

RCCP Project: _____

P E F S T A N D A R D T R U S T A G R E E M E N T ¹

THIS AGREEMENT made this _____ day of _____, 20_____.

BETWEEN:

[VENDOR]
(the "Vendor")

- and -

[TRUSTEE]
(the "Trustee")

-and-

TARION WARRANTY CORPORATION

("Tarion")

WHEREAS:

- A. The Vendor intends to construct and develop a residential condominium conversion project (the "RCCP") on the following lands and premises situated in the Town of xxx (hereinafter collectively referred to as the "Real Property"), namely:
Legal Description:
- B. Attached as Schedule 1 is the most recent "expected major repair schedule" (as that term is defined in the ONHWP Act²) relating to the RCCP.
- C. In accordance with the ONHWP Act, the Vendor has paid or caused to be paid to the Trustee, the sum of \$_____ which is the amount required to fund the "pre-existing elements fund" as that term is defined in the ONHWP Act. That sum, as reduced or increased in accordance with the ONHWP Act, together with any interest thereon, is hereafter referred to as the "Funds";

¹ **Note:** Tarion updates forms periodically. Please ensure you go to Tarion.com to make sure you have the most recent version of this document.

² The *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31, and regulations enacted thereunder all as amended from time to time (the "ONHWP Act").

- D. The ONHWP Act requires that the Funds be held in trust with the Trustee until they can be released in accordance with the ONHWP Act and this Agreement;
- E. The Trustee has agreed to hold all of the Funds received by it from time to time and to place and invest same in a separate, designated and segregated trust account at, [bank and account no.] (the “**Bank Account**”), and to hold and monitor the Funds in trust in accordance with the terms and provisions of this Agreement.
- F. Tarion is executing this Agreement for the sole purpose of exercising the rights provided to it hereunder.

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 the recitals 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;
- (b) Any term or expression used but not defined herein shall have the meaning, if applicable, given to it in the ONHWP Act.

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 – TRUST

Establishment of the Fund

- 2.1 The Vendor has paid or caused to be paid or delivered to the Trustee the Funds described in recital C above.
- 2.2 The Trustee hereby agrees to hold the Funds in trust for the benefit of the persons entitled to the Funds from time to time under the terms of the ONHWP Act (the “**Beneficiaries**”).
- 2.3 The Trustee hereby accepts the trust constituted by this Agreement (the “**Trust**”) and in carrying out its duties and responsibilities pursuant to this Agreement shall exercise the degree of care, diligence and skill that a prudent skilled professional custodian and Trustee would exercise in circumstances dealing with the property of another person.

Payments out of the Fund

- 2.4 The Trustee shall, on the written directions of persons set out in specified forms described in this Agreement, from time to time, make payments out of the Funds to such persons, in such manner and in such amounts as are required under the terms of this Agreement and the applicable law. Upon each such payment being made, the amount of that payment shall no longer constitute part of the Funds.
- 2.5 No part of the Funds shall be used for or diverted for purposes other than those provided for under the terms of this Agreement. In particular, the Trustee shall arrange for payments of its fees, expenses or other incidental costs directly by the Vendor under section 2.11.

Concerning the Trustee

- 2.6 The Trustee shall have no duties or responsibilities other than those specifically provided for by the terms of this Agreement. For greater certainty, the Trustee shall have no power or duty to invest the Funds.
- 2.7 The Trustee shall have no responsibilities in respect of how monies distributed from the Funds are spent.
- 2.8 All persons dealing with the Trustee are released from inquiry into any decision or authority of the Trustee relating to the Funds and from seeing to the application of any monies paid or delivered to the Trustee.
- 2.9 Every document executed by the Trustee which has been executed as provided in this Agreement, shall be conclusive in favour of any person, partnership, corporation or other entity relying thereon.
- 2.10 The Trustee shall have and is hereby vested with all and every power, right and authority necessary or desirable to enable the Trustee to administer the Funds and carry out the Trustee’s obligations rights under this Agreement.

Trustee's Expenses

- 2.11 The Trustee shall be entitled to such compensation as may from time to time be mutually agreed upon in writing by the Trustee and the Vendor. Such payments shall be made by the Vendor to the Trustee and any such payments or obligations shall be separate from and not form any part of the Funds.
- 2.12 The Trustee shall make no claim against or exercise any right of set-off in respect of the Funds.

Records

- 2.13 The Trustee shall keep and maintain accurate and detailed accounts and records to record all transactions with respect to its administration of the Funds.
- 2.14 Tarion, or its authorized representative, in its discretion, may at any time during usual business hours, make an inspection and audit the books and records of the Trustee relating to the Funds and shall have the right of inspection of the assets held in the Funds wheresoever stored physically or electronically. This provision does not impose any obligation on Tarion to do inspections or audits.

Successor Trustee

- 2.15 A Trustee at the time acting under this Agreement may, in accordance with Section 6.10, resign and be discharged from the Trust by providing written notice to the Vendor and Tarion. Any Trustee hereunder may be removed at any time with or without cause by an instrument executed by the Beneficiaries and provided a replacement "trustee" (as that term is defined in the ONHWP Act) has agreed to assume trusteeship of the Funds. Such resignation or removal, as the case may be, shall take effect ninety (90) days after the instrument of resignation has been delivered.
- 2.16 Any successor Trustee who accepts such appointment shall have the same powers and duties as those conferred upon the Trustee hereunder and, upon acceptance of such appointment by the successor Trustee, the Trustee shall assign, transfer and pay over to such successor Trustee the Funds, together with any and all records, books and documents in the Trustee's possession pertaining to the Funds. The Trustee shall be responsible for all costs associated with the change of Trustee and the transfer and vesting of the Funds in the successor Trustee.
- 2.17 The Vendor and Trustee may not amend in whole or in part any or all of the provisions of the Agreement without the prior written consent of Tarion which may not be unreasonably withheld.
- 2.18 The Trustee shall notify the Vendor and Tarion of any payment made out of the Trust.
- 2.19 This Trust Agreement may not be assigned by the Trustee.

SECTION 3 – RELEASE OF MONIES FROM FUND

Very Specific Release Provisions

- 3.1 The parties acknowledge there are very specific rules for distributing funds from the Funds, which differ depending on when the funds are requested and who is requesting the funds. In general terms, these are:

Distribution to Vendor

- Before Project Registration Date – Common Elements
- Up until Title Transfer Date – Unit matters

Distribution to Condominium Corporation

- After Project Registration Date but before Turnover Meeting
- After Turnover Meeting

Distribution to Applicable Unit Owner

- After Transfer of Title (less than \$10,000)
- After Transfer of Title (greater than \$10,000)
- After Project Registration Date Plus 7 Years

Distribution to Vendor

- 3.2 *Before Project Registration Date – Common Elements [s.3(2) O.Reg. 520/17; ss.9(1)(3), O.Reg. 522/17]*

The Trustee is hereby authorized and directed to make payment to the Vendor of the amount set out in and upon receipt of an original signed copy of RCCP Form 2 (being the then current form of such document so identified and posted on Tarion's website).

- 3.3 *Before Title Transfer of a Unit – Unit Repairs [s.3(2) O.Reg. 520/17; ss.9(1)(2), O.Reg. 522/17]*

The Trustee is hereby authorized and directed to make payment to the Vendor of the amount set out in and upon receipt of an original signed copy of RCCP Form 3 (being the then current form of such document so identified and posted on Tarion's website).

Distribution to Condominium Corporation

- 3.4 *After the Project Registration Date but before Turnover Meeting [s.3(2) O.Reg. 520/17; ss.9(1)(5), O.Reg. 522/17]*

The Trustee is hereby authorized and directed to make payment to the Condominium Corporation of the amount set out in and upon receipt of an original signed copy of RCCP Form 4 (being the then current form of such document so identified and posted on Tarion's website).

3.5 After Project Registration Date and after Turnover Meeting [s.3(3) O.Reg. 520/17]

The Trustee is hereby authorized and directed to make payment to the Condominium Corporation of the amount set out in and upon receipt of an original signed copy of RCCP Form 5 (being the then current form of such document so identified and posted on Tarion's website).

Distribution to Unit Purchaser

3.6 After Transfer of Title to Unit (less than \$10,000) [s.3(6) 520/17]

The Trustee is hereby authorized and directed to make payment to the Unit Owner of the amount set out in and upon receipt of an original signed copy of RCCP Form 6 (being the then current form of such document so identified and posted on Tarion's website).

3.7 After Transfer of Title to Unit (greater than \$10,000) [s.3(2) O.Reg. 520/17; ss.9(1) 9(7) O.Reg. 522/17]

The Trustee is hereby authorized and directed to make payment to the Unit Owner of the amount set out in and upon receipt of an original signed copy of RCCP Form 7 (being the then current Form of such document so identified and posted on Tarion's website).

3.8 7 Years after Project Registration Date [ss.3(7) O.Reg. 520/17]

The Trustee is hereby authorized and directed to make payment to the Unit Owner of the amount set out in and upon receipt of an original signed copy of RCCP Form 8 (being the then current Form of such document so identified and posted on Tarion's website).

SECTION 4 - REPRESENTATION AND WARRANTIES

4.1 **Representations of the Vendor**

The Vendor hereby represents and warrants to the Trustee and to Tarion 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 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;
- f) it is (or has made formal application to Tarion to become) a registered vendor and/or builder under the ONHWP Act, in respect of the RCCP;
- g) no creditor of the Vendor has (or will have) any security interest or other claim in the Funds ranking prior to the interests of the Beneficiaries created by virtue of this Agreement, and the Vendor covenants to obtain and deliver to the Trustee upon the Trustee's request, all such acknowledgements or postponements, in form and substance satisfactory to Tarion, from any or all creditors of the Vendor evidencing that any security interests or other claims of such creditors do not attach to the Fund, or such security interest(s) rank behind the interests of the Trustee and Beneficiaries in and to the Funds; and
- h) the Vendor has (or will have) all necessary and unencumbered rights in and to the Fund, prior to the delivery thereof by the Vendor to the Trustee.

4.2 Representations of the Trustee

The Trustee hereby represents and warrants that it meets statutory requirements for firms acting as Trustees as communicated in writing to the Trustee by Tarion on or before the date of this Agreement.

4.3 Survival of Warranties

The representations and warranties contained in Section 4.1 and Section 4.2 hereof shall survive and continue in full force and effect for the benefit of Tarion until this Agreement is terminated in accordance with the provisions hereinafter set forth.

SECTION 5 - THE ESCROW ACCOUNT

5.1 Reporting

The Trustee shall, on a monthly basis, within fifteen (15) business days after the end of each calendar month, provide the Vendor and Tarion with a certificate of an officer or senior representative of the Trustee containing the following statement: I have reviewed the bank records for the Bank Account and declare that the aggregate amount of Funds as of _____ day of _____, 20__, is \$_____. Tarion, in its discretion, may upon written request, be provided with additional reports concerning the disposition of the Funds.

SECTION 6 – GENERAL

6.1 Further Assurances

The Vendor, the Trustee and Tarion 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.

6.2 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 or by transmitting by email. All Notices delivered personally, by courier or email 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, by email or personally. Any notice delivered or faxed after 5:00 p.m. shall be deemed to have been received on the next business day following the date of such personal delivery or fax transmission (as the case may be). The addresses of the parties for the purposes hereof shall respectively be:

Vendor:

Attention:
Phone No.:
Email:

Trustee:

Attention:
Phone No.:
Email:

Tarion:

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. The address for Notice to Tarion is on page 10.

6.3 Successors, etc.

Subject, in the case of the Trustee only, to Section 6.10 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.

6.4 **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 the Province of Ontario and the laws of Canada applicable therein.

6.5 **Time**

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

6.6 **No Partnership Created**

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

6.7 **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.

6.8 **Reliance by Trustee**

The Trustee 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 any 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 Trustee 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 Trustee harmless in respect of all of the foregoing, which indemnity shall survive the termination of this Agreement.

6.9 **No Liability**

No action or other proceeding for damages or other relief shall be instituted against either the Trustee or Tarion or any of their respective employees or representatives for an act done in good faith in the execution of or intended execution of their duties or powers under this Agreement or applicable provisions of the ONHWP Act or for any alleged neglect or default in the execution in good faith of those duties or powers.

6.10 **Resignation of the Trustee**

The Trustee may resign and be discharged from any further duties or liabilities hereunder by giving thirty (30) days written notice to the Vendor and Tarion (or such shorter notice as they may accept) provided that a successor Trustee, acceptable to both Tarion and the

Vendor, is approved prior to the effective date of such resignation, and provided further that the successor Trustee confirms in writing to both Tarion and the Vendor that it shall be liable for the performance and fulfillment of all covenants and obligations imposed upon the Trustee as set forth in this Agreement and shall be bound thereby as if the successor Trustee had been originally named and appointed as Trustee herein.

6.11 Paramountcy

The parties hereto agree that the terms and conditions of this Agreement shall at all times be subject to the overriding provisions relating to the Fund in the ONHWP Act.

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

[Trustee]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Trustee.

[Vendor]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Vendor.

Tarion Warranty Corporation hereby acknowledges having received a signed copy of this Agreement on this _____ day of _____, 20__.

Tarion Warranty Corporation

Per: _____
Name:
Title:

I have authority to bind the Corporation.

Address for Notice:

Tarion Warranty Corporation
5160 Yonge Street, 12th Floor
TORONTO, ON M2N 6L9
Attention:
Email: _____