

# AGREEMENT

Pursuant to section 98 of the *Condominium Act, 1998*

**THIS AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

Between:

Wellington Standard Condominium Corporation No. \_\_\_\_  
(the "Condominium")

and

Timberworx Custom Homes Inc.  
(the "Declarant")

## WHEREAS:

- A. the Declarant is the first owner of all of the units (each, a "Unit" and collectively, the "Units") in Wellington Standard Condominium Plan No. \_\_\_\_ (the "Plan") and intends that this Agreement shall be registered against title to each Unit at a time that the Declarant is the owner thereof;
- B. the Declarant is entering into this Agreement to accommodate owners of the Units after the Declarant who may make or have made one or more Modifications, as such term is defined herein;
- C. this Agreement is being entered into to satisfy in part the requirements of section 98 of the *Condominium Act, 1998*;

**NOW THEREFORE**, in consideration of the payment of Two Dollars mutually by each party to the other (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the parties hereto acknowledge and agree as follows:

## GENERAL PROVISIONS

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- 1. In this Agreement, the terms "Board", "Modification", "Plan" and "Unit", and the plural forms thereof, shall have the meanings ascribed to them in the recitals hereto; and
  - a. "Act" means the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended, and all the regulations made thereunder, their several provisions, as well as any future amendments thereto or replacements thereof;
  - b. "common elements" means the common elements of the Plan, including without limitation those portions of the common elements designated for the exclusive use of the occupants of any unit within the Plan;
  - c. "construct" and all its variants as applied to a Modification shall mean and include without limiting the generality of such term, to construct, install, connect, place, insert, erect, plant, build, make or in any other way cause the Modification to be situate in and/or upon the common elements;
  - d. "Modification" until the coming into force of section 88 of Schedule 1 of the *Protecting Condominium Owners Act, 2015*, (the "Amended Section 98(2)"), means an addition, alteration or improvement to the common elements of the Plan, as such terms are used in section 98 of the Act, and thereafter has the meaning attributed to that term that is set out in the Amended Section 98(2);
  - e. "Owner" means the Declarant, while the Declarant owns any Unit, and each person acquiring title to any Unit from or otherwise subsequent to the Declarant during the tenure of such person's ownership of such Unit;
  - f. any provisions of the Act relevant to additions, alterations or improvement to the common elements by unit owners that are not expressly set out herein are hereby incorporated into this Agreement, and anything herein that is determined to be inconsistent with the provisions of the Act or the declaration, by-laws and rules of the Condominium, is not therefor void but is hereby deemed to be corrected and amended to be consistent therewith;
  - g. the use of the masculine gender in this Agreement shall be deemed to include the feminine and neuter genders;

- h. the use of the singular shall be deemed to include plural wherever the context so requires and vice versa; and
  - i. the use of headings herein is for convenience only and shall not affect the interpretation hereof.
2. Subject to section 3 hereof, this Agreement applies to:
- a. any Modification that is made by or for an Owner, including the Declarant, at any time following registration of the declaration and description;
  - b. any Modification that, prior to registration of the declaration and description, is made by the Declarant on behalf of a person who is then a purchaser of the Unit, where the modified common elements do not appear in the description for the Condominium as part of the common elements.
3. This Agreement does not apply with respect to:
- a. any addition, alteration, improvement or modification that is made to the common elements or assets of the Plan by the Condominium pursuant to section 97 of the Act; or
  - b. a Modification made to the common elements or assets of the Plan by an Owner in respect of which a valid agreement pursuant to section 98 of the Act, other than this Agreement, is entered into by such Owner and the Condominium and is registered on title to such Owner's Unit, provided such other agreement is both dated and registered after the registration of this Agreement on title to the Unit.
4. Each Modification is the property of the Owner of the Unit in respect of which the Modification is made. The Condominium confirms that it has no ownership interest in the Modifications. No Modification is nor will any Modification be considered at any time or for any purposes part of the common elements.

#### **EFFECT OF REGISTRATION**

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5. The Declarant shall attend to the registration of this Agreement against title to the Units at its own expense. It is intended that this Agreement shall be registered against title to all Units, such that the rights and obligations set out herein of any one Owner to another are to apply to all Owners in respect of all other Owners.
6. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns. For certainty and without limiting the generality of the foregoing, once this Agreement is registered on title to a Unit the rights, responsibilities, privileges and obligations hereunder of the Declarant as an Owner run with the title to the Unit and are binding upon and enure to the benefit of all other and future Owners of the Unit from time to time. Where there is more than one person who is an Owner of a Unit hereunder, the Owner's obligations hereunder shall be joint and several amongst them.
7. Notwithstanding the foregoing, the rights, responsibilities, privileges and obligations hereunder of the Declarant that attach to it as the Declarant only and not as an Owner, shall not be assumed by or binding upon or enure to the benefit of any other Owner.
8. Upon registration against title to a Unit, the same is hereby charged with a lien in favour of the Condominium to secure the obligations of the Owner hereunder.

#### **PROVISIONS RELATING TO APPROVAL**

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9. The Declarant is hereby given approval to make any Modification it chooses without further permission or regulation by the Condominium.
10. Without limiting the generality of the foregoing, the Declarant is hereby specifically granted approval with respect to the installation of Unit Signage, as defined in the declaration of the Corporation, including any building mounted or canopy signs, and for the installation on the common elements, in a location selected by the Declarant in its sole and absolute discretion, of a permanent, freestanding, pole sign or other kind of sign indicating the name of the building and/or any of the businesses occupying Units in the Plan. It is further understood and approved that the Declarant may charge a fee to unit owners for the placement of their name, logo, or other information on such signs.

11. Apart from the foregoing, no approval for any Modification made by or for an Owner other than the Declarant is herein or hereby granted and therefore any Owner other than the Declarant seeking to make a Modification must first seek approval from the Board, which approval need not be given.
12. The Board is entitled to require the Owner to provide such plans and specifications for any Modification, and to make additions, deletions or other revisions to the same, as the Board acting reasonably determines are necessary for it to provide its approval for any Modification. For example and clarity only, and without limiting the generality of the foregoing, such plans and specifications may include details as to the location, manner of construction, materials and appearance of the proposed Modification. Notwithstanding the foregoing and any other provision of this Agreement, the Board is not required to provide its approval for any Modification.
13. In granting its approval for any Modification, the Board may impose such conditions or restrictions as to the use of the Modification as the Board in its sole discretion deems appropriate, which conditions or restrictions shall have the same force as if they were provisions of this Agreement provided the same are given in writing by the Board to the Owner seeking such approval, and are in effect from the time that the Owner commences construction or installation of the Modification in question. For further clarity and without restricting the generality of the foregoing, such restrictions may include that any Modification be removed, dismantled or disconnected at a particular time or in specified circumstances.

#### RECORDS OF MODIFICATIONS

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14. It is an obligation of the Condominium hereunder to maintain in an up to date and accurate manner one or more lists, files or records ("Records of Modifications") indicating what Modifications, if any, have been approved and/or constructed with respect to each Unit, as well as any special terms or conditions imposed in accordance with this Agreement relating to the approval, use and care thereof.
15. Notwithstanding anything else herein, this Agreement governs and applies to any and all of the Modifications constructed by or for an Owner regardless of whether the same are listed in the Records of Modifications of the Condominium and regardless of whether all of the provisions of this Agreement or the relevant provisions of the Act are strictly followed with respect to the approval, construction, use or care of such Modification. For clarity and without limiting the generality of the foregoing, this Agreement may deal with Modifications that were made prior to the time that this Agreement is entered into by the parties and registered on title to the Units, as well as Modifications being made at the time it is entered into and Modifications that may be made after such time, and shall govern all such Modifications, and the Owners of the Units for or by whom they are made, alike in accordance with the terms hereof.
16. Where an addition, alteration or improvement has been made to the common elements appurtenant to a Unit and was not or cannot be shown to have been made by or for the Condominium and is not listed in the Records of Modifications, the determination of whether such addition, alteration or improvement to the common elements is a Modification hereunder shall be left to the sole, reasonable discretion of the Board.
17. It is the obligation of each Owner hereunder to cooperate with the Condominium to ensure that the Records of Modifications are up to date and accurate with respect to the Owner's Unit, including without limitation that each Owner shall grant to the Board such access to such Owner's Unit and any of its appurtenant portions of the common elements of the Plan designated for the exclusive use of the owner of such Unit, if any, and shall provide the Board with such details, drawings, photographs and other information whatsoever, as the Board in its discretion acting reasonably may determine is required in order to create and maintain such Records of Modifications so that they are both accurate and up-to-date.
18. The Condominium is required to provide a copy of that portion of the Records of Modifications that pertains to a Unit along with every status certificate issued by the Condominium in respect of such Unit, or to provide written advice to the person requesting such status certificate that according to its records there are no Modifications then approved or constructed with respect to the Unit.

#### PROVISIONS RELATING TO CONSTRUCTION

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19. With respect to each Modification made by or on behalf of an Owner other than the Declarant, the Owner hereby agrees or warrants, as the case may be, to construct the Modification, or that the Modification (if already existing at the time this Agreement is entered into by the Owner) has been constructed, in strict compliance with:

- a. all aspects of the plans and specifications required by the Board to provide its consent, including any additions, deletions or revisions thereto, without any deviations therefrom unless such deviations are approved in writing by the Board which approval the Board is not required to give;
  - b. the other relevant provisions of this Agreement and all relevant provisions of the Act and the declaration, by-laws and rules of the Condominium;
  - c. all applicable codes, rules, regulations, laws and ordinances of all relevant governmental authorities.
20. With respect to each Modification made by or on behalf of an Owner other than the Declarant, during any construction of a Modification occurring after the execution of this Agreement, the Owner shall take all reasonable steps to ensure that the use made by other unit owners and/or the Condominium of the units and common elements will not be unduly or unreasonably altered, disturbed or interfered with by such construction.
21. Prior to starting construction of a Modification, the Board may require from an Owner other than the Declarant, and if required the Owner agrees to pay, a deposit to the Condominium in an amount determined by the Board acting reasonably which shall be a security deposit (the "Security Deposit") to be held by the Condominium until it is satisfied, acting reasonably, that the Modification has been constructed in a good and workmanlike manner in accordance with the construction requirements set out in this Agreement.
22. The full amount of the Security Deposit or any part thereof may, in the Board's absolute discretion, be applied by the Condominium toward the cost of bringing the Modification into compliance with the construction requirements set out in this Agreement if the Owner does not do so within a reasonable period of time after being requested to do so by the Board. If the Security Deposit is insufficient to effect the completion of the Modification in compliance with such requirements, then the balance of the costs to do so, to the extent they are incurred by the Condominium, are monies owing by the Owner to the Condominium and subject to collection in accordance with the provisions of this Agreement and the Act.
23. Once construction of the Modification is completed in a good and workmanlike manner in compliance with the requirements of this Agreement as determined by the Board acting reasonably, the Security Deposit, or any balance thereof remaining, if any, shall be returned to the Owner.
24. If the Modification is or was not constructed as required hereunder, or if, notwithstanding such construction, the Modification is thereafter determined by the Board to be a nuisance impacting the reasonable use and enjoyment of the property comprising the Plan by any other unit owner or resident of a unit of the Plan, the Board, in its sole and absolute discretion, may decide to (i) complete the construction or reconstruction of the Modification in compliance with such requirements, or (ii) make such changes to the Modification as are necessary to remove such nuisance, or (iii) to remove the Modification and restore the affected common elements to their proper condition as determined by the Board, or (iv) require the Owner to do any such thing, and all such construction, reconstruction or removal, whether done or required to be done by the Board or the Owner, shall be at the Owner's expense. The Board is hereby granted the right to enter in or onto any part of a Unit or the common elements to give effect to its decision in accordance with this provision. The costs incurred by the Condominium in accordance with this provision are deemed to be monies owing by the Owner to the Condominium and subject to collection in accordance with the provisions of this Agreement and the Act.
25. Any removal, dismantling or disconnection (these and all such similar terms being hereinafter referred to as "removal") of a Modification or any part thereof, whether for a temporary purpose or permanently, shall be treated for all purposes hereunder as if the result were itself a Modification hereunder and the removal being the construction thereof. For clarity, this includes a requirement that the Owner obtain approval from the Board prior to commencing such removal. Upon any such removal of any Modification, whether or not Board approval has been obtained, the Owner must return the affected parts of the common elements to the state, condition and location they had prior to the construction of the Modification, unless otherwise permitted or required by the Board, and all costs associated with the removal and such repair of the common elements shall be borne by the Owner. Any costs incurred or claims suffered by the Condominium on account of thereof shall be monies owing by the Owner to the Condominium and subject to collection in accordance with the provisions of this Agreement and the Act.
26. If a mechanics or construction lien is registered against a Unit and/or common elements of the Condominium as a result of the Modification, the Owner of such Unit must immediately remove the lien, failing which the Condominium may, at its option, obtain a discharge of the lien by:

- a. paying the amount claimed under the lien into court;
- b. posting a bond; or
- c. any other method available to it;

and any such payment and other costs incurred by the Condominium in so doing (including all legal fees, charges and disbursements and applicable H.S.T. and other taxes) will be borne solely by the Owner and will be an additional common expense for the Unit that shall be due and payable when requested by the Board. If unpaid then notwithstanding any other provisions of this Agreement the same shall immediately be deemed to be common expenses in arrears of the Owner's Unit and payment thereof can be enforced by the registration and enforcement of a lien against such Owner's Unit.

#### **USE, REPAIR AND MAINTENANCE OF MODIFICATIONS**

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27. The Owner shall comply with any conditions or restrictions relating to the use of a Modification that are set out in by the Board in accordance with section 12 of this Agreement, unless otherwise permitted by the Board (which permission must be express and in writing, which, without limiting the generality of the foregoing, may be in the form of duly enacted rules of the Condominium). This provision shall not apply to the Declarant.
28. The Owner is responsible to maintain and repair or if necessary replace the Modification after damage and in accordance with the rules of the Corporation and any standards or care and other requirements that may be established by the Board from time to time with respect to Modifications. The terms "maintain", "repair" and "repair after damage" as used herein shall have the meanings that are ascribed to them in the Act.
29. If the Owner fails to maintain and repair the Modification as required hereunder, the Board, in its sole and absolute discretion, may take steps to effect such maintenance or repairs (and is hereby granted the right to enter in or onto any part of a Unit or the common elements to do so) or may withdraw its approval for the Modification and require the Owner to remove the Modification forthwith and at the Owner's own expense. If the Modification is not removed as and when required by the Board, the Condominium may effect such removal with the costs of same being monies owing by the Owner to the Condominium.
30. With respect to any Modification appurtenant to a Unit other than a Unit owned by the Declarant, if the Board determines it is necessary or advisable to access, move, remove or dismantle a Modification or any part thereof in order to allow the Condominium to carry out its duties or fulfill any of its obligations, the Owner will permit such access or will move, remove or dismantle the Modification or part as requested by the Board and in the time frame and to the location specified by the Board, all at the Owner's sole expense. The Board will provide the Owner with at least 48 hours notice of any such request, except in an emergency (as determined solely by the Board). If the Owner fails to permit access or to move, remove or dismantle the Modification or part, as the case may be, to the satisfaction of the Board and in the time frame and to the location specified by the Board, the Board is irrevocably authorized to do so (including to enter in or upon any Unit or the common elements to do so) at the Owner's sole expense. In addition, the Owner will be solely responsible for the costs and completion of the subsequent relocation or replacement or reconstruction of the Modification in its original location (or as otherwise agreed by the Board in writing), which shall be done strictly in accordance with the terms of this Agreement pertaining to construction of Modifications. If the Modification or such part thereof remains on the Condominium property during any work and is not moved back to its prior position (or as otherwise agreed by the Board in writing) within a time frame established by the Board, the Board has the right to remove and dispose of the Modification at the expense of the Owner. Any costs incurred by the Condominium on account of any of the foregoing shall be monies owing by the Owner to the Condominium and subject to collection in accordance with the provisions of this Agreement and the Act.

#### **COSTS AND INDEMNITIES**

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31. Any and all monies owing by an Owner to the Condominium on account of this Agreement shall be due and payable in accordance with any written demand by the Board. If unpaid as and when due the same shall be deemed to be, and for all purposes are and shall be collected as, common expenses in arrears for which a lien can be registered against the title to the Unit and enforced in accordance with the relevant provisions of the Act. Such amounts in arrears shall each bear interest calculated monthly at the rate set out in the by-laws of the Condominium or, if none is there recorded, at a variable rate set

on the first day of each month and equal to twice the Prime Rate of the Bank of Canada as of the first day of the month in which such interest is to be calculated. Such interest is deemed to be part of the common expenses that are deemed to be in arrears.

32. Notwithstanding the payment and/or use of any Security Deposit, each Owner agrees to indemnify and save the Condominium, the Board, and all other Owners (including the Declarant) and occupants of Units in the Plan, and each of their employees, agents and invitees, fully harmless from all costs (including all legal fees, charges, disbursements and applicable taxes), damages, claims, losses or liabilities suffered or incurred by any of them whether directly or indirectly on account of this Agreement or as a result of a Modification or any part of a Modification, its construction, use, care or removal, and all amounts payable by any of them on account of such costs, damages, claims, losses and liabilities will be additional common expenses for the Unit, the payment of which can be enforced by the registration and enforcement of a lien against the Unit. For further clarification, this section is not intended to, and shall not, make an Owner responsible to indemnify the parties above for any costs or liabilities resulting from a Modification made by another Owner.
33. Since the Modification is the property of the Owner, the costs of insurance therefor shall be borne solely by the Owner. If it is determined by the Board that any insurance coverage is required to be carried by the Condominium on account of the Modification, the costs thereof shall be paid by the Condominium and, if requested by the Board in writing, reimbursed by the Owner and considered monies owing to the Condominium hereunder. Further, the Owner shall reimburse the Condominium for any deductible paid by the Condominium pursuant to its insurance policies as a result of, or relating to, the Modification. If such costs and deductible amounts are not paid by the Owner after receipt of a written request therefor from the Board, then notwithstanding any other provisions of this Agreement the same shall be immediately deemed to be common expenses of the Owner's Unit that are in arrears in respect of which a lien can be registered against the title to the Unit and enforced in accordance with the relevant provisions of the Act.
34. If this Agreement is terminated at any time with respect to a Unit, the Owner will be responsible for the cost (including all legal fees, charges and disbursements and applicable H.S.T. and other taxes) of the discharge or removal of this Agreement from title to the Unit. Any costs incurred by the Condominium shall be paid by the Owner of the Unit after receipt of a written request therefor from the Board, and, notwithstanding any other provisions of this Agreement, if unpaid shall be immediately deemed to be common expenses of the Owner's Unit that are in arrears in respect of which a lien can be registered against the title to the Unit and enforced in accordance with the relevant provisions of the Act.

#### MISCELLANEOUS PROVISIONS

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35. This Agreement constitutes the entire agreement between the parties. Each of the parties acknowledges that, except as contained in this Agreement, there is no representation, warranty, collateral agreement or condition (whether a direct or collateral condition or an express or implied condition) which induced it to enter into this Agreement.
36. If there is a disagreement between the Condominium and the Owner with respect to this Agreement or any part of it, the disputing party will give written notice of the dispute to the other party. If, within ten days of the date the written notice was issued, the parties are unable to resolve the dispute, the parties hereto agree that the matter will be referred for mediation in accordance with section 132 of the Act and the parties will be bound by the mediation provisions in the by-laws of the Condominium, if any. Subject to the provisions of such by-law, if any, in the event either party refuses or fails to acknowledge or participate in mediation proceedings, such mediation shall be deemed to have been tried and failed such that the parties shall not be hindered thereby from proceeding to arbitration and/or court proceedings in accordance with the Act.
37. Each party shall, without receiving additional consideration therefor, co-operate with and take such additional action as may be requested by the other party, acting reasonably, in order to carry out the purpose and intent of this Agreement.
38. No restriction, condition, obligation or provision contained in this Agreement shall be deemed to have been abrogated or waived because of any failure to enforce the same, irrespective of the number of violations or breaches that may occur. No amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.
39. The invalidity of any part of this Agreement shall not impair or affect in any manner the validity and

enforceability or effect of the balance thereof.

- 40. Time is of the essence in this Agreement in the performance of the duties of the Owner and the Condominium.
- 41. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement. Furthermore, this Agreement or any individual execution page hereof may be transmitted by facsimile or any other electronic means of transmitting documents, and the reproduction of signatures thereby will be deemed to be original and legally binding. This Agreement may include a separate signature page for each Unit.

**IN WITNESS WHEREOF** this Agreement has been signed by each of the undersigned effective as of the day and date first written above.

**WELLINGTON STANDARD CONDOMINIUM CORPORATION NO. \_\_\_\_**

By: \_\_\_\_\_  
Name: Shawn Marsh  
Title: President

I have authority to bind the corporation.

**TIMBERWORX CUSTOM HOMES INC.**

By: \_\_\_\_\_  
Name: Shawn Marsh  
Title: President

I have authority to bind the corporation.