

Note: This form of Deposit Trust Agreement (DTA) is intended for situations where: i) the vendor is not subject to any security requirement from Tarion; or ii) there is a security requirement that the vendor agrees to satisfy by providing a bond or letter of credit (as opposed to the DTA continuing as security in favour of Tarion after the Early Termination Conditions are satisfied or waived)

Instrument No.: _____

Deposit Trust Agreement Freehold Project

This agreement made this _____ day of _____, 20_____.

Between:

[VENDOR]

(the "Vendor")

OF THE FIRST PART

- and -

[ESCROW AGENT]

(the "Escrow Agent")

OF THE SECOND PART

Whereas:

- A. The Vendor intends to construct and develop xxx# freehold homes in a single location, either at the same time or consecutively, as a single coordinated undertaking, which freehold homes arise out of the Vendor's Notice of Proposal of Conditions of Qualification for Enrolment and/or Enrolment issued by Tarion on xxx date of NOP under ID# xxx (the "**Freehold Project**") on lands and premises situated in the city / town of xxx. To the extent that legal description(s) are available at the time of executing this Agreement, the Freehold Project is more particularly described as the xxx# freehold homes that the Vendor intends to construct and develop on the lands and premises under legal description(s):

Legal Description: xxx

- B. Each purchaser (a "Purchaser") of a home in the Freehold Project (a "**Home**" or collectively referred to as the "**Homes**") has paid or will pay directly to the Escrow Agent in trust deposit monies, including any sums for upgrades and extras (a "**Deposit**" and collectively referred to as the "**Deposits**") pursuant to the provisions of the agreement of purchase and sale in connection therewith (the "**Purchase Agreement**" and collectively referred to as the "**Purchase Agreements**");
- C. The Purchase agreements will include conditions ("**Early Termination Conditions**") described in subparagraphs 1(b) (i) or 1(b) (ii) of Schedule A to the mandatory addendum form (the "**Addendum**") required to be attached pursuant to Regulation 165-08 under the Ontario New Home Warranties Plan Act, R.S.O. 1990, c. 0.31, as amended, and all regulations enacted thereunder (the "**ONHWP Act**") thus pursuant to Section 1(c)(iv) of Schedule A to the Addendum the Deposits are required to be held in trust (the "**Purchaser Trust**") by the Vendor's lawyer (Escrow Agent) pursuant to the Addendum in accordance with a deposit trust agreement in form specified by Tarion Warranty Corporation ("**Tarion**"). This Agreement is the afore-mentioned deposit trust agreement;
- D. The Escrow Agent has agreed to hold all of the Deposits received by the Escrow Agent from time to time pursuant to the provisions of the Purchase Agreements and this Agreement and to place and invest same in a separate, designated and segregated trust account at, [account no.](#) (the "**Bank Account**"). Deposits (together with all interest earned or accrued thereon, less any amounts released in accordance with the provisions of this Agreement) (the "**Deposit Funds**") shall be held in trust for Purchasers in accordance with the terms and provisions of this Agreement; and
- E. After the provisions of Section 1(c)(iv) of Schedule A to the Addendum no longer apply and the contractual trust for the Deposit Funds no longer applies (the "**Purchaser Trust Termination Date**"), the parties have agreed that the Deposit Funds shall be disbursed as set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of Ten (\$10.00) Dollars of lawful money of Canada now paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the veracity of the

foregoing recitals (and acknowledge and agree that same shall form an integral part of this Agreement), and further covenant and agree, to and with each other, as follows:

Section 1 – Interpretation

1.1 Definitions

In addition to the defined terms set forth in this Agreement, the following words or terms shall have the respective meanings in this Agreement as ascribed to them below:

(a) “Agreement” means this agreement and any other agreement in supplement, amendment or confirmation hereof.

1.2 Gender and Number

This Agreement shall be read and construed with all changes of gender and/or number as may be required by the context.

1.3 Headings

The headings of sections or subsections are provided for convenience of reference only, and do not define, limit or enlarge the construction or interpretation of this Agreement.

1.4 Currency

All references to monetary amounts are references to Canadian Dollars.

Section 2 – Representation and Warranties

2.1 Representations of the Vendor

The Vendor hereby represents and warrants to the Escrow Agent that, as of the date hereof:

- a) it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the corporate power and capacity to own its properties and assets and to carry on its business;

- b) it has the power and capacity to enter into this Agreement and to do all acts and things as are required or contemplated hereunder to be done, observed and performed by it;

- c) it has taken all necessary action to duly authorize the execution, delivery and performance of this Agreement;
- d) the execution and delivery of this Agreement and the performance by it of its obligations hereunder (i) do not and will not contravene, breach or result in any default under any of its constating documents or under any mortgage, lease, agreement or other legally binding instrument, licence, permit or laws to which it is a party or by which it or any of its properties or assets may be bound; and (ii) will not oblige it to grant any lien or security interest in respect of the Deposit Funds to any person;
- e) this Agreement constitutes, or upon execution and delivery will constitute, a valid and binding obligation of it, enforceable against it in accordance with its terms, subject only to bankruptcy and insolvency laws affecting the enforcement of creditors' rights generally and the availability, in the discretion of a court of competent jurisdiction, of equitable remedies; and
- f) it has obtained or made formal application to Tarion to obtain confirmation of qualification for enrolment of the homes (as defined in the ONHWP Act) in the Freehold Project under the ONHWP Act;

2.2 Representations of the Escrow Agent

The Escrow Agent hereby represents and warrants that it or its relevant partners are lawyers in good standing in the Province of Ontario.

2.3 Survival of Warranties

The representations and warranties contained in Section 2.1 and Section 2.2 hereof shall survive and continue in full force and effect for the benefit of the applicable party until this Agreement is terminated in accordance with the provisions hereinafter set forth.

Section 3 – The Escrow Account

3.1 Vendor's Responsibilities with Regard to Deposit Funds

The Vendor covenants and agrees that:

- a) all Deposit Funds held by the Escrow Agent shall be held in trust for the Purchasers pursuant to the Addenda attached to purchaser agreements and this Agreement; and
- b) each of the Purchase Agreements shall provide and stipulate that all Deposits payable on account of the purchase price of any Home shall (prior to the Purchaser Trust Termination Date) be made payable to the Escrow Agent in trust, and as soon as the Vendor has received any funds representing Deposits, the Vendor shall within fifteen (15) business days after receipt of such funds deliver same to the Escrow Agent to be deposited in the Bank Account and held in accordance with the terms of the Addendum and this Agreement.

3.2 Escrow Agent Responsibilities

The Escrow Agent covenants and agrees that:

- a) as soon as the Escrow Agent has received any funds representing a Deposit delivered to it by or on behalf of the Vendor in accordance with Section 3.1(b) hereof, the Escrow Agent shall forthwith deposit such funds into the Bank Account;
- b) all Deposit Funds held by the Escrow Agent are held in trust for the Purchaser pursuant to the applicable Addendum;
- c) within 10 (ten) days of depositing any such monies into the Bank Account the Escrow Agent shall, on behalf of the Vendor and in accordance with the provisions of the Addendum and this Agreement, provide to the person or persons who paid the Deposit written evidence that such amounts are held in trust as required by the Addendum;
- d) the Escrow Agent shall not release any Deposit Funds (including interest earned or accrued thereon) to the Vendor or any other person except in strict compliance with the provisions of the Addendum and this Agreement; and

- e) the Escrow Agent shall not pay or withdraw any funds from the Bank Account save and except in those circumstances provided in Sections 4.1 and 4.2 below.
- f) the Escrow Agent shall notify Tarion in writing within 10 (ten) days after this Agreement is terminated in accordance with Section 4.3 below.

3.3 Signing Authority

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

Section 4 – Release of Funds

4.1 Refund of Deposits to Purchasers

Upon the delivery of a written notice from the Vendor to the Escrow Agent stating that a Purchaser is entitled to a refund of their Deposits, for example such funds are due to the Purchaser because:

- (a) the Purchaser has exercised a purchaser condition;
- (b) the Vendor is in default and is required at law to return deposits;
- (c) the Vendor and Purchaser have entered into a settlement agreement which calls for repayment;
- (d) it is so ordered by Court Order; or
- (e) an Early Termination Condition is not satisfied or waived in accordance with the Purchase Agreement,

the Escrow Agent is hereby authorized and directed by the Vendor to thereupon issue a cheque drawn on the Bank Account payable to the named Purchaser (or to whomsoever the said Purchaser may in writing so direct) in the amount of his or her Deposits, together with all prescribed interest earned or accrued thereon.

4.2 After the Purchaser Trust Termination Date

The Vendor shall advise the Escrow Agent in writing when the Purchaser Trust Termination Date has occurred with evidence that all Deposit Funds owing to Purchasers whose Purchaser Agreement was terminated pursuant to an Early Termination Condition have received a full refund of Deposit Funds as contemplated by section 4.1 above. Thereafter the Escrow Agent may respond to a written direction from the Vendor to pay remaining Deposit Funds to the Vendor.

4.3 Payment to the Vendor/Termination of Agreement

It is understood and agreed by the parties hereto that save and except for the indemnity of the Escrow Agent by the Vendor, as set forth in section 5.8 hereof, this Agreement shall automatically be terminated on the last to occur of the following:

- (a) Purchaser Trust Termination Date; and
- (b) The date upon which all Deposit Funds have been disbursed in accordance with this Agreement.

Section 5 – General

5.1 Further Assurances

The Vendor and the Escrow Agent shall hereafter do, make and execute all such documents, acts, matters, and things as may be required in order to give effect to this Agreement.

5.2 Notices

Any notice or other communication to be given hereunder (a "Notice") shall be in writing and may be effectively given by delivering the same by courier or personally at the addresses hereinafter set forth, or by sending the same by prepaid registered mail to the parties at such addresses. All Notices delivered personally, by courier, or by electronic means before 5:00 p.m. on a business day shall be deemed to have been received on that day. Any Notice so mailed shall be deemed to have been received on the third business day (i.e. excluding Saturdays, Sundays and statutory holidays) next following the mailing thereof, provided the postal service is in operation during such time. During any interruptions of postal service, all Notices shall be delivered by courier, personally, or by electronic means. Any notice delivered after 5:00 p.m. shall be deemed to have been received on the next business day following the date of such delivery. The addresses of the parties for the purposes hereof shall respectively be:

Vendor:

Attention:
Phone No.:
Email:

Tarion:

Tarion Warranty Corporation
5160 Yonge Street, 7th Floor
TORONTO ON M2N 6L9
Attention:
Phone No.:
Email:

Escrow Agent:

Attention:
Phone No.:
Email:

Any party hereto may from time to time notify each of the other parties hereto, in accordance with the provision hereof, of any change of address which thereafter, until changed by like Notice, shall be the address of such party for all purposes of this Agreement.

5.3 Successors, etc.

Subject, in the case of the Escrow Agent only, to Section 5.9 hereof, this Agreement shall be binding upon, and enure to the benefit of each of the parties hereto and their respective successors and assigns, provided however, that the Vendor may not assign its rights or interest hereunder, without the prior written consent of Tarion which consent may be arbitrarily withheld.

5.4 Governing law

This Agreement, the transactions referred to herein and all other documents delivered hereunder shall be construed and interpreted in accordance with the laws of Ontario.

5.5 Time

Time shall be of the essence of this Agreement and the transactions contemplated herein.

5.6 No Partnership Created

Nothing herein shall be construed so as to make the Escrow Agent and/or the Vendor the partner(s) of one another.

5.7 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and, except as herein stated and in the documents to be executed and delivered pursuant hereto, contains all of the representations, undertakings or agreements of the respective parties. There are no verbal representations, undertakings or agreements of any kind between the parties hereto with respect to the subject matter hereof except as stated herein. This Agreement may not be modified or amended except with the written consent of all parties hereto.

5.8 Reliance by Escrow Agent

The Escrow Agent shall be entitled to rely upon any written confirmation, notice, request, direction or other instrument (hereinafter collectively referred to as an "Instrument") furnished to it by the other party to this Agreement, without inquiring into the due authorization, execution or delivery of such Instrument, or the authority of the person delivering such Instrument to it, or the correctness of the matters set out therein. Provided that if the Escrow Agent acts honestly, in good faith and not negligently, and in strict accordance with the provisions of this Agreement, it shall not be liable for any costs, damages, liabilities, actions or causes of action arising from the carrying out of its duties hereunder, and the Vendor hereby agrees to indemnify and save the Escrow Agent harmless in respect of all of the foregoing, which indemnity shall survive the termination of this Agreement.

5.9 Resignation of the Escrow Agent

The Escrow Agent may resign and be discharged from any further duties or liabilities hereunder by giving thirty (30) days written notice to the Vendor (or such shorter notice as they may accept) provided that a suitable successor Escrow Agent (lawyer in good standing in the Province of Ontario) is approved prior to the effective date of such resignation, and provided further that the successor Escrow Agent confirms in writing to the Vendor that it shall be liable for the performance and fulfillment of all covenants and obligations imposed upon the Escrow Agent as set forth in this Agreement, and shall be bound thereby as if the successor Escrow Agent had been originally named and appointed as Escrow Agent herein.

5.10 Paramountcy

The parties hereto agree that the terms and conditions of this Agreement shall at all times be subject to the overriding Purchaser Trust provisions of the addendum.

5.11 Electronic Signatures

This Agreement may be executed by any or all of the undersigned parties in wet-ink, or by way of an electronic signature in accordance with the provisions of the *Electronic Commerce Act, 2000, S.O. 2000, c. 17*, as amended, and a photocopy or a scanned and e-mailed copy of this executed Agreement (whether signed in wet-ink or electronically) may be relied upon and enforced to the same extent as if it were an original executed version.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first above-mentioned.

[VENDOR]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

[ESCROW AGENT]

Per: _____

Name:

Title:

I have authority to bind the Corporation.