

Property \_\_\_\_\_

## Statement Of Critical Dates Delayed Closing 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.**

**NOTE TO HOME BUYERS:** *Please visit Tarion's website: [www.tarion.com](http://www.tarion.com) for important information about all Tarion's warranties including the Delayed Closing 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 closing of your purchase.*

Note that the dates marked with \* **are not firm dates**, but rather reflect the latest date the event in question could occur. Each of these dates may be set earlier than the date shown, as described below and explained in more detail in the Addendum. When a Second Tentative Closing Date, a Firm Closing Date or a Delayed Closing Date is formally set, some or all of the subsequent dates may change as well. The Purchaser should consult Tarion's website, and the Addendum, for further information on how to calculate revised Critical Dates.

**VENDOR**

\_\_\_\_\_  
Full Name(s)

**PURCHASER**

\_\_\_\_\_  
Full Name(s)

**1. Critical Dates**

The **First Tentative Closing Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

A **Second Tentative Closing Date** can subsequently be set by the Vendor by giving proper written notice within the 90-day time period noted in section 2 below. The Second Tentative Closing Date can be up to 120 days after the First Tentative Closing Date, and so could be as late as: the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.\*

The Vendor must set a **Firm Closing Date** by giving proper written notice within the 90-day time period noted in section 2 below. The Firm Closing Date can be up to 120 days after the Second Tentative Closing Date, and so could be as late as: the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.\*

*If the Vendor cannot close by the Firm Closing Date, then the Purchaser is entitled to delayed closing compensation (see section 9 of the Addendum) and the Vendor must set a Delayed Closing Date.*

The Vendor can set a Delayed Closing Date that is up to 365 days after the earlier of the Second Tentative Closing Date and the Firm Closing Date. This **Outside Closing Date** could be as late as: the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.\*

**2. Notice Period for a Closing Delay**

Changing a Closing date requires proper written notice. The Vendor, without the Purchaser's consent, can delay Closing twice by up to 120 days each time by setting a Second Tentative Closing Date and then a Firm Closing Date.

Notice of a delay beyond the First Tentative Closing Date must be given no later than: (i.e., **90 days** before the First Tentative Closing Date), or else the First Tentative Closing Date becomes the Firm Closing Date. the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Notice of a second delay in Closing must be given no later than: (i.e., **90 days** before the Second Tentative Closing Date), or else the Second Tentative Closing Date becomes the Firm Closing Date. the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

**3. Purchaser's Termination Period**

If the home is not complete by the Outside Closing Date, and the Vendor and the Purchaser have not otherwise agreed, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "Purchaser's Termination Period"), which period could end as late as: the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed closing compensation and to a full refund of all monies paid plus interest (see sections 9, 11 and 12 of the Addendum).

**Note:** *Anytime 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 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 7 of the Addendum).*

Acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

PURCHASER: \_\_\_\_\_

## Addendum to Agreement of Purchase and Sale Delayed Closing 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. It contains important provisions that are part of the delayed closing warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the “*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 CLOSING WARRANTY.**

**The Vendor shall complete all blanks set out below.**

<b>VENDOR</b>			
Full Name(s) _____			
Tarion Registration Number _____		Address _____	
Phone _____	City _____	Province _____	Postal Code _____
Fax _____	Email _____		

<b>PURCHASER</b>			
Full Name(s) _____			
Address _____			
Phone _____	City _____	Province _____	Postal Code _____
Fax _____	Email _____		

<b>PROPERTY DESCRIPTION</b>			
Municipal Address _____			
City _____	Province _____	Postal Code _____	
Short Legal Description _____			

<b>INFORMATION REGARDING THE PROPERTY</b>			
The Vendor confirms that:			
(a)	The Property is within a plan of subdivision or a proposed plan of subdivision.	<input type="radio"/> Yes	<input type="radio"/> No
	If yes, the plan of subdivision is registered.	<input type="radio"/> Yes	<input type="radio"/> No
	If the plan of subdivision is not registered, approval of the draft plan of subdivision has been given.	<input type="radio"/> Yes	<input type="radio"/> No
(b)	The Vendor has received confirmation from the relevant government authorities that there is sufficient:		
	(i) water capacity, and (ii) sewage capacity to service the Property.	<input type="radio"/> Yes	<input type="radio"/> No
	If yes, the nature of the confirmation is as follows: _____		
	If the availability of water and sewage capacity is uncertain, the issues to be resolved are as follows: _____		
(c)	A building permit has been issued with respect to the Property.	<input type="radio"/> Yes	<input type="radio"/> No
(d)	Commencement of Construction: <input type="radio"/> has occurred; or <input type="radio"/> is expected to occur by the _____ day of _____, 20____.		
	The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.		

**1. Definitions**

“**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 the completion of the sale of the Property and “Close” has a corresponding meaning.

“**Commencement of Construction**” means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the home.

“**Critical Dates**” means the First Tentative Closing Date, the Second Tentative Closing Date, the Firm Closing Date, the Delayed Closing Date, the Outside Closing Date, and the last day of the Purchaser’s Termination Period.

“**Delayed Closing Date**” means the date on which the Vendor agrees to Close, in the event the Vendor cannot close on the Firm Closing Date, as set in accordance with section 6.

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

“**Firm Closing Date**” means the firm date on which the Vendor agrees to Close, as set in accordance with this Addendum.

“**First Tentative Closing Date**” means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that it will be able to Close, as set out in the Statement of Critical Dates.

“**Outside Closing Date**” means the latest date that the Vendor can set as a Delayed Closing Date before the Purchaser’s right to terminate the Purchase Agreement for delay arises, calculated in accordance with paragraph 11(b).

“**Purchaser’s Termination Period**” means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 11(b).

“**Second Tentative Closing Date**” means the updated estimated date (if applicable) that the Vendor anticipates that it will be able to Close, as set in accordance with section 3.

“**Statement of Critical Dates**” means the Statement of Critical Dates attached to or accompanying this Addendum (in form to be determined by the Tarion Registrar from time to time). The Statement of Critical Dates must be signed by both the Vendor and Purchaser.

“**The Act**” means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

“**Unavoidable Delay**” means an event which delays Closing 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 7(b), and the date on which the Unavoidable Delay concludes.

**2. 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 2(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 2(i) or (j), 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.
- (c) The Vendor confirms that:
  - (i) This Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), will result in the automatic termination of the Purchase Agreement. ○ Yes ○ No
  - (ii) If yes, 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:

**Condition #1** (if applicable)

Description of the Early Termination Condition: \_\_\_\_\_

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: \_\_\_\_\_

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 cannot be later than 90 days before the First Tentative Closing Date, and will be deemed to be 90 days before the First Tentative Closing Date if no date is specified or if the date specified is later than 90 days before the First Tentative Closing 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 by paragraph 2(k).

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

- (d) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph 2(c)(ii) and any appendix listing additional Early Termination Conditions.
- (e) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions listed in subparagraph 2(c)(ii).
- (f) 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.
- (g) 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.

*2. Early Termination – Conditions (continued)*

- (h) If a Purchase Agreement or proposed Purchase Agreement contains Early Termination Conditions, the Purchaser has three (3) Business Days after the day of receipt of a true and complete copy of the Purchase Agreement or proposed Purchase Agreement to review the nature of the conditions (preferably with legal counsel). If the Purchaser is not satisfied, in the Purchaser's sole discretion, with the Early Termination Conditions, the Purchaser may revoke the Purchaser's offer as set out in the proposed Purchase Agreement, or terminate the Purchase Agreement, as the case may be, by giving written notice to the Vendor within those three Business Days.
- (i) The Purchase Agreement may be conditional until Closing upon compliance with the subdivision control provisions (section 50) of the Planning Act (Ontario), 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 (i.e., 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.

**3. Setting the Tentative Closing Date and the Firm Closing Date**

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the home on the Property and to Close without delay.
- (b) **First Tentative Closing Date:** The Vendor shall set out, in the Statement of Critical Dates, the First Tentative Closing Date.
- (c) **Second Tentative Closing Date:** The Vendor may choose to set a Second Tentative Closing Date that is no later than 120 days after the First Tentative Closing Date. The Vendor shall give written notice of the Second Tentative Closing Date to the Purchaser no later than 90 days before the First Tentative Closing Date, or else the First Tentative Closing Date shall for all purposes be the Firm Closing Date.
- (d) **Firm Closing Date:** The Vendor shall set a Firm Closing Date, which can be no later than 120 days after the Second Tentative Closing Date or, if a Second Tentative Closing Date is not set, no later than 120 days after the First Tentative Closing Date. If the Vendor elects not to set a Second Tentative Closing Date, the Vendor shall give written notice of the Firm Closing Date to the Purchaser no later than 90 days before the First Tentative Closing Date, or else the First Tentative Closing Date shall for all purposes be the Firm Closing Date. If the Vendor elects to set a Second Tentative Closing Date, the Vendor shall give written notice of the Firm Closing Date to the Purchaser no later than 90 days before the Second Tentative Closing Date, or else the Second Tentative Closing Date shall for all purposes be the Firm Closing Date.
- (e) **Notice:** Any notice given by the Vendor under paragraphs (c) and (d) must set out the Second Tentative Closing Date or Firm Closing Date, as the case may be, and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

**4. Changing the Firm Closing Date – Three Ways**

- (a) The Firm Closing Date, once set or deemed to be set in accordance with section 3, can be changed only:
  - (i) by the mutual written agreement of the Vendor and Purchaser in accordance with section 5;
  - (ii) by the Vendor setting a Delayed Closing Date in accordance with section 6; or
  - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 7.
- (b) If a new Firm Closing Date is set in accordance with section 5 or 7, then the new date is the "Firm Closing Date" for all purposes in this Addendum.

**5. Changing Critical Dates – By Mutual Agreement**

- (a) This Addendum sets out a structure for setting, extending and/or accelerating Closing dates, which cannot be altered contractually except as set out in this section 5 and in paragraph 7(c).
- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend a Firm Closing Date or a Delayed Closing Date in each case to a new specified calendar date. The amendment must comply with the requirements of section 10.
- (c) The Vendor and Purchaser may at any time after signing the Purchase Agreement mutually agree in writing to accelerate the First Tentative Closing Date and correspondingly reset all the Critical Dates provided that:
  - (i) the mutual amendment is signed at least 180 days prior to the First Tentative Closing Date;
  - (ii) all the Critical Dates including the Outside Closing Date are moved forward by the same number of days (subject to adjustment so that Critical Dates fall on Business Days);
  - (iii) a new Statement of Critical Dates is signed by both parties at the time the amendment is signed and a copy is provided to the Purchaser; and
  - (iv) the Purchaser is given a three (3) Business Day period in which to review the amendment after signing and if not satisfied with the amendment may terminate the amendment (but not the balance of the Purchase Agreement), upon written notice to the Vendor within such 3-day period.

Any such amendment must be by mutual agreement and, for greater certainty, neither party has any obligation to enter into such an amendment.

- (d) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Closing Date or Delayed Closing Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to Close on the Firm Closing Date or Delayed Closing Date, as the case may be. Delayed closing 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.
- (e) 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.

**6. Changing the Firm Closing Date – By Setting a Delayed Closing Date**

- (a) If the Vendor cannot Close on the Firm Closing Date and sections 5 and 7 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Closing Date in accordance with this section, and delayed closing compensation is payable in accordance with section 9.
- (b) The Delayed Closing Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Closing Date. However, if the Vendor selects a Delayed Closing Date that is more than 365 days after the earlier of: (i) the Firm Closing Date, and (ii) the Second Tentative Closing Date, then the Vendor's written notice setting the Delayed Closing Date shall include a statement explaining that the Purchaser need not accept the full delay and will have the right to terminate the Purchase Agreement after 365 days of delay as described in section 11.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Closing Date as soon as the Vendor knows that it will be unable to Close on the Firm Closing Date, and in any event no later than 10 days before the Firm Closing Date, failing which delayed closing compensation is payable from the date that is 10 days before the Firm Closing Date, in accordance with paragraph 9(c).
- (d) If a Delayed Closing Date is set and the Vendor cannot Close on the Delayed Closing Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Closing Date, unless the delay arises due to Unavoidable Delay under section 7 or is mutually agreed upon under section 5, in which case the requirements of those sections must be met. Paragraphs 6(b) and 6(c) above apply with respect to the setting of the new Delayed Closing 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 11.

## 7. 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 closing 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: 10 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 10 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 Closing Date or Delayed Closing 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 Closing Date or Delayed Closing 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 7(c), the notice is ineffective, the existing Critical Dates are unchanged, and any delayed closing compensation payable under section 9 is payable from the existing Firm Closing Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section must set out the revised next Critical Date and state that the setting of such date may change other future Critical Dates, as applicable, in accordance with the terms of the Addendum.

## 8. Building Code – Conditions of Occupancy

- (a) On or before the date of Closing, the Vendor shall deliver to the Purchaser:
  - (i) where a registered code agency has been appointed for the building or part of the building under the *Building Code Act* (Ontario), a final certificate with respect to the home that contains the prescribed information as required by s. 11(3) of the *Building Code Act*; or
  - (ii) where a registered code agency has not been so appointed, either:
    - (A) an Occupancy Permit (as defined in paragraph (d)) for the home; or
    - (B) a signed written confirmation by the Vendor that: (I) provisional or temporary occupancy of the home has been authorized under Article 1.3.3.1 of Division C of the Building Code; or (II) the conditions for residential occupancy of the home as set out in s. 11 of the *Building Code Act* or Article 1.3.3.2 of Division C of the Building Code, as the case may be (the "Conditions of Occupancy") have been fulfilled.
- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for certain Conditions of Occupancy (the "Purchaser Obligations"):
  - (i) the Purchaser may not refuse to Close on the basis that the Purchaser Obligations have not been completed;
  - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling the Conditions of Occupancy (other than the Purchaser Obligations), a signed written confirmation that the Vendor has fulfilled such Conditions of Occupancy; and
  - (iii) if the Purchaser and Vendor have agreed that the Conditions of Occupancy (other than the Purchaser Obligations) are to be fulfilled prior to Closing, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the date of Closing.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(iii), the Vendor shall set a Delayed Closing Date (or new Delayed Closing Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(iii), as the case may be. In setting the Delayed Closing Date (or new Delayed Closing Date), the Vendor shall comply with the requirements of section 6, and delayed closing compensation shall be payable in accordance with section 9. Despite the foregoing, delayed closing compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(iii) is because the Purchaser has failed to satisfy the Purchaser Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written 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 the fact that authority to occupy the home has been granted.

## 9. Delayed Closing Compensation

- (a) The Vendor warrants to the Purchaser that, if the Closing is delayed beyond the Firm Closing Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 5 or 7), then the Vendor shall compensate the Purchaser for all costs incurred by the Purchaser as a result of the delay up to a total amount of \$7,500, which amount includes payment to the Purchaser of \$150 a day for living expenses for each day of delay until the date of Closing or the date of termination of the Purchase Agreement, as applicable under paragraph (b).
- (b) Delayed closing compensation is payable only if: (i) Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraphs 11(b), (c) or (e) of this Addendum. Delayed closing compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Closing, 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 *Act*.
- (c) If the Vendor gives written notice of a Delayed Closing Date to the Purchaser less than 10 days before the Firm Closing Date, contrary to the requirements of paragraph 6(c), then delayed closing compensation is payable from the date that is 10 days before the Firm Closing Date.
- (d) If the Vendor gives written notice of a Delayed Closing Date to the Purchaser more than 90 days before the First Tentative Closing Date instead of setting a Second Tentative Closing Date under section 3, then delayed closing compensation is payable from the date that is 240 days after the First Tentative Closing Date. Similarly, if the Vendor gives written notice of a Delayed Closing Date to the Purchaser more than 90 days before the Second Tentative Closing Date instead of setting a Firm Closing Date under section 3, delayed closing compensation is payable from the date that is 120 days after the Second Tentative Closing Date.
- (e) 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 closing compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed closing compensation in connection with a claim.
- (f) If delayed closing compensation is payable, the Purchaser may make a claim to the Vendor for that compensation within 180 days after Closing 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 closing compensation payable based on the rules set out in section 9 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 closing 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 closing compensation payable by the Vendor.

A true copy of the acknowledgement (showing clearly the municipal address and enrolment number of the home on the first page) shall be provided to Tarion by the Vendor within 30 days after execution of the acknowledgement by the parties.
- (g) If the Vendor and Purchaser cannot agree as contemplated in paragraph 9(f), then to make a claim to Tarion, the Purchaser must file a claim with Tarion in writing within one (1) year after Closing. A claim may also be made and the same rules apply if the sales transaction is terminated under paragraphs 11(b), (c) or (e), in which case the deadline is 180 days after termination for a claim to the Vendor and one (1) year after termination for a claim to Tarion.

## 10. Changes to Critical Dates

- (a) Whenever the parties by mutual agreement extend or accelerate either the Firm Closing Date or the Delayed Closing Date this section applies.
- (b) If the change involves acceleration of either the Firm Closing Date or the Delayed Closing Date, then the amending agreement must set out each of the Critical Dates (as changed or confirmed).

*10. Changes to Critical Dates (continued)*

- (c) If the change involves extending either the Firm Closing Date or the Delayed Closing Date, then the amending agreement shall:
- (i) disclose to the Purchaser that the signing of the amendment may result in the loss of delayed closing compensation as described in section 9 above;
  - (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 (the "Compensation"); and
  - (iii) contain a statement by the Purchaser that the Purchaser waives compensation or accepts the above-noted Compensation, in either case, in full satisfaction of any delayed closing compensation payable by the Vendor for the period up to the new Firm Closing Date or Delayed Closing Date.
- (d) If the Purchaser for his or her own purposes requests a change of date or dates, then paragraph 10(c) shall not apply.

**11. Termination of the Purchase Agreement**

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- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written consent, such written consent to be given at the time of the termination.
- (b) If for any reason (other than breach of contract by the Purchaser) Closing has not occurred within 365 days after the earlier of: (i) the Firm Closing Date, and (ii) the Second Tentative Closing Date, 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, then the Delayed Closing Date shall be the date set by the Vendor under paragraph 6(b).
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or any date for Closing 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 requirements of section 2.
- (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 delay in Closing alone.

**12. Return of Monies Paid on Termination**

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- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), the Vendor shall return 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 return to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor and/or a termination agreement as a prerequisite to obtaining the return of monies payable as a result of termination of the Purchase Agreement under this paragraph.
- (b) The rate of interest payable on the Purchaser's monies is 2% less than the minimum rate at which the Bank of Canada makes short-term advances to members of the Canada Payments Association, as of the date of termination of the Purchase Agreement.
- (c) Notwithstanding paragraphs 12(a) and (b), if either party initiates legal proceedings to contest termination of the Purchase Agreement or the return of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

**13. Disputes Regarding Termination**

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- (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 *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.

**14. Addendum Prevails**

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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.

**15. Time Periods, and How Notice Must Be Sent**

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- (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.
- (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 paragraph 15(b), 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, the party shall send written notice of the change of address/contact number to the other party.
- (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.

## **SCHEDULE A**

### **Types of Permitted Early Termination Conditions** (Section 2)

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

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- (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) subject to paragraph 1(c), receipt by the Vendor of confirmation that sales of homes in a Freehold Project have exceeded a specified threshold by a specified date;
  - (ii) subject to paragraph 1(c), receipt by the Vendor of confirmation that financing for a Freehold Project on terms satisfactory to the Vendor has been arranged by 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.

- (c) the following requirements apply with respect to the conditions set out in subparagraph 1(b)(i) or 1(b)(ii):
- (i) the 3 Business Day period in section 2(h) of the Addendum shall be extended to 10 calendar days for a Purchase Agreement which contains a condition set out in subparagraphs 1(b)(i) and/or 1(b)(ii);
  - (ii) the Vendor must describe the Freehold Project in reasonable detail following the heading "Description of the Early Termination Condition" in subparagraph 2(c)(ii) of the Addendum;
  - (iii) the date for satisfaction of the condition cannot be later than 9 months following signing of the Purchase Agreement; and
  - (iv) until the condition is satisfied or waived, all monies paid by the Purchaser to the Vendor, including deposit(s) and monies for upgrades and extras: (A) shall be held in trust by the Vendor's lawyer pursuant to a deposit trust agreement (executed in advance in the form specified by Tarion Warranty Corporation, which form is available for inspection at the offices of Tarion Warranty Corporation during normal business hours), or secured by other security acceptable to Tarion and arranged in writing with Tarion, or (B) failing compliance with the requirement set out in clause (A), shall be deemed to be held in trust by the Vendor for the Purchaser on the same terms as are set out in the form of deposit trust agreement described in clause (A).

#### **2. The following definitions apply in this Schedule:**

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**"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).

**"Freehold Project"** means the construction or proposed construction of three or more freehold homes (including the Purchaser's home) by the same Vendor in a single location, either at the same time or consecutively, as a single coordinated undertaking.

#### **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:**

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