selected by the Purchaser from the Vendor's samples, inasmuch as wood and stone are natural materials which inherently cannot be precisely replicated or matched with other pieces or samples, thereby accounting for variations of colour, finish, grain and/or veining even within the same lot or section of wood, laminates or stone (as the case may be);

c. the Purchaser must ensure that the Residential Unit is properly ventilated after the Closing Date inasmuch as all new construction materials contain moisture and that if the Residential Unit is not ventilated then materials in the unit may warp or swell and the build-up of moisture can lead to mould, and the failure to properly ventilate the Residential Unit may void any Warranty Corporation warranty relating to the affected materials; and

d. the various types of flooring that may be installed within the Unit (such as carpeting, flooring, laminates, marble, vinyl flooring, ceramic tile, etc.) may result in different floor heights or levels (which shall be established by the Vendor in its sole and unfettered discretion) between rooms or areas within the Unit having different flooring materials (for example, a height or level differential between ceramic floor tiles in the kitchen and hardwood flooring in the adjacent living room), and in this regard the Vendor shall be entitled to use or install appropriate reducers in the transitional areas between rooms having different materials;

and the Purchaser shall accordingly be estopped from claiming any entitlement to an abatement in the Purchase Price of the Unit, or any replacement (in whole or in part) of the carpet, flooring, laminates, vinyl flooring, tiles, kitchen and/or bathroom cabinetry, manufactured finishing materials or wood products or flooring so installed, or any other relief or claim for compensation from or against the Vendor or TARION as a result of the variations hereinbefore described or contemplated.

34. If the Purchaser makes any payment to the Vendor on account of the purchase and/or installation of any Extras by or on behalf of the Vendor pursuant to an amendment, schedule or addendum to this Purchase Agreement, such payment(s) shall be non-refundable if this transaction is not completed for any reason whatsoever, save for the default of the Vendor. If any of said Extras ordered by the Purchaser are not supplied and/or installed on the Unit Transfer Date, the Vendor shall, at its sole option, either undertake to supply and/or install same within a reasonable time after the Unit Transfer Date or refund to the Purchaser on the Unit Transfer Date (as a credit in favour of the Purchaser on the Statement of Adjustments) the amounts paid by the Purchaser to the Vendor in connection with such Extras (it being agreed upon that that there shall not be any refund for any Extras provided on a "no charge" basis, as determined by the Vendor in its sole and unfettered discretion) and such refund shall be accepted by the Purchaser as full and final settlement of any claim by the Purchaser with respect to such Extras, and the Vendor shall be released from any and all obligations, claims or demand whatsoever with respect thereto.

35. In addition to the foregoing, subject to the prior written consent of the Vendor being obtained, in the event that the Purchaser chooses to up-grade or make changes to the standard materials and specifications for the Dwelling Unit which are otherwise provided by the Vendor, then subject to the terms of the Addendum to the contrary, the Vendor shall not be held liable for any delays in having the Residential Unit substantially completed sufficient to permit occupancy thereof by the Closing Date (provided such delays are as a result of such up-grading or revised work not being completed in time), and the Purchaser shall nevertheless be obliged to execute and deliver to the Vendor on the Closing Date all documents and instruments required to be given to the Vendor on the Closing Date as hereinbefore provided or contemplated, and shall also pay to the Vendor the monies specified in this Agreement, notwithstanding that the Unit may not be substantially completed by such date.

36. It is further understood and agreed that the Vendor shall not be responsible or liable in any way to the Purchaser for the quality of, and/or workmanship with respect to the Extras, unless same are supplied and/or constructed directly by the Vendor, and then only if the Vendor specifically agrees in writing to be responsible or liable for same, or is responsible for same under the ONHWPA and its regulations. The Purchaser shall be obliged to forthwith advise the Vendor in writing as to the details of all Extras (if same are not ordered directly from the Vendor and the Vendor has consented to the installation of same) so that the Vendor may assess whether any revisions to the plans and specifications of the Building and/or Property are needed, and/or whether any additional up-graded materials or changed items are required from other tradesmen or suppliers, in order to facilitate or expedite the completion and installation of the Extras; and if such revisions or additional up-graded materials or changed items are required, as determined by the Vendor in its sole and unfettered discretion, then the Purchaser agrees to pay for all such costs and expenses attributable and/or incidental to the completion and installation of same.

Tarion Warranty Corporation

37. The Vendor represents and warrants to the Purchaser that the Vendor is registered with Tarion. The Vendor covenants that on completion of this transaction a warranty certificate for the Unit (hereinafter defined as the "**CCP**") will be requested by the Vendor from Tarion for the Purchaser. The Vendor further covenants to provide the Condominium Corporation with a similar warranty certificate with respect to the common elements as and if required by the ONHWPA. **The Purchaser acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be limited to only those warranties deemed to be given by the Vendor under the ONHWPA and shall extend only for the time period and in respect of those items as stated in the ONHWPA, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement, or condition precedent to, concurrent with or in any way affecting this Agreement, the Condominium or the Unit, other than as expressed herein.** These shall be the only warranties covering the Units and common elements. Without limiting the generality of the foregoing, the Purchaser hereby releases the Vendor from any liability whatsoever in respect of water damage caused to improvements, if any, and chattels stored in the Unit, and acknowledges and agrees that the Vendor shall not be liable or responsible for the repair or rectification of any exterior work to the Property or Condominium resulting from ordinary settlement, including settlement of driveways, walkways, patio stones or sodded area, nor for any damage for interior household improvements, chattels or decor caused by material shrinkage, twisting or warpage, nor for any secondary or consequential damages whatsoever resulting from any defects in materials, design or workmanship related to the Property, nor natural variations in texture or colour in paint or other finishes or cabinetry nor for any item requiring rectification or completion in respect of which the Purchaser has made improvements or alterations to or in the vicinity of the said item, or which the Purchaser has attempted to complete or rectify on his own, and the Vendor's only obligation shall be to rectify any defects pursuant to the terms of this Agreement and the ONHWPA. The Purchaser agrees to remove at his expense any finishes and/or improvements made by the Purchaser as requested by the Vendor in order to enable the Vendor to do any completion or rectification work. The Purchaser shall be responsible from and after the Closing Date to ensure that the Dwelling Unit is properly ventilated, cooled and/or heated as the case may be and/or properly humidified or de-humidified as the case may be so as to prevent the undue warping or shrinkage of materials and/or so as to prevent the instance of mould in the Dwelling Unit.

38. The Purchaser agrees that in no event shall the Purchaser be entitled to obtain possession of the Residential Unit unless and until the Purchaser or its designate has executed the Confirmation of Receipt of the HIP (as hereinafter defined) and the Certificate of Completion and Possession and/or PDI Form (as hereinafter defined).

Completion of the Unit and Common Elements

39. The Vendor shall complete the common elements as soon as reasonably practicable, but the failure of the Vendor to complete the common elements beyond the minimum standards required by the Municipality in order to comply with the occupancy and other provisions of the Addendum, on or before the Closing Date or Unit Transfer Date, shall in no event entitle the Purchaser to refuse to take possession of the Units and/or to close the within transaction, or to fail to remit to the Vendor the entire amount of monies required to be paid by the Purchaser hereunder, or to maintain any holdback of any part of the Purchase Price or Occupancy Fees, and the Vendor hereby undertakes to complete the Unit and all unfinished work or improvements thereto in accordance with this Agreement.

40. If the Unit is substantially complete and fit for occupancy on the Closing Date in accordance with the Addendum, but the Creating Documents have not been registered, (or in the event the Condominium is registered prior to the Closing Date and the Vendor's closing documentation has yet to be prepared), the Purchaser shall occupy the Unit on the Closing Date pursuant to the occupancy terms attached hereto as Schedule "C", provided that the Vendor shall be entitled to amend or modify the terms of the Occupancy Licence, as deemed necessary or desirable by the Vendor.

41. The Purchaser acknowledges and agrees that the Vendor may from time to time, in its sole discretion, or as required by any governmental authority or the Construction Lender, change, vary or modify the plans and specifications pertaining to the Unit or the Condominium (including architectural, structural, engineering, landscaping, grading, mechanical, site service or other plans) or pertaining to any recreational or other amenities situated within the Condominium (the "**Amenities**") from the plans and specifications existing at the inception of the project or as they exist at the time the Purchaser has entered into this Agreement (save and except for material changes) or as same may be illustrated in any sales brochure(s), model(s) in the sales office or otherwise, and the Purchaser shall have absolutely no claim or cause of action against the Vendor for any such changes, variances or modifications nor shall the Purchaser be entitled to any notice thereof. The Purchaser acknowledges that the distances and views from the proposed building shown on any site plan, artist's renderings or scale model are approximate only and/or may be modified during construction.

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

Pre-delivery Inspections

43. The Purchaser (or the Purchaser's Designate) agrees to meet the Vendor's representative at the date and time designated by the Vendor, on or prior to the Closing Date, to conduct a pre-delivery inspection of the Dwelling Unit (hereinafter referred to as the "**PDI**") and to list all mutually agreed items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit, on the CCP and/or the Receipt of HIP and/or such other forms prescribed from time to time by, and required to be completed pursuant to the provisions of the ONHWPA (collectively the "**PDI Form**" or the "**PDI Forms**"). The said CCP and PDI Forms shall be executed by both the Purchaser and the Vendor's representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work save and except as provided by law. Except as to those items specifically listed on the PDI or CCP forms, the Purchaser agrees that such CCP and/or PDI shall comprise the Vendor's only undertaking at that time with respect to such incomplete or deficient work save and except as provided by law and the Purchaser shall be deemed to have conclusively accepted the condition and completeness of the Unit. In the event that the Vendor performs any additional work to the Unit in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder. The completion of the PDI and execution of the CCP and PDI Forms by the Purchaser are conditions of the Vendor's obligation to provide occupancy to the Dwelling Unit to the Purchaser and to complete this transaction on the Closing Date. Except as specifically set out in this Agreement to the contrary, the Purchaser shall not be entitled to enter the Unit or the Property prior to the Closing Date.

44. The Purchaser is hereby notified and acknowledges that the Homeowner Information Package, as defined in the Warranty Program Bulletin 42 (the "**HIP**") is available from the Warranty Program and must be provided to the Purchaser by the Vendor. The Purchaser covenants and agrees that the HIP may be delivered by the provision of a URL and or the documents as recorded on a compact disk or flash drive. The Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's Designate, at or before the time of the completion of the PDI. The Purchaser, or the Purchaser's Designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP, in the form required by the Warranty Program, forthwith upon receipt of the HIP. The Purchaser shall be entitled to send a designate (the "**Designate**") to conduct the PDI in the Purchaser's place, provided the Purchaser first provides to the Vendor the Appointment of Designate for PDI in the form prescribed by the ONHWPA, prior to the PDI. If the Purchaser appoints a Designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the Designate to the same degree and with the force and effect as if executed by the Purchaser directly. The Purchaser, or the Purchaser's Designate agrees to execute, and provide to the Vendor, the Confirmation of Receipt of the HIP, in the form required by the Warranty Program or the Vendor forthwith upon receipt of the HIP. The Purchaser shall be entitled to send a designate (the "**Designate**") to conduct the PDI in the Purchaser's place, provided the Purchaser first provides to the Vendor the Appointment of Designate for PDI in the form prescribed by the ONHWPA, prior to the PDI. In such case, save and except as otherwise provided in ONHWPA, the Purchaser agrees that he/she shall notify the Vendor at least five (5) days prior to the scheduled PDI that a Designate will be attending in his/her/their stead and return to the Vendor at least two (2) days prior to the scheduled PDI the executed Warranty Corporations Appointment of Designate form. If the Purchaser appoints a Designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the Designate to the same degree and with the force and effect as if executed by the Purchaser directly.

45. In the event the Purchaser and/or the Purchaser's Designate fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth herein or at law. Alternatively, the Vendor may complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's Designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney to complete the CCP and PDI Forms on the Purchaser's or the Purchaser's Designates behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's Designate had executed the CCP and PDI Forms. Termination without Default

Termination without Default

46. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee or for optional upgrades, changes or extras ordered by the Purchaser, save and except as provided for in the ONHWPA, its regulations or the Addendum to the contrary. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever for any loss of bargain or for any professional or other fees paid in relation to this transaction. It is understood and agreed by the parties that if construction of the Unit is not completed in accordance with the provisions of this Agreement on or before the Closing Date, or any extension thereof, the Vendor's responsibility shall only be limited to those costs, damages and expenses that the Purchaser may claim pursuant to the ONHWPA and/or the Addendum.

Purchasers Default

47. In the event that the Purchaser is in default with respect to any of his or her obligations contained in this Agreement and/or in the Occupancy Agreement, and/or any other agreement of purchase and sale and/or Occupancy Agreement entered into with the Vendor with respect to any other unit in the Condominium or any other condominium being developed by the Declarant adjacent to or abutting the Real Property (with this Agreement, the Occupancy Agreement and/or any other aforesaid agreement(s) being hereinafter collectively referred to as the "**Unit Agreements**") on or before Closing and/or the Unit Transfer Date and fails to remedy such default forthwith, if such default is a monetary default and/or pertains to the execution and delivery of documentation required to be given to the Vendor on the Closing Date or the Unit Transfer Date, or within five (5) days of the Purchaser being so notified in writing with respect to any other non-monetary default, then the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained in the Unit Agreements (including without limitation, the right to make colour and finish selections with respect to the Unit as hereinbefore provided or contemplated), and/or unilaterally declare the Unit Agreements to be terminated and of no further force or effect, whereupon all deposit monies theretofore paid, together with all monies paid for any extras or changes to the Unit, may be retained by the Vendor as its liquidated damages, and not as a penalty, in addition to (and without prejudice to) any other rights or remedies available to the Vendor at contract, law or in equity. The failure of the Purchaser to make all arrangements that the Purchaser must make with respect to the Unit Services on or before the Closing Date (including the completion and delivery of all documents, identification, applications, payment forms etc., to a Service Provider) that result in the Residential Unit not being capable of occupancy in accordance with the Addendum, shall be considered a substantial event of default under this Agreement. In the event of the termination of this Agreement and/or the Occupancy License by reason of the Purchaser's default as aforesaid, then the Purchaser shall be obliged to forthwith vacate the Unit (or cause same to be forthwith vacated) if same has been occupied (and shall leave the Unit in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser), and shall execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser does not have (and the Purchaser hereby covenants and agrees that he/she does not have) any legal, equitable or proprietary interest whatsoever in the Unit and/or the Property (or any portion thereof), and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his or her lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead, and in accordance with the provisions of the *Powers of Attorney Act* R.S.O. 1990, as amended, the Purchaser hereby declares that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity on the part of the Purchaser. In the event the Vendor's Solicitors or an Escrow Agent is/are holding any of the deposits in trust pursuant to this Agreement, then in the event of default as aforesaid, the Purchaser hereby releases the said solicitors from any obligation to hold the deposit monies, in trust, and shall not make any claim whatsoever against the said solicitors and the Purchaser hereby irrevocably directs and authorizes the said solicitors to deliver the said deposit monies and accrued interest, if any, to the Vendor. In addition to and without prejudice to the Vendor's rights set out above, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which are due and payable by the Purchaser to the Vendor pursuant to this Agreement are not made and/or paid on the date due, then the Vendor shall be entitled, but not obligated, to accept same provided that such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to one and one half percent per month. The Vendor shall on or after the Unit Transfer Date, have a Vendor's Lien on the Units with respect to any unpaid portion of the Purchase Price or any amount payable by the Purchaser to the Vendor hereunder. The Purchaser, upon request by the Vendor, shall execute an acknowledgment of receipt (the **"Acknowledgment"**) of this Agreement, as well as all documents prescribed under the Act and/or its regulations required to be delivered to the Purchaser including the disclosure statement and draft Creating Documents. The Purchaser covenants, acknowledges and agrees that in the event that the Purchaser does not re-attend at the office or the sales office of the Vendor within 5 days of notice being delivered to the Purchaser that this Purchase Agreement executed by the Vendor is available for pick-up by the Purchaser, then this Agreement, at the option of the Vendor, shall become void and of no further force and effect and the Vendor shall deliver to the Purchaser all deposit monies theretofore paid, with interest as may be required by the Act, but without deduction, and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages thereby, and the Purchaser waives any claim against the Vendor in this regard. This waiver shall not merge but shall survive the termination of this Agreement by the Vendor as set out herein and may be pleaded as estopped to any claim of the Purchaser.

Right of Entry

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

b. The Purchaser hereby acknowledges and confirms that prior to the Closing Date she/he shall not be allowed access to the Property, for any purpose whatsoever without the specific written consent of the Vendor, (which consent may be arbitrarily withheld by the Vendor). If and once such right of access is exercised by the Purchaser with consent as aforesaid, he/she agrees to comply with all regulations and requirements imposed by any governmental authorities or imposed by the Vendor which may prevent, restrict or regulate such access due to health, safety or other governmental requirements or policies. The Purchaser further acknowledges and agrees that any access to the Property shall be at the Purchaser's sole risk and the Purchaser hereby forever discharges and releases the Vendor, its successors and assigns, agents, employees and contractors from any and all damages, actions and claims whatsoever that the Purchaser may have as a result of personal injury or property damage occasioned by entering onto the Property, whether such entry was with or without the Vendor's express written consent. If permitted onto the Property, the Purchaser shall not enter the Property unless accompanied by a representative of the Vendor and the Purchaser shall be responsible to provide and wear all such protective headwear and footwear and any other equipment or clothing as required pursuant to the *Occupational Health and Safety Act* and/or any successor or other legislation and its regulations and the Purchaser agrees to indemnify and save the Vendor harmless from and against any and all losses, liabilities, charges, damages or fines that the Vendor or its agents incur as a result of the Purchaser's breach of the foregoing.

Executions

49. The Purchaser agrees to provide to the Vendor's Solicitors on each of the Closing Date and Unit Transfer Date with a clear and up-to-date Execution Certificate in respect of the Purchaser's name (and guarantors' name if same is required for the Purchaser's financing of this transaction) from the Land Titles Office in which the Lands are registered, and if a clear execution certificate cannot be obtained from the said Land Titles Office because of any outstanding execution(s) filed against a person or persons with a name similar or identical to that of the Purchaser or guarantor, then the Purchaser or guarantor shall be obliged to deliver an unqualified statutory declaration of his/her solicitor, confirming that the Purchaser is not one and the same person as the judgment debtor(s) named in the said execution(s) [and shall also provide such other information and documentation as the Vendor's solicitor may reasonably require in order to be satisfied, in the Vendor's solicitor's sole discretion, that the Purchaser or guarantor is not one and the same person as the particular execution debtor(s) named in the outstanding execution(s)]. The failure to provide such Certificates or other documents as hereinbefore provided, shall be deemed to be an event of default by the Purchaser and the Vendor, notwithstanding anything else set out herein to the contrary, shall not be obliged to provide any period of rectification and shall be immediately entitled to all of its remedies

Risk

50. The Condominium and all equipment contained therein (save and except for the Extras installed in the Unit or the chattels or possessions of the Purchaser) shall be and remain at the risk of the Vendor until the Unit Transfer Date. Save and except as provided in the Addendum to the contrary, in the event of any physical damage to any portion of the Condominium or the Property (or to any portion thereof) caused by fire, explosion, flood, lightning, tempest, act of God, act of war or act or terrorism, any event defined as an event of force majeure in this Agreement or an event giving rise to Unavoidable Delay (as defined in the Addendum) or by any other insurable peril occurring prior to the Unit Transfer Date, which renders the Unit or the Condominium building uninhabitable or unoccupiable at law, then the parties agree that: a) if any such damage can be substantially repaired within one hundred and eighty days from the date of the damage occurring, as determined jointly by the Vendor acting reasonably (and which determination shall be final and binding on the parties hereto), then such damage shall be deemed and construed to constitute an "Unavoidable Delay", as defined in the Addendum. In such event the provisions pertaining to Unavoidable Delay and the corresponding extension of the Firm Occupancy Date or the Delayed Occupancy Date (as the case may be) outlined in the Addendum shall apply and if the Purchaser has already taken possession of the Unit at the time of such damage occurring, then the Purchaser's existing occupancy of the Units shall be temporarily suspended for the duration of the Unavoidable Delay Period (as such term is defined the Addendum) and the monthly rental or occupancy fees payable by the Purchaser to the Vendor shall be abated and/or suspended during the Unavoidable Delay Period; and b) if the Vendor's construction lender elects to appropriate all or most of the available insurance proceeds (if any) and/or is unwilling to lend or advance or re-advance monies required to rebuild and/or repair such damage, or if such damage cannot be substantially repaired within one hundred and eighty days from the date of the damage occurring, as determined by the Vendor acting reasonably (and which determination shall be final and binding on the parties), then in any of the aforementioned cases, such damage(s) shall be deemed for all purposes to have frustrated the completion of this Agreement. In such event the, if the Purchaser has already taken possession of the Unit at the time of such damage, then the Purchaser's existing occupancy of the Units shall thereupon be forthwith terminated, and all monies paid by the Purchaser on account of the Purchase Price (inclusive of all monies paid to the Vendor for extras and/or upgrades) shall be fully refunded to the Purchaser, together with all interest accrued thereon at the prescribed rate, and the Vendor shall not be liable for any costs and/or damages incurred by the Purchaser thereby whatsoever, resulting from the termination of the Purchaser's occupancy or this Agreement.

Representations and Marketing Materials

51. The Purchaser acknowledges that, notwithstanding anything contained in any brochures, drawings, plans, advertisements, or other marketing materials, or any statements made by the Vendor's sale representatives, there is no warranty or representation, collateral agreement or condition contained herein on the part of the Vendor as to the area of the Unit or any other matter (and including without limitation, the Amenities to be provided to the Condominium which shall be provided as more particularly set out in the Condominium Documents). The Purchaser further acknowledges that any dimensions, ceiling heights, or other data shown on such marketing materials are approximate only and that the Purchaser is not purchasing the Unit on a price per square foot basis. Ceiling heights and room dimensions may vary based upon bulkheads, ducts, or other design requirements. Accordingly, the Purchaser shall not be entitled to any abatement or refund of the Purchase Price based on the precise area and/or final configuration (including without limitation, the construction of the mirror image or reversal of the floor plan layout) and/or ceiling height or room dimensions of the constructed Unit.

52. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is measured in accordance with the terms of the Tarion's Bulletin 22. For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the Warranty Program. Actual useable floor space may vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space or net floor area within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for abatement or compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit, or the net floor area of the Unit or otherwise, regardless of the extent of any variance or discrepancy with respect to the area (either gross or net) of the Unit, or the dimensions of the Unit. Purchasers are further notified that the suite designations may not necessarily correspond with the actual legal unit and level designations of the Condominium and the Vendor reserves the right, prior to condominium registration, to change suite numbers and unit and level designations, as long as the proximate location of the Dwelling Unit as to floor and location within a floor plate does not change.

Exchange of Documents and Tender

53. The parties acknowledge that on the Closing Date and/or Unit Transfer Date, there will be no exchange of documents at the Land Registry Office between the parties or their respective solicitors. Any tender of documents or monies hereunder, including those required to be exchanged on the Closing Date and/or Unit Transfer Date shall be made respectively upon the Vendor or the Purchaser, or upon their respective solicitors, as hereinafter set out and any money shall be tendered by bank draft of a chartered bank or trust company, wire transfer (using Large Value Transaction protocols) or, if permitted by the Vendor, by direct deposit of the monies into the Vendor's solicitor's trust account in accordance with the requirements provided by such Vendor's solicitor. The Vendor shall be allowed to tender and deliver documentation to the Purchaser and/or his or her solicitor by electronic mail and/or by posting the documentation required to be delivered to the Purchaser on the Unit Transfer Date and/or the Closing Date on an internet web site and providing notice to the Purchaser and/or his/her solicitor with the method of accessing such documents on such internet site and the internet address of such web site. In the event the Vendor's documents are emailed or posted on such site, said documents may be executed electronically in accordance with the *Electronic Commerce Act (Ontario)* and the emailing or posting of such documentation, electronically signed where required, and the notification to the Purchaser's solicitor or the Purchaser of where on the world wide web such documents can be accessed, shall be deemed to be effective tender of such documents on the Purchaser and/or their solicitor. Tender of any documents on the Purchaser other than those delivered via the web or internet may be made on the Purchaser's solicitor by telefax and/or email. Notwithstanding anything set out herein to the contrary, any tender upon the Vendor on the Closing Date and/or the Unit Transfer Date

must be made at the offices of its solicitor during normal business hours, which shall be deemed to be 9:00 a.m. to 4:30 p.m. on any business day (excluding weekends and statutory holidays). Save and except as specifically hereinafter set out to the contrary, any tender upon the Purchaser on the Closing Date and/or Unit Transfer Date, if required, may be made by the Vendor's solicitor by he/she confirming to the Purchaser's solicitor in writing that:

a. that they have already delivered to the Purchaser's solicitor, such documents, undertakings, affidavits of the Vendor or its solicitor as may be required to effect a proper tender for the purposes of the interim and/or final closing of this transaction (either by way of delivery of the documents by email and/or the posting of such documents, electronically executed, on an internet web site as hereinbefore set out);

b. that the Vendor has advised that keys for the Units are available for release at the Property and/or the head office of the Vendor (on the Unit Transfer Date or Closing Date as applicable);

c. advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and

d. with respect to the closing of the transaction, has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the co-operation or participation of the Purchaser's solicitor , and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's solicitors;

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds [*and without any requirement to have an independent witness evidencing the foregoing*]. The delivery of such written confirmation shall be deemed to be complete and effective tender. The Purchaser covenants acknowledges and agrees that the Vendor's and its solicitor's documents may be electronically signed in accordance with the *Electronic Commerce Act, 2000 Ch. 17, S.O. 2000,* as amended, and that such electronic form of execution of the documents shall be satisfactory for the purposes of this Agreement and this tender provision.

54. In the event that the Purchaser or his solicitor has not delivered the requisite documents and/or monies as hereinbefore set out at such location and by 4:30 p.m. on the Closing Date and/or Unit Transfer Date, then the Purchaser shall be deemed for all purposes to have waived tender by the Vendor. The Purchaser shall be estopped and forever barred from claiming any defect in the title to the Units and/or Property, or any deficiency in the construction thereof, or that the Vendor was unable or unwilling to provide occupancy of the Residential Unit and/or complete this transaction in accordance with the provisions of this Agreement and/or the Addendum. It is further provided that, notwithstanding the preceding provisions, that in the event the Purchaser or his Solicitor advise the Vendor or its Solicitors, on or before the Closing Date and/or Unit Transfer Date, that the Purchaser is unable or unwilling to complete the purchase transaction or take possession of the Units (or any portion thereof), the Vendor shall be relieved of any obligation to make any formal tender upon the Purchaser or his Solicitor or provide any documentation to the Purchaser as hereinbefore set out and may exercise forthwith any and all of its right and remedies provided or in this Agreement and at law. The Purchaser hereby acknowledges and agrees that the key(s) to the Units shall be released to him/her directly from the site and/or head office of the Vendor when the Purchaser becomes entitled to same in accordance with this Agreement, and the Vendor shall not otherwise be required to produce or deliver a key to the Units on the Unit Transfer Date and/or Closing, or as part of any tender in connection therewith. In the event the Purchaser or his Solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative or solicitor at the Vendor's solicitor's office shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time.

Electronic Registration

55. The parties agree that notwithstanding any other provision in this Agreement that on the Unit Transfer Date that they hereby waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement will be governed by the following provisions. In the event that the electronic registration system (hereinafter referred to as the "**Teraview Electronic Registration System**" or "**TERS**") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's Solicitors, the following provisions shall prevail:

a. A solicitor licenced by the Law Society of Upper Canada shall represent the Purchaser in connection with the completion of the transaction, and the Purchaser shall authorize such lawyer to enter into an escrow closing agreement with the Vendor's Solicitors on the latter's standard form (hereinafter referred to as the "**Escrow Document Registration Agreement**"), establishing the procedures and timing for completing this transaction and to be executed by the Purchaser's solicitor and returned to the Vendor's Solicitors prior to the Unit Transfer Date;

b. The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:
   (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registrable documentation); and
   (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.

c. If the Purchaser's lawyer is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said lawyer (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's Solicitors, at such time on the scheduled closing date as may be directed by the Vendor's Solicitors or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's Solicitors' office, and shall pay a fee as determined by the Vendor's Solicitors, for the use of the Vendor's computer facilities.

d. The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on Closing and/or the Unit Transfer Date, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the Vendor's Solicitors (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.

56. The Purchaser shall deliver, on the Unit Transfer Date and/or the Closing Date, such declarations, undertakings, indemnities, Rebate forms, assignments of Rebate, other forms, documents, certificates and other documents as required by the Vendor, as well as all monies and funds as may be required herein to the Vendor or Vendor's solicitor (as determined by the Vendor). If delivered on the Unit Transfer Date, such documents, monies etc., shall be deemed to comprise the "**Requisite Deliveries**" as defined in the Document Registration Agreement governing closing. The Purchaser shall deliver such documents, monies, etc., by no later than 4:30 p.m. on the Closing Date and/or Unit Transfer Date, as the case may be. In the event that the Purchaser or his solicitor has not delivered the Requisite Deliveries and/or documents and/monies as hereinbefore set out at such location and by such time, then notwithstanding anything set out to the contrary in this Agreement, the Purchaser shall be deemed for all purposes to have waived tender by the Vendor. The Purchaser shall be estopped and forever barred from claiming any defect in the title to the Units and/or Property, or any deficiency in the construction thereof, or that the Vendor was unable or unwilling to provide occupancy of the Residential Unit and/or complete this transaction in accordance with the provisions of this Agreement and the Vendor shall be entitled to exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.

General Provisions

57. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.

58. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.

59. Time shall be of the essence with respect to all aspects of this Agreement. This Offer when accepted by the Vendor shall constitute a binding contract of purchase and sale subject only to the terms of the Addendum and/or the expiration of the statutory period in the Act. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and assigns.

60. Where the Purchaser is a corporation, the execution of this Purchase Agreement by the principal or principals of such corporation shall be deemed and construed to constitute the personal guarantee of such person or persons so signing with respect to the obligations of the Purchaser herein, and such person or persons shall also be correspondingly be obliged to unconditionally guarantee any mortgage(s) required to be given by the Purchaser on Unit Transfer Date, in accordance with the provisions hereof, if any. The Purchaser shall provide the Vendor with certified copies of resolutions, by-laws, articles of incorporation or other corporate documentation as the Vendor may require to satisfy itself that this agreement and all of the Purchaser's obligations hereunder are duly authorized.

61. No waiver by the Vendor of any breach of covenant or default in the performance of any obligation hereunder or any failure by the Vendor to enforce its rights herein shall constitute any further waiver of the Vendor's rights herein, it being the express intent of the parties that any waiver or forbearance in enforcing its rights by the Vendor shall apply solely to that particular breach or failure.

62. If the Purchaser comprises more than one individual, then all individuals comprising the Purchaser shall be deemed and construed to have acquired the Unit on joint account with right of survivorship, and accordingly, should any of the individuals comprising the Purchaser die before the Unit Transfer Date, then the Vendor is hereby authorised and directed to engross the deed/transfer of title in the name of the surviving individual(s) comprising the Purchaser, without requiring probate of the deceased individual's last will and testament.

63. In the event that any of the documents delivered by the Vendor's Solicitor to the Purchaser or Purchaser's solicitor for execution by the Purchaser are signed in foreign characters or lettering (which bears no relation to the Purchaser's name in English, as same appears in the document(s) being executed), then the Purchaser agrees to ensure that his or her signature is duly witnessed, and that a statement is added in English by such witness confirming that the witness saw the Purchaser sign the document after same had been read to the Purchaser and the Purchaser appeared to fully understand same.

64. If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered copy thereof, together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked, shall be delivered to the Vendor along with such documents.

65. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. In the event of any conflict or inconsistency between the terms of this Agreement and the Addendum then the terms of the Addendum shall prevail and the terms of this Agreement in conflict or inconsistent shall be deemed to be severed from the Agreement without affecting the validity and/or enforceability of the balance of the Agreement.

Non- Merger

66. The covenants, representations, warranties and agreements of the Purchaser hereto shall not merge on the Unit Transfer Date, but shall remain in full force and effect according to their respective terms notwithstanding the transfer of title to the Unit to the Purchaser.

The *Planning Act*

67. This Agreement and the transaction arising therefrom are subject to compliance with the provisions of Section 50 of the *Planning Act*, R.S.O. 1990, c.P.13 and any amendments thereto (the "**Planning Act**") on or before the Unit Transfer Date. The Vendor shall not be obliged to have it or its solicitor execute any Planning Act statements on the transfer/deed.

Notice

68. Any written notice required under the Addendum shall be delivered and deemed to be given in accordance with the terms described at Paragraph 14 of the Addendum. Any other written notice or document required or desired to be given to the Purchaser or to the Vendor shall be deemed to have been sufficiently given if same is in writing and either (i) personally delivered or delivered by courier to the Purchaser or Vendor or to their respective solicitors, as the case may be, at the address noted in of this Purchase Agreement and any such document and notice shall be deemed to have been given and received on the date of personal delivery or delivery by courier, (ii) mailed by prepaid ordinary post and addressed to the Purchaser or Vendor or their respective solicitors, as the case may be, at the address noted in this Purchase Agreement and any such document and notice shall be deemed to have been given and received two business days after the date of mailing, or (iii) delivered by e-mail or telefax to the Purchaser or Vendor or to their respective solicitors, as the case may be, at the e-mail address or telefax number noted in this Agreement or provided by the Purchaser and any such document and notice shall be deemed to have been given and received on the date of e-mail or telefax transmission, (or the next business day if the date of delivery or transmission is not a business day), provided that in respect of e-mail transmission, the sender does not receive notification that the transmission did not go through.

69. The Purchaser acknowledges that the Vendor is not required to deliver "hard" or paper copies of the documentation pertaining to the Occupancy of the Unit or the conveyance of title to the Unit, draft or otherwise, to the Purchaser or the Purchaser's solicitor (the "**Closing Documentation**"). The Vendor or the Vendor's representatives may, at their option, deliver to the Purchaser or the Purchaser's solicitor any or all of the Closing Documentation by email and/or by website. If delivered by website, the Closing Documentation shall be made available for download on an internet website designated by the Vendor and access to such website shall be effected by way of a confidential password to be provided to the Purchaser and/or the Purchaser's solicitor.

Amendments not constituting Material Change

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

    a. change the Property's municipal address or numbering of the Unit (in terms of the unit number and/or level number ascribed to any one or more of the units comprising the Unit), without the requirement of any amendment;

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

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

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

    e. reduce the height of any building comprising part of the Condominium, increase and/or reduce the number of dwelling and/or parking units or other ancillary units and/or alter the massing and/or façade of the building;

    and that the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its sales representatives (whether based or founded in contract, tort or in equity) for any such changes, deletions, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications is material in nature (as defined by the Act) and significantly affects the fundamental character, use or value of the Unit and/or the Condominium, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same), and where any such change, deletion, alteration or modification to the said plans and specifications is material in nature, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Unit Transfer Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such material change), and the return of the Purchaser's deposit monies, together with interest accrued thereon at the rate prescribed by the Act. The Purchaser further expressly acknowledges that the Vendor's ability to change, vary or modify the plans and specifications pertaining to the Property is an essential requirement for the a successful marketing and completion of the Condominium, which mutually benefits both parties, and that in consideration of the Purchaser assuming this risk of potential major or minor changes to the Property, the Purchaser hereby acknowledges having received the benefit of a sale price which may (or may not) be lower than the prices that are (or may be) applicable to comparable units in the Property, when the same shall have been fully constructed. Purchasers are advised that the budget contains a clause permitting increases which shall be up to the percentage per annum specified in the budget, (or portion thereof) after a stipulated date and such increases shall not be considered a material change. The costs of electricity, water and natural gas are based on estimates of those rates and/or unit charges and in the event that the real costs of those utilities is in excess of the estimated amounts or unit charges, then the Vendor/Declarant shall have the right to increase the budget for such increases and such increase shall not be considered a material change. The changes noted above shall not require any amendment to this agreement and the Vendor may, but shall not be obliged, to provide notice of such amendments to the Purchaser. In the event that the amendments to the building or condominium or plans relating thereto result in the change of a unit number or level number or suite number then the Vendor shall be entitled to make such amendment to the said unit, level and suite numbers as set out in this agreement, designated by the Vendor or as assigned to the Purchaser, shall be deemed to be amended accordingly. The Purchaser shall execute any and all acknowledgments, amendments, addendums etc., confirming the above noted non-material amendments as the Vendor may require from time to time.

71. a. The Vendor shall have the right to substitute any floorplate or level in the Condominium with an alternative floorplate containing a modified design of units and/or number of units on the level. In the event that such modifications becomes necessary, there shall be a reallocation of each owner's proportionate percentage and the Creating Documents shall be modified accordingly. The Purchaser acknowledges that none of the foregoing changes or revisions (if implemented) unless same substantively affects the common expenses payable in respect of the Units being purchased herein, shall in any way be considered or construed as a material change to the Disclosure Statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction. In addition to be entitled to build any unit in using a mirror of the floorplate shown in the drawings, the Vendor shall have the right to revise the internal configuration of any room in the unit, including constructing same using a mirrored design and configuration and the Purchaser shall be obliged to accept such amendment and/or revisions to the configuration of the unit and/or rooms.

    b. The Purchaser acknowledges that it may be entering into this Agreement before the proposed development has received the approval of the Municipality and the Purchaser should review the Addendum in this regard.

    c. In addition to the right to substitute floorplate, the Vendor reserves the right to increase or decrease the final number of dwelling, parking, parking/locker units and/or other ancillary units and/or exclusive use common element spaces intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the dwelling, parking, parking/locker units and/or exclusive use common element spaces ultimately comprised within the Condominium, all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the dwelling, parking and/or other ancillary unit count will not affect, in any material or substantial way, the percentage of common expenses and common interests allocated and attributable to the dwelling units, parking units, parking locker units and/or locker units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more dwelling units situate adjacent to one another may be divided, combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units may be split into two or more figures or incorporated into one figure or percentage in respect of the split or final combined unit as the case may be, and the overall dwelling unit count of the Condominium will be varied and adjusted accordingly. This will result in a change to the unit numbering and the Vendor shall be permitted to amend the unit numbering in this agreement to reflect the foregoing and the change

in the unit numbering shall not be considered a material change provided that the Units remain substantially the same and substantially in the same position within the overall floor plate. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.

d. The Purchaser further acknowledges that the registered Condominium Documents and final budget statement for the one year period immediately following registration of the Condominium may vary from the proposed Condominium Documents and budget statement given to the Purchaser when entering into this Agreement, and the Purchaser hereby acknowledges and agrees that in the event there is a material amendment to any of the documentation or information comprising the Condominium Documents (whether or not registered on title), then the Purchaser's only remedy shall be rescission of this Agreement within the time period prescribed under the Act, and under no circumstances shall the Purchaser be entitled to claim specific performance and/or damages (either legal or equitable) against the Vendor as a result thereof, notwithstanding any rule of law or equity to the contrary.

Cause of Action/Assignment

72. The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties.

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

Irrevocability

74. This offer by the Purchaser, shall be irrevocable by the Purchaser until the 20th day (excluding Saturdays, Sundays and statutory holidays) following the date of his or her execution of this Agreement, after which time, if such offer has not been accepted by the Vendor, this offer may be withdrawn, and if so, same shall be null and void and the deposit shall be returned to the Purchaser without interest or deduction. Acceptance by the Vendor of this offer shall be deemed to have been sufficiently made if this Agreement is executed by the Vendor on or before the irrevocable date specified in the preceding sentence, without requiring any notice of such acceptance to be delivered to the Purchaser prior to such time. Subject to the provisions of the Addendum to the contrary, the parties to this Agreement shall be entitled to execute this Agreement, and deliver same to the other party by telefacsimile or electronic mail, and a telefaxed or electronically transmitted copy of this Agreement, endorsed by the Vendor and/or the Purchaser, may be relied upon as if it were an original. The Vendor and the Purchaser covenant and agree, upon the request of the other, to provide one originally executed copy of this Agreement to the requesting party. This right may only be exercised once by each party. The parties hereto shall be entitled to rely upon, and deliver, any copies of any agreements to the telefax numbers set out in this Agreement and the Addendum and a confirmation of transmission or read receipt shall be deemed to be conclusive evidence that the document telefaxed or emailed, has been delivered to the other party or parties. In the event that there is more than one Purchaser, the delivery by the Vendor of this Agreement by telefacsimile or email to one Purchaser shall be deemed to be service to all Purchasers and each Purchaser hereby appoints the other(s) as its duly authorized agent and attorney for the purposes of such service. If this Agreement is accepted by the Vendor this Agreement shall be deemed to be effective (subject to the statutory right of termination in favour of the Purchaser) on the date of such acceptance

Electronic Commerce Act

75. Pursuant to subsection 3(1) and any other relevant provisions of the *Electronic Commerce Act, 2000* of Ontario, as amended (or any successor or similar legislation): (i) the Purchaser acknowledges and agrees to use and accept any information and/or document to be provided by the Vendor and/or the Vendor's Solicitors in respect of this transaction in an electronic form if, when and in the form provided by the Vendor and/or the Vendor's Solicitors; and (ii) the Purchaser acknowledges and agrees to provide to the Vendor and/or its solicitors any information and/or document required in respect of this transaction in an electronic form as, when and in the form required by the Vendor and/or the Vendor's Solicitors, in the Vendor's sole and unfettered discretion.

Purchaser's Consent to Collection, Use and Disclosure of Personal Information

76. The Purchaser hereby consents to the Vendor's collection and use of the Purchaser's personal information, necessary and sufficient to enable the Vendor to proceed with the Purchaser's purchase of the Unit and for the completion of this transaction, post-closing and after sales customer care purposes and marketing purposes. The personal information collected and used by the Vendor includes without limitation, the Purchaser's name, home address, email address, facsimile/telephone number, age, date of birth, marital status, residency status, social insurance number and financial information. The Purchaser's marital status shall only be used for the limited purposes described in subparagraphs (a), (e), (f) and (g) below and the Purchaser's residency status and social insurance number shall only be used for the limited purpose described in subparagraph (f) below. The Vendor shall also collect and use the Purchaser's desired suite design(s) and colour/finish selections for the purpose of completing this transaction. The Purchaser hereby consents to the disclosure and/or transfer by the Vendor of any or all personal information collected by the Vendor to the following third parties for the following purposes, on the express understanding and agreement that the Vendor shall not sell or otherwise provide or distribute such personal information to any third parties other than the following:

a. any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser, including without limitation, the Vendor's construction lender(s) (the "**Construction Lender**"), the project monitor, TARION and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Units from the Vendor;

b. any insurance companies providing (or wishing to provide) insurance coverage with respect to the Units (or any portion thereof) and/or the common elements of the Condominium, including without limitation, any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;

c. any real estate brokerages, agents, trades/suppliers or sub trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the sales. marketing, completion and/or finishing of the Unit as well as the installation of any extras or upgrades ordered or requested by the Purchaser;

d. one or more providers of cable television, telephone, telecommunication, security alarm systems, hydroelectricity, chilled water/hot water, gas and/or other similar or related services to the Units and/or Property (or any portion thereof) and/or the Condominium;

e. any relevant governmental authorities or agencies, including without limitation, the Municipal Property Assessment Corporation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax and HST), and the Canada Revenue Agency ("**CRA**") with respect to HST;

f. Canada Revenue Agency to whose attention the T 5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number, as required by Regulation 201(l)(b)(ii) of *The Income Tax Act* R.S.C. 1985, as amended;

g. the Vendor's Solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;

h. the condominium corporation, for purposes of facilitating the completion of the corporation's voting, leasing and/or other relevant records, and to the condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;

i. any party where the disclosure is required by law;

j. any party where the Purchaser consents to the disclosure;

k. any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to, or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser, as well as all real estate agents or brokerages having an interest or earning commissions with respect to this transaction; or

l. one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to, or affiliated with the Vendor, and who may send (by e mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser.

The Purchaser may direct the Vendor not to use the Purchaser's personal information for marketing purposes, including the purposes identified in subparagraphs (k) and (l), by giving notice to the Vendor at the address and telephone number that appears in the Agreement of Purchase and Sale. The Purchaser may obtain additional information about the Vendor's personal information management practices, make a complaint to the Vendor about its practices and request access to, or a correction of, personal information about the Purchaser in the Vendor's possession or control, by contacting the Vendor at the address and telephone number that appears in the Agreement.

Election to Pre-Pay

77. The parties acknowledge and agree that, before the expiry of the rescission period as set out in the Act permitting the Purchaser to terminate this Agreement, the Purchaser may elect to pay the balance of the Purchase Price then outstanding on the Closing Date. In the event that the Purchaser makes such election, he/she shall sign an irrevocable election to pay the balance of the purchase price in full, as aforesaid, in the Vendor's form (the "**Election**"), and deliver same to the Vendor prior to the expiry of the rescission period under the Act. The Purchaser acknowledges that the Purchaser will not be receiving a deed to the Units being purchased on the Closing Date and that the monies will be paid to the Vendor's solicitor on that date, to be held in trust by such solicitor in accordance with the Act and shall only to be released from trust by said solicitor as provided for in the Act. In the event that the Election is not delivered within the rescission period, the Purchaser shall have no further right to elect to pay the balance of the Purchase Price under the Agreement at the Closing Date. In the event that the Purchaser signs the Election and delivers same to the Vendor within the rescission period as set out in the Act and then subsequently, for any reason whatsoever, fails to pay the amount owing to the Vendor as required by this Agreement at the Closing Date, then the Vendor may, in addition to any other rights or remedies available to it pursuant to this Agreement, declare this Agreement to be in default and/or terminated and of no further force or effect whereupon all deposit monies, monies paid with respect to the Purchase Price and monies paid in respect of Extras, together with all interest accrued thereon, shall be retained by the Vendor as its liquidated damages and not as a penalty, and the Purchaser shall vacate the Unit/Property forthwith in accordance with this Agreement. Provided that the Vendor may elect not to terminate this Agreement and to require the Purchaser to complete the transaction contemplated herein on the following terms and conditions, namely:
   a. the Purchaser may rectify its default by paying the Vendor with an administration fee of $2,500.00 + HST, together with the outstanding balance of the Purchase Price, on the Closing Date; or,
   b. the Vendor may allow the Purchaser to pay the balance of the outstanding Purchase Price at the Unit Transfer Date, subject to the Purchaser paying forthwith on demand, the sum of $2,500.00 + HST as an administration fee for the amendment of this Agreement to provide for same; and such administration fees as set out above shall be considered a reasonable pre-estimation of the costs and expenses incurred by the Vendor by reason of it being obliged to arrange for the alternate financing arrangements and/or dealing with the default.

Notice/Warning Clauses

78. The Purchaser acknowledges that final development approvals and/or future Development Agreements between the Vendor and the Municipality may require the Vendor to provide the Purchaser with certain notices or warnings including, without limiting the generality of the foregoing, notices or warnings regarding the use of the Units and/or Property, environmental issues, noise levels from adjacent roadways, railways or otherwise, maintenance of municipal fencing, school transportation and related educational issues, care of landscaping on the Property and the status of services and works in the neighbourhood and/or Condominium. The Purchaser acknowledges and agrees that the Vendor may be unable, at this time, to provide the Purchaser with all such notices and warnings. The Purchaser shall forthwith upon request, from time to time, execute acknowledgment(s) or amendment(s) to this Agreement containing the required notices and warning clauses. The Purchaser acknowledges and agrees that the Vendor may be unable to sell the Units to the Purchaser unless the Purchaser executes such acknowledgments or amendments as aforesaid. In the event that the Purchaser fails to execute such acknowledgments or amendments forthwith upon being requested to do so, such failure or refusal shall be considered an Event of Default by the Purchaser and the Vendor shall be entitled to its remedies herein. The Purchaser covenants and agrees to execute forthwith upon request, one or more acknowledgments and/or amendments to this Agreement containing such additional warning clauses, notice and/or indemnities if and when requested to do so by the Vendor and to be bound by the contents of any such

SCHEDULE "A"
TO THE AGREEMENT OF PURCHASE AND SALE OF BRIGHTSTAR NEWCASTLE CORPORATION
STANDARD FINISHES

SEE ATTACHED

SCHEDULE A

Brookhouse
GATE
TOWN & COUNTRY RESIDENCES

FEATURES & FINISHES

BUILDING FEATURES

- Stunning 4 storey building with only 78 spacious suites
- Beautiful landscaped property
- Club and library rooms
- Club room has kitchen facilities for large gatherings
- Security entrance system
- Spacious lobby with ground floor mail room
- Underground parking for all units
- Second parking spaces available for purchase
- Refuse room on each floor
- Heated, landscaped BBQ areas
- Professional putting green
- Outdoor fitness stations
- Steel and concrete construction
- Sprinklers throughout
- Emergency generator

SUITE FEATURES

- 9' ceilings in all living areas (except when structural and/or mechanical systems wouldn't allow)
- Intercom from lobby to suite
- Ensuite laundry – includes washer and dryer
- Individual metering
- Heat pumps
- Private balconies
- Ensuite storage in most units
- 4 inch baseboards
- Series 800 Colonial or Classique interior doors
- Brushed nickel door hardware
- Levered door handles
- Smooth ceilings in all bathrooms and kitchen –all other ceilings to receive textured finish

KITCHENS

- Traditional or contemporary style cabinets available from vendor's standard samples
- Double stainless steel sink
- Lever faucet and vegetable sprayer
- Stylish laminate wood flooring in choice of colours from vendor's standard samples
- Kitchen islands and breakfast bars, as per plan
- Fridge, stove and dishwasher from vendor's standard samples
- Granite countertop from vendor's standard samples

BATHROOMS

- Traditional or contemporary style cabinets and counter tops available from vendor's standard samples
- Single lever faucets
- Glass shower doors
- Mirrors over vanities
- White bathroom sink and toilet
- Shower and tub as per plan
- Linen closet in most units

FLOORING

- Cozy 35 oz. broadloom with 11 mm foam underpad in bedrooms; colours from vendor's standard samples
- Stylish laminate wood flooring in front entry, kitchen, living room, den and dining room – choice of colors from vendor's standard samples
- Choice of 12" x 12" or 13" x 13" ceramic tile for bath, laundry and storage areas from vendor's standard samples

---

COLOUR SELECTION AND FINISHINGS

Brightstar provides interior design consultants to help in the selection of finishes and upgrades.

Sales Representative: [signature] Purchaser: [signature] X

Date: OCTOBER 30, 2014

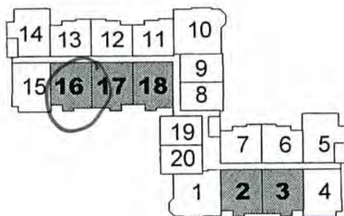
Note: Any displayed finishes might be a builder's upgrade, which would be purchased at an additional cost.
All references to room sizes, measurements, materials, construction styles, trade, industry, brand names or terms may be subject to change or variation.
Measurements may be converted from feet to meters or vice versa and actual product size may very slightly.
All references to features and finishes are as per applicable plan or elevation and each item may not be applicable to every unit. Locations of features and finishes are as per builder plan or at the Vendors sole discretion.
All features and finishes where the purchaser is given the option to select the style and or colour shall be from the vendors predetermined standard selections.
Usable square footages may vary from stated floor areas.

SCHEDULE “B”
TO THE AGREEMENT OF PURCHASE AND SALE OF BRIGHTSTAR NEWCASTLE CORPORATION
UNIT PLAN AND FLOOR PLAN

SEE ATTACHED

SCHEDULE A
THE CRANDELL

Level 4 Unit 16 Municipal No. 416



Key Plan

Specifications are subject to change without notice. All images are artist concept only. E & O.E. 2014
Note: Actual usable floor space may vary from the stated floor area.

SCHEDULE "C"
TO THE AGREEMENT OF PURCHASE AND SALE OF BRIGHTSTAR NEWCASTLE CORPORATION
TERMS OF OCCUPANCY LICENCE

1. The terms of the Occupancy Licence shall be substantially in accordance with the terms and conditions of this schedule provided that the Vendor shall have the right to amend the terms of schedule in its discretion. The transfer of title to the Unit shall take place on the Unit Transfer Date upon which date, unless otherwise expressly provided for hereunder, the term of this Occupancy Licence shall be automatically terminated once title to the Unit has passed to the Purchaser.

2. The Vendor grants to the Purchaser a licence to occupy the Unit from the Closing Date to the Unit Transfer Date (the "**Interim Occupancy**"). The Purchaser shall pay to the Vendor the Occupancy Fee during the Interim Occupancy which is the aggregate of the following amounts, namely: a) the amount of interest payable in respect of the unpaid balance of the Purchase Price at the prescribed rate; b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable by the Vendor to the Unit; and c) the projected monthly common expense contribution for the Unit. The occupancy fee shall be paid on the first day of each month in advance during Interim Occupancy, no part of which shall be credited as payments on account of the Purchase Price, but which payments shall be a charge for occupancy only. If the Closing Date is not the first day of the month, the Purchaser shall pay on the Closing Date a pro rata amount for the balance of the month by certified funds. The Purchaser shall deliver to the Vendor on or before the Closing Date a series of post-dated cheques as required by the Vendor for payment of the estimated monthly Occupancy Fee. The Occupancy Fee may be recalculated by the Vendor, from time to time based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee following notice from the Vendor. With respect to taxes, the Purchaser agrees that the amount estimated by the Vendor on account of municipal realty taxes attributed to the Unit shall be subject to recalculation based upon the real property tax assessment or reassessment of the Units and/or Condominium, issued by the Municipality after the Unit Transfer Date and the applicable mill rate in effect as at the date such assessment or reassessment is issued. The Occupancy Fee shall thereupon be recalculated by the Vendor and any amount owing by one party to the other shall be paid in accordance with this agreement and/or the Act.

3. The Purchaser shall be allowed to remain in occupancy of the Unit during Interim Occupancy provided the terms of this Occupancy Licence and the Agreement have been observed and performed by the Purchaser. In the event the Purchaser breaches the terms of occupancy the Vendor in its sole discretion and without limitation of any other rights or remedies provided for in this Agreement or at law may terminate this Agreement and revoke the Occupancy Licence whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Vendor may take whatever steps it deems necessary to obtain vacant possession and the Purchaser shall reimburse the Vendor for all costs it may incur.

4. At or prior to the time that the Purchaser takes possession of the Unit, the Purchaser shall execute and deliver to the Vendor any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Vendor pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time. The Purchaser shall pay the monthly Occupancy Fee during Interim Occupancy and the Vendor shall return all unused post-dated Occupancy Fee cheques to the Purchaser on or shortly after the Unit Transfer Date.

5. The Purchaser agrees to maintain the Unit in a clean and sanitary condition and not to make any alterations, improvements or additions thereto without the prior written approval of the Vendor which may be unreasonably withheld. The Purchaser shall be responsible for all utility, telephone expenses, cable television service, or other charges and expenses billed directly to the occupant of the Unit by the supplier of such services or by the Corporation or such other third party and not the responsibility of the Corporation under the Condominium Documents. No noise constituting an annoyance and/or nuisance or disrupting the normal use of a residential unit shall be permitted to be transmitted from one residential unit to another residential unit. If the Vendor determines that any noise is being transmitted to another unit and that such noise is an annoyance and/or a nuisance and/or disruptive, then the owner of such unit shall, at his/her expense, take such steps are necessary in the opinion of the Vendor rectify and/or abate such noise. Any owner of a residential unit, save and except the Vendor or any related or affiliated company, who installs and/or causes to be installed, hardwood flooring, synthetic hard surface flooring, laminate flooring and/or any other ceramic tile flooring ("**Hard Surface Flooring**"), shall prior to such installation, install such sound proofing sub-flooring material as required by the Vendor. In addition, the Vendor may require that the said unit owner(s) install carpeting (having a face weight and underpad as the Vendor may designate) over the Hard Surface Flooring as the Vendor may deem necessary or desirable in order to abate noise in the unit where the Hard Surface Flooring has been installed. In the event that the said unit owner fails to undertake the rectification/abatement measures required by the Vendor, then the Purchaser shall be in default under this licence and the Purchase Agreement entitling the Vendor to its remedies thereunder. In addition no owner, tenant or occupant of a Residential Unit shall be permitted to alter, penetrate, remove, any portion of any demising wall or ceiling assembly (including the drywall) between any residential unit or any exterior wall or ceiling, other than the application of any wall or ceiling covering or paint. In addition, no owner, tenant or occupant of a Residential Unit shall be permitted to install any electronic equipment or audio speakers in the cavity of any demising wall or ceiling between any residential unit or any exterior wall or ceiling. In the event that the said unit owner defaults with respect to this obligation then the Purchaser shall be in default under this licence and the Purchase Agreement entitling the Vendor to its remedies thereunder.

6. The Purchaser's occupancy of the Unit shall be governed by the provisions of the Condominium Documents and the provisions of this Agreement. The Unit may only be occupied and used in accordance with the Condominium Documents and for no other purpose.

7. The Vendor and the Purchaser covenant and agree, notwithstanding the taking of possession, that all terms hereunder continue to be binding upon them and that the Vendor may enforce the provisions of the Occupancy Licence separate and apart from the purchase and sale provisions of this Agreement.

8. The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium including all aspects of a standard unit only and not on any improvements or betterments made by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Closing Date to insure the improvements or betterments to the Unit and to replace and/or repair same if they are removed, injured or destroyed. The Vendor is not liable for the Purchaser's loss occasioned by fire, theft or other casualty, unless caused by the Vendor's willful conduct. The Purchaser must insure all chattels on the Property at his/her own expense after the Closing Date. The Purchaser agrees to indemnify the Vendor for all losses, costs and expenses incurred as a result of the Purchaser's neglect, damage or use of the Unit or the Condominium, or by reason of injury to any person or property in or upon the Unit or the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, invitees, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Unit or the Condominium as a result of the Purchaser's neglect, damage or use of the Unit or Condominium, he will immediately reimburse the Vendor for the cost of doing same, the determination of need for such repairs or redecoration shall be at the discretion of the Vendor, and such costs may be added to the Purchase Price.

9. In accordance with clause 80(6)(d) and (e) the Act, subject to strict compliance by the Purchaser with the requirements of occupancy set forth in this Agreement, the Purchaser shall not have the right to assign, sublet or in any other manner dispose of the Occupancy Licence during Interim Occupancy without the prior written consent of the Vendor which consent may be arbitrarily withheld. The Purchaser acknowledges

that, if permitted by the Vendor, such assignment will result in the Purchaser owing the Vendor, in addition to the Purchase Price, all amounts equal to all Rebates and HST Credits as the assignment will disentitle the Purchaser to the Rebates and will also pay the Vendor an administrative fee together with all applicable taxes will be payable to the Vendor each time the Purchaser wishes to assign, sublet or dispose of the Occupancy License during Interim Occupancy, and is permitted to do so.

The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of the Occupancy Licence, shall be deemed to form an integral part of the Occupancy Licence. Subject to the terms and conditions of the ONHWPA and/or the Addendum, in the event the Vendor elects to terminate the Occupancy Licence pursuant to this Agreement following substantial damage to the Unit and/or the Condominium, the Occupancy Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Unit and/or the Condominium can be repaired within a reasonable time following damages as determined by the Vendor (but not, in any event, to exceed 180 days) and the Unit is, during such period of repairs uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Unit and/or the Condominium with all due dispatch and the Occupancy Fee shall abate during the period when the Unit remains uninhabitable; otherwise, the Purchaser shall vacate the Unit and deliver up vacant possession to the Vendor and all moneys, paid in respect of deposits and/or Extras (excluding the Occupancy Fee paid to the Vendor) shall be returned to the Purchaser. It is understood and agreed that the proceeds of all insurance policies held by the Vendor are for the benefit of the Vendor alone. These provisions are subject to any overriding provisions in the ONHWPA, its regulations and/or the Addendum to the contrary.

SCHEDULE "D"
TO THE AGREEMENT OF PURCHASE AND SALE OF BRIGHTSTAR NEWCASTLE CORPORATION
WARNING CLAUSES

Purchasers are advised that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for site plan approval, draft plan of condominium approval and or other approvals, certain requirements may be imposed upon the Vendor by various governmental authorities, quasi-governmental authorities, utilities, transportation corporations, etc. These requirements (the "**Requirements**") usually relate to warning provisions to be given to Purchasers in connection with environmental, site plan, municipal or other concerns (such as warnings relating to noise levels, the proximity of the building to major streets and similar matters). Accordingly, the Purchaser acknowledges that the agreement of purchase and sale obliges the Purchaser to execute any and all documents required by the Vendor acknowledging, inter alia, that (1) the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final agreement of purchase and sale and/or the condominium documents the Purchaser shall accept the same, without in any way affecting this transaction. In addition one or more development agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways. Purchasers acknowledges that this Agreement of Purchase and Sale and/or the declaration of the condominium obliges the Purchaser to be bound by, and comply with, the contents of any such development agreements, notice(s), etc. and the Purchaser agrees to be bound by same.

The Purchasers are hereby advised and acknowledge that:

a. noise levels caused by the condominium's co-generation system, elevators, garbage chutes, mechanical equipment, and by the condominium's recreation facilities, may occasionally cause noise and inconvenience to the residential occupants; and

b. as and when other residential units in the condominium are being completed and/or moved into, excessive levels of noise, vibration, dust and/or debris are possible, and same may accordingly temporarily cause noise and inconvenience to the residential occupants;.

c. a mechanical room will be located in the underground parking level and noise and vibration from the mechanical room may cause noise and inconvenience to the residential occupants above the mechanical room.

SCHEDULE "E"
TO THE PURCHASE AGREEMENT OF BRIGHSTAR NEWCASTLE CORPORATION

-AND-

Gerry Rasmussen

PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT (CANADA)
FINTRAC COMPLIANCE (Personal)

I/we Gerry Rasmussen hereby declare that I/we are (check beside the correct number):

1. ✓ purchasing the Unit and Property for our own account, as our property and with our own funds; or

2. ______ purchasing the Unit and Property for and on behalf of another party using his/her/its funds (the "**3RD Party**").

If you have checked No. 2 you MUST complete the following:

1. Name of 3rd Party: ______
2. Address of 3rd Party: ______
3. Telephone Number and Email Address of 3rd Party ______
4. Relationship of 3rd Party to Purchaser: ______
5. Source of 3rd Party Funds: ______
6. Length of Time that you have known 3rd Party: ______
7. Date of Birth of 3rd Party: ______
8. 3rd Party Occupation: ______
9. Name and Address of Business or Employer: ______

I/we make this declaration honestly and truthfully and acknowledge and agree that it shall have the same force and effect as if sworn and made under oath. I/we acknowledge and agree that by making this declaration that I/we am/are not the intended beneficial purchaser of the property that is the subject of this agreement and that accordingly I/we do not qualify for the Rebate or HST Rebate. Notwithstanding that I/we are not purchasing the Unit or Property for my/our own accounts I/we hereby personally covenant and agree to perform and guarantee the performance of all of the obligations of the Purchaser under this agreement.

Dated this Toronto 30th day of October, 2014.

Witness as to all signatures

Print Name: Gerry Rasmussen

Print Name:

NOTE: THE PURCHASER MUST SUPPLY THE EVIDENCE OF IDENTIFICATION OF THE 3RD PARTY AS REQUIRED PURSUANT TO PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT (CANADA). THIS EVIDENCE SHALL INCLUDE NOT LESS THAN TWO OF THE PRESCRIBED PIECES OF IDENTIFICATION FOR THE 3RD PARTY PURCHASER. THE IDENTIFICATION MUST BE NOTARIAL COPIES, NOTARIZED OR GUARANTEED BY A CANADIAN NOTARY PUBLIC OR PERMITTED GUARANTOR.

Two of the following three types of identification are acceptable:

1. **legible photocopy of an original Acceptable Identification Document, signed by a Canadian commissioner of oaths or guarantor to be a true copy of the original. This can include:**
    - (a) birth certificate issued by a government body
    - (b) driver's licence
    - (c) passport
    - (d) record of landing
    - (e) permanent resident card
    - (f) certificate of Indian status
    - (g) Social Insurance Number Card
2. **credit report from valid credit rating agency**
3. **cleared cheque or confirmed bank account in the name of the 3rd party, identifying the financial institution, account number, branch and the date the cheque cleared**

ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURE DOCUMENTS AND ACCEPTED AGREEMENT OF PURCHASE AND SALE

TO: BRIGHTSTAR NEWCASTLE CORPORATION

RE: UNIT 16**, LEVEL** 4**, SUITE** 416**, 21 Brookhouse Drive, Newcastle, Ontario, L1B 1N8**

The undersigned acknowledges that he/she/they has/have received the following documents from Brightstar Newcastle Corporation the residential condominium being developed at 21 Brookhouse Drive, Newcastle, Ontario L1B 1N8 (the "**Condominium**"), namely:

1) the Disclosure Statement, including the Table of Contents;

2) the Proposed Condominium Declaration;

3) proposed By-law No. 1, being the general organizational by-law of the proposed Condominium;

4) proposed By-law No. 2, providing the criteria for determining what comprises a standard residential and parking unit for insurance purposes;

5) proposed By-law No. 3, setting out the procedure for any necessary mediation/arbitration of disputes;

6) proposed By-law No. 4, authorizing the proposed Condominium to grant the Permitted Party a licence to use the common elements for the purposes of marketing and selling the units in the Condominium and further authorizing the Condominium to assume any outstanding municipal agreements and to enter into a licence agreement to complete and fulfill all of the terms and conditions set out in any outstanding municipal agreements and to save and indemnify the Declarant harmless from and against all losses or damages sustained by the Declarant as a result of the Condominium not complying with such outstanding municipal agreements;

7) the proposed Property Management Agreement;

8) the proposed Budget outlining the common expenses for the first year of operation of the Condominium after registration;

9) proposed Schedule of Monthly Common Expenses;

10) the proposed rules of the Condominium; and

11) ONE fully executed copy of the Agreement of Purchase and Sale for the above noted property being purchased, executed by the Purchaser on 30 October, 2014 and accepted by the Vendor on 30 October, 2014.

The Purchaser acknowledges and agrees that the 10 day rescission period as set out in Section 73(2) of the *Condominium Act, 1998* will begin to run from this date. Therefore the Purchaser has until 11:59 pm on the 10th day from the date set out below to terminate or cancel the Agreement of Purchase and Sale noted above, for any reason, and receive a return of his/her deposit.

DATED at Toronto, this 30th day of October 2014.

[signature]
Witness as to all signatures

[signature]
Purchaser -
(Print Name) Gerry Rasmussen

Purchaser -
(Print Name) ______________________

Condominium Form
(Tentative Occupancy Date)
Property 21 Brookhouse Drive Newcastle

Statement of Critical Dates
Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**
NOTE TO HOME BUYERS: ***Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.***

VENDOR BRIGHTSTAR NEWCASTLE CORPORATION
Full Name(s)

PURCHASER Gerry Rasmussen
Full Name(s)

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the 31st day of October, 2016.

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

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

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

the ___day of __________, 20___.
Final Tentative Occupancy Date

or

the ___day of __________, 20___.
Firm Occupancy Date

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

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

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 31st day of May, 2018.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date. Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the 2nd day of August, 2016.
(i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on: the 3th day of July, 2018.
If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (*see sections 7, 10 and 11 of the Addendum*).

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Acknowledged this 30 day of October, 2014.

VENDOR: [signature]

PURCHASER: X [signature]

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty

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

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

The Vendor shall complete all blanks set out below.

VENDOR

BRIGHTSTAR NEWCASTLE CORPORATION
Full Name(s)

43804
Tarion Registration Number

55 St. Clair Avenue West, Suite 205
Address

416-362-5890
Phone

Toronto | ON | M4V 2Y7
City | Province | Postal Code

416-362-1218
Fax

jbuckler@brightstarcorp.ca
Email*

PURCHASER

Gerry Rasmussen
Full Name(s)

6 Leonard Street Townhouse # 19
Address

Richmond Hill | Ontario | L4C 0L6
City | Province | Postal Code

(905) 7870944
Phone

Fax

gerryrasmussen@gmail.com
Email*

PROPERTY DESCRIPTION

21 Brookhouse Drive
Municipal Address

Newcastle | ON | L1B 1N7
City | Province | Postal Code

78 Unit Condominium Development - Part Lot 26, Plan: 40M-2038 Parts 3, 4, Block: 138
Short Legal Description

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

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

(b) Commencement of Construction: O has occurred; or O is expected to occur by the 30 day of April, 2015.

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

***Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.**

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

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

2. Changing the Firm Occupancy Date – Three Ways

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

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

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

4. Changing Critical Dates – By Mutual Agreement

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

(b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:

(i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
(ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
(iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
(iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:

i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

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

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

(d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

(a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.

(b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.

(c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.

(d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.

(e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

(a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.

(b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

(c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. ☒ Yes ○ No

(d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

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

See attached

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

The date by which Condition #1 is to be satisfied is the _____day of____________, 20 _____.

Condition #2 (if applicable)
Description of the Early Termination Condition:

See attached

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

The date by which Condition #2 is to be satisfied is the _____day of __________, 20______.

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

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

(e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.

(f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.

(g) For conditions under paragraph 1(a) of Schedule A the following applies:

(i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;

(ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and

(iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.

(h) For conditions under paragraph 1(b) of Schedule A the following applies:

(i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;

(ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and

(iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.

(i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.

(j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.

(k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

(a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of $7,500, which amount includes: (i) payment to the Purchaser of a set amount of $150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.

(b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.

(c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.

(d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of $150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.

(e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:

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

(f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.

(g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

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

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

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

(b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
   (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
   (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
   (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.

(c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.

(d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

(a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.

(b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.

(c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.

(d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.

(e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.

(f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

(a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.

(b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.

(c) Notwithstanding paragraphs(a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

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

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

not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.
"Closing" means completion of the sale of the home, including transfer of title to the home to the Purchaser.
"Commencement of Construction" means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.
"Critical Dates" means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser's Termination Period.
"Delayed Occupancy Date" means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.
"Early Termination Conditions" means the types of conditions listed in Schedule A.
"Final Tentative Occupancy Date" means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).
"Firm Occupancy Date" means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.
"First Tentative Occupancy Date" means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.
"Formal Zoning Approval" occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.
"Occupancy" means the right to use or occupy the home in accordance with the Purchase Agreement.
"Occupancy Date" means the date the Purchaser is given Occupancy.
"Outside Occupancy Date" means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.
"Property" or "home" means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.
"Purchaser's Termination Period" means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).
"Roof Assembly Date" means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.
"Statement of Critical Dates" means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.
"The ONHWP Act" means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.
"Unavoidable Delay" means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.
"Unavoidable Delay Period" means the number of days between the Purchaser's receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

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

14. Time Periods, and How Notice Must Be Sent

(a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.

(b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

(c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.

(d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.

(e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.

(f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.

(g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.

(h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.

(i) Words in the singular include the plural and words in the plural include the singular.

(j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

(a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.

(b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.

(c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.

(d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.

(e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

SCHEDULE A

Types of Permitted Early Termination Conditions

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

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

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

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

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

2. The following definitions apply in this Schedule:

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.
"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

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

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

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

III TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

SCHEDULE B

Adjustments to Purchase Price or Balance Due on Closing

PART I Stipulated Amounts/Adjustments

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

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

1.Paragraph 6 (f) of the Purchase Agreement: The Costs of the Tarion Enrolment Fee for the Unit fixed as of the date that the Units are enrolled.

2. Paragraph 6(g) of the Purchase Agreement, NSF Charges of $200.00 + HST per occurance.

3. Paragraph 6(h) of the Purchase Agreement, $50.00 for each cheque provided for Deposits, Extras and/or adjustments + HST.

4. Section 6 of the Purchase Agreement: There is applicable taxes (such as HST) added to all adjustments.

5. In the event that the Vendor receives any rebate, credit, recovery, adjustment, discount or similar benefit from any party or parties in respect of any item that the Vendor is entitled to charge the Purchaser for in accordance with this agreement, then the Vendor shall be entitled to retain such any rebate, credit, recovery, adjustment, discount or similar benefit for its own use and as its own property absolutely and shall not be obliged to credit or adjust with the Purchaser for such any rebate, credit, recovery, adjustment, discount or similar benefit.

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Condominium Form
(Tentative Occupancy Date)

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

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

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

1. Paragraph 6(a) of the Purchase Agreement: Realty Taxes and local Improvement charges estimated as if the Units have been assessed or on the basis of land taxes.

2. Paragraph 6(a) of the Purchase Agreement: Security for Property Taxes that the Vendor is obliged to pre-pay or provide security for to the Municipality.

3. Paragraph 6(b) of the Purchase Agreement: common expense contributions attributable to the Unit.

4. Paragraph 6(c) of the Purchase Agreement: Any other taxes or increases in additional taxes imposed on the Unit or this transaction by the federal, provincial, or municipal government or by the Law Society of Upper Canada.

5. Paragraph 6(d) of the Purchase Agreement: Proportionate Share or actual costs of meters for utilities and connection fees and charges for sewers, water, gas services, etc.

6. Paragraph 6(e) of the Purchase Agreement: Increases after February 1, 2014, in development charge(s) or levies (including parks, cash-in-lieu, and public art levies), parlad levies, Go Transit or other transportation levies, as well as all other levies, charges, obligations or assessments assessed against or attributable to the Unit or assessed against the Property pursuant to the Development Charges Act 1997, the Education Act, the Planning Act or pursuant to any other relevant legislation, regulation, policy or authority.

7. Paragraph 6(f) of the Purchase Agreement: Tarion Enrolment Fee

8. Paragraph 6(i) of the Purchase Agreement: Vendor's legal fees, disbursements and taxes for amendments, changes, extensions etc. of the Purchase Agreement: There is applicable taxes (such as HST) added to tall adjustments.

9. Paragraph 6(k) of the Purchase Agreement: two months estimated common expenses to be directed to the Reserve Fund.

10. Paragraph 6 (j) of the Purchase Agreement: Vendor's costs of rectifying or mitigating any default by the Purchaser, including legal fees, costs of extras (if not pre-paid, costs related to third party installations incurred by Vendor.

11. Paragraph 6(l) of the Purchase Agreement: assignment fee charged by the Vendor's solicitor if Purchaser assigns the Agreement of Purchase and Sale.

12. Paragraph 6(m) of the Purchase Agreement: All taxes on adjustments and/or reimbursements.

13. Paragraph 8 of the Purchase Agreement: Security deposit for unit utility services.

14. Paragraphs 9, 10, 11, 12, 13 and 14 of the Purchase Agreement: HST Rebate assigned to the Purchaser. If the Purchaser does not qualify for the full amount of any HST Rebate or HST Credit (as those terms are defined in teh Purchase Agreement), which the Purchaser is obliged to assign to the Vendor then the Purchaser shall pay the Vendor an amount or amounts equivalent tot he HST Rebates or HST Credits that the Purchaser becomes dis-entitled to.

15. Paragraph 5 of the Purchase Agreement: While not an adjustment, from after occupancy of the Units the Purchaser must pay all utility costs including electricity, gas and water (unless included as part of the common expenses), telephone services and cable television services for the Units as well as the occupancy fees.

16. Paragraph 3 and the last paragraph of Schedule C of the Purchase Agreement: All costs of the Vendor in obtaining vacant possession of the Units in the event that the Purchaser defaults under the Purchase Agreement after possession and the Purchase Agreement is terminated and all damages caused by the Purchaser to the Condominium during possession.

17. In the event that the Vendor receives any rebate, credit, recovery, adjustment, discount or similar benefit from any party or parties in respect of any item that the Vendor is entitled to charge th Purchaser for in accordance with this agreement, then the Vendor shall be entitled to retain such rebate, credit, recovery, adjustment, discount or similar benefit for its own use and as its own property absolutely and shall not be obliged to credit or adjust with the Purchaser for such any rebate, credit, recovery, adjustment, discount or similar benefit.

Schedule/Appendix of Early Termination Conditions

BRIGHTSTAR NEWCASTLE CORPORATION

Section 6(d) of the Tarion Addendum (continued)

Condition 1

The Vendor has entered into binding agreements of purchase and sale for not less than 75% of the Dwelling Units in the Project.

There is no Approval Authority for this condition.

The date for the satisfaction of this condition is **June 30, 2016**

Condition 2

The Vendor is satisfied that the Purchaser has the financial resources to complete the purchase transaction.

There is no Approval Authority for this Condition.

The date for the satisfaction of this Condition is the 60th day after the date that the Purchaser has entered into this agreement of purchase and sale.

Condition 3

The Vendor is able to obtain financing for the Project on terms satisfactory to it.

There is no Approval Authority for this Condition.

The date for the satisfaction of this Condition is **June 30, 2016.**

TAB G

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 30th day of October 2014, wherein Lender was to purchase a condominium dwelling unit #416 (the "Dwelling Unit"), together with an undivided interested 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~~ 6 MTHS from the date of advance hereof. In the event that Closing does not occur within ~~ONE (1) years~~ 6 MTHS from the date of advance hereof, then interest shall accrue at the Royal Bank of Canada prime rate ~~plus~~ FIVE percent (5%) from the ~~date of advance~~ 7th month 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.

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

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

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;

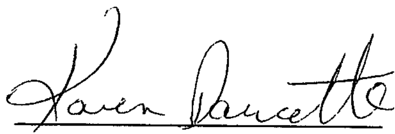
(ii) if sent by mail as aforesaid, be deemed to have been given sent, delivered and received on the fourth Business Day following the date of mailing; and

(iii) if sent by telecopy machine, be deemed to have been given, sent, delivered and received on the date of delivery.

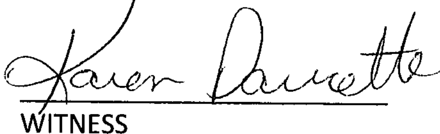
20. This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.

Dated at Toronto this 29th day of May, 2018.

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

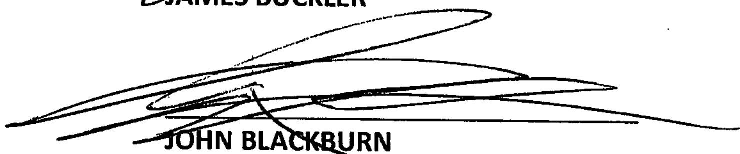

WITNESS

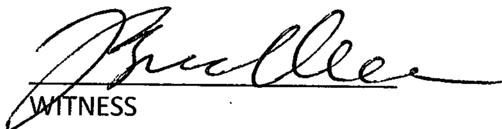
GERRY RASMUSSEN


WITNESS

JAMES BUCKLER

WITNESS


JOHN BLACKBURN


WITNESS

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

TAB H

35 King Avenue West
Newcastle ON L1B 1H2
905-987-3500
Fax 905-987-3503

www.lovekinlaw.com

69 Yorkville Avenue, Suite 201
Toronto ON M5R 1B8
6-922-6900
Fax: 416-922-6903

VALENTINE **LOVEKIN**

Barrister & Solicitor

November 18, 2019

Mr. Gerry RASMUSSEN
21 Brookhouse Drive
Unit 417
Newcastle, Ontario
L1B 0V4

Re: Your purchase from BRIGHTSTAR NEWCASTLE CORPORATION
21 Brookhouse Drive, Unit 417, Newcastle
My File No.: 18-376

TRUST LEDGER STATEMENT

Received from you - Gerry RASMUSSEN		$23,230.91
Paid to vendor on closing	$17,883.62	
Paid Ontario Land Transfer Tax	3,864.59	
Paid to Durham Standard Condominium Corporation No. 312	545.42	
Paid legal fees and disbursements – VALENTINE R. B. LOVEKIN	937.28	
	$23,230.91	$23,230.91

THIS IS MY STATEMENT HEREIN

Valentine R. B. Lovekin

VRBL:em
E. & O. E.

TAB I

SRLaw
Schneider Ruggiero LLP

Bernard Schneider
George N. Ruggiero
David Spencer
K. Bruce Milburn
Gerald Warner
David Markowitz
Davide J. Di Iulio
Hashim Naqvi

Michael Markoff Counsel

Reply To: Lola Fazzalari
Direct Line: 416-363-2211 #210

Email: lfazzalari@srlawpractice.com

October 16, 2018

Brightstar Newcastle Corporation
250 Shields Court, Unit # 07
Markham, ON L3R 9W7

RE: Brightstar Newcastle Corporation sale to Gerry Rasmussen
Dwelling Unit 16 Level 4, Parking Unit TBA Level TBA, Locker Unit TBA Level TBA; Plan HSCP
Occupancy Date: October 16, 2018 ~ Brookhouse Gate Condominium Project #416 ~
Our File: 36893 ~ 416

The above transaction has now been completed on an Interim Occupancy basis, in accordance wih the enclosed Statement of Adjustments.

Accordingly, we are enclosing the following for your attention:

1. Direction re: Title (which contains the social insurance number for each purchaser);
2. A certified cheque (or bank draft) , made payable to **Brightstar Newcastle Corporation**, in the amount of **$2,227.04**;
3. Occupancy Licence Agreement;
4. 10 post-dated cheques each dated the 1st of the month in the sum of **$1,732.73** commencing December 1, 2018 payable to **Brightstar Newcastle Corporation**; - Undertaking attached
5. Copy of the certificate as received from the Purchaser(s) insurance broker/company, confirming that the Purchaser has arranged liability insurance coverage for the above-referenced property, in the amount of $2,000,000.00.
6. Acknowledgement - Receipt of Residential HVA Control - Enercare Home
7. Enercare Customer Service Agreement completed by the Purchasers with confirmation that same has been sent to Enercare
8. Residential HVAC Rental Contract initial by Purchaser(s).

Please note: The Purchaser shall receive a credit in the amount of **$279.47** on the final closing adjustments, on account of occupancy fees overpaid on closing.

We trust you will find the enclosed to be in order.

Rec'd 2506.51 B.S.

Yours very truly,
SCHNEIDER, RUGGIERO LLP

Per: Lola Fazzalari
Encls.

TAB J

Prepared: November 12, 2019 - Suite #417

FINAL CLOSING STATEMENT OF ADJUSTMENTS

RE: Brightstar Newcastle Corporation sale to Gerry Rasmussen
Unit 16, Level 4, Unit 24, Level A, Unit 175, Level A, DSCP 312
417, 21 Brookhouse Drive, Town of Newcastle, Ontario L1B 0V4
BUILDER TARION ENROLMENT NUMBER: 43604

OCCUPANCY DATE: **OCTOBER 16, 2018**

FINAL CLOSING DATE: **NOVEMBER 20, 2019**

		CREDIT PURCHASER	CREDIT VENDOR
APS Price:	$337,900.00		
Plus: Total Upgrades Purchased:	$26,139.16		
Total Amount of Adjustments subject to HST (included in statement of adjustments)	$13,260.90		
Total Value of Consideration inclusive of HST and all items noted below with *	$377,300.06		
Total Value of Consideration (net of taxes and rebates):	$359,305.73		
HST Federal Portion (5%):	$17,302.24		
HST Rebate Federal Portion:	$6,228.81		
HST Ontario Portion (8%):	$27,683.59		
HST Rebate Ontario Portion:	$20,762.69		
NET SALE PRICE:			$ 337,900.00
CREDIT VENDOR: TOTAL HST REBATE AMOUNT			$ 26,991.50
CREDIT PURCHASER: HST REBATE AMOUNT:		$ 26,991.50	
Credit Purchaser: Total deposits paid by Purchaser Prior to Occupancy		$ 67,580.00	
CREDIT PURCHASER FOR UPGRADES PAID:		$ 26,139.16	
***TOTAL AMOUNT OF EXTRAS/UPGRADES PURCHASED:**			
Upgrades	26,139.16		
CREDIT VENDOR:			$ 26,139.16
CREDIT PURCHASER: As agreed to with the Vendor:		$ 270,320.00	
CREDIT PURCHASER - DELAYED OCCUPANCY CLOSING COMPENSATION with respect to the delay in the occupancy closing date for this matter as per expenses provided by Purchaser to the Vendor:		$ 6,261.36	
CREDIT PURCHASER FOR TOTAL OCCUPANCY FEES PAID TO THE VENDOR: Being the actual amount paid by the Purchaser			

DocuSign Envelope ID: 150D1CD0-17EC-4618-81BB-3D3FE649D55A

to the Vendor on account of occupancy fees to date:

$ 2,506.51

TOTAL COMMON EXPENSES PAYABLE BY PURCHASER:
Being $ 545.42 per month for the time period from the Occupancy Date of October 16, 2018 to November 30, 2019 (being 411 days) **CREDIT VENDOR:**

$ 7,369.89

2018 LAND TAXES PAYABLE:
The Vendor has paid the 2018 land taxes for Property in the amount of $$25,812.55 in full. The Purchasers' share is calculated by dividing the total taxes paid by 78 dwelling units = **$330.93/per unit** for 2018. Credit Vendor for the Purchaser's share of the 2018 land taxes calculated from October 16, 2018 to December 31, 2018. **ALLOW VENDOR**:

$ 69.81

2018 ESTIMATED SUPPLEMENTAL REALTY TAXES:
The estimated 2018 Supplemental Taxes have been calculated based on the EReg Consideration for the Property, being $359,305.73, multiplied by the Municiplity of Clarington's 2018 mill rate of 1.328069% = $4,771.83. The Vendor is being credited with the amount of the Purchaser's estimated proportionate share of the 2018 supplemental taxes (calculated from October 16, 2018 to December 31, 2018). (The total amount credited to the Vendor in this regard will be held in Schneider Ruggiero LLP's trust account, in the event the said taxes are bulk billed to the Vendor. See our firm's undertaking with respect to this matter). **ALLOW VENDOR**

$ 1,006.66

2019 LAND TAXES PAYABLE:
The total 2019 taxes for the lands being $26,791.90 (paid in full by Vendor). The Purchasers' share is calculated by dividing the total taxes of $26,791.90 by 78 dwelling units =**$343.48/per unit** for 2019. Credit Vendor for the Purchaser's share of the 2019 land taxes calculated to December 31, 2019. **This adjustment will be readjusted, once the final 2019 land tax bill is received by our client for the Property. ALLOW VENDOR:**

$ 343.48

2019 ESTIMATED SUPPLEMENTAL REALTY TAXES:
The estimated 2019 Supplemental Taxes have been calculated based on the EReg Consideration for the Property, being $359,305.73, multiplied by the Municipality of Clarington's 2019 mill rate of 1.173410% = $4,216.13. The Vendor is being credited with the amount of the Purchaser's estimated proportionate share of the 2019 supplemental taxes (calculated to December 31, 2019). (The total amount credited to the Vendor in this regard will be held in Schneider Ruggiero LLP's trust account, in the event the said taxes are bulk billed to the Vendor. See our firm's undertaking with respect to this matter). **ALLOW VENDOR**

$ 4,216.13

DocuSign Envelope ID: 150D1CD0-17EC-4618-81BB-3D3FE649D55A

TARION FEE (INCLUSIVE OF HST)*
As per paragraph 6(f) of Agreement
Total Fee Payable: $780.00
Plus HST: $101.40
CREDIT VENDOR:

$ 881.40

DEPOSIT ADMINISTRATION (INCLUSIVE OF GST/HST)*
EVIDENCE OF COMPLIANCE (paragraph 6(h) of Agreement)
Being $50.00 per deposit receipt issued ~ credit Vendor for having prepared ([4]) deposit receipts (inclusive of the deposit receipt issued for any further deposit received on the Occupancy Closing Date (if applicable)), plus HST calculated at [13%]. **CREDIT VENDOR:**

$ 226.00

LAW SOCIETY LEVY (INCLUSIVE OF HST)*
As per para. 6(c) of Agreement

$ 73.45

HYDRO/WATER SERVICES INSTALLATION SERVICES AND HYDRO METER INSTALLATION COSTS*
Pursuant to Para 6(d) of Agreement ~ Total connection costs payable per unit for installation of hydro services of **$1,878.21** (being total costs paid by Vendor of $165,546.00 divided by 78 units), plus hydro meter installation cost of **$587.08,** plus water service installation costs of **$1,769.23** (being total costs paid by Vendor of $138,000.00 divided by 78 units) = Total cost payable of **$4,234.52** plus HST> ~ **ALLOW VENDOR**

$ 4,785.01

DEVELOPMENT CHARGES INCREASES, PARK LEVY & LANDSCAPING COSTS*:
pursuant to paragraph 6(e) of Agreement (calculated as follows, as per back up posted on the website for this project)

Development Charge Increases	$1,687.81
Exterior Aesthetics (chimney enclosure & faux stone wall treatment)	$2,358.97
Landscaping Costs	$2,320.51
TOTAL COSTS PAYABLE:	**$6,367.29**

CREDIT VENDOR TOTAL COSTS PAYABLE BY PURCHASER PLUS HST THEREON:

$ 7,195.04

REIMBURSEMENT TO VENDOR OF SECURITY DEPOSIT PAID WITH RESPECT TO THE HYDRO ACCOUNT (not taxable)
Pursuant to Paragraph 8 of the Agreement
CREDIT VENDOR FUNDS PAID:

$ 384.62

STATUS CERTIFICATE *
Pursuant to para 6(i) of Agreement
CREDIT VENDOR:

$ 100.00

$ 17,883.62	
$ 417,682.15	$ 417,682.15

TAB K

To: Gary Cerrato, Receiver BDO April 4th 2021
And: Ryan Buzzell, Centurion Mortgage Investments

Re: Brightstar Newcastle Corporation, and
Gerry Rasmussen #417 21 Brookhouse Drive, Newcastle

This communication is regarding my home at #417, 21 Brookhouse Drive, Newcastle, where I am now in my third year of occupancy. I am presenting this to you, again due to necessitated circumstances, as explained herein. The following confirms the completed legal Agreement of Purchase and Sale as entered into seven years ago with Brightstar Newcastle Corporation, with the details outlined again below. It remains a legally completed transaction, although with the final title registration still held in abeyance, and despite the validation of the legal Agreement of Purchase and Sale.

AGREEMENT OF PURCHASE AND SALE of #417, 21 BROOKHOUSE DR, NEWCASTLE

30th October 2014 **The Agreement of Purchase and Sale was entered into between Gerald Rasmussen and Brightstar Newcastle Corporation for the purchase of condominium #417 at 21 Brookhouse Drive, Newcastle; and for a purchase price of $337,900. It was signed by both parties and a deposit paid of $67,580. The deposit of 67,580 was held in trust by Brightstar's lawyers but later paid to BNC (Brightstar Newcastle Corporation).**

BNC RECEIVED AND CASHED: $67,580

1st June 2018 **Full balance of purchase price of $270,320 paid to BNC by Gerry Rasmussen with a CIBC bank draft for that exact amount, payable to Brookhouse Newcastle Corporation representing the full balance of the purchase price and imprinted on it that it was for the purchase of #417 at 21 Brookhouse.**

BNC RECEIVED AND CASHED: $270,320

TOTAL BALANCE AS PER AGREEMENT PAID IN FULL TO BNC: $337,900

20th Oct 2018 **Moved in after delayed closing. Brightstar was required to pay for Tarion controlled delayed occupancy costs claim amounting to $7,500**

18th November 2019 **Final closing date and title transfer date set. I attended with my closing lawyer on the day, and disbursements, land transfer tax and other pertinent closing costs were duly paid. But my lawyer was unable to close and register the title for reasons which were not made clear at the time; but which I was to discover later were due to a 'stolen' title.**

Consequent to my move in at interim closing and the final closing date (and with the full knowledge and agreement of Brightstar); as a retired professional interior designer, I completed major upgrading and finishing on my home in the region of about $40,000. This involved flooring, cornices, custom trim mouldings, painting, cabinetry, counters, appliances, plumbing and electrics; all of which now form part of the unit and cannot be removed from the home without totally and completely gutting the interior of the condominium apartment.

This is being presented again to the Receiver, Centurion and Court as necessary, because I urgently require to know **the date when the title can be released to me.** Developing health circumstances are now necessitating I seek to move closer to my treatment hospital. Unnecessary further delays could be not only a threat to my health but also my life. I am being held prisoner against my will, in my own home, not due to Covid, but due to the stolen title and my being blocked from being able to sell my home, now necessary to enable me, from the proceeds of the sale, to give me the means to live closer to my doctors and treatment centre, Princess Margaret Hospital in downtown Toronto. With regard to my health and age the 100 mile round trip from Newcastle that I need to drive each time is prohibitive.

I now also realize that previous actions as taken by Centurion may have been without their full knowledge at the time.

I am not engaging a lawyer at this time (with the exception of the closing lawyer) in order to save further costs, and I am requesting this matter may be given priority to conclusion.

All documentation and contents in this letter may be verified as necessary.

Yours Respectfully,
Gerry Rasmussen

STATEMENT
(as requested)

I am not prepared to pay a rent to the Receiver.

The title to my legally purchased home in Oct 2014 was stolen on closing in Nov 2019. This month of closing coincided with my being diagnosed with cancer. Because of my health problems which continued onwards, I relied and trusted on the sincerity of the principals of Brightstar who repeatedly told me that there was a problem between them and their finance company, Centurion, and it would be sorted in the not too distant future. But, and without any written notification, it was never made clear to me exactly why it did not close. Even my lawyer who attended the closing for me, was unable to explain properly. Each time I tried to follow it up I was left having just to accept their word. When you get a health prognosis as I did your priorities exist only in one place; as life remains far more important than anything else. I did not pursue exactly what was going on, as aggressively as I otherwise would have done.

Gerry Rasmussen

TO: CENTURION Attn: Ryan Buzzell

I am the purchaser/occupant of Unit 417 at the newly constructed Brookhouse Gate development in Newcastle, and have recently been made aware of certain contemplated actions with regard to a situation between Brightstar Newcastle Corporation and yourselves.

On 30th October 2014, I purchased a preconstruction apartment home at the Brookhouse Gate development. The purchase price was $337,900, and was completed on a standard Ontario legal Agreement of Purchase and Sale form. My deposits totaling $67,580 were paid over the prescribed period, and were held in Trust by lawyers Schneider Ruggiero LLP. I then looked forward to moving into my new home as I watched through the construction progress. In May 2018 I had occasion to speak to the developer, John Blackburn, whom I had known for many years as a close friend. He expressed that due to certain situations that had been caused, final completion of the project had almost reached a stalling point. As it was close to my own moving in and the sale of my existing property was well underway, I offered to pay the balance of the full purchase price of my new home to Brightstar at that time, with a view to helping in any small way I could. On 1st June 2018 I advanced the full and final balance of the purchase price of my new home in the amount of $270,320. This was completed by way of a CIBC bank draft for the said amount, clearly imprinted payable to Brightstar Newcastle Corporation for the purchase of Unit 417, 21 Brookhouse Drive. As I was aware BNC would probably be using the funds, and that Tarion would not cover, or insure, that sum of money; concomitantly I had my lawyer draw up an agreement to give me necessary protection. This was completed in the form of a loan and amendment agreement to my purchase and clearly states that the payment as made to Brightstar Newcastle Corporation solely represents the total balance due and payable at the time of my occupancy, registration, and closing pursuant to the APS. My occupancy occurred on October 18th 2018, and the condominium was officially registered the following November 2019. I attended with the closing lawyer at the time, paying land transfer tax along with certain disbursements. However, despite all obligations under the Agreement of Purchase and Sale having been fulfilled with the Agreement holding firm as a legally binding contract between the vendor BNC and the purchaser Gerry Rasmussen as per the laws and statutes of Ontario; I subsequently learnt that my lawyer could not transfer the title on that day, and would be held up due to certain problems inherent relating to Brightstar and their finance company. With the Covid months that emerged at this time, and followed, I was told that things would be sorted and would be shortly forthcoming. I was not too unduly worried with the delay on the finality of the transfer of title. I had the extra signed security agreement, and I continued to **transform the 'shell' I had purchased from Brightstar into a home for myself. I need to point** out and bring to your attention that I am a professional interior designer. Pursuant to permission as given by the builder to complete my suite, having paid the full purchase price

of the apartment, I have spent many thousands of dollars with all bills available as personally paid by myself. Walls, doors, flooring, lighting have all been changed; elaborate cornices, mouldings, and architectural features added, along with too many numerous upgrades to detail here (but can be made available as necessary). The Brightstar unit sold to me that you may consider you have a claim to, cannot be separated from my own personal property which has added enormous value to the apartment, totaling many, many thousands of dollars. Also owing to valuable art works on show in the suite, there is an elaborate security alarm system with video cameras, centrally monitored. If there is any attempt to gain entry to the suite, the police will be immediately dispatched, and I would also pursue a charge of breaking and entering now that I have informed you of such.

My concerns with waiting to acquire full title to my property pending rectification of a situation between yourselves and Brightstar, may not have been too much of a major consequence at the time, but it is very much now, as circumstances have since changed. Following the death of my wife I live alone, and have recently been diagnosed with cancer, and am attending treatment at the Princess Margaret Hospital in Toronto. I purchased my home in good faith, fully and legally paid for, and am now, through such circumstances, looking to sell it in the near future and require the title to be in order. I am not an investor; I do not work for Brightstar. Whatever the situation is between yourselves and Brightstar is just that, and nothing to do with myself who remains as an innocent purchaser victim, who has fully paid for his occupied home. You, morally, or otherwise, do not have any right to attempt to block title to my property and home.

I request that the title is put in order immediately so I may proceed in the near future with the rest of my life. Your unjustified actions are increasing my current stress, and jeopardizing and endangering my present state of health. I have fully paid for my home that I now live in, with a legitimate and legal Agreement of Purchase and Sale.
DO NOT ATTEMPT TO STEAL IT!

If you choose, through legal manipulation, to continue to try and block title on my fully paid home, purchased in good faith, from Brightstar Corporation, this story with respect to Centurion**'s actions** and integrity, pertaining to this occupant at 21 Brookhouse, will be given to the Toronto Star newspaper. *Your website espouses integrity*. You should therefore understand, if Brightstar owes you money, you have to get it from them. Do not try and take it from me and ruin the life of this completely innocent individual bystander, that has nothing to do with Brightstar Corporation, other than purchasing my home from them.

Gerry Rasmussen

APPENDIX C

CITATION: Centurion Mortgage Capital Corporation v. Brightstar Newcastle Corporation, 2021 ONSC 5181
COURT FILE NO.: CV-20-00650557-00CL
DATE: 20210723

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CENTURION MORTGAGE CAPITAL CORPORATION, Plaintiff/Moving Party

AND:

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

BEFORE: Justice Cavanagh

COUNSEL: *Michael R. Kestenberg*, *Thomas M. Slahta*, and *Dominique Michaud*, Counsel for the Plaintiff /Moving Party

R. Bevan Brooksbank and *Leah Mangano*, Counsel for The Guarantee Company of North America, Responding Party

HEARD: March 22, 2021

ENDORSEMENT

Introduction

[1] The plaintiff and moving party, Centurion Mortgage Capital Corporation ("Centurion") brings this motion for determination of a mortgage priority dispute with The Guarantee Company of North America ("GCNA"). Each of Centurion and GCNA registered a mortgage against title to a property owned by Brightstar Newcastle Corporation ("Brightstar") for the purpose of financing Brightstar's development of a condominium project.

[2] For the following reasons, I conclude that the Centurion mortgage has priority over the GCNA mortgage, except with respect to purchasers' deposits which are also subject to GCNA's prior security interest under the *Personal Property Security Act*.

Factual Background

[3] I set out below some of the background facts to this priority dispute which are taken from documents in evidence.

Centurion and Brightstar Financing Agreement

[4] Centurion issued a Mortgage Financing Commitment dated March 3, 2016 to Brightstar (the "Centurion Commitment") for the purpose of financing Brightstar's construction of a 78-unit condominium development (the "Project") on lands and premises known municipally as 21 Brookside Drive, Newcastle, Ontario (the "Property"). Brightstar accepted Centurion's Financing Commitment on or about March 3, 2016.

[5] Centurion was represented in respect of the financing provided to Brightstar by a lawyer at Garfinkle Biderman LLP, Jeremy Mandell ("Mandell").

[6] At the time of execution of the Centurion Commitment, Brightstar had not yet closed on primary construction financing, although it had secured a primary construction financing commitment from Meridian Credit Union Limited ("Meridian").

[7] Bruce Milburn ("Milburn"), a lawyer at Schneider Ruggiero LLP ("SR Law"), was acting for Brightstar in respect of the Centurion second mortgage financing. Milburn also acted as counsel for GCNA in respect of a 2016 Tarion and Excess Condominium Deposit Insurance ("ECDI") Credit Facility.

[8] Mandell forwarded a copy of the Centurion Commitment to Milburn. Sometime after doing so, Milburn told Mandell that GCNA would be providing ECDI financing to Brightstar to enable it to use purchasers' deposits for approved costs or to make payment to the construction lender, and that GCNA's financing was to be secured by, among other things, a mortgage against the Property.

[9] The Centurion Commitment provides that Centurion would have a second-ranking mortgage in the principal amount of $4,565,000 on the Property which Centurion agreed to subordinate to the primary construction financing. Centurion would also receive a general security agreement granting it a security interest in all personal property, assets and undertaking of Brightstar subject only to a prior ranking security interest in favour of the primary construction lender and a prior ranking security interest in favour of the ECDI Provider (GCNA) in respect of all unit purchasers' deposits in respect of the Project.

[10] Prior to execution of the Centurion Commitment, Brightstar, Guarantee Company of North America ("GCNA") and Schneider Ruggiero LLP ("SR Law") executed a Deposit Trust Agreement effective March 31, 2014 (the "Deposit Trust Agreement"). The Deposit Trust Agreement provided, in part, that Deposit Monies received in respect of the Condominium Unit Project would be held in a designated trust account maintained by SR Law. Brightstar granted GCNA a security interest in all "Deposits" received together with all interest earned or accrued thereon. The term "Deposits" was defined to have the meaning ascribed to this term in Part I(1) of Regulation 892 to the *Ontario New Home Warranties Plan Act*.

[11] GCNA registered a financing statement on April 9, 2014 in accordance with the *PPSA* to perfect its security interest in the Deposits.

[12] By May 2016, Centurion and Mandell were aware that in addition to the Centurion second mortgage financing, Brightstar had entered into the Deposit Trust Agreement further to which GCNA had registered a security interest under the *PPSA* in respect of the Deposits, and that Brightstar would be entering into two other financing transactions, one in favour of Meridian (the primary construction lender) and another in favour of GCNA.

Email communications between Mandell and Milburn in April and May 2016

[13] On April 13, 2016, Mandell delivered a requisition letter to Milburn which included, among other things, the requirement that Centurion be provided with a priority agreement from Brightstar's ECDI provider, GCNA, confirming an obligation on GCNA to release unit purchaser deposits to finance construction, regardless of a default under the ECDI facility.

[14] On May 9, 2016 Milburn provided Mandell with GCNA's form of priority agreement with respect to GCNA's anticipated mortgage security along with GCNA's form of subordination agreement as it related to the GCNA *PPSA* Security and the Centurion *PPSA* Security.

[15] GCNA's form of mortgage priority agreement forwarded to Mandell by Milburn on May 9, 2019 provided that GCNA's mortgage would be postponed and subordinate to the mortgage of the other lender (described in this form of agreement as the "Construction Lender"), except in respect of the deposit monies received from time to time from purchasers of dwelling units in the Project and accrued interest charges (defined as "Deposit Monies").

[16] Similarly, the draft subordination agreement with respect to the *PPSA* registered security also provided that the Centurion *PPSA* Security would rank in priority to the GCNA *PPSA* Security, except with respect to the Deposits.

Completion of Centurion second mortgage financing transaction

[17] GCNA and Centurion executed a *PPSA* Subordination Agreement dated May 13, 2016 by which GCNA subordinated GCNA's security interest to Centurion's security interest, save and except for the Deposits (the "*PPSA* Subordination Agreement").

[18] The Centurion second mortgage financing transaction was completed on May 17, 2016. Centurion registered a charge/mortgage securing repayment of the principal sum of $4,565,000 plus interest against the Property on or about May 17, 2016 (the "Centurion Mortgage").

Email communications between Milburn and Mandell in June and July 2016 in connection with completion of GCNA's ECDI credit facility mortgage financing

[19] On June 2, 2016, Milburn sent to Mandell an email attaching a form of mortgage priority agreement and a form of Acknowledgement and Direction for the postponement of the Centurion Mortgage. In his email, Milburn stated that GCNA had previously signed Centurion's form of priority agreement, although this statement was incorrect. The form

of mortgage priority agreement was substantively the same as the one provided by Milburn to Mandell on May 9, 2016. Milburn asked Mandell to have these documents signed and returned at his earliest opportunity.

[20] On June 8, 2016, Mandell sent Milburn both a signed mortgage priority agreement and a signed Acknowledgement and Direction for the postponement of the Centurion Mortgage (the "Postponement Acknowledgement"). The form of mortgage priority agreement provides that Centurion's mortgage security has priority over GCNA's mortgage security except in respect of Deposit Monies in respect of which the GCNA security shall have priority for so long as, and to the extent that, such Deposit Monies shall remain in trust pursuant to the provisions of the Deposit Trust Agreement.

[21] On July 12, 2016, Milburn sent an email to Mandell in connection with the closing of the GCNA financing transaction in which he states that he has the mortgage priority agreement signed by Centurion, but the Postponement Acknowledgement remains outstanding. Milburn asked Mandell to provide this document as soon as possible. Mandell evidence is that he sent Milburn another signed Postponement Acknowledgement on July 12, 2016 although the email transmitting this document is not attached to Mandell's affidavit and GCNA does not have a copy of this email. Nothing turns on this because GCNA received the signed Postponement Acknowledgment.

GCNA financing commitment with Brightstar

[22] GCNA issued two credit instruments to Brightstar with respect to the Project. On or around March 27, 2014 GCNA entered into a commitment letter with Brightstar to provide a bond in favour of Tarion Warranty Corporation for the Project and ECDI policies for the Project.

[23] Under this commitment letter, GCNA required Brightstar to provide a collateral mortgage registered against the lands on which the Project was to be constructed subordinate only to the mortgage registered by Brightstar's lender at the time.

[24] GCNA agreed to defer registration of the GCNA mortgage against the Project lands until Brightstar was ready to commence construction of the Project, at which time Brightstar was expected to request the release of Deposits from trust to assist in financing the Project's construction.

[25] On or around March 29, 2016, GCNA and Brightstar executed a further amended and restated commitment letter. The modifications did not amend GCNA's requirement for a Deposit Trust Agreement and a second-ranking mortgage as security for the Project.

Completion of GCNA financing transaction

[26] On July 13, 2016 GCNA registered the GCNA mortgage from Brightstar securing the principal amount of $4,100,000 and the Postponement Acknowledgement.

Emails between Mandell and Milburn in September 2016

[27] On September 8, 2016, Mandell sent an email to Milburn advising that he did not have a signed copy of the GCNA mortgage priority agreement (and a sworn copy of a statutory declaration) and asked Milburn to send him these documents.

[28] Milburn replied to this email on September 8, 2016 and forwarded the sworn statutory declaration. With respect to the mortgage priority agreement, Milburn stated “I don’t think we ended up using GCNA’s form of priority agreement but I can get it signed and return a copy to you. We relied on the attached subordination agreement which could have been called a priority agreement”. There was no subordination agreement attached to Milburn’s email.

[29] Milburn did not send a signed mortgage priority agreement to Mandell. Mandell did not follow up.

Internal email correspondence between GCNA and Milburn in July 2016

[30] On July 14, 2016, Alistair Cartwright, an employee of GCNA, sent an email to Milburn noting that he had received a copy of a priority agreement signed by Centurion but that it did not reflect GCNA’s agreement with Brightstar because it provided that the GCNA security is subordinate to that of Centurion. Mr. Cartwright asked Milburn whether it would be possible to revise the Centurion agreement to provide that the Centurion security is subordinate to that of GCNA.

[31] In his email sent in response the same day, Milburn, in reference to the mortgage priority agreement he sent to GCNA for execution, asked Mr. Cartwright to “please disregard that document” because it was prepared when Centurion first went on title as the sole construction lender and that Centurion had been replaced by Meridian. Milburn stated that GCNA has a prior ranking mortgage to that of Centurion.

[32] Milburn did not inform Mandell that he had given this advice to GCNA.

Communications in August and September 2019

[33] In August 2019, David Spencer, another lawyer at SR Law, advised that Brightstar was ready to close and transfer title to numerous units. Spencer sent an email dated August 21, 2019 setting out GCNA’s position with respect to disbursement of closing funds and indicated that GCNA requires $780,000 to secure its bond.

[34] By email dated September 4, 2019, Mandell advised that Centurion does not agree with the proposed payout priorities.

[35] On September 10, 2019, Mandell sent an email to Milburn, after having reviewed GCNA’s commitment with Brightstar and what he said was the “Priority Agreement” between Centurion and GCNA, and advised that the priority agreement “seems to clearly subordinate Centurion to the deposit monies only”. Milburn responded on September 10, 2019 and, in his response, advised that “[s]o long as the deposits remain in trust GCNA

maintains priority over such funds ahead of Centurion". Mandell responded and asked whether the GCNA deposits are remaining in the deposit trust account.

[36] On September 11, 2019, Milburn sent an email to Mandell and he wrote:

> Further to our phone conversation of a few minutes ago that included Centurion personnel, I confirm that the August 10, 2019 discharge statement (I believe that is the date of the statement your client mentioned) is no longer valid. At the time it was based on the best information was available to us. Under the terms of the GCNA commitment letter all of the deposits would have been released into the project and GCNA would have secured the $780,000 from the last sales closings. Since then there has been a change and GCNA will not release any more of the deposits into the project. Therefor (sic) the $780,000 flow of funds back to GCNA will not take place. I understand Centurion saw this flow of funds as improper as they would have priority to those funds and they are correct in that thinking. I now understand Jeremy that it was on this premise that you are asking your questions but that was not apparent to me at the time. I apologize for any confusion on this matter.

Notification of GCNA's position with respect to priority

[37] The distribution of proceeds of sale was not agreed upon and the matter was referred to litigation counsel. Mandell was advised through litigation counsel that GCNA's position was that it holds a mortgage in priority to Centurion's mortgage in respect of all amounts owed by Brightstar to GCNA.

The Escrow Agreement

[38] To address the dispute regarding the relative priority of the Centurion Mortgage and the GCNA Mortgage, Centurion and GCNA entered into an Omnibus Agreement dated November 1, 2019 (the "Escrow Agreement") wherein certain proceeds from the sale of units were held in trust by SR Law as the escrow agent pending resolution of the priority dispute.

[39] Centurion and GCNA proceeded to allow Brightstar to sell the units of the Project in order to repay the first mortgagee, Meridian. This was done in accordance with the Escrow Agreement.

[40] By email dated November 2, 2020, Milburn confirmed that $1,279,297.28 was held in the escrow account pending resolution of the priority dispute.

Analysis

[41] The issues on this motion are:

a. Whether the Centurion Mortgage has priority over the GCNA Mortgage because (i) GCNA is bound by the terms of a priority agreement made in May 2016 by its counsel on its behalf; or (ii) GCNA is estopped, in the circumstances, from asserting priority of its mortgage over the Centurion Mortgage?

b. Whether Centurion requires an order for rectification of the Postponement Acknowledgement?

c. Whether Centurion's claim to priority is statute barred.

Was a priority agreement made in May 2016 on behalf of GCNA and Centurion?

[42] Centurion submits that the evidence shows that an agreement was made in May 2016 between Mandell, counsel for Centurion, and Milburn, counsel for GCNA, on behalf of their respective clients, that the GCNA Security (comprised of the GCNA *PPSA* Security and the GCNA Mortgage) would have priority in respect of Deposits, and the Centurion Security (comprised of the Centurion *PPSA* Security and the Centurion Mortgage) would have priority in respect of all other property and assets of Brightstar.

[43] Milburn and Mandell, as lawyers for GCNA and Centurion, respectively, had authority to make agreements with respect to matters falling within the apparent scope of their authority which included the authority to make an agreement with respect to the relative priority of the security to be given by Brightstar to each of GCNA and Centurion. This is based on the following principle stated in *Scherer v. Paletta*, 1996 CanLII 286 (ONCA), at para. 4:

> A client, having retained a solicitor in a particular matter, holds that solicitor out as his agent to conduct the matter in which the solicitor is retained. In general, the solicitor is the client's authorized agent in all matters that may reasonably be expected to arise for decision in the particular proceedings for which he has been retained. Where a principal gives an agent general authority to conduct any business on his behalf, he is bound as regards third persons by every act done by the agent which is incidental to the ordinary course of such business which falls within the apparent scope of the agent's authority.

[44] In his December 17, 2020 affidavit, Mandell provided the following evidence:

a. After the Centurion Commitment was made on March 3, 2016, Mandell learned that Milburn at SR Law was acting for Brightstar in respect of the Centurion second mortgage financing. SR Law also acted as counsel for GCNA in respect of

a Tarion Bond and EDCI Credit facility. Mandell provided Milburn with a copy of the Centurion Commitment. The Centurion Commitment shows that Brightstar agreed that Centurion's loan would be secured by a second charge/mortgage against the Property and that primary construction financing would be entitled to a first charge/mortgage against the Property.

b. By May 2016, Mandell knew that Brightstar had entered into the Deposit Trust Agreement further to which GCNA had registered a security interest under the *PPSA* in respect of the Deposits.

c. On April 13, 2016, Mandell delivered a requisition letter to Milburn which required that Brightstar provide Centurion with a priority agreement with Brightstar's EDCI provider confirming an obligation on ECDI provider, which he knew to be GCNA, to release unit purchaser deposits to finance construction regardless of a default under the ECDI facility.

d. On May 9, 2016, Milburn, acting as counsel for GCNA, provided to Mandell GCNA's form of priority agreement with respect to mortgage security along with GCNA's form of subordination agreement as it related to GCNA's and Centurion's *PPSA* security. In his email, Milburn asked whether Mandell had another form of priority agreement he preferred and advised that the attached form of priority agreement was one with which GCNA was comfortable and "which will be used once GCNA security is registered on title". The form of priority agreement attached to Milburn's email provided that Centurion's mortgage security against the Property would rank ahead of GCNA's mortgage security, except with respect to the "Deposit Monies".

e. Centurion was willing to accept the relative priorities set out in the draft mortgage priority agreement and the *PPSA* subordination agreement.

f. GCNA and Centurion executed a *PPSA* Subordination Agreement dated May 13, 2016 by which GCNA subordinated GCNA's security interest to Centurion's security interest, save and except for the Deposits.

g. The Centurion second mortgage financing transaction closed on or about May 17, 2016 and the Centurion Mortgage was registered against the Property. As GCNA's financing transaction had not been completed and no GCNA mortgage had been registered, it was not necessary for Centurion to insist on delivery of an executed mortgage priority agreement as a condition of completing the mortgage transaction with Brightstar. Centurion advanced funds to Brightstar.

[45] Richard Longland, the Vice President of Commercial and Developer Surety at GCNA provided evidence on behalf of GCNA. He states in his affidavit that GCNA's commitment with Brightstar provided that GCNA was to have second-ranking mortgage security subordinate only to the mortgage of the primary construction lender, Meridian. Mr. Longland's evidence is that GCNA would only enter into the form of mortgage priority agreement sent by Milburn to Mandell on May 9, 2016 and on June 2, 2016 with

the primary, first-ranking construction lender and not with a lender whose mortgage was to be subordinate to GCNA's mortgage. Mr. Longland's evidence is that if GCNA had known that Centurion would take the position that the Postponement Acknowledgement did not postpone the Centurion Mortgage in its entirety, GCNA would not have extended the GCNA credit facility and would have taken steps to ensure that it received the security agreed to in the GCNA Commitment.

[46] In his February 4, 2021 affidavit, Mandell responded to Mr. Longland's affidavit. Mandell provided the following additional evidence with respect to his communications with Milburn in May 2016:

a. As he had stated in his first affidavit, neither Milburn nor anyone else at GCNA asked him to obtain Centurion's agreement to postpone the Centurion Mortgage to the entirety of the GCNA Mortgage.

b. Some time prior to May 9, 2016, Milburn and Mandell discussed a limited postponement of the Centurion Mortgage. In those discussions, Milburn asked that Centurion agreed to postpone its mortgage to a GCNA mortgage to a limited extent - only to the extent of purchasers' deposits.

c. Mandell received the GCNA Commitment on the same day, May 9, 2016, that Milburn provided him with GCNA's form of mortgage priority agreement which would limit GCNA's mortgage priority to the "Deposit Monies". He received the GCNA Commitment in conjunction with Milburn's request that Centurion postpone its mortgage to a GCNA mortgage only with respect to purchasers' deposits.

d. Milburn and Mandell discussed and agreed that the mortgage priorities and the PPSA priorities would be the same - Centurion's *PPSA* security and the Centurion Mortgage would take priority to GCNA's *PPSA* security and mortgage security, except with respect to purchasers' deposits.

[47] GCNA submits that the evidence does not support a finding that Milburn entered into an agreement with Mandell on behalf of their respective clients, GCNA and Centurion, by which GCNA and Centurion agreed that the Centurion mortgage and *PPSA* security would have priority over the GCNA mortgage and *PPSA* security, except with respect to purchasers' deposits. GCNA submits that the evidence upon which Centurion relies for such an agreement consists of an unexecuted priority agreement and vague references to verbal discussions, none of which were reduced to writing. GCNA contends that the draft priority agreement sent by Milburn to Mandell on May 9, 2016 that provided that GCNA would postpone its mortgage security except with respect to the Deposits did not make logical sense in the circumstances because GCNA did not yet have a mortgage registered, so there was no need for an agreement to postpone.

[48] I disagree that because GCNA did not have a mortgage registered on May 9, 2016 when Milburn sent the draft priority agreement, an agreement by which GCNA would agree to subordinate its mortgage security to Centurion's mortgage security, except for Deposits,

did not make sense. On May 9, 2016, GCNA had already registered its *PPSA* security, and Centurion, which was also taking *PPSA* security from Brightstar under the Centurion Commitment, needed to obtain GCNA's agreement to subordinate its *PPSA* security to Centurion's *PPSA* security, except for Deposits, in order for Centurion to receive the security provided for in the Centurion Commitment. Mandell and Milburn both knew that Centurion and GCNA would each be taking mortgage security from Brightstar, also Milburn's client, and it makes sense that they would discuss the relative priorities for the mortgage security to be given by Brightstar to Centurion and to GCNA. This is particularly so because the Centurion Commitment and the GCNA Commitment which, on May 9, 2016, were in the possession of both Milburn and Mandell, each provided for second ranking mortgage security for Centurion and for GCNA.

[49] In his May 9, 2016 email to Mandell, Milburn expressly states that the mortgage priority agreement in the form provided "will be used once the GCNA security is registered on title" and that the PPSA Subordination Agreement will be provided by GCNA "at this time". Milburn makes it clear in this email that the PPSA Subordination Agreement will be given by GCNA at the time of completion of the Centurion financing, because GCNA already had perfected its security interest under the *PPSA*, whereas the mortgage priority agreement whereby Centurion would have priority over the GCNA mortgage security except the Deposits would only be needed once the GCNA mortgage security is registered on title. This makes sense in the context of the discussions as explained by Mandell in his affidavits.

[50] The statements in Mandell's affidavits are not vague references to oral discussions with Milburn. To the contrary, Mandell clearly and unequivocally states that he discussed with Milburn the relative priorities of the Centurion and GCNA mortgage and PPSA security and they agreed that the Centurion security would have priority, except with respect to purchasers' deposits. Milburn's May 9, 201 email supports such an agreement. The draft mortgage priority agreement sent by Milburn to Mandell on May 9, 2016 and the PPSA Subordination Agreement dated May 13, 2016 are consistent with such an agreement.

[51] Milburn did not give evidence on this motion by affidavit or as a witness on a pending motion. If Mandell was being untruthful or was mistaken in his evidence concerning his discussions with Milburn about the relative priorities of the security to be given by Brightstar to their respective clients, Milburn was in a position to say so. Centurion submits that I should draw an adverse inference from the failure of Milburn to give evidence on this motion.

[52] GCNA submits that an adverse inference as a result of the failure of GCNA to tender evidence from Milburn is not warranted. GCNA submits that Mandell's evidence about his conversations with Milburn are vague and not recorded in emails, notes, or calendar invitations showing when the alleged conversations took place. GCNA also submits that little weight should be given to Mandell's evidence about his discussions with Milburn.

[53] It was open to GCNA to tender evidence from Milburn to contradict the evidence given by Mandell. GCNA did not do so. Milburn would have knowledge of the relevant facts and would be assumed to be willing to assist GCNA. No explanation was offered for the

decision not to tender evidence from Milburn. In these circumstances, I draw an inference that had Milburn given evidence, his evidence would have been unfavourable to GCNA. See Sidney N. Lederman, Alan W. Bryant & Michelle K. Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada, Fourth Edition*, (LexisNexis Canada Inc., 2014), at §§6.450-6.451.

[54] The Centurion mortgage financing transaction with Brightstar was completed on May 17, 2016 and Centurion's mortgage was registered on that day. There is no evidence from Milburn or anyone else representing GCNA that Centurion was asked and agreed to postpone its mortgage security to the entirety of GCNA's mortgage security to be registered later. Mandell's evidence is that no such request was made on behalf of GCNA. In the absence of any such agreement, Centurion would have had no obligation to postpone or subordinate its mortgage security to the entirety of GCNA's mortgage security, particularly given that the Centurion Commitment with Brightstar provided for Centurion to have second ranking mortgage security behind the primary construction lender.

[55] Mandell's evidence of his discussions with Milburn that resulted in their agreement that the Centurion mortgage and *PPSA* security would have priority over the GCNA mortgage and *PPSA* security, except for Deposits, is uncontradicted. Mandell was cross-examined on this evidence and he did not resile from it. Milburn's May 9, 2016 email states that the form of mortgage priority agreement he sent "will be used once the GCNA security is registered on title". This email, and the forms of agreements attached to it, confirm Mandell's evidence that he and Milburn agreed that Centurion's mortgage and PPSA security would have priority over GCNA's mortgage and PPSA security, except for deposits.

[56] I accept Mandell's evidence and find that in May 2016, he and Milburn agreed, on behalf of their respective clients, Centurion and GCNA, that the Centurion *PPSA* and mortgage security would have priority over the GCNA *PPSA* and mortgage security, except for Deposits.

[57] Mandell's evidence that he arranged for Centurion to execute and return to GCNA the mortgage priority agreement and the Postponement Acknowledgement, which Milburn had requested be signed and returned to him, shows that these two documents were, as Mandell put it, a "package deal". Centurion had not previously agreed to postpone its registered mortgage to the entirety of GCNA's mortgage, and, absent such an agreement, there would be no commercial reason for it to do so. Milburn did not suggest in email correspondence to Mandell that GCNA did not intend to be bound by the mortgage priority agreement. His email to Mandell asking Centurion to sign and return this agreement with the Postponement Acknowledgement is evidence that GCNA intended to sign the mortgage priority agreement. I find that these documents, together, were delivered by Centurion to GCNA to give effect to the prior agreement made between Mandell and Milburn.

[58] GCNA does not raise the *Statute of Frauds* as a basis to oppose this motion. I am satisfied that there were acts by Centurion which fulfill the purpose of the agreement

made between Mandell and Milburn and qualify as part performance. In these circumstances, the *Statute of Frauds* does not apply to prevent enforcement of this agreement. See *Erie Sand and Gravel Limited v. Seres Farms Limited* (2009), 97 O.R. (3d) 241 (C.A.), at paras. 48-49.

[59] The agreement made by Milburn and Mandell on behalf of their respective clients required the parties to execute and deliver both the mortgage priority agreement and the Postponement Acknowledgement. It was not open to GCNA to register and rely upon the Postponement Acknowledgement without accepting the agreed qualification provided for by the mortgage priority agreement that Milburn had requested, and that Centurion had executed and delivered at the same time as it delivered the Postponement Acknowledgment.

Is GCNA precluded by application of the doctrines of proprietary estoppel or promissory estoppel from relying on the registered mortgage postponement to assert that the Centurion Mortgage was postponed and subordinated to the entirety of the GCNA Mortgage?

[60] Centurion relies, in the alternative, on the doctrines of proprietary estoppel and promissory estoppel in support of its submission that GCNA is precluded from relying on the registered Postponement Acknowledgement without accepting the limitations that it agreed to as set out in the form of mortgage priority agreement that Milburn asked Centurion to sign and return.

[61] In *Cowper-Smith v. Morgan*, [2017] 2 S.C.R. 61, McLachlin C.J., writing for the majority, described proprietary estoppel as a principle of equity that applies when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word: *Cowper-Smith*, at para. 15.

[62] In *Cowper-Smith*, McLachlin C.J. held, at para. 16, that proprietary estoppel protects the equity, which in turn protects the claimant's reasonable reliance. Like other estoppels, proprietary estoppel avoids the unfairness or injustice that would result to one party if the other were permitted to break her word and insist on her strict legal rights. McLachlin C.J. quoted with approval the following passage from the decision of Lord Denning M.R. in *Amalgamated Investment & Property Co. (in Liquidation) v. Texas Commerce International Bank Ltd.*, [1982] 1 Q.B. 84 (C.A.), at p. 122:

> When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them - neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back

> on it, the courts will give the other such remedy as the equity of the case demands.

[63] GCNA submits that the doctrine of proprietary estoppel is inapplicable because the estoppel must arise from inducements by the owner of the land. In support of this submission, GCNA relies on the decision of the Court of Appeal in *Oakville (Town) v. Sullivan*, 2021 ONCA 1, at para. 32, where the Court of Appeal, in describing the elements that must be established for proprietary estoppel, states that the estoppel must arise from inducements by the owner of land. The Court of Appeal did not address the decision in *Cowper-Smith* in its decision. In *Sullivan*, the inducements upon which the respondents relied were made by the owner of the land so the issue of whether the person making the inducement must be the owner of the land did not arise in that case.

[64] In *Cowper-Smith*, the person making the inducement lacked an ownership interest in the property at the time of the assurance or when the claimant relied on the assurance. McLachlin C.J. held, at para. 15, that "an inchoate equity arises the time of detrimental reliance on a representation or assurance" and "[w]hen the party responsible for the representation or assurance possesses an interest in the property sufficient to fulfill the claimant's expectation, proprietary estoppel may give effect to the equity by making the representation or assurance binding". The Court held, at para. 22, that "proprietary estoppel may prevent the inequity of an unrequited detriment where a claimant has reasonably relied on an expectation that he will enjoy a right or benefit over property, even when the party responsible for that expectation does not own an interest in the property at the time of the claimant's reliance". On the authority of *Cowper-Smith*, I conclude that for proprietary estoppel to be established, it is not essential that the person making the assurance be the owner of the property at the time of the claimant's reliance.

[65] GCNA submits that, in any event, the assurance upon which Centurion relies was not sufficiently clear and unambiguous for Centurion to have relied on it and that it was not intended to have been taken seriously.

[66] The assurance made by Milburn, based on the uncontradicted evidence of Mandell, is clear and unambiguous. The form of mortgage priority agreement sent by Milburn to Mandell with his May 9, 2016 email (that he wrote "will be used once the GCNA security is registered on title") clearly conveys that Centurion's mortgage security is to have priority over GCNA's mortgage security except for Deposits. Centurion had registered its mortgage before GCNA's mortgage financing was completed, and there would be no commercial reason for Centurion to postpone and subordinate its mortgage security in its entirety to GCNA's mortgage security without a prior agreement. It is clear from the evidence that Mandell relied on the assurance given by Milburn that Centurion would only be subordinating its mortgage security to GCNA's mortgage security with respect to Deposits and that Mandell relied on this assurance when he sent the mortgage priority agreement and Postponement Acknowledgement as executed by Centurion. I find that Centurion reasonably relied on the Milburn's assurance. It would be manifestly unfair and unjust for GCNA to go back on the assurance given by Milburn on its behalf.

[67] If I had not concluded that an agreement was made by which GCNA agreed that the *PPSA* and mortgage security given by Brightstar to Centurion would have priority over GCNA's *PPSA* and mortgage security, except for Deposits, I would hold that GCNA is precluded by the doctrine of proprietary estoppel from relying on the Postponement Acknowledgment without giving effect to the form of mortgage priority agreement that it asked Centurion to sign together with the Postponement Acknowledgment.

[68] I do not find it necessary to address the submissions with respect to promissory estoppel.

Does Centurion require an order under s. 159 of the Land Titles Act to rectify the register to give effect to rectification of the Acknowledgment and Direction?

[69] GCNA submits that Centurion needs to obtain an order for rectification of the Postponement Acknowledgement and that such an order is required for the court to rectify the property register for the Property under s. 159 of the *Land Titles Act*.

[70] Centurion does not seek rectification of the Postponement Acknowledgement. Centurion seeks an order to remedy GCNA's breach of the agreement by executing only the Postponement Acknowledgment and registering it on title without accepting the restrictions to which it had agreed as set out in the form of mortgage priority agreement that it asked Centurion to sign. This order may be made without an order for rectification of the Postponement Acknowledgement.

Is the relief sought by Centurion on its motion statute-barred?

[71] GSNA submits that the *Limitations Act*, *2002*, S.O. 2002, c. 24, Sch. B (the "*Limitations Act*") applies to the relief sought by Centurion on its motion.

[72] Under the *Limitations Act*, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. A claim is discovered on the earlier of (a) the day on which the person with the claim first knew (i) that the injury, loss or damage had occurred, (ii) that the injury, loss or damage was caused by or contributed to by an act or omission, (iii) that the act or omission was that of the person against whom the claim is made, and (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to remedy it, and (b) the day in which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[73] GCNA submits that nothing changed between September 8, 2016 and August 21, 2019, when the proposed distribution of funds was issued. As of September 8, 2016, Mr. Mandell knew that the GCNA mortgage had been placed on title, the Postponement Acknowledgement had been registered, and that GCNA had not signed the priority agreement. GCNA submits that these facts, known to Centurion, were contrary to the agreement upon which Centurion relies for the relief sought on this motion and, to the extent that the Postponement Acknowledgement departed from this agreement, Centurion's claim had crystallized and was known.

[74] The Escrow Agreement was entered into on November 1, 2019 which had the effect of a standstill to preserve the *status quo* vis-à-vis the priority dispute. Centurion issued its Statement of Claim on October 30, 2020 and sought a receivership over Brightstar. Centurion brought this motion on December 17, 2020.

[75] GCNA submits that Centurion's claim was discovered by September 8, 2016 and the limitation period expired two years later. GCNA submits that the relief sought by Centurion on this motion is statute barred and, on this basis alone, its motion should be dismissed.

[76] Mandell's evidence is that he did not know that GCNA took that position that it had priority over the Centurion Mortgage until August or September 2019 when he had email communications with a lawyer at SR Law about the proposed payout from net proceeds of sale of condominium units and he was informed by litigation counsel retained by Centurion that GCNA's counsel had taken the position that GCNA holds a second mortgage in priority to the Centurion Mortgage in respect of all amounts owed by Brightstar to GCNA, not just with respect to Deposits.

[77] Centurion submits that the claim for the relief sought on this motion was discovered no earlier than August 2019 and that this motion was brought by Notice of Motion dated December 17, 2020, well within the limitation period.

[78] Mandell's evidence is that although Milburn did not provide a signed mortgage priority agreement as he had offered to do in his September 8, 2016 email, Mandell did not press him because it was clear to him that Milburn had acknowledged that Centurion's security, including the Centurion Mortgage, had priority over GCNA's security, including mortgage security, except for the Deposits.

[79] The Postponement Acknowledgement signed by Centurion and returned to GCNA on June 8, 2016 (together with the signed mortgage priority agreement) is not qualified and does not refer to the mortgage priority agreement. Mandell's evidence is that in his practice, he does not insist that a registered mortgage postponement contain all the terms of the agreement between the parties relating to priorities and he is content to rely on a separate agreement delineating the parties' agreement respecting mortgage priorities between the mortgages referenced in the postponement. Mandell's evidence is that he had such an agreement with Milburn which was reflected in GCNA's form of mortgage priority agreement sent to him by Milburn (together with the Postponement Acknowledgement).

[80] Mandell's evidence is that from his perspective, the mortgage priority agreement and the Postponement Acknowledgement were a "package deal" and that the Postponement Acknowledgement was subject to the mortgage priority agreement. His evidence is that Milburn never indicated to him that he took a contrary view. In this regard, Mandell refers to an email dated July 12, 2016 from Milburn in response to Mandell's June 8, 2016 email sending the two signed documents. Milburn asks for a signed Postponement Acknowledgment for the postponement only, and acknowledges "we have the priority

agreement". He did not express disagreement with any of its terms. Mandell sent another copy of the Postponement Acknowledgment on July 12, 2016.

[81] Mandell's evidence is that based on his communications with Milburn prior to August/September 2019, he had no reason to question that GCNA and Centurion had agreed that the Centurion Mortgage was postponed to the GCNA Mortgage only with respect to unit purchasers' deposits.

[82] GCNA relies on answers given by Mandell on his cross-examination in which he agreed that he reviewed the Postponement Acknowledgement before Centurion signed it and he recognized that it gave effect to the GCNA restated commitment and did not refer to any form of priority agreement or limit its effect to the Deposits. Mandell agreed that he did not request that the Postponement Acknowledgement by so limited and that he expected Milburn to register the Postponement Acknowledgment. These answers are not inconsistent with Mandell's affidavit evidence.

[83] Based on his communications with Milburn, there was no reason for Mandell to question his understanding that GCNA had agreed that the Centurion Mortgage would have priority to the GCNA Mortgage except for Deposits until GCNA's position became clear in September 2019. I find that Mandell did not know that GCNA's position was that it is entitled to rely on the postponement Acknowledgement, without also agreeing to the terms of the mortgage priority agreement, until he was informed of this fact in September 2019.

[84] I also conclude that a reasonable person with the abilities and in the circumstances of Mandell would not have known that GCNA's position is that the Centurion Mortgage was postponed in its entirety to the GCNA Mortgage until no earlier than August or September 2019.

[85] Centurion's claim is not statute barred.

Does Centurion have priority over GCNA with respect to proceeds from the sale of condominium units on the basis that GCNA's priority is limited to Deposits?

[86] At the hearing of this motion, counsel agreed that, having regard to the Escrow Agreement, the form of order to be made will depend on my decision with respect to the priority dispute and, if the parties are unable to agree on the form of order, further submissions may be needed.

What is the appropriate remedy?

[87] In its Notice of Motion, Centurion asks for an order declaring that the registered GCNA Mortgage is subordinate to the registered Centurion Mortgage and, in the alternative, an Order deleting the Postponement Acknowledgement from title to the Property.

[88] GCNA, having made the priority agreement with Centurion in May 2016, was not contractually entitled to sign only the Priority Acknowledgement, and rely upon registration of the Priority Acknowledgement on title to the Property. GCNA was

contractually required to also sign and deliver the mortgage priority agreement. If it had done so, it would not have been entitled to rely on the effect of registration of the Postponement Acknowledgement to give the GCNA Mortgage priority over the Centurion Mortgage.

[89] Given my conclusion with respect to the priority dispute, the requested order is proper to give effect to the parties' agreement with respect to relative priorities.

Disposition

[90] For these reasons, Centurion's motion with respect to determination of the relative priorities between the Centurion Mortgage and the GCNA Mortgage is granted.

[91] I make an order:

a. Declaring that the registered Charge of GCNA (Instrument Number DR1493303) is subordinate to the registered Charge of Centurion (Instrument Number DR1474136).

b. Deleting Instrument Number DR1493304 (the Postponement Acknowledgement) from title to the Property.

[92] I ask counsel to advise whether they are agreed on the form of order to give effect to my decision with respect to relative priority of the Centurion Mortgage and the GCNA Mortgage, having regard to the terms of the Escrow Agreement. If so, I ask that counsel provide me with an approved form of order.

[93] If costs are not resolved, Centurion may make written submissions not exceeding 3 pages (excluding costs outline) within 14 days. GCNA may make written responding submissions (also not exceeding 3 pages excluding costs outline) within 14 days thereafter. Centurion may make brief reply submissions (not exceeding one page) within 5 days thereafter.

Cavanagh J.

Date: July 23, 2021

APPENDIX D

REPLY TO:	GEORGE BENCHETRIT
FILE NO.:	66944
DIRECT:	416 218 1141
FAX:	416 218 1841
EMAIL:	george@chaitons.com

Chaitons LLP

VIA Email

August 4, 2021

ROBINS, APPLEBY LLP 2600-120 Adelaide Street West Toronto, ON M5H 1T1 Dominique Michaud Email: dmichaud@robapp.com	Lawyers for Centurion Mortgage Capital Corporation
RICHARD J. MAZAR 115 King Avenue West Newcastle, Ontario L1B 1L3 Richard Mazar Email: rmazar@mazarlaw.com	Lawyer for the Defendants and 2153491 Ontario Inc.
MACK LAWYERS 146 Simcoe Street North Oshawa, ON L1G 4S7 Paul Mack Email: pmack@macklawyers.ca	Lawyers for Jason C. Boccinofuso and 1791029 Ontario Inc.
BORDEN LADNER GERVAIS LLP 3400-22 Adelaide Street West Toronto, ON M5H 4E3 Alex MacFarlane Email: AMacfarlane@blg.com Robert Antenore Email: RAntenore@blg.com	Lawyers for The Guarantee Company of North America

Re: ***Unit 417, 21 Brookhouse Drive, Newcastle, Ontario, including the condominium unit, one parking space and one locker (collectively, "Unit 417")***

Dear All,

As you know, we represent BDO Canada Limited, in its capacity as court-appointed receiver and manager over certain lands and premises owned by Brightstar Newcastle Corporation, including Unit 417 (the "**Receiver**").

Chaitons LLP

In its First Report dated April 14, 2021 (accessible for your convenience via this link) at paragraphs 32-44, the Receiver provided a summary of the situation with respect to Unit 417 as of that time.

Since then, Mr. Rasmussen has maintained his position that he is entitled to obtain title to Unit 417. We have encouraged Mr. Rasmussen to retain a lawyer to deal with this matter, but to date he has not done so. Nevertheless, given Mr. Rasmussen's circumstances, the Receiver is of the view that it is appropriate to address the matter in court and to give Mr. Rasmussen and all potential stakeholders an opportunity to assert any legal positions they choose to advance. To that end, we have secured a 30-minute appointment with the court on August 23, 2021 at 9:30 am.

Subject to hearing from any of you that your clients are taking a contrary position, the Receiver intends to seek an order at the upcoming hearing approving the transfer of Unit 417 to Mr. Rasmussen and vesting title free of all claims and encumbrances, provided that Mr. Rasmussen pays certain closing and occupancy-related amounts to the Receiver. The Receiver is in the process of determining what those amounts should be and will be engaging with Mr. Rasmussen to confirm that he is prepared to pay them on closing.

Please let us know as soon as possible if your clients will be taking a position with respect to this matter, so that the Receiver can consider any such positions for the purpose of its report to the Court. If you have any questions or would like to discuss this matter, please contact me at your convenience.

Yours truly,

CHAITONS LLP

George Benchetrit

PARTNER
GB/AC

APPENDIX E

George Benchetrit

From: Brooksbank, Bevan <BBrooksbank@blg.com>
Sent: Monday, August 9, 2021 9:48 AM
To: George Benchetrit; Antenore, Robert
Cc: MacFarlane, Alex; Mangano, Leah
Subject: RE: Unit 417, 21 Brookhouse Drive, Newcastle, Ontario

CAUTION: [External]

Morning George,
Further to our earlier call, we have set out below GCNA's position with respect to the Unit 417 issue as requested.

GCNA disputes that the ~$270,000 loaned to Brightstar by Rasmussen was a deposit because (i) it was characterized as a loan – not as a deposit - in the agreement between Rasmussen and Brightstar; (ii) the loan was not paid to SR Law or held in SR Law's Escrow/Deposit account, which is a statutory requirement for all condominium deposits; (iii) the loan was not insured, which is a statutory requirement for all as a deposits before they can be released from trust to the developer; (iv) the loan agreement requires the payment of interest at prime + 5%, which contravenes the interest provision of *the Condominium Act*; and (v) the loan does not otherwise have the characteristics of a valid deposit as required to be treated as such under the *Act*.

Instead, Rasmussen took possession of Unit 417 before it closed and made purported improvements at Rasmussen's own risk pre-closing. He entered into a loan agreement with Brightstar, which does not characterize the loan as a deposit and is silent on the loan being secured by excess deposit insurance. If the intent of all parties was for the $270,000 loan to be a deposit on the condominium purchase, surely the parties would have described the loan as a deposit in the loan agreement, arranged for the deposit to be paid to SR Law, deposited the $270,000 in the trust account and requested GCNA to insure the $270,000 by issuing a deposit insurance policy, all in compliance with the *Condominium Act*. None of this occurred. Instead, the loan agreement provides Rasmussen with other forms of security, none of which would have been necessary if it was a deposit under the *Act*. The only reason such security is required under the loan agreement is that all parties understood that the loan was not a deposit and it was not safeguarded by the statutory protections of the *Condominium Act*. Also, the loan agreement provides for interest on the loan, which is not available on deposits under the *Act*.

GCNA also understands that Mr. Rasmussen is a close personal friend of one of the principals of Brightstar and that he purchased his unit in order to assist Brightstar with financing.

In short, while GCNA is sympathetic to the situation Mr. Rasmussen finds himself in, his recourse is as against Brightstar. GCNA was a stranger to the transaction and had no notice of the loan agreement. It would be inequitable in the circumstances to effectively ascribe a priority secured lender status to Rasmussen, to the detriment of the remaining multiple secured creditors.

Lastly, please circulate the full loan agreement (with the missing schedules) when available.
Best,
Bevan

Bevan Brooksbank
Partner Commercial Litigation Group
Borden Ladner Gervais LLP
T 416.367.6604 | F 416.367.6749 | BBrooksbank@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

APPENDIX F

Statement by Gerry Rasmussen in answer to GCNA's position with respect to #417 Brookhouse; as outlined by Mr Bevan Brooksbank for GCNA.

On the 30th October 2014 I entered into an Agreement of Purchase and Sale between Brightstar Newcastle Corporation and myself to purchase Unit 417 at Brookhouse Gate paying the original full list price *(*see note below).* This was completed on the forms as approved by OREA and became a legally binding contract after the prescribed deposits were paid in trust. There remains no dispute that this was, and is, a legal Agreement of Purchase and Sale.

GCNA asserts that a certain 'loan agreement' is the key to obviating the completion of that APS and final registration of title of my home, despite the fact that this 'loan agreement' does not form part, or have anything to do with the legality of the APS, but a mere adjunct to it. The insistence that it does not comply with the various definitions prescribed under the Condominium Act for the amount therein to qualify as a deposit is of no consequence. This 'loan agreement', although legal in itself, was created not only to give me some additional security on a personal level, but essentially would allow Brightstar to more easily legally use the funds for construction costs (something which I understand at that time was of immediate concern to complete the project). Also, it served to reinforce my prepayment by stating and also allowing for an amendment to the APS confirming that the amount as advanced to Brightstar of $270,320 represented the full balance of the purchase price per my APS and no other amounts were payable.

**Note Previous assertions stated that I had obtained the apartment at a reduced or discounted price are incorrect. I purchased on the first price list of a preconstruction condo, which will always end up considerably lower than other purchasers buying later. Also, the assertion that I got certain upgrades (a small part of my considerable betterments in the suite) for free is incorrect. I would lose interest on prepaying the $270,320 of my purchase and Brightstar was to gain, so it was agreed that those particular upgrades were given for free only in lieu of my not charging any interest on my prepayment 'loan' as advanced to Brightstar. Interest was only ascribed in the security agreement after 6 months if closing hadn't taken place at that time.*

It remains undeniable and indisputable that the money as advanced to BNC was the final prepayment on my purchase. Not only is it clearly stated in the agreement, and even the exact amount of dollars (270,320) as owed on my purchase was advanced, but I made sure that my bank, the CIBC, had imprinted on the bank transfer document slip, payable to BNC, that it was for the final purchase amount for Unit 417 Brookhouse Gate. Also, the principals at Brightstar have confirmed that this was the final payment on the apartment I purchased from them. And lastly, I confirm I made this payment to Brightstar for the final payment on my purchase. To conclude anything otherwise is only going to be an attempt at legal manipulation to subvert what were clearly my intentions on advancing the prepayment and the facts corroborating such.

The apartment was delivered to me as per the agreement and I took possession. There was no one else in this equation, and whatever has transpired between Brightstar and their creditors I am not privy to, and remains subsequent to the completed transaction. I remain an innocent purchaser who has fulfilled the terms of the Agreement to the satisfaction of the vendor, and have since occupied my legally purchased home for almost 3 years.

GCNA's assertion that (to quote):
".... made purported improvements at Rasmussen's own risk preclosing".
There was no risk. The extensive upgrading and betterments were completed after taking possession of the apartment and fully paying for it. They were completed in accordance with Schedule C, para 8, of the APS, which provides for the vendor requiring to grant the necessary permission for the purchaser to upgrade before closing. This was done accordingly and is common practice in new home condominium construction. Having abided by the provisions of the documentation, if the necessity arose for me to tear out all my many thousands of dollars (receipts available) of extensive upgrading and my own fully paid for betterments it would not only reduce the suite to its original concrete shell, but would benefit no one.

"... all parties understood it was not a deposit and it was not safeguarded by the statuary protections of the Condominium Act".
This statement is incorrect. All parties were in agreement and understood that this was indeed my final payment, or deposit, on the purchase of my unit (although not

safeguarded by the Condominium Act due to the intent for immediate funding of construction costs).

"... and that he purchased his unit in order to assist Brightstar with financing".
This statement is absolutely incorrect, as the home was purchased to live in. After the death of my wife in 2014, I was to sell my house and downsize to a condominium; which I purchased to live in (although recent health problems have changed certain of my plans). It was while I was waiting to move in that I learnt the project may not be completed as the developer had some financial problems, and I might not have my unit to move into. It was only then that I elected to prepay the balance of the purchase price so that the developer may have use of, and in just a minor way, hopefully to help ensure final completion of the project (done for my own selfish interests, if you like, so I could have my unit to move into).

".... his recourse is as against Brightstar. GCNA was a stranger to the transaction and had no notice of the loan agreement".
The fact that GCNA was not informed by Brightstar that I had prepaid the balance of my purchase is what maybe necessitates GCNA's own recourse rather as against Brightstar. My legal Agreement of Purchase and Sale as fulfilled remains between myself and the vendor and developer BNC only; and all parties have agreed I have paid the full amount for my unit. Such agreement does not provide an excuse for GCNA to steal my $270,320 balance of purchase price prepayment made and my home; just because they were not informed of such prepayment on my purchase by the vendor. As well I have no agreement with GCNA to inform them as such and for GCNA to continue to proceed with an attempt to try and steal my home when I, as an innocent purchaser, owe GCNA absolutely nothing, remains not only outrageous but immoral.

I respectfully submit the foregoing in reply to the statement as outlined and made by Mr Bevan Brooksbank on behalf of GCNA.

Gerry Rasmussen
#417 Brookhouse Gate

15th August 2021

Court File No. CV-20-00650557-00CL

CENTURION MORTGAGE CAPITAL CORPORATION - and - BRIGHTSTAR NEWCASTLE CORPORATION ET AL.
Plaintiff Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit
Tel: (416) 218-1141
Email: george@chaitons.com

Lawyers for BDO Canada Limited, in its capacity as Court-Appointed Receiver