

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.  
by Alvarez & Marsal Canada Inc. solely in its capacity as  
Court Appointed Receiver and Manager and Construction Lien  
Trustee of Urbancorp (Leslieville) Developments Inc. and  
not its personal or corporate capacity**

**– and –**

**C.R.A.F.T. DEVELOPMENT CORPORATION**

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**CONSTRUCTION CONTRACT**

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**For the completion of the  
50 Curzon St. Project (Leslieville)**

**April 18, 2017**

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## **AGREEMENT BETWEEN OWNER AND CONTRACTOR**

**This Agreement** made as of the 18th day of April in the year 2017.

**by and between the parties**

**Urbancorp (Leslieville) Developments Inc., by Alvarez & Marsal Canada Inc. solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of Urbancorp (Leslieville) Developments Inc. and not its personal or corporate capacity**

hereinafter called the “**Owner**”

**and**

**C.R.A.F.T. Development Corporation**

hereinafter called the “**Contractor**”

The Owner and the Contractor agree as follows:

### **ARTICLE A-1 THE WORK**

The Contractor shall:

- 1.1 perform all of the work and services required for the completion of the construction of all 55 townhouses at 50 Curzon St., Toronto, Ontario and all Common Elements, in accordance with the terms of this Agreement, including all work and services required:
  - .1 in accordance with the plans and specifications, and all construction work and services required to comply with the Building Code and all other applicable Laws, the applicable New APS, the Notice of Approval Conditions, the Site Plan Agreement, and all other development approvals and agreements, including repairing or replacing existing deficient or defective work in accordance with this Contract, upgrades to Units required under the applicable New APS (if any), all landscape works and all work and services with respect to the parkland dedication required under the Notice of Approval Conditions and the Site Plan Agreement;
  - .2 to correct all defects and deficiencies, whether or not it is a Latent Defect, including defects reported in each PDI Inspection Form, each Tarion 60 Day Report, each Tarion Bulletin 19 Report and in the Technical Audit; provided that, in the case of a Latent Defect, a Change Order is issued for such Latent Defects in accordance with GC 6.2 – CHANGE ORDER;
  - .3 to complete the Geo-thermal System Work in accordance with GC 3.14 – HEATING, VENTILATION AND AIRCONDITIONING SYSTEM;
  - .4 to perform the Contractor’s obligations under the General Conditions;
  - .5 in accordance with a Change Order;
  - .6 in order to obtain, maintain, and comply with, all Development Approvals; and
  - .7 to perform all such other work and services as set out or described in Schedule “G” – Other Work and Services,

for which work and services the Agreement has been signed by the parties, and for which Kasian Architecture Ontario Inc. is acting as and is hereinafter called the “**Prime Consultant**”, and Altus Group Limited is acting as Project Monitor and is hereinafter called the “**Project Monitor**”;

- 1.2 do and fulfill everything indicated by the Contract Documents; and
- 1.3 commence the Work by the 30th day after the satisfaction of the Conditions Precedent, and (a) subject to adjustment in Contract Time as provided for in the Contract Documents, attain Substantial Performance of the Work by no later than the 240<sup>th</sup> day after the date of commencement of the Work (the “**Scheduled Substantial Performance Date**”), and (c) in any event, attain Substantial Performance of the Work by no later than the 15<sup>th</sup> day of June, 2018 (the “**Outside Date**”). For clarity, the Outside Date shall not be adjusted except in accordance with GC 6.5 – DELAYS and paragraph 6.2.10 of GC 6.2 – Change Order.

#### **ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

- 2.1 The Contract supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the Work, but subject to the terms of the Settlement Approval Order.
- 2.2 The Contract may be amended only as provided in the Contract Documents.

#### **ARTICLE A-3 CONTRACT DOCUMENTS**

3.1 The following are the Contract Documents referred to in Article A-1 of the Agreement - THE WORK:

- Agreement between Owner and Contractor
- Definitions
- The General Conditions of the Stipulated Price Contract
- the following Schedules to the Agreement:
  - Schedule “A”: List of Report and Drawings
  - Schedule “B-1”: New APS substantially in the blank form of New APS attached
  - Schedule “B-2”: Standard Agreement of Purchase and Sale for New Purchasers substantially in the blank form of agreement attached
  - Schedule “C”: Standard Home Automatization Package
  - Schedule “D”: List with Upgrades
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**ARTICLE A-4 CONTRACT PRICE**

- 4.1 The contract price (the "**Contract Price**"), which excludes Value Added Taxes, consists of:
- .1 a fixed price (the "**Fixed Price**") equal to Five Million and Three Hundred and Fifty Thousand Dollars (\$5,350,000.00) for all Work under this Contract except for work under a Change Order and the Geo-thermal System Work;
  - .2 the Change Price for work under each Change Order as determined in accordance with GC 6.2 – CHANGE ORDER; and
  - .3 without duplication, the Geo-thermal System Costs for completing the Geo-thermal System Work.
- 4.2 Value Added Taxes of thirteen percent (13%) payable by the Owner to the Contractor on the Fixed Price are Six Hundred and Ninety Five Thousand and Five Hundred Dollars (\$695,500.00).
- 4.3 Total amount payable by the Owner to the Contractor for the construction of the Work is Six Million and Forty Five Thousand and Five Hundred Dollars (\$6,045,500.00) plus any Change Price for work under a Change Order as determined in accordance with GC 6.2 – CHANGE ORDER, and, without duplication, the Geo-thermal System Costs in accordance with the provisions of GC 3.14 – HEATING, VENTILATION AND AIR CONDITIONING SYSTEM.
- 4.4 All amounts are in Canadian funds.

**ARTICLE A-5 PAYMENT**

- 5.1 Subject to the provisions of the Contract Documents, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of ten percent (10%), the Owner shall:
- .1 make progress payments to the Contractor on account of the Contract Price when due in the amount certified by the Prime Consultant in the Consultant's Payment Certificate and verified by the Project Monitor in the Final Project Monitor's Payment Verification, together with such Value Added Taxes as may be applicable to such payments in accordance with GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT, including any Change Price in accordance with a Change Order, and

- .2 upon Substantial Performance of the Work, pay to the Contractor the unpaid balance of the holdback amount when due together with such Value Added Taxes as may be applicable to such payment in accordance with GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK and GC 5.5 – PAYMENT OF HOLDBACK AMOUNT UPON SUBSTANTIAL PERFORMANCE OF THE WORK, and
  - .3 upon the issuance of the Final Project Monitor’s Final Payment Verification for payment, pay to the Contractor the unpaid balance of the Contract Price when due together with such Value Added Taxes as may be applicable to such payment in accordance with GC 5.7 – FINAL PAYMENT.
- 5.2 In the event of loss or damage occurring where payment becomes due under the Builders “All Risk” and boiler and machinery insurance policies, payments shall be made to the Contractor in accordance with the provisions of GC 11.1.9.
- 5.3 Interest
- .1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest at a rate of 5.5% per annum above the prime rate shall become payable on such unpaid amounts until payment is made. The prime rate shall be the fluctuating annual interest rate equal at all times to the reference rate of interest (however designated) of Canadian Imperial Bank of Commerce for determining interest chargeable by it on loans in Canadian dollars made in Canada.
  - .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions - DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the Contract, had it not been in dispute, until the date it is paid.
  - .3 Any amount of interest payable by the Owner to the Contractor shall only become due and be paid from proceeds from the sale of the Units in accordance with the Waterfall in the same priority as the payment to the Contractor of the Craft Construction Loan.

#### **ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING**

- 6.1 Notices in Writing will be addressed to the recipient at the address set out below. The delivery of a Notice in Writing will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A Notice in Writing delivered by one party in accordance with this Contract will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a Working Day, then the Notice in Writing shall be deemed to have been received on the Working Day next following such day. A Notice in Writing sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a Working Day or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first Working Day next following the transmission thereof. An address for a party may be changed by Notice in Writing to the other party setting out the new address in accordance with this Article.

**Owner**

Urbancorp (Leslieville) Developments Inc., by Alvarez & Marsal Canada Inc. solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of Urbancorp (Leslieville) Developments Inc.. and not its personal or corporate capacity

Address: Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
Toronto, Ontario M5J 2J1

Facsimile No: 416-847-5201  
Contact: Gruneir, Ryan  
E-mail Address: [rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)

and to:

Address: Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
Toronto Ontario M5J 1J1  
Facsimile No: 416-847-5201  
Contact: Zaspalis, Tony  
E-mail Address: [tzaspalis@alvarezandmarsal.com](mailto:tzaspalis@alvarezandmarsal.com)

**Contractor**

C.R.A.F.T. Development Corporation  
Address: 2-10 Queen Elizabeth Blvd.  
Etobicoke, On, M8Z 1L8  
Facsimile No: 416-979-0593  
Contact: Carmine Nigro  
E-mail Address: [cnigro@craftgrp.com](mailto:cnigro@craftgrp.com)

and to

Contact: Robert Sabato  
E-mail Address: [rsabato@craftgrp.com](mailto:rsabato@craftgrp.com)

**Prime Consultant**

Kasian Architecture Ontario Inc,  
Address: 85 Hanna Avenue, Suite 300  
Toronto, Ontario M6K 2S3  
Facsimile No: 416-583-3610  
Contact: Sanja Djulepa  
E-mail: [sanja.djulepa@kasian.com](mailto:sanja.djulepa@kasian.com)

**Project Monitor, if applicable**

Altus Group Limited  
Address: 33 Yonge Street, Suite 500  
Toronto, Ontario, M5E 1G4  
Facsimile No: (416) 641-9501  
Contact: Colin Duran, Senior Director, Cost Consulting & Project Management  
E-mail: [colin.doran@altusgroup.com](mailto:colin.doran@altusgroup.com)



**Administrative Agent, if applicable**

Canadian Imperial Bank of Commerce,  
in its capacity as Administrative Agent under the Loan Agreement

Address: 25 King Street West,  
Commerce Court North - 16<sup>th</sup> Floor,  
Toronto, Ontario, M5L 1A2  
Facsimile No: (416) 214-8749  
Contact: Paul Montgomery, Senior Director, Special Loans  
E-mail: paul.montgomery@cibc.com

With a copy to:

Contact: Mauricio Echeverri, Senior Account Manager, Special Loans  
E-mail: mauricio.echeverri@cibc.com

**Terra Firma Capital Corporation, if applicable**

Terra Firma Capital Corporation  
Address: 22 St. Clair Avenue East, Suite #200  
Toronto, Ontario M4T 2S3  
Facsimile No: (416) 792-4711  
Contact: Glenn Watchorn  
E-mail: gwatchorn@tfcc.ca

\* if it is intended that the notice must be received by a specific individual, that individual’s name shall be indicated.

**ARTICLE A-7 LANGUAGE OF THE CONTRACT**

7.1 [INTENTIONALLY DELETED.]

7.2 This Agreement is drawn in English at the request of the parties hereto. La presente convention est redigee en anglais a la demande des parties.

**ARTICLE A-8 SUCCESSION**

8.1 The Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and permitted assigns.

**ARTICLE A-9 RECOURSE**

9.1 All obligations of the Construction Receiver, whether on behalf of the Owner or its own behalf, under or in connection with this Contract are undertaken by Alvarez & Marsal Canada Inc. solely in its capacity as the Court Appointed Receiver and Manager and Construction Lien Trustee of the Owner, Urbancorp Developments (The Beach) Inc. and Urbancorp Developments (Riverdale) Inc. and, save and except in the case of gross negligence or wilful misconduct of the Construction Receiver, as determined by a Court of competent jurisdiction, Alvarez & Marsal Canada Inc., shall have no personal or corporate liability under this Contract. The sole recourse of the Contractor against the Owner or the Construction Receiver in connection with such obligations shall be limited solely to a claim against the proceeds of the property and assets of the Owner.

9.2 The Project Monitor shall have no liability in connection with this Contract to the Contractor, and the Contractor hereby releases the Project Monitor from all costs, damages, losses or other amounts or claims of whatsoever nature or kind that may be suffered or incurred by either Party as a result of the actions,

inaction, decisions, approvals and reports of, and other activities undertaken by, the Project Monitor in connection with this Contract.

- 9.3 Neither party nor the Change Funder may bring a claim against the Project Monitor for any decision, recommendation, finding or determination of the Project Monitor made in relation to paragraph 2.2.12 of GC 2.2 – ROLE OF CONSULTANT, paragraphs 6.2.2 or 6.2.8. of GC 6.2 – CHANGE ORDER, paragraph 6.4.3 of GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS, or paragraph 7.1.6 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER.
- 9.4 For greater certainty, nothing in this Article A-9 is intended to limit the liability of the estate of Urbancorp (Leslieville) Developments Inc. for any breach by the Owner under this Contract. Other than claims against the Construction Receiver for its gross negligence or wilful misconduct, all claims against the Owner or the Construction Receiver may only be brought against the estate of Urbancorp (Leslieville) Developments Inc.
- 9.5 The provisions of this Article A-9 are intended for the benefit of the Construction Receiver and the Project Monitor, as the case may be, as a third party beneficiary and may be relied upon by the Construction Receiver and the Project Monitor, as the case may be, notwithstanding that it is not a party to this Contract.

#### **ARTICLE A-10 COUNTERPARTS**

This Contract may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. Counterparts may be executed either in original or electronic or faxed form (each of which shall be deemed to constitute an original form).

**In witness** whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives as of the date first above written.


SIGNED AND DELIVERED  
in the presence of:

**WITNESS**

**OWNER:**

**URBANCORP (LESLIEVILLE)  
DEVELOPMENTS INC.**, by Alvarez & Marsal  
Canada Inc. solely in its capacity as Court  
Appointed Receiver and Manager and  
Construction Lien Trustee of Urbancorp  
(Leslieville) Developments Inc.. and not its  
personal or corporate capacity

  
signature  
Gail A. Jenkinson

name of owner  
  
signature  
Douglas R. McIntosh, President  
Alvarez & Marsal Canada Inc.

**WITNESS**

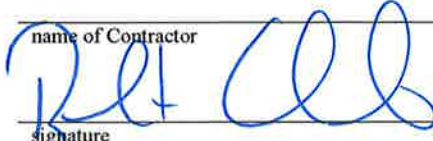
**CONTRACTOR:**

**C.R.A.F.T. DEVELOPMENT  
CORPORATION**

\_\_\_\_\_  
signature

\_\_\_\_\_  
name of Contractor

\_\_\_\_\_  
signature



\_\_\_\_\_  
name of person signing

**Robert Sabato, Director and Authorized Signing  
Officer**

\_\_\_\_\_  
name and title of person signing

\_\_\_\_\_  
signature

\_\_\_\_\_  
signature

\_\_\_\_\_  
name of person signing

\_\_\_\_\_  
name and title of person signing

## **DEFINITIONS**

The following Definitions shall apply to all Contract Documents:

### **Administrative Agent**

The Administrative Agent refers to Canadian Imperial Bank of Commerce as administrative agent for the Syndicate under the Syndicate Construction Loan Agreement.

### **Advanced Change Funds**

Advanced Change Funds has the meaning set out in paragraph 6.2.4 of GC 6.2 – CHANGE ORDER.

### **Application for Payment**

An Application for Payment means the Contractor's application for payment as described in GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and substantially in the form set out in Exhibit 2 of Schedule "N" – FORMS.

### **Application for Holdback Payment**

An Application for Holdback Payment has the meaning set out in paragraph 5.5.1 of GC 5.5 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK.

### **Application for Substantial Performance**

An Application for Substantial Performance has the meaning set out in paragraph 5.4.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK.

### **Breach Work**

Breach Work has the meaning set out in paragraph 7.1.6.2 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER.

### **Breach Work Amount**

Breach Work Amount has the meaning set out in paragraph 7.1.6.4(2) of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER.

### **Builder**

The Builder is Urban Renaissance Inc., or such other builder engaged by the Contractor as the general or primary contractor for the Work and approved by the Owner.

### **Catastrophic Event**

A Catastrophic Event is any loss or damage to the Project that cannot be fully repaired, replaced or restored:

- by the earlier to occur of (a) one year from the date of such loss or damage, and (b) the date that a Unit Owner whose Unit is affected by such loss or damage may terminate his/her purchase agreement for such Unit; and
- for a cost equal to or less than 75% of the full insured replacement value of the Project under the property insurance maintained by the Owner; provided that if such loss or damage is not covered by insurance

maintained by the Owner, then such loss or damage will automatically be considered a Catastrophic Event unless the Owner otherwise agrees.

### **Change Funder**

A Change Funder means Terra Firma; provided that, (a) if Terra Firma does not provide the funding for the applicable change in accordance with Section 2.4 of the Cost Overrun Guarantee, then the Contractor will be the Change Funder if it is obliged under this Contract or the Cost Overrun Guarantee to provide, or agrees to provide, the funding for the applicable change, or (b) if neither Terra Firma nor the Contractor provide the funding for the applicable change in accordance with Section 2.4 or 2.6 of the Cost Overrun Guarantee, and the Syndicate is considering providing, or agrees to provide, the funding for the applicable change in accordance Section 2.7 of the Cost Overrun Guarantee, then the Syndicate will be the Change Funder.

### **Change Order**

A Change Order is a written amendment to the Contract prepared by the Consultant in accordance with Part 6 of this Contract – CHANGES IN THE WORK, substantially in the form set out in Exhibit 9 of Schedule “N” and signed by the Owner, the Contractor, and, if applicable, the Change Funder, and approved by the Project Monitor, in accordance with GC 6.2 – CHANGE ORDER; provided that if, pursuant to GC 8.2 – NEGOTIATION AND MEDIATION, the parties agree or an arbitrator determines, the parties’ approval of, and signature on, such Change Order will be deemed to have been provided.

### **Change Order Request**

A Change Order Request has the meaning set out in paragraph 6.2.1 of GC 6.2 – CHANGE ORDER.

### **Change Order Recommendation**

A Change Order Recommendation has the meaning set out in paragraph 6.2.2 of GC 6.2 – CHANGE ORDER.

### **Change Price**

A Change Price has the meaning set out in paragraph 6.2.1.3 of GC 6.2 – CHANGE ORDER.

### **Conditions Precedent**

Conditions Precedent means the conditions precedent set out in paragraphs 1.1.10 and 1.1.11 of GC 1.1 – CONTRACT DOCUMENTS.

### **Construction Breach**

A Construction Breach occurs if (a) the Contractor neglects to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract, or (b) in the case of a disputed Change Order or disputed Construction Breach, the Contractor fails to perform any of its obligations described in GC 6.2.8 or GC 7.1.6, as applicable, in connection with such disputed Change Order (or Requested Work) or disputed Construction Breach (or the Breach Work).

### **Construction Equipment**

Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the Work but is not incorporated into the Work.

### **Construction Receiver**

Alvarez & Marsal Canada Inc. solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of Urbancorp (Leslieville) Developments Inc. (and not its personal or corporate capacity) appointed pursuant to the UC Receivership Proceedings.

### **Construction Schedule**

The Construction Schedule is the construction schedule to be attached as Schedule “H” – CONSTRUCTION SCHEDULE in accordance with GC 3.5 – CONSTRUCTION SCHEDULE AND SCHEDULE OF VALUES, which is subject to amendment in accordance with the terms of the Contract.

### **Consultant**

The Consultant means the Prime Consultant, or such other professional architect, mechanical, electrical, civil, geotechnical, environmental or other engineer and other consultants as the Contractor retains in connection with the Work, and licensed to practice in Ontario if required to be licensed under applicable law. A reference in this Contract to the Consultant means the Consultant or the Consultants jointly with the relevant responsibility and professional oversight for the applicable task, work or services. The term Consultant means the applicable Consultant or the Consultant’s authorized representative.

### **Consultant’s Payment Certificate**

The Consultant’s Payment Certificate is the certificate issued by the Prime Consultant in connection with an Application for Payment by the Contractor (whether under the Fixed Price portion of the Contract or under a Change Order), substantially in the form set out in Exhibit 5 of Schedule “N” - FORMS, certifying that:

- the Work has progressed as indicated in the applicable Application for Payment and the Schedule of Values, and the Contractor is entitled to the amounts claimed in the Application for Payment;
- the Construction Schedule and the scheduled date for Substantial Performance of the Work have not been changed, except as permitted under paragraph 6.5.1 of GC 6.5 – DELAYS or as changed by Change Orders signed by the Owner, the Contractor, and the Change Funder and approved by the Project Monitor;
- the Contract Price has not been changed, except as changed by Change Orders signed by the Owner, the Contractor, and the Change Funder and approved by the Project Monitor;
- Substantial Performance of the Work will occur on or prior to the Outside Date; and

### **Consultant’s Substantial Performance Certificate**

A Consultant’s Substantial Performance Certificate has the meaning set out in paragraph 5.4.1.5 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK.

### **Consultant’s Final Payment Certificate**

A Consultant’s Final Payment Certificate has the meaning set out in paragraph 5.7.1.6 of GC 5.7 – FINAL PAYMENT.

### **Contract**

The Contract is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.

**Contract Documents**

The Contract Documents consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.

**Contract Price**

The Contract Price has the meaning set out in paragraph 4.1 of Article A-4 of the Agreement - CONTRACT PRICE and for certainty, includes the Change Price under each Change Order.

**Contract Time**

The Contract Time is the time from commencement of the Work to Substantial Performance of the Work as permitted under paragraph 6.5.1 of GC 6.5 – DELAYS or as amended by way of a Change Order in accordance with the terms of this Contract.

**Contractor**

The Contractor is the person or entity identified as such in the Agreement. The term Contractor means the Contractor or the Contractor's authorized representative as designated to the Owner in writing.

**Cost Overrun**

A Cost Overrun means a Cost Overrun as defined in the Cost Overrun Guarantee.

**Cost Overrun Guarantee**

The Cost Overrun Guarantee is the Cost Overrun Funding and Performance Agreement entered into between Terra Firma, the Construction Receiver, the Contractor and the Administrative Agent and dated as of the date of this Contract.

**CP Outside Date**

The CP Outside Date means July 31, 2017 or such later date as may be agreed among the Construction Receiver, the Contractor, the Administrative Agent and Terra Firma.

**Craft Cash Collateral**

Craft Cash Collateral has the meaning set out in the Development Contract.

**Craft Cash Collateral Amount**

Craft Cash Collateral Amount means, at any time, an amount equal to \$535,000 less the amount of the Craft Cash Collateral expended by the Owner to cure Construction Breaches, Development Breaches or Funding Breaches prior to or at such time.

**Craft Construction Loan**

The loan made by the Contractor to the Construction Receiver pursuant to a loan agreement dated as of the date of this Contract between the Contractor (as lender) and the Construction Receiver (as borrower) in the initial principal amount of \$2,000,000 for the purpose of funding, *inter alia*, the cost of the Work.

**Craft Loan Option**

The Craft Loan Option has the meaning set out in GC 3.14.1.2(2).



**Day**

A Day has the meaning set out in the Development Contract.

**Delayed Approval**

A Delayed Approval has the meaning set out in paragraph 6.2.8 of GC 6.2 – CHANGE ORDER.

**Development Approvals**

The Development Approvals are the approvals, permits, license and authorizations from governmental authorities required to perform the Work and complete the Project (including the Work as required in the Notice of Approval Conditions and the Site Plan Agreement, but, for greater certainty, excludes the Settlement Approval Order).

**Development Breach**

Development Breach has the meaning set out in the Development Contract.

**Development Contract**

The Development Contract between the Owner and the Contractor dated the date of this Contract.

**Development Costs**

Development Costs has the meaning set out in the Development Contract.

**Development Services**

Development Services has the meaning set out in the Development Contract.

**Dispute Work Order**

Dispute Work Order has the meaning set out in paragraph 6.2.8.4 of GC 6.2 – CHANGE ORDERS and paragraph 7.1.6.4 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER.

**Draft Application for Payment**

A Draft Application for Payment has the meaning set out in paragraph 5.3.1 of GC 5.3 – PROGRESS PAYMENT.

**Draft Application for Final Payment**

Draft Application for Final Payment has the meaning set out in paragraph 5.7.2 of GC 5.7 – FINAL PAYMENT.

**Draft Project Monitor's Final Payment Verification**

Draft Project Monitor's Final Payment Verification has the meaning set out in paragraph 5.7.3.4 of GC 5.7 – FINAL PAYMENT.

**Draft Project Monitor's Payment Verification**

A Draft Project Monitor's Payment Verification has the meaning set out in paragraph 5.3.2.4 of GC 5.3 – PROGRESS PAYMENT.

## **Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, and diagrams, including those drawings attached at SCHEDULE "A": LIST OF REPORT AND DRAWINGS.

## **Early Unit Occupancy**

Early Unit Occupancy has the meaning set out in paragraph 5.6.1 of GC 5.6 – EARLY UNIT OCCUPANCY.

## **Early Unit Occupancy Conditions**

Early Unit Occupancy Conditions means, with respect to a Unit, the Unit Occupancy Conditions, any additional conditions for early occupancy set out in the applicable New APS, and any conditions for early occupancy set out in GC 5.6 – EARLY UNIT OCCUPANCY.

## **Event of Default**

An Event of Default means the occurrence of a Major Event of Default or Minor Construction Breach.

## **Final Application for Payment**

A Final Application for Payment has the meaning set out in paragraph 5.3.3 of GC 5.3 – PROGRESS PAYMENT.

## **Final Application for Final Payment**

Final Application for Final Payment has the meaning set out in paragraph 5.7.4 of GC 5.7 – FINAL PAYMENT.

## **Final Project Monitor's Final Payment Verification**

Final Project Monitor's Final Payment Verification has the meaning set out in paragraph 5.7.5.1 of GC 5.7 – FINAL PAYMENT.

## **Final Project Monitor's Payment Verification**

A Final Project Monitor's Payment Verification has the meaning set out in paragraph 5.3.4.1 of GC 5.3 – PROGRESS PAYMENT.

## **Fixed Price**

The Fixed Price is the amount stipulated in paragraph 4.1.1 of Article A-4 of the Agreement - CONTRACT PRICE.

## **Funding Breach**

Funding Breach means the failure of the Contractor to fund any Cost Overrun as required under the Cost Overrun Guarantee or to fund the amounts required under provisions of this Contract, including the requirement to fund Geothermal Systems Costs in accordance with GC 3.14 – HEATING, VENTILATION AND AIR CONDITIONING SYSTEM, paragraph 6.2.8 of GC 6.2 – CHANGE ORDER, paragraphs 7.1.6 or 7.1.7 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER or amounts required under Section 4.2(h) or 7.1(e) and (f) of the Development Contract.

**Funding Failure**

Funding Failure has the meaning set out in paragraph 7.1.8 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER.

**General Conditions**

The General Conditions are the general conditions of this Contract.

**Geo-thermal System**

The Geo-thermal System has the meaning set out in paragraph 3.14.1 of GC 3.14 – HEATING, VENTILATION AND AIRCONDITIONING SYSTEM.

**Geo-thermal System Costs**

The Geo-thermal System Costs has the meaning set out in paragraph 3.14.5 of GC 3.14 – HEATING, VENTILATION AND AIRCONDITIONING SYSTEM.

**Geo-thermal System Requirements**

The Geo-thermal System Requirements are the requirements set out in paragraph 3.14.1 of GC 3.14 – HEATING, VENTILATION AND AIRCONDITIONING SYSTEM.

**Geo-thermal System Work**

The work and services relating to the Geo-thermal System as described in GC 3.14 – HEATING, VENTILATION AND AIRCONDITIONING SYSTEM including, if applicable, the de-commissioning of the existing Geo-thermal System and installation of a Replacement HVAC System.

**Initial Change Orders**

Initial Change Orders means, collectively, the Change Orders dated as of the date of this Contract relating to Latent Defects known by the parties of the date of this Contract, including those discovered as a result of the Latent Defect Pre-Testing and the Change Order(s) relating to the Geo-thermal System Work.

**Latent Defect**

Latent Defect has the meaning set out in paragraph 6.4.1 of GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS.

**Latent Defect Pre-Testing**

The Latent Defect Pre-Testing is the testing and investigation for Latent Defects conducted by or on behalf of the Contractor prior to the date of this Contract.

**Lien Act**

The Lien Act refers to the *Construction Lien Act* (Ontario).

**Lien Claim**

Lien Claim has the meaning set out in paragraph 13.1.1 of GC 13 – LIEN CLAIMS.

## **Losses**

Losses has the meaning set out in the Development Contract.

## **Major Construction Breach**

Major Construction Breach means if:

- a Construction Breach occurs; and
- except in the case of a Construction Breach relating to GC 7.1.6, the Contractor has failed to cure such Construction Breach within ten (10) Days after receipt of a notice of such breach from the Owner, or, provided that such breach is capable of being cured, but not within such ten (10) Day period, the Contractor has failed to cure such Construction Breach within such longer period of time as has been determined by the Project Monitor in its reasonable discretion based on the nature of the breach, or the Contractor has failed to make bona fide and diligent attempts to cure such breach within such longer period of time; and
- the expected or budgeted cost of remedying such Construction Breach is individually greater than the Craft Cash Collateral Amount at such time, or the aggregate amount of the cost of remedying such Construction Breach plus (a) the cost of remedying all other outstanding Construction Breaches at such time that have not been remedied or cured, plus (b) the cost of remedying all outstanding Development Breaches at such time that have not been remedied or cured, plus (c) the amount of all outstanding Funding Breaches, is greater than the Craft Cash Collateral Amount at such time; provided that the cost of remedying Construction Breaches and Development Breaches shall be as determined by the Project Monitor, acting reasonably.

## **Major Event of Default**

Major Event of Default has the meaning set out in GC 7.1.1.

## **Minor Construction Breach**

Minor Construction Breach means if:

- a Construction Breach occurs; and
- except in the case of a Construction Breach relating to GC 7.1.6, the Contractor has failed to cure such Construction Breach within ten (10) Days after receipt of a notice of such breach from the Owner, or, provided that such breach is capable of being cured, but not within such ten (10) Day period, the Contractor has failed to cure such Construction Breach within such longer period of time as has been determined by the Project Monitor in its reasonable discretion based on the nature of the breach, or the Contractor has failed to make bona fide and diligent attempts to cure such breach within such longer period of time; and
- the expected or budgeted cost of remedying such Construction Breach is individually equal to or less than the Craft Cash Collateral Amount at such time, or the aggregate amount of the cost of remedying such Construction Breach plus (a) the cost of remedying all other outstanding Construction Breaches at such time that have not been remedied or cured, plus (b) the cost of remedying all outstanding Development Breaches at such time that have not been remedied or cured, plus (c) the amount of all outstanding Funding Breaches, is equal to or less than the Craft Cash Collateral Amount at such time; provided that the cost of remedying Construction Breaches and Development Breaches shall be as determined by the Project Monitor, acting reasonably.

## **New APS**

New APS has the meaning set out in the Development Contract.

### **New Purchaser**

The New Purchaser refers to any Unit Owner other than an Opt-In Leslieville Purchaser.

### **Notice in Writing**

A Notice in Writing, where identified in the Contract Documents, is a written communication between the parties or between them and the Consultant and/or the Project Monitor, as applicable, that is transmitted in accordance with the provisions of Article A-6 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

### **Notice of Approval Conditions**

The Notice of Approval Conditions refers to the Notice of Approval Conditions issued by the City of Toronto to Urbancorp Communities Inc. on January 25, 2016 in respect of Site Plan Control Application No. 11154637 STE 30 SA, a copy of which is attached as Schedule "J".

### **OHSA**

OHSA is the *Occupational Health and Safety Act* (Ontario).

### **Ontario New Home Warranty Plan**

The Ontario New Home Warranty Plan means the Ontario New Home Warranty Plan as defined in the *Ontario New Home Warranty Plan Act* (Ontario).

### **Opt-In Leslieville Purchasers**

Opt-In Leslieville Purchasers has the meaning set out in the Settlement Approval Order as of the date it was granted.

### **Opt-In Units**

Opt-In Units has the meaning set out in paragraph GC 3.8.5 of GC 3.8 – LABOUR AND PRODUCTS.

### **Outside Date**

The Outside Date has the meaning set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK.

### **Owner**

The Owner is the person or entity identified as such in the preamble of the Agreement. The term Owner means the Owner or the Owner's authorized agent or representative as designated to the Contractor in writing, but does not include the Consultant.

### **Owners Security**

The Owners Security has the meaning set forth in the Development Contract.

### **PDI Inspection Deficiency**

A PDI Inspection Deficiency is a deficiency, or any item in a Unit that is damaged, incomplete, missing or not operating properly as stated in the PDI Inspection Form; provided that, if the Contractor and the Unit Owner do not agree that an item is deficient, damaged, incomplete, missing or not operating properly, such item will be considered a PDI Inspection Deficiency if Tarion, pursuant to a conciliation inspection, finds, or, if the Unit Owner appeals Tarion's finding, the License Appeal Tribunal determines that such item is deficient, damaged, incomplete, missing

or not operating properly, in which case the Contractor shall pay the costs and charges of or related to such conciliation and/or appeal if required.

**PDI Inspection Form**

The PDI Inspection Form refers to the pre-delivery inspection form together with the Certificate of Completion and Possession prepared under and in accordance with the Ontario New Home Warranty Plan with respect to each Unit.

**Place of the Work**

The Place of the Work is the designated site or location of the Work identified in the Contract Documents.

**Prime Consultant**

The Prime Consultant has the meaning set out in paragraph 1.1 of Article A-1 of the Agreement – THE WORK.

**Prior Work**

The Prior Work is any construction work or services performed by parties other than the Contractor or the Builder prior to the date of this Contract.

**Product**

Product or Products means material, machinery, equipment, and fixtures forming the Work, but does not include Construction Equipment.

**Project**

The Project means the 55 unit low-rise residential condominium development, comprising four blocks (Block 100 with 14 units; Block 200 with 8 units; Block 300 with 14 units; and Block 500 with 19 units), with one level of underground parking, and associated site works, common area works, infrastructure, site servicing and landscaping, as well as a geo-thermal component, including the total construction contemplated of which the Work may be the whole or a part.

**Project Monitor**

The Project Monitor has the meaning set out in Article A-1.

**Project Monitor's Holdback Verification**

The Project Monitor's Holdback Verification has the meaning set out in paragraph 5.5.2.1 of GC 5.2 – PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK.

**Project Monitor's Substantial Performance Verification**

The Project Monitor's Substantial Performance Verification has the meaning set out in paragraph 5.4.4.3 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK.

**Project Monitor's Final Payment Verification**

The Project Monitor's Final Payment Verification has the meaning set out in paragraph 5.7.5.1 of GC 5.7 – FINAL PAYMENT.

**Project Work**

The Project Work is all of the construction work and services required for and relating to the Project, including the Work and the Prior Work.

**Provide**

Provide means to supply and install.

**Punchlist**

The Punchlist has the meaning set out in paragraph 5.4.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK.

**Replacement HVAC System**

The Replacement HVAC System has the meaning set out in paragraph 3.14.1 of GC 3.14 – HEATING, VENTILATION AND AIRCONDITIONING SYSTEM.

**Requested Work**

Requested Work has the meaning set out in paragraph 6.2.8.2 of GC 6.2 – CHANGE ORDERS.

**Schedule of Values**

The Schedule of Values is the schedule of values attached as Schedule “T”.

**Scheduled Substantial Performance Date**

The Scheduled Substantial Performance Date has the meaning set out in paragraph 1.3 of Article A-1 of the Agreement – THE WORK.

**Settlement Approval Order**

Settlement Approval Order means the order to be granted by the Ontario Court of Justice (Commercial List) in the UC Receivership Proceedings which will approve the arrangements among Urbancorp Developments (Leslieville) Inc. and the Stakeholders (as defined in the Development Contract) with respect with the Project, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to those parties.

**Shop Drawings**

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, Product data, and other data which the Contractor provides to illustrate details of portions of the Work.

**Site Plan Agreement**

The Site Plan Agreement is the Site Plan Agreement to be entered into between Urbancorp (Leslieville) Developments Inc. and the City of Toronto, as may be amended from time to time, the current draft copy of which is attached as Schedule “K”.

### **Specifications**

The Specifications are that portion of the Contract Documents, wherever located and whenever issued, consisting of the written requirements and standards for Products, systems, workmanship, quality, and the services necessary for the performance of the Work.

### **Statutory Declaration**

A Statutory Declaration is a statutory declaration substantially in the form set out in Exhibit 1 of Schedule “N”.

### **Subcontractor Payment Confirmation**

A Subcontractor Payment Confirmation is a payment confirmation signed by each Subcontractor or Supplier of the Contractor and each subcontractor or supplier of the Builder substantially in the form set out in Exhibit 10 of Schedule “N”.

### **Subcontractor**

A Subcontractor is a person or entity having a direct contract with the Contractor to perform a part or parts of the Work at the Place of the Work.

### **Substantial Performance of the Work**

Substantial Performance of the Work has the meaning given to that term in paragraph 5.4.1 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK.

### **Supplemental Instruction**

A Supplemental Instruction is an instruction, not involving adjustment in the Contract Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models or written instructions, consistent with the intent of the Contract Documents. It is to be issued by the Consultant to supplement the Contract Documents as required for the performance of the Work.

### **Supplier**

A Supplier is a person or entity having a direct contract with the Contractor to supply Products.

### **Syndicate**

The Syndicate refers to Canadian Imperial Bank of Commerce, Laurentian Bank of Canada and Canadian Western Bank as lenders under the Syndicate Construction Loan Agreement, or their assignees, as represented by the Administrative Agent.

### **Syndicate Construction Loan Agreement**

The Syndicate Construction Loan Agreement is the loan agreement made as of the date of this Contract, between the Construction Receiver (as borrower), the Administrative Agent, the Syndicate (as lenders), in the initial principal amount of \$4,500,000, as such agreement may be amended and supplemented from time to time.

### **Tarion**

Tarion is Tarion Warranty Corporation.



### **Tarion 60 Day Report**

Tarion 60 Day Report refers to each 60 Day Report Form to be submitted to Tarion in accordance with Bulletin 19R under the Ontario New Home Warranty Plan.

### **Tarion Bulletin 19 Report**

The Tarion Bulletin 19 Report refers to the Builder Bulletin Report 19R Final Report to be submitted to Tarion under the Ontario New Home Warranty Plan.

### **Tarion ONHWP Deficiencies**

Tarion ONHWP Deficiencies refers to any deficiency reported in a Tarion 60 Day Report or a Tarion Bulletin 19 Report.

### **Technical Audit**

The Technical Audit is an audit performed by applicable independent experts on behalf of the Contractor with respect to the same elements of the Project as those covered by a performance audit required under section 44 of the *Condominium Act* (Ontario).

### **Technical Audit Deficiencies**

The Technical Audit Deficiencies refers to any deficiency reported in a Technical Audit.

### **Temporary Work**

Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding Construction Equipment, required for the execution of the Work but not incorporated into the Work.

### **Termination Notice**

A Termination Notice is a Notice in Writing providing notice of termination delivered by the Owner under paragraph 7.1.3.8 or 7.1.9 of GC 7.1 – SUSPENSION OR TERMINATION BY OWNER, or by the Contractor under paragraph 7.2.1 of GC 7.2 – SUSPENSION OR TERMINATION BY CONTRACTOR or by the Owner under paragraph 11.1.9.1 of GC 11.1 - INSURANCE.

### **Terra Firma**

Terra Firma is Terra Firma Capital Corporation.

### **Total Performance of the Work**

Total Performance of the Work has the meaning given to that term in paragraph 5.7 of GC 5.7 – FINAL PAYMENT.

### **UC Beach**

UC Beach means Urbancorp (The Beach) Developments Inc.

### **UC Riverdale**

UC Riverdale means Urbancorp (Riverdale) Developments Inc.

### **UC Receivership Proceedings**

The receivership proceedings commenced in the Ontario Superior Court of Justice [Commercial List] under Court File No. CV-16-11409-00CL pursuant to which Alvarez & Marsal Canada Inc. was appointed as receiver and manager and as construction lien trustee of all of the assets, undertakings, and property acquired for, or used in relation to the business of, among others, Urbancorp Developments (Leslieville) Inc.

### **Unit**

Unit has the meaning given to such term in the Development Contract.

### **Unit Completion**

Unit Completion means, with respect to a Unit:

1. the Work for such Unit is complete, other than minor deficiencies;
2. an occupancy permit has been issued by the City of Toronto; and
3. all requirements for occupancy under the applicable New APS have been satisfied.

### **Unit Occupancy Conditions**

Unit Occupancy Conditions means, with respect to a Unit, the conditions required to be satisfied to permit occupancy of the Unit by the applicable Unit Owner, including to the following:

1. the Work has attained Unit Completion;
2. the PDI Inspection Form has been issued, and all PDI Inspection Deficiencies reported in the PDI Inspection Form have been repaired or replaced or the Consultant has provided the Owner and the Project Monitor with a certificate certifying that funds have been deposited with, or withheld by, the Owner or alternative security has been provided by the Contractor that are sufficient to repair or replace such PDI Inspection Deficiencies; and
3. all insurance required under the applicable New APS have been obtained.

### **Unit Occupancy Date**

Unit Occupancy Date means, with respect to a Unit, the date the Unit has satisfied all of the Unit Occupancy Conditions and the Unit is actually occupied by the applicable Unit Owner, including any early occupancy permitted in accordance with GC 5.6 – EARLY UNIT OCCUPANCY.

### **Unit Owner**

Unit Owner means the residential owner or purchaser of a Unit.

### **Value Added Taxes**

Value Added Taxes means such sum as shall be levied upon the Contract Price by the Federal or any Provincial or Territorial Government and is computed as a percentage of the Contract Price and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the Contractor by the tax legislation.

### **Waterfall**

Waterfall has the meaning set forth in the Development Contract.

**Work**

The Work means the total construction and related services required to complete the construction of 55 townhomes at 50 Curzon Street, Toronto and by the Contract Documents, including the work and services described in paragraph 1.1 of Article A-1 of the Agreement – THE WORK.

**Working Day**

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the Place of the Work.

Capitalized terms used but not defined in the Contract have the meanings given to those terms in the Development Contract. Terms and provisions of this Contract will be interpreted in accordance with Section 2 of Schedule 1 of the Development Contract.

## **GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**

### **PART 1 GENERAL PROVISIONS**

#### **GC 1.1 CONTRACT DOCUMENTS**

- 1.1.1 The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work by the Contractor in accordance with these documents. It is not intended, however, that the Contractor shall supply products or perform work not consistent with, not covered by, or not properly inferable from the Contract Documents.
- 1.1.2 Nothing contained in the Contract Documents shall create any contractual relationship between:
- .1 the Owner and the Consultant, a Subcontractor, a Supplier, or their agent, employee, or other person performing any portion of the Work; and
  - .2 the Project Monitor and the Contractor, the Consultant, a Subcontractor, a Supplier, or their agent, employee, or other person performing any portion of the Work.
- 1.1.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.1.5 References in the Contract Documents to the singular shall be considered to include the plural as the context requires.
- 1.1.6 Neither the organization of the Specifications nor the arrangement of Drawings shall control the Contractor in dividing the Work among Subcontractors and Suppliers.
- 1.1.7 If there is a conflict within the Contract Documents:
- .1 the order of priority of documents, from highest to lowest, shall be
    - the Settlement Approval Order
    - the Agreement between the Owner and the Contractor,
    - the Definitions,
    - the General Conditions,
    - the Schedules to the Agreement
    - the Notice of Approval Conditions
    - the Site Plan Agreement
    - Division 1 of the Specifications,
    - technical Specifications,
    - material and finishing schedules,
    - the Drawings.
  - .2 Drawings of larger scale shall govern over those of smaller scale of the same date.
  - .3 dimensions shown on Drawings shall govern over dimensions scaled from Drawings.
  - .4 later dated documents shall govern over earlier documents of the same type.
- 1.1.8 Specifications, Drawings, models, and copies thereof furnished by the Consultant are and shall remain the Consultant's property, with the exception of the signed Contract sets, which shall belong to each party to

the Contract. All Specifications, Drawings and models furnished by the Consultant are to be used only with respect to the Work and are not to be used on other work. The Contractor grants to the Owner a perpetual royalty-free license to use all such Specifications, Drawings, models and copies, and any other documents, information, plans, designs, or intellectual property developed in relation to the Project by the Contractor, the Consultant or any Subcontractor for the purposes of completing the Project.

- 1.1.9 Models furnished by the Contractor at the Owner's expense are the property of the Owner.
- 1.1.10 The execution of the Contract by the Owner (and its covenants and obligations hereunder) are conditional on the granting of the Settlement Approval Order, the "Effective Date" (as defined therein) having occurred, and such order being final and non-appealable and if such order is appealed, such appeal is withdrawn or determined in favour of the Construction Receiver.
- 1.1.11 The obligations of the parties hereunder are subject to the following conditions precedent (the "**Conditions Precedent**"): (a) the execution and delivery of the Development Contract and such contract being in full force and effect, and (b) satisfaction of the conditions precedent set out in Section 9.1 of the Development Contract, other than Section 9.1(a). The conditions set forth in this GC 1.1.11 are inserted for the benefit of both parties and may only be waived by agreement of both parties, whether in whole or in part (with or without terms or conditions).

If the conditions set forth in Sections 1.1.10 and 1.1.11 are not satisfied (or waived by the parties) on or before the CP Outside Date, then this Contract shall be automatically terminated and of no force and effect.

## **GC 1.2 LAW OF THE CONTRACT**

- 1.2.1 The law of the Place of the Work shall govern the interpretation of the Contract.

## **GC 1.3 RIGHTS AND REMEDIES**

- 1.3.1 Except as expressly provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by Laws.
- 1.3.2 No action or failure to act by the Owner, Consultant, the Project Monitor or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **GC 1.4 ASSIGNMENT**

- 1.4.1 Subject to paragraph 1.4.2, neither party to the Contract shall assign the Contract or a portion thereof without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 1.4.2 The Owner is permitted to assign all or any part of the Contract to lenders as security or a replacement receiver or trustee in bankruptcy without the consent of the Contractor and is also permitted to assign the warranties under this Contract without the consent of the Contractor as provided in paragraph 12.3.9 in GC 12.3 – WARRANTY.

## **GC 1.5 CONFIDENTIALITY**

- 1.5.1 The parties to the Contract shall keep confidential all matters respecting technical, commercial and legal information, documents and agreement relating to or arising out of the Contract, and shall not disclose such matters, without the prior written consent of the other parties to the Contract in accordance with the confidentiality provisions set out in the Development Contract.

**GC 1.6 CONDUCT OF PARTIES**

1.6.1 The Parties agree to perform their respective obligations under this Contract honestly and in good faith and will use commercially reasonable efforts to fulfill their respective obligations to provide any approvals, consents or determination of, or satisfaction with, matters without undue delay (taking into account all of the circumstances). The Parties recognize and agree that time is of the essence in this Contract.

**PART 2 ADMINISTRATION OF THE CONTRACT**

**GC 2.1 AUTHORITY OF THE CONSULTANT**

2.1.1 The Consultant will have authority to act on behalf of the Contractor only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in paragraph 2.1.2.

2.1.2 The duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of the Owner, the Contractor and the Consultant.

2.1.3 If the Consultant's employment is terminated, the Contractor shall immediately appoint or reappoint a replacement Consultant and the status of the terminated Consultant under the Contract Documents shall be that of the former Consultant. The Contractor shall provide written notice to the Owner of the termination of each Consultant and the appointment of a replacement Consultant; provided that the prior written approval of the Owner shall be required with respect to any replacement Consultant that had not been a consultant to UC Leslieville for the Project.

**GC 2.2 ROLE OF THE CONSULTANT**

2.2.1 The Prime Consultant will provide administration of the Contract as described in the Contract Documents.

2.2.2 The Prime Consultant will visit the Place of the Work at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Contract Documents.

2.2.3 The Prime Consultant will provide at the Place of the Work, one or more project representatives to assist in carrying out the Consultant's responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the Contractor.

2.2.4 The Prime Consultant will promptly inform the Owner and the Project Monitor of the date of receipt of the Contractor's Applications for Payment as provided in paragraph 5.3.1 of GC 5.3 - PROGRESS PAYMENT.

2.2.5 Based on the Prime Consultant's observations and evaluations of the Contractor's Applications for Payment, the Prime Consultant will determine the amounts owing to the Contractor under the Contract and will issue the Consultant's Payment certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT and GC 5.7 - FINAL PAYMENT.

2.2.6 The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents.

2.2.7 Matters in question relating to the performance of the Work or the interpretation of the Contract Documents shall be initially referred in writing to the Consultant and the Project Monitor by the party raising the question for interpretations and findings and copied to the other party.

- 2.2.8 Interpretations and findings of the Consultant shall be consistent with the intent of the Contract Documents. In making such interpretations and findings the Consultant will not show partiality to either the Owner or the Contractor.
- 2.2.9 The Consultant's interpretations and findings will be given in writing to the parties as soon as practicable.
- 2.2.10 [INTENTIONALLY DELETED].
- 2.2.11 The Consultant will have authority to reject Project Work which in the Consultant's opinion does not conform to the requirements of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of Project Work, whether or not such work is fabricated, installed or completed. However, neither the authority of the Consultant to act nor any decision either to exercise or not to exercise such authority, or to accept or reject any Project Work, shall give rise to any duty or responsibility of the Consultant to the Owner, Subcontractors, Suppliers, or their agents, employees, or other persons performing any of the Work.
- 2.2.12 Notwithstanding paragraph 2.2.11, if under paragraph 2.2.11 the Consultant rejects any Project Work that is Prior Work ("**Rejected Prior Work**"), then the Contractor shall correct and repair or replace such Rejected Prior Work as part of the Work, provided that the costs of correction and repair or replacement:
- .1 will be reimbursed in accordance with GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS if such Rejected Prior Work is a Latent Defect;
  - .2 subject to paragraph 2.2.12.3, will be reimbursed pursuant to a Change Order in accordance with GC 6.2 – CHANGE ORDER if the Project Monitor concludes, acting reasonably, that the defect or deficiency in such Rejected Prior Work is not a Latent Defect and could not have been identified by the Contractor in its inspections and due diligence of the Prior Work in calculating the Fixed Price; or
  - .3 will not be reimbursed if the Project Monitor concludes, acting reasonably, that the defect or deficiency in such Rejected Prior Work is not a Latent Defect and should have been identified by the Contractor in its inspections and due diligence of the Prior Work in calculating the Fixed Price;
- The Parties agree that the determination and conclusions of the Project Monitor pursuant to this GC 2.2.12 is final and binding on the Parties and is not subject to dispute.
- 2.2.13 During the progress of the Work, the Consultant will furnish Supplemental Instructions to the Contractor with reasonable promptness or in accordance with a schedule for such instructions agreed to by the Consultant and the Contractor.
- 2.2.14 The Consultant will review and take appropriate action upon Shop Drawings, samples and other Contractor's submittals, in accordance with the Contract Documents.
- 2.2.15 The Consultant will prepare Change Orders to be attached to the Contractor's Change Order Request that is to be approved by the Owner, and, if applicable, the Change Funder and the Project Monitor as provided in GC 6.2 - CHANGE ORDER.
- 2.2.16 The Consultant will conduct reviews of the Work to determine the date of Substantial Performance of the Work as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.17 All certificates issued by the Consultant will be to the best of the Consultant's knowledge, information and belief. By issuing any certificate, the Consultant does not guarantee the Work is correct or complete.

2.2.18 The Consultant and/or the Contractor will receive and review written warranties and related documents required by the Contract and provided by the Contractor and will forward such warranties and documents to the Project Monitor for review and acceptance.

**GC 2.3 REVIEW AND INSPECTION OF THE WORK**

2.3.1 The Owner, the Consultant and the Project Monitor shall have access to the Project Work at all times. The Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Place of the Work, the Owner, the Consultant and the Project Monitor shall be given access to such Work whenever it is in progress.

2.3.2 If Project Work is designated for tests, inspections or approvals in the Contract Documents, or by the Consultants instructions, or by the Laws or ordinances of the Place of the Work, the Contractor shall give the Consultant reasonable notification of when such Project Work will be ready for review and inspection. The Contractor shall arrange for and shall give the Consultant reasonable notification of the date and time of inspections by other authorities.

2.3.3 The Contractor shall furnish promptly to the Prime Consultant and the Project Monitor two copies of certificates and inspection reports relating to the Project Work.

2.3.4 If the Contractor covers, or permits to be covered, Project Work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such Project Work, have the inspections or tests satisfactorily completed, and make good covering Project Work.

2.3.5 The Consultant may order any portion or portions of the Project Work to be examined to confirm that such Work is in accordance with the requirements of the Contract Documents. The Contractor shall correct the Work, if required, and pay the cost of examination and correction, subject to paragraph 2.3.8.

2.3.6 The Contractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the Contract Documents to be performed by the Contractor or is designated by the Laws or ordinances applicable to the Place of the Work. For certainty, the foregoing excludes the cost of any test or inspection that is included as a Development Cost under the Development Contract.

2.3.7 The Contractor shall pay the cost of samples required for any test or inspection to be performed by the Consultant if such test or inspection is designated in the Contract Documents.

2.3.8 If the Consultant orders any portion or portions of the Project Work to be examined pursuant to paragraphs 2.3.4 and 2.3.5, and

.1 the examination uncovers a Latent Defect, then the costs of uncovering and re-covering such Project Work, and repairing the Latent Defect, will be paid in accordance with GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS;

.2 the examination uncovers a defect or deficiency in the Project Work which is not a Latent Defect, then the costs of uncovering and re-covering the Project Work, and repairing the defect or deficiency will be borne by the Contractor; and

.3 the examination does not uncover any defect or deficiency in the Project Work, then the costs of uncovering and re-covering the Project Work will be paid by the Contractor but reimbursed by the Owner from and to the extent of proceeds of sale of the Units in accordance with the Waterfall, in the same priority as the payment to the Contractor of the Craft Construction Loan.



## **GC 2.4 DEFECTIVE WORK**

- 2.4.1 The Contractor shall promptly correct defective Project Work that has been rejected by the Consultant as failing to conform to the Contract Documents whether or not the defective Project Work has been incorporated in the Work and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Contractor.
- 2.4.2 The Contractor shall make good promptly all pre-existing Project Work or other contractors' Project Work destroyed or damaged by such corrections at the Contractor's expense.
- 2.4.3 The Contractor shall not be responsible for, and the Contract Price does not include any work related to, Latent Defects, including the items listed as latent defects in Schedule "M", except in accordance with GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS.
- 2.4.4 Subject to paragraphs 2.4.3, 10.2.4 and 10.2.6, the Contractor shall be responsible for promptly correcting all defects and deficiencies if such defects and deficiencies are required to be corrected in order to comply with applicable Laws, the applicable New APS, the Early Occupancy Conditions or the Occupancy Conditions, as the case may be, prior to the applicable scheduled Unit Occupancy Date, including the defects and deficiencies existing on the Project prior to the commencement of the Work, PDI Inspection Deficiencies, Tarion ONHWP Deficiencies and Technical Audit Deficiencies.

## **PART 3 EXECUTION OF THE WORK**

### **GC 3.1 CONTROL OF THE WORK**

- 3.1.1 The Contractor shall have total control of the Work and shall effectively direct and supervise the Work so as to ensure conformity with the Contract Documents.
- 3.1.2 The Contractor shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the Work under the Contract.
- 3.1.3 The Contractor shall preserve and protect the rights of the parties under the Contract with respect to the Work to be performed by each Consultant and shall enter into a contract with each Consultant to perform the applicable aspects of the Work as provided in the Contract.
- 3.1.4 The Contractor's contract with each Consultant shall incorporate terms and conditions of the Contract Documents, insofar as they are applicable, and be in a form and substance acceptable to the Owner, acting reasonably.
- 3.1.5 The Contractor shall not be responsible to the Owner for acts and omissions of any Consultant, or of any persons directly or indirectly employed by the Consultant to the extent that the Contractor obtains the agreement of each Consultant that:
- .1 Each Consultant's services are being provided for the benefit of the Contractor, the Construction Receiver and the Owner, and the Contractor, the Construction Receiver and the Owner will be added as additional insureds under the Consultant's professional liability insurance (which liability insurance will be in scope and with limits which are satisfactory to the Owner); and
  - .2 the Contractor has assigned (and does hereby assign) its rights, interests and benefits under the Consultant's contract to the Owner.

The parties agree to co-operate in prosecuting any claim against a Consultant with respect to the services provided in connection with the Work or the Development Services.

**GC 3.2 INTENTIONALLY DELETED**

**GC 3.3 TEMPORARY WORK**

- 3.3.1 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance, and removal of Temporary Work,
- 3.3.2 The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by Law or by the Contract Documents and in all cases where such Temporary Work is of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 3.3.3 Notwithstanding the provisions of GC 3.1 - CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the Contract Documents where such Contract Documents include designs for Temporary Work or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for that part of the design or the specified method of construction. The Contractor shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Work.

**GC 3.4 DOCUMENT REVIEW**

- 3.4.1 The Contractor shall review the Contract Documents and shall report promptly to the Consultant, the Owner and the Project Monitor any error, inconsistency or omission the Contractor may discover. Such review by the Contractor shall be to the best of the Contractor's knowledge, information and belief and in making such review the Contractor does not assume any responsibility to the Owner or the Consultant for the accuracy of the review. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the Contract Documents, which the Contractor did not discover. If the Contractor does discover any error, inconsistency or omission in the Contract Documents, the Contractor shall not proceed with the Work affected until the Contractor has received corrected or missing information from the Consultant, the Owner or the Project Monitor.

**GC 3.5 CONSTRUCTION SCHEDULE & SCHEDULE OF VALUES**

- 3.5.1 Except as set out in GC 6.1 – CHANGES, 6.2 – CHANGE ORDER and 6.5 - DELAYS, the Construction Schedule can only be altered with an express written approval from the Owner in consultation with the Project Monitor. The Contractor agrees that the Construction Schedule shall give priority to the completion of all site servicing for the Project.
- 3.5.2 The Contractor shall:
  - .1 Prepare a detailed Construction Schedule and deliver it to the Owner, for the Owner's approval, within 60 days from the satisfaction or waiver by the parties of the Conditions Precedent.
  - .2 monitor the progress of the Work relative to the Construction Schedule and update the Construction Schedule on a monthly basis or as stipulated by the Contract Documents; and
  - .3 advise the Owner, the Project Monitor and the Consultant of any revisions required to the Construction Schedule as the result of extensions of the Contract Time as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.
- 3.5.3 Any adjustment to the Schedule of Values that results in an increase in the Contract Price must be requested by Contractor pursuant to a Change Order Request and approved and implemented pursuant to a Change Order in accordance with GC 6.2 – CHANGE ORDER. Any adjustment to the Schedule of Values that does not result in an increase in the Contract Price may be requested by Contractor in writing

and approved by the Project Monitor in its sole discretion and such adjustment implemented by revision to then existing Schedule of Values.

**GC 3.6 SUPERVISION**

- 3.6.1 The Contractor shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the Place of the Work while Work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.6.2 The appointed representative shall represent the Contractor at the Place of the Work. Information and instructions provided by the Consultant to the Contractor's appointed representative shall be deemed to have been received by the Contractor, except with respect to Article A-6 of the Agreement - RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

**GC 3.7 SUBCONTRACTORS AND SUPPLIERS**

- 3.7.1 The Contractor shall preserve and protect the rights of the parties under the Contract with respect to Work to be performed under subcontracts, and shall:
- .1 enter into contracts or written agreements with Subcontractors and Suppliers to require them to perform their work as provided in the Contract Documents;
  - .2 incorporate the terms and conditions of the Contract Documents into all contracts or written agreements with Subcontractors and Suppliers; and
  - .3 be as fully responsible to the Owner for acts and omissions of Subcontractors, Suppliers and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the Contractor in respect of the Work.
- 3.7.2 Prior to commencing the Work, the Contractor shall provide a written notice to Owner and the Project Monitor describing each Subcontractor and Supplier intended to be retained by the Contractor or the Builder including a brief description of the portion of the Work or Products to be performed or supplied by each such Subcontractor and Supplier. Any proposed changes to the notice shall be submitted in writing to the Owner and Project Monitor prior to the making such proposed change(s). Notwithstanding the foregoing, the Contractor must obtain the express written approval of the Owner before entering into any contract or engagement for a Consultant that was not a consultant to UC Leslieville with respect to the Project.
- 3.7.3 The Consultant or the Project Monitor may provide to a Subcontractor or Supplier information as to the percentage of the Subcontractor's or Supplier's portion of the Work which has been certified for payment.
- 3.7.4 The Contractor covenants and agrees that it is retaining the Builder to perform the Work and that the Builder is a registered builder in good standing with Tarion under the Ontario New Home Warranty Plan as required to perform the Work.

**GC 3.8 LABOUR AND PRODUCTS**

- 3.8.1 The Contractor shall provide and pay for labour, Products, tools, Construction Equipment, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the Work, all of which is included in the Contract Price.
- 3.8.2 Unless otherwise specified in the Contract Documents, Products provided shall be new, except for the Products at the Place of Work at the time of execution of the Contract. Products which are not specified shall be of a quality consistent with or better than those specified.

- 3.8.3 The Contractor shall maintain good order and discipline among the Contractor's employees engaged on the Work and shall not employ anyone on the Work not skilled in the tasks assigned.
- 3.8.4 The Contractor shall have the right to substitute other products and materials for those listed in the schedules or provided for in the plans and specifications or New APS; provided that the substituted products and materials are of a quality equal to, or better than, the products and materials so listed or so provided.
- 3.8.5 The Existing Curzon Purchasers will be entitled to purchase Units completed according to the general specifications in Schedules "A", "B-1" and "C" with only those upgrades set out in Schedules "E" or "F" for the Units set out in those schedules and the Work shall include the works and materials required in those Schedules for the Opt-In Leslieville Purchasers who enter into a New APS with the Owner for the purchase of the applicable Unit ("**Opt-In Units**").
- 3.8.6 In the case of all Units that are not Opt-In Units, the Contractor shall complete each such Unit according to the general specifications in Schedules "A", "B-2" and "C". For certainty, New Purchasers will not be offered, and shall not be entitled to, any upgrades to the features and finishes described in Schedules "A", "B-1" and "C" except to the extent Contractor is prepared to provide the same as part of the Work for the Fixed Price.
- 3.8.7 The Contractor shall have the right acting reasonably not to perform any portion(s) of the Work or for materials required in Schedules "D", "E" or "F" that may no longer be economically feasible to install or provide for any Opt-In Unit, in which case the Contractor agrees to a reduction in the Fixed Price in an amount equal to the price indicated in Schedules "D", "E" or "F" and actually paid by (or for the benefit of) the applicable Opt-In Leslieville Purchaser in respect of such works or materials to the extent such work or materials are not performed or supplied for an Opt-In Unit.

### **GC 3.9 DOCUMENTS AT THE SITE**

- 3.9.1 The Contractor shall keep one copy of current Contract Documents, submittals, reports, and records of meetings at the Place of the Work, in good order and available to the Owner, the Consultant and the Project Monitor.

### **GC 3.10 SHOP DRAWINGS**

- 3.10.1 The Contractor shall provide Shop Drawings as required in the Contract Documents and shall provide to the Project Monitor such access to, and/or copies of, Shop Drawings as may be requested by the Project Monitor from time to time.
- 3.10.2 The Contractor shall provide Shop Drawings to the Consultant to review in orderly sequence and sufficiently in advance so as to cause no delay in the Work or in the work of other contractors.
- 3.10.3 Upon request of the Contractor or the Consultant, the Contractor and Consultant shall jointly prepare a schedule of the dates for provision, review and return of Shop Drawings.
- 3.10.4 The Contractor shall provide Shop Drawings in the form specified, or if not specified, as directed by the Consultant.
- 3.10.5 Shop Drawings provided by the Contractor to the Consultant shall indicate by stamp, date and signature of the person responsible for the review that the Contractor has reviewed each one of them.
- 3.10.6 The Consultant's review is for conformity to the design concept and for general arrangement only.
- 3.10.7 Shop Drawings which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the Contractor for approval.

- 3.10.8 The Contractor shall review all Shop Drawings before providing them to the Consultant. The Contractor represents by this review that:
- .1 the Contractor has determined and verified all applicable field measurements, field construction conditions, Product requirements, catalogue numbers and similar data, or will do so; and
  - .2 the Contractor has checked and co-ordinated each Shop Drawing with the requirements of the Work and of the Contract Documents.
- 3.10.9 At the time of providing Shop Drawings, the Contractor shall expressly advise the Consultant in writing of any deviations in a Shop Drawing from the requirements of the Contract Documents. The Consultant shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The Consultant's review shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or for meeting all requirements of the Contract Documents.
- 3.10.11 The Contractor shall provide revised Shop Drawings to correct those which the Consultant rejects as inconsistent with the Contract Documents, unless otherwise directed by the Consultant. The Contractor shall notify the Consultant in writing of any revisions to the Shop Drawings other than those requested by the Consultant.
- 3.10.12 The Consultant will review and return Shop Drawings in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the Work.

### **GC 3.11 USE OF THE WORK**

- 3.11.1 The Contractor shall confine Construction Equipment, Temporary Work, storage of Products, waste products and debris, and operations of employees and Subcontractors to limits indicated by Laws, ordinances, permits, or the Contract Documents and shall not unreasonably encumber the Place of the Work.
- 3.11.2 The Contractor shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work,

### **GC 3.12 CUTTING AND REMEDIAL WORK**

- 3.12.1 Subject to GC 6.4 - LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS, the Contractor shall perform the cutting and remedial work required to make the affected parts of the Work come together properly.
- 3.12.2 The Contractor shall co-ordinate the Work to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Intentionally Deleted.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Work.

### **GC 3.13 CLEANUP**

- 3.13.1 The Contractor shall maintain the Work in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the Owner, other contractors or their employees.

- 3.13.2 Before applying for Substantial Performance of the Work as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK, the Contractor shall remove waste products and debris (other than that resulting from the work of the Owner, other contractors or their employees), and shall leave the Place of the Work clean and suitable for use or occupancy by the Owner. The Contractor shall remove products, tools, Construction Equipment, and Temporary Work not required for the performance of the remaining Work.
- 3.13.3 Prior to application for the final payment, the Contractor shall remove any remaining products, tools, Construction Equipment, Temporary Work, and waste products and debris (other than those resulting from the work of the Owner, other contractors or their employees).

#### **GC 3.14 HEATING, VENTILLATION AND AIRCONDITIONING SYSTEM**

- 3.14.1 The Work shall include the testing and investigation of the existing geothermal heating and cooling system installed at the Place of Work, including the heat pumps installed in each Unit (the “**Geo-thermal System**”) in order to determine if the Geo-Thermal System is appropriate and functioning, or can be repaired in order to be functioning, and comply with all requirements of applicable Law, the Notice of Approval Conditions, the Site Plan Agreement, the Ontario New Home Warranty Plan, the New APS and the requirements of this Contract (the “**Geo-thermal System Requirements**”). After completing such testing and investigation of the Geo-thermal System, the Contractor shall provide a Notice in Writing to the Owner and the Project Monitor indicating that:
- .1 either:
- (1) the Contractor will provide and commission the Geo-thermal System in accordance with paragraph 3.14.3; or
  - (2) in the opinion of the Contractor, acting reasonably, the Geo-thermal System cannot be made operative and/or it is more prudent or cost effective to de-commission the Geo-thermal System and the Contractor will de-commission the Geo-thermal System and install a replacement heating, ventilation and cooling system (a “**Replacement HVAC System**”) in accordance with paragraph 3.14.4; and
- .2 either:
- (1) the Contractor will be paying the Geo-thermal System Costs directly; or
  - (2) the Contractor will be increasing the amount of the Craft Loan to the Construction Receiver in an amount sufficient to finance the Geo-thermal System Costs and will be pre-funding that amount to the Construction Receiver (“**Craft Loan Option**”).
- 3.14.2 The Contractor shall submit to the Owner and the Project Monitor, with the Notice in Writing provided pursuant to paragraph 3.14.1, a Change Order Request in accordance with GC 6.2 – CHANGE ORDER, that includes the confirmation of the change to the Work based on the Contractor’s decision regarding paragraphs 3.14.1.1(1) or 3.14.1.2(2), the Contractor’s budget for the Geo-thermal System Costs and a schedule of values for such Geo-thermal System Work. The Change Order for the Geo-thermal System Work shall provide for such monthly reporting and certifications as to the progress and costs of the Geo-Thermal System Work as the Owner and the Project Monitor shall reasonably request and, in the case of the election by the Contractor of the Craft Loan Option, the basis upon which progress payments for the Geo-thermal System Costs will be made by the Owner.
- 3.14.3 If, pursuant to the Contractor’s Notice in Writing pursuant to paragraphs 3.14.1 and 3.14.2, the Contractor indicates it will provide and commission the Geo-thermal System, the Contractor will be responsible for, and the Geo-thermal System Work will include, the provision, commissioning and, if applicable, repair of

the Geo-thermal System required to ensure that the Geo-thermal System complies with all Geo-thermal System Requirements.

3.14.4 If, pursuant to the Contractor's Notice in Writing pursuant to paragraphs 3.14.1 and 3.14.2, the Contractor indicates it will de-commission the Geo-thermal System and provide a Replacement HVAC System:

- .1 the Contractor shall be responsible for, and the Geo-thermal System Work will include, the de-commissioning of the Geo-thermal System and the installation of a Replacement HVAC System that is appropriate and meets all of the Geo-thermal System Requirements (subject to any revisions or amendments to such Geo-thermal System Requirements necessary to reflect the description and the specifications required for the Replacement HVAC System, including as set out in the Notice of Approval conditions), and will proceed to perform all of the de-commissioning work required for the Geo-thermal System promptly; and
- .2 if the Replacement HVAC System is not a geo-thermal system specified in the Notice of Approval Conditions or the Site Plan Agreement, the Contractor shall apply for and obtain all required approvals for the Replacement HVAC System from the City of Toronto and related amendments to the Notice of Approval Conditions or the Site Plan Agreement.

3.14.5 The costs and expenses of providing, testing, investigating and commissioning the Geo-thermal System, including any repairs or upgrades of the Geo-thermal System, or of de-commissioning the Geo-thermal System and installing a Replacement HVAC System (the "**Geo-thermal System Costs**") are not included in the Fixed Price and are not to be included in the Contractor's Applications for Payment unless the Contractor has elected the Craft Loan Option and has pre-funded the entire amount of the Geo-thermal System Costs to the Construction Receiver. The Contractor will be responsible for the payment of all Geo-thermal System Costs as they arise and become due, and will be reimbursed for such Geo-thermal System Costs by the Owner only in accordance with this GC 3.14. The Owner will be obliged to pay the Geo-thermal System Costs (together with interest thereon at the rate of 7% per annum) to the Contractor only from the proceeds of the sale of the Geo-thermal System (if any) on first priority basis as described in Section 2.5 of the Development Contract or from the proceeds of the sales of Units with the same priority as the payment of the Craft Construction Loan in the Waterfall, whichever shall first become available or from a combination thereof.

3.14.6 The Owner shall not be obliged to pay for any Work related to the Geo-thermal System or the Replacement HVAC System except as provided under paragraphs 3.14.2 and 3.14.5.

#### **PART 4 INTENTIONALLY DELETED**

#### **PART 5 PAYMENT**

##### **GC 5.1 INTENTIONALLY DELETED**

##### **GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT**

5.2.1 Applications for Payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made monthly as the Work progresses.

5.2.2 Notwithstanding paragraph 5.3.1 of GC 5.3 – PROGRESS PAYMENT, Applications for Payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.

5.2.3 The amount claimed shall be for the value, proportionate to the amount of the Contract, of Work performed and Products delivered to the Place of the Work as of the last day of the payment period.

- 5.2.4 The Contractor and Owner agree upon the Schedule of Values for the parts of the Work, aggregating the total amount of the Contract Price, as attached as Schedule "I" so as to facilitate evaluation of Applications for Payment.
- 5.2.5 The Schedule of Values shall be used as the basis for Applications for Payment.
- 5.2.6 The Contractor shall include with the Application for Payment the following:
- .1 a statement based on the Schedule of Values confirming the Work has been completed;
  - .2 a Statutory Declaration for the Contractor and the Builder;
  - .3 a Subcontractor Payment Confirmation from each Subcontractor, and each subcontractor of the Builder;
  - .4 a clearance certificate issued by the Workplace Safety and Insurance Board indicating that the Contractor, the Builder and (for the first Application for Payment, the final Application for Payment and the Application for Holdback Payment only) each Subcontractor, and each subcontractor of the Builder is registered with, and has an account in good standing with, the Workplace Safety and Insurance Board;
  - .5 such additional documentation as may be reasonably required to be submitted with an Application for Payment under each applicable Change Order;
  - .6 updated Construction Schedule; and
  - .7 title search showing no liens registered against title to the Place of the Work.
- 5.2.7 Applications for Payment for Products delivered to the Place of the Work but not yet incorporated into the Work shall be supported by such evidence as the Consultant and/or the Project Monitor may reasonably require to establish the value and delivery of the Products.

### **GC 5.3 PROGRESS PAYMENT**

- 5.3.1 The Contractor shall submit to the Owner, the Prime Consultant and the Project Monitor, on the 25<sup>th</sup> day of each month, a draft of the Application for Payment that complies with the requirements of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENTS (the "**Draft Application for Payment**").
- 5.3.2 After receipt by the Owner, the Prime Consultant and the Project Monitor of the Draft Application for Payment, the Prime Consultant and the Project Monitor will each:
- .1 review the Draft Application for Payment and confirm to the Contractor and the Owner that the Draft Application for Payment is complete and complies with the requirements of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT, including the requirements with respect to claims for payment of amounts relating to a Change Order in accordance with GC 6.2 – CHANGE ORDER;
  - .2 either approve or reject all or a part of the Draft Application for Payment;
  - .3 in the case of the Prime Consultant, deliver to the Owner, the Contractor and the Project Monitor, the Consultant's Payment Certificate within 10 Days of receipt of the Draft Application for Payment; and
  - .4 in the case of the Project Monitor, deliver to the Owner, the Contractor and the Prime Consultant a draft verification (the "**Draft Project Monitor's Payment Verification**") within the later to occur



of 5 Days of the receipt of the Consultant's Payment Certificate and 15 Days of the receipt of the Draft Application for Payment, verifying the amount of the Draft Application for Payment that the Project Monitor determines is payable under the Contract.

- 5.3.3 After receipt by the Contractor of the Draft Project Monitor's Payment Verification, the Contractor will submit to the Owner and the Project Monitor a final Application for Payment (the "**Final Application for Payment**") for the applicable monthly payment period, including any adjustment required by the Consultant's Payment Certificate, the Draft Project Monitor's Payment Verification or both. The Contractor shall not include in the Final Application for Payment any claim for any amount not certified by both the Prime Consultant in the Consultant's Payment Certificate and the Project Monitor in the Draft Project Monitor's Payment Verification. Nothing in this paragraph 5.3.3 limits the Contractor's right to dispute any rejection by the Prime Consultant or the Project Monitor of amounts claimed in a Draft Application for Payment in accordance with Part 8 – DISPUTE RESOLUTION, and any amount subsequently determined under Part 8 – DISPUTE RESOLUTION to be owing to the Contractor as part of the Contract Price or otherwise approved by the Prime Consultant and the Project Monitor may be included in subsequent Applications for Payment.
- 5.3.4 After receipt by the Owner and the Project Monitor of a proper Final Application for Payment:
- .1 the Project Monitor will, within 7 Days of receipt of the Final Application for Payment, deliver to the Owner and the Contractor a Project Monitor's Payment Verification (the "**Final Project Monitor's Payment Verification**") verifying the amounts that the Project Monitor determines is payable under the Contract;
  - .2 if the Final Application for Payment is not complete or does not comply with the requirements of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT, including any adjustments required to be made as a result of the Consultant's Payment Certificate, the Draft Project Monitor's Payment Verification or both, the Project Monitor may reject all or part of the Final Application for Payment, and the Contractor will repeat the process of submitting a Final Application for Payment under paragraph 5.3.4; and
  - .3 the Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement - PAYMENT within 7 Days after receipt of the proper Final Application for Payment and Final Project Monitor's Payment Verification.
- 5.3.5 The Owner will only be required to pay to the Contractor amounts that have been certified by the Prime Consultant and verified by the Project Monitor, and otherwise comply with the requirements of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT and GC 5.3 – PROGRESS PAYMENT.

#### **GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK**

- 5.4.1 The Contractor will attain "**Substantial Performance of the Work**" when the following conditions have been satisfied:
- .1 the Work, including all of the construction related conditions and requirements set out in the Notice of Approval Conditions and in the Site Plan Agreement, is substantially performed in accordance with the definition of substantial performance in the Lien Act; for certainty, the balance of the conditions and requirements set out in the Notice of Approval of Conditions and in the Site Approval Agreement are part of the Development Services provided by the Contractor (as developer) under the Development Contract;
  - .2 an occupancy permit has been issued for each Unit;
  - .3 not less than 100% of the Units have attained Unit Completion;

- .4 the Contractor, the Consultant, the Owner and the Project Monitor have agreed on the Punchlist in accordance with paragraph 5.4.2; and
  - .5 the Prime Consultant has certified that the Work has attained Substantial Performance of the Work in accordance with the Contract and the Lien Act and in the form set out in Exhibit 6 of Schedule “N” (the “**Consultant’s Substantial Performance Certificate**”).
- 5.4.2 When the Contractor considers that the Work is substantially performed, the Contractor shall deliver to the Prime Consultant, the Project Monitor and the Owner a comprehensive list of deficiencies and other items to be completed or corrected (the “**Punchlist**”), which Punchlist must be approved by the Consultant and the Project Monitor acting reasonably, and shall deliver a written application for certification of Substantial Performance of the Work in accordance with paragraph 5.4.3 of this GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK and in the form set out in Exhibit 3 of Schedule “N” (the “**Application for Substantial Performance**”).
- 5.4.3 The Contractor shall include with the Application for Substantial Performance the following:
- .1 a statement based on the Schedule of Values confirming Substantial Performance of the Work has been attained;
  - .2 a Statutory Declaration for the Contractor and the Builder;
  - .3 a Subcontractor Payment Confirmation from each Subcontractor, and each subcontractor of the Builder;
  - .4 a clearance certificate issued by the Workplace Safety and Insurance Board indicating that the Contractor, the Builder and each Subcontractor, and each subcontractor of the Builder is registered with, and has an account in good standing with, the Workplace Safety and Insurance Board;
  - .5 such additional documentation as may be required to be submitted with an Application for Substantial Performance under each applicable Change Order;
  - .6 an updated Construction Schedule;
  - .7 a final list of all Change Order Requests and Change Orders; and
  - .8 the Consultant’s Substantial Performance Certificate.
- 5.4.4 After receipt by the Owner and the Project Monitor of the Application for Substantial Performance, the Project Monitor will within 5 Working Days of receipt of the Application for Substantial Performance:
- .1 review the Application for Substantial Performance and confirm to the Contractor and the Owner that the Application for Substantial Performance is complete and complies with the requirements of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK;
  - .2 either approve or reject the Application for Substantial Performance; and
  - .3 deliver to the Owner and the Contractor a verification (the “**Project Monitor’s Substantial Performance Verification**”) verifying the Application for Substantial Performance, the Consultant’s Substantial Performance Certificate and the date of Substantial Performance of the Work.
- 5.4.5 After receipt by the Owner and the Contractor of the Consultant’s Substantial Performance Certificate and the Project Monitor’s Substantial Performance Verification:

- .1 the Contractor shall publish a copy of the Consultant's Substantial Performance Certificate once in a construction trade newspaper;
- .2 where the Contractor does not publish a copy of the Consultant's Substantial Performance Certificate within 7 days of receiving a copy of such certificate, the Owner may publish the copy at the Contractor's expense; and
- .3 the Contractor, the Prime Consultant and the Project Monitor shall establish a reasonable date for finishing the Work; provided that such date shall be prior to the Outside Date.

**GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK**

- 5.5.1 After the issuance of the Project Monitor's Substantial Performance Verification, the Contractor shall submit to the Owner and the Project Monitor an Application for Payment of the holdback amount (the "**Application for Holdback Payment**"), which Application for Holdback Payment shall be substantially in the form of an Application for Payment, provided that it indicates that it is for payment of the holdback retained by the Owner under the Lien Act and includes a copy of the publication of the Consultant's Substantial Performance Certificate in accordance with paragraph 5.4.5 and all of the documents listed in paragraphs 5.2.6.2, 5.2.6.6 and 5.2.6.7 of GC 5.2 – APPLICATIONS FOR PROGRESS PAYMENT.
- 5.5.2 After the receipt of an Application for Holdback Payment from the Contractor and supporting documentation:
  - .1 the Project Monitor will, within 5 Working Days of receipt of the Application for Holdback Payment, review the Application for Holdback Payment and verify to the Contractor and the Owner that the Application for Holdback Payment is complete and complies with the requirements of GC 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, and deliver to the Owner and the Contractor a verification (the "**Project Monitor's Holdback Verification**") verifying the Application for Holdback Payment;
  - .2 if the Application for Holdback Payment is not complete or does not comply with the requirements of GC 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, the Project Monitor may reject all or part of the Application for Holdback Payment, and the Contractor will repeat the process of submitting a Application for Holdback Payment under paragraph 5.5.1; and
  - .3 the Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement - PAYMENT within 7 Working Days after the later to occur of: (a) the Application for Holdback Payment is complete or does comply with the requirements of GC 5.5 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK, (b) the Project Monitor issues the Project Monitor's Holdback Verification, and (c) the lien period applicable to the holdback has expired and the Owner is permitted to release the holdback under the Lien Act; provided that no liens have been registered against title to the Place of the Work.

**GC 5.6 EARLY UNIT OCCUPANCY**

- 5.6.1 If, prior to Total Performance of the Work, a Unit satisfies all of the Early Unit Occupancy Conditions, the Owner may, by at least 5 Working Days prior Notice in Writing, request that the Contractor permit the applicable Unit Owner to occupy that Unit ("**Early Unit Occupancy**"). For certainty, the Contractor may not permit any Early Unit Occupancy without the prior written approval of the Owner, which approval shall be in its sole discretion.
- 5.6.2 Prior to any such Early Unit Occupancy of a Unit approved by the Owner, the Contractor shall:
  - .1 provide notice to the Owner and the Project Monitor of a pre-delivery inspection;

- .2 provide access to the Unit to the applicable Unit Owner in order to participate in the pre-delivery inspection;
- .3 provide a copy of each PDI Inspection Form to the Project Monitor and the Project Monitor shall be entitled to access to the Unit to review the PDI Inspection Deficiencies and/or to participate in any pre-delivery inspection at its option; and
- .4 repair or replace all PDI Inspection Deficiencies reported in the PDI Inspection Form, unless the Project Monitor has provided the Owner with a certificate certifying that the amount set aside for deficiencies in the Schedule of Values is sufficient to pay for all of the costs of such PDI Inspection Deficiencies, or, if not, that sufficient funds or alternative security have been provided by the Contractor to the Construction Receiver for the repair or replacement of such PDI Deficiencies.

5.6.3 After any such Early Unit Occupancy of a Unit, the Contractor shall:

- .1 provide safe and secure access to the Unit and completed Common Elements to the applicable Unit Owner to the extent access to the Unit and Common Elements passes through or adjacent to the construction zone of the Place of the Work;
- .2 repair or replace all PDI Inspection Deficiencies reported in the PDI Inspection Form which were not completed prior to the date of the Early Unit Occupancy; and
- .3 no longer be responsible for the Unit except for any deficiency repair or replacement and warranty obligations as required under this Contract.

#### **GC 5.7 FINAL PAYMENT**

5.7.1 The Contractor will attain “**Total Performance of the Work**” when the following conditions have been satisfied:

- .1 the Work, including all of the construction related conditions and requirements set out in the Notice of Approval Conditions and in the Site Approval Agreement, is completed in accordance with the Lien Act;
- .2 all Units have attained Unit Completion and an occupancy permit has been issued by the City of Toronto for all Units;
- .3 the Tarion Bulletin 19 Report has been issued and a copy has been provided to the Project Monitor and the Owner;
- .4 the Technical Audit has been completed and a copy has been provided to the Project Monitor and the Owner;
- .5 all of the Punchlist work has been completed and all PDI Inspection Deficiencies, Tarion Deficiencies and Technical Audit Deficiencies have been repaired or replaced, unless the Project Monitor has provided the Owner with a certificate certifying that the amount set aside for deficiencies in the Schedule of Values is sufficient to pay for all of the costs of such deficiencies, or, if not, that sufficient funds or alternative security have been provided by the Contractor to the Construction Receiver to complete all such work; and
- .6 the Prime Consultant has certified that the Work has attained Total Performance of the Work in accordance with the Contract and the Lien Act and in the form set out in Exhibit 7 of Schedule “N” (the “**Consultant’s Final Payment Certificate**”).

- 5.7.2 The Contractor shall submit to the Owner, the Prime Consultant and the Project Monitor a draft application for final payment substantially in the form set out in Schedule “N” (the “**Draft Application for Final Payment**”) the following:
- .1 a written application for final payment stating the final balance of the Contract Price to be paid by the Owner under the Contract;
  - .2 a Statutory Declaration for the Contractor and the Builder;
  - .3 a Subcontractor Payment Confirmation from each Subcontractor, and each subcontractor of the Builder;
  - .4 a clearance certificate issued by the Workplace Safety and Insurance Board indicating that the Contractor, the Builder and each Subcontractor, and each subcontractor of the Builder is registered with, and has an account in good standing with, the Workplace Safety and Insurance Board;
  - .5 such additional documentation as may be required to be submitted with an Application for Final Payment under each Change Order;
  - .6 final Construction Schedule; and
  - .7 title search showing no liens registered against title to the Place of the Work.
- 5.7.3 After receipt by the Owner and the Project Monitor of the Draft Application for Final Payment, the Prime Consultant and the Project Monitor will:
- .1 review the Draft Application for Final Payment and confirm to the Contractor and the Owner that the Draft Application for Final Payment is complete and complies with the requirements of GC 5.7 – FINAL PAYMENT;
  - .2 either approve or reject all or a part of the Draft Application for Final Payment;
  - .3 in the case of the Prime Consultant, deliver to the Owner, the Contractor and the Project Monitor, the Consultant’s Final Payment Certificate within 10 Days of the receipt of the Draft Application for Final Payment; and
  - .4 in the case of the Project Monitor, deliver to the Owner, the Contractor a draft verification (the “**Draft Project Monitor’s Final Payment Verification**”) within the later to occur of 5 Days of the receipt of the Consultant’s Final Payment Certificate and 15 Days of the receipt of the Draft Application for Final Payment verifying the amount of the Draft Application for Final Payment that the Project Monitor determines is payable under the Contract.
- 5.7.4 After receipt by the Contractor of the Draft Project Monitor’s Final Payment Verification, the Contractor will submit to the Owner and the Project Monitor a final Application for Final Payment (the “**Final Application for Final Payment**”) for the balance of the Contract Price not paid, including any adjustment required by the Consultant’s Final Payment Certificate, the Draft Project Monitor’s Final Payment Verification or both. The Contractor shall not include in the Final Application for Final Payment any claim for any amount not certified by both the Consultant in the Consultant’s Final Payment Certificate and the Project Monitor in the Draft Project Monitor’s Final Payment Verification. Nothing in this paragraph 5.7.4 limits the Contractor’s right to dispute any rejection by the Project Monitor of amounts claimed in a Draft Application for Final Payment in accordance with Part 8 – DISPUTE RESOLUTION, and any amount subsequently determined under Part 8 – DISPUTE RESOLUTION to be owing to the Contractor as part of the Contract Price or otherwise approved by the Project Monitor will be paid in accordance with Part 8 – DISPUTE RESOLUTION.

5.7.5 After receipt by the Owner and the Project Monitor of a proper Final Application for Final Payment:

- .1 the Project Monitor will, within 7 Days of receipt of the Final Application for Final Payment, deliver to the Owner and the Contractor a Project Monitor's Final Payment Verification (the "**Final Project Monitor's Final Payment Verification**") verifying the amounts that the Project Monitor determines is payable under the Contract;
- .2 if the Final Application for Final Payment is not complete and does not comply with the requirements of GC 5.7 – FINAL PAYMENT, including any adjustments required to be made as a result of the Consultant's Final Payment Certificate, the Draft Project Monitor's Final Payment Certificate or both, the Project Monitor may reject all or part of the Final Application for Final Payment, and the Contractor will repeat the process of submitting a Final Application for Final Payment under paragraph 5.7.4; and
- .3 the Owner shall make payment to the Contractor on account as provided in Article A-5 of the Agreement - PAYMENT on or before 7 Days after receipt of the proper Final Application for Final Payment and Final Project Monitor's Final Payment Verification.

5.7.6 The Owner will only be required to pay to the Contractor amounts that have been certified by the Consultant and verified by the Project Monitor, and otherwise comply with the requirements of GC 5.7 – FINAL PAYMENT.

#### **GC 5.8 WITHHOLDING OF PAYMENT**

5.8.1 If because of climatic or other conditions reasonably beyond the control of the Contractor, there are items of Work that cannot be performed, payment in full for that portion of the Work which has been performed as certified by the Consultant and verified by the Project Monitor shall not be withheld or delayed by the Owner on account thereof, but the Owner may withhold, until the remaining portion of the Work is finished, only such an amount that the Consultant and the Project Monitor determines is sufficient and reasonable to cover the cost of performing such remaining work.

5.8.2 Notwithstanding any other provision of this Contract, the Owner or the Project Monitor may decline to approve an Application for Payment or an Application for Final Payment or may make an allowance or adjustment for, or allow the Owner a set-off or credit for, or the Owner may withhold (each such instance, a "**Withholding**") any amount as may be necessary to protect the Owner from claims or loss on account of:

- .1 non-conforming or defective Work, which is not rectified or remedied in accordance with the Contract;
- .2 any holdback required under Lien Act;
- .3 failure of the Contractor to fulfil its obligations in respect of claims for lien in accordance with Part 13 – LIEN CLAMS;
- .4 failure of the Contractor to make any payment promptly when due to Subcontractors performing part of the Work provided the Owner has made all payments to Contractor under the Contract; and
- .5 failure by the Contractor to provide any report deliverable in accordance with the Contract Documents.

5.8.3 When the Contractor has remedied the cause of the Withholding and has furnished evidence satisfactory to the Project Monitor and the Owner of such remedy, the amount of the Withholding will be released.

## **GC 5.9 NON-CONFORMING WORK**

- 5.9.1 No payment by the Owner under the Contract nor partial or entire use or interim or other occupancy of the Work by any purchasers of the Units or the Owner or the sale of the Units by the Owner shall constitute an acceptance of any portion of the Work or Products which are not in accordance with the requirements of the Contract Documents.

## **PART 6 CHANGES IN THE WORK**

### **GC 6.1 CHANGES**

- 6.1.1 The Owner and the Contractor shall agree in writing to any changes to the Contract.
- 6.1.2 The Contractor shall not perform a change in the Work without a Change Order. The parties agree that no change in the Contract Price, the Fixed Price, the Schedule of Values, the Contract Time, the Construction Schedule, the Scheduled Substantial Performance Date or the Outside Date will be claimed or accepted except in accordance with GC 6.1 – CHANGES, GC 6.2 – CHANGE ORDER, GC 3.5.3 (SCHEDULE OF VALUES) and GC 6.5 (DELAY), as applicable. This requirement is of the essence in this Contract.
- 6.1.3 A Change Order is not valid or binding unless signed by the Owner, the Contractor and, if applicable, the Change Funder, and approved by the Project Monitor, in accordance with GC 6.2 – CHANGE ORDER; provided that if, pursuant to GC 8.2 – NEGOTIATION AND MEDIATION, the parties agree or an arbitrator determines, the parties' approval of, and signature on, such Change Order will be deemed to have been provided.

### **GC 6.2 CHANGE ORDER**

- 6.2.1 When any change to the Work, the Contract Price, the Fixed Price, the Schedule of Values, the Contract Time, the Construction Schedule, the Scheduled Substantial Performance Date or the Outside Date is required under this Contract by the Contractor, including in relation to a Latent Defect or the Geo-thermal System, the Contractor shall deliver a written request for a Change Order substantially in the form set out in Exhibit 8 of Schedule "N" (a "**Change Order Request**") to the Owner, the Project Monitor and, if the requested change requires an increase in the Contract Price, the Change Funder and the Administrative Agent, which Change Order Request will include the following:
- .1 a copy of the draft Change Order prepared by the Consultant;
  - .2 a description of the proposed change;
  - .3 either (a) a method of adjustment for the Contract Price together with a maximum price for adjustment, or (b) a fixed amount of adjustment for the Contract Price for the proposed change (in either case, a "**Change Price**"), and in either case including Value Added Taxes and together with a schedule of values indicating the payment schedule for such Change Price, the method and timing of payments of the Change Price and appropriate supporting documentation (such as Supplier quotations and price sheets) substantiating the quantum of the Change Price;
  - .4 the adjustment in the Contract Time and Construction Schedule, if any, for the proposed change; and
  - .5 a description of the consequences to the costs of the Project, the Contract Time, the Construction Schedule and occupancy of the Units as a result of the Change Order Request not being approved.
- 6.2.2 The Project Monitor shall review the Change Order Request and provide a recommendation to the Owner and Change Funder as soon as practicable as to whether all or any part of the Change Order Request

should be accepted or rejected by the Owner and any Change Funder, together with any amendments thereto that would result in the Change Order Request being acceptable (“**Change Order Recommendation**”). If the Project Monitor recommends rejection of all or any part of the Change Order Request and/or the amendment of the Change Order Request, the Project Monitor shall provide a copy of that recommendation to the Contractor. The Contractor shall be entitled to amend the Change Order Request and submit a replacement Change Order Request to the Project Monitor, Owner and Change Funder taking into account the Project Monitor’s recommendations within 5 Working Days of receipt of the Project Monitor’s recommendations (any such replacement Change Order Request shall also be referred to herein as a “**Change Order Request**”). In such case, the replacement Change Order Request shall be treated as a new Change Order Request and the provisions of this GC 6.2.2 shall apply once again. If a replacement Change Order Request is not submitted within the period required, the original Change Order Request and original Change Order Recommendation will be considered by the Owner and the Change Funder.

- 6.2.3 The Project Monitor shall be entitled to consult with such of the Consultants, the Owner’s legal advisors and/or any other expert advisors as it determines is necessary or desirable to provide its Change Order Recommendations.
- 6.2.4 The Parties agree that the recommendations set out in the Change Order Recommendation by the Project Monitor shall be final and binding on the parties and each Change Funder with respect to a Change Order Request (excluding the Initial Change Orders) if the amount of Change Price in the Change Order is less than or equal to \$100,000 (exclusive of Value Added Taxes). For certainty, the parties and the Change Funder shall be entitled to dispute any other Change Order Requests notwithstanding the recommendations set out in the applicable Change Order Recommendation by the Project Monitor.
- 6.2.5 After receipt of a Change Order Request and Change Order Recommendation, the Owner and the Change Funder will as soon as reasonably practicable review the Change Order Request and Change Order Recommendation and seek to confirm the availability of funding from the Change Funder for the Change Price under, and in accordance with, the Cost Overrun Guarantee. Except as provided by paragraph 6.2.3, the Change Funder shall be entitled to dispute or reject all or any part of a Change Order Request (including whether the Contractor is entitled to a Change Order for the proposed change and/or the proposed Change Price). The Owner shall not be under any obligation to approve a Change Order Request unless and until it has received written confirmation that the Change Funder approves the related Change Order Request, agrees to fund the Change Price, and has advanced funds to the Owner sufficient to pay the Change Price (the “**Advanced Change Funds**”), which Advanced Change Funds will be held by the Owner in trust for the purposes of paying the Change Price and will be returned to the Change Funder to the extent not used to pay the Change Price.
- 6.2.6 If the Change Funder or the Owner dispute or reject all or any part of a Change Order Request, the Change Funder shall have the right to participate as a party to any mediations or arbitrations relating to any disputes in respect of any Change Order Request or any Change Order funded by the Change Funder.
- 6.2.7 When funding for a Change Order Request and a Change Funder are confirmed in accordance with the Cost Overrun Guarantee, the Advanced Changed Funds are deposited in the Owner’s bank account by the Change Funder, and the Change Order Request is otherwise acceptable to the Owner, the Project Monitor and the Change Funder, then the Contractor, the Owner and the Change Funder shall sign the Change Order. For certainty, if all or any part of a Change Order Request is disputed in accordance with GC Part 8, then the Parties and the Change Funder shall be bound by the determination thereof.
- 6.2.8 A Change Order is only valid under this Contract, and only amends or adjusts this Contract, the Contract Price, Construction Schedule or the Contract Time, if the Advanced Change Funds are received by the Owner, and the Change Order is signed by the Owner, the Change Funder and the Contractor and approved by the Project Monitor (or any disputes with respect to such Change Order Request have been resolved in favour of the Contractor in accordance with GC Part 8 and the Parties and the Change Funder are therefore bound thereby). Thereafter, the value of the Work performed as the result of a Change Order shall (if applicable) be included in subsequent Applications for Payment, and the Advanced



Change Funds may be used to pay for that portion of the Applications for Payment related to the Change Order.

6.2.9 Notwithstanding the provisions of Part 6 – CHANGES IN THE WORK other than paragraph 6.5.7, if a dispute arises with respect to an approval of a Change Order Request and the Contractor’s entitlement to a Change Order for any reason, or a Change Order Request which has been recommended for approval by the Project Monitor has not been approved within 10 Working Days after its receipt by the Owner and the Change Funder (“**Delayed Approval**”), the Contractor and Owner agree as follows:

- .1 (a) in the case of a rejection of the Change Order Request, the Contractor shall forthwith dispute the rejection of the Change Order Request and forthwith commence and diligently pursue mediation proceedings in accordance with paragraph 8.2.4 of GC 8.2 – NEGOTIATION AND MEDIATION; or (b) in the case of a Delayed Approval, the Contractor shall forthwith provide a Notice in Writing to the Owner, the Project Monitor and the Change Funder;
- .2 the Project Monitor and Consultant shall forthwith review the work to be performed in connection with the Change Order Request (the “**Requested Work**”) and provide a written recommendation to the Parties and the Change Funder, as soon as practicable, as to whether the Requested Work can be, or should not be, delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION and if the Requested Work should not be so delayed, provide a time schedule for the performance of, the Requested Work if not included in the Change Order Request. If the Project Monitor and the Consultant cannot agree on a recommendation, the recommendation of the Project Monitor will prevail. The recommendation of the Project Monitor and Consultant shall be final and binding on the Parties and the Change Funder and shall not be subject to dispute;
- .3 if the recommendation of the Project Monitor and Consultant is that the Requested Work can be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION, the Requested Work will be held in abeyance;
- .4 if the recommendation of the Project Monitor and Consultant is that the Requested Work should not be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION (a “**Dispute Work Order**”):
  - (1) the Contractor agrees to commence and diligently perform the Requested Work in accordance with the schedule in the Change Order Request or Disputed Work Order, as the case may be, and to bear all costs related to such Change Order Request, in the first instance, including any applicable consultant costs or approval fees, until the final agreement, determination, settlement or approval of all disputes or delays in respect of such Change Order Request and hereby agrees to release the Owner from any claims related to such Change Order Request if, in the case of a Delayed Approval, the Change Order Request is not approved by the Owner and the Change Funder (subject to the Contractor’s right to dispute) or, in the case of a disputed Change Order Request, any final determination or settlement of the dispute in respect of the Change Order Request is in the Owner’s or Change Funder’s favour; and
  - (2) Terra Firma shall advance to the Owner an amount equal to the Change Price set out in the Change Order Request, which amount will be held by the Owner in accordance with paragraph 6.2.8.7 until the final determination or settlement of the disputed Change Order Request, or in the case of a Delayed Approval, the final disposition of such Change Order Request; provided that, if Terra Firm fails to advance such Change Price, then the cost paid or payable by the Contractor for the Requested Work as required pursuant to paragraph 6.2.8.4(1): (a) if the Contractor not is successful in the dispute under this paragraph, shall be the sole responsibility of the Contractor, and it shall not be entitled to any reimbursement from the Owner of any of such Change Price, or (b) if the Contractor is successful in the dispute, the Change Price actually paid by the Contractor for all

direct, reasonable and verifiable costs of performing the Requested Work as of such time (and the balance of the Change Price (if any) thereafter paid by the Contractor for all direct, reasonable and verifiable costs of completing the Requested Work) will be added to the amount of the Craft Loan to the Construction Receiver; and

- (3) The Contractor agrees to provide such monthly reporting and certifications as to the progress and costs of the Requested Work as the Owner and the Project Monitor may reasonably request.

- .5 If such dispute or Delayed Approval is finally resolved or the parties agree, then
- .6 if the Contractor is entitled to a change, the parties shall agree on any change to the Contract Price, Contract Time or scope of the Work in a Change Order in accordance with paragraph 6.2.1 of GC 6.2 – CHANGE ORDER;
- .7 if the Contractor is not entitled to a change, then the work that is the subject of the Change Order Request shall form part of the Work and be included in the Fixed Price; and
- .8 the amounts advanced by the Change Funder in accordance with paragraph 6.2.8.4(2) will be (a) if the Contractor is not entitled to the change, returned to the Change Funder, and the Contractor shall be solely responsible for payment of all costs related to any work performed in relation to such change as part of the Fixed Price, or (b) if the Contractor is entitled to the change, deemed to be Advanced Change Funds and used to reimburse the Contractor for all direct, reasonable and verifiable costs of performing the work related to such change and paid for by the Contractor.

6.2.10 The Change Price approved in a Change Order shall include all costs and fees related to the proposed change, including the cost of materials and services, all consulting and consultant’s fees, planning or permitting fees, legal fees, delay costs, additional rental costs, additional insurance premiums, and third party approval or other fees, if any. Subject to paragraph 6.2.8, any work or services related to any change performed by the Contractor without a Change Order will be deemed to be included in the Work to be performed for the Fixed Price or at the Contractor’s cost. Any cost of performing the work or services related to a Change Order that exceeds the Change Price will be at the Contractor’s cost.

6.2.11 Each extension of the Contract Time included in a Change Order shall extend the Outside Date by an equivalent period of time if so expressly set out in the applicable Change Order Request or Change Order.

**GC 6.3 INTENTIONALLY DELETED**

**GC 6.4 LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS**

6.4.1 For the purposes of this Contract, a “**Latent Defect**”:

- .1 is a condition, defect or deficiency that is of a type listed in Schedule “M” – Latent Defects; or
- .2 is a condition, defect or deficiency that is of a type other than those listed in Schedule “M” that:
  - (1) was not known by the Contractor on the date of this Contract; and
  - (2) was not discovered during the performance of the Latent Defect Pre-Testing and set out in the Initial Change Orders; and
  - (3) could not reasonably have been known or discovered by a contractor carrying on investigations and testing of the Place of the Work in a prudent and professional manner.

- 6.4.2 For certainty, if a type of condition, defect or deficiency is identified in Schedule "M" as one which will not be a Latent Defect, then such condition, defect or deficiency shall not be a Latent Defect notwithstanding the conditions in GC 6.4.1.2 are satisfied.
- 6.4.3 If the Owner, the Contractor, the Builder or the Consultant discovers a hidden or latent defect, deficiency or condition that it believes is a Latent Defect, such observing party shall give Notice in Writing to the other party, the Consultant and the Project Monitor of such defect, deficiency or condition before it is disturbed or addressed and in no event later than 5 Working Days after first observance of such defect, deficiency or condition.
- 6.4.4 The Project Monitor will promptly investigate such defect, deficiency or condition and make a finding regarding such defect, deficiency or condition and provide the Owner, the Contractor and the Consultant with a Notice in Writing confirming the Project Monitor's opinion as to whether or not the defect, deficiency or condition at the Place of the Work constitutes a Latent Defect. The Project Monitor shall be entitled to consult with such of the Consultants, the Owner's legal advisors and/or any other expert advisors as it determines is necessary or desirable to provide its opinion.
- 6.4.5 If the Project Monitor's finding is that such defect, deficiency or condition at the Place of the Work constitutes a Latent Defect, the Contractor will deliver a Change Order Request in respect of such defect, deficiency or condition, and the provisions of GC 6.2 – CHANGE ORDER shall apply and no work relating to such possible Latent Defect shall be commenced except as provided under GC 6.2 – CHANGE ORDER.
- 6.4.6 If the Project Monitor's finding is that such defect, deficiency or condition at the Place of the Work does not constitute a Latent Defect, the Contractor shall not be entitled to any increase in the Contract Price, extension of the Contract Time or to a Change Order, and the cost of correcting such defect, deficiency or condition shall be included in the Fixed Price.
- 6.4.7 If the costs related to the repair, replacement or correction of such defects, deficiencies or conditions is, in the reasonable opinion of the Project Monitor, less than or equal to \$100,000 (exclusive of Value Added Taxes), then the Project Monitor's finding under paragraph 6.4.3 is final and binding on the Parties and none of the Parties or the Change Funder will have the right to dispute such finding, or reject a Change Order Request on the basis that such condition, deficiency or defect is not a Latent Defect, under Part 8 – DISPUTE RESOLUTION.

#### **GC 6.5 DELAYS**

- 6.5.1 If the Contractor is delayed in the performance of the Work for any reason, the Contract Time and the Construction Schedule may be extended as the Contractor determines, acting reasonably, without a Change Order, provided that the costs of any such extension are borne by the Contractor and no such extension will delay the date of Substantial Performance of the Work beyond the Outside Date.
- 6.5.2 If the Contractor is delayed in the performance of the Work by an action or omission of the Owner or Project Monitor or anyone employed or engaged by it directly or indirectly (other than the Contractor and its Subcontractors) contrary to the provisions of the Contract Documents, then the Contract Time and the Outside Date shall only be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and as approved in a Change Order. The Contractor shall only be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay and as approved by the Owner, the Project Monitor and the Change Funder in a Change Order.
- 6.5.3 If the Contractor is delayed in the performance of the Work by a stop work or any order issued by a court or other public authority or authority having jurisdiction and providing that such order was not issued as the result of an act or fault of the Contractor or any person employed or engaged by the Contractor directly or indirectly, then the Contract Time and the Outside Date shall only be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and as approved

by the Owner, the Project Monitor and the Change Funder in a Change Order. The Contractor shall only be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay and as approved by the Owner, the Project Monitor and Change Funder in a Change Order.

6.5.4 If the Contractor is delayed in the performance of the Work by:

- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the Contractor is a member or to which the Contractor is otherwise bound),
- .2 fire, unusual delay by common carriers or unavoidable casualties,
- .3 abnormally adverse weather conditions, or
- .4 any cause beyond the Contractor's control other than one resulting from a default or breach of Contract by the Contractor,

then the Contract Time and Outside Date shall only be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and as approved by the Owner, the Project Monitor and, if applicable, Change Funder in a Change Order. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the Contractor agrees to a shorter extension. The Contractor shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the Owner or anyone employed or engaged by it directly or indirectly (other than the Contractor and its Subcontractors) and are approved by the Owner, the Project Monitor and, if applicable, the Change Funder in a Change Order.

6.5.5 Except as permitted by GC 6.5.1 with respect to delays that do not require a Change Order, no extension shall be made for delay unless Notice in Writing of the cause of delay is given to the Consultant and the Project Monitor not later than 10 Working Days after the commencement of the delay. The Notice in Writing of the cause of delay must provide details of the delay, anticipated impact on the critical path and costs and include a draft remediation plan to place the Work back on schedule. In the case of a continuing cause of delay only one Notice in Writing shall be necessary.

6.5.6 If no schedule is made under paragraph 2.2.13 of GC 2.2 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the Consultant to furnish instructions until 10 Working Days after demand for such instructions has been made.

6.5.7 Notwithstanding any provision to the contrary in this Contract, the Contract Time and the Construction Schedule will not be extended if the date scheduled for Substantial Performance of the Work will occur after the Outside Date (as such Outside Date may have been expressly extended pursuant to other provisions of this Contract), unless approved in a Change Order that expressly approves a change to the Outside Date. If, at any time, the Contractor is of the opinion that Substantial Performance of the Work cannot be attained by the Outside Date, it will provide the Owner, the Project Monitor, the Administrative Agent and Terra Firma a Notice in Writing immediately, and will thereafter deliver to the Owner, the Project Monitor, the Administrative Agent and Terra Firma a remediation plan providing for such remedial actions required in order to ensure that Substantial Performance of the Work occurs on or before the Outside Date, including overtime work and/or re-sequencing of work, as applicable.

## **PART 7 DEFAULT, SUSPENSION AND TERMINATION**

### **GC 7.1 SUSPENSION AND TERMINATION BY OWNER**

7.1.1 For the purposes of this Contract, a "**Major Event of Default**" means the occurrence of any of the following:

- .1 a Major Construction Breach;
- .2 a lien is registered on title to the Place of the Work that arises out of or is attributable to the Work by a person other than the Contractor (other than any such lien arising solely as a result of a default by the Owner in the performance of its payment obligations under this Contract or the Development Contract) and is not discharged, vacated or otherwise removed by the Contractor within ten (10) days of the Contractor becoming aware of such lien;
- .3 a “Major Event of Default” (as defined under the Development Contract) occurs under the Development Contract;
- .4 an “Event of Insolvency” (as defined in the Development Contract) with respect to the Contractor or the Builder occurs;
- .5 Substantial Performance of the Work has not occurred by the Outside Date (as the Outside Date may be expressly extended pursuant to a Change Order or provision of this Contract); or
- .6 the Contractor commits any fraud, willful misconduct, willful default (including intentional abandonment of any part of the Work) or misappropriation of funds related to the Project. For certainty, willful default does not include any default by the Contractor where the Contractor continues to make active, good faith efforts to cure such default.

#### 7.1.2 INTENTIONALLY DELETED

7.1.3 If a Major Event of Default occurs under paragraph 7.1.1, then in addition to any rights and remedies it may have under this Contract, the Owner shall have all of the following rights so long as the Major Event of Default remains uncured (all or any of which may be exercised by the Owner from time to time in its discretion):

- .1 enforce any of the remedies available to the Owner pursuant to the terms of this Contract or applicable Law for a default hereunder including by applying all or any part of the Craft Cash Collateral or undisbursed portion of the Craft Loan against Obligations (as defined in the Development Contract);
- .2 withhold payment to the Contractor of any portion of any payment due to the Contractor under this Contract;
- .3 set-off all or any portion of the Obligations (as defined in the Development Contract) against all or any amounts owing from time to time by the Owner or the Construction Receiver to the Contractor (including the Craft Loan) howsoever and whenever arising;
- .4 on its own or by engaging another contractor, remedy such Major Event of Default, in which case the Owner shall be entitled, upon demand, to be reimbursed by the Contractor for any monies reasonably expended to remedy such Major Event of Default (including any expense incurred in connection therewith) and/or to deduct the cost thereof from any payment then or thereafter due the Contractor, provided that the Prime Consultant has certified, and the Project Monitor has verified, such costs as properly relating to the Contract and to be reimbursed by the Contractor as monies reasonably expended to remedy such Major Event of Default (including any expense incurred in connection therewith);
- .5 take possession of the Work and Products at the Place of the Work; subject to the rights of third parties, utilize the Construction Equipment at the Place of the Work; finish the Work by whatever method the Owner may consider expedient, all at the cost and expense of the Contractor and without prejudice to any claim that the Owner may have for damages incurred by it; provided that the amount of such costs, expenses and damages shall be reduced by the amount that would have

otherwise been payable by the Owner to the Contractor under this Contract for completion of the Work as of the date of the taking of such possession;

- .6 exercise and enforce all or any of the Owner's Security (as defined in the Development Contract) and/or take an assignment of the Subcontracts in accordance with Section 6.2 of the Development Contract;
- .7 suspend the Contract, the Development Contract, and/or any other Project Agreement by issuing a Notice in Writing to the Contractor;
- .8 terminate this Contract, the Development Contract, and/or any other Project Agreement by issuing a Termination Notice to the Contractor, in which event, the Contractor shall not be entitled to recover any Losses whatsoever from the Owner or the Construction Receiver, in which case paragraph 7.1.5 shall apply; and
- .9 do such other acts and things as the Owner or Construction Receiver may be authorized or entitled to do under this Contract, the Development Contract, the Cost Overrun Guarantee or the Settlement Approval Order.

7.1.4 If a Minor Construction Breach occurs, then in addition to any rights and remedies it may have under this Contract in connection with any Minor Construction Breach (which, for greater certainty, excludes the remedies in paragraph 7.1.3 for a Major Event of Default), the Owner shall have all of the following rights so long as the Minor Construction Breach remains uncured (all or any of which may be exercised by the Owner from time to time in its discretion):

- .1 enforce any of the remedies available to the Owner pursuant to the terms of this Contract for a Minor Construction Breach hereunder (which, for greater certainty, excludes the remedies in paragraph 7.1.3 for a Major Event of Default); and
- .2 on its own or by engaging another contractor, remedy all or any of the then outstanding Construction Breaches, in which case the Owner shall be entitled, upon demand, to be reimbursed by the Contractor for any monies reasonably expended to remedy such outstanding Construction Breaches (including any expense incurred in connection therewith) and/or to deduct the cost thereof from the Craft Cash Collateral, the undisbursed portion of the Craft Loan or any payment then or thereafter due the Contractor, provided that the Prime Consultant has certified, and the Project Monitor has verified, such costs as properly relating to the Contract and to be reimbursed by the Contractor as monies reasonably expended to remedy such Construction Breaches (including any expense incurred in connection therewith); for the purposes of the foregoing the Contractor will co-operate with, and provide such reasonable assistance as may be requested by, the Owner's other contractors (including providing access to the Place of Work and the Project) as may be necessary to permit such other contractor(s) to properly remedy such outstanding Construction Breaches.

7.1.5 If a Major Event of Default has occurred and is continuing at the time of termination of this Contract:

- .1 the effective date of the termination will be the date set out in the Termination Notice;
- .2 the Contractor shall have no right or claim whatsoever to, and is forever barred from claiming, any payments that might otherwise be due or become due under this Contract except for (without duplication):
  - (1) the amounts set out in a Final Application for Payment and certified by the Consultant in the Consultant's Payment Certificate and verified by the Project Monitor in the Project Monitor's Payment Verification, but not yet paid, plus the amount of any accumulated statutory 10% holdback amount; and

- (2) its reasonable and verifiable costs for any Work actually performed by the Contractor prior to receiving the Termination Notice;
- (3) provided that, in each case, the Construction Receiver has funding available for such purpose;
- .3 the priority of payment of the Craft Construction Loan and the Geo-thermal System Costs (together with the Court ordered charge securing such loans and costs) shall automatically be further subordinated such that they rank after the repayment of the indebtedness owing to Terra Firma described in the Waterfall set out in the Settlement Approval Order;
- .4 the Contractor shall have no claim against the Owner, the Construction Receiver or any of the property and assets of UC Leslieville, UC Beach or UC Riverdale for any Losses arising from such termination by the Owner;
- .5 the Construction Receiver shall be entitled to retain the full amount of the Craft Cash Collateral and the full amount of the undisbursed portion of the Craft Loan (if any) for application against the losses suffered or incurred by the Owner or the Construction Receiver under either of this Contract or the Development Contract; provided that any excess over such losses shall be returned to the Contractor; and
- .6 each of the Owner and the Construction Receiver shall be entitled to all other rights and remedies it may have against the Contractor under either this Contract or the Development Contract or applicable Law.

7.1.6 Notwithstanding the provisions of this Part 7 – DEFAULT, SUSPENSION AND TERMINATION, if the Contractor bona fide and in good faith disputes that a Construction Breach has occurred, the Owner will not be entitled to exercise its rights and remedies with respect to such Construction Breach for so long as the following conditions are satisfied, and the Contractor agrees as follows:

- .1 the Contractor will forthwith commence and diligently pursue a resolution of such dispute pursuant to GC Part 8 – DISPUTE RESOLUTION;
- .2 the Project Monitor and Consultant shall forthwith review the alleged Construction Breach and the work to be performed or remedied in connection therewith (the “**Breach Work**”) and provide a written recommendation to the Parties and the Change Funder, as soon as practicable, as to whether the Breach Work can be, or should not be, delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION and if the Breach Work should not be so delayed, provide a cost for, and a time schedule for the performance of, the Breach Work, and if the Project Monitor and the Consultant cannot agree on a recommendation, the recommendation of the Project Monitor will prevail. The recommendation of the Project Monitor and Consultant shall be final and binding on the Parties and the Change Funder and shall not be subject to dispute;
- .3 if the recommendation of the Project Monitor and Consultant is that the Breach Work can be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION, the Breach Work will be held in abeyance;
- .4 if the recommendation of the Project Monitor and Consultant is that the Breach Work should not be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION (also a “**Dispute Work Order**”):
  - (1) the Contractor shall forthwith commence and diligently perform the Breach Work within the time schedule recommended by the Project Monitor and Consultant at the Contractor’s own cost and expense (in the first instance) until final agreement, determination or settlement of such dispute between the Parties, and hereby agrees that

the Owner is released from any claims related to such Breach Work if any final determination or settlement of the dispute in respect of the Breach Work is in the Owner's favour;

- (2) Terra Firma shall forthwith advance to the Owner an amount equal to the cost of the Breach Work as determined by the Project Monitor (the "**Breach Work Amount**"), which Breach Work Amount will be held by the Owner until the final determination or settlement of the disputed Construction Breach and dealt with in accordance with GC 7.1.7 ; provided that, if Terra Firma fails to advance the Breach Work Amount, then the Breach Work Amounts paid or payable by the Contractor as required pursuant to GC 7.1.6.4(1): (a) if the Contractor is not successful in the dispute under this paragraph, shall be the sole responsibility of the Contractor, and it shall not be entitled to any reimbursement from the Owner of any of the Breach Work Amount, or (b) if the Contractor is successful in the dispute, the Breach Work Amount actually paid by the Contractor for all direct, reasonable and verifiable costs of performing the Breach Work as of such time (and such further Breach Work Amount (if any) thereafter paid by the Contractor for all direct, reasonable and verifiable costs of completing the Breach Work) will be added to the amount of the Craft Loan to the Construction Receiver; and
- (3) The Contractor agrees to provide such monthly reporting and certifications as to the progress and costs of the Breach Work as the Owner and the Project Monitor may reasonably request.

7.1.7 If such disputed Construction Breach is finally resolved or the Parties agree, then:

- .1 if the resolution or agreement of the Parties is that there was no Construction Breach, then the Owner will use the funds advanced by the Change Funder in connection with such Construction Breach to reimburse the Contractor for all direct, reasonable and verifiable costs of performing the Breach Work which have been paid for by the Contractor and to pay for any remaining direct, reasonable and verifiable costs incurred by the Contractor to complete the Breach Work;
- .2 if the resolution or agreement of the Parties is that there was a Construction Breach, then:
  - (1) if the Breach Work has not yet been performed, the Contractor will be entitled to the applicable cure period within which to perform the Breach Work; and
  - (2) if the Breach Work has been performed by the Contractor, then the funds advanced by the Change Funder in connection with such Construction Breach shall be returned to the Change Funder, and the Contractor shall be solely responsible for payment of all costs related to the Breach Work as part of the Fixed Price or applicable Change Price, as applicable.

7.1.8 For the purposes of this Contract, a "**Funding Failure**" means the occurrence of any of the following:

- .1 if, at any time and for whatever reason (including by reason of default by the Contractor or the repair or replacement of any damage or destruction to all or any part of the Project), the estimated cost to complete the Work (including rectifying all known Latent Defects and completing all warranty work) and the Development Services, as determined by the Project Monitor, acting reasonably, is greater than the aggregate amount of all funding available for the Project pursuant to the Craft Loan Agreement, the Syndicate Construction Loan Agreement and, to the extent available, the Craft Cash Collateral, and Terra Firma (or to the extent required or permitted under the Cost Overrun Guarantee, the Contractor and the Syndicate) declines to fund the difference pursuant to the Cost Overrun Guarantee; or



- .2 if, at any time, a Cost Overrun as defined under the Cost Overrun Guarantee is not funded by Terra Firma as required under the Cost Overrun Guarantee (or by the Contractor or the Syndicate as required or permitted under the Cost Overrun Guarantee).

7.1.9 The Owner shall be entitled to terminate the Contract upon the occurrence of a Funding Failure or a Catastrophic Event upon issuance to the Contractor of a Termination Notice. If the Contract is terminated solely as a result of the Funding Failure or a Catastrophic Event, then:

- .1 the effective date of the termination will be the date set out in the Termination Notice;

- .2 the Contractor shall have no claim whatsoever against the Owner or the Construction Receiver or any of the property and assets of UC Leslieville, UC Beach or UC Riverdale for any Losses arising from such termination by the Owner, except against the Owner for (without duplication):

- (1) the amounts set out in a Final Application for Payment and certified by the Consultant in the Consultant's Payment Certificate and verified by the Project Monitor in the Project Monitor's Payment Verification, but not yet paid (plus the amount of any accumulated statutory 10% holdback amount);
- (2) its reasonable and verifiable costs for any Work actually performed by the Contractor prior to receiving the Termination Notice but not yet included in an Application for Payment, provided that the Contractor delivers to the Owner an Application for Payment for such costs and they are certified by the Consultant in the Consultant's Payment Certificate and verified by the Project Monitor in the Project Monitor's Payment Verification;
- (3) its reasonable and verifiable costs for any Work actually performed by the Contractor after receiving the Termination Notice for work necessary to preserve, protect, secure and/or store the Work and the Place of the Work or to perform such other work specified in such notice;
- (4) provided that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, interest calculated in accordance with paragraph 5.3 of Article A-5 of the Agreement – PAYMENT on amounts due and payable under the Contract but not paid;
- (5) provided that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, the return of any undisbursed portion of the Craft Loan and Craft Cash Collateral (after payment of outstanding costs under each of this Contract and the Development Contract and correction of any deficiencies in the Work performed by the Contractor prior to such termination); and
- (6) provided that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, any termination costs that the Contractor may owe to arms' length third parties (other than the Builder) as a direct result of such termination and that are unrecoverable or unavoidable, but only to the extent of funding available to the Construction Receiver for such purpose;

provided that, in each case, the Construction Receiver has funding available for such purpose.

- .3 provide that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, the Owner and the Construction Receiver shall have no claim whatsoever against the Contractor for any Losses except for deficiencies in any of the Work performed by the Contractor prior to such termination; and

.4 to the extent sufficient proceeds are available under the Waterfall, payment in the same priority of payment as the Craft Loan and Geo-thermal System Costs of any of the Losses of the Contractor described in paragraph 7.1.9.2 immediately above for which the Construction Receiver did not have sufficient funding to pay.

7.1.10 All payments under GC 7.1 – SUSPENSION AND TERMINATION BY OWNER shall be made in the accordance with the Waterfall to the extent sufficient proceeds are available under the Waterfall and such payments shall be paid in the same priority of payment as the Craft Loan and Geo-thermal System Costs.

**GC 7.2 SUSPENSION AND TERMINATION BY CONTRACTOR**

7.2.1 The Contractor may give a Termination Notice to the Owner, with a copy to the Prime Consultant, the Project Monitor and the Administrative Agent, that the Owner is in default of the Owner’s contractual obligations only if the Owner fails to pay the Contractor when due the amounts set out in a Final Application for Payment that has been certified by the Prime Consultant in the Consultant’s Payment Certificate and by the Project Monitor in the Project Monitor’s Payment Verification; provided that the Owner has received funding for such amounts under any of the Craft Loan Agreement, the Syndicate Construction Loan Agreement or the Cost Overrun Guarantee.

7.2.2 The Contractor’s Termination Notice to the Owner provided under paragraph 7.2.1 shall advise that if the default is not corrected within 10 Working Days following the receipt of the Termination Notice, the Contractor may, without prejudice to any other right or remedy the Contractor may have, suspend the Work or terminate the Contract. If the Contractor suspends the Work or terminates the Contract, the Contractor shall perform all work necessary to preserve, protect, secure and/or store the Work and the Place of the Work.

7.2.3 If this Contract is terminated under this GC 7.2 – SUSPENSION AND TERMINATION BY CONTRACTOR, the Contractor shall be entitled to be paid:

- .1 the amounts set out in a Final Application for Payment and certified by the Consultant in the Consultant’s Payment Certificate and verified by the Project Monitor in the Project Monitor’s Payment Verification, but not yet paid and, in addition, the amount of any accumulated statutory 10% holdback amount;
- .2 its reasonable, verifiable and auditable costs for any Work actually performed by the Contractor prior to receiving the Termination Notice but not yet included in an Application for Payment, provided that the Contractor delivers to the Owner an Application for Payment for such costs and they are certified by the Consultant in the Consultant’s Payment Certificate and verified by the Project Monitor in the Project Monitor’s Payment Verification;
- .3 its reasonable, verifiable and auditable costs for any Work actually performed by the Contractor after receiving the Termination Notice for work necessary to preserve, protect, secure and/or store the Work and the Place of the Work or to perform such other work specified in such notice;
- .4 provided that no Event of Default under this Contract or an “Event of Default” as defined in the Development Contract has occurred and is then existing, interest calculated in accordance with paragraph 5.3.7 on amounts due and payable under the Contract but not paid; and
- .5 provided that no Event of Default under this Contract or an “Event of Default” as defined in the Development Contract has occurred and is then existing, any termination costs that the Contractor may owe to arms’ length third parties (other than the Builder) as a direct result of such termination and that are unrecoverable or unavoidable, but only to the extent of funding available to the Construction Receiver for such purpose;

- 7.2.4 All payments made under paragraph 7.2 shall be made in accordance with the Waterfall to the extent sufficient proceeds are available under the Waterfall and such payments shall be paid in the same priority of payment as the Craft Loan and Geo-thermal System Costs.

## **PART 8 DISPUTE RESOLUTION**

### **GC 8.1 AUTHORITY OF THE CONSULTANT**

- 8.1.1 Except as otherwise expressly provided in this Contract, differences between the parties to the Contract as to the interpretation, application or administration of the Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the Consultant as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the Contract in respect of a matter in which the Consultant has no authority under the Contract to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 - NEGOTIATION AND MEDIATION, and in GC 8.3 - RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
- 8.1.3 If a dispute is not resolved promptly, the Consultant will give such instructions as in the Consultant's opinion are necessary for the proper performance of the Work and to prevent delays pending settlement of the dispute, provided that there is no increase in the Contract Price, no costs for which the Owner may be liable except in accordance with GC 6.2 – CHANGE ORDER (including the performance of any work related to a change that is not supported by Advanced Change Funds in accordance with paragraph 6.2.4 of GC 6.2 – CHANGE ORDER), and no change in the Contract Time or Construction Schedule. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have.
- 8.1.4 If the Change Funder elects to participate in a dispute pursuant to paragraph 6.2.6, then the Change Funder shall receive all notices required to be given to either party pursuant to this Part 8 and shall be entitled to participate as if it were a party to this Contract.
- 8.1.5 If the Contractor, Owner and, if applicable, Change Funder and Project Monitor cannot agree on any matter under any provision hereof which contemplates that such matter is to be agreed upon between any such parties after the date of this Contract, either or both of the parties shall be entitled to bring such matter before the Court in the UC Receivership Proceedings to seek the Court's determination, advice and/or directions.

### **GC 8.2 NEGOTIATION AND MEDIATION**

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in Schedule "L" – Dispute Resolution Procedures, the parties shall appoint a Project Mediator from the list of project mediators set out in Schedule "L" – Dispute Resolution Procedures within 10 Working Days after either party by Notice in Writing requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the Consultant under GC 2.2 - ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 Working Days after receipt of that finding, the party sends a Notice in Writing of dispute to the other party and to the Consultant, which contains the particulars of the matter in dispute and the relevant provisions of the Contract Documents. The responding party shall send a Notice in Writing of reply to the dispute within 10 Working Days after receipt of such Notice in Writing setting out particulars of this response and any relevant provisions of the Contract Documents.

- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 Working Days following receipt of a responding party's Notice in Writing of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in Schedule "L" – Dispute Resolution Procedures and shall take place in Toronto, Ontario.
- 8.2.5 If the dispute has not been resolved within 10 Working Days after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving Notice in Writing to the Owner, the Contractor, the Project Monitor, the Consultant, and, if applicable, the Change Funder.
- 8.2.6 By giving a Notice in Writing to the other party, the Consultant (and, if applicable, the Change Funder), not later than 10 Working Days after the date of termination of the mediated negotiations under paragraph 8.2.5, either party (or, if applicable, the Change Funder) may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in Schedule "L" – Dispute Resolution Procedures. The arbitration shall be conducted in Toronto, Ontario.
- 8.2.7 If neither party (or, if applicable, the Change Funder), by Notice in Writing, given within 10 Working Days of the date of Notice in Writing requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until the earlier to occur of
    - (1) Substantial Performance of the Work has been attained,
    - (2) the Contract has been terminated, or
    - (3) the Contractor has abandoned the Work, and
  - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.
- 8.2.8 Notwithstanding anything in this Contract to the contrary, any dispute or claim of a party relating to the conduct of the Construction Receiver will only be determined by the Superior Court of Justice of Ontario (Commercial List), and not under this Part 8 – DISPUTE RESOLUTION.

### **GC 8.3 RETENTION OF RIGHTS**

- 8.3.1 It is agreed that no act by either party (or, if applicable, the Change Funder) shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the Notice in Writing required under Part 8 of the General Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 - AUTHORITY OF THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under the Lien Act.

## **PART 9 PROTECTION OF PERSONS AND PROPERTY**

### **GC 9.1 PROTECTION OF WORK AND PROPERTY**

- 9.1.1 The Contractor shall protect the Work and the Owner's property and property adjacent to the Place of the Work from damage which may arise as the result of the Contractor's operations under the Contract, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the Contract Documents; or
  - .2 acts or omissions by the Owner, other contractors of the Owner, and their agents and employees.
- 9.1.2 Before commencing any Work, the Contractor shall determine the location of all underground utilities and structures indicated in the Contract Documents or that are reasonably apparent in an inspection of the Place of the Work.
- 9.1.3 Should the Contractor in the performance of the Contract damage the Work, the Owner's property or property adjacent to the Place of the Work, the Contractor shall be responsible for making good such damage at the Contractor's expense.
- 9.1.4 Should damage occur to the Work or Owner's property for which the Contractor is not responsible, as provided in paragraph 9.1.1, the Contractor shall make good such damage to the Work and, if the Owner so directs, to the Owner's property. The Contract Price and Contract Time shall be adjusted as provided in GC 6.1 OWNER'S RIGHT TO MAKE CHANGES and GC 6.2 - CHANGE ORDER.

### **GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

- 9.2.1 INTENTIONALLY DELETED.
- 9.2.2 The Contractor shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substances exceeds the time weighted levels prescribed by applicable legislation at the Place of the Work and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the Place of the Work prior to the Contractor commencing the Work.
- 9.2.3 Unless the Contract expressly provides otherwise, the Contractor shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the Place of the Work prior to the Contractor commencing the Work.
- 9.2.4 If the Contractor
- .1 encounters toxic or hazardous substances at the Place of the Work, or
  - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the Place of the Work,
- the Contractor Shall:
- .3 take all reasonable steps, including stopping the Work, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the Place of the Work, and
  - .4 immediately report the circumstances to the Consultant, the Project Monitor and the Owner in writing.

- 9.2.5 If the Owner and Contractor do not agree on the existence, significance of, or whether the toxic or hazardous substances were in existence or brought onto the Place of the Work by the Contractor or anyone for whom the Contractor is responsible, or whether the toxic or hazardous substances constitute a Latent Defect in accordance with paragraph 6.4.1 of GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS, the Owner may retain and pay for an independent qualified expert to investigate and determine such matters. The expert’s report shall be delivered to the Owner and the Contractor.
- 9.2.6 If the Owner and Contractor agree, or if the expert referred to in paragraph 9.2.5 determines, or if an arbitrator determines, that the toxic or hazardous substances were not brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, and that such conditions were in existence prior to the date of this Contract and constitute a Latent Defect, then the provisions of GC 6.2- CHANGE ORDER shall apply to the work required to remove and remediate the toxic or hazardous substance and no work relating to such toxic or hazardous substances shall be commenced except in accordance with GC 6.2 – CHANGE ORDER.
- 9.2.7 If the Owner and Contractor agree, or if the expert referred to in paragraph 9.2.5 determines, or if an arbitrator determines, that the toxic or hazardous substances were brought onto the place of the Work by the Contractor or anyone for whom the Contractor is responsible, and/or were in existence prior to the date of this Contract and do not constitute a Latent Defect, the Contractor shall promptly at the Contractor’s own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to safely remove and dispose of the toxic or hazardous substances;
  - .2 make good any damage to the Work, the Owner’s property or property adjacent to the place of the Work as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY;
  - .3 reimburse the Owner for reasonable costs incurred under paragraph 9.2.5 or in investigating such toxic or hazardous substances; and
  - .4 indemnify the Owner as required by GC 12.1 - INDEMNIFICATION.
- 9.2.8 If either party does not accept the expert’s findings under paragraph 9.2.5, the disagreement shall be settled in accordance with Part 8 of the General Conditions - Dispute Resolution. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert’s determination and take the steps required by paragraph 9.2.6 or 9.2.7 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES.

### **GC 9.3 ARTIFACTS AND FOSSILS**

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the Place of the Work shall, as between the Owner and the Contractor, be deemed to be the absolute property of the Owner.
- 9.3.2 The Contractor shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the Consultant upon discovery of such items.
- 9.3.3 The Consultant will investigate the impact on the Work of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase in the Contractor’s cost or time to perform the Work, and that such conditions constitute a Latent Defect, then the provisions of GC 6.2 – CHANGE ORDER shall apply and no work shall be commenced except in accordance with GC 6.2 – CHANGE ORDER. Any work relating to any such discoveries that proceeds without a Change Order will be at the Contractor’s sole cost.

**GC 9.4 CONSTRUCTION SAFETY**

9.4.1 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation, including for greater certainty the *Occupational Health and Safety Act* and registering as the “constructor” as defined in such Act, and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work.

**GC 9.5 MOULD**

9.5.1 The Work for the Fixed Price includes the remediation of all mould at the Place of the Work. If the Contractor, Owner, Consultant or Project Monitor observes or reasonably suspects the presence of mould at the Place of the Work:

- .1 the observing party shall promptly report in writing the circumstances to the Contractor, the Owner, the Consultant and the Project Monitor, as applicable, and
- .2 the Contractor shall promptly take all reasonable steps, including stopping the Work if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
- .3 if the Owner and Contractor do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, a party may seek to resolve such disagreement in accordance with Part 8 – DISPUTE RESOLUTION.

9.5.2 The Contractor shall promptly, at the Contractor’s own expense:

- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
- .2 make good any damage to the Work, the Owner’s property or property adjacent to the Place of the Work as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
- .3 reimburse the Owner for reasonable costs incurred under paragraph 9.5.1.3, and
- .4 indemnify the Owner as required by GC 12.1 - INDEMNIFICATION.

**PART 10 GOVERNING REGULATIONS**

**GC 10.1 TAXES AND DUTIES**

10.1.1 The Contract Price shall include all taxes and customs duties in effect as at the effective date of the Contract except for Value Added Taxes payable by the Owner to the Contractor as stipulated in Article A-4 of the Agreement - CONTRACT PRICE.

10.1.2 Any increase or decrease in costs to the Contractor due to changes in such included taxes and duties after the effective date of the Contract shall increase or decrease the Contract Price accordingly.

**GC 10.2 LAWS, NOTICES, PERMITS, AND FEES**

10.2.1 The Laws of the Place of the Work shall govern the Work.

10.2.2 The Contractor shall be responsible for the procurement of , and payment for, all permits, licences, inspections, and certificates, which are necessary for the performance of the Work and customarily obtained by contractors or owners in the jurisdiction of the Place of the Work after the issuance of the

building permit; provided that the Contractor will be reimbursed for the cost of any third party professional consultant fees and fees or charges of Governmental Authorities as a Development Cost under the Development Contract. The Contract Price includes the cost of these permits, licences, inspections, and certificates, and their procurement, other than third party professional consultant fees and fees or charges of Governmental Authorities which will be treated as a Development Cost under the Development Contract.

- 10.2.3 The Contractor shall give the required notices and comply with the Laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the Work and which relate to the Work, to the preservation of the public health, and to construction safety.
- 10.2.4 The Contractor shall be responsible for verifying, or arranging for the verification, that the Contract Documents are in compliance with the applicable Laws, ordinances, rules, regulations, or codes relating to the Project Work; provided that the costs of such verification is reimbursed as a Development Cost under the Development Contract. If the Contract Documents are at variance therewith, or if, subsequent to the time of the effective date of the Contract, changes are made to the applicable Laws, ordinances, rules, regulations, or codes which require modification to the Contract Documents, the Contractor shall advise the Consultant and the Project Monitor in writing requesting direction immediately upon such variance or change becoming known. The Consultant will make the changes required to the Contract Documents as provided in GC 6.1 - CHANGES and GC 6.2 - CHANGE ORDER.
- 10.2.5 If the Contractor fails to advise the Consultant in writing; and fails to obtain direction as required in paragraph 10.2.4; and performs work knowing it to be contrary to any Laws, ordinances, rules, regulations, or codes; the Contractor shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such Laws, ordinances, rules, regulations, or codes.
- 10.2.6 If, subsequent to the time of the effective date of the Contract, changes are made to applicable Laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the Work, the Contractor may seek to recover its costs incurred due to such changes in accordance with the requirements of GC 6.1 - CHANGES and GC 6.2 - CHANGE ORDER.

### **GC 10.3 PATENT FEES**

- 10.3.1 The Contractor shall pay the royalties and patent licence fees required for the performance of the Contract. The Contractor shall hold the Owner harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Contractor or anyone for whose acts the Contractor may be liable.

### **GC 10.4 WORKERS' COMPENSATION**

- 10.4.1 Prior to commencing the Work, again with the Contractor's Application for Payment of the holdback amount following Substantial Performance of the Work and again with the Contractor's Draft Application for Final Payment, the Contractor shall provide evidence of compliance with workers' compensation legislation at the Place of the Work, including payments due thereunder.
- 10.4.2 At any time during the term of the Contract, when requested by the Owner, the Contractor shall provide such evidence of compliance by the Contractor and Subcontractors.



## **PART 11 INSURANCE AND CONTRACT SECURITY**

### **GC 11.1 INSURANCE**

- 11.1.1 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the Owner shall take out and maintain an “all-risks” builder’s risk property insurance policy for the Project at the Owner’s expense, which policy shall name the Owner, the Contractor, the Consultant and all Subcontractors as insureds. The policy limit of such policy shall be commensurate with value of the Project and shall have such deductible amount, as shall be acceptable to the Owner. The Owner shall make available a certificate of such insurance to the Contractor and Consultant upon written request.
- 11.1.2 Without restricting the generality of GC 12.1 – INDEMNIFICATION, the Contractor shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in Schedule “O” – Insurance Requirements except as hereinafter provided:
- .1 General liability insurance in the name of the Contractor and include, or in the case of a single, blanket policy, be endorsed to name, the Owner and the Consultant as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the Contractor with regard to the Work. General liability insurance shall be maintained from the date of commencement of the Work until one year from the date of Substantial Performance of the Work. Liability coverage shall be provided for completed operations hazards from the date of Substantial Performance of the Work, as set out in the Project Monitor’s Substantial Performance Certificate, on an ongoing basis for a period of 6 years following Substantial Performance of the Work. Notwithstanding the foregoing or any other provision of this paragraph 11.1.1, the Contractor acknowledges and agrees that the Owner shall have the right, at its discretion and if deemed appropriate by the Owner, to provide, maintain and pay for insurance coverages specified in paragraph 11.1.1.1 (General Liability Insurance) (which shall be in “Wrap-Up” Form). The contractor shall reimburse the Owner for any resulting reduction in the contractor’s insurance premium costs that shall result because the Contractor is not required to provide the general liability insurance and boiler and machinery insurance coverages prescribed in paragraph GC 11.1.1.
  - .2 Automobile Liability Insurance from the date of commencement of the Work until one year after the date of Substantial Performance of the Work.
- 11.1.3 Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the Owner with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the Work.
- 11.1.4 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the Contract.
- 11.1.5 If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the Owner shall have the right to provide and maintain such insurance and give evidence to the Contractor and the Consultant. The Contractor shall pay the cost thereof to the Owner on demand or the Owner may deduct the cost from the amount which is due or may become due to the Contractor.
- 11.1.6 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the Place of the Work.
- 11.1.7 If a revised version of CCDC 41 - INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements than as set out in this GC 11.1 or Schedule “O”, the parties shall address

such reduction, prior to the Contractor's insurance policy becoming due for renewal, and record any agreement in a Change Order.

- 11.1.8 If a revised version of CCDC 41 - INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements than as set out in this GC 11.1 or Schedule "O", the Owner may request the increased coverage from the Contractor by way of a Change Order.
- 11.1.9 Owner shall provide, maintain and pay for the "Broad form" property insurance in the joint names of the Contractor, the Owner and the Consultant. The policy shall include as insureds all Subcontractors. The "Broad form" property insurance shall be provided from the date of commencement of the Work until the earliest of:
- .1 10 calendar days after the date of Substantial Performance of the Work;
  - .2 with respect to the part or section of the Work used or occupied, on the commencement of use or occupancy of any part or section of the Work, unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the Work, and
  - .3 when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 11.1.10 The "Broad form" property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the Owner and the Contractor as their respective interests may appear. In the event of loss or damage:
- .1 the Contractor shall act on behalf of the Owner for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work in accordance with, and subject to, a Change Order approving such restoration work in accordance with GC 6.2 – CHANGE ORDER; provided that, if the loss or damage constitutes a Catastrophic Event, the Owner shall have the option of repairing or restoring the damage or receiving the proceeds of insurance and terminating this Contract and shall make such election by at least 5 Working Days' prior Notice in Writing to the Contractor. If the Owner elects to terminate the Contract as a result of a Catastrophic Event, then such Notice in Writing shall constitute a Termination Notice and the provisions of GC 7.1.9 and 7.1.10 shall apply.
  - .2 Loss or damage shall not affect the rights and obligations of either party under the Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the Consultant may recommend in consultation with the Contractor if the loss or damage is to be repaired or restored; and
  - .3 If the loss or damage is to be repaired or restored:
    - (1) the Contractor shall be entitled to receive from the Owner, in addition to the amount due under the Contract, the amount which the Owner's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds in accordance with the progress payment provisions; and
    - (2) the Contractor shall be entitled to receive from the payments made by the insurer the amount of the Contractor's interest in the restoration of the Work.

## GC 11.2 CONTRACT SECURITY

11.2.1 The Contractor shall, prior to commencement of the Work or within the specified time, provide to the Owner any Contract security specified in the Contract Documents.

## PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

### GC 12.1 INDEMNIFICATION

12.1.1 Without restricting the Contractor's obligation to indemnify as described in paragraph 12.1.4, the Contractor shall indemnify and hold harmless the Owner from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by the Owner or in respect to claims by third parties that arise out of, or are attributable in any respect to its involvement as party to this Contract, provided such claims are:

- .1 caused by:
  - (1) the negligent acts or omissions of the Contractor or anyone for whose acts or omissions that the Contractor is liable, or
  - (2) a failure of the Contractor from whom indemnification is sought to fulfill its terms or conditions; and
- .2 made by Notice in Writing within the Indemnity Period; provided that the expiry of the Indemnity Period shall in no way derogate from, affect, release or limit any right, remedy, cause of action or claim that the Owner or Construction Receiver may have against the Contractor under applicable Law at any time prior or subsequent to the expiry of the Indemnity Period.
- .3 For the purposes of GC 12.1, "**Indemnity Period**" means the period from the date of this Construction Contract to the date of discharge of the Construction Receiver by a final and non-appealable order of the Court in the UC Receivership Proceedings as the receiver and manager and construction lien trustee of the property and assets of each of UC Riverdale, UC Leslieville and UC Beach in form, scope and substance satisfactory to the Construction Receiver, which order shall include a release of all claims of any nature or kind of all persons against Alvarez & Marsal Canada Inc. personally and in its capacity as the Construction Receiver.

12.1.2 The obligation of the Contractor to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the Owner for which insurance is to be provided by either party pursuant to GC 11.1 - INSURANCE, the insurance limit for one occurrence as referred to in CCDC 41 in effect at the time of the effective date of the Contract.
- .2 In respect to losses suffered by the Owner for which insurance is not required to be provided by either party in accordance with GC 11.1 - INSURANCE, the Contract Price as recorded in Article A-4 -CONTRACT PRICE, but in no event shall the sum be greater than \$20,000,000.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

12.1.3 The obligation of the Contractor to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

- 12.1.4 The Contractor shall indemnify and hold harmless the Owner from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of its obligations described in GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES.
- 12.1.5 In respect to any claim for indemnity or to be held harmless, Notice in Writing of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;
- 12.1.6 Neither party shall be liable to the other party for any Indirect Losses (as defined in the Development Contract).

## **GC 12.2 WAIVER OF CLAIMS**

- 12.2.1 Subject to the Lien Act, the Contractor waives and releases the Owner from:
- .1 all claims or recourse against the Owner except those specifically provided for in this Contract, and for any fraud or willful misconduct of the Owner;
  - .2 as of the date of the submission of the Application for Substantial Performance, all claims for changes or Change Orders, for Latent Defects, or for adjustment in the Contract Price, Contract Time or change in the scope of the Work, except for those already submitted prior to, or those arising after, the date of the submission of the Application for Substantial Performance; and
  - .3 as of the fifth calendar day before the expiry of the lien period under the Lien Act, all claims which the Contractor has or reasonably ought to have knowledge of that could be advanced by the Contractor against the Owner arising under this Contract or the Contractor's involvement in the Project, including those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of Substantial Performance of the Work, except as follows:
    - .4 (a) claims arising prior to or on the date of Substantial Performance of the Work for which Notice in Writing of claim has been received by the Owner from the Contractor no later than the sixth calendar day before the expiry of the lien period provided by the Lien Act;
    - .5 (b) claims resulting from fraud or wilful misconduct of the Owner; and
    - .6 (c) claims not permitted to be waived under the Lien Act.

## **GC 12.3 WARRANTY**

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6 and the warranty/deficiency work specifically included in the description of the Work, the warranty period under the Contract is one year from the date of Substantial Performance of the Work.
- 12.3.2 The Contractor shall be responsible for the proper performance of the Work which the Contractor performed to the extent that the design and Contract Documents permit such performance.
- 12.3.3 The Owner shall promptly give the Contractor Notice in Writing of observed defects and deficiencies which occur in the Work performed by the Contractor during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the Contractor shall correct promptly, at the Contractor's expense, defects or deficiencies in the Work performed by the Contractor which appear prior to and during the one year warranty period.
- 12.3.5 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.

- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the Contract Documents. Extended warranties shall be issued by the warrantor to the benefit of the Owner. The Contractor's responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.
- 12.3.7 If any defect is corrected under the conditions of GC 12.3 – WARRANTY, the time period for the warranty in that particular item in the Work shall begin again from the date when the defect is corrected and if such defect be corrected more than once the time period for warranty applicable shall begin again from the latest date when such defect is corrected until three (3) years.
- 12.3.8 Without limiting the Contractor's warranty for the Work performed by the Contractor, the Contractor warrants to the Owner for the services and materials provided by the Contractor in respect of the matters provided for in the Ontario New Home Warranty Plan:
- .1 With respect to each Unit, for a period of one year from the earlier of (a) the Unit Occupancy Date for such Unit, and (b) the date of Substantial Completion of the Work; and
  - .2 With respect to all other parts of the Project, for a period of one year from the date of Substantial Completion of the Work.
- 12.3.9 For greater certainty, subject to GC 2.4 – DEFECTIVE WORK, this warranty does not include warranty of any Products, work, services or materials provided by any person other than the Contractor, including previous contractors, subcontractors, or suppliers unless the Work performed by the Contractor includes work on, or the Contractor handles or alters, such Products, work, services and/or materials.
- 12.3.10 The Contractor agrees that the warranties provided under this Contract, including any warranties of Products and materials by manufacturers and Suppliers, are being provided to the Owner for the benefit of the Owner, the Condominium Corporation and the Unit Owners, and may be assigned by the Owner to the Condominium Corporation and the applicable Unit Owners or otherwise enforced by the Condominium Corporation or the applicable Unit Owner.
- 12.3.11 For greater clarity, nothing in this GC 12.3 – WARRANTY in any way limits the Contractor's obligations to repair, replace or remedy PDI Inspection Deficiencies, Tarion ONHWP Deficiencies or Technical Audit Deficiencies as part of the Work in accordance with this Contract.

### **PART 13 LIEN CLAIMS**

- 13.1.1 The Contractor agrees at its expense (and not as part of the Contract Price) to forthwith remove from the title of the Place of Work all claims for liens, certificates of lis pendens, construction liens and certificates of action, claims of quantum meruit and similar registrations whether under the Lien Act (a "**Lien Claim**") that arise out of, or are attributable to, the Work or any of the Work performed by a Subcontractor and shall indemnify and save harmless the Owner, its agents and employees from and against all claims by third parties against the Owner and all costs, losses, damages and expenses incurred by the Owner in connection therewith. The Contractor shall ensure that the Owner's title to the Place of Work shall be kept free and clear of Lien Claims arising out of, or attributable to, this Contract or the Work. The Owner acknowledges and agrees that the foregoing is not intended to limit any right the Contractor may have under the lien legislation to file a Lien Claim if the Owner does not comply with its payment obligations under this Contract and in such event the Owner agrees to be responsible for all costs and expenses, including legal fees, incurred by the Contractor and arising from such failure to comply on the part of the Owner.