

Dear Prospective Guarantor:

Re: Guarantee and Indemnity

We understand you have agreed to guarantee the obligations of the Registrant.

Before signing the attached Guarantee and Indemnity, we recommend that you read it carefully and review it with your legal counsel.

The Guarantee and Indemnity sets out your obligations and you should familiarize yourself with the terms of the attached Guarantee and Indemnity.

The Guarantee and Indemnity is a binding contract between you and Tarion. By signing the Guarantee and Indemnity you agree in your personal capacity (or corporately if the Guarantee and Indemnity is from a corporation) to:

- guarantee indefinitely the payment and performance of the Registrant's obligations to Tarion which may arise during the full warranty period (7 years) of each home commenced by the Registrant. You will continue to be liable unless and until the Guarantee and Indemnity is terminated in accordance with its termination provisions; and
- indemnify Tarion for all costs, claims, losses, damages and liabilities that may arise as a result of the Registrant failing to pay or perform its obligations to Tarion for all homes commenced, built or sold by the Registrant.

Please ensure you follow the attached instructions when completing the Guarantee and Indemnity and keep a copy of it for your records. Please return the signed and initialed Guarantee and Indemnity to Tarion by mail, by courier or true copy scanned and sent by email.

Neither this letter nor the instructions form part of, nor do they alter the terms of, the Guarantee and Indemnity.

As a guarantor you must provide an updated Personal Net Worth Statement to Tarion each renewal period, along with supporting material. For corporate guarantors, Tarion requires externally prepared reviewed financial statements.

If you have any questions or concerns, please contact Tarion's Licensing and Underwriting department at 1-877-696-6497 ext. 3001 or go to the Contact Us link at www.tarion.com.

Yours truly,

Tarion Licensing and Underwriting

CHECKLIST for Completing the Guarantee and Indemnity

NOTE: The Guarantee and Indemnity must be accurately completed according to these instructions. No changes, deletions, corrections (e.g. use of white out, items crossed off) are permitted on the Guarantee and Indemnity. This will result in the Guarantee and Indemnity being returned, resulting in a delay or possible refusal of the Applicant's registration or Registrant's renewal.

Please ensure the following blank fields are completed before returning it to Tarion:

- All Pages** - Guarantor must **initial the box** at the bottom of each page of the Guarantee and Indemnity to acknowledge that you have read, understood and agreed to the contents of that page. If the Guarantor is a corporation or other legal entity, the duly authorized signing officer(s) must initial each page.
- Page 1** – Insert the **full legal name of the Guarantor**, whether it is an individual, corporation or other legal entity (e.g. if your full legal name is John Michael Smith, it must be written exactly this way on both pages 1 and 15).
- Page 1** – Insert the current **complete mailing address** and phone number of the Guarantor, whether it is an individual, corporation, or other legal entity.
- Page 1** – Insert the **full name of the Registrant** for whom the Guarantee and Indemnity is being provided. The Registrant name inserted must match the name of the Registrant in Tarion's records (e.g., Michael R. Smith is not the same as Mike Smith, and Acme Homes (Brampton) Inc. is not the same as Acme Homes Inc.).
- Page 15** – Insert the **date the Guarantee and Indemnity is signed** (e.g. 1st day of January, 2014).
- Page 15** – **Witness:** The individual (at least 18 years old) who witnesses the Guarantor sign the Guarantee and Indemnity must: (i) insert his/her full legal name where indicated; and (ii) sign where indicated.
- Page 15** - Print the **full legal name of the Guarantor**. Your name must read exactly the same as the Guarantor name printed on page 1.
- Page 15** - Provide the **signature of the Guarantor or authorized signing officer(s)**. If the Guarantor is a corporation or other legal entity, print the name of the authorized signing officer(s) above "Name of Signatory". Otherwise, if the guarantor is a person, leave it blank.

If you have any questions about the Guarantee and Indemnity or how to complete it, please contact Tarion at 1-877-696-6497 ext. 3001 or go to the Contact Us link at www.tarion.com.

GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is made

BY:

Name: _____ (print legibly)
(the "**Guarantor**")

Address: _____ (print legibly)

Telephone Number: _____ (print legibly)

FOR REGISTRANT: _____ (print legibly)
(*print Vendor/Builder name*)
(the "**Registrant**")

IN FAVOUR OF:

TARION WARRANTY CORPORATION
(**"Tarion"**)

5160 Yonge Street, 12th Floor
Toronto, ON M2N 6L9

RECITALS:

- A. Tarion is a private, non-profit corporation designated by the Lieutenant Governor in Council to administer the *Ontario New Home Warranties Plan Act*.
- B. The Registrant has applied to Tarion for registration or continued registration as a vendor and/or builder under the ONHWP Act.
- C. The Guarantor has executed this Guarantee and Indemnity Agreement in order to better secure the due performance and fulfillment of all obligations and liabilities of the Registrant to Tarion, statutory, contractual or otherwise relating to certain Homes.

NOW THEREFORE in consideration of the sum of \$1.00, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Guarantor agrees with Tarion as follows:

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ARTICLE 1
INTERPRETATION

1.1 Definitions

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the ONHWP Act. In this Agreement, in addition to the definitions set out in the recitals hereto:

1.1.1 **“this Agreement”**, **“hereto”**, **“herein”**, **“hereof”**, **“hereby”**, **“hereunder”** and any similar expressions refer to this Guarantee and Indemnity as it may be supplemented, amended or restated from time to time, and not to any particular Article, Section or other portion hereof;

1.1.2 **“Builder Activity Period”** means each and every 12 month period (or longer or shorter period if a registration renewal date is more or less than 12 months from the initial registration date or last renewal date), following: (i) the Commencement Date; and (ii) any renewal date for registration thereafter. For greater clarity, Builder Activity Period includes any such period whether or not the Registrant is actually registered with Tarion, including if: registration is allowed to expire; registration is suspended, revoked or refused; registration is subject to a notice of proposal to suspend, revoke or refuse that has not been finalized; and/or the Registrant is building a Home(s) illegally;

1.1.3 **“Claim”** has the meaning ascribed to such term in section 3.1;

1.1.4 **“Commenced”** in respect of a Home means the date the Home is properly enrolled under the ONHWP Act and if not so enrolled, the earlier of: (i) the date the Home should have been so enrolled; (ii) the date the Registrant has sold or agreed to sell the Home; and (iii) the date construction of the Home commenced including preparatory work such as demolition and/or excavation. For clarity, **“Homes Commenced”** will include any Homes Commenced by or on behalf of the Registrant regardless of whether the Registrant is at the time registered with Tarion;

1.1.5 **“Commencement Date”** means the date this Agreement is signed on the signing page or, if this Agreement replaces a current Indemnity, then the date set out here:

1.1.6 **“Condominium Project”** has the meaning ascribed to such term in Regulation 892 of the ONHWP Act;

1.1.7 **“Guaranteed Obligations”** means all of the obligations, liabilities and indebtedness of the Registrant to Tarion from time to time, whether present or future, absolute or contingent, liquidated or unliquidated, as principal or as surety, alone or with others, of whatsoever nature or kind, in any currency: (i) which are VB Obligations; and (ii) otherwise, in respect of any Homes Commenced by the Registrant during any Builder Activity Periods following the Commencement Date;

1.1.8 **“Home”** means a home as defined in the ONHWP Act;

1.1.9 **“Indemnifiable Circumstance”** has the meaning ascribed to such term in Section 2.2;

1.1.10 **“Indemnified Amounts”** means the amounts to be paid by the Guarantor under Section 2.2;

1.1.11 **“Maximum Liability Amount”** means the aggregate of the amounts at a given time calculated as follows:

- A. \$20,000 x the number of Homes Commenced by the Registrant during all Builder Activity Periods (or parts thereof);

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plus

- B. For the common elements of each Condominium Project Commenced by the Registrant during all Builder Activity Periods (or parts thereof), the lesser of \$20,000 x the number of units in the Condominium Project and \$1,000,000;

less

- C. Any amounts paid by the Guarantor to Tarion in satisfaction or reduction of the Guaranteed Obligations and/or Indemnified Amounts;

1.1.12 “**ONHWP Act**” means the *Ontario New Home Warranties Plan Act* and regulations thereunder, as amended from time to time;

1.1.13 “**Proceedings**” means any receivership, insolvency, proposal, bankruptcy, compromise, arrangement, reorganization, winding-up, dissolution or other similar proceedings, whether or not any of the foregoing is judicial in nature;

1.1.14 “**Registrant**” means the Registrant noted on page one including any successors and assigns. Such designation for the purposes of this Agreement shall not be affected by the person’s registration status with Tarion;

1.1.15 “**VB Obligations**” means any and all obligations, liabilities and indebtedness of a vendor and/or builder to Tarion under the ONHWP Act, any agreement with Tarion, Builder Bulletins or otherwise, including without limitation, all amounts Tarion pays out to resolve a vendor or builder’s warranty obligations, as well as statutory administration fees and interest (whether or not actually incurred) and other third party costs including legal fees on a substantial indemnity basis in enforcing this Agreement.

1.2 Additional Definitions

1.2.1 In this Agreement, unless the contrary intention appears, a reference to:

1.2.1.1 an “amendment” includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and “amend” will be construed accordingly;

1.2.1.2 any person includes its successors and assigns, replacements, transferees and substitutes from time to time; and

1.2.1.3 any document includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that document, including any amendment providing for any increase (however great) in the amount or the provision of any facility.

1.3 Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.4 References to Articles and Sections

Whenever in this Agreement a particular Article, section or other portion thereof is referred to, such reference pertains to the particular Article, section or portion thereof contained herein, unless otherwise indicated.

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1.5 References to Agreements and Enactments

Except as otherwise specifically provided:

1.5.1 reference in this Agreement to any contract, agreement or any other document shall be deemed to include (i) reference to the same as supplemented, amended or restated from time to time and (ii) reference to any contract, agreement or any other document which substitutes, in whole or in part, for the same from time to time; and

1.5.2 reference in this Agreement to any enactment, including, without limitation, any statute, law, by-law, regulation, rule, ordinance or order, shall be deemed to include reference to such enactment as re-enacted or amended from time to time and to any enactment in substitution therefor.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian currency.

1.7 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.8 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.9 No Conditions Precedent

This Agreement is effective upon execution and delivery of this Agreement by the Guarantor.

1.10 Amendment, Waiver

No amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.11 Governing Law, Attornment

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Guarantor hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of Ontario.

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ARTICLE 2
GUARANTEE AND INDEMNITY

2.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees the due payment and performance of all Guaranteed Obligations subject to section 2.6.

2.2 Indemnity

The Guarantor shall indemnify and save Tarion harmless from and against any losses, costs, claims, damages and/or liabilities which may arise resulting from or by virtue of:

2.2.1 any of the Guaranteed Obligations being or becoming for any reason whatsoever in whole or in part: (i) void, voidable, *ultra vires*, illegal, invalid, ineffective or otherwise unenforceable by Tarion in accordance with its terms; or (ii) released or discharged by operation of law; or

2.2.2 the failure of the Registrant to perform or fulfill any of the Guaranteed Obligations; or

2.2.3 the payment or satisfaction by Tarion in whole or in part of any claim asserted by any party pursuant to the ONHWP Act in respect of or otherwise related in any manner to any home enrolled (or which ought to have been enrolled), constructed and/or sold by or on behalf of the Registrant;

(all of the foregoing collectively, an “**Indemnifiable Circumstance**”).

This indemnity shall extend to all amounts paid by Tarion in its sole judgment to resolve any claim(s) made against it under the ONHWP Act in respect of the Registrant, subject to section 2.6.

For greater certainty, these losses shall include without limitation the amount of all Guaranteed Obligations which would have been payable by the Registrant but for the existence of an Indemnifiable Circumstance.

2.3 Guarantor Liable as Principal

The Guarantor shall be liable to Tarion as principal obligor and not as surety only, and will not plead or assert to the contrary in any action taken by Tarion in enforcing this Agreement.

2.4 Continuing Guarantee and Indemnity

The guarantee and indemnity herein shall be a continuing guarantee of the payment and performance of all the Guaranteed Obligations and a continuing indemnity for the payment of all Indemnified Amounts and shall apply to and secure any ultimate balance thereof due or remaining unpaid to Tarion. The guarantee and indemnity herein shall not be considered as wholly or partially satisfied by the intermediate payment or satisfaction at any time of all or any part of the Guaranteed Obligations or Indemnified Amounts. All payments received by Tarion from the Registrant or any other person shall be applied as payments in gross without any right on the part of the Guarantor to claim the benefit of any such payments until payment in full of all Guaranteed Obligations and Indemnified Amounts.

2.5 Reinstatement

The guarantee and indemnity herein shall be reinstated if at any time any payment of any Guaranteed Obligations or Indemnified Amounts is rescinded or must otherwise be returned by Tarion upon any Proceedings of or affecting the Registrant or the Guarantor or for any other reason whatsoever, all as though

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such payment had not been made. Tarion may concede or compromise any claim that such payment ought to be rescinded or otherwise returned, without discharging, diminishing or in any way affecting the liability of the Guarantor hereunder or the effect of this Section 2.5.

2.6 Maximum Liability Amount

The maximum amount that the Guarantor shall be required to pay to Tarion in respect of the Guaranteed Obligations and Indemnified Amounts in the aggregate for all Claims hereunder is limited to the Maximum Liability Amount. For clarity, although the Maximum Liability Amount is calculated by reference to Homes and units, the Maximum Liability Amount is an aggregate cap and does not restrict or limit liability for Guaranteed Obligations or Indemnified Amounts in respect of individual Homes, units or Condominium Projects.

ARTICLE 3 ENFORCEMENT

3.1 Demand

Upon the occurrence and during the continuance of an event giving rise to a guarantee or indemnity claim under Sections 2.1 or 2.2 above (a "Claim"), the Guarantor shall, on demand being made by Tarion forthwith pay to Tarion or perform or cause the performance of, all Guaranteed Obligations for which such demand was made. All Indemnified Amounts shall be payable by the Guarantor to Tarion, forthwith upon demand being made by Tarion.

3.2 Right to Immediate Payment or Performance

Tarion shall not be bound to make any demand on or to seek or exhaust its recourse against the Registrant or any other person or to realize on any security held by it in respect of the Guaranteed Obligations or Indemnified Amounts before being entitled to demand payment from or performance by the Guarantor and enforce its rights under this Agreement and the Guarantor hereby renounces all benefits of discussion and division.

3.3 Tarion's Statement

A statement in writing of Tarion as to the amount of the Guaranteed Obligations, the Indemnified Amounts and all other amounts payable hereunder shall be binding upon the Guarantor and conclusive against it in the absence of manifest error.

ARTICLE 4 APPROPRIATION AND SET-OFF BY TARION

4.1 Appropriation

Upon the occurrence and during the continuance of a Claim, Tarion shall be at liberty, without in any way prejudicing or affecting its rights hereunder, to appropriate or to refrain from appropriating any payment made to, or monies received by it, from:

4.1.1 the Registrant or others to any portion of the Guaranteed Obligations; and

4.1.2 the Guarantor to any portion of the Guaranteed Obligations, the Indemnified Amounts, all other amounts payable hereunder and any other obligations, liabilities and indebtedness of the Guarantor to Tarion in connection with the Guaranteed Obligations;

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in each case whether then due or to become due, and whether absolute or contingent, and from time to time to revoke or alter any such appropriation, all as Tarion may from time to time in its sole discretion determine.

4.2 Set-Off by Tarion

Tarion may, at any time and from time to time after the occurrence of a Claim that is continuing, without demand or notice of any kind, set off, appropriate and apply any and all security or monies held by Tarion in any capacity, general or special, matured or unmatured, in any currency, held by or for the benefit of the Guarantor and any other indebtedness and liability of Tarion to the Guarantor, matured or unmatured, in any currency, against and on account of the Guarantor's liability hereunder in any currency irrespective of whether or not Tarion has made any demand for payment hereunder or the Guaranteed Obligations are due, in such order of application as Tarion may from time to time elect. If the amounts being set-off are not payable in the same currency, Tarion may convert either amount into the other currency on the day as of which that set-off is being effected, or if that day is not a Business Day then on the Business Day preceding the day as of which that set-off is being effected.

ARTICLE 5 **POSTPONEMENT OF DEBTS** **AND GUARANTOR NOT TO COMPETE**

5.1 Postponement of Debts

All liabilities and indebtedness, present and future, absolute or contingent, of the Registrant to the Guarantor following the occurrence of a Claim that is continuing, are postponed to the payment and performance in full of the Guaranteed Obligations, the Indemnified Amounts and all other amounts payable hereunder and all monies received by the Guarantor in respect thereof, following the occurrence of a Claim that is continuing, shall be received in trust for Tarion and forthwith upon receipt shall be paid over to Tarion, the whole without in any way lessening or limiting the liability of the Guarantor under this Agreement. Such postponement is independent of the guarantee and indemnity herein and shall remain in full force and effect until Tarion has received payment and performance in full of all Guaranteed Obligations, all Indemnified Amounts and all other amounts payable hereunder. For greater certainty, until the occurrence of a Claim that is continuing, the Guarantor may receive any payments contemplated by this Section 5.1.

5.2 Guarantor Not to Compete

The Guarantor shall not:

5.2.1 take any security or payment from the Registrant or any other guarantor or person liable directly or as surety for all or any part of the Guaranteed Obligations;

5.2.2 have a claim in any Proceedings of or affecting the Registrant or any other guarantor or person liable directly or as surety for all or any part of the Guaranteed Obligations that is *pari passu* or senior in right of payment to any claim of Tarion. For greater certainty, the Guarantor may take any action necessary to preserve a claim that is subordinate in right of payment to the claims of Tarion in any such Proceedings, including, without limitation, making any filings that are required to preserve such a claim;

5.2.3 assert any right (including without limitation any right of set-off, right of indemnity or reimbursement or right of contribution, and any right whether or not the right arises under any security) against the Registrant or any other guarantor or person liable directly or as surety for all or any part of the Guaranteed Obligations; or

5.2.4 have any right of subrogation to Tarion, or be otherwise entitled to claim the benefit of any security now or hereafter held by Tarion, in respect of the Guaranteed Obligations;

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until Tarion has received payment and performance in full of all Guaranteed Obligations, all Indemnified Amounts and all other amounts payable hereunder. Any money, security, or other personal or real property taken or received by the Guarantor in contravention of this Section 5.2 shall be held by the Guarantor in trust for Tarion and shall be delivered or transferred to Tarion on demand.

ARTICLE 6
PROTECTION OF TARION

6.1 Defects in Creation of Guaranteed Obligations

Tarion shall not be concerned to see or enquire into the capacity and powers of the Registrant or, as applicable, its directors, officers, partners, employees, or agents acting or purporting to act on its behalf. All obligations, liabilities and indebtedness purporting to be incurred by the Registrant in favour of Tarion shall be deemed to form part of the Guaranteed Obligations and/or Indemnified Amounts even though the Registrant may not be a legal entity or the incurring of such obligations, liabilities or indebtedness was irregularly, defectively or informally effected or in excess of the capacity or powers of the Registrant or its directors, officers, partners, employees or agents and notwithstanding that Tarion has specific notice of the capacity and powers of the Registrant or its directors, officers, partners, employees or agents.

6.2 Liability Absolute

The liability of the Guarantor hereunder shall be absolute and unconditional and shall not be discharged, diminished or in any way affected by:

6.2.1 any amalgamation, merger, consolidation or reorganization of the Registrant, the Guarantor, Tarion, or any continuation of the Registrant, the Guarantor, Tarion from the statute under which it now or hereafter exists to another statute whether under the laws of the same jurisdiction or another jurisdiction;

6.2.2 any change in the name, business, objects, capital structure, ownership, constating documents, by-laws, resolutions, registration status or registration number of the Registrant, the Guarantor, Tarion, including without limitation any transaction (whether by way of transfer, sale or otherwise) whereby all or any part of the undertaking, property and assets of the Registrant, the Guarantor or Tarion becomes the property of any other person;

6.2.3 if applicable, any change in the membership of the Registrant or the Guarantor due to the removal or introduction of one or more partners;

6.2.4 any Proceedings of or affecting the Registrant, the Guarantor, Tarion or any other person and any court orders made or action taken by the Registrant, the Guarantor, Tarion or any other person under or in connection with those Proceedings, whether or not those Proceedings or orders or that action results in any of the matters described in Sections 6.3.1.1 to 6.3.1.9 occurring with or without the consent of Tarion;

6.2.5 the current existence or subsequent occurrence of an Indemnifiable Circumstance;

6.2.6 any defence, counterclaim or right of set-off available to the Registrant;

6.2.7 the fact that the Registrant ceases to be liable for any reason whatsoever to Tarion in respect of all or any part of the Guaranteed Obligations (otherwise than by reason of the payment of those Guaranteed Obligations to Tarion) or the fact that a court determines that the liability of the Registrant to Tarion in respect of all or any part of the Guaranteed Obligations has been satisfied or is deemed to have been

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satisfied (except in circumstances where payment of those Guaranteed Obligations has been received by Tarion);

6.2.8 by Tarion's actions or omissions, including: non-compliance with any of its agreements, with requirements of the ONHWP Act; or failure to give notice; and/or

6.2.9 any other circumstance which might otherwise constitute in whole or in part a defence available to, or a discharge of, the Guarantor, the Registrant or any other person in respect of the Guaranteed Obligations or the liability of the Guarantor hereunder (otherwise than by reason of the payment of those Guaranteed Obligations to Tarion).

6.3 Dealings by Tarion

6.3.1 Tarion may from time to time in its absolute discretion without discharging, diminishing or in any way affecting the liability of the Guarantor hereunder:

6.3.1.1 make or continue to make any accommodation available to the Registrant constituting or relating to the Guaranteed Obligations;

6.3.1.2 continue to renew the Registrant's registration from time to time;

6.3.1.3 permit any increase or decrease, however significant, of the Guaranteed Obligations or otherwise supplement, amend, restate or substitute, in whole or in part, however significant, the Guaranteed Obligations or any other agreement relating to any of the foregoing or, in whole or in part, terminate the availability of any agreement relating to, or demand repayment of any Guaranteed Obligations;

6.3.1.4 enforce or take action under or abstain from enforcing or taking action under the Registration, the ONHWP Act or any other agreement;

6.3.1.5 receive, give up, subordinate, release or discharge any security; supplement, amend, restate, substitute, renew, abstain from renewing, perfect or abstain from perfecting or maintaining the perfection of any security; enforce, take action under or realize in any manner or abstain from enforcing, taking action under or realizing any security; deal with or abstain from dealing with all or any part of the undertaking, property and assets covered by any security or allow or abstain from allowing Registrant or other persons to deal with all or any part of such undertaking, property and assets;

6.3.1.6 renew all or any part of the Guaranteed Obligations or grant extensions of time or any other indulgences to the Registrant or to any other guarantor or other person liable directly or as surety for all or any part of the Guaranteed Obligations;

6.3.1.7 accept or make any compositions or arrangements with or release, discharge or otherwise deal with or abstain from dealing with the Registrant or any other guarantor or other person liable directly or as surety for all or any part of the Guaranteed Obligations;

6.3.1.8 in whole or in part prove or abstain from proving a claim of Tarion in any Proceedings of or affecting the Registrant; and

6.3.1.9 agree with the Registrant, any other guarantor or any other person liable directly or as surety for all or any part of the Guaranteed Obligations and/or Indemnified Amounts to do anything described in Sections 6.3.1.1 to 6.3.1.8;

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whether or not any of the matters described in Sections 6.3.1.1 to 6.3.1.9 above occur alone or in connection with one or more other such matters.

6.3.2 No loss of or in respect of any security or additional covenant relating to the Guaranteed Obligations, the Indemnified Amounts, or any part thereof, whether occasioned through the fault of Tarion or otherwise, shall discharge, diminish or in any way affect the liability of the Guarantor hereunder. Neither Tarion nor any of its directors, officers, employees or agents, or any receiver or receiver-manager appointed by it or by a court, shall have any liability, whether in tort, contract or otherwise, for any neglect or any act taken or omitted to be taken by Tarion or by any of such other persons (other than its own gross negligence or willful misconduct) in connection with the Guaranteed Obligations and/or Indemnified Amounts or any part thereof, or any security or other covenant relating to the Guaranteed Obligations or any part thereof including without limitation any of the matters described above in this Section 6.3. To the extent permitted by applicable law, the Guarantor waives all rights it may have as surety, whether at law, in equity or otherwise, that are inconsistent with the provisions of this Agreement.

6.4 Waiver of Notice

The Guarantor expressly waives any right to receive notice of the existence or creation of all or any of the Guaranteed Obligations or Indemnified Amounts and presentment, demand, notice of dishonour, protest, notice of any of the events or circumstances described in Sections 6.1, 6.2 or 6.3 and all other notices whatsoever in respect of the Guaranteed Obligations or Indemnified Amounts except to the extent, if at all, that the *Personal Property Security Act* (Ontario) ("PPSA") or other applicable law requires notice to be given to the Guarantor in connection with any disposition of collateral by or on behalf of Tarion.

ARTICLE 7 **GENERAL AGREEMENTS OF GUARANTOR**

7.1 General Agreements

7.1.1 The Guarantor acknowledges, consents and agrees:

7.1.1.1 if it is an entity other than a natural person that it shall at all times maintain and preserve its existence as such entity;

7.1.1.2 if it is an entity other than a natural person, that it shall not change its name or change the jurisdiction of its chief executive office or principal place of business (as such terms are used in the PPSA from time to time) without written notice to Tarion at least fifteen (15) days prior to such change;

7.1.1.3 to waive any defence arising by reason of any incapacity, disability and/or lack of power (or any other limitation with respect to the status, capacity or power) of the Guarantor and /or the Registrant (or of the directors, officers, partners or agents of the Guarantor and/or the Registrant, as the case may be), or by reason of any irregularity, defect or informality in the entering into or execution of this Agreement and/or any agreement between Tarion and the Registrant, and hereby further waive(s) any and all other defences that may otherwise be lawfully alleged, pleaded or asserted by the Guarantor in defence of any legal proceedings commenced by Tarion in respect of this Agreement;

7.1.1.4 that the Guarantor shall be and remain bound to perform the obligations and liabilities of the Registrant arising under this Agreement notwithstanding the contents or provisions of any agreement(s) heretofore or hereafter entered into between the Registrant and Tarion, and notwithstanding that any such agreement(s) may be void or voidable as against the Registrant (or

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the Registrant's trustee in bankruptcy), and notwithstanding that the Guarantor may not have received or reviewed any such agreement;

7.1.1.5 waive any notice of any neglect or failure on the part of the Registrant to perform or fulfill any or all of the Registrant's obligations to Tarion, or to pay any or all of the liabilities incurred or owing by the Registrant to Tarion, and further waives the requirement to be notified of any demand for performance and/or payment made by Tarion against the Registrant;

7.1.1.6 to provide Tarion with any financial information in respect of the Guarantor relevant to this Agreement and authorizes Tarion to procure and utilize, from time to time, credit information in respect of the Guarantor, and agrees that no action, claim or proceeding will be instituted against Tarion in respect of any damages incurred by the Guarantor as a consequence thereof provided such information is not disclosed to any third party, except credit reporting to agencies to whom Tarion owes a duty of disclosure, and except as otherwise required by law; and

7.1.1.7 to provide written notice to Tarion at least ninety (90) days prior to any proposal: (i) to reorganize, amalgamate, merge, consolidate or otherwise enter into any form of business combination with any person; and/or (ii) to liquidate, dissolve or wind up or take any steps or proceedings in connection therewith; in each case, that would materially and adversely affect the Guarantor's financial position as disclosed to Tarion.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties

The Guarantor represents and warrants to Tarion as follows:

8.1.1 the Guarantor has authority to enter into this Agreement;

8.1.2 if the Guarantor is other than a natural person, it has been duly formed and is existing under the laws of the Province of Ontario;

8.1.3 this Agreement has been duly executed and delivered for and on behalf of the Guarantor;

8.1.4 this Agreement constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms;

8.1.5 the entering into of this Agreement and the performance by the Guarantor of its obligations hereunder does not and will not contravene, breach or result in any default under the constating documents or other organizational documents of the Guarantor (as applicable) or any applicable law;

8.1.6 no authorization, consent or approval of, or filing with or notice to, any person or official body is required in connection with the execution and delivery of this Agreement by the Guarantor or the performance of this Agreement by the Guarantor;

8.1.7 except as disclosed in writing to Tarion, there is no court, administrative, regulatory or similar action (whether civil, quasi-criminal, or criminal), arbitration or other dispute settlement procedure, investigation or enquiry by any official body, or any similar matter or action against or involving the Guarantor, whether in progress or threatened, which, if determined adversely to the Guarantor, would materially adversely affect its ability to perform any of the provisions of this Agreement; and

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8.1.8 all materials provided to Tarion in connection with this Guarantee and Indemnity are true and complete.

8.2 Survival of Representations and Warranties

The representations and warranties of the Guarantor set forth in Section 8.1 shall be relied upon by Tarion, as the case may be, and shall continue in full force and effect so long as any Guaranteed Obligations remain outstanding.

ARTICLE 9 **TERM AND TERMINATION**

9.1 Term

This Agreement shall be in full force and effect from and after the Commencement Date and shall remain in full force and effect until terminated in accordance with section 9.2 or 9.3.

9.2 Termination by Tarion

Tarion may by written notice to the Guarantor terminate this Agreement, in whole or in part, in which case the Guarantor, will no longer be obligated for any Guaranteed Obligations or Indemnified Amounts unless otherwise provided in such notice.

9.3 Termination by Guarantor

The Guarantor may, after the first two Builder Activity Periods (and not before), provide written notice to Tarion that it wishes to terminate obligations with respect to Homes Commenced after the third Builder Activity Period under this Agreement (a "Termination Notice"). Such Termination Notice must be provided at least ten (10) months prior to the expiration of the then current Builder Activity Period and delivered in accordance with section 10.8. It is the Guarantor's responsibility to determine as needed the end date for any Builder Activity Period, and this information will be supplied by Tarion upon written request. If the Termination Notice is received within such timeframe, then Tarion will send a written notice confirming receipt. Once the Guarantor has received such notice of receipt, the Guarantor will no longer be obligated for any Guaranteed Obligations or Indemnified Amounts in respect of Homes Commenced in any Builder Activity Period after the then current Builder Activity Period. For greater certainty, the Guarantor will continue to be obligated for all Guaranteed Obligations and Indemnified Amounts and other obligations whatsoever made in respect of any Homes Commenced during the then current Builder Activity Period and any prior Builder Activity Period since the date of this Agreement.

ARTICLE 10 **MISCELLANEOUS**

10.1 Payment of Costs and Expenses

The Guarantor shall pay to Tarion on demand all reasonable costs and expenses of Tarion, its officers, employees and agents and any receiver or receiver-manager appointed by it or by a court in connection with this Agreement, including, without limitation:

10.1.1 any actual or proposed amendment or modification hereof or any waiver hereunder and all instruments supplemental or ancillary thereto;

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10.1.2 obtaining advice as to Tarion's rights and responsibilities under this Agreement; and

10.1.3 the defence, establishment, protection or enforcement of any of the rights or remedies of Tarion under this Agreement including, without limitation, all costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under this Agreement;

and further including, without limitation, all of the reasonable fees, expenses and disbursements of Tarion's lawyers, on a solicitor and his own client basis, incurred in connection therewith and all sales or value-added taxes payable by Tarion (whether refundable or not) on all such costs and expenses.

10.2 No Set-off By Guarantor

All amounts payable by the Guarantor under this Agreement shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that the Guarantor shall be prohibited by law from doing so, in which case the Guarantor shall pay to Tarion such additional amount as shall be necessary to ensure that Tarion receives the full amount it would have received if no such deduction or withholding had been made.

10.3 No Waiver

No delay on the part of Tarion in the exercise of any right, power or remedy hereunder or otherwise shall operate as a waiver thereof, and no single or partial exercise by Tarion of any right, power or remedy shall preclude other or further exercise thereof or the exercise of any other right, power or remedy. No action of Tarion permitted hereunder shall in any way impair or affect its rights, powers or remedies under this Agreement.

10.4 Additional Security

This Agreement shall be in addition to, shall not in any way be prejudiced by, and shall not prejudice: (i) any other security now or hereafter held by Tarion; and (ii) the endorsement by the Guarantor of any notes or other documents, and Tarion's rights under this Agreement shall not be merged in any such other security or endorsement.

10.5 Benefit of the Agreement

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

10.6 Entire Agreement

This Agreement cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between Tarion and the Guarantor with respect to the subject matter hereof except as expressly set forth herein.

10.7 Successors and Assigns

This Agreement shall be binding on the Guarantor and its successors and shall enure to the benefit of Tarion and its successors and assigns. This Agreement shall be assignable by Tarion free of any set-off, counter-claim or equities between the Guarantor and Tarion, and the Guarantor shall not assert against an assignee of Tarion any claim or defence that the Guarantor has against Tarion. The Guarantor may not assign its obligations under this Agreement.

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10.8 Notices

All notices and other communications under this Agreement are to be in writing; are to be delivered by hand, by courier, or by registered mail; will be deemed to have been received on the business day following the date of delivery; and are to be addressed in the case of either party to the address as set forth above. Subject to paragraph 7.1.1.2, each party may establish a new address from time to time by written notice to the other given in accordance with this section provided however, that no such change of address will be effective until written notice thereof is actually received by the party to whom such change of address is sent.

10.9 Further Assurances

The Guarantor must at its own expense from time to time do, execute and deliver, or cause to be done, executed and delivered, all such financing statements, further assignments, documents, acts, matters and things as may be reasonably requested by Tarion for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and covenants herein contained.

10.10 Electronic Delivery

Delivery of the executed Agreement by facsimile transmission or other electronic medium shall be as effective as delivery of a manually executed copy of this Agreement. Despite the forgoing, upon written request to the Guarantor from Tarion, the Guarantor shall deliver, to Tarion, an original executed copy of the Agreement.

10.11 Executed Copy

The Guarantor acknowledges receipt of a fully executed copy of this Agreement.

10.12 No Liability

Under no circumstances whatsoever shall Tarion: (i) be under any obligation to expend or risk its own funds in the fulfillment of any duties hereunder; (ii) be liable in connection with the performance of any such duties hereunder except for its own gross negligence or willful misconduct; or (iii) be liable for any acts or omissions in connection with the administration of the ONHWP Act.

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ARTICLE 11
UNDERSTANDING OF OBLIGATIONS

11.1 Independent Legal Advice

The Guarantor acknowledges having received independent legal advice with respect to this Agreement or having expressly chosen not to do so.

11.2 Review of Materials

The Guarantor acknowledges and confirms that the Guarantor and its legal counsel have been given an opportunity by Tarion to review the ONHWP Act and the Builder Bulletins issued by Tarion to the date hereof (as well as any agreement(s) between the Registrant and Tarion in existence as of the date hereof).

11.3 Review and Understand the Agreement

The Guarantor acknowledges and confirms having read and understood the terms and provisions hereof before having executed this Agreement.

IN WITNESS WHEREOF the Guarantor has duly executed this Agreement this _____ day of _____, 20_____.

Witness Name: _____
(print legibly)

Guarantor Name: _____
(print legibly)

Witness Signature: _____

Guarantor Signature: _____
If not an individual, signature of signing officer.

Name of Signatory (print legibly)

I have authority to bind the entity.

This is the signing page for the Guarantee and Indemnity given by the above-noted Guarantor in favour of Tarion Warranty Corporation and in respect of the obligations of the Registrant (Vendor/Builder) noted on page 1 of this Agreement.

**Guarantor's
Initials**