

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

- and -

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &  
URBANCORP (THE BEACH) DEVELOPMENTS INC.**

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Lien Act*, R.S.O. 1990,  
c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**MOTION RECORD  
(Returnable October 11, 2018)**

October 5, 2018

**BLAKE, CASSELS & GRAYDON  
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**TAB 1**

Court File No.: CV-16-11409-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

**and**

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &  
URBANCORP (THE BEACH) DEVELOPMENTS INC.**

Respondents

**APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C.B-3, AS AMENDED, SECTION 68 OF THE *CONSTRUCTION LIEN ACT*, R.S.O. 1990 C. C. 30, AND UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43**

**NOTICE OF MOTION**

**(Re: APPROVING LIEN SETTLEMENTS, AUTHORIZING ASSIGNMENTS OF SALE AGREEMENTS, AMENDING SETTLEMENT APPROVAL ORDER, CHARGING CASH COLLATERAL & APPROVING SALE OF GEO –THERMAL SYSTEM)**

**(Returnable October 11, 2018)**

Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C. 30, as amended (the Receiver together with the Construction Lien Trustee, the “**Construction Receiver**”), of all of the assets, undertakings and property acquired for, or used in relation to the business including all proceeds

thereof (the “**Property**”) of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc. will make a motion to a Judge of the Commercial List at 10:00 a.m. on October 11, 2018, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

### **PROPOSED METHOD OF HEARING**

This motion will be heard orally.

Capitalized terms not defined herein shall have the meaning given to them in the Seventh Report of the Construction Receiver dated October 5, 2018 (the “**Seventh Report**”).

### **THIS MOTION IS FOR:**

1. Orders substantially in the form attached at Tabs C and D of the Motion Record:
  - (a) approving the settlements reached between the Vetting Committee (as hereinafter defined) and certain lienholders of the Leslieville Project and Beach Project (the “**Settled Liens**”);
  - (b) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Beach Project from the \$120,000 holdback reserve established by the Construction Receiver;
  - (c) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Leslieville Project from the \$200,000 holdback reserve established by the Construction Receiver;
  - (d) authorizing the Construction Receiver, in its sole discretion, to consent to the assignment by Leslieville Purchasers of their agreements of purchase and sale for Leslieville Project units;
  - (e) amending sub-paragraph 55(1) of the settlement approval order (re: Leslieville Project) granted by Mr. Justice Newbould dated May 2, 2017 (the “**Settlement**”);

**Approval Order**”) to provide for a partial priority allocation of the distributions payable to Lien Claimants to be made to certain Lien Claimants’ counsel;

- (f) granting three superpriority charges in favour of each of the Canadian Imperial Bank of Commerce (the “**Administrative Agent**”), Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”) and Tarion Warranty Corporation (“**Tarion**”), attaching to certain cash collateral securing the claims of each pursuant to contingent secured liabilities; and
- (g) approving the sale of the Geothermal System to the Condominium Corporation and vesting the Geothermal System assets in the Condominium Corporation free and clear of any and all encumbrances (other than permitted encumbrances) (the “**Approval and Vesting Order**”).

2. Such further and other relief as counsel may request and this Honourable Court deems just.

**THE GROUNDS FOR THIS MOTION ARE:**

*Background*

3. On May 31, 2016, the Court issued an order appointing A&M as the Construction Receiver of all the Property of the Debtors (the “**Appointment Order**”).

4. Prior to the appointment of the Construction Receiver, the Debtors had carried on business as land developers principally focussed on the development, construction and sale of residential projects located in the Greater Toronto Area.

5. At the commencement of these Receivership Proceedings, the Debtors’ three residential projects – the Riverdale Project, Leslieville Project and the Beach Project – were at various stages of completion.

*Construction Lien Claims*

6. As described in the Sixth Report of the Construction Receiver dated June 19, 2018 (the “**Sixth Report**”), there were originally nine construction lien claims registered on title with respect to the Beach Project and thirteen construction lien claims registered on title with respect to the Leslieville Project. Capitalized terms used in this Notice of Motion but not otherwise defined shall have the meanings given to them in the Sixth Report.

7. Pursuant to an order of the Court dated June 26, 2018, settlements were approved with all but three lien claimants in respect of the Beach Project and Leslieville Project. Lien claimants whose claims were not settled as part of the June 26, 2018 order are referred to herein as the “**Outstanding Lien Claimants.**”

8. Since the date of the Sixth Report, settlement proposals in respect of Orin and Roni liens have been approved by the Vetting Committee and accepted by the respective Outstanding Lien Claimants. Subject to Court approval, these Settled Liens will be paid out of the holdback reserves maintained by the Construction Receiver on each project (thereby reducing the holdback reserves maintained by the Construction Receiver).

### *The Geothermal Sale*

9. As described in the Sixth Report, following a Court-approved sale process and pursuant to the provisions of the Disclosure Documents, the Construction Receiver recommended that the Geothermal System be sold to, and purchased by, the Condominium Corporation. The Condominium Corporation and the Construction Receiver have now prepared and settled an agreement of purchase and sale (the “**Geothermal APS**”) providing for the sale of the Geothermal System to the Condominium Corporation (the “**Geothermal Transaction**”).

10. A summary of key terms and conditions of the Geothermal APS are as follows:

- (a) **Purchase Property:** Unit 1, Level B, being the Geothermal Unit (as defined in the Geothermal APS, as described in the Condominium documents (as defined in the Geothermal APS);
- (b) **Purchase Price:** Eight hundred thousand dollars (\$800,000), inclusive of HST;

- (c) **Court Approval:** The Geothermal APS is conditional on the Court approving the proposed Geothermal Transaction;
- (d) **Financing Condition:** The Geothermal APS is conditional on the Condominium Corporation obtaining the Green Loan, or other financing sufficient to fund the Geothermal APS Purchase Price (as defined in the Geothermal APS);
- (e) **“As is Where is”:** Notwithstanding any warranty coverage provided by Tarion Warranty Corporation, the sale of the Geothermal System is on an “as is where is” basis without recourse or liability to the Construction Receiver; and
- (f) **“Permitted Encumbrances”:** The Geothermal APS and corresponding requested vesting order explicitly provides for certain encumbrances, such as utility easements, to remain on title.

11. In the Construction Receiver’s view, the applicable considerations, when applied to the facts of this case, support the Court approving the proposed Geothermal Transaction.

12. In the Construction Receiver’s view, the proposed Geothermal Transaction represents the highest and best transaction in respect of the Geothermal System resulting from the Court-approved sale process and the consideration appears to be fair and reasonable in the circumstances. There is no evidence to suggest that any viable alternative exists that would deliver a better recovery from the Geothermal System for the creditors ranking subordinate to the Debtor’s senior secured lenders.

***Amendment of Settlement Approval Order***

13. On May 2, 2017, the Court granted a Settlement Approval Order which provided for a comprehensive priority waterfall for the payment of proceeds of realization. The Settlement Approval Order provides for a distribution, as a twelfth priority, directing that money paid as part of the twelfth stage of the waterfall be paid (i) 50% to Terra Firma, (ii) 25% to Opt-in Purchasers, and (iii) 25% to Lien Claimants on account of their valid lien claims, other than



priority claims for Holdback Deficiencies, which have been settled and in most cases paid by the Construction Receiver (the “**Lien Claimant Distribution**”).

14. The Construction Receiver has had discussions with the Lien Claimant counsel participating on the Vetting Committee (“**Vetting Committee Counsel**”) who have expressed concern that they (or their clients) have incurred disproportionate costs to protect all lien claims and to ensure the interests of Lien Claimants generally are represented in the Vetting Committee process.

15. Vetting Committee Counsel has requested, and the Construction Receiver has agreed to request, an amendment to the Lien Claimant Distribution, such that: (i) first, each Lien Claimant will be given \$2,500 (or such lesser amount if the Lien Claimant Distribution is not sufficient to fund such distribution); (ii) second, \$40,000 of the Lien Claimant Distribution will be paid to Vetting Committee Counsel; and (iii) third, the remainder of the Lien Claimant Distribution, if any, will be paid *pari passu* to Lien Claimants (provided that the aggregate of the Lien Claimant Distribution may not exceed the aggregate amount available to Lien Claimants under the Settlement Approval Order).

#### ***Assignment of Leslieville Purchase Agreements***

16. On May 2, 2017, the Settlement Approval Order authorized and directed the Construction Receiver to enter into agreements of purchase and sale in respect of the Leslieville Project units (the “**Leslieville APSs**”). On the terms of the agreements, the Leslieville APSs cannot be assigned by the Vendor. This provision was included because the Construction Receiver did not want to be in a position where its marketing and sale process was in competition with sales by existing purchasers.

17. All fifty-five Residential Units in the Leslieville Project have been sold, each pursuant to a Leslieville APS. The Construction Receiver is in a position to close each of the Leslieville APSs in the short term. Accordingly, the rationale for the restriction on assignment no longer applies – there is no risk to competing sale efforts.

18. Craft and the Construction Receiver have now received requests from some Leslieville Project purchasers to consent to the assignment of their Leslieville APSs

19. Accordingly, the Construction Receiver is seeking the Court's approval and authority to consent, in the Construction Receiver's sole discretion, to assignments of the Leslieville APSs, at the request of any purchaser, in exchange for reimbursement by the purchaser of any financial due diligence costs incurred by the Construction Receiver to facilitate the assignment, and a \$15,000 assignment fee.

***Charge on Cash Collateral***

20. Each of the Administrative Agent, Travelers and Tarion have contingent claims against the Debtors on account of letters of credit, insurance policies, bonds and warranties. The three creditors are entitled under the Settlement Approval Order to distributions of cash collateral on account of these contingent liabilities.

21. The Construction Receiver is seeking a Court ordered charge over the cash collateral in the hands of each of the Administrative Agent, Travelers and Tarion, in favour of the party holding the funds. The cash collateral paid to each of the Administrative Agent, Travelers and Tarion will remain receivership property and therefore be subject to all of the charges and other encumbrances affecting receivership property, but because it is intended to be a distribution on account of contingent liabilities the requested charge in favour of the recipient will protect the integrity of the distribution, until the underlying contingent liabilities have either crystalized or been terminated

***Authorities to be Relied on***

22. The Construction Receiver expressly relies on Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

23. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THIS MOTION:**

1. The Seventh Report
2. The pleadings and proceedings herein; and
3. Such further and other material as counsel made advise and this Honourable Court may permit.

October 5, 2018

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**TO: SERVICE LIST**

**CANADIAN IMPERIAL BANK OF COMMERCE et.al.**    **V.    URBAN CORP (LESLIEVILLE DEVELOPMENTS INC.)**

(Applicant)

(Respondents)

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Re: Approval of Settlements, Payments and  
Sale of Geothermal System)**

**(Returnable October 11, 2018)**

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**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

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**Applicant**

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**APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*  
*ACT*, R.S.C. 1985, C.B-3, AS AMENDED, SECTION 68 OF THE  
*CONSTRUCTION LIEN ACT*, R.S.O. 1990 C. C. 30, AND UNDER SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C. 43**

**SEVENTH REPORT  
OF  
ALVAREZ & MARSAL CANADA INC.,  
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN TRUSTEE  
OF THE ASSETS, UNDERTAKINGS AND PROPERTY OF URBANCORP  
(LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE)  
DEVELOPMENTS INC., & URBANCORP (THE BEACH) DEVELOPMENTS INC.**

**October 5, 2018**

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## 1.0 INTRODUCTION AND OVERVIEW

1. On May 31, 2016, the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Appointment Order**”) appointing Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”, and together with the Receiver, the “**Construction Receiver**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the “**CLA**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, the “**Guarantors**”, and the Guarantors, together with UC Leslieville, the “**Debtors**”) (such proceedings, the “**Receivership Proceedings**”).
2. A detailed summary and history of the Debtors’ business and the Receivership Proceedings is set out in the sixth report of the Construction Receiver, dated June 19, 2018 (the “**Sixth Report**”). Capitalized terms used and not otherwise defined in this seventh report of the Construction Receiver (the “**Seventh Report**”) shall have the meanings given to them in the Sixth Report.

### 1.1 PURPOSE OF REPORT

3. The purpose of this Seventh Report is to:
  - a. support the Construction Receiver’s motion requesting this Court’s approval of orders:
    - (i) approving the settlements reached between the Vetting Committee (as hereinafter defined) and certain lienholders of the Leslieville Project and Beach Project (the “**Settled Liens**”);
    - (ii) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Beach Project from the \$120,000 holdback reserve established by the Construction Receiver;
    - (iii) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Leslieville Project from the \$200,000 holdback reserve established by the Construction Receiver;
    - (iv) authorizing the Construction Receiver, in its sole discretion, to consent to the assignment by Leslieville Purchasers of their

agreements of purchase and sale for Leslieville Project units, if and as may be requested by any individual Leslieville Purchaser;

- (v) amending sub-paragraph 55(l) of the settlement approval order (re: Leslieville Project) granted by Mr. Justice Newbould dated May 2, 2017, as amended by the order of Mr. Justice Newbould dated May 11, 2017 (the “**Settlement Approval Order**”) to provide for a partial priority allocation of the distributions payable to Lien Claimants to be made to certain Lien Claimants’ counsel;
- (vi) granting three superpriority charges in favour of each of the Canadian Imperial Bank of Commerce (the “**Administrative Agent**”), Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”) and Tarion Warranty Corporation (“**Tarion**”), attaching to certain cash collateral securing the claims of each pursuant to contingent secured liabilities; and
- (vii) approving the sale of the Geothermal System to the Condominium Corporation and vesting the Geothermal System assets in the Condominium Corporation free and clear of any and all encumbrances (other than permitted encumbrances) (the “**Approval and Vesting Order**”).

## 1.2 CURRENCY

- 4. Unless otherwise noted, all currency references in this Seventh Report are to Canadian dollars.

## 2.0 CONSTRUCTION LIEN CLAIMS

- 5. As reported in the Sixth Report, there were originally nine construction lien claims in the aggregate amount of \$2,058,930.92 registered on title with respect to the Beach Project and 13 construction lien claims in the aggregate amount of \$3,561,770.19 registered on title with respect to the Leslieville Project.
- 6. Pursuant to the CLA, a construction lien claimant with a valid lien claim may assert a priority claim on account of deficiencies in holdbacks that an owner should have maintained in priority to amounts owing to a mortgagee under its charge on the project lands. Under the CLA, where a lien claimant contracted directly with the Debtors (as owners) or their agent(s), a lien claimant is entitled to claim priority for holdback deficiencies in priority to amounts owing to registered mortgagees up to a maximum amount of 10% of the total value of materials and services which the lien claimant provided to the project (the “**Holdback Deficiencies**”).
- 7. As described in the Sixth Report, a vetting committee was convened, consisting of representatives of Terra Firma, Travelers and two construction lien claimant counsel (the “**Vetting Committee**”), to review construction lien claims and make

recommendations to the Construction Receiver regarding the settlement of same. Pursuant to an order of the Court dated June 26, 2018, settlements were approved with all but three lien claimants in respect of the Beach Project and the Leslieville Project. Lien claimants whose claims were not settled as part of this June 26, 2018 order are referred to herein as the “**Outstanding Lien Claimants**”.

8. The Outstanding Lien Claimants’ claims against the Beach Project and Leslieville Project are as follows:

Outstanding Lien Claimant	Beach Project		Leslieville Project	
	Total Claim	10% of Total Claim	Total Claim	10% of Total Claim
Lido	\$866,823.00	\$86,682.30	\$1,548,100.00	\$154,810.00
Orin	\$181,969.72	\$18,196.97	\$179,415.75	\$17,941.58
Roni	\$79,481.33	\$7,948.13	\$166,901.00	\$16,690.10
<b>Total</b>		<b>\$112,827.40</b>		<b>\$189,441.68</b>

9. Since the date of the Sixth Report, settlement proposals in respect Orin and Roni liens of have been approved by the Vetting Committee and accepted by the respective lien claimants. The Settled Liens are summarized below and, subject to Court approval, will be paid out of the holdback reserves maintained by the Construction Receiver on each project (thereby reducing the holdback reserves maintained by the Construction Receiver):

- a. Orin – Agreed holdback to be paid:
  - (i) Beach Project: \$18,196.97
  - (ii) Leslieville Project: \$17,941.58;
- b. Roni – Agreed holdback to be paid:
  - (i) Beach Project: \$3,874.95
  - (ii) Leslieville Project: \$8,345.05.

### 3.0 LESLIEVILLE PROJECT GEOTHERMAL SALE

#### *Proposed Geothermal Transaction*

10. As described in detail in the Sixth Report, following a Court-approved sale process, the Construction Receiver recommended that the Geothermal System be sold to, and purchased by, the Condominium Corporation. Following receipt of Court approval for the sale of the Geothermal System to the Condominium Corporation, the Condominium Corporation and the Construction Receiver prepared and settled an agreement of purchase and sale (the “**Geothermal APS**”)

providing for the sale of the Geothermal System to the Condominium Corporation (the “**Geothermal Transaction**”).

11. The Geothermal APS was modeled after the agreement of purchase and sale that was approved by the Court for the sale of the Leslieville Project units. A copy of the proposed Geothermal APS is attached hereto as **Appendix “A”**. A summary of the key terms and conditions of the Geothermal APS are as follows:
  - a. **Purchased Property:** Unit 1, Level B, being the Geothermal Unit (as defined in the Geothermal APS, as described in the Condominium Documents (as defined in the Geothermal APS).
  - b. **Purchase Price:** Eight hundred thousand dollars (\$800,000), inclusive of HST.
  - c. **Court Approval:** The Geothermal APS is conditional on the Court approving the proposed Geothermal Transaction.
  - d. **Financing Condition:** The Geothermal APS is conditional on the Condominium Corporation obtaining the Green Loan, or other financing sufficient to fund the Geothermal APS Purchase Price (as defined in the Geothermal APS).
  - e. **“As is Where is”:** Notwithstanding any warranty coverage provided by Tarion Warranty Corporation, the sale of the Geothermal System is on an “as is where is” basis without recourse or liability to the Construction Receiver.
  - f. **“Permitted Encumbrances”:** The Geothermal APS and corresponding requested vesting order explicitly provides for certain encumbrances, such as utility easements, to remain on title.

### ***Construction Receiver’s Considerations and Recommendations***

12. Pursuant to the leading caselaw<sup>1</sup>, when reviewing a proposed sale of assets by a receiver, the Court should consider the following:
  - a. Whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
  - b. The interests of all parties;
  - c. The efficacy and integrity of the process by which offers have been obtained; and
  - d. Whether there has been unfairness in the working out of the process.

In the Construction Receiver’s view, the foregoing considerations, when applied to the facts of this case, support the Court approving the proposed Geothermal Transaction, for the reasons set out below.

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<sup>1</sup> *Royal Bank v. Soundair Corp. (1991) 4 O.R. (3d) 1 (C.A).*

*Effort to Obtain Best Price*

13. As set out in detail in the Sixth Report, the sale process for the sale of the Geothermal System was undertaken by Innovia Corporation, a third party project management advisory firm retained by Craft to assist with the repair, commissioning and marketing of the Geothermal System. The process was thorough but did not ultimately generate interest from any geothermal company at the floor price of \$800,000 (inclusive of HST) set out in the Disclosure Documentation for a sale to the Condominium Corporation. Accordingly, in the Construction Receiver's view, the proposed Geothermal Transaction represents the highest and best price for the Geothermal System.
14. Moreover, in the Construction Receiver's view, the sale to the Condominium Corporation for the \$800,000 (inclusive of HST) purchase price is fair and appropriate from the perspective of the Condominium Corporation and the unit owners because it is consistent with the Disclosure Documentation.

*Interest of the Parties*

15. The sale of the Geothermal System, for a floor price of \$800,000 (inclusive of HST) or greater, has been before the Court since April of 2017, and no stakeholders have expressed any concerns or objections to the Construction Receiver.

*Integrity and Fairness in the Process*

16. The Construction Receiver is not aware of any procedural irregularities or unfairness in the process to market and sell the Geothermal System.

*Financing the proposed Geothermal Transaction*

17. As further discussed in the Sixth Report, in order to purchase the Geothermal System, the Condominium Corporation would have to enter a loan on terms substantially consistent with the Disclosure Documentation (the "**Green Loan**").
18. Since the date of the Sixth Report, Craft and the Construction Receiver have entered into a term sheet with Copower Inc. and negotiated debt and security documents to memorialize the Green Loan. These debt and security documents are in the process of being finalized, and funding is anticipated to occur contemporaneously with the closing of the proposed Geothermal Transaction.

*Construction Receiver's Conclusion*

19. In the Construction Receiver's view, the proposed Geothermal Transaction represents the highest and best transaction in respect of the Geothermal System resulting from the Court-approved sale process and the consideration appears to be fair and reasonable in the circumstances. There is no evidence to suggest that any viable alternative exists that would deliver a better recovery from the Geothermal System for the creditors ranking subordinate to the Debtors' senior secured lenders.

20. Accordingly, the Construction Receiver respectfully requests that the Court approve the Geothermal APS and grant the form of Approval and Vesting Order submitted by the Construction Receiver to the Court.

#### 4.0 AMENDMENT OF SETTLEMENT APPROVAL ORDER

21. On May 2, 2017, the Court granted the Settlement Approval Order which provided for, among other things, a comprehensive priority waterfall for the payment of proceeds of realization. A copy of the Settlement Approval Order (comprised of the May 2, 2017 settlement approval order and the May 11, 2017 order amending the May 2, 2017 order) are attached hereto as **Appendix "B"**.
22. Sub-paragraph 55(l) of the Settlement Approval Order provides for a distribution, as a twelfth priority, directing that money paid as part of the 12th stage of the waterfall will be paid (i) 50% to Terra Firma, (ii) 25% to Opt-in Purchasers (iii) 25% to Lien Claimants on account of their valid lien claims, other than priority claims for Holdback Deficiencies, which have been settled and in most cases paid by the Construction Receiver (the distribution described in sub-paragraph 55(l)(iii) herein described as the "**Lien Claimant Distribution**").
23. The Construction Receiver has had discussions with Phil Horgan and Joseph D'Alimonte, the Lien Claimant counsel participating on the Vetting Committee (in their capacity as counsel, the "**Vetting Committee Counsel**"), who have expressed concern that they (or their clients) have incurred disproportionate costs to protect all lien claims and to ensure the interests of Lien Claimants generally are represented in the Vetting Committee process.
24. Vetting Committee Counsel have requested, and the Construction Receiver has agreed to request, that the Lien Claimant Distribution be divided into three tranches, to the effect that the Lien Claimant Distribution will be paid as follows: (i) first, \$2,500 shall be paid to each Lien Claimant (or such lesser, equal amount as may be available if the Lien Claimant Distribution is not sufficient to fund \$2,500 to each Lien Claimant); (ii) second, \$40,000 of the Lien Claimant Distribution (or such lesser amount as may be available), shall be paid to Vetting Committee Counsel; and (iii) third, the remainder of the Lien Claimant Distribution, if any, shall be paid *pari passu* to Lien Claimants, provided that the aggregate of (i), (ii) and (iii) may not exceed the aggregate amount available to Lien Claimants under the Settlement Approval Order prior to the making of the proposed amendment.
25. At this stage, the Construction Receiver takes no position on whether or not there will be sufficient proceeds of disposition to make Lien Claimant Distributions. However, if there are Lien Claimant Distributions, the Construction Receiver believes that the proposed amendment to the priority waterfall in the Settlement Approval Order is reasonable in the circumstances, reflecting the time spent by Vetting Committee counsel on matters of common interest to all Lien Claimants.
26. Moreover, the proposed amendment to the Settlement Approval Order does not expand the size of the Lien Claimant Distribution, it merely reallocates how the Lien Claimant Distribution will be distributed; accordingly, the proposed amendment only affects the interest of Lien Claimants, and no other stakeholders.

## 5.0 ASSIGNMENT OF LESLIEVILLE PURCHASE AGREEMENTS

27. On May 2, 2017, the Settlement Approval Order authorized and directed the Construction Receiver to enter into agreements of purchase and sale in respect of the Leslieville Project units (the “**Leslieville APSs**”).
28. Pursuant to Section 16 of each agreement, the Leslieville APSs cannot be assigned by the Vendor. This non-assignment provision was included in the agreement because the Construction Receiver did not want to be in a position where its marketing and sale process was in competition with sales by existing purchasers trying to “flip” their Leslieville APSs.
29. However, as discussed in detail in the Sixth Report, all fifty-five Residential Units in the Leslieville Project have been sold, each pursuant to Leslieville APSs. Since the date of the Sixth Report, on September 7, 2018, the Leslieville Project was registered as TSCC No. 2669, and the Construction Receiver is in a position to close each of the transactions under the Leslieville APSs in the short term. The Construction Receiver anticipates that closing will occur in the third week of October. Accordingly, the rationale for the restriction on assignment no longer applies – there is no risk of competing sale efforts.
30. Craft and the Construction Receiver have now received requests from some Leslieville Project purchasers to consent to the assignment of their Leslieville APSs.
31. Given the time that will have passed from the execution of the Leslieville APSs to the closing of the transactions, it is very likely that the value of the underlying Leslieville Project unit will have increased, and thus purchasers of such units who assign their Leslieville APS would stand to profit if they are in effect selling the contract for the current market value of the units.
32. However, in the Construction Receiver’s view, any potential incremental increase in value between the date of the execution of the Leslieville APS and the closing of the transaction would not be captured by the Construction Receiver, for the benefit of the estate, simply by refusing to consent to the assignment. If the Construction Receiver refuses to consent to an assignment, then it is anticipated that the current Leslieville Project unit purchasers would still close, and then if they so desired immediately re-sell the unit (a transaction that would cause land transfer tax to be paid twice). In such a scenario, there is no value-add to the Debtors’ estates.
33. Accordingly, in consultation with key stakeholders, the Construction Receiver is seeking the Court’s approval and authority to consent, in the Construction Receiver’s sole discretion, to assignments of the Leslieville APSs, at the request of any purchaser, in exchange for reimbursement by the purchaser of any financial due diligence costs incurred by the Construction Receiver to facilitate the assignment, and a \$15,000 assignment fee.

34. As a condition of any consent to an assignment, the Construction Receiver would require that the assignor remain liable under the assigned Leslieville APS, such that if the assignee for any reason did not close, the Construction Receiver could require the assignor to close.

## 6.0 CASH COLLATERAL CHARGES

35. As described in the Sixth Report, the Administrative Agent has issued five letters of credit in favour of the City of Toronto (the “City”) to secure obligations of the Debtors to third parties:
- a. \$769,280, as security for the transfer of the Leslieville Parkland;
  - b. \$12,773.33, as security for baseline Leslieville Parkland improvements;
  - c. \$115,504, which the Construction Receiver believes to be in support of future City charges based on the estimated annual average storm water discharge for 13 units along Howie Avenue for a period of 20 years;
  - d. \$35,835, as security for the completion of works within the City right of way at the Riverdale Project; and
  - e. \$22,700, as security for the cost of traffic impact study and bollard removal at the Riverdale Project.
36. It is anticipated that these letters of credit will be returned or drawn-upon over the coming months.
37. Pending the return or drawdown of the letters of credit, the Administrative Agent is entitled pursuant to subparagraph 55(e) of the Settlement Agreement to distributions on account of these contingent liabilities.
38. Travelers has a number of potential claims secured by a mortgage and a general security agreement granted by UC Leslieville, including contingent claims arising from claims under an excess deposit insurance policy underwritten by Travelers that may be made in connection with agreements of purchase and sale entered into prior to the commencement of these proceedings, and arising from claims under a bond issued by Travelers. Travelers is entitled to receive cash collateral from the Construction Receiver pursuant to subparagraph 55(g) of the Settlement Agreement, in an amount to be agreed by the Construction Receiver and Travelers.
39. Tarion has a number of potential claims relating to its obligations under the *Ontario New Home Warranty Program Act* in respect of the Leslieville Project, and is entitled to receive cash collateral from the Construction Receiver pursuant to subparagraph 55(h) of the Settlement Agreement.



40. Given that the payments on account of contingent liabilities discussed in this section are subject to be returned to the Construction Receiver if and when the underlying contingency is released or terminated, the Construction Receiver is seeking an order in the present motion to augment the terms of the Settlement Agreement. In the Construction Receiver's view, the requested order does not vary the terms of the Settlement Approval Order or alter the priorities or entitlement to distributions.
41. The Construction Receiver is seeking a Court ordered charge over the cash collateral in the hands of each of the Administrative Agent, Travelers and Tarion, in favour of the party holding the funds. The cash collateral paid to each of the Administrative Agent, Travelers and Tarion will remain receivership property, and therefore be subject to all of the charges and other encumbrances affecting receivership property, but because it is intended to be a distribution on account of contingent liabilities, the requested charge in favour of the recipient will protect the integrity of the distribution, until the underlying contingent liabilities have either crystalized or been terminated.
42. In the Construction Receiver's view, the requested charges are fair and reasonable. Because they affect only cash collateral that is required to be paid to the beneficiary of the charges pursuant to the Settlement Approval Order, the requested charges do not prejudice or otherwise affect any third party.

## 7.0 CONCLUSION

43. In light of the foregoing, the Construction Receiver requests that this Honourable Court grant the orders, in the form enclosed in the Motion Record of the Construction Receiver.

All of which is respectfully submitted, this 5<sup>th</sup> day of October, 2018.

**ALVAREZ & MARSAL CANADA INC. SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN TRUSTEE OF THE ASSETS, UNDERTAKINGS AND PROPERTY OF URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC., & URBANCORP (THE BEACH) DEVELOPMENTS INC. AND NOT ITS PERSONAL OR CORPORATE CAPACITY**

Per:



Douglas R. McIntosh

President

# **APPENDIX "A"**

**AGREEMENT OF PURCHASE AND SALE**

The undersigned, **TSCC 2669** (the “**Purchaser**”), hereby agrees with **URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.** (“**UC Leslieville**”), by **ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as the court appointed receiver and manager and construction lien trustee of all of the property, assets and undertaking of UC Leslieville and without personal or corporate liability (the “**Receiver**”) (UC Leslieville, by its Receiver, hereafter the “**Vendor**”) to purchase Unit 1, Level B, being the Geothermal Unit, as described in the Condominium Documents (hereinafter called the “**Property**”), together with an undivided interest in the common elements appurtenant to such unit (collectively, the “**Unit**”) on the following terms and conditions:

1. (a) The purchase price of the Unit (the “**Purchase Price**”) is **EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00)** which amount shall be inclusive of HST, in lawful money of Canada. The entire purchase price shall be payable by wire transfer or lawyer’s certified trust cheque on the Title Transfer Date to the Vendor or as the Vendor may direct, subject to the adjustments hereinafter set forth.
- (b) The transfer of title to the Unit shall be completed on a date established by the Vendor in accordance with paragraph **Error! Reference source not found.** hereof (the “**Title Transfer Date**”).
- (c) The Purchaser does hereby confirm that it has received from the Vendor, the Vendor’s disclosure statement.

Paragraphs 2 through 32 to this Agreement are an integral part hereto and are contained on subsequent pages. The Purchaser acknowledges that it has read all Paragraphs of this Agreement.

The undersigned accepts the above offer and agrees to complete this transaction in accordance with the terms thereof.

**DATED** at Toronto, this \_\_\_day of \_\_\_\_\_, 2018.

**TORONTO STANDARD CONDOMINIUM CORPORATION NUMBER 2669**

Per: \_\_\_\_\_  
Name: Peter Griffis  
Title: President

Per: \_\_\_\_\_  
Name: Robert Sabato  
Title: Vice-President  
I/We have authority to bind the corporation.

**DATED**, signed, sealed and delivered, this \_\_\_\_ day of \_\_\_\_\_, 2018.

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.**, by **ALVAREZ & MARSAL CANADA INC.**, solely in its capacity as the court appointed receiver and manager and construction lien trustee of all of the assets, undertaking and properties of **URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.**, and without personal or corporate liability

Per:

\_\_\_\_\_  
Authorized Signing Officer

I have the authority to bind the Corporation.

2. The meaning of words and phrases used in this Agreement and its Schedules shall have the meaning ascribed to them in the *Condominium Act, 1998*, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the “**Act**”) and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:
- (a) “**Act**” has the meaning given to it in the introduction to this paragraph 2;
  - (b) “**Agreement**” means this Agreement of Purchase and Sale;
  - (c) “**Condominium Documents**” means the Creating Documents, the by-laws and rules of the Condominium, the disclosure statement and budget statement;
  - (d) “**Court**” means the Ontario Superior Court of Justice [Commercial List];
  - (e) “**Creating Documents**” means the registered declaration and description;
  - (f) “**HST**” or “**Harmonized Sales Tax**” shall mean the harmonized and/or blended Ontario Retail Sales Tax (the “**RST**”) and federal Goods and Services Tax (the “**GST**”). The Purchaser is advised that the rate of HST applicable to this transaction is 13 percent;
  - (g) “**Property**” has the meaning given to it in the first paragraph on page 1 hereof;
  - (h) “**Purchase Price**” has the meaning given to it in the introductory clause of Paragraph 1 hereof;
  - (i) “**Purchaser**” has the meaning given to it in the first paragraph on page 1 hereof;
  - (j) “**Receiver**” has the meaning given to it in the first paragraph on page 1 hereof;
  - (k) “**Title Transfer Date**” has the meaning given to it in paragraph 1(b) hereof;
  - (l) “**UC Leslieville**” has the meaning given to it in the first paragraph on page 1 hereof;
  - (m) “**Unit**” has the meaning given to it in the first paragraph on page 1 hereof; and
  - (n) “**Vendor**” has the meaning given to it in the first paragraph on page 1 hereof;

### **Deposits**

3. The parties hereto confirm that no deposit will be paid prior to the Title Transfer Date.

## **Adjustments**

4. (a) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
  - (i) In accordance with Schedule D to the registered Declaration, the Unit's percentage contribution to common expenses and percentage interest in the common elements is 0.000001, and as such, realty taxes and common expenses shall not be adjusted for on the final statement of adjustments, as the amounts will be nominal.
  - (ii) any new taxes imposed on the Unit by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Unit by such government prior to the Title Transfer Date;

## **HST**

5. It is acknowledged and agreed by the parties hereto that the Purchase Price is inclusive of all HST exigible with respect to this purchase and sale transaction, and that the Purchaser shall pay to the Vendor on the Closing Date the HST due and owing

## **Title**

6. The Purchaser shall be allowed ten (10) days prior to the Title Transfer Date to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, nor any other proof or evidence of the title of the Unit. Notwithstanding anything to the contrary hereinafter, the Purchaser acknowledges and agrees to accept title to the Unit subject to those instruments, documents and agreements listed in paragraph 8 hereof, which shall be permitted encumbrances. If within the examination period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which does not relate to a permitted encumbrance, which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the examination period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

## **Direction Re: Title**

7. Title to the Unit shall be taken in the name of the Purchaser.

### **Permitted Encumbrances**

8. (a) The Purchaser agrees to accept title subject to the following:
- (i) the Condominium Documents;
  - (ii) Instrument number AT2958525, registered March 2, 2012, being a Transfer of Easement in favour of Rogers Communications Inc.
  - (iii) Instrument number AT3708202, registered October 7, 2014, being a Transfer of Easement in favour of Bell Canada.
  - (iv) Instrument number AT3728135, registered October 30, 2014, being a Transfer of Easement in favour of Enbridge Gas Distribution Inc.
  - (v) Instrument number AT4735221, registered November 17, 2017, being a Notice of an agreement, being a site plan agreement, and
  - (vi) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction.
- (b) It is acknowledged and agreed that the Vendor shall not be obliged to obtain or register on title to the property a release of (or an amendment to) any of the aforementioned instruments or easements or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property.
- (c) The Purchaser agrees to accept a conveyance of title to the Unit pursuant to a court order that will authorize and direct the land registry office to clear/delete all registered charges, construction liens and certificates of action.
- (d) The Vendor shall be entitled to obtain from the Purchaser specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

### **Vendor's Lien**

9. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies on the Title Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Unit any time after the Title Transfer Date.

### **The Planning Act**

10. This Agreement and the transaction arising therefrom are conditional upon compliance with the provisions of Section 50 of the *Planning Act*, R.S.O. 1990, c.P.13 and any amendments thereto on or before the Title Transfer Date.

### **Title Transfer Date**

11. The Title Transfer Date shall be October 16, 2018 or such earlier or later day as agreed to by the parties, acting reasonably. The Purchaser covenants and agrees that it will, at its own expense complete the transaction in accordance with the notice aforesaid and register the transfer of title immediately upon delivery of the transfer to it. The Purchaser shall be responsible for all Land Transfer Tax exigible on the purchase of the Unit.

### **Purchaser's Covenants, Representations and Warranties**

12. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages, or Court Ordered Charges arranged by UC Leslieville, the Vendor or the Receiver and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph 12.
13. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be in default of its obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 18 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, certificate of pending litigation, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
14. The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her or their interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Unit, nor directly or indirectly permit any third party to list or advertise the Unit for sale or lease, at any time until after the Title Transfer Date. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply.



### **Termination without Default**

15. (a) The Purchaser further acknowledges and agrees that it does not have any legal, equitable or proprietary interest whatsoever in the Unit (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor. In no event shall the Vendor, the Receiver or any of their respective agents, including the Vendor's solicitors be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor, the Receiver, the Vendor's solicitors and/or any of their respective agents as a complete defence to any such claim.

### **No Liability of Receiver**

16. The Purchaser acknowledges and agrees that the Receiver, and its agents, officers and employees shall have no liability (personal, corporate or otherwise) under, as a result of or in connection with any obligations of UC Leslieville or the Vendor (and anyone for whom it is at law responsible) under this Agreement.
17. The Purchaser acknowledges and agrees that:
- (i) the Vendor does not warrant any of the systems contained or installed in the Unit or common elements, but shall provide the Purchaser with the full benefit of any warranties obtained by it to the extent that it is able to do so pursuant to the terms of any such warranties. The Purchaser agrees to accept such warranties in lieu of any other warranties or guarantees, expressed or implied, at equity or at law, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement or condition precedent to, concurrent with, or in any way affecting this Agreement or the subject land or Unit other than as expressed herein;
  - (ii) the Unit is being purchased by the Purchaser on an "as is, where is" basis at the Purchaser's own risk and peril and without any express or implied agreement, representation or warranty of any kind about the Unit, the fixtures, fittings and equipment located therein, contents, condition, existence of latent defects, or any other aspect or characteristic of the Unit, other than as set out in subsection 17(i) above;
  - (iii) the Receiver shall have no liability or obligation with respect to the value, state, or condition of the Unit, whether or not the matter is within the knowledge or imputed knowledge of the Receiver, its officers, employees, directors, agents, representatives and contractors;
  - (iv) the Receiver makes no agreements, representations or warranties concerning any statements made or other information delivered or made available to the Purchaser or any other person with respect to the Unit. For greater certainty, the Receiver is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Unit; and
  - (v) without limiting the foregoing, any conditions, warranties or representations expressed or implied pursuant to the Act, the *Sale of Goods Act* (Ontario), or any similar legislation in the Province of Ontario, do not apply to this purchase and are waived by the Purchaser.

### **Purchaser's Default**

18. (a) In the event that the Purchaser is in default with respect to any of its obligations contained in this Agreement on or before the Title Transfer Date and fails to remedy such default forthwith, if such default is a monetary default and/or pertains to the execution and delivery of documentation required to be given to the Vendor on the Title Transfer Date, or within five (5) business days of the Purchaser being so notified in writing with respect to any other non-monetary default, then the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained herein, and/or unilaterally declare this Agreement to be terminated and of no further force or effect. All monies paid hereunder, together with any interest earned thereon shall be forfeited to the Vendor for the benefit of the estate of UC Leslieville.
- (b) The Purchaser agrees that the forfeiture of the aforesaid monies shall not be a penalty and it shall not be necessary for the Vendor to prove it suffered any damages in order for the Vendor to be able to retain the aforesaid monies. The Vendor shall in such event still be entitled to claim damages from the Purchaser in addition to any monies forfeited to the Vendor. The aforesaid retention of monies is in addition to (and without prejudice to) any other rights or remedies available to the Vendor at law or in equity. In the event of the termination of this Agreement by reason of the Purchaser's default as aforesaid, then the Purchaser shall be obliged to forthwith execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser does not have (and the Purchaser hereby covenants and agrees it does not have) any legal, equitable or proprietary interest whatsoever in the Unit (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his or her lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead, and in accordance with the provisions of the *Powers of Attorney Act*, R.S.O. 1990, as amended, the Purchaser hereby declares that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity on the part of the Purchaser.

### **Risk**

19. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date.

### **Tender/Termet**

20. (a) Any tender of documents or monies hereunder, including those required to be exchanged on the Title Transfer Date shall be made respectively upon the Vendor or the Purchaser, or upon their respective solicitors, as hereinafter set out and any money shall be tendered by wire transfer (using Large Value Transaction protocols) or, if permitted by the Vendor, by direct deposit of the monies into the Vendor's solicitor's trust account in accordance with the requirements provided by such Vendor's solicitor. The Vendor shall be allowed to tender and deliver documentation to the Purchaser and/or its solicitor by electronic mail and/or by posting the documentation required to be delivered to the Purchaser on the Title Transfer Date on an internet web site and providing notice to the Purchaser and/or its solicitor with the method of accessing such documents on such internet site and the internet address of such web site. In the event the Vendor's

documents are emailed or posted on such site, said documents may be executed electronically in accordance with the *Electronic Commerce Act (Ontario)* and the emailing or posting of such documentation, electronically signed where required, and the notification to the Purchaser's solicitor or the Purchaser of where on the world wide web such documents can be accessed, shall be deemed to be effective tender of such documents on the Purchaser and/or their solicitor. Tender of any documents on the Purchaser other than those delivered via the web or internet may be made on the Purchaser's solicitor by fax and/or email. Notwithstanding anything set out herein to the contrary, any tender upon the Vendor on the Title Transfer Date must be made at the offices of its solicitor during normal business hours, which shall be deemed to be 9:00 a.m. to 4:30 p.m. on any business day (excluding weekends and statutory holidays). Save and except as specifically hereinafter set out to the contrary, any tender upon the Purchaser on the Title Transfer Date, if required, may be made by the Vendor's solicitor by he/she confirming to the Purchaser's solicitor in writing that:

- (i) that they have already delivered to the Purchaser's solicitor, such documents, undertakings, affidavits of the Vendor or its solicitor as may be required to effect a proper tender for the purposes of the interim and/or final closing of this transaction (either by way of delivery of the documents by email and/or the posting of such documents, electronically executed, on an internet web site as hereinbefore set out);
- (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
- (iii) with respect to the closing of the transaction, has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the co-operation or participation of the Purchaser's solicitor;

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds and without any requirement to have an independent witness evidencing the foregoing. The delivery of such written confirmation shall be deemed to be complete and effective tender. The Purchaser covenants acknowledges and agrees that the Vendor's and its solicitor's documents may be electronically signed in accordance with the *Electronic Commerce Act, 2000 Ch. 17, S.O. 2000*, as amended, and that such electronic form of execution of the documents shall be satisfactory for the purposes of this Agreement and this tender provision

- (b) In the event that the Purchaser or his solicitor has not delivered the requisite documents and/or monies as hereinbefore set out at such location and by 4:30 p.m. on the Title Transfer Date, then the Purchaser shall be deemed for all purposes to have waived tender by the Vendor. The Purchaser shall be estopped and forever barred from claiming any defect in the title to the Units, or any deficiency in the construction thereof, and/or complete this transaction in accordance with the provisions of this Agreement. It is further provided that, notwithstanding the preceding provisions, that in the event the Purchaser or his Solicitor advise the Vendor or its Solicitors, on or before the Title Transfer Date, that the Purchaser is unable or unwilling to complete the purchase transaction, the Vendor shall be relieved of any obligation to make any formal tender upon the Purchaser or its Solicitor or provide any documentation to the Purchaser as

hereinbefore set out and may exercise forthwith any and all of its right and remedies provided or in this Agreement and at law. In the event the Purchaser or his Solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative or solicitor at the Vendor's solicitor's office shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time.

21. As the electronic registration system (hereinafter referred to as the "**Teraview Electronic Registration System**" or "**TERS**") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:
- (a) The Purchaser shall be obliged to retain a lawyer, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction, and shall authorize such lawyer to enter into an escrow closing agreement with the Vendor's solicitor on the latter's standard form (hereinafter referred to as the "**Escrow Document Registration Agreement**"), establishing the procedures and timing for completing this transaction and to be executed by the Purchaser's solicitor and returned to the Vendor's solicitors at least two (2) days prior to the Title Transfer Date. If the Vendor's solicitor provides written notice to the Purchaser's solicitor that it accepts and agrees to be bound by the terms of the form of Document Registration Agreement prepared by the Law Society of Upper Canada and adopted by the Joint LSUC – CBAO Committee on Electronic Registration of Title Documents, as may be amended from time to time, the Vendor's solicitor and the Purchaser's solicitor shall be deemed to have executed such form which shall be the Escrow Document Registration Agreement defined in this subparagraph 22(a) and referred to in this Agreement.
  - (b) The delivery and exchange of documents and monies and the release thereof to the Vendor and the Purchaser, as the case may be:
    - (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation); and
    - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.
  - (c) If the Purchaser's lawyer is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said lawyer (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's solicitor, at such time on the scheduled Title Transfer Date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's solicitor's office, and shall pay a fee as determined by the Vendor's solicitor, acting reasonably for the use of the Vendor's computer facilities.
  - (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by wire transfer or certified cheque via personal delivery to the Vendor's solicitor (or in such

other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.

- (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (f) Notwithstanding anything contained in this agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
  - (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement or the provisions of this Agreement;
  - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
  - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor and specifically, when the Transfer of the Unit is created on the TERS system and messaged to the Purchaser's solicitor under the TERS system;

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

### **General**

- 22. The Vendor shall provide a statutory declaration on the Title Transfer Date that UC Leslieville is not a non-resident of Canada within the meaning of the ITA.
- 23. The Purchaser agrees to pay the costs of registration of the Transfer/Deed for the Unit(s) and its own documents and any tax (including land transfer tax) in connection therewith.
- 24. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
- 25. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.

26. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
27. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
28. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.

#### **Notice**

29. Any notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, facsimile transmission or electronic mail to the attention of the Purchaser or to the Purchaser's solicitor to their respective addresses indicated herein and to the Vendor at c/o Alvarez & Marsal Canada Inc. solely in its capacity as the Court appointed receiver and manager and construction lien trustee of all of the assets, undertaking and properties of Urbancorp (Leslieville) Developments Inc., Royal Bank Plaza, South Tower, 200 Bay Street, Suite 2900, Toronto, ON M5J 2J1 Attention: Tony Zaspalis and Ryan Grunier or to the Vendor's solicitors at the address indicated in this Agreement or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, by electronic mail or by facsimile transmission and upon the third day following posting, excluding Saturdays, Sundays and statutory holidays. This agreement or any amendment or addendum thereto may, at the Vendor's option, be properly delivered if it delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

#### **Material Change**

#### **Cause of Action/Assignment**

30. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which it might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than UC Leslieville, even though UC Leslieville may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties. Furthermore, the Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.

### **Non-Merger**

31. The covenants and agreements of each of the parties hereto shall not merge on the Title Transfer Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

### **Conditions**

32. This Agreement is subject to the approval of this Agreement and the transactions contemplated hereunder by the Ontario Superior Court of Justice, and subject to the granting of an order approving the transactions contemplated by this Agreement and vesting in the Purchaser all of UC Leslieville's right, title and interest in and to the Unit free and clear of all encumbrances (other than the permitted encumbrances set out in Paragraph 8(a) hereof), in form and substance acceptable to the Receiver and the Purchaser, each acting reasonably.
33. This Agreement is conditional upon the Purchaser obtaining and finalizing the necessary financing to pay the Purchase Price to the Vendor as contemplated in this Agreement.
34. The parties hereto hereby acknowledge, confirm and agree that the conditions set out in paragraph 32 and 33 shall hereinafter be referred to as the "**Conditions**". The parties hereto acknowledge and agree that the Conditions are herein included for the sole benefit of the Vendor, and that notwithstanding that any or all of same may be considered or construed as a true condition precedent, any or all of the above conditions may be unilaterally waived, in whole or in part by the Vendor at any time prior to the Title Transfer Date, as may be extended by the parties, by notice in writing delivered to the Purchaser. It is specifically agreed that the Purchaser shall be estopped from claiming that any of the foregoing conditions are void for uncertainty, nor shall the ambiguous character, if any, of said conditions be deemed or construed to void or vitiate the transaction of purchase and sale evidenced hereby under any circumstances. If prior to the Title Transfer Date, as maybe extended, the Vendor notifies the Purchaser that it is not satisfied with or will not waive all of the Conditions, then this this Agreement shall be null and void and of no further force and effect. For greater certainty, if the Vendor and Purchaser proceed with the closing as contemplated in this Agreement, then the Vendor shall be deemed to have waived all of the Conditions.

**SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE**

**CONFIRMATION OF RECEIPT**

**THE UNDERSIGNED** being the Purchaser of the Unit hereby acknowledges having received from the Vendor with respect to the purchase of the Unit the following document on the date noted below:

1. Disclosure Statement (including Table of Contents);
2. Budget Statement for the one (1) year immediately following the registration of the proposed Declaration and Description;
3. the Declaration;
4. the By-Laws;
5. the Rules;
6. the Management Agreement;
7. the Plan of Condominium; and
8. a copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and the Purchaser.

The Purchaser hereby acknowledges that receipt of the disclosure documents Disclosure Statement and accompanying documents referred to in paragraphs 1-8 above may have been in an electronic format and that such delivery satisfies the Vendor's obligation to deliver a Disclosure Statement under the Act.

**The Purchaser further acknowledges having been advised that the Purchaser shall be entitled to rescind or terminate the Agreement to which this Schedule is attached, provided written notice of the Purchaser's desire to so rescind or terminate the Agreement is delivered to the Vendor or the Vendor's solicitors within ten (10) days after the date set out below.**

DATED at Toronto, this 10<sup>th</sup> day of September, 2018.

**TORONTO STANDARD CONDOMINIUM  
CORPORATION NUMBER 2669**

Per: \_\_\_\_\_  
Name: Peter Griffis  
Title: President

Per: \_\_\_\_\_  
Name: Robert Sabato  
Title: Vice-President  
I/We have authority to bind the corporation.



# **APPENDIX "B"**

Court File No. CV-16-11409-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )

TUESDAY, THE 2<sup>nd</sup>

MR. JUSTICE NEWBOULD )

DAY OF MAY, 2017

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &  
URBANCORP (THE BEACH) DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Lien Act*, R.S.O. 1990,  
c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**SETTLEMENT APPROVAL ORDER  
(RE: LESLIEVILLE PROJECT)**

**THIS MOTION**, made by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and in its capacity as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (“**CLA**”) (the Receiver, together with the Construction Lien Trustee, the “**Construction Receiver**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business, including all proceeds thereof (the “**Property**”) of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp

(Riverdale) Developments Inc. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, and UC Leslieville, the “**Debtors**”), for an order approving various agreements and arrangements in order to give effect to a proposed settlement amongst the Syndicate, Terra Firma, Craft, and the Ad Hoc Leslieville Purchasers (each as defined in **Schedule “A”** hereto, and collectively, the “**Settlement Parties**”), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and the second report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”) and on hearing the submissions of counsel for the Construction Receiver, the Syndicate, Terra Firma, Craft, the Ad Hoc Leslieville Purchasers, Tarion, and Travelers, and the counsel on the counsel slip, attached, no one else appearing for any other person on the service list although properly served as appears from the affidavit of service of Kelly Peters sworn April 28, 2017, filed,

**DEFINITIONS**

1. **THIS COURT ORDERS** that capitalized terms shall have the meanings given to them in **Schedule “A”** hereto.

**CONDITION PRECEDENT TO THIS ORDER**

2. **THIS COURT ORDERS** that this Order will only become effective upon the filing by the Construction Receiver with the Court of a certificate confirming the satisfaction or waiver by the Settlement Parties of the Opt-In Threshold no later than two Business Days after the Ultimate Rescission Bar Date, or such later date as may be agreed to by the Settlement Parties. The date of the filing of such certificate shall be the Effective Date.

**AUTHORITY TO ENTER INTO AGREEMENTS AND DOCUMENTS FOR AND ON BEHALF OF UC LESLIEVILLE**

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized to execute such agreements authorized by paragraphs 4, 8, 10, 25, 26, 27, 28, 31 and 41 of this Order in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate

capacity, and shall be without any liability on the part of the Construction Receiver or its directors, officers, agents and employees.

#### **SALE OF UNITS TO OPT-IN LESLIEVILLE PURCHASERS**

4. **THIS COURT ORDERS AND DECLARES** that each sale transaction contemplated by each New APS to be entered into between UC Leslieville and an Opt-In Leslieville Purchaser (each such transaction, a “**New APS Transaction**”) is hereby approved, with such non-material amendments as the Construction Receiver may deem necessary or desirable. The Construction Receiver is hereby authorized and directed to take such additional steps and execute and deliver such additional documents as may be necessary or desirable for the completion of each New APS Transaction and for the conveyance of the applicable Unit to the applicable Opt-In Leslieville Purchaser.

#### **OPT-IN LESLIEVILLE PURCHASERS’ PREMIUM CHARGE**

5. **THIS COURT ORDERS** that each Opt-In Leslieville Purchaser shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**Purchasers’ Premium Charge**”) on the Leslieville Project as security for the reimbursement of the amount of the Premium paid by such Opt-In Leslieville Purchaser pursuant to its New APS. The Purchasers’ Premium Charge shall have the priority set out in paragraph 49 hereof.

#### **SALE OF UNSOLD UNITS TO NEW PURCHASERS**

6. **THIS COURT ORDERS** that Craft is hereby authorized to market each Unit that is not otherwise sold to an Opt-In Leslieville Purchaser (each, an “**Unsold Unit**”) pursuant to the Marketing Plan approved by the Construction Receiver, the Syndicate, and Terra Firma in accordance with the Craft Development Contract or as otherwise approved by the Court.

7. **THIS COURT ORDERS** that the form of Standard Form Sale Agreement to be offered to prospective purchasers of Unsold Units is hereby approved, with such non-material amendments as the Construction Receiver may deem necessary or desirable (including, without limitation, additional provisions relating to any non-resident or foreign purchaser taxes as may be

introduced after the date hereof), provided that the purchase price for an Unsold Unit shall be not less than the Minimum Unit Price.

8. **THIS COURT ORDERS AND DECLARES** that each sale transaction contemplated by each Standard Form Sale Agreement to be entered into between UC Leslieville and a New Leslieville Purchaser (each such transaction, a “**Subsequent Sale Transaction**”) is hereby approved, and the execution of the Standard Form Sale Agreement by the Construction Receiver is hereby authorized and approved. The Construction Receiver is hereby authorized and directed to take such additional steps and execute and deliver such additional documents as may be necessary or desirable for the completion of each Subsequent Sale Transaction and for the conveyance of the applicable Unsold Unit to each New Leslieville Purchaser, including for greater certainty, the Tarion Addendum and the Disclosure Documentation (as approved pursuant to the Purchaser Package Approval Order).

#### **FUNDING FAILURE**

9. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in the New APS or Standard Form Sale Agreement (including the Tarion Addendum), if at any time the Construction Receiver determines in its sole discretion that a Funding Failure has occurred then, provided that no Opt-In Purchaser or New Leslieville Purchaser has entered into occupancy of his/her Unit pursuant to the terms of his/her New APS or Standard Form Sale Agreement, as the case may be, the Construction Receiver is hereby authorized to deliver to each Opt-In Leslieville Purchaser and New Leslieville Purchaser a Funding Failure Notice, and upon the delivery of such Funding Failure Notice: (a) the authority of the Construction Receiver to execute each such New APS and Standard Form Sale Agreement is withdrawn and each such New APS and Standard Form Sale Agreement is hereby deemed terminated and null and void and of no force and effect as a result of the Funding Failure, and (b) the Construction Receiver shall only return (i) to each Opt-In Leslieville Purchaser, the New Deposit paid by such Opt-In Leslieville Purchaser, and (ii) to each New Leslieville Purchaser, all deposit monies paid by the New Leslieville Purchaser, in each case, together with any interest required by law, and no other amounts, and (c) the Opt-In Purchasers and the New Leslieville Purchasers shall have no claim

of any kind whatsoever against the Construction Receiver (in its personal capacity, corporate capacity or otherwise) as a result of a Funding Failure.

#### VESTING OF RESIDENTIAL UNITS

10. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to deliver transfers/deeds in the form prescribed by the *Land Registration Reform Act* (but excluding the implied covenants thereunder) duly executed (or deemed to be executed through electronic signature) by the Construction Receiver (each a "Transfer/Deed") with respect to each Unit to be conveyed pursuant to a New APS or a Standard Form Sale Agreement, as applicable, in favour of each Opt-In Leslieville Purchaser or New Leslieville Purchaser, as applicable.

11. **THIS COURT ORDERS AND DECLARES** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of each Transfer/Deed in respect of a Unit, all of UC Leslieville's right, title and interest in and to the Unit described in the Transfer/Deed shall vest absolutely in the transferee named in such Transfer/Deed, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims with respect to such Unit (including, without limitation, the claims of all Existing Leslieville Purchasers and Leslieville Assignors), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, encumbrances, title retention agreements, each and every Original Leslieville APS, judgments, adverse claims or interests, exceptions, reservations, easements, encroachments, servitudes, restrictions on use, any right of occupancy, any matter capable of registration against title, options, rights of first refusal or similar rights, rights of pre-emption or privilege or any contract creating any of the foregoing (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by this Order and the Order of Mr. Justice Newbould dated May 31, 2016; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "B"** hereto (all of which are collectively referred to as the "**Encumbrances**").

which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “C”** (the “**Permitted Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the applicable Unit referenced in a Transfer/Deed are hereby expunged and discharged as against such Unit.

12. **THIS COURT ORDERS** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of each Transfer/Deed in respect of a Unit, the Land Registrar is hereby directed to enter the transferee named in such Transfer/Deed as the owner of the Unit described in such Transfer/Deed in fee simple, and is hereby directed to delete and expunge from title to the Unit described in each such Transfer/Deed all of the Claims listed in **Schedule “B”** hereto, including such further Claims as may have arisen and/or been registered against title to such Unit as more particularly set out by way of solicitor’s statement or affidavit annexed to such Transfer/Deed (as contemplated by **Schedule “B”**), and such solicitor’s statement will also confirm, in respect of such Subsequent Sale Transactions, that the Minimum Unit Price has been satisfied.

#### **REPUDIATION AND TERMINATION OF EACH ORIGINAL LESLIEVILLE APS**

13. **THIS COURT ORDERS** that the Construction Receiver be and is hereby authorized to repudiate each and every Original Leslieville APS, without a requirement to deliver a written notice, with such repudiation to be effective (a) in respect of each Opt-Out Leslieville Purchaser and each Unpaid Leslieville Assignor, on the Effective Date, and (b) in respect of each Opt-In Leslieville Purchaser, on either (i) the date of the registration of the applicable Transfer/Deed on the closing of the applicable New APS Transaction, or (ii) the date of the termination of the New APS in accordance with its term or deemed termination of the New APS in accordance with paragraph 9 of this Order (each such date, a “**Repudiation Date**”).

14. **THIS COURT ORDERS AND DECLARES** that as a result of the repudiation by the Construction Receiver pursuant to paragraph 13 of this Order, each Original Leslieville APS is not capable of performance and may be terminated by each Existing Leslieville Purchaser. Notice of the termination by each Existing Leslieville Purchaser of their Original Leslieville APS shall be deemed to be provided to the Construction Receiver on, and effective as of, the applicable Repudiation Date. Notwithstanding the termination of such Original Leslieville

APS, any claim against Tarion or Travelers shall be dealt with in accordance with paragraphs 17 to 19 of this Order.

**COMMISSIONS ON AN ORIGINAL LESLIEVILLE APS**

15. **THIS COURT ORDERS AND DECLARES** that all Original Co-Operating Brokers shall have no claim, including without limitation a claim for fees or commissions, to any proceeds paid by an Opt-In Leslieville Purchaser on the closing of a New APS Transaction.

**NON-RECOURSE AGAINST PROPERTY**

16. **THIS COURT ORDERS AND DECLARES** that all Existing Leslieville Purchasers and Leslieville Assignors shall have no right, title, interest, claim or recourse as against any of the Property of the Debtors, and any such claim held by an Existing Leslieville Purchaser or a Leslieville Assignor against the Debtors shall be limited to (a) an unsecured claim against the estate of UC Leslieville, (b) a Tarion Deposit Claim, and (c) an Excess Deposit Insurance Claim, each to the extent available.

**RECOURSE FOR DEPOSIT CLAIMS**

17. **THIS COURT ORDERS** that any Tarion Deposit Claim or Excess Deposit Insurance Claim asserted against Tarion or Travelers, respectively, shall be dealt with in accordance with the terms of this Order.

18. **THIS COURT ORDERS AND DECLARES** that the following persons shall be authorized and permitted to assert, to the extent available, a Tarion Deposit Claim against Tarion and an Excess Deposit Insurance Claim against Travelers, in each case, only after the Repudiation Date of the applicable Original Leslieville APS as provided pursuant to paragraph 13 of this Order:

- (a) each Unpaid Leslieville Assignor;
- (b) each Opt-Out Leslieville Purchaser, but excluding a Non-Paying Leslieville Assignee; and



- (c) each Opt-In Leslieville Purchaser on the termination of such Opt-In Leslieville Purchaser's New APS as a result of a breach by UC Leslieville and not a breach or default by such Opt-In Leslieville Purchaser.

19. **THIS COURT ORDERS** that, notwithstanding any agreement to the contrary (including, without limitation, the terms of any assignment agreement between a Leslieville Assignee and its Leslieville Assignor):

- (a) each Paid-up Leslieville Assignor shall be forever estopped and enjoined from asserting a Tarion Deposit Claim and Excess Deposit Insurance Claim against Tarion and Travelers in respect of the applicable Original Leslieville APS, respectively; and
- (b) the recourse of each Paid-up Leslieville Assignee who: (i) opts out of the proposed settlement, or (ii) opts in but whose New APS does not close for any reason other than the breach or default of such Paid-Up Leslieville Assignee, in each case, as against each applicable Paid-Up Leslieville Assignor shall be limited to any amounts properly due and owing to such Paid-up Leslieville Assignee pursuant to the terms of the applicable assignment agreement that are not recovered from Tarion and Travelers, respectively.

The foregoing provisions of this paragraph 19 do not extend to Tarion Deposit Claims and Excess Deposit Insurance Claims by any Unpaid Leslieville Assignor or to any claims as between a Non-Paying Leslieville Assignee and its Unpaid Leslieville Assignor.

20. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and empowered to share information with Tarion and Travelers, including information with respect to Existing Leslieville Purchasers and Leslieville Assignors, as requested by Tarion and Travelers to assist in the administration and processing of Tarion Deposit Claims and Excess Deposit Insurance Claims as set out in this Order. Tarion and Travelers shall have the right to seek advice and directions with respect to the terms of this Order.

### **TARION CHARGE**

21. **THIS COURT ORDERS** that Tarion shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**Tarion Charge**”) on the Leslieville Project as security for its obligations under the ONHWPA to the Opt-In Leslieville Purchasers, New Leslieville Purchasers and the Condominium Corporation, provided that the Tarion Charge shall be limited to the Tarion Charge Amount at the time of any distribution of the Proceeds of Realization to Tarion pursuant to paragraph 55 hereof. The Tarion Charge shall have the priority set out in paragraph 49 hereof.

22. **THIS COURT ORDERS** that Tarion shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**Tarion Residual Charge**”) on the Leslieville Project as further security for any of its obligations under the ONHWPA to the Opt-In Leslieville Purchasers, New Leslieville Purchasers and the Condominium Corporation, provided that the Tarion Residual Charge shall be limited to the Tarion Residual Reserve Amount at the time of any distribution of the Proceeds of Realization to Tarion pursuant to paragraph 55 hereof. The Tarion Charge shall have the priority set out in paragraph 49 hereof.

### **TRAVELERS EXCESS INSURANCE POLICY AND CASH COLLATERAL**

23. **THIS COURT ORDERS AND DECLARES** that, subject to payment of the premiums thereunder, the Travelers Master Excess Claims Policy is in full force and effect notwithstanding this Receivership Proceeding.

24. **THIS COURT ORDERS** that, notwithstanding anything to the contrary contained in this Order, none of the Court Ordered Charges shall have priority over Travelers with respect to the Travelers Cash Collateral and that Travelers shall be entitled to exercise its rights and remedies against the Travelers Cash Collateral from time to time to satisfy outstanding Travelers Secured Obligations as they arise, including the payment of any outstanding premiums under the Travelers Master Excess Claims Policy. The Travelers Mortgage shall have the priority set out in paragraphs 52(d) and 55.

**CRAFT CONSTRUCTION CONTRACT**

25. **THIS COURT ORDERS AND DECLARES** that the Craft Construction Contract is hereby approved, and the execution and delivery of the Craft Construction Contract by the Construction Receiver is hereby ratified, authorized and approved. The Construction Receiver is hereby authorized and directed to take such additional steps and execute and deliver such additional documents as may be necessary or desirable from time to time to give effect to the Craft Construction Contract, including without limitation, the entering into, and execution and delivery of, any non-material amendments to the Craft Construction Contract as the Construction Receiver may deem necessary or desirable.

**ENGAGEMENT OF PROJECT MONITOR**

26. **THIS COURT ORDERS AND DECLARES** that the Project Monitor Engagement is hereby approved, and the execution and delivery of the Project Monitor Engagement by the Construction Receiver is hereby authorized and approved. The Construction Receiver is hereby authorized and directed to take such additional steps and execute and deliver such additional documents as may be necessary or desirable from time to time to give effect to the Project Monitor Engagement, including without limitation, the entering into, and execution and delivery of, any non-material amendments to the Project Monitor Engagement as the Construction Receiver may deem necessary or desirable.

**CRAFT DEVELOPMENT CONTRACT**

27. **THIS COURT ORDERS AND DECLARES** that the Craft Development Contract (which includes, without limitation, the requirement for the provision of the Craft Cash Collateral by Craft and the payment of interest thereon, and the payment of an Earned Management Fee, Deferred Management Fee and Craft Success Fee), is hereby approved and the execution and delivery of the Craft Development Contract by the Construction Receiver is hereby ratified, authorized and approved, with such non-material amendments as the Construction Receiver may deem necessary or desirable from time to time.

28. **THIS COURT ORDERS** the Construction Receiver is hereby authorized to take such additional steps and execute and deliver such additional documents contemplated by the Craft Development Contract, including without limitation, any and all necessary site plan and condominium applications, plan of subdivision applications, application for part lot control exemption by-laws, and other similar application and agreements in order for Craft to perform the Development Services pursuant to the Craft Development Contract.

29. **THIS COURT ORDERS** that Craft shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the "**Craft Deferred Management Fee Charge**") on the Leslieville Project as security for the payment of the Deferred Management Fee, provided such Deferred Management Fee is earned in accordance with the Craft Development Contract. The Craft Deferred Management Fee Charge shall have the priority set out in paragraph 49 hereof.

30. **THIS COURT ORDERS** that Craft shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the "**Craft Success Fee Charge**") on the Leslieville Project as security for the payment of the Craft Success Fee, provided such Craft Success Fee is earned in accordance with the Craft Development Contract. The Craft Success Fee Charge shall have the priority set out in paragraph 49 hereof.

#### VACANT LOT

31. **THIS COURT ORDERS** that, subject to the satisfaction of the Vacant Lot Conditions as set out in the Craft Development Contract, the Construction Receiver is hereby authorized and directed to execute and deliver a Transfer/Deed with respect to the Vacant Lot in favour of Craft or such transferee as designated by Craft in writing to the Construction Receiver.

32. **THIS COURT ORDERS AND DECLARES** that upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed in respect of the Vacant Lot, all of UC Leslieville's right, title and interest in and to the Vacant Lot as more particularly described in the Transfer/Deed shall vest absolutely in the transferee named in such Transfer/Deed, free and clear of and from any and all Encumbrances and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Vacant Lot are hereby expunged and discharged as against the Vacant Lot.

33. **THIS COURT ORDERS** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of a Transfer/Deed in respect of the Vacant Lot, the Land Registrar is hereby directed to enter the transferee named in any such Transfer/Deed as the owner of the Vacant Lot in fee simple, and is hereby directed to delete and expunge from title to the Vacant Lot as described in such Transfer/Deed, all of the Claims listed in **Schedule “B”** hereto, including such further Claims as may have arisen and/or been registered against title to the Vacant Lot as more particularly set out by way of solicitor’s statement or affidavit annexed to such Transfer/Deed (as contemplated by **Schedule “B”**).

### **GEO-THERMAL SYSTEM**

34. **THIS COURT ORDERS** that Craft is hereby authorized to market the right to operate and, if legally available, the right to own the Geo-Thermal System (if repaired and commissioned in accordance with the Craft Construction Contract) (the “**Craft Collateral**”) pursuant to the Geo-Thermal System Marketing Process to be agreed to by the Construction Receiver and Craft or otherwise approved by the Court.

35. **THIS COURT ORDERS** that any proceeds arising from a transaction in respect of the Craft Collateral (the “**Geo-Thermal System Proceeds**”) shall be applied as follows:

- (a) first, to Craft in the aggregate amount of the Craft Geo-Thermal Costs, if any, and the Geo-Thermal Loan, if any; and
- (a) the balance, if any, to be added to Proceeds of Realization to be distributed pursuant to the Waterfall set out in paragraph 55 of this Order.

36. **THIS COURT ORDERS** that Craft, as security for the Craft Geo-Thermal Costs and the Geo-Thermal Loan, if any, shall be entitled to the benefit of and hereby is granted:

- (a) a first priority fixed and specific charge (the “**Craft Geo-Thermal Proceeds Charge**”) on the Craft Collateral; and
- (b) a fixed and specific charge (the “**Craft Geo-Thermal Charge**”) on the Leslieville Project, and shall have the priority set out in paragraph 49 hereof.

## FINANCING OF LESLIEVILLE CONSTRUCTION

37. **THIS COURT ORDERS AND DECLARES** that the Construction Receiver is hereby authorized and empowered to obtain and borrow under credit facilities provided by the Syndicate Construction Loan Agreement and the Craft Loan Agreement, and the execution and delivery by the Construction Receiver of each of such agreements is hereby ratified, authorized and approved. The Construction Receiver is hereby authorized and directed to take such additional steps and execute and deliver such additional documents as may be necessary or desirable from time to time to give effect to the Syndicate Construction Loan Agreement and/or the Craft Loan Agreement, including without limitation, the entering into, and execution and delivery of, any non-material amendments to the Syndicate Construction Loan Agreement and/or the Craft Loan Agreement as the Construction Receiver may deem necessary or desirable.

38. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Syndicate Construction Loan Agreement and the Craft Loan Agreement, respectively, or as may be reasonably required by the Syndicate or Craft pursuant to the terms thereof, and the Construction Receiver is hereby authorized and directed to pay the Syndicate Construction Loan Obligations and Craft Construction Secured Obligations to the Syndicate and Craft, respectively, from the Proceeds of Realization as and when such Proceeds of Realization become available for distribution by the Construction Receiver in accordance with the Waterfall.

39. **THIS COURT ORDERS** that the Syndicate shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the "**Syndicate Charge**") on the whole of the Property of the Debtors as security for the payment of the Syndicate Construction Loan Obligations (which includes any Syndicate COR Funded Amount and any Syndicate COR Commitment Fee), together with interest and charges thereon, as applicable. The Syndicate Charge shall have the priority set out in paragraph 49 hereof.

40. **THIS COURT ORDERS** that Craft shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the "**Craft Construction Charge**") on the Leslieville

Project as security for the payment of the Craft Construction Secured Obligations (which includes any Craft COR Funded Amount and any Craft COR Commitment Fee), together with interest and charges thereon as applicable. The Craft Construction Charge shall have the priority set out in paragraph 49 hereof.

#### **TF COST OVERRUN AGREEMENT**

41. **THIS COURT ORDERS AND DECLARES** that the TF Cost Overrun Agreement is hereby approved, and the execution and delivery of the TF Cost Overrun Agreement by the Construction Receiver is hereby ratified, authorized and approved. The Construction Receiver is hereby authorized and directed to take such additional steps and execute and deliver such additional documents as may be necessary or desirable from time to time to give effect to the TF Cost Overrun Agreement, including without limitation, the entering into, and execution and delivery of, any non-material amendments to the TF Cost Overrun Agreement as the Construction Receiver may deem necessary or desirable.

42. **THIS COURT ORDERS** that Terra Firma shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**TF Cost Overrun Agreement Charge**”) on the Property of UC Leslieville and UC Beach as security for the payment of the TF Cost Overrun Funded Amount, together with interest and charges thereon. The TF Cost Overrun Agreement Charge shall have the priority set out in paragraph 49 hereof.

43. **THIS COURT ORDERS** that in the event that Terra Firma defaults in funding a Cost Overrun, and either Craft or the Syndicate fund the Construction Receiver for such Cost Overrun or in the case of Craft, pay such Cost Overrun directly in accordance with the provisions of the TF Cost Overrun Agreement, the Craft Construction Contract and/or the Craft Development Contract (such amount, a “**Craft COR Funded Amount**” and a “**Syndicate COR Funded Amount**”, respectively), then subject to applicable law:

- (a) Craft shall be entitled to charge (i) a commitment fee in an amount of up to \$250,000 (the “**Craft COR Commitment Fee**”), and (ii) a deferred fee in the amount equal to 25% of each Craft COR Funded Amount (the “**Craft COR Deferred Fee**”), for each Craft COR Funded Amount paid by Craft; and

- (b) the Syndicate shall be entitled to charge (i) a commitment fee in an amount of up to \$250,000 (the “**Syndicate COR Commitment Fee**”), and (ii) a deferred fee in the amount equal to 25% of each Syndicate Cost Overrun Funded Amount (the “**Syndicate COR Deferred Fee**”), for each Syndicate COR Funded Amount paid by the Syndicate.

44. **THIS COURT ORDERS** that Craft shall be entitled to add the amount of each Craft COR Funded Amount and each Craft COR Commitment Fee to the principal amount outstanding under the Craft Loan Agreement on the date of the advance of such Craft COR Funded Amount.

45. **THIS COURT ORDERS** that Craft shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**Craft COR Deferred Fee Charge**”) on the Leslieville Project as security for the payment of all Craft COR Deferred Fees. The Craft COR Deferred Fee Charge shall have the priority set out in paragraph 49 hereof.

46. **THIS COURT ORDERS** that the Syndicate shall be entitled to add the amount of each Syndicate COR Funded Amount and each Syndicate COR Commitment Fee to the principal amount outstanding under the Syndicate Construction Loan Agreement on the date of the advance of such Syndicate COR Funded Amount.

47. **THIS COURT ORDERS** that the Syndicate shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**Syndicate COR Deferred Fee Charge**”) on the whole of the Property of the Debtors as security for the payment of all Syndicate COR Deferred Fees. The Syndicate COR Deferred Fee Charge shall have the priority set out in paragraph 49 hereof.

48. **THIS COURT ORDERS** that in the event that 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 (a “**Defaulted Syndicate Advance**”) and either or both of Craft and Terra Firma fund such Defaulted Syndicate Advance in accordance with the TF Cost Overrun Agreement (such amount, a “**Syndicate Default Funded Amount**”), then Craft and/or Terra



Firma, as the case may be, shall be entitled to the benefit of and hereby is granted a fixed and specific charge (the “**Syndicate Loan Default Charge**”) on the whole of the Property of UC Leslieville and UC Beach as security for the payment of all such Syndicate Default Funded Amounts. The Syndicate Loan Default Charge shall have the priority set out in paragraph 49 hereof.

**PRIORITY AND VALIDITY OF CHARGES**

49. **THIS COURT ORDERS** that, subject to subparagraph 36(a) and paragraph 53 of this Order, the priorities of the Court Ordered Charges on the Leslieville Project, as among them, shall be as follows:

- (a) **First** – Construction Receiver’s Charge;
- (b) **Second** – Syndicate Charge (to the maximum amount of the Syndicate Construction Loan Obligations, including all applicable principal, interest, fees, charges and costs) and the Syndicate Loan Default Charge (to the maximum amount of all Syndicate Default Funded Amounts, including all applicable interest, fees charges and costs) on a *pari passu* basis;
- (c) **Third** – Construction Receiver’s Borrowings Charge (to the maximum principal amount of \$6.0 million, plus all applicable interest, fees, charges and costs);
- (d) **Fourth** – Craft Construction Charge (to the maximum amount of Craft Construction Secured Obligations, including all applicable principal, interest, fees, charges and costs);
- (e) **Fifth** – Craft Geo-Thermal Charge (to the maximum amount of the Craft Geo-Thermal Costs and Geo-Thermal Loan, if any);
- (f) **Sixth** – Craft Deferred Management Fee Charge (to the maximum amount of the Deferred Management Fee);
- (g) **Seventh** – Tarion Charge;
- (h) **Eighth** – Craft Success Fee Charge (to the maximum amount of the Craft Success Fee);
- (i) **Ninth** – Craft COR Deferred Fee Charge (to the maximum amount of all Craft COR Deferred Fees), and the Syndicate COR Deferred Fee Charge (to the

maximum amount of all Syndicate COR Deferred Fees), on a *pari passu* and rateable basis;

- (j) **Tenth** – TF Cost Overrun Agreement Charge (to the maximum amount of the TF Cost Overrun Funded Amounts);
- (k) **Eleventh** - Purchasers' Premium Charge (to the maximum amount of the aggregate Premiums paid by all Opt-In Leslieville Purchasers pursuant to their New APS); and
- (l) **Twelfth** – Tarion Residual Charge.

50. **THIS COURT ORDERS** that the filing, registration or perfection of all Court Ordered Charges shall not be required, and that all Court Ordered Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Court Ordered Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

51. **THIS COURT ORDERS** that the Court Ordered Charges or any of the Definitive Documents in connection with the Construction Receiver's borrowings authorized by this Order or the Appointment Order shall not be enforced without leave of this Court.

52. **THIS COURT ORDERS** that, subject to the priorities among the Court Ordered Charges set out in paragraph 49 of this Order and sections 14.06(7), 81.4(4) and 81.6 of the BIA:

- (a) the Construction Receiver's Charge, the Syndicate Charge, the Syndicate Loan Default Charge and the Construction Receiver's Borrowings Charge shall rank in priority to all Encumbrances, but subordinate in priority to the Travelers Cash Collateral;
- (b) subject to paragraph 53 below, the Craft Geo-Thermal Proceeds Charge shall, as against the Craft Collateral, have the priority set out in subparagraph 36(a);
- (c) subject to paragraph 53 below, the Craft Construction Charge, Craft Geo-Thermal Charge, and the Craft Deferred Management Fee Charge shall rank in priority to all Encumbrances, but subordinate in priority to (i) the Travelers Cash Collateral, (ii) the Holdback Deficiencies (up to the Holdback Reserve),

(iii) the Priority Realty Claims (up to the Priority Realty Claims Reserve), and  
(iv) the Syndicate Pre-Filing Secured Obligations;

- (d) subject to paragraph 53 below, the Tarion Charge, the Craft Success Fee Charge, the Craft COR Deferred Fee Charge, the Syndicate COR Deferred Fee Charge, the TF Cost Overrun Agreement Charge, the Purchasers' Premium Charge, the Tarion Residual Charge shall rank in priority to all Encumbrances, but subordinate in priority to (i) the Travelers Cash Collateral, (ii) the Holdback Deficiencies (up to the Holdback Reserve), (iii) the Priority Realty Claims (up to the Priority Realty Claims Reserve), (iv) the Syndicate Pre-Filing Secured Obligation, and (v) the Travelers Secured Obligations secured by the Travelers Mortgage.

53. **THIS COURT ORDERS** that if a Major Event of Default has occurred and is continuing under either of the Craft Construction Contract or the Craft Development Contract, as defined therein, then subject to the terms and conditions as set out in the Craft Construction Contract and/or Craft Development Contract, on the earlier of: (i) notice in writing from the Construction Receiver to Craft as provided in the Craft Development Contract, and (ii) the termination of the Craft Development Contract:

- (a) Craft shall have no right or claim whatsoever to, and is forever barred from claiming, any payments or other consideration that might otherwise be due or become due under the Craft Development Contract and Craft Construction Contract (including, for certainty, the Deferred Compensation and the transfer of the Vacant Lot), except for the payments expressly provided for under such agreements in connection with a termination of such agreements relating to the Construction Work or Development Services actually performed or incurred by Craft or on behalf of Craft under either of such agreements; and
- (b) the repayment of the Craft Construction Secured Obligations, any Craft Geo-Thermal Costs or Geo-Thermal Loan (together with the Craft Construction Charge, the Craft Geo-Thermal Proceeds Charge and the Craft Geo-Thermal Charge) shall automatically be subordinated in priority such that repayment of

the Craft Construction Secured Obligations and any Craft Geo-Thermal Costs or Geo-Thermal Loan shall only occur after repayment of the Terra Firma Indebtedness.

#### **DISTRIBUTION WATERFALL**

54. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, all Proceeds of Realization shall stand in the place and stead of the Leslieville Project, and that as and when the Leslieville Project is sold, all Claims and Encumbrances shall attach to the net Proceeds of Realization with the same priority as they had with respect to the Leslieville Project immediately prior to the transfers as set out and permitted in this Order, as if the Leslieville Project had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the transfers.

55. **THIS COURT ORDERS** that, subject to the receipt of Proceeds of Realization as contemplated by this Order or any subsequent transaction with the Construction Receiver, the Construction Receiver is hereby authorized and directed to distribute from time to time, and without further Order of the Court, the Proceeds of Realization (other than any Geo-Thermal System Proceeds, which shall be distributed in accordance with paragraph 35, and other than the Travelers Cash Collateral, which may be used by Travelers in accordance with paragraph 24) as and when such Proceeds of Realization become available for distribution by the Construction Receiver as follows (the “**Waterfall**”):

- (a) first, to the Construction Receiver, the amount of the Construction Receiver’s Reserve;
- (b) second, on a *pari passu* and rateable basis (i) to the Administrative Agent, the amount of the Syndicate Construction Loan Obligations (including, for certainty, any Syndicate COR Funded Amount and any Syndicate COR Commitment Fee) secured by the Syndicate Charge; and (ii) to Craft and Terra Firma, as applicable, the amount of the Syndicate Default Funded Amounts secured by the Syndicate Loan Default Charge;

- (c) third, to the Administrative Agent, the amount of the Construction Receiver's obligations owing to the Syndicate for monies borrowed pursuant to the Construction Receiver's Borrowings Charge;
- (d) fourth, to the Construction Receiver, the amount of the Holdback Reserve and the Priority Claims Reserve;
- (e) fifth, to the Administrative Agent, the amount of the Syndicate Pre-Filing Secured Obligations;
- (f) sixth, subject to paragraph 53, to Craft, (i) the amount of the Craft Construction Secured Obligations (including, for certainty, any Craft COR Funded Amount and any Craft COR Commitment Fee) secured by the Craft Construction Charge, and (ii) the Craft Geo-Thermal Costs and Geo-Thermal Loan secured by the Craft Geo-Thermal Charge, and (iii) the Deferred Management Fee secured by the Craft Deferred Management Fee Charge;
- (g) seventh, to Travelers in respect of the Travelers Secured Obligations secured by the Travelers Mortgage, including: (i) the amount of monies paid by Travelers in respect of Excess Deposit Insurance Claims, (ii) as cash collateral, an amount reasonably estimated by Travelers, and approved by the Construction Receiver at the time of distribution, with respect to any remaining potential Excess Deposit Insurance Claims in connection with any Original Leslieville APS, (iii) the amount of monies paid by Travelers to Tarion with respect to Tarion Deposit Claims pursuant to the Tarion Bond, and (iv) as cash collateral, an amount equal to the then outstanding Tarion Bond Amount. For certainty, the foregoing amounts shall be calculated taking into account any then remaining Travelers Cash Collateral. The cash collateral to be paid to Travelers pursuant to this subparagraphs 55(g)(ii) and (iv) hereof is to be held by Travelers upon terms and conditions to be agreed upon by the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in such subparagraphs.

- (h) eighth, to Tarion, as cash collateral in an amount equal to the Tarion Charge Amount at the time of distribution to Tarion as security for its obligations under the ONHWPA to the Opt-In Leslieville Purchasers, the New Leslieville Purchasers and the Condominium Corporation. The cash collateral to be paid to Tarion pursuant to this subparagraph 55(h) is to be held by Tarion upon terms and conditions to be agreed upon by the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in this paragraph;
- (i) ninth, subject to paragraph 53, to Craft, the amount of the Craft Success Fee secured by the Craft Success Fee Charge;
- (j) tenth, *pari passu* and rateably, to (i) Craft, in the aggregate amount of all Craft COR Deferred Fees, and (ii) the Syndicate, in the aggregate amount of all Syndicate COR Deferred Fees, if applicable;
- (k) eleventh, to Terra Firma, in an amount not exceeding the sum of (i) \$6.5 million on account of the Terra Firma Indebtedness, and (ii) the aggregate of all TF Cost Overrun Funded Amounts secured by the TF Cost Overrun Agreement Charge;
- (l) twelfth, *pari passu* and rateably to (i) Terra Firma (up to the remaining Terra Firma Indebtedness, if any) and (ii) the Opt-In Leslieville Purchasers (for the aggregate amount of the Premiums paid by all Opt-In Leslieville Purchasers pursuant to the New APS), with such amount allocated to the Opt-In Leslieville Purchasers to be distributed on a *pari passu* and rateable basis amongst all Opt-In Leslieville Purchasers; and
- (m) thirteenth, to Tarion and/or the Construction Receiver, as cash collateral in an amount equal to the Tarion Residual Reserve Amount at the time of distribution to Tarion as security for its obligations under the ONHWPA to the Opt-In Leslieville Purchasers, the New Leslieville Purchasers and the Condominium Corporation. The cash collateral pursuant to this subparagraph 55(m) is to be

held by Tarion and/or the Construction Receiver upon terms and conditions to be agreed upon by Tarion, the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in this paragraph;

- (n) fourteenth, to Lien Claimants in respect of the balance of their valid lien claims (other than claims for Holdback Deficiencies), such claims and their respective allocation between the Lien Claimants and the respective Projects to be determined, if necessary, by further order of the Court; and
- (o) the balance, if any, to unsecured creditors of the Debtors on a pro-rata basis, such claims to be determined, if necessary, by further order of the Court.

56. **THIS COURT ORDERS** that, any payments, distributions and disbursements under this Order by the Construction Receiver shall not constitute a “distribution” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 107 of the *Corporations Tax Act* (Ontario), section 117(1) of the *Taxation Act, 2007* (Ontario), or any other similar federal or provincial tax legislation (collectively, the “**Tax Statutes**”), and that the Construction Receiver, in making such payments, distributions or disbursements is not “distributing”, nor shall be considered to “distribute” nor to have “distributed”, such funds for the purposes of the Tax Statutes, and shall have no obligation to obtain a clearance certificate in respect of such payments, distributions or disbursements. The Construction Receiver shall not incur any liability under the Tax Statutes in respect of its making any payments ordered or permitted by this Order, and is hereby forever released and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made under this Order and any claims of this nature are hereby forever barred.

#### **CONSTRUCTION LIEN CLAIMS AND HOLDBACK**

57. **THIS COURT ORDERS** that, subject to the Waterfall set out in paragraph 55, upon receipt of any Proceeds of Realization, the Construction Receiver is hereby authorized and directed to retain from the Proceeds of Realization the amount of \$1,184,000 (the “**Holdback**”

**Reserve**”) in full and final satisfaction of all claims of the construction lien claimants of the Leslieville Project as set out at **Schedule “D”** hereto (the **“Lien Claimants”**) and their subcontractors, if any, in respect of any deficiencies in the holdbacks required to have been retained by any statutory **“owner”** of the Leslieville Project, as that term is defined in section 1(1) of the CLA that have priority to amounts that were owing to any mortgagee against the Leslieville Project pursuant to Part IV of the CLA (the **“Holdback Deficiencies”**).

58. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to hold the Holdback Reserve in an interest bearing account for amounts owed to the Lien Claimants for Holdback Deficiencies and the Holdback Reserve shall stand in place and stead of the Leslieville Project, subject to the entirety of claims by the Lien Claimants, and their subcontractors, if any, with respect to Holdback Deficiencies, and all actions or proceedings commenced against UC Leslieville, the Administrative Agent, Travelers, and Terra Firma by the Lien Claimants, and their subcontractors, if any, with respect to the Holdback Deficiencies shall be satisfied by the Holdback Reserve.

59. **THIS COURT ORDERS** that, upon the establishment of the Holdback Reserve by the Construction Receiver, all actions or proceedings commenced by the Lien Claimants as set out at **Schedule “E”** hereto or their subcontractors, if any, as applicable, against UC Leslieville, Terra Firma, the Administrative Agent, and Travelers with respect to: (i) Holdback Deficiencies; (ii) trust or damage claims (if any); or (iii) otherwise claiming priority over any mortgagee (collectively, the **“Mortgagee Actions”**) are hereby dismissed as against UC Leslieville, Terra Firma, the Syndicate, as applicable, on a with prejudice without costs basis.

60. **THIS COURT ORDERS** that, upon settlement of the Holdback Deficiencies owed to the Lien Claimants from the Holdback Reserve, as may be agreed between Terra Firma, Travelers, the Administrative Agent and the Lien Claimants, with the consent of the Construction Receiver (the **“Settled Amounts”**), the Construction Receiver shall bring a motion or motions, as applicable, from time to time, as the Construction Receiver in its sole discretion deems appropriate, to pay the Settled Amounts to each of the Lien Claimants and to pay the amount, if any, by which the Holdback Reserve exceeds the Settled Amounts in accordance with the Waterfall set out in paragraph 55 of this Order.



61. **THIS COURT ORDERS** that this Order is without prejudice to the rights of the Construction Receiver, the Lien Claimants, or any of them, to, at any time, bring a motion(s) to the Court seeking, among other things, payment of their respective claims for Holdback Deficiencies, refer any issues to a Construction Lien Master or any relief with respect to the determination of their claims for Holdback Deficiencies to be paid from the Holdback Reserve.

#### **PRIORITY REALTY TAX CLAIM RESERVE**

62. **THIS COURT ORDERS** that, subject to the Waterfall set out in paragraph 55 of this Order, upon receipt of any Proceeds of Realization, the Construction Receiver is hereby authorized and directed to retain from the Proceeds of Realization an amount satisfactory to the Construction Receiver to be held by the Construction Receiver in an interest bearing account on account of any Priority Realty Tax Claims (the “**Priority Realty Tax Claim Reserve**”), and the Priority Realty Tax Claim Reserve shall stand in place and stead of the Property.

#### **ROLE OF CONSTRUCTION RECEIVER**

63. **THIS COURT ORDERS** that the obligations of the Construction Receiver with respect to the completion of the Leslieville Project shall be limited only to those obligations specified under the Project Agreements, and, for greater certainty, the Construction Receiver shall have no obligation or responsibility for any onsite supervision, review or certification of the Construction Work or the Development Services completed by Craft, its consultants, subcontractors and/or any other party, in respect of the Leslieville Project. The Construction Receiver shall at all times be entitled to rely only on that information provided by Craft, its consultants and subcontractors, including but not limited to, with respect to information contained in the monthly progress reports provided by Craft to the Construction Receiver, the Project Monitor and the Administrative Agent, regarding the progress of the Construction Work and the Development Services. In exercising its limited mandate under the Project Agreements, the Construction Receiver is hereby authorized, as the Construction Receiver considers it advisable or appropriate, to consult with and rely on any information and advice provided by the Project Monitor. For greater certainty, the Construction Receiver is not a “declarant” within the meaning of the *Condominium Act* (Ontario) and shall not be liable for the obligations of a declarant arising thereunder.

64. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Construction Receiver under the Appointment Order, the Construction Receiver shall not be liable for any act or omission on the part of the Construction Receiver pertaining to the discharge of its duties under this Order, save and except for any claim or liability arising out of gross negligence or wilful misconduct on the part of the Construction Receiver. Nothing in this Order shall derogate from the protections afforded to the Construction Receiver by the BIA, any other federal or provincial legislation, applicable law, or the Appointment Order.

#### **SEALING OF CONFIDENTIAL APPENDIX**

65. **THIS COURT ORDERS** that, subject to further order of the Court, **Confidential Appendix "B"** and **Confidential Appendix "C"** to the Second Report shall be sealed, kept confidential, and not form part of the public record, but rather be placed, separate and apart from all other contents of the Court file, in a sealed envelope with a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of the Court.

#### **GENERAL**

66. **THIS COURT ORDERS** that, notwithstanding:
- (a) the pendency of these proceedings;
  - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of the Debtors and any bankruptcy order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Vacant Lot, the Units in the applicable persons, the Court Ordered Charges, the reserves, payments, distributions and disbursements made pursuant to this Order, are made free and clear of any Encumbrances, and shall be binding on any trustee in bankruptcy that may be appointed in respect of each Debtor, and shall not be void or voidable by creditors of each Debtor, nor shall they constitute nor be deemed to be a fraudulent preference, assignment,

fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

67. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Construction Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.

68. **THIS COURT ORDERS** that the Construction Receiver may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder, including, for greater certainty, with respect to the performance of its or UC Leslieville's obligations under any of the agreements approved herein.

69. **THIS COURT ORDERS** that pursuant to the BIA, section 195, this Order is subject to provisional execution notwithstanding any appeal therefrom.



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ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

MAY 02 2017

PER / PAR: 

## SCHEDULE "A"

### DEFINITIONS

"**A&M**" shall have the meaning given to it in the recitals of this Order;

"**Ad Hoc Leslieville Purchasers**" means the forty-six (46) Existing Leslieville Purchasers represented by Dickinson Wright LLP;

"**Administrative Agent**" means Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the Syndicate under the Syndicate Construction Loan and the Pre-Filing Syndicate Credit Agreement;

"**Appointment Order**" means the order of the Court dated May 31, 2016 appointing A&M as Construction Receiver of all of the Property of the Debtors;

"**BIA**" shall have the meaning given to it in the recitals of this Order;

"**Builder**" has the meaning given to it pursuant to the ONHWPA;

"**Business Days**" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario;

"**CLA**" shall have the meaning given to it in the recitals of this Order;

"**Claims**" shall have the meaning given to it in paragraph 11;

"**Condominium**" means the condominium which will be created upon registration of the declaration against the Leslieville Project pursuant to the provisions of the *Condominium Act* (Ontario);

"**Condominium Corporation**" means the condominium corporation for the Condominium;

"**Construction Lien Trustee**" shall have the meaning given to it in the recitals of this Order;

"**Construction Receiver**" shall have the meaning given to it in the recitals of this Order;

"**Construction Receiver's Borrowings Charge**" means the Receiver's Borrowings Charge and the Construction Lien Trustee's Charge as defined in paragraph 22 of the Appointment Order.

"**Construction Receiver's Charge**" shall have the meaning given to it in paragraph 19 of the Appointment Order;

"**Construction Receiver's Counsel**" means Gowlings WLG (Canada) LLP;

"**Construction Receiver's Independent Counsel**" means Blake, Cassels & Graydon LLP;

**“Construction Receiver’s Reserve”** means a reserve in an amount satisfactory to the Construction Receiver to serve as cash collateral sufficient to secure the payment of the Professional Expenses;

**“Construction Work”** shall have the meaning given to it in the Craft Development Contract;

**“Cost Overrun”** shall the meaning given to it in the TF Cost Overrun Agreement;

**“Court Ordered Charges”** shall mean the Construction Receiver’s Charge, the Construction Receiver’s Borrowings Charge, the Syndicate Charge, the Craft Construction Charge, the Craft Deferred Management Fee Charge, the Craft Geo-Thermal Proceeds Charge, the Craft Geo-Thermal Charge, the TF Cost Overrun Agreement Charge, the Tarion Charge and the Purchasers’ Premium Charge;

**“Craft”** means C.R.A.F.T. Development Corporation;

**“Craft Cash Collateral”** shall have the meaning given to it in the Craft Development Contract.

**“Craft Collateral”** shall have the meaning given to it in paragraph 34 of this Order;

**“Craft Construction Charge”** shall have the meaning given to it in paragraph 40 of this Order;

**“Craft Construction Contract”** means the fixed price construction contract dated April 18, 2017 made between UC Leslieville by the Construction Receiver and Craft for the completion of the construction of the Leslieville Project, and as appended as **Appendix “C”** to the Second Report;

**“Craft Construction Secured Obligations”** means, collectively (without duplication), (i) the obligations of the Construction Receiver owing to Craft under the Craft Loan Agreement, (ii) all Craft COR Funded Amounts and all Craft COR Commitment Fees earned by the Craft pursuant to the TF Cost Overrun Agreement, (iii) all other amounts, costs or expenses funded to the Construction Receiver or paid by Craft pursuant to the terms of the Craft Construction Contract or Craft Development Contract which are expressly provided thereunder to be loans funded by Craft under the Craft Loan Agreement or costs to be reimbursed from the Proceeds of Realization with the same priority in the Waterfall as loans funded by Craft under the Craft Loan Agreement; and (iv) interest on the Craft Cash Collateral as provided for under the Craft Development Contract.

**“Craft COR Commitment Fee”** shall have the meaning given to it in paragraph 43(a) of this Order;

**“Craft COR Deferred Fee”** shall have the meaning given to it in paragraph 43(a) of this Order;

**“Craft COR Deferred Fee Charge”** shall have the meaning given to it in paragraph 45 of this Order;

**“Craft COR Funded Amount”** shall have the meaning given to it in paragraph 43 of this Order;

“**Craft Deferred Management Fee Charge**” shall have the meaning given to it in paragraph 29 of this Order;

“**Craft Development Contract**” means the development contract dated April 18, 2017 between UC Leslierville by the Construction Receiver and Craft for the provision by Craft of development services with respect to the Leslierville Project, and as appended as **Appendix “D”** to the Second Report;

“**Craft Geo-Thermal Charge**” shall have the meaning given to it in paragraph 36(b) of this Order;

“**Craft Geo-Thermal Costs**” shall have the meaning given to it in the Craft Construction Contract;

“**Craft Geo-Thermal Proceeds Charge**” shall have the meaning given to it in paragraph 36(a) of this Order;

“**Craft Loan Agreement**” means the loan agreement dated April 18, 2017 made between the Construction Receiver (as borrower) and Craft (as lender), and as appended as **Appendix “F”** to the Second Report;

“**Craft Success Fee**” means the fee equal to \$1 million to be paid to Craft in accordance with the Craft Development Contract and the Waterfall;

“**Craft Success Fee Charge**” shall have the meaning given to it in paragraph 30 of this Order;

“**Debtors**” shall have the meaning given to it in the recitals of this Order;

“**Defaulted Syndicate Advance**” shall have the meaning given to it in paragraph 48 of this Order;

“**Deferred Commitment Fee**” shall have the meaning given to it in the Syndicate Construction Loan Agreement;

“**Deferred Compensation**” shall have the meaning given to it in the Craft Development Contract;

“**Deferred Management Fee**” means a management fee equal to \$1,125,000 to be paid to Craft in accordance with the Craft Development Contract and the Waterfall;

“**Definitive Documents**” shall have the meaning given to it in paragraph 38 of this Order;

“**Development Services**” shall have the meaning given to it in the Craft Development Contract;

“**Disclosure Documentation**” means, in respect of the Condominium, the disclosure statement, first year budget statement, declaration, by-laws and rules, proposed condominium management agreement and draft plan of standard condominium;

**“Earned Management Fee”** shall have the meaning given to it in the Craft Development Contract to be paid to Craft in accordance with the Craft Development Contract and the Waterfall;

**“Effective Date”** shall have the meaning given to it in paragraph 2 of this Order;

**“Encumbrances”** shall have the meaning given to it in paragraph 11 of this Order;

**“Excess Deposit Insurance Claim”** means an insurance claim made pursuant to the Master Insurance Policy for Excess Condominium Deposits and Upgrade Monies (Policy No. 10031069) dated July 13, 2012 provided by Travelers for purchase price deposits paid to UC Leslieville or UC Leslieville’s solicitor in excess of the Tarion Deposit Claim;

**“Existing Leslieville Purchaser”** means a person who has entered into an Original Leslieville APS with UC Leslieville, or where such person or persons has/have assigned its/their Original Leslieville APS, the assignee(s) thereof;

**“Funding Failure”** means the occurrence of any of the following:

- (a) if, at any time and for whatever reason (including by reason of default by Craft or the repair or replacement of any damage or destruction to all or any part of the Leslieville Project), the estimated cost to complete the Construction 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: (i) all funding available for the Leslieville Project pursuant to the Craft Loan Agreement, the Syndicate Construction Loan Agreement and, to the extent available, the Craft Cash Collateral, and (ii) Terra Firma (or to the extent permitted (or required) under the TF Cost Overrun Agreement, Craft and the Syndicate) declines (or fails) to fund the difference pursuant to the TF Cost Overrun Agreement; or
- (b) if, at any time, a Cost Overrun is not funded by Terra Firma as required under the TF Cost Overrun Agreement (or by Craft or the Syndicate as required or permitted under the TF Cost Overrun Agreement);

**“Funding Failure Notice”** means a notice in writing providing notice of a Funding Failure delivered by the Construction Receiver to the Opt-In Leslieville Purchasers and New Leslieville Purchasers, as applicable;

**“Geo-Thermal Loan”** has the meaning given to it in the Craft Development Contract;

**“Geo-Thermal System”** has the meaning given to it in the Craft Construction Contract;

**“Geo-Thermal System Marketing Process”** shall have the meaning given to it in the Craft Development Contract;

**“Geo-Thermal System Proceeds”** shall have the meaning given to it in paragraph 35 of this Order;

**“Holdback Deficiencies”** shall have the meaning given to it in paragraph 57 of this Order;

**“Holdback Reserve”** shall have the meaning given to it in paragraph 57 of this Order;

**“Latent Defect”** means shall have the meaning given to it in the Craft Construction Contract

**“Leslieville Assignee”** means an Existing Leslieville Purchaser who is an assignee under an Original Leslieville APS from a Leslieville Assignor;

**“Leslieville Assignor”** means a person who entered into an Original Leslieville APS with UC Leslieville, and assigned such Original Leslieville APS to a person or persons that are now an Existing Leslieville Purchaser;

**“Leslieville Project”** means the Leslieville Project Lands and the 55 unit low-rise residential development located on the Leslieville Project Lands and other improvements and all landscaping and interior decoration, all plant, machinery, improvements and equipment and all other property whether free standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto, to be constructed or completed on, above or under the surface of the Leslieville Project Lands;

**“Leslieville Project Lands”** means the lands and premises situate in the City of Toronto, and which is currently municipally known as 50 Curzon Street, as more particularly described in Schedule “F” under the heading “Leslieville Project Lands”;

**“Lien Claimant”** shall have the meaning given to it in paragraph 57 of this Order;

**“Major Event of Default”** shall have the meaning given to it in the Craft Construction Contract or the Craft Development Contract, as applicable;

**“Marketing Plan”** shall have the meaning given to it in the Craft Development Contract;

**“Minimum Unit Price”** shall mean the minimum sale price for an Unsold Unit as set out in Confidential Appendix “B” to the Second Report, or such other price as maybe determined in accordance with the Craft Development Contract or otherwise approved by the Court;

**“Mortgagee Action”** shall have the meaning given to it in paragraph 59 of this Order;

**“New APS”** means an agreement of purchase and sale between UC Leslieville by the Construction Receiver and an Opt-In Leslieville Purchaser for a Unit, substantially in the form of Schedule “B” to the Purchaser Package Approval Order;

**“New APS Transaction”** shall have the meaning given to it in paragraph 4 of this Order;

**“New Leslieville Purchaser”** means a person who is a purchaser of an Unsold Unit pursuant to a Standard Form Sale Agreement;

**“Non-Paying Leslieville Assignee”** means a Leslieville Assignee who is an Opt-Out Leslieville Purchaser and has not paid all of the purchase price deposit monies outstanding under its



Original Leslieville APS either directly to UC Leslieville or reimbursed its Leslieville Assignor for such deposit amounts;

“**ONHWPA**” means the *Ontario New Home Warranties Plan Act* (Ontario) and all regulations prescribed thereunder, as may be amended from time to time;

“**Opt-In Deadline**” means May 19<sup>th</sup>; 2017 at 5:00 pm (EST);

“**Opt-In Leslieville Purchaser**” means an Existing Leslieville Purchaser (a) who has delivered a fully executed and completed Opt-In Package to the Construction Receiver in accordance with the Purchaser Information Package Approval Order, and (b) who has not rescinded its New APS by the applicable Rescission Bar Date;

“**Opt-In Threshold**” means at least 40% of the Existing Leslieville Purchasers opt-in to the proposed settlement by the Opt-In Deadline and have not rescinded their New APS by the Ultimate Rescission Bar Date;

“**Opt-In Package**” shall have the meaning given to it in the Purchaser Package Approval Order;

“**Opt-Out Leslieville Purchaser**” means an Existing Leslieville Purchaser who is not an Opt-In Leslieville Purchaser;

“**Original Co-Operating Broker**” means a broker who entered into a co-operating broker agreement with UC Leslieville in connection with an Original Leslieville APS;

“**Original Leslieville APS**” means an existing agreement of purchase and sale for a given unit in the Condominium entered into between UC Leslieville, as vendor, and an Existing Leslieville Purchaser, together with all related amendments and side agreements;

“**Paid-up Leslieville Assignee**” means a Leslieville Assignee who has reimbursed its Leslieville Assignor for all of the purchase price deposit monies paid by such Leslieville Assignor under the Original Leslieville APS;

“**Paid-up Leslieville Assignor**” means a Leslieville Assignor who has been paid by its Leslieville Assignee for all of the purchase price deposit monies paid by such Leslieville Assignor under the Original Leslieville APS;

“**Parking Unit**” means each parking unit in the Condominium to be registered against the Leslieville Project Lands;

“**Permitted Encumbrances**” shall have the meaning given to it in paragraph 11 of this Order;

“**Pre-Filing Syndicate Credit Agreement**” means the credit agreement made as of July 13, 2012 between UC Leslieville (as borrower), Alan Saskin, Urbancorp Toronto Management Inc., UC Riverdale and UC Beach (as guarantors), and the Syndicate (as lenders), as amended and supplemented from time to time;

“**Premium**” means, for each Opt-In Leslieville Purchaser, the sum of \$255,000;

**“Priority Realty Tax Claim”** means any unpaid realty taxes of UC Leslieville;

**“Priority Realty Tax Claim Reserve”** shall have the meaning given to it in paragraph 62 of this Order;

**“Proceeds of Realization”** means the net proceeds derived from the use, sale or other disposition of the Leslieville Project;

**“Project Agreements”** means Craft Construction Contract, Craft Development Contract, the TF Cost Overrun Agreement, Syndicate Construction Loan Agreement and the Craft Loan Agreement;

**“Project Monitor Engagement”** means the agreement between Altus Group Limited and the Construction Receiver, substantially in the form of **Appendix “E”** to the Second Report.

**“Projects”** means the Leslieville Project and the Beach Project;

**“Professional Expenses”** means (i) all accrued but unpaid fees and disbursements of the Construction Receiver, the Construction Receiver’s Counsel and the Construction Receiver’s Independent Counsel, and (ii) the fees and disbursements as estimated from time to time by the Construction Receiver to complete the Receivership Proceeding;

**“Property”** has the meaning given to it in the recitals of this Order;

**“Purchaser Package Approval Order”** means the order of the Court dated April 19, 2017 approving, among other things, the information to be provided to the Existing Leslieville Purchasers in respect of the proposed settlement;

**“Purchasers’ Premium Charge”** shall have the meaning given to it in paragraph 5 of this Order;

**“Receiver”** shall have the meaning given to it in recitals of this Order;

**“Receivership Proceeding”** means the receivership proceeding with respect to the Debtors commenced by the Appointment Order bearing Court File No. CV-16-11409-00CL;

**“Repudiation Date”** shall have the meaning given to it in paragraph 13 of this Order;

**“Rescission Bar Date”** shall have the meaning given to it in the Purchaser Package Approval Order;

**“Second Report”** shall have the meaning given to it in the recitals of this Order;

**“Settled Amounts”** shall have the meaning given to it in paragraph 60 of this Order;

**“Settlement Parties”** shall have the meaning given to it in the recitals of this Order;

**“Standard Form Sale Agreement”** means an agreement of purchase and sale between UC Leslieville by the Construction Receiver and a New Leslieville Purchaser for an Unsold Unit, substantially in the form of **Appendix “I”** to the Second Report;

**“Storage Unit”** means each storage unit in the Condominium to be registered against the Leslieville Project Lands;

**“Subsequent Sale Transaction”** shall have the meaning given to it in paragraph 8 of this Order;

**“Syndicate”** means Canadian Imperial Bank of Commerce, Canadian Western Bank, and Laurentian Bank, or their assignees, as represented by the Administrative Agent;

**“Syndicate Charge”** shall have the meaning given to it in paragraph 39 of this Order;

**“Syndicate Construction Loan Agreement”** means the credit agreement made as of April 18, 2017 between the Construction Receiver (as borrower), the Syndicate (as lenders), and the Administrative Agent (as the administrative agent for the Syndicate), in the initial principal amount of \$4.5 million, substantially in the form as appended as **Appendix “G”** to the Second Report, as the same may be amended or supplemented from time to time;

**“Syndicate Construction Loan Obligations”** means the obligations of the Construction Receiver owing to the Syndicate pursuant to the Syndicate Construction Loan Agreement from time to time, including: (i) the Deferred Commitment Fee, (ii) all Syndicate COR Funded Amounts and all Syndicate COR Commitment Fees earned by the Syndicate pursuant to the TF Cost Overrun Agreement, and (iii) any other amounts which may expressly be provided by the terms of the Syndicate Construction Loan Agreement, the Craft Construction Contract, the Craft Development Contract and/or the TF Cost Overrun Agreement to be (or be deemed to be) a loan under the Syndicate Construction Loan Agreement;

**“Syndicate COR Commitment Fee”** shall have the meaning given to it in paragraph 43(b) of this Order;

**“Syndicate COR Deferred Fee”** shall have the meaning given to it in paragraph 43(b) of this Order;

**“Syndicate COR Deferred Fee Charge”** shall have the meaning given to it in paragraph 47 of this Order;

**“Syndicate COR Funded Amount”** shall have the meaning given to it in paragraph 43 of this Order;

**“Syndicate Default Funded Amount”** shall have the meaning given to it in paragraph 48 of this Order;

**“Syndicate Loan Default Charge”** shall have the meaning given to it in paragraph 48 of this Order;

**“Syndicate Pre-Filing Secured Obligations”** means the secured obligations owing by the Debtors to the Syndicate under the Pre-Filing Syndicate Credit Agreement;

**“Tarion”** means Tarion Warranty Corporation;

**“Tarion Addendum”** means the addendum to the Standard Form Sale Agreement from Tarion Warranty Corporation;

**“Tarion Bond”** means bond no. 10030498 dated May 19, 2011 in the original amount of \$1.26 million issued by Travelers in favour of Tarion in respect of the Leslieville Project, as amended from time to time;

**“Tarion Bond Amount”** means, at any time, the amount equal to \$1.1 million less the amounts paid by Travelers to Tarion prior to such time under the Tarion Bond;

**“Tarion Residual Reserve Amount”** means, at any time, a reserve reasonably estimated by Tarion, and approved by the Construction Receiver, to serve as cash collateral sufficient to secure the payment of Tarion’s remaining obligations under the ONHWPA to the Opt-In Leslieville Purchasers, New Leslieville Purchasers and the Condominium Corporation after taking into account the Tarion Bond Amount and the Tarion Charge Amount at such time;

**“Tarion Deposit Claim”** means a claim to Tarion for compensation for purchase price deposits paid pursuant to an Original Leslieville APS (up to a maximum amount of \$20,000) pursuant to the ONHWPA;

**“Tarion Charge”** shall have the meaning given to it in paragraph 21 of this Order;

**“Tarion Charge Amount”** means, at any time, the amount equal to \$1.1 million less the Tarion Bond Amount at such time;

**“Tax Statutes”** shall have the meaning given to it in paragraph 56 of this Order;

**“Terra Firma”** means Terra Firma Capital Corporation;

**“Terra Firma Commitment Letter”** means the commitment letter between Terra Firma and UC Leslieville, Bosvest Inc. and Westside Gallery Lofts Inc., UTMI and Mr. Alan Saskin as guarantors, and UC Riverdale, UC Beach, Edge Residential Inc. and Edge on Triangle Park Inc., and all amending agreements;

**“Terra Firma Indebtedness”** means the indebtedness owed by the Debtors to Terra Firma pursuant to the Terra Firma Commitment Letter;

**“TF Cost Overrun Funded Amount”** means the amount of funds advanced by Terra Firma pursuant to the TF Cost Overrun Agreement;

**“TF Cost Overrun Agreement”** means the cost overrun funding and performance agreement April 18, 2017 made among Terra Firma, the Construction Receiver, the Administrative Agent, and Craft, as amended or supplemented from time to time;

**“TF Cost Overrun Agreement Charge”** shall have the meaning given to it in paragraph 42 of this Order;

**“Transfer/Deed”** shall have meaning given to it in paragraph 10 of this Order;

**“Travelers”** means Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada;

**“Travelers Cash Collateral”** means the deposit monies received by UC Leslieville under the Original Leslieville APS and held in trust by Harris Sheaffer LLP, which were pledged by UC Leslieville to Travelers as cash collateral for Travelers Secured Obligations, and as of August 9, 2016 was in the total amount of \$250,000, plus \$85,484.97 in interest;

**“Travelers Master Excess Claims Policy”** means Policy No. 10031069 - Master Insurance Policy for Excess Condominium Deposits and Upgrades issued by Travelers favour of UC Leslieville;

**“Travelers Secured Obligations”** means all obligations owed or owing by UC Leslieville to Travelers, from time to time, related to the Travelers Master Excess Claims Policy and/or the Tarion Bond arising under a letter agreement dated March 5, 2012 between Travelers and UC Leslieville or the UC Leslieville Indemnity Agreement, as secured by a Deposit Trust Agreement dated May 19, 2011 amongst UC Leslieville, Travelers and Harris, Sheaffer LLP or the Travelers Mortgage;

**“Travelers Mortgage”** means the charge/mortgage registered as Instrument No. AT2720786 on June 15, 2011 granted by UC Leslieville in favor of Travelers to secure the Travelers Secured Obligations;

**“UC Beach”** shall have the meaning given to it in the recitals of this Order;

**“UC Leslieville”** shall have the meaning given to it in the recitals of this Order;

**“UC Riverdale”** shall have the meaning given to it in the recitals of this Order;

**“UC Leslieville Indemnity Agreement”** means the indemnity agreement dated May 19, 2011 entered into between UC Leslieville (as principal), Alan Saskin, High Res. Inc., Urbancorp Toronto Management Inc. (as indemnitors) and Travelers.

**“Ultimate Rescission Bar Date”** means the date being ten (10) days after the Opt-In Deadline;

**“Unit”** means a residential unit in the Condominium to be registered against the Leslieville Project Lands and, in the case of a unit sold pursuant to a New Sale Transaction or a Subsequent Sale Transaction, includes a Parking Unit and Storage Unit, together with an undivided interest in the common elements appurtenant to such unit and the exclusive use of those parts of the common elements attaching to such unit, to the extent included in such sale transaction;

**“Unpaid Leslieville Assignor”** means a Leslieville Assignor who paid deposit monies to UC Leslieville pursuant to an Original Leslieville APS and has not been reimbursed for such deposit

monies by the applicable Leslieville Assignee for deposit monies paid by the Leslieville Assignor under the Original Leslieville APS;

“**Unsold Unit**” shall have the meaning given to it in paragraph 6 of this Order;

“**UTMI**” means Urbancorp Toronto Management Inc.;

“**Vacant Lot**” means the lands and premises situate in the City of Toronto, as more particularly described in Schedule “F” under the heading “Vacant Lot”;

“**Vacant Lot Conditions**” shall have the meaning given to them in the Craft Development Contract;

“**Vendor**” has the meaning given to it pursuant to the ONHWPA; and

“**Waterfall**” shall have the meaning given to it in paragraph 55 of this Order.

**SCHEDULE "B" - CLAIMS TO BE EXPUNGED FROM TITLE TO REAL PROPERTY**

1. Instrument No. AT2720786, registered June 15, 2011, being a charge in favour of Travelers Guarantee Company of Canada;
2. Instrument No. AT3081811, registered July 24, 2012, being a charge in favour of Canadian Imperial Bank of Commerce;
3. Instrument No. AT3082309, registered July 24, 2012, being a postponement of Travelers Insurance Company of Canada charge No. AT2720786 in favour of Canadian Imperial Bank of Commerce charge No. AT3081811;
4. Instrument No. AT3102606, registered August 16, 2012, being a notice with respect to Travelers Insurance Company of Canada charge No. AT2720786;
5. Instrument No. AT3954372, registered July 22, 2015, being a charge in favour of Terra Firma Capital Corporation;
6. Instrument No. AT3954373, registered July 22, 2015, being a notice of general assignment of rents in favour of Terra Firma Capital Corporation;
7. Instrument No. AT4011571, registered September 17, 2015, being a construction lien in favour of Alpa Stairs and Railings Inc.
8. Instrument No. AT4039964, registered October 19, 2015, being a certificate of action in favour of Alpa Stairs and Railings Inc.
9. Instrument No. AT4057394, registered November 3, 2015, being a construction lien registered in favour of EXP Services Inc.;
10. Instrument No. AT4072949, registered November 20, 2015, being a construction lien in favour of Roni Excavating Limited;
11. Instrument No. AT4072991, registered November 20, 2015, being a construction lien in favour of Orin Contractors Corp.;
12. Instrument No. AT4073814, registered November 23, 2015, being a construction lien in favour of Sterling Carpet & Tile;
13. Instrument No. AT4106412, registered December 30, 2015, being a certificate of action in favour of Roni Excavating Limited;
14. Instrument No. AT4106476, registered December 30, 2015, being a certificate of action in favour of Orin Contractors Corp.;
15. Instrument No. AT4129370, registered January 26, 2016, being a certificate of action in favour EXP Services Inc.

16. Instrument No. AT4140578, registered February 8, 2016, being a certificate of action in favour of Sterling Tile & Carpet;
17. Instrument No. AT4153410, registered February 25, 2016, being a construction lien in favour of Silvio Construction Co. Ltd.;
18. Instrument No. AT4165123, registered March 10, 2016, being a construction lien in favour of NG Marin Inc.;
19. Instrument No. AT4165218, registered March 11, 2016, being a construction lien in favour of Commercial Two Construction Inc.;
20. Instrument No. AT4165591, registered March 11, 2016, being a construction lien in favour of MDF Mechanical Limited;
21. Instrument No. AT4166872, registered March 14, 2016, being a construction lien in favour of Uptown Hardware Limited;
22. Instrument No. AT4181331, registered March 31, 2016, being a certificate of action in favour of Silvio Construction Co. Ltd.;
23. Instrument No. AT4194677, registered April 15, 2016, being a construction lien in favour of 207875 Ontario Limited;
24. Instrument No. AT4194686, registered April 15, 2016, being a construction lien in favour of Emergency Propane Services Inc.
25. Instrument No. AT4198081, registered April 20, 2016, being a construction lien in favour of Lido Construction Inc.
26. Instrument No. AT4200385, registered April 22, 2016, being a certificate of action in favour of Uptown Hardware Limited;
27. Instrument No. AT4200654, registered April 25, 2016, being a certificate of action in favour of MDF Mechanical Limited;
28. Instrument No. AT4211208, registered May 4, 2016, being a certificate of action in favour of NG Marin Inc.;
29. Instrument No. AT4215263, registered May 10, 2016, being a certificate of action in favour of Commercial Two Construction Inc.;
30. Instrument No. AT4229855, registered May 30, 2016, being a certificate of action in favour of 207875 Ontario Limited;
31. Instrument No. AT4229857, registered May 30, 2016, being a certificate of action in favour of Emergency Propane Services Inc.;



32. Instrument No. AT4243741, registered June 10, 2016, being an application to register a court order of the Ontario Superior Court of Justice Commercial List appointing Alvarez & Marsal Canada Inc. as appointing receiver and construction lien trustee;
33. Instrument No. AT4244696, registered June 10, 2016, being a certificate of action in favour of Lido Construction Inc.; and
34. Together with such further Claims as may arise and/or be registered against title to the Leslieville Project Lands up to and including the time of closing of a New APS Transaction, a Subsequent Sale Transaction or such other transaction (as set out in more detail by way of solicitor's statement or affidavit annexed to the Transfer/Deed).

**SCHEDULE "C" – PERMITTED ENCUMBRANCES, EASEMENTS AND  
RESTRICTIVE COVENANTS RELATED TO THE REAL PROPERTY**

**(unaffected by the Vesting Order)**

1. Instrument No. AT2958528, registered March 2, 2012, being a transfer of easement in favour of Rogers Communications Inc.;
2. Instrument No. AT3708202, registered October 7, 2014, being a transfer of easement in favour of Bell Canada;
3. Instrument No. AT3728135, registered October 30, 2014, being a transfer of easement in favour of Enbridge Gas Distribution Inc.; and
4. Instrument No. AT4163132, registered March 8, 2016, being a Notice of Security Interest in favour of Genesis Home Services Inc.

**SCHEDULE "D"**  
**LIST OF LIEN CLAIMANTS**

207875 Ontario Ltd (o/a Canadian Rental Centres)
Alpa Stairs and Railings Inc.
Commercial Two Construction Inc.
Emergency Propane Services Inc.
EXP Services Inc.
Lido Construction Inc.
MDF Mechanical Ltd.
NG Marin Inc.
Orin Contractors Corp.
Roni Excavating Limited
Silvio Construction Co. Ltd.
Sterline Carpet and Tile
Uptown Hardware Ltd

**SCHEDULE "E"**

**LIEN CLAIMANT ACTIONS**

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
1.	207875 Ontario Limited	Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Terra Firma Capital Corporation, Canadian Imperial Bank of Commerce, Travelers Insurance Company of Canada	CV-16-553611
2.	Alpa Stairs and Railings Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-537937
3.	Commercial Two Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552495
4.	Emergency Propane Services Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Terra Firma Capital Corporation, Canadian Imperial Bank of Commerce, Travelers Insurance Company of Canada	CV-16-553614
5.	EXP Services Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-545215

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
6.	Lido Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce, Terra Firma Capital Corporation	CV-16-554573
7.	MDF Mechanical Limited	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada also known as Travelers Insurance Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551542
8.	NG Marin Inc.	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552136
9.	Orin Contractors Corp.	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543587
10.	Roni Excavating Limited	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543574
11.	Silvio Construction Co. Ltd.	Urbancorp (Leslieville) Developments Inc., Urbancorp Toronto Management Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-549968

	<b>Plaintiff</b>	<b>Defendants</b>	<b>Court File No.</b>
12.	<b>Sterling Carpet &amp; Tile</b>	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Urbancorp Financial Inc., Urbancorp Construction Company, Canadian Imperial Bank of Commerce, Travelers Insurance Company of Canada and Terra Firma Capital Corporation	CV-16-546232
13.	<b>Uptown Hardware Limited</b>	Urbancorp (Leslieville) Developments Inc., Travelers Guarantee Company of Canada, Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551471

**SCHEDULE "F"**

**Legal Description**

**Leslieville Project Lands - 50 Curzon Street, Toronto, Ontario**

**PIN 21051-0408 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc.**

Firstly: Part Lot 11, Plan 61E Toronto; Part Lot 11, Concession 1 FTB, designated as Part 2, Plan 66R-25636; Secondly: Part Lot 11, Concession 1 FTB designated as Part 1, Plan 66R-25636; Thirdly: Part Lot 11, Concession 1 FTB commencing at an iron bar in the western limit of Curzon Street, distant 595.81 feet measured northerly therealong from the northern limit of Queen Street East; Thence north 16 degrees 00 minutes west along the said western limit of Curzon Street a distance of 65.70 feet to an iron bar; thence south 74 degrees 22 minutes 20 seconds west a distance of 252.43 feet to an iron pipe in the eastern limit of Lot 8, according to a Plan filed in the said Registry Office as number 61E; thence south 17 degrees 06 minutes east along the eastern limits of Lots 8 and 9 according to said Plan 61E a distance of 66.00 feet to a spike in a stump; Thence north 74 degrees 18 minutes 20 seconds east a distance of 251.17 feet to the point of commencement; subject to an easement as in AT2958528; subject to an easement as in AT3708202, subject to an easement as in AT3728135, City of Toronto

**Vacant Lot**

**Owner: Urbancorp (Leslieville) Developments Inc.**

Part of the Leslieville Project Lands designated as Part 10 on a draft reference plan of survey prepared by George C.M. Lo., Ontario Land Surveyor, of R. Avis Surveying Inc. dated January 28, 2015, the precise legal description for which will be set out in the Transfer/Deed to be delivered pursuant to the terms of the Order to which this schedule is annexed.

10:00 A.M.  
COUNSEL SLIP

N 82

COURT FILE NO CV-16-11409-00CL DATE MAY 2, 2017

CANADIAN IMPERIAL BANK OF COMMERCE  
NO ON LIST 10

TITLE OF  
PROCEEDING

✓ URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.  
etal.

COUNSEL FOR:  
PLAINTIFF(S)  
APPLICANT(S)  
PETITIONER(S)

Clifton Prophet for CIBC  
Thomas Germer as Agent  
Pamela Huff / Kelly Peters  
Counsel for Construction

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COUNSEL FOR:  
DEFENDANT(S)  
RESPONDENT(S)

Receiver, Moving Party

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SETTLEMENT APPROVAL ORDER**

**BLAKE, CASSELS & GRAYDON LLP**  
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Independent Counsel for Alvarez & Marsal Canada Inc., in its capacity as both Receiver and Manager, and Construction Lien Trustee of the assets, undertakings and property of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc., and Urbancorp (The Beach) Developments Inc.

**TAB 3**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 11<sup>th</sup>  
 )  
\_\_\_\_. JUSTICE \_\_\_\_\_ ) DAY OF OCTOBER, 2018  
 )

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

- and -

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &  
URBANCORP (THE BEACH) DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Lien Act*, R.S.O. 1990,  
c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER**

**(RE: APPROVING LIEN SETTLEMENTS, AUTHORIZING ASSIGNMENTS OF SALE  
AGREEMENTS, AMENDING SETTLEMENT APPROVAL ORDER & CHARGING  
CASH COLLATERAL)**

**THIS MOTION**, made by Alvarez & Marsal Canada Inc. in its capacity as receiver and manager (in such capacity, the **“Receiver”**), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and in its capacity as construction lien trustee (in such capacity, the **“Construction Lien Trustee”**), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended (the Receiver, together with the Construction Lien Trustee, the **“Construction Receiver”**), of all of the assets, undertakings, and property acquired for, or used in relation to the business, including all proceeds thereof (the **“Property”**) of Urbancorp (Leslieville) Developments Inc. (**“UC Leslieville”**), Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc. (**“UC Beach”**), for an order

granting certain authorizations and approvals as set out herein, was heard this day in Toronto, Ontario.

**ON READING** the Notice of Motion dated October 5, 2018, the Seventh Report of the Construction Receiver dated October 5, 2018 (the “**Seventh Report**”), and on hearing the submissions of counsel for the Construction Receiver and the counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served with the Construction Receiver’s Motion Record as appears from the affidavit of service of [AFFIANT] sworn October 5, 2018, filed,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **APPROVAL OF LIEN SETTLEMENTS AND DISTRIBUTIONS**

#### *Leslieville Project Lien Settlements*

2. **THIS COURT ORDERS** that the lien settlement amounts agreed to by the Vetting Committee (as defined in the Seventh Report) and parties claiming construction liens against the Respondent UC Leslieville’s construction project located in the Leslieville neighbourhood of Toronto (“**Leslieville Construction Lien Claimants**”), as set out in Paragraph 9 of the Seventh Report, are hereby approved. The Respondent UC Leslieville’s construction project located in Leslieville, Toronto shall be referred to as the “**Leslieville Project**” for the purposes of this Order.

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the settlement amounts hereby approved by this Order to the applicable Leslieville Construction Lien Claimant from the \$200,000 holdback reserve established by the Construction Receiver in respect of the Leslieville Project, and such reserve shall be reduced by an amount equal to such distribution.

*Beach Project Lien Settlements*

4. **THIS COURT ORDERS** that the lien settlement amounts agreed to by the Vetting Committee (as defined in the Seventh Report) and parties claiming construction liens against the Respondent UC Beach's construction project located in The Beach neighbourhood of Toronto (the "**Beach Construction Lien Claimants**"), as set out in Paragraph 9 of the Seventh Report, are hereby approved. The Respondent UC Beach's construction project located in The Beach, Toronto shall be referred to as the "**Beach Project**" for the purposes of this Order.

5. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the settlement amounts hereby approved by this Order to the applicable Beach Construction Lien Claimant from the \$120,000 holdback reserve established by the Construction Receiver in respect of the Beach Project, and such reserve shall be reduced by an amount equal to such distribution.

**AUTHORIZATION TO CONSENT TO ASSIGNMENT OF LESLIEVILLE PROJECT AGREEMENTS OF PURCHASE AND SALE**

6. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized, in its sole discretion, to consent to the assignment by purchasers of any agreement of purchase and sale in respect of units in the Leslieville Project, upon such terms and conditions as the Construction Receiver may determine to be reasonable or necessary in the circumstances, including without limitation an assignment fee of CDN\$15,000, or such other amount as may be determined by the Construction Receiver.

**FURTHER AMENDMENT TO SETTLEMENT APPROVAL ORDER**

7. **THIS COURT ORDERS** that the settlement approval order (re: Leslieville Project) granted by Mr. Justice Newbould dated May 2, 2017, as amended by the order of Mr. Justice Newbould dated May 11, 2017 (the "**Settlement Approval Order**") is hereby amended as follows:

- (a) Subparagraph 55(1) of the Settlement Approval Order (as amended by paragraph 1 of the order of Mr. Justice Newbould dated May 11, 2017) shall be deleted in its entirety and replaced with the following:

“(l) twelfth, on a 50/50 basis between (i) Terra Firma (up to the remaining Terra Firma Indebtedness, if any) and (ii) the Opt-In Leslieville Purchasers for the aggregate amount of the Premiums paid by all Opt-In Leslieville Purchasers pursuant to the New APS (the “**Premium Reimbursement Claims**”), *provided that* such amount allocated to the Opt-In Leslieville Purchasers shall be further allocated as among the Opt-In Leslieville Purchasers and the Lien Claimants in respect of the balance of their valid lien claims other than the Holdback Deficiencies paid above (the “**Lien Claimants Balance Claims**”), to be distributed on a *pari passu* and rateable basis among the Premium Reimbursement Claims and the Lien Claimants Balance Claims, *and provided further that* the distribution in respect of Lien Claimants Balance Claims (the “**Lien Claimant Distribution**”) shall be sub-allocated as follows: (x) first, \$2,500 shall be paid to each Lien Claimant (or such lesser, equal amount as may be available if the Lien Claimant Distribution is not sufficient to fund \$2,500 to each Lien Claimant); (y) second, \$40,000 (or such lesser amount as may be available), shall be paid to Vetting Committee Counsel (as defined in the Seventh Report); and (z) third, the remainder of the Lien Claimant Distribution, if any, will be paid *pari passu* to Lien Claimants, provided that the aggregate of (x), (y) and (z) shall not exceed the aggregate Lien Claimants Balance Claims; subject to determination by the Court, if necessary of the appropriate allocation of the Lien Claimants Balance Claims to the respective Projects.”

## **CASH COLLATERAL CHARGES**

### *Administrative Agent Cash Collateral Charge*

8. **THIS COURT ORDERS** that Canadian Imperial Bank of Commerce, in its capacity as administrative agent (the “**Administrative Agent**”) shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (“**CIBC Cash Collateral Charge**”) in all amounts distributed to the Administrative Agent by the Construction Receiver from Proceeds of Realization (as defined in the Settlement Approval Order) pursuant to the Waterfall (as defined in the Settlement Approval Order) as cash collateral for the liabilities and obligations under or in connection with the outstanding letters of credit issued by Canadian Imperial Bank of Commerce (the “**CIBC LCs**”) forming part of the Syndicate Pre-Filing

Secured Obligations (as defined in the Settlement Approval Order) (together with all income earned thereon and accretions thereto from time to time, the “**CIBC Cash Collateral**”).

9. **THIS COURT ORDERS AND DECLARES** the CIBC Cash Collateral shall be in such amount as agreed between the Construction Receiver and the Administrative Agent, or such amount as may be further ordered by this Court, and is to be held by the Administrative Agent upon terms and conditions to be agreed upon by the Construction Receiver, the Administrative Agent, Terra Firma Capital Corporation and C.R.A.F.T. Development Corporation, or as otherwise ordered by the Court, as security for the liabilities and obligations under or in connection with the CIBC LCs

10. **THIS COURT ORDERS** that the CIBC Cash Collateral Charge shall rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, “**Encumbrances**”) against the CIBC Cash Collateral from time to time.

*Travelers Cash Collateral Charge*

11. **THIS COURT ORDERS** that Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”) shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (“**Travelers Cash Collateral Charge**”) in all amounts distributed to Travelers by the Construction Receiver from Proceeds of Realization pursuant to the Waterfall as cash collateral for certain of the Travelers Secured Obligations (as defined in the Settlement Approval Order) as provided by the terms of the Waterfall (together with all income earned thereon and accretions thereto from time to time, the “**Travelers Cash Collateral**”).

12. **THIS COURT ORDERS** that the Travelers Cash Collateral Charge shall rank in priority to all Encumbrances against the Travelers Cash Collateral from time to time.

*Tarion Cash Collateral Charge*

13. **THIS COURT ORDERS** that Tarion Warranty Corporation (“**Tarion**”) shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (“**Tarion Cash Collateral Charge**”) in all amounts distributed to Tarion by the Construction Receiver from Proceeds of Realization pursuant to the Waterfall as cash collateral for certain of the Tarion Secured Obligations (as defined in the Settlement Approval Order) as provided by the

terms of the Waterfall (together with all income earned thereon and accretions thereto from time to time, the “**Tarion Cash Collateral**”).

14. **THIS COURT ORDERS** that the Tarion Cash Collateral Charge shall rank in priority to all Encumbrances against the Tarion Cash Collateral from time to time.

15. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the CIBC Cash Collateral Charge, the Travelers Cash Collateral Charge and the Tarion Cash Collateral Charge (collectively, the “**Cash Collateral Charges**”) shall not be required and that each of the Cash Collateral Charges shall be valid and enforceable for all purposes including, without limitation, as against any right, title or interest filed, registered, recorded or perfected subsequent to any of the Cash Collateral Charges coming into existence notwithstanding any such failure to file, register, record or perfect. Each of the Cash Collateral Charges may be enforced upon the terms and conditions and at the times as may be agreed between the Construction Receiver and the beneficiary of the applicable Cash Collateral Charge.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**ORDER**  
**(APPROVING LIEN SETTLEMENTS,  
AUTHORIZING ASSIGNMENTS,  
AMENDING SETTLEMENT APPROVAL  
ORDER & CHARGING CASH)**

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**BLAKE, CASSELS & GRAYDON LLP**  
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Independent Counsel for Alvarez & Marsal Canada Inc., in its capacity as both Receiver and Manager, and Construction Lien Trustee of the assets, undertakings and property of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc., and Urbancorp (The Beach) Developments Inc.

**TAB 4**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 11<sup>th</sup>  
 )  
\_\_\_\_. JUSTICE \_\_\_\_\_ ) DAY OF OCTOBER, 2018

BETWEEN:

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

- and -

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &  
URBANCORP (THE BEACH) DEVELOPMENTS INC.**

Respondents

APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Lien Act*, R.S.O. 1990,  
c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER**

**(RE: APPROVAL AND VESTING ORDER - GEOTHERMAL UNIT)**

**THIS MOTION**, made by Alvarez & Marsal Canada Inc. in its capacity as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and in its capacity as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c.C.30, as amended (the Receiver, together with the Construction Lien Trustee, the “**Construction Receiver**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business, including all proceeds thereof of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc., for an order (i) approving the sale transaction (the “**Geothermal Transaction**”) contemplated by an agreement of purchase and sale to be entered into by the Construction Receiver and Toronto Standard Condominium Corporation Number 2669 (the “**Purchaser**”), substantially in the form of the agreement attached as Appendix A to

the Seventh Report (defined below) (the “**Geothermal APS**”); and (ii) vesting in the Purchaser all of UC Leslieville’s right, title and interest in and to the Property (as defined in the Geothermal APS);.

**ON READING** the Notice of Motion dated October 5, 2018, the Seventh Report of the Construction Receiver dated October 5, 2018 (the “**Seventh Report**”), and on hearing the submissions of counsel for the Construction Receiver and the counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served with the Construction Receiver’s Motion Record as appears from the affidavit of service of [AFFIANT] sworn October 5, 2018, filed,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **GEOHERMAL TRANSACTION APPROVED**

2. **THIS COURT ORDERS** that the Geothermal Transaction and the Geothermal APS are hereby approved, and the Construction Receiver is hereby authorized to execute and enter into a purchase and sale agreement (the “**Sale Agreement**”) in the name of and on behalf of UC Leslieville, and not in its personal or corporate capacity, which Sale Agreement shall be substantially on the terms set out in the Geothermal APS, subject to such amendments, additions and/or deletions as may be negotiated between the Construction Receiver and the Purchaser.

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Geothermal Transaction, and for the conveyance of the Property to the Purchaser.

4. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to perform all of their obligations and agreements under the Sale Agreement and any ancillary documents related thereto (collectively, the “**Transaction Documents**”).

5. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Construction Receiver to proceed with the Geothermal Transaction and the Transaction Documents in the name of and on behalf of UC Leslieville, and that no shareholder or other corporate approval, if applicable, shall be required in connection therewith.

#### **VESTING OF GEOTHERMAL UNIT**

6. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed in respect of the Geothermal Unit (as defined in the Condominium Documents) (the "**Geothermal Unit**"), all of UC Leslieville's right, title and interest in and to the Geothermal Unit and UC Leslieville's interest in and to the common elements appurtenant to such Geothermal Unit (collectively, the "**Property**") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims with respect to such Property, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, encumbrances, title retention agreements, judgments, adverse claims or interests, exceptions, reservations, easements, encroachments, servitudes, restrictions on use, any right of occupancy, any matter capable of registration against title, options, rights of first refusal or similar rights, rights of pre-emption or privilege or any contract creating any of the foregoing (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by this Order, the Order of Mr. Justice Newbould dated May 2, 2017 and the Order of Mr. Justice Newbould dated May 31, 2016; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "A"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

7. **THIS COURT ORDERS** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed in respect of the Geothermal Unit, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Geothermal

Unit, and is hereby directed to delete and expunge from title to the Geothermal Unit all of the Claims listed in **Schedule “A”** hereto, including such further Claims as may have arisen and/or been registered against title to the Geothermal Unit as more particularly set out by way of solicitor’s statement or affidavit annexed to such Transfer/Deed (as contemplated by **Schedule “A”**).

8. **THIS COURT ORDERS AND DECLARES** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any bankruptcy order issued in respect of UC Leslieville; and
- (c) any assignment in bankruptcy made in respect of UC Leslieville;

the entering into of the Transaction Documents and the vesting of the Property in the Purchaser pursuant to this Order shall be binding on UC Leslieville’s trustee in bankruptcy, and any subsequent trustee in bankruptcy that may be appointed in respect of UC Leslieville and shall not be void or voidable by creditors of UC Leslieville, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **MISCELLANEOUS**

9. **THIS COURT ORDERS HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Construction Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Construction Receiver may apply from time to time to this Court for advice and directions in the discharge of its powers and duties hereunder, including, for greater certainty, with respect to the performance of its or UC Leslieville's obligations under any of the agreements approved herein.

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**Schedule A**

**CLAIMS TO BE EXPUNGED FROM TITLE**

1. Instrument No. AT2720786 registered June 15, 2011 is a Charge from Urbancorp (Leslieville) Developments Inc. to Travelers Guarantee Company of Canada in the principal amount of \$6,000,000.00, which will be discharged upon registration of the Order and certification of same by the LRO.
2. Instrument No. AT3081811 registered July 24, 2012 is a Charge from Urbancorp (Leslieville) Developments Inc. to Canadian Imperial Bank of Commerce in the principal amount of \$70,000,000.00, which will be discharged upon registration of the Order and certification of same by the LRO.
3. Instrument No. AT3082309 registered July 24, 2012 is a Postponement from Travelers Insurance Company of Canada to Canadian Imperial Bank of Commerce (postponing AT2720786 to AT3081811), which will be discharged upon registration of the Order and certification of same by the LRO.
4. Instrument No. AT3102606 registered August 16, 2012 is a Notice from Urbancorp (Leslieville) Developments Inc. to Travelers Insurance Company of Canada, which will be discharged upon registration of the Order and certification of same by the LRO.
5. Instrument No. AT3954372 registered July 22, 2015 is a Charge from Urbancorp (Leslieville) Developments Inc. and Urbancorp (Riverdale) Developments Inc. to Terra Firma Capital Corporation in the principal amount of \$5,500,000.00, which will be discharged upon registration of the Order and certification of same by the LRO.
6. Instrument No. AT3954373 registered July 22, 2015 is a Notice of Assignment of Rents from Urbancorp (Leslieville) Developments Inc. and Urbancorp (Riverdale) Developments Inc. to Terra Firma Capital Corporation, which will be discharged upon registration of the Order and certification of same by the LRO.
7. Instrument No. AT4011571 registered September 17, 2015 is a Construction Lien from Alpa Stairs and Railings Inc. to Ontario Superior Court of Justice in the amount of \$179,860.00, which will be discharged upon registration of the Order and certification of same by the LRO.
8. Instrument No. AT4039964 registered October 19, 2015 is a Certificate from Alpa Stairs and Railings Inc. relating to AT4011571, which will be discharged upon registration of the Order and certification of same by the LRO.
9. Instrument No. AT4057394 registered November 3, 2015 is a Construction Lien from EXP Services Inc. in the amount of \$9,378.00, which will be discharged upon registration of the Order and certification of same by the LRO.



10. Instrument No. AT4072949 registered November 20, 2015 is a Construction Lien from Roni Excavating Limited in the amount of \$66,901.00, which will be discharged upon registration of the Order and certification of same by the LRO.
11. Instrument No. AT4072991 registered November 20, 2015 is a Construction Lien from Orin Contractors Corp. in the amount of \$179,416.00, which will be discharged upon registration of the Order and certification of same by the LRO.
12. Instrument No. AT4073814 registered November 23, 2015 is a Construction Lien from Sterling Carpet & Tile in the amount of \$46,998.00, which will be discharged upon registration of the Order and certification of same by the LRO.
13. Instrument No. AT4106412 registered December 30, 2015 is a Certificate from Roni Excavating Limited relating to Certificate of Action Lien #AT4072949, which will be discharged upon registration of the Order and certification of same by the LRO.
14. Instrument No. AT4106476 registered December 30, 2015 is a Certificate from Orin Contractors Corp. relating to Certificate of Action #AT4072991, which will be discharged upon registration of the Order and certification of same by the LRO.
15. Instrument No. AT4129370 registered January 26, 2016 is a Certificate from Exp Services Inc. to Urbancorp (Leslieville) Developments Inc.; Urbancorp Inc.; Travelers Guarantee Company of Canada; Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation relating to AT4057394, which will be discharged upon registration of the Order and certification of same by the LRO.
16. Instrument No. AT4140578 registered February 9, 2016 is a Certificate from Sterling Tile & Carpet (Cert of Action), which will be discharged upon registration of the Order and certification of same by the LRO.
17. Instrument No. AT4153410 registered February 25, 2016 is a Construction Lien from Silvio Construction Co. Ltd. in the amount of \$40,362.00, which will be discharged upon registration of the Order and certification of same by the LRO.
18. Instrument No. AT4163132 registered March 8, 2016 is a Notice of Security Interest from Genesis Home Services Inc. in the amount of \$290,975.00, which will be discharged upon registration of the Order and certification of same by the LRO.
19. Instrument No. AT4165123 registered March 10, 2016 is a Construction Lien from NG Marin Inc. in the amount of \$856,929.00, which will be discharged upon registration of the Order and certification of same by the LRO.
20. Instrument No. AT4165218 registered March 11, 2016 is a Construction Lien from Commercial Two Construction Inc. in the amount of \$220,067.00, which will be discharged upon registration of the Order and certification of same by the LRO.

21. Instrument No. AT4165591 registered March 11, 2016 is a Construction Lien from MDF Mechanical Limited in the amount of \$291,964.00, which will be discharged upon registration of the Order and certification of same by the LRO.
22. Instrument No. AT4166872 registered March 14, 2016 is a Construction Lien from Uptown Hardware Limited in the amount of \$72,642.00, which will be discharged upon registration of the Order and certification of same by the LRO.
23. Instrument No. AT4181331 registered March 31, 2016 is a Certificate from Silvio Construction Co. Ltd. relating to AT4153410, which will be discharged upon registration of the Order and certification of same by the LRO.
24. Instrument No. AT4194677 registered April 15, 2016 is a Construction Lien from 207875 Ontario Limited in the amount of \$37,133.00, which will be discharged upon registration of the Order and certification of same by the LRO.
25. Instrument No. AT4194686 registered April 15, 2016 is a Construction Lien from Emergency Propane Services Inc. in the amount of \$12,022.00, which will be discharged upon registration of the Order and certification of same by the LRO.
26. Instrument No. AT4198081 registered April 20, 2016 is a Construction Lien from Lido Construction Inc. in the amount of \$1,548,100.00, which will be discharged upon registration of the Order and certification of same by the LRO.
27. Instrument No. AT4200385 registered April 22, 2016 is a Certificate from Uptown Hardware Limited relating to AT4166872, which will be discharged upon registration of the Order and certification of same by the LRO.
28. Instrument No. AT4200654 registered April 25, 2016 is a Certificate from MDF Mechanical Limited relating to AT4165591, which will be discharged upon registration of the Order and certification of same by the LRO.
29. Instrument No. AT4211208 registered May 4, 2016 is a Certificate from NG Marin Inc. relating to AT4165123, which will be discharged upon registration of the Order and certification of same by the LRO.
30. Instrument No. AT4215263 registered May 10, 2016 is a Certificate from Commercial Two Construction Inc. relating to AT4165218, which will be discharged upon registration of the Order and certification of same by the LRO.
31. Instrument No. AT4229855 registered May 30, 2016 is a Certificate from 207875 Ontario Limited relating to Construction Lien AT4194677, which will be discharged upon registration of the Order and certification of same by the LRO.
32. Instrument No. AT4229857 registered May 30, 2016 is a Certificate from Emergency Propane Services Inc. relating to Construction Lien AT4194686, which will be discharged upon registration of the Order and certification of same by the LRO.

33. Instrument No. AT4243741 registered June 10, 2016 is an Application for Court Order from Ontario Superior Court of Justice Commercial List to Alvarez & Marsal Canada Inc. , which will be discharged upon registration of the Order and certification of same by the LRO.
34. Instrument No. AT4244696 registered June 10, 2016 is a Certificate from Lido Construction Inc. regarding AT4198081, which will be discharged upon registration of the Order and certification of same by the LRO.

**Schedule B**

**PERMITTED ENCUMBRANCES**

1. Instrument No. AT2958528 registered March 2, 2012 is a Transfer Easement from Urbancorp (Leslieville) Developments Inc. to Rogers Communications Inc.
2. Instrument No. AT3708202 registered October 7, 2014 is a Transfer Easement from Urbancorp (Leslieville) Developments Inc. to Bell Canada.
3. Instrument No. AT3728135 registered October 30, 2014 is a Transfer Easement from Urbancorp (Leslieville) Developments Inc. to Enbridge Gas Distribution Inc.
4. Instrument number AT4735221, registered November 17, 2017, being a Notice of an agreement, being a site plan agreement.
5. TCP2669 registered September 7, 2018, being Standard Condo Plan
6. Instrument Number AT4952987, registered September 7, 2018, being a Condominium Declaration.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**ORDER  
(APPROVAL AND VESTING ORDER –  
GEOTHERMAL UNIT)**

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CANADIAN IMPERIAL BANK OF COMMERCE V. URBAN CORP (LESLIEVILLE DEVELOPMENTS INC.  
et.al.

(Applicant)

(Respondents)

Court File No. CV-16-11409-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**MOTION RECORD  
(Re: Approval of Settlements, Payments  
and Sale of Geo-Thermal System)**

**(Returnable October 11, 2018)**

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