

**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

**(Re: Substituted Service and Approval of Lien Settlements, Purchase Price Adjustments,
Fees and Activities & Tarion Cash Collateral and Warranty Procedure)
(Returnable March 26, 2018)**

March 18, 2019

**BLAKE, CASSELS & GRAYDON
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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.

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

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TAB 1

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

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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: SUBSTITUTED SERVICE AND APPROVAL OF LIEN SETTLEMENTS,
PURCHASE PRICE ADJUSTMENTS, FEES AND ACTIVITIES & TARION CASH
COLLATERAL AND WARRANTY PROCEDURE)**

(Returnable March 26, 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.

(collectively, the “**Debtors**”) will make a motion to a Judge of the Commercial List at 8:30 a.m. on March 26, 2019, 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 Eighth Report of the Construction Receiver dated March 18, 2019 (the “**Eighth Report**”).

THIS MOTION IS FOR:

1. Orders substantially in the form attached at Tabs 4 and 5 of the Motion Record:

Lien Claims and Holdback Settlements

- (a) approving the settlements reached between the Vetting Committee and Lido Construction Inc. (“**Lido**”) in respect of *Construction Lien Act* (“**CLA**”) holdback entitlements for the Leslieville Project and Beach Project (the “**Holdback Settlement**”);
- (b) authorizing and directing the Construction Receiver to pay the applicable Holdback Settlement in respect of the Leslieville Project and the Beach Project from the holdback reserves currently maintained by the Construction Receiver and releasing the remainder of such holdback reserves for distribution to creditors in accordance with the distribution waterfall (the “**Distribution Waterfall**”) set out in Paragraph 55 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**”);
- (c) approving the amount of Lien Claimant entitlements, net of holdback settlements already paid, for the purposes of the Construction Receiver calculating *pari passu* distributions to such Lien Claimants, if any;

Warranty Claims and Tarion Cash Collateral

- (d) authorizing the Construction Receiver to waive certain notice periods provided for in the *Ontario New Home Warranties Plan Act* (Ontario) (the “**ONHWPA**”) in order to permit Tarion Warranty Corporation (“**Tarion**”) to assess and remediate warranted defect claims at the Leslieville Project more expeditiously;
- (e) authorizing and directing the Construction Receiver to pay certain amounts to Tarion as cash collateral which would otherwise be payable to Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”) pursuant to the Settlement Approval Order to be held by Tarion pending the expiry of certain warranty periods;

Leslieville Purchase Price Adjustments

- (f) authorizing the Construction Receiver to disclose certain contact information of the purchasers of Leslieville Units (the “**Leslieville Purchasers**”) who are unrepresented by counsel (the “**Unrepresented Purchasers**”);
- (g) granting substituted service on the Unrepresented Purchasers by email to the last known email address of such Unrepresented Purchaser, based on the records of the Construction Receiver’s real estate counsel, Miller Thomson LLP (“**Real Estate Counsel**”);
- (h) declaring that certain purchase price adjustments calculated and charged by the Construction Receiver in connection with the closing of Leslieville Units are accurate and binding as between the Construction Receiver and purchasers;
- (i) setting a protocol and schedule for the resolution of the Shibley Righton Motion (defined below), a dispute with certain Leslieville Purchasers concerning a purchase price adjustment made on closing with respect to a parkland levy (the “**Park Levy**”);

Activity and Fee Approval

- (j) approving the activities of the Construction Receiver described in the seventh report of the Construction Receiver, dated October 5, 2018 and the Eighth Report;
 - (k) approving the interim statement of receipts and disbursements for the period of May 31, 2016 to March 4, 2019 (the “**Interim R&D Statement**”);
 - (l) approving the fees and disbursements of:
 - i. the Construction Receiver for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
 - ii. the Construction Receiver’s independent counsel, Blake, Cassels & Graydon LLP, for the nine (9) month period of May 1, 2018 through to and including January 31, 2019; and
 - iii. the Construction Receiver’s counsel, Gowling WLG (Canada) LLP, for the nine (9) month period of May 1, 2018 through to and including January 31, 2019.
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 (the “**Appointment Order**”) appointing A&M as the Construction Receiver of all the Property of the Debtors
4. Prior to the appointment of the Construction Receiver, the Debtors 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 Debtor's three residential projects – the Riverdale Project, the Leslieville Project and the Beach Project – were at various stages of completion.

The Construction Lien Claims and Holdback Settlements

6. At the commencement of the Receivership Proceedings, there were nine (9) construction lien claims in the aggregate amount of \$2,058,930.92 registered on title with respect to the Beach Project and thirteen (13) construction lien claims in the aggregate amount of \$3,561,770.19 registered on title with respect to the Leslieville Project.

7. 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. 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 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**”).

8. The Vetting Committee recommended (with the Construction Receiver's support) settlement and payment offers to all Lien Claimants in respect of their Holdback Deficiencies. The settlements were approved by the Court on June 16, 2018 and October 11, 2018 with all but one Lien Claimant, Lido, with respect of the Beach Project and the Leslieville Project.

9. Lido has now accepted a settlement offer from the Vetting Committee and the Construction Receiver is seeking the Court's approval of this holdback settlement with Lido. Subject to Court approval, the foregoing settlement amounts will be paid out of the remaining Leslieville Holdback Reserve and the Beach Holdback Reserve.

10. Lido is the last remaining Lien Claimant that has not received a holdback payment. Once payment is made, there will cease to be a reason to maintain Holdback Reserves that have been maintained for Holdback Deficiencies. The Construction Receiver accordingly seeks the Court's

authorization to release the balance of the Leslieville Holdback Reserve and Beach Holdback Reserve.

Final Lien Claim Amounts

11. In order to calculate the holdback settlements that have, with the exception of Lido's settlement, been Court approved and paid to Lien Claimants, the Vetting Committee assessed the aggregate lien claims of each Lien Claimant and calculated the appropriate 10% holdback amount. In order to calculate the lien claimants' entitlement to Holdback Deficiencies, the Vetting Committee had to calculate the provable lien claim underlying those Holdback Deficiencies.

12. The Construction Receiver is now seeking to have the amount of lien claims of each Lien Claimant approved based on the analysis of the Vetting Committee. The Construction Receiver requires these lien claims to be finally determined in order to be able to make the necessary calculations for distribution in accordance with the Twelfth Stage Distribution in the Distribution Waterfall, if any.

Tarion Order

13. The seventh stage of the Distribution Waterfall provides for a distribution to be made to Travelers in respect of certain secured obligations owing by UC Leslieville to Travelers including on account of (i) a bond in the current amount of \$772,540 as security for UC Leslieville's obligations to Tarion (the "**Tarion Bond**"), and (ii) an excess condominium deposit insurance policy issued by Travelers to cover deposits not protected by Tarion (the "**Travelers Master Excess Claims Policy**").

14. All possible claimants under the Travelers Master Claims Policy have asserted a claim, those claims have been funded by Travelers to the extent Travelers is liable for them, and Travelers has been reimbursed by the Construction Receiver. The only remaining amounts payable to Travelers under the seventh tier of the Distribution Waterfall are in respect of cash collateral required to be paid to secure the Tarion Bond.

15. Between November 2018 and January 2019, the Construction Receiver, Tarion, Travelers and Terra Firma came to an agreement whereby the Construction Receiver would pay Travelers' entitlement under the seventh stage of the Distribution Waterfall directly to Tarion "as cash collateral, an amount equal to the then outstanding Tarion Bond Amount" and that such cash collateral is in addition to the Tarion Charge Amount (as such term is defined in the Settlement Approval Order). This arrangement would allow Travelers to terminate the Tarion Bond without prejudice to Tarion and entitle Tarion to access the cash collateral pursuant to a Court order.

16. It was further agreed that Tarion would administer Leslieville Purchaser warranty claims in consultation with Terra Firma and the Construction Receiver, draw on the cash collateral to reimburse itself for costs, and at a certain date remit any balance of the cash collateral to the Construction Receiver, until the Construction Receiver's discharge.

17. Implementing the foregoing cash collateral and bond cancellation arrangement is an amendment to the Distribution Waterfall. However, the only parties affected are Tarion and Travelers (except to the extent that creditors with claims below the seventh stage benefit from the cost savings) and both parties have agreed to this arrangement. In order to ensure that it is strictly in compliance with its obligations, the Construction Receiver is seeking an order directing it to make payment of the cash collateral to Tarion and providing for the turn over of cash collateral when Tarion's entitlement to it expires.

Administration of Warranty Claims

18. The Leslieville Purchasers acquired their unit subject to a statutory warranty from UC Leslieville, backstopped by Tarion. Under the ONHWPA, if a warrantied claim arises in respect of a home, the homeowner may submit a claim, which then gives rise to a period of time during which the vendor is prepressed to remedy the defect (a "**Notice Period**"). The applicable Notice Period varies depending on the defect but can be as long as 150 days. If a vendor does not remediate the defect within the applicable Notice Period, Tarion may step in to do so.

19. In the present case, the Construction Receiver does not have the funds to remedy future defects and so repairs will ultimately be done by Tarion to the extent that they are warrantied claims under the ONHWPA. Accordingly, there is no purpose in requiring Leslieville Purchasers

to submit to the Notice Period. The Construction Receiver has consulted with Tarion, Craft and Terra Firma and believes that the most efficient and fair solution is for the Construction Receiver to waive the applicable Notice Periods provided for in the ONHWPA.

Leslieville Purchase Price Adjustments

20. All 55 residential units in the Leslieville project were sold between October 18 and 25, 2018. On closing, purchase price closing adjustments were made to the purchase price of each unit in accordance with the terms of the applicable agreements of purchase and sale (each, an “**APS**”)

21. There were 7 purchase price adjustments made by the Construction Receiver on closing of the Leslieville Units, each made in accordance with the applicable APS. The purchase price adjustments include the Park Levy, a Tarion enrollment fee, the Utility Levy, an Ontario Law Society fee, an administrative fee, a status certificate charge and title insurance premiums (collectively, the “**Leslieville Purchase Price Adjustments**”).

22. On closing, certain Leslieville Purchasers raised objections about the Park Levy and Utility Levy as purchase price adjustments, but ultimately closed and paid all the adjustments required by the Construction Receiver. Shibley Righton, on behalf of 46 Leslieville Purchasers, has objected to the Park Levy and on March 26, 2019 filed a motion to formally challenge it (the “**Shibley Righton Motion**”).

23. The Construction Receiver believes that all of the Leslieville Purchase Price Adjustments were correctly charged as a purchase price adjustment on closing, however it is currently holding \$700,000 in reserve representing the aggregate Park Levy, plus a reserve for costs (the “**Park Levy Reserve**”) and \$525,000 representing the aggregate Utility Levy, plus a reserve for costs (the “**Utility Reserve**”), pending further order of this Court.

24. In order to release the Park Levy Reserve and the Utility Reserve, the Construction Receiver will require the Court’s advice and direction regarding the Leslieville Purchase Price Adjustments. Final resolution of the Leslieville Purchase Price Adjustments is necessary to enable the Construction Receiver to release the Park Levy Reserve and the Utility Reserve and distribute it in accordance with the Distribution Waterfall or as otherwise directed by the Court.

25. In order to finally adjudicate the Leslieville Purchase Price Adjustments, the Construction Receiver will need to effect service on the Unrepresented Purchasers. It is not practical in the context of these proceedings to effect service on the Unrepresented Purchasers by way of alternative to personal service. The Construction Receiver wishes to regularize service on the Unrepresented Purchasers by obtaining authorization from the Court that it may disclose the names and e-mail addresses (if necessary) to interested parties who request such information in order to effect service in these proceedings and a general order for substituted service permitting service on the Unrepresented Purchasers to be effected using their last known e-mail address based on the records of Real Estate Counsel.

26. The Construction Receiver is seeking this order *nunc pro tunc*, which would in effect validate the Construction Receiver's service of this motion on unrepresented Leslieville Purchasers by email.

27. Absent any formal objection to the Utility Levy or any of the other Leslieville Purchase Price Adjustments, the Construction Receiver is of the view that it is appropriate at this time for the Court to approve the Leslieville Purchase Price Adjustments (excluding the Park Levy) as charged.

Fee Approval

28. Pursuant to the Appointment Order, the Construction Receiver was specifically authorized by the Court to retain counsel to the Syndicate, Gowling WLG (Canada) LLP as its counsel (the "**Construction Receiver's Counsel**") to advise and represent it, save and except on matters upon which the Construction Receiver in its judgement determines it requires independent advice, in which case the Construction Receiver was authorized to and retained Blake, Cassels & Graydon LLP as its independent counsel (the "**Independent Counsel**"). To assist in finalizing the New APS and condominium disclosure documentation and facilitating the closing of the 55 Leslieville Project units the Construction Receiver also retained Real Estate Counsel, Miller Thomson LLP.

29. The Construction Receiver is seeking approval of its fees and those of its counsel in connection with the performance of their duties in the Receivership Proceedings, in the following amounts:

- (a) Construction Receiver in the amount of \$392,314.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019;
- (b) Independent Counsel in the amount of \$136,501.30, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019; and
- (c) Construction Receiver's Counsel in the amount of \$39,679.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019.

30. The Construction Receiver is not seeking approval of Real Estate Counsel's fees at this time and will seek such approval at a later appearance.

31. The Construction Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable and that there is no overlap between the work done by Construction Receiver's Counsel and Independent Counsel.

Authorities to be Relied on

32. The Construction Receiver expressly relies on Rules 1.04, 2.03, 3.02, 16.04 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

33. 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, dated October 5, 2018;
2. The Eighth Report, filed;
3. The Supplement to the Eighth Report, filed;

4. The Construction Receiver's Compendium of Fee Affidavits, to be filed;
5. Such further and other material as counsel made advise and this Honourable Court may permit.

March 18, 2019

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TO: SERVICE LIST

MASTER SERVICE LIST

As of 18 March 2019

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

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

(Applicant)

(Respondents)

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

**NOTICE OF MOTION
(Re: Substituted Service and Approval of Lien
Settlements, Purchase Price Adjustments, Fees
and Activities & Tarion Cash Collateral and
Warranty Procedure)
(Returnable March 26, 2019)**

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TAB 2

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**

**EIGHTH 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.**

March 18, 2019

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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 not otherwise defined in this Eighth Report are as defined in the Sixth Report.

1.1 *Purpose of the Report*

3. The purpose of this Eighth Report of the Construction Receiver (the “**Eighth Report**”) is to:
 - a. provide the Court with a general update on the status of the Leslieville Project, Beach Project and Riverdale Project and the Construction Receiver’s activities from the date of the Sixth Report (June 19, 2018) to the date of this Eighth Report;
 - b. provide the Court with an update with respect to the Construction Receiver’s combined Interim Statement of Receipts and Disbursements for the Leslieville Project, Beach Project and Riverdale Project, for the period of May 31, 2016 to March 4, 2019 (the “**Interim R&D Statement**”);
 - c. provide the Court with an update on the closing of the sales for residential units at the Leslieville Project (the “**Leslieville Units**”) and the purchase price adjustments made in connection therewith, including a motion served on March 18, 2019 by Shibley Righton LLP (“**Shibley Righton**”) and returnable on March 26, 2019, in which Shibley Righton, on behalf of certain Leslieville Purchasers (defined below), have challenged one of the purchase price adjustments (the “**Shibley Righton Motion**”);
 - d. provide the Court and stakeholders with a range of possible future distribution amounts to Terra Firma, Lien Claimants and the Opt-In Leslieville Purchasers, pursuant to the 12th stage of the Distribution

Waterfall, taking into account a number of contingencies that have yet to be resolved; and

- e. support the Construction Receiver's motion requesting this Court's granting of orders:
- (i) approving the settlements reached between the Vetting Committee (as hereinafter defined) and Lido Construction Inc. ("**Lido**") in respect of CLA holdback entitlements for the Leslieville Project and Beach Project (the "**Holdback Settlement**");
 - (ii) authorizing and directing the Construction Receiver to pay the applicable Holdback Settlement in respect of the Leslieville Project and the Beach Project from the holdback reserves currently maintained by the Construction Receiver, and releasing the remainder of such holdback reserves for distribution to creditors in accordance with the distribution waterfall (the "**Distribution Waterfall**") set out in Paragraph 55 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**");
 - (iii) approving the amount of Lien Claimant entitlements, net of holdback settlements already paid, for the purposes of the Construction Receiver calculating *pari passu* distributions to such Lien Claimants, if any;
 - (iv) authorizing the Construction Receiver to waive certain notice periods provided for in the *Ontario New Home Warranties Plan Act* (Ontario) (the "**ONHWPA**"), in order to permit Tarion Warranty Corporation ("**Tarion**") to assess and remediate warrantied defect claims at the Leslieville Project more expeditiously;
 - (v) authorizing and directing the Construction Receiver to pay certain amounts to Tarion as cash collateral, which would otherwise be payable to Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada ("**Travelers**") pursuant to the Settlement Approval Order, to be held by Tarion pending the expiry of certain warranty periods;
 - (vi) authorizing the Construction Receiver to disclose certain contact information of purchasers of Leslieville Units (the "**Leslieville Purchasers**") who are unrepresented by counsel;
 - (vii) granting substituted service on unrepresented Leslieville Purchasers by email to the last known email address of such

Leslieville Purchaser, based on the records of the Construction Receiver's real estate counsel, Miller Thomson LLP ("**Real Estate Counsel**");

- (viii) declaring that certain purchase price adjustments calculated and charged by the Construction Receiver in connection with the closing of Leslieville Units are accurate and binding as between the Construction Receiver and purchasers;
- (ix) setting a protocol and schedule for the resolution of the pending Shibley Righton Motion, regarding a dispute over the purchase price adjustment made on closing with respect to a parkland levy (the "**Park Levy**");
- (x) approving the activities of the Construction Receiver described in the Seventh Report of the Construction Receiver, dated October 5, 2018 (the "**Seventh Report**") and this Eighth Report;
- (xi) approving the Interim R&D Statement; and
- (xii) approving the fees and disbursements of:
 - a. the Construction Receiver for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
 - b. the Construction Receiver's independent counsel Blake, Cassels & Graydon LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019; and
 - c. the Construction Receiver's counsel Gowling WLG (Canada) LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019.

1.2 *Currency*

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

2.0 **STATUS OF PROJECTS**

2.1 *Leslieville Project*

- 5. In the Sixth Report, the Construction Receiver reported that:
 - a. construction of the Leslieville Project was substantially complete, with only unit pre-delivery inspection ("**PDI**") work and minor common area work remaining;

- b. the City of Toronto (the “**City**”) was holding two letters of credit (“**LCs**”) (issued by CIBC) totaling \$870,920 related to the construction and development of the Leslieville Project, namely:
 - i. \$769,280 as security for the transfer of the Leslieville Parkland to the City (dated February 12, 2013) (the “**Park LC**”); and
 - ii. \$101,640 as security for baseline Leslieville Parkland improvements.
 - c. the City was also holding cash collateral of \$40,000 funded directly by Terra Firma in connection with the Site Plan Agreement to secure landscape works as detailed on the approved Landscaping Plans;
 - d. all fifty-five (55) Leslieville Units (together with parking and storage units, as applicable) had been sold, of which fifty-four (54) were subject to firm agreements of purchase and sale. There was one (1) Leslieville Unit sale that was still within the statutory rescission period which was to expire on June 26, 2018;
 - e. occupancy permits from the City had been issued for all fifty-five (55) Leslieville Units, of which fifty-two (52) Leslieville Units were occupied pursuant to the Occupancy Licence contained in each agreement of purchase and sale (“**APS**”); and
 - f. ten (10) excess parking units (“**Excess Parking Units**”) and twenty one (21) bicycle storage units (“**Bicycle Storage Units**”) had been sold.
6. The following developments have taken place at the Leslieville Project since the filing of the Sixth Report:
- a. all outstanding common area and unit “pre-delivery inspection” or “PDI” work has been completed, and only two Leslieville Units remain subject to Tarion inspection, which inspection is scheduled for April 24, 2019;
 - b. the Park LC has been returned, undrawn;
 - c. the LC for the original face value amount \$101,640 held as security by the City for baseline Leslieville Parkland improvements has been reduced to \$12,773¹, undrawn. City representatives have advised the Construction Receiver that they intend to hold the security until at least May 1, 2020;

¹ The LC held by the City expires on September 10, 2019, subject to certain annual renewal provisions. On December 3, 2018, CIBC issued a notice of non-renewal to the City indicating that CIBC would not renew the LC and would not honour any draw requests in respect of the LC after September 10, 2019. In light of the above, the Construction Receiver anticipates that the City will draw on the LC prior to September 10, 2019, and that CIBC will fund the draw request from cash held in the CIBC cash collateral account.

- d. the \$40,000 cash collateral funded directly by Terra Firma and held as security by the City for Leslieville Project landscaping has been returned to Terra Firma in full;
- e. the one (1) Leslieville Unit sale subject to the statutory rescission period firmed up in late June 2018 and has closed;
- f. the three (3) remaining unoccupied Leslieville Units, were occupied over the course of the summer of 2018;
- g. the Construction Receiver filed a claim with its insurer for approximately \$125,000 (exclusive of HST) in respect of ice storm damage to the Leslieville Project which occurred during the initial occupancy phase in April 2018. The deductible under the Construction Receiver's insurance policy is \$50,000. The Construction Receiver has recently been advised that its claim has been accepted in full and that it will be receiving approximately \$75,000 (i.e. the claim amount less the deductible);
- h. an additional three (3) Bicycle Storage Units were sold prior to condominium registration;
- i. the Leslieville Units were registered as Toronto Standard Condominium Corporation No. 2669 ("**TSCC No. 2669**" or the "**Condominium Corporation**") on September 7, 2018;
- j. Leslieville Unit² closings took place between October 18 and 25, 2018 for gross proceeds of \$51.4 million, inclusive of all purchase price and other closing adjustments and HST ("**Leslieville Sale Proceeds**");
- k. the sale of the geothermal unit to TSCC No. 2669 for \$800,000, inclusive of HST, was approved by this Court on October 11, 2018 and closed on October 24, 2018;
- l. as authorized by the Order (Re: Approving Lien Settlements, Authorizing Assignment of Sale Agreements & Charging Cash Collateral) granted by Mr. Justice Penny, dated October 11, 2018, the Construction Receiver entered into a cash collateral agreement with CIBC, whereby the Construction Receiver distributed approximately \$164,000 to CIBC in support of CIBC's Leslieville Project and Riverdale Project LC obligations to the City;
- m. as authorized and directed by the Court in the Settlement Approval Order, the Construction Receiver established a reserve of \$1,184,000 (the "**Leslieville Holdback Reserve**") from the Leslieville Sale Proceeds to

² Including parking and storage units, as applicable.

satisfy all claims of the Lien Claimants of the Leslieville Project in respect of Holdback Deficiencies (defined below). All Leslieville Project holdback claims have been settled with the respective lien claimant and all but one such settlements have been approved by this Court. The final, unapproved settlement with Lido is further described in Section 3.0 of this Report;

- n. the City has issued supplementary 2018 property tax bills totaling approximately \$101,000. The Construction Receiver understands that the supplementary property taxes were issued to reflect an increased mill rate with the change in the Leslieville Project from a development project to a condominium corporation. As such, the Construction Receiver is of the view that the supplementary 2018 taxes are owed by the owners of the Leslieville Units. The Construction Receiver has submitted an application for the apportionment of these taxes to the current owners of the Leslieville Units. The City's General Government and Licensing Committee will consider the apportionment application at a hearing scheduled for April 23, 2019;
 - o. the condominium turnover meeting was held on January 8, 2019 and a new board of directors was elected by the TSCC No. 2669 unit owners;
 - p. the Construction Receiver filed HST returns with the Canada Revenue Agency ("CRA") in respect of the sale of the Leslieville Units up to and including February 28, 2019, and has held back from distribution an appropriate amount, pending the receipt of clearance certificates confirming that no additional HST is owing. Applications to the CRA for clearance certificates have been made and the Construction Receiver will report on their progress as information becomes available; and
 - q. the final Excess Parking Unit and four (4) additional Bicycle Storage Units were sold in late February/early March 2019 for gross proceeds of \$21,700, inclusive of HST. These transactions are expected to close over the coming days.
7. All assets of the Leslieville Project have now been realized upon other than:
- a. seven (7) Bicycle Storage Units which remain for sale;
 - b. the ice storm insurance claim, for which proceeds are pending;
 - c. potential recoveries from cash collateral held by CIBC (or the City) in respect of the last remaining UC Leslieville LC;
 - d. potential recoveries from cash collateral to be held by Tarion (should this Court grant the Tarion Cash Collateral Order being sought), and

- e. certain HST refunds due from CRA.

2.2 *Beach Project*

8. As previously reported, the principal asset of the Beach Project was the Beach Lots, the sale of which closed on July 28, 2017 for gross sale proceeds of \$4.9 million. After adjustments and realtor commissions, the Construction Receiver received \$4,736,120 (the “**Beach Sale Proceeds**”).
9. As authorized and directed by the Court, the Construction Receiver established a reserve of \$416,000 (the “**Beach Holdback Reserve**”) from the Beach Sale Proceeds to satisfy all claims of the Lien Claimants of the Beach Project in respect of Holdback Deficiencies (defined below). All Beach Project holdback claims have been settled and such settlements approved by this Court, other than that of Lido, which is further described in Section 3.0 of this Report.
10. Further, the Construction Receiver was authorized and directed to repay \$2.2 million of Receiver Certificates from Beach Sale Proceeds. The remaining \$1.1 million of Beach Sale Proceeds was utilized by the Construction Receiver to fund the ongoing administration costs of the estates.
11. There are no further assets to be realized upon under the Beach Project.

2.3 *Riverdale Project*

12. As outlined in the Sixth Report, the sale of the townhome units at the Riverdale Project was completed in late April to early May 2016, prior to the date of the Appointment Order.
13. The closing documentation for the Riverdale Project sales was prepared by the Debtors’ solicitors, Harris Sheaffer LLP (“**Harris Sheaffer**”). Total closing proceeds, less costs and HST, of \$18,668,456.18, were remitted to CIBC in respect of the Debtors’ loan obligations to the CIBC Syndicate. Harris Sheaffer held monies related to these closings, totaling \$2,976,772.41, plus accrued interest, equal to the HST portion of proceeds collected from purchasers (the “**Residual Closing Monies**”).
14. On April 20, 2018, counsel to Terra Firma filed a motion to have the Residual Closing Monies remitted to the Construction Receiver. The motion was unopposed, and on April 30, 2018 an Order (the “**April 30th Order**”) was granted (i) directing Harris Sheaffer to remit the Residual Closing Monies to the Construction Receiver, and (ii) authorizing and directing the Construction Receiver to first repay Terra Firma’s costs related to the motion and the Debtors’ bankruptcy proceedings, and second, to repay certain debt obligations of the Construction Receiver from Residual Closing Monies.

15. On May 31, 2018, the Construction Receiver received from Harris Sheaffer \$3,004,495.32 (being Residual Closing Monies, plus accrued interest, less bank charges). As outlined further below, the Construction Receiver has utilized these proceeds to:
 - a. establish a reserve of \$114,495.32 to repay Terra Firma's costs related to the motion and the Debtors' bankruptcy proceedings. Actual Terra Firma costs totaled \$101,795.32. The unused portion of the reserve was utilized by the Construction Receiver to fund the administrative costs of the estates; and
 - b. repay \$2,890,000 of CIBC Syndicate Construction Loan obligations (being post-filing debt obligations).
16. As at the date of the Sixth Report, there were four (4) LCs (issued by CIBC) totaling \$195,039 that were held by the City as security in connection with the construction and development of the Riverdale Project.
17. Since the Sixth Report, three (3) LCs totaling \$79,535 have been returned, undrawn. The only remaining LC was for \$115,504 and was in support of future City water discharge fees (based on the estimated annual average storm water discharge for 13 units along Howie Avenue for a period of 20 years). This LC was drawn upon by the City upon receiving notice from CIBC, dated December 3, 2018, that it would not be renewing the LC. The draw down was funded by CIBC from a CIBC cash collateral account. As such, the City is holding cash collateral in place of the LC. The Construction Receiver has been in contact with City representatives on this issue and expects that a determination of whether the cash collateral can be returned, or reduced, should be made within the next three (3) to six (6) months.
18. There are no further assets to be realized upon under the Riverdale Project.

3.0 CONSTRUCTION LIEN CLAIMS AND HOLDBACK SETTLEMENTS

3.1 *Leslieville Project and Beach Project Liens & Holdback Settlements*

19. As reported in the Second Report, there were nine (9) 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.
20. 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**”).

21. 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. Supporting documentation has been provided by all applicable construction Lien Claimants, and through a negotiation and settlement process with these claimants, the Vetting Committee has recommended (with the Construction Receiver’s support) settlement and payment offers to all claimants in respect of their Holdback Deficiencies.
22. Pursuant to orders of the Court dated June 26, 2018 (the “**June 26 Order**”) and October 11, 2018 (the “**October 11 Order**”), settlements were approved with all but one Lien Claimant in respect of the Beach Project and the Leslieville Project, Lido.
23. Pursuant to the June 26 Order, the Construction Receiver was maintaining a holdback reserve of \$200,000 in respect of the Leslieville Project (the “**Leslieville Holdback Reserve**”) and \$120,000 in respect of the Beach Project (the “**Beach Holdback Reserve**”). The October 11 Order authorized the Construction Receiver to make payments to certain Lien Claimants out of these reserves, reducing the Leslieville Holdback Reserve to \$173,713.37 and the Beach Holdback Reserve to \$97,928.08.

Lido Settlement

24. Since the date of the October 11 Order, the settlement offer recommended by the Vetting Committee and made to Lido has been accepted. The Lido settlement is as follows:

Agreed holdback to be paid:
 - (i) Leslieville Project: \$58,691.18
 - (ii) Beach Project: \$71,811.32
25. The Construction Receiver is seeking the Court’s approval of this holdback settlement with Lido. Subject to Court approval, the foregoing settlement amounts will be paid out of the remaining Leslieville Holdback Reserve and Beach Holdback Reserve.
26. Because Lido is the last remaining Lien Claimant that has not received a holdback payment, once the payments are made there will cease to be a reason to maintain holdback reserves, and the Construction Receiver is accordingly seeking the

Court's authorization to release the balance of the Leslieville Holdback Reserve and the Beach Holdback Reserve. These balances are \$115,022.19 (Leslieville Holdback Reserve) and \$26,116.76 (Beach Holdback Reserve), for a total amount of \$141,138.95.

Determination of Final Lien Claim Amounts

27. In order to calculate the holdback settlements that have, with the exception of Lido's settlement, been Court approved and paid to Lien Claimants, the Vetting Committee assessed the aggregate lien claims of each Lien Claimant, reviewed supporting documentation and invoices, assessed what parts of the lien claim were supported by documents, took into account any incremental pre-filing payments that may have been made by UC Leslieville and UC Beach (as applicable), and then calculated the appropriate 10% holdback amount. Accordingly, in order to calculate Lien Claimants' entitlements to Holdback Deficiencies, the Vetting Committee had to calculate the provable lien claim underlying those Holdback Deficiencies.
28. The Construction Receiver is now seeking to have the lien claims of each Lien Claimant approved, based on the analysis of the Vetting Committee. The Construction Receiver requires these lien claims to be finally determined in order to be able to make necessary calculations for distribution in accordance with the Settlement Approval Order.
29. Paragraph 55 of the Settlement Approval Order provides for the detailed Distribution Waterfall, which was carefully negotiated by the relevant stakeholders in early 2017 and ultimately Court approved on May 2, 2017. On May 11, 2017, an order was made amending subparagraph 55(1) of the Settlement Approval Order, which as amended provides for distributions at the twelfth level of the priority waterfall as follows (the "**Twelfth Stage Distribution**"):
 - (1) 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**"), with such amount allocated to the Opt-In Leslieville Purchasers to 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; subject to determination by the Court, if necessary of the appropriate allocation of the Lien Claimants Balance Claims to the respective Projects.

30. As noted later in this Eighth Report, it is not clear whether there will be sufficient funds for the Construction Receiver to make the Twelfth Stage Distribution. However, in the event that a Twelfth Stage Distribution is available, the Construction Receiver needs to have fixed amounts for both the Premium Reimbursement Claims and the Lien Claimants Balance Claims in order to calculate such distributions. The Premium Reimbursement Claims are based on the Premium paid by the Opt-In Leslieville Purchasers and is defined in the Settlement Approval Order: it is \$255,000 for each Opt-In Leslieville Purchaser for a total of \$10,200,000 for the forty (40) Opt-Ins.
31. The Lien Claimants Balance Claims, and the allocation of same to the respective Projects, has not been finally determined, although in the Construction Receiver's view it follows necessarily from the Court approved Holdback Deficiency settlements. The Construction Receiver is concerned that negotiating or adjudicating the Lien Claimants Balance Claims is therefore unnecessary and could be time consuming and unnecessarily costly. Accordingly, the Construction Receiver is seeking their final approval at this time.
32. According to the Vetting Committee's calculations, with which the Construction Receiver agrees, the Lien Claimants Balance Claims for the Leslieville Project are set out in **Appendix "A"**, and summarized as follows:

Leslieville Lien Claimants		Leslieville Lien Claimants' Balance Claims
1	207875 Ontario Ltd (o/a Canadian Rental Centres)	\$29,385.47
2	Alpa Stairs and Railings Inc.	\$115,174.81
3	Commercial Two Construction Inc.	\$118,367.21
4	Emergency Propane Services Inc.	\$0.00
5	EXP Services Inc.	\$8,246.87
6	MDF Mechanical Ltd.	\$180,841.23
7	NG Marin Inc.	\$744,804.02
8	Silvio Construction Co. Ltd.	\$35,826.09
9	Sterling Carpet and Tile	\$13,710.22
10	Uptown Hardware Ltd.	\$65,377.57
11	Orin Contractors Corp.	\$161,474.17
12	Roni Excavating Limited	\$25,105.45
13	Lido Construction Inc.	\$54,515.60
Total		\$1,552,828.71

33. Attached as **Appendix "B"** is the Vetting Committee's calculation of Lien Claimants total lien claims in respect of the Beach Project, which like the above Leslieville Project claims, are based on the applicable Court approved Holdback

Deficiency calculations. However, the Twelfth Stage Distribution is being made only in respect of the Leslieville Project, and accordingly the Construction Receiver is not seeking to have the lien claims in respect of the Beach Project approved.

34. On February 7, 2019, counsel to the Construction Receiver sent counsel to each of the Leslieville Project Lien Claimants a notice of its assessment of their Lien Claimants Balance Claim, which notice advised of the Construction Receiver's intention to seek court approval of such amounts for the purposes of determining the Lien Claimants Balance Claims under the Settlement Approval Order. Lien Claimants are also being served with the Construction Receiver's motion record.
35. To date, only one Lien Claimant responded to the Construction Receiver indicating that it disagreed with the Construction Receiver's calculation. The Construction Receiver in consultation with the Vetting Committee determined that the Lien Claimant was correct. The amounts included in the foregoing chart and in Appendix "A" reflect the correct, revised amount.
36. In the Construction Receiver's view, this type of negative claims process is the most efficient means for finally determining the Lien Claimants Balance Claims, given that Holdback Deficiencies (which are based on the proposed Lien Claimants Balance Claims) have been accepted by the affected Lien Claimants and approved by the Court.

Amendment to Twelfth Stage Distribution

37. As discussed in the Seventh Report, the Lien Claimant counsel participating on the Vetting Committee (in their capacity as counsel, the "**Vetting Committee Counsel**"), have expressed concern that they (or their clients) have incurred disproportionate costs connected with ensuring the interests of Lien Claimants generally are represented in the Vetting Committee process. They accordingly requested that the Construction Receiver seek an amendment to the Settlement Approval Order that would provide for certain distributions to be made to Vetting Committee Counsel, as compensation for their expenses incurred for the benefit of all Lien Claimants.
38. The Construction Receiver sought to amend the Settlement Approval Order to provide such compensation in connection with seeking the October 11 Order, but ultimately adjourned this relief when certain other stakeholders raised concerns with it.
39. Since the adjournment of the proposed amendment to the Settlement Approval Order on October 11, 2018, the Construction Receiver has had further discussions with Vetting Committee Counsel about the requested amendment, but is not seeking such relief in connection with the Construction Receiver's pending motion.

40. Vetting Committee Counsel have been advised of this motion prior to the service of the Construction Receiver's motion record, and should Vetting Committee Counsel seek to amend the Settlement Approval Order at the return of the Construction Receiver's motion, the Construction Receiver will file a supplemental report to take a position on such relief.

4.0 TARION ORDER

41. The Settlement Approval Order provides for, among other things, the comprehensive Distribution Waterfall, made up of 15 priority tiers.
42. The seventh tier of the Distribution Waterfall provides for a distribution to be made to Travelers, in respect of certain secured obligations owing by UC Leslieville to Travelers, including on account of (i) a bond in the current amount of \$772,540³ as security for UC Leslieville's obligations to Tarion (the "**Tarion Bond**"), and (ii) an excess condominium deposit insurance policy issued by Travelers to cover deposits not protected by Tarion (the "**Travelers Master Excess Claims Policy**").
43. Since the date of the Seventh Report, the Construction Receiver and Travelers took steps to notify the three (3) parties with outstanding claims against the Travelers Master Excess Claims Policy that they were eligible for payment. In response to these efforts, all claimants made claims.
44. Accordingly, as of the date of this Eighth Report, all claimants with claims under the Travelers Master Excess Claims Policy have asserted a claim, those claims have been funded by Travelers to the extent Travelers is liable for them, and Travelers has been reimbursed by the Construction Receiver. Therefore, the only remaining amounts payable to Travelers under the seventh tier of the Distribution Waterfall are in respect of cash collateral required be paid to secure the Tarion Bond.
45. The Tarion Bond, in turn, secures obligations owed to Tarion, and in November 2018 the Construction Receiver entered into discussions with counsel to Tarion and Travelers to determine whether the cash collateral required to be paid by the Construction Receiver on account of the Tarion Bond could be paid directly to the beneficiary of the Tarion Bond, thereby eliminating future bond premiums from accruing due, and eliminating Travelers' role in these proceedings.
46. Between November 2018 and January 2019, the Construction Receiver, Tarion, Travelers and Terra Firma came to an agreement whereby the Construction Receiver would pay Travelers' entitlement under the seventh tier of the Distribution Waterfall directly to Tarion "as cash collateral, an amount equal to

³ The Construction Receiver has recently been made aware of a further draw request in the approximate amount of \$23,000 that, if and when funded, would cause the bond to be drawn down by that amount, but increase the cash collateral sought to be paid to Tarion by an equal amount.

the then outstanding Tarion Bond Amount” and that such cash collateral is in addition to the Tarion Charge Amount (as such term is defined in the Settlement Approval Order) to which Tarion is entitled under the Distribution Waterfall. This arrangement would allow Travelers to terminate the Tarion Bond, without prejudice to Tarion, and entitle Tarion to access the cash collateral pursuant to a Court order.

47. It was further agreed that Tarion would administer Leslieville Purchaser warranty claims, in consultation with the Construction Receiver, draw on the cash collateral to reimburse itself for costs, and at a certain date remit any balance of the cash collateral to the Construction Receiver, until the Construction Receiver’s discharge, as described in the related draft Court order being sought by the Construction Receiver.
48. The Construction Receiver estimates that this arrangement, and in particular the cancellation of the Tarion Bond, will save the UC Leslieville estate approximately \$60,000, by eliminating future bond premiums and Travelers’ legal costs.
49. Implementing the foregoing cash collateral and bond cancellation arrangement is an amendment to the Distribution Waterfall. However, the only parties affected are Tarion and Travelers (except to the extent that creditors with claims below the seventh tier stand to benefit from the cost savings), and both parties have agreed to this arrangement.
50. In order to ensure that it is strictly in compliance with its obligations under the Distribution Waterfall, the Construction Receiver is seeking an order approving and directing it to make payment of the cash collateral to Tarion and providing for the turn-over of cash collateral when Tarion’s entitlement to it expires and certain related relief.

5.0 ADMINISTRATION OF WARRANTY CLAIMS

51. The Leslieville Units are subject to two warranty regimes: one is contractual and backstopped by Craft, and the other is statutory and backstopped by Tarion (to the extent that UC Leslieville does not fulfill its warranty-related obligations). The Construction Receiver has had extensive discussions with Craft, Tarion and Terra Firma regarding the most efficient way for these warranties to be administered going forward, and has come to a solution that it believes is both cost efficient and protective of the interests of owners of Leslieville Units, given the fact that UC Leslieville is not fulfilling its warranty-related obligations.

Craft Warranty Claims

52. Pursuant to the construction contract between UC Leslieville (by the Construction Receiver) and Craft, dated April 18, 2017 and approved by the Settlement Approval Order (the “**Construction Contract**”), the warranty period for construction done by Craft is one year from the date of “Substantial Performance

of the Work”, as defined in the Construction Contract. Substantial Performance of the Work occurred on June 7, 2018. Accordingly, the warranty period under the Construction Contract will expire on June 7, 2019.

53. Additionally, the Construction Contract provides for certain extended warranties that are valid beyond the ordinary one year warranty period. These include any third party warranties on chattel or fixtures that are offered by the manufacturer of such items. Craft’s only obligation under the Construction Contract in respect of these extended warranties is to ensure that the third party warranties are in place. Therefore, Craft does not need to be engaged for this in any general, on going capacity.
54. Finally, if Craft does warranty work, that warranty work is further warranted for an additional 3 years. In the Construction Receiver’s view, this will be a narrow category of potential claims.
55. Accordingly, Craft will remain engaged with the Leslieville Project until at least June 7, 2019, in order to address any warranty claims that may arise under the Construction Contract. In this capacity, it may also receive claims in respect of defects or deficiencies that are not covered by the Construction Contract warranty period, but rather are covered by the Tarion warranty. In such an event, Craft will pass the claim along to Tarion, and Tarion will deal with them pursuant to the ONHWPA.
56. In the Construction Receiver’s view, it is appropriate for Craft to disengage with the Leslieville Project after June 7, 2019, and for all warranty claims to be processed directly by Tarion pursuant to the ONHWPA.

Tarion Warranty Claims

57. The Leslieville Purchasers acquired their Leslieville Units subject to warranties from UC Leslieville backstopped by Tarion, because the Unit was “substantially completed” as of the date of the Construction Receiver’s appointment. The issue of “substantial completion” is discussed at length in the Second Report of the Receiver dated April 21, 2017.
58. Under the ONHWPA, among other things, a vendor of a new home warrants to the owner of that home that the home is constructed in a workmanlike manner, free from defects in material, is fit for habitation, is constructed in accordance with the Ontario Building Code, and is free from major structural defects.⁴ In the case of the Leslieville Project, the vendor of the Leslieville Units is UC Leslieville (and following the appointment of the Construction Receiver, UC Leslieville by the Construction Receiver).

⁴ The Construction Receiver notes certain exemptions to the warranty enumerated in section 13(2) of the ONHWPA, the details of which are not relevant to the relief being requested by the Construction Receiver at this time.

59. The ONHWPA warranties take effect for units on the date of occupancy and for common elements on the date of registration of the condominium. The warranties are of different term lengths, with warranties for major structural defects having a term of up to 7 years.⁵ Possession dates of Leslieville Units range from March to August, 2018.
60. In the ordinary course, pursuant to the regulations promulgated under the ONHWPA, if a warranted claim arises in respect of a home, the homeowner may submit a claim, which then gives rise to a period of time during which the vendor is required to remedy the defect (a “**Notice Period**”). The applicable Notice Period varies depending on the defect, but can be as long as 150 days. In simple terms, if a vendor does not remediate the defect within the applicable Notice Period, then Tarion may step in to do so.
61. In the present case, UC Leslieville is subject to receivership and bankruptcy proceedings and by virtue of the Settlement Approval Order, the Construction Receiver does not have the funds to remedy future defects, so repairs will ultimately be done by Tarion to the extent that they are warranted claims under the ONHWPA. Accordingly, there is no purpose in requiring Leslieville Purchasers to submit to the Notice Periods ordinarily imposed by the ONHWPA.
62. The Construction Receiver has discussed a path forward with Tarion, Craft and Terra Firma, and believes that the most efficient and fair solution is for the Construction Receiver to waive the applicable Notice Periods provided for in the ONHWPA and its regulations, in order that any ONHWPA warranty claims may be addressed by Tarion without unnecessary delay. This will enable any defects that would ultimately be addressed by Tarion to be remediated much sooner, which has clear benefits to the Leslieville Purchasers, with no corresponding prejudice to other stakeholders.
63. The Construction Receiver is therefore seeking an order that will authorize it to waive the applicable Notice Periods under the ONHWPA and authorize Tarion, in its discretion, to remediate defects that are properly subject to ONHWPA warranty claims immediately upon receiving notice of such claims from unit owners or the Condominium Corporation.
64. The Construction Receiver notes that costs borne by Tarion in remediating warranted defects will reduce the cash collateral held by Tarion, discussed above. As this cash collateral would always be Tarion’s recourse in the event that it was required to remediate warranted defects, the Construction Receiver views the proposed protocol for warranty claims to be, at a minimum, economically neutral but potentially economically advantageous to UC Leslieville’s stakeholders

⁵ See ONHWPA s. 13(3) and (4) and R.R.O 1990 Reg. 892 (Administration of the Plan).

because it will permit defects to be remedied more expeditiously and prevent any defects from getting worse in the meantime.

65. Any residual, unused Tarion cash collateral will be released at the end of the applicable warranty periods, including any processing and payment periods thereafter, all in accordance with the terms of the Court Order sought on this motion.

Unit Owner and Condominium Corporation Correspondence

66. If the Court grants the relief sought by the Construction Receiver in respect of warranty claims, the Construction Receiver intends to send a letter to each Leslieville Unit owner and the Condominium Corporation, in consultation with Tarion and Craft (the “**Unit Owner Correspondence**”). The Unit Owner Correspondence is intended to notify affected parties of the warranty coverage and claim procedure set out above, and provide contact information for Craft, Tarion and the Construction Receiver in the event of any questions.

6.0 LESLIEVILLE CLOSING PROCEEDS AND STATEMENTS OF ADJUSTMENT

67. For ease of review, the Construction Receiver has provided its discussion and analysis of the Leslieville Project closing proceeds and purchase price adjustments in a supplement to the Eighth Report, dated contemporaneously herewith (the “**Supplemental Report**”).
68. The relief being sought by the Construction Receiver in respect of the purchase price adjustments will be of particular relevance to certain unrepresented Leslieville Purchasers, and it may be unduly and unnecessarily complex and comprehensive to include that discussion and analysis in the body of the Eighth Report, which is itself quite voluminous.

7.0 CONSTRUCTION RECEIVER’S INTERIM COMBINED STATEMENT OF RECEIPTS AND DISBURSEMENTS

69. Over the course of the receivership proceedings, the Construction Receiver opened a total of eight (8) bank accounts:
- a. one (1) for administration expenses;
 - b. one (1) for asset realizations; and
 - c. six (6) for Leslieville Project construction - one account for each construction lender (Craft, the CIBC Syndicate and Terra Firma), an account for the \$535,000 of cash collateral provided by Craft pursuant to the Craft Development Contract (the “**Craft Cash Collateral**”), a supplier holdback account and a disbursement account.

70. In addition, the Construction Receiver oversaw the distribution of funds from two (2) lawyers' trust accounts – one (1) held by Real Estate Counsel (in respect of the Leslieville Project closings) and the other held by Harris Sheaffer (in respect of the pre-receivership deposits made by the Original Leslieville Purchasers). All funds held within these trust accounts have now been distributed, either to the Construction Receiver or to others as directed by the Construction Receiver in accordance with the Distribution Waterfall.
71. The Interim R&D Statement in respect of the above accounts for the period of May 31, 2016 to March 4, 2019 is attached as **Appendix "C"**.
72. The Interim R&D Statement indicates that the Construction Receiver has collected \$76.5 million of receipts from asset sales, borrowings and other sources and has disbursed approximately \$71.6 million to various parties over the course of the receivership proceedings.
73. Total receipts of \$76.5 million consist of the following
- a. Borrowings of \$12.9 million to finance the administration of the Debtors' estates and completion of the Leslieville Project construction, namely:
 - (i) \$4.8 million from the CIBC Syndicate to fund the Construction Receiver's initial administration of the Debtors' estates;
 - (ii) \$2.0 million from Craft as the initial tranche of the Leslieville Project construction financing;
 - (iii) \$535,000 of Craft Cash Collateral, in support of Craft's obligations under the Craft Construction and Development agreements;
 - (iv) \$3.95 million from the CIBC Syndicate as additional construction financing required to complete the construction of the Leslieville Project; and
 - (v) \$1.6 million from Terra Firma in respect of construction budget cost overruns which were beyond the fixed price contract with Craft. These cost overruns were formally outlined in contract Change Orders as approved by Altus Group, the Project Monitor.

As outlined below, all borrowings have been repaid, inclusive of interest and financing fees.
 - b. Leslieville Project asset realizations of \$53.7 million, which consist primarily of:
 - (i) \$51.4 million (inclusive of \$5.4 million in HST collected and all purchase price and other closing adjustments) from the sale of

fifty-five (55) Leslieville Units (with parking), ten (10) Excess Parking Units and twenty-four (24) Bicycle Storage Units;

- (ii) \$800,000 (inclusive of approximately \$92,000 in HST collected) of proceeds from the sale of the Leslieville Project geothermal unit to the Condominium Corporation;
 - (iii) \$1.2 million of interim occupancy fees; and
 - (iv) Recovery of Leslieville Purchaser deposits held by Harris Sheaffer plus interest totaling approximately \$343,000.
- c. Proceeds of \$4.9 million from the sale of the Beach Project lots;
 - d. Collection of \$3.0 million of UC Riverdale Residual Closing Monies;
 - e. Other receipts of \$2.0 million, which consist primarily of HST refunds and deposit interest earned.
74. Total disbursements of \$71.6 million consist of the following:
- a. \$9.8 million of construction related costs, consisting of \$7.7 million of budgeted construction costs and approved Change Orders, a Craft Deferred Management Fee of \$1.125 million, and a Craft Success Fee of \$1.0 million;
 - b. Full repayment of all Receiver's borrowings of \$12.9 million plus interest and fees of \$1.4 million;
 - c. \$31.3 million of other distributions to stakeholders with security or court-order charges, namely:
 - (i) Approximately \$641,000 to twelve (12) UC Leslieville Lien Claimants and eight (8) UC Beach Lien Claimants;
 - (ii) \$26.4 million to the CIBC Syndicate for pre-receivership loans, inclusive of accrued interest. This includes approximately \$165,000 which was distributed to CIBC pursuant to a cash collateral agreement to secure outstanding pre-receivership letters of credit and related legal fees;
 - (iii) Craft geothermal costs of approximately \$194,000, inclusive of interest;
 - (iv) Travelers claims of approximately \$1,024,000, consisting of deposit claims paid under Travelers' Excess Condominium

Deposit Insurance policy, draws on the Tarion Bond, unpaid bond and insurance policy premiums, legal fees and interest;

- (v) Tarion claims of approximately \$234,000 in respect of deposit claims paid under the Ontario New Home Warranty Program inclusive of Tarion's 15% administration charge; and
- (vi) \$2.75 million to Terra Firma in respect of pre-receivership claims.

d. Other disbursements of \$16.2 million, namely:

- (i) \$5.4 million remitted to CRA (representing HST collected on the sale of the UC Leslieville Project residential assets and Geothermal unit, net of October 2018 input tax credits);
- (ii) \$2.4 million of HST paid to suppliers (and utilized by the Construction Receiver as input tax credits);
- (iii) \$3.2 million in fees and disbursements of the Construction Receiver's Legal Counsel (Gowlings), Independent Counsel (Blakes) and Real Estate Counsel (Miller Thomson), as well as the Debtors' legal counsel (Harris Sheaffer) for assistance provided to the Construction Receiver in connection with the Receivership Proceedings;
- (iv) \$2.5 million of Construction Receiver fees and disbursements;
- (v) Approximately \$934,000 in realtor brokerage commissions in respect of the sale of the UC Beach Lots and Leslieville Units;
- (vi) Realty taxes of approximately \$397,000;
- (vii) Project monitor (Altus Group) fees and disbursements of approximately \$367,000;
- (viii) Repairs and maintenance costs (prior to construction recommencement) of approximately \$309,000;
- (ix) Insurance premiums of approximately \$206,000;
- (x) Security costs of approximately \$148,000;
- (xi) Repayment of Terra Firma Motion and Debtors' bankruptcy fees of approximately \$102,000, as authorized by the April 30 Order; and

- (xii) Approximately \$352,000 in other disbursements such as costs incurred for the release of letters of credit, appraisal costs, condominium maintenance fees, winter heating and other utilities, interim property management fees, etc.
75. Total cash on hand as at March 4, 2019 was \$4.9 million. Of this amount, the Construction Receiver has set aside approximately \$1.4 million in holdbacks and reserves⁶, as summarized below:
- a. Holdback of \$173,713.37 for the lien claim of Lido, in respect of the Leslieville Project, as determined pursuant to Court Orders dated May 2, 2017 (Settlement Approval Order), June 26, 2018 and October 11, 2018 (the “Leslieville Holdback Reserve”, defined above);
 - b. Holdback of \$97,928.08 for the lien claim of Lido Construction Inc., in respect of the Beach Project, as determined pursuant to Court Orders dated May 2, 2017 (Settlement Approval Order), June 26, 2018 and October 11, 2018 (the “Beach Holdback Reserve”, defined above);
 - c. Reserve of \$836,656.30 in favour of Travelers representing Travelers’ maximum claim under the Distribution Waterfall.
 - d. Reserve of \$327,460.00 in favour of Tarion representing Tarion’s maximum claim under the Distribution Waterfall.
76. After taking into account the above holdbacks and reserves, the Construction Receiver has approximately \$3.5 million of unrestricted cash available to fund accrued and potential liabilities, future costs and stakeholder distributions.

8.0 RANGE OF POTENTIAL TWELFTH STAGE DISTRIBUTION

77. The Receiver has been requested by certain stakeholders, including Terra Firma and counsel to certain Lien Claimants, to provide an estimate of potential Twelfth Stage Distributions, which as described above would be paid to Terra Firma, Lien Claimants and Opt-In Leslieville Purchasers in accordance with the Settlement Approval Order.
78. Attached as **Appendix “D”** is a projection of the range of possible Twelfth Stage Distributions (“**12th Stage Projection**”), based on high-recovery and low-recovery assumptions regarding future realizations and contingent costs.
79. As discussed in this Eighth Report, there are a number of contingencies with respect to the wind-down of the UC Leslieville estate that have yet to materialize. Examples of these contingencies include the extent to which warranty claims will be made against Tarion, potential additional HST liability, determination of

⁶ Excluding the Park Levy Reserve and the Utility Reserve, each as defined in the Supplemental Report.

Leslieville Project purchase price adjustments, release of Leslieville Project and Beach Project holdback reserves, and final determination of professional and administrative fees.

80. The 12th Stage Projection is being provided for illustrative purposes only, to demonstrate a possible scope of recoveries. The 12th Stage Projection is based on assumptions that the Construction Receiver cannot provide assurances will materialize, and the 12th Stage Projection should not be relied upon as an estimate of actual future distributions, which may be lower or higher than what is reflected in the 12th Stage Projection. Moreover, the 12th Stage Projection does not account for the timing of any distributions, some of which could take years to make depending on how certain long-term contingencies are resolved.

9.0 CONSTRUCTION RECEIVER'S ACTIVITIES

81. In addition to the foregoing, since the Sixth Report, the Construction Receiver has undertaken a variety of activities in pursuing its mandate, including, among other things (i) implementing the Settlement, (ii) conservatory and security measures, (iii) asset review, analysis and realizations, and (iv) court/administrative and regulatory matters, as summarized below.

9.1 *Settlement Implementation*

- a. preparing updated security waterfall scenarios to assist in the overall analysis of the Settlement, including related discussions and meetings with stakeholders;
- b. reviewing construction lien claims and related discussions with counsel and the Vetting Committee regarding Holdback Deficiencies and the process to determine and settle such claims;
- c. preparing the monthly reporting package to key stakeholders required by the Craft Development Contract, including statements of receipts and disbursements, summaries of estimated accrued liabilities, summaries of secured creditor balances and estimated future cash needs, and related discussions with stakeholders;
- d. consulting with CIBC, Terra Firma, Travelers and Craft in respect of numerous construction, marketing and administrative matters;
- e. reviewing monthly reporting prepared by Craft in respect of construction, project development and sales;
- f. reviewing deposit claims made by parties who opted-out of the Settlement;
- g. corresponding with parties who opted-out of the Settlement but had not made a deposit claim;

- h. reviewing various reports prepared by the Altus Group in connection with draw requests received from Craft, including Change Orders and budget revisions and related communication with Terra Firma in respect of funding matters;
- i. preparing Drawdown notices, Solvency Certificates and Project Status Certificates in respect of advance requests under the CIBC Syndicate Construction Loan, as well as arranging for related wire transfers to Craft, and establishing appropriate holdback amounts;
- j. discussing and corresponding with Craft regarding the state of the Leslieville Project, status of letters of credit, status of pre-delivery inspections and deficiency repairs, and other matters on an ongoing basis;
- k. discussions with City representatives in connection with the release of letters of credit, and the status of letters of credit still held;
- l. discussions with Tarion in respect of the logistics of warranty coverage for the Leslieville Project under the Ontario New Home Warranty Program;
- m. discussions with Craft, Altus Group and legal counsel regarding the threshold for the release of holdback monies;
- n. follow up discussions Harris Sheaffer in respect of receiving the UC Riverdale Residual Closing Monies;
- o. review and reimbursement of Terra Firma's costs in respect of the April 30th Order and the Debtors' trustee, MSI Spergel Inc.;
- p. discussions with legal counsel, and review and execution of documentation relating to the registration of the Leslieville Project as TSCC No. 2669 on September 7, 2018;
- q. discussions with legal counsel about distributions to secured creditors on account of pre-filing debt;
- r. discussions with City officials in respect of 2018 supplementary property tax assessments and assignment of Sanitary Discharge Agreement to the Condominium ;
- s. review of payout statements from CIBC, Craft, Travelers and Terra Firma, and arrange for repayment of all Construction Receiver debt obligations as well as other distributions pursuant to the Distribution Waterfall;
- t. discussions with Craft and legal counsel in respect of transferring vacant land on Jones Ave. (adjacent to the Leslieville Project) to Craft (or its nominee), as required under the Craft Development Agreement;

- u. numerous discussions and related correspondence with counsel for Travelers and Tarion, in respect of setting up reserves to cover the maximum possible claims of Travelers and Tarion, such that distributions to Terra Firma could be made in accordance with the Distribution Waterfall;
- v. discussions with CRA regarding the filing of applications for clearance certificates and filing of same; and
- w. discussions with interim board member of the Condominium Corporation, and legal counsel in advance of turnover meeting which was held on January 8, 2019;

9.2 *Conservatory and Security Measures*

- a. discussing with Firstbrook Cassie and Anderson Inc., the Construction Receiver's insurance broker, insurance coverage renewals;
- b. filing an insurance claim in respect of ice storm damage to the Leslieville Project which occurred during the initial occupancy phase in April 2018;
- c. attending the Leslieville Project for periodic site visits;
- d. discussions and correspondence with the interim property manager, First Service Ontario LP ("**First Service**"), regarding safety and security matters, authorized disbursements, sub-metering arrangements with PowerStream, and other matters during the interim occupancy period of March 26, 2018 to September 6, 2018; and
- e. discussions with First Service on transitioning interim property management services on behalf of the Construction Receiver to property management services on behalf of the Condominium Corporation, effective September 7, 2018.

9.3 *Asset Review, Analysis & Realizations*

- a. reviewing Craft's updated marketing plans in respect of the Leslieville Project Excess Parking Units and Bicycle Storage Units, and corresponding with Craft and RE/MAX regarding marketing efforts;
- b. reviewing, commenting on and executing agreements of purchase and sale in respect of the Leslieville Project Excess Parking Units and Bicycle Storage Units;
- c. reviewing and executing MLS forms Confirmation of Co-operation and Representation in respect of Leslieville Project sales;

- d. reviewing, commenting on and executing numerous Leslieville Project purchase and sale amendments;
- e. reviewing and approving extension notices to Leslieville Purchasers in connection with Final Occupancy dates, as recommended by Craft, including related discussions with major stakeholders;
- f. reviewing summaries of interim occupancy closing statements of adjustment from March 2018 to August 2018, and related review of interim occupancy monthly payment calculations prepared by legal counsel;
- g. discussions with Leslieville Purchasers regarding adjustments to the purchase price under the APS, assignment and HST rebate issues;
- h. review, approval and execution of one (1) assignment agreement;
- i. discussions with Tarion in respect of Tarion's enrollment fee to be calculated based on actual purchase price vs. estimated 2011 prices;
- j. correspondence with Leslieville Purchasers regarding upcoming closing and geothermal unit sale;
- k. reviewing final closing statements of adjustment in October 2018, and overall reconciliation of funds received from legal counsel;
- l. reviewing and approving RE/MAX commission invoices for payment out of Real Estate Counsel trust account;
- m. reviewing Craft's marketing/financing plan in respect of the Leslieville Project geothermal system, including meetings and follow up discussions with Craft and its consultant, Innovia Corp.;
- n. review and execution of purchase and sale agreement of the Geothermal Unit to the Condominium Corporation;
- o. review of draft approval and vesting order in respect of the geothermal unit and preparation of report in support of same;
- p. review and provide comments on loan documentation from CoPower Holdings Inc. to finance the sale of the Geothermal Unit to the Condominium Corporation;
- q. reviewing final closing statements of adjustment in March 2019 in respect of the Excess Parking Units and Bicycle Storage Units; and

- r. corresponding with Leslieville Purchasers in respect of New Housing Rebate applications.

9.4 *Court/Administration/Regulatory*

- a. attending Court for various matters in respect of these Receivership Proceedings;
 - b. updating the Construction Receiver's webpage as new information becomes available;
 - c. responding to creditor enquiries about the status of the Receivership Proceedings;
 - d. engaging in discussions with Shibley Righton and Terra Firma regarding the Park Levy dispute;
 - e. preparing and filing HST returns in respect of the receivership reporting periods ended June 30, 2018 to February 28, 2019;
 - f. discussing and corresponding with CRA concerning delays in receiving post-filing HST refunds;
 - g. managing operating costs and expenses of the Receivership Proceedings, including estimating the Construction Receiver's cash requirements, reviewing invoices submitted by contractors and consultants, and preparing statements of receipts & disbursements and commitments;
 - h. preparing the Interim Statements of Receiver dated November 20, 2018 pursuant to section 246(2) of the BIA for each of the Debtors and remitting same to the Office of the Superintendent of Bankruptcy and the Debtors' Licensed Insolvency Trustee, MSI Spergel Inc.;
 - i. preparing the Construction Receiver's Seventh Report; and
 - j. preparing this Eighth Report.
82. The Construction Receiver is seeking the Court's approval of the foregoing activities, and those set out in the Seventh Report.

10.0 **FEE APPROVAL**

83. Pursuant to the Appointment Order, the Construction Receiver was specifically authorized by the Court to retain counsel to the Syndicate, Gowlings WLG LLP as its counsel (the "**Construction Receiver's Counsel**") to advise and represent it, save and except on matters upon which the Construction Receiver in its judgment determines it requires independent advice, in which case the Construction Receiver

was authorized to and retained Blake, Cassels & Graydon LLP (“**Blakes**”) as its independent counsel (“**Independent Counsel**”). To assist in finalizing the New APS and condominium disclosure documentation and facilitating the closing of the 55 Leslieville Units, the Construction Receiver also retained Real Estate Counsel, Miller Thomson LLP.

84. Pursuant to the Appointment Order, the fees and disbursements of the Construction Receiver and the fees and disbursements of its legal counsel were authorized to be paid on a periodic basis based on the fees and expenses incurred in respect of the Leslieville Project, the Beach Project and the Riverdale Project, and for fees and expenses incurred for the general administration of the Receivership Proceedings.
85. The Construction Receiver most recently sought and received approval of its fees and disbursements and those of the Construction Receiver’s Counsel, and Independent Counsel from April 1, 2017 to April 30, 2018 and approval of the fees and disbursements of Real Estate Counsel from April 1, 2017 to June 2, 2017 (the “**June Fee Approval**”).
86. The Construction Receiver is seeking approval of its fees and those of its counsel in connection with the performance of their duties in the Receivership Proceedings for the period following the June Fee Approval, in the following amounts:
 - a. Construction Receiver in the amount of \$392,314.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019;
 - b. Independent Counsel (Blakes) in the amount of \$136,501.30, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019; and
 - c. Construction Receiver’s Counsel (Gowlings) in the amount of \$39,679.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019,
87. The Construction Receiver is not seeking approval of Real Estate Counsel’s fees at this time, and will seek such approval at a later appearance.
88. The total fees and disbursements of the Construction Receiver are set out in detail in the affidavit of Douglas McIntosh sworn March 11, 2019 (the “**McIntosh Affidavit**”), a copy of which is attached as Tab “A” to the Construction Receiver’s Compendium of Fee Affidavits, filed together with the Construction Receiver’s Motion Record (the “**Fee Compendium**”). The McIntosh Affidavit sets out a summary which identifies the accounting professionals who worked on the Receivership Proceedings, including rank, hourly rates, total fees and hours

billed. This summary indicates a combined average hourly rate of \$598.04 and 656 of total hours worked.

89. The total fees and disbursements of Independent Counsel are set out in detail in the affidavit of Milly Chow, to be sworn (the “**Chow Affidavit**”), a copy of which will be attached as Tab “B” to the Fee Compendium. The Chow Affidavit sets out a summary which identifies the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$563.12 and 242.4 of total hours worked.
90. The total fees and disbursements of the Construction Receiver’s Counsel are set out in detail in the affidavit of Clifton Prophet sworn March 18, 2019 (the “**Prophet Affidavit**”), a copy of which is to attached as Tab “C” to the Fee Compendium. The Prophet Affidavit sets out a summary which identifies the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$808.13 and 49.1 of total hours worked.
91. The work done by Blakes and the work done by Gowlings was done in connection with different aspects of the Urbancorp receivership, and in the Construction Receiver’s view there is no overlap or duplication between the Blakes and the Gowlings work.
92. The foregoing professional fees have been reported to secured creditors on an ongoing basis both as part of the Construction Receiver’s monthly update on interim receipts and disbursements and accrued commitments, and as part of the Construction Receiver’s periodic updates to its Distribution Waterfall analysis.
93. The Construction Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable. Accordingly, the Construction Receiver respectfully requests this Court’s approval of such fees and disbursements, as more particularly set out in the Fee Affidavits.

11.0 CONCLUSION

94. For the reasons set out in this Eighth Report and in the Supplemental Report, the Construction Receiver requests that this Honourable Court grant the orders, in the form enclosed in the Motion Record of the Construction Receiver, which taken together will have the effect of:
 - a. approving the settlements reached between the Vetting Committee and Lido;
 - b. authorizing and directing the Construction Receiver to pay the applicable Holdback Settlement in respect of the Leslieville Project and the Beach Project from the holdback reserves currently maintained by the

Construction Receiver, and releasing the remainder of such holdback reserves for distribution to creditors in accordance with the Distribution Waterfall;

- c. approving the amount of Lien Claimant entitlements, net of holdback settlements already paid, for the purposes of the Construction Receiver calculating *pari passu* distributions to such Lien Claimants, if any;
- d. permitting Tarion to assess and remediate warranted defect claims at the Leslieville Project more expeditiously than it is permitted pursuant to prevailing regulations;
- e. authorizing and directing the Construction Receiver to pay certain amounts to Tarion as cash collateral, which would otherwise be payable to Travelers, to be held by Tarion pending the expiry of certain warranty periods;
- f. authorizing the Construction Receiver to disclose certain contact information of the Unrepresented Purchasers (as defined in the Supplemental Report);
- g. granting substituted service on the Unrepresented Purchasers (as defined in the Supplemental Report) by email to the last known email address of such Unrepresented Purchaser, based on the records of Real Estate Counsel;
- h. declaring that the Leslieville Purchase Price Adjustments, excluding the Park Levy, are accurate and binding as between the Construction Receiver and Leslieville Purchasers;
- i. setting a protocol and schedule for the resolution of the pending Shibley Righton Motion;
- j. approving the activities of the Construction Receiver described in the seventh report of the Construction Receiver, dated October 5, 2018 and this Eighth Report;
- k. approving the Interim R&D Statement; and
- l. approving the fees and disbursements of:
 - 1. the Construction Receiver for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
 - 2. the Construction Receiver's Independent Counsel for the nine (9) month period of May 1, 2018 through to and including January 31, 2019; and

3. the Construction Receiver's Counsel for the nine (9) month period of May 1, 2018 through to and including January 31, 2019.

[Signature on Next Following Page]

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All of which is respectfully submitted, this 18th day of March 2019.

**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

EIGHTH REPORT

APPENDIX A

Urbancorp (Leslieville) Developments Inc.

Summary of Lien claims, holdback payments and Net Claim to be Utilized for Stage 12 distribution, if any
Prepared as at March 13, 2019

	Leslieville Lien Claimants	Total Claim Amount Before Any Holdback Payout	Less Court Authorized Holdback payment (note 1)	Leslieville Lien Claimants' Balance Claims
1	207875 Ontario Ltd (o/a Canadian Rental Centres)	\$37,133.02	\$7,747.55	\$29,385.47
2	Alpa Stairs and Railings Inc.	\$179,860.26	\$64,685.45	\$115,174.81
3	Commercial Two Construction Inc.	\$220,067.21	\$101,700.00	\$118,367.21
4	Emergency Propane Services Inc.	\$12,022.05	\$12,022.05	\$0.00
5	EXP Services Inc.	\$9,377.58	\$1,130.71	\$8,246.87
6	MDF Mechanical Ltd.	\$291,963.55	\$111,122.32	\$180,841.23
7	NG Marin Inc.	\$856,928.72	\$112,124.70	\$744,804.02
8	Silvio Construction Co. Ltd.	\$39,806.77	\$3,980.68	\$35,826.09
9	Sterling Carpet and Tile	\$46,997.53	\$33,287.31	\$13,710.22
10	Uptown Hardware Ltd.	\$72,641.74	\$7,264.17	\$65,377.57
11	Orin Contractors Corp.	\$179,415.75	\$17,941.58	\$161,474.17
12	Roni Excavating Limited	\$33,450.50	\$8,345.05	\$25,105.45
13	Lido Construction Inc.	\$113,206.78	\$58,691.18	\$54,515.60 (Note 1)
	Total	\$2,092,871.46	\$540,042.75	\$1,552,828.71

Notes:

- 1 All holdback deficiency payments, other than for Lido, were previously approved by the Court pursuant Orders dated June 26, 2018 and October 11, 2018. Lido's holdback payment is as proposed in Section 3.0 of the Construction Receiver's Eighth Report.

EIGHTH REPORT

APPENDIX B

Urbancorp (The Beach) Developments Inc.

Summary of Lien claims, holdback payments and Net Claim to be Utilized for Stage 12 distribution, if any
Prepared as at March 13, 2019

	Beach Lien Claimants	Total Claim Amount Before Any Holdback Payout	Less Court Authorized Holdback payment (note 1)	Beach Lien Claimants' Balance Claims
1	207875 Ontario Ltd (o/a Canadian Rental Centres)	\$73,903.36	\$10,648.46	\$63,254.90
2	Alpa Stairs and Railings Inc.	\$33,083.39	\$29,466.78	\$3,616.61
3	Furkin Construction Inc.	\$116,337.45	\$27,491.46	\$88,845.99
4	NG Marin Inc.	\$646,159.76	\$64,615.98	\$581,543.78
5	Silvio Construction Co. Ltd.	\$35,467.55	\$3,342.76	\$32,124.79
6	Uptown Hardware Ltd.	\$25,456.76	\$2,545.68	\$22,911.08
7	Orin Contractors Corp.	\$181,969.72	\$18,196.97	\$163,772.75
8	Roni Excavating Limited	\$38,749.50	\$3,874.95	\$34,874.55
9	Lido Construction Inc.	\$198,162.75	\$71,811.32	\$126,351.43 (Note 1)
Total:		\$1,349,290.24	\$231,994.36	\$1,117,295.88

Notes:

- 1 All holdback deficiency payments, other than for Lido, were previously approved by the Court pursuant Orders dated June 26, 2018 and October 11, 2018. Lido's holdback payment is as proposed in Section 3.0 of the Construction Receiver's Eighth Report.

EIGHTH REPORT

APPENDIX C

**URBANCORP (LESLIEVILLE, THE BEACH, RIVERDALE)
COMBINED INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD MAY 31, 2016 TO MARCH 4, 2019**

TOTAL (CAD \$)

RECEIPTS:

Receiver Borrowings:

CIBC Syndicate - Receiver Certificates Issued [1]	4,800,000.00
Craft Construction Loan [2]	2,000,000.00
Craft Collateral [3]	535,000.00
CIBC Syndicate Construction Loan [4]	3,950,000.00
Terra Firma Funded Cost Overruns [5]	1,565,502.92
Sub-total - Receiver Borrowings	12,850,502.92

UC Leslieville Asset Realizations:

Proceeds (net of HST) from Sale of UC Leslieville Residential, Parking and Locker Units [6]	45,908,889.39
HST Collected on Sale of UC Leslieville Residential, Parking and Locker Units [6]	5,441,430.89
Interim Occupancy Fee Receipts [7]	1,245,741.99
Proceeds (net of HST) from Sale of UC Leslieville Geo-Thermal Unit [8]	707,964.60
Recovery of UC Leslieville Purchaser Deposits Held by Harris Sheaffer, In Trust [9]	343,482.84
HST collected on Sale of UC Leslieville Geo-Thermal Unit [8]	92,035.40
Collection of Amounts Due to Builder on Closing	4,894.00
Sub-total - UC Leslieville Asset Realizations	53,744,439.11

UC Beach Asset Realizations:

Proceeds from Sale of the Beach Project Lots [10]	4,902,229.72
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UC Riverdale Asset Realizations:

Receipt of UC Riverdale Residual Closing Monies [11]	3,004,495.32
City of Toronto - Tree Security Deposit Refund	2,915.00
Sub-total - UC Riverdale Asset Realizations	3,007,410.32

Other Receipts

HST Refunds Received [12]	1,766,593.20
Deposit Interest & Other Interest	164,365.79
Purchaser Deposit - In Trust (Subsequently Transferred to Miller Thomson Trust Account)	27,000.00
Recovery of Craft Expenses Funded by Receiver	23,998.43
Recovery of Geo-Thermal Finance Fees Funded by Receiver on Behalf of Condo Corp	3,000.00
Sub-total - Other Receipts	1,984,957.42

Total Receipts

76,489,539.49

DISBURSEMENTS:

Construction Related Costs

Amounts Paid to Craft per Construction Budget + Approved Change Orders [13]	(7,703,631.25)
Craft Deferred Management Fee [14]	(1,125,000.00)
Craft Success Fee [14]	(1,000,000.00)
Sub-total - Construction Related Costs	(9,828,631.25)

Repayment of Receiver's Borrowings

CIBC Syndicate - Receiver's Certificate - Principal Repayment [1]	(4,800,000.00)
CIBC Syndicate - Receiver's Certificate - Interest [1]	(563,252.26)
CIBC Syndicate Construction Loan - Principal Repayment [4]	(3,950,000.00)
CIBC Syndicate Construction Loan - Interest [4]	(70,958.22)
CIBC Syndicate Construction Loan - Fees [4]	(200,000.00)
Craft Construction Loan - Principal Repayment [2]	(2,000,000.00)
Craft Construction Loan - Interest [2]	(207,106.96)
Craft Cash Collateral - Principal Repayment [3]	(535,000.00)
Craft Cash Collateral - Interest [3]	(59,414.59)
Terra Firma Funded Cost Overruns - Principal Repayment [5]	(1,565,502.92)
Terra Firma Funded Cost Overruns - Interest [5]	(340,170.51)
Sub-total Repayment of Receiver's Borrowings	(14,291,405.46)

Other Distributions to Stakeholders with Security/Court-Ordered Charges

Court Authorized Lien Payments (UC Beach & UC Leslieville) [15]	(641,534.61)
CIBC Syndicate Loans (Pre-Receivership) - Principal Repayment [16]	(23,717,545.99)
CIBC Syndicate Loans (Pre-Receivership) - Interest [16]	(2,539,191.46)
CIBC Syndicate Cash Collateral re: Letters of Credit (Pre-Receivership) [16]	(164,691.56)
Craft Geothermal Costs - Principal Repayment [17]	(180,820.08)
Craft Geothermal Costs - Interest [17]	(12,915.98)
Travelers secured indebtedness (known claims) [18]	(1,024,204.99)
Tarion, in Lieu of Travelers Bond Draw [19]	(233,900.00)
Terra Firma Loan (Pre-Receivership) [20]	(2,750,000.00)
Sub-total - Other Distributions to Stakeholders with Security/Court-Ordered Charges	(31,264,804.67)

**URBANCORP (LESLIEVILLE, THE BEACH, RIVERDALE)
COMBINED INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD MAY 31, 2016 TO MARCH 4, 2019**

TOTAL (CAD \$)

Other Disbursements	
HST Remitted to CRA	(5,419,372.57)
HST Paid to Suppliers	(2,298,742.30)
Legal Fees & Disbursements [21]	(3,152,827.19)
Construction Receiver Fees & Disbursements [22]	(2,502,555.84)
Listing Brokerage Commissions (UC Beach & UC Leslieville)	(934,084.75)
Realty Taxes	(397,269.84)
Altus Group Costs [23]	(369,863.47)
Repairs & Maintenance	(309,476.97)
Insurance	(205,590.00)
Security / Alarm	(148,497.98)
Repayment of Terra Firma Motion & Bankruptcy Fees	(101,795.32)
Latent Defect Testing	(59,199.56)
Toronto Standard Condo Corp No. 2669 - Maintenance Fees	(53,439.83)
Costs Incurred to Release LCs	(46,620.69)
Utilities	(44,198.10)
Winter Heating	(30,250.00)
Appraisal Report Costs	(30,120.00)
Purchaser Deposit - Transferred to Miller Thomson Deposit Trust	(27,000.00)
PST Paid to Suppliers	(15,126.80)
Tarion Enrolment Fees	(13,950.00)
Interim Property Management Fees	(8,820.00)
UTMI Staffing Costs	(8,426.03)
Tax Consultant	(4,987.50)
Geothermal Finance Fee Advance	(3,000.00)
Office Expense	(2,874.98)
Bank Charges	(2,725.42)
Mediation Expense	(1,500.00)
Sub-total - Other Disbursements	(16,192,315.13)
Total Disbursements	(71,577,156.51)
Excess of Receipts over Disbursements (Cash on Hand)	4,912,382.98
HOLDBACKS AND RESERVES:	
Holdback for Liens as per court order - Leslieville [24]	(173,713.37)
Holdback for Liens as per court order - Beach [24]	(97,928.08)
Reserve for Travelers secured debt obligations [25]	(836,656.30)
Reserve for Tarion contingent liabilities [26]	(327,460.00)
Total Holdbacks and Reserves	(1,435,757.75)
Unrestricted Cash on Hand to Fund Accrued and Potential Liabilities, Future Costs and Stakeholder Distributions [27]	3,476,625.23

Urbancorp (Leslieville, The Beach, Riverdale)

Notes to Combined Interim Statement of Receipts and Disbursements

For the period May 31, 2016 to March 4, 2019

- [1] To fund the administration of the estates, the Construction Receiver borrowed from the CIBC Syndicate (by way of Receiver's Certificates) a total of \$4.8 million over the course of the receivership proceedings. Pursuant to Orders dated May 2, 2017 and October 26, 2017, all Receiver's Certificate borrowings were repaid, inclusive of interest, from UC Beach and UC Leslieville asset realizations.
- [2] The Construction Receiver borrowed \$2.0 million from Craft Development Corporation ("Craft") on June 2, 2017 to help fund the completion of the construction of the Leslieville Project. Pursuant to the Settlement Approval Order, the Construction Receiver distributed to Craft approximately \$2.2 million on October 29, 2018 in full repayment of the Craft Construction Loan, inclusive of interest.
- [3] As part of the Craft Development Agreement, Craft provided the Construction Receiver with cash collateral of \$535,000 to support Craft's obligations thereunder. On December 6, 2018, the Construction Receiver returned the cash collateral to Craft, plus interest of approximately \$59,000.
- [4] Following the utilization of the Craft Construction Loan, the Construction Receiver borrowed a further \$3.95 million from the CIBC Syndicate to fund Leslieville Project construction costs. Pursuant to the order of Mr. Justice Myers dated April 30, 2018, the Construction Receiver repaid CIBC Syndicate Construction Loan Obligations consisting of principal, interest, and a deferred commitment fee totaling \$2.89 million. In addition, during the month of August 2018, the Construction Receiver repaid CIBC Syndicate Construction Loan Obligations consisting of principal and interest totaling \$500,000. All remaining principal and interest due under the CIBC Syndicate Construction Loan totaling approximately \$831,000 was repaid on October 22, 2018.
- [5] Pursuant to the Terra Firma Cost Overrun Agreement, the Construction Receiver borrowed a total of \$1.57 million from Terra Firma Capital Corporation ("Terra Firma") in respect of approved Change Orders to the original Leslieville Project construction budget. On December 21, 2018, the Construction Receiver repaid Terra Firma advances in full, plus interest of approximately \$340,000.
- [6] Proceeds of \$45.9 million plus HST of \$5.4 million was collected by the Construction Receiver in respect of UC Leslieville units which closed October 19-25, 2018. The closed units consisted of 55 residential units (with parking), 10 excess parking units and 24 bicycle locker units. One (1) excess parking unit and 11 bicycle locker units remain unsold.
- [7] Interim occupancy of the UC Leslieville project commenced in late March 2018 and continued until the unit closings which took place between October 19-25, 2018.
- [8] The sale of the UC Leslieville Geothermal unit for \$800,000 (inclusive of approximately \$92,000 in HST) to the project condominium corporation, TSCC No. 2669, closed on October 24, 2018.
- [9] Represents Leslieville Purchaser deposits of \$250,000 (plus interest earned) held by Harris Sheaffer LLP pursuant to a Deposit Trust Agreement between UC Leslieville, Travelers and Harris Sheaffer dated May 19, 2011.
- [10] The sale of the UC Beach Project lots for \$4.9 million closed on July 28, 2017.
- [11] Pursuant to the order of Mr. Justice Myers dated April 30, 2018, Harris Sheaffer wired the Construction Receiver funds on May 31, 2018 totaling approximately \$3.0 million (being UC Riverdale Residual Closing Monies, plus accrued interest less bank charges). On June 1, 2018, the Construction Receiver utilized these funds to (i) establish a reserve of approximately \$114,000 to repay Terra Firma's estimated costs related to the motion and the Debtors' bankruptcy proceedings, and (ii) repay \$2.89 million of Syndicate Construction Loan obligations.
- [12] HST refunds relate to input tax credits generated by the Construction Receiver for administrative costs, asset selling costs as well as construction and development costs.

Urbancorp (Leslieville, The Beach, Riverdale)

Notes to Combined Interim Statement of Receipts and Disbursements

For the period May 31, 2016 to March 4, 2019

- [13] Represents amounts paid to Craft pursuant to the approved construction budget, inclusive of approved change orders, as approved by the Project Monitor, Altus Group. The amounts paid to Craft are inclusive of a \$375,000 Earned Management Fee.
- [14] In addition to the Earned Management Fee, Craft also earned a Deferred Management Fee of \$1.125 million and a Success Fee of \$1.0 million which were paid to Craft from the Leslieville Project proceeds of sale. As part of its compensation, Craft is also entitled to have a vacant lot located on Jones Ave., adjacent to the Leslieville Project, transferred to it, or its nominee. The Construction Receiver is currently working with Craft's counsel to arrange for the transfer.
- [15] Pursuant to the Orders (Re: Lien Settlement Approvals, etc.) of Mr. Justice Myers dated June 26, 2018 and Mr. Justice Penny dated October 11, 2018, the Receiver has paid approximately \$160,000 to UC Beach lien claimants and approximately \$481,000 to UC Leslieville lien claimants.
- [16] Pursuant to the Settlement Approval Order, the Construction Receiver distributed approximately \$26.3 million to the CIBC Syndicate on October 24, 2018 in full repayment of pre-receivership advances, inclusive of interest. Further, approximately \$165,000 was distributed to CIBC pursuant to a cash collateral agreement with the Construction Receiver to deal with outstanding pre-receivership letters of credit plus legal fees.
- [17] Pursuant to the Settlement Approval Order, the Construction Receiver distributed to Craft Development Corporation approximately \$194,000 for costs incurred in connection with the commissioning of the UC Leslieville geothermal system, inclusive of interest.
- [18] Travelers' claim consists of (i) depositor claims paid to fourteen (14) "Opt-out" depositors pursuant to Travelers' Excess Condominium Deposit Insurance policy, (ii) a draw down of its bond by Tarion in respect of four (4) depositors, (iii) unpaid bond and insurance policy premiums, (iv) legal fees, and (v) interest.
- [19] The payment to Tarion of \$233,900 represents ten (10) deposit claims of \$20,000 each, plus Tarion's 15% administration fee and HST. The payment has reduced Travelers' \$1.1 million bond held by Tarion by an equivalent amount.
- [20] Further to establishing reserves for the payment of the potential further claims of Travelers and Tarion, the Construction Receiver, with the consent of Travelers and Tarion, distributed \$2.5 million to Terra Firma on December 21, 2018 in respect of pre-receivership advances made by Terra Firma to the Debtors. A further \$250,000 was distributed to Terra Firma on January 21, 2019, for total distributions of \$2.75 million.
- [21] Represents Construction Receiver's Legal Counsel fees & disbursements (Gowlings) incurred up to December 31, 2018, Construction Receiver's Independent Counsel fees & disbursements (Blakes) up to January 31, 2019, Construction Receiver's Real Estate Legal Counsel fees & disbursements (Miller Thomson) up to November 30, 2018, including fees & disbursements in connection with the UC Leslieville unit closings and Debtors' Legal Counsel fees & disbursements (Harris Sheaffer) for transition assistance provided to the Construction Receiver.
- [22] Represents Construction Receiver fees & disbursements incurred up to January 31, 2019.
- [23] Represents fees and disbursements of Altus Group, the UC Leslieville construction project monitor, up to January 31, 2019.
- [24] Represents holdbacks for the lien claims of Lido Construction Inc., in respect of UC Leslieville and UC Beach, as determined pursuant to Court Orders dated May 2, 2017 (Settlement Approval Order), June 26, 2018 and October 11, 2018.
- [25] Represents a reserve established by the Construction Receiver in favour of Travelers representing Travelers' maximum claim under the Waterfall outlined in the Settlement Approval Order.

Urbancorp (Leslieville, The Beach, Riverdale)

Notes to Combined Interim Statement of Receipts and Disbursements

For the period May 31, 2016 to March 4, 2019

- [26]** Represents a reserve established by the Construction Receiver in favour of Tarion representing Tarion's maximum claim under the Waterfall outlined in the Settlement Approval Order.

- [27]** Unrestricted Cash on Hand includes funds reserved in respect of the Park Levy and the Utility Levy.

EIGHTH REPORT

APPENDIX D

Urbancorp (Leslieville, Beach, Riverdale)

Projected Waterfall Distribution - prepared on March 13, 2019

Caution: In preparing this document, Alvarez & Marsal Canada Inc. ("A&M" or "we") has necessarily relied upon unaudited financial and other information supplied, and representations made to us, by various parties. We have not independently verified the accuracy or completeness of the information or conducted an audit, nor are we providing any other form of assurance thereon. We have not completed procedures recommended by CPA Canada or the AICPA for the examination of a financial forecast. The estimated recoveries and distributions referred to herein are based on assumptions which are not always capable of objective verification or validation. To the extent that actual conditions vary from those projected, the results predicted can be expected to change. Such changes may be material. Accordingly, A&M makes no representation or warranty as to the accuracy, reliability or completeness of the foregoing projections and A&M is not responsible to any party, in any way, for any analysis or projections contained in this document. A&M expressly reserves the right to amend or vary foregoing projections in its sole discretion, including in future reports to Court or stakeholders.

Line	Projected Realizations			
	Low	High		
1	Cash on hand as at March 4, 2019 (per R&D)	\$4,912,383	\$4,912,383	
2	Less: Holdback for Liens as per court order - Leslieville	(173,713)	(173,713)	
3	Less: Holdback for Liens as per court order - Beach	(97,928)	(97,928)	
4	Less: Reserve for Travelers secured debt obligations	(836,656)	(836,656)	
5	Less: Reserve for Tarion contingent obligations	(327,460)	(327,460)	
6	Cash Available to fund accrued liabilities, estimated future costs and future stakeholder distributions as at March 4, 2019 (per R&D)	\$3,476,625	\$3,476,625	
7	Projected changes in holdbacks and reserves [1]			
8	Add: Release of holdback for Leslieville liens	\$173,713	\$173,713	
9	Less: Payment of Lido holdback claim (Leslieville) as per settlement outlined in Receiver's 8th Court Report	(58,691)	(58,691)	
10	Add: Release of holdback for Leslieville liens	97,928	97,928	
11	Less: Payment of Lido holdback claim (Beach) as per settlement outlined in Receiver's 8th Court Report	(71,811)	(71,811)	
12	Add: Release of existing Travelers reserve	836,656	836,656	
13	Less: Excess of Travelers' Reserve over Bond [2]	(64,116)	-	
14	Add: Release of existing Tarion reserve	327,460	327,460	
15	Less: Funding of Tarion cash collateral account [3]	(1,100,000)	(1,100,000)	
16	Sub-total	\$141,139	\$205,255	
17	Other Potential Adjustments to Projected Cash Flow [1]			
18	Less: Craft invoice for Final amounts due under Craft Construction Contract (Hard costs)	(\$240,309)	(\$240,309)	
19	Add: Recovery of HST paid on final payments to Craft (Hard costs)	27,646	27,646	
20	Less: Craft invoice for Final amounts due under Craft Development Contract (Soft Costs)	(8,439)	(8,439)	
21	Add: Recovery of HST paid on final payments to Craft (Soft costs)	971	971	
22	Less: Craft invoice for Cost Overruns - Latent Defects	(36,704)	(36,704)	
23	Add: Recovery of HST paid on final payments to Craft (Cost overruns - Latent defects)	4,223	4,223	
24	Less: Estimated Administrative Accrued Liabilities	(39,550)	(39,550)	
25	Add: Recovery of HST paid on estimated administrative accrued liabilities	4,550	4,550	
26	Less: Estimated Future Administrative Costs until Discharge	(395,435)	(296,584)	
27	Add: Recovery of HST paid on estimated future administrative	45,493	34,120	
28	Add: HST refunds for the months of December 2018 to February 2019	420,559	420,559	
29	Add: Sale of 1 excess parking unit, and 4 bicycle storage units, net of closing costs (closing mid-March, 2019)	20,800	20,800	
30	Less: Remittance of HST on sale of remaining parking and bicycle storage units	(2,393)	(2,393)	
31	Add: Potential sale of remaining 7 bicycle storage units, net of closing costs	-	9,800	
32	Less: Remittance of HST on potential sale of remaining 7 bicycle storage units	-	(1,127)	
33	Add: Potential Recovery from CIBC / City of Toronto Cash Collateral [4]	-	149,270	
34	Add: Potential recovery on Insurance claim [5]	75,344	75,344	
35	Add: Potential Recovery on Tarion Cash Collateral account [3]	-	1,025,000	
36	Less: Park Levy reimbursement claim (under dispute)	(700,000)	-	
37	Add: Recovery of HST on Park Levy reimbursement claim (under dispute)	76,545	-	
38	Sub-total	(\$746,701)	\$1,147,177	
39	Projected Cash available for Combined Stage 11 and 12 distributions	\$ 2,871,063	\$ 4,829,057	
40	Less: Distribution required for Terra Firma to achieve \$6.5 million cap under Stage 11 [6]	(3,750,000)	(3,750,000)	
41	Projected Potential Amount of Cash available for Stage 12 distribution only	\$0	\$1,079,057	
42	Terra Firma	50%	\$0	\$539,529
43	Leslieville Opt-In Purchasers / Lien Claimants	50%	\$0	\$539,529

See notes on next page

NOTES:

- 1** This analysis assumes that all Court orders sought by the Construction Receiver and described in the 8th Report and the Supplemental Report will be granted and that no unforeseen liabilities or claims are made by any party. The low-end of the analysis assumes that the Park Levy reimbursement claim (under dispute) will have to be paid to Leslieville Purchasers, while the high-end assumes that no payment will be required. Although the Construction Receiver does not believe that any amounts are due to Canada Revenue Agency ("CRA") for HST, we caution that CRA has not conducted an audit of the Construction Receiver's HST accounts nor have clearance certificates been issued. Further, City of Toronto (the "City") has claimed that the Construction Receiver owes the City approximately \$101,000 in supplementary 2018 property taxes for the Leslieville Project. The Construction Receiver believes that such supplementary taxes are owed by the Leslieville Purchasers and has advised the City of such. An apportionment application has been filed by the Construction Receiver and is scheduled to be heard on April 23, 2019. Should it be determined that CRA, the City, the Leslieville Purchasers or any other party, has a valid claim against the Construction Receiver or the Debtors' estates which is not reflected in this analysis, then the analysis will change and the change may be material.
- 2** As at March 4, 2019, all claims under Travelers' Excess Condominium Deposit Insurance policy have been paid in full by Travelers. Further, Tarion has drawn \$327,460 on the bond issued by Travelers in respect of fourteen (14) Opt-out depositors. The amount remaining on the Tarion bond is \$772,540.00. Travelers has been reimbursed in full by the Receiver pursuant to the Waterfall outlined in the Settlement Approval Order. The low end of estimated realizations assumes that all of the excess reserve will be utilized by Travelers to cover legal and other costs. The high end assumes that the excess reserve will not be utilized by Travelers and will be available for distribution to the other stakeholders.
- 3** Tarion's cash collateral is assumed to be \$1,100,000 relating solely to warranty coverage. The low end of the analysis assumes that all of cash collateral will be utilized by Tarion. The high-end assumes that the cash collateral will be used to fund \$75,000 in warranty claims with the remainder returned to the Construction Receiver.
- 4** Pursuant to the Cash Collateral Letter Agreement dated October 24, 2018 between CIBC and the Construction Receiver, CIBC is currently holding \$33,766.05 in a cash collateral account to cover the outstanding principal of one LC issued by CIBC on behalf of the Debtors, LC fees and related legal fees and disbursements. Further, the City has drawn on one LC and is currently holding \$115,504.35 in cash in support of certain obligations of the UC Riverdale in respect of a Sanitary Discharge Agreement with the City. The low end of the analysis assumes that there will be no recoveries from the CIBC/City cash collateral, while the high end assumes that all of the cash collateral on hand (held by either CIBC or the City) will be returned to the Construction Receiver.
- 5** The Construction Receiver has filed an insurance claim for \$125,343.50 plus HST with its insurer related to certain damage caused by an ice storm back in April 2018. The Construction Receiver's insurance policy has a deductible of \$50,000. The Receiver has been advised by the insurer that it will be paying the full claim amount (excluding HST) less the \$50,000 deductible, or \$75,343.50.
- 6** To date, the Construction Receiver has distributed \$2,750,000 in respect of Terra Firm's pre-receivership debt. A further distribution of \$3,750,000 is required to achieve the \$6.5 million threshold outlined in the Settlement Approval Order.

TAB 3

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**

**SUPPLEMENT TO THE EIGHTH 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.**

March 18, 2019

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TABLE OF APPENDICES

A.	Table of Leslieville Purchase Price Adjustments
B.	Sample Opt-In Leslieville Purchaser APS
C.	Sample New Leslieville Purchaser APS
D.	Sample of the 2011 Original Leslieville Purchaser APS
E.	Altus' Letter Regarding Utility Levy
F.	Notice of Change of Lawyer and Notice of Appearance of Shibley Righton
G.	August 10, 2016 order of Mr. Justice Newbould

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. The Construction Receiver has filed the Eighth Report of the Construction Receiver, dated contemporaneously herewith (the “**Eighth Report**”). This supplement to the Eighth Report (the “**Supplemental Report**”) is provided in addition to that Eighth Report. Capitalized terms used in the Supplemental Report not otherwise defined herein shall have the meaning given to them in the Eighth Report.

1.1 PURPOSE OF THE SUPPLEMENTAL REPORT

3. The purpose of this Supplemental Report is to:
 - a. provide the Court with an update on the closing of the sales for residential units at the Leslieville Project (the “**Leslieville Units**”) and the purchase price adjustments made in connection therewith, including a motion served on March 18, 2019 by Shibley Righton LLP (“**Shibley Righton**”) and returnable on March 26, 2019, in which Shibley Righton, on behalf of certain Leslieville Purchasers, have challenged one of the purchase price adjustments (the “**Shibley Righton Motion**”); and
 - b. support the Construction Receiver’s motion requesting this Court’s granting of an order:
 - (i) authorizing the Construction Receiver to disclose certain contact information of Leslieville Purchasers who are unrepresented by counsel;
 - (ii) granting substituted service on unrepresented Leslieville Purchasers by email to the last known email address of such Leslieville Purchaser, based on the records of Real Estate Counsel;

- (iii) declaring that certain purchase price adjustments calculated and charged by the Construction Receiver in connection with the closing of Leslieville Units are accurate and binding as between the Construction Receiver and purchasers; and
- (iv) setting a protocol and schedule for the resolution of the pending Shibley Righton Motion, a dispute with certain Leslieville Purchasers concerning a purchase price adjustment made on closing with respect to a parkland levy (the “**Park Levy**”).

1.2 CURRENCY

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

2.0 LESLIEVILLE CLOSING PROCEEDS AND STATEMENTS OF ADJUSTMENT

Introduction

- 5. As discussed in the Eighth Report, the sale of all 55 Leslieville Units (including parking and storage units, as applicable) were completed between October 18 and 25, 2018. On closing, purchase price closing adjustments were made to the purchase price of each unit, in accordance with the terms of the applicable agreements of purchase and sale.
- 6. There were 7 purchase price adjustments made by the Construction Receiver on closing of the Leslieville Units, each made in accordance with the applicable purchase agreements: the Park Levy, a utility installation levy (the “**Utility Levy**”), a Tarion enrollment fee, an Ontario Law Society Fee, an administrative fee, a status certificate charge and title insurance premiums (collectively, the “**Leslieville Purchase Price Adjustments**”). A detailed summary of the Leslieville Purchase Price Adjustments is attached as **Appendix “A”** hereto.
- 7. In the Construction Receiver’s view, each of the Leslieville Purchase Price Adjustments, including the Park Levy and the Utility Levy, are routine purchase price adjustments of the sort that are commonly made in connection with closing residential real estate transactions. Moreover, each is provided for in the applicable agreement of purchase and sale.
- 8. On closing, several Leslieville Purchasers raised objections with Real Estate Counsel about the Park Levy and/or Utility Levy. The Construction Receiver and Real Estate Counsel provided these parties with documentation to support the adjustments and explained why it was appropriate for the Construction Receiver to make the adjustments. All Leslieville Purchasers closed and funded their transactions.

9. Shortly after closing, two (2) Leslieville Purchasers contacted the Construction Receiver to express their disagreement with the validity and/or quantum of the Park Levy and Utility Levy. The Construction Receiver responded to these Leslieville Purchasers and explained its rationale for the Leslieville Purchase Price Adjustments.
10. Subsequently, on November 23, 2018, Real Estate Counsel was notified by Shibley Righton that they were in the process of being retained by certain of the Leslieville Purchasers, and advised that there was a dispute with respect to closing adjustments. On February 8, 2019, Shibley Righton confirmed to the Construction Receiver in writing that it had been retained by purchasers of thirty (30) Leslieville Units.
11. On March 18, 2019, Shibley Righton served a motion returnable on March 26, 2019, seeking among other things, a declaration that their clients alone have right, title and interest in the Park Levy and an order that the Construction Receiver repay each of Leslieville Purchasers they represent the amount of the Park Levy paid by them, plus interest (the “**Shibley Righton Motion**”). This is consistent with the position taken by Shibley Righton in discussions with the Construction Receiver in February and March 2019.
12. For the reasons set out below, the Construction Receiver believes that all of the Leslieville Purchase Price Adjustments were correctly charged as a purchase price adjustment on closing, however it is currently holding \$700,000 in reserve, representing the aggregate Park Levy, plus a reserve for interest and costs (the “**Park Levy Reserve**”) and \$525,000, representing the aggregate Utility Levy, plus a reserve for interest and costs (the “**Utility Reserve**”), pending further order of this Court.
13. In order to release the Park Levy Reserve and the Utility Reserve, the Construction Receiver requires the Court’s advice and direction regarding the Leslieville Purchase Price Adjustments, and at this time is seeking an order:
 - a. authorizing the Construction Receiver to disclose certain contact information of unrepresented Leslieville Purchasers;
 - b. granting substituted service on unrepresented Leslieville Purchasers by email to the last known email address of such Leslieville Purchaser, based on the records of Real Estate Counsel;
 - c. declaring that the Leslieville Purchase Price Adjustments (excluding the Park Levy) were properly charged; and
 - d. approving a protocol and schedule for the resolution of the dispute about the Park Levy.

The Quantum of the Leslieville Purchase Price Adjustments

14. Line 16 of the attached Appendix “A” aggregates the Leslieville Purchase Price Adjustments, indicating that the fifty-five (55) Leslieville Purchasers were charged a total of approximately \$1.3 million in purchase price closing adjustments inclusive of HST. This is an average of approximately \$23,000 per unit, which equates to approximately 2% of the condominium units’ gross selling price.
15. As indicated above, the Construction Receiver is currently holding the Park Levy Reserve and the Utility Reserve in the aggregate amount of \$1,225,000. If this Court should determine that any of the Leslieville Purchase Price Adjustments were improperly charged, these funds are available to be reimbursed to affected Leslieville Purchasers.

Contractual Basis for Purchase Price Adjustments

16. Purchase price closing adjustments are clearly outlined in each Leslieville Purchaser’s purchase agreement, and include charges for all of the Leslieville Purchase Price Adjustments, including the Park Levy, Utility Levy, Tarion enrolment fees, title insurance, etc.
17. As discussed below, there are two general categories of purchase agreements, “**Opt-In Leslieville Purchaser APSs**”, executed by parties who had pre-receivership agreements to purchase Leslieville Units, and “**New Leslieville Purchaser APSs**”, executed by parties who did not have a pre-receivership agreement to purchase. A sample Opt-In Leslieville Purchaser APS is attached hereto as **Appendix “B”**¹, and a sample New Leslieville Purchaser APS is attached hereto as **Appendix “C”**². These two samples are in form and substance materially the same as each APS executed by each Leslieville Purchaser.³

Opt-in Leslieville Purchaser APS

18. As discussed in the Second Report, as of the date of the Construction Receiver’s appointment, all but one of the 55 Leslieville Units were sold pursuant to agreements of purchase and sale (the “**Original Leslieville Purchaser APS**”) executed by UC Leslieville with each purchaser in 2011 (the “**Original Leslieville Purchasers**”). A sample of the 2011 Original Leslieville Purchaser APS is attached hereto as **Appendix “D”**.

¹ See paragraphs 7(d)(iii) to 7(d)(vii), 7(d)(ix) and 7(d)(x)

² See paragraphs 6(d)(iii) to 6(d)(vii), 6(d)(ix) and 6(d)(x)

³ The Construction Receiver notes that there are some variances in the final APSs executed by purchasers that in its view are not material to the relief being requested, such as for example Opt-In Leslieville Purchaser APSs deal with fees for Ad Hoc Leslieville Purchasers Counsel (defined below), and certain New Leslieville Purchaser APSs include a contractual cap on fees and adjustments.

19. Shortly after the appointment of the Construction Receiver, on July 15, 2016, Terra Firma served a motion (the “**Terra Firma Motion**”) seeking a declaration, among other things, that the interests of the Original Leslieville Purchasers were subordinate to the interest of Terra Firma, and an order vesting all of Urbancorp Leslieville’s right title and interest in the Leslieville Project in Terra Firma – in effect, the Terra Firma motion would have prevented the Original Leslieville Purchasers from closing on Leslieville Units, if and when they were completed.
20. This Court deferred the hearing of the Terra Firma Motion in order to allow discussions to take place between Terra Firma and the key stakeholders, including a subset of forty-six (46) purchasers of the Leslieville Project (the “**Ad Hoc Leslieville Purchasers**”), who were represented by Dickinson Wright LLP (“**Ad Hoc Leslieville Purchaser Counsel**”).
21. As described in detail in the Second Report, these discussions were ultimately successful, and a settlement was negotiated that would enable the Original Leslieville Purchasers to purchase their respective townhomes, albeit at a higher purchase price to reflect, to a degree, an increase in fair market value (the “**Settlement**”).
22. The Settlement contemplated that the Original Leslieville Purchasers would be entitled to opt-in and execute the Opt-In Leslieville Purchaser APS, which included an increased purchase price that was ultimately agreed to be \$255,000 for each Opt-In Leslieville Purchaser. The Opt-In Leslieville Purchaser APS was a highly negotiated document, involving input from counsel to Terra Firma, the Construction Receiver and from Ad Hoc Leslieville Purchaser Counsel, among others.
23. Despite the protracted and heavy negotiations, the purchase price adjustments in the Opt-In Leslieville Purchaser APS are not capped in any way, and are identical to the purchase price adjustments in the Original Leslieville Purchaser APS.
24. The form of Opt-In Leslieville Purchaser APS was specifically approved by the Court in the Purchaser Package Approval Order, as amended (with such non-material amendments to the Opt-In Leslieville Purchaser APS as the Construction Receiver may deem necessary or desirable), on May 2, 2017.
25. As set out in line 11 of Appendix “A”, the total purchase price closing adjustments for the forty (40) Opt-In Leslieville Purchasers (and the two new Leslieville Purchasers that did not negotiate caps on purchase price adjustments, discussed below) averaged approximately \$24,000 plus HST.

New Leslieville Purchaser APS

26. Pursuant to the opt-in process described in the Second Report, a total of 40 Opt-In Leslieville Purchasers executed Opt-In Leslieville Purchaser APSs (for 40 units),

and the remaining 15 units were sold pursuant to New Leslieville Purchaser APSs.

27. The form of New Leslieville Purchaser APS was specifically approved by the Court in the Settlement Approval Order.
28. New Leslieville Purchasers had negotiated a capping of certain purchase price and other closing adjustments under paragraph 6(d)(iii) to 6(d)(ix) in respect of thirteen (13) Leslieville Units. In the Construction Receiver's view, this capping of adjustments was appropriate and commercially reasonable given that the New Leslieville Purchasers paid a substantially higher purchase price than the Opt-In Leslieville Purchasers.
29. As set out in line 15 of Appendix "A", the total purchase price closing adjustments for New Leslieville Purchasers who negotiated caps was \$8,200 plus HST per unit.

Utility Levy

30. Pursuant to Section 7(d)(v) of the Opt-In APSs, and Section 6(d)(v) of the New Purchaser APSs, the Construction Receiver was permitted to charge a Utility Levy in the amount of \$442,634.24 plus HST.
31. A letter from Altus Group, the project's cost consultant, was provided to purchasers or their counsel confirming that the amount of the above costs was \$442,634.24 plus HST, which amount was allocated evenly to each Leslieville Units (i.e. 1/55th of total, or \$8,047.90 plus HST). A copy of Altus' letter is attached hereto as **Appendix "E"**.
32. The Construction Receiver charged to 42 Leslieville Purchasers that had not negotiated caps on their purchase price adjustments, on closing, a Utility Levy in the aggregate amount of \$338,011.60 plus HST, with the remaining \$104,622.64 plus HST allocated to the 13 Leslieville Purchasers with closing adjustment caps. In the Construction Receiver's view, this was appropriate and in accordance with applicable APSs.
33. Each APS provides that the "Purchaser" shall pay the following amounts on closing:

the cost of utility meter installations, water and sewer service connection charges, hydro and gas meter or sub-meter installation, and hydro and gas installation and connection or energization charges for the Condominium and/or the Unit, the Purchaser's portion of such installation and/or connection or energization charges and costs to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the registered Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges

and costs. A letter from the Vendor's or Vendor's Representative's engineers specifying the said charges and costs shall be final and binding on the Purchaser.

34. This provision is identical to Section 6(d)(v) of the original Leslieville agreement of purchase and sale, which was executed prior to these receivership proceedings by each Opt-In Leslieville Purchaser.
35. One Leslieville Purchaser has advised the Construction Receiver that in their view, utility installation charges incurred prior to receivership were not eligible as an adjustment as they were "sunk" costs. This Leslieville Purchaser appears to now be represented by Shibley Righton, however the pending Shibley Righton Motion does not challenge the Utility Levy or seek any relief in respect thereof.
36. In the Construction Receiver's view, based on the advice of Real Estate Counsel, there is no basis for the objection to the Utility Levy. The levy is clearly chargeable under the applicable APSs, and the amount charged represented costs incurred by UC Leslieville either directly or through the Construction Receiver. There is no distinction between pre- and post-receivership utility installation costs, nor any reason for the UC Leslieville creditors to bear the cost of pre-receivership costs when such costs are provided for as a liability of the purchasers in their applicable agreements of purchase and sale.

Resolution of Leslieville Purchase Price Adjustments

37. The Construction Receiver has consulted with Real Estate Counsel, and is of the view that the purchase price adjustments made on the closing of the Leslieville Units are correctly calculated and properly made under the applicable contracts with the Leslieville Purchasers, and applicable law.
38. Nevertheless, because of the outstanding, unresolved complaints, the Construction Receiver has held back the Park Levy Reserve and the Utility Reserve, which amounts are available to the Leslieville Purchasers in the event that this Court determines that any of the adjustments were improperly calculated or charged.
39. The Construction Receiver is seeking the Court's advice and direction regarding the Leslieville Purchase Price Adjustments, in order to eliminate possible contingent claims from purchasers. Final resolution of the Leslieville Purchase Price Adjustments is necessary to enable the Construction Receiver to release the Park Levy Reserve and the Utility Reserve, and distribute such funds in accordance with the Distribution Waterfall, or as otherwise ordered by the Court.

Notice to Unrepresented Leslieville Purchasers

40. In order to finally adjudicate the Leslieville Purchase Price Adjustments, the Construction Receiver will need to effect service on the Leslieville Purchasers who are not represented by Shibley Righton (subject to the resolution of the

potential issues with Shibley Righton’s representation, described below) or other counsel.

41. Based on the Notice of Change of Lawyer and Notice of Appearance filed by Shibley Righton and attached hereto as **Appendix “F”**, Shibley Righton represents 46 Leslieville Purchasers,⁴ in respect of thirty (30) Leslieville Units.⁵ Based on the Construction Receiver’s records, there are a total of 80 Leslieville Purchasers, and therefore thirty five (35) Leslieville Purchasers⁶ that are not represented by counsel (the **“Unrepresented Purchasers”**).⁷
42. Based on the Construction Receiver’s records, the thirty five (35) Unrepresented Purchasers purchased twenty six (26) Leslieville Units.⁸ Included among the thirty five (35) Unrepresented Purchasers are the new Leslieville Purchasers who acquired the thirteen (13) Leslieville Units in respect of which caps on purchase price adjustments were negotiated. Accordingly, there are only thirteen (13) Leslieville Units owned by Unrepresented Purchasers in respect of which the full Leslieville Purchase Price Adjustments were paid.
43. It is not practical in the context of these proceedings to effect service on the Unrepresented Purchasers by way of an alternative to personal service. The Construction Receiver wishes to regularize service on the Unrepresented Purchasers by obtaining authorization from the Court that it may disclose the names, e-mail addresses (if necessary), to interested parties who request such information in order to effect service in these proceedings, and a general order for substituted service, as provided for by Rule 16.04 of the *Rules of Civil Procedure*, permitting service on the Unrepresented Purchasers to be effected using their last known e-mail address based on the records of Real Estate Counsel.
44. The Construction Receiver is seeking this order *nunc pro tunc*, which would in effect validate the Construction Receiver’s service of this motion on the

⁴ Based on its records, the Construction Receiver is unable to determine which Leslieville Unit one of the Shibley Righton clients owns; the Construction Receiver will work with Shibley Righton to resolve this.

⁵ Some Leslieville Units have more than one Leslieville Purchaser, and two Leslieville Purchasers purchased two Leslieville Units.

⁶ The unknown Shibley Righton client referred to in footnote 4 is the reason for the discrepancy of one in this calculation: 80 total Leslieville Purchasers minus 46 Shibley Righton Clients plus 1 Shibley Righton client that does not appear to be a purchaser equals 35 Unrepresented Purchasers.

⁷ The Construction Receiver notes that all Unrepresented Purchasers were represented by real estate counsel in connection with closing the purchases of their Leslieville Unit(s), however the Construction Receiver does not presume that real estate counsel acts for them in connection with the current Leslieville Purchase Price Adjustment issue. Where the Construction Receiver has an email address for the Unrepresented Purchaser’s real estate counsel, it will send notice of this motion to such counsel as a courtesy.

⁸ There are 55 Leslieville Units in total. 30 Leslieville Units are owned by Shibley Righton clients, and 26 are owned by Unrepresented Purchasers – the reason for the one unit discrepancy is that one Leslieville Unit is owned jointly by one person who is listed as a Shibley Righton client, and one who is not. That unit is accordingly counted for both the Shibley Righton clients and for the Unrepresented Purchasers.

Unrepresented Purchasers by email. The Construction Receiver believes the order is appropriate and will assist in ensuring proper service in connection with resolving the issues of the Leslieville Purchase Price Adjustments.

45. The Construction Receiver notes that the same relief regarding disclosure and substituted service that is being sought at this time was granted by the Court in these proceedings in 2016 in respect of certain unrepresented purchasers. The August 10, 2016 order of Mr. Justice Newbould is attached as **Appendix “G”** hereto.

Park Levy Resolution

46. Given the pending Shibley Righton Motion, the Construction Receiver is not proposing to have the Park Levy adjudicated at this time, however to ensure that the matter is resolved expeditiously, it is seeking to have a resolution protocol and schedule declared by the Court at this time. As of the date of this Report, the Construction Receiver and Shibley Righton have not had an opportunity to agree to such a protocol and schedule, but the Construction Receiver will endeavour to work with Shibley Righton and other affected stakeholders to agree to a resolution timeline prior to the return date of the Construction Receiver’s motion on March 26, 2019.
47. As a preliminary matter to resolving the Park Levy dispute, the Construction Receiver is also working with stakeholders to resolve a potential conflict issue with Shibley Righton. In the course of reviewing its files to respond to document requests from Shibley Righton, the Construction Receiver discovered that certain personnel at Shibley Righton formerly worked at Miller Thomson. Two of these lawyers had docketed time to invoices received by the Construction Receiver regarding real estate matters.
48. The Construction Receiver is in discussions with Shibley Righton and Terra Firma to determine whether this potential conflict can be managed in a manner satisfactory to all parties. The Construction Receiver reserves all rights in this regard, and may seek advice and direction of the Court, on notice to the service list, if necessary.

Other Leslieville Purchase Price Adjustment Resolution

49. Absent any formal objection to the Utility Levy or any of the other Leslieville Purchase Price Adjustments, none of which are being challenged in the pending Shibley Righton Motion, the Construction Receiver is of the view that it is appropriate at this time for the Court to approve the Leslieville Purchase Price Adjustments (other than the Park Levy) as charged, and direct the Construction Receiver to release the Utility Reserve for distribution in accordance with the Distribution Waterfall.

3.0 CONCLUSION

50. The Construction Receiver requests that this Honourable Court grant the order, in the form enclosed in the Motion Record of the Construction Receiver:
- a. authorizing the Construction Receiver to disclose certain contact information of the Unrepresented Purchasers;
 - b. granting substituted service on the Unrepresented Purchasers by email to the last known email address of such Leslieville Purchaser, based on the records of Real Estate Counsel;
 - c. declaring that the Leslieville Purchase Price Adjustments (excluding the Park Levy) are accurate and binding as between the Construction Receiver and Leslieville Purchasers; and
 - d. setting a protocol and schedule for the resolution of the pending Shibley Righton Motion.

[Signature on Next Following Page]

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All of which is respectfully submitted, this 18th day of March 2019.

**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

SUPPLEMENT TO THE EIGHTH REPORT

APPENDIX A

Urbancorp (Leslieville) Developments Inc.

Summary of Purchase Price Closing Adjustments - Credits to Vendor and Closing Adjustment Reserves

Prepared on March 13, 2019

Line	42 Units (no cap)			APS Reference for 40 Opt-in Purchasers	APS Reference for 2 New Purchasers	
	Amount	HST	Total			
1	Purchase Price Closing Adjustments (credit to Vendor):					
2	Park levy	\$ 588,804.10	\$ 76,544.53	\$ 665,348.63	7(d)(iii)	6 (d)(iii)
3	Tarion Enrolment Fee	56,170.00	7,302.10	63,472.10	7 (d)(iv)	6 (d)(iv)
4	Utility and Meter connection fees	338,011.60	43,941.51	381,953.11	7 (d)(v)	6 (d)(v)
5	Law society fee	2,730.00	354.90	3,084.90	7 (d)(vi)	6 (d)(vi)
6	Admin fee of \$50 per cheque	5,300.00	689.00	5,989.00	7 (d)(vii)	6 (d)(vii)
7	Reserve Fund payment payable to Condo Corp (note 1)	n/a	n/a	n/a	7 (d)(viii)	6 (d)(viii)
8	Status Certificate	3,716.81	483.19	4,200.00	7 (d)(ix)	6 (d)(ix)
9	Title Insurance	8,400.00	1,092.00	9,492.00	7 (d)(x)	6 (d)(x)
10	Total Purchase Price Closing Adjustments (credit to Vendor)	\$ 1,003,132.51	\$ 130,407.23	\$ 1,133,539.74		
11	Average (42 units)	\$ 23,884.11	\$ 3,104.93	\$ 26,989.04		
Line	13 Units (with cap)			APS Reference for 13 New Purchasers		
	Amount	HST	Total			
12	APS Section 6 (d) Adjustments (Capped at \$8,000/unit plus HST) (note 1)	\$ 104,000.00	\$ 13,520.00	\$ 117,520.00	6(d)(iii) to 6(d)(ix)	
13	Title Insurance	2,600.00	338.00	2,938.00	6 (d)(x)	
14	Total Purchase Price Closing Adjustments (credit to Vendor)	\$ 106,600.00	\$ 13,858.00	\$ 120,458.00		
15	Average (13 units)	\$ 8,200.00	\$ 1,066.00	\$ 9,266.00		
16	Total Purchase Price Closing Adjustments (credit to Vendor)	\$ 1,109,732.51	\$ 144,265.23	\$ 1,253,997.74		
17	Average (55 units)	20,176.95	2,623.00	\$ 22,799.96		
18	Park Levy Reserve (lines 2 + reserve for costs)			\$ 700,000.00		
19	Utility Reserve (line 4 + line 12 + reserve for costs)			525,000.00		
20	Total Closing Adjustment Reserves			\$ 1,225,000.00		

Notes:

1. \$200/unit Condo Corp. reserve fund charged on closing is not a purchase price adjustment, but was part of the adjustments for 13 purchasers which were capped.

SUPPLEMENT TO THE EIGHTH REPORT

APPENDIX B

(Existing Leslieville Purchasers)

[REDACTED]

AGREEMENT OF PURCHASE AND SALE

The undersigned, [REDACTED] (collectively, the "Purchaser"), hereby agrees with **URBAN CORP (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 the above-noted unit, as outlined for identification purposes only, on the sketch attached hereto as Schedule "A", together with one (1) Parking Unit, which Parking Unit shall be allocated by the Vendor in its sole discretion, however the intent of the Vendor is to allocate Parking Units to Purchasers based on the plan attached hereto as Schedule "G", which may change prior to the Occupancy Date as determined by the Vendor; being proposed unit(s) in the Condominium, to be registered against those lands and premises situate in the City of Toronto, and which are currently municipally known as 50 Curzon Street and legally described in the Condominium Documents (hereinafter called the "Property"), together with an undivided interest in the common elements appurtenant to such unit(s) and the exclusive use of those parts of the common elements attaching to such unit(s), as set out in the proposed Declaration (collectively, the "Unit") on the following terms and conditions:

- (a) The purchase price of the Unit (the "Purchase Price") is **Eight Hundred Fifty-Four Thousand DOLLARS (\$854,000.00)** which amount shall be inclusive of HST, less the Rebate, in lawful money of Canada, payable as follows:
 - (b) to **Miller Thomson LLP** (the "Vendor's Solicitors" or "Escrow Agent" or "Trustee"), in trust, in the following amounts at the following times, by certified cheque or wire transfer, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Title Transfer Date:
 - (i) the sum of **Twenty-Thousand DOLLARS (\$20,000.00)** within (40) days from the Effective Date (the "New Deposit");
 - (ii) the Purchaser shall receive a credit on the final statement of adjustments for the sum of [REDACTED] which was paid under the Original APS (the "Old Deposit"), provided that if the Purchaser is an assignee under the Original APS, the Vendor shall have received from such Purchaser, evidence satisfactory to the Vendor, in its sole and absolute discretion, that the full amount of the Old Deposit has been paid or will be paid by the Purchaser to the assignor under the Original APS, in accordance with the Purchaser Package Approval Order;
 - (c) the balance of the Purchase Price 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.
2. (a) The Purchaser, or its permitted tenants or permitted assigns shall occupy the Unit on the Final Tentative Occupancy Date (as defined in the Statement of Critical Dates being part of the Tarion Addendum), or such extended or accelerated date that the Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "Occupancy Date"). The Vendor, at its discretion and without obligation, shall be permitted a one-time unilateral right to extend a Firm Occupancy Date or Delayed

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Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessary tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be.

- (b) The transfer of title to the Unit shall be completed on the later of the Occupancy Date or a date established by the Vendor in accordance with Paragraph 14 hereof (the "Title Transfer Date").
- (c) The Purchaser hereby acknowledges that he/she/they has/have received a Disclosure Statement dated May 2, 2017, and accompanying documents in accordance with Section 72 of the Act, and a copy of this Agreement executed by the Vendor. The Purchaser hereby acknowledges that the Condominium Documents required by the Act have not been registered by the Vendor, and agrees that the Vendor may, from time to time, make any modification to the Condominium Documents in accordance with its own requirements and the requirements of any mortgagee, governmental authority, examiner of Legal Surveys, the Land Registry Office or any other competent authority having jurisdiction to permit registration thereof. The Purchaser further acknowledges having been advised by the Vendor that the Purchaser shall be entitled to rescind or terminate this Agreement for a period of ten (10) days following the date when the Purchaser executes and delivers a copy of this Agreement to the Vendor, by providing written notice of the Purchaser's desire to so rescind or terminate this Agreement to the Vendor or the Vendor's Solicitors within such ten (10) day period.

If the Purchaser exercises such right of rescission or termination within such ten (10) day period, the Vendor shall not be obligated to repay (i) any amount in respect of the Old Deposit, or (ii) any amounts paid by the Purchaser at any time (including under the Old APS) for extras or upgrades or changes ordered by the Purchaser, whether or not installed in the Unit, and the Purchaser's claims, if any, in respect of the Old Deposit shall be limited to claims against TWC in accordance with ONHWPA and/or claims against Travelers Guarantee Company of Canada, as applicable, and the Purchaser's claims, if any, in respect of any other amounts shall be limited to unsecured claims against the estate of UC Leslieville.

- (d) The Purchaser further acknowledges and agrees that in the event there is a material change (as defined in subsection 74(2) of the Act) to the Disclosure Statement, the Purchaser's only remedy shall be as set forth in subsection 74(6) of the Act in respect of the return of the New Deposit only, notwithstanding any rule of law or equity to the contrary.
3. (a) The covenants and obligations of the Vendor under this Agreement are conditional upon the Settlement Conditions having been satisfied or waived on or before the dates set out in the Settlement Conditions. The foregoing condition is for the benefit of the Vendor only and may only be waived in whole or in part by the Vendor by notice in writing to the Purchaser. The Purchaser shall promptly provide the Vendor with all such information and assistance within the Purchaser's power to reasonably assist the Vendor to obtain the Settlement Orders, including, without limitation, such information as the Court may require to reasonably evaluate the Purchaser's financial ability to perform its obligations under this Agreement. The Purchaser acknowledges and agrees that the Receiver has no duty or obligation to defend or respond to any appeal of all or any part of the Settlement Orders as initially granted by the Court.

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- (b) If the Settlement Conditions are not satisfied or waived on or before the dates set out in the Settlement Conditions, then this Agreement shall be null and void and of no further force or effect, and the provisions of Paragraph 20(a) shall be applicable. The Purchaser confirms that prior to signing this Agreement, he or she has carefully reviewed the entire Agreement, including without limitation, Paragraphs 20 and 30, and all Schedules attached hereto. The Purchaser confirms that he or she either has had the opportunity, prior to signing this Agreement and/or will during the 10 day rescission period review this Agreement with his or her solicitor.
- (c) The covenants and obligations of the Vendor and the Purchaser are also conditional upon there being, on or before the Title Transfer Date, no order issued by any Court or other governmental authority delaying, restricting or preventing, and no pending claim or judicial or administrative proceeding, or investigation against any party by any person, for the purpose of enjoining, delaying, restricting or preventing the consummation of the transaction hereunder or otherwise claiming that this Agreement or the consummation of the transaction hereunder is improper or would give rise to proceedings under any laws.

The following Schedules of this Agreement, if attached hereto, shall form a part of this Agreement.

Schedule "A" – Unit Plan/Sketch

Schedule "B" – Features and Finishes

Schedule "C" – Terms of Occupancy Licence

Schedule "D" – Warning Clauses

Schedule "F" – Extras

Schedule "G" – Proposed Parking Plan

Schedule "H" – Confirmation of Receipt

Schedule "P" – Purchaser Package Approval Order (Without Schedules)

Schedule "S" – Settlement Approval Order

Schedule "TA" – being the Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale (collectively the "Tarion Addendum").

DATED, signed, sealed and delivered, this 3rd day of May, 2017.

Vendor's Solicitor:
Miller Thomson LLP
40 King Street West, Suite 5800
Toronto, Ontario
M5H 3S1
Tel: (416) 595-8637
Fax: (416) 595-8695
Attn: Ron Fairbloom
rfairbloom@millerthomson.com

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.

Paragraphs 4 through 47 and Schedules "A", "B", "C", "D", "P", "G", "H", "P", "S" and "TA" attached to this Agreement are an integral part hereto and are contained on subsequent pages. The Purchaser acknowledges that he or she or they has read all Paragraphs and Schedules of this Agreement.

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

DATED at _____ this _____ day of _____, 2017.

SIGNED, SEALED AND DELIVERED	)	Purchaser's Signature	_____ [seal]
)		
in the presence of)		
WITNESS	)	Purchaser's Name	_____
(as to all Purchasers)		
signatures, if more than	)	Date of Birth	_____
one purchaser))		
	)	Social Insurance Number	_____
)		
	)	Purchaser's Signature	_____ [seal]
)		
	)	Purchaser's Name	_____
)		
	)	Date of Birth	_____
)		
	)	Social Insurance Number	_____

Purchaser's Solicitor: Marc A. Lean

Address: 199 Bay Street, Suite 2200, Toronto, ON M5L 1G4

Telephone: 416-777-4015 Facsimile: 1-844-670-6009 Email: mlean@dickinson-wright.com

The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is as follows:

Address: 

City: 

Province: 

Postal Code: 

Telephone (B): _____

(H): _____

Facsimile: _____

E-Mail address: 

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4. 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 Section 4;
 - (b) "**Ad Hoc Curzon Purchasers**" means those Existing Leslieville Purchasers represented by Dickinson Wright LLP;
 - (c) "**Administrative Agent**" means Canadian Imperial Bank of Commerce in its capacity as administrative agent for the Syndicate.
 - (d) "**Agreement**" means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
 - (e) "**Appointment Order**" means the order of the Court dated May 31, 2016 appointing Alvarez & Marsal Canada Inc. as receiver and manager and construction lien trustee of all of the assets, undertaking and properties of UC Leslieville, as amended or supplemented from time to time;
 - (f) "**Beach Sale Process Order**" means the sale process order of the Court dated May 2, 2017, as it may be amended, restated or supplemented from time to time with the consent or approval of the Receiver, Syndicate, Terra Firma and Craft;
 - (g) "**Condominium**" means the condominium which will be registered against the Property pursuant to the provisions of the Act;
 - (h) "**Condominium Documents**" means the Creating Documents, the by-laws and rules of the Condominium, the disclosure statement and budget statement together with all other documents and agreements which are entered into by the Vendor on behalf of the Condominium or by the Condominium directly prior to the turnover of the condominium, as may be amended from time to time;
 - (i) "**Court**" means the Ontario Superior Court of Justice [Commercial List];
 - (j) "**Court Ordered Charges**" means the Receiver's Borrowing Charge, the Receiver's Charge (each as defined in the Appointment Order) and such other charges granted by the Court in the Receivership Proceeding.
 - (k) "**CRA**" means the Canada Revenue Agency or its successors;
 - (l) "**Craft**" means C.R.A.F.T. Development Corporation;
 - (m) "**Creating Documents**" means the declaration and description which are intended to be registered against title to the Property and which will serve to create the Condominium, as may be amended from time to time;
 - (n) "**Development Agreement**" has the meaning given to it in Paragraph 10(a)(vi) hereof;
 - (o) "**DW Costs**" has the meaning given to it in Paragraph 7(l) hereof;

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- (p) **"Effective Date"** means the date upon which the Settlement Conditions are satisfied or waived and this Agreement becomes effective, written notice of which will be given to the Purchaser;
- (q) **"Escrow Agent"** has the meaning given to it in Paragraph 1(b) hereof;
- (r) **"Existing Leslieville Purchasers"** means a person who has entered into an Original APS with UC Leslieville, or where such person or persons has/have assigned its/their Original APS, the assignee(s) thereof;
- (s) **"Interim Occupancy"** means the period of time from the Occupancy Date to the Title Transfer Date;
- (t) **"ITA"** has the meaning given to it in Paragraph 6(a) hereof;
- (u) **"HST" or "Harmonized Sales Tax"** has the meaning given to it in Paragraph 7(g) hereof, and for greater certainty shall mean the harmonized and/or blended Ontario Retail Sales Tax (the "RST") and federal Goods and Services Tax (the "GST"). Purchasers are advised that the rate of HST applicable to this transaction is 13 percent being comprised of five per cent GST and eight percent RST;
- (v) **"Levies"** has the meaning given to it in Paragraph 7(d)(ii) hereof;
- (w) **"Municipality"** has the meaning given to it in Paragraph 10(b) hereof;
- (x) **"New APS"** means the new agreements of purchase and sale, in substantially the form approved by the Purchaser Package Approval Order, entered into by Existing Leslieville Purchasers who have opted-in to the Proposed Settlement by the Opt-In Deadline, with such minor amendments as the Receiver may deem necessary or desirable;
- (y) **"New Deposit"** has the meaning given to it in Paragraph 1(b)(i) hereof;
- (z) **"Occupancy Date"** has the meaning given to it in Paragraph 2(a) hereof;
- (aa) **"Occupancy Fee"** means the sum of money payable monthly in advance by the Purchaser to the Vendor and calculated in accordance with Schedule "C" hereof;
- (bb) **"Occupancy Licence"** means the terms and conditions upon which the Purchaser shall occupy the Unit during Interim Occupancy as set forth in Schedule "C" hereof;
- (cc) **"Old Deposit"** has the meaning given to it in Paragraph 1(b)(ii) hereof;
- (dd) **"ONHWPA"** means the Ontario New Home Warranties Plan Act, R.S.O. 1990, c.O.31;
- (ee) **"Opt-In Deadline"** means May 19, 2017 at 5:00 p.m. (Toronto time);
- (ff) **"Opt-In Leslieville Purchaser"** means a purchaser who has an existing agreement of purchase and sale with UC Leslieville for a given unit in the Condominium (a) who has delivered a fully executed and completed Opt-In Package to the Construction Receiver in accordance with the Purchaser Package Approval Order, and (b) who has not rescinded its New APS by the applicable Rescission Bar Date.
- (gg) **"Opt-In Package"** has the meaning given to it in the Purchaser Package Approval Order;

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- (hh) **"Original APS"** means the existing agreement of purchase and sale for the Unit entered into between UC Leslieville (as vendor) and the Purchaser (as purchaser), or the assignor thereof if the Purchaser is an assignee thereof, as amended or supplemented;
- (ii) **"Project Architect"** means Kasian Architects or such other architect as may be retained by Craft or the Vendor in connection with the completion of the Condominium;
- (jj) **"Property"** has the meaning given to it in the first paragraph on page 1 hereof;
- (kk) **"Proposed Settlement"** means the proposed settlement with respect to the Leslieville Project (as defined in the Settlement Approval Order) as approved by the Settlement Approval Order;
- (ll) **"Purchase Price"** has the meaning given to it in the introductory clause of Paragraph 1(a) hereof;
- (mm) **"Purchaser"** has the meaning given to it in the first paragraph on page 1 hereof;
- (nn) **"Purchaser Package Approval Order"** means the order of the Court dated May 2, 2017 pursuant to which the Court approved the form, and dissemination, of the purchaser information package with respect to the sale of units in the Condominium, including the Unit, a copy of which (without schedules) is attached hereto as Schedule "P", as it may be amended, restated or supplemented from time to time with the consent or approval of the Receiver, Syndicate, Terra Firma and Craft;
- (oo) **"Rebate" or "Rebates"** has the meaning given to it in Paragraph 7(f) hereof, and for greater certainty shall mean any provincial and/or federal new housing purchase rebate and/or transitional rebate applicable to this purchase transaction (regardless whether such transitional rebate is initially claimable by the Purchaser or the Vendor), and shall include any refund, credit, rebate of any form or nature of such HST applicable to this purchase transaction but specifically shall not include any new housing residential rental or leasing rebate whatsoever, and such Rebates shall be fully assignable to the Vendor as hereinafter set out;
- (pp) **"Receiver"** has the meaning given to it in the first paragraph on page 1 hereof;
- (qq) **"Receivership Administration Order"** means the receivership administration order of the Court dated May 2, 2017, which among other things, authorizes an increase of borrowings by the Receiver, as it may be amended, restated or supplemented from time to time with the consent or approval of the Receiver, Syndicate, Terra Firma and Craft;
- (rr) **"Receivership Proceeding"** means the receivership proceeding with respect to UC Leslieville commenced by the Appointment Order bearing Court File No. CV-16-11409-00CL;
- (ss) **"Requirements"** has the meaning given to it in Paragraph 46;
- (tt) **"Rescission Bar Date"** has the meaning given to in the Purchaser Package Approval Order;
- (uu) **"Service Supplier"** has the meaning given to it in Paragraph 7(e) hereof;

- (vv) **"Settlement Approval Order"** means the settlement approval order of the Court dated May 2, 2017 which among other things, authorizes the sale of this Unit by the Receiver on behalf of and in the name of UC Leslieville, as Vendor, a copy of which is attached hereto as Schedule "S", as it may be amended, restated or supplemented from time to time with the consent or approval of the Receiver, Syndicate, Terra Firma, Craft and the Ad Hoc Curzon Purchasers;
- (ww) **"Settlement Conditions"** means:
- (i) the Settlement Approval Order becomes effective in accordance with its terms on or before the Settlement Orders Outside Date and the Receiver has filed a certificate with the Court confirming the same;
 - (ii) each of the Settlement Orders becomes a final order of the Court on or before the Settlement Orders Outside Date, which means that each of such orders is not appealed before the expiry of the applicable appeal period, or if it is appealed, such appeal is finally determined in favour of the Receiver by the Settlement Orders Outside Date. The Receiver is under no obligation to defend or respond to any appeal of any of such orders;
 - (iii) all of the conditions precedent under the Settlement Definitive Agreements have been satisfied or waived in accordance with such Settlement Definitive Agreements by the Settlement Orders Outside Date; and
 - (iv) the Purchaser is an Opt-In Leslieville Purchaser in accordance with the terms of the Purchaser Package Approval Order by the Rescission Bar Date applicable to it;
- (xx) **"Settlement Definitive Agreements"** means the Craft Development Contract, the Craft Construction Contract, the Syndicate Construction Loan Agreement, the Craft Loan Agreement and the TF Cost Overrun Agreement, each as defined in the Settlement Approval Order, as each may be amended, restated or supplemented from time to time in accordance with the terms thereof;
- (yy) **"Settlement Orders"** means the Purchaser Package Approval Order, Settlement Approval Order, the Receivership Administration Order and the Beach Sale Process Order;
- (zz) **"Settlement Orders Outside Date"** means August 31st, 2017, which date may be extended from time to time by the Vendor by notice in writing to the Purchaser (or his/her solicitors) to such later date as may be agreed to by the Vendor, Terra Firma and the Administrative Agent;
- (aaa) **"Syndicate"** means Canadian Imperial Bank of Commerce, Canadian Western Bank and Laurentian Bank of Canada (and their respective assignees from time to time), as lenders to UC Leslieville and the Receiver, respectively;
- (bbb) **"Tarion Addendum"** has the meaning given to it in the list of Schedules on page 3 of this Agreement;
- (ccc) **"Terra Firma"** means Terra Firma Capital Corporation;
- (ddd) **"Title Transfer Date"** has the meaning given to it in Paragraph 2(b) hereof;

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- (eee) "Trustee" has the meaning given to it in Paragraph 1(b) hereof;
- (fff) "TWC" means Tarion Warranty Corporation or its successors;
- (ggg) "UC Leslieville" has the meaning given to it in the first paragraph on page 1 hereof;
- (hhh) "Unit" has the meaning given to it in the first paragraph on page 1 hereof;
- (iii) "Vendor" has the meaning given to it in the first paragraph on page 1 hereof;
- (jjj) "Vendor's Representatives" shall mean the Receiver's agents, directors, officers, partners, affiliates, employees, representatives, consultants, advisers and contractors (including Craft as the developer of the Property to be retained by the Vendor or such other developer of the Property as may be retained by the Vendor who replaces Craft); and
- (kkk) "Vendor's Solicitors" has the meaning given to it in Paragraph 1(b) hereof.

Finishes

5. The Purchase Price shall include those items listed on Schedule "B" attached hereto. The Purchaser acknowledges that only the items set out in Schedule "B" are included in the Purchase Price and that model suite/vignette furnishings and appliances, decor, upgrades, artist's renderings, scale model(s), improvements, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless specified in Schedule "B". The Purchaser agrees to attend and notify the Vendor of his/her choice of finishes within fifteen (15) days of being requested to do so by the Vendor or the Vendor's Representative. In the event colours and/or finishes subsequently become unavailable, the Purchaser agrees to re-attend at such time or times as requested by the Vendor or the Vendor's Representative, to choose from substitute colours and/or finishes. If the Purchaser fails to choose colours or finishes within the time periods requested, the Vendor may irrevocably choose the colours and finishes for the Purchaser and the Purchaser agrees to accept the Vendor's selections. The Purchaser acknowledges that the Vendor may, from time to time, substitute items(s)/materials(s) listed in Schedule "B" with other items(s)/materials(s), provided that the quality of any substituted item(s)/material(s) is comparable to or better than the item(s)/material(s) originally indicated.

The Purchaser specifically acknowledges that in the manufacture of finishing items, colour variances sometimes occur. The Purchaser hereby agrees to accept any such colour variation resulting from the manufacturing process without any right of abatement of purchase price and in full satisfaction of the Vendor's obligations herein. More specifically, the Purchaser acknowledges that colour, texture, appearance, grains, veining, natural variations in appearance etc. of features and finishes installed in the Unit may vary from Vendor's samples or as otherwise shown to the Purchaser as a result of normal manufacturing and installation processes and/or as a result of any such finishes being of natural products and the Purchaser agrees that the Vendor is not responsible for same. The Vendor is not responsible for shade difference occurring in the manufacture of items such as, but not limited to, finishing materials or products such as carpet, tiles, bath tubs, sinks and other such products where the product manufacturer establishes the standard for such finishes. Nor shall the Vendor be responsible for shade difference in colour of components manufactured from different materials but which components are designed to be assembled into either one product or installed in conjunction with another product and in these circumstances the product as manufactured shall be accepted by the Purchaser. Purchaser acknowledges and agrees that pre-finished wood flooring (if any) may react to normal fluctuating humidity levels inducing gapping or cupping. The Purchaser acknowledges that natural stone (if

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any) is a very soft stone which will require a substantial amount of maintenance by the Purchaser and is very easily scratched and damaged. Purchaser acknowledges and agrees that carpeting may be seamed in certain circumstances and said seams may be visible. The Purchaser further acknowledges and agrees that various types of flooring, including but not limited to carpets, marble, tile, laminate, hardwood floors, or engineered wood in the Unit may result in different heights (to be established by the Vendor in its sole discretion) in the transitional areas between them, and that the Vendor may use appropriate reducers in the area.

Notwithstanding anything herein contained to the contrary, the Purchaser acknowledges and agrees that if upon the Title Transfer Date, any of the extras, upgrades or changes paid for by the Purchaser as described in Schedule "F" attached hereto remain incomplete in whole or in part or if the Vendor shall, in its sole discretion, determine that it will not provide extras, upgrades or changes or cannot complete the extras, upgrades or changes paid for as described in Schedule "F", then there shall be credit given to the Purchaser on the final statement of adjustments in an amount equal to that portion of the amount paid by the Purchaser as specifically set out in Schedule "F" attached hereto, in connection with such extras, upgrades or changes which remain incomplete in whole or in part as aforesaid, as determined by the Vendor. The Purchaser further acknowledges and agrees that the credit given to the Purchaser in the statement of adjustments shall be accepted by the Purchaser as full and final settlement of any claim by the Purchaser with respect to the extras, upgrades or changes which remain incomplete as aforesaid. The Purchaser further acknowledges that the Vendor's liability with respect to such incomplete extras, upgrades or changes shall be limited to the credit provided to the Purchaser in the final statement of adjustments referred to aforesaid and, thereafter, there shall be no further liability upon the Vendor in connection with such incomplete extras, upgrades or changes and upon such credit being given, the Vendor shall be deemed to have been released from any and all obligations, claims or demands whatsoever with respect to such incomplete extras, upgrades or changes.

Deposits

6. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on the Title Transfer Date on the New Deposit only from the date of deposit of the money received from time to time by the Vendor's Solicitors or the Trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(6) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted on page 3 of this Agreement. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in Section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that, except as expressly stated in this Agreement, the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) The New Deposit shall be held by the Vendor's Solicitor in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended and in accordance with this Agreement.

Adjustments

7. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:
- (i) all utility costs including electricity, gas and water (unless included as part of the common expenses); and
 - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) 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) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall be remitted to the relevant taxing authority on account of the Unit. Alternatively, the Vendor in its sole discretion, shall be entitled to provide a credit in favour of the Purchaser on the final statement of adjustments in an amount equal to the realty tax component of the Occupancy Fees paid, and adjust separately for realty taxes based on the land only. In such event, the Purchaser shall assume and be solely responsible for any and all OMIT or supplementary taxes assessed against the Unit, including any such OMIT or supplementary taxes assessed for a period prior to the Title Transfer Date. In addition, the Vendor shall not be required to readjust for any realty taxes following the Title Transfer Date, and no undertaking to readjust shall be provided to the Purchaser. Notwithstanding the foregoing, the Purchaser shall complete the transaction contemplated by this Agreement on the Title Transfer Date, without holdback or abatement of any kind.
 - (ii) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with Paragraph 6 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) 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;

- (ii) the amount of any increase in development charge(s) and/or education development charge(s) (the "Levies") assessed against or attributable to the Unit (or assessed against the Property or any portion thereof, and attributable to the Unit by pro-rating same in accordance with the proportion or percentage of common interests attributable thereto), pursuant to the Development Charges Act, 1997, S.O. 1997, c.27 as amended from time to time, and the Education Act, R.S.O. 1990, c. E.2, as amended from time to time, in excess of the Levies paid by UC Leslieville or any other person on or before April 18, 2017 with respect to the Property or any portion thereof; provided that the Purchaser shall be entitled to a credit of up to \$2,500 against such increase, with the adjustment under this section 7(d)(ii) being zero if the increase in Levies allocated as aforesaid to any individual Unit is equal to or less than \$2,500.
- (iii) the amount of any parks levy or any charges pursuant to a Section 37 Agreement (pursuant to the *Planning Act*), levied, charged or otherwise imposed with respect to the Condominium, the Property or the Unit by any governmental authority, which is equivalent to the common interest allocation attributable to the Unit as set out in Schedule "D" to the Declaration;
- (iv) the cost of the TWC enrolment fee for the Unit (together with any provincial or federal taxes exigible with respect thereto);
- (v) the cost of utility meter installations, water and sewer service connection charges, hydro and gas meter or sub-meter installation, and hydro and gas installation and connection or energization charges for the Condominium and/or the Unit, the Purchaser's portion of such installation and/or connection or energization charges and costs to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the registered Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs. A letter from the Vendor's or Vendor's Representative's engineers specifying the said charges and costs shall be final and binding on the Purchaser;
- (vi) the charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument;
- (vii) a sum of Fifty Dollars (\$50.00) for the cheque tendered pursuant to Paragraph 1(b) of this Agreement and for any cheque tendered for any other monies paid on account of the Purchase Price up to, but not including the Title Transfer Date representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfilment of the requirements of subsection 8(6) of the Act;
- (viii) the sum of Two Hundred Dollars (\$200.00) payable to the Corporation for deposit to the Reserve Fund Account;
- (ix) the cost of providing a status certificate in the maximum amount allowed pursuant to the Act;
- (x) the Vendor's Solicitor may arrange for the project to be enrolled with a title insurer or insurers acceptable to the Vendor (the "Title Insurer") in order to centralize underwriting for the project and avoid unnecessary duplication of costs

for purchasers and their solicitors. In the event that the Purchaser elects to obtain title insurance through the Title Insurer, the Purchaser and the Purchaser's solicitor shall not be required to perform some or all of the following due diligence thereby saving the Purchaser significant transaction costs: title search and review of title search; preparation of requisition letter; prepare, send out and review responses to clearance letters; execution searches against the Vendor; and corporate status searches. As a result of the foregoing and regardless of whether the Purchaser obtains title insurance through the Title Insurer, the Purchaser agrees to pay to the Vendor or its solicitors on the Title Transfer Date an administration fee of two hundred dollars plus applicable taxes for enrolling the project with the Title Insurer and for preparing and delivering to the Purchaser's solicitor and Title Insurer a title advice statement

- (e) The Purchaser acknowledges that it may be required to enter into an agreement with the supplier of hydro services and/or geothermal heating and cooling services to the Condominium or Unit (the "Service Supplier") on or before the Occupancy Date. Furthermore, the Purchaser acknowledges that such agreement may require the Purchaser to deliver a security deposit to the Service Supplier prior to the Occupancy Date and the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.
- (f) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and, if applicable, the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction (hereinafter referred to as the "HST") less the Rebate as defined below, and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. Where the Purchaser intends to avail himself/herself of the HST rebate on the statement of adjustments, the Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the new housing rebate applicable pursuant to Section 254 of the *Excise Tax Act* (Canada), as may be amended, and the new housing rebate announced by the Ontario Ministry of Revenue (collectively, the "Rebate"), in its Information Notice dated June 2009 - No. 2 (the "Ontario Circular") and further warrants and represents that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on the Title Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Occupancy Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Unit as his primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit. The Purchaser further warrants and represents that he has not claimed (and hereby covenants that the Purchaser shall not hereafter claim), for the Purchaser's own account, any part of the Rebate or the RST transitional housing rebate referred to in the Ontario Circular (the "Transitional Rebate") in connection with the Purchaser's acquisition of the Unit, save as may be otherwise hereinafter expressly provided or contemplated. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate and the Transitional Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate and the Transitional Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate and the Transitional Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or

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Vendor's solicitors request for same (and in any event on or before the Title Transfer Date), all requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate and the Transitional Rebate (by way of assignment or otherwise), including without limitation, the New Housing Application for Rebate of Goods and Services Tax Form as prescribed from time to time (collectively, the "Rebate Forms"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate and the Transitional Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate or the Transitional Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate or the Transitional Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his interest in the Unit with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:

- (i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's solicitors request for same (and in any event on or before the Title Transfer Date) the Rebate Forms duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate and the Transitional Rebate; or
- (ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor (or to whomsoever the Vendor may in writing direct), by certified cheque delivered on the Title Transfer Date, an amount equivalent to the Rebate and/or the Transitional Rebate, in addition to the Purchase Price and in those circumstances where the Purchaser maintains that he is eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to pursue the procurement of the Rebate directly from CRA. It is further understood and agreed that in the event that the Purchaser intends to rent out the Unit before or after the Title Transfer Date, the Purchaser shall not be entitled to the Rebate, but may nevertheless be entitled to pursue, on his own after the Title Transfer Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to Section 256.2 of the *Excise Tax Act*, as may be amended, and other applicable legislation to be enacted relating to the provincial new rental housing rebate.

- (g) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with

respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the *Excise Tax Act*. In addition, and without limiting the generality of the foregoing, in the event that the Purchase Price is increased by the addition of extras, changes, upgrades or adjustments and as a result of such increase, the quantum of the Rebate that would otherwise be available is reduced or extinguished (the quantum of such reduction being hereinafter referred to as the "Reduction"), then the Purchaser shall pay to the Vendor on the Title Transfer Date the amount of (as determined by the Vendor in its sole and absolute discretion) the Reduction..

- (h) An administration fee of Two Hundred and Fifty Dollars (\$250.00) shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.
- (i) All Opt-In Leslieville Purchasers acknowledge that the Ad Hoc Curzon Purchasers have incurred and are liable to Dickinson Wright LLP for certain legal costs, disbursements and HST ("DW Costs") in respect of the Property, including but not limited to the Proposed Settlement, and agree that every Opt-In Leslieville Purchaser (whether or not an Ad Hoc Curzon Purchaser) shall pay his or her proportionate share of the DW Costs to the Vendor as an adjustment on the Statement of Adjustments, on the Title Transfer Date. The Vendor agrees to receive such payment of Costs in trust for the benefit of Dickinson Wright LLP and to pay the same to Dickinson Wright LLP as soon as practicable following closing on the Title Transfer Date. Every Opt-In Leslieville Purchaser who is not current with his or her payments of DW Costs on the Transfer Title Date, will make his or her accounting current by providing an adjustment on the Statement of Adjustments on that date. For certainty, the proportionate share of each Opt-In Leslieville Purchaser of the DW Costs shall be as calculated by Dickinson Wright LLP and notified in writing to the Vendor and shall be based on the number of Ad Hoc Curzon Purchasers plus the number of Opt-In Leslieville Purchasers who were not Ad Hoc Curzon Purchasers.

Title

8. The Vendor or the Vendor's Solicitors shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "Notification Date"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "Examination Period") 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, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor 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 deposit monies (other than the Old Deposit) together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation.

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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

9. Subject to the restrictions contained in Paragraph 17, the Purchaser hereby agrees to submit to the Vendor or the Vendor's Solicitors on the earlier of the Occupancy Date and twenty (20) days prior to the Title Transfer Date, an irrevocable direction to the Vendor indicating and confirming the manner in which the Purchaser wishes to take title to the Units, accompanied by the date of birth, marital status and social insurance number of each person approved by the Vendor to take title to the Units and the Purchaser shall be required to close the transaction in the manner so advised unless the Vendor otherwise consents in writing, which consent may be arbitrarily withheld. If the Purchaser does not submit such confirmation within the required time as aforesaid the Vendor shall be entitled to tender a Transfer/Deed on the Title Transfer Date engrossed in the name of the Purchaser as shown on the face of this Agreement. The Vendor shall have the right to reject any direction given by the Purchaser if the Vendor believes, in its discretion, that the direction violates the terms of Paragraph 17, herein.

Permitted Encumbrances

10. (a) The Purchaser agrees to accept title subject to the following:
- (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser and as described in Schedule "H" hereto;
 - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
 - (iii) easements, rights of way and/or licences now registered (or to be registered hereafter) for the purposes of discharging, emitting, releasing or venting thereon or otherwise affecting the Property at any time during the day or night with noise, vibration and other sounds, excluding spills, and other emissions of every nature and kind whatsoever arising from, out of or in connection with any and all present and future railway facilities and operations upon the railway lands located in proximity to the Property;
 - (iv) notices of security interest in respect of any equipment owned by an equipment lessor or supplier of heating and cooling as more particularly described in the Condominium Documents;
 - (v) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s)

to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners as such term is defined in the Condominium Documents), provided that any such easement and cost-sharing agreements or reciprocal agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;

- (vi) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder; and
- (vii) 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 easements, Development Agreements, reciprocal agreements or restrictive covenants 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, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Property is situate (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also

acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier and that any geothermal system serving the Unit and/or the Condominium does not form part of the common property and may be sold to a third party service provider.

- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 10(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer Date.
- (d) The Purchaser agrees to accept a conveyance of title to the Unit pursuant to the Settlement Approval Order.
- (e) 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

- 11. 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.

Construction Lien Act

- 12. The Purchaser covenants and agrees that he/she is a "home buyer" within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.C.30 and will not claim any lien holdback on the Occupancy Date or Title Transfer Date. Subject to the rights of the Vendor under Paragraph 20(b), the Vendor shall complete the remainder of the Condominium according to its schedule of completion and neither the Occupancy Date nor the Title Transfer Date shall be delayed on that account.

The Planning Act

- 13. 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

- 14. (a) The provisions of the Tarion Addendum reflect the TWC's policies, regulations and/or guidelines on extensions of the Final Tentative Occupancy Date, but it is expressly understood and agreed by the parties hereto that any failure to provide notice of the extension of the Final Tentative Occupancy Date or Firm Occupancy Date, in accordance with the provisions of the Tarion Addendum shall only give rise to a damage claim by the Purchaser against the Vendor (and for greater certainty, not against the Receiver) up to a maximum of **Seven Thousand Five Hundred Dollars (\$7,500.00)**, as more particularly

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set forth in the Regulations to the ONHWP, and under no circumstances shall the Purchaser be entitled to terminate this transaction or otherwise rescind this Agreement as a result thereof, other than in accordance with the Tarion Addendum.

- (b) The Vendor's Solicitors shall designate a date not less than twenty (20) days after written notice is given to the Purchaser or his or her solicitor of the registration of the Creating Documents as the Title Transfer Date. The Title Transfer Date once designated may be extended from time to time by the Vendor's Solicitors provided that it shall not be more than twenty-four (24) months following the Occupancy Date.

Purchaser's Covenants, Representations and Warranties

15. 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. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor within ten (10) days of execution of this Agreement and then again from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing and notwithstanding any other provision in this Agreement to the contrary, within ten (10) days of written demand from the Vendor, the Purchaser agrees to produce evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date. If the Purchaser fails to provide the mortgage approval as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.
16. 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 his or her or their 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 27 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).

17. 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 and the Occupancy License, 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. The Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, and shall not be permitted to direct title to any other third parties.
18. The Purchaser acknowledges that the Vendor or the Vendor's Representative is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Lands (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as a well as a site plan approval/development application/draft plan of condominium approval with respect to the Lands, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without adversely affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.
19. The Purchaser covenants and agrees that he/she/they shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration/construction office(s) and model units, and the display of signs located on the Property.

Termination without Default

20. (a) In the event this Agreement is terminated through no fault of the Purchaser, including through the exercise of the Vendor's right of termination pursuant to Paragraph 30(b) or deemed terminated and declared null and void and no force and effect pursuant to the

Settlement Approval Order (as described in Paragraph 20(b) if applicable, the Purchaser shall be entitled to be repaid the New Deposit by the Vendor, together with any interest required by law to be paid; provided however, for certainty, that the Vendor shall not be obligated to repay (i) any amount in respect of the Old Deposit; (ii) any amounts paid by the Purchaser at any time (including under the Original APS) for extras or upgrades or changes ordered by the Purchaser, whether or not installed in the Unit, or (iii) any amounts paid by the Purchaser in connection with occupancy of the Unit (including as an Occupancy Fee). The Purchaser's claims, if any, in respect of the Old Deposit shall be limited to claims against TWC in accordance with ONHWPA and/or claims against Travelers Guarantee Company of Canada, as applicable, and the Purchaser's claims, if any, in respect of any other amounts shall be limited to unsecured claims against the estate of UC Leslieville.

- (b) The Purchaser acknowledges that notwithstanding anything otherwise contained in this Agreement (including the Tarion Addendum), the Settlement Approval Order provides that if at any time the Receiver determines in its sole discretion that a "Funding Failure" has occurred then, provided that the Purchaser has not entered into occupancy of his/her Unit pursuant to the terms of this Agreement, the Receiver is authorized to deliver a written notice notifying the Purchaser of the Funding Failure, and upon the delivery of such notice, this Agreement will be deemed terminated and null and void and of no force and effect. For greater certainty, the Vendor's right described in this Paragraph 20(b) and contained in the Settlement Approval Order does not apply once the Purchaser has entered into occupancy of the Unit pursuant to the Occupancy Licence. Please see definition of "Funding Failure" as set out in the Settlement Approval Order, a copy of which is attached hereto as Schedule "S".
- (c) The Purchaser further acknowledges and agrees that he/she (they) does (do) not have any legal, equitable or proprietary interest whatsoever in the Unit and/or the Property (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor. The Vendor shall be entitled to require the Purchaser to execute a release of any surety, lender, escrow agent or any other third party requested by the Vendor in its discretion prior to the return of any monies to which the Purchaser is entitled hereunder. In no event shall the Vendor, the Receiver or any of their respective agents, including the Escrow Agent be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor, the Receiver, the Escrow Agent and/or any of their respective agents as a complete defence to any such claim.

Termination of Original APS

21. (a) The Purchaser acknowledges and confirms that it has been informed that UC Leslieville is in receivership and is unable to complete its obligations under the Original APS.
- (b) The Purchaser acknowledges and agrees that the Original APS will not be terminated unless and until the earlier of:
- (i) the closing of the transaction contemplated herein and upon such closing, the Original APS will be repudiated by the Receiver and deemed terminated by the Settlement Approval Order and of no further force or effect; and
 - (ii) the termination of this Agreement by either the Vendor or the Purchaser, in which case, upon the effective date of such termination, the Original APS will be

automatically terminated and of no further force or effect. For certainty, in the case of a termination by the Vendor for whatever reason, the Purchaser shall only have the rights and claims or obligations and liabilities set out in Paragraphs 20 or 27 of this Agreement, as the case may be, but in no event shall the Purchaser have any legal, equitable or proprietary interest whatsoever in the Unit and/or the Property (or any portion thereof) or any claim against the estate of UC Leslieville except as expressly set out in Paragraph 20.

No Liability of Receiver

22. 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. The Purchaser shall have no recourse against any property or asset of UC Leslieville, except for an unsecured claim against the estate of UC Leslieville and, to the extent expressly set out herein, the return of the New Deposit.

23. Tarion Warranty Corporation

(a) The Vendor covenants that on completion of this transaction a warranty certificate for the Unit will be requested by the Vendor or the Vendor's Representative from TWC. The Vendor or the Vendor's Representative further covenants to request from TWC for the benefit of the Corporation a similar warranty certificate with respect to the common elements. The Purchaser acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be limited to only those warranties deemed to be given by TWC, which warranties shall extend only for the time period and in respect of those items as stated in the ONHWPA, 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, the Condominium or the Unit, other than as expressed herein. Notwithstanding anything otherwise contained herein, neither the Receiver, Vendor or the estate of UC Leslieville shall have any liability in connection with any representation, warranty, guarantee, collateral agreement or condition precedent to, concurrent with or in any way affecting this Agreement, the Condominium or the Unit.

(b) The Purchaser acknowledges and agrees that:

- (i) it is responsible for conducting and has conducted its own searches and investigations of the Unit and the Condominium and it is satisfied with the Unit and the Condominium and all matters and things connected with it or in any way related to it, and is relying entirely upon its own investigations in entering into this Agreement;
- (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, suitability for development, fitness for a particular purpose, merchantability, title, physical characteristics, square footage, profitability, use or zoning, environmental condition, existence of latent defects, quality, or any other aspect or characteristic of the Unit and the Condominium;

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- (iii) actual usable floor space of the Unit may vary from the stated floor area;
- (iv) the Receiver shall have no liability or obligation with respect to the value, state, contents or condition of the Unit and the Condominium, whether or not the matter is within the knowledge or imputed knowledge of the Receiver, its officers, employees, directors, agents, representatives and contractors;
- (v) 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 and the Condominium. 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 the Condominium, or the operation of them, furnished by any real estate broker, agent, employee, Craft or other person; and
- (vi) 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.

Right of Entry

24. Notwithstanding the Purchaser occupying the Unit on the Occupancy Date or the closing of this transaction and the delivery of title to the Unit to the Purchaser, as applicable, the Vendor, the Vendor's Representatives or any person authorized by them shall be entitled at all reasonable times and upon reasonable prior notice to the Purchaser to enter the Unit and the common elements in order to make inspections or to do any work or replace therein or thereon which may be deemed necessary by the Vendor in connection with the Unit or the common elements and such right shall be in addition to any rights and easements created under the Act. A right of entry in favour of the Vendor for a period not exceeding five (5) years similar to the foregoing may be included in the Transfer/Deed or other conveyance document provided on the Title Transfer Date and acknowledged by the Purchaser at the Vendor's sole discretion.

Occupancy

25. (a) The Unit shall be deemed to be substantially completed when the interior work has been finished to the minimum standards allowed by the Municipality so that the Unit may be lawfully occupied notwithstanding that there remains other work within the Unit and/or the common elements to be completed. The Purchaser shall not occupy the Unit until the Municipality has permitted same or consented thereto, if such consent is required and the Occupancy Date shall be postponed until such required consent is given. The Purchaser shall not require the Vendor to provide or produce an occupancy permit, certificate or authorization from the Municipality other than the documentation required by Paragraph 9 of the Taron Addendum. Provided that the Vendor or the Vendor's Representative complies with Paragraph 9 of the Taron Addendum, the Purchaser acknowledges that the failure to complete the common elements before the Occupancy Date shall not be deemed to be failure to complete the Unit, and the Purchaser agrees to complete this transaction notwithstanding any claim submitted to the Vendor and/or to the TWC in respect of apparent deficiencies or incomplete work provided, always, that such incomplete work does not prevent occupancy of the Unit as, otherwise, permitted by the Municipality.
- (b) If the Unit is substantially complete and fit for occupancy on the Occupancy Date, as provided for in subparagraph (a) above, but the Creating Documents have not been

registered, (or in the event the Condominium is registered prior to the Occupancy Date and closing documentation has yet to be prepared), the Purchaser shall pay to the Vendor a further amount on account of the Purchase Price specified in Paragraph 1(b) hereof without adjustment save for any pro-rated portion of the Occupancy Fee described and calculated in Schedule "C", and the Purchaser shall occupy the Unit on the Occupancy Date pursuant to the Occupancy Licence attached hereto as Schedule "C".

Inspection

26. (a) The Purchaser or the Purchaser's designate as hereinafter provided agrees to meet the Vendor's Representative at the date and time designated by the Vendor or the Vendor's Representative, prior to the Occupancy Date, to conduct a pre-delivery inspection of the Unit (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit, on the TWC Certificate of Completion and Possession (the "CCP") and the PDI Form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the ONHWPA. The said CCP and PDI Forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's Representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work and the Purchaser shall not require any further undertaking of the Vendor to complete any outstanding items. In the event that the Vendor performs any additional work to the Unit in its discretion, the Vendor shall not be deemed to have waived the provision of this Paragraph or otherwise enlarged its obligations hereunder.
- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees that the Vendor or the Vendor's Representative will provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the confirmation of receipt forthwith upon receipt of the HIP.
- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.

- (e) In the event the Purchaser and/or the Purchaser's designate fails to execute the confirmation of receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

Purchaser's Default

27. (a) In the event that the Purchaser is in default with respect to any of his or her or their obligations contained in this Agreement or in the Occupancy License 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 Occupancy Date or 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 (including without limitation, if applicable, the right to make colour and finish selections with respect to the Unit as hereinbefore provided or contemplated), and/or unilaterally declare this Agreement and the Occupancy License, if applicable, to be terminated and of no further force or effect. All monies paid hereunder (including the deposit monies paid or agreed to be paid by the Purchaser pursuant to this Agreement which sums shall be accelerated on demand of the Vendor), together with any interest earned thereon and monies paid or payable (if any) for extras or upgrades or changes ordered by the Purchaser, whether or not installed in the Unit, shall be forfeited to the Vendor for the benefit of the estate of UC Leslieville.
- (b) Notwithstanding anything to the contrary in this Agreement, any default of the Purchaser under this Agreement which results in the Vendor unilaterally declaring this Agreement and the Occupancy License, if applicable, to be terminated and of no further force or effect shall constitute a default of the Purchaser under the Original APS, in which case all monies paid under the Original APS (including the Old Deposit and monies paid for extras or upgrades or changes ordered by the Purchaser), together with any interest earned thereon, shall be forfeited to the Vendor for the benefit of the estate of UC Leslieville.
- (c) 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 and/or the Occupancy License by reason of the Purchaser's default as aforesaid, then the Purchaser shall be obliged to forthwith vacate the Unit (or cause same to be forthwith vacated) if same has been occupied (and shall leave the Unit in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser), and shall 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 that he/she/they does not have) any legal, equitable or proprietary interest whatsoever in the Unit and/or the Property (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

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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. In the event the Vendor's Solicitors or an Escrow Agent is/are holding any of the deposits in trust pursuant to this Agreement, then in the event of default as aforesaid, the Purchaser hereby releases the said solicitors or Escrow Agent from any obligation to hold the deposit monies, in trust, and shall not make any claim whatsoever against the said solicitors or Escrow Agent and the Purchaser hereby irrevocably directs and authorizes the said solicitors or Escrow Agent to deliver the said deposit monies and accrued interest, if any, to the Vendor.

- (d) Notwithstanding subparagraph (a) above, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which are due and payable by the Purchaser to the Vendor pursuant to this Agreement are not made and/or paid on the date due, but are subsequently accepted by the Vendor, notwithstanding the Purchaser's default, then such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to eight (8%) percent per annum above the bank rate as defined in subsection 19(2) of O. Reg. 48/01 to the Act at the date of default.

Common Elements

28. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the conditional building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his/her successors in title against the Vendor. The Vendor may, from time to time, change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any elevations, building specifications or site plans of any part of the Condominium, to conform with any municipal or architectural requirements related to building codes, official plan or official plan amendments, zoning by-laws, committee of adjustment and/or land division committee decisions, municipal site plan approval or architectural control. Such changes may be to the plans and specifications existing at inception of the Condominium or as they existed at the time the Purchaser entered into this Agreement, or as illustrated on any sales material, including without limitation, brochures, and models or otherwise. With respect to any aspect of construction, finishing or equipment, the Vendor shall have the right, without the Purchaser's consent, to substitute materials, for those described in this Agreement or in the plans or specifications, provided the substituted materials are in the judgment of the Project Architect whose determination shall be final and binding, of equal or better quality. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications.

Executions

29. The Purchaser agrees to provide to the Vendor's Solicitors on the Occupancy Date and the Title Transfer Date a clear and up-to-date Execution Certificate confirming that no executions are filed at the local Land Titles Office against the individual(s) in whose name title to the Unit is being taken.

Risk

30. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy Licence attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:
- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted in Paragraph 5 of the Taron Addendum;
 - (b) terminate this Agreement and, provided that the Purchaser is not then in default under this Agreement, return to the Purchaser all deposit (other than the Old Deposit) paid by the Purchaser to the Vendor, with interest payable under law, if there is substantial damage to all or any part of the Condominium, or if the Syndicate retains the insurance proceeds relating to such damage (for certainty, in the case of such termination the provisions of Paragraph 20 shall apply); or
 - (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act;

it being understood and agreed that all insurance policies and the proceeds thereof are to be for the benefit of the Vendor alone.

Tender/Termet

31. (a) Any tender of documents or monies hereunder, including those required to be exchanged on the Occupancy Date and/or 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 his or her solicitor by electronic mail and/or by posting the documentation required to be delivered to the Purchaser on the Occupancy Date and/or Title Transfer Date on an internet web site and providing notice to the Purchaser and/or his/her 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 Occupancy Date and/or 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 Occupancy Date and/or 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:

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- (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) that the Vendor has advised that keys for the Units are available for release at the Property and/or the head office of the Vendor (on the Occupancy Date and/or Title Transfer Date as applicable);
- (iii) 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
- (iv) 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, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's solicitors;

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 Occupancy Date and/or 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 and/or Property, or any deficiency in the construction thereof, or that the Vendor was unable or unwilling to provide occupancy of the Residential Unit and/or complete this transaction in accordance with the provisions of this Agreement and/or the Tarion Addendum. 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 Occupancy Date and/or Title Transfer Date, that the Purchaser is unable or unwilling to complete the purchase transaction or take possession of the Units (or any portion thereof), the Vendor shall be relieved of any obligation to make any formal tender upon the Purchaser or his 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. The Purchaser hereby acknowledges and agrees that the key(s) to the Units shall be released to him/her directly from the site and/or head office of the Vendor when the Purchaser becomes entitled to same in accordance with this Agreement, and the Vendor shall not otherwise be required to produce or deliver a key to the Units on the Occupancy Date and/or Title Transfer Date, or as part of any tender in connection therewith. In the event the Purchaser or his Solicitor fails to appear or appears and fails to close, such attendance by