

# Terms of Use

These Terms of Use are effective as of **Monday May 7<sup>th</sup> 2018**.

## Purpose and Consent to Terms

1. The following terms of use (the "**Terms**") constitutes a binding agreement between Him & Her Incorporated ("**H&H**") and you ("**you**" or "**your**") and applies to your use of **220dundurn.ca** and all of the features available through this URL (the "**Website**"), however accessed. By accessing, viewing, downloading or otherwise using this Website or any webpage or feature of the Website, you agree without limitation to be bound by and comply with these Terms, as such are revised or updated from time to time at the sole discretion of H&H, including without limitation, the Privacy Policy (as defined below) and any other usage guidelines and rules that may be posted on the Website by H&H from time to time, all of which are incorporated into these Terms by reference. In order to become a registered user of the Website, you must provide your personal information such as your name, email address, telephone number, contact preference, visitor type and source (collectively, your "**Personal Information**") and you must indicate your acceptance of these Terms by selecting "By registering I agree to the Terms of Service".
2. **IF YOU DO NOT AGREE TO BE BOUND BY ALL OF THESE TERMS OR THE PRIVACY POLICY, DO NOT ACCESS OR USE THE WEBSITE.**
3. If you have any questions or concerns about the Terms, please contact H&H at [info@himandher.ca](mailto:info@himandher.ca)

## Privacy Policy

4. As a condition to using the Website, you agree to the terms of H&H's Privacy Policy which can be reviewed [220dundurn.ca/privacy](http://220dundurn.ca/privacy) (the "**Privacy Policy**"). The Privacy Policy may be updated from time to time at the sole discretion of H&H. Changes to the Privacy Policy will be effective when H&H posts the changes to the Website or as otherwise provided for in the Privacy Policy.
5. You hereby consent to H&H's collection, storage, use and disclosure of your Personal Information and other personally identifiable information provided by you during your use of the Website (collectively, your "**Information**") in accordance with the Privacy Policy, including the transfer of this information to Canada and/or other countries for storage, processing and use by H&H. Notwithstanding anything to the contrary in these Terms, H&H reserves the right at all times to disclose any information as it deems necessary to satisfy any applicable law, regulation, legal process or governmental request.
6. As part of providing you the Website, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Website and your user account.

## Eligibility to Use the Website

7. You must be at least 13 years old to use the Website. If you are under the age of majority in the jurisdiction where you live, you must have your parent or legal guardian read these Terms and agree to them for you. If you are a parent or guardian, you are responsible for exercising supervision over your child's use of the Website.

## Purchase of Condominium Units

8. The use of this Website does not create a client or other advisory relationship between you and H&H. H&H is not providing real estate advice or investment advice to you. Potential purchasers should seek professional advice or legal advice and complete their own independent investigations prior to any purchase.
9. H&H does not represent or act as agent for any builder or condominium development company (collectively "**Builder**"). All transactions made in association with condominium projects featured on the Website are solely between you and the Builder. If you purchase a condominium unit from any condominium project featured on the Website, you should refer to your respective agreement of purchase and sale for complete details of the terms and conditions applicable to your purchase as such agreement will provide the sole and exclusive remedies available to you as a purchaser of such condominium unit arising from any cause or claim whatsoever, including any lien arising from any misrepresentation. You acknowledge and agree that H&H has no liability for anything related to your purchase of a condominium unit.

## Modifications

10. H&H is entitled to modify or update the Website from time to time in order to adapt it technically, change menu guidances or layouts, or expand or limit functionality in any way.
11. All condominium project models, plans, renderings, displays, specifications, construction methods and the like utilized and/or referred to on the Website (including all images, descriptions, layouts, dimensions, elevations, materials, prices, availability and/or representations indicated or implied) are created by the Builder and are approximate only and merely reflective of the proposed condominium projects, or various aspects thereof, as conceived or intended, and may be subject to change or variation at any time and from time to time, without any notice or liability to you (whether significant or otherwise). Any reliance upon such content shall be at your own risk. No information or material on the Website is to be considered to be an offer to sell.

## Permitted Use of the Website

12. You agree to comply with all laws, rules, regulations and international conventions as applicable to your use of the Website ("**Applicable Law**").
13. You agree that you will not, nor encourage or assist any person or entity, directly or indirectly, to do the following:
  - (a) use the account or password of another registered user of the Website;
  - (b) sell, reproduce, modify or attempt to modify any part of the Website in any way;
  - (c) reverse engineer, disassemble or decompile anything used to provide access to the Website;
  - (d) use the Website to engage in any unlawful or fraudulent activity or perpetrate a hoax or engage in phishing schemes or forgery or other similar falsification or manipulation of data;

- (e) input, upload or post anything to the Website which contains (i) content of an unlawful, defamatory, threatening, pornographic, abusive, libelous or otherwise objectionable nature, (ii) content that encourages conduct which could constitute a criminal offence, or (iii) content that violates or attempts to violate the intellectual property rights or rights to the publicity, security or privacy of others;
- (f) interfere with another person's full use and enjoyment of the Website;
- (g) cause, in H&H's sole discretion, an inordinate burden on the Website, including by transmitting any worms, viruses, spyware, malware or any code of a destructive or disruptive nature;
- (h) collect, harvest or store personal information of any person from the Website;
- (i) access or use the Website to build a competitive product or website;
- (j) circumvent or modify, attempt to circumvent or modify, any security technology or software that is part of the Website; or
- (k) access, view, download or otherwise use the Website in a manner that otherwise breaches or violates these Terms.

### **Account Registration and Responsibility**

14. In order to access or utilize certain aspects of the Website, you will be required to establish and maintain a valid user account with H&H. During user registration, you will be required to provide your Personal Information and you agree to provide only information which is accurate, current and complete. You are solely responsible for maintaining the confidentiality of your user account and meeting any other necessary requirements to access your user account. It is strongly recommended that you log out of your user account and close all windows after using the Website.
15. You understand that you are solely responsible for all activities that occur through your user account and agree to immediately notify H&H if you suspect any unauthorized use of your user account or any other security breach, and to fully cooperate with H&H to remedy any security-related issues.

### **Termination and Suspension of Your User Account or Use of the Website**

16. You may terminate your user account at any time by making a request to [info@himandher.ca](mailto:info@himandher.ca).
17. H&H may, in its sole discretion, suspend or terminate your use of the Website (in whole or in part) at any time, without cause and without notice, including for (a) breaches of these Terms; (b) as required by law enforcement, government agencies or court order; (c) security or technical problems; or (d) extended periods of inactivity. You understand that such termination or suspension may result in permanent deletion of user data and content, and you agree that H&H will not be liable to you or to any third party for losses or damages incurred as a result of the termination or suspension of your user account or your access to the Website, and will have no obligation to grant you further access to or use of the Website. In addition to terminating or suspending access to the Website, H&H reserves the right to block certain IP addresses at its sole discretion.

18. Upon termination or suspension of your user account, your right to use the Website, access your user account through the Website and/or access any materials obtainable through the Website will immediately cease.
19. The above-described actions are not H&H's exclusive remedies and H&H may take any other legal, equitable or technical action it deems appropriate in the circumstances.

### Contact with You

20. You understand and agree that H&H may contact you through any of the means specified in your Personal Information for purposes relating to the function or security of your user account.
21. You understand and agree that H&H may contact you through electronic communications such as project updates and promotional material (collectively, "**Marketing Material**"), provided you have consented to the receipt of such Marketing Material during the user registration process by selecting "By registering for access I agree to the terms of service".
22. Upon your registration for a user account, you will be added to H&H's newsletter (the "**Newsletter**"), but you will only receive notifications from H&H once you have confirmed your subscription by receiving a confirmation email.
23. Even if your user account has been terminated or suspended in accordance with these Terms, you may continue to receive Marketing Material and the Newsletter provided that you have not withdrawn your consent to receive such communications. You understand and agree that you have the option to withdraw your consent to receive Marketing Material or the Newsletter by selecting the "unsubscribe" option in the body of the electronic communication or contacting H&H at [info@himandher.ca](mailto:info@himandher.ca).

### Limiting Use

24. You acknowledge and agree that H&H reserves the right to stop any conduct that may constitute a breach of these Terms or otherwise inhibits other users from fully utilizing and enjoying the Website.
25. To maintain the Website in a manner H&H deems appropriate, and to the maximum extent permitted by Applicable Law, H&H may review, monitor, display, reject, refuse to post, store, maintain, accept or delete any content you input, upload or post to the Website without any notice or liability to you.

### Intellectual Property

26. The Website contains proprietary marks and information including the domain name, text, scripts, graphics, logos, interactive features, patents, copyrights and trademarks (individually and collectively, the "**Marks**").
27. H&H is the owner or authorized user of all intellectual property rights in the Website and all content displayed on the Website, including the Marks. You agree that all information on the Website, including the Marks, is protected by law, including laws relating to proprietary and intellectual property rights of Canada and other countries.
28. You may display on your computer, download or print pages from the Website provided the information from the Website will not be altered and your use of the content downloaded or printed is only for your personal and non-commercial use. You agree not to use the content

displayed on the Website, including the Marks, without the written consent of H&H and/or the owner of the content displayed on the Website or the Marks, as applicable.

29. Other than in accordance with Sections 26 to 28, no one has permission to copy, redistribute, reproduce or republish in any form, any content displayed at the Website.

### **Tracking, Analytics and Statistical Information**

30. By using the Website, you consent to H&H's use of internet cookies, session variables and other means to track data pertaining to your usage of the Website in order to customize your Website experience according to your preferences, customize its Newsletter and Marketing Material, prepare and analyze statistics, produce reports, improve the Website, improve products or services or customize the performance of paid advertisements. You can set your cookie preferences using your browser. Unless the cookie is strictly necessary, you can withdraw your consent to the use of cookies at any time. This may result in unauthorized access to personal or confidential information. While every reasonable effort is made to ensure that all software provided in the Website is suitable for use on a wide variety of computer systems, you should take reasonable and appropriate precautions to scan for computer viruses, and ensure compatibility of the software with your specific computer system.
31. By providing your Information through the Website, you grant to H&H a limited, personal, non-sublicensable, non-exclusive, non-transferable, worldwide right to use your Information. Your Information may be used by H&H for items such as customizing your user experience and any Marketing Material or Newsletter sent to you. Your Information will be stored by H&H until you initiate a request to remove such Information by contacting [info@himandher.ca](mailto:info@himandher.ca) Unless otherwise noted in these Terms and the Privacy Policy, H&H will not disclose your Information to third-parties without your express consent.
32. H&H also uses analytics software (the "**Analytics Code**") to track, capture and aggregate the anonymous data of its Website users. H&H owns all rights in the data generated through the Analytics Code. Nothing in these Terms shall be deemed an assignment or transfer of H&H's ownership rights in the Analytics Code. Through the Analytics Code, H&H may collect, store and use anonymous information about you in order to customize your Website experience according to your preferences, customize its Newsletter and Marketing Material, prepare and analyze statistics, produce reports, improve the Website, improve products or services or customize the performance of paid advertisements. Such information may be shared with third parties, such as Google Analytics or Facebook Pixel, in order to provide these services or to analyze, store, or aggregate the information.
33. H&H may monitor your use of the Website and compile electronic data concerning your characteristics and activities (including your Information) with other data in an aggregate and anonymous manner to derive statistical and performance information related to the provision and operation of the Website and may make such information publicly available, provided that such information does not include any data that would identify you or disclose your Information. H&H retains all rights, title and interest in and to such statistical and performance information.
34. While H&H strives to provide accurate information, any statistical information provided through the Website cannot be conclusively relied upon and should not be used in place of a professional opinion.

### **Website Availability**

35. H&H reserves the right to limit or discontinue the Website or any feature or service provided by the Website, including for maintenance and repairs, without notice to you.

### **Security and Networks**

36. Regular e-mail messages over the internet that have not been encrypted are not secure, and are subject to possible interception or loss, and possible alteration. H&H will not be responsible for and will not be liable to you or any other person for any damages in connection with an e-mail communication sent by you to H&H or an e-mail communication sent by H&H to you at your request.
37. Data collected through the Website, including your Information ("**Collected Data**"), is stored in data centre facilities located in the United States or Canada, to which users have remote access via the internet. H&H implements security procedures to help protect Collected Data from security attacks. However, you understand that use of the Website necessarily involves transmission of your Collected Data over networks that are not owned, operated or controlled by H&H, and H&H is not responsible for any Collected Data or data altered, intercepted, copied or stored across such networks. H&H cannot guarantee that its security procedures will be error-free, that transmissions of your Collected Data will always be secure, or that unauthorized third parties will never be able to bypass H&H's security measures or those provided by third parties. H&H agrees to notify you in the event of a detected security breach.
38. Technical processing and transmission of the Website, may involve: (a) transmissions over various networks; and/or (b) changes to conform and adapt to technical requirements of connecting networks or devices. Use of or connection to the internet provides the opportunity for unauthorized persons to circumvent security precautions and illegally gain access to Collected Data. H&H does not guarantee the privacy, security or authenticity of any content, data or information transmitted over or stored in any system connected to the internet.

### **External Websites or Products**

39. There may be links from the Website, Newsletter or Marketing Material to third-party web sites, applications or features ("**External Websites**"). H&H is not responsible for any content, service or feature related to External Websites, nor shall it be liable for any damages incurred from viewing such External Websites. H&H does not endorse any such External Website. By accessing External Websites, you acknowledge and agree that your use of the External Websites may cause personally identifying information to be publicly disclosed and/or associated with you, even if H&H has not provided such information. You agree to hold H&H harmless for all activity related to External Websites.
40. Any references on the Website to products, services or publications, other than those of H&H, do not imply the endorsement or approval of such products, services or publications by H&H.

### **Representations and Warranties**

41. You understand and agree that: (a) your use of the Website is at your sole risk; (b) you will be solely responsible for all activities with respect to the Website undertaken by you; (c) H&H makes no representations or warranties as to the accuracy of Website content; and (d) the Website is provided on an "as is" and "as available" basis, without warranty or conditions of any kind.

### **Disclaimer of Warranties**

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42. To the fullest extent permitted by law, H&H expressly disclaims all warranties and conditions of any kind, whether express or implied, relating to the Website or any content, information, products or services available through the Website including implied warranties of merchantability, fitness or a particular purpose, non-infringement, security or accuracy.
43. H&H makes no warranty that (i) the Website will meet your requirements; (ii) the Website will operate in a timely, secure, error-free and uninterrupted manner; (iii) information available through the Website will be accurate, reliable or useful; or (iv) any errors in the Website will be corrected.
44. The Website's content is provided to you for informational purposes and is not intended to provide specific financial, legal or other advice. Under no circumstances will H&H be liable for any loss or damage caused by your reliance on information obtained through use of the Website. It is your responsibility to evaluate the accuracy, completeness and usefulness of any information provided.
45. Some jurisdictions do not allow the exclusion of certain warranties, so the above limitations or exclusions may not apply to you.

### **Limitation of Liability**

46. H&H, its subsidiaries and affiliates, and their respective directors, officers, managers, employees, shareholders, agents, licensors and members are not liable to you or any person for incidental, indirect, consequential, special, punitive or exemplary damages of any kind, including damages for lost revenues or profits, loss of goodwill, loss of prospective economic advantage, loss of use, loss of data, business interruption or other intangible losses (even where H&H has been advised of the possibility of such losses) in any way related to the use, inability to use, or the results of use of the Website, any External Websites, or the content contained on any or all such websites, whether based on contract, in tort or any other legal or equitable theory, nor for any claim by another person or persons.
47. Only the limitations which are allowed and lawful in your jurisdiction will apply specifically to you. In any event, the monetary value of any claim against H&H in connection with these Terms or the Website, whether based on contract, in tort or any other legal or equitable theory, shall be, to the extent permitted by applicable law, limited to the maximum aggregate amount of fifty Canadian dollars (\$50.00 CAD).

### **Indemnification**

48. You agree to indemnify, defend and hold harmless H&H, its subsidiaries and affiliates, and their respective directors, officers, managers, employees, shareholders, agents, licensors and members, including costs and lawyers' fees, from any claim or demand made by any third party due to or arising out of: (a) your access to the Website and any content obtained by you through the Website; (b) your use or misuse of the Website; (c) any breach of these Terms by you; or (d) your violation of any third-party rights or any Applicable Laws. H&H reserves the right, at your expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with H&H, at your expense, in asserting any available defenses.

### **Feedback**

49. H&H welcomes your feedback and comments regarding the Website. By submitting or providing H&H with comments, messages, suggestions, ideas, concepts, feedback or other information about the Website, H&H and/or H&H 's operations (collectively, "**Submissions**") you thereby (a) represent and warrant that none of the Submissions are confidential or proprietary to you or to any other person; (b) represent and warrant that none of the Submissions breach any agreement to which you are a party; and (c) grant H&H an exclusive royalty-free, perpetual, irrevocable, unrestricted, transferable, sub-licensable, worldwide right and license to the right to use, modify, share and commercialize the Submissions in any way and for any purpose.

## Data Charges

50. You are responsible for contracting with an internet service or mobile data provider and paying all required fees and taxes to maintain internet service on your computer or device. H&H is not responsible for any data usage or overage charges incurred by you as a result of accessing the Website.

51. You are responsible for obtaining any hardware and/or software required to access or use the Website.

## General Terms

52. You and H&H expressly agree that these Terms and all other contracts, documents or notices relating thereto, including the Privacy Policy, will be in the English language. *Les parties aux présentes ont expressément exigé que cette convention et tous les autres contrats, documents ou avis qui y sont afférents soient rédigés en langue anglaise.*

53. These Terms and the documents referred to herein, including the Privacy Policy, constitute the entire agreement between you and H&H regarding the Website and supersedes any prior agreements. There are no provisions, representations, undertakings, agreements or collateral agreements between you and H&H other than as set out in these Terms.

54. You agree that these Terms will be construed and governed by the laws of the Province of Ontario and the laws of Canada applicable to Ontario without regard to conflicts of law principles or provisions. Any dispute arising out of or relating to these Terms or your use of the Website shall take place in the exclusive jurisdiction and venue of the courts located in the City of Kitchener, Ontario. The *United Nations Convention on Contracts for the International Sale of Goods* (also called the Vienna Convention, and which is cited in the statutes of Canada as the International Sales of Goods Contracts Convention Act) will not apply to these Terms or the transactions contemplated by these Terms.

55. Any cause of action you may have against H&H relating to these Terms, the Website or your use of the Website must be commenced within one (1) year of the cause of action arising. Otherwise, you agree that such cause of action is permanently barred.

56. A failure by H&H to exercise or enforce any right or provision of these Terms shall not constitute a waiver of the right or provision.

57. If any provision of these Terms are found to be unlawful, void, invalid or unenforceable by a court of competent jurisdiction, you agree that the court should interpret that provision, and modify it if necessary, to give effect to the parties' intentions as reflected therein. The other provisions of these Terms will remain in full force and effect.



58. You agree that H&H may transfer ownership or operation of all or any part of the Website, as well as its rights and obligations under these Terms, to another person. You will remain bound by all of these Terms following any such assignment. You may not assign or transfer any of your rights or obligations arising under these Terms, in whole or in part, to another person without the written consent of H&H.
59. H&H has the right to update these Terms at any time. H&H will endeavor to provide notice to you of any updates. However, it is your responsibility to check if these Terms have been updated. Your continued use of the Website following any amendment to these Terms will signify your acceptance of the amended terms.
60. In the event of any termination or expiration of these Terms for any reason, all provisions whose meaning requires them to survive shall survive expiration or termination.
61. The word “including” in its various forms, as used in these Terms, means “including, without limitation”. The words “such as” in their various forms, as used in these Terms means “such as, by way of non-limiting example”. The headings, sections and subsections are for convenience of reference only and shall not affect the construction or interpretation of these Terms.
62. If you have any questions or comments regarding these Terms, or if you have any questions, complaints, claims or other legal concerns relating to H&H or its business, please contact H&H at the contact details listed below:

Him & Her Incorporated  
**72 St. Leger St. Unit 320, Kitchener, ON N2H 6R4**  
Phone: **226-750-7102**  
Email: **[info@himandher.ca](mailto:info@himandher.ca)**