

EXECUTION VERSION

COST OVERRUN FUNDING AND PERFORMANCE AGREEMENT

THIS COST OVERRUN FUNDING AND PERFORMANCE AGREEMENT is made as of the 18th day of April, 2017.

BETWEEN:

ALVAREZ & MARSAL CANADA INC., solely in its capacity as court appointed receiver and manager and construction lien trustee of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc. and not in its personal or corporate capacity

(“Construction Receiver”)

and

TERRA FIRMA CAPITAL CORPORATION, a corporation incorporated under the laws of the province of Ontario

(“Guarantor”)

and

CANADIAN IMPERIAL BANK OF COMMERCE as Administrative Agent for the Syndicate under the Syndicate Construction Loan Agreement

(“Administrative Agent”)

and

C.R.A.F.T. DEVELOPMENT CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(“Craft”)

WHEREAS:

- A. Urbancorp (Leslieville) Developments Inc. by the Construction Receiver (the **“Owner”**) and Craft have entered into:

- (a) a fixed price construction contract dated as of the date hereof (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Craft Construction Contract**”); and
 - (b) a development contract dated as of the date hereof (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Craft Development Contract**” and collectively with the Craft Construction Contract, the “**Craft C&D Contracts**”);
- B. As an inducement to the Owner and Construction Receiver to enter into the Craft C&D Contracts with Craft:
- (a) Guarantor has agreed to:
 - (i) absolutely, unconditionally and irrevocably guarantee to the Owner and the Construction Receiver, as a direct obligation, the construction and development of the Leslieville Project as contemplated under the Craft C&D Contracts whether by Craft or, in the event of a default by Craft, by another Person to the extent of, and as provided for, in Section 3.1; and
 - (ii) fund all Cost Overruns;
 - (b) Craft has agreed to fund each Cost Overrun that occurs after the Interim Occupancy Date if the Guarantor fails to fund such Cost Overrun in default of its obligations under this Agreement;

and in furtherance thereof each of Guarantor and Craft has agreed to enter into this Agreement.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions from Craft Construction Contract

Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Craft Construction Contract.

1.2 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

“**Breach Services**” has the meaning set forth in the Craft Development Contract.

“**Breach Work**” has the meaning set forth in the Craft Construction Contract.

“**Budget Increase Recommendation**” has the meaning set forth in the Craft Development Contract.

“**Budget Increase Request**” has the meaning set forth in the Craft Development Contract.

“**Business Day**” has the meaning set forth in the Craft Development Contract.

“**Change Funder**” has the meaning set forth in the Craft Construction Contract.

“**Change Order**” has the meaning set forth in the Craft Construction Contract.

“**Change Order Request**” has the meaning set forth in the Craft Construction Contract.

“**Change Price**” has the meaning set forth in the Craft Construction Contract.

“**CO Work**” means:

- (a) in the case of each Change Order Request (and the resulting Change Order) for which the Change Price is required to be funded under this Agreement by the Guarantor or Craft, all Construction Work provided for under such Change Order Request and Change Order;
- (b) in the case of each Budget Increase Request for which the Development Cost Overruns provided for thereunder are required to be funded under this Agreement by the Guarantor or Craft, all Development Services provided for under such Budget Increase Request; and
- (c) in the case of Dispute Funding, the applicable Dispute Work.

“**Construction Dispute**” means a dispute or delay with respect to a Change Order Request or a dispute with respect to a Construction Breach as described in Section 2.3(a).

“**Construction Dispute Funding**” has the meaning set forth in Section 2.3(a).

“**Construction Dispute Work**” means:

- (a) in the case of a dispute in connection with a Change Order Request, the Construction Work that is the subject of such Change Order Request; and

(b) in the case of a disputed Construction Breach, the applicable Breach Work.

“**Construction Work**” has the meaning set forth in the Craft Construction Contract.

“**Contract Price**” has the meaning set forth in the Craft Construction Contract.

“**Cost Overrun**” means:

(a) with respect to the Craft Construction Contract:

- (i) with respect to each Change Order Request for which the Project Monitor’s Change Order Recommendation is final and binding on the parties pursuant to Section GC 6.2.3 and/or Section GC 6.4.6 of the Craft Construction Contract, each Change Price under a Change Order Request recommended by the Project Monitor;
- (ii) without duplication, each Change Price under each Change Order that has been executed by the Owner, Craft and a Change Funder or is otherwise binding on those parties (other than Geo-thermal System Costs covered by a Change Order);
- (iii) with respect to any disputed Change Order Request, the Change Price requested thereunder; and
- (iv) with respect to any disputed Construction Breach, the cost of the Breach Work thereunder as determined by the Project Monitor;

together with all HST payable in connection with any of the foregoing amounts.

(b) with respect to the Craft Development Contract:

- (i) with respect to each Budget Increase Request for which the Project Monitor’s Budget Increase Recommendation is final and binding on the parties pursuant to Section 4.2(e) of the Craft Development Contract, each Development Cost Overrun under a Budget Increase Request recommended by the Project Monitor;
- (ii) without duplication, each Development Cost Overrun under each Budget Increase Request that has been approved by the Owner, Craft and a Change Funder or is otherwise binding on those parties;
- (iii) in the case of a disputed Budget Increase Request, the amount of the Development Cost Overrun requested thereunder; and
- (iv) in the case of a disputed Development Breach, the cost of the Breach Services as determined by the Project Monitor.

together with all HST payable in connection with any of the foregoing amounts.

“**CP Outside Date**” means July 31, 2017 or such later date as may be agreed among the Construction Receiver, Craft, the Administrative Agent and the Guarantor.

“**Craft C&D Contracts**” has the meaning specified in the Recital A(b) to this Agreement.

“**Craft Construction Contract**” has the meaning specified in the Recital A(a) to this Agreement.

“**Craft Development Contract**” has the meaning specified in the Recital A(b) to this Agreement.

“**Craft Funded Amount**” has the meaning set forth in Section 2.6(c).

“**Craft Funding Date**” has the meaning set forth in Section 2.6(b).

“**Craft Funding Election**” has the meaning set forth in Section 2.6(b).

“**Craft Loan Agreement**” means the credit agreement dated as of the date hereof entered into between Craft (as lender) and the Construction Receiver (as borrower) for a loan in the initial principal amount of \$2,000,000 which is secured against the Leslieville Project in the priority set out in the Waterfall.

“**Craft Loans**” means the loans advanced by Craft to the Construction Receiver pursuant to the Craft Loan Agreement.

“**Craft Notice Period**” has the meaning set forth in Section 2.6(a).

“**Defaulted Cost Overrun**” has the meaning set forth in Section 2.7.

“**Defaulted Syndicate Advance**” has the meaning set forth in Section 2.10.

“**Development Cost Overrun**” has the meaning set forth in the Development Contract.

“**Development Dispute**” means a dispute with respect to a Budget Increase Request or a dispute with respect to a Development Breach as described in Section 2.3(b).

“**Development Dispute Funding**” has the meaning set forth in the Section 2.3(b).

“**Development Dispute Services**” means:

- (a) in the case of a dispute with respect to a Budget Increase Request, the Development Services to be funded by the requested Development Cost Overrun;

(b) in the case of a disputed Development Breach, the applicable Breach Services.

“**Development Services**” has the meaning set forth in the Craft Development Contract.

“**Dispute Funding**” has the meaning set forth in the Section 2.3(b).

“**Dispute Work**” means Construction Dispute Work and/or Development Dispute Services and/or collectively Construction Dispute Work and Development Dispute Services, as the context requires.

“**Dispute Work Order**” has the meaning set forth in the Craft Construction Contract.

“**Existing Curzon Purchasers**” has the meaning set forth in the Development Contract.

“**Fixed Price**” means \$5,350,000.00 (plus the HST payable thereon).

“**Geo-thermal System Costs**” has the meaning set forth in the Construction Contract.

“**Geo-thermal System Work**” has the meaning set forth in the Construction Contract.

“**Governmental Authority**” has the meaning set forth in the Development Contract.

“**Guaranteed Obligations**” means:

(a) with respect to the Guarantor, the TF Guaranteed Obligations;

(b) with respect to Craft, the obligations of Craft under Section 2.6(a).

“**Initial Development Budget**” has the meaning set forth in the Development Contract.

“**Interim Occupancy Date**” means the first date upon which any Unit is occupied pursuant to the interim occupancy provisions of the New APS applicable to such Unit and which interim occupancy was permitted pursuant to the terms of the Craft C&D Contracts.

“**Leslieville Project**” means the “Project” as defined in the Construction Contract.

“**Marketing End Date**” has the meaning set forth in the Development Contract.

“**New APS**” has the meaning set forth in the Construction Contract.

“**Obligor Funding Date**” has the meaning set forth in Section 2.10(a).

“**Obligor Funding Election**” has the meaning set forth in Section 2.10(a).

“**Obligor Notice Period**” has the meaning set forth in Section 2.10(a).

“**Obligors**” means, collectively, the Guarantor and Craft, and “**Obligor**” means any one of them. For certainty, the reference to Craft as an Obligor in this Agreement does not limit the meaning of Craft to Craft as an obligor under this Agreement but includes Craft in all of its capacities including its capacity as contractor under the Craft Construction Contract and as developer under the Craft Development Contract wherever the context permits.

“**Original Syndicate Loan Commitment**” means \$4,500,000.00.

“**Project Completion**” means the date on which:

- (c) Total Performance of the Work has been achieved; and
- (d) The Development Services have been completed; provided that if the only Development Service remaining to be completed as of the Marketing End Date is the marketing and sale of any remaining Unsold Units, unsold Extra Parking Spaces and/or unsold Extra Storage Spaces, Craft shall be deemed to have performed all of the Development Services as of the Marketing End Date.

“**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 UC Leslieville and the Stakeholders (as defined in the Development Contract) with respect with the Leslieville Project, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to those parties.

“**Syndicate**” means the lenders from time to time under the Syndicate Construction Loan Agreement.

“**Syndicate Construction Loan Agreement**” means the credit agreement made as of the date hereof between the Construction Receiver (as borrower), Canadian Imperial Bank of Commerce (as administrative agent and a lender), Laurentian Bank of Canada (as a lender) and Canadian Western Bank (as a lender), in the initial principal amount of \$4,500,000, as such agreement may be amended and supplemented from time to time.

“**Syndicate Construction Loan**” means, at any time, the loans outstanding under the Syndicate Construction Agreement at such time.

“**Syndicate Funding Date**” has the meaning set forth in Section 2.7(a).

“**Syndicate Funding Election**” has the meaning set forth in Section 2.7(a).

“**Syndicate Notice Period**” has the meaning set forth in Section 2.7(a).

“**TF Construction Funded Amount**” has the meaning set forth in Section 2.4(a)(i).

“**TF Default Notice**” has the meaning set forth in Section 2.5.

“**TF Defaulted Cost Overrun**” has the meaning set forth in Section 2.5.

“**TF Development Funded Amount**” has the meaning set forth in Section 2.4(a)(ii).

“**TF Funded Amount**” means either a TF Construction Funded Amount or a TF Development Funded Amount, and “**TF Funded Amounts**” means, collectively, all TF Construction Funded Amounts and TF Development Funded Amounts.

“**TF Guaranteed Obligations**” has the meaning set forth in Section 3.1.

“**Total Performance of the Work**” has the meaning set forth in the Craft Construction Contract.

“**UC Beach**” means Urbancorp (The Beach) Developments Inc.

“**UC Leslieville**” means Urbancorp (Leslieville) Developments Inc.

“**UC Receivership Proceedings**” means 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 UC Leslieville, UC Riverdale and UC Beach.

“**UC Riverdale**” means Urbancorp (Riverdale) Developments Inc.

“**Unit**” has the meaning set forth in the Craft Construction Contract.

“**Waterfall**” means the scheme of distribution of proceeds from the disposition by the Construction Receiver of the property, assets and undertaking of UC Leslieville and UC Beach as set out in the Settlement Approval Order.

1.3 Interpretation

Unless otherwise expressly provided herein, this Agreement shall be interpreted in accordance with Section 2 of Schedule 1 (Definitions and Interpretation) of the Craft Development Contract and such section shall apply *mutatis mutandis* to this Agreement.

1.4 Survival

This Agreement shall survive the termination or other expiry of either or both of the Craft C&D Contracts.

2. COST OVERRUNS

2.1 Change Orders and Construction Disputes

- (a) The parties hereto acknowledge that:
- (i) each increase in the Contract Price payable under the Craft Construction Contract beyond the Fixed Price will be processed through a Change Order;
 - (ii) each Change Price for a Change Order (other than a Change Order in connection with Geo-thermal System Costs) is to be funded (A) by the Guarantor as required under this Agreement, or (B) if the Guarantor defaults in such obligation after the Interim Occupancy Date, by Craft as required under this Agreement;
 - (iii) the Guarantor, as a Change Funder, is entitled to receive each Change Order Request and Change Order Recommendation and to participate in the process for Change Orders set out in the Craft Construction Contract including the dispute resolution process; and
 - (iv) all Construction Dispute Funding is to be provided (A) by the Guarantor as required under this Agreement, or (B) if the Guarantor defaults in such obligation after the Interim Occupancy Date, by Craft as required under this Agreement.
- (b) To the extent not a party to the Craft Construction Contract, each of the parties hereto agree to be bound by the provisions of the Craft Construction Contract relating to Change Orders and Construction Disputes, Section GC 7.1 of the Craft Construction Contract and the provisions of the Craft Construction Contract that are supplemental or necessarily incidental to any of such provisions or sections including, without limitation, all of Part 6 (Changes), Section GC 7.1.6 and GC 7.1.7 and all of Part 8 (Dispute Resolution) of the Craft Construction Contract.

2.2 Development Cost Overruns and Development Disputes

- (a) The parties hereto acknowledge that:
- (i) each Development Cost Overrun is to be funded (A) by the Guarantor as required under this Agreement, or (B) if the Guarantor defaults in such obligation after the Interim Occupancy Date, by Craft as required under this Agreement;
 - (ii) the Guarantor, as a Change Funder, is entitled to receive each Budget Increase Request and Budget Increase Recommendation and to participate in the process for Budget Increase Requests set out in the Development Contract including the dispute resolution process; and

- (iii) all Development Dispute Funding is to be provided (A) by the Guarantor as required under this Agreement, or (B) if the Guarantor defaults in such obligation after the Interim Occupancy Date, by Craft as required under this Agreement.
- (b) To the extent not a party to the Craft Development Contract, each of the parties hereto agree to be bound by the provisions of the Craft Development Contract relating to increases in the Development Budget and Development Disputes and the provisions of the Craft Development Contract that are supplemental or necessarily incidental to any of such provisions including, without limitation, all of Section 4.2 (Initial Development Budget and Financial Matters), Sections 7.1(e) and (f) and Section 13.3 (Dispute Resolution) of the Craft Development Contract.

2.3 Disputed Change Orders, Budget Increase Requests and Breaches

- (a) The parties acknowledge and agree that (i) Section GC 6.2. of the Craft Construction Contract contemplates funding by a Change Funder of the amount of the Change Price of a Change Order Request which has been rejected by the Project Monitor, a Change Funder or the Owner and disputed by Craft or the approval of a Change Order Request by a Change Funder or the Owner that has been delayed, in each case in the circumstances and upon the terms and conditions set out therein, and (ii) Section GC 7.1.6 and 7.1.7 of the Craft Construction Contract contemplates the funding of the cost of Breach Work where a Construction Breach has been disputed by Craft upon the terms and conditions set out therein (collectively, “**Construction Dispute Funding**”).
- (b) The parties further acknowledge and agree that (i) Sections 4.2(h) and (i) of the Craft Development Contract contemplate funding by a Change Funder of the amount of a Budget Increase Request which has been rejected by the Project Monitor, a Change Funder or the Owner and disputed by Craft or the approval of a Budget Increase Request by a Change Funder or the Owner which has been delayed, in each case in the circumstances and upon the terms and conditions set out therein, and (ii) Sections 7.1(e) and (f) of the Craft Development Contract contemplate the funding of the cost of Breach Services where a Development Breach has been disputed by Craft upon the terms and conditions set out therein (collectively, “**Development Dispute Funding**” and together with the Construction Dispute Funding, the “**Dispute Funding**”).
- (c) The parties hereby agree that:
 - (i) the Dispute Funding shall be paid to, and held and applied by, the Construction Receiver as contemplated by the applicable provisions of the applicable Craft C&D. To the extent any Dispute Funding is ultimately required to be used by the Construction Receiver to fund a Change Price, a Development Cost Overrun or the cost of Dispute Work, then such Dispute Funding shall be, and be deemed to

be, a funding by the Guarantor of a Cost Overrun pursuant to Section 2.4(a) of this Agreement.

- (ii) If the Guarantor has defaulted in providing any Dispute Funding as required under this Agreement and Craft has funded the cost of the applicable Dispute Work as required under the applicable Craft C&D Contract, then to the extent Craft was entitled to be paid the cost of the Dispute Work by the Owner pursuant to the terms of such Craft C&D Contract, the cost of such Dispute Work actually paid by Craft shall be, and be deemed to be, a funding by Craft of a Cost Overrun pursuant to Section 2.6(a) or 2.6(b), as the case may be, of this Agreement and, for certainty, Craft shall be entitled to receipt of the additional fees contemplated under Section 2.6(d).
- (iii) Nothing in this Agreement affects or derogates from Craft's obligations under each of the Craft C&D Contracts to pay the cost of all Dispute Work in the first instance.
- (d) Each of the parties hereto agree that it will not be entitled to bring any claim against the Project Monitor for any decision, recommendation, finding or determination of the Project Monitor in relation to (i) paragraph 2.2.12 of GC 2.2 – ROLE OF CONSULTANT, paragraph 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 of the Craft Construction Contract, or (ii) Section 4.2(d) or 7.1(e) of the Craft Development Contract.

2.4 Funding

- (a) The Guarantor shall fund each Cost Overrun as follows:
 - (i) The Guarantor shall pay to the Construction Receiver by wire transfer of immediately available funds to an account provided by the Construction Receiver the full amount (including HST) of the Change Price of each Change Order Request or Construction Dispute Funding (each, a “**TF Construction Funded Amount**”) as soon as possible but in any event within 3 Business Days of:
 - (A) in the case of each Change Order Request for which the Project Monitor's Change Order Recommendation is final and binding on the parties pursuant to Section GC 6.2.3 and/or Section GC 6.4.6 of the Craft Construction Contract, receipt of a Change Order Recommendation from the Project Monitor recommending that the Change Order Request be approved; or

- (B) in the case of a Construction Dispute Funding relating to a Change Order Request, receipt of Dispute Work Order from the Project Monitor and Consultant;
 - (C) in all other cases relating to a Change Order Request, the earlier of (1) approval by the Guarantor of such Change Order Request, and (2) receipt of written notice from the Construction Receiver of the resolution in favour of Craft of any Change Order Request rejected or disputed by the Project Monitor, Guarantor or Construction Receiver in accordance with the terms of the Craft Construction Contract.
 - (D) in the case of Dispute Funding related to a Construction Breach, receipt of a Dispute Work Order from the Project Monitor and Consultant; and
 - (E) in all other cases of a Dispute Funding related to a Construction Breach, receipt of written notice from the Owner that the dispute of the Construction Breach has been resolved in favour of Craft in accordance with the terms of the Craft Construction Contract, which notice shall confirm the amount of the Dispute Funding required.
- (ii) The Guarantor shall pay to the Construction Receiver by wire transfer of immediately available funds to an account provided by the Construction Receiver the full amount (including HST) the Development Cost Overrun requested in each Budget Increase Request or Development Dispute Funding (each, a “**TF Development Funded Amount**”) within 3 Business Days of:
- (A) in the case of each Budget Increase Request for which the Project Monitor’s Budget Increase Recommendation is final and binding on the parties pursuant to Section 4.2 of the Craft Development Contract, receipt of a Budget Increase Recommendation from the Project Monitor recommending that the Budget Increase Request be approved;
 - (B) in the case of a Development Dispute Funding related to a Budget Increase Request, receipt of written notice from the Construction Receiver of a Development Dispute, which notice shall confirm the amount of the Development Dispute Funding required;
 - (C) in all other cases of a Dispute Funding related to a Budget Increase Request, the earlier of (1) approval by the Guarantor of such Budget Increase Request, and (2) receipt of written notice from the Construction Receiver of the resolution in favour of Craft of any Budget Increase Request rejected or disputed by the Project Monitor, Guarantor or

Construction Receiver in accordance with the terms of the Craft Development Contract; and

- (D) in the case of Dispute Funding related to a Development Breach, receipt of a written notice from the Construction Receiver of a Development Dispute, which notice shall confirm the amount of the Development Dispute Funding required.
- (b) The Construction Receiver agrees to hold each TF Funded Amount funded by the Guarantor in a segregated account and use such funds only for the purpose of paying the costs of the applicable CO Work. The Construction Receiver further agrees to refund to the Guarantor any portion of a TF Funded Amount remaining after completion of, and full payment for, the cost of the applicable CO Work, provided that the Guarantor is not then in default under this Agreement.
- (c) The aggregate of the TF Funded Amounts funded by the Guarantor under this Agreement together with interest thereon at the rate of 16% per annum shall be repaid to the Guarantor from, and to the extent of, the proceeds of disposition of the property and assets of UC Leslieville and UC Beach in the priority set out in the Waterfall.

2.5 Notice of Default by Guarantor

If the Guarantor defaults in funding a Cost Overrun as required pursuant to Section 2.4 of this Agreement, the Construction Receiver shall promptly provide written notice (“**TF Default Notice**”) to each of Craft and the Administrative Agent that the Guarantor has failed to fund such Cost Overrun as required pursuant to Section 2.4 of this Agreement (each, a “**TF Defaulted Cost Overrun**”).

2.6 Craft Funding if Guarantor Defaults

Without in any way relieving the Guarantor of, or waiving any of, its liabilities and obligations under this Agreement, and without in any way restricting, limiting or waiving the rights and remedies of the Construction Receiver under this Agreement or applicable Law against the Guarantor, if the Guarantor defaults in funding a Cost Overrun as required pursuant to Section 2.4 of this Agreement, then the parties agree as follows:

- (a) If the Guarantor defaults in funding a Cost Overrun as required pursuant to Section 2.4 of this Agreement at any time on or after the Interim Occupancy Date, then Craft shall fund the amount of any TF Defaulted Cost Overrun to the Construction Receiver by wire transfer of immediately available funds to an account provided by the Construction Receiver within 3 Business Days of receiving the applicable TF Default Notice (each, a “**Craft Notice Period**”); provided however that Craft shall not be required to fund such TF Defaulted Cost Overrun if it arises in connection with Dispute Funding and Craft is

paying the cost of the applicable Dispute Work from its own resources, in which case Section 2.3(c)(ii) shall apply.

- (b) If a TF Defaulted Cost Overrun arises at any time prior to the Interim Occupancy Date, then Craft shall have the right (but not any obligation) to fund the amount of any TF Defaulted Cost Overrun to the Construction Receiver by giving written notice to the Construction Receiver and the Administrative Agent of Craft's intention to do so (each, a "**Craft Funding Election**") within 2 Business Days of receiving a TF Default Notice (each, a "**Craft Notice Period**"). The Craft Funding Election shall also specify the date upon which it will fund the amount of the TF Defaulted Cost Overrun to the Construction Receiver (each, a "**Craft Funding Date**"), which date shall be not more than 2 Business Days following the provision of the Craft Funding Election (unless otherwise agreed by the Construction Receiver). If Craft does not respond within the Craft Notice Period, then it shall be deemed to have declined to fund the applicable TF Defaulted Cost Overrun. For certainty, the foregoing right (but not obligation) to fund the amount of any TF Defaulted Cost Overrun is an additional right and, in the case of Dispute Funding, does not affect or derogate from Craft's obligations under each of the Craft C&D Contracts to pay the cost of all Dispute Work in the first instance.
- (c) The parties agree that the amount of all TF Defaulted Cost Overruns funded by Craft to the Construction Receiver pursuant to Section 2.6(a) and Section 2.6(b) shall be, and be deemed to be, additional loans advanced by Craft to the Construction Receiver under the Craft Loan Agreement in such amount (each, a "**Craft Funded Amount**").
- (d) Subject to applicable Law, Craft shall be entitled to charge:
 - (i) a commitment fee in an amount of up to \$250,000 for each Craft Funded Amount as determined in Craft's discretion, acting reasonably, and which shall be earned in full and be added to the principal amount of the Craft Loan on the date of advance of such Craft Funded Amount; and
 - (ii) a deferred fee in an amount equal to 25% of each Craft Funded Amount, which deferred fee shall be earned on the date of advance of such Craft Funded Amount and paid to Craft from, and to the extent of, the proceeds of disposition of the property and assets of UC Leslieville and UC Beach in the priority set out in the Waterfall.
- (e) The Construction Receiver agrees to hold each Craft Funded Amount in a segregated account and use such funds only for the purpose of paying the costs of the applicable CO Work. The Construction Receiver further agrees to repay to Craft any portion of a Craft Funded Amount remaining after completion of, and full payment for, the cost of the applicable CO Work, provided that Craft is not then in default under either of the Craft C&D Contracts.

2.7 Syndicate Funding if Guarantor Defaults and Craft does not Fund

Without in any way relieving either Obligor of, or waiving any of, their respective liabilities and obligations under this Agreement, and without in any way restricting, limiting or waiving the rights and remedies of the Construction Receiver under this Agreement or applicable Law against each of the Obligors, if the Guarantor defaults in funding, or Craft defaults in funding, or declines to fund (as the case may be) a Cost Overrun (a “**Defaulted Cost Overrun**”) as required pursuant to Section 2.4 and Section 2.6, respectively, of this Agreement, then the parties agree as follows:

- (a) The Syndicate shall be entitled (but not obligated) to fund such Defaulted Cost Overrun by providing written notice to the Construction Receiver of their intention to do so (each, a “**Syndicate Funding Election**”) within 3 Business Days of receipt of written notice by the Construction Receiver to the Administrative Agent that both of the Obligors have defaulted in funding the Defaulted Cost Overrun (each, a “**Syndicate Notice Period**”). The Syndicate Funding Election shall also specify the date upon which it will fund the amount of such Defaulted Cost Overrun to the Construction Receiver (each, a “**Syndicate Funding Date**”), which date shall be not more than 3 Business Days following the provision of the Syndicate Funding Election (unless otherwise agreed by the Construction Receiver);
- (b) If the Administrative Agent does not respond within the Syndicate Notice Period, then the Syndicate shall be deemed to have declined to fund the applicable Defaulted Cost Overrun;
- (c) If the Syndicate elects to fund the applicable Defaulted Cost Overrun, then subject to the terms and conditions of the Syndicate Loan Agreement (including the conditions precedent to each advance of loans thereunder and satisfaction of the condition precedent set out in Section 2.7(e)), the Syndicate agrees to fund the amount of the applicable Defaulted Cost Overrun to the Construction Receiver on the applicable Syndicate Funding Date by advancing additional loans under the Syndicate Loan Agreement in such amount (each, a “**Syndicate Funded Amount**”);
- (d) Subject to applicable Law, the Syndicate shall be entitled to charge
 - (i) a commitment fee in an amount of up to \$250,000 for each Syndicate Funded Amount as determined in the Syndicate’s discretion, acting reasonably, and which shall be earned in full and be added to the principal amount of the Syndicate Construction Loan on the date of advance of such Syndicate Funded Amount; and
 - (ii) a deferred fee in an amount equal to 25% of each Syndicate Funded Amount, which deferred fee shall be earned on the date of advance of such Syndicate Funded Amount and paid to Syndicate from, and to the extent of, the proceeds of

disposition of the property and assets of UC Leslieville and UC Beach in the priority set out in the Waterfall;

- (e) The Construction Receiver and the Syndicate agree that a condition precedent to the provision of such additional loans to fund a Defaulted Cost Overrun is the negotiation and execution of such amendment or variation to the Syndicate Loan Agreement as may be reasonably required in connection with such additional loans as soon as practicable but in any event before the advance of any Syndicate Funded Amount, such amendment or variation to be in form and substance acceptable to the Construction Receiver and Syndicate, both acting reasonably; and
- (f) The Construction Receiver agrees to hold each Syndicate Funded Amount in a segregated account and use such funds only for the purpose of paying the costs of the applicable CO Work. The Construction Receiver further agrees to repay to Syndicate any portion of a Syndicate Funded Amount remaining after completion of, and full payment for, the cost of the applicable CO Work.

2.8 Reservation of Rights

- (a) The Guarantor acknowledges and agrees that all funding by Craft or the Syndicate of any Cost Overrun (whether or not disputed) as contemplated in Sections 2.6 and 2.7 are without prejudice to, and shall not derogate from, the rights and remedies of the Construction Receiver, or the liabilities and obligations of the Guarantor, under this Agreement with respect to such Cost Overrun including the right to collect payment from the Guarantor of, and the liability of the Guarantor for, the amount of such Cost Overruns together with such other costs, liabilities and damages suffered or incurred by the Construction Receiver as a result of a default by the Guarantor under this Agreement.
- (b) Craft acknowledges and agrees that all funding by the Syndicate of any Cost Overrun (whether or not disputed) as contemplated in Section 2.7 is without prejudice to, and shall not derogate from, the rights and remedies of the Construction Receiver, or the liabilities and obligations of Craft, under this Agreement with respect to such Cost Overrun including the right to collect payment from Craft of, and the liability of Craft for, the amount of such Cost Overruns together with such other costs, liabilities and damages suffered or incurred by the Construction Receiver as a result of a default by Craft under this Agreement.

2.9 Amendments to Section 2.7

The parties agree that the provisions of Section 2.7 may be amended, varied or waived by agreement between the Construction Receiver and the Administrative Agent in connection with any Defaulted Cost Overrun; provided that no such amendment, variation or waiver results in increased financial obligations or costs to the Construction Receiver or the estate of UC

Leslieville. No such amendment, variation or waiver shall require the agreement of, or any notice to, either Obligor or affect or derogate from the liabilities and obligations of each of the Obligors under this Agreement or any of the rights and remedies of the Construction Receiver under this Agreement.

2.10 Guarantor and Craft Right to Fund if Syndicate Defaults under Syndicate Construction Loan Agreement

If the Syndicate defaults in providing any advance of loans under the Syndicate Construction Loan Agreement which has been requested by the Construction Receiver and for which all conditions precedent thereunder have been satisfied (“**Defaulted Syndicate Advance**”), then the parties agree as follows:

- (a) Each of the Obligors shall be entitled (but not obligated) to fund such Defaulted Syndicate Advance by providing written notice to the Construction Receiver of its intention to do so (each, an “**Obligor Funding Election**”) within 3 Business Days of receipt of written notice by the Construction Receiver to each of the Obligors that the Syndicate defaulted in funding the Defaulted Syndicate Advance (each, an “**Obligor Notice Period**”). The Obligor Funding Election shall also specify the date upon which it will fund the amount of such Defaulted Syndicate Advance to the Construction Receiver (each, an “**Obligor Funding Date**”), which date shall be not more than 3 Business Days following the provision of the Obligor Funding Election (unless otherwise agreed by the Construction Receiver);
- (b) If none of the Obligors respond within the Obligor Notice Period, then the Obligors shall be deemed to have declined to fund the applicable Defaulted Syndicate Advance;
- (c) If one or both of the Obligors elect to fund the applicable Defaulted Syndicate Advance, then:
 - (i) if both Obligors elect to fund such Defaulted Syndicate Advance, then each Obligor shall be deemed to have elected to fund 50% of the amount of such Defaulted Syndicate Advance (unless the Obligors and the Construction Receiver agree otherwise);
 - (ii) with respect to any such funding by the Guarantor, the amount of such Defaulted Syndicate Advance funded by the Guarantor shall be, and be deemed to be an amount funded by the Guarantor under this Agreement and bear interest at the same rate as applicable to the Syndicate Construction Loan.
 - (iii) with respect to any such funding by Craft, the amount of such Defaulted Syndicate Advance funded by Craft shall be, and be deemed to be an amount funded by Craft under this Agreement, and bear interest at the same rate as applicable to the Syndicate Construction Loan.

- (iv) all Defaulted Syndicate Advances funded by the Guarantor or Craft together with the interest accrued thereon shall be repaid from, and to the extent of, the proceeds of disposition of the property and assets of UC Lesliewille and UC Beach on a *pari passu* and rateable basis with the Syndicate Construction Loans pursuant to the Waterfall.

2.11 Consent and Approvals

Each of the Owner and Craft agree that each of the Guarantor and the Administrative Agent and/or Syndicate shall have the benefit of each provision of each of the Craft C&D Contracts that requires the consent or approval of the Guarantor, the Administrative Agent and/or the Syndicate in connection with any matter.

3. GUARANTEE

3.1 Guarantee

Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to the Construction Receiver, as a direct obligation, the construction and development of the Lesliewille Project as contemplated under the Craft C&D Contracts including, without limitation, if either or both of the Craft C&D Contracts are terminated by the Construction Receiver in accordance with the terms thereof or otherwise by order of the Court in the UC Receivership Proceedings, then the construction and development of the Lesliewille Project as contemplated under the Craft C&D Contracts by such other Person or Persons as may be engaged by the Construction Receiver in its discretion. In such case the Guarantor agrees that it is liable for, and will pay to the Construction Receiver, the costs, expenses and damages howsoever incurred by the Construction Receiver (including costs incurred as a result of delay) arising from or in connection with such termination, and pre-fund to the Construction Receiver the cost and expenses of completing the Construction Work and Development Services as determined by the Construction Receiver, acting reasonably; PROVIDED HOWEVER THAT the amount of the TF Guaranteed Obligations under this Section 3.1 will be reduced by the amount (if any) of the un-advanced portion of the Original Syndicate Loan Commitment (less the aggregate amount of all Syndicate Funded Amounts (if any)) at the time demand has been made by the Construction Receiver on the Guarantor under this Section 3.1 (collectively, with the obligations of the Guarantor under Section 2.4 of this Agreement, the “**TF Guaranteed Obligations**”).

3.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations or by either Obligor in the performance of any of its obligations under this Agreement shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.

- (b) The Agreement herein provided for shall be a continuing, absolute and unconditional agreement and/or guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of this Agreement, Project Completion has occurred under each of the Craft C&D Contracts, and each of the Obligor shall have fully and satisfactorily discharged all of its obligations under this Agreement.
- (c) The liability of each of the Obligor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to any of the Obligor shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Craft C&D Contracts or any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of either Obligor or the Builder or any sale, lease or transfer of any of the assets of either Obligor;
 - (iii) any change in the Construction Receiver, either Obligor or the Builder;
 - (iv) any delay in the performance of the Construction Work or the Development Services, whether contemplated under Section GC 6.5 of the Craft Construction Contract or otherwise (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (v) any change in the financial condition of either Obligor or the Builder;
 - (vi) any Construction Breach, Development Breach, Major Event of Default, Major Construction Breach, Minor Construction Breach, Major Development Breach, Minor Development Breach or Event of Default, as each such term is defined under the Craft Construction Contract or Craft Development Contract, or any resulting release, stay or discharge of any Guaranteed Obligation;
 - (vii) the occurrence of any Force Majeure as defined under the Craft Development Contract;
 - (viii) any termination by the Construction Receiver of either or both of the Craft C&D Contracts;
 - (ix) any lack or limitation of power, incapacity or disability on the part of either Obligor or the Builder or any other irregularity, defect or informality on the part of either Obligor with respect to the Guaranteed Obligations;

- (x) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, either Obligor in respect of the Guaranteed Obligations or this Agreement;
 - (xi) the exercise of any rights by the Syndicate or Craft under the Syndicate Loan Agreement or the Craft Loan Agreement, respectively;
 - (xii) any amendment, variation, stay or vacation of any provision of the Settlement Approval Order;
 - (xiii) the assignment by the Construction Receiver of either or both of the Craft C&D Contracts; or
 - (xiv) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against any Obligor; or
 - (xv) any funding of Cost Overruns by any or all of Craft, the Syndicate and/or any other Person from time to time.
- (d) The obligations and liabilities of each of the Obligors hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against any Obligor or the Builder of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) The Construction Receiver shall not be bound to exhaust its recourse against any Obligor or others or any security or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by each of the Obligors, and each of the Obligors renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that each Obligor shall not be entitled to, and does hereby waive, any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, each Obligor hereby waives notice of acceptance of this Agreement and of the non-performance by any Obligor, diligence, presentment, protest, dishonour, demand for performance from the Construction Receiver and notice of non-performance or failure to perform on the part of any Obligor and all other notices whatsoever. The Agreement hereunder is a guarantee of performance and compliance. In order to hold each Obligor liable hereunder, there shall be no obligation on the part of the Construction Receiver at any time to demand or resort for performance to the other Obligor, or each Obligor's respective properties or

assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that the other Obligor be joined as a party to any proceeding for the enforcement of any provision of this Agreement and the Construction Receiver shall have the right to enforce the provisions of this Agreement irrespective of whether or not legal proceedings or other enforcement efforts against either or both of the Obligors are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, either or both Obligors shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Agreement herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of each of the Obligors under this Agreement and without in any way requiring the consent of or giving notice to any of the Obligors, the Construction Receiver may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with either Obligor or others, including any other guarantor, as the Construction Receiver may see fit and the Construction Receiver may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as the Construction Receiver may see fit.
- (h) Neither an action or proceeding brought under this Agreement regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Agreement. Each of the Obligors acknowledges that, if judgment is granted on an action or proceeding commenced under this Agreement, the obligations of each of the Obligors to the Construction Receiver do not merge with or end such Obligor's obligations hereunder.
- (i) The liability of each of the Obligors under this Agreement shall arise forthwith after demand has been made in writing on such Obligor (or in the case of the obligations of each Obligor under any subsection of Section 2, the applicable Obligor has received the documentation or notice required under such subsection).
- (j) Each of the Obligors agrees to pay to the Construction Receiver any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a full indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties

Each of the Obligors (with respect to itself only) represents and warrants to the Construction Receiver that as of the date of this Agreement:

- (a) The Obligor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Agreement and to perform its obligations hereunder;
- (b) The Obligor has the requisite power, authority and capacity to execute and deliver and perform this Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Agreement to be done, executed, delivered or performed;
- (c) No steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit the Obligor's ability to perform its obligations under this Agreement and such documents and agreements are in full force and effect as of the date hereof;
- (d) this Agreement has been duly authorized, executed, and delivered by the Obligor and constitutes legal, valid, and binding obligations of the Obligor, enforceable against the Obligor in accordance with its terms, subject only to:
 - (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (e) the authorization, execution, delivery and performance by the Obligor of this Agreement do not violate or conflict with, or constitute a default under:
 - (i) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Guarantor;

- (ii) any applicable Law; or
 - (iii) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (f) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against the Obligor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Obligor or in any impairment of its ability to perform its obligations under this Agreement, and the Obligor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (g) the Obligor is able to meet its obligations as they generally become due.

5. CONDITIONS PRECEDENT

- (a) The execution and delivery of this Agreement by the Construction Receiver and its obligations hereunder are subject to and conditional upon the granting of the Settlement Approval Order, the “Effective Date” (as defined therein) having occurred and such order becoming final and non-appealable and if such order is appealed, such appeal is withdrawn or determined in favour of the Construction Receiver.
- (b) The obligations of all of the parties to this Agreement are subject to the satisfaction or waiver of each of the following conditions precedent:
- (i) the execution and delivery of the each of the Craft C&D Contracts by the parties thereto and each such contract being in full force and effect; and
 - (ii) each of the other conditions precedent to the Craft Development Contract.

The foregoing conditions are inserted for the benefit of all of the parties to this Agreement and may only be waived by agreement of all of the parties to this Agreement (whether in whole or in part and with or without terms or conditions).

- (c) If the conditions set forth in Sections 5(a) and 5(b) are not satisfied (or waived by the parties hereto) on or before the CP Outside Date, then this Agreement shall be automatically terminated and of no force and effect. For certainty, none of the parties hereto has any obligation to appeal, or defend any appeal of, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order (as each such order is defined in the Craft Development Contract) or any provision of any of them.

6. NOTICES

6.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Guarantor:

Terra Firma Capital Corporation
22 St Clair Ave E #200
Toronto, ON
M4T 2S3

Fax No.: 416-792-4711
Email: gwatchorn@tfcc.ca
Attn.: Glenn Watchorn

If to the Construction Receiver:

Alvarez & Marsal Canada Inc. in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc.

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

Attention: Gruneir, Ryan
Fax No.: 416-847-5201
Email: rgruneir@alvarezandmarsal.com

and to

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

Attention: Zaspalis, Tony

Fax No: 416-847-5201
E-mail: tzaspalis@alvarezandmarsal.com

If to Craft:

C.R.A.F.T. Development Corporation
2-10 Queen Elizabeth Blvd.
Etobicoke, Ontario M8Z 1L8

Attention: Carmine Nigro
Fax No.: 416-979-0593
Email: cnigro@craftgrp.com

and to

C.R.A.F.T. Development Corporation
2-10 Queen Elizabeth Blvd.
Etobicoke, Ontario M8Z 1L8

Attention: Robert Sabato
Fax No.: 416-979-0593
Email: rsabato@craftgrp.com

If to the Administrative Agent:

Canadian Imperial Bank of Commerce,
as Administrative Agent for the Syndicate under the Syndicate Construction Loan
Agreement

25 King Street West,
Commerce Court North - 16th Floor,
Toronto, Ontario, M5L 1A2

Attention: Paul Montgomery, Senior Director, Special Loans
Fax No: 416-214-8749
E-mail: paul.montgomery@cibc.com

With a copy to:

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

6.2 Change of Address

Either party to this Agreement may, from time to time, change any of its contact information set forth in Section 6.1 by prior Notice to the other party, and such, change shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

6.3 Deemed Receipt of Notices

- (a) Subject to Sections 6.3(b), (c) and (d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic mail or facsimile shall be deemed to have been received on the day it is transmitted by electronic mail or facsimile.
- (b) If the party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic mail or facsimile transmission in accordance with this Article 6.
- (c) If any Notice delivered by hand or transmitted by electronic mail or facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

6.4 Service on Parties to this Agreement

Where any Notice is required to be served on any party to this Agreement, the obligation to serve such Notice shall be fulfilled by serving it on such party in accordance with the provisions of this Article 6.

7. GENERAL

7.1 Time of the Essence

Time is of the essence in all aspects of this Agreement.

7.2 Limited Recourse against Construction Receiver

All obligations of the Construction Receiver under or in connection with this Agreement are undertaken by Alvarez & Marsal Canada Inc. solely in its capacity as the Court Appointed Receiver and Manager and Construction Lien Trustee of UC Leslieville 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 Agreement. The sole recourse of any of the other parties to this Agreement against the Construction Receiver in connection with such obligations shall be limited solely to a claim against the proceeds of the property and assets of UC Leslieville.

7.3 Amendments

This Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Agreement.

7.4 Waiver

- (a) No waiver made or given by a party under or in connection with this Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

7.5 Entire Agreement

Except where provided otherwise in this Agreement, this Agreement, together with the Craft C&D Contracts, the Craft Loan Agreement, the Syndicate Loan Agreement and the Settlement Approval Order, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and

understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.

7.6 Severability

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.

7.7 Enurement

This Agreement shall enure to the benefit of, and be binding on, the parties hereto and their respective permitted successors and assigns. This Agreement may not be assigned by the Guarantor or Craft.

7.8 Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

7.9 Cumulative Remedies

Except as otherwise set forth in this Agreement, the rights, powers and remedies of each party set forth in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Agreement, any of the Craft C&D Agreements, the Craft Loan Agreement, the Syndicate Loan Agreement or applicable Law.

7.10 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Agreement.

7.11 Costs

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Agreement.

7.12 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.

7.13 Counterparts

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or electronic or faxed form (which shall be deemed to constitute an original form).

7.14 Joint and Several

If Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of Guarantor hereunder.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc. and not in its personal or corporate capacity

Per:



Name: Douglas R. McIntosh

Title: President,

Alvarez & Marsal Canada Inc.

Confidential

Cost Overrun Funding and Performance Agreement

TERRA FIRMA CAPITAL CORPORATION

Per:




Name: Glenn Watchorn

Title: President and C.E.O.

I/We have authority to bind the corporation

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Administrative Agent for and
on behalf of the Syndicate**

Per: 
Name: Paul Montgomery
Title: Senior Director, Special Loans Risk
Management

Per: 
Name: Mauricio Echeverri
Title: Senior Account Manager, Special
Loans Risk Management

I/We have authority to bind the corporation

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

Per: 
Name: Robert Sabato
Title: Director & authorized signing officer

Per: _____
Name:
Title:

I/We have authority to bind the corporation

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Confidential

Cost Overrun Funding and Performance Agreement