

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**

**IN THE MATTER OF 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**

**SECOND 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.**

**April 21, 2017**

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## 1.0 INTRODUCTION

1. On May 31, 2016, the Ontario Superior Court of Justice (the “**Court**”) issued 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 including all proceeds thereof (the “**Property**”) of Urbancorp (Leslieville) Developments Inc., (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc., (“**UC Beach**”, together with UC Riverdale, the “**Guarantors**”, and the Guarantors, together with UC Leslieville, the “**Debtors**”) (such proceedings, the “**Receivership Proceedings**”).
2. Prior to the appointment of the Construction Receiver, the Debtors carried on business as land developers principally focused on the development, construction and sale of residential projects located in the Greater Toronto Area.
3. Residential projects under development by the Debtors were typically “pre-sold” by unit and/or home pursuant to agreements of purchase and sale with individual purchasers prior to the commencement of construction. At the commencement of these Receivership Proceedings, the Debtors’ three residential projects, the Riverdale Project, the Leslieville Project, and the Beach Project, were at various stages of completion.
  - a. The Riverdale Project consists of forty-two (42) freehold townhome units and a common elements condominium corporation. Construction of the Riverdale Project is complete with sales to purchasers having closed in late April and early May 2016.
  - b. The Leslieville Project consists of fifty-five (55) condominium townhome units of a proposed condominium (the “**Condominium**”) and a proposed detached house. The units of the Condominium are substantially complete with only certain interior finishes, landscaping, and utility/water connections to be completed. Construction on the detached house has not begun. Of the fifty-five (55) available condominium units, fifty-four (54) were subject to purchase and sale agreements as at the date of the Appointment Order.
  - c. The Beach Project consists of thirty-two (32) semi-detached homes and one (1) detached home. Twenty-five (25) homes are complete with sales to purchasers having closed in 2014 and 2015. The remaining eight (8) homes are in the very early stages of construction (from raw land to initial

framing). Of these eight (8) homes, six (6) were subject to purchase and sale agreements as at the date of the Appointment Order.

4. Pursuant to the Appointment Order, the Construction Receiver's mandate was to, among other things, take possession, to receive, preserve, protect and maintain control of the Property of the Debtors, and with the approval of the Court, to market, advertise and solicit offers in respect of such Property.
5. The initial phase of these Receivership Proceedings included asset preservation, information gathering and development of an asset realization plan. This initial phase was anticipated to last approximately 6 to 8 weeks. However, the development of an asset realization plan was put on hold as a result of the Terra Firma Motion (described below).
6. On July 15, 2016, Terra Firma Capital Corporation ("**Terra Firma**"), a subordinate mortgagee, served a motion (the "**Terra Firma Motion**"), seeking, among other things, an order: (i) declaring that persons who executed agreements of purchase and sale with UC Leslieville and UC Beach but had not closed were subordinate to the interest of Terra Firma in the Property of the Debtors, (ii) after payment of claims ranking in priority to Terra Firma's security, including those of the first ranking mortgage in favour of the Syndicate (defined below), vesting in Terra Firma all of the Debtors' right, title and interest in and to the Property, free and clear of all claims, including any and all interests of such purchasers, and (iii) declaring that, upon payment of the fees and expenses of the Construction Receiver, the Receivership Proceedings were to be terminated (the "**Redemption Order**").
7. The Terra Firma Motion was originally scheduled to be heard on August 15, 2016. By order of the Court, the August 15<sup>th</sup> hearing date was vacated and set down for August 31, 2016 to allow time for settlement discussions amongst Terra Firma and key stakeholders, including a subset of forty-six (46) purchasers at the Leslieville Project (the "**Ad Hoc Leslieville Purchasers**") represented by Dickinson Wright LLP ("**Ad Hoc Leslieville Purchasers Counsel**") and C.R.A.F.T. Development Corporation ("**Craft**"), the developer proposed by Terra Firma to complete the Leslieville Project should a settlement be finalized. As settlement discussions were being held, the Terra Firma Motion continued to move forward but was met with significant resistance and proceeded on a contested litigation path. Six (6) chambers appointments were held to address litigation scheduling matters. Responding motion records were filed on September 2, 2016 by Ad Hoc Leslieville Purchasers Counsel and on September 14, 2016 by counsel to a subset of five (5) purchasers at the Beach Project (the "**Ad Hoc Beach Purchasers Counsel**") and one assignor. Shortly thereafter, in late September 2016, cross-examinations of Terra Firma's Chief Executive Officer were held.
8. A mediation was held on September 28, 2016 before The Honourable Mr. Jack Ground to determine if a settlement was possible with respect to the Leslieville

Project. With the assistance of the Construction Receiver and commitment of key stakeholders, including Canadian Imperial Bank of Commerce (“**CIBC**”) in its capacity as administrative agent (the “**Administrative Agent**”) to the senior secured lending syndicate consisting of CIBC, Canadian Western Bank, and Laurentian Bank of Canada (collectively, the “**Syndicate**”), Terra Firma, the Ad Hoc Leslieville Purchasers, and Craft (collectively, the “**Settlement Parties**”), a settlement framework was established at and following the mediation, which has been crystallized into definitive documentation (the “**Proposed Settlement**”).

9. Given the near completion stage of the Leslieville Project and the significant increase in the market value of the units due to market forces, the negotiations, if concluded, centered on maintaining an opportunity for all existing purchasers of the Leslieville Project (the “**Existing Leslieville Purchasers**”) to purchase their respective townhome units, albeit at a higher purchase price given the change in market conditions and subject to other terms and conditions to be set out in a new agreement of purchase and sale following the completion of the development and construction of the Leslieville Project. Development and construction costs would be financed by the Syndicate and Craft, with a cost overrun and completion guarantee provided by Terra Firma.
10. Extensive negotiations were undertaken among the Settlement Parties to reach the Proposed Settlement, including numerous meetings among the Settlement Parties and the Construction Receiver and attendances before this Court. Negotiations were protracted and, at several junctures, the Proposed Settlement appeared to be at risk. However, through the perseverance of the Settlement Parties and the efforts of the Construction Receiver and its counsel, after over eight months of negotiations, including further extensive discussions with Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”), and Tarion Warranty Corporation (“**Tarion**”), the Construction Receiver now seeks court approval of the various agreements and arrangements that give effect to the Proposed Settlement.
11. In contrast to the Leslieville Project, the remaining eight (8) homes of the Beach Project are only at a very early stage of construction. A settlement akin to the Proposed Settlement was canvassed with the Syndicate and Terra Firma but was not supported with respect to the Beach Project.
12. Accordingly, the Construction Receiver seeks this Court’s approval to implement a sales and marketing process with respect to the Beach Project on an “as is” basis, and to repudiate each outstanding agreement of purchase and sale with UC Beach (each an “**Original Beach APS**”) as the Construction Receiver is not capable of performing these agreements.

## 1.1 PURPOSES OF THIS REPORT

13. The purpose of this second report (the “**Second Report**”) is to:
  - a. describe the Proposed Settlement with respect to the Leslieville Project facilitated by the Construction Receiver amongst the Settlement Parties, and seek this Court’s approval of orders giving effect to the Proposed Settlement (the “**Purchaser Package Approval Order**” and “**Settlement Approval Order**”, respectively);
  - b. describe the proposed sales process with respect to the Beach Project (the “**Beach Sale Process**”) and seek this Court’s approval of an order authorizing (i) the repudiation of each Original Beach APS by the Construction Receiver, and (ii) the engagement of Cushman Wakefield, Brokerage Ltd. (the “**Beach Listing Agent**”) to implement the Beach Sale Process, subject to the supervision of the Construction Receiver (the “**Beach Project Order**”);
  - c. request this Court’s approval of certain administrative matters in respect of the Receivership Proceedings, including (i) an increase to the maximum principal amount of the Construction Receiver’s borrowings from \$3 million to \$6 million, and (ii) authorization for the Construction Receiver to assign the Debtors into bankruptcy (the “**Receivership Administration Order**”);
  - d. provide the Court with the Construction Receiver’s analysis of the priority of secured claims against the Debtors, including an analysis and estimate of the priority of construction lien claims in order to make provision for a fund to be set aside from proceeds of sale to pay such claims;
  - e. provide the Court with a general update of the Construction Receiver’s activities from its appointment to date relating to, among other things, (i) conservatory and security measures, (ii) asset review and analysis, (iii) review of the security positions of the Syndicate, Travelers and Terra Firma, and (iv) court/administrative and regulatory matters; and
  - f. request this Court’s approval of (i) the activities of the Construction Receiver from the date of its appointment to this Second Report, and (ii) the Construction Receiver’s fees and disbursements and the fees and disbursements of its counsel, Gowlings WLG LLP, (“**Construction Receiver’s Counsel**”), its independent counsel, Blake, Cassels & Graydon LLP (“**Construction Receiver’s Independent Counsel**”) and counsel to the Construction Receiver in respect of condominium real estate law, Miller Thomson LLP (“**Construction Receiver’s Real Estate Counsel**”).

## 1.2 CURRENCY

14. Unless otherwise noted, all currency references in this Second Report are to Canadian dollars.

## 1.3 RESTRICTIONS

15. In preparing this Second Report, the Construction Receiver has relied on unaudited financial information prepared by the Debtors' management, former employees, and third party financial and construction advisors, the Debtors' books and records and discussions with the Debtors' management and such third parties. The Construction Receiver has not performed an audit or other verification of such information. The Construction Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Second Report, or relied upon by the Construction Receiver in preparing this Second Report.

## 1.4 DEFINITIONS

16. Capitalized terms in this Second Report shall have the meanings given to them in **Appendix "A"** hereto.

## 2.0 LESLIEVILLE PROJECT

### 2.1 BACKGROUND

17. The Leslieville Project is a residential condominium project located in east Toronto's Leslieville neighbourhood.
18. The Leslieville Project is substantially complete with fifty-five (55) condominium townhome units (the "**Units**"), each with a dedicated underground parking unit, and up to eleven (11) excess underground parking units (the "**Excess Parking Units**") and thirty-three (33) bicycle storage units (the "**Bicycle Storage Units**"). The Leslieville Project also includes a proposed three storey freehold detached house (the "**Detached House**"), the construction of which has not commenced. The Units, Excess Parking Units and Bicycle Storage Units are located at 50 Curzon Street, Toronto. The proposed Detached House was to be located on Jones Avenue, Toronto, adjacent to the Units, which is presently a vacant lot (the "**Vacant Lot**").
19. As at the date of the Appointment Order, all of the Units, with the exception of one, were pre-sold prior to construction pursuant to agreements of purchase and sale which UC Leslieville executed in 2011 (each, an "**Original Leslieville APS**"). Pursuant to each Original Leslieville APS, the Units were scheduled to be completed for occupancy in February, 2013.
20. Construction of the Units and parking structure at the Leslieville Project, however, did not commence until late 2012 to early 2013 following the issuance



of conditional building permits to UC Leslieville by the City of Toronto (the “City”) pursuant to conditional permit agreements (“CPAs”).

21. Since that time, UC Leslieville encountered numerous delays in the construction of the Leslieville Project. As a result, UC Leslieville sought and the City agreed to extend the conditions deadline contained in the CPAs several times, with the latest deadline at the time of the Appointment Order being June 30, 2016. In light of the potential settlement among the Settlement Parties, the Construction Receiver negotiated an extension of this deadline by mutual agreement with the City to December 31, 2016, and subsequently to April 30, 2017. The Construction Receiver is currently seeking a further extension of the CPAs to July 31, 2017.
22. UC Leslieville issued notices of delayed occupancy twelve (12) times over the course of approximately 2.5 years to the Existing Leslieville Purchasers. Based on the information available to the Construction Receiver, UC Leslieville’s last notice was issued on March 16, 2016 and set a revised firm occupancy date of September 14, 2016. Accordingly, the Existing Leslieville Purchasers who executed their Original Leslieville APS in 2011 have waited nearly six (6) years to occupy their Unit.
23. As described in more detail below, the Construction Receiver is of the view that the Units are substantially completed.<sup>1</sup> Based on discussions with management from Urbancorp Toronto Management Inc. (“UTMI”), the former construction manager, the Construction Receiver understands that construction at the Leslieville Project came to a standstill in or about September 2015.

## 2.2 PATH TO PROPOSED SETTLEMENT

24. In light of the late stage of completion of the Leslieville Project and in order to avoid protracted litigation, extensive settlement discussions were pursued among Terra Firma, the Ad Hoc Leslieville Purchasers, the Syndicate, Craft (as proposed developer), and the Construction Receiver through the course of the summer and fall of 2016. These settlement negotiations proceeded in parallel with the litigation timetable of the Terra Firma Motion set and revised at various chambers appointments by this Court on July 19<sup>th</sup>, August 10<sup>th</sup>, August 19<sup>th</sup>, and August 29<sup>th</sup>, 2016. The status of the settlement negotiations among the parties has been reported to this Court at various chambers appointments along with periodic updates provided to the Service List.
25. At the request of Ad Hoc Leslieville Purchasers Counsel and after the cancellation of a court-ordered settlement conference, on September 28, 2016, a private mediation among Terra Firma, Craft, the Ad Hoc Leslieville Purchasers, and the Syndicate was conducted by The Honourable Mr. Jack Ground at the offices of

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<sup>1</sup>The Units still require certain interior finishes, water/sewer connections, internal catch basins, certain rear decks and landscaping to be completed.

the Construction Receiver's Independent Counsel, and included the Construction Receiver.

26. The mediation brought measured but encouraging success, as the Settlement Parties were able to agree to the principal terms of a settlement in respect of the Leslieville Project. In the weeks that followed, the Construction Receiver and its counsel worked with the Settlement Parties to crystallize the settlement into a framework outline. As the proposed settlement required financial commitments from all Settlement Parties, many of the negotiations were between the Syndicate on the one hand and Terra Firma and Craft on the other hand.
27. On November 7, 2016, the Construction Receiver was advised of an impasse between Craft and the Syndicate in such settlement discussions.
28. At the request of the Construction Receiver, on November 11, 2016, the Construction Receiver and Altus Group Limited (“**Altus**”), the Syndicate’s cost consultant for the Leslieville Project, met with representatives of Craft and Urban Renaissance Inc. (“**URI**”), the proposed builder of the Leslieville Project, primarily to gain an understanding of the impasse between the Syndicate and Craft and to conduct further due diligence with respect to the fixed price proposed by Craft for the completion of the construction of the Leslieville Project. Altus further met with Craft on November 15, 2016.
29. At the initiative of the Construction Receiver, follow up discussions were subsequently held among the Construction Receiver, Craft, URI, Altus, and counsel to Craft, Terra Firma and the Syndicate, which ultimately resolved the impasse. During the course of such discussions, a further material issue arose which was resolved by allowing Craft and URI to conduct an additional level of due diligence during the month of December, 2016 (which was ultimately extended to mid-January, 2017) while the parties pursued negotiation of definitive agreements to give effect to the Proposed Settlement.
30. Following the resolution of these issues, on December 8, 2016, a non-binding settlement framework was agreed to by the Settlement Parties and the Construction Receiver (the “**Settlement Framework**”).
31. Since the conclusion of the Settlement Framework, the parties have been actively negotiating several material definitive agreements and orders to be sought from the Court (collectively, the “**Settlement Definitive Documents**”), including among others:
  - a. the Craft Construction Contract and Craft Development Contract, providing a fixed price for completion of construction of the Leslieville Project and the provision of development services necessary to register the Leslieville Project as a Condominium;
  - b. the TF Cost Overrun Agreement, to address financial support for Cost Overruns;

- c. the Syndicate Construction Loan Agreement and the Craft Loan Agreement, providing financing to the Construction Receiver to complete construction of the Leslieville Project by Craft;
- d. a form of New APS to be offered to Existing Leslieville Purchasers who opt-in to the Proposed Settlement and do not rescind their New APS within the statutory 10-day cooling off period under condominium law (“**Opt-In Leslieville Purchasers**”);
- e. a form of Standard Form Sale Agreement to be offered to new purchasers (“**New Leslieville Purchasers**”) for Units not sold to Opt-In Leslieville Purchasers;
- f. Condominium Disclosure Documentation for Opt-In Leslieville Purchasers and New Leslieville Purchasers;
- g. a Purchaser Information Package to be provided to Existing Leslieville Purchasers in respect of the Proposed Settlement to assist them in their decision whether to “opt-in” and pay an additional amount of \$255,000 (the “**Premium**”)<sup>2</sup> for their Unit; and
- h. the proposed Purchaser Package Approval Order and Settlement Approval Order, which give effect to the aforementioned agreements and distribution of proceeds of realization from the Leslieville Project (the “**Proceeds of Realization**”),

all of which are described in more detail below.

- 32. The breadth and complexity of the negotiations of the definitive agreements proved significantly more extensive and took much longer than all parties originally anticipated.
- 33. By late February, the Construction Receiver and the Settlement Parties became increasingly concerned at the delay and expense of the negotiation of the Settlement Definitive Documents. Intensive negotiations among Craft, Terra Firma, the Syndicate and the Construction Receiver and their respective counsel took place throughout March and early April in an effort to resolve outstanding issues and finalize the Settlement Definitive Documents. These efforts included the attendance at a number of “all hands” meetings among Craft, the Syndicate, the Construction Receiver, their counsel and counsel for Terra Firma, as well as the engagement of the Construction Receiver’s Real Estate Counsel to assist in finalizing the New APS and Disclosure Documentation.

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<sup>2</sup> In the Settlement Framework, the Premium was \$225,000. In early April, 2017, to address the substantially higher than anticipated costs associated with the complexities of completing the Settlement Definitive Documents, Terra Firma required an increase of the Premium to \$255,000. The Construction Receiver understands that the increase in the Premium was acceptable to Ad Hoc Leslieville Purchasers Counsel after consultation with their clients, on the basis that the market value of the Units had further improved since the Settlement Framework was achieved.

34. The Settlement Parties were able to conclude the Settlement Definitive Documentation during this past week. The Proposed Settlement has the following advantages over alternative realization strategies:
- a. it avoids the litigation risks associated with the Terra Firma Motion and the delay and uncertainty of any appeals therefrom;
  - b. it provides predictability of results, given the fixed price component of the Craft Construction Contract, the TF Cost Overrun Agreement provided by Terra Firma, the Premium under the New APS, and other protections contained in the Proposed Settlement (described in more detail below);
  - c. it represents a commitment from all key stakeholders (lenders, purchasers and developer/builder) of the Leslieville Project with the positive result of providing Existing Leslieville Purchasers with an opportunity to purchase and finally occupy their Unit after the long delay caused by UC Leslieville's failures; and
  - d. if approved by the Court, it allows construction to recommence this summer and avoid another winter of inactivity.

### 2.3 PURCHASER PACKAGE APPROVAL ORDER

35. The Construction Receiver is seeking approval of the Purchaser Package Approval Order which, if granted, will authorize the Construction Receiver to deliver to each Existing Leslieville Purchaser an individualized information package with respect to the Proposed Settlement (the "**Purchaser Information Package**") consisting of:
- a. a notice to each Existing Leslieville Purchaser (the "**Settlement Notice Letter**") notifying them of the Proposed Settlement, the opportunity to enter into a New APS with UC Leslieville, the process to opt-in to the Proposed Settlement and general consequences to an Existing Leslieville Purchaser if they choose to opt-out, and directing them to the Construction Receiver's website for further information, including the Second Report;
  - b. an acknowledgment letter to be signed by each Existing Leslieville Purchaser if they wish to opt-in to the Proposed Settlement (the "**Opt-In Letter**");
  - c. a New APS, which has been executed by UC Leslieville by its Construction Receiver;
  - d. an addendum (the "**Tarion Addendum**") to the New APS from Tarion which forms part of the New APS; and
  - e. a Disclosure Statement and accompanying documentation being:

- (i) the first year budget statement for the proposed Condominium,
  - (ii) the proposed Declaration, By-laws and Rules for the proposed Condominium,
  - (iii) the proposed Condominium management agreement with FirstService Residential Inc., and
  - (iv) a preliminary draft plan of condominium,
- (collectively, the “**Disclosure Documentation**”);
- f. an acknowledgement to be signed by each Opt-In Leslieville Purchaser of receipt of, among other things, the Disclosure Documentation (“**Acknowledgement**”); and
  - g. in the case of certain Leslieville Assignees, a signed irrevocable direction directing the real estate broker or lawyer (the “**Deposit Holder**”) holding any portion of the purchase price deposit monies paid by such Leslieville Assignee (the “**Old Deposit**”) to release the entire remaining portion of the Old Deposit to the Leslieville Assignor (the “**Irrevocable Direction**”) or other evidence of payment satisfactory to the Construction Receiver.
36. A copy of the proposed Purchaser Information Package is attached as **Schedules “A” to “F”** to the Purchaser Package Approval Order.

#### 2.4 **TREATMENT OF EACH ORIGINAL LESLIEVILLE APS AND EACH NEW APS**

37. Terra Firma did not support the adoption by the Construction Receiver of each Original Leslieville APS, as this would mean that the Construction Receiver would be bound by the terms contained in each agreement, including the payment of certain real estate broker commissions on closing. In addition, the purchase price in each Original Leslieville APS was well below current market values and was not acceptable to Terra Firma from a realization perspective.
38. Accordingly, the Settlement Parties agreed that the offer to Existing Leslieville Purchasers would be embodied in a New APS with the original purchase price increased by the Premium, and the proposed Settlement Approval Order would authorize the Construction Receiver to repudiate each Original Leslieville APS.
39. The New APS was modeled after the Original Leslieville APS with modifications so that the new arrangements were acceptable to the Settlement Parties. A summary of the key terms and conditions of each New APS are as follows:
- a. **Purchased Property:** The Unit contemplated under the Original Leslieville APS, together with a parking unit;

- b. **Purchase Price:** The purchase price under the Original Leslieville APS, without any adjustments, discounts or credits, plus the Premium;
- c. **Old Deposit:** The Opt-In Leslieville Purchaser will receive credit for the deposits paid by it to UC Leslieville under the Original Leslieville APS (or, in the case of an assignee, paid to the assignor of the Original Leslieville APS);
- d. **Additional Deposit:** A further deposit of \$20,000 payable by each Opt-In Leslieville Purchaser is required to be paid within 40 days from the date the Settlement Conditions are satisfied (or waived), and will be held in trust by the Construction Receiver's real estate counsel pending closing of the New APS;
- e. **Upgrades:** Upgrades contracted for by each Opt-In Leslieville Purchaser (as more particularly set out in **Schedule "F"** to the New APS) will be completed by Craft. If Craft determines that any upgrade contemplated under the New APS cannot be completed on an economic basis, then the Opt-In Leslieville Purchaser will receive a credit on the final statement of adjustments on closing in an amount equal to that portion of the amount paid by the Opt-In Leslieville Purchaser for such upgrade which remains incomplete in whole or in part and Craft will reduce the fixed price payable under the Craft Construction Contract by the same amount;
- f. **Assignability:** Each Opt-In Leslieville Purchaser will not be able to assign its right, title and interest in the New APS to a third party prior to closing. One assignment and one amendment were requested with respect to immediate family members by Ad Hoc Leslieville Purchasers Counsel on the basis that it would cause undue hardship on the Existing Leslieville Purchaser seeking to opt-in to the Proposed Settlement. The Construction Receiver and the Settlement Parties have agreed to such requests on the understanding there are no other hardship requests;
- g. **"As is Where is":** Notwithstanding any warranty coverage provided by Tarion (as described below under *Section 2.5*), the sale to each Opt-In Leslieville Purchaser of its Unit by the Construction Receiver is on an "as is where is" basis without recourse or liability to the Construction Receiver;
- h. **Interim Occupancy:** Pursuant to each of the Craft Construction Contract and Craft Development Contract, interim occupancy of any Unit will not be permitted without the prior written approval of the Construction Receiver. The Construction Receiver will only permit occupancy of a Unit to be taken if it is satisfied (in its sole discretion) that it has sufficient funding available to fund the projected cost to complete the Condominium or any part thereof. On occupancy, the Opt-In Leslieville Purchaser will commence payment to the Construction Receiver of interim occupancy

fees and other costs pursuant to the occupancy license included as part of the New APS. The Final Tentative Occupancy Date is February 1, 2018 as set out in the Tarion Addendum appended to each New APS, which date may be extended by the Construction Receiver for up to 120 days, such date being the “**Final Tentative Occupancy Date**”. If occupancy is delayed beyond the Final Tentative Occupancy Date compensation must be paid as an adjustment on closing in the amount not exceeding \$7,500 per unit, all as provided for in the Tarion Addendum; and

- i. **Ad Hoc Leslieville Counsel Legal Costs:** The New APS contemplates each Opt-In Leslieville Purchaser paying to the Vendor, in trust, his or her proportionate share of the legal costs and disbursements of Ad Hoc Leslieville Purchasers Counsel (the “**DW Costs**”) with a credit for any retainer already paid. The DW Costs will be an adjustment on the statement of adjustments on closing and will be calculated by Ad Hoc Leslieville Purchasers Counsel and notified in writing to the Vendor. The Construction Receiver has been advised by Ad Hoc Leslieville Purchasers Counsel that as at November 7, 2016 (counsel’s last invoice date), the aggregate fees, disbursements and HST were \$208,274.30.
40. The Settlement Approval Order provides that prior to an Opt-In Leslieville Purchaser taking occupancy of its Unit, the Construction Receiver may deliver a notice to each Opt-In Leslieville Purchaser notifying them of a “Funding Failure” (a “**Funding Failure Notice**”) if the Construction Receiver has determined it does not have, and is unable to obtain sufficient financing or access to sufficient funds from the Syndicate, Terra Firma, or Craft, to fund the projected cost to complete the Condominium or any part thereof (a “**Funding Failure**”). On the delivery of such Funding Failure Notice, the New APS is deemed terminated and null and void and no force and effect, and any deposit monies held by the Construction Receiver will be returned. Once occupancy has been taken of the Unit, the Construction Receiver is not able to deliver a Funding Failure Notice.
41. Specifically, GC 7.1.8 of the Craft Construction Contract (and the corresponding section of the Craft Development Contract) defines a “Funding Failure” as follows:
  - a. if, at any time and for whatever reason (including by reason of default by the Contractor or the repair or replacement of any damage or destruction to all or any part of the Project), the estimated cost to complete the Work (including rectifying all known Latent Defects and completing all warranty work) and the Development Services, as determined by the Project Monitor, acting reasonably, is greater than the aggregate amount of all funding available for the Project pursuant to the Craft Loan Agreement, the Syndicate Construction Loan Agreement and, to the extent available, the Craft Cash Collateral, and Terra Firma (or to the extent required or permitted under the TF Cost Overrun Agreement, the Contractor and the

- Syndicate) declines to fund the difference pursuant to the TF Cost Overrun Agreement; or
- b. if, at any time, a Cost Overrun is not funded by Terra Firma as required under the TF Cost Overrun Agreement (or by the Contractor or the Syndicate as required or permitted under the TF Cost Overrun Agreement).
42. In addition, the New APS will not become effective unless the following conditions are satisfied or waived (the “**Settlement Conditions**”) on or before August 31, 2017 (the “**Settlement Orders Outside Date**”), as such date may be extended from time to time as may be agreed to by the Construction Receiver, Craft, Terra Firma and the Administrative Agent:
- a. the Existing Leslieville Purchaser has “opted in” to the Proposed Settlement in accordance with the terms of the Purchaser Package Approval Order by the Opt-In Deadline and has not rescinded their New APS;
  - b. the Settlement Approval Order becomes effective in accordance with its terms and the Construction Receiver has filed a certificate with the Court confirming the same;
  - c. each of the Purchaser Package Approval Order, Settlement Approval Order, Beach Project Order, Receivership Administration Order (the “**Settlement Orders**”) becomes a final and non-appealable order of the Court on or before the Settlement Outside Date, which means that no appeal of such Orders is pending before the expiry of the applicable appeal period, or if such Orders are appealed, such appeal is determined in favour of the Construction Receiver (a “**Final Order**”); and
  - d. All of the conditions precedent under the Settlement Definitive Agreements have been satisfied or waived in accordance with such Settlement Definitive Agreements.
43. If all of the Settlement Conditions are not satisfied or waived by the Settlement Outside Date, each New APS will become null and void and of no force and effect.

## 2.5 TARION WARRANTY CORPORATION COVERAGE

44. A condition precedent to the Proposed Settlement is that satisfactory arrangements are made with Tarion so that warranty coverage under the *Ontario New Home Warranties Plan Act* (Ontario) (the “**ONHWPA**”) is available to Existing Leslieville Purchasers, New Leslieville Purchasers and the Condominium Corporation. Accordingly, Tarion became an instrumental party in the completion of the Proposed Settlement and their cooperation was of great assistance to the Construction Receiver.



45. The Construction Receiver understands that based on the provisions of the ONHWPA, interpretation thereof and historical practice, a purchaser who buys a residential Unit from the Construction Receiver pursuant to the terms of the Proposed Settlement properly acquires that Unit subject to the statutory warranty guaranteed by Tarion if the Unit is “substantially completed” as of the date of the Construction Receiver’s appointment.
46. Accordingly, a key issue to be resolved was whether the Leslieville Project was “substantially completed” at the time of the Construction Receiver’s appointment. “Substantially completed” is not defined in the ONHWPA and the Construction Receiver is not aware of any judicial consideration of the term in the context of the ONHWPA. As a result, the Construction Receiver engaged in extensive discussions with Tarion, in consultation with Altus, who performed extensive site inspections and cost-to-complete analyses, in order to resolve the issue.
47. As a result of the above collaboration, on April 20, 2017, Tarion advised by letter to the Construction Receiver that it had determined that the Leslieville Project has been “substantially completed” within the meaning of the ONHWPA and that the applicable warranties under the ONHWPA apply with respect to the Leslieville Project. As a result, the Existing Leslieville Purchasers, New Leslieville Purchasers and the Condominium Corporation will receive the benefit of the warranty protections provided under the ONHWPA. A copy of the letter from Tarion is attached hereto as **Appendix “B”** to this Second Report.

## 2.6 DISCLOSURE DOCUMENTATION

48. In accordance with the disclosure requirements under the *Condominium Act* (Ontario), UC Leslieville had provided each Existing Leslieville Purchaser in 2011 with (i) a disclosure statement, (ii) budget statement for the one year period immediately following the registration of the proposed declaration, (iii) the proposed declaration, (iv) proposed by-laws and rules of the condominium corporation, (v) the proposed condominium management agreement, and (vi) the preliminary draft plan of the condominium (the “**Original Disclosure Documentation**”).
49. The Construction Receiver has reviewed the Original Disclosure Documentation, and with the assistance of the Construction Receiver’s Real Estate Counsel and other counsel, URI, UC Leslieville’s surveyor, and the proposed Condominium property manager, has prepared the Disclosure Documentation to reflect, among other things
  - a. the new circumstances of the Receivership Proceedings;
  - b. the Proposed Settlement, and related risks of dealing with an insolvent entity;
  - c. a revised draft plan of condominium which reflects, as a result of construction completed by UC Leslieville, fewer residential units (from 63

originally down to 55), fewer visitor parking spots (from 16 down to 7) and the addition of 33 Bicycle Storage Units; and

- d. the right of UC Leslieville as the Declarant to have the option to require the Condominium to purchase the Geo-Thermal System for \$800,000, inclusive of HST.
50. The Construction Receiver seeks this Court's approval of the Disclosure Documentation for dissemination to Existing Leslieville Purchasers as well as New Leslieville Purchasers seeking to acquire Unsold Units.
  51. The Disclosure Documentation contains a requirement for a certificate to be executed by a chief financial officer or chief executive officer of the Declarant, UC Leslieville. There are currently no such officers at UC Leslieville. Accordingly, the Purchaser Package Approval Order provides that the Construction Receiver execute the required certificate on behalf of UC Leslieville without any personal liability on the part of the Construction Receiver or its officers or directors. Although given this authority to execute such certificates, the Purchaser Package Approval Order and the Settlement Approval Order expressly provide that the Construction Receiver is not a "declarant" within the meaning of the *Condominium Act* (Ontario).

## 2.7 "OPTING IN" TO THE PROPOSED SETTLEMENT

52. As described above, the procedure to "opt-in" to the Proposed Settlement is set out in the Settlement Notice Letter attached as **Schedule "A"** to the Purchaser Package Approval Order, which will be sent to each Existing Leslieville Purchaser in accordance with the Purchaser Package Approval Order.
53. In order for the Construction Receiver to complete each individualized Purchaser Information Package, including populating the form of New APS with purchaser names, original purchase price, Premium, new purchase price, deposit credits and upgrade information, the Construction Receiver prepared a schedule summarizing this information, which is attached hereto as ***Confidential Appendix "A"***. The Confidential Appendix was reviewed by the Ad Hoc Leslieville Purchasers Counsel, Terra Firma, and the Syndicate and approved by Ad Hoc Leslieville Purchasers Counsel and Terra Firma. As the schedule contains personal and commercially sensitive information, the Construction Receiver seeks to seal ***Confidential Appendix "A"***.
54. Following receipt of the Purchaser Information Package, each Existing Leslieville Purchaser will have until 5:00 pm ET on May 19, 2017 (the "**Opt-In Deadline**"), approximately a two-week period, to "opt-in" to the Proposed Settlement.
55. An Existing Leslieville Purchaser who wishes to "opt-in" to the Proposed Settlement must return to the Construction Receiver by the Opt-In Deadline fully executed copies of (i) the Opt-In Letter, (ii) its New APS and Acknowledgement, and (iii) the Tarion Addendum (the "**Opt-In Package**"). Additional

documentation is required to be provided by Existing Leslieville Purchasers who are assignees of an Original Leslieville APS (“**Leslieville Assignees**”) (as described in the Settlement Notice Letter) as part of the Opt-In Package.

56. Existing Leslieville Purchasers who wish to view their Unit before opting-in to the Proposed Settlement will be invited to contact the Construction Receiver as soon as possible after receipt of the Settlement Notice Letter, to arrange for an opportunity to view the applicable Unit.

## 2.8 “OPTING OUT” OF THE PROPOSED SETTLEMENT

57. Each Existing Leslieville Purchaser who does not deliver a fully executed Opt-In Package to the Construction Receiver by the Opt-in Deadline will be deemed to have opted-out of the Proposed Settlement (each, an “**Opt-Out Leslieville Purchaser**”), and the applicable New APS executed by the Construction Receiver for and on behalf of UC Leslieville will be null and void.
58. On the Effective Date of the Settlement Approval Order, each Opt-Out Leslieville Purchasers’ Original Leslieville APS will be repudiated and deemed to be terminated, and each Opt-Out Leslieville Purchaser will have no recourse against any Property of the Debtors other than an unsecured claim against the estate of the Debtors.
59. In addition, Opt-Out Leslieville Purchasers (other than Leslieville Assignees, to the extent of deposit amounts that have not been paid to the applicable Leslieville Assignor, and therefore do not have a claim for such amounts) will retain only a right to make a claim:
  - a. against Tarion, in respect of the deposit monies paid under the Original Leslieville APS, up to \$20,000; and
  - b. against Travelers, in respect of any amounts paid under the Original Leslieville APS on account of deposits in excess of \$20,000, but excluding any deposits for upgrades.
60. The entitlement of an Opt-Out Leslieville Purchaser to the return of all or any part of deposit monies paid by such Opt-Out Leslieville Purchaser from Tarion and Travelers will be determined and processed by Tarion and Travelers, as applicable, and not the Construction Receiver. Any recovery of deposit monies paid by the applicable Opt-Out Leslieville Purchaser under the Original Leslieville APS will not include any monies paid on account of upgrades.

## 2.9 TREATMENT OF LESLIEVILLE ASSIGNORS & LESLIEVILLE ASSIGNEES

61. Based on the records of UC Leslieville, there are 16 Leslieville Assignees, all of which are represented by Ad Hoc Leslieville Purchasers Counsel.

62. Through discussions with Ad Hoc Leslieville Purchasers Counsel, it became apparent that the reimbursement of Old Deposits made by Leslieville Assignees to Leslieville Assignors in order to obtain an assignment of the Original Leslieville APS varied. Based on information provided by Ad Hoc Leslieville Purchasers Counsel, the Construction Receiver understands that:
- a. Twelve (12) of the Leslieville Assignees have reimbursed their respective Leslieville Assignors (and/or paid UC Leslieville) the full amount of the Old Deposits paid under the Original Leslieville APS;
  - b. Two (2) of the Leslieville Assignees have paid the full amount of the Old Deposit paid under the Original Leslieville APS to a Deposit Holder to be held in trust pending closing of the Original Leslieville APS and to be paid to their respective Leslieville Assignors upon the closing of the Original Leslieville APS;
  - c. One (1) Leslieville Assignee has reimbursed his/her Leslieville Assignor \$59,000 of the \$59,900 Old Deposit paid under the Original Leslieville APS and paid \$1,000 to a Deposit Holder to be held in trust pending the closing of the Original Leslieville APS and to be paid to the Leslieville Assignor upon the closing of the Original Leslieville APS;
  - d. One (1) of the Leslieville Assignees has paid \$35,000 of the \$62,000 Old Deposit paid under the Original Leslieville APS to a Deposit Holder to be held in trust pending closing of the Original Leslieville APS and to be paid to his/her Leslieville Assignor upon the closing of the Original Leslieville APS. The \$27,000 balance of the Old Deposit paid under the Original Leslieville APS has not been paid by such Leslieville Assignee to either his/her Leslieville Assignor or to a Deposit Holder.
63. In order to participate in the Proposed Settlement, all Leslieville Assignees must provide evidence satisfactory to the Construction Receiver of payment of the amount of the Old Deposit to the Leslieville Assignor. The particular requirements are set out in the Settlement Notice Letter. For Leslieville Assignees and Leslieville Assignors who do not participate in the Proposed Settlement, the rights of such parties to assert a Tarion Deposit Claim against Tarion and an Excess Insurance Claim against Travelers are set out in the Settlement Approval Order.

## **2.10 COMPLETION OF CONSTRUCTION OF THE LESLIEVILLE PROJECT**

64. Craft was introduced to the Settlement Parties as the proposed developer of the Leslieville Project by Terra Firma. Craft is a residential and commercial developer who has developed over 2.5 million square feet of residential and commercial uses to date.
65. If approved by this Court, the construction and development of the Leslieville Project will be completed within these Receivership Proceedings by Craft

pursuant to the Craft Construction Contract and Craft Development Contract. Copies of the Craft Construction Contract (without schedules)<sup>3</sup> and Craft Development Contract are attached as **Appendix “C”** and **Appendix “D”** to this Second Report, respectively.

66. The Craft Construction Contract contemplates that Craft will retain URI as its constructor and general contractor to complete the construction of the Leslieville Project. URI is a registered builder with Tarion and specializes in providing support services to the residential construction industry. Craft will also retain qualified consultants for independent quality assurance, and will complete the Leslieville Project for condominium registration. Craft’s current intention is to retain the pre-existing consultants for the Leslieville Project to the extent appropriate.
67. Under the Craft Construction Contract, Craft will have total control over all aspects of the construction and will be responsible for directing and supervising all work performed on site. The Construction Receiver will not be responsible for onsite supervision, review or certification of the construction work provided by Craft in respect of the Leslieville Project, but will receive written monthly progress reports from Craft. Further, the Construction Receiver will receive reports from the Project Monitor in connection with monthly draw requests.
68. Craft has agreed to complete the construction of the Leslieville Project for an all-in fixed construction contract price totaling \$5.35 million (exclusive of HST) (the **“Fixed Price”**), excluding work completed by Craft pursuant to approved and pre-funded Change Orders and costs related to the work and services in respect of the Geo-Thermal System (described in more detail in *Section 2.13 Geo-Thermal System*). The cost of the work under each approved Change Order is considered a “cost overrun” which is to be funded by Terra Firma under the TF Cost Overrun Agreement (described in more detail under *Section 2.12 - TF Cost Overrun Agreement*). The primary exclusion from the scope of the Fixed Price relates to work arising from **“Latent Defects”**.
69. Because the cost to rectify a Latent Defect is outside the scope of the Fixed Price and to be pre-funded by Terra Firma, significant negotiations were undertaken by Craft and Altus, with the assistance of the Construction Receiver, to delineate and refine what constitutes a “Latent Defect”. These discussions culminated in a schedule appended to the Craft Construction Contract (the **“Latent Defect Schedule”**). In addition, any condition not listed on the Latent Defect Schedule may still constitute a “Latent Defect” if such condition: (i) was not known by Craft on the date it entered into the Craft Construction Contract, (ii) was not discovered by Craft during its diligence process, and (iii) could not have been reasonably discovered by Craft during its diligence process.

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<sup>3</sup>Due to size, a copy of the Craft Construction Contract (with schedules) will be filed with the Court and posted on the Construction Receiver’s website for stakeholders to review.

70. Craft has estimated that Substantial Performance of the Work (as defined under the Craft Construction Contract) will take approximately eight (8) months from commencement of the construction work, but has an outside date of June 15, 2018 (the “**Outside Date**”), subject to extension as provided under the Craft Construction Contract. If Craft does not attain Substantial Performance of Work by the Outside Date, such event constitutes a Major Event of Default under the Craft Construction Contract and gives rise to remedies available to the Construction Receiver, including among other things, the termination of the Craft Construction Contract.
71. The full scope of the services agreed to be performed by Craft as the developer are outlined in the Craft Development Contract. Under the Craft Development Contract, Craft has agreed to perform (or cause to be performed) all of the work and services necessary to complete the development of the Leslieville Project, which include approval and registration of the Condominium in accordance with the requirements of applicable law, all Development Approvals, the Tarion Home Warranty Plan and each New APS as well as to market and sell all Unsold Units and close the sale of all of the Units (described as “**Development Services**” under the Craft Development Contract). The initial budget prepared by Craft estimated the cost under the Craft Development Contract to be \$945,500 (the “**Initial Development Budget**”). Under the terms of the Craft Development Contract, a budget increase of \$197,500 has been requested by Craft, which increases the Initial Development Budget to \$1,143,000. This increase has been approved by Terra Firma and is to be funded by Terra Firma pursuant to the TF Cost Overrun Agreement.
72. As part of the Development Services, Craft will negotiate development, servicing, site plan, and other similar agreements with the City and has agreed to fulfill the conditions under those agreements. These types of development agreements must be executed by the owner of the property (as opposed to the developer). As there are currently no officers of UC Leslieville, the Settlement Approval Order authorizes the Construction Receiver to execute such agreements for and on behalf of UC Leslieville without any liability on the part of the Construction Receiver or its officers or directors.
73. Craft’s total compensation set out in the Craft Development Contract is as follows (the “**Craft Compensation**”):
- a. a management fee of \$1.5 million consisting of:
    - i. \$375,000 (the “**Earned Management Fee**”) to be deferred until the Cash Collateral Release Date (defined below), which requires construction of the Leslieville Project to be completed; and
    - ii. \$1.125 million (the “**Deferred Management Fee**”) to be deferred and paid from Proceeds of Realization in accordance with a

distribution waterfall set out in the Settlement Approval Order (the “**Waterfall**”) (discussed below);

- b. a deferred success fee of \$1 million (the “**Craft Success Fee**”) to be deferred and paid from Proceeds of Realization in accordance with the Waterfall; and
  - c. subject to the satisfaction of the Vacant Lot Conditions, as defined in the Craft Development Contract (which includes, among other things, the completion of the construction work and any *Planning Act* (Ontario) compliance), the transfer to Craft of the Vacant Lot or to such third party as Craft may direct.
74. Pursuant to the proposed Settlement Approval Order, as security for the payment of the Deferred Management Fee and the Craft Success Fee, Craft is granted fixed and specific charges on the Leslieville Project (the “**Craft Deferred Management Fee Charge**”) and the “**Craft Success Fee Charge**”, respectively).
75. Both the Craft Construction Contract and Craft Development Contract allow the Construction Receiver to terminate either or both of the agreements in the event of a “Major Event of Default” (as defined therein). In such circumstances, Craft will not be entitled to receive any portion of the Craft Compensation, and the repayment of the \$2 million of construction financing provided by Craft (described below) will be subordinated such that it will rank after the repayment of the Terra Firma secured obligations (as set out in the Waterfall in *Section 2.16 Proposed Distribution of Proceeds of Realization*).
76. In contrast, if a Funding Failure occurs and Craft is not in default under either of the Craft Construction Contract or Craft Development Agreement, the Construction Receiver may terminate both contracts with limited liability to Craft.
77. Each of the Craft Construction Contract and Craft Development Contract are subject to the satisfaction or waiver of certain conditions precedent, which include, the execution and delivery of each of the other Settlement Definitive Documents, the Court approval of the Purchaser Package Approval Order, Settlement Approval Order, the Beach Project Order, and the Receivership Administration Order (and such orders becoming Final Orders) certain arrangements with Tarion and Travelers with respect to administration of deposit claims and warranty coverage, the receipt by the Construction Receiver of the initial amount of the Craft Loan and the Craft Cash Collateral, the pre-funding by Terra Firma of all Cost Overruns identified prior to execution of the contracts, and the satisfaction of the Bankruptcy Condition.

## 2.11 ENGAGEMENT OF PROJECT MONITOR

78. As part of the Proposed Settlement, the Construction Receiver intends to engage Altus to act as the “Project Monitor” under the Craft Construction Contract and Craft Development Contract, and as an independent cost consultant. In this role,

Altus will, among other things, verify payment applications made by Craft, and also provide recommendations with respect to Change Order Requests made by Craft, and in cases where such Change Order Requests involve a change in the contract price that is less than or equal to \$100,000, such recommendations by Altus will be final and binding on Craft, Terra Firma and the Construction Receiver.

79. Given the important role served by Altus in the Proposed Settlement, the Settlement Approval Order also seeks approval of the engagement of Altus by the Construction Receiver (the “**Project Monitor Engagement**”). A copy of the engagement letter of the Project Monitor is attached as **Appendix “E”** to this Report.

## **2.12 FINANCING COMPLETION OF CONSTRUCTION OF LESLIEVILLE PROJECT**

80. The remaining construction and development of the Leslieville Project will be financed by Craft and the Syndicate on the terms and conditions set out in the Craft Loan Agreement and the Syndicate Construction Loan Agreement, respectively. Copies of the Craft Loan Agreement and the Syndicate Construction Loan Agreement are attached to this Report as **Appendix “F”** and **Appendix “G”**, respectively.
81. In the event construction and development costs exceed the financing provided by the Syndicate and Craft, Terra Firma has entered into the TF Cost Overrun Agreement with the Construction Receiver to fund all Cost Overruns and has absolutely, unconditionally and irrevocably guaranteed the completion of the construction and development of the Leslieville Project as contemplated by the Craft Construction Contract and the Craft Development Contract (*see Section 2.12 - TF Cost Overrun Agreement*).

### ***Craft Loan Agreement***

82. As a condition to the Proposed Settlement, Craft is to provide the Construction Receiver with a “first in” \$2 million construction loan, which is subordinate to the Syndicate Pre-Filing Secured Obligations. The key terms of the Craft Loan Agreement are set out below:
- a. **Initial Principal Amount:** \$2 million to be advanced as one single advance (the “**Craft Loans**”) to the Construction Receiver to be held by the Construction Receiver for payment of construction and development costs;
  - b. **Commitment Fee:** none;
  - c. **Interest:** 7% per annum;



- d. **Additional Obligations:** additional obligations may be added to the loan amount, including: (i) Cost Overruns funded by Craft pursuant to the TF Cost Overrun Agreement and related fees (described in more detail below), and (ii) other amounts, costs or expenses funded by Craft pursuant to the terms of the Craft Construction Contract or Craft Development Contract that expressly provide thereunder to be loans funded by Craft;
- e. **Repayment:** the loan has no maturity date, but rather is repaid from Proceeds of Realization as and when such Proceeds of Realization become available for distribution by the Construction Receiver in accordance with the Waterfall;
- f. **Craft Construction Charge:** all obligations of the Construction Receiver under the Craft Loan Agreement are to be secured by a Court ordered charge over the Leslieville Project, and has the priority set out in the Waterfall;
- g. **Conditions Precedent:** The obligation of Craft to advance the Craft Loans is subject to certain conditions precedent, which are similar to the conditions precedent to the Craft Development Contract and the Craft Construction Contract. Given that Craft, as lender is also the contractor and developer, the conditions precedent to each disbursement of the Craft Loan by the Construction Receiver to pay construction and development costs are limited; and
- h. **Events of Default and Remedies:** Given that the borrower is the Construction Receiver, the Events of Default are limited in nature.

### *Syndicate Construction Loan Agreement*

- 83. As a condition to the Proposed Settlement, the Syndicate has agreed to provide the Construction Receiver with a \$4.5 million construction loan (the “**Syndicate Construction Loan Agreement**”) to fund construction and development costs. The key terms of the Syndicate Construction Loan Agreement are set out below:
  - a. **Initial Principal Amount:** \$4.5 million to be advanced by multiple advances but only available once the Craft Loans have been fully advanced and disbursed by the Construction Receiver in payment of construction and/or development costs (the “**Syndicate Construction Loan**”);
  - b. **Purpose:** The Syndicate Construction Loan is required to fund the Fixed Price under the Craft Construction Craft, and the initially budgeted Development Costs. It is not to be used to fund any Cost Overruns;
  - c. **Commitment Fee:** a \$200,000 commitment fee is to be paid when the principal is repaid;

- d. **Interest:** CIBC Prime Rate plus 5% per annum;
- e. **Additional Obligations:** additional obligations may be added to the loan amount, including Cost Overruns funded by the Syndicate (if Terra Firma defaults in funding) pursuant to the TF Cost Overrun Agreement and related fees (described in more detail below);
- f. **Repayment:** the loan has no maturity date, but rather is to be repaid from Proceeds of Realization as and when such Proceeds of Realization become available for distribution by the Construction Receiver in accordance with the Waterfall set out in the Settlement Approval Order;
- g. **Syndicate Charge:** all obligations of the Construction Receiver under the Syndicate Construction Loan Agreement are to be secured by a Court ordered charge over the Leslieville Project and the other property and assets of each of the Debtors, which is subordinate only to the Construction Receiver's Charge;
- h. **Initial Conditions Precedent:** The obligation of the Syndicate to advance any Syndicate Construction Loan is subject to certain conditions precedent, which are similar to the conditions precedent to the Craft Development Contract and the Craft Construction Contract (described above), with the additional requirement that the Craft Loans have been fully advanced and disbursed by the Construction Receiver in payment of construction and/or development costs;
- i. **Conditions Precedent to Each Advance:** Customary conditions precedent for the advance of construction loans including a "cost to complete" test to be completed by Altus and that all Cost Overruns have been fully funded in order to ensure sufficient funding is available to complete the Leslieville Project; and
- j. **Events of Default and Remedies:** Given that the borrower is the Construction Receiver, the Events of Default are limited in nature.

#### ***TF Cost Overrun Agreement***

- 84. Pursuant to the TF Cost Overrun Agreement, Terra Firma has agreed to pre-fund all Cost Overruns to the Construction Receiver. In addition, Terra Firma has provided a guarantee of the completion of the Leslieville Project as contemplated by the Craft Construction Contract and the Craft Development Contract (whether by Craft or another contractor or builder) and is liable for all costs of such completion in excess of any un-advanced amounts of the \$4.5 million commitment under the Syndicate Construction Loan Agreement. All amounts funded by Terra Firma under the TF Cost Overrun Agreement bear interest at the rate of 16% per annum and are to be paid from Proceeds of Realization pursuant to the Waterfall in the same priority as the existing Terra Firma Indebtedness. A

copy of the TF Cost Overrun Agreement is attached to this Report as **Appendix “H”**.

85. Pursuant to the TF Cost Overrun Agreement:
- a. If Terra Firma defaults in its obligation to fund any Cost Overrun, then first, Craft and second, the Syndicate have the option of funding such Cost Overrun. If either of such parties elects to fund such Cost Overrun, then, subject to applicable law, it is entitled to charge:
    - (i) a commitment fee in an amount of up to \$250,000; and
    - (ii) a deferred fee in the amount equal to 25% of such Cost Overrun.
86. Once interim occupancy of any of the Units occurs, Craft is obligated to fund any Cost Overruns that Terra Firma defaults in funding and, in such case, is entitled to the same commitment and deferred fees.
87. All Cost Overruns funded by Craft or the Syndicate together with such fees are to be paid from Proceeds of Realization. The amount of each such funded Cost Overrun and commitment fee are to be added to the Craft Loan or the Syndicate Loan, as the case may be, and each such deferred fee (referred to as a “**Craft COR Deferred Fee**” or a “**Syndicate COR Deferred Fee**”, respectively) is to be paid after Travelers and Tarion, but before Terra Firma in the priority provided in the Waterfall set out in the Settlement Approval Order. In order for such deferred fees to be paid in priority to unsecured creditors, the Settlement Approval Order grants both the Syndicate and Craft a fixed and specific charge on the Leslieville Project (the “**Syndicate COR Deferred Fee Charge**”) and the “**Craft COR Deferred Fee Charge**”, respectively) as security for the payment of all deferred fees.
88. If the Syndicate defaults in its obligation to fund any amount under the Syndicate Construction Loan Agreement, then Craft and Terra Firma have the option to fund such amounts (the “**Syndicate Default Funded Amounts**”). If either or both of such parties elect to fund, they are entitled to interest on such amount at the same rate as the Syndicate Construction Loans and are entitled to be repaid from the Proceeds of Realization on a *pari passu* and rateable basis with the Syndicate Construction Loans in accordance with the Waterfall set out in the Settlement Approval Order. To give effect to this structure, the Settlement Approval Order contemplates a fixed and specific charge being granted to Craft and Terra Firma on the Leslieville Project (the “**Syndicate Loan Default Charge**”) as security for the payment of all such Syndicate Default Funded Amounts.

## 2.13 GEO-THERMAL SYSTEM

89. Pursuant to the Craft Construction Contract, Craft is responsible for ensuring that the Leslieville Project has an appropriate and functioning heating and cooling

system that complies with all applicable Law, all Development Approvals and each New APS.

90. Currently, there is an existing geothermal heating/cooling system (the “**Geo-Thermal System**”) installed at the Leslieville Project, but the system is not yet commissioned. The Craft Construction Contract requires Craft to test and investigate the Geo-Thermal System in order to determine if the Geo-Thermal System is appropriate and functioning. If, in the opinion of Craft, acting reasonably, the Geo-Thermal System cannot be made operative and/or it is more prudent or cost effective to de-commission the Geo-Thermal System, then Craft will de-commission the Geo-Thermal System and install the Replacement HVAC System. Otherwise, Craft will commission, and if necessary repair, the Geo-Thermal System to bring it to a satisfactory working order. All repairs and commissioning costs (the “**Craft Geo-Thermal System Costs**”) are to be paid directly by Craft or funded by way of an additional Craft Loan to the Construction Receiver, with such funding entitled to (i) a first priority fixed and specific charge on any proceeds of the sale of the Geo-Thermal Unit(s) (the “**Geo-Thermal System Proceeds Charge**”), and (ii) a fixed and specific charge on the Leslieville Project with the priority set out in the proposed Settlement Approval Order (the “**Craft Geo-Thermal Charge**”).
91. If the Geo-Thermal System is commissioned, there are two possible sale options available to UC Leslieville: (i) a sale to the Condominium, or (ii) a sale to a third party company (a “**Geo-Thermal Company**”), as described in more detail below:

*Geo-Thermal System Option 1: Sale to Condominium Corporation*

92. The Condominium Corporation may be required to purchase from UC Leslieville, the Geo-Thermal Unit(s) including all or part of the Geo-Thermal System, at a cost of \$800,000 inclusive of HST (“**Geo-Thermal Purchase Price**”).
93. In order to purchase the Geo-Thermal Unit(s), including all or part of the Geo-Thermal System, the Condominium Corporation will either enter into or assume a loan, which may be classified as a green loan, arranged by UC Leslieville possibly with a lender or finance company chosen by UC Leslieville in its sole discretion, for the entire Geo-Thermal Purchase Price, and possibly land transfer tax (“**Green Loan**”). As of the date of this Report, the Loan has not been arranged, however, based on consultations by the proposed Condominium property manager with various financial institutions it is anticipated that the Loan may be on the following principal terms:
- a. **Term:** Five (5) years, commencing on or shortly following registration of the Condominium;
  - b. **Interest:** It is anticipated that the principal amount from time to time outstanding on the Green Loan shall bear interest at the rate equal to approximately five (5%) percent over the Government of Canada Bond

Yield having approximately a ten (10) year term, calculated on the date being one (1) month prior to the date of the transfer of the Geo-Thermal Unit(s). In the event that the interest rate available is based on a fixed rate, it is presently anticipated that the annual rate of interest will be approximately 6.65% -7% per annum;

- c. **Amortization Period:** It is anticipated that the Green Loan will be based on an amortization period of between 20 – 25 years. At the discretion of UC Leslieville, the Green Loan may have a term and amortization period of ten (10) years; and
  - d. **Repayment:** The Green Loan will be closed for repayment.
94. It is currently anticipated by URI that, by utilizing the Geo-Thermal System instead of a conventional heating and cooling system, the savings in utility costs will be approximately equal to the annual cost of the Green Loan (principal and interest). Accordingly, if the Geo-Thermal System is installed in the Condominium and the Green Loan is arranged, it is anticipated that the estimated cost of utilities associated with heating and cooling, combined with the cost of repayment of the Loan, will be approximately equal to what the cost of utilities would have been for heating and cooling the Condominium and the residential unit, if a conventional energy system was utilized. The actual monthly Green Loan payments cannot be precisely determined at this time, as the prevailing interest rates and amortization period have not been set; however, based on consultations with the proposed Condominium property manager it is presently anticipated that the monthly Green Loan payments will be approximately \$6,000/month.
95. In addition, it will be a duty and obligation of the Condominium Corporation to obtain or assume the Green Loan and to execute and deliver all associated loan and security documents required by the Green Loan provider and UC Leslieville, to secure the Green Loan, including but not limited to a mortgage on title to the Geo-Thermal Unit(s).

### ***Geo-Thermal System Option 2: Sale to Geo-Thermal Company***

96. The Geo-Thermal Unit(s), including all or part of the Geo-Thermal System, may be conveyed to a Geo-Thermal Company. In such event, the Geo-Thermal Company will enter into an agreement with the Condominium Corporation requiring the Geo-Thermal Company to generate and supply heating and cooling to the Condominium at a rate, which is intended to fluctuate based on the rates of other utilities (the “**Geo-Thermal Energy Supply Contract**”). The Geo-Thermal Energy Supply Contract shall provide that the cost of supplying geo-thermal heating and cooling will be based on the consumption of geo-thermal energy by either the Condominium as a whole or the individual Units.

97. The two options are to be considered in connection with a marketing process (the “**Geo-Thermal System Marketing Process**”), such process having terms and conditions satisfactory to both Craft and the Construction Receiver, or as otherwise approved by the Court.

### ***Replacement HVAC Option***

At the date of this Report, it is uncertain if a Geo-Thermal System will be available for the Leslieville Project. As mentioned above, if the Geo-Thermal System cannot be made operative and/or it is more prudent or cost effective to de-commission the Geo-Thermal System, then Craft will de-commission the Geo-Thermal System and install a Replacement HVAC System. Accordingly, the Disclosure Documentation advises all purchasers that UC Leslieville reserves the right to provide heating and cooling to the Units through a Replacement HVAC System.

## **2.14 MARKETING OF UNSOLD UNITS**

98. Units that are not sold to Existing Leslieville Purchasers (the “**Unsold Units**”) will be listed and sold on the market on an “as is where is” basis to New Leslieville Purchasers pursuant to a standard form purchase and sale agreement (the “**Standard Form Sale Agreement**”), the form of which is attached hereto as **Appendix “P”**.
99. Pursuant to the Craft Development Contract, Craft will be responsible for completing all marketing and related services for the Unsold Units in accordance with a Marketing Plan agreed to by Craft, Terra Firma, the Syndicate and the Construction Receiver or otherwise approved by the Court.
100. In this regard, the Construction Receiver has been advised by Craft that it will engage real estate brokerage firm, RE/MAX Hallmark Realty Limited, Brokerage (“**RE/MAX**”), as the listing agent for the Unsold Units (the “**Leslieville Listing Agent**”) to market and sell the Unsold Units. Craft has agreed to perform (or cause to be performed) the marketing services until the earlier of: (i) the sale and closing of all of the Unsold Units (including Excess Parking Units and Bicycle Storage Units), and (ii) six (6) months following the establishment of the Condominium under the *Condominium Act* (Ontario) (the last day of such six-month period, the “**Marketing End Date**”).
101. The proposed Settlement Approval Order contemplates approval of each sale transaction with a New Leslieville Purchaser pursuant to a Standard Form Sale Agreement (each transaction, a “**Subsequent Sale Transaction**”), provided that the purchase price for each Unsold Unit is not less than a pre-established minimum sales price (the “**Minimum Unit Price**”). The Construction Receiver has met with representatives of RE/MAX, Craft, and the Syndicate to determine the appropriate Minimum Unit Price for each Unit. The Minimum Unit Prices agreed to by the Settlement Parties are set out in a ***Confidential Appendix “B”*** to

this Second Report. As the schedule contains commercially sensitive information, the Construction Receiver seeks to seal **Confidential Appendix “B”**. In the Construction Receiver’s view, the Minimum Unit Prices are fair and reasonable in light of current market conditions. Any reduction of any individual Minimum Unit Price must be approved by the Construction Receiver, the Syndicate, and Terra Firma or otherwise approved by the Court.

## 2.15 MARKETING OF RESIDUAL ASSETS – PARKING

102. Each Unit sold to an Opt-In Leslieville Purchaser or New Leslieville Purchaser, as applicable, will include a dedicated underground parking unit. As described above, the current draft plan of condominium contemplates that there will be up to eleven (11) Excess Parking Units.
103. As part of the Proposed Settlement, the Settlement Parties agreed to provide the Opt-In Leslieville Purchasers with a first opportunity to purchase an Excess Parking Unit. As there are only eleven (11) Excess Parking Units, Craft, with the assistance of the Construction Receiver, are currently developing a process to offer such Excess Parking Units to Opt-In Leslieville Purchasers and, if any remaining, to the New Leslieville Purchasers (the “**Excess Parking Unit Process**”). As of the date of this Report, the Excess Parking Unit Process is not yet finalized. If the Excess Parking Unit Process is finalized prior to the motion date, the Construction Receiver will file a supplementary report containing the particulars of the process and the proposed form of order for approval.

## 2.16 PROPOSED DISTRIBUTION OF PROCEEDS OF REALIZATION

104. Various Court ordered charges were necessary in order to give effect to the Proposed Settlement. The Court ordered charges proposed to be granted under the Settlement Approval Order are summarized below.
105. In favour of the Syndicate:
  - a. **Syndicate Charge:** This charge secures the \$4.5 million Syndicate Construction Loan to be provided by the Syndicate, together with any Cost Overruns funded by the Syndicate, and all applicable interest, fees, charges and costs (See *Section 2.12 - Syndicate Construction Loan Agreement* and *TF Cost Overrun Agreement*); and
  - b. **Syndicate COR Deferred Fee Charge:** This charge secures the deferred fee that the Syndicate is entitled to charge in connection with any Cost Overrun funded by it (see *Section 2.12 - TF Cost Overrun Agreement*);
106. In favour of Craft:
  - a. **Craft Charge:** This charge secures the \$2 million construction loan to be provided by Craft, together with any Cost Overruns funded by Craft, all

applicable interest, fees, charges, and costs (see *Section 2.12 - Craft Loan Agreement* and *TF Cost Overrun Agreement*);

- b. **Craft Geo-Thermal Charge:** This charge secures the Craft Geo-Thermal Costs (whether paid directly by Craft or funded by way of increased Craft Loans) (see *Section 2.13 Geo-Thermal System*);
- c. **Craft Deferred Management Fee Charge:** This charge secures the \$1.125 million Deferred Management Fee payable to Craft under the Craft Development Contract (see *Section 2.10 Completion of Construction of the Leslieville Project*);
- d. **Craft Success Fee Charge:** This charge secures the \$1 million Success Fee payable Craft under the Craft Development Contract (see *Section 2.10 Completion of Construction of the Leslieville Project*);
- e. **Craft COR Deferred Fee Charge:** This charge secures the deferred fee that Craft is entitled to charge in connection with any Cost Overrun funded by it (see *Section 2.12 - TF Cost Overrun Agreement*).

107. In favour of Terra Firma,

- a. **the TF Cost Overrun Agreement Charge:** This charge secures all amounts funded by Terra Firma under the TF Cost Overrun Agreement together with all interest, costs and other charges (see *Section 2.12 - TF Cost Overrun Agreement*);

108. In favour of Tarion,

- a. **the Tarion Warranty Charge:** This charge secures the cost of warranty obligations under the ONHWPA that may be required to be honoured by Tarion in connection with the Leslieville Project and will be in an amount equal to the difference between \$1.1 million and the amount available under the Tarion Bond provided by Travelers at the time of distribution of Proceeds of Realization from the Leslieville Project (see *Section 2.5 Tarion Warranty Corporation Coverage*);
- b. **the Tarion Residual Charge:** This charge secures the cost of warranty obligations under the ONHWPA that may be required to be honoured by Tarion in connection with the Leslieville Project beyond \$1.1 million.<sup>4</sup>

109. In favour of the Opt-In Leslieville Purchasers,

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<sup>4</sup> Tarion requested a subordinate court ordered charge be granted in its favour to cover potential claims from purchasers that exceed \$1.1 million. Given the deep subordination in the Waterfall of the Tarion Residual Charge, the Construction Receiver does not anticipate any material recovery under this charge. The cooperation of Tarion was critical to the success of the Proposed Settlement as it was a condition precedent that such warranty coverage be provided to the Existing Leslieville Purchasers and New Leslieville Purchasers. Accordingly, the Construction Receiver recommends the granting of the Tarion Residual Charge in the circumstances.



- a. **the Purchasers' Premium Charge:** This charge secures an amount equal to the \$255,000 increased purchase price paid by each Opt-In Leslieville Purchaser pursuant to his/her New APS. (see *Section 2.4 Treatment of Each Original Leslieville APS and Each New APS*).
110. Following completion of construction and condominium registration of the Leslieville Project, closings of the Units will occur and Proceeds of Realization will be generated. The Settlement Approval Order sets out the Waterfall for such Proceeds of Realization as follows:
- a. **first**, to the Construction Receiver, a reserve amount for all accrued but unpaid fees and disbursements of the Construction Receiver and its counsel, and the fees and disbursements estimated by the Construction Receiver as required to complete the Receivership Proceedings;
  - b. **second**, to the Administrative Agent, the amount of the Syndicate Construction Loan Obligations (including, for certainty, any Syndicate COR Funded Amount and any Syndicate COR Commitment Fee) secured by the Syndicate Construction Charge;
  - c. **third**, to the Administrative Agent, the amount of the Construction Receiver's obligations owing to the Syndicate for monies borrowed pursuant to the Construction Receiver's Borrowings Charge;
  - d. **fourth**, to the Construction Receiver, the amount of the Holdback Reserve and the Priority Realty Tax Claims Reserve (see *Section 5.8 Treatment of Construction Lien Claimants under Settlement Approval Order and Beach Project Order* and see *Section 5.1 Realty Taxes*);
  - e. **fifth**, to the Administrative Agent, the amount of the Syndicate Pre-Filing Secured Obligations;
  - f. **sixth**, provided there is no Major Event of Default under the Craft Construction Contract or the Craft Development Contract, (i) the amount of the Craft Construction Secured Obligations (including, for certainty, any Craft COR Funded Amount and any Craft COR Commitment Fee) secured by the Craft Construction Charge, and (ii) the Craft Geo-Thermal Costs and Geo-Thermal Loan secured by the Craft Geo-Thermal Charge, and (iii) the Deferred Management Fee secured by the Craft Deferred Management Fee Charge;
  - g. **seventh**, to Travelers, (i) the amount of monies paid by Travelers in respect of Excess Deposit Insurance Claims, (ii) as cash collateral, an amount reasonably estimated by Travelers, and approved by the Construction Receiver at the time of distribution, with respect to any remaining potential Excess Deposit Insurance Claims in connection with any Original Leslieville APS, (iii) the amount of monies paid by Travelers to Tarion with respect to Tarion Deposit Claims pursuant to the Tarion

Bond, and (iv) as cash collateral, an amount equal to the then outstanding Tarion Bond Amount. For certainty, the foregoing amounts shall be calculated taking into account any then remaining Travelers Cash Collateral<sup>5</sup>;

- h. **eighth**, to Tarion, as cash collateral in an amount equal to the Tarion Warranty Charge Amount at the time of distribution to Tarion as security for its warranty obligations under the ONHWPA to the Opt-In Leslieville Purchasers, the New Leslieville Purchasers and the Condominium Corporation<sup>6</sup>;
- i. **ninth**, provided there is no Major Event of Default under the Craft Construction Contract or the Craft Development Contract, to Craft, the amount of the Craft Success Fee secured by the Craft Success Fee Charge;
- j. **tenth**, *pari passu* and rateably, to (i) Craft, in the aggregate amount of all Craft COR Deferred Fees, and (ii) the Syndicate, in the aggregate amount of all Syndicate COR Deferred Fees, if applicable;
- k. **eleventh**, to Terra Firma, in an amount not exceeding the sum of (i) \$6.5 million on account of the Terra Firma Indebtedness, and (ii) the aggregate of all Cost Overruns funded by Terra Firma secured by the TF Cost Overrun Agreement Charge;
- l. **twelfth**, *pari passu* and rateably to (i) Terra Firma (up to the remaining Terra Firma Indebtedness, if any) and (ii) the Opt-In Leslieville Purchasers (for the aggregate amount of the Premiums paid by all Opt-In Leslieville Purchasers pursuant to the New APS), with such amount allocated to the Opt-In Leslieville Purchasers to be distributed on a *pari passu* and rateable basis amongst all Opt-In Leslieville Purchasers;
- m. **thirteenth**, to Tarion and/or the Construction Receiver, as cash collateral in an amount equal to the Tarion Residual Reserve Amount at the time of distribution to Tarion as security for its obligations under the ONHWPA to the Opt-In Leslieville Purchasers, the New Leslieville Purchasers and the Condominium Corporation. The cash collateral is to be held by Tarion and/or the Construction Receiver upon terms and conditions to be agreed upon by Tarion, the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in this paragraph; and

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<sup>5</sup> The cash collateral to be paid to Travelers pursuant to the Settlement Approval Order is to be held by Travelers upon terms and conditions to be agreed upon by the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in such subparagraphs.

<sup>6</sup> Similar to Travelers, the cash collateral to be paid to Tarion pursuant to the Settlement Approval Order is to be held by Tarion upon terms and conditions to be agreed upon by the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in such subparagraph.

- n. **the balance**, if any, to unsecured creditors of the Debtors on a pro-rata basis, such claims to be determined, if necessary, by further order of the Court.

## 2.17 BANKRUPTCY OF DEBTORS

111. At the request of Terra Firma and Craft, each of the Craft Construction Contract, the Craft Development Contract, the TF Cost Overrun Agreement, the Craft Loan Agreement and the Syndicate Construction Loan Agreement are subject to the condition precedent that each of the Debtors be adjudged bankrupt under the BIA (the “**Bankruptcy Condition**”) such that priorities of statutory claims will be subject to the distribution regime of the BIA.
112. To satisfy the Bankruptcy Condition, the Receivership Administration Order authorizes the Construction Receiver to assign the Debtors into bankruptcy. Counsel to Terra Firm has advised the Construction Receiver that if such relief is not granted by the Court that it will bring bankruptcy applications against the Debtors to satisfy the Bankruptcy Condition.
113. It is contemplated that the Construction Receiver will make arrangements with a trustee in bankruptcy proposed by Terra Firma (the “**Bankruptcy Trustee**”) once appointed to continue investigations into the Residual Closing Monies (discussed below) that are currently being held by Harris Sheaffer. Any recovery from such Residual Closing Monies (net of costs) would be distributed in accordance with the Waterfall.
114. All three Debtors are insolvent within the meaning of the BIA. In the Construction Receiver’s view the relief sought is appropriate in order to satisfy the Bankruptcy Condition, as it is a condition precedent to the Proposed Settlement. The assignment by the Construction Receiver is more efficient and less costly than Terra Firma bringing separate applications for bankruptcy orders to achieve the same result.

## 2.18 CONDITIONS PRECEDENT TO PROPOSED SETTLEMENT

115. The Proposed Settlement is conditional upon at least 40% of the Existing Leslieville Purchasers the “**Opt-In Threshold**”) opting into the Proposed Settlement by the Opt-In Deadline and not rescinding their New APS by the Ultimate Rescission Bar Date, which is ten (10) days after the Opt-In Deadline. The proposed Settlement Approval Order will only become effective upon the filing by the Construction Receiver with the Court of a certificate confirming the satisfaction or waiver by the Syndicate, Terra Firma, Craft and the Ad Hoc Leslieville Purchasers of the Opt-In Threshold within 2 Business Days following the Ultimate Rescission Bar Date (or such later date as may be agreed by those parties).

116. In addition, each of the Settlement Definitive Documents is by its terms subject to the satisfaction or waiver of the conditions precedent as summarized above under the applicable sections in this Second Report.

## 2.19 RECOMMENDATION

117. In light of the foregoing, the Construction Receiver recommends that this Court approve both the Purchaser Package Approval Order and the Settlement Approval Order.
118. The Proposed Settlement contains several important features that act as safeguards for the estate from cost overages arising from construction of the Leslieville Project:
- a. First, the Fixed Price nature of the Craft Construction Contract requires Craft to fund any hard cost overages relating to construction with limited exceptions;
  - b. Second, Craft has agreed to fund \$2,000,000 of the construction and development costs (see *Section 2.12 - Craft Loan Agreement*). This loan is to be fully pre-funded and disbursed prior to any advances under the Syndicate Construction Loan Agreement and is to be repaid from Proceeds of Realization pursuant to the Waterfall after the Syndicate Pre-Filing Secured Obligations have been repaid in full. In addition, none of the Craft Compensation except for the Earned Management Fee is payable until after the Syndicate Pre-Filing Secured Obligations have been repaid in full.
  - c. Third, pursuant to the TF Cost Overrun Agreement entered into by Terra Firma and the Construction Receiver, any cost overage above the Fixed Price or the development budget is to be funded by Terra Firma with the ability for Craft or the Syndicate to provide such funding in the event Terra Firma fails to do so (see *Section 2.12 - TF Cost Overrun Agreement*); and
  - d. Fourth, Craft has also agreed to provide the Construction Receiver with cash collateral in the amount of \$535,000 (“**Craft Cash Collateral**”) as security for Craft’s performance of its obligations under the Craft Construction Contract and Craft Development Contract. Provided Craft is not in default under either agreement, this security will be released only after certain conditions are satisfied, which include the completion of construction of the Leslieville Project, among others (the “**Cash Collateral Release Date**”). Pursuant to the terms of the Craft Development Contract, Craft is entitled to receive interest at the rate of 7% per annum on such cash collateral, which interest is to be paid from Proceeds of Realization in the same priority as the loans under the Craft Loan Agreement.

### 3.0 BEACH PROJECT

#### 3.1 BACKGROUND

119. The Beach Project is located between Edgewood and Hemlock Avenues near east Toronto's Beach neighbourhood. Based on the current lot configuration, the Beach Project comprises thirty-three (33) freehold homes, consisting of thirty-two (32) semi-detached homes and one (1) detached home.
120. Of the thirty-three (33) homes, twenty five (25) have been fully constructed and the sale of these homes was completed in 2014 and 2015.
121. Currently, there are eight (8) semi-detached homes<sup>7</sup> (the "**Beach Homes**") that remain unbuilt. Six (6) of the eight (8) Beach Homes to be constructed have been pre-sold to Existing Beach Purchasers pursuant to an Original Beach APS. Five (5) Beach Homes were pre-sold in 2011 and 2012, prior to any construction commencing at the Beach Project, with the final Beach Home being pre-sold in August 2015.
122. The registered owner of the Beach Project unsold lands is UC Leslieville<sup>8</sup>, while UC Beach is the project developer and the Vendor under each Original Beach APS.
123. The development of the Beach Project was authorized by the City pursuant to the terms of a Consent Agreement between UC Leslieville and the City dated July 27, 2012. UC Beach has provided the City with financial security in the form of letters of credit issued by CIBC totaling \$872,074.07 to cover (i) UC Beach's obligations to the City in respect of the installation of municipal services, tree planting, among other things, (ii) Toronto Hydro Electric System.<sup>9</sup>
124. Similar to the Leslieville Project, the Construction Receiver understands that no construction work has been done at the Beach Project since September 2015. In contrast to the Leslieville Project, the 8 lots remaining at the Beach Project as at the Appointment Order were in the very early stages of construction, ranging

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<sup>7</sup>In March 2015, the Committee of Adjustment of the City rendered a Notice of Decision allowing for a minor variance which effectively authorized the number of homes to be constructed to increase from thirty-three (33) to thirty-five (35), consisting of thirty-four (34) semi-detached and one (1) detached home. However, UC Beach has not severed the lots to reflect this decision and, in August 2015, entered into an Original Beach APS for one of the remaining lots pursuant to the original thirty-three (33) home configuration.

<sup>8</sup>UC Leslieville owns 100% of 4 lots, and 99.999% of the remaining 4 lots. The remaining 0.001% interest is held by UC Beach.

<sup>9</sup>The Construction Receiver has held preliminary discussions with the City in respect of the nature of UC Beach's obligations and a potential action plan to have the letters of credit released. Based on the Construction Receiver's discussions with City staff on the work left to complete, it appears that the City may be over-secured. A proposed purchaser of the Beach Homes will have to address the letters of credit. The Craft Development Contract provides for Craft's assistance in that regard.

from raw land, to foundations only, to foundations with partial framing. Recently, the Construction Receiver arranged for the removal of the framing as it posed a safety risk.

### 3.2 TREATMENT OF EXISTING BEACH PURCHASERS

125. A total of five (5) Existing Beach Purchasers and one (1) assignor are represented by Ad Hoc Beach Purchaser Counsel in these Receivership Proceedings. Accordingly, one Existing Beach Purchaser who is an assignee of an Original Beach APS remains unrepresented.
126. The following table summarizes the aggregate amount of payments made by the Existing Beach Purchasers to the Debtors in respect of purchase price deposits and upgrades deposits based on the books and records of the Debtors:

Municipal Address	Deposits Paid	Upgrades Paid	Total
21 Hemlock Avenue	\$ 69,991.00	\$ -	\$ 69,991.00
3 Vince Avenue	74,991.00	18,155.34	93,146.34
33 Vince Avenue	95,000.00	29,307.05	124,307.05
34 Vince Avenue	100,000.00	-	100,000.00
36 Vince Avenue	109,895.00	-	109,895.00
37 Hemlock Avenue	224,639.33	-	224,639.33
<b>Total</b>	<b>\$ 674,516.33</b>	<b>\$ 47,462.39</b>	<b>\$ 721,978.72</b>

127. Generally, Existing Beach Purchasers made deposits which totaled 10% of the gross purchase price set out in their Original Beach APS.
128. The Construction Receiver notes that in connection with one Original Beach APS executed in 2015 (the “**2015 Beach APS**”), the deposit in the amount of \$224,639.33 was not made to UC Beach in cash by the Existing Beach Purchaser. The Construction Receiver is advised by such Ad Hoc Beach Purchaser’s Counsel that the deposit amount represented an “in-kind” payment on account of monies owed by UC Beach to the Existing Beach Purchaser. The Construction Receiver has requested but not received further information in respect of this transaction.
129. Other than in respect of the 2015 Beach APS, deposits (inclusive of upgrade deposits) made in respect of each Beach Home ranged from \$69,991 to \$109,895, with the average deposit being approximately \$100,000. Pursuant to ONHWPA, freehold development purchaser deposits are protected by Tarion up to a maximum of \$40,000 per unit. Deposits paid by Existing Beach Purchasers in excess of \$40,000 (the “**Excess Deposits**”) are not insured. Excess Deposits paid by the Existing Beach Purchaser(s) for their respective Beach Home range from \$29,991 to \$69,895, exclusive of the “in-kind” deposit in respect of the 2015 Beach APS.
130. In addition, Existing Beach Purchasers have paid UC Beach, in advance, for upgrades totaling approximately \$47,000 with respect to two Beach Homes.

Based on the Construction Receiver's review, these payments appear to have been utilized by the Debtors in the construction of the Beach Project, and do not appear to be subject to any insurance for upgrades and range from \$18,155.34 to \$29,307.05 per Beach Home.

### 3.3 REALIZATION STRATEGY

131. Unlike the Leslieville Project which is substantially complete, little work has been done on the Beach Homes other than foundations and initial framing (with such framing being removed in light of safety concerns). The Construction Receiver canvassed both the Syndicate and Terra Firma with respect to the availability of a settlement with respect to the Beach Project, however, neither were prepared to advance monies to complete the Beach Project, given the very early stages of construction, the potential need and costs of tearing down and replacing the existing foundation structures, and the extended period of time it would take to complete construction.
132. Further, the Settlement Parties were not prepared to enter into the Proposed Settlement without the condition that the Construction Receiver repudiate each Original Beach APS, and sell the Beach Homes "as is where is" (the "**Beach Lots**").
133. Given the initial stage of construction, the likely costs of completion, the length of time for completion, the lack of support from Terra Firma and the Syndicate that the sale of the Beach Lots are a part of the Settlement Proposal, the Construction Receiver has concluded that it is incapable of performing the obligations under each Existing Beach APS. Accordingly, as part of the Beach Project Order, the Construction Receiver seeks authority to repudiate each Original Beach APS and authority to sell the Beach Lots on an "as is where is" basis free and clear of all rights under the Original Beach APS.
134. Construction Receiver's Independent Counsel has reviewed each Original Beach APS and confirmed that each agreement contains a subordination provision in favour of mortgage and/or construction financing (the "**Subordination Clause**") and a disclaimer of interest in land provision (the "**Property Interest Waiver**"). The Subordination Clause and the Property Interest Waiver are set out below:

#### **Section 13 of Schedule "A":**

The Purchaser hereby acknowledges the full priority of any mortgage or construction financing arranged by the Vendor and/or secured by the Real Property over his interest as Purchaser for the full amount of the said mortgage or construction financing, notwithstanding any law or statute to the contrary and agrees to execute all acknowledgements or postponements required to give full effect thereto.

**Section 34 of Schedule “A”:**

The Purchaser covenants and agrees that it will at no time register or attempt to register this Agreement on title to the Real Property by way of caution, deposit, assignment or in any way whatsoever, and it is expressly agreed by all parties hereto that any such registration or attempt by the Purchaser or anyone acting for or through him shall constitute an event of default under this Agreement ....The Purchaser acknowledges that notwithstanding any rule of law to the contrary that by executing this Agreement he has not acquired any equitable or legal interest in the Dwelling or the Real Property.

135. Construction Receiver’s Independent Counsel advised Ad Hoc Beach Purchaser Counsel that the Beach Purchasers were not included in the Proposed Settlement by letter dated April 7, 2017, a copy of which is attached as **Appendix “J”**.

**3.4 REQUEST FOR PROPOSALS TO REAL ESTATE BROKERS**

136. As part of the Construction Receiver’s efforts at the outset of the Receivership Proceedings to develop an asset realization plan, on July 21, 2016, the Construction Receiver sent a request for proposals (the “**RFP**”) to five real estate brokers to submit a proposal for the sale of the Leslieville Project and the Beach Project. The deadline for proposals was August 3, 2016. A copy of the RFP is attached hereto as **Appendix “K”**.
137. Four brokers submitted proposals under the assumption that both Projects would be listed (the “**Proposals**”). As a result of the Terra Firma Motion and developing settlement discussions among stakeholders with respect to the Leslieville Project, the RFP process was suspended.
138. In October 2016, settlement discussions among the Leslieville stakeholders were still continuing. As a result, the Construction Receiver asked the four brokers who had previously submitted Proposals to update their Proposals assuming that only the Beach Lots were available to be marketed and sold (the “**Updated Proposals**”). The Construction Receiver reviewed the Updated Proposals and held several follow-up discussions with the proposed brokers to clarify certain aspects of their Updated Proposals, including marketing approach, estimated valuation, overall timing and commission structure.
139. While the settlement discussions were ongoing, the Construction Receiver received an unsolicited offer from a potential purchaser in respect of the Beach Lots (the “**Excluded Party**”).
140. The Construction Receiver prepared a summary of the Updated Proposals (the “**Proposal Summary**”), which is attached hereto as *Confidential Appendix “C”*.



The Proposal Summary contains confidential and commercially sensitive information provided by each real estate broker, including the estimated value of the Beach Lots. If the Proposal Summary is not sealed, potential bidders could have access to the information that could negatively impact the proposed Beach Sale Process.

141. The Construction Receiver reviewed the Updated Proposals of each real estate broker and determined that the proposal from the Beach Listing Agent was most favourable. This determination was based on several factors, including:
  - a. the Beach Listing Agent is one of the world's largest real estate services firms, with significant local presence, and national and global reach;
  - b. the Beach Listing Agent team has ample experience and knowledge, including significant experience with distressed property sales in court supervised proceedings;
  - c. the Beach Listing Agent has extensive experience with infill transactions in the Greater Toronto Area;
  - d. the Beach Listing Agent's commission structure is competitive, and takes into account reduced commission in the event the offer from the Excluded Party is ultimately the successful bid; and
  - e. the Beach Listing Agent's responsiveness and significant knowledge of the Beach Project and the market generally.
142. The Construction Receiver discussed this recommendation with the Settlement Parties, who unanimously approved the Construction Receiver's recommendation to retain the Beach Listing Agent.
143. After obtaining approval by the Settlement Parties, the Construction Receiver, with the assistance of the Construction Receiver's Independent Counsel, engaged in negotiations and finalized a listing agreement for the Beach Lots (the "**Beach Listing Agreement**"), a copy of which is attached hereto as **Appendix "L"**.
144. The key terms of the Beach Listing Agreement are summarized as follows:
  - a. the Beach Listing Agent will be the exclusive listing brokerage for six (6) months unless the Beach Listing Agreement is otherwise terminated in accordance with the terms therein (the "**Listing Period**");
  - b. in the event that a sale is completed and closed during the Listing Period or during a 120 day holdover period, a commission equal to the amount of three percent (3.00%) of the purchase price for each of the Beach Lots will be payable to the Beach Listing Agent; and

- c. in the event that the Excluded Party is the successful purchaser of the Beach Lots, a commission equal to three percent (3.00%) of the next highest bid will be payable to the Beach Listing Agent.

145. In light of the foregoing, the Construction Receiver is of the view that the engagement of the Beach Listing Agent as listing agent will be beneficial to the estate and its stakeholders generally and to the efforts to maximize realizations from the Beach Lots, and recommends this Court approve the Beach Listing Agreement.

### 3.5 PROPOSED BEACH SALE PROCESS

146. A summary of the recommended Beach Sale Process is attached as Schedule “A” to the Beach Listing Agreement and is summarized below. The proposed Beach Sale Process is expected to be completed within a 14-week timeframe and can be broken down into two separate phases.

<b>Beach Sale Process Summary</b>	
<p><b>Phase 1 – Solicitation and Marketing Process</b>  (Minimum 6 Weeks)</p>	<p>Within the first two (2) weeks, the Beach Listing Agent will begin to implement a proposed marketing plan (the “<b>Beach Marketing Plan</b>”). Under the Marketing Plan, the Beach Listing Agent will:</p> <ol style="list-style-type: none"> <li>1. List the Beach Lots for sale on the Multiple Listing Service (“<b>MLS</b>”) to be sold on an “as is, where is” basis;</li> <li>2. Prepare a preliminary information memorandum (the “<b>Brochure</b>”). Such Brochure, in draft form will be provided to the Construction Receiver and the Construction Receiver shall provide amendments and subsequent approval to the Brochure prior to the Beach Listing Agent disseminating to the market and prior to posting on MLS. The Beach Listing Agent shall distribute the Brochure to its extensive client database and create a website dedicated to the Beach Lots, providing access to the Brochure and confidentiality agreement (also to be approved by the Construction Receiver);</li> <li>3. Disseminate the following to prospective bidders: the Brochure and confidentiality agreements (to be made available online, with printed copies available upon request); and</li> <li>4. Market the Beach Lots utilizing:</li> </ol>

	<p>a. a digital/web-based marketing strategy, and</p> <p>b. a traditional marketing strategy, such as Globe and Mail and Novae Res Urbis advertisements and a “For Sale” sign installed at a strategic location on one of the Properties.</p>
<p><b>Phase 2 – Bid Review, Negotiations &amp; Closings</b></p> <p>(Approximately 8 weeks)</p>	<p>The Beach Listing Agent will facilitate the offer solicitation process, promote competitive offers, and provide guidance to qualified buyers and the Construction Receiver. Bids are to be delivered to the downtown Toronto office of the Beach Listing Agent on the bid date, after an initial three-four week marketing period, which bid will include a mark-up of the form of purchase and sale agreement provided to potential bidders. The Beach Listing Agent, in conjunction with the Construction Receiver, will assess all submitted bids to determine either the successful bid, or whether additional negotiations are required.</p> <p>The Beach Listing Agent will work closely with the Construction Receiver to coordinate the transaction and assist the successful bidder (to the extent reasonable) with any due diligence required. The Beach Listing Agent shall also assist the Construction Receiver and its counsel (to the extent reasonable) with the closing process.</p>

147. The Construction Receiver recommends that this Court approve the Beach Sale Process, for the following reasons:
- a. the Beach Marketing Plan provides the Beach Lots with significant exposure to the marketplace, with sufficient time for offers to be prepared and submitted;
  - b. the Beach Sale Process allows for an efficient, transparent and competitive bidding process; and
  - c. the Settlement Parties have approved the proposed Beach Sale Process;

#### **4.0 RIVERDALE PROJECT**

##### **4.1 BACKGROUND**

148. The Riverdale Project is located on Howie and Boulton Avenues, in east Toronto’s Riverdale neighbourhood.

149. The Riverdale Project consists of forty-two (42) freehold townhome units and a common elements condominium corporation. The sale of the townhome units to

purchasers (the “**Riverdale Purchasers**”) were all completed in late April to early May 2016, prior to the date of the Appointment Order.

150. The registered owner of the Riverdale Project was UC Leslieville. UC Riverdale was the Project developer and the Vendor under the agreements of purchase and sale with the Riverdale Purchasers (each, a “**Riverdale APS**”).
151. To facilitate the Riverdale Project closings, CIBC bonded off lien claims by paying the lien amounts into Court. These amounts are included as part of the Syndicate’s outstanding loan balance discussed in Section 5.2 of this Report.
152. Although construction of the Riverdale Project had been completed, the City held, as at the date of the Appointment Order, an aggregate of \$637,796 in letters of credit issued by CIBC to support UC Riverdale’s outstanding obligations to the City in respect of municipal works, streetscaping, urban forestry and parks, among other things.<sup>10</sup>
153. 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 Syndicate. Harris Sheaffer continues to hold monies related to these closings, totaling \$2,976,772.41, plus accrued interest, that the Construction Receiver understands is being held on account of the HST portion of proceeds collected from Riverdale Purchasers (the “**Residual Closing Monies**”).
154. The Construction Receiver was investigating the circumstances and the terms and conditions pursuant to which the Residual Closing Monies are retained by Harris Sheaffer and whether the Residual Closing Monies are subject to a true trust in favour of the Canada Revenue Agency (“**CRA**”) and how such monies may be disbursed. Counsel to Terra Firma has expressed its interest in continuing such investigations with the assistance of the Bankruptcy Trustee, if appointed.
155. On April 20, 2016, shortly prior to the dates of the Riverdale Project closings, the CRA issued a Notice of Reassessment to HST registrant Bay/Stadium LP (the Debtors’ corporate parent) in respect of its August 2015 reporting period (the “**August 2015 Reassessment**”). The Construction Receiver understands that the HST account in question relates to the Riverdale Project.

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<sup>10</sup>The Construction Receiver has held preliminary discussions with the City in respect of the nature of UC Riverdale’s obligations and a potential action plan to have the letters of credit released. To date, the letters of credit outstanding have been reduced by \$175,836. The current amount of letters of credit outstanding in respect of the Riverdale Project is \$461,960. Based on the Construction Receiver’s discussions with City staff on the work left to complete, it appears that the City may be over-secured. However, further follow up in terms of a plan of action to have the work completed, and the letters of credit released, is required.

156. The August 2015 Reassessment statement indicates an amount owing of \$4,406,709.57 calculated as \$4,359,030.00 due pursuant to the audit of the August 2015 reporting period, plus arrears interest of \$45,186.65, and a prior balance owing of \$2,492.92.
157. On June 27, 2016, CRA issued an additional Notice of Assessment in respect of Bay/Stadium LP's April 2016 reporting period (the "**April 2016 Assessment**"), which covered the time period of the bulk of the Riverdale Project closings. The April 2016 Assessment statement indicates an amount owing of \$7,355,286.66 calculated as (i) \$2,904,261.30 (which represents HST filed as owing in respect of the April 2016 reporting period), plus (ii) arrears interest of \$10,731.49, plus (iii) a prior balance owing of \$4,440,293.87 (which is the balance owing under the August 2015 Reassessment plus additional interest).
158. The Construction Receiver retained MNP LLP, the Debtors' and Bay/Stadium LP's tax advisors, to review the matter and prepare a Notice of Objection, which was filed by the Construction Receiver with CRA on July 19, 2016.<sup>11</sup>
159. On July 23, 2016, the Construction Receiver received a Notice of Assessment dated July 18, 2016 from CRA in respect of Bay/Stadium LP's May 2016 reporting period (the "**May 2016 Assessment**"). The May 2016 Assessment statement indicates an amount owing of \$7,439,908.77 calculated as (i) \$63,336.00 (which represents HST filed as owing in respect of the May 2016 reporting period), plus (ii) arrears interest of \$155.93, plus (iii) a prior balance owing of \$7,376,416.75 (which is the balance owing under the April 2016 Reassessment plus additional interest).
160. On August 17, 2016, CRA issued a letter to Bay/Stadium LP advising that it may take between approximately nine (9) and twelve (12) months for an appeals officer to review the Notice of Objection and render a decision. To date, no decision has been rendered.

## **5.0 REVIEW OF SECURITY AND OTHER POTENTIAL PRIOR RANKING CLAIMS**

### **5.1 REALTY TAXES**

161. As at the date of the Appointment Order, there were realty taxes owing of \$94,127.27 and \$22,660.36 on the Leslieville Project and Beach Project, respectively. In addition, the Construction Receiver received the final 2016 tax

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<sup>11</sup>The Notice of Objection was filed on the basis that (a) the Minister incorrectly assumed that the freehold residential townhome units at the Riverdale Project were condominium units and then took the position in the August 2015 Reassessment that HST became payable on the sale of all units sixty (60) days after the day on which the common element condominium corporation registered on title as a condominium, (b) the Minister based the Reassessment on incorrect estimates of the HST payable and did not take the HST new housing rebates into account, and (c) the Minister also appears to have double-counted by applying HST again on the condominium units at closing in April 2016.

assessment and interim 2017 for both the Leslieville Project and the Beach Project.

162. As realty taxes rank in priority to all other claims on real property pursuant to the Municipal Act (Ontario), and as interest on the outstanding realty tax balances accrues at a much higher rate than Receiver Certificates, the Construction Receiver has paid all outstanding realty taxes on the Leslieville Project and Beach Project totaling \$214,051.42.

## 5.2 SYNDICATE

163. The Syndicate provided senior secured credit facilities to UC Leslieville (in its capacity as Borrower) pursuant to a credit agreement dated July 13, 2012, and amendments thereto (collectively, the “**Syndicate Pre-Filing Credit Agreement**”). A copy of the Syndicate Pre-Filing Credit Agreement is attached as Exhibit “F” to the Application Record to appoint the Construction Receiver (the “**Application Record**”), a copy of which is available on the Construction Receiver’s website. UC Beach, UC Riverdale, UTMI, and Mr. Alan Saskin are all guarantors under the Syndicate Pre-Filing Credit Agreement.
164. As security for all of the Debtors’ indebtedness owing to the Syndicate under the Syndicate Pre-Filing Credit Agreement, the Syndicate was given by UC Leslieville, among other things, a debenture dated July 13, 2012 (the “**Debenture**”) in the principal amount of \$70,000,000. A copy of the Debenture is attached as **Exhibit “J”** to the Application Record. The Debenture grants a mortgage and charge of all of UC Leslieville’s right, title and interest (present and future), in and to the real property comprising the Leslieville Project, Beach Project and Riverdale Project and personal property of UC Leslieville. A charge/mortgage granted by UC Leslieville in favour of the Administrative Agent (the “**CIBC Mortgage**”) to which the Debenture was appended was registered on title to the whole of the Leslieville Project, Beach Project and Riverdale Project.
165. The Syndicate advanced monies to UC Leslieville (in its capacity as Borrower) in connection with the Riverdale Project, Leslieville Project and Beach Project. As at March 31, 2017, the Construction Receiver has been advised that the following amounts are outstanding under the Syndicate Pre-Filing Credit Agreement (the “**Senior Indebtedness**”):

Syndicate Indebtedness	Total
Project Loans (N1)	\$ 20,881,886.94
Interest on Project Loans (to March 31, 2017)	929,893.10
Capital Loan	2,500,000.00
Interest on Capital Loans (to March 31, 2017)	148,438.35
Letters of Credit (N2)	2,204,954.17
<b>Total</b>	<b>\$ 26,665,172.56</b>

**N1** Includes bonded off lien claims for UC Riverdale in the amount of \$298,457.05 plus Syndicate fees and expenses.

**N2** Contingent Liability

166. The Senior Indebtedness does not include financing provided by the Syndicate in the amount of \$3,000,000 pursuant to Receiver's Certificates to date in respect of fees and operating expenses in these Receivership Proceedings.

### 5.3 TRAVELERS

167. In connection with a revised commitment letter dated March 5, 2012 to UC Leslieville (attached as **Appendix "M"** to this Report), Travelers has provided (i) a Tarion Bond in the amount of \$1.1 million as security for UC Leslieville's obligations to Tarion up to a maximum amount of \$2,444,573, and (ii) excess condominium deposit insurance to cover deposits not protected by Tarion (the "**Travelers Master Excess Claims Policy**"), in each case, only for the Leslieville Project. Copies of the Tarion Bond and the Travelers Master Excess Claims Policy are attached as **Appendix "N"** and **Appendix "O"** to this Report.
168. Based on the books and records of the Debtors, the Construction Receiver understands that Harris Sheaffer received \$3.425 million of the deposit monies paid under the Original Leslieville APSs, most of which has been released to UC Leslieville to fund the Leslieville Project construction costs, as authorized by Travelers.
169. As at August 9, 2016, Harris Sheaffer was holding approximately \$335,000 (\$250,000 plus accrued interest of \$85,484.97) in trust in respect of these deposits (the "**Travelers Cash Collateral**"). In addition, the records of the Debtors confirm that all upgrade monies paid by an Existing Leslieville Purchaser were paid directly to UC Leslieville, as opposed to Harris Sheaffer and do not appear to be covered by the Travelers Master Excess Claims Policy.
170. UC Leslieville, as principal, and Alan Saskin, High Res and UTMI provided an indemnity in favour of Travelers for all obligations owed or owing by UC Leslieville to Travelers from time to time under or in connection with the Travelers Master Excess Claims Policy and the Tarion Bond. A copy of the indemnity agreement entered into on May 19, 2011 (the "**UC Leslieville Indemnity Agreement**") is attached as **Appendix "P"**.

171. All obligations owing to Travelers by UC Leslieville were secured by a charge/mortgage granted by UC Leslieville in favor of Travelers (the “**Travelers Mortgage**”), and a general security agreement made August 1, 2012 given by UC Leslieville to Travelers (the “**Travelers GSA**”). Copies of the Travelers Mortgage and the Travelers GSA are attached as **Appendix “Q”** and **Appendix “R”**, respectively.
172. As at March 31, 2017, the obligations owing to Travelers can be summarized as follows:

Travelers Insurance Company of Canada	Total
Tarion Bond (N1)	\$ 1,100,000.00
Excess Condominium Deposit Insurance ("ECDI") Claims (N1, N2)	2,444,573.00
Unpaid Tarion Bond Premiums	4,099.00
Unpaid ECDI Premiums	40,364.00
Legal Fees	55,000.00
<b>Total</b>	<b>\$ 3,644,036.00</b>

**N1** These are contingent claims and will be determined based on the total number of Opt-Outs.

**N2** Based on a review of UC Leslieville's books and records, the Construction Receiver believes the ECDI contingent claim is \$2,325,323, or \$119,250 lower than Travelers estimate.

#### 5.4 TERRA FIRMA

173. A copy of the commitment letter dated August 2011 between Terra Firma and UC Leslieville, Bosvest Inc. and Westside Gallery Lofts Inc. and Marina Townhomes of South Beach Inc., as borrowers, and UTMI and Mr. Alan Saskin, as guarantors, together with all omnibus loan amending agreements, including the fifth omnibus amending agreement made July 21, 2015 between the UC Leslieville, the guarantors, UC Riverdale and UC Beach, collectively, the “**Terra Firma Commitment Letter**”), and letter of intent dated June 1, 2014 issued by Terra Firma MA Ltd., and assigned to Terra Firma in favour of UC Leslieville (the “**Terra Firma Letter of Intent**”) are attached as **Appendix “S”**.
174. As security for the indebtedness owing to Terra Firma under the Terra Firma Commitment Letter and Terra Firma Letter of Intent, Terra Firma, was granted, among other security, the following:
- a. an acknowledgement and direction dated September 12, 2011 in favour of, *inter alia*, Terra Firma, attaching an unregistered charge/mortgage (the “**Unregistered Mortgage**”) granted by UC Leslieville in favour of Terra Firma in the original principal amount of \$10,000,000, of which \$5,500,000 was in respect of the Leslieville Project, Beach Project and Riverdale Project, together with a direction to, *inter alia*, Terra Firma authorizing Terra Firma, on the occurrence of certain events of default,



and provided certain conditions were met, to register the Unregistered Mortgage against title to the Leslieville Project, Beach Project and Riverdale Project. The Unregistered Mortgage constitutes an equitable mortgage over the Leslieville Project, Beach Project and Riverdale Project;

- b. a charge/mortgage (the “**Registered Mortgage**”) granted by UC Leslieville and UC Riverdale in favour of Terra Firma in the original principal amount of \$5,500,000, registered on July 22, 2015 against the Leslieville Project, the Riverdale Project (less the parcels conveyed to third parties prior to the Registered Mortgage) and certain portions of the Beach Project not yet conveyed to third parties (collectively, the “**2015 Property**”). The Registered Mortgage did not include three parcels comprising part of the Beach Project not yet conveyed to third parties, but such three parcels are subject to the Unregistered Mortgage. The Registered Mortgage grants a charge, pledge and assignment to Terra Firma of all of UC Leslieville’s right and interest in and to the 2015 Property;
  - c. a notice of assignment of rents granted by UC Leslieville and UC Riverdale in favour of Terra Firma, registered against title to the 2015 Property; and
  - d. general security agreements granted by UC Leslieville dated as of September 12, 2011 and each of UC Riverdale and UC Beach dated as of June 11, 2014, in favour of Terra Firma, all of which were properly registered at the date of the Receivership Proceedings under the *Personal Property Security Act* (Ontario).
175. As summarized below, Terra Firma has advised the Construction Receiver that is owed \$7,163,546.74, inclusive of \$1,320,236.11 in accrued interest, as at March 31, 2017. Interest and costs have continued to accrue since then.

Terra Firma Capital Corporation Indebtedness		Total
Loan Amount	\$	5,500,000.00
Interest (December 1, 2015 to March 31, 2017)		1,320,236.11
Legal Fees		343,310.63
<b>Total</b>	<b>\$</b>	<b>7,163,546.74</b>

## 5.5 LEGAL REVIEW OF SYNDICATE, TERRA FIRMA AND TRAVELERS SECURITY

176. The Construction Receiver’s Independent Counsel has completed a review of the security of the Syndicate, Terra Firma and Travelers, and has delivered opinions to the Construction Receiver in respect thereto (the “**Security Opinions**”).
177. In summary, the Security Opinions, subject to the usual qualifications and assumptions set out therein and based on searches of the parcel registers with

currency dates described therein, including various subordination and postponement agreements, opines that:

- a. the security of the Syndicate, Terra Firma and Travelers constitute legal, valid and binding obligations of UC Leslieville, enforceable against UC Leslieville by the Administrative Agent, as agent for the Syndicate, Terra Firma and Travelers, respectively, in accordance with their terms; and
- b. subject to any outstanding registered construction liens, unpaid realty taxes and statutory claims of which the Construction Receiver is not aware that may have priority, the CIBC Mortgage is in a first ranking position on the Leslieville Project, Beach Project and Riverdale Project (and the proceeds of Units which have been sold to third parties prior to the Receivership Proceedings) in favour of the Administrative Agent; except, the CIBC Mortgage is in a second ranking position, vis-à-vis Travelers, with respect to any deposit monies received from time to time from Existing Leslieville Purchasers and accrued interest thereon that remain in trust relating to the Leslieville Project (the “**Deposit Monies**”), and with respect to any advances made by the Syndicate exceeding \$27,594,700 plus interest thereon;
- c. the Travelers Mortgage is in a second ranking position on the Leslieville Project in favour of Travelers, except with respect to Deposit Monies in respect of which the Travelers Mortgage is in a first ranking position;
- d. the Registered Mortgage in favour of Terra Firma is in a third ranking position on the Leslieville Project and a second ranking position on the Riverdale Project and the Beach Project (and the proceeds of Units which have been sold to third parties prior to the Receivership Proceedings); and
- e. with respect to the general security agreements granted by UC Riverdale and UC Beach, Construction Receiver’s Independent Counsel has not been able to satisfy itself of the evidence of debt obligations owing to UC Riverdale or UC Beach which are secured by such security. Construction Receiver’s Independent Counsel has discussed the issue with counsel for Terra Firma who asserts evidence of debt obligations are contained in the security documents. The Construction Receiver has not pursued further as it does not view this issue as material to the Receivership Proceedings or the proposed distribution of Proceeds of Realization under the Waterfall. All of the assets subject to the Proposed Settlement (but for a 0.001% interest in certain of the Beach Lots which are charged by the Registered Mortgage and/or Unregistered Mortgage), are wholly owned by UC Leslieville over which Terra Firma has valid security.

## 5.6 CONSTRUCTION LIEN CLAIMS AGAINST DEBTORS

178. The Construction Receiver has been advised by CIBC that the lien claims registered on the Riverdale Project lands were bonded off prior to the Appointment Order to facilitate the closings of the Riverdale Project units in or about late April and early May of 2016. The Construction Receiver has been advised by the Construction Receiver's Independent Counsel that its review of the parcel registers for property identifiers (PINs) for the Riverdale Project indicated that there were no remaining lien claims registered against the title to the Riverdale Project lands.
179. As set out in the charts below, as at January, 30, 2017, there were 22 lien claims in the aggregate amount of \$5,620,701.11 (collectively, the "**Lien Claims**") registered on title against the Debtors with respect to the Leslieville Project and the Beach Project (collectively, the "**Projects**"). There are 13 Lien Claims in the aggregate amount of \$3,561,770.19 registered on title with respect to the Leslieville Project and 9 Lien Claims in the aggregate amount of \$2,058,930.92 registered on title with respect to the Beach Project.

## 5.7 PRIORITY CLAIMS FOR HOLDBACK DEFICIENCIES

180. 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 CIBC and Terra Firma up to a maximum amount of 10% of the total value of materials and services which the lien claimant provided to the Projects (the "**Holdback Deficiencies**").
181. Given the status of these proceedings, a construction lien claims process has not been established to determine, among other things, the quantum, validity and priority of the Lien Claims or to determine the total value of materials and services provided to the Projects by the lien claimants (collectively, the "**Lien Claimants**"). However, in order to prepare an estimate of the aggregate amount of Holdback Deficiencies with respect to the Projects (the "**Estimated Holdback Amount**") for the purpose of the Terra Firma Motion, Construction Receiver's Independent Counsel requested that the Lien Claimants provide their positions (on a without prejudice basis) as to the total value of materials and services provided by each Lien Claimant to the projects. These amounts are set out in the following charts with the exception of two (2) Lien Claimants who did not respond in which case the total contract amount claimed by these two (2) Lien Claimants in their Lien Claims has been used (the Lien Claimants were advised that total contract amounts would be used if they did not respond):

a. *Lien and Holdback Claims – UC Leslieville Project*

Lien Claimant	Total Lien Amount	Total Value		Priority Holdback Amount (10%)
		Materials/Services		
207875 Ontario Ltd (o/a Canadian Rental Centres)	\$ 37,133.02	\$ 77,475.56	\$ 7,747.56	
Alpa Stairs and Railings Inc.	179,860.26	646,854.45	64,685.45	
Commercial Two Construction Inc.	220,067.21	1,017,000.00	101,700.00	
Emergency Propane Services Inc.	12,022.05	134,490.57	13,449.06	
EXP Services Inc.	9,377.58	151,220.77	15,122.08	
Lido Construction Inc.	1,548,100.00	1,548,100.00	154,810.00	
MDF Mechanical Ltd.	291,963.55	1,558,547.10	155,854.71	
NG Marin Inc.	856,928.72	1,121,247.02	112,124.70	
Orin Contractors Corp.	179,415.75	179,415.75	17,941.58	
Roni Excavating Limited	66,901.00	66,901.00	6,690.10	
Silvio Construction Co. Ltd.	40,361.78	40,361.78	4,036.18	
Sterline Carpet and Tile	46,997.53	364,012.55	36,401.26	
Uptown Hardward Ltd.	72,641.74	292,731.04	29,273.10	
<b>TOTAL</b>	<b>\$ 3,561,770.19</b>	<b>\$ 7,198,357.59</b>	<b>\$ 719,835.78</b>	

b. *Lien and Holdback Claims – UC Beach Project*

Lien Claimant	Total Lien Amount	Total Value		Priority Holdback Amount (10%)
		Materials/Services		
207875 Ontario Ltd. (o/a Canadian Rental Centres)	\$ 74,151.96	\$ 106,733.22	\$ 10,673.32	
Alpa Stairs and Railings Inc.	33,083.39	295,326.86	29,532.69	
Furkin Construction Inc.	116,337.45	188,636.24	18,863.62	
Lido Construction Inc.	866,823.00	866,823.00	86,682.30	
NG Marin Inc.	646,159.76	646,159.76	64,615.98	
Orin Contractors Corp.	181,969.72	181,969.72	18,196.97	
Roni Excavating Ltd.	79,481.33	79,481.33	7,948.13	
Silvio Construction Co. Ltd.	35,467.55	35,467.55	3,546.76	
Uptown Hardward Ltd.	25,456.76	133,103.62	13,310.36	
<b>TOTAL</b>	<b>\$ 2,058,930.92</b>	<b>\$ 2,533,701.30</b>	<b>\$ 253,370.13</b>	

182. As set out in the above charts, the total Estimated Holdback Amount is \$973,205.89, based on 10% of the aggregate total value of materials and services provided to the Projects by the Lien Claimants of \$9,732,058.89. This amount is based on the following assumptions: (i) each Lien Claimant contracted directly with the owner/debtor; (ii) the amounts in the charts represent the total value of materials and services actually provided by the Lien Claimants to the Projects; (iii) all Lien Claims are validly registered and are valid as to quantum; (iv) no holdback amounts were retained by the Debtors such that each Lien Claimant is entitled to a priority for 10% of their total value of materials and services provided to the Projects; and (v) the Lien Claimants have no additional priority claims under section 78 of the CLA.

## 5.8 TREATMENT OF CONSTRUCTION LIEN CLAIMS UNDER SETTLEMENT APPROVAL ORDER AND BEACH PROJECT ORDER

183. To date, no information has been provided which would indicate that the total value of materials and services provided to the Projects by the Lien Claimants could exceed the amounts set out in the charts above.
184. Accordingly, based on the information currently available to the Construction Receiver and the assumptions set out above, it is the Construction Receiver's view that the Estimated Holdback Amount of \$973,205.89 is sufficient to satisfy the Holdback Deficiencies. However, in an abundance of caution, the Settlement Parties have agreed to set aside a reserve amount of \$1.6 million from the Proceeds of Realization (\$1,184,000 reserve for the Leslieville Project (the "**Leslieville Project Holdback Reserve**") and \$416,000 reserve for the Beach Project (the "**Beach Project Holdback Reserve**"), respectively) to be held by the Construction Receiver in full and final satisfaction of all claims of the Lien Claimants and their subcontractors, if any, in respect of any deficiencies in the holdbacks required to have been retained by any statutory "owner" of the Leslieville Project and Beach Project, as that term is defined in section 1(1) of the CLA that have priority to amounts that were owing to any mortgagee against the Leslieville Project and Beach Project pursuant to Part IV of the CLA (the "**Holdback Deficiencies**").
185. Pursuant to the Settlement Approval Order, the Construction Receiver is authorized and directed to hold the Leslieville Project Holdback Reserve in an interest bearing account for amounts owed to the Lien Claimants for Holdback Deficiencies. The Leslieville Project Holdback Reserve will stand in place and stead of the Leslieville Project, to be used to satisfy the entirety of claims by the Lien Claimants, and their subcontractors, if any, with respect to Holdback Deficiencies, and all actions or proceedings commenced against UC Leslieville, the Administrative Agent, Travelers, and Terra Firma by the Lien Claimants, and their subcontractors, if any, with respect to the Holdback Deficiencies.
186. Once the Leslieville Project Holdback Reserve is established by the Construction Receiver using Proceeds of Realization, all actions or proceedings commenced by the Lien Claimants (as set out in **Schedule "E"** to the Settlement Approval Order) or their subcontractors, if any, as applicable, against UC Leslieville, Terra Firma, the Administrative Agent, and Travelers with respect to: (i) Holdback Deficiencies; (ii) trust or damage claims (if any); or (iii) otherwise claiming priority over any mortgagee (collectively, the "**Mortgagee Actions**") will be dismissed as against UC Leslieville, Terra Firma, the Syndicate, as applicable, on a with prejudice without costs basis.
187. It is intended that the Lien Claimants will coordinate amongst themselves, Terra Firma, Travelers and Administrative Agent to settle the exact amounts of each Lien Claimant's claim in respect of Holdback Deficiencies with the consent of Construction Receiver (the "**Settled Amounts**"). Once such Settled Amounts are

agreed upon, the Construction Receiver will bring a motion or motions (as required) to pay the Settled Amounts to each of the Lien Claimants and to distribute any residual amount, if any, in accordance with the distribution Waterfall.

188. The same structure is contemplated in the Beach Project Order with respect to Lien Claims registered on title against the Beach Project.

## 5.9 REVIEW OF MORTGAGE ADVANCES

189. By letter dated July 22, 2016, counsel for MDF Mechanical Ltd. requested certain information from CIBC and Terra Firma pursuant to section 39 of the CLA including the dates and amounts of advances made by CIBC and Terra Firma pursuant to their respective mortgages registered on title to the Leslieville Project. Copies of the responses provided by counsel for CIBC and Terra Firma dated August 22, 2016 and September 16, 2016, respectively, are attached as **Appendix “T”**.
190. The information provided by CIBC in its response raised potential issues with respect to the timing of a subsequent advance by CIBC under its mortgage and the discharge of a Lien Claim registered on title to the Leslieville Project. In particular, Blueline Rental, Inc. (“**Blueline**”) registered a Lien Claim on title on September 30, 2014, which was discharged on October 24, 2014 and the CIBC response indicated that CIBC made an intervening advance of \$657,344 on October 16, 2014. A copy of the PIN for the Leslieville Project as at March 30, 2017, is attached as **Appendix “U”**. On its face, this information suggested that CIBC made an advance while Blueline’s Lien Claim was registered on title which, pursuant to section 78(4) of the CLA, would result in CIBC losing priority over this advance to the Lien Claimants with valid Lien Claims on the Leslieville Project. Accordingly, counsel for MDF Mechanical Ltd. requested that counsel for the Construction Receiver review the timing of this advance.
191. In response to requests for additional information by counsel for the Construction Receiver, counsel for CIBC advised that, as a result of certain clerical errors, the dates of CIBC’s advances set out in its letter dated August 22, 2016 were incorrect, as those dates reflected the date the Draw Notice was received by CIBC, not the dates on which advances were made. Rather, the advance of \$657,344 was actually made on October 27, 2014, after the discharge of Blueline’s Lien Claim. Copies of a spreadsheet setting out the dates and amounts of advances by CIBC with respect to the Projects (and the Riverdale Project), bank statements for UC Leslieville and a letter of direction dated August 1, 2012 with respect to the initial advance, were provided to the Construction Receiver and reviewed by Construction Receiver’s Independent Counsel.
192. Attached as **Appendix “V”** is a copy of letter dated October 26, 2016 from counsel for CIBC to counsel for Commercial Two Construction Inc. in response

to a subsequent section 39 request with respect to, among other things, CIBC's mortgage and advances.

193. Based on the information and documentation provided to the Construction Receiver and its counsel regarding the mortgage advances by CIBC and Terra Firma with respect to the Projects, it appears that there is no basis for any additional priority claims over registered mortgagees for the Lien Claimants other than as set out above.

#### **5.10 STERLING TILE & CARPET SECTION 39 REQUEST**

194. By letter dated August 3, 2016, a copy of which is attached as **Appendix "W"**, Sterling Tile & Carpet requested certain information from numerous parties, including the Construction Receiver, pursuant to section 39 of the CLA. A copy of the Construction Receiver's response by letter dated December 1, 2016, is attached as **Appendix "X"**.

#### **6.0 CONSTRUCTION RECEIVER'S ACTIVITIES TO DATE**

195. In addition to the extensive ongoing discussions and meetings with various stakeholders necessary to achieve the Proposed Settlement outlined in detail in this Report, since its appointment, the Construction Receiver has also undertaken a variety of activities in pursuing its mandate, including, among other things, (i) conservatory and security measures, (ii) asset review and analysis, (iii) review of the Syndicate, Travelers and Terra Firma security positions, and (iv) court/administrative and regulatory matters as summarized below.

#### **6.1 COURT/ADMINISTRATIVE/REGULATORY**

- a. attendance in Court on May 31, 2016 on the granting of the Appointment Order, and subsequent court attendances in respect of these proceedings;
- b. meetings and discussions with representatives of UTMI and KSV (Monitor of certain Filed Urbancorp Entities) regarding books and records of Debtors and coordination of information flow to the Construction Receiver;
- c. setting up and maintaining the Construction Receiver's webpage;
- d. preparing the Notice and Statement of Receiver pursuant to sections 245 (1) and 246 (1) of the BIA for each of the Debtors and remitting same to the Office of the Superintendent of Bankruptcy;
- e. establishing new bank accounts in the name of Alvarez & Marsal Canada Inc., in its capacity as Construction Receiver, and separate HST account numbers for the Construction Receiver;

- f. reviewing and corresponding with Berkow, Cohen LLP in respect of certain litigation claims made against the Debtors and related parties in respect of liens, real estate commissions, and other unsecured claims;
- g. reviewing the status of outstanding pre-receivership HST liabilities or refunds due, including reviewing the August 2015 Reassessment, the April 2016 Assessment and the May 2016 Assessment received from CRA in respect of the Riverdale Project and retaining MNP LLP to prepare and file the Notice of Objection;
- h. preparing and filing HST returns in respect of the receivership reporting periods ended May 31, 2016 to February 28, 2017;
- i. numerous discussions and correspondence with CRA in respect of set-off being applied by CRA against the Construction Receiver refund returns, and co-ordinating the reversal of same;
- j. managing operating costs and expenses of the Receivership Proceedings, including estimating the Construction Receiver's cash requirements, reviewing invoices submitted by contractors and consultants, submitting funding requests through the issuance of Receiver Certificates, and preparing statements of Receipts and Disbursements and Commitments;
- k. preparing the First Report of the Construction Receiver in respect of service issues and the scheduling of the Terra Firma Motion;
- l. preparing the Interim Statement of Receiver pursuant to section 246(2) of the BIA for each of the Debtors and remitting same to the Office of the Superintendent of Bankruptcy;
- m. engaging Miller Thomson LLP, as the Construction Receiver's Real Estate Counsel in respect of the New APS and Disclosure Documentation; and
- n. preparation of the Second Report of the Construction Receiver.

## **6.2. CONSERVATORY AND SECURITY MEASURES**

- a. retaining Firstbrook Cassie and Anderson Inc. ("FCA") as the Construction Receiver's insurance broker, and obtaining through FCA new and extended insurance coverage;
- b. securing the books and records of the Debtors and facilitating transfer of same to the Construction Receiver's offices;
- c. securing Property of the Debtors by, among other things, implementing appropriate security arrangements at UC Leslieville and UC Beach Projects;



- d. freezing the Debtors' bank accounts at CIBC and accounts at Harris Sheaffer in respect of purchaser deposits for the Leslieville Project and the Residual Closing Monies;
- e. touring the Leslieville and Beach Projects;
- f. engaging various contractors and consultants to assist in the preservation and maintenance of the Project sites, including in respect of site safety and maintenance, pest control, snow removal and salting, winter heating, general clean-up services, and remediation work in respect of water damage and potential mould issues, among others, and coordinating same with such contractors and consultants;
- g. obtaining quotes from, and coordinating with, consultants to perform a building envelope review on the Leslieville Project; and
- h. reviewing and negotiating extensions of the CPAs with the City in respect of the Leslieville Project to December 31, 2016 and subsequently to April 30, 2017 and July 31, 2017.

### 6.3. ASSET REVIEW AND ANALYSIS

- a. engaging the services of Altus, a leading commercial real estate consulting firm<sup>12</sup>, to perform an Estimate of Costs-to-Complete Report, and to provide general consulting advice with respect to project completion status, potential construction options, construction liens, communication with City, project security and maintenance;
- b. preparing a summary of Riverdale Project closing proceeds and related adjustments and to assist the Syndicate with its undertaking to release security over the Riverdale Project;
- c. analysis of the Debtors' purchaser deposit information, and discussions with counsel to Travelers regarding matters related thereto;
- d. engaging the services of CBRE Limited ("CBRE") and Janterra Real Estate Advisors ("Janterra") to conduct appraisals on the Leslieville Project and Beach Project, and discussions with CBRE and Janterra representatives regarding content of appraisal reports;
- e. preparing RFP document for potential listing brokers, and reviewing RFP submissions received and related analysis;
- f. preparing revised RFP process in respect of only the Beach Project, and reviewing revised RFP submissions received and related analysis;

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<sup>12</sup>Altus was also the Syndicates' cost consultant appointed by CIBC pursuant to its Syndicate Pre-Filing Credit Agreement.

- g. meetings with City officials and follow up discussions to review the state of the Projects, Notice of Approval Conditions, site plan agreements, status of outstanding approvals, status of letters of credit, and other matters;
- h. discussions and correspondence with City officials in respect of the calculation of realty tax arrears, and reversal of errors made by the City;
- i. reviewing all purchase and sale agreements in the Debtors' possession and preparation of summary based on information available; and
- j. reviewing an unsolicited offer on the Beach Lots and related discussions with stakeholders.

#### **6.4 STAKEHOLDER SETTLEMENT DISCUSSIONS, DOCUMENTATION AND ANALYSIS**

- a. review of lien claims and related discussions with counsel regarding holdback amounts;
- b. attendance at day-long mediation with The Honourable Mr. J. Ground and stakeholder group on September 28, 2016;
- c. preparation of numerous purchaser deposit, purchase price and upgrade summaries including numerous discussions with stakeholder groups;
- d. arrange for inspection tours by UC Leslieville Purchasers, and various stakeholder groups;
- e. preparation of numerous security waterfall scenarios to assist in the overall analysis of the proposed settlement;
- f. review of condominium disclosure documentation in respect of geothermal assets and related discussions with stakeholders;
- g. assistance in drafting of the initial and revised development budgets, and related discussions with stakeholders;
- h. arranging for the updating of annual condominium budget with property management firm, FirstService Residential;
- i. review and commentary in respect of several drafts of the Settlement Framework;
- j. review and commentary in respect of several drafts of the Settlement Definitive documentation, including the New APS, the Disclosure Documentation, the Craft Construction Contract, the Craft Development

Contract, the TF Cost Overrun Agreement, the Craft Loan Agreement, the Syndicate Construction Loan Agreement and the draft court Orders; and

- k. preparing a Special Report to Tarion in respect of the state of completion of the Leslieville Project.

## 7.0 CONSTRUCTION RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS ("R&D") AND ESTIMATED FUNDING REQUIREMENTS

### *Construction Receiver's Interim Statement of Receipts and Disbursements and Current Borrowings*

196. The Construction Receiver's Interim Statement of Receipts and Disbursements ("R&D") for the period May 31, 2016 to March 31, 2017 (the "Period"), is attached as **Appendix "Y"**. The R&D indicates a cash balance on hand as at March 31, 2017 of \$152,486.98.
197. The principal assets of UC Leslieville and UC Beach are partially constructed real estate holdings which do not presently generate positive cash flow. The principal asset of UC Riverdale relates to monies held in trust by Harris Sheaffer in respect of HST withheld on the UC Riverdale closings. Accordingly, the Construction Receiver's only source of cash receipts has been Court authorized borrowings issued pursuant to Receiver Certificates, HST refunds and interest on cash balances held. The Construction Receiver's disbursements consist primarily of professional fees, repairs and maintenance, realty taxes, insurance, utilities and security.
198. The Construction Receiver has fully drawn its authorized borrowings of \$3.0 million through the issuance of Receiver's Certificates, as set out below:

Certificate No.	Amount	Date Issued
1	\$ 200,000	7-Jun-16
2	1,100,000	2-Aug-16
3	1,000,000	14-Sep-16
4	700,000	7-Dec-16
<b>TOTAL</b>	<b>\$ 3,000,000</b>	

### *Estimated Funding Requirements*

199. As at March 31, 2017, the Construction Receiver has estimated its accrued liabilities to be \$1,824,906, as outlined in **Appendix "Z"**. Net of cash on hand, the Construction Receiver's accrued liabilities are estimated at \$1,672,419. Accrued liabilities predominately relate to unpaid professional fees.
200. As outlined in the attached as **Appendix "AA"**, the Construction Receiver is requesting additional borrowings of \$3.0 million, to cover estimated accrued liabilities as at March 31, 2017 and future anticipated costs, assuming the proposed orders sought to implement the Proposed Settlement are granted and the

Construction Receiver is authorized to carry out its obligations thereunder, which primarily relate to professional fees, realty taxes, expenditures required to gain release of letters of credit, and Project Monitor costs.

201. Accordingly, the Construction Receiver is respectively requesting this Honourable Court's approval of an increase in the Construction Receiver's authorized borrowing limit, from \$3.0 million to \$6.0 million.

## **8.0 APPROVAL OF FEES AND ACTIVITIES**

202. Pursuant to the Appointment Order, the Construction Receiver was specifically authorized by the Court to retain 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 shall retain independent counsel.
203. Given the variety of realization options available to the Construction Receiver and competing interests of the stakeholders, the engagement of independent counsel to provide independent legal advice became critically important. The Construction Receiver retained Blake, Cassels & Graydon LLP to act as Construction Receiver's Independent Counsel in these Receivership Proceedings.
204. The Construction Receiver and its counsel have maintained detailed records of their professional time and disbursements since the Appointment Order.
205. 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 each Project, and for fees and expenses incurred for the general administration of the Receivership Proceedings.
206. 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 \$1,390,042.50, plus HST and disbursements for the period from May 30, 2016 to March 31, 2017;
  - b. Construction Receiver's Independent Counsel in the amount of \$1,328,389.60, plus HST and disbursements for the period from May 19, 2016 to March 31, 2017;
  - c. Construction Receiver's Counsel in the amount of \$650,479.00, plus HST and disbursements for the period from June 2, 2016 to March 31, 2017;  
and

- d. Construction Receiver's Real Estate Counsel in the amount of \$44,562.00, plus HST and disbursements for the period from March 2<sup>nd</sup>, 2017 to March 31, 2017.
207. The Receiver will be serving and filing a supplementary report in respect of the approval sought of such professional fees which will include affidavits from each firm attaching detailed accounts (redacted for privileged information) and providing summaries which will identify the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rate, the total fees and hours billed and combined average hourly rates for each firm.
208. The Construction Receiver and its counsel had to take a very active role in facilitating the Proposed Settlement under very challenging circumstances as described in detail in this Second Report. The fees and disbursements of the Construction Receiver and its counsel resulting from the above described activities are significant. However, they reflect the complexity of the Proposed Settlement and the difficulties encountered in finding and successfully achieving a realization strategy that balanced the competing interests of the stakeholders while maximizing recoveries.

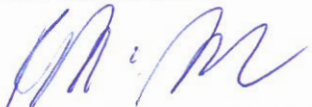
#### 9.0 CONCLUSIONS & RECOMMENDATIONS

209. The Construction Receiver requests that this Honourable Court grant the relief sought by the Construction Receiver in this Second Report.

All of which is respectfully submitted, this 21<sup>st</sup> day of April, 2017.

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

Per:

  
\_\_\_\_\_  
Douglas R. McIntosh  
President

# **APPENDIX “A”**

## SCHEDULE “A”

### DEFINITIONS

“**2015 Beach APS**” shall have the meaning given to it in paragraph 128 of this Second Report;

“**2015 Property**” shall have the meaning given to it in paragraph 173b of this Second Report;

“**Acknowledgement**” shall have the meaning given to it in paragraph 35f of this Second Report;

“**Ad Hoc Beach Purchasers**” shall have the meaning given to it in paragraph 7 of this Second Report;

“**Ad Hoc Beach Purchaser Counsel**” shall have the meaning given to it in paragraph 7 of this Second Report;

“**Ad Hoc Leslieville Purchaser Counsel**” means Dickinson Wright LLP;

“**Ad Hoc Leslieville Purchasers**” shall have the meaning given to it in paragraph 7 of this Second Report;;

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

“**Altus**” means Altus Group Limited;

“**Application Record**” shall have the meaning given to it in paragraph 162 of this Second Report;

“**Appointment Order**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**April 2016 Reassessment**” shall have the meaning given to it in paragraph 156 of this Second Report;

“**August 2015 Reassessment**” shall have the meaning given to it in paragraph 154 of this Second Report;

“**Bankruptcy Condition**” shall have the meaning given to it in paragraph 111 of this Second Report;

“**Bankruptcy Trustee**” shall have the meaning given to it in paragraph 113 of this Second Report;

“**Beach Homes**” shall have the meaning given to it in paragraph 121 of this Second Report;

“**Beach Listing Agent**” shall have the meaning given to it in paragraph 13b of this Second Report;

“**Beach Listing Agreement**” shall have the meaning given to it in paragraph 142 of this Second Report;

“**Beach Marketing Plan**” shall have the meaning given to it in paragraph 146 of this Second Report;

“**Beach Lots**” shall have the meaning given to it in paragraph 132 of this Second Report;

“**Beach Project**” is the project described in Section 3.0 of this Second Report;

“**Beach Project Holdback Reserve**” shall have the meaning given to it in paragraph 183 of this Second Report;

“**Beach Project Order**” shall have the meaning given to it in paragraph 13b of this Second Report;

“**Beach Sale Process**” has the meaning given to it in paragraph 13b and as more particularly described in Section 3.5 of this Second Report;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**Bicycle Storage Units**” shall have the meaning given to it in paragraph 18 of this Second Report;

“**Blueline**” means Blueline Rental, Inc.

“**Brochure**” shall have the meaning given to it in paragraph 146 of this Second Report;

“**Cash Collateral Release Date**” shall have the meaning given to it in paragraph 118d of this Second Report;

“**CBRE**” means CBRE Limited;

“**CIBC**” means the Canadian Imperial Bank of Commerce

“**CIBC Mortgage**” shall have the meaning given to it in paragraph 164 of this Second Report;

“**City**” means the City of Toronto;

“**CLA**” means the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended;

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

“**Condominium Corporation**” means the condominium corporation for the Condominium;

“**Construction Lien Trustee**” shall have the meaning given to it in paragraph 1 of this Second Report;



“**Construction Receiver**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**Construction Receiver’s Charge**” shall have the meaning given to it in paragraph 19 of the Appointment Order;

“**Construction Receiver’s Counsel**” means Gowlings WLG (Canada) LLP;

“**Construction Receiver’s Independent Counsel**” means Blake, Cassels & Graydon LLP;

“**Construction Receiver’s Real Estate Counsel**” means Miller Thomson LLP;

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

“**Court**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**CPAs**” shall have the meaning given to it in paragraph 20 of this Second Report;

“**CRA**” means the Canada Revenue Agency;

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

“**Craft Cash Collateral**” shall have the meaning given to it in paragraph 118d of this Second Report;

“**Craft Charge**” shall have the meaning given to it in paragraph 106a of this Second Report;

“**Craft Compensation**” shall have the meaning given to it in paragraph 73 of this Second Report;

“**Craft Construction Charge**” means the Court ordered charge over the Leslieville Project, subordinate to the Syndicate Pre-Filing Secured Obligations, to secure all obligations of the Construction Receiver under the Craft Loan Agreement;

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

“**Craft COR Deferred Fee**” shall have the meaning given to it in paragraph 87 of this Second Report;

“**Craft COR Deferred Fee Charge**” shall have the meaning given to it in paragraph 87 of this Second Report;

“**Craft Deferred Management Fee Charge**” shall have the meaning given to it in paragraph 74 of this Second Report;

“**Craft Development Contract**” means the development contract dated April 18, 2017 between UC Leslieville by the Construction Receiver and Craft for the provision by Craft of development

services with respect to the Leslieville Project, and as appended as **Appendix “D”** to the Second Report;

“**Craft Geo-Thermal Charge**” shall have the meaning given to it in paragraph 90 of this Second Report;

“**Craft Geo-Thermal Systems Costs**” shall have the meaning given to it in paragraph 90 of this Second Report;

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

“**Craft Loans**” shall have the meaning given to it in paragraph 82a of this Second Report;

“**Craft Success Fee**” shall have the meaning given to it in paragraph 73b of this Second Report;

“**Craft Success Fee Charge**” shall have the meaning given to it in paragraph 74 of this Second Report;

“**Debenture**” shall have the meaning given to it in paragraph 163 of this Second Report;

“**Debtors**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**Deferred Management Fee**” shall have the meaning given to it in paragraph 73a ii of this Second Report;

“**Deposit Holder**” shall have the meaning given to it in paragraph 35g of this Second Report;

“**Deposit Monies**” shall have the meaning given to it in paragraph 176b of this Second Report;

“**Detached House**” shall have the meaning given to it in paragraph 18 of this Second Report;

“**Development Services**” shall have the meaning given to it in paragraph 71 of this Second Report;

“**Disclosure Documentation**” shall have the meaning given to it in paragraph 35e of this Second Report;

“**DW Costs**” shall have the meaning given to it in paragraph 39i of this Second Report;

“**Earned Management Fee**” shall have the meaning given to it in paragraph 73a i of this Second Report;

“**Effective Date**” shall have the meaning given to it in the Settlement Approval Order;

“**Estimated Holdback Amount**” shall have the meaning given to it in paragraph 180 of this Second Report;

“**Excess Deposits**” shall have the meaning given to it in paragraph 129 of this Second Report;

“**Excess Parking Unit Process**” shall have the meaning given to it in paragraph 103 of this Second Report;

“**Excess Parking Units**” shall have the meaning given to it in paragraph 18 of this Second Report;

“**Excluded Party**” shall have the meaning given to it in paragraph 138 of this Second Report;

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

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

“**FCA**” means Firstbrook Cassie and Anderson Inc.;

“**Final Order**” shall have the meaning given to it in paragraph 42c of this Second Report;

“**Final Tentative Occupancy Date**” shall have the meaning given to it in paragraph 39h of this Second Report;

“**Fixed Price**” shall have the meaning given to it in paragraph 68 of this Second Report;

“**Funding Failure**” shall have the meaning given to it in paragraph 40 of this Second Report;

“**Funding Failure Notice**” shall have the meaning given to it in paragraph 40 of this Second Report;

“**Geo-Thermal Company**” shall have the meaning given to it in paragraph 91 of this Second Report;

“**Geo-Thermal Energy Supply Contract**” shall have the meaning given to it in paragraph 96 of this Second Report;

“**Geo-Thermal Purchase Price**” shall have the meaning given to it in paragraph 92 of this Second Report;

“**Geo-Thermal System**” has the meaning given to it in paragraph 90 of this Second Report;

“**Geo-Thermal System Marketing Process**” shall have the meaning given to it in paragraph 97 of this Second Report;

“**Geo-Thermal System Proceeds Charge**” shall have the meaning given to it in paragraph 90 of this Second Report;

“**Geo-Thermal Unit(s)**” shall have the meaning given to it in the Disclosure Documentation;

“**Green Loan**” shall have the meaning given to it in paragraph 93 of this Second Report;

“**Guarantors**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**Harris Sheaffer**” shall have the meaning given to it in paragraph 153 of this Second Report;

“**Holdback Deficiencies**” shall have the meaning given to it in paragraph 179 of this Second Report;

“**Initial Development Budget**” shall have the meaning given to it in paragraph 71 of this Second Report;

“**Irrevocable Direction**” shall have the meaning given to it in paragraph 35g of this Second Report;

“**Janterra**” means Janterra Real Estate Advisors;

“**Latent Defects**” shall have the meaning given to it in paragraph 68 of this Second Report;

“**Latent Defect Schedule**” shall have the meaning given to it in paragraph 69 of this Second Report;

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

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

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

“**Leslieville Project Holdback Reserve**” shall have the meaning given to it in paragraph 183 of this Second Report;

“**Leslieville Project Lands**” means the lands and premises situate in the City of Toronto, and which is currently municipally known as 50 Curzon Street;

“**Lien Claimants**” shall have the meaning given to it in paragraph 180 of this Second Report;

“**Lien Claims**” shall have the meaning given to it in paragraph 178 of this Second Report;

“**Listing Period**” shall have the meaning given to it in paragraph 143a of this Second Report;

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

“**Marketing End Date**” shall have the meaning given to it in paragraph 100 of this Second Report;

“**Marketing Plan**” shall have the meaning given to it in paragraph 145 of this Second Report;

“**May 2016 Assessment**” shall have the meaning given to it in paragraph 158 of this Second Report;

“**Minimum Unit Price**” shall have the meaning given to it in paragraph 101 of this Second Report, and as set out in **Confidential Appendix “B”** to this Second Report, or such other price as may be determined in accordance with the Craft Development Contract or otherwise approved by the Court;

“**MLS**” shall have the meaning given to it in paragraph 145 of this Second Report;

“**Mortgagee Actions**” shall have the meaning given to it in paragraph 186 of this Second Report

“**New APS**” means an agreement of purchase and sale between UC Leslieville by the Construction Receiver and an Opt-In Leslieville Purchaser for a Unit, substantially in the form of Schedule “C-1” to the Purchaser Package Approval Order;

“**New Leslieville Purchasers**” shall have the meaning given to it in paragraph 31e of this Second Report;

“**Old Deposit**” shall have the meaning given to it in paragraph 35g of this Second Report;

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

“**Opt-In Deadline**” shall have the meaning given to it in paragraph 54 of this Second Report;

“**Opt-In Leslieville Purchaser**” shall have the meaning given to it in paragraph 31d of this Second Report;

“**Opt-In Letter**” shall have the meaning given to it in paragraph 35b of this Second Report;

“**Opt-In Package**” shall have the meaning given to it in paragraph 55 of this Second Report;

“**Opt-In Threshold**” shall have the meaning given to it in paragraph 115a of this Second Report;

“**Opt-Out Leslieville Purchaser**” shall have the meaning given to it in paragraph 57 of this Second Report;

“**Original Beach APS**” shall have the meaning given to it in paragraph 12 of this Second Report;

“**Original Disclosure Documentation**” shall have the meaning given to it in paragraph 48 of this Second Report;

“**Original Leslieville APS**” shall have the meaning given to it in paragraph 19 of this Second report;

“**Outside Date**” shall have the meaning given to it in paragraph 70b of this Second Report;

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

“**Period**” shall have the meaning given to it in paragraph 195 of this Second Report;

“**Premium**” shall have the meaning given to it in paragraph 31g of this Second Report;

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

“**Project Monitor**” shall have the meaning given to in the Craft Development Contract and the Craft Development Contract;

“**Project Monitor Engagement**” shall have the meaning given to it in paragraph 79 of this Second Report;

“**Projects**” shall have the meaning given to it in paragraph 178 of this Second Report;

“**Property**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**Property Interest Waiver**” shall have the meaning given to it in paragraph 134 of this Second Report;

“**Proposals**” shall have the meaning given to it in paragraph 136 of this Second Report;

“**Proposal Summary**” shall have the meaning given to it in paragraph 139 of this Second Report;

“**Proposed Settlement**” shall have the meaning given to it in paragraph 8 of this Second Report;

“**Purchaser Information Package**” shall have the meaning given to it in paragraph 35 of this Second Report;

“**Purchaser Package Approval Order**” shall have the meaning given to it in paragraph 13a of this Second Report;

“**Purchasers’ Premium Charge**” shall have the meaning given to it in paragraph 109 of this Second Report;

“**R&D**” shall have the meaning given to it in paragraph 195 of this Second Report;

“**Receiver**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**Receivership Administration Order**” shall have the meaning given to it in paragraph 13c of this Second Report;

“**Receivership Proceeding**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**Redemption Order**” shall have the meaning given to it in paragraph 6 of this Second Report;

“**Registered Mortgage**” shall have the meaning given to it in paragraph 173b of this Second Report;

“**Replacement HVAC System**” shall have the meaning given to it in the Disclosure Documentation;

“**Residual Closing Monies**” shall have the meaning given to it in paragraph 152 of this Second Report;

“**RFP**” shall have the meaning given to it in paragraph 136 of this Second Report;

“**Riverdale APS**” shall have the meaning given to it in paragraph 149 of this Second Report;

“**Riverdale Project**” is the project described in Section 4.0 of this Second Report;

“**Riverdale Purchasers**” shall have the meaning given to it in paragraph 148 of this Second Report;

“**Second Report**” shall have the meaning given to it in paragraph 13 of this Second Report;

“**Security Opinions**” shall have the meaning given to it in paragraph 175 of this Second Report;

“**Senior Indebtedness**” shall have the meaning given to it in paragraph 164 of this Second Report;

“**Settled Amounts**” shall have the meaning given to it in paragraph 186 of this Second Report;

“**Settlement Approval Order**” shall have the meaning given to it in paragraph 13a of this Second Report;

“**Settlement Conditions**” shall have the meaning given to it in paragraph 42 of this Second Report;

“**Settlement Definitive Documents**” shall have the meaning given to it in paragraph 31 of this Second Report;

“**Settlement Framework**” shall have the meaning given to it in paragraph 30 of this Second Report;

“**Settlement Notice Letter**” shall have the meaning given to it in paragraph 35a of this Second Report;

“**Settlement Orders**” shall have the meaning given to it in paragraph 42c of this Second Report;

“**Settlement Orders Outside Date**” shall have the meaning given to it in paragraph 42 of this Second Report;

“**Settlement Parties**” shall have the meaning given to it in paragraph 8 of this Second Report;

“**Standard Form Sale Agreement**” shall have the meaning given to it in paragraph 98 of this Second Report;

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

“**Subordination Clause**” shall have the meaning given to it in paragraph 134 of this Second Report;

“**Subsequent Sale Transaction**” shall have the meaning given to it in paragraph 101 of this Second Report;

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

“**Syndicate Charge**” shall have the meaning given to it in paragraph 83g of this Second Report;

“**Syndicate Construction Loan Agreement**” shall have the meaning given to it in paragraph 77 of this Second Report;

“**Syndicate Construction Loan**” shall have the meaning given to it in paragraph 83 of this Second Report;

“**Syndicate Construction Loan Obligations**” shall have the meaning given to it in the definitions schedule to the Settlement Approval Order;

“**Syndicate COR Deferred Fee**” shall have the meaning given to it in paragraph 87 of this Second Report;

“**Syndicate COR Deferred Fee Charge**” shall have the meaning given to it in paragraph 87 of this Second Report;

“**Syndicate Default Funded Amount**” shall have the meaning given to it in paragraph 88 of this Second Report;

“**Syndicate Loan Default Charge**” shall have the meaning given to it in paragraph 88 of this Second Report;

“**Syndicate Pre-Filing Credit Agreement**” shall have the meaning given to it in paragraph 162 of this Second Report;

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

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

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

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

“**Tarion Residual Charge**” shall have the meaning given to it in paragraph 108b of this Second Report;

“**Tarion Warranty Charge**” shall have the meaning given to it in paragraph 108a of this Second Report;

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

“**Terra Firma Commitment Letter**” shall have the meaning given to it in paragraph 172 of this Second Report;



“**Terra Firma Letter of Intent**” shall have the meaning given to it in paragraph 172 of this Second Report;

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

“**Terra Firma Motion**” shall have the meaning given to it in paragraph 6 of this Second Report;

“**TF Cost Overrun Agreement**” shall have the meaning given to it in Section 2.12 of this Second Report;

“**TF Cost Overrun Agreement Charge**” shall have the meaning given to it in paragraph 107 of this Second Report;

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

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

“**Travelers Cash Collateral**” shall have the meaning given to it in paragraph 1682 of this Second Report;

“**Travelers GSA**” shall have the meaning given to it in paragraph 170 of this Second Report;

“**Travelers Master Excess Claims Policy**” shall have the meaning given to it in paragraph 166 of this Second Report

“**Travelers Mortgage**” shall have the meaning given to it in paragraph 170 of this Second Report;

“**Travelers Secured Obligations**” means all obligations owed or owing by UC Leslieville to Travelers from time to time under or in connection with the Travelers Master Excess Claims Policy and the Tarion Bond pursuant to the UC Leslieville Indemnity Agreement.

“**UC Beach**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**UC Leslieville**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**UC Riverdale**” shall have the meaning given to it in paragraph 1 of this Second Report;

“**UC Leslieville Indemnity Agreement**” shall have the meaning given to it in paragraph 169 of this Second Report

“**Ultimate Rescission Bar Date**” shall have the meaning given to it in paragraph 115 of this Second Report;

“**Units**” shall have the meaning given to it in paragraph 18 of this Second Report, and as more particularly defined in the Settlement Approval Order;

“**Unregistered Mortgage**” shall have the meaning given to it in paragraph 173a of this Second Report;

“**Unsold Unit**” shall have the meaning given to it in paragraph 98 of this Second Report;

“**Updated Proposals**” shall have the meaning given to it in paragraph 136 of this Second Report;

“**URI**” means Urban Renaissance Inc.;

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

“**Vacant Lot**” shall have the meaning given to it in paragraph 18 of this Second Report;

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

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

“**Waterfall**” shall have the meaning given to it in paragraph 73a ii of this Second Report, and more particularly set out in the Settlement Approval Order.

## **APPENDIX “B”**



April 20, 2017

**EMAIL (TZASPALIS@ALVAREZANDMARSAL.COM)**

Alvarez & Marsal Canada Inc.  
 Royal Bank Plaza, South Tower  
 200 Bay Street, Suite 2900  
 P.O. Box 22  
 Toronto ON M5J 2J1  
 Canada

Attention: Tony Zaspalis

Dear Sirs and Mesdames:

**Re: In the Matter of the Receivership of Urbancorp (Leslieville) Developments Inc. et al, Court File No. CV-16-11409-00CL**

Capitalized terms not otherwise defined in this letter shall have the meanings given to them in the *Special 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. Made to Tarion Warranty Corporation Re: Substantial Completion of 50 Curzon Street Project Dated April 18, 2017* (the “Special Report”).

Based on the information set out in the Special Report, and the other information provided to Tarion by the Construction Receiver in connection with the Special Report including, without limitation, the *50 Curzon Street (Leslieville), Toronto Low-Rise Condominium Development Site Visit Report at March 2, 2017* and the *50 Curzon Street (Leslieville), Toronto Low-Rise Condominium Development Estimate of Cost-To-Complete*, each prepared by Altus Group Limited, Tarion has determined that the Project has been substantially completed for the purposes of section 15.1 of the *Ontario New Home Warranties Plan Act* (the “ONHWP Act”), and will therefore be subject to the applicable warranties under the ONHWP Act.

In accordance with applicable case law (see, e.g., *Montreal Trust Company of Canada v. Bloordale Properties Ltd.*, *Romspen Investment Corporation v. 6176666 Canada Ltee.*, *Ontario New Home Warranty Program v. Morison*), the ONHWP Act does not prohibit certain court-appointed officials from selling new homes in certain circumstances, despite the fact that they

are not registered with Tarion as “vendors” or as “builders”. Therefore, in the present circumstances of this receivership, Tarion does not oppose the Construction Receiver selling the new homes as it would not be considered a “vendor” or “builder” under, and for the purposes of, the ONHWP Act.

Yours Truly,



Howard Bogach  
President and CEO

# **APPENDIX “C”**

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

**– and –**

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

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**CONSTRUCTION CONTRACT**

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

**April 18, 2017**

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## AGREEMENT BETWEEN OWNER AND CONTRACTOR

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

by and between the parties

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

hereinafter called the “Owner”

and

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

hereinafter called the “Contractor”

The Owner and the Contractor agree as follows:

### ARTICLE A-1 THE WORK

The Contractor shall:

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

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

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

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

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

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

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

- Agreement between Owner and Contractor
- Definitions
- The General Conditions of the Stipulated Price Contract
- the following Schedules to the Agreement:
  - Schedule “A”: List of Report and Drawings
  - Schedule “B-1”: New APS substantially in the blank form of New APS attached
  - Schedule “B-2”: Standard Agreement of Purchase and Sale for New Purchasers substantially in the blank form of agreement attached
  - Schedule “C”: Standard Home Automatization Package
  - Schedule “D”: List with Upgrades
  - Schedule “E”: Upgrades Summary
  - Schedule “F”: Approved Upgrades
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  - Schedule “I”: Schedule of Values
  - Schedule “J”: Notice of Approval Conditions
  - Schedule “K”: Draft Site Plan Agreement

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  - Exhibit 2 - Application for Payment
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  - Exhibit 8 - Change Order Request
  - Exhibit 9 - Change Order
  - Exhibit 10 - Subcontractor Payment Confirmation
- Schedule “O”: Insurance Requirements

#### **ARTICLE A-4 CONTRACT PRICE**

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

#### **ARTICLE A-5 PAYMENT**

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

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

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

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

**Owner**

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

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

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

and to:

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

**Contractor**

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

and to

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

**Prime Consultant**

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

**Project Monitor, if applicable**

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

**Administrative Agent, if applicable**

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

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

With a copy to:

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

**Terra Firma Capital Corporation, if applicable**

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

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

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

7.1 [INTENTIONALLY DELETED.]

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

**ARTICLE A-8 SUCCESSION**

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

**ARTICLE A-9 RECOURSE**

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

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

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

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

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

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

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





SIGNED AND DELIVERED  
in the presence of:

**WITNESS**

**OWNER:**

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

  
signature  
Gail A. Jenkinson

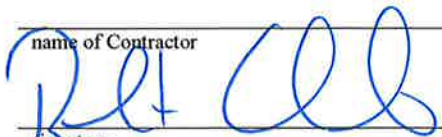
name of owner  
  
signature  
Douglas R. McIntosh, President  
Alvarez & Marsal Canada Inc.

**WITNESS**

**CONTRACTOR:**

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

\_\_\_\_\_  
signature

name of Contractor  
  
signature

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

Robert Sabato, Director and Authorized Signing Officer  
\_\_\_\_\_  
name and title of person signing

\_\_\_\_\_  
signature

\_\_\_\_\_  
signature

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

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

## **DEFINITIONS**

The following Definitions shall apply to all Contract Documents:

### **Administrative Agent**

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

### **Advanced Change Funds**

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

### **Application for Payment**

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

### **Application for Holdback Payment**

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

### **Application for Substantial Performance**

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

### **Breach Work**

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

### **Breach Work Amount**

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

### **Builder**

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

### **Catastrophic Event**

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

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

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

### **Change Funder**

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

### **Change Order**

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

### **Change Order Request**

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

### **Change Order Recommendation**

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

### **Change Price**

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

### **Conditions Precedent**

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

### **Construction Breach**

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

### **Construction Equipment**

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

**Construction Receiver**

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

**Construction Schedule**

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

**Consultant**

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

**Consultant’s Payment Certificate**

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

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

**Consultant’s Substantial Performance Certificate**

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

**Consultant’s Final Payment Certificate**

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

**Contract**

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

**Contract Documents**

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

**Contract Price**

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

**Contract Time**

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

**Contractor**

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

**Cost Overrun**

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

**Cost Overrun Guarantee**

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

**CP Outside Date**

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

**Craft Cash Collateral**

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

**Craft Cash Collateral Amount**

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

**Craft Construction Loan**

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

**Craft Loan Option**

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

**Day**

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

**Delayed Approval**

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

**Development Approvals**

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

**Development Breach**

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

**Development Contract**

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

**Development Costs**

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

**Development Services**

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

**Dispute Work Order**

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

**Draft Application for Payment**

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

**Draft Application for Final Payment**

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

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

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

**Draft Project Monitor's Payment Verification**

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

**Drawings**

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

**Early Unit Occupancy**

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

**Early Unit Occupancy Conditions**

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

**Event of Default**

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

**Final Application for Payment**

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

**Final Application for Final Payment**

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

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

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

**Final Project Monitor's Payment Verification**

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

**Fixed Price**

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

**Funding Breach**

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



**Funding Failure**

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

**General Conditions**

The General Conditions are the general conditions of this Contract.

**Geo-thermal System**

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

**Geo-thermal System Costs**

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

**Geo-thermal System Requirements**

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

**Geo-thermal System Work**

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

**Initial Change Orders**

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

**Latent Defect**

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

**Latent Defect Pre-Testing**

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

**Lien Act**

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

**Lien Claim**

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

**Losses**

Losses has the meaning set out in the Development Contract.

**Major Construction Breach**

Major Construction Breach means if:

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

**Major Event of Default**

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

**Minor Construction Breach**

Minor Construction Breach means if:

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

**New APS**

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

**New Purchaser**

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

**Notice in Writing**

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

**Notice of Approval Conditions**

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

**OHSA**

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

**Ontario New Home Warranty Plan**

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

**Opt-In Leslieville Purchasers**

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

**Opt-In Units**

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

**Outside Date**

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

**Owner**

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

**Owners Security**

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

**PDI Inspection Deficiency**

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

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

**PDI Inspection Form**

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

**Place of the Work**

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

**Prime Consultant**

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

**Prior Work**

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

**Product**

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

**Project**

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

**Project Monitor**

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

**Project Monitor's Holdback Verification**

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

**Project Monitor's Substantial Performance Verification**

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

**Project Monitor's Final Payment Verification**

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

**Project Work**

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

**Provide**

Provide means to supply and install.

**Punchlist**

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

**Replacement HVAC System**

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

**Requested Work**

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

**Schedule of Values**

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

**Scheduled Substantial Performance Date**

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

**Settlement Approval Order**

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

**Shop Drawings**

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

**Site Plan Agreement**

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

**Specifications**

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

**Statutory Declaration**

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

**Subcontractor Payment Confirmation**

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

**Subcontractor**

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

**Substantial Performance of the Work**

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

**Supplemental Instruction**

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

**Supplier**

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

**Syndicate**

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

**Syndicate Construction Loan Agreement**

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

**Tarion**

Tarion is Tarion Warranty Corporation.

**Tarion 60 Day Report**

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

**Tarion Bulletin 19 Report**

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

**Tarion ONHWP Deficiencies**

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

**Technical Audit**

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

**Technical Audit Deficiencies**

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

**Temporary Work**

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

**Termination Notice**

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

**Terra Firma**

Terra Firma is Terra Firma Capital Corporation.

**Total Performance of the Work**

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

**UC Beach**

UC Beach means Urbancorp (The Beach) Developments Inc.

**UC Riverdale**

UC Riverdale means Urbancorp (Riverdale) Developments Inc.

**UC Receivership Proceedings**

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

**Unit**

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

**Unit Completion**

Unit Completion means, with respect to a Unit:

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

**Unit Occupancy Conditions**

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

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

**Unit Occupancy Date**

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

**Unit Owner**

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

**Value Added Taxes**

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

**Waterfall**

Waterfall has the meaning set forth in the Development Contract.



**Work**

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

**Working Day**

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

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

## GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

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

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

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

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

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

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

## **GC 1.3 RIGHTS AND REMEDIES**

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

## **GC 1.4 ASSIGNMENT**

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

## **GC 1.5 CONFIDENTIALITY**

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

**GC 1.6 CONDUCT OF PARTIES**

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

**PART 2 ADMINISTRATION OF THE CONTRACT****GC 2.1 AUTHORITY OF THE CONSULTANT**

- 2.1.1 The Consultant will have authority to act on behalf of the Contractor only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of the Owner, the Contractor and the Consultant.
- 2.1.3 If the Consultant's employment is terminated, the Contractor shall immediately appoint or reappoint a replacement Consultant and the status of the terminated Consultant under the Contract Documents shall be that of the former Consultant. The Contractor shall provide written notice to the Owner of the termination of each Consultant and the appointment of a replacement Consultant; provided that the prior written approval of the Owner shall be required with respect to any replacement Consultant that had not been a consultant to UC Leslieville for the Project.

**GC 2.2 ROLE OF THE CONSULTANT**

- 2.2.1 The Prime Consultant will provide administration of the Contract as described in the Contract Documents.
- 2.2.2 The Prime Consultant will visit the Place of the Work at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Contract Documents.
- 2.2.3 The Prime Consultant will provide at the Place of the Work, one or more project representatives to assist in carrying out the Consultant's responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the Contractor.
- 2.2.4 The Prime Consultant will promptly inform the Owner and the Project Monitor of the date of receipt of the Contractor's Applications for Payment as provided in paragraph 5.3.1 of GC 5.3 - PROGRESS PAYMENT.
- 2.2.5 Based on the Prime Consultant's observations and evaluations of the Contractor's Applications for Payment, the Prime Consultant will determine the amounts owing to the Contractor under the Contract and will issue the Consultant's Payment certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT and GC 5.7 - FINAL PAYMENT.
- 2.2.6 The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents.
- 2.2.7 Matters in question relating to the performance of the Work or the interpretation of the Contract Documents shall be initially referred in writing to the Consultant and the Project Monitor by the party raising the question for interpretations and findings and copied to the other party.

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

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

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

- 2.3.1 The Owner, the Consultant and the Project Monitor shall have access to the Project Work at all times. The Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Work by the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Place of the Work, the Owner, the Consultant and the Project Monitor shall be given access to such Work whenever it is in progress.
- 2.3.2 If Project Work is designated for tests, inspections or approvals in the Contract Documents, or by the Consultants instructions, or by the Laws or ordinances of the Place of the Work, the Contractor shall give the Consultant reasonable notification of when such Project Work will be ready for review and inspection. The Contractor shall arrange for and shall give the Consultant reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The Contractor shall furnish promptly to the Prime Consultant and the Project Monitor two copies of certificates and inspection reports relating to the Project Work.
- 2.3.4 If the Contractor covers, or permits to be covered, Project Work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the Contractor shall, if so directed, uncover such Project Work, have the inspections or tests satisfactorily completed, and make good covering Project Work.
- 2.3.5 The Consultant may order any portion or portions of the Project Work to be examined to confirm that such Work is in accordance with the requirements of the Contract Documents. The Contractor shall correct the Work, if required, and pay the cost of examination and correction, subject to paragraph 2.3.8.
- 2.3.6 The Contractor shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the Contract Documents to be performed by the Contractor or is designated by the Laws or ordinances applicable to the Place of the Work. For certainty, the foregoing excludes the cost of any test or inspection that is included as a Development Cost under the Development Contract.
- 2.3.7 The Contractor shall pay the cost of samples required for any test or inspection to be performed by the Consultant if such test or inspection is designated in the Contract Documents.
- 2.3.8 If the Consultant orders any portion or portions of the Project Work to be examined pursuant to paragraphs 2.3.4 and 2.3.5, and
- .1 the examination uncovers a Latent Defect, then the costs of uncovering and re-covering such Project Work, and repairing the Latent Defect, will be paid in accordance with GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS;
  - .2 the examination uncovers a defect or deficiency in the Project Work which is not a Latent Defect, then the costs of uncovering and re-covering the Project Work, and repairing the defect or deficiency will be borne by the Contractor; and
  - .3 the examination does not uncover any defect or deficiency in the Project Work, then the costs of uncovering and re-covering the Project Work will be paid by the Contractor but reimbursed by the Owner from and to the extent of proceeds of sale of the Units in accordance with the Waterfall, in the same priority as the payment to the Contractor of the Craft Construction Loan.

**GC 2.4 DEFECTIVE WORK**

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

**PART 3 EXECUTION OF THE WORK****GC 3.1 CONTROL OF THE WORK**

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

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

**GC 3.2 INTENTIONALLY DELETED****GC 3.3 TEMPORARY WORK**

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

**GC 3.4 DOCUMENT REVIEW**

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

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

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



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

### **GC 3.6 SUPERVISION**

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

### **GC 3.7 SUBCONTRACTORS AND SUPPLIERS**

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

### **GC 3.8 LABOUR AND PRODUCTS**

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

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

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

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

### **GC 3.10 SHOP DRAWINGS**

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

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

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

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

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

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

### **GC 3.13 CLEANUP**

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

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

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

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

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

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

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

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

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

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

#### **PART 5 PAYMENT**

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

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

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

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

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

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

### **GC 5.3 PROGRESS PAYMENT**

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

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

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

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

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

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



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

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

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

#### **GC 5.6 EARLY UNIT OCCUPANCY**

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

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

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

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

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

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

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

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

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

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

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the Contractor, there are items of Work that cannot be performed, payment in full for that portion of the Work which has been performed as certified by the Consultant and verified by the Project Monitor shall not be withheld or delayed by the Owner on account thereof, but the Owner may withhold, until the remaining portion of the Work is finished, only such an amount that the Consultant and the Project Monitor determines is sufficient and reasonable to cover the cost of performing such remaining work.
- 5.8.2 Notwithstanding any other provision of this Contract, the Owner or the Project Monitor may decline to approve an Application for Payment or an Application for Final Payment or may make an allowance or adjustment for, or allow the Owner a set-off or credit for, or the Owner may withhold (each such instance, a "**Withholding**") any amount as may be necessary to protect the Owner from claims or loss on account of:
- .1 non-conforming or defective Work, which is not rectified or remedied in accordance with the Contract;
  - .2 any holdback required under Lien Act;
  - .3 failure of the Contractor to fulfil its obligations in respect of claims for lien in accordance with Part 13 – LIEN CLAMS;
  - .4 failure of the Contractor to make any payment promptly when due to Subcontractors performing part of the Work provided the Owner has made all payments to Contractor under the Contract; and
  - .5 failure by the Contractor to provide any report deliverable in accordance with the Contract Documents.
- 5.8.3 When the Contractor has remedied the cause of the Withholding and has furnished evidence satisfactory to the Project Monitor and the Owner of such remedy, the amount of the Withholding will be released.

**GC 5.9 NON-CONFORMING WORK**

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

**PART 6 CHANGES IN THE WORK****GC 6.1 CHANGES**

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

**GC 6.2 CHANGE ORDER**

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

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

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

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

- 6.2.9 Notwithstanding the provisions of Part 6 – CHANGES IN THE WORK other than paragraph 6.5.7, if a dispute arises with respect to an approval of a Change Order Request and the Contractor’s entitlement to a Change Order for any reason, or a Change Order Request which has been recommended for approval by the Project Monitor has not been approved within 10 Working Days after its receipt by the Owner and the Change Funder (“**Delayed Approval**”), the Contractor and Owner agree as follows:
- .1 (a) in the case of a rejection of the Change Order Request, the Contractor shall forthwith dispute the rejection of the Change Order Request and forthwith commence and diligently pursue mediation proceedings in accordance with paragraph 8.2.4 of GC 8.2 – NEGOTIATION AND MEDIATION; or (b) in the case of a Delayed Approval, the Contractor shall forthwith provide a Notice in Writing to the Owner, the Project Monitor and the Change Funder;
  - .2 the Project Monitor and Consultant shall forthwith review the work to be performed in connection with the Change Order Request (the “**Requested Work**”) and provide a written recommendation to the Parties and the Change Funder, as soon as practicable, as to whether the Requested Work can be, or should not be, delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION and if the Requested Work should not be so delayed, provide a time schedule for the performance of, the Requested Work if not included in the Change Order Request. If the Project Monitor and the Consultant cannot agree on a recommendation, the recommendation of the Project Monitor will prevail. The recommendation of the Project Monitor and Consultant shall be final and binding on the Parties and the Change Funder and shall not be subject to dispute;
  - .3 if the recommendation of the Project Monitor and Consultant is that the Requested Work can be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION, the Requested Work will be held in abeyance;
  - .4 if the recommendation of the Project Monitor and Consultant is that the Requested Work should not be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION (a “**Dispute Work Order**”):
    - (1) the Contractor agrees to commence and diligently perform the Requested Work in accordance with the schedule in the Change Order Request or Disputed Work Order, as the case may be, and to bear all costs related to such Change Order Request, in the first instance, including any applicable consultant costs or approval fees, until the final agreement, determination, settlement or approval of all disputes or delays in respect of such Change Order Request and hereby agrees to release the Owner from any claims related to such Change Order Request if, in the case of a Delayed Approval, the Change Order Request is not approved by the Owner and the Change Funder (subject to the Contractor’s right to dispute) or, in the case of a disputed Change Order Request, any final determination or settlement of the dispute in respect of the Change Order Request is in the Owner’s or Change Funder’s favour; and
    - (2) Terra Firma shall advance to the Owner an amount equal to the Change Price set out in the Change Order Request, which amount will be held by the Owner in accordance with paragraph 6.2.8.7 until the final determination or settlement of the disputed Change Order Request, or in the case of a Delayed Approval, the final disposition of such Change Order Request; provided that, if Terra Firm fails to advance such Change Price, then the cost paid or payable by the Contractor for the Requested Work as required pursuant to paragraph 6.2.8.4(1): (a) if the Contractor not is successful in the dispute under this paragraph, shall be the sole responsibility of the Contractor, and it shall not be entitled to any reimbursement from the Owner of any of such Change Price, or (b) if the Contractor is successful in the dispute, the Change Price actually paid by the Contractor for all

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

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

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

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

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

### **GC 6.3 INTENTIONALLY DELETED**

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

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

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



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

#### **GC 6.5 DELAYS**

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

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

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

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

- 6.5.5 Except as permitted by GC 6.5.1 with respect to delays that do not require a Change Order, no extension shall be made for delay unless Notice in Writing of the cause of delay is given to the Consultant and the Project Monitor not later than 10 Working Days after the commencement of the delay. The Notice in Writing of the cause of delay must provide details of the delay, anticipated impact on the critical path and costs and include a draft remediation plan to place the Work back on schedule. In the case of a continuing cause of delay only one Notice in Writing shall be necessary.
- 6.5.6 If no schedule is made under paragraph 2.2.13 of GC 2.2 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the Consultant to furnish instructions until 10 Working Days after demand for such instructions has been made.
- 6.5.7 Notwithstanding any provision to the contrary in this Contract, the Contract Time and the Construction Schedule will not be extended if the date scheduled for Substantial Performance of the Work will occur after the Outside Date (as such Outside Date may have been expressly extended pursuant to other provisions of this Contract), unless approved in a Change Order that expressly approves a change to the Outside Date. If, at any time, the Contractor is of the opinion that Substantial Performance of the Work cannot be attained by the Outside Date, it will provide the Owner, the Project Monitor, the Administrative Agent and Terra Firma a Notice in Writing immediately, and will thereafter deliver to the Owner, the Project Monitor, the Administrative Agent and Terra Firma a remediation plan providing for such remedial actions required in order to ensure that Substantial Performance of the Work occurs on or before the Outside Date, including overtime work and/or re-sequencing of work, as applicable.

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

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

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

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

#### 7.1.2 INTENTIONALLY DELETED

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

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

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

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

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

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

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

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

- (2) its reasonable and verifiable costs for any Work actually performed by the Contractor prior to receiving the Termination Notice;
  - (3) provided that, in each case, the Construction Receiver has funding available for such purpose;
- .3 the priority of payment of the Craft Construction Loan and the Geo-thermal System Costs (together with the Court ordered charge securing such loans and costs) shall automatically be further subordinated such that they rank after the repayment of the indebtedness owing to Terra Firma described in the Waterfall set out in the Settlement Approval Order;
  - .4 the Contractor shall have no claim against the Owner, the Construction Receiver or any of the property and assets of UC Leslieville, UC Beach or UC Riverdale for any Losses arising from such termination by the Owner;
  - .5 the Construction Receiver shall be entitled to retain the full amount of the Craft Cash Collateral and the full amount of the undisbursed portion of the Craft Loan (if any) for application against the losses suffered or incurred by the Owner or the Construction Receiver under either of this Contract or the Development Contract; provided that any excess over such losses shall be returned to the Contractor; and
  - .6 each of the Owner and the Construction Receiver shall be entitled to all other rights and remedies it may have against the Contractor under either this Contract or the Development Contract or applicable Law.
- 7.1.6 Notwithstanding the provisions of this Part 7 – DEFAULT, SUSPENSION AND TERMINATION, if the Contractor bona fide and in good faith disputes that a Construction Breach has occurred, the Owner will not be entitled to exercise its rights and remedies with respect to such Construction Breach for so long as the following conditions are satisfied, and the Contractor agrees as follows:
- .1 the Contractor will forthwith commence and diligently pursue a resolution of such dispute pursuant to GC Part 8 – DISPUTE RESOLUTION;
  - .2 the Project Monitor and Consultant shall forthwith review the alleged Construction Breach and the work to be performed or remedied in connection therewith (the “**Breach Work**”) and provide a written recommendation to the Parties and the Change Funder, as soon as practicable, as to whether the Breach Work can be, or should not be, delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION and if the Breach Work should not be so delayed, provide a cost for, and a time schedule for the performance of, the Breach Work, and if the Project Monitor and the Consultant cannot agree on a recommendation, the recommendation of the Project Monitor will prevail. The recommendation of the Project Monitor and Consultant shall be final and binding on the Parties and the Change Funder and shall not be subject to dispute;
  - .3 if the recommendation of the Project Monitor and Consultant is that the Breach Work can be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION, the Breach Work will be held in abeyance;
  - .4 if the recommendation of the Project Monitor and Consultant is that the Breach Work should not be delayed until the dispute can be resolved pursuant to GC Part 8 – DISPUTE RESOLUTION (also a “**Dispute Work Order**”):
    - (1) the Contractor shall forthwith commence and diligently perform the Breach Work within the time schedule recommended by the Project Monitor and Consultant at the Contractor’s own cost and expense (in the first instance) until final agreement, determination or settlement of such dispute between the Parties, and hereby agrees that

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

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

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

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

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

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

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

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

- .1 the effective date of the termination will be the date set out in the Termination Notice;
- .2 the Contractor shall have no claim whatsoever against the Owner or the Construction Receiver or any of the property and assets of UC Leslieville, UC Beach or UC Riverdale for any Losses arising from such termination by the Owner, except against the Owner for (without duplication):
  - (1) the amounts set out in a Final Application for Payment and certified by the Consultant in the Consultant's Payment Certificate and verified by the Project Monitor in the Project Monitor's Payment Verification, but not yet paid (plus the amount of any accumulated statutory 10% holdback amount);
  - (2) its reasonable and verifiable costs for any Work actually performed by the Contractor prior to receiving the Termination Notice but not yet included in an Application for Payment, provided that the Contractor delivers to the Owner an Application for Payment for such costs and they are certified by the Consultant in the Consultant's Payment Certificate and verified by the Project Monitor in the Project Monitor's Payment Verification;
  - (3) its reasonable and verifiable costs for any Work actually performed by the Contractor after receiving the Termination Notice for work necessary to preserve, protect, secure and/or store the Work and the Place of the Work or to perform such other work specified in such notice;
  - (4) provided that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, interest calculated in accordance with paragraph 5.3 of Article A-5 of the Agreement – PAYMENT on amounts due and payable under the Contract but not paid;
  - (5) provided that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, the return of any undisbursed portion of the Craft Loan and Craft Cash Collateral (after payment of outstanding costs under each of this Contract and the Development Contract and correction of any deficiencies in the Work performed by the Contractor prior to such termination); and
  - (6) provided that no Event of Default under this Contract or an "Event of Default" as defined in the Development Contract has occurred and is then existing, any termination costs that the Contractor may owe to arms' length third parties (other than the Builder) as a direct result of such termination and that are unrecoverable or unavoidable, but only to the extent of funding available to the Construction Receiver for such purpose;

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

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

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

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

## **GC 7.2 SUSPENSION AND TERMINATION BY CONTRACTOR**

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

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

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

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



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

## **PART 8 DISPUTE RESOLUTION**

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

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

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

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

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

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

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

**PART 9 PROTECTION OF PERSONS AND PROPERTY****GC 9.1 PROTECTION OF WORK AND PROPERTY**

9.1.1 The Contractor shall protect the Work and the Owner's property and property adjacent to the Place of the Work from damage which may arise as the result of the Contractor's operations under the Contract, and shall be responsible for such damage, except damage which occurs as the result of:

- .1 errors in the Contract Documents; or
- .2 acts or omissions by the Owner, other contractors of the Owner, and their agents and employees.

9.1.2 Before commencing any Work, the Contractor shall determine the location of all underground utilities and structures indicated in the Contract Documents or that are reasonably apparent in an inspection of the Place of the Work.

9.1.3 Should the Contractor in the performance of the Contract damage the Work, the Owner's property or property adjacent to the Place of the Work, the Contractor shall be responsible for making good such damage at the Contractor's expense.

9.1.4 Should damage occur to the Work or Owner's property for which the Contractor is not responsible, as provided in paragraph 9.1.1, the Contractor shall make good such damage to the Work and, if the Owner so directs, to the Owner's property. The Contract Price and Contract Time shall be adjusted as provided in GC 6.1 OWNER'S RIGHT TO MAKE CHANGES and GC 6.2 - CHANGE ORDER.

**GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES**

9.2.1 INTENTIONALLY DELETED.

9.2.2 The Contractor shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substances exceeds the time weighted levels prescribed by applicable legislation at the Place of the Work and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the Place of the Work prior to the Contractor commencing the Work.

9.2.3 Unless the Contract expressly provides otherwise, the Contractor shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the Place of the Work, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the Place of the Work prior to the Contractor commencing the Work.

9.2.4 If the Contractor

- .1 encounters toxic or hazardous substances at the Place of the Work, or
- .2 has reasonable grounds to believe that toxic or hazardous substances are present at the Place of the Work,

the Contractor Shall:

- .3 take all reasonable steps, including stopping the Work, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the Place of the Work, and
- .4 immediately report the circumstances to the Consultant, the Project Monitor and the Owner in writing.

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

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

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

**GC 9.4 CONSTRUCTION SAFETY**

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

**GC 9.5 MOULD**

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

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

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

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

**PART 10 GOVERNING REGULATIONS****GC 10.1 TAXES AND DUTIES**

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

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

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

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

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

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

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

### **GC 10.3 PATENT FEES**

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

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

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

## PART 11 INSURANCE AND CONTRACT SECURITY

### GC 11.1 INSURANCE

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

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

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



## GC 11.2 CONTRACT SECURITY

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

## PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

### GC 12.1 INDEMNIFICATION

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

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

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

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

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

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

## **GC 12.2 WAIVER OF CLAIMS**

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

## **GC 12.3 WARRANTY**

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

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

### **PART 13 LIEN CLAIMS**

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

## **APPENDIX “D”**

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

– and –

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

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**DEVELOPMENT CONTRACT**

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**April 18, 2017**

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**THIS DEVELOPMENT CONTRACT** (the “**Development Contract**”) is made as of the 18<sup>th</sup> day of April, 2017

**AMONG:**

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

(the “**Developer**”)

– and –

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

(the “**Owner**”)

**RECITALS:**

- A. Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”) is the legal and beneficial owner of certain lands and premises located at 50 Curzon Street, Toronto, Ontario, as more particularly described in Schedule 2 (Legal Description of the Project) (the “**Lands**”).
- B. UC Leslieville undertook to develop the Project.
- C. The Syndicate provided a construction loan (the “**Original Construction Loan**”) to UC Leslieville to finance, among other things, the Project, which Original Construction Loan is guaranteed by Urbancorp (The Beach) Developments Inc. (“**UC Beach**”) and Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”). UC Leslieville subsequently defaulted on the Original Construction Loan, and UC Beach and UC Riverdale subsequently defaulted on their guarantees and together UC Leslieville, UC Beach and UC Riverdale are indebted to the Syndicate and to other creditors.
- D. By order of the Court dated May 31, 2016, Alvarez & Marsal Canada Inc. was appointed as receiver and manager pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada), and section 101 of the *Courts of Justice Act* (Ontario), and as construction lien trustee pursuant to section 68 of the *Construction Lien Act* (Ontario), of all of the assets, undertakings, and property acquired for, or used in relation to the business including all proceeds thereof of UC Leslieville, UC Riverdale and UC Beach (collectively, the “**Construction Receiver**”).
- E. As part of a settlement regarding the outstanding debt owed under the Original Construction Loan and other debts of UC Leslieville and certain of its Affiliates, the Developer has agreed to perform or cause to be performed all of the work and services required to complete the Project, including all development, permitting, construction, construction management, supply, finishing work, landscaping, marketing, selling and closing of the sales of condominium units and excess parking units, and establishing and registering the condominium corporation, for which UC Leslieville shall be the declarant, all in accordance with and subject to the terms of this Development Contract, the Construction Contract and the Settlement Approval Order.



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

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions and Interpretation**

This Development Contract shall be interpreted in accordance with Schedule 1 (Definitions and Interpretation).

### **1.2 Schedules**

This Development Contract is comprised of this executed Development Contract and the following schedules and exhibits, all of which are hereby incorporated by reference into and form part of this Development Contract:

<b><u>Schedule</u></b>	<b><u>Title</u></b>
Schedule 1	Definitions and Interpretation
Schedule 2	Description of the Project
Schedule 3-1	Initial Development Budget
Schedule 4	Legal Description of Vacant Lot
Schedule 5	Insurance Requirements
Schedule 6	Legal Description of Beach Remaining Lands

## **ARTICLE 2 COMPLETION OF THE PROJECT**

### **2.1 Overall Obligations under this Development Contract**

- (a) The Developer shall:
- (i) provide the Development Services in accordance with Section 2.2 of this Development Contract;
  - (ii) complete the marketing, selling and closing of Units, Extra Parking Spaces and Extra Storage Spaces in accordance with Section 2.4 of this Development Contract and each New APS;
  - (iii) provide for the financing and security required of the Developer in accordance with Article 6 this Development Contract; and
  - (iv) comply with its other obligations as set out herein.
- (b) In consideration for the provision of the services described in this Development Contract, the Developer shall be entitled to receive the compensation and reimbursements provided for under Section 5.1 of this Development Contract, and shall be reimbursed for the Development Costs incurred by it in accordance with this Development Contract.

- (c) At all times the Developer shall act on a basis which is fair and reasonable and exercise its powers and discharge its duties hereunder honestly and in good faith and in the best interests of the estate of UC Leslieville and the Construction Receiver. Notwithstanding anything to the contrary contained in this Development Contract, the Owner acknowledges that in respect of the Development Services (which, for clarity, do not include the Construction Work), the Developer need only exercise that degree of care, diligence and skill that a professional, qualified and prudent development manager would exercise in comparable circumstances.
- (d) Notwithstanding anything to the contrary contained in this Development Contract, Developer acknowledges and agrees that it and its Subcontractors are not agents of the Owner or the Construction Receiver and have no power to bind the Owner or the Construction Receiver to any obligation or agreement with any Person. The Developer shall not hold itself out, and shall ensure that its Subcontractors do not hold themselves out, to any Person as an agent of the Owner or the Construction Receiver and Developer shall not, and shall ensure that its Subcontractors do not, enter into any obligation or agreement on behalf of the Owner or the Construction Receiver.
- (e) The Parties agree to perform their respective obligations under this Contract honestly and in good faith and will use commercially reasonable efforts to fulfill their respective obligations to provide any approvals, consents or determination of, or satisfaction with, matters without undue delay (taking into account all of the circumstances). The Parties recognize and agree that time is of the essence in this Contract.

## **2.2 Development Services**

- (a) The Developer shall perform or cause to be performed all of the work and services necessary to complete the development of the Project, including approval and registration of the Condominium and the Condominium Corporation (for which UC Leslieville shall be the declarant), in accordance with the requirements of applicable Law, all Development Approvals, the Tarion Home Warranty Plan and each New APS, and shall market and sell the Unsold Units, the Extra Parking Spaces and the Extra Storage Spaces, complete the transfer of all Units which are sold to Unit Owners, complete the transfer of the Extra Parking Spaces and Extra Storage Spaces which are sold and provide the services described in Section 2.4(g) with respect to UC Riverdale and UC Beach (the foregoing, other than any such work and services to be performed or provided under the Construction Contract, being herein collectively, the “**Development Services**”), including:
  - (i) taking (or causing to be taken) all steps, and preparing and submitting (or causing to be prepared and submitted) all applications and documents, required to process the development of the Lands, including the submission of any and all necessary site plan and condominium applications, plan of subdivision applications, applications for part lot control exemption by-laws and the negotiation of development, servicing, site plan, and other similar agreements (and/or amendments thereto or variations thereof) to be entered into by the Owner with Governmental Authorities, in each case, to the extent required or desirable to complete the Project;
  - (ii) obtaining all Development Approvals that are necessary to complete the Project and fulfilling the conditions thereunder (either as part of the Development Services or through the Construction Work under the Construction Contract);
  - (iii) communicating with all Government Authorities and community stakeholders;

- (iv) with respect to the establishment of the Project as a Condominium, the Developer shall, among other things:
  - (A) make all applications, obtain all approvals and create or obtain all surveys, Consultant's reports or certifications and other documents as are necessary to obtain the approval and registration of the Project as a condominium under the Condominium Act;
  - (B) be responsible for, and pay for as Development Costs, the establishment, organization and registration of the Condominium Corporation with UC Leslieville as declarant, and assist the Owner or Construction Receiver in the calling of the turn over meeting if such meeting occurs before the Marketing End Date; provided that the initial directors of the Condominium Corporation shall be such individuals as are designated by, or acceptable to, the Construction Receiver;
  - (C) to register (or cause to be registered) the applicable condominium agreement (including the condominium declaration and description and by-laws), on title to the Lands;
  - (D) perform all of the work and services contemplated to be performed by the Developer in the Business Plan approved in accordance with this Development Contract; and
  - (E) to perform (or cause to be performed) all such other land title and registration work required in order to complete the transfer of Units to Unit Owners and the transfer of the Extra Parking Spaces and Extra Storage Spaces in accordance with Section 2.4;
- (v) the marketing and sale of the Unsold Units, the Extra Parking Spaces and Extra Storage Spaces in accordance with Section 2.4, it being acknowledged and agreed that the Developer does not warrant that all unsold Units, Extra Parking Spaces and Extra Storage Spaces will be sold for the prices established in accordance with this Development Contract;
- (vi) the management and administration of all New APS including interim occupancy of each Unit (but excluding property management to the extent set out in Section 2.4(e)) and the closing of the sales of the Units, the Extra Parking Spaces and Extra Storage Spaces in accordance with Section 2.4; and
- (vii) be responsible for, and pay, the utilities and other operating costs (including the utilities and maintenance costs for the common elements):
  - (A) of each Unit until Unit Completion for such Unit; and
  - (B) for all other parts of the Project until the earlier of (1) all Units having been sold and transferred to the Unit Owner; and (2) the Marketing End Date;

provided however that the Developer agrees to pay, in the first instance, the utilities and other operating costs (including the utilities and maintenance costs for the common elements) of each Unit until the earlier of (1) Unit Occupancy of such Unit, (2) the sale and transfer of such Unit to the Unit Owner, and (3) the Marketing End Date. The Owner agrees to reimburse the Developer for all such costs for such Unit from interim

occupancy payments received from the Unit Owner (if any) as provided in Section 2.2(a)(viii) and/or from the proceeds of sale of the Units in the same priority and at the same time as payment of the Craft Construction Loan under the Waterfall. The parties agree to use their commercially reasonable efforts to reconcile these costs once a Property Manager has been appointed and the Units are occupied.

For certainty, (A) except as aforesaid, the cost of the utilities and other operating costs of the Project are included in the Fixed Price with respect to Units that have not achieved Unit Completion; (B) the real property taxes for the Lands shall not be the responsibility of the Developer, but shall be paid by the Owner as a Development Cost or otherwise; and (C) the cost of the property and builders all risk insurance shall be the responsibility of the Owner as a Development Cost or otherwise. The cost of general liability insurance required to be carried by the Developer under the Construction Contract or this Development Contract shall be the responsibility of the Developer and shall not be a Development Cost for which the Owner is liable.

(viii) with respect to interim occupancy payments made by Unit Owners from to time:

- (A) the Owner (or, at the direction of the Owner, the Property Manager) shall directly receive all interim occupancy payments made by Unit Owners from time to time; and
- (B) with respect to each Unit that has achieved Unit Completion, the Developer shall be entitled to receive monthly reimbursement from such interim occupancy payments of the monthly cost of utilities for all such Units that have been separately metered and the proportionate Unit share of the monthly cost of utilities for and maintenance of the common elements for all such Units (the **"Monthly Unit Costs"**);

provided however that after payment to the Developer of the Monthly Unit Costs for the Units that have achieved Unit Completion from interim occupancy payments as required, the balance (if any) of such payments received by the Owner shall constitute revenue of the estate of UC Leslieville that the Construction Receiver is entitled to hold and use in its discretion in connection with the payment of its costs, expenses and other obligations;

(b) All Consultants, including the Project Architect and the Project Engineer, required in connection with the Construction Work or the Development Services shall be retained directly by the Developer on terms satisfactory to the Owner but not on behalf of the Owner or the Construction Receiver; provided however that each such Consultant retained by the Developer that was not an existing consultant or advisor to UC Leslieville in connection with the Project shall require the prior written approval of the Owner and the Project Monitor. The fees and disbursements of the Consultants shall constitute Development Costs. The Developer shall not be responsible to the Owner for acts and omissions of any Consultant, or of any persons directly or indirectly employed by the Consultant to the extent that the Developer obtains the agreement of each Consultant that:

- (i) each Consultant's services are being provided for the benefit of the Developer and the Construction Receiver and the Construction Receiver and Owner will be added as additional insureds under each such Consultant's professional liability insurance (which liability insurance will be in scope and with limits which are satisfactory to the Owner); and

- (ii) the Developer has assigned (and does hereby assign) its rights, interests and benefits under the Consultant's contract to the Owner.

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

- (c) All applications to, and agreements with, Governmental Authorities negotiated by the Developer as part of the Development Services and required to be signed to the Owner will be provided to the Owner with a brief description of any material terms the Developer wishes to bring to the attention of the Owner including any material liabilities or changes to existing drafts or executed versions of such applications and agreement, and the Developer's recommendation to the Owner. The Owner will deal with all such requests in a timely fashion.

### **2.3 Completion of Construction**

- (a) With respect to the completion of the Construction Work of the Project, the Developer and the Owner shall concurrently enter into a construction contract in form and substance satisfactory to the Developer, the Owner and the Stakeholders (the "**Construction Contract**"), and that will include the Fixed Price for the Construction Work other than the Construction Work required for Change Orders, including Change Orders for Latent Defects Repair Work and Geo-Thermal System Work, and other than any soft costs that constitute Development Costs hereunder.
- (b) All Subcontracts shall be assignable by the Developer to the Owner or its designee without the consent of the counterparties to such Subcontracts.
- (c) The Developer shall obtain and maintain, or cause to be obtained and maintained, all Development Approvals and comply with all conditions under the Development Approvals for the Project and other applicable requirements of Governmental Authorities, and in connection therewith take such action as is necessary or desirable to obtain the return (or maximum reduction) of all letters of credit provided by UC Leslieville to Governmental Authorities in connection with the Project as soon as practicable. Any costs incurred to obtain additional Development Approvals, including fees and disbursements of Consultants and fees charged by Governmental Authorities, shall constitute Development Costs.

### **2.4 Marketing and Sales of Unsold Units and Administration and Closing of All Units**

- (a) As soon as practicable following the granting of the Settlement Approval Order, the Developer shall market for sale the Unsold Units, Extra Parking Spaces and Extra Storage Spaces pursuant to a marketing and sales plan to be agreed between the Developer and the Owner and approved by the Syndicate and Terra Firma or as otherwise ordered by the Court in the UC Receivership Proceedings (the "**Marketing Plan**"). The Marketing Plan shall include (i) if applicable, a listing broker (the "**Leslieville Broker**") and the maximum commission payable to such broker; provided that all commission payable shall be paid from the proceeds of sale of the applicable Unsold Unit, Extra Parking Space or Extra Storage Space, as the case may be, and the Owner shall provide a direction to that effect; and (ii) a minimum sales price for each Unsold Unit ("**Minimum Unit Price**"), Extra Parking Space ("**Minimum Parking Space Price**") and Extra Storage Space ("**Minimum Storage Space Price**"), (collectively, the "**Minimum Price**"). Unless otherwise agreed by the Developer, the Owner, the Administrative Agent and Terra Firma, the Leslieville Broker shall have the discretion to determine the list or offering price for each Unsold Unit ("**List Price**") from time to time; provided that:
  - (i) such List Price is greater than or equal to the Minimum Unit Price for such Unsold Unit; and

- (ii) if no bona fide qualified offers are received for any Unsold Unit within any two (2) week period at the then current List Price determined by the Leslieville Broker, any of the Developer, Owner, Terra Firma or the Administrative Agent may request a meeting or conference call with the Leslieville Broker (to which representatives of all of the foregoing parties are also invited) to discuss the appropriateness of such List Price for such Unsold Unit.
- (b) The Developer may entertain any offer for an Unsold Unit that is greater than its List Price or Minimum Unit Price. Any other amendment to the Marketing Plan requires the prior approval of the Owner and the Developer; provided that, the following shall require the prior approval of the Owner, Terra Firma and the Syndicate or shall otherwise be approved by the Court in the UC Receivership Proceedings:
- (i) Any reduction of the Minimum Unit Price for an Unsold Unit or any sale of an Unsold Unit for a price below its Minimum Unit Price; and
  - (ii) any other material amendment to the Marketing Plan.

For certainty, the Developer and Owner may agree upon any reduction in the Minimum Price of any Extra Parking Space or Extra Storage Space and upon any sale of any Extra Parking Space or Extra Storage Space for any amount below its Minimum Price.

- (c) All New APS and offers to purchase or commitments to a Unit Owner for a Unit (and associated parking space) shall be entered into by the Owner and all deposits and other moneys (whether for interim occupancy payments or otherwise) paid by a Unit Owner under or in connection with a New APS shall be paid to, and held by, the Owner or as it may direct.
- (d) With respect to the marketing and sales of the Unsold Units, the Extra Parking Spaces and Extra Storage Spaces, the Developer shall:
- (i) perform or cause to be performed all work and services required to implement the Marketing Plan and sell the Unsold Units, Extra Parking Spaces and Extra Storage Spaces;
  - (ii) confirm the actual number of Extra Parking Spaces and Extra Storage Spaces and that the Extra Parking Spaces and Extra Storage Spaces are permitted to be sold pursuant to the Development Approvals including any site plan agreement with the City;
  - (iii) if the Extra Parking Spaces are permitted to be sold, provide the Opt-In Leslieville Purchasers with the first opportunity to purchase such Extra Parking Spaces, the process for which shall be set out in the Marketing Plan;
  - (iv) be responsible for, and pay for, all marketing and advertising of the Unsold Units, the Extra Parking Spaces and the Extra Storage Spaces and be entitled to reimbursement for such Development Costs which shall be provided for under the Initial Development Budget (and any subsequently approved Development Budget) as provided in Section 5.4;
  - (v) negotiate and finalize all New APS for Units with Unit Owners substantially in the Standard Form Sales Agreement and provide such finalized New APS to the Owner for approval and execution on behalf of the Owner pursuant to a process to be agreed between the Developer and the Owner which is designed to ensure the timely execution of each New APS; and

- (vi) negotiate and finalize all agreements for the purchase and sale of the Extra Parking Spaces and Extra Storage Spaces, each in a form and substance satisfactory to the Owner, and provide such finalized agreement to the Owner for approval and execution on behalf of the Owner pursuant to a process to be agreed between the Developer and the Owner which is designed to ensure the timely execution of each New APS.
- (e) With respect to the management, administration and closing of the sales of the Units, Extra Parking Spaces and Extra Storage Spaces, the Developer shall:
  - (i) perform all of the work and services required in connection with the interim occupancy of each Unit by the relevant Unit Owner; provided that:
    - (A) no interim occupancy of any Unit will be permitted prior to Total Performance of the Work without the prior written approval of the Owner, which approval shall be in the Owner's sole discretion;
    - (B) subject to Section 2.4(e)(i)(A), the "Final Tentative Occupancy Date" and "Firm Occupancy Date" for the purposes of and as defined in the Standard Form Sales Agreement shall be as agreed between the Developer and the Owner, and any extension of either of those dates shall only be made with the agreement of the Developer and the Owner;
    - (C) the Owner agrees to retain the Property Manager prior to the interim occupancy of any Unit and that the Property Manager shall manage all Units that are occupied. The fees of the Property Manager shall be included in the Approved Operating Budget;
    - (D) the Property Manager with the assistance of the Owner (or its counsel) shall be responsible for calculating the interim occupancy fees and amounts payable by each Unit Owner; and
    - (E) the Property Manager shall be responsible for preparing and providing to the Owner and the Developer for approval a draft operating budget for the Project for the interim occupancy period (together with reasonably detailed back-up) at least 10 Business Days prior to the commencement of interim occupancy by any of the Unit Owners. The operating budget approved by the Owner and the Developer shall constitute the operating budget for the Project for the interim occupancy period (as such budget may be amended from time to time by the Owner, the "**Approved Operating Budget**") and the Property Manager and/or the Developer shall provide monthly accounting to the Owner against such Approved Operating Budget;
  - (ii) except as provided in Section 2.4(e)(i), maintain, preserve and protect the Project until Substantial Performance of the Work;
  - (iii) subject to Sections 2.4(e)(iv) and 2.4(e)(v), perform all of the work and services required to administer, complete and close the sale of each Unit to the relevant Unit Owner and close the sale of each Extra Parking Space and Extra Storage Space; provided that:
    - (A) the Developer shall consult with the Owner from time to time as to, and provide at least 10 Business Days' prior written notice of, the date that should be

designated by the Owner under each New APS as the "Title Transfer Date" (as defined under the New APS); and

- (B) subject to the terms of the New APS, the Developer and the Owner shall agree as to the date to be designated by the Owner as the "Title Transfer Date" under each New APS prior to any extensions or notifications of such date being given by the Owner under each New APS.
- (iv) use legal counsel acceptable to the Construction Receiver and the Administrative Agent (in their respective discretion) to deal with legal disputes or claims of Unit Owners against the Owner arising under or in connection with any New APS or agreement for the sale of any Extra Parking Space or Extra Storage Space entered into by the Owner; provided that:
- (A) the Owner shall be consulted with respect to all material disputes and claims;
  - (B) the Developer shall have no authority to settle any legal dispute or claim or to take or assert any legal action or exercise any of the rights of the Owner under any New APS or agreement for the sale of any Extra Parking Space or Extra Storage Space except for the settlement of any such dispute or claim which satisfies the following conditions:
    - (1) the settlement is a settlement in full of such dispute and does not impose any additional liability or obligation on the Owner;
    - (2) the settlement is effected through a reduction in (or credit against) the purchase price payable under such New APS or agreement for sale which results in the purchase price (before customary closing adjustments) being at least equal to the applicable Minimum Price;
    - (3) such reduction in (or credit against) the purchase price payable under such New APS or agreement of sale is no more than \$20,000; and
    - (4) the Unit Owner or purchaser, as the case may be, continues to be bound to close under such New APS or agreement of sale; and
  - (C) for certainty, the legal costs incurred in connection with such disputes or claims shall constitute Development Costs.
- (v) use legal counsel acceptable to the Construction Receiver, the Administrative Agent and Terra Firma (in their respective discretion) for the closing of the sale of each Unit under a New APS and to close the sale of each Extra Parking Space and Extra Storage Space; provided that:
- (A) for certainty, the costs of such legal counsel are to be paid from the closing proceeds from the sale of each Unit, Extra Parking Space and Extra Storage Space, as the case may be, and the Owner shall provide a direction to that effect; and
  - (B) if any such sale is not completed for any reason other than a default of the Developer, the costs of the legal counsel in respect of such incomplete transaction shall be Development Costs.



- (f) The Developer shall perform all of the work and services contemplated to be performed by the Developer under and in accordance with the Business Plan.
- (g) With respect to UC Riverdale and UC Beach, the Developer agrees to use reasonable efforts (which shall be in the reasonable discretion of the Developer) to assist the Owner to obtain, and facilitate, the return or reduction in the amount of all letters of credit provided by any of UC Riverdale and/or UC Beach to the City or Toronto Hydro in connection with the development of the projects located at 55 Howie Street, Toronto, Ontario and 42 Edgewood Avenue, Toronto, Ontario, respectively. For certainty, the foregoing services provided by the Developer under this Development Contract do not extend to any construction work at either such project or any financial obligation, that may be required to obtain such return or reduction of any letter of credit. The services described in this Section 2.4(g) shall be collectively referred to as the “**Additional LC Services**” in this Development Contract.
- (h) The parties agree that the Developer shall perform the Development Services described under this Section 2.4 until the earlier of (i) the sale and closing of all of the Units, Extra Parking Spaces and Extra Storage Spaces, and (ii) 6 months following establishment of the Condominium under the Condominium Act (the last day of such 6-month period, the “**Marketing End Date**”).

## **2.5 Sale of Geo-Thermal System**

- (a) Pursuant to the Construction Contract, the Developer will be responsible for ensuring that the Project has an appropriate and functioning heating and cooling system that complies with all applicable Law, all Development Approvals and each New APS.
- (b) Pursuant to the Settlement Approval Order, the Developer has been granted a first priority Court ordered charge against the proceeds of sale from the existing Geo-thermal System if repaired and commissioned by the Developer pursuant to the Construction Contract (the “**Craft Collateral**”), as security for the payment of the documented Geo-thermal System Costs and/or any Craft Loan advanced to fund Geo-thermal System Costs (“**Geo-thermal Loan**”).
- (c) Craft will market and sell the right to operate and, if legally possible and available, own the Geo-thermal System through a marketing process and upon terms and conditions satisfactory to the Construction Receiver and the Developer or as otherwise approved by the Court in the UC Receivership Proceedings (“**Geo-thermal System Marketing Process**”). The proceeds from any sale of the right to operate or own the Craft Collateral (the “**Geo-thermal System Proceeds**”) shall be applied as follows:
  - (i) first, to be credited against (without duplication) the documented Geo-thermal System Costs and/or any Geo-thermal Loan; and
  - (ii) the balance, if any, to payment of costs and claims in accordance with the priorities set out in the Waterfall.
- (d) The Owner and Construction Receiver acknowledge that the Developer does not represent or warrant that the right to operate and/or own the Geo-thermal System will be saleable. If the right to operate and/or own the Geo-thermal System is not sold through the Geo-thermal Marketing Process:
  - (i) the Construction Receiver shall be entitled to dispose of the Geo-thermal System as it may determine in its discretion (or as may be approved by the Court in the UC Receivership Proceedings) including by conveying to the Condominium Corporation the

Geo-thermal System for an approximate purchase price of \$800,000 as contemplated in the draft form of declaration establishing the Condominium proposed to be approved by the Purchaser Package Approval Order; and

- (ii) the full amount of the documented Geo-thermal System Costs and/or any Geo-thermal Loan shall be payable to the Developer in accordance with the priorities set out in the Waterfall.

### **ARTICLE 3 DECISIONS AND APPROVALS**

#### **3.1 Day-to-Day Management**

- (a) Subject to the terms of this Development Contract and the Construction Contract, the day-to-day operations, management, administration and the provision of the Development Services in respect of the Project will be the responsibility of, and at the expense of, the Developer.
- (b) For certainty, the Developer shall be solely responsible for all debts and liabilities that it incurs in connection with the Development Services and shall not incur (or permit any of its Sub-Contractors, Consultants, employees, officers, or agents, to incur) any debts or liabilities in the name of, or on behalf of, the Owner or the Construction Receiver and, subject to receipt by the Developer of payments when due in accordance with the Craft C&D Contracts, shall not create or permit to exist any Liens against any of the property and assets of UC Leslieville in connection with any of the Developer's or Builder's debts and liabilities.

#### **3.2 Decisions**

- (a) In addition to any other approval requirements set out under this Development Contract, the written approval of the Owner shall be required for the following decisions, documents, actions or the implementation of any of the following matters:
  - (i) if the start date for the re-commencement of Construction Work is later than 10 Business Days after issuance of the Settlement Approval Order and such order having become final and non-appealable;
  - (ii) the expenditure of, or the making of any commitment for, any Development Costs in excess of the amounts budgeted in the then current Development Budget unless the amount of such excess has been pre-funded to the Construction Receiver by a Change Funder as required or permitted under the TF Cost Overrun Guarantee;
  - (iii) if the start date for the commencement of the marketing of the Unsold Units, the Extra Parking Spaces and the Extra Storage Spaces is not within 10 Business Days of the re-commencement of Construction Work;
  - (iv) the merger or consolidation of the Developer with any other entity at any time prior to Substantial Performance of the Work; and
  - (v) any change in the effective control of the Developer at any time prior to Substantial Performance of the Work.
- (b) The Developer shall provide to the Owner at least 5 Business Days' prior written notice of:
  - (i) the start date for the re-commencement of Construction Work; and

- (ii) the start date for the commencement of the marketing of the Unsold Units, the Extra Parking Spaces and the Extras Storage Spaces.
- (c) In connection with any decisions under any of the Project Agreements, the Owner will be entitled to consult with the Project Monitor, Project Architect, Project Engineer and such other advisors or consultants as the Owner considers necessary or appropriate in the circumstances, or to seek the advice and directions of the Court in the UC Receivership Proceedings.

### **3.3 Reporting by Developer**

The Developer shall prepare and provide to the Owner, the Project Monitor and the Administrative Agent a monthly progress report on the status and progress of the Development Services, including the following information:

- (a) updates to, and any known or anticipated material changes to, the Development Budget;
- (b) the sales of Unsold Units, Extra Parking Spaces and Extra Storage Spaces and the implementation of the Marketing Plan;
- (c) the sale of the Geo-thermal System and the implementation of the Geo-thermal System Marketing Process;
- (d) any material issues arising under any New APS;
- (e) notice of any material health and safety incidences or injuries arising in connection with the Project;
- (f) any material changes to the Business Plan and status of meeting the material milestones set out therein; and
- (g) such other information as may reasonably be requested by the Owner or Project Monitor from time to time with respect to the Work or the Development Services.

The monthly report of the Developer shall be provided by the 20th day of each month with respect to the previous month. In addition, the Developer's books and records relating to the Project shall be made available for review by the Owner and/or the Project Monitor, from time to time upon request, at mutually convenient times.

### **3.4 Information from Owner/Construction Receiver**

- (a) The Owner or Construction Receiver shall prepare and provide to the Developer the following information on a monthly basis (by the 20th day of each month with respect to, or as of the end of, the previous month):
  - (i) Statement of receipts and disbursements;
  - (ii) Summary of estimated accrued commitments;
  - (iii) The Construction Receiver's estimated projected costs to be incurred through to completion of the receivership of UC Riverdale, UC Leslieville and UC Beach and discharge of the Construction Receiver by the Court (excluding the costs to be incurred under each of the Craft C&D Contracts), which estimated projected costs will be prepared based on the facts and circumstances then known to the Construction

Receiver and the exercise in good faith of its reasonable commercial judgement. For certainty, the Construction Receiver is not representing or warranting any such projections and all such projections are expressly subject to the assumptions, limitations and disclaimers contained therein. Forward looking information and estimates are being provided for discussion and illustration purposes only as actual results will vary and those variations may be material.”

- (b) The Construction Receiver will also:
- (i) request monthly from each of the Administrative Agent, Terra Firma and Travelers and, to the extent received, provide to the Developer, a statement of account from each of the Syndicate, Terra Firma and Travelers with respect to their respective outstanding loans and indebtedness; and
  - (ii) use its commercially reasonable efforts to provide to the Developer, as soon as practicable following receipt by the Construction Receiver:
    - (A) copies of all written notices and correspondence received by the Construction Receiver from the City relating to the development of the Project;
    - (B) copies of all written notices of expropriation with respect to any portion of the Lands with the exception of the park dedication required by the site plan agreement for the Project; and
    - (C) copies of all written notices from any Governmental Authority of non-compliance in any material respect with any environmental Law relating to the Project and of any written notice of any investigation, non-routine inspection by any Governmental Authority, or any written material inquiry by any Governmental Authority, in connection with any environmental Law relating to the Project.

#### **ARTICLE 4 BUSINESS PLANS, BUDGETS**

##### **4.1 Business Plan**

- (a) The Developer will prepare a business plan for the Project (the “**Business Plan**”) in form and substance satisfactory to the Owner which incorporates and is based upon, the criteria set out in Section 4.1(b). The initial Business Plan will be provided to the Owner for approval within 60 days following the conditions precedent to this Development Contract having been satisfied or waived by the parties.
- (b) The Business Plan for the Project shall incorporate, *inter alia*, the following information:
- (i) the Marketing Plan;
  - (ii) projected timing for Unit Completion of the Units by Building and occupancy of each Unit and Building;
  - (iii) projected occupancy fees and revenue and projected operating costs of the Project;
  - (iv) the process and estimated timing for all required approvals from Governmental Authorities (if any) and the estimated timing for the fulfillment of each of the conditions thereunder;

- (v) the process for obtaining all approvals from Governmental Authorities for, and registration of, the Condominium and Condominium Corporation;
  - (vi) the estimated timing of final closings for the sale of the Units, Extra Parking Spaces and Extra Storage Spaces; and
  - (vii) such other information as may be reasonably requested by the Owner or the Project Monitor from time to time.
- (c) The initial Business Plan as approved by the Owner shall be amended by the Developer as necessary from time to time, provided that the Developer shall not amend the Business Plan without the approval of the Owner if such amendment would result in a Change Order, Development Cost Overrun or result in a default by the Developer under either of the Craft C&D Contracts.

#### **4.2 Initial Development Budget and Agreed Financial Matters**

- (a) The initial budget for the Development Costs is attached hereto as Schedule 3 (the “**Initial Development Budget**”). Developer acknowledges that:
- (i) the Development Costs represent amounts payable to third parties for services provided in connection with the Project;
  - (ii) the Owner and the Construction Receiver have no liability or obligation to pay the amount of any Development Costs in excess of the amount provided for in the Initial Development Budget and all such excess amounts constitute Development Cost Overruns that are required to be pre-funded by Terra Firma or the Developer under the TF Cost Overrun Guarantee (or permitted to be pre-funded by the Syndicate as provided under the TF Cost Overrun Guarantee).
- (b) All amendments or variations to the Development Budget that do not involve a Development Cost Overrun shall be as agreed between the Developer and the Project Monitor. Any amendments or variations to the Development Budget that involve a Development Cost Overrun (“**Budget Increase Request**”) shall require:
- (i) the prior written approval of the Project Monitor, the Owner and the Change Funder; and
  - (ii) the full amount of such Development Cost Overrun to be pre-funded by a Change Funder to the Owner prior to any such amendment or variation becoming effective.
- (c) The Developer shall submit its proposal for each Budget Increase Request in writing to each of the Project Monitor, the Owner and the Change Funder, which proposal shall include reasonably detailed back-up detail for the Development Cost Overrun.
- (d) The Project Monitor shall review each Budget Increase Request proposed by the Developer and provide a recommendation to the Owner and Change Funder as soon as practicable as to whether all or any part of the Budget Increase Request should be approved or rejected by the Owner and any Change Funder, together with any amendments thereto that would result in the Budget Increase Request being acceptable (“**Budget Increase Recommendation**”). If the Project Monitor recommends rejection of all or any part of the Budget Increase Request and/or the amendment of the Budget Increase Request, the Project Monitor shall provide a copy of that recommendation to the Developer. The Developer shall be entitled to amend the Budget

Increase Request and submit a replacement Budget Increase Request to the Project Monitor, Owner and Change Funder taking into account the Project Monitor's recommendations within 5 Business Days of receipt of the Project Monitor's recommendations (any such replacement Budget Increase Request shall also be referred to herein as a "Budget Increase Request"). In such case, the replacement Budget Increase Request shall be treated as a new Budget Increase Request and the provisions of this Section 4.2(d) shall apply once again. If a replacement Budget Increase Request is not submitted within the period required, the original Budget Increase Request and original Budget Increase Recommendation will be considered by the Owner and the Change Funder. The Project Monitor shall be entitled to consult with such of the Consultants, the Owner's legal advisors and/or any other expert advisors as it determines is necessary or desirable to provide its Budget Increase Recommendations.

- (e) The Parties agree that the recommendations set out in the Budget Increase Recommendation by the Project Monitor shall be final and binding on the Parties and each Change Funder with respect to a Budget Increase Request (other than the Closing Budget Increase Request) if the amount of the Budget Increase Request is less than or equal to \$100,000 (for certainty, exclusive of HST). For certainty, the Parties and the Change Funder shall be entitled to dispute any other Budget Increase Request notwithstanding the recommendations set out in the applicable Budget Increase Recommendation by the Project Monitor.
- (f) The Owner confirms that its approval of a Budget Increase Request will be provided upon (i) receipt by the Owner of a Budget Increase Recommendation from the Project Monitor recommending approval of such Budget Increase Request and the written approval of the Change Funder of such Budget Increase Request, and (ii) the full amount of the Development Cost Overrun requested in such Budget Increase Request having been pre-funded to the Owner by the Change Funder.
- (g) If the Change Funder or the Owner dispute or reject all or any part of a Budget Increase Request that it is permitted to dispute or reject, the Change Funder shall have the right to participate as a party to any mediations or arbitrations relating to any disputes in respect of such Budget Increase Request.
- (h) If a dispute arises with respect to an approval of a Budget Increase Request for any reason, or a Budget Increase Request which has been recommended for approval by the Project Monitor has not been approved within 5 Business Days after its receipt by the Owner and the Change Funder ("**Delayed Approval**"), the Developer shall provide or cause to be provided the Development Services contemplated under, and incur the costs requested in, such Budget Increase Request and:
  - (i) (1) in the case of a rejection of the Budget Increase Request, the Developer shall forthwith dispute the rejection of the Budget Increase Request and forthwith commence and diligently pursue the mediation proceedings in accordance with Section 13.3 or (2) in the case of a Delayed Approval, the Developer provides a notice in writing to the Owner, the Project Monitor and the Change Funder;
  - (ii) the Developer shall be responsible for the costs requested in such Budget Increase Request, in the first instance, until the final agreement, determination, settlement or approval of all disputes or delays in respect of such Budget Increase Request and hereby releases the Owner from any claims related to such Budget Increase Request if, in the case of a Delayed Approval, the Budget Increase Request is not approved by the Owner and the Change Funder (subject to the Developer's right to dispute) or, in the case of a disputed Budget Increase Request, any final determination or settlement of the dispute in respect of the Budget Increase Request is in the Owner's or Change

Funder's favour. The Developer agrees to provide such monthly reporting and certifications (including copies of invoices) as to the Development Services provided and costs incurred under or in connection with such Budget Increase Request as the Owner and the Project Monitor may reasonably request; and

- (iii) Terra Firma shall advance to the Owner an amount equal to the Development Cost Overrun requested in the Budget Increase Request ("**Disputed Amount**"), which amount will be held by the Owner in accordance with Section 2.3(c) of the TF Cost Overrun Guarantee until the final determination or settlement of such disputed Budget Increase Request, or in the case of a Delayed Approval, the final disposition of such Budget Increase Request; provided that, if Terra Firm fails to advance the Disputed Amount, then the Disputed Amounts paid by the Contractor as required pursuant to Section 4.2(h)(ii): (a) if the Contractor is not successful in the dispute under this paragraph, shall be the sole responsibility of the Contractor, and it shall not be entitled to any reimbursement from the Owner of any of the Disputed Amount, or (b) if the Contractor is successful in the dispute, the Disputed Amounts actually paid by the Contractor for such Development Cost Overrun as of such time (and the balance of the Disputed Amount actually paid by the Contractor thereafter for the balance of such Development Cost Overrun) will be added to the amount of the Craft Loan to the Construction Receiver.
- (i) If such dispute or Delayed Approval is finally resolved or the parties agree, then
    - (i) if the Developer is entitled to the Development Cost Overrun requested in such Budget Increase Request, the Development Budget shall be amended as requested;
    - (ii) if the Developer is not entitled to the Development Cost Overrun requested in such Budget Increase Request, the Development Budget shall not be amended and the Developer shall not be entitled to claim payment of any of such costs from the Owner; and
    - (iii) the amounts advanced by the Change Funder in accordance with Section 4.2(h)(iii) will be (1) if the Developer is not entitled to the requested increase in the Development Budget, returned to the Change Funder, and the Developer shall be solely responsible for payment of all of such costs that it has incurred, or (2) if the Developer is entitled to the requested increase in the Development Budget, used by the Owner to reimburse the Developer for all such costs that it has incurred and to fund all such remaining costs as may have been requested in the Budget Increase Request.

## **ARTICLE 5 COMPENSATION AND PAYMENT**

### **5.1 Compensation**

- (a) The Developer's entire compensation (including all reimbursement of Development Costs) under this Development Contract consists of:
  - (i) the amount of Development Costs set out in the Initial Development Budget and any subsequently approved Development Budget;
  - (ii) without duplication, the amount of Development Cost Overruns funded by a Change Funder as required or permitted under the TF Cost Overrun Guarantee;

- (iii) the Earned Management Fee in accordance with Section 5.2(a)(i)(A);
  - (iv) the Deferred Management Fee and other Deferred Compensation in accordance with Sections 5.2(a)(i)(B) and 5.2(a)(ii); and
  - (v) the Vacant Lot in accordance with Sections 5.2(a)(iii) and 5.3.
- (b) The Owner shall be responsible for all applicable HST with respect to such compensation (other than in connection with the transfer of the Vacant Lot, which shall be the responsibility of the Developer).
- (c) The Developer represents and warrants that it is registered as required under applicable Law for HST purposes and its HST registration number is 895497353 RT0001.

## **5.2 Management Fees and other Deferred Compensation**

- (a) In consideration for the Developer's services under this Development Contract, but subject to the other terms and conditions of the Craft C&D Contracts, the Developer shall be entitled to receive the following fees:
- (i) a management fee equal to \$1,500,000, of which:
    - (A) \$375,000 will be paid on the date of Total Performance of the Work (the "**Earned Management Fee**"), provided there is no Major Event of Default hereunder or "Major Event of Default" as defined under the Construction Contract at such time; and
    - (B) \$1,125,000 will be deferred and paid from the proceeds of disposition of the Units and other property and assets of UC Leslieville and the Beach Remaining Lands in accordance with the payment priorities set out in the Waterfall (the "**Deferred Management Fee**"), which Deferred Management Fee is subject to satisfaction of the Performance Conditions and the provisions of Section 5.2(b) and is to be secured by a Court ordered charge with the priority set out in the Waterfall as provided in the Settlement Approval Order;
  - (ii) subject to the provisions of Section 5.2(b), a success fee equal to \$1,000,000 for attaining Total Performance of the Work (the "**Success Fee**" and together with the Deferred Management Fee, the "**Deferred Compensation**"), the payment of which will only become due upon attaining Total Performance of the Work and completion of the Development Services, excluding the Additional LC Services (collectively, the "**Performance Conditions**") and be deferred and paid from the proceeds of disposition of the Units and other property and assets of UC Leslieville and the Beach Remaining Lands in accordance with the payment priorities set out in the Waterfall as provided in the Settlement Approval Order; for certainty, the completion of the Additional LC Services does not form part of the Total Performance of the Work and are not a condition to the Success Fee becoming due and payable to the Developer pursuant to this Section 5.2(a)(ii); and
  - (iii) subject to the provisions of Section 5.2(b), transfer of the Vacant Lot to the Developer free and clear of mortgages, charges and other encumbrances as provided in the Settlement Approval Order, subject to satisfaction of the Vacant Lot Conditions.
- (b) The Developer acknowledges and agrees:



- (i) that its entitlement to the Deferred Compensation and the transfer of the Vacant Lot are contingent upon the generation of sufficient proceeds from the disposition of the Units, Extra Parking Spaces, Extra Storage Spaces and other property and assets of UC Leslieville and the Beach Remaining Lands to pay such amounts after payment of all claims ranking in priority of payment to the Deferred Compensation under the Waterfall, and as such, the Developer's entitlement to the payment of the Deferred Compensation and transfer of the Vacant Lot is limited to the availability of such proceeds; and
- (ii) that its entitlement to the Deferred Compensation and the transfer of the Vacant Lot are subject to satisfaction of the Performance Conditions; provided that if proceeds of disposition of the Units and other property and assets of UC Leslieville and the Beach Remaining Lands become available to pay the Deferred Compensation or permit the transfer of the Vacant Lot in accordance with the payment priorities set out in the Waterfall as provided in the Settlement Approval Order at a time when the Performance Conditions have been completely satisfied except for the sale of any remaining Unsold Units, Extra Parking Spaces and/or Extra Storage Spaces, the parties agree that the Developer shall be entitled to receive (1) all of the Deferred Compensation except for an amount equal to \$15,000 for each calendar month (or part thereof) in the period from the date of payment of the Deferred Compensation to the Marketing End Date (the "**Remaining Period**"), which amount shall be withheld by the Owner, and (2) the transfer of the Vacant Lot. Thereafter, \$15,000 of the Deferred Compensation withheld by the Owner shall be paid to the Developer at the end of each calendar month in the Remaining Period unless an Event of Default has occurred and is continuing and the balance shall be due and payable in full to the Developer upon the earlier to occur of (1) sale and closing of all of the remaining Unsold Units, Extra Parking Spaces and Extra Storage Spaces, and (2) the Marketing End Date.

### 5.3 Vacant Lot

The Disposition by the Owner of the right, title, and interest of the Owner in the Vacant Lot to the Developer (or nominee or designee of the Developer) pursuant to Section 5.2(a)(iii) is subject to the satisfaction of the following conditions (the "**Vacant Lot Conditions**"):

- (a) satisfaction of the Performance Conditions;
- (b) payment in full of all claims as outlined in the Waterfall which rank in priority of payment to the transfer of the Vacant Lot as set out in the Waterfall; the Developer acknowledges that it will not be entitled to a transfer of the Vacant Lot if the Construction Receiver requires the proceeds of sale from such Vacant Lot to pay in full all or any part of any of such prior ranking claims;
- (c) payment by the Developer of the amount of all applicable land transfer Taxes and HST in respect of the transfer of the Vacant Lot to the Developer; and
- (d) compliance with the Planning Act (Ontario).

### 5.4 Payment of Development Costs

- (a) As a condition to the payment of the Development Costs by the Owner:
  - (i) the Developer shall provide to the Project Monitor and the Owner, for approval, an application for payment that includes all of the following:

- (A) copies of all underlying third party invoices;
  - (B) if the application for payment is for the release of any holdback amount, a copy of the certificate of Substantial Performance of the Work indicating that the applicable lien period under the Lien Act has expired, certification by the Project Monitor that all applicable lien periods under the Lien Act have expired and a subsearch of the Lands as required pursuant to Section 5.4(f);
  - (C) evidence satisfactory to the Owner and Project Monitor that all Development Costs that were the subject of any prior application for payment have been paid in full;
  - (D) certification by the Developer that the Development Costs requested to be paid are Budgeted Development Costs plus HST; and
  - (E) such other information as may be reasonably requested by the Project Monitor from time to time; and
- (ii) The Project Monitor shall review such application for approval and provide its report to the Owner with respect thereto including as to satisfaction of the foregoing conditions, in form and scope satisfactory to the Owner.
- (b) If the application for payment is incomplete or deficient, or the report of the Project Monitor does not recommend the payment requested, the Owner may reject all or any part of it. If the Developer disagrees with the decision of the Owner, the matter may be referred for resolution pursuant to Section 13.3.
- (c) If the application for payment includes Development Cost Overruns, then the Owner will only be required to pay the amount of such Development Cost Overrun requested to the extent such Development Cost Overrun has been fully pre-funded by a Change Funder in accordance with, or as permitted under, the TF Cost Overrun Guarantee.
- (d) Subject to Section 5.4(e), upon receipt by the Owner of a fully completed application for payment in proper form and report from the Project Monitor confirming the Development Costs requested thereunder and recommending the payment thereof, the Owner will make payment within 7 days.
- (e) The parties agree that the submission of the application for payment of Development Costs by the Developer and provision of a report thereon by the Project Monitor shall be co-ordinated with the progress payment process outlined in GC 5.3 of the Construction Contract such that the verifications and reports from the Project Monitor under the Construction Contract and this Development Contract are provided at the same time and the monthly payments due under the Construction Contract and under this Development Contract are due from the Owner on the same date.
- (f) If a requested payment includes Development Costs to which the Lien Act applies, the Owner will comply with the provisions of the Lien Act (including with respect to construction lien holdbacks) with respect to each such payment or portion thereof requested by the Developer and shall have received a sub-search from its counsel confirming that no Liens have been registered on title to the Lands other than Permitted Encumbrances.
- (g) If the Owner fails to make payments as they become due under the terms of this Development Contract or in an award by arbitration or in an order of a court, interest at the rate of 5.5% per

annum above the prime rate from time to time shall also become payable on such unpaid amounts until payment in full. The prime rate shall be the fluctuating annual interest rate equal at all times to the reference rate of interest (however designated) of Canadian Imperial Bank of Commerce for determining interest chargeable by it on loans in Canadian dollars made in Canada.

- (h) Any amount of interest payable by the Owner to the Developer shall not become due and payable until proceeds from the sale of the Units have been received by the Owner or the Construction Receiver, and shall only be paid to the extent of, and in accordance with, the Waterfall at the same time and priority as the payment to the Developer of the Craft Loan.

## ARTICLE 6 SECURITY AND FINANCING OF THE PROJECT

### 6.1 Security for Completion

- (a) The Developer will provide the Construction Receiver with cash collateral in the amount of \$535,000 (“**Craft Cash Collateral**”) on the latest of the date of execution of this Development Contract and the Construction Contract and the date that the Settlement Approval Order is granted. The Construction Receiver shall hold such Craft Cash Collateral in a segregated, interest-bearing, account in the name of the Construction Receiver at Canadian Imperial Bank of Commerce (the “**Account**”), the same to stand as security for the Developer’s indebtedness, liabilities and obligations to the Owner and/or the Construction Receiver including without limitation the Developer’s performance obligations under the Craft C&D Contracts, and for all costs, expenses, and other damages suffered by the Construction Receiver and/or the estate of UC Leslieville if the Developer defaults thereunder and does not cure such default as required under the applicable Craft C&D Contract (collectively, the “**Obligations**”). In furtherance thereof, the Developer hereby creates a security interest in favour of the Construction Receiver in the Account, the Craft Cash Collateral and in any and all investments, income and proceeds thereof or derived therefrom, all as security for the Obligations. The Craft Cash Collateral and any interest earned thereon (less any amount properly applied by the Owner or the Construction Receiver in accordance with the terms of the Craft C&D Contracts) will be returned to the Developer as soon as practicable after the date upon which all the following conditions have been satisfied (the date of return of the Craft Cash Collateral being, the “**Cash Collateral Release Date**”):
- (i) at the time of release of the Craft Cash Collateral, there is no default by the Developer under the Craft C&D Contracts (following expiry of all applicable cure periods thereunder);
  - (ii) the Project attained Total Performance of the Work in accordance with, and as certified under, the Construction Contract;
  - (iii) all of the Development Services have been completed except for the sale of any remaining Unsold Units, Extra Parking Spaces and/or Extra Storage Spaces at the time the other conditions set out in Sections 6.1(a)(i), 6.1(a)(ii), 6.1(a)(iv) and 6.1(a)(v) have been satisfied;
  - (iv) all applicable Lien periods have expired without any Liens in respect of the Construction Work having been filed or all Liens filed have been satisfied in full, discharged or vacated (other than any Liens arising solely as a result of a default of the Owner in the performance of its payment obligations under the Craft C&D Contracts); and

- (v) the Developer, the Consultant and the Project Monitor have certified that the costs of all work and services provided by third party trades, suppliers and consultants have been paid in full.

The Construction Receiver and the Owner shall be entitled to set-off against the Craft Cash Collateral otherwise returnable to the Developer any amount due and owing to the Construction Receiver or the Owner in respect of the Obligations and/or to set aside therefrom an appropriate reserve for application thereto, including during the pendency of any claim made by the Construction Receiver or the Owner against the Developer in respect of the Obligations.

- (b) If the Craft Cash Collateral is returned to the Developer on the Cash Collateral Release Date, then the Developer shall also be entitled receive interest on the Craft Cash Collateral from the date it was deposited with the Construction Receiver to the Cash Collateral Release Date at a rate of 7% per annum; provided that such interest shall only be payable to the extent of, and from, proceeds from the disposition of the Units, Extra Parking Spaces, Extra Storage Spaces and other property and assets of UC Leslieville and the Beach Remaining Lands in the same priority as payment of the Deferred Compensation under the Waterfall and shall be due on the later of the Cash Collateral Release Date and the distribution of such proceeds by the Construction Receiver.
- (c) The Construction Receiver, the Owner and the Developer agree that value has been given for the granting of the security interest contemplated in this Section 6.1 and that the Parties have not agreed to postpone the time for attachment of the security interest.

## **6.2 Assignment and Security Interest in Subcontracts**

- (a) As general and continuing collateral security for the faithful performance by the Developer of its covenants and obligations under each of the Craft C&D Contracts, and the discharge of all of the Obligations, the Developer hereby assigns and transfers to the Construction Receiver, and grants to the Construction Receiver a security interest in, all of the Developer's right, title, estate and interest in and to all Subcontracts and all benefits, powers and advantages of the Developer to be derived therefrom, and all covenants, obligations, undertakings and agreements of the Subcontractors and Suppliers thereunder (whether arising pursuant thereto or available to the Developer at law or in equity) including the right of the Developer to enforce the Subcontracts and the obligations of the Subcontractors and Suppliers thereunder and to give or withhold any and all consents, requests, directions, instructions, approvals, extensions or waivers thereunder in accordance with the terms thereof and to exercise options, make elections, declare defaults and participate in arbitration or other legal proceedings thereunder.
- (b) To the extent that any Subcontract is not assignable to the Owner at law, the Developer shall hold its interest in such Subcontract in trust for the Construction Receiver and said interest and all benefits derived under such Subcontract shall be for the account of the Owner.
- (c) Upon the Construction Receiver exercising its rights under the Subcontracts in accordance with Section 6.1, in order that the full benefit of every Subcontract not assigned to the Owner but held for it in trust in accordance with Section 6.2(b) may be realized for the benefit of the Owner and/or the Construction Receiver, the Developer shall, at the request and expense and under the direction of the Construction Receiver, in the name of the Developer, take all such action or do or cause to be done all such things as are necessary or desirable in order that the Developer's rights under such Subcontracts may be preserved for the benefit of the Owner and/or Construction Receiver and that the obligations of the Subcontractor or Supplier under such Subcontracts may be enforced.

- (d) The Owner and the Developer agree that value has been given for the granting of the security interest contemplated in this Section 6.2 and that the Parties have not agreed to postpone the time for attachment except for Subcontracts which are entered into after the date of this Development Contract, the attachment to which will occur forthwith upon the Developer acquiring rights thereto or therein.

### **6.3 Craft Loan**

- (a) The Developer agrees to provide a loan to the Construction Receiver in the initial principal amount of \$2,000,000.00 (which amount is exclusive of the Craft Cash Collateral) upon the terms and conditions set out in the Craft Loan Agreement for the purpose of funding the costs of Construction Work and/or Development Services (the “**Craft Loan**”). The Craft Loan will be secured by a charge against all of the property and assets of UC Leslieville granted under, and with the priority provided under, the Settlement Approval Order.
- (b) The Developer further agrees that:
- (i) the Craft Loan will be funded in full by one advance to the Construction Receiver on the effective date of each of the Craft C&D Contracts, other than the advances after such initial advance which are deemed to be Craft Loans under the provisions of either of the Craft C&D Contracts;
  - (ii) none of the Syndicate Construction Loan will be advanced until all of the Craft Loan has been disbursed by the Construction Receiver; and
  - (iii) to the extent permitted under each of the Craft C&D Contracts, the Construction Receiver will be entitled to apply all or any of the undisbursed portion of the Craft Loan to satisfy all or any of the Obligations or all or any of the unpaid amounts due to subcontractors of the Developer, all as determined in the sole discretion of the Construction Receiver.

## **ARTICLE 7 DEFAULTS**

### **7.1 Default by the Developer**

- (a) For the purposes of this Development Contract, a “**Major Event of Default**” means the occurrence of any of the following:
- (i) a Major Development Breach;
  - (ii) a lien is registered on title to the Project Site that arises out of or is attributable to the Construction Work or Development Services by a person other than the Developer (other than any such lien arising solely as a result of a default by the Owner in the performance of its payment obligations under either of the Craft C&D Contracts) and is not discharged, vacated or otherwise removed by the Developer within ten (10) days of the Developer becoming aware of such lien;
  - (iii) a “Major Event of Default” (as defined under the Construction Contract) occurs under the Construction Contract;
  - (iv) an Event of Insolvency with respect to the Developer or the Builder occurs; or

- (v) the Developer commits any fraud, willful misconduct, willful default (including intentional non-performance of any Development Service) or misappropriation of funds related to the Project. For certainty, willful default does not include any circumstance involving a default by the Developer where it has been and is making good faith efforts to cure such default.
- (b) If a Major Event of Default occurs under Section 7.1(a), then in addition to any rights and remedies it may have under this Development Contract, the Owner shall have all of the following rights so long as the Major Event of Default remains uncured (all or any of which may be exercised by the Owner from time to time in its discretion):
- (i) enforce any of the remedies available to the Owner pursuant to the terms of this Development Contract or applicable Law for a default hereunder including by applying all or any part of the Craft Cash Collateral or undisbursed portion of the Craft Loan against Obligations;
  - (ii) withhold payment to the Developer of any portion of any payment due to the Developer under this Development Contract;
  - (iii) set-off all or any portion of the Obligations against all or any amounts owing from time to time by the Owner or the Construction Receiver to the Developer (including the Craft Loan) howsoever and whenever arising;
  - (iv) on its own or by engaging another contractor or developer, remedy such Major Event of Default, in which case the Owner shall be entitled, upon demand, to be reimbursed by the Developer for any monies reasonably expended to remedy such Major Event of Default (including any expense incurred in connection therewith) and/or to deduct the cost thereof from any payment then or thereafter due the Developer, provided that the Project Monitor has verified such costs as properly relating to the Development Contract and to be reimbursed by the Developer as monies reasonably expended to remedy such Major Event of Default (including any expense incurred in connection therewith);
  - (v) take possession of the Construction Work and Products at the Project Site; subject to the rights of third parties, utilize the Construction Equipment (as defined in the Construction Contract) at the Project Site; finish the Construction Work and the Development Services by whatever method the Owner may consider expedient, all at the cost and expense of the Developer and without prejudice to any claim that the Owner may have for damages incurred by it; provided that the amount of such costs, expenses and damages shall be reduced by the amount that would have otherwise been payable by the Owner to the Developer under the applicable Craft C&D Contract for completion of the Construction Work and Development Services, as the case may be, as of the date of the taking of such possession;
  - (vi) exercise and enforce all or any of the Owner's Security and/or take an assignment of the Subcontracts in accordance with Section 6.2;
  - (vii) suspend the Development Contract, the Construction Contract, and/or any other Project Agreement by issuing a notice to the Developer;
  - (viii) terminate this Development Contract, the Construction Contract, and/or any other Project Agreement by issuing a Termination Notice to the Developer, in which event,

the Developer shall not be entitled to recover any Losses whatsoever from the Owner or the Construction Receiver and in which case Section 7.1(d) will apply; and/or

- (ix) do such other acts and things as the Owner or Construction Receiver may be authorized or entitled to do under this Development Contract, the Development Contract, the TF Cost Overrun Guarantee or the Settlement Approval Order.
- (c) If a Minor Development Breach occurs, then in addition to any rights and remedies it may have under this Development Contract in connection with any Minor Development Breach (which, for greater certainty, excludes the remedies in paragraph 7.1(b) for a Major Event of Default), the Owner shall have all of the following rights so long as the Minor Development Breach remains uncured (all or any of which may be exercised by the Owner from time to time in its discretion):
- (i) enforce any of the remedies available to the Owner pursuant to the terms of this Development Contract for a Minor Development Breach hereunder (which, for greater certainty, excludes the remedies in paragraph 7.1(b) for a Major Event of Default); and
  - (ii) on its own or by engaging another contractor or developer, remedy all or any of the then outstanding Development Breaches, in which case the Owner shall be entitled, upon demand, to be reimbursed by the Developer for any monies reasonably expended to remedy such outstanding Development Breaches (including any expense incurred in connection therewith) and/or to deduct the cost thereof from the Craft Cash Collateral, the undisbursed portion of the Craft Loan or any payment then or thereafter due the Developer, provided that the Project Monitor has verified such costs as properly relating to the Development Contract and to be reimbursed by the Developer as monies reasonably expended to remedy such Development Breaches (including any expense incurred in connection therewith); for the purposes of the foregoing the Developer will co-operate with, and provide such reasonable assistance as may be requested by, the Owner's other contractors or developers (including providing access to the Project Site and the Project) as may be necessary to permit such other contractor(s) or developer(s) to properly remedy such outstanding Development Breaches.
- (d) If a Major Event of Default has occurred and is continuing at the time of termination of this Development Contract:
- (i) the effective date of the termination will be the date set out in the Termination Notice;
  - (ii) the Developer shall have no right or claim whatsoever to, and is forever barred from claiming, any payments that might otherwise be due or become due under this Development Contract except for (without duplication) Development Costs that have been incurred by the Developer prior to such termination but only to the extent that (x) the Developer is entitled to be paid such Development Costs pursuant to Section 5.4, or (y) such Development Costs are reasonable and verifiable, and, in each case, the Construction Receiver has funding available for such purpose. To the extent sufficient proceeds are available under the Waterfall, the Developer shall be entitled to payment of such Development Costs in the same priority of payment as the Craft Loan and Geo-thermal System Costs (as subordinated pursuant to Section 7.1(d)(iii)) of any of the Losses of the Developer described in this Section 7.1(d)(ii) for which the Construction Receiver did not have sufficient funding to pay.
  - (iii) the priority of payment of the Craft Construction Loan and the Geo-thermal System Costs (together with the Court ordered charge securing such loans and costs) shall automatically be further subordinated such that they rank after the repayment of the

indebtedness owing to Terra Firma described in the Waterfall set out in the Settlement Approval Order;

- (iv) the Developer shall have no claim against the Owner, the Construction Receiver or any of the property and assets of UC Leslieville or UC Beach for any Losses arising from such termination by the Owner;
  - (v) the Construction Receiver shall be entitled to retain the full amount of the Craft Cash Collateral and the full amount of the undisbursed portion of the Craft Loan (if any) for application against the losses suffered or incurred by the Owner or the Construction Receiver under either of the Craft C&D Contracts; provided that any excess over such losses shall be returned to the Developer; and
  - (vi) each of the Owner and the Construction Receiver shall be entitled to all other rights and remedies it may have against the Developer under either of the Craft C&D Contracts or applicable Law.
- (e) Notwithstanding the provisions of this Section 7.1, if the Developer *bona fide* and in good faith disputes that a Development Breach has occurred, the Owner will not be entitled to exercise its rights and remedies with respect to such Development Breach for so long as the following conditions are satisfied, and the Developer agrees as follows:
- (i) the Developer will forthwith commence and diligently pursue a resolution of such dispute pursuant to GC Part 8 – DISPUTE RESOLUTION of the Construction Contract;
  - (ii) the Developer shall forthwith commence and diligently perform the services which are the subject of the Development Breach (“**Breach Services**”) at the Developer’s own cost and expense (in the first instance) until final agreement, determination or settlement of such dispute between the Parties, and agrees that the Owner is hereby released from any claims related to such Breach Services if any final determination or settlement of the dispute in respect of the Development Breach is in the Owner’s favour. The Developer agrees to provide such monthly reporting and certifications (including copies of invoices) as to the Breach Services provided and costs incurred under or in connection with such disputed Development Breach as the Owner and the Project Monitor may reasonably request; and
  - (iii) Terra Firma shall forthwith advance to the Owner an amount equal to the cost of the Breach Services as determined by the Project Monitor (the “**Breach Services Amount**”), which Breach Services Amount will be held by the Owner in accordance with Section 7.1(f) of this Development Contract until the final determination or settlement of the disputed Development Breach; provided that, if Terra Firm fails to advance the Breach Services Amount, then the Breach Services Amounts paid or payable by the Contractor as required pursuant to Section 7.1(e)(ii): (a) if the Developer is not successful in the dispute under this Section, shall be the sole responsibility of the Developer, and it shall not be entitled to any reimbursement from the Owner of any of the Breach Services Amount, or (b) if the Developer is successful in the dispute, the Breach Service Amount actually paid by the Developer for all direct, reasonable and verifiable costs of performing the Breach Services as of such time (and such further Breach Services Amount (if any) thereafter paid by the Developer for all direct, reasonable and verifiable costs of completing the Breach Services) will be added to the amount of the Craft Loan to the Construction Receiver.
- (f) If such disputed Development Breach is finally resolved or the Parties agree, then:



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

## **7.2 Funding Failure and Catastrophic Event**

- (a) For the purposes of this Development Contract, a “**Funding Failure**” means the occurrence of any of the following:
  - (i) if, at any time and for whatever reason (including by reason of default by the Developer or the repair or replacement of any damage or destruction to all or any part of the Project), the estimated cost to complete the Work (including rectifying all known Latent Defects and completing all warranty work) and the Development Services, as determined by the Project Monitor, acting reasonably, is greater than the aggregate amount of all funding available for the Project pursuant to the Craft Loan Agreement, the Syndicate Construction Loan Agreement and, to the extent available, the Craft Cash Collateral, and Terra Firma (or to the extent permitted (or required) under the TF Cost Overrun Guarantee, the Developer and the Syndicate) declines (or fails) to fund the difference pursuant to the TF Cost Overrun Guarantee; or
  - (ii) if, at any time, a Cost Overrun as defined under the TF Cost Overrun Guarantee is not funded by Terra Firma as required under the TF Cost Overrun Guarantee (or by the Developer or the Syndicate as required or permitted under the TF Cost Overrun Guarantee).
- (b) The Owner shall be entitled to terminate the Development Contract upon the occurrence of a Funding Failure or a Catastrophic Event upon issuance to the Developer of a Termination Notice. If the Development Contract is terminated solely as a result of the Funding Failure or a Catastrophic Event, then:
  - (i) the effective date of the termination will be the date set out in the Termination Notice;
  - (ii) the Developer shall have no right or claim whatsoever to, and is forever barred from claiming, any payments that might otherwise be due or become due under this Development Contract except for (without duplication):
    - (A) Development Costs that have been incurred by the Developer prior to such termination but only to the extent that (x) the Developer is entitled to be paid

such Development Costs pursuant to Section 5.4, or (y) such Development Costs are reasonable and verifiable;

- (B) provided that no Event of Default hereunder or “Event of Default” as defined under the Construction Contract has occurred and is then existing, interest calculated in accordance with Sections 5.4(f) and (g) on the amounts due and payable under the Development Contract but not paid;
- (C) provided that no Event of Default hereunder or “Event of Default” as defined under the Construction Contract has occurred and is then existing, the return of any undisbursed portion of the Craft Loan and Craft Cash Collateral (after payment of outstanding costs under each of the Craft C&D Contracts and correction of any deficiencies in the Work performed by the Developer prior to such termination); and
- (6) provided that no Event of Default hereunder or “Event of Default” as defined under the Construction Contract has occurred and is then existing, any termination costs that the Developer may owe to arms’ length third parties in connection with the Development Services as a direct result of such termination and that are unrecoverable or unavoidable;

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

- (iii) provided that no Event of Default hereunder or “Event of Default” as defined under the Construction Contract has occurred and is then existing, the Owner and the Construction Receiver shall have no claim whatsoever against the Developer for any Losses except for deficiencies in any of the Development Services provided prior to such termination; and
- (iv) to the extent sufficient proceeds are available under the Waterfall, payment in the same priority of payment as the Craft Loan and Geo-thermal System Costs of any of the Losses of the Developer described in Section 7.2(b)(ii) for which the Construction Receiver did not have sufficient funding to pay.

### **7.3 Claims and Priority of Payments after Default**

The Developer agrees that upon the occurrence of a Major Event of Default and written notice being given by the Owner to the Developer while such Major Event of Default is continuing that the provisions of this Section 7.3 are being invoked (whether or not the Owner has terminated either or both of the Craft C&D Contracts or exercised any of its other rights or remedies):

- (f) The Developer shall have no right or claim whatsoever to, and is forever barred from claiming, any payments that might otherwise be due or become due under any of the Craft C&D Contracts described in Section 5.2(a) and the Developer hereby releases all and any of its right and claim thereto in such circumstances; and
- (g) The priority of payment of the Craft Loan and the Geo-thermal System Costs (together with the Court ordered charge securing such loans and costs) shall automatically be further subordinated such that they rank after the repayment of the indebtedness owing to Terra Firma described in the Waterfall set out in the Settlement Approval Order.

#### **7.4 Acknowledgement**

The Developer acknowledges and agrees that the consequences of an occurrence of a default under the Craft C&D Contracts and/or arising in connection with the termination or suspension of each of the Craft C&D Contracts do not constitute a penalty and are equitable and reasonable in the circumstances.

#### **7.5 Further Assurances**

If the Owner terminates this Development Contract, the Developer shall, upon request and (save in the case of termination by reason of Developer's default) at the expense of the Owner, execute and deliver such papers and take such action, including the legal assignment of the Developer's contractual rights under all such contracts entered into by the Developer pursuant hereto, for the purpose of fully vesting in the Owner the rights and benefits of the Developer thereunder, and the Owner shall assume any obligations or commitments of the Developer thereunder.

### **ARTICLE 8 INTENTIONALLY DELETED**

### **ARTICLE 9 CONDITIONS PRECEDENT**

#### **9.1 Conditions Precedent**

The execution and delivery of this Development Contract by the Construction Receiver and its obligations hereunder are subject to and conditional upon the granting of the Settlement Approval Order, the "Effective Date" (as defined therein) having occurred and such order becoming final and non-appealable and if such order is appealed, such appeal is withdrawn or determined in favour of the Construction Receiver.

The obligations of the Parties under this Development Agreement are subject to the satisfaction or waiver of the following conditions precedent:

- (a) the Construction Contract shall have been executed and delivered by the Parties thereto and be in full force and effect;
- (b) the schedule of values for progress payments under the Construction Contract shall have been approved by the Project Monitor, the Syndicate and Terra Firma;
- (c) the Developer shall have delivered to the Owner the Craft Cash Collateral as required under this Development Contract and the same shall have been deposited in the name of the Owner in an account maintained with the Administrative Agent and the Owner shall have a first ranking security interest in the Craft Cash Collateral;
- (d) the TF Cost Overrun Guarantee shall have been executed and delivered by the parties thereto and be in full force and effect;
- (e) the Craft Loan Agreement shall have been executed and delivered by the parties thereto and be in full force and effect, all conditions precedent to the loan advance shall have been satisfied or shall have been waived by the Developer and the full amount of the Craft Loan shall have been advanced to the Construction Receiver;

- (f) the Syndicate Construction Loan Agreement shall have been executed and delivered by the parties thereto and be in full force and effect;
- (g) each of the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order and the Receivership Administration Order shall have been granted, the "Effective Date" (as defined in the Settlement Approval Order) shall have occurred and each such order shall be final and non-appealable and if any such orders are appealed, such appeal is withdrawn or determined in favour of the Construction Receiver;
- (h) none of the Receivership Order, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order or any provision of any of them shall have been stayed, varied or vacated without the prior written consent of the Owner, the Developer, the Syndicate and Terra Firma and there shall not be any pending motion to do so;
- (i) Tarion and Travelers shall have provided the Tarion/Travelers Settlement Acknowledgements in form and substance satisfactory to the Parties, the Syndicate and Terra Firma (including pursuant to the Settlement Approval Order);
- (j) the Standard Form Sales Agreement to be entered into with each Curzon Purchaser and the disclosure statement required to be delivered to each Curzon Purchaser under the Condominium Act shall have been approved by the Court pursuant to the Purchaser Package Approval Order and the Court shall have confirmed the last date upon which an Opt-In Leslieville Purchaser may rescind its New APS to purchase a Unit in the Project pursuant to Section 73(2) of the *Condominium Act*;
- (k) Terra Firma shall have funded to the Construction Receiver
  - (i) the full cost of rectifying all Latent Defects discovered by the Developer, the Construction Receiver or any other Person relating to the Project prior to the other conditions precedent hereto having been satisfied as required under the TF Cost Overrun Guarantee; and
  - (ii) the amount of all Development Cost Overruns in excess of the amount of the Initial Development Budget identified prior to the other conditions precedent hereto having been satisfied as required under the TF Cost Overrun Guarantee; and
- (l) Each of UC Riverdale, UC Leslieville and UC Beach shall have been adjudged bankrupt under the *Bankruptcy and Insolvency Act* (Canada).

## 9.2 Waiver

The conditions set forth in Sections 9.1(a) to 9.1(l), inclusive, are inserted for the benefit of both Parties and may only be waived by agreement of both Parties, whether in whole or in part (with or without terms or conditions).

## 9.3 CP Outside Date

If the conditions set forth in Sections 9.1(a) to 9.1(l), inclusive are not satisfied (or waived by the Parties) on or before the CP Outside Date, then this Development Contract shall be automatically terminated and of no force and effect. For certainty, none of the Parties has any obligation to appeal, or defend any appeal of, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order or any provision of any of them.

## **ARTICLE 10 INDEMNIFICATION**

### **10.1 Indemnification by Developer**

The Developer (in this Section 10.1, the “**Indemnifying Party**”) hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless, the Owner and the Construction Receiver and each director, officer, employee, agent and representative of the Construction Receiver (in this Section 10.1, collectively, the “**Indemnified Parties**”) from and against any and all Losses which the Indemnified Parties may suffer, incur or sustain, directly or indirectly, as a result of, or which arise from or are connected with:

- (a) any breach or default by the Indemnifying Party of any of the provisions of this Development Contract;
- (b) any willful act, omission or negligence of the Indemnifying Party or any of its respective agents, directors, officers, servants, contractors or employees in the performance of its obligations under this Development Contract; and/or
- (c) any action taken by the Indemnifying Party outside the scope of this Development Contract.

This indemnity shall expire with respect to any claim that has not been made by the Owner or Construction Receiver against the Developer prior to the Discharge Date; provided that such expiry shall in no way derogate from, affect, release or limit any right, remedy, cause of action or claim that the Owner or Construction Receiver may have against the Developer under applicable Law at any time prior or subsequent to the expiry of this indemnity as aforesaid provided.

“**Discharge Date**” means for the purposes of this Section 10.1, the date of discharge of the Construction Receiver by a final and non-appealable order of the Court in the UC Receivership Proceedings as the receiver and manager and construction lien trustee of the property and assets of each of UC Riverdale, UC Leslieville and UC Beach in form, scope and substance satisfactory to the Construction Receiver, which order shall include a release of all claims of any nature or kind of all persons against Alvarez & Marsal Canada Inc. personally and in its capacity as the Construction Receiver.

### **10.2 Indirect Losses**

Neither Party shall be liable to the other Party for any Indirect Losses.

## **ARTICLE 11 INSURANCE**

### **11.1 Construction Phase Requirements**

The Owner will obtain and maintain the insurance policies required in accordance with the Construction Contract. The Developer will obtain and maintain the general liability insurance policy required in accordance with the Construction Contract at its own cost and expense.

### **11.2 Occupancy Insurance**

The Developer shall ensure that all Unit Owners who occupy any Unit prior to the closing of the sale of such Unit will obtain and maintain the insurance policies required in accordance with the applicable New APS.

### **11.3 Post-Construction Requirements**

The Developer will maintain general liability insurance for a period of 6 years after Total Performance of the Work and will provide the Construction Receiver with certificates of insurance verifying such policy on the anniversary of the date of Total Performance of the Work or upon request by the Construction Receiver.

## **ARTICLE 12 CONFIDENTIALITY**

### **12.1 Confidential Information**

- (a) The Parties shall keep confidential all matters respecting technical, commercial and legal information, documents and agreements relating to or arising out of the Project, the Construction Work, and provision of the Development Services (“**Confidential Information**”), and shall not disclose such matters, without the prior written consent of the Owner, with respect to Confidential Information of the Owner and the Construction Receiver, and of the Developer, with respect to Confidential Information of the Developer.
- (b) Notwithstanding Section 12.1(a), a Party may disclose Confidential Information: (i) that is required to be disclosed in accordance with applicable Laws (provided that to the extent practicable, the Party whose Confidential Information is to be disclosed is provided five (5) Business Days’ written notice of such requirement prior to the disclosure); (ii) to its professional advisors (including Consultants) and representatives (provided such parties agree to be bound by confidentiality obligations at least as onerous as set out in this Section 12.1), (iii) to the Project Monitor, the Syndicate, and Terra Firma and their respective professional advisors and representatives (provided such parties agree to be bound by confidentiality obligations at least as onerous as set out in this Section 12.1); (iv) to the City and other Governmental Authorities; (v) in the case of the Owner or the Construction Receiver, to any Person (including Curzon Purchasers and prospective purchasers of Units) that it may deem necessary to fulfill its duties and obligations as the Court appointed receiver and manager and construction lien trustee of the property and assets of UC Leslieville, or as it may deem to be necessary in connection with the UC Receivership Proceedings, and (vi) that has become public or available to the public (other than as a result of the breach of this Section 12.1 by such Party).

## **ARTICLE 13 GENERAL CONTRACT PROVISIONS**

### **13.1 Limitation of Recourse against Construction Receiver**

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

### **13.2 Project Monitor**

- (a) The Project Monitor shall have no liability in connection with this Development Contract to the Developer, and the Developer hereby releases the Project Monitor from all costs, damages,

losses or other amounts or claims of whatsoever nature or kind that may be suffered or incurred by either Party as a result of the actions, inaction, decisions, approvals and reports of, and other activities undertaken by, the Project Monitor in connection with this Development Contract.

- (b) Neither Party nor the Change Funder may bring a claim against the Project Monitor for any decision, recommendation, finding or determination of the Project Monitor made in relation to or as contemplated by Section 4.2 or 7.1(e) .
- (c) For greater certainty, nothing in this Section 13.2 is intended to limit the liability of the estate of Urbancorp (Leslieville) Developments Inc. for any breach by the Owner under this Development Contract. Other than claims against the Construction Receiver for its gross negligence or wilful misconduct, all claims against the Owner or the Construction Receiver may only be brought against the estate of Urbancorp (Leslieville) Developments Inc.
- (d) The provisions of this Section 13.2 are intended for the benefit of the Construction Receiver and the Project Monitor, as the case may be, as a third party beneficiary and may be relied upon by the Construction Receiver and the Project Monitor, as the case may be, notwithstanding that it is not a party to this Development Contract.

### **13.3 Dispute Resolution**

- (a) Any dispute or disagreement between the Parties under this Development Contract will be resolved in accordance with the dispute resolution procedures for mediation and arbitration as set out in GC 8.2 and Schedule "O" of the Construction Contract.
- (b) Notwithstanding anything in this Contract to the contrary, any dispute or claim of a party relating to the conduct of the Construction Receiver will only be determined by the Superior Court of Justice of Ontario (Commercial List), and not under this Part 8 – DISPUTE RESOLUTION.
- (c) If the Parties under this Development Contract cannot agree on any matter under any provision hereof which contemplates that such matter is to be agreed upon between the Parties after the date of this Development Contract, either or both of the Parties shall be entitled to bring such matter before the Court in the UC Receivership Proceedings to seek the Court's determination, advice and/or directions.

### **13.4 Notices**

All notices, requests, demands, approvals or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery or by facsimile or electronic transmission to the other parties to the following addresses:

- (a) to the Developer at:

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

Attention: Carmine Nigro  
Fax No.: 416-979-0593  
Email: [cnigro@craftgrp.com](mailto:cnigro@craftgrp.com)

and to

Attention: Robert Sabato  
Fax No.: 416-979-0593  
Email: [rsabato@craftgrp.com](mailto:rsabato@craftgrp.com)

(b) to the Owner at:

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

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

Attention: Gruneir, Ryan  
Fax No.: 416-847-5201  
Email: [rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)

and to

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

Attention: Zaspalis, Tony  
Fax No: 416-847-5201  
E-mail: [tzaspalis@alvarezandmarsal.com](mailto:tzaspalis@alvarezandmarsal.com)

(c) to the Project Monitor, if applicable at:

Altus Group Limited

33 Yonge Street, Suite 500  
Toronto, Ontario, M5E 1G4

Attention: Colin Duran, Senior Director, Cost Consulting & Project Management  
Fax No: 416-641-9501  
E-mail: [colin.doran@altusgroup.com](mailto:colin.doran@altusgroup.com)

(d) to the Administrative Agent, if applicable at:

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

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



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

With a copy to:

Attention: Mauricio Echeverri, Senior Account Manager, Special Loans  
E-mail: [mauricio.echeverri@cibc.com](mailto:mauricio.echeverri@cibc.com)

(e) to Terra Firma, if applicable at:

Terra Firma Capital Corporation

22 St. Clair Avenue East, Suite # 200  
Toronto, ON M4T 2S3

Attention: Glenn Watchorn  
Fax No: (416) 792-4711  
Email: gwatchorn@tfcc.ca

or at such other address as may be given by any of them to the others in writing from time to time. Any such notices, requests, demands or other communications shall be deemed to have been received, if sent by personal delivery, when delivered, or if sent by facsimile or electronic transmission, on the Day of the transmittal if sent during normal business hours, and otherwise on the next following Business Day.

### **13.5 Further Assurances**

Each of the Parties shall from time to time and at all times do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Development Contract, including the delivery of any documents or information in the Developer's possession or control relating to any of the Work or Development Services, any occupancy or operating costs of the Units or Common Elements, or relating to the establishment, organization, registration or operation of the Condominium Corporation requested by the Owner at any time before or after any termination of this Development Contract or completion of the performance of the Development Services or the Construction Work.

### **13.6 Entire Agreement**

This Development Contract (including the Schedules and Exhibits hereto), the Construction Contract, the TF Cost Overrun Guarantee, the Craft Loan Agreement and the Settlement Approval Order constitute the whole agreement and understanding of the parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the Parties with respect thereto.

### **13.7 Waiver**

Failure by any Party at any time to enforce any provision of this Development Contract or to require performance by any other Party of any of the provisions of this Development Contract will not be construed as a waiver of any such provision and will not affect the validity of this Development

Contract or any part thereof or the right of any Party to enforce any provision in accordance with its terms.

### **13.8 Amendments**

No amendment to this Development Contract will be binding unless it is in writing and signed by the duly authorized representative(s) of each of the Parties.

### **13.9 Law**

This Development Contract will be governed by and construed in all respects in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

### **13.10 Time**

Time shall be of the essence in this Development Contract. In the event of any extension of time by a Party for the performance of an obligation by the other Party under this Development Contract, time shall continue to remain of the essence hereof notwithstanding such extension.

### **13.11 Binding Effect**

This Development Contract and all covenants and conditions herein contained shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, permitted transferees and permitted assigns. The Developer shall not be entitled to assign this Development Contract or any portion thereof without the prior written consent of the Owner, which consent may be unreasonably withheld.

### **13.12 Conflicts**

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Development Contract and the provisions of any Schedules and Exhibits, the provisions of this Development Contract shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.
- (b) In the event of any ambiguity, conflict or inconsistency between the provisions of this Development Contract and the Construction Contract with respect to the Construction Work or any of the obligations of the Developer under the Construction Contract, the provisions of the Construction Contract shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

### **13.13 Counterparts**

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

*[Remainder of the page deliberately left blank]*

**IN WITNESS WHEREOF** this Development Contract has been duly executed by the Parties hereto on the date first written above for signature by:

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

Per: 

Name: Robert Sabato

Title: Director and authorized signing officer

I have the authority to bind the Corporation

Per: \_\_\_\_\_

Name:

Title:

I have the authority to bind the Corporation

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

Per:



Name: Douglas R. McIntosh

Title: President, Alvarez & Marsal  
Canada Inc.

**SCHEDULE 1  
DEFINITIONS AND INTERPRETATION**

**1. Definitions**

For the purposes of this Development Contract and all Schedules hereto, the following terms when capitalized shall have the following meanings:

“**Account**” has the meaning given to such term in Section 6.1(a).

“**Additional LC Services**” has the meaning given to such term in Section 2.4(g).

“**Administrative Agent**” means Canadian Imperial Bank of Commerce in its capacity as administrative agent for the Syndicate under the Syndicate Construction Loan.

“**Affiliate**” of a Party hereto means:

- (a) any corporation which beneficially owns, directly or indirectly, the majority of the issued and outstanding voting and non-voting securities, interests and units (including any warrants, options or other rights to purchase such securities, interests and units, and securities or obligations convertible into or exchangeable for such securities, interests or units) of such party;
- (b) any corporation of which such party or such party’s Affiliate (within the meaning of this definition) beneficially owns, directly or indirectly, the majority of the issued and outstanding voting and non-voting securities, interests and units (including any warrants, options or other rights to purchase such securities, interests and units, and securities or obligations convertible into or exchangeable for such securities, interests or units); and
- (c) any combination of Affiliates which alone or together satisfy the requirements in subsections (a) or (b) of this definition, as the case may be.

In the case of the Developer, Affiliate also means an Affiliate of a shareholder of the Developer.

“**Approved Operating Budget**” has the meaning given to such term in Section 2.4(e)(i)(E).

“**Beach Remaining Lands**” means the remaining lands and premises owned by UC Leslieville and/or UC Beach located at 42 Edgewood Avenue, Toronto, Ontario and more particularly described in Schedule 6 hereto under the heading “Beach Remaining Lands”.

“**Beach Sale Process Order**” means the sale process order to be granted in the UC Receivership Proceedings which will approve, among other things, a sale process for the Beach Remaining Lands, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver, Terra Firma, the Developer and the Syndicate.

“**Breach Services**” has the meaning given to such term in Section 7.1(e)(ii).

“**Breach Services Amount**” has the meaning given to such term in Section 7.1(e)(iii).

“**Budget Increase Recommendation**” has the meaning given to such term in Section 4.2(d).

“**Budget Increase Request**” has the meaning given to such term in Section 4.2(b).

**“Budgeted Development Costs”** means, at any time, all budgeted costs described as a line item in the then current Development Budget, including any contingency amount of budgeted costs.

**“Builder”** has the meaning given to such term in the Construction Contract.

**“Buildings”** means the building or buildings to be developed for the purpose of Units on the Lands, together with associated Common Elements and, in each case, including any and all related improvements and structures appurtenant thereto.

**“Building Blocks”** means, collectively, the Building blocks referred to as Building Block 100 (14 Units), Building Block 200 (8 Units), Building Block 300 (14 Units) and Building Block 500 (19 Units).

**“Business Day”** means any Day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

**“Business Plan”** has the meaning given to such term in Section 4.1(a).

**“Cash Collateral Release Date”** has the meaning given to such term in Section 6.1(a).

**“Catastrophic Event”** has the meaning given to such term in the Construction Contract.

**“Change Funder”** has the meaning given to such term in the Construction Contract.

**“Change Order”** has the meaning given to such term in Construction Contract but for certainty means only a Change Order under the Construction Contract in respect of which its Change Price has been fully pre-funded to the Construction Receiver by a Change Funder.

**“Change Price”** has the meaning given to such term in Construction Contract.

**“City”** means the Corporation of the City of Toronto.

**“Claims”** means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services, with legal costs on a full indemnity scale), proceedings, demands and charges.

**“Closing Budget Increase Request”** means the Budget Increase Request dated as of the date of this Development Contract which was approved by the Project Monitor and Terra Firma as the Change Funder.

**“Common Elements”** has the meaning given to that term in the Condominium Act.

**“Condominium”** means the Buildings, Units and Common Elements after they are established as a condominium under the Condominium Act.

**“Condominium Act”** means the *Condominium Act* (Ontario).

**“Condominium Corporation”** means the “condominium corporation” as defined in the Condominium Act established for the Condominium.

**“Confidential Information”** has the meaning given to such term in Section 12.1(a).

**“Construction”** means the provision of labour, the provision and incorporation of materials and equipment into the Project, and the provision of services and documents, all as required by the Construction Contract.

**“Construction Contract”** has the meaning given to such term in Section 2.3(a).

**“Construction Receiver”** has the meaning give to such term in the recitals to this Development Contract.

**“Construction Schedule”** means the Construction Schedule under the Construction Contract.

**“Construction Work”** means the “Work” as defined under the Construction Contract.

**“Consultant”** means Kasian Architecture Inc., or such other architect, mechanical, electrical, civil, geotechnical, environmental or other engineer and other consultants as the Developer retains in connection with the Construction Work and licensed to practice in Ontario if required to be licensed under applicable Law and in the case of an architect, engineer or other consultant that had not been previously retained by UC Leslieville in connection with the Project, has been approved by the Owner. A reference in this Contract to the Consultant means the Consultant or the Consultants jointly with the relevant responsibility and professional oversight for the applicable task, work or services. The term Consultant means the applicable Consultant and the Consultant’s authorized representative.

**“Cost Overrun”** has the meaning set forth in the TF Cost Overrun Guarantee.

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

**“Craft C&D Contracts”** means, collectively, this Development Contract and the Construction Contract.

**“Craft Cash Collateral”** has the meaning given to such term in Section 6.1(a).

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

**“Craft Collateral”** has the meaning given to such term in Section 2.5(b).

**“Craft Loan”** has the meaning given to such term in Section 6.3(a).

**“Craft Loan Agreement”** means the loan agreement dated as of the date hereof made between the Construction Receiver (as borrower) and the Developer (as lender) in the initial principal amount of \$2,000,000 for the purpose of funding the cost of the Construction Work and Development Costs.

**“Day”** means a calendar day of 24 hours measured from midnight to the next midnight. When any period of time is referred to in this Development Contract by Days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or statutory holiday in the Province of Ontario, such day will be omitted from the computation.

**“Deferred Compensation”** has the meaning given to such term in Section 5.2(a)(ii).

**“Deferred Management Fee”** has the meaning given to such term in Section 5.2(a)(i)(B).

**“Delayed Approval”** has the meaning given to such term in Section 4.2(h).

**“Developer”** has the meaning give to such term in the preamble of this Development Contract.

**“Development Approvals”** has the meaning given such term in the Construction Contract.

**“Development Breach”** means if (a) the Developer fails to perform the Development Services properly or otherwise fails to comply with its covenants or obligations under this Development Contract, or (b) in the case of a disputed Budget Increase Request or a disputed Development Breach, the Developer fails to perform any of its obligations described in Section 4.2(h) or 7.1(e) in connection with such disputed Budget Increase Request or disputed Development Breach, as the case may be.

**“Development Budget”** means, at any time, the then current budget of the Development Costs, which budget has a line by line itemization of the Development Costs, as prepared by the Developer and agreed by the Owner, the Project Monitor and, if there have been Development Cost Overruns from the Initial Development Budget, the Change Funder from time to time, including as the context permits or requires, the Initial Development Budget, and **“current Development Budget”** means the then current Development Budget prepared and approved as aforesaid.

**“Development Contract”** means this Development Contract between the Owner and the Developer.

**“Development Cost Overrun”** means, at any time, a cost overrun under the Initial Development Budget or any subsequent Development Budget as determined by the Project Monitor. A cost overrun under the Development Budget shall not be determined on a line by line basis but on the basis of the overall Development Budget after taking into account committed costs and reasonable estimates of costs yet to be incurred.

**“Development Costs”** means the third party costs (including HST thereon) incurred by the Developer in connection with the provision of the Development Services which the Owner has agreed to reimburse pursuant to the terms of this Development Contract, including without limitation fees payable to the municipality, costs related to registration of the Condominium, fees and disbursements of Consultants (including without limitation architects, surveyors, engineers and lawyers), costs of a reserve fund study, amounts paid into a reserve fund, costs of the Developer’s technical audit and all other soft costs related to providing the Development Services, but, for certainty, excludes all costs related to the Construction Work included in the Fixed Price and Change Prices under Change Orders (including the costs of Subcontractors under the Construction Contract).

**“Development Services”** has the meaning given to such term in Section 2.1(e).

**“Direct Losses”** means all costs, liabilities, losses and other damages that are not Indirect Losses.

**“Discharge Date”** has the meaning given to such term in Section 10.1.

**“Disposition”** means the sale, transfer, assignment, disposition or encumbrance, or agreement to sell, transfer, assign, dispose of or encumber any of the Lands (or any part thereof) or this Development Contract (or any interest herein).

**“Disputed Amount”** has the meaning given to such term in Section 4.2(h)(iii).

**“Earned Management Fee”** has the meaning given to such term in Section 5.2(a)(i)(A).

**“Environmental Laws”** means all Laws relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods.

**“Event of Default”** means the occurrence of a Minor Development Breach or a Major Event of Default.

**“Event of Insolvency”** means, with respect to any Party, the occurrence of any one of more of the following events:



- (a) if such Party shall:
- (i) be wound-up, dissolved or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada) or any successor legislation thereto or have its existence terminated or have any resolution passed therefor;
  - (ii) make a general assignment for the benefit of its creditors or a proposal or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any successor legislation thereto or be adjudged by a court of competent jurisdiction to be bankrupt or insolvent or acknowledge its insolvency in writing; or
  - (iii) apply for protection or propose a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada) or any successor legislation thereto or shall file any petition, application or answer seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future Laws relating to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors or under any applicable federal or provincial legislation relating to, *inter alia*, the incorporation or constitution of corporations; or
- (b) if a court of competent jurisdiction enters an order, judgment or decree approving a petition or application filed against such Party, seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future Laws relating to bankruptcy, insolvency or other relief for or against debtors generally or under any applicable federal or provincial legislation relating to, *inter alia*, the incorporation or constitution of corporations and (i) such Party shall acquiesce in the entering of such order, judgment or decree, or (ii) if there is no such acquiescence, the order, judgment or decree remains unvacated or unstayed for an aggregate of forty-five (45) Days (whether or not consecutive) from the date of entry thereof; or
- (c) if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for such Party.

**“Existing Curzon Purchasers”** means the purchasers of Units in the Project pursuant to agreements of purchase and sale with UC Leslieville existing as of the commencement of the UC Receivership Proceedings.

**“Extra Parking Spaces”** means the estimated 11 currently unallocated parking spaces in the Condominium.

**“Extra Storage Spaces”** means the estimated 33 bicycle storage spaces in the Condominium.

**“Fixed Price”** has the meaning given to such term in the Construction Contract.

**“Force Majeure”** means:

- (a) in the case of the Construction Work, an event giving rise to a delay as set out in paragraph 6.5.4 of GC 6.5 – DELAYS of the Construction Contract; and

- (b) in the case of the Development Services, undue delays (being material delays beyond the then current practice) on the part of any Governmental Authorities in settling any agreements, processing any applications or granting any approvals (including actions required to effect registration of the Condominium); provided that such delays are not caused by any acts or omissions of the Developer.

For greater certainty, lack of funds, the state of the market or any wilful or negligent act or omission on the part of the Developer does not constitute Force Majeure.

**“Funding Breach”** means the failure of the Developer to fund (a) any Cost Overrun as required under the TF Cost Overrun Guarantee, (b) the Geo-thermal System Costs, or (c) all amounts required under Sections 4.2(h) and 7.1(e) of this Development Contract or GC paragraph 6.2.8 of GC 6.2 – CHANGE ORDER, paragraphs 7.1.6 or 7.1.7 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER under the Construction Contract.

**“Geo-thermal System Costs”** has the meaning given to such term in the Construction Contract.

**“Geo-thermal System Marketing Process”** has the meaning given to that term in Section 2.5(c).

**“Geo-thermal Loan”** has the meaning given to that term in Section 2.5(b).

**“Geo-thermal System”** has the meaning given to such term in the Construction Contract.

**“Geo-thermal System Marketing Process”** has the meaning given to such term in 2.5(c).

**“Geo-thermal System Proceeds”** has the meaning given to such term in Section 2.5(c).

**“Geo-thermal System Work”** has the meaning given to such term in the Construction Contract.

**“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, having jurisdiction in any way over or in respect of any aspect of the performance of either of the Craft C&D Contracts or any Schedule thereto.

**“HST”** means the harmonized sales tax, as described in the *Excise Tax Act* (Canada).

**“Indemnified Parties”** has the meaning given to such term in Article 10.

**“Indemnifying Party”** has the meaning given to such term in Article 10.

**“Indirect Losses”** means, collectively, (a) punitive, exemplary or aggravated damages; or (b) indirect, consequential, incidental, reliance or special damages, including loss of profits, business interruption losses, loss of contract, loss of use, loss of production, loss of business, cost of capital, loss of business opportunity, loss of goodwill or any economic loss of any other kind.

**“Initial Development Budget”** has the meaning given to such term in Section 4.2(a).

**“Lands”** has the meaning set out in Recital A.

**“Lands Planning Documents”** means, collectively, the City approved site-specific official plan amendment, site specific zoning by-law, plans of subdivision (including draft plans), plans of condominium (including draft plans), site plan agreements for individual Building Blocks, if applicable,

and urban design guidelines and all other by-laws, building and other restrictions regulating or restricting the development, construction and use of all or any part of the Lands, tree preservation, grading, drainage, erosion, sedimentation control and other matters relevant to the development, construction and use of all or any part of the Lands, as the same may be amended, extended, consolidated or replaced from time to time.

“**Latent Defects**” has the meaning given to such term in the Construction Contract.

“**Latent Defects Pre-Testing**” has the meaning given to such term in the Construction Contract.

“**Laws**” means any and all requirements under or prescribed by the common law and the law of equity and any enactments, statutes, regulations, laws, court orders or judgments, decrees, writs, administrative interpretations, ordinances, orders in council, by-laws, codes (including design and construction codes), orders, injunctions, directives, guidelines, rules or policies of any Governmental Authority affecting, applicable to or otherwise relating to any of the parties to this Development Contract, the Lands, any Building or any part thereof or the use thereof and includes, for greater certainty, all Environmental Laws, the Lands Planning Documents and the *Ontario New Home Warranties Plan Act*.

“**Leslieville Broker**” has the meaning given such term in Section 2.4(a).

“**Lien**” means a mortgage, charge, security interest, pledge, lien, tax lien, statutory lien, construction lien or encumbrance of any kind.

“**Lien Act**” means the *Construction Lien Act* (Ontario).

“**List Price**” has the meaning given to such term in Section 2.4(a).

“**Losses**” means, collectively, all Direct Losses and Indirect Losses.

“**Major Development Breach**” means if:

- .1 a Development Breach occurs; and
- .2 except in the case of a Development Breach relating to Section 4.2(h) or 7.1(e), the Developer has failed to cure such Development Breach within ten (10) Days after receipt of a notice of such breach from the Owner, or, provided that such breach is capable of being cured, but not within such ten (10) Day period, the Developer has failed to cure such Development Breach within such longer period of time as has been determined by the Project Monitor in its reasonable discretion based on the nature of the breach, or the Developer has failed to make bona fide and diligent attempts to cure such breach within such longer period of time; and
- .3 the cost of remedying such Development Breach is individually greater than the Craft Cash Collateral Amount at such time, or the aggregate amount of the cost of remedying such Development Breach plus (a) the cost of remedying all other outstanding Development Breaches at such time that have not been remedied or cured, plus (b) the cost of remedying all outstanding Construction Breaches at such time that have not been remedied or cured, plus (c) the amount of all outstanding Funding Breaches, is greater than the Craft Cash Collateral Amount at such time; provided that the cost of remedying Development Breaches and Construction Breaches shall be as determined by the Project Monitor, acting reasonably.

“**Major Event of Default**” has the meaning set out in Section 7.1(a).

“**Marketing End Date**” has the meaning given to such term in Section 2.4(h) .

**“Marketing Plan”** has the meaning given to such term in Section 2.4(a).

**“Monthly Unit Costs”** has the meaning given to such term in Section 2.2(a)(viii)(B).

**“Minimum Parking Space Price”** has the meaning given to such term in Section 2.4(a).

**“Minimum Price”** has the meaning given to such term in Section 2.4(a).

**“Minimum Storage Price”** has the meaning given to such term in Section 2.4(a).

**“Minimum Unit Price”** has the meaning given to such term in Section 2.4(a).

**“Minor Development Breach”** means if:

- .1 a Development Breach occurs; and
- .2 except in the case of a Development Breach relating to Section 4.2(h) or 7.1(e), the Developer has failed to cure such Development Breach within ten (10) Days after receipt of a notice of such breach from the Owner, or, provided that such breach is capable of being cured, but not within such ten (10) Day period, the Developer has failed to cure such Development Breach within such longer period of time as has been determined by the Project Monitor in its reasonable discretion based on the nature of the breach, or the Developer has failed to make bona fide and diligent attempts to cure such breach within such longer period of time; and
- .3 the cost of remedying such Development Breach is individually equal to or less than the Craft Cash Collateral Amount at such time, or the aggregate amount of the cost of remedying such Development Breach plus (a) the cost of remedying all other outstanding Development Breaches at such time that have not been remedied or cured, plus (b) the cost of remedying all outstanding Construction Breaches at such time that have not been remedied or cured, plus (c) the amount of all outstanding Funding Breaches, is equal to or less than the Craft Cash Collateral Amount at such time; provided that the cost of remedying Development Breaches and Construction Breaches shall be as determined by the Project Monitor, acting reasonably.

**“New APS”** means each purchase and sale agreement for a Unit entered into and outstanding between the Owner and a Unit Owner substantially in the form of the Standard Form Sales Agreement.

**“New Curzon Purchasers”** means the Unit Owners other than the Opt-In Leslieville Purchasers.

**“Obligations”** has the meaning given to such term in Section 6.1(a).

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

**“Original Construction Loan”** has the meaning given to such term in Recital C.

**“Outside Date”** has the meaning given to such term in the Construction Contract.

**“Owner”** has the meaning give to such term in the preamble of this Development Contract.

**“Owner’s Security”** means, collectively, the security interest granted in the Craft Cash Collateral pursuant to Section 6.1 and the security interest in the Subcontracts pursuant to Section 6.2.

**“Parties”** means the Owner and the Developer, and **“Party”** means either one of them.

**“Person”** includes an individual, corporation, partnership, joint venture, association, trust, pension fund, union, government, governmental body, governmental agency, authority, board, tribunal, commission or department and the heirs, beneficiaries, executors, personal or other legal representatives or administrators of an individual, and the receivers and administrators of a corporation.

**“Planning Act”** means the *Planning Act* (Ontario).

**“Product”** has the meaning given to such term in the Construction Contract.

**“Project”** has the meaning given to such term in the Construction Contract.

**“Project Agreements”** means this Development Contract, the Construction Contract, and the TF Cost Overrun Guarantee.

**“Project Architect”** means Kasian Architecture Inc., or such other architect as the Developer shall retain in connection with the Construction Work which has been approved by the Owner.

**“Project Engineer”** means, as applicable, the mechanical, electrical, civil, geotechnical, environmental or other engineer retained by the Developer shall retain in connection with the Construction Work and in the case of an engineer that had not been previously retained by UC Leslieville in connection with the Project, has been approved by the Owner.

**“Project Monitor”** means Altus Group Limited or such other cost consultant as may be chosen by the Owner and acceptable to the Syndicate and Terra Firma.

**“Project Site”** means the location of the Construction on the Lands.

**“Property Manager”** means FirstService Residential or such other property manager as may be designated by the Owner.

**“Purchaser Package Approval Order”** means the order to be granted in the UC Receivership Proceedings which will approve, among other things, the Standard Forms of Sales Agreement for sale of Units by the Owner to the Existing Curzon Purchasers and the disclosure statement required under the Condominium Act to be provided by the Owner to the Existing Curzon Purchaser, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver and the Syndicate.

**“Receivership Administration Order”** means the receivership administration order to be granted in the UC Receivership Proceedings which will approve, among other things, an increase of borrowings by the Construction Receiver required in connection with the arrangements among UC Leslieville and the Stakeholders to be approved by the Settlement Approval Order, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver and the Stakeholders;

**“Remaining Period”** has the meaning set forth in Section 5.2(b)(ii).

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

**Stakeholders**” means the Construction Receiver, the Developer, Terra Firma, the Syndicate and the Existing Curzon Purchasers represented by Dickinson Wright LLP.

**Standard Form Sales Agreement**” means the standard form agreement of purchase and sale to be utilized in respect of the sale of the Units to the Unit Owners, in each case as approved pursuant to the Purchaser Package Approval Order or the Settlement Approval Order, as applicable.

**Subcontract**” means a contract between the Developer and a Subcontractor.

**Subcontractor**” is a Person having a direct contract with the Developer to perform a part or parts of the Development Services.

**Substantial Performance of the Work**” has the meaning given to such term in the Construction Contract.

**Success Fee**” has the meaning given to such term in Section 5.2(a)(ii).

**Supplier**” means a manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with the Developer or with any Subcontractor, to furnish materials and equipment to be incorporated in the Work by the Developer or any Subcontractor.

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

**Syndicate Construction Loan Agreement**” means the credit agreement made as of the date hereof between the Construction Receiver (as borrower), the Syndicate (as lenders), and the Administrative Agent (as the administrative agent for the Syndicate), in the initial principal amount of \$4,500,000, as such agreement may be amended and supplemented from time to time.

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

**Tarion**” means Tarion Warranty Corporation.

**Tarion Home Warranty Plan**” has the meaning given to such term in the Construction Contract.

**Tarion/Travelers Settlement Acknowledgements**” means acknowledgements and agreements provided by each of Tarion and Travelers with respect to warranty and deposit insurance coverage for the Existing Curzon Purchasers and Unit Owners in form and substance satisfactory to the Stakeholders.

**Taxes**” means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, unemployment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties imposed by any Governmental Authority (including federal, state, provincial, municipal and foreign Governmental Authorities), and whether disputed or not.

**Termination Notice**” means a notice in writing providing notice of termination delivered by the Owner to the Developer under Section 7.1(b)(viii) or 7.2(b).

**Terra Firma**” means Terra Firma Capital Corporation.

**“TF Cost Overrun Guarantee”** means the cost overrun funding and performance guarantee dated as of the date hereof made among Terra Firma, the Construction Receiver, the Administrative Agent and the Developer.

**“Total Performance of the Work”** has the meaning given to such term in the Construction Contract.

**“Travelers”** means Travelers Guarantee Company of Canada.

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

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

**“UC Receivership Proceedings”** means the receivership proceedings commenced in the Ontario Superior Court of Justice [Commercial List] under Court File No. CV-16-11409-00CL pursuant to which Alvarez & Marsal Canada Inc. was appointed as receiver and manager and as construction lien trustee of all of the assets, undertakings, and property acquired for, or used in relation to the business of UC Leslieville, UC Riverdale and UC Beach.

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

**“Unit”** means a residential condominiums unit within or comprising, as applicable, a Building or to be situated upon a portion of the Lands, in each case, that is intended to be sold, leased to, or occupied by the occupants thereof for residential use, and includes a townhouse unit, a condominium unit, and any superintendent and guest suites and any parking space associated therewith and to the extent the context permits includes the Extra Parking Spaces and the Extra Storage Units.

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

**“Unit Owner”** means the residential owner or purchaser of a Unit.

**“Unsold Units”** means, at any time, the Units that have not been sold pursuant to a New APS entered into by the Owner at such time.

**“Vacant Lot”** means the lands and premises described in Schedule 4 (Legal Description of Vacant Lot).

**“Vacant Lot Conditions”** has the meaning given to such term in Section 5.3.

**“Warranty Work”** means the warranty work and services as described in the Construction Contract, including all Tarion warranties (including all work required in connection with each PDI Inspection Form, each Tarion 60 Day Report and each Tarion Bulletin 19 Report and the Technical Audit (as such terms are defined in the Construction Contract) and all other warranties for work done under the Construction Contract giving rise to any Tarion claims by Unit Owners or the Condominium Corporation to the extent related to the work performed by the Developer under the Craft C&D Contracts.

**“Waterfall”** means scheme of distribution and allocation of proceeds from the sale of Units and other property of UC Leslieville and UC Beach as set out in the Settlement Approval Order.

## 2. Interpretation

The Development Contract and all Schedules and Exhibits thereto will be interpreted according to the following provisions, save to the extent that the context or the express provisions of the Development Contract or any Schedules thereto otherwise requires:

- (a) The table of contents, headings and sub-headings, marginal notes and references to them in the Development Contract are for convenience of reference only, do not constitute a part of the Development Contract, and shall not be taken into consideration in the interpretation or construction of, or affect the meaning of, the Development Contract.
- (b) All references to Articles, Sections, Schedules and Exhibits are references to Articles and Sections of and Schedules and Exhibits to the Development Contract and all references to parts, paragraphs or appendices are references to parts and paragraphs contained in and appendices to the Schedules or Exhibits.
- (c) The Schedules and Exhibits to the Development Contract (including any appendices thereto) are an integral part of the Development Contract and reference to the Development Contract includes reference thereto and reference to any Schedule or Exhibit includes reference to any appendix thereto.
- (d) All references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of the Development Contract expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.
- (e) All references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute.
- (f) All references to time of Day and Business Day are references to Eastern Standard time or Eastern Daylight Saving time, as the case may be.
- (g) The words “herein”, “hereto”, “hereof” and “hereunder” and other words of like import refer to the Development Contract as a whole and not to the particular Section, Schedule, part, paragraph or appendix in which such word may be used.
- (h) Words importing the singular include the plural and vice versa.
- (i) Words importing a particular gender include all genders.
- (j) Any reference to a public organization shall be deemed to include a reference to any successor(s) to such public organization or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such public organization.
- (k) All monetary amounts are expressed in Canadian Dollars.
- (l) Any requirement for anything or action to be “in accordance with” or “in compliance with” or “pursuant to” any standard, code, specification, guideline or other requirement or stipulation means that such thing or action is to exceed or at least equal that standard, code, specification, guideline or other requirement or stipulation.



- (m) Any reference to anything being “in”, “on”, “under” or “over” any other thing shall, where the context permits, include the others.
- (n) Whenever the terms “will” or “shall” are used in the Development Contract they are to be construed and interpreted as synonymous and are to be read as “shall”.
- (o) The words “includes” or “including” are to be construed as meaning “includes without limitation” or “including without limitation”, respectively.
- (p) The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances, and in any event taking no less steps and efforts than those that would be taken by a reasonable and prudent person in comparable circumstances, including, where appropriate and applicable, taking into consideration, good development industry practice and good construction industry practice, but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrue solely to that person’s own benefit.
- (q) All capitalized terms used in a Schedule or Exhibit have the meanings given to such terms in this Development Contract, unless stated otherwise in a particular Schedule or Exhibit, in which case such term will have the meaning given to it in that Schedule or Exhibit solely for the purposes of that Schedule or Exhibit.
- (r) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.
- (s) The words of the Development Contract are to be given their natural meaning. The parties have had the opportunity to take legal advice on the Development Contract and no term is, therefore, to be construed contra proferentem.
- (t) A reference to any right, power, obligation or responsibility of any department, ministry, agency, board, commission, corporation or other entity of any Governmental Authority is to the department, ministry, agency, board, commission, corporation or other entity of the Governmental Authority which, pursuant to Laws, has such right, power, obligation or responsibility at the relevant time.
- (u) A reference to persons for whom a party is in law responsible includes that party’s employees, agents, contractors and subcontractors of any tier, advisors and any other persons for whom that party is in law responsible or over whom that party could reasonably be expected to exercise control.
- (v) If the time for doing an act falls or expires on a Day that is not a Business Day, the time for doing such act will be extended to the next following Business Day.
- (w) Each provision of the Development Contract will be valid and enforceable to the fullest extent permitted by law. If any provision of the Development Contract is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality will not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Development Contract. If any such provision of the Development Contract is held to be invalid, unenforceable or

illegal, the parties will promptly endeavour in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Development Contract as nearly as possible to its original intent and effect.

**SCHEDULE 2  
LEGAL DESCRIPTION OF THE PROJECT**

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

**PIN 21051-0408 (LT)**

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

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

**SCHEDULE 3  
INITIAL DEVELOPMENT BUDGET**

**[SEE ATTACHED]**

### Initial Development Budget

Initial Development Budget per Development Agreement	Amount
Craft Management Fee - 25% of \$1.5 million	375,000
Consultant and Architect fees (see note 1 below)	330,500
Potential marketing costs for non-Opt-ins	200,000
Legal/Closing/Financing costs to Settlement	40,000
<b>Total</b>	<b>945,500</b>

Note 1.

Summary of Consultant and Architect Fees			
Type	Supplier	Estimate	Basis
Engineering Service re: Geothermal	R. Mancini	80,000	Supplier Quote
Architectural	Kasian Architecture	68,300	Supplier Quote
Surveyor	R. Avis Surveying	34,500	Craft Quote
Technical Audit	To be determined	30,000	Projection Craft
Bulletin 19 & Code Consultant	To be determined	20,000	Projection Supplier
Mechanical/Electrical	United Engineering	18,500	Craft Quote
Environmental (Park if required)	EXP Services	15,000	Projection Craft
Water Testing	To be determined	7,500	Projection Supplier
Civil Engineering	GHD	6,200	Supplier Quote
Structural	Leonard Kalishenko	5,600	Supplier Quote
Landscaping Consulting	Terraplan Landscape	5,200	Craft Quote
Fire Safety Report	To be determined	5,000	Projection Supplier
Environmental	EXP Services	4,750	Craft Quote
Arborist	To be determined	2,500	Projection
Contingency		27,450	
<b>Sub-total</b>		<b>330,500</b>	

**SCHEDULE 4  
LEGAL DESCRIPTION OF VACANT LOT**

Part 10 as shown on the draft reference plan attached hereto as prepared by R. Avis Surveying Inc. and dated January 28, 2015.

**SCHEDULE 5  
INSURANCE REQUIREMENTS**

**Intentionally Deleted.**

**SCHEDULE 6  
LEGAL DESCRIPTION OF BEACH REMAINING LANDS**

**Beach Remaining Lands - 42 Edgewood Avenue, Toronto, Ontario**

**Formerly PIN 21024-0422 (LT)**

Lots 5, 6, 7, 8 and 9, Plan 504 (Midway); Lots 66, 67, 68 and 69, Plan 481E, designated as Parts 1 and 2, Plan 66R-25512; s/t an easement over Part Lot 69, Plan 481E, designated as Part 2, Plan 66R-25512 in favour of Part Lot 70, Plan 481E as in ET127629; t/w an easement over Part Lot 70, Plan 481E, designated as Parts 3, Plan 66R-25512 as in ET127629; City of Toronto

**Now**

**(1) PIN 21024-0455 (LT)**

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

PART OF LOT 66 & 67 PLAN 481E DESIGNATED AS PART 1 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(2) PIN 21024-0456 (LT)**

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

PART OF LOTS 8 & 9 PLAN 504 (MIDWAY) DESIGNATED AS PART 2 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(3) PIN 21024-0457 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PART OF LOTS 8 & 9 PLAN 504 (MIDWAY) DESIGNATED AS PART 3 PLAN 66R27603 TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO, DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(4) PIN 21024-0469 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PART OF LOT 66 PLAN 481E DESIGNATED AS PART 15 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO, DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO



**(5) PIN 21024-0491 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PT LTS 5, 6 & 7 PLAN 504 BEING PT 36 PL 66R27603 AND PT LT 5 PLAN 504 BEING PT 1 PL 66R27625; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504 & PT LT 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 1 PL 66R27625 IN FAVOUR OF PT LT 4 PL 504 AS IN AT3690147; CITY OF TORONTO

**(6) PIN 21024-0492 (LT)**

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

PT LTS 5, 6 & 7 PLAN 504 BEING PT 35 PL 66R27603 AND PT LT 5 PL 504 BEING PT 2 PL 66R27625; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504 & PT LT 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 2 PL 66R27625 IN FAVOUR OF PT LT 4 PL 504 AS IN AT3690147; CITY OF TORONTO

**(7) PIN 21024-0493 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PT LTS 68 & 69 PL 481E BEING PT 17 PL 66R27603; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504, PT LTS 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; CITY OF TORONTO

**(8) PIN 21024-0494 (LT)**

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

PT LT 69 PL 481E BEING PTS 16 & 18 PL 66R27603; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504, PT LTS 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 18 PL 66R27603 IN FAVOUR OF PT LT 70 PL 481E AS IN ET127629; CITY OF TORONTO

# **APPENDIX “E”**

## EXECUTION VERSION

## ENGAGEMENT LETTER

[insert date], 2017

Altus Group Limited  
33 Yonge Street, Suite 500  
Toronto, ON M5E 1G4

**Attention: Mr. Colin Doran**

**Re: Urbancorp (Leslieville) Developments Inc. (“UC Leslieville”), Urbancorp (The Beach) Developments Inc. (“UC Beach”) and Urbancorp (Riverdale) Developments Inc. (“UC Riverdale” and collectively with UC Leslieville and UC Beach, the “UC Companies”)**

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Alvarez & Marsal Canada Inc., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of each of the UC Companies (the “**Construction Receiver**”) and not its personal or corporate capacity, hereby engages Altus Group Limited (“**Altus**”) as the “Project Monitor” and “Independent Cost Consultant”, as the case may be, pursuant to each of the construction contract dated as of the date hereof made between UC Leslieville (the “**Owner**”), by the Construction Receiver, and C.R.A.F.T. Development Corporation (“**Craft**”) (the “**Construction Contract**”), the development contract dated the date hereof made between the Owner and Craft (the “**Development Contract**”), the cost overrun and completion guarantee dated as of the date hereof made between Terra Firma Capital Corporation (“**Terra Firma**”), Craft, Canadian Imperial Bank of Commerce in its capacity as administrative agent for the Syndicate (the “**Administrative Agent**”) and the Construction Receiver, the credit agreement dated as of the date hereof made between the Construction Receiver and Craft and the credit agreement dated as of the date hereof made between the Construction Receiver, the Administrative Agent and the Syndicate (the “**Syndicate Loan Agreement**”) (collectively the “**Agreements**”).

Each capitalized term used in this Engagement Letter that is not otherwise defined shall have the meaning set forth in the Development Contract.

**1. General:**

- 1.1 Altus agrees to perform the functions of the Project Monitor and the Independent Cost Consultant (as defined in the Syndicate Loan Agreement), as the case may be, set forth in each of the Agreements.
- 1.2 In addition to the functions set out in Section 1.1, Altus also agrees to:
  - (a) document the condition of the Project, including the interior and exterior of all units, underground parking, storage rooms, geo-thermal room, and mechanical and electrical room prior to the commencement of construction and providing a report of these matters to the Construction Receiver within 14 days of the issuance of the Settlement Approval Order;
  - (b) attend at the Project site on an at least monthly basis and more frequently as it determines is necessary or as the Construction Receiver may request; and
  - (c) provide such other services relating to the Project and/or any of the Agreements as it may be requested to perform from time to time by the Construction Receiver.

## 2. Monthly Reports:

2.1 Altus agrees to prepare throughout the period of construction of the Project, a monthly report for the Project, which includes, but not limited to, the following information:

- (a) The Project Monitor Certificate and Project Consultant Certificate (as defined in the Syndicate Loan Agreement) required in connection with progress draws under the Construction Contract and the Development Contract and drawdowns under the Syndicate Loan Agreement;
- (b) Updated Schedule of Values (as defined in the Construction Contract), Development Budget, Construction Schedule and cash flow projections;
- (c) The costs to date, holdbacks retained and released in accordance with the Construction Lien Act, the value of any Change Orders, Development Cost Overruns and the current estimate of the cost to complete the Project;
- (d) Confirmation of amounts required to be funded by a Change Funder under the TF Cost Overrun Guarantee for Change Orders and Development Cost Overruns;
- (e) A detailed breakdown of construction costs in accordance with the Schedule of Values and soft costs and identified contractors on the Project. The report will segregate construction costs from soft costs. The report's appendices will identify the contractors on the Project and quantify the amounts of holdbacks in respect of the contracts retained and released from time to time pursuant to the Construction Lien Act;
- (f) A review of the HST monthly report for accuracy and to ensure that any refunds are deposited into the Project account and are applied towards the reduction of the monthly draws;
- (g) Reconciliation of the amount requested and the advance recommended and confirm costs to date are substantiated by work completed at the Project site;
- (h) Review of cancelled cheques issued by Craft for the payables in the prior monthly payment period;
- (i) Any potential issues identified by Altus which may affect completion of the Project in accordance with the agreed Project schedule, budget, and cash flow projections;
- (j) Review of Craft's monthly report under the Development Contract and report on status of Development Services relating to the construction of, and registration of Declaration for, the Project and with respect to the marketing and sale of the Units; and
- (k) Comments and recommendations on any other items which may have become evident during discussions with the Construction Receiver or during the course of the Project Monitor's review.

2.2 The Monthly Report shall be accompanied with copies of the following documents:

- (a) A current sales summary report prepared by the Construction Receiver;
- (b) Site photographs depicting the Project in its current form;
- (c) Architect's certificates and/or engineers' or other consultants' certificates, certifying that the construction work has been completed in accordance with the approved plans and

specifications, municipal by-laws and regulations and the provincial building code, and that identified deficiencies are being addressed;

- (d) All Change Orders;
- (e) All Budget Increase Requests; and
- (f) Summary of HST paid and input tax credits refunded, collected, with a copy of the Construction Receiver's detailed report and calculations.

2.3 The Monthly Report will include an "Executive Summary" that will present and comment on the following:

- (a) The date the Project was last visited, and a detailed description of the status of the Project to date;
- (b) Disbursement recommendation for the Craft Loan or the Syndicate Construction Loan;
- (c) The current Schedule of Values, summary of the Change Prices (as defined in the Construction Contract) under Change Orders, and current Development Budget with changes highlighted/compared
- (d) The original contingency reserve under each of the Schedule of Values and Development Budget, the previous month's contingency reserves for each, and the then current month's contingency reserve and Altus' comments on the adequacy thereof;
- (e) The current gross costs to date, holdbacks, net costs to date, and the costs to complete;
- (f) The current scheduled date for the Substantial Performance of the Work for the Project as per the Construction Schedule, the current Outside Date, the previous scheduled date for the Substantial Performance of the Work, and whether the timeframe falls within the contractual delivery date to units to third party purchasers;
- (g) Listing of the permits and approvals required for the completion of the Project, and a listing of those approvals held;
- (h) Comments and recommendations on any other items which may have become evident during discussions with the Construction Receiver or during the course of Altus' review;
- (i) Identification of any issues which might affect the Project's completion within the agreed Schedule of Values, Change Orders, and current Development Budget and Construction Schedule, along with recommendations for revisions; and
- (j) Such other services as Altus may be directed to perform from time to time by the Construction Receiver.

2.4 Concurrently with the delivery of the Monthly Report to the Construction Receiver, Altus shall deliver copies of the Monthly Report to the Administrative Agent and Terra Firma as follows:

- (a) To the Administrative Agent at:

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

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

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

With a copy to:

Attention: Mauricio Echeverri, Senior Account Manager, Special Loans  
E-mail: [mauricio.echeverri@cibc.com](mailto:mauricio.echeverri@cibc.com)

(b) to Terra Firma at:

Terra Firma Capital Corporation

22 St. Clair Avenue East, Suite # 200  
Toronto, ON M4T 2S3

Attention: Glenn Watchorn  
Fax No: (416) 792-4711  
Email: [gwatchorn@tfcc.ca](mailto:gwatchorn@tfcc.ca)

### 3. Limited Capacity and Recourse

The execution and delivery of this Agreement by the Construction Receiver and all obligations of the Construction Receiver, whether on behalf of the Owner or its own behalf, under or in connection with this Engagement Letter are undertaken by Alvarez & Marsal Canada Inc. solely in its capacity as the Court Appointed Receiver and Manager and Construction Lien Trustee of each of the UC Companies and Alvarez & Marsal Canada Inc. shall have no personal or corporate liability under this Engagement Letter. The sole recourse of Altus against the Owner or the Construction Receiver in connection with such obligations shall be limited solely to a claim against the proceeds of the property and assets of the Owner.

### 4. Court Approval and Conditions

- 4.1 The execution and delivery of this Engagement Letter by the Construction Receiver and its obligations hereunder are subject to and conditional upon the granting of the Settlement Approval Order (as defined in the Development Contract), the "Effective Date" (as defined therein) having occurred and such order becoming final and non-appealable and if such order is appealed, such appeal is withdrawn or determined in favour of the Construction Receiver.
- 4.2 The obligations of the parties hereunder are subject to the following conditions precedent: (a) the execution and delivery of the Development Contract and such contract being in full force and effect, and (b) satisfaction of the conditions precedent set out in Section 9.1 of the Development Contract, other than Section 9.1(a). The conditions set forth in this section 4.2 are inserted for the benefit of both parties and may only be waived by agreement of both parties, whether in whole or in part (with or without terms or conditions).
- 4.3 If the conditions set forth in Sections 4.1 and 4.2 are not satisfied (or waived by the parties) on or before the CP Outside Date (as defined in the Development Contract), then this Engagement Letter shall be automatically terminated and of no force and effect.

**5. Acknowledgements:**

- 5.1 The Construction Receiver acknowledges the following:
- (a) Except as otherwise provided under the Agreements, the services provided by Altus are the collection and review of the information to be reported on to the Construction Receiver and the Administrative Agent.
  - (b) Altus' services do not constitute an audit. Altus assumes that Craft and its Subcontractors and Consultants have provided full disclosure of all pertinent information.
  - (c) Altus is not involved in reviewing construction on a day-to-day basis and except as otherwise expressly provided under the Agreements, Altus is not involved in making of any construction related decisions.
  - (d) The Monthly Reports are premised upon a Craft progress draw request which shall confirm that the monies previously paid to Craft have been used in the Project and that all bills have been paid to date.
- 5.2 The Construction Receiver shall pay the cost of Altus' services under this Engagement Letter in accordance with Altus' schedule of hourly rates and applicable fees for the services provided hereunder. Altus shall bill the Construction Receiver monthly.

**6. Other**

- 6.1 In addition to the rights and remedies available to the Construction Receiver under this Engagement Letter or law, including the right to claim for any damages suffered by the Construction Receiver or UC Leslieville as a result of any failure to perform its obligations under this Engagement Letter, the Construction Receiver reserves the right to terminate this Engagement Letter upon 5 Business Days' prior written notice, without cost or penalty to the Construction Receiver, should Altus fail to perform its obligations under this Engagement Letter, or if in the opinion of the Construction Receiver, at its sole discretion, the Altus Monthly Reports represent a serious oversight detrimental to the position of the Construction Receiver and/or the estate of UC Leslieville.
- 6.2 Altus will obtain and maintain professional liability insurance in amounts of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate.
- 6.3 The Construction Receiver may terminate this Engagement Letter at any time upon 30 days written notice delivered to Altus.

Yours truly,

Alvarez & Marsal Canada Inc., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of each of the UC Companies and not its personal or corporate capacity

Per: \_\_\_\_\_  
Douglas R. McIntosh  
President, Alvarez & Marsal Canada Inc.

The foregoing is accepted and agreed this [ ] day of [ ], 2017.

**ALTUS GROUP LIMITED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TOR\_LAW\ 9149116\6



## **APPENDIX “F”**

**CREDIT AGREEMENT****BETWEEN**

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as  
Court Appointed Receiver and Manager and Construction Lien Trustee of  
URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC. and  
URBANCORP (THE BEACH) DEVELOPMENTS INC. and  
not in its personal or corporate capacity  
as Construction Receiver**

**AND**

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

**MADE AS OF****April 18, 2017**

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## CREDIT AGREEMENT

THIS AGREEMENT is made as of April 18, 2017

BETWEEN:

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC. and not in its personal or corporate capacity (the "Construction Receiver"),**

- and -

**C.R.A.F.T. DEVELOPMENT CORPORATION, a corporation incorporated under the laws of the Province of Ontario (in its capacity as lender hereunder, the "Lender"),**

WHEREAS the Construction Receiver has requested the Credit Facility to finance certain costs associated with the development and completion of construction of the Leslieville Project, and the Lender has agreed to provide the Credit Facility to the Construction Receiver upon and subject to the terms and conditions set out in this Agreement;

AND WHEREAS in addition to the financing being extended by it hereunder, C.R.A.F.T. Development Corporation has also been retained by the Construction Receiver as the Developer (as therein defined) under the Craft Development Contract and as the Contractor (as therein defined) under the Craft Construction Contract (in such capacities and in any other capacity other than its capacity as lender hereunder, herein referred to as "**Craft**");

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.01 Definitions

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

**"Administrative Agent"** means the administrative agent appointed from time to time by the Syndicate Lenders under the Syndicate Credit Agreement.

**"Agreement"** means this credit agreement, including its recitals and schedules.

**"Applicable Law"** means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy,

practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

“**Architect**” means such architect as may be retained by or on behalf of Craft in connection with the Construction of the Leslieville Project.

“**Architect Contract**” means any contract or agreement between the Architect and Craft relating to the Leslieville Project, as such agreement may be amended, restated or supplemented.

“**Architect’s Costs**” means the costs incurred by Craft for the services of the Architect in connection with the Work.

“**Beach Remaining Lands**” has the meaning given to such term in the Craft Development Contract.

“**Beach Sale Process Order**” means the sale process order to be granted in the UC Receivership Proceedings which will approve, among other things, a sale process for the Beach Remaining Lands, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver, Terra Firma, Craft and the Syndicate Lenders.

“**Builder**” has the meaning given to such term in the Craft Construction Contract.

“**Budgeted Development Costs**” means (i) all budgeted costs described as a line item in the Initial Development Budget or any subsequent Development Budget, including any Contingency Amount of budgeted costs, plus (ii) H.S.T.

“**Business Day**” means a day of the year, other than a Saturday, Sunday or statutory holiday, on which the Lender is open for business at its executive offices in Toronto, Ontario.

“**Canadian Dollars**” and “**Cdn. \$**” mean the lawful money of Canada.

“**Change Funder**” has the meaning given thereto in the Craft Construction Contract.

“**Change Orders**” has the meaning given thereto in the Craft Construction Contract.

“**City**” means City of Toronto.

“**CO Work**” has the meaning set forth in the TF Cost Overrun Guarantee.

“**Commitment**” means, \$2,000,000, being the maximum aggregate amount of the Loan that the Lender is obliged to make hereunder, as such amount may be reduced from time to time by any permanent repayments, reductions or prepayments required or made hereunder.

“**Condominium Act**” means the *Condominium Act*, R.S.O. 1998, c.19, as amended or replaced from time to time.

“**Condominium Documents**” means the Declaration, condominium corporation by-laws (or agreements relating thereto), shared facility agreements (if any), insurance trust agreement (if any) or other documents relating to the creation and operation of the Leslieville Project.

**“Construction”** means the completion of construction of the Leslieville Project in accordance with the Plans and Specifications.

**“Construction Receiver”** means Alvarez & Marsal Canada Inc., in its capacity as Court appointed receiver and manager and construction lien trustee of UC Leslieville, UC Beach and UC Riverdale.

**“Construction Receiver’s Counsel”** means Blake, Cassels & Graydon LLP or such other firm of legal counsel as Construction Receiver may from time to time designate.

**“Construction Schedule”** means the construction schedule in respect of the Leslieville Project forming part of the Craft Construction Contract from time to time.

**“Consultant Contract”** means any contract entered into (i) by or on behalf of Craft and (ii) a Consultant relating to the Leslieville Project.

**“Consultants”** means, as applicable, the Architect and the Engineers for the Leslieville Project, and such other consultants as may be retained by Craft from time to time in connection with the Craft C&D Contracts, including as may be identified in connection with any Development Budget.

**“Contingency Amount”** means, with respect to any Development Budget, the amount, if any, of any contingency provided in such Development Budget in respect of the calculation of the Development Costs.

**“Costs”** means with respect to any work performed or services to be performed under the Craft C&D Contracts, the cost (including HST) of such work or service as agreed between Craft and UC Leslieville by the Construction Receiver, including, for greater certainty, the cost of all CO Work.

**“Cost Overruns”** means all “Cost Overruns” as defined in the TF Cost Overrun Guarantee.

**“Court”** means the Ontario Superior Court of Justice (Commercial List) supervising the UC Receivership Proceedings.

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

**“Craft”** has the meaning set forth in the second recital hereto.

**“Craft C&D Contracts”** means, collectively, the Craft Construction Contract and the Craft Development Contract.

**“Craft Construction Contract”** means the fixed price construction contract dated on or about the date hereof and made between UC Leslieville by the Construction Receiver and Craft for the Construction of the Leslieville Project.

**“Craft Development Contract”** means the development contract dated on or about the date hereof and made between UC Leslieville by the Construction Receiver and Craft for the provision by Craft of the Development Services with respect to the Leslieville Project.

**“Craft Loans”** means, at any time, the loans outstanding under this Agreement at such time, including loans that are deemed to have been advanced under this Agreement pursuant to the terms of either of the Craft C&D Contracts or the TF Cost Overrun Guarantee.

**“Craft Security”** means the Court ordered Encumbrance against the Leslieville Project granted pursuant to the Settlement Approval Order.

**“Credit Facility”** means the credit facility described in Section 2.01.

**“Curzon Purchasers”** means, collectively, the Opt-In Leslieville Purchasers and the New Curzon Purchasers.

**“Debt”** means, with respect to any Person, all obligations that, in accordance with GAAP, would then be classified as a liability of such Person, and, without duplication, includes, with respect to such Person, an obligation in respect of borrowed money or for the deferred purchase price of Property or services or an obligation that is evidenced by a note, bond, debenture or any other similar instrument.

**“Declaration”** means the declaration or declarations which, together with the description, shall be registered under the Condominium Act and will subject the Leslieville Project or portion(s) thereof to the provisions of the Condominium Act, and all amendments to such declaration or declarations.

**“Default”** means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

**“Defaulted Cost Overruns”** has the meaning given thereto in the TF Cost Overrun Guarantee.

**“Development Budget”** means, at any time, the then current budget of all Development Costs which has a line by line itemization of Development Costs including Contingency Amounts, as prepared by Craft and agreed by (a) the Construction Receiver, (b) if required under the Syndicate Credit Agreement, the Syndicate Lenders, (c) the Independent Cost Consultant and (d) if there have been Development Cost Overruns from the Initial Development Budget, the Change Funder, including as the context permits or requires, the Initial Development Budget; and **“current Development Budget”** means the then current Development Budget (if any) prepared and approved as aforesaid which replaces a prior Development Budget.

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

**“Development Costs”** means the actual Costs of the Development Services.

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

**“Disposition”** means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any Property or of any right, title or interest in or to any Property, and the verb **“Dispose”** has a corresponding meaning.



**“Encumbrance”** means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person’s Property, or any consignment by way of security or capital lease of Property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** have corresponding meanings.

**“Engineers”** means the structural, mechanical & electrical, geotechnical and environmental, and such other engineers as may be retained by or behalf of Craft in connection with the Construction of the Leslieville Project.

**“Engineering Contracts”** means, collectively, the agreements entered into by or on behalf of Craft and the Engineers, as such agreements may be amended, restated or supplemented as permitted hereunder.

**“Environmental Law”** means any Applicable Law relating to the environment, including those pertaining to:

- (a) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances, and
- (b) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

**“Event of Default”** has the meaning set out in Section 9.01.

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

**“Existing Purchaser Deposits”** means, with respect to any Opt-In Leslieville Purchaser in connection with a Unit, the deposit(s) actually paid to UC Leslieville (or in the case of such Opt-In Leslieville Purchaser being an assignee of a purchaser under an agreement of purchase and sale with UC Leslieville for such Unit, actually paid to the assignor) under its original agreement of purchase and sale with UC Leslieville for such Unit.

**“Existing Syndicate Credit Agreement”** means the credit agreement made as of July 13, 2012 between UC Leslieville (as borrower), Alan Saskin, Urbancorp Toronto Management Inc., UC Riverdale and UC Beach (as guarantors), Canadian Imperial Bank of Commerce (as administrative agent and a lender), Laurentian Bank of Canada (as a lender) and Canadian Western Bank (as a lender), as amended and supplemented from time to time.

**“Existing Syndicate Debt”** means all debts and liabilities owing by UC Leslieville, UC Riverdale and/or UC Beach to the Syndicate Lenders pursuant to the Existing Syndicate Credit Agreement.

**“Existing Syndicate Security”** means all Encumbrances granted by UC Leslieville, UC Riverdale, UC Beach or any other Person as security for the Existing Syndicate Debt.

**“Fixed Price”** means the sum of \$5,350,000 plus H.S.T. being the fixed price agreed by Craft to perform the work and services under the Craft Construction Contract other than the CO Work.

**“GAAP”** means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute.

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

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

**“Governmental Authority”** means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

**“Gross Sale Proceeds”** means, with respect to a New APS, (a) the gross sale price (inclusive of net HST payable in respect of such New APS) set out in such New APS less (b) in the case of an Opt-In Leslieville Purchaser, the amount of credit for its Existing Purchaser Deposit set out in such New APS.

**“Hazardous Substance”** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

**“Holdback”** means any amount required to be retained by or on behalf of UC Leslieville by the Construction Receiver, in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Leslieville Project in accordance with the *Construction Lien Act* (Ontario).

**“HST”** means the harmonized sales tax under the *Excise Tax Act* (Canada).

**“Independent Cost Consultant”** means Altus Group Limited or such other replacement consultant appointed by the Construction Receiver.

**“Initial Development Budget”** means the Development Budget agreed between Craft, the Construction Receiver, the Syndicate Lenders, the Independent Cost Consultant and Terra Firma as the Initial Development Budget under the Craft Development Contact.

**“Insolvent”** means, with respect to any Person, that such Person (a) has committed an “act of bankruptcy”, has admitted in writing that it is unable to pay its debts as they become due, or has become insolvent, (b) has made any assignment in bankruptcy or made any other assignment for the benefit of creditors, has made any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, (c) has sought relief under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the United States Bankruptcy Code, the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or

analogous law, (d) has been adjudged bankrupt, has filed a petition or proposal to take advantage of any act of insolvency, has consented to or acquiesced in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or has filed a petition or otherwise commenced any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or has consented to, or acquiesced in, the filing of such a petition or proposal.

**"Latent Defect"** has the meaning ascribed thereto in the Craft Construction Contract.

**"Lender's Counsel"** means Goldman, Sloan, Nash and Haber LLP or such other firm of legal counsel as the Lender may from time to time designate.

**"Lender's Office"** means the address of the Lender given beside its name on the signatures pages hereto, or such other office in Canada that the Lender may from time to time designate by notice to the Construction Receiver.

**"Leslieville Project"** means the "Project" as defined under the Craft Construction Contract.

**"Leslieville Project Lands"** means the lands and premises comprising the Leslieville Project site located at 50 Curzon Street, Toronto, Ontario and more particularly described in Schedule C hereto under the heading "Leslieville Project Lands".

**"Loan"** means the extension of credit by the Lender under this Agreement.

**"Loan Disbursement Account"** has the meaning set forth in Section 2.03(1).

**"Loan Documents"** means (a) this Agreement, (b) the Security, and (c) all present and future agreements, documents, certificates and instruments delivered by the Construction Receiver to the Lender pursuant to or in respect of this Agreement or the Security, in each case as the same may from time to time be amended, and **"Loan Document"** means any one of the Loan Documents.

**"Marketing Plan"** has the meaning set forth in the Craft Development Contract.

**"New APS"** means each purchase and sale agreement for a Unit entered into and outstanding between UC Leslieville by the Construction Receiver, and a Curzon Purchaser substantially in the form of a Standard Form Sales Agreement.

**"New Curzon Purchasers"** means, collectively, the Persons that are purchasers of Units in the Leslieville Project after the date hereof, other than the Opt-In Leslieville Purchasers.

**"Obligations"** means all obligations of the Construction Receiver to the Lender under or in connection with this Agreement or the other Loan Documents, including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Construction Receiver to the Lender in any currency or remaining unpaid by the Construction Receiver to the Lender under or in connection with this Agreement or the other Loan Documents whether arising from dealings between the Lender and the Construction Receiver, or from any other dealings or proceedings by which the Lender may be or become in any manner whatsoever a creditor or obligee of the Construction Receiver pursuant to this

Agreement or the other Loan Documents, and wherever incurred, and whether incurred by the Construction Receiver alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses relating thereto.

**“Operating Budget”** means an “Approved Operating Budget” as defined in the Craft Development Contract and approved in accordance with the Syndicate Credit Agreement, if required thereunder.

**“Operating Manager”** means First Service Residential or such other residential condominium property manager as may be appointed by the Construction Receiver.

**“Operating Phase”** means the period commencing on the interim occupancy of any of the Units to closing of the purchase and sale of the last of the Units.

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

**“Outside Date”** has the meaning given thereto in the Craft Construction Contract, as such date may be extended from time to time in accordance with the Craft Construction Contract.

**Permitted Debt”** means:

- (a) the Debt under this Agreement;
- (b) the liabilities to be incurred by the Construction Receiver under the Syndicate Credit Agreement up to a maximum principal amount of (a) \$4,650,000.00, plus (b) if and for so long as the ITC Condition (as therein defined) exists, an amount up to the ITC Increase (as therein defined), except as such maximum principal amount may be increased as contemplated under the Settlement Approval Order in order to cover additional principal advances to be made by the Syndicate Lenders in connection with (and without duplication of clause (g) below) the funding of Defaulted Cost Overruns under and in accordance with the provisions of the TF Cost Overrun Guarantee;
- (c) liabilities due and payable to Craft from time to time under the terms of the Craft C&D Contracts;
- (d) the Existing Syndicate Debt;
- (e) the Debt of UC Leslieville owing under the Travelers Agreements and Travelers Mortgage;
- (f) the Debt of UC Leslieville, UC Riverdale and UC Beach owing to Terra Firma on or prior to the date hereof and secured under the mortgage granted by UC Leslie in favour of Terra Firma registered against the Leslieville Project Lands on July 22, 2015;
- (g) additional debt incurred by the Construction Receiver to cover TF Defaulted Cost Overruns or Defaulted Cost Overruns under and in accordance with the provisions of the TF Cost Overrun Guarantee;
- (h) any other Debt owed by the Construction Receiver to the Syndicate Lenders;

- (i) any liabilities secured by the Receiver's Expense Reimbursement Charge;
- (j) any liabilities secured by the Receiver's Borrowings Charge and the Construction Lien Trustee's Borrowing Charge (as each term is set forth in Section 22 of the Receivership Order), including as Section 22 may be varied by order of the Court in the UC Receivership Proceedings;
- (k) any additional Craft Loans to fund Geo-Thermal Costs, to the extent permitted under and made pursuant to the terms of the Settlement Approval Order; and
- (l) any other Debt which is approved by the Court in the UC Receivership Proceedings.

**"Permitted Encumbrances"** means, with respect to the Leslieville Project Lands, the following:

- (a) all Encumbrances existing as of the date of the Receivership Order, including the Existing Syndicate Security;
- (b) all Court ordered charges granted under the Receivership Order;
- (c) all Court ordered charges granted under the Settlement Approval Order including the Security and the Craft Security; and
- (d) such other Encumbrances which are approved by the Court in the UC Receivership Proceedings.

**"Person"** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**"Plans and Specifications"** means the plans and specifications pertaining to the development and construction of the Leslieville Project as defined in the Craft Construction Contract as of the date hereof.

**"Proceeds for Distribution"** has the meaning set forth in Section 5.01(2).

**"Proforma Sale Price"** means, in respect of any Unit that is not subject to an Opt-In Purchase Agreement, the Minimum Unit Price for such Unit as defined in the Craft Development Contract which has been approved by the Syndicate Lenders if and to the extent required under the Syndicate Credit Agreement.

**"Property"** means, with respect to any Person, all or any portion of that Person's undertaking and property, both real and personal.

**"Purchaser Deposits"** means, collectively:

- (a) the additional deposits paid by each of the Opt-In Leslieville Purchasers pursuant to its New APS;
- (b) the deposits paid by each New Curzon Purchaser pursuant to its New APS,

but for greater certainty does not include Existing Purchaser Deposits.

**“Purchaser Information Package”** has the meaning given to it in the Purchaser Package Approval Order.

**“Purchaser Package Approval Order”** means the order to be granted in the UC Receivership Proceedings which will approve, among other things, form(s) of purchase and sale agreement for sale of Units by UC Leslieville by the Construction Receiver and the disclosure statement required under the Condominium Act to be provided by the Construction Receiver to all Existing Curzon Purchasers, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver and the Syndicate Lenders.

**“Receivership Administration Order”** means the receivership administration order to be granted in the UC Receivership Proceedings which will approve, among other things, an increase of borrowings by the Construction Receiver required in connection with the arrangements among UC Leslieville, the Construction Receiver, Craft, the Syndicate, Terra Firma and the Existing Curzon Purchasers represented by Dickinson Wright LLP to be approved by the Settlement Approval Order, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver and the Syndicate Lenders;

**“Receivership Order”** means the order of the Honourable Mr. Justice Newbould granted on May 31, 2016 in the UC Receivership Proceedings which, among other things, appointed Alvarez & Marsal Canada Inc. as the receiver and manager and construction lien trustee of all of the property, assets and undertakings of each of UC Leslieville, UC Riverdale and UC Beach acquired for, or used in relation to, their respective businesses, as the same may be amended, restated or supplemented from time to time.

**“Receiver’s Expense Reimbursement Charge”** means the “Construction Receiver’s Charge” as defined in Section 19 of the Receivership Order.

**“Receiver’s Reserve”** shall have the meaning given to it in the Settlement Approval Order.

**“Release”** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

**“Security”** means the Encumbrances created in favour of the Lender pursuant to the Settlement Approval Order as security for the Obligations, including all security described in Article 8.

**“Settlement Approval Order”** means the order to be granted by the Ontario Court of Justice (Commercial List) in the UC Receivership Proceedings which will approve the arrangements among UC Leslieville, the Construction Receiver, Craft, the Syndicate, Terra Firma and the Existing Curzon Purchasers represented by Dickinson Wright LLP with respect to the Leslieville Project, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to those parties.

**“sole and absolute discretion”** means in the sole, absolute and subjective discretion of the relevant Person, which discretion may be exercised unreasonably.

**“Standard Form Sales Agreement”** means the standard form agreements of purchase and sale to be utilized in respect of the sale of the Units to the Opt-In Leslieville Purchasers and New Curzon Purchasers, respectively, in each case as approved pursuant to the Purchaser Package Approval Order and/or Settlement Approval Order, respectively.

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

**“Syndicate Lenders”** means the Lenders (as therein defined), including any administrative agent appointed thereby, under the Syndicate Credit Agreement.

**“Syndicate Credit Agreement”** means the Credit Agreement dated on or about the date hereof between the Construction Receiver (as borrower), Canadian Imperial Bank of Commerce (as administrative agent), and Canadian Imperial Bank of Commerce, Canadian Western Bank and Laurentian Bank of Canada (as initial lenders), as the same may be amended, restated, replaced or modified from time to time.

**“Tarion”** means Tarion Warranty Corporation, its successors and assigns.

**“Tarion Home Warranty Program”** means the applicable warranty program operated by Tarion relating to purchasers of the Units.

**“Tarion/Travelers Settlement Acknowledgements”** means the acknowledgements and/or agreements provided by each of Tarion and Travelers with respect to warranty and deposit insurance coverage for the Existing Curzon Purchasers and New Curzon Purchasers in form and substance satisfactory to the Construction Receiver, Craft, the Syndicate, Terra Firma and the Existing Curzon Purchasers represented by Dickinson Wright LLP.

**“Taxes”** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Terra Firma”** means Terra Firma Capital Corporation, a corporation incorporated under the laws of the Province of Ontario.

**“TF Cost Overrun Guarantee”** means the cost overrun and completion guarantee dated on or about the date hereof and provided by Terra Firma to the Construction Receiver, the Administrative Agent on behalf of the Syndicate Lenders and Craft.

**“TF Defaulted Cost Overruns”** has the meaning given thereto in the TF Cost Overrun Guarantee.

**“Travelers”** means Travelers Guarantee Company of Canada, or its successors or assigns as the surety for bonds and/or excess deposit insurance issued to Tarion Warranty Corporation and/or Existing Curzon Purchasers pursuant an agreement of purchase and sale in respect of the Leslieville Project for the deposits made by such purchasers thereunder.

**“Travelers Agreements”** mean the agreements entered into between Travelers and UC Leslieville in respect of, *inter alia*, the Existing Purchaser Deposits for the Leslieville Project, bonds issued in respect thereof and/or excess deposit insurance.

**“Travelers Mortgage”** means the subordinate mortgage granted by UC Leslieville in favour of the Travelers as collateral security for the obligations of UC Leslieville to Travelers pursuant to the Travelers Agreements (such mortgage constituting an Encumbrance ranking behind the Existing Syndicate Security on the Leslieville Project Lands and a first priority Encumbrance on Existing Purchaser Deposits).

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

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

**“UC Receivership Proceedings”** means the receivership proceedings commenced in the Ontario Superior Court of Justice [Commercial List] under Court File No. CV-16-11409-00CL pursuant to which Alvarez & Marsal Canada Inc. was appointed as receiver and manager and as construction lien trustee of all of the assets, undertakings, and property acquired for, or used in relation to the business of UC Leslieville, UC Riverdale and UC Beach.

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

**“Unit”** means either (i) a “unit” (as defined in the Condominium Act) comprising part of the Leslieville Project for use as a residence or (ii) any freehold portion of the Leslieville Project (whether severed or intended to be severed) to be sold to a purchaser for use as a residence, together with the common and exclusive use interests appurtenant thereto, as applicable.

**“Waterfall”** means the scheme of distribution and allocation of proceeds from the sale of Units and other property of UC Leslieville and UC Beach as set out in the Settlement Approval Order.

#### 1.02 **Extended Meanings**

In this Agreement words importing the singular number include the plural and *vice versa*, and words importing any gender include all genders. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than a Person who is a party to this Agreement. Any definition of or reference to any agreement, instrument, order or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument, order or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein).

#### 1.03 **Interest Calculations and Payments**

Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest “*per annum*” or a similar expression is used, such interest will be calculated on the basis of a calendar year of 365 days, and using the nominal rate method of calculation and not the effective rate method of calculation or on any other basis that gives effect to the principle of deemed reinvestment of interest. Interest will continue to accrue after maturity and default and/or judgment, if any, until payment thereof, and interest will accrue and be compounded monthly on overdue interest, if any.



#### 1.04 **Permitted Encumbrances**

The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and will not subordinate, any Encumbrance created by any of the Security to any Permitted Encumbrance.

#### 1.05 **Time of the Essence**

Time shall be of the essence of this Agreement

#### 1.06 **Currency**

Unless otherwise specified in this Agreement, all references to currency (without further description) are to lawful money of Canada.

#### 1.07 **Conflicts**

In the event of a conflict between the provisions of this Agreement and the provisions of any other Loan Document, then, unless such Loan Document or an acknowledgement from the Construction Receiver and the Lender relative to such Loan Document expressly states that this Section 1.07 is not applicable to such Loan Document, notwithstanding anything else contained in such other Loan Document, the provisions of this Agreement will prevail and the provisions of such other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict.

#### 1.08 **Limitation of Recourse against Construction Receiver**

Notwithstanding any other provision of this Credit Agreement or any other agreement by or among the Construction Receiver and the Lender, Alvarez & Marsal Canada Inc. shall have no personal or corporate liability under this Agreement or any of the other Loan Documents. All obligations of the Construction Receiver, whether on behalf of UC Leslieville or its own behalf, under or in connection with the Credit Facility established under this Agreement and the other Loan Documents are undertaken by Alvarez & Marsal Canada Inc. solely in its capacity as the Court Appointed Receiver and Manager and Construction Lien Trustee of UC Leslieville, UC Beach and UC Riverdale, and save and except in the case of the gross negligence or willful misconduct of Alvarez & Marsal Canada Inc., as determined by a court of competent jurisdiction, the sole recourse of the Lender against UC Leslieville or the Construction Receiver in connection with such obligations shall be limited solely to a claim against the proceeds of the property and assets of UC Leslieville,

#### 1.09 **Schedules**

The following are the Schedules attached hereto and incorporated by reference and deemed to be part hereof:

Schedule A - Legal Description of Project Lands

## ARTICLE 2 THE CREDIT FACILITY

### 2.01 **Credit Facility**

Subject to the terms and conditions of this Agreement, the Lender establishes in favour of the Construction Receiver a non-revolving, term credit facility (the “**Credit Facility**”) in an amount up to the Commitment which is available to the Construction Receiver by way of a one-time Loan.

### 2.02 **Purpose of Credit Facility**

The Loan made under the Credit Facility will only be used by the Construction Receiver for the following purposes:

- (1) to finance the Fixed Price payable to Craft under the Craft Construction Contract; and
- (2) to finance the payment of the Budgeted Development Costs set out in the Initial Development Budget agreed pursuant to the Craft Development Contract.

### 2.03 **Single Drawdown and Disbursements from the Loan Disbursement Account**

- (1) Subject to the provisions of this Agreement, including without limitation Section 3.01, the full amount of the Loan shall be advanced by the Lender in one single advance (i) upon satisfaction of the conditions precedent set forth in Section 3.01 and (ii) within three Business Days after delivery by the Construction Receiver to the Lender of a written notice requesting that the advance be made. Such advance shall be made to an account in the name of the Construction Receiver to be established and maintained with the Canadian Imperial Bank of Commerce (the “**Loan Disbursement Account**”).
- (2) After the initial advance under Section 3.02(1), the Construction Receiver shall be entitled to disburse amounts from the Loan Disbursement Account upon fulfilment of the conditions in Section 3.02.
- (3) All determinations relating to the disbursement of amounts from the Loan Disbursement Account, including as to compliance with the conditions of Section 3.02, shall be made by the Construction Receiver, acting reasonably and in good faith (including, as and where appropriate, with advice from the Independent Cost Consultant). Any and all such determinations shall be final and conclusive in all respects. In the event of any dispute relating thereto between the Lender and the Construction Receiver, either party shall be at liberty to apply to the Court in the UC Receivership Proceedings for further instructions relating to any requested Disbursement.

### 2.04 **Rights under Craft C&D Contracts**

Notwithstanding anything to the contrary in this Agreement, and, for certainty, without compliance by the Construction Receiver with the conditions precedent set forth in Section 3.02, the Construction Receiver shall, at any time when Craft is in default under either of the Craft

C&D Contracts, be entitled to exercise such of the rights and remedies against the amounts outstanding from time to time in the Loan Disbursement Account to which it is entitled under either or both of the Craft C&D Contracts as a result of such default.

#### 2.05 **Interest on Excess Loan, Unpaid Costs and Expenses**

Unless the payment of interest is otherwise specifically provided for herein, where the Construction Receiver fails to pay any amount required to be paid by it hereunder when due, after having received notice that such amount is due, the Construction Receiver shall pay interest on such unpaid amount from the time such amount is due until paid at an annual rate equal to 9.0% per annum in accordance with Section 5.01.

### **ARTICLE 3 ADVANCE AND DISBURSEMENT CONDITIONS**

#### 3.01 **Conditions Precedent to Initial Advance**

The obligations of the Lender under this Agreement (including to make the advance of the Loan to the Loan Disbursement Account under the Credit Facility) are subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (1) each of the Craft C&D Contracts shall have been executed and delivered by each of Craft and the Construction Receiver and be in full force and effect;
- (2) the Loan Disbursement Account shall have been established;
- (3) the TF Cost Overrun Guarantee shall have been executed and delivered by Terra Firma to the Construction Receiver, Craft and the Administrative Agent on behalf of the Syndicate Lenders in form and substance satisfactory to the Lender and be in full force and effect;
- (4) the Syndicate Loan Agreement shall have been executed and delivered to the Construction Receiver in form and substance satisfactory to the Lender and be in full force and effect;
- (5) each of the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order, and the Receivership Administration Order shall have been granted, the "Effective Date" (as defined in the Settlement Approval Order) shall have occurred and each of such orders shall be final and non-appealable and if any such orders are appealed, such appeal is withdrawn or determined in favour of the Construction Receiver;
- (6) none of the Receivership Order, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order or any provision of any of them shall have been stayed, varied or vacated without the prior written consent of the Lender and the Construction Receiver and there shall not be any pending motion to do so;
- (7) Tarion and Travelers shall have provided the Tarion/Travelers Acknowledgements, or the Court shall have made an Order of like effect, in form and substance satisfactory to the Lender.

- (8) the Standard Form Sales Agreement to be entered into with each Curzon Purchaser and the disclosure statement required to be delivered to each Curzon Purchaser under the Condominium Act shall have been approved by the Court pursuant to the Purchaser Package Approval Order and the Settlement Approval Order, as applicable, and the Court shall have confirmed the last date upon which an Opt-In Leslieville Purchaser may rescind its New APS to purchase a Unit in the Leslieville Project pursuant to Section 73(2) of the Condominium Act;
- (9) the Independent Cost Consultant shall have been appointed to act on behalf of the Construction Receiver throughout the duration of the Leslieville Project;
- (10) the Initial Development Budget shall have been approved by the Independent Cost Consultant, the Syndicate Lenders, the Lender and Terra Firma;
- (11) Terra Firma shall have funded to the Construction Receiver the (a) cost of all Latent Defects discovered by Craft, the Construction Receiver or any other Person relating to the Leslieville Project as of the date the other conditions precedent set out in this Section 3.01 have been satisfied, (b) amount of all "Development Cost Overruns" (as defined in the Craft Development Contract) requested by Craft as of the date the other conditions precedent set out in this Section 3.01 have been satisfied, in each case as required under the TF Cost Overrun Guarantee, and for certainty, inclusive of HST;
- (12) Terra Firma shall not be Insolvent;
- (13) no Cost Overrun discovered after the date of this Agreement shall be existing which has not been funded by Terra Firma, Craft or the Syndicate Lenders under the TF Cost Overrun Guarantee;
- (14) no Default or Event of Default will have occurred and be continuing on the date of advance of the Loans, or would result from making the requested advance;
- (15) the Lender shall have received a subsearch from Lender's Counsel confirming that no Encumbrances have been registered on title to the Leslieville Project Lands other than Permitted Encumbrances; and
- (16) each of UC Riverdale, UC Leslieville and UC Beach shall have been adjudged bankrupt under the Bankruptcy and Insolvency Act (Canada),

provided that all documents delivered pursuant to this Section 3.01 must continue to be in full force and effect, and in form and substance satisfactory to the Lenders, acting reasonably.

If the conditions set forth in Sections 3.01 and 3.05 are not satisfied (or waived by the parties) on or before the CP Outside Date, then this Agreement shall be automatically terminated and of no force and effect.

### 3.02 **Conditions Precedent to all Disbursements from the Loan Disbursement Account**

Disbursements of funds from the Loan Disbursement Account are subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (1) no default by the Construction Receiver shall have occurred under the Construction Contract and be subsisting after the expiry of all applicable cure periods that entitles the Lender to terminate the Construction Contract;
- (2) no Cost Overrun shall be existing which has not been funded by Terra Firma, Craft or the Syndicate Lenders under the TF Cost Overrun Guarantee;
- (3) all conditions precedent to the progress draw or payment under the applicable Craft C&D Contract proposed to be funded from the disbursement from the Loan Disbursement Account shall have been satisfied or waived and Craft is entitled to such progress draw or payment under such Craft C&D Contract;
- (4) none of the Receivership Order, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order or any provision of any of them shall have been stayed, varied or vacated without the prior written consent of the Lender and the Construction Receiver;
- (5) none of the Tarion/Travelers Acknowledgements nor any provision thereof shall have been varied or withdrawn, or the Court Order so declaring varied or stayed, without the prior written consent of the Lender;
- (6) no Default or Event of Default will have occurred and be continuing on the date of such disbursement, or would result from making the requested advance;
- (7) a subsearch shall confirm that no Encumbrances have been registered on title to the Leslieville Project Lands since the date of the prior disbursement from the Loan Disbursement Account other than Permitted Encumbrances; and
- (8) all other terms and conditions of this Agreement upon which the Construction Receiver may obtain a disbursement from the Loan Disbursement Account that have not been waived will have been fulfilled.

### 3.03 **Provisos**

Notwithstanding anything to the contrary contained in this Agreement:

- (1) Each disbursement from the Loan Disbursement Account shall include the amount of the Holdback (if any) relating to the Costs to be paid from such disbursement and the Construction Receiver shall retain the amount of each such Holdback in a segregated account with the Canadian Imperial Bank of Commerce until such Holdback becomes payable to Craft under the Craft C&D Contracts or as ordered by the Court in the UC Receivership Proceedings. For certainty, once disbursed to the Construction Receiver, all such Holdback amounts are within its control and no longer subject to the provisions of this Agreement; and
- (2) if some or all of the conditions precedent in Section 3.02 are not or cannot be satisfied, the Construction Receiver shall nevertheless be entitled to the continuing disbursement of funds from the Loan Disbursement Account (A) to permit it to pay amounts payable to Craft pursuant to either or both of the Craft

C&D Contracts upon the termination of either or both of the Craft C&D Contracts by the Construction Receiver (or UC Leslieville by the Construction Receiver) in accordance with the terms thereof (which, for certainty, excludes any compensation payable to Craft pursuant to Section 5.2 of the Development Contract), and (B) as provided in Section 2.04.

#### 3.04 **Waiver**

The conditions set forth in Sections 3.01 and 3.02 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions), in respect of the initial advance or any disbursement without prejudicing the right of the Lender at any time to assert such conditions in respect of any subsequent disbursement from the Loan Disbursement Account.

#### 3.05 **Condition to Construction Receiver's Execution**

Notwithstanding anything to the contrary in this Agreement, the execution and delivery of this Agreement by the Construction Receiver and its obligations hereunder are subject to and conditional upon the granting of the Settlement Approval Order, the "Effective Date" (as defined therein) having occurred and such order becoming final and non-appealable and if such order is appealed, such appeal is withdrawn or determined in favour of the Construction Receiver.

### **ARTICLE 4 PAYMENTS OF INTEREST AND COMMITMENT FEES**

#### 4.01 **Interest**

The Construction Receiver will pay interest in Canadian Dollars on each Loan from the date of initial advance of the Loan to the Loan Disbursement Account to the date of repayment thereof (both before and after default, acceleration and judgment) at the rate of seven percent (7%) *per annum*. Interest on the Loan will become due and payable in accordance with Section 5.01.

Such interest will accrue from day to day, be payable in arrears and will be calculated on the principal amount of the Loan outstanding from time to time and on the basis of the actual number of days elapsed in a year of 365 days.

#### 4.02 **Maximum Rate of Interest**

Notwithstanding anything contained herein to the contrary, the Construction Receiver will not be obliged to make any payment of interest or other amounts payable to the Lender hereunder in excess of the amount or rate that would be permitted by Applicable Law or would result in the receipt by the Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)). If the making of any payment by the Construction Receiver would result in a payment being made that is in excess of such amount or rate, the Lender will determine the payment or payments that are to be reduced or refunded, as the case may be, so that such result does not occur.

## ARTICLE 5 REPAYMENT

### 5.01 Mandatory Repayment

- (1) The Loan and all other Obligations shall become due by the Construction Receiver upon the occurrence of an Event of Default hereunder which has been accelerated by the Lender in accordance with Section 9.02, and subject to compliance with any conditions to such acceleration set forth therein.
- (2) Notwithstanding any other section of this Agreement, including without limitation, anything to the contrary in Sections 4.01 or 5.01(1) (but subject to Sections 5.01(3) and 5.01(4)), the Construction Receiver shall only be required to pay interest accrued on the Loan (including default interest pursuant to Section 2.04), the principal amount of the Loan outstanding under the Credit Facility (whether before or after an Event of Default or acceleration) and all other Obligations from time to time only out of and from (i) receipts of Gross Sale Proceeds from the sale of Units or other income from the Units or the realization thereof, and (ii) receipts of sales proceeds, rental (including occupation rent) or other income from, or the realization of, the Leslieville Project (other than the Units) and any and all other property, assets and undertaking of UC Leslieville (collectively the amounts in clauses (i) and (ii) being herein called “**Proceeds for Distribution**”), in each case, as and when such Proceeds for Distribution become available for distribution by the Construction Receiver to the Lender in the UC Receivership Proceedings; provided that nothing hereinbefore provided shall limit any right or remedy which the Lender may have under Article 9, subject to compliance with the Settlement Approval Order and any other applicable order of the Court in the UC Receivership Proceedings.
- (3) All Proceeds for Distribution (net of the Receiver’s Reserve as contemplated by the Settlement Approval Order) shall be distributed by the Construction Receiver in accordance with and subject to the Waterfall approved under the Settlement Approval Order, unless otherwise ordered by the Court in the UC Receivership Proceedings. The Lender may apply any Proceeds for Distribution received from the Construction Receiver in payment of Obligations under this Agreement to such of the Obligations then outstanding as the Lender may determine in its discretion. Any principal portion of the Loan repaid by the Construction Receiver shall permanently reduce the Commitment by an equivalent amount and no such principal amount so repaid may thereafter be re-advanced.
- (4) The Lender acknowledges and agrees that during the Operating Phase, and provided no Event of Default has occurred and remains outstanding, the operating costs of the Leslieville Project (collectively, “**Operating Phase Costs**”) shall be paid from the interim occupancy revenues collected by the Construction Receiver or the Operating Manager from such Curzon Purchasers. To facilitate the payment of such Operating Phase Costs, the Operating Manager shall be authorized and required by the Construction Receiver (i) to collect such revenues, (ii) to pay Operating Phase Costs from the revenue so collected (so long as such Operating Phase Costs are at or below the amounts budgeted therefor in the Operating Budget), and (iii) to remit the positive balance (if any) remaining thereafter to the Construction Receiver (collectively, “**Remitted**”).

**Amounts**”). To the extent so remitted, the Construction Receiver (i) shall not be required to treat any Remitted Amounts as Proceeds for Distribution pursuant to Section 5.01(2), and (ii) may use any Remitted Amounts so retained for subsequent application in payment of any of its costs and expenses, provided that any such amounts that are not so used shall be distributed as Proceeds for Distribution and eventually distributed by the Construction Receiver at such time as may be determined by it.

## **ARTICLE 6 PLACE AND APPLICATION OF PAYMENTS**

### **6.01 Place of Payment of Principal, Interest and Fees**

All payments of principal, interest, fees and other amounts to be made by the Construction Receiver to the Lender pursuant to this Agreement will be made in the currency in which the Loan is outstanding for value on the day such amount(s) are distributed by the Construction Receiver in accordance with the Settlement Approval Order, by payment thereof to the Lender at the Lender’s Office or at such other place and by such other method as the Construction Receiver and the Lender may from time to time agree.

## **ARTICLE 7 COVENANTS**

### **7.01 Positive Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Lender, the Construction Receiver will:

- (1) Timely payment Make due and timely payment of the Obligations required to be paid by it hereunder in accordance with Section 5.01;
- (2) Use of Credit Facility Use the proceeds of the Credit Facility only for the purposes specified in Section 2.02;
- (3) Construction Lien Act (Ontario) Comply with the provisions of the *Construction Lien Act* (Ontario), including, without limitation, retaining the Holdbacks as required thereby; and
- (4) Purchaser Deposit Account Maintain or instruct Construction Receiver’s Counsel to maintain a separate trust account for Purchaser Deposits in respect of the Leslieville Project with Canadian Imperial Bank of Commerce during the term of this Agreement and cause all Purchaser Deposits in respect of the Leslieville Project to be deposited to and all releases of Purchaser Deposits in respect of the Leslieville Project to be paid from such trust account.

### **7.02 Negative Covenants**

So long as this Agreement is in force and the Obligations remain outstanding and except as otherwise permitted by the prior written consent of the Lender, the Construction Receiver will not:



- (1) No Sale of Project Dispose of or Lease any of the Leslieville Project other than as provided under the Settlement Approval Order.
- (2) No Encumbrances Create, incur, assume or permit to exist any Encumbrance upon the Leslieville Project Lands or any other property and assets of UC Leslieville except Permitted Encumbrances; or
- (3) New Debt Incur any Debt other than Permitted Debt.

## **ARTICLE 8 SECURITY**

### **8.01 Security**

As general and continuing security for the payment and performance of the Obligations, the Lender shall be granted a fixed and specific Court ordered charge on the whole of the Property of UC Leslieville, which Court ordered charge shall confer priority in favour of the Lender in terms of the order of payment and the ranking of security in the manner contemplated in the Settlement Approval Order.

## **ARTICLE 9 DEFAULT**

### **9.01 Events of Default**

The occurrence of any one or more of the following events will constitute an event of default ("**Event of Default**") under this Agreement:

- (1) if the Construction Receiver fails to pay any Obligation when due;
- (2) if the Construction Receiver breaches any covenant in Section 7.02 and has received written notice thereof from the Lender;
- (3) if the Construction Receiver neglects to observe or perform, in any material respect, any covenant or obligation contained in this Agreement or any other Loan Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 9.01 or in such Loan Document) and the Construction Receiver fails to remedy such default within 30 days from the date the Lender delivers written notice of the default to the Construction Receiver, or where the Lender (having regard to the subject matter of the default) has agreed, acting reasonably, that such default cannot be cured within such 30 days, such longer period as is required so long as the Construction Receiver is diligently proceeding at all times to cure such default and provided that, in any event, such cure period shall not extend longer than four months without the consent of the Lender in its sole and absolute discretion; or
- (4) any Catastrophic Event (as defined in the Construction Contract occurs); or

- (5) the existence or occurrence of any event or circumstance described in Section 3.01 or 3.02 which would effectively disentitle the Construction Receiver from obtaining a disbursement from the Loan Disbursement Account.

## 9.02 **Acceleration and Enforcement**

- (1) If any Event of Default occurs:
  - (a) the Lender may, upon written notice to the Construction Receiver, terminate the right of the Construction Receiver to disburse any further funds from the Loan Disbursement Account; provided however, that the Construction Receiver shall be entitled to exercise all rights and remedies it may have from time to time with respect to all amounts in the Loan Disbursement Account provided under either or both of the Craft C&D Contracts in the event of a default by Craft thereunder;
  - (b) the Lender may, at its option and in any event on delivery of written notice to the Construction Receiver, demand repayment of the outstanding principal amount of the Loan and all other Obligations, whereupon such principal amount and such other Obligations shall become immediately due and payable with interest thereon, at the rate or rates determined as herein provided to the date of actual payment thereof, all without further notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Construction Receiver; provided however that such repayment shall (i) only be made to the extent of and from Proceeds for Distribution in the priority and order of payment of the Obligations as set out in the Settlement Approval Order and (ii) be in accordance with the Settlement Approval Order; and
  - (c) the Lender may, in its sole and absolute discretion (but subject to the further order of the Court, if required under the Receivership Order (including Section 11 thereof, if applicable) and/or under the Settlement Approval Order), exercise any right or recourse and proceed by any action, suit, remedy or proceeding under the Security or Applicable Law, including any right, recourse, action, suit, remedy or proceeding authorized or permitted in the UC Receivership Proceedings or under the Settlement Approval Order, for the recovery of all the Obligations to the Lender and whether or not the Lender has exercised any of its rights under the foregoing clause (a); provided however that repayment of the Obligations shall only be made in accordance with the Settlement Approval Order and to the extent of and from Proceeds for Distribution in the priority and order of payment of the Obligations as set out in the Settlement Approval Order.
- (2) The Lender is not under any obligation to the Construction Receiver or any other Person to realize upon any collateral or enforce the Security or any part thereof or to allow any of the collateral to be dealt with or Disposed of. The Lender is not responsible or liable to the Construction Receiver or any other Person for any loss or damage arising from such realization or enforcement or the failure to do so or for any act or omission on its part or on the part of any director, officer,

employee, agent or adviser of any of them in connection with any of the foregoing.

#### 9.03 **Remedies Cumulative**

For greater certainty, it is expressly understood that the rights and remedies of the Lender as against the estate of UC Leslieville hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity. Any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or any other Loan Document will not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled in connection with such default or breach.

#### 9.04 **Perform Obligations**

Subject to the Settlement Approval Order, if an Event of Default has occurred and is continuing and if the Construction Receiver has failed to perform any of its covenants or agreements in the Loan Documents, the Lender, may, but will be under no obligation to, perform any such covenants or agreements in any manner deemed fit without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any legal costs) paid by the Lender in respect of the foregoing will be an Obligation and will be secured by the Security..

#### 9.05 **Third Parties**

It is not necessary for any Person dealing with the Lender or any agent of the Lender to inquire whether the Security has become enforceable, or whether the powers that the Lender is purporting to exercise may be exercised, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale is to be made, or otherwise as to the propriety or regularity of any Disposition or any other dealing with the collateral charged by such Security or any part thereof.

#### 9.06 **Application of Payments**

From and after the occurrence of an Event of Default which is continuing, all payments made by the Construction Receiver hereunder or received from Proceeds for Distribution will be applied to amounts due under the Obligations, all as determined by the Lender, but subject to and otherwise in accordance with the Settlement Approval Order.

### **ARTICLE 10 GENERAL**

#### 10.01 **Addresses, Etc. for Notices**

The mailing addresses and addresses for electronic communications for the purposes of notices and other communications to the Construction Receiver and the Lender are set out on the signature pages of this Agreement.

#### 10.02 **Governing Law and Submission to Jurisdiction**

This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein.

#### 10.03 **Effect of Assignment**

For greater certainty, an assignment by the Lender of its rights hereunder will not constitute a repayment, discharge, rescission, extinguishment or novation of any extension of credit by the Lender under this Agreement or interest therein, and the obligations so assigned will continue to be the same obligations and not new obligations.

#### 10.04 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

#### 10.05 **Further Assurances**

The Construction Receiver and the Lender will promptly cure any default by it in the execution and delivery of this Agreement, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. Prior to its discharge as Construction Receiver under the UC Receivership Proceedings and during the term of this Credit Agreement, the Construction Receiver will promptly execute and deliver to the Lender, upon request, all such other and further documents, agreements, opinions, certificates and instruments in compliance with, or for the accomplishment of the covenants and agreements of the Construction Receiver hereunder or more fully to state the obligations of the Construction Receiver as set forth herein or to make any recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection therewith.

#### 10.06 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the Construction Receiver and the Lender. No waiver of any breach of any provision of this Agreement and no consent required hereunder will be effective or binding unless made in writing and signed by the party purporting to give the same. Unless otherwise provided, any waiver or consent given hereunder will be limited to the specific breach waived or matter consented to, as the case may be, and may be subject to such conditions as the party giving such waiver or consent considers appropriate.

#### 10.07 **Reasonableness**

Until the occurrence of an Event of Default, unless specifically specified otherwise herein, in respect of the exercise of any discretion or the giving of any consents or approval under this Agreement, the Lender shall act in a reasonable and timely manner, bearing in mind the scope, magnitude and complexity of the Leslieville Project and the financial and development expertise of the Construction Receiver.

10.08 **Time of the Essence**

Time is of the essence of this Agreement.

***[Signature pages follow]***


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

**CONSTRUCTION  
RECEIVER:**

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC. and not in its personal or corporate capacity**

Royal Bank Plaza, South Tower 200 Bay  
Street, Suite 2900  
P.O. Box 22  
Toronto, Ontario, M5J 2J1  
Attention:  
Ryan Gruneir and Tony Zaspalis  
Facsimile No.: 416-847-5201  
Email: rgruneir@alvarezandmarsal.com  
tzaspalis@alvarezandmarsal.com

By:

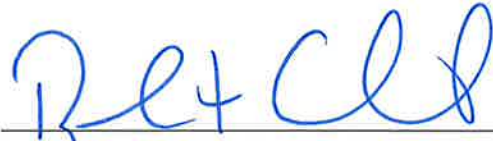
  
\_\_\_\_\_  
Name: Douglas R. McIntosh  
Title: President, Alvarez & Marsal  
Canada Inc.

**LENDER:**

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

10 Queen Elizabeth Blvd.  
Suite #2  
Etobicoke, Ontario  
M8Z 1L8  
Attention: President  
Facsimile No.: 416-979-9996

By:



---

Name: Robert Sabato  
Title: Director and authorized signing officer

---

Name:

Title:

**SCHEDULE A  
LEGAL DESCRIPTION OF PROJECT LANDS**

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

**PIN 21051-0408 (LT)**

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

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

TOR\_LAW\9131323\13



# **APPENDIX “G”**

**CREDIT AGREEMENT**

**BETWEEN**

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as  
Court Appointed Receiver and Manager and Construction Lien Trustee of  
URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,  
URBANCORP (RIVERDALE) DEVELOPMENTS INC. and  
URBANCORP (THE BEACH) DEVELOPMENTS INC.  
and not in its personal or corporate capacity  
as Construction Receiver**

**AND**

**CANADIAN IMPERIAL BANK OF COMMERCE  
as Administrative Agent**

**AND**

**THE FINANCIAL INSTITUTIONS  
from time to time parties hereto  
as Lenders**

**MADE AS OF**

**April 18, 2017**

**Gowling WLG (Canada) LLP**

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**CREDIT AGREEMENT**

THIS AGREEMENT is made as of April 18, 2017

BETWEEN:

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC. and not in its personal or corporate capacity (the “Construction Receiver”),**

- and -

**CANADIAN IMPERIAL BANK OF COMMERCE,**  
in its capacity as administrative agent for the Lenders  
(the “**Administrative Agent**”),

- and -

**THE FINANCIAL INSTITUTIONS** from time to time party to this Agreement and designated as Lenders on the signatures pages hereto (each, a “**Lender**” and collectively, the “**Lenders**”),

WHEREAS the Construction Receiver has requested the Credit Facility to finance certain costs associated with the development and completion of construction of the Leslieville Project, and the Lenders have agreed to provide the Credit Facility to the Construction Receiver upon and subject to the terms and conditions set out in this Agreement;

AND WHEREAS Canadian Imperial Bank of Commerce will be the Administrative Agent as contemplated by Section 7.1 of Schedule A hereto, namely pursuant to the CBA Model Credit Agreement Provisions as set out therein, as modified in accordance with that schedule;

AND WHEREAS it is a condition of the provision of the Credit Facility that Terra Firma agrees to provide the TF Cost Overrun Guarantee and Terra Firma has agreed to do so;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

**ARTICLE 1  
INTERPRETATION**

1.01 Definitions

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

**“Administrative Agent’s Office”** means the branch of the Administrative Agent located at 595 Bay Street, Toronto, Ontario, M5G 2C2, or such other office in Canada that the Administrative Agent may from time to time designate by notice to the Construction Receiver and the Lenders.

**“Agreement”** means this credit agreement, including its recitals and schedules.

**“Applicable Law”** has the meaning set out in Schedule A.

**“Applicable Percentage”** has the meaning set out in Schedule A.

**“Architect”** means such architect as may be retained by or on behalf of Craft in connection with the Construction of the Leslieville Project, which architect if other than the architect for the Leslieville Project retained by UC Leslieville prior to the commencement of the UC Receivership Proceedings, shall be subject to the prior approval the Administrative Agent.

**“Architect Contract”** means any contract or agreement between the Architect and Craft relating to the Leslieville Project, as such agreement may be amended, restated or supplemented as permitted hereunder.

**“Architect’s Costs”** means the costs incurred by Craft for the services of the Architect in connection with the Work.

**“Beach Remaining Lands”** means the remaining lands and premises owned by UC Leslieville and/or UC Beach located at 42 Edgewood Avenue, Toronto, Ontario and more particularly described in Schedule D hereto under the heading “Beach Remaining Lands”.

**“Beach Sale Process Order”** means the sale process order to be granted in the UC Receivership Proceedings which will approve, among other things, a sale process for the Beach Remaining Lands, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver, Terra Firma, Craft and the Lenders.

**“Builder”** has the meaning given to such term in the Craft Construction Contract, which Builder if other than Urban Renaissance Inc. shall be subject to the prior approval the Administrative Agent.

**“Budgeted Development Costs”** means (i) all budgeted costs described as a line item in the Initial Development Budget or any subsequent Development Budget, including any Contingency Amount of budgeted costs, and (ii) HST.

**“Business Day”** means a day of the year, other than a Saturday, Sunday or statutory holiday, on which the Administrative Agent is open for business at its executive offices in Toronto, Ontario.

**“Canadian Dollars”** and **“Cdn. \$”** mean the lawful money of Canada.

**“Change Funder”** has the meaning given thereto in the Craft Construction Contract.

**“Change Orders”** has the meaning given thereto in the Craft Construction Contract.

**“City”** means City of Toronto.

“**CO Work**” has the meaning set forth in the TF Cost Overrun Guarantee.

“**Commitment**” means, for each Lender with respect to the Credit Facility, the amount specified with respect to such Lender in Schedule B (which will be amended and distributed to all parties by the Administrative Agent from time to time following the allocation of the Credit Facility between the Tranches and as other Persons become Lenders), being the maximum aggregate amount of Loans that such Lender is obliged to make hereunder, as such amount may be reduced from time to time by such Lender’s Applicable Percentage of the amount of any permanent repayments, reductions or prepayments required or made hereunder.

“**Condominium Act**” means the *Condominium Act*, R.S.O. 1998, c.19, as amended or replaced from time to time.

“**Condominium Documents**” means the Declaration, condominium corporation by-laws (or agreements relating thereto), shared facility agreements (if any), insurance trust agreement (if any) or other documents relating to the creation and operation of the Leslieville Project.

“**Construction**” means the completion of construction of the Leslieville Project in accordance with the Plans and Specifications.

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

- (a) Total Performance of the Work has occurred;
- (b) the Construction Receiver has received all relevant occupancy permits and passed inspections required by Governmental Authorities (other than those inspections required to be made in respect of work undertaken by purchasers under any New APS) with respect to the Leslieville Project and has satisfied the conditions under all applicable development and planning approvals;
- (c) the Declaration has been registered; and
- (d) the purchase and sale transactions under all New APS have closed.

“**Construction Receiver**” means Alvarez & Marsal Canada Inc., in its capacity as Court appointed receiver and manager and construction lien trustee of UC Leslieville, UC Beach and UC Riverdale.

“**Construction Receiver’s Counsel**” means Blake, Cassels & Graydon LLP and Miller Thomson LLP (in respect of real estate matters) or such other firm of legal counsel as Construction Receiver may from time to time designate and that is acceptable to the Lenders.

“**Construction Receiver’s Reserve**” shall have the meaning given to it in the Settlement Approval Order.

“**Construction Schedule**” means the construction schedule in respect of the Leslieville Project provided to and approved by the Lenders.

“**Consultant Contract**” means any contract entered into (i) by or on behalf of Craft, and (ii) a Consultant relating to the Leslieville Project.

**“Consultants”** means, as applicable, the Architect and the Engineers for the Leslieville Project, and such other consultants as the Lenders may approve, including as may be identified in connection with any Development Budget.

**“Contingency Amount”** means, with respect to any Development Budget, the amount, if any, of any contingency provided in such Development Budget in respect of the calculation of the Development Costs.

**“Costs”** means with respect to any work performed or services to be performed under the Craft C&D Contracts, the cost (including HST) of such work or service as agreed between Craft and UC Leslieville by the Construction Receiver, including, for greater certainty, the cost of all CO Work.

**“Cost Overruns”** means all “Cost Overruns” as defined in the TF Cost Overrun Guarantee.

**“Cost to Complete”** means, at any given date and in respect of the Leslieville Project, that amount established by the Construction Receiver and confirmed by the Independent Cost Consultant, which is the aggregate of (without duplication):

- (a) the remaining unpaid portion of the Fixed Price under the Craft Construction Contract;
- (b) all Costs of the CO Work not then incurred;
- (c) to the extent Geo-thermal System Costs are being funded by a Craft Loan, all Geo-thermal System Costs not then incurred;
- (d) the amount of all Costs of the CO Work incurred, to the extent not paid or prepaid in full from funds provided to the Construction Receiver by Terra Firma, Craft or the Lenders under or in accordance with the TF Cost Overrun Guarantee;
- (e) to the extent Geo-thermal System Costs are being funded by a Craft Loan, the amount of all Geo-thermal System Costs incurred, to the extent not paid or prepaid in full from Craft Loans advanced to the Construction Receiver to fund Geo-thermal System Costs;
- (f) all Holdbacks, as of such date;
- (g) the Development Costs for the remaining Development Services not then incurred;
- (h) the amount of all Development Costs incurred, to the extent not then paid (i) in the case of Cost Overruns, from funds provided to the Construction Receiver by Terra Firma, Craft or the Lenders under or in accordance with the TF Cost Overrun Guarantee, and (ii) in the case of all other Development Costs incurred, to the extent not then paid, excluding such other Development Costs to be paid from a requested Drawdown which otherwise fulfils the Drawdown conditions set forth in this Agreement.

**“Court”** means the Ontario Superior Court of Justice (Commercial List) supervising the UC Receivership Proceedings.

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



**“Craft”** means C.R.A.F.T. Development Corporation, a corporation incorporated under the laws of the Province of Ontario.

**“Craft C&D Contracts”** means, collectively, the Craft Construction Contract and the Craft Development Contract.

**“Craft Cash Collateral”** means the cash collateral in the amount of \$535,000 provided by Craft pursuant to the Craft Construction Contract, which cash collateral is to be deposited in an account in the name of the Construction Receiver and maintained with the Administrative Agent.

**“Craft Construction Contract”** means the fixed price construction contract dated on or about the date hereof and made between UC Leslieville by the Construction Receiver and Craft for the Construction of the Leslieville Project.

**“Craft Development Contract”** means the development contract dated on or about the date hereof and made between UC Leslieville by the Construction Receiver and Craft for the provision by Craft of the Development Services with respect to the Leslieville Project.

**“Craft Loan Agreement”** means the loan agreement (which shall be in form and substance acceptable to the Lenders) dated on or about the date hereof and entered into between Craft (as lender) and the Construction Receiver (as borrower) for a loan in the initial principal amount of \$2,000,000, which loan shall be secured against the Leslieville Project in the priority set out in the Waterfall.

**“Craft Loans”** means, at any time, the loans outstanding under the Craft Loan Agreement at such time, including loans that are deemed to have been advanced under this Agreement pursuant to the terms of either of the Craft C&D Contracts or the TF Cost Overrun Guarantee.

**“Craft Security”** means the Court ordered Encumbrance against the Leslieville Project granted pursuant to the Settlement Approval Order.

**“Credit Facility”** means the credit facility described in Section 2.01 and includes both the FP Tranche and the Development Tranche, and the ITC Tranche, if otherwise made available in accordance herewith.

**“Credit Facility Commitment”** means (a) \$4,500,000.00, plus (b) if and for so long as the ITC Condition exists, an amount up to the ITC Increase. The Credit Facility Commitment will be allocated between the FP Tranche and the Development Tranche, and if made available by the Lenders, the ITC Tranche, on the date of the first Drawdown under the Credit Facility by agreement between the Construction Receiver and the Administrative Agent with the advice of the Independent Cost Consultant, provided that such initial allocation may be subsequently readjusted or reallocated by further agreement between the Construction Receiver and the Administrative Agent with the advice of the Independent Cost Consultant.

**“Curzon Purchasers”** means, collectively, the Opt-In Leslieville Purchasers and the New Curzon Purchasers.

**“Debt”** means, with respect to any Person, all obligations that, in accordance with GAAP, would then be classified as a liability of such Person, and, without duplication, includes, with respect to such Person, an obligation in respect of borrowed money or for the deferred purchase price of

Property or services or an obligation that is evidenced by a note, bond, debenture or any other similar instrument.

**“Declaration”** means the declaration or declarations which, together with the description, shall be registered under the Condominium Act and will subject the Leslieville Project or portion(s) thereof to the provisions of the Condominium Act, and all amendments to such declaration or declarations.

**“Default”** has the meaning set out in Schedule A.

**“Defaulted Cost Overruns”** has the meaning given thereto in the TF Cost Overrun Guarantee.

**“Deferred Commitment Fee”** means the commitment fee payable to the Lenders pursuant to Section 4.02 of this Agreement.

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

**“Development Budget”** means, at any time, the then current budget of all Development Costs which has a line by line itemization of Development Costs including Contingency Amounts, as prepared by Craft and agreed by (a) the Construction Receiver, (b) if required hereunder, the Lenders, (c) the Independent Cost Consultant and (d) if there have been Development Cost Overruns from the Initial Development Budget, the Change Funder, including as the context permits or requires, the Initial Development Budget; and **“current Development Budget”** means the then current Development Budget (if any) prepared and approved as aforesaid which replaces a prior Development Budget.

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

**“Development Costs”** means the actual Costs of the Development Services.

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

**“Development Tranche”** means that portion of the Credit Facility Commitment allocated to fund the Development Costs.

**“Disposition”** means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any Property or of any right, title or interest in or to any Property, and the verb **“Dispose”** has a corresponding meaning.

**“Drawdown”** means the advance of a Prime Rate Loan, and the term **“advance”** (whether used hereunder, and whether used as a verb or noun) means an advance or the advancing of a Prime Rate Loan pursuant to a Drawdown.

**“Drawdown Date”** means the date on which a Drawdown is made by the Construction Receiver pursuant to the provisions hereof.

**“Drawdown Notice”** means a notice, substantially in the form set out in Schedule 1.01(A), to be given to the Administrative Agent by the Construction Receiver pursuant to Section 2.03.

**“Encumbrance”** means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person’s Property, or any consignment by way of security or capital lease of Property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** have corresponding meanings.

**“Engineers”** means the structural, mechanical & electrical, geotechnical and environmental, and such other engineers as may be retained by or behalf of Craft in connection with the Construction of the Leslieville Project, which engineers if other than the engineers for the Leslieville Project retained by UC Leslieville prior to the commencement of the UC Receivership Proceedings, shall be subject to the prior approval the Administrative Agent.

**“Engineering Contracts”** means, collectively, the agreements entered into by or on behalf of Craft and the Engineers, as such agreements may be amended, restated or supplemented as permitted hereunder.

**“Environmental Law”** means any Applicable Law relating to the environment, including those pertaining to:

- (a) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances, and
- (b) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

**“Event of Default”** has the meaning set out in Section 9.01.

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

**“Existing Purchaser Deposits”** means, with respect to any Opt-In Leslieville Purchaser in connection with a Unit, the deposit(s) actually paid to UC Leslieville (or in the case of such Opt-In Leslieville Purchaser being an assignee of a purchaser under an agreement of purchase and sale with UC Leslieville for such Unit, actually paid to the assignor) under its original agreement of purchase and sale with UC Leslieville for such Unit.

**“Existing Syndicate Credit Agreement”** means the credit agreement made as of July 13, 2012 between UC Leslieville (as borrower), Alan Saskin, Urbancorp Toronto Management Inc., UC Riverdale and UC Beach (as guarantors), Canadian Imperial Bank of Commerce (as administrative agent and a lender), Laurentian Bank of Canada (as a lender) and Canadian Western Bank (as a lender), as amended and supplemented from time to time.

**“Existing Syndicate Debt”** means all debts and liabilities owing by UC Leslieville, UC Riverdale and/or UC Beach to the Lenders pursuant to the Existing Syndicate Credit Agreement.

**“Existing Syndicate Security”** means all Encumbrances granted by UC Leslieville, UC Riverdale, UC Beach or any other Person as security for the Existing Syndicate Debt.

**“First Advance Date”** means that date which is 150 days after the first advance of the Craft Loans or such later date as may be agreed in writing by the Required Lenders.

**“Fixed Price”** means the sum of \$5,350,000 plus HST being the fixed price agreed by Craft to perform the work and services under the Craft Construction Contract other than the CO Work.

**“Force Majeure”** has the meaning set forth in the Development Contract.

**“FP Tranche”** means that portion of the Credit Facility Commitment allocated to fund the Fixed Price under the Craft Construction Contract.

**“GAAP”** means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute.

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

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

**“Governmental Authority”** has the meaning set out in Schedule A.

**“Gross Sale Proceeds”** means, with respect to a New APS, (a) the gross sale price (inclusive of net HST payable in respect of such New APS) set out in such New APS less (b) in the case of an Opt-In Leslieville Purchaser, the amount of credit for its Existing Purchaser Deposit set out in such New APS.

**“Hazardous Substance”** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

**“Holdback”** means any amount required to be retained by or on behalf of UC Leslieville by the Construction Receiver, in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Leslieville Project in accordance with the *Construction Lien Act* (Ontario).

**“HST”** means the harmonized sales tax under the *Excise Tax Act* (Canada).

**“Independent Cost Consultant”** means Altus Group Limited, or such other replacement consultant appointed by the Construction Receiver.

**“Independent Cost Consultant’s Certificate”** means the certificate attached as Schedule 1.01(1)(D) hereto.

**“Initial Development Budget”** means the Development Budget agreed between Craft, the Construction Receiver, the Required Lenders, the Independent Cost Consultant and Terra Firma as the Initial Development Budget under the Craft Development Contract, a copy of which is attached hereto as Schedule 1.01(B).

**“Insolvent”** means, with respect to any Person, that such Person (a) has committed an “act of bankruptcy”, has admitted in writing that it is unable to pay its debts as they become due, or has become insolvent, (b) has made any assignment in bankruptcy or made any other assignment for the benefit of creditors, has made any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, (c) has sought relief under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the United States Bankruptcy Code, the *Winding-up and Restructuring Act* (Canada) or any other bankruptcy, insolvency or analogous law, (d) has been adjudged bankrupt, has filed a petition or proposal to take advantage of any act of insolvency, has consented to or acquiesced in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or has filed a petition or otherwise commenced any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors’ rights or has consented to, or acquiesced in, the filing of such a petition or proposal.

**“Interbank Reference Rate”** means the interest rate expressed as a percentage *per annum* that is customarily used by the Administrative Agent when calculating interest due by it or owing to it arising from adjustments between the Administrative Agent and other Canadian chartered banks.

**“ITC Condition”** means the continuance in effect on the date hereof or from time to time after the date hereof of any prior exercise of rights of set-off (or similar rights) by the Canada Revenue Agency against any one or more of UC Riverdale, UC Leslieville or UC Beach in respect of accumulated input tax credits (i) otherwise due to or standing to the credit of UC Riverdale, UC Leslieville or UC Beach and (ii) which have been claimed or are claimable by the Construction Receiver, including in the context of the UC Receivership Proceedings, which has not been reversed or waived by the Canada Revenue Agency thereby permitting the application of such input tax credits to reduce tax otherwise payable by UC Riverdale, UC Leslieville or UC Beach and/or the Construction Receiver.

**“ITC Increase”** means \$0.00 (Nil).

**“ITC Tranche”** means that portion of the Credit Facility Commitment available to the Construction Receiver hereunder and designated as the ITC Tranche by the Lenders; provided that the ITC Condition exists on the date hereof, but only if and for so long as the ITC Condition continues.

**“Latent Defect”** has the meaning ascribed thereto in the Craft Construction Contract.

**“Lenders”** means the Persons from time to time party to this Agreement and identified as a Lender, in Schedule B, and **“Lender”** means any one of the Lenders.

**“Lenders’ Counsel”** means the firm of Gowling WLG (Canada) LLP or such other firm of legal counsel as the Administrative Agent may from time to time designate.

**“Lending Office”** means, with respect to a particular Lender, the branch or office specified in Schedule B from which such Lender makes advances and to which the Administrative Agent disburses payments received for the benefit of such Lender.

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

**“Leslieville Project Lands”** means the lands and premises comprising the Leslieville Project site located at 50 Curzon Street, Toronto, Ontario and more particularly described in Schedule C hereto under the heading “Leslieville Project Lands”.

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

**“Loan”** has the meaning set out in Schedule A, but also includes all advances deemed to be made hereunder by the Lenders to fund Cost Overruns under the TF Cost Overrun Guarantee.

**“Loan Disbursement Account”** has the meaning set forth in the Craft Development Contract.

**“Loan Documents”** means (a) this Agreement, (b) the Security, and (c) all present and future agreements, documents, certificates and instruments delivered by the Construction Receiver to the Administrative Agent or the Lenders pursuant to or in respect of this Agreement or the Security, in each case as the same may from time to time be amended, and **“Loan Document”** means any one of the Loan Documents.

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

**“Material Project Agreements”** means:

- (a) the Craft C&D Contracts;
- (b) the TF Cost Overrun Guarantee;
- (c) any Architect Contract and any Engineering Contracts and all other Consultant Contracts that provide for aggregate payments thereunder in excess of \$250,000;
- (d) all subcontracts that provide for aggregate payments in excess of \$250,000, including any subcontract between Craft and the Builder;
- (e) the Plans and Specifications and all planning approvals, permits, licences, development agreements, and other material contracts with respect to the Leslieville Project designated as Material Project Agreements by the Administrative Agent from time to time, provided that the Administrative Agent has notified the Construction Receiver of such designation,

**“New APS”** means each purchase and sale agreement for a Unit entered into and outstanding between UC Leslieville by the Construction Receiver and a Curzon Purchaser substantially in the form of a Standard Form Sales Agreement.

**“New Curzon Purchasers”** means, collectively, the Persons that are purchasers of Units in the Leslieville Project after the date hereof, other than the Opt-In Leslieville Purchasers.

**“Obligations”** means all obligations of the Construction Receiver to the Administrative Agent, the Lenders, or any of them, under or in connection with this Agreement or the other Loan Documents, including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Construction Receiver to the Administrative Agent or the Lenders, or any of them, in any currency or remaining unpaid by the Construction Receiver to the Administrative Agent or the Lenders, or any of them, under or in connection with this Agreement or the other Loan Documents whether arising from dealings between the

Administrative Agent or the Lenders, or any of them, and the Construction Receiver, or from any other dealings or proceedings by which the Administrative Agent or the Lenders, or any of them, may be or become in any manner whatsoever a creditor or obligee of the Construction Receiver pursuant to this Agreement or the other Loan Documents, and wherever incurred, and whether incurred by the Construction Receiver alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses relating thereto.

**“Operating Budget”** means an “Approved Operating Budget” as defined in the Craft Development Contract; provided that the initial Operating Budget shall be subject to the review and approval of the Required Lenders and any amendments thereto shall be subject to the approval of the Required Lenders to the extent required hereunder.

**“Operating Manager”** means First Service Residential or such other residential condominium property manager as may be approved by the Administrative Agent.

**“Operating Phase”** means the period commencing on the interim occupancy of any of the Units to closing of the purchase and sale of the last of the Units.

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

**“Outside Date”** has the meaning given thereto in the Craft Construction Contract, as such date may be extended from time to time in accordance with the Craft Construction Contract.

**“Permitted Debt”** means:

- (a) the Debt under this Agreement;
- (b) the Craft Loan up to a maximum principal amount of \$2,000,000, except as such maximum principal amount may be increased as contemplated under the Settlement Approval Order in order to cover additional principal advances to be made by Craft in connection with (i) the Geo-Thermal Costs, and (ii) without duplication of clause (g) below, the funding of TF Defaulted Cost Overruns under and in accordance with the provisions of the TF Cost Overrun Guarantee;
- (c) liabilities due and payable to Craft from time to time under the terms of the Craft C&D Contracts;
- (d) the Existing Syndicate Debt;
- (e) the Debt of UC Leslieville owing under the Travelers Agreements and Travelers Mortgage;
- (f) the Debt of UC Leslieville, UC Riverdale and UC Beach owing to Terra Firma on or prior to the date hereof and secured under the mortgage granted by UC Leslie in favour of Terra Firma registered against the Leslieville Project Lands on July 22, 2015;
- (g) additional debt incurred by the Construction Receiver to cover TF Defaulted Cost Overruns or Defaulted Cost Overruns under and in accordance with the provisions of the TF Cost Overrun Guarantee;

- (h) any other Debt owed by the Construction Receiver to the Lenders;
- (i) any liabilities secured by the Receiver's Expense Reimbursement Charge;
- (j) any liabilities secured by the Receiver's Borrowings Charge and the Construction Lien Trustee's Borrowing Charge (as each term is set forth in Section 22 of the Receivership Order), including as Section 22 may be varied by order of the Court in the UC Receivership Proceedings;
- (k) any additional Craft Loans to fund Geo-Thermal Costs, to the extent permitted under and made pursuant to the terms of the Settlement Approval Order; and
- (l) any other Debt which is approved by the Court in the UC Receivership Proceedings.

**"Permitted Encumbrances"** means, with respect to the Leslieville Project Lands, the following:

- (a) all Encumbrances existing as of the date of the Receivership Order, including the Existing Syndicate Security;
- (b) all Court ordered charges granted under the Receivership Order;
- (c) all Court ordered charges granted under the Settlement Approval Order including the Security and the Craft Security; and
- (d) such other Encumbrances which are approved by the Court in the UC Receivership Proceedings.

**"Person"** has the meaning set out in Schedule A.

**"Plans and Specifications"** means the plans and specifications pertaining to the development and construction of the Leslieville Project as listed in Schedule "A" to the Craft Construction Contract as of the date hereof.

**"Prime Rate"** means the variable *per annum* reference rate of interest announced and adjusted by the Administrative Agent from time to time for Canadian Dollar loans in Canada.

**"Prime Rate Loan"** means a Loan in Canadian Dollars made by the Lenders to the Construction Receiver with respect to which interest is calculated by reference to the Prime Rate.

**"Prime Rate Margin"** means 5% per annum.

**"Proceeds for Distribution"** has the meaning set forth in Section 5.01(2).

**"Proforma Sale Price"** means, in respect of any Unit that is not subject to an Opt-In Purchase Agreement, the Minimum Unit Price for such Unit as defined in the Craft Development Contract which has been approved by the Required Lenders.

**"Project Status Certificate"** means the certificate attached as Schedule 1.01(1)(C) hereto.

**"Property"** means, with respect to any Person, all or any portion of that Person's undertaking and property, both real and personal.



**“Purchaser Deposits”** means, collectively:

- (a) the additional deposits paid by each of the Opt-In Leslieville Purchasers pursuant to its New APS;
- (b) the deposits paid by each New Curzon Purchaser pursuant to its New APS,

but for greater certainty does not include Existing Purchaser Deposits.

**“Purchaser Information Package”** has the meaning given to it in the Purchaser Package Approval Order.

**“Purchaser Package Approval Order”** means the order to be granted in the UC Receivership Proceedings which will approve, among other things, form(s) of purchase and sale agreement for sale of Units by UC Leslieville by the Construction Receiver and the disclosure statement required under the Condominium Act to be provided by the Construction Receiver to all Existing Curzon Purchasers, as such order may be varied from time to time with the prior written consent of the Construction Receiver and the Syndicate Lenders under the Syndicate Credit Agreement.

**“Receivership Administration Order”** means the receivership administration order to be granted in the UC Receivership Proceedings which will approve, among other things, an increase of borrowings by the Construction Receiver required in connection with the arrangements among UC Leslieville, the Construction Receiver, Craft, the Lenders, Terra Firma and the Existing Curzon Purchasers represented by Dickinson Wright LLP to be approved by the Settlement Approval Order, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to the Construction Receiver and the Syndicate;

**“Receivership Order”** means the order of the Honourable Mr. Justice Newbould granted on May 31, 2016 in the UC Receivership Proceedings which, among other things, appointed Alvarez & Marsal Canada Inc. as the receiver and manager and construction lien trustee of all of the property, assets and undertakings of each of UC Leslieville, UC Riverdale and UC Beach acquired for, or used in relation to, their respective businesses, as the same may be amended, restated or supplemented from time to time.

**“Receiver’s Expense Reimbursement Charge”** means the “Construction Receiver’s Charge” as defined in Section 19 of the Receivership Order.

**“Release”** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

**“Required Lenders”** means (i) if no Loans are outstanding under this Agreement, the Lenders holding at least 66 2/3% of the aggregate amount of Commitments, (ii) if any Loans are outstanding under this Agreement, the Lenders to which an amount in aggregate equal to at least 66 2/3% of such Loans is owed, and (iii) where there are only two Lenders, both such Lenders.

**“Security”** means, collectively:

- (a) the Encumbrances created in favour of the Lenders pursuant to the Settlement Approval Order as security for the Obligations; and
- (b) the documents creating any Encumbrance in favour of, or any collateral held from time to time by, the Lenders or on behalf of the Lenders by the Administrative Agent, in each case as security for the Obligations.

including all security described in Article 8.

**“Settlement Approval Order”** means the order to be granted by the Ontario Court of Justice (Commercial List) in the UC Receivership Proceedings which will approve the arrangements among UC Leslieville, the Construction Receiver, Craft, the Lenders, Terra Firma and the Existing Curzon Purchasers represented by Dickinson Wright LLP with respect to the Leslieville Project, as it may be amended, restated or supplemented from time to time, in each case in form and substance satisfactory to those parties.

**“sole and absolute discretion”** means in the sole, absolute and subjective discretion of the relevant Person, which discretion may be exercised unreasonably.

**“Standard Form Sales Agreement”** means the standard form agreements of purchase and sale to be utilized in respect of the sale of the Units to the Opt-In Leslieville Purchasers and New Curzon Purchasers, respectively, in each case as approved pursuant to the Purchaser Package Approval Order and/or the Settlement Approval Order, respectively.

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

**“Tarion”** means Tarion Warranty Corporation, its successors and assigns.

**“Tarion Home Warranty Program”** means the applicable warranty program operated by Tarion relating to purchasers of the Units.

**“Tarion/Travelers Settlement Acknowledgements”** means the acknowledgements and/or agreements provided by each of Tarion and Travelers with respect to warranty and deposit insurance coverage for the Existing Curzon Purchasers and New Curzon Purchasers, in form and substance satisfactory to the Construction Receiver, Craft, the Lenders, Terra Firma and the Existing Curzon Purchasers represented by Dickinson Wright LLP.

**“Taxes”** has the meaning set out in Schedule A.

**“Terra Firma”** means Terra Firma Capital Corporation, a corporation incorporated under the laws of the Province of Ontario.

**“TF Cost Overrun Guarantee”** means the cost overrun and completion guarantee dated on or about the date hereof and provided by Terra Firma to the Construction Receiver, the Administrative Agent on behalf of the Lenders and Craft.

**“TF Defaulted Cost Overruns”** has the meaning given thereto in the TF Cost Overrun Guarantee.

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

“**Tranches**” means, collectively, the FP Tranche and the Development Tranche, and if made available by the Lenders, the ITC Tranche, and “**Tranche**” shall mean either one of them.

“**Travelers**” means Travelers Guarantee Company of Canada, or its successors or assigns as the surety for bonds and/or excess deposit insurance issued to Tarion Warranty Corporation and/or Existing Curzon Purchasers pursuant an agreement of purchase and sale in respect of the Leslieville Project for the deposits made by such purchasers thereunder.

“**Travelers Agreements**” mean the agreements entered into between Travelers and UC Leslieville in respect of, *inter alia*, the Existing Purchaser Deposits for the Leslieville Project, bonds issued in respect thereof and/or excess deposit insurance.

“**Travelers Mortgage**” means the subordinate mortgage granted by UC Leslieville in favour of the Travelers as collateral security for the obligations of UC Leslieville to Travelers pursuant to the Travelers Agreements (such mortgage constituting an Encumbrance ranking behind the Existing Syndicate Security on the Leslieville Project Lands and a first priority Encumbrance on Existing Purchaser Deposits).

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

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

“**UC Receivership Proceedings**” means the receivership proceedings commenced in the Ontario Superior Court of Justice [Commercial List] under Court File No. CV-16-11409-00CL pursuant to which Alvarez & Marsal Canada Inc. was appointed as receiver and manager and as construction lien trustee of all of the assets, undertakings, and property acquired for, or used in relation to the business of UC Leslieville, UC Riverdale and UC Beach.

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

“**Unit**” means either (i) a “unit” (as defined in the Condominium Act) comprising part of the Leslieville Project for use as a residence or (ii) any freehold portion of the Beach Remaining Lands or the Leslieville Project (whether severed or intended to be severed) to be sold to a purchaser for use as a residence, together with the common and exclusive use interests appurtenant thereto, as applicable.

“**Upgrades**” means, with respect to any New Curzon Purchaser, any upgrades, betterments or supplements to the standard finishes for such Curzon Purchaser’s Unit beyond those standard finishes which are described in or otherwise contemplated under the terms of such Curzon Purchaser’s New APS.

“**Waterfall**” means the scheme of distribution and allocation of proceeds from the sale of Units and other property of UC Leslieville and UC Beach as set out in the Settlement Approval Order.

## 1.02 **Extended Meanings**

In this Agreement words importing the singular number include the plural and *vice versa*, and words importing any gender include all genders. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than a Person who is a party to this Agreement. Any definition of or reference to any agreement, instrument, order or other document herein (including this Agreement) shall be

construed as referring to such agreement, instrument, order or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein).

### 1.03 **Interest Calculations and Payments**

Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest "*per annum*" or a similar expression is used, such interest will be calculated on the basis of a calendar year of 365 days, and using the nominal rate method of calculation and not the effective rate method of calculation or on any other basis that gives effect to the principle of deemed reinvestment of interest. Interest will continue to accrue after maturity and default and/or judgment, if any, until payment thereof, and interest will accrue and be compounded monthly on overdue interest, if any.

### 1.04 **Permitted Encumbrances**

The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and will not subordinate, any Encumbrance created by any of the Security to any Permitted Encumbrance.

### 1.05 **Time of the Essence**

Time shall be of the essence of this Agreement

### 1.06 **Currency**

Unless otherwise specified in this Agreement, all references to currency (without further description) are to lawful money of Canada.

### 1.07 **Conflicts**

In the event of a conflict between the provisions of this Agreement and the provisions of any other Loan Document, then, unless such Loan Document or an acknowledgement from the Construction Receiver and the Administrative Agent relative to such Loan Document expressly states that this Section 1.07 is not applicable to such Loan Document, notwithstanding anything else contained in such other Loan Document, the provisions of this Agreement will prevail and the provisions of such other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict.

### 1.08 **Nature of Lenders' Obligations**

- (1) The obligations of each Lender and the Administrative Agent under this Agreement are several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders, the Administrative Agent or the Construction Receiver of any of their respective obligations hereunder.
- (2) Neither the Administrative Agent nor any Lender shall be responsible for the obligations of any other Lender hereunder.

### 1.09 Limitation of Recourse against Construction Receiver

Notwithstanding any other provision of this Credit Agreement or any other agreement by or among the Construction Receiver and the Administrative Agent and the Lenders, Alvarez & Marsal Canada Inc. shall have no personal or corporate liability under this Agreement or any of the other Loan Documents. All obligations of the Construction Receiver, whether on behalf of UC Leslieville or its own behalf, under or in connection with the Credit Facility established under this Agreement and the other Loan Documents are undertaken by Alvarez & Marsal Canada Inc. solely in its capacity as the Court Appointed Receiver and Manager and Construction Lien Trustee of UC Leslieville, UC Beach and UC Riverdale, and save and except in the case of the gross negligence or willful misconduct of Alvarez & Marsal Canada Inc., as determined by a court of competent jurisdiction, the sole recourse of the Lender against UC Leslieville, UC Beach, UC Riverdale or the Construction Receiver in connection with such obligations shall be limited solely to a claim against the proceeds of the property and assets of UC Leslieville, UC Beach and/or UC Riverdale.

### 1.10 Schedules

The following are the Schedules attached hereto and incorporated by reference and deemed to be part hereof:

Schedule A	-	Model Credit Agreement Provisions
Schedule B	-	Lenders and Commitments
Schedule C	-	Legal Description of Project Lands
Schedule 1.01(A)	-	Drawdown Notice
Schedule 1.01(B)	-	Initial Development Budget
0	-	Project Status Certificate
0	-	Independent Cost Consultant's Certificate

## ARTICLE 2 THE CREDIT FACILITY

### 2.01 Credit Facility

- (1) Subject to the terms and conditions of this Agreement, the Lenders establish in favour of the Construction Receiver a non-revolving, term credit facility (the "**Credit Facility**") in an amount up to the Credit Facility Commitment which is available to the Construction Receiver by way of Prime Rate Loans. Each Lender's obligation under the Credit Facility is several and limited to the amount of its Commitment.
- (2) The Credit Facility shall be divided into the FP Tranche and the Development Tranche, and if made available by the Lenders, the ITC Tranche, and the Credit Facility Commitment shall be allocated between the Tranches by agreement between the Construction Receiver and the Administrative Agent, based on the advice of the Independent Cost Consultant as of the date of the first Drawdown under the Credit Facility; provided that such initial allocation between the

Tranches may be subsequently readjusted or reallocated by further agreement between the Construction Receiver and the Administrative Agent upon further advice of the Independent Cost Consultant. The Administrative Agent shall provide written confirmation to the Construction Receiver and each of the Lenders as soon as practicable following such agreed allocation, adjustment or reallocation.

- (3) If the first advance under the Credit Facility does not occur on or before the First Advance Date, the Required Lenders may, in their sole and absolute discretion, cancel the Credit Facility, in which event, the Lenders will have no further obligation to make Drawdowns available to the Construction Receiver under the Credit Facility. In addition, at any time after that date which is 30 days after (a) the earlier of Total Completion of the Work and completion of the Development Services and (b) the Outside Date (or such later date as may be agreed in writing by the Required Lenders), the Required Lenders may, in their sole and absolute discretion, cancel all or any unutilized portion of the Commitment.

## 2.02 **Purpose of Credit Facility**

Loans made under the Credit Facility will only be used by the Construction Receiver for the following purposes:

- (1) with respect to the FP Tranche, to finance the Fixed Price payable to Craft under the Craft Construction Contract; and
- (2) with respect to the Development Tranche, to finance the payment of the Budgeted Development Costs set out in the Initial Development Budget agreed pursuant to the Craft Development Contract.

## 2.03 **Drawdowns**

- (1) Subject to the provisions of this Agreement, including without limitation Sections 3.01 and 3.02, the Construction Receiver may make Drawdowns hereunder by giving the Administrative Agent a Drawdown Notice at least three Business Days prior to the proposed Drawdown Date. A Drawdown Date must be a Business Day.
- (2) Each Drawdown Notice must be delivered to the Administrative Agent by the Construction Receiver on or prior to 11:00 a.m. (Toronto time) on a Business Day.
- (3) Each Drawdown must be in a minimum principal amount of Cdn. \$100,000 and increments of Cdn. \$50,000.
- (4) Unless otherwise agreed to by the Lenders, the Construction Receiver will not be entitled to make Drawdowns more than once each calendar month.
- (5) No Drawdown under the ITC Tranche may be made after the ITC Condition has ceased.

#### 2.04 **Administrative Agent's Obligations with Respect to Loans**

Upon receipt of a Drawdown Notice, the Administrative Agent will forthwith notify the Lenders of the proposed Drawdown Date, of each Lender's Applicable Percentage of such Loan and, if applicable, the account of the Administrative Agent to which each Lender's Applicable Percentage is to be credited.

#### 2.05 **Lenders' and Administrative Agent's Obligations with Respect to Loans**

Each Lender will, prior to 11:00 a.m. (Toronto time) on the Drawdown Date specified by the Construction Receiver in a Drawdown Notice credit the Administrative Agent's account specified in the Administrative Agent's notice given under Section 2.04 with such Lender's Applicable Percentage of any Loan to be advanced thereunder and by 11:00 a.m. (Toronto time) on the same date the Administrative Agent will advance to the Construction Receiver the full amount of the amounts so credited.

#### 2.06 **Irrevocability**

Each Drawdown Notice given by the Construction Receiver hereunder is irrevocable and will oblige the Construction Receiver to make the Drawdown contemplated on the date specified therein.

#### 2.07 **Account of Record**

The Administrative Agent will open and maintain books of account evidencing all Loans and all other amounts owing by the Construction Receiver to the Lenders hereunder. The Administrative Agent will enter in the foregoing books of account details of all amounts from time to time owing, paid or repaid by the Construction Receiver hereunder. The information entered in the foregoing books of accounts will, in the absence of manifest error, constitute prima facie evidence of the obligations of the Construction Receiver to the Lenders hereunder with respect to all Loans and all other amounts owing by the Construction Receiver to the Lenders hereunder. After a request by the Construction Receiver, the Administrative Agent will promptly advise the Construction Receiver of such entries made in the Administrative Agent's books of account.

#### 2.08 **Interest on Excess Loans, Unpaid Costs and Expenses**

Unless the payment of interest is otherwise specifically provided for herein, where the Construction Receiver fails to pay any amount required to be paid by it hereunder when due, after having received notice that such amount is due (including, without limitation, the portion of any Loan made under a Credit Facility hereunder that exceeds the applicable Credit Facility Commitment), the Construction Receiver shall pay interest on such unpaid amount from the time such amount is due until paid at an annual rate equal to the Prime Rate plus 7.0% per annum in accordance with Section 5.01.

**ARTICLE 3  
DISBURSEMENT CONDITIONS**

**3.01 Conditions Precedent to First Drawdown**

The obligations of each Lender under this Agreement (including to make the first advance under the Credit Facility) are subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (1) each of the Craft C&D Contracts shall have been executed and delivered to the Construction Receiver in form and substance satisfactory to the Lenders and be in full force and effect;
- (2) the schedule of values for progress payments and the construction schedule under the Craft Construction Contract shall have been approved by the Independent Cost Consultant and the Lenders;
- (3) (i) Craft shall have delivered the Craft Cash Collateral to the Construction Receiver as required under the Craft Development Contract and the same shall have been deposited in the name of the Construction Receiver in an account maintained with the Administrative Agent, and (ii) the Loan Disbursement Account shall have been established;
- (4) the TF Cost Overrun Guarantee shall have been executed and delivered to the Construction Receiver, Craft and the Administrative Agent on behalf of the Lenders in form and substance satisfactory to the Lenders and be in full force and effect;
- (5) the Craft Loan Agreement shall have been executed and delivered to the Construction Receiver in form and substance satisfactory to the Lenders and be in full force and effect, and the Craft Loan shall have been fully advanced to the Construction Receiver;
- (6) the Craft Loan shall have been fully disbursed by the Construction Receiver to fund progress draws or payments under the Craft C&D Contracts;
- (7) each of the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order and the Receivership Administration Order shall have been granted, the "Effective Date" (as defined in the Settlement Approval Order) shall have occurred and each of such orders shall be final and non-appealable and if any such orders are appealed, such appeal is withdrawn or determined in favour of the Construction Receiver;
- (8) none of the Receivership Order, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order or any provision of any of them shall have been stayed, varied or vacated without the prior written consent of the Lenders and the Construction Receiver and there shall not be any pending motion to do so;



- (9) Tarion and Travelers shall have provided the Tarion/Travelers Acknowledgements, or the Court shall have made an Order of like effect, in either case, in form and substance satisfactory to the Lenders;
- (10) the Standard Form Sales Agreement to be entered into with each Curzon Purchaser and the disclosure statement required to be delivered to each Curzon Purchaser under the Condominium Act shall have been approved by the Court pursuant to the Purchaser Package Approval Order and the Settlement Approval Order, as applicable, and the Court shall have confirmed the last date upon which an Opt-In Leslieville Purchaser may rescind its New APS to purchase a Unit in the Leslieville Project pursuant to Section 73(2) of the Condominium Act;
- (11) the Independent Cost Consultant shall have been appointed to act on behalf of the Construction Receiver throughout the duration of the Leslieville Project; provided that the Construction Receiver acknowledges and agrees that Altus Group Limited will also be acting as the Independent Cost Consultant under this Agreement for the Lenders notwithstanding any actual or potential conflict occasioned thereby;
- (12) the Initial Development Budget shall have been approved by the Independent Cost Consultant, the Lenders and Terra Firma;
- (13) Terra Firma shall have funded to the Construction Receiver the (a) cost of all Latent Defects discovered by Craft, the Construction Receiver or any other Person relating to the Leslieville Project as of the date the other conditions precedent under this Section 3.01 have been satisfied, (b) amount of all "Development Cost Overruns" (as defined in the Craft Development Contract) requested by Craft as of the date the other conditions precedent under this Section 3.01 have been satisfied, in each case as required under the TF Cost Overrun Guarantee, and for certainty, inclusive of HST;
- (14) (i) no Major Event of Default (as defined under each of the Craft C&D Contracts) or any material breach under any of the other Material Project Agreements shall have occurred (and no event of default shall have occurred thereunder), and shall in any case, be continuing on the Drawdown Date, and (ii) neither of the Craft C&D Contracts shall have been terminated by either party thereto, including as a result of any breach, default or event of default thereunder;
- (15) none of Craft, the Builder or Terra Firma shall be Insolvent;
- (16) no Cost Overrun discovered after the date of this Agreement shall be existing which has not been funded by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee;
- (17) the Administrative Agent will have received a Drawdown Notice in accordance with Section 2.03(1) and (2);
- (18) no Default or Event of Default will have occurred and be continuing on the Drawdown Date, or would result from making the requested advance;

- (19) all conditions precedent to the progress draw or payment under the applicable Craft C&D Contract proposed to be funded from the Drawdown shall have been satisfied and that Craft is entitled to such progress draw or payment under such Craft C&D Contract;
- (20) all Geo-thermal System Costs incurred by Craft have been paid when due and payable;
- (21) after giving effect to the Drawdown:
  - (a) in the case of a Drawdown under the FP Tranche, the Cost to Complete shall not exceed (i) the undrawn Credit Facility Commitment allocated to the FP Tranche, (ii) the funding previously received and then currently held by the Construction Receiver for Cost Overruns under the Craft Construction Contract provided by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee; and (iii) if the Geo-thermal System Costs are being funded through a Craft Loan, the amount of Craft Loans received and then currently held by the Construction Receiver to fund Geo-thermal System Costs;
  - (b) in the case of a Drawdown under the Development Tranche, (i) the Costs of Craft to be paid with the proceeds of such Drawdown are within the current Development Budget, and (ii) the remaining Budgeted Development Costs shall not exceed (A) the undrawn Credit Facility Commitment allocated to the Development Tranche (ii) the funding previously received and then currently held by the Construction Receiver for Cost Overruns under the Craft Development Contract provided by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee; and
  - (c) in the case of a Drawdown under the ITC Tranche, the ITC Condition has not ceased.
- (22) the Administrative Agent shall have received in respect of the Leslieville Project:
  - (a) a Project Status Certificate;
  - (b) a Independent Cost Consultant's Certificate signed by the Independent Cost Consultant;
  - (c) a copy of the related Craft request for payment under the applicable Craft C&D Contract, a copy of the Independent Cost Consultant's recommendation or payment verification certificate required under the applicable Craft C&D Contract, together with, in the case of a Drawdown under the Craft Development Contract, copies of any and all invoices as may be requested by the Administrative Agent.
- (23) the Administrative Agent shall have received all other reports and deliveries required hereunder or otherwise reasonably requested by it with respect to the Leslieville Project for the period prior to such Drawdown Date;

- (24) the Administrative Agent shall have received a subsearch from Lenders' Counsel confirming that no Encumbrances have been registered on title to the Leslieville Project Lands other than Permitted Encumbrances;
- (25) such first advance must have occurred no later than the First Advance Date; and
- (26) each of UC Leslieville, UC Beach and UC Riverdale shall have been adjudged bankrupt under the Bankruptcy and Insolvency Act (Canada),

provided that all documents delivered pursuant to this Section 3.01 must continue to be in full force and effect, and in form and substance satisfactory to the Lenders, acting reasonably.

If the conditions set forth in Sections 3.01(1) to (5), (7) to (13), (15) and (26) and Section 3.05 are not satisfied (or waived by the parties) on or before the CP Outside Date, then this Agreement shall be automatically terminated and of no force and effect.

### **3.02 Conditions Precedent to all Subsequent Drawdowns – Leslieville Facilities**

The obligation of each Lender to make any subsequent advance hereunder by way of a Loan under the Credit Facility is subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (1) the Administrative Agent will have received a Drawdown Notice in accordance with Sections 2.03(1) and (2);
- (2) (i) no Major Event of Default (as defined under each of the Craft C&D Contracts) or any material breach under any of the other Material Project Agreements shall have occurred (and no event of default shall have occurred thereunder), and shall in any case, be continuing on the Drawdown Date, and (ii) neither of the Craft C&D Contracts shall have been terminated by either party thereto, including as a result of any breach, default or event of default thereunder;
- (3) none of Craft, the Builder or Terra Firma shall be Insolvent;
- (4) no Cost Overrun shall be existing which has not been funded by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee;
- (5) all conditions precedent to the progress draw or payment under the applicable Craft C&D Contract proposed to be funded from the Drawdown shall have been satisfied or waived and Craft is entitled to such progress draw or payment under such Craft C&D Contract;
- (6) none of the Receivership Order, the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Sales Process Order or the Receivership Administration Order or any provision of any of them shall have been stayed, varied or vacated without the prior written consent of the Lenders and the Construction Receiver;
- (7) none of the Tarion/Travelers Acknowledgements nor any provision thereof shall have been varied or withdrawn, or the Court Order so declaring varied or stayed, without the prior written consent of the Required Lenders;

- (8) no Default or Event of Default will have occurred and be continuing on the Drawdown Date, or would result from making the requested advance;
- (9) the Construction Receiver shall have delivered to the Administrative Agent all available reporting required under this Agreement and newly available since the previous Drawdown;
- (10) a subsearch shall confirm that no Encumbrances have been registered on title to the Leslieville Project Lands since the date of the prior Drawdown under the Credit Facility other than Permitted Encumbrances;
- (11) the Administrative Agent shall have received copies of all New APS entered into since the previous Drawdown;
- (12) the Administrative Agent shall have received in respect of the Leslieville Project:
  - (a) a Project Status Certificate;
  - (b) a Independent Cost Consultant's Certificate signed by the Independent Cost Consultant;
  - (c) a copy of the related Craft request for payment under the applicable Craft C&D Contract, a copy of the Independent Cost Consultant's recommendation or payment verification certificate required under the applicable Craft C&D Contract, together with, in the case of a Drawdown under the Craft Development Contract, copies of any and all invoices as may be requested by the Administrative Agent.
- (13) all Geo-thermal System Costs incurred by Craft have been paid when due and payable;
- (14) after giving effect to the Drawdown:
  - (a) in the case of a Drawdown under the FP Tranche, the Cost to Complete shall not exceed (i) the undrawn Credit Facility Commitment allocated to the FP Tranche, (ii) the funding previously received and then currently held by the Construction Receiver for Cost Overruns under the Craft Construction Contract provided by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee; and (iii) if the Geo-thermal System Costs are being funded through a Craft Loan, the amount of Craft Loans received and then currently held by the Construction Receiver to fund Geo-thermal System Costs.
  - (b) in the case of a Drawdown under the Development Tranche, (i) the Costs of Craft to be paid with the proceeds of such Drawdown are within the current Development Budget, and (ii) the remaining Budgeted Development Costs shall not exceed (A) the undrawn Credit Facility Commitment allocated to the Development Tranche (ii) the funding previously received and then currently held by the Construction Receiver for Cost Overruns under the Craft Development Contract provided by

Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee;  
and

- (15) all other terms and conditions of this Agreement upon which the Construction Receiver may obtain a Loan that have not been waived will have been fulfilled.

### 3.03 **Provisos**

Notwithstanding anything in Section 3.02 to the contrary, if some or all of the conditions precedent in Section 3.02 are not or cannot be satisfied (except for the condition precedent in 3.02(10) which must be satisfied), the Construction Receiver shall nevertheless be entitled to a Drawdown under the FP Tranche and/or the Development Tranche, as applicable, to pay (A) amounts payable to Craft pursuant to either or both of the Craft C&D Contracts upon termination of either or both of the Craft C&D Contracts by the Construction Receiver (or UC Leslieville by the Construction Receiver) in accordance with the terms thereof (which, for certainty, excludes any compensation payable to Craft pursuant to Section 5.2 of the Development Contract); and (B) amounts of Holdback which become payable to Craft under the Craft C&D Contracts or as ordered by the Court in the UC Receivership Proceedings.

### 3.04 **Waiver**

The conditions set forth in Sections 3.01 and 3.02 are inserted for the sole benefit of the Lenders and may be waived by the Required Lenders, in whole or in part (with or without terms or conditions), in respect of any Drawdown without prejudicing the right of the Lenders at any time to assert such conditions in respect of any subsequent Drawdown.

### 3.05 **Condition to Construction Receiver's Execution**

Notwithstanding anything to the contrary in this Agreement, the execution and delivery of this Agreement by the Construction Receiver and its obligations hereunder are subject to and conditional upon the granting of the Settlement Approval Order, the "Effective Date" (as defined therein) having occurred and such order becoming final and non-appealable and if such order is appealed, such appeal is withdrawn or determined in favour of the Construction Receiver.

## **ARTICLE 4 PAYMENTS OF INTEREST AND COMMITMENT FEES**

### 4.01 **Interest on Prime Rate Loans**

The Construction Receiver will pay interest in Canadian Dollars on each Prime Rate Loan from the date of advance to the date of repayment (both before and after default, acceleration and judgment) at a rate *per annum* equal to the sum of (a) the Prime Rate in effect from time to time plus (b) the Prime Rate Margin. Interest on the Loans will become due and payable in accordance with Section 5.01.

Each determination by the Administrative Agent of the Prime Rate applicable from time to time will, in the absence of manifest error, be binding upon the Construction Receiver. Such interest will accrue from day to day, be payable in arrears and will be calculated on the principal

amount of the Prime Rate Loan outstanding from time to time and on the basis of the actual number of days elapsed in a year of 365 days. Changes in the Prime Rate will cause an immediate adjustment of the interest rate applicable to such Loan without the necessity of any notice to the Construction Receiver.

#### 4.02 **Deferred Commitment Fee**

In consideration of the Lenders providing the Credit Facility, the Construction Receiver shall pay to the Administrative Agent, for the account of the Lenders, a fee of \$200,000 which is fully earned on the date when the Settlement Approval Order is final and any appeal period has expired or any appeal therefrom has been dismissed and is due and payable in accordance with Section 5.01.

#### 4.03 **Maximum Rate of Interest**

Notwithstanding anything contained herein to the contrary, the Construction Receiver will not be obliged to make any payment of interest or other amounts payable to the Lenders hereunder in excess of the amount or rate that would be permitted by Applicable Law or would result in the receipt by the Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)). If the making of any payment by the Construction Receiver would result in a payment being made that is in excess of such amount or rate, the particular Lender will determine the payment or payments that are to be reduced or refunded, as the case may be, so that such result does not occur.

### **ARTICLE 5 REPAYMENT**

#### 5.01 **Mandatory Repayment**

- (1) The Loans and all other Obligations shall become due by the Construction Receiver upon the occurrence of an Event of Default hereunder which has been accelerated by the Lenders in accordance with Section 9.02, and subject to compliance with any conditions to such acceleration set forth therein.
- (2) Notwithstanding any other section of this Agreement, including without limitation, anything to the contrary in Sections 4.01 or 5.01(1) (but subject to Sections 5.01(4) and 5.01(5)), the Construction Receiver shall only be required to pay interest accrued on the Loans (including default interest pursuant to Section 2.08), the Deferred Commitment Fee, the principal amount of the Loans outstanding under the Credit Facility (whether before or after an Event of Default or acceleration) and all other Obligations from time to time only out of and from (i) receipts of Gross Sale Proceeds from the sale of Units or other income from the Units or the realization thereof, and (ii) receipts of sales proceeds, rental (including occupation rent) or other income from, or the realization of, the Beach Remaining Lands, the Leslieville Project (other than the Units) and any and all other property, assets and undertaking of UC Leslieville, UC Beach and UC Riverdale (collectively the amounts in clauses (i) and (ii) being herein called "**Proceeds for Distribution**"), in each case, as and when such Proceeds for Distribution become available for distribution by the Construction Receiver to the Lenders in the UC Receivership Proceedings; provided that nothing hereinbefore provided shall limit any right or remedy which the Administrative Agent or the

Lenders may have under Article 9, subject to compliance with the Settlement Approval Order and any other applicable order of the Court in the UC Receivership Proceedings.

- (3) All Proceeds for Distribution (net of the Construction Receiver's Reserve as contemplated by the Settlement Approval Order) shall be distributed by the Construction Receiver in accordance with and subject to the Waterfall approved under the Settlement Approval Order, unless otherwise ordered by the Court in the UC Receivership Proceedings. The Lenders may apply any Proceeds for Distribution received from the Construction Receiver in payment of Obligations under this Agreement to such of the Obligations then outstanding as the Lenders may determine in their discretion. Any principal portion of the Loans repaid by the Construction Receiver shall permanently reduce the Credit Facility Commitment available under the applicable Tranche (as determined by the Lenders in their sole discretion) by an equivalent amount and no such principal amount so repaid may thereafter be re-advanced.
- (4) The Lenders acknowledge and agree that during the Operating Phase, and provided no Event of Default has occurred and remains outstanding, the operating costs of the Leslieville Project (including the reimbursement of Craft for such operating costs) (collectively, "**Operating Phase Costs**") shall be paid from the interim occupancy revenues collected by the Construction Receiver or the Operating Manager from such Curzon Purchasers. To facilitate the payment of such Operating Phase Costs, the Operating Manager shall be authorized and required by the Construction Receiver (i) to collect such revenues, (ii) to pay Operating Phase Costs from the revenues so collected (so long as such Operating Phase Costs are at or below the amounts budgeted therefor in the Operating Budget), and (iii) to remit the positive balance (if any) remaining thereafter to the Construction Receiver (collectively, "**Remitted Amounts**"). To the extent so remitted, the Construction Receiver (i) shall not be required to treat any Remitted Amounts as Proceeds for Distribution pursuant to Section 5.01(2), and (ii) may use any Remitted Amounts so retained for subsequent application in payment of any of its costs and expenses, provided that any such amounts that are not so used shall be distributed as Proceeds for Distribution and eventually distributed by the Construction Receiver at such time as may be determined by it.
- (5) Amounts outstanding under the ITC Tranche shall be repaid by the Construction Receiver within five Business Days of the Construction Receiver's receipt from the Canada Revenue Agency of an amount or amounts on account of amounts previously set-off by the Canada Revenue Agency against input tax credits claimed by the Construction Receiver and assessed against any of UC Riverdale, UC Leslieville or UC Beach by Canada Revenue Agency. For greater certainty, (i) the Construction Receiver's obligation under this Section 5.01(5) shall be limited to only the amount or amounts actually received by the Construction Receiver from the Canada Revenue Agency, and (ii) any other amounts remaining unpaid under the ITC Tranche shall be repaid as provided under Section 5.01(2).

## ARTICLE 6 PLACE AND APPLICATION OF PAYMENTS

### 6.01 Place of Payment of Principal, Interest and Fees

All payments of principal, interest, fees and other amounts to be made by the Construction Receiver to the Administrative Agent and the Lenders pursuant to this Agreement will be made in the currency in which the Loans are outstanding for value on the day such amount(s) are distributed by the Construction Receiver in accordance with the Settlement Approval Order or, if such day is not a Business Day, on the Business Day next following with interest, by deposit or transfer thereof to the account of the Administrative Agent maintained at the Administrative Agent's Office in Toronto or at such other place as the Construction Receiver and the Administrative Agent may from time to time agree.

## ARTICLE 7 COVENANTS

### 7.01 Positive Covenants

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Required Lenders, the Construction Receiver will:

- (1) Timely payment Make due and timely payment of the Obligations required to be paid by it hereunder in accordance with Section 5.01;
- (2) Information Promptly provide such information with respect to the Leslieville Project, the status of each of the Craft C&D Contracts and the work and services provided thereunder, the sale of Units and all other matters relating to the construction, development and sale of the Leslieville Project and the sale of the Beach Remaining Lands as may be reasonably requested by the Administrative Agent or any of the Lenders from time to time and to the extent that the same is available to the Construction Receiver, whether directly or indirectly from Craft or the Independent Cost Consultant;
- (3) Further Assurances Use reasonable efforts to provide the Administrative Agent and the Lenders with such other documents, opinions, consents, acknowledgments and agreements as are reasonably necessary to implement this Agreement and the other Loan Documents from time to time;
- (4) Use of Credit Facility Use the proceeds of the Credit Facility only for the purposes specified in Section 2.02;
- (5) Other Notices Promptly notify the Administrative Agent on becoming aware of the occurrence of any of the following and provide the additional information noted below:
  - (a) if at any time a Latent Defect is discovered by Craft or the Builder, a description of the Latent Defect, together with such details with respect thereto (including the estimated cost of repair) that are available to the Construction Receiver;



- (b) if at any time the Development Costs are expected to exceed the Initial Development Budget, such details with respect thereto as are available to the Construction Receiver;
  - (c) the occurrence of an event of Force Majeure, describing in reasonable detail the effects of such event on the Construction of the Leslieville Project, the action which Craft intends to take during the pendency of such event to minimize the effects of such event (if any) and the estimated date when the event of Force Majeure is likely to cease to impair Construction or operation of the Leslieville Project;
  - (d) any breach in any material respect of either of the Craft C&D Contracts or of any default or event of default that shall have occurred thereunder;
  - (e) any default by Terra Firma under the TF Cost Overrun Guarantee;
  - (f) any damage to or destruction of any Property that forms part of the Leslieville Project, which might give rise to an insurance claim, if the cost of any repairs to or replacement of such Property exceeds \$250,000;
  - (g) any construction lien (or claim therefor) of which the Construction Receiver has notice or which is registered against title to the Leslieville Project, in either case, after the date hereof, and provide the Administrative Agent with a true copy of such claim of lien or registered instrument;
  - (h) any written notice of expropriation with respect to any portion of the Leslieville Project Lands with the exception of the park dedication required by the site plan agreement for the Project, and provide a copy of such notice to the Administrative Agent forthwith upon receipt of such notice, and the Construction Receiver hereby covenants and agrees that no such claim shall be compromised or settled without the prior written consent of the Lenders or order of the Court;
  - (i) any circumstance whereby the date of Construction Completion of the Leslieville Project is expected by the Construction Receiver or the Independent Cost Consultant to be delayed by three or more months from the initial Construction Schedule, whether in an individual instance or in aggregate after taking into account all past delays and reasonably anticipated delays; or
  - (j) any written notice of non-compliance in any material respect with any Environmental Law relating to the Leslieville Project Lands, and of any written notice of any investigation or non-routine inspection by any Governmental Authority, or any written material inquiry by any Governmental Authority, in connection with any Environmental Law relating to the Leslieville Project;
- (6) Construction Lien Act (Ontario) Comply with the provisions of the *Construction Lien Act (Ontario)*, including, without limitation, retaining the Holdbacks as required thereby;

- (7) Purchaser Deposit Account Maintain or instruct Construction Receiver's Counsel to maintain a separate trust account for Purchaser Deposits in respect of the Leslieville Project with the Administrative Agent during the term of this Agreement and cause all Purchaser Deposits in respect of the Leslieville Project to be deposited to and all releases of Purchaser Deposits in respect of the Leslieville Project to be paid from such trust account; and
- (8) Operating Budget Prior to permitting any interim occupancy of the Leslieville Project, (a) provide or cause the Operating Manager to provide a draft Operating Budget to the Administrative Agent for the Lenders' approval and obtain the Lenders approval thereof, and (b) appoint the Operating Manager to undertake management (insofar as interim occupancy issues are concerned) of the Leslieville Project during the Operating Phase.

## 7.02 Negative Covenants

So long as this Agreement is in force and the Obligations remain outstanding and except as otherwise permitted by the prior written consent of the Required Lenders, the Construction Receiver will not:

- (1) No Sale of Project Dispose of or Lease any of the Leslieville Project or the Beach Remaining Lands other than:
  - (a) (i) sales of Units to Opt-In Leslieville Purchasers made pursuant to the terms of the Standard Form Sales Agreement relating thereto and at the prices agreed in or pursuant to the Settlement Approval Order and (ii) interim occupancy of such Units by the Opt-In Leslieville Purchasers;
  - (b) (i) sales of Units to New Curzon Purchasers made pursuant to the terms of the Standard Form Sales Agreement for purchase prices at no less than Proforma Sales Prices as agreed pursuant to the Marketing Plan under the Craft Development Contract as approved by the Required Lenders (as such Proforma Sales Prices may be amended from time to time with the approval of the Required Lenders to the extent contemplated under the Craft Development Contract), (ii) interim occupancy of such Units by the New Curzon Purchasers;
  - (c) sales of unallocated parking spaces and extra storage spaces at the Leslieville Project pursuant to a sales process, and for prices no less than the minimum prices as agreed pursuant to the Marketing Plan under the Craft Development Contract as approved by the Required Lenders (as such minimum prices may be amended from time to time with the approval of the Required Lenders to the extent contemplated under the Craft Development Contract);
  - (d) sales of all or a portion of the Beach Remaining Lands pursuant to a sales process acceptable to the Required Lenders and approved by the Court in the UC Receivership Proceedings and only for a price acceptable to the Required Lenders or as may be directed by the Court; or
  - (e) with the prior written consent of the Required Lenders;

- (2) No Encumbrances Create, incur, assume or permit to exist any Encumbrance upon the Leslieville Project Lands, Beach Remaining Lands or any other property and assets of UC Leslieville, UC Beach or UC Riverdale except Permitted Encumbrances;
- (3) New Debt Incur any Debt other than Permitted Debt;
- (4) Amendments to Craft C&D Contracts Amend, vary or alter in any material way, consent to any assignment or transfer of, or waive or surrender any of its material rights or material entitlements under, any of the Craft C&D Contracts;
- (5) Amendment of Initial Development Budget or any subsequent Development Budget or any Operating Budget (i) Make cumulative changes to the Initial Development Budget or any subsequent Development Budget, including, for greater certainty, cumulative changes to individual line items within such Development Budget, which result in an individual or aggregate increase to such Development Budget unless:
  - (a) such increase has been approved or recommended by the Independent Cost Consultant pursuant to the terms of the Craft Development Contract; and
  - (b) such increase has been pre-funded or funded by Terra Firma or Craft to the Construction Receiver under and in accordance with TF Cost Overrun Guarantee or the Craft Development Contract, as the case may be;or (ii) make any change to the Operating Budget which results in the Operating Phase Costs being greater than the interim occupancy revenues derived from interim occupancy of the Units during the Operating Phase;
- (6) Craft Construction Contract; No Change Orders (i) Agree to any Change Orders, or (ii) the performance of any work or services by Craft outside of the FP Scope of Work unless, in either case, (A) the Change Order and/or Cost of such work or services has been recommended by the Independent Cost Consultant as contemplated under the Craft Construction Contract, and (B) the Cost of such Change Order or work has been pre-funded or funded by Terra Firma or Craft to the Construction Receiver under and in accordance with the TF Cost Overrun Guarantee or the Craft Construction Contract, as the case may be;
- (7) Amendment of Construction Schedule (i) Permit or agree to a revision to the Construction Schedule which, directly or indirectly, permits or results in Substantial Performance of the Work (as defined in the Craft Construction Contract) occurring beyond the Outside Date; or (ii) permit or agree to a revision of the Construction Schedule or a delay or extension of the Substantial Performance of the Work which, in either case, would permit or result in an increase in the Costs of Construction, unless such increase has been (A) recommended by the Independent Cost Consultant as contemplated under the Craft Construction Contract, and (B) pre-funded or funded by Terra Firma or Craft to the Construction Receiver under and in accordance with TF Cost Overrun Guarantee or the Craft Construction Contract, as the case may be;

provided that upon any revision of the Construction Schedule, the Construction Receiver will forthwith provide a copy thereof to the Administrative Agent;

- (8) Amendment of Plans and Specifications Revise the Plans and Specifications in any material respect, except as may be required to comply with Applicable Law or any Development Approvals or except with the consent of the Required Lenders, such consent not to be unreasonably withheld, provided that upon revision of the Plans and Specifications, the Construction Receiver will forthwith provide a copy thereof to the Administrative Agent;
- (9) Marketing Plan and Sales Agree to any of the following:
- (a) the initial Marketing Plan and thereafter, any material amendment to the Marketing Plan; or
  - (b) any reductions in ProForma Sales Price for any Unit or the sale of any Unit for a price below its then current ProForma Sales Price; or

without the prior written approval of the Required Lenders.

- (10) No Upgrades Offer to or agree with any New Curzon Purchaser to make or provide any Upgrades, or permit Craft or the Builder to do so.

## **ARTICLE 8 SECURITY**

### 8.01 **Security**

As general and continuing security for the payment and performance of the Obligations, the Administrative Agent on behalf of the Lenders shall be granted a fixed and specific Court ordered charge of all of the Beach Remaining Lands, the Leslieville Project, each New APS, the Craft C&D Contracts, the Craft Cash Collateral, the TF Cost Overrun Guarantee, the Craft Loan and all other property, assets and undertaking of each of UC Leslieville, UC Beach and UC Riverdale, which Court ordered charge shall confer priority in favour of the Lenders in terms of the order of payment and the ranking of security in the manner contemplated in the Waterfall and the Settlement Approval Order.

## **ARTICLE 9 DEFAULT**

### 9.01 **Events of Default**

The occurrence of any one or more of the following events will constitute an event of default (“**Event of Default**”) under this Agreement:

- (1) if the Construction Receiver fails to pay any Obligation when due;
- (2) if the Construction Receiver breaches any covenant in Section 7.02 and has received written notice thereof from the Administrative Agent;

- (3) if the Construction Receiver neglects to observe or perform, in any material respect, any covenant or obligation contained in this Agreement or any other Loan Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 9.01 or in such Loan Document) and the Construction Receiver fails to remedy such default within 30 days from the date the Administrative Agent delivers written notice of the default to the Construction Receiver, or where the Required Lenders (having regard to the subject matter of the default) have agreed, acting reasonably, that such default cannot be cured within such 30 days, such longer period as is required so long as the Construction Receiver is diligently proceeding at all times to cure such default and provided that, in any event, such cure period shall not extend longer than four months without the consent of the Required Lenders in their sole and absolute discretion; or
- (4) if any Catastrophic Event (as defined in the Craft Construction Contract) occurs; or
- (5) the existence or occurrence of any event or circumstance described in Section 3.01 or 3.02 which would effectively disentitle the Construction Receiver from obtaining a Drawdown under the Credit Facility.

#### 9.02 **Acceleration and Enforcement**

- (1) If any Event of Default occurs:
  - (a) the Lenders will have no further obligation to make Loans available to the Construction Receiver hereunder, and may, at the option of the Administrative Agent or at the request of the Required Lenders and in any event on delivery of written notice to the Construction Receiver, demand repayment of the outstanding principal amount of the Loans and all other Obligations, whereupon such principal amount and such other Obligations shall become immediately due and payable with interest thereon, at the rate or rates determined as herein provided to the date of actual payment thereof, all without further notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Construction Receiver; provided however that repayment of the Obligations shall only be made in accordance with the Settlement Approval Order to the extent of and from Proceeds for Distribution in the priority and order of payment set out in the Settlement Approval Order; and
  - (b) the Lenders, or the Administrative Agent on their behalf, may, in their sole and absolute discretion (but subject to the further order of the Court, if required under the Receivership Order (including Section 11 thereof, if applicable) and/or under the Settlement Approval Order), exercise any right or recourse and proceed by any action, suit, remedy or proceeding under the Security or Applicable Law, including any right, recourse, action, suit, remedy or proceeding authorized or permitted in the UC Receivership Proceedings or under the Settlement Approval Order, for the recovery of all the Obligations to the Lenders and whether or not the

Lenders or the Administrative Agent have exercised any of their respective rights under the foregoing clause (a); provided however that repayment of the Obligations shall only be made in accordance with the Settlement Approval Order to the extent of and from Proceeds for Distribution in the priority and order of payment set out in the Settlement Approval Order.

- (2) The Administrative Agent and Lenders are not under any obligation to the Construction Receiver or any other Person to realize upon any collateral or enforce the Security or any part thereof or to allow any of the collateral to be dealt with or Disposed of. Neither the Administrative Agent nor the Lenders are responsible or liable to the Construction Receiver or any other Person for any loss or damage arising from such realization or enforcement or the failure to do so or for any act or omission on their respective parts or on the part of any director, officer, employee, agent or adviser of any of them in connection with any of the foregoing.
- (3) Each of the Lenders acknowledges that the Administrative Agent holds the Security to secure all of the Obligations and, upon the occurrence of an Event of Default, the Administrative Agent will act on the written instructions of the Required Lenders as provided in this Agreement and will distribute the Proceeds for Distribution received by the Administrative Agent in accordance with the Settlement Approval Order to the Lenders in accordance with their Applicable Percentage of the Obligations and in accordance with Section 9.06.

### 9.03 **Remedies Cumulative**

For greater certainty, it is expressly understood that the respective rights and remedies of the Lenders and the Administrative Agent as against the estate of UC Leslieville hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity. Any single or partial exercise by the Lenders or by the Administrative Agent of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or any other Loan Document will not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which any one or more of the Lenders and the Administrative Agent may be lawfully entitled in connection with such default or breach.

### 9.04 **Perform Obligations**

If an Event of Default has occurred and is continuing and if the Construction Receiver has failed to perform any of its covenants or agreements in the Loan Documents, the Required Lenders, may, but will be under no obligation to, instruct the Administrative Agent on behalf of the Lenders to perform any such covenants or agreements in any manner deemed fit by the Required Lenders without thereby waiving any rights to enforce the Loan Documents. The reasonable expenses (including any legal costs) paid by the Administrative Agent and the Lenders in respect of the foregoing will be an Obligation and will be secured by the Security. Without limiting the generality of the foregoing, in the event that a construction lien is registered against the Leslieville Project Lands or any portion thereof and is not discharged within fifteen (15) Business Days thereafter, the Administrative Agent (on behalf of the Lenders) shall be entitled, in its sole discretion, on behalf of the Construction Receiver or otherwise, to pay into

court the amount required to effect removal of such lien and the amount so paid shall be deemed to have been advanced by the Lenders to the Construction Receiver and shall, together with all interest accruing thereon, be deemed to form a part of the indebtedness and liability of the Construction Receiver to the Lenders hereunder.

#### 9.05 **Third Parties**

It is not necessary for any Person dealing with the Lenders, the Administrative Agent or any other agent of the Lenders to inquire whether the Security has become enforceable, or whether the powers that the Lenders or the Administrative Agent are purporting to exercise may be exercised, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale is to be made, or otherwise as to the propriety or regularity of any Disposition or any other dealing with the collateral charged by such Security or any part thereof.

#### 9.06 **Application of Payments**

From and after the occurrence of an Event of Default which is continuing, all payments made by the Construction Receiver hereunder or received from Proceeds for Distribution will be applied to amounts due under the Obligations, all as determined by the Administrative Agent and based on Applicable Percentage of Obligations, but subject to and otherwise in accordance with the Settlement Approval Order.

### **ARTICLE 10 THE ADMINISTRATIVE AGENT AND THE LENDERS**

#### 10.01 **Payments by the Construction Receiver**

- (1) All payments made by or on behalf of the Construction Receiver pursuant to this Agreement will be made to and received by the Administrative Agent on behalf of the Lenders and will be distributed by the Administrative Agent to the Lenders as soon as possible upon receipt by the Administrative Agent. All payments made by the Construction Receiver hereunder (whether made before or after the occurrence of an Event of Default) or received from Proceeds for Distribution will be applied to amounts due under the Obligations, all as determined by the Administrative Agent and based on Applicable Percentage of Obligations but subject to and in accordance with the Settlement Approval Order.
- (2) Subject to Section 10.02, if the Administrative Agent does not distribute a Lender's Applicable Percentage of a payment made by the Construction Receiver to or for the benefit of a Lender for value on the day that payment is made to the Administrative Agent, provided that such payment is received by the Administrative Agent no later than 1:00 p.m. (Toronto time) on such day, the Administrative Agent will pay to such Lender on demand an amount equal to the product of (a) the Interbank Reference Rate *per annum* and (b) the amount received by the Administrative Agent from the Construction Receiver and not so distributed to such Lender, with the result thereof multiplied by (c) a fraction, the numerator of which is the number of days that have elapsed from and including the date of receipt of the payment by the Administrative Agent to but excluding the date on which the payment is made by the Administrative Agent to such Lender, and the denominator of which is 365 or 366, as the case may be.

#### 10.02 **Payments by Administrative Agent**

For greater certainty, the following provisions will apply to all payments made by the Administrative Agent to the Lenders hereunder:

- (a) the Administrative Agent will be under no obligation to make any payment (whether in respect of principal, interest, fees or otherwise) to any Lender until an amount in respect of such payment has been received by the Administrative Agent from the Construction Receiver;
- (b) if the Administrative Agent receives less than the full amount of any payment of principal, interest, fees or other amount owing by the Construction Receiver under this Agreement, then, the Administrative Agent will have no obligation to remit to each Lender any amount other than such Lender's Applicable Percentage of the amount actually received by the Administrative Agent;
- (c) if any Lender advances more or less than its Applicable Percentage of the Loan, such Lender's entitlement to such payment will be increased or reduced, as the case may be, in proportion to the amount actually advanced by such Lender;
- (d) the Administrative Agent acting reasonably and in good faith will, after consultation with the Lenders in the case of any dispute, determine in all cases the amount of all payments to which each Lender is entitled and such determination will, in the absence of manifest error, be binding and conclusive;
- (e) upon request, the Administrative Agent will deliver a statement detailing any of the payments to the Lenders referred to herein; and
- (f) all payments by the Administrative Agent to a Lender hereunder will be made to such Lender at its address set forth on the signature pages on this Agreement or on the applicable Assignment and Assumption unless notice to the contrary is received by the Administrative Agent from such Lender.

#### 10.03 **Administration of the Credit Facility**

- (1) Unless otherwise specified herein, the Administrative Agent will perform the following duties under this Agreement:
  - (a) prior to an advance to the Construction Receiver hereunder, ensure that all conditions precedent have been fulfilled in accordance with the terms of this Agreement;
  - (b) take delivery of each Lender's Applicable Percentage of a Loan and make all Loans hereunder in accordance with the provisions set forth herein;
  - (c) use reasonable efforts to collect promptly all sums due and payable by the Construction Receiver pursuant to this Agreement;



- (d) make all payments to the Lenders in accordance with the provisions hereof;
  - (e) hold all legal documents relating to the Credit Facility, maintain complete and accurate records showing all Loans made by the Lenders, all remittances and payments made by the Construction Receiver to the Administrative Agent, all remittances and payments made by the Administrative Agent to the Lenders and all fees or any other sums received by the Administrative Agent and allow each Lender and their respective advisors to examine such accounts, records and documents at their own expense, and provide any Lender, upon reasonable notice, with such copies thereof as such Lender may reasonably require from time to time at its expense;
  - (f) except as otherwise specifically provided for in this Agreement, promptly advise each Lender upon receipt of each notice and deliver to each Lender, promptly upon receipt, all other written communications furnished by the Construction Receiver to the Administrative Agent pursuant to this Agreement, including copies of financial reports and certificates which are to be furnished to the Administrative Agent;
  - (g) forward to each of the Lenders, one copy each of this Agreement and other Loan Documents;
  - (h) promptly forward to each Lender, upon request, an up-to-date loan status report and any other information respecting the Construction Receiver reasonably requested by such Lender; and
  - (i) upon learning of same, promptly advise each Lender in writing of the occurrence of a Default or of any material adverse information relative to the Construction Receiver.
- (2) The Administrative Agent may take the following actions only with the prior consent of the Required Lenders, unless otherwise specified in this Agreement:
- (a) subject to Section 10.03(3), exercise any and all rights of approval conferred upon the Lenders by this Agreement;
  - (b) amend, modify or waive any of the terms of this Agreement (including waiver of a Default or an Event of Default) if such amendment, modification or waiver would not have a material adverse effect on the rights of the Lenders thereunder and if such action is not otherwise provided for in Section 10.03(3);
  - (c) engage professionals, experts and agents as permitted by Section 10.04(1); and
  - (d) declare an Event of Default, take action to enforce performance of the Obligations and realize on collateral subject to the Security and pursue any other legal remedy necessary or advisable to protect the interests of the Lenders hereunder.

- (3) The Administrative Agent may take the following actions only with the prior unanimous consent of the Lenders, unless otherwise specified herein:
- (a) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Credit Facility, reduce the interest rate applicable to either of the Credit Facility, reduce the fees payable with respect to the Credit Facility, extend any date fixed for payment of principal or interest relating to the Credit Facility;
  - (b) amend, modify, discharge, terminate or waive any terms of the Security otherwise than pursuant to the terms hereof or thereof;
  - (c) amend this Section 10.03(3);
  - (d) amend any provision of Article 5;
  - (e) amend Section 7.01(1) or Section 7.02;
  - (f) amend Section 9.06 or Section 10.01;
  - (g) amend any provision of Schedule A;
  - (h) amend the definition of "Required Lenders"; or
  - (i) where the Independent Cost Consultant identifies a Cost Overrun which the Administrative Agent proposes to finance other than by way of funding provided by Craft or Terra Firma under and in accordance with the TF Cost Overrun Guarantee.
- (4) As between the Construction Receiver, on the one hand, and the Administrative Agent and the Lenders, on the other hand:
- (a) all statements, certificates, consents and other documents which the Administrative Agent purports to deliver on behalf of the Lenders or the Required Lenders will be binding on each of the Lenders, and the Construction Receiver will not be required to ascertain or confirm the authority of the Administrative Agent in delivering such documents;
  - (b) all certificates, statements, notices and other documents which are delivered by the Construction Receiver to the Administrative Agent in accordance with this Agreement will be deemed to have been delivered to each of the Lenders; and
  - (c) all payments which are made by the Construction Receiver to the Administrative Agent in accordance with this Agreement will be deemed to have been duly made to each of the Lenders.

#### 10.04 **Rights of Administrative Agent**

- (1) In administering the Credit Facility, the Administrative Agent may retain, at the expense of the Lenders if such expenses are not recoverable from the Construction Receiver, such counsel, auditors and other experts as the Administrative Agent may select, in its sole discretion, acting reasonably, and is entitled to rely upon the advice of such counsel, auditors and other experts in the performance of its duties hereunder.
- (2) Except in its own right as a Lender, the Administrative Agent will not be required to advance its own funds for any purpose hereunder.

#### 10.05 **Representations, Acknowledgements and Covenants of Lenders**

- (1) Each of the Lenders acknowledges that in the event that the Administrative Agent does not receive payment in accordance with this Agreement, it will not be the obligation of the Administrative Agent to maintain the Credit Facility in good standing nor will any Lender have recourse to the Administrative Agent in respect of any amounts owing to such Lender under this Agreement.
- (2) Each Lender acknowledges that its obligation to advance its Applicable Percentage of Loans in accordance with the terms of this Agreement is independent and in no way related to the obligation of any other Lender hereunder.
- (3) Each Lender agrees that it will notify the Administrative Agent of any Default or Event of Default of which it becomes aware.
- (4) Each Lender hereby acknowledges receipt of a copy of this Agreement and the Loan Documents and acknowledges that it is satisfied with the form and content of such documents.
- (5) Each Lender will respond promptly to each request by the Administrative Agent for the consent of such Lender required hereunder.

#### 10.06 **Provisions Operative Between Lenders and Administrative Agent Only**

Except for the provisions of Sections 10.03(2), (3) and (4), Sections 10.05(2) and (5) and item (3) of 10.08 and the first sentence of Section 10.01(1), the provisions of this Article 10 relating to the rights and obligations of the Lenders and the Administrative Agent inter se will be operative as between the Lenders and the Administrative Agent only, and the Construction Receiver will not have any rights or obligations under or be entitled to rely for any purpose upon such provisions.

#### 10.07 **Maintenance of Security**

The Security shall be granted in favour of and held by the Administrative Agent for and on behalf of the Lenders in accordance with the provisions of this Agreement. The Administrative Agent shall, in accordance with its usual practices in effect from time to time, take all steps customarily required to perfect and maintain the Security of type provided under this Agreement; and ensuring that the name of the Administrative Agent is noted on all property

insurance policies covering the Leslieville Project to the extent required herein. If the Administrative Agent becomes aware of any matter concerning the Security which it considers to be material, it shall promptly inform the Lenders. The Administrative Agent shall comply with all instructions provided by the Lenders in connection with the enforcement or release of the Security which it holds. The Administrative Agent agrees to permit each Lender to review and make photocopies of the original documents comprising the Security from time to time upon reasonable notice.

#### 10.08 **Application of Proceeds for Distribution**

Notwithstanding any other provision of this Agreement, any and all Proceeds for Distribution or any portion thereof shall be distributed in the following order: (1) firstly, in payment of all costs and expenses incurred by the Administrative Agent and the Lenders in connection with this Agreement, the Security or any distribution by the Construction Receiver, including legal, accounting and receivers' fees and disbursements; (2) secondly, against the outstanding Obligations, each Lender being entitled to receive its pro rata share thereof; and (3) thirdly, if all Obligations have been paid and satisfied in full, then, subject to Applicable Law and the provisions of the Settlement Approval Order, to the Construction Receiver.

#### 10.09 **No Partnership**

The obligations of each Lender under this Agreement are several. The failure of any Lender to carry out its obligations hereunder shall not relieve the other Lenders of any of their respective obligations hereunder. No Lender shall be responsible for the obligations, acts or omissions of any other Lender hereunder. Neither the entering into of this Agreement nor the completion of any transactions contemplated herein shall constitute the Lenders a partnership. Each Lender may lend money to and have business dealings with the Construction Receiver outside the scope of this Agreement.

#### 10.10 **Sharing of Information**

The Administrative Agent and the Lenders may share among themselves any information they may have from time to time concerning the Construction Receiver whether or not such information is confidential; but shall have no obligation to do so (except for any obligations of the Administrative Agent to provide information to the extent required in this Agreement).

### **ARTICLE 11 GENERAL**

#### 11.01 **Addresses, Etc. for Notices**

The mailing addresses and addresses for electronic communications for the purposes of notices and other communications to the Construction Receiver, the Lenders and the Administrative Agent are set out on the signature pages of this Agreement.

#### 11.02 **Governing Law and Submission to Jurisdiction**

Ontario is the Province for the purposes of Sections 11(a) and (b) of Schedule A.

### 11.03 **Effect of Assignment**

For greater certainty, an assignment by any Lender of its rights hereunder will not constitute a repayment, discharge, rescission, extinguishment or novation of any extension of credit by such Lender under this Agreement or interest therein, and the obligations so assigned will continue to be the same obligations and not new obligations.

### 11.04 **Survival**

The provisions of Section 9 of Schedule A will survive the repayment of all Loans and all obligations with respect to Letters of Credit, whether on account of principal, interest or fees, and the termination of this Agreement, unless a specific release of such provisions by the Administrative Agent, on behalf of the Lenders, is delivered to the Construction Receiver.

### 11.05 **Severability**

If any provision of this Agreement is determined by any court of competent jurisdiction to be illegal or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any of the parties.

### 11.06 **Further Assurances**

The Construction Receiver, each Lender and the Administrative Agent will promptly cure any default by it in the execution and delivery of this Agreement, the Loan Documents or of any of the agreements provided for hereunder to which it is a party. Prior to its discharge as Construction Receiver under the UC Receivership Proceedings and during the term of this Credit Agreement, the Construction Receiver will promptly execute and deliver to the Administrative Agent, upon request by the Administrative Agent, all such other and further documents, agreements, opinions, certificates and instruments in compliance with, or for the accomplishment of the covenants and agreements of the Construction Receiver hereunder or more fully to state the obligations of the Construction Receiver as set forth herein or to make any recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection therewith.

### 11.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by the Construction Receiver and the Administrative Agent for and on behalf of the Lenders or the Required Lenders, as the case may be. No waiver of any breach of any provision of this Agreement and no consent required hereunder will be effective or binding unless made in writing and signed by the party purporting to give the same. Unless otherwise provided, any waiver or consent given hereunder will be limited to the specific breach waived or matter consented to, as the case may be, and may be subject to such conditions as the party giving such waiver or consent considers appropriate.

### 11.08 **Reasonableness**

Until the occurrence of an Event of Default, unless specifically specified otherwise herein, in respect of the exercise of any discretion or the giving of any consents or approval

under this Agreement, the Administrative Agent and the Lenders shall act in a reasonable and timely manner consistent with prudent lending practices bearing in mind the scope, magnitude and complexity of the Leslieville Project and the financial and development expertise of the Construction Receiver.

11.09 **Time of the Essence**

Time is of the essence of this Agreement.

***[Signature pages follow]***

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

**CONSTRUCTION  
RECEIVER:**

Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
P.O. Box 22  
Toronto, Ontario, M5J 2J1

Attention:

Ryan Gruneir and Tony Zaspalis  
Facsimile No.: 416-847-5201

Email: [rgruneir@alvarezandmarsal.com](mailto:rgruneir@alvarezandmarsal.com)  
[tzaspalis@alvarezandmarsal.com](mailto:tzaspalis@alvarezandmarsal.com)

**ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC. and not in it personal or corporate capacity**

By:



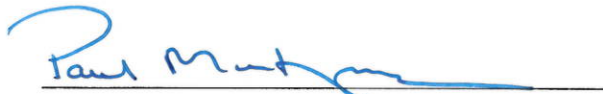
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Name: Douglas R. McIntosh  
Title: President, Alvarez & Marsal  
Canada Inc.


**ADMINISTRATIVE AGENT:****CANADIAN IMPERIAL BANK OF COMMERCE, as  
Administrative Agent**

Canadian Agency Services  
40 Dundas St West  
5th Floor  
Toronto, Ontario  
M5G 2C2  
Attention: Manager, Agency Services Group  
Facsimile No.: 416-956-3830

By:



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



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



**LENDERS:**

Canadian Imperial Bank of Commerce  
25 King Street West  
Commerce Court North – 16<sup>th</sup> Floor  
Toronto, Ontario M5L 1A2

## Attention:

Paul Montgomery and Mauricio Echeverri  
Facsimile No.: (416) 214-8749  
Email: paul.montgomery@cibc.com  
mauricio.echeverri@cibc.com

**CANADIAN IMPERIAL BANK OF COMMERCE**, as  
a Lender

By:



Name: Paul Montgomery

Title: Senior Director, Special Loans  
Risk Management

Name: Mauricio Echeverri

Title: Senior Account Manager, Special  
Loans Risk Management

**CANADIAN WESTERN BANK, as a Lender**

3000, 10303 Jasper Avenue  
Edmonton, Alberta T5J 3X6  
Attention: Mykhaylo Hotsaliuk  
Facsimile: (780) 421-0379

By:

  
\_\_\_\_\_

Name:

MYKHAYLO HOTSALIUK

Title:

AVP, Corporate Lending

  
\_\_\_\_\_

Name:

Stephen Jacobson


Title:

Manager, Corporate Lending

**LAURENTIAN BANK OF CANADA, as a Lender**

1981 av. McGill College  
Bureau 1675  
Montreal Quebec H3A 3K3  
Attention: Alexandre LeBlanc  
Facsimile: 514-284-5942  
Email:  
[alexandre.leblanc2@banquelaurentienne.ca](mailto:alexandre.leblanc2@banquelaurentienne.ca)

By:

  
Name: *Connie Biello*  
Title: *VP Special Loans*

Name:

Title:

**SCHEDULE A**  
**MODEL CREDIT AGREEMENT PROVISIONS**

As Attached

## SCHEDULE A TO CREDIT AGREEMENT

### (CBA Amended “Stapled-on” Version of LSTA Model Credit Agreement Provisions dated November 1, 2004)

The attached model credit agreement provisions, which have been revised under the direction of the Canadian Bankers' Association Secondary Loan Market Specialist Group from provisions prepared by The Loan Syndications and Trading Association, Inc., form part of this Agreement, except for the footnotes to the model credit agreement provisions and subject to the following variations:

#### Variations

1. The definition of “Default” is amended by deleting the words “that constitutes an Event of Default or”.
2. The term “Borrower” where used in this Schedule A shall mean the Construction Receiver as defined in this Agreement.
3. The definition of “Loan” as set out in this Schedule A shall be amended to delete the words “banker’s acceptance or LIBO Rate Loan, except for any Letter of Credit or participation in a Letter of Credit” and substitute the following therefor “Prime Rate Loan, Letter of Credit, Bankers’ Acceptance or BA Equivalent Advance outstanding under the Credit Facility”.
3. Any reference to a “Permitted Lien” shall mean a Permitted Encumbrance.
4. Section 3.2(f) of this Schedule A is deleted.
5. Section 3 of this Schedule A is amended by adding the following Section 3.6.  

“3.6 Overriding Payment Qualification.

Without limiting the generality of Section 5.01 of this Agreement, the Borrower shall not be required to make any payment under Section 3.1 to 3.5 or under Section 9 except out of and from Proceeds for Distribution as and when such Proceeds for Distribution become available for distribution by the Borrower to the Lenders in the UC Receivership Proceedings.”
6. Section 7.3(1)(c) of this Schedule A is amended to replace “person” with “Person”.
7. Section 10(b)(i) of this Schedule A is amended to replace the number “\$5,000,000” therein, by the number “\$1,000,000”.
8. Section 10(b)(iv)(z) of this Schedule A is amended by adding at the end thereof, the words “or any successor thereto”.
9. Section 10(b)(v) of this Schedule A shall be deleted in its entirety and the following substituted therefor:
 

“(v) any assignment of an interest in excess of \$1,000,000 must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless: (A) the proposed assignee is itself already a Lender; (B) the proposed assignee is an Affiliate of any of the Lenders or an Approved Fund; or (C) an Event of Default has occurred and is continuing; and”
10. For the purposes of Section 10(b)(vi) of this Schedule A, the processing and recordation fee referred to therein shall be \$3,000.

11. For the purposes of Sections 11(a) and 11(b) of this Schedule A, the specified Province shall be the Province of Ontario.
12. Capitalized words, terms or phrases used in this Schedule A and not defined in this Schedule A shall have the meaning given to such words, terms or phrases in Section 1.01 of this Agreement (or if not defined therein, as defined elsewhere in this Agreement) to the extent therein defined. If not defined in this Schedule or in Section 1.01 or elsewhere in this Agreement, the relevant capitalized words, terms or phrases shall be given a usual and reasonable interpretation according to Canadian banking practice.<sup>1</sup>
13. If there is any inconsistency or conflict between the terms of this Schedule A and the terms of the main body of this Agreement, the terms of the main body of this Agreement shall prevail.

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<sup>1</sup> Note that phrases such as "Letter of Credit" are neither defined in this Schedule A, nor otherwise in this Agreement. The defined terms have been retained so as to result in minimal interference with the LSTA Model Credit Agreement Provisions, and on the understanding that the failure to include relevant definitions in this Agreement (solely for reasons of brevity) does not affect the interpretation of this Agreement, including this Schedule A.

## MODEL CREDIT AGREEMENT PROVISIONS

### 1. Definitions

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” means the credit agreement of which these Provisions form part.

“Applicable Law” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

“Applicable Percentage” means with respect to any Lender, the percentage of the total Commitments represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be the percentage of the total outstanding Loans and participations in respect of Letters of Credit represented by such Lender’s outstanding Loans and participations in respect of Letters of Credit.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Applicable Law, (b) any change in any Applicable Law or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any Applicable Law by any Governmental Authority.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have corresponding meanings.

“Default” means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

“Eligible Assignee” means any Person (other than a natural person, any Obligor or any Affiliate of an Obligor), in respect of which any consent that is required by Section 10(b) has been obtained.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of an Obligor

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hereunder, (a) taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes or any similar tax imposed by any jurisdiction in which the Lender is located and (c) in the case of a Foreign Lender (other than (i) an assignee pursuant to a request by the Borrower under Section 3.3(b), (ii) an assignee pursuant to an Assignment and Assumption made when an Event of Default has occurred and is continuing or (iii) any other assignee to the extent that the Borrower has expressly agreed that any withholding tax shall be an Indemnified Tax), any withholding tax that (A) is not imposed or assessed in respect of a Loan that was made on the premise that an exemption from such withholding tax would be available where the exemption is subsequently determined, or alleged by a taxing authority, not to be available and (B) is required by Applicable Law to be withheld or paid in respect of any amount payable hereunder or under any Loan Document to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.2(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from an Obligor with respect to such withholding tax pursuant to Section 3.2(a). For greater certainty, for purposes of item (c) above, a withholding tax includes any Tax that a Foreign Lender is required to pay pursuant to Part XIII of the Income Tax Act (Canada) or any successor provision thereto.<sup>1</sup>

"Foreign Lender" means any Lender that is not organized under the laws of the jurisdiction in which the Borrower is resident for tax purposes and that is not otherwise considered or deemed in respect of any amount payable to it hereunder or under any Loan Document to be resident for income tax or withholding tax purposes in the jurisdiction in which the Borrower is resident for tax purposes by application of the laws of that jurisdiction. For purposes of this definition Canada and each Province and Territory thereof shall be deemed to constitute a single jurisdiction and the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Governmental Authority" means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Issuing Bank" means the Person named elsewhere in this Agreement<sup>2</sup> as the issuer of Letters of Credit on the basis that it is "fronting" for other Lenders and not on the basis that it is the attorney of other Lenders to sign Letters of Credit on their behalf, or any successor issuer of Letters of Credit. For greater certainty, where the context requires, references to "Lenders" in these Provisions include the Issuing Bank.

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<sup>1</sup> Please note that this definition of "Excluded Taxes" will result in Foreign Lenders not being grossed up for withholding taxes that exist at the time of execution and delivery of the Credit Agreement, except in the circumstances specified. Accepted.

<sup>2</sup> Ensure that the Credit Agreement identifies the Issuing Bank or indicates that there is none. In this case, the Credit Agreement indicates that there is none.



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"Loan" means any extension of credit by a Lender under this Agreement, including by way of bankers' acceptance or LIBO Rate Loan, except for any Letter of Credit or participation in a Letter of Credit.

"Obligors" means, collectively, the Borrower and each of the guarantors of the Borrower's obligations that are identified elsewhere in this Agreement.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Participant" has the meaning assigned to such term in Section 10(d).

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Provisions" means these model credit agreement provisions.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person's Affiliates.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

## 2. Terms Generally

(1) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein (including this Agreement) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) unless otherwise expressly stated, all references in these Provisions to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, these Provisions, but all such references elsewhere in this Agreement shall be construed to refer to this Agreement apart from these Provisions, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(2) If there is any conflict or inconsistency between these Provisions and the other terms of this Agreement, the other terms of this Agreement shall govern to the extent necessary to resolve the conflict or inconsistency.

## 3. Yield Protection

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### 3.1 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof, except for Indemnified Taxes or Other Taxes covered by Section 3.2 and the imposition, or any change in the rate, of any Excluded Tax payable by such Lender; or

(iii) impose on any Lender or any applicable interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or any other amount), then, upon request of such Lender and subject to the provisions of Section 3.6, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or the Letters of Credit issued or participated in by such Lender, to a level below that which such Lender or its holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of its holding company with respect to capital adequacy), then from time to time the Borrower will, subject to the provisions of Section 3.6, pay to such Lender such additional amount or amounts as will compensate such Lender or its holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, except that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

### 3.2 Taxes.

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(a) Payments Subject to Taxes. If any Obligor, the Administrative Agent, or any Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of an Obligor hereunder or under any other Loan Document, then (i) the sum payable shall be increased by that Obligor when payable as necessary and subject to the provisions of Section 3.6 so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Obligor shall make any such deductions required to be made by it under Applicable Law and (iii) the Obligor shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of paragraph (a) above, the Borrower shall, subject to the provisions of Section 3.6, timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Indemnification by the Borrower. The Borrower shall, subject to the provisions of Section 3.6, indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by an Obligor to a Governmental Authority, the Obligor shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, at the request of the Borrower, deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, (a) any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to withholding or information reporting requirements, and (b) any Lender that ceases to be, or to be deemed to be, resident in Canada for purposes of Part XIII of the Income Tax Act (Canada) or any successor provision thereto shall within five days thereof notify the Borrower and the Administrative Agent in writing.

(f) Treatment of Certain Refunds and Tax Reductions. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which an Obligor has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Excluded Taxes otherwise payable by it, it shall pay to the Borrower or Obligor, as applicable, an amount equal to such refund or reduction (but only to the extent of indemnity

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payments made, or additional amounts paid, by the Borrower or Obligor under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower or Obligor as applicable, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower or Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

### 3.3 Mitigation Obligations: Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.1, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.1 or 3.2, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders.<sup>3</sup> If any Lender requests compensation under Section 3.1, if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.2, if any Lender's obligations are suspended pursuant to Section 3.4 or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon 10 days' notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(i) the Borrower pays the Administrative Agent the assignment fee specified in Section 10(b)(vi);

(ii) the assigning Lender receives payment of an amount equal to the outstanding principal of its Loans and participations in disbursements under Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any breakage costs and amounts required to be paid under this Agreement as a result of prepayment to a Lender) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.1 or payments required to be made pursuant to Section 3.2, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with Applicable Law.

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<sup>3</sup> Please note that the Breakfunding section in the Credit Agreement should expressly include any amounts payable as a result of an assignment required by this Section. As Loans are restricted to Prime Rate Loans, this issue does not arise.

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A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### 3.4 Illegality.

If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Loan (or to maintain its obligation to make any Loan), or to participate in, issue or maintain any Letter of Credit (or to maintain its obligation to participate in or to issue any Letter of Credit), or to determine or charge interest rates based upon any particular rate, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender with respect to the activity that is unlawful shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent) and subject to the provisions of Section 3.6, prepay or, if conversion would avoid the activity that is unlawful, convert any Loans, or take any necessary steps with respect to any Letter of Credit in order to avoid the activity that is unlawful. Upon any such prepayment or conversion, the Borrower shall, subject to the provisions of Section 3.6, also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

#### 3.5 Inability to Determine Rates Etc.

If the Required Lenders determine that for any reason a market for bankers' acceptances does not exist at any time or the Lenders cannot for other reasons, after reasonable efforts, readily sell bankers' acceptances or perform their other obligations under this Agreement with respect to bankers' acceptances, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the Borrower's right to request the acceptance of bankers' acceptances shall be and remain suspended until the Required Lenders determine and the Agent notifies the Borrower and each Lender that the condition causing such determination no longer exists. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or that the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing, conversion or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a borrowing of Base Rate Loans in the amount specified therein.

#### 3.6 Overriding Payment Qualification.

Without limiting the generality of Section 5.01 of this Agreement, the Borrower shall not be required to make any payment under Section 3.1 to 3.5 or under Section 9 except out of and from Proceeds for Distribution as and when such Proceeds for Distribution become available for distribution by the Borrower to the Lenders in the UC Receivership Proceedings.

#### 4. Right of Setoff.

If an Event of Default has occurred and is continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other

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obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Obligor against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender has made any demand under this Agreement or any other Loan Document and although such obligations of the Obligor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each the Lenders and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff, consolidation of accounts and bankers' lien) that the Lenders or their respective Affiliates may have. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such setoff and application, but the failure to give such notice shall not affect the validity of such setoff and application. If any Affiliate of a Lender exercises any rights under this Section 4, it shall share the benefit received in accordance with Section 5 as if the benefit had been received by the Lender of which it is an Affiliate.

5. Sharing of Payments by Lenders.

If any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains any payment or other reduction that might result in such Lender receiving payment or other reduction of a proportion of the aggregate amount of its Loans and accrued interest thereon or other obligations hereunder greater than its *pro rata* share thereof as provided herein, then the Lender receiving such payment or other reduction shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders rateably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest,

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by any Obligor pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in disbursements under Letters of Credit to any assignee or participant, other than to any Obligor or any Affiliate of an Obligor (as to which the provisions of this Section shall apply); and

(iii) the provisions of this Section shall not be construed to apply to (w) any payment made while no Event of Default has occurred and is continuing in respect of obligations of the Borrower to such Lender that do not arise under or in connection with the Loan Documents, (x) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Loan Documents, (y) any reduction arising from an amount owing to an Obligor upon the termination of derivatives entered into between the Obligor and such Lender<sup>4</sup>, or (z) any payment to which such Lender is entitled as a result of any form of credit protection obtained by such Lender.

The Obligors consent to the foregoing and agree, to the extent they may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may

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<sup>4</sup> Those preparing Credit Agreements should consider whether this exclusion of proceeds of derivatives is appropriate in the particular circumstances of the Credit Agreement. It may be appropriate to provide for sharing of, for example, any net amount available after the termination of all derivatives entered into between the Obligors and a Lender and the setoff of resulting amounts owing by the Obligors and to the Obligors if there is more than one such derivative. This issue is not relevant here where there is no hedging.

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exercise against each Obligor rights of setoff and counterclaim and similar rights of Lenders with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

6. Administrative Agent's Clawback

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any advance of funds that such Lender will not make available to the Administrative Agent such Lender's share of such advance, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with the provisions of this Agreement concerning funding by Lenders and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable advance available to the Administrative Agent, then the applicable Lender shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such advance. If the Lender does not do so forthwith, the Borrower shall pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon at the interest rate applicable to the advance in question. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that has failed to make such payment to the Administrative Agent.

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of any Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute the amount due to the Lenders. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at a rate determined by the Administrative Agent in accordance with prevailing banking industry practice on interbank compensation.

7. Agency.

7.1 Appointment and Authority. Each of the Lenders and the Issuing Bank hereby irrevocably appoints the Person identified elsewhere in this Agreement as the Administrative Agent<sup>5</sup> to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Bank, and no Obligor shall have rights as a third party beneficiary of any of such provisions.

7.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the

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<sup>5</sup> Ensure that the Credit Agreement identifies the Administrative Agent for the purpose of this reference. The Credit Agreement does so.

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Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent and without any duty to account to the Lenders.

### 7.3 Exculpatory Provisions.

(1) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents.<sup>6</sup> Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), but the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the person serving as the Administrative Agent or any of its Affiliates in any capacity.

(2) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as is necessary, or as the Administrative Agent believes in good faith is necessary, under the provisions of the Loan Documents) or (ii) in the absence of its own gross negligence or wilful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing the Default is given to the Administrative Agent by the Borrower or a Lender.

(3) Except as otherwise expressly specified in this Agreement, the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

7.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for

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<sup>6</sup> It is anticipated that the Credit Agreement will require the Borrower to be responsible for compliance with all requirements to maintain perfection of security. This will not be the case in this transaction as the security will take the form of a court-ordered charge.



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relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

7.5 Indemnification of Administrative Agent. Each Lender agrees to indemnify the Administrative Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Administrative Agent's gross negligence or wilful misconduct.

7.6 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent from among the Lenders (including the Person serving as Administrative Agent) and their respective Affiliates. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Administrative Agent shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

7.7 Replacement of Administrative Agent.

(1) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Bank and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto, Ontario or Montréal, Québec, or an Affiliate of any such Lender with an office in Toronto or Montréal. The Administrative Agent may also be removed at any time by the Required Lenders upon 30 days' notice to the Administrative Agent and the Borrower as long as the Required Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such 30 days, which shall be a Lender having a Commitment to a revolving credit if one or more is established in this Agreement and having an office in Toronto or Montréal, or an Affiliate of any such Lender with an office in Toronto or Montréal.

(2) If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications specified in Section 7.7(1), provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly,

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until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in the preceding paragraph.

(3) Upon a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Administrative Agent, and the former Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in the preceding paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the termination of the service of the former Administrative Agent, the provisions of this Section 7 and of Section 9 shall continue in effect for the benefit of such former Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Administrative Agent was acting as Administrative Agent.

7.8 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

7.9 Collective Action of the Lenders. Each of the Lenders hereby acknowledges that to the extent permitted by Applicable Law, any collateral security and the remedies provided under the Loan Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder and under any collateral security are to be exercised not severally, but by the Administrative Agent upon the decision of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Accordingly, notwithstanding any of the provisions contained herein or in any collateral security, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Administrative Agent with the prior written agreement of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Administrative Agent to the extent requested by the Administrative Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Administrative Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Administrative Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

7.10 No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or holders of similar titles, if any, specified in this Agreement shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

## 8. Notices: Effectiveness; Electronic Communication

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier

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service, mailed by certified or registered mail or sent by telecopier to the addresses or telecopier numbers specified elsewhere in this Agreement<sup>7</sup> or, if to a Lender, to it at its address or telecopier number specified in the Register or, if to an Obligor other than the Borrower, in care of the Borrower.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given on a business day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located, shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent,<sup>8</sup> provided that the foregoing shall not apply to notices to any Lender of Loans to be made or Letters of Credit to be issued if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address. Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

#### 9. Expenses; Indemnity: Damage Waiver<sup>9</sup>

(a) Costs and Expenses. The Borrower shall, subject to the provisions of Section 3.6, pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable out-of-pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Bank, including the reasonable fees, charges and disbursements of counsel, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters

<sup>7</sup> Ensure that the Credit Agreement contains the contact information referred to. Confirmed.

<sup>8</sup> Administrative Agents may wish to prescribe procedures for electronic communications and to disseminate those procedures to Lenders. Not required in this instance.

<sup>9</sup> A reference to this Section should be included in the Survival Section, if any, of the Credit Agreement. Confirmed.

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of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall, subject to the provisions of Section 3.6, indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnatee**") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by any Indemnatee or asserted against any Indemnatee by any third party or by any Obligor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by any Obligor, or any Environmental Liability related in any way to any Obligor, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by an Obligor and regardless of whether any Indemnatee is a party thereto, provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnatee or (y) result from a claim brought by the Borrower or any other Obligor against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, if the Obligor has obtained a final and nonappealable judgment in its favour on such claim as determined by a court of competent jurisdiction, nor shall it be available in respect of matters specifically addressed in Sections 3.1, 3.2 and 9(a).

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Bank or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Issuing Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Issuing Bank in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the other provisions of this Agreement concerning several liability of the Lenders.

(d) Waiver of Consequential Damages. Etc. To the fullest extent permitted by Applicable Law, the Obligors shall not assert, and hereby waive, any claim against any Indemnatee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnatee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

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(e) Payments. All amounts due under this Section shall, subject to the provisions of Section 3.6, be payable promptly after demand therefor. A certificate of the Administrative Agent or a Lender setting forth the amount or amounts owing to the Administrative Agent, Lender or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

10 Successors and Assigns

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Obligor may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that:

(i) except if an Event of Default has occurred and is continuing or in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment being assigned (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of a revolving facility, or \$1,000,000, in the case of any assignment in respect of a term facility, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, the Borrower otherwise consent to a lower amount (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate credits on a non-*pro rata* basis;

(iii) any assignment of a Commitment relating to a credit under which Letters of Credit may be issued must be approved by any Issuing Bank (such approval not to be unreasonably withheld or delayed) unless the Person that is the proposed assignee is itself already a Lender with a Commitment under that credit;

(iv) any assignment must be approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) unless:

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(x) in the case of an assignment of a Commitment relating to a revolving credit, the proposed assignee is itself already a Lender with the same type of Commitment,

(y) no Event of Default has occurred and is continuing, and the assignment is of a Commitment relating to a non-revolving credit that is fully advanced, or

(z) the proposed assignee is a bank whose senior, unsecured, non-credit enhanced, long term debt is rated at least A3, A- or A low by at least two of Moody's Investor Services Inc., Standard & Poor's, a division of The McGraw-Hill Companies, Inc. and Dominion Bond Rating Service Limited, respectively;

(v) any assignment must be approved by the Borrower (such approval not to be unreasonably withheld or delayed) unless the proposed assignee is itself already a Lender with the same type of Commitment or a Default has occurred and is continuing; and

(vi) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in an amount specified elsewhere in this Agreement<sup>10</sup> and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Loan Documents, including any collateral security, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3 and 9, and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

(c) Register. The Administrative Agent shall maintain at one of its offices in Toronto, Ontario or Montréal, Québec a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, an

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<sup>10</sup> Ensure that the Credit Agreement specifies the amount of this fee.

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Obligor or any Affiliate of an Obligor<sup>11</sup>) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Loan to the Borrower.

Subject to paragraph (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 3 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4 as though it were a Lender, provided such Participant agrees to be subject to Section 5 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.1 and 3.2 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.2 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.2(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, but no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11. Governing Law: Jurisdiction: Etc.

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Province specified elsewhere in this Agreement<sup>12</sup> and the laws of Canada applicable in that Province.

(b) Submission to Jurisdiction. Each Obligor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the Province specified elsewhere in this Agreement, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Obligor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Obligor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in

<sup>11</sup> Consideration should be given to the percentage of Lenders required to permit the sale of a participation to an Obligor or any Affiliate or Subsidiary of an Obligor. Not required in this instance.

<sup>12</sup> Ensure that the Credit Agreement identifies the Province referred to here and in paragraph (b) immediately below. Confirmed.

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any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

12. WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. Counterparts: Integration: Effectiveness: Electronic Execution

(a) Counterparts: Integration: Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in the conditions precedent Section(s) of this Agreement, this Agreement shall become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the Personal Information Protection and Electronic Documents Act (Canada), the Electronic Commerce Act, 2000 (Ontario) and other similar federal or provincial laws based on the Uniform Electronic Commerce Act of the Uniform Law Conference of Canada or its Uniform Electronic Evidence Act, as the case may be.

14. Treatment of Certain Information: Confidentiality

(1) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing



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provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap, derivative, credit-linked note or similar transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent or any Lender on a non-confidential basis from a source other than an Obligor.

(2) For purposes of this Section, "**Information**" means all information received in connection with this Agreement from any Obligor relating to any Obligor or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers

(3) In addition, and notwithstanding anything herein to the contrary, the Administrative Agent may provide the information described on Exhibit B concerning the Borrower and the credit facilities established herein to Loan Pricing Corporation and/or other recognized trade publishers of information for general circulation in the loan market.

### ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "**Assignor**") and [*Insert name of Assignee*] (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan-transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "**Assigned Interest**"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_
2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of [*identify Lender*]<sup>1</sup>]
3. Borrower(s): \_\_\_\_\_
4. Administrative Agent: \_\_\_\_\_, as the administrative agent under the Credit Agreement
5. Credit Agreement: [The [*amount*] Credit Agreement dated as of \_\_\_\_\_ among [*name of Borrower(s)*], the Lenders parties thereto, [*name of Administrative Agent*], as Administrative Agent, and the other agents parties thereto]

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<sup>1</sup> Select as applicable.

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## Assigned Interest:

Facility Assigned <sup>2</sup>	Aggregate Amount of Commitment/Loans for all Lenders <sup>3</sup>	Amount of Commitment/Loans Assigned <sup>3</sup>	Percentage Assigned of Commitment/Loans <sup>4</sup>	CUSIP Number
	\$	\$	%	
	\$	\$	%	
	\$	\$	%	

[ Trade Date: \_\_\_\_\_ ]<sup>5</sup>

<sup>2</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment," "Term Loan Commitment," etc.)

<sup>3</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>4</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>5</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

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Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

[Consented to and]<sup>6</sup> Accepted:

[NAME OF ADMINISTRATIVE AGENT], as  
Administrative Agent

By \_\_\_\_\_  
Title:

[Consented to:]<sup>7</sup>

[NAME OF RELEVANT PARTY]

By \_\_\_\_\_  
Title:

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<sup>6</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

<sup>7</sup> To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, L/C Issuer) is required by the terms of the Credit Agreement.

## ANNEX 1 to Assignment and Assumption

[ ]<sup>1</sup>STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document<sup>2</sup>, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section \_\_\_ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender<sup>3</sup>, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and

<sup>1</sup> Describe Credit Agreement at option of Administrative Agent.

<sup>2</sup> The term "Loan Document" should be conformed to the term used in the Credit Agreement. Conformed.

<sup>3</sup> The concept of "Foreign Lender" should be conformed to the section in the Credit Agreement governing withholding taxes and gross-up.

Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Credit Agreement.

**LOAN MARKET DATA TEMPLATE****Recommended Data Fields – At Close**

The items highlighted in bold are those that Loan Pricing Corporation (LPC) deem essential. The remaining items are those that LPC has seen become more prominent over time as transparency has increased in the U.S. Loan Market.

<u><b>Company Level</b></u>	<u><b>Deal Specific</b></u>	<u><b>Facility Specific</b></u>
<b>Issuer Name</b>	<b>Currency/Amount</b>	<b>Currency/Amount</b>
<b>Location</b>	<b>Date</b>	<b>Type</b>
<b>SIC (Cdn)</b>	<b>Purpose</b>	<b>Purpose</b>
Identification Number(s)	<b>Sponsor</b>	<b>Tenor</b>
<b>Revenue</b>	<b>Financial Covenants</b>	Term Out Option
	Target Company	<b>Expiration Date</b>
<b>*Measurement of Risk</b>	<b>Assignment Language</b>	<b>Facility Signing Date</b>
<b>S&amp;P Sr. Debt</b>	Law Firms	<b>Pricing</b>
<b>S&amp;P Issuer</b>	MAC Clause	<b>Base Rate(s)/Spread(s)/BA/LIBOR</b>
<b>Moody's Sr. Debt</b>	Springing lien	<b>Initial Pricing Level</b>
<b>Moody's Issuer</b>	Cash Dominion	<b>Pricing Grid (tied to, levels)</b>
<b>Fitch Sr. Debt</b>	Mandatory Prepays	<b>Grid Effective Date</b>
<b>Fitch Issuer</b>	Restrict'd Payments (Neg Covs)	<b>Fees</b>
S&P Implied	Other Restrictions	<b>Participation Fee (tiered also)</b>
(internal assessment)		<b>Commitment Fee</b>
<b>DBRS</b>		<b>Annual Fee</b>
Other Ratings		<b>Utilization Fee</b>
<b>*Industry Classification</b>		<b>LC Fee(s)</b>
Moody's Industry		<b>BA Fee</b>
S&P Industry		Prepayment Fee
Parent		Other Fees to Market
Financial Ratios		Security
		<b>Secured/Unsecured</b>
		Collateral and Seniority of Claim
		Collateral Value
		<b>Guarantors</b>
		<b>Lenders Names/Titles</b>
		<b>Lender Commitment (\$)</b>
		Committed/Uncommitted
		Distribution method
		<b>Amortization Schedule</b>
		Borrowing Base/Advance Rates
		New Money Amount
		<b>Country of Syndication</b>
		Facility Rating (Loss given default)
		<b>S&amp;P Bank Loan</b>
		<b>Moody's Bank Loan</b>
		<b>Fitch Bank Loan</b>
		<b>DBRS</b>
		<b>Other Ratings</b>

**SCHEDULE B  
LENDERS AND COMMITMENTS**

Lender and Lending Office	FP Tranche (To be completed once Total Commitment is allocated)	Development Tranche (To be completed once Total Commitment is allocated)	ITC Tranche	Total Commitment
<b>Canadian Imperial Bank of Commerce</b> 25 King Street West Commerce Court North – 16th Floor Toronto, Ontario M5L 1A2  Attention: Paul Montgomery and Mauricio Echeverri Facsimile No.: (416) 214-8749 Email: paul.montgomery@cibc.com mauricio.echeverri@cibc.com	Cdn. \$● (50%)	Cdn. \$● (50%)	Cdn. \$0.00 (50%)	Cdn. \$2,250,000 (50%)
<b>Canadian Western Bank</b> 3000, 10303 Jasper Avenue Edmonton AB T5J 3X6 Attention: Mykhaylo Hotsaliuk Facsimile: 780-421-0379	Cdn. \$● (25%)	Cdn. \$● (25%)	Cdn. \$0.00 (25%)	Cdn. \$1,125,000 (25%)
<b>Laurentian Bank of Canada</b> 8500 Leslie Street Suite 100 Thornhill On. L3T 7M8 Attention: Jeff Weller Facsimile: (905) 886-5851	Cdn. \$● (25%)	Cdn. \$● (25%)	Cdn. \$0.00 (25%)	Cdn. \$1,125,000 (25%)
<b>Total</b>	<b>Cdn. \$●</b>	<b>Cdn. \$●</b>	<b>Cdn. \$0.00</b>	<b>Cdn. \$4,500,000</b>



**SCHEDULE C  
LEGAL DESCRIPTION OF PROJECT LANDS**

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

**PIN 21051-0408 (LT)**

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

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

**SCHEDULE D  
LEGAL DESCRIPTION OF BEACH REMAINING LANDS**

**Beach Remaining Lands - 42 Edgewood Avenue, Toronto, Ontario**

**Formerly PIN 21024-0422 (LT)**

Lots 5, 6, 7, 8 and 9, Plan 504 (Midway); Lots 66, 67, 68 and 69, Plan 481E, designated as Parts 1 and 2, Plan 66R-25512; s/t an easement over Part Lot 69, Plan 481E, designated as Part 2, Plan 66R-25512 in favour of Part Lot 70, Plan 481E as in ET127629; t/w an easement over Part Lot 70, Plan 481E, designated as Parts 3, Plan 66R-25512 as in ET127629; City of Toronto

**Now**

**(1) PIN 21024-0455 (LT)**

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

PART OF LOT 66 & 67 PLAN 481E DESIGNATED AS PART 1 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(2) PIN 21024-0456 (LT)**

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

PART OF LOTS 8 & 9 PLAN 504 (MIDWAY) DESIGNATED AS PART 2 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(3) PIN 21024-0457 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PART OF LOTS 8 & 9 PLAN 504 (MIDWAY) DESIGNATED AS PART 3 PLAN 66R27603 TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO, DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(4) PIN 21024-0469 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PART OF LOT 66 PLAN 481E DESIGNATED AS PART 15 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO, DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

**(5) PIN 21024-0491 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PT LTS 5, 6 & 7 PLAN 504 BEING PT 36 PL 66R27603 AND PT LT 5 PLAN 504 BEING PT 1 PL 66R27625; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504 & PT LT 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 1 PL 66R27625 IN FAVOUR OF PT LT 4 PL 504 AS IN AT3690147; CITY OF TORONTO

**(6) PIN 21024-0492 (LT)**

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

PT LTS 5, 6 & 7 PLAN 504 BEING PT 35 PL 66R27603 AND PT LT 5 PL 504 BEING PT 2 PL 66R27625; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504 & PT LT 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 2 PL 66R27625 IN FAVOUR OF PT LT 4 PL 504 AS IN AT3690147; CITY OF TORONTO

**(7) PIN 21024-0493 (LT)**

**Owner: Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.**

PT LTS 68 & 69 PL 481E BEING PT 17 PL 66R27603; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504, PT LTS 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; CITY OF TORONTO

**(8) PIN 21024-0494 (LT)**

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

PT LT 69 PL 481E BEING PTS 16 & 18 PL 66R27603; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504, PT LTS 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 18 PL 66R27603 IN FAVOUR OF PT LT 70 PL 481E AS IN ET127629; CITY OF TORONTO

**SCHEDULE 1.01(A)  
DRAWDOWN NOTICE**

TO: CANADIAN IMPERIAL BANK OF COMMERCE, as Administrative Agent

FROM: ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC., as Construction Receiver (the "**Construction Receiver**") and not in its personal or corporate capacity

DATE: ●, 201●

1. This Drawdown Notice is delivered to you, as Administrative Agent, pursuant to Section 2.03 of the Credit Agreement made as of April 18, 2017 between, inter alia, the Construction Receiver, as Construction Receiver, you, as Administrative Agent, and the financial institutions from time to time parties thereto as lenders, as amended to the date hereof (the "**Credit Agreement**"). All terms used in this Drawdown Notice that are defined in the Credit Agreement have the same meanings herein.

2. The Construction Receiver hereby requests the following Loan(s):

(a) Drawdown Date:

\_\_\_\_\_

(b) Type(s) of Tranche requested under the Credit Facility (If draws are being made under more than one Tranche, check multiple boxes below, as applicable):

FP Tranche

or

Development Tranche

or

ITC Tranche

(c) Amount of Loan requested (If draws are being made under more than one Tranche, complete both lines):

Tranche			<u>Amount</u>
_____	Prime Rate Loan:	Cdn. \$	_____
_____	Prime Rate Loan:	Cdn. \$	_____

3. All of the conditions precedent to the Loan(s) requested hereby that have not been properly waived in writing by or on behalf of the Lenders have, to the best of the knowledge of the Construction Receiver (without any independent investigation), been satisfied.

4. To the best of the knowledge of the Construction Receiver (based solely on information obtained from the Independent Cost Consultant, Consultants and Craft and without any independent investigation), no Default or Event of Default has occurred and is continuing or will have occurred and be continuing on the Drawdown Date, or will result from the Loan(s) requested hereby.

5. Accompanying this Drawdown Notice are the following documents:

- Copy of completed Application for Payment (or Application for Final Payment as applicable) signed by Craft under the Construction Contract and relating to the Craft payment to be funded by the requested Drawdown, together with copies of all related statutory declarations and certificates provided by Craft to the Independent Cost Consultant in connection with such Application.
- Copy of completed Consultant's Payment Certificate (or Consultant's Final Payment Certificate as applicable) issued under the Construction Contract and relating to the Craft payment to be made, signed by Kasian Architecture Ontario Inc.
- Copy of completed application for payment of Development Costs under the Craft Development Contract.
- Copy of the Project Monitor's Payment Verification (or Project Monitor's Final Payment Verification as applicable) signed by the Independent Cost Consultant under the Construction Contract which includes the Independent Cost Consultant's recommendation for payment of the Development Costs requested.
- Completed Project Status Certificate signed by the Construction Receiver.
- Completed Independent Cost Consultant's Certificate signed by the Independent Cost Consultant.

ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC., as Construction Receiver and not in its personal or corporate capacity

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE 1.01(B)  
INITIAL DEVELOPMENT BUDGET**

**[SEE ATTACHED]**

### Initial Development Budget

Initial Development Budget per Development Agreement	Amount
Craft Management Fee - 25% of \$1.5 million	375,000
Consultant and Architect fees (see note 1 below)	330,500
Potential marketing costs for non-Opt-ins	200,000
Legal/Closing/Financing costs to Settlement	40,000
<b>Total</b>	<b>945,500</b>

#### Note 1.

Summary of Consultant and Architect Fees			
Type	Supplier	Estimate	Basis
Engineering Service re: Geothermal	R. Mancini	80,000	Supplier Quote
Architectural	Kasian Architecture	68,300	Supplier Quote
Surveyor	R. Avis Surveying	34,500	Supplier Quote
Technical Audit	To be determined	30,000	Craft Projection
Bulletin 19 & Code Consultant	To be determined	20,000	Craft Projection
Mechanical/Electrical	United Engineering	18,500	Supplier Quote
Environmental (Park if required)	EXP Services	15,000	Craft Projection
Water Testing	To be determined	7,500	Supplier Projection
Civil Engineering	GHD	6,200	Supplier Quote
Structural	Leonard Kalishenko	5,600	Supplier Quote
Landscaping Consulting	Terraplan Landscape	5,200	Supplier Quote
Fire Safety Report	To be determined	5,000	Craft Projection
Environmental	EXP Services	4,750	Supplier Quote
Arborist	To be determined	2,500	Craft Projection
Contingency		27,450	
<b>Sub-total</b>		<b>330,500</b>	

**SCHEDULE 1.01(1)(C)  
PROJECT STATUS CERTIFICATE**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent (the “ <b>Administrative Agent</b> ”)	CONSTRUCTION RECEIVER: ALVAREZ & MARSAL CANADA INC., in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC., as Construction Receiver (the “ <b>Construction Receiver</b> ”)
ADVANCE: Relating to Drawdown Notice dated _____, 201__	PROJECT: Leslieville Project (the “ <b>Project</b> ”)
CERTIFICATE DATE: [Date]	CONSTRUCTION CONTRACT: Dated April 18, 2017 between the Construction Receiver and C.R.A.F.T. Development Corporation (“ <b>Craft</b> ”)

I, \_\_\_\_\_, the \_\_\_\_\_ (insert title) of the Construction Receiver, hereby certify for and on behalf of the Construction Receiver and not in my personal capacity and without personal liability, that as of \_\_\_\_\_ (insert date):

1. I am familiar with and have examined the provisions of the Credit Agreement dated as of April 18, 2017, between, inter alia, the Construction Receiver, the Administrative Agent and the lenders named therein (the “**Credit Agreement**”) and have made reasonable investigations of the books and records of the Construction Receiver in respect of the Project and inquiries of other officers and senior personnel of the Construction Receiver and with the Independent Cost Consultant, except as where stated herein. Terms defined in the Credit Agreement have the same meanings when used in this certificate.
2. I confirm that the Construction Receiver has complied with all holdback requirements under the *Construction Lien Act* (Ontario) (the “Act”) applicable in respect of the Project, except for any holdback requirements in connection with payments to Consultants.
3. I confirm that any and all funds heretofore received by the Construction Receiver from the Lenders as advances under the Credit Agreement have been paid to Craft pursuant to and in accordance with the payment terms of the Craft Construction Contract or the Craft Development Contract.
4. I confirm that the Construction Receiver has not received written notice of any lien or other claim of lien in respect of the Project.
5. Based solely on the information provided to me by the Independent Cost Consultant and without any independent investigation, I confirm that no part of the requested advance is being requested in order to pay for Cost Overruns and that all Cost Overruns incurred in connection



with the Leslieville Project prior to the date hereof have been fully pre-funded by Terra Firma and/or Craft in accordance with the TF Cost Overrun Guarantee and that no Cost Overruns are currently unfunded except for the following "Dispute Work" (as defined in the TF Cost Overrun Guarantee) which is being paid by Craft as required under the applicable Craft C&D Contract:  
 \_\_\_\_\_ (Add schedule as necessary).

6. Based solely on the information provided to me by the Independent Cost Consultant and without any independent investigation, I am not aware of any Minor Construction Breaches, Minor Development Breaches or Major Events of Default (each as defined in the Craft Construction Contract) under either of the Craft C&D Contracts, except for:  
 \_\_\_\_\_ (Add schedule as necessary).

7. All of the statements contained in this certificate are, to the best of my knowledge (after due inquiry as noted above including with the Independent Cost Consultant) and belief as of the date hereof, true, complete and accurate in all material respects.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1.01(1)(D)  
INDEPENDENT COST CONSULTANT'S CERTIFICATE**

TO: Canadian Imperial Bank of Commerce, as Administrative Agent (the " <b>Administrative Agent</b> ")	CONSTRUCTION RECEIVER: ALVAREZ & MARSAL CANADA INC., solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of URBANCORP (LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE) DEVELOPMENTS INC. and URBANCORP (THE BEACH) DEVELOPMENTS INC. (the " <b>Construction Receiver</b> ")
ADVANCE: Relating to Drawdown Notice dated _____, 201__	PROJECT: The Leslieville Project (" <b>Project</b> ")
CERTIFICATE DATE: [Date]	CONSTRUCTION CONTRACT: Dated April 18, 2017 between the Construction Receiver and C.R.A.F.T. Development Corporation (" <b>Craft</b> ")

Based on my/our professional experience and qualifications and after making such reasonable enquiries as I/we have deemed necessary in the circumstances, I/we hereby certify to the Administrative Agent as follows:

1. Unless otherwise defined herein, all initially capitalized terms have the meanings set forth in the Craft Development Contract (as defined in the below-mentioned Credit Agreement), as amended from time to time, and if not defined therein, then in the Credit Agreement dated as of April 18, 2017, between, inter alia, the Construction Receiver, the Administrative Agent and the lenders named therein, as amended from time to time (the "**Credit Agreement**").
2. I/we have periodically inspected construction since the commencement of construction and last inspected the Project on \_\_\_\_\_ (insert date) (the "**Inspection Date**").
3. All required permits, licenses and other authorizations have been obtained and are being maintained.
4. The Project has not been damaged by fire or other casualty.
5. Construction and development of the Project up to and including the Inspection Date has been performed in a good and workmanlike manner (subject to the qualification in Note 1).
6. Construction and development of the Project up to and including the Inspection Date has been performed substantially in accordance with (i) the plans and specifications, (ii) the Construction Schedule, (iii) all applicable building codes, municipal bylaws and regulations, (iv) all required permits, licenses and other authorizations, and (v) all applicable laws, rules and regulations including, without limitation, environmental laws (subject to the qualification in Note 1 below<sup>1</sup>).

7. The statutory declarations and/or other evidence provided by Craft and any and all relevant sub-contractors on the Project confirm that, as of the date hereof: (i) no claims for lien have been registered against the Project by Craft, the Builder or such sub-contractors, (ii) Craft, the Builder and each such sub-contractor is not aware of any grounds supporting any claim for lien against the Project, and (iii) Craft is not aware of any breach or non-compliance under the Construction Contract that would constitute a Construction Breach.
8. There is no "Dispute Work" (as defined under either of the Craft C&D Contracts) that has not been pre-funded by Craft or Terra Firma except for: \_\_\_\_\_ (Add schedule as necessary).
9. We are not aware of any Minor Construction Breaches, Minor Development Breaches or Major Events of Default (as each term is defined under either of the Craft C&D Contracts) except for: \_\_\_\_\_ (Add schedule as necessary).
10. In my/our opinion, as of the date hereof, the figures set forth below accurately reflect the Project costs or work completed on the Project and the costs of the remaining work required to complete the Project in accordance with the plans and specifications and the Construction Schedule. A report setting out in greater detail those elements comprising the figures set out below is attached hereto and forms part of this Certificate.
- (a) Project costs of work completed to date: \$ \_\_\_\_\_
- (b) Project costs of remaining work: \$ \_\_\_\_\_
- (c) Estimated total Project costs (a+b): \$ \_\_\_\_\_
- (d) Original estimate of total Project costs: \$ \_\_\_\_\_
- (e) Amount of additional costs, if any (c-d): \$ \_\_\_\_\_
11. I/we confirm that the Cost Overruns associated with the Project to date are as follows:
- (a) Total Cost Overruns to date: \$ \_\_\_\_\_
- (b) Cost Overruns not currently pre-funded by Craft or Terra Firma Capital Corporation: \$ \_\_\_\_\_

Details to any new Cost Overruns are set forth in greater detail in the accompanying report.

12. After giving effect to the requested advance, the Cost to Complete the Project (excluding Development Costs to be funded under the Development Tranche) does not exceed (a) the undrawn Credit Facility Commitment allocated to the FP Tranche, (b) the funding previously received and then currently held by the Construction Receiver for Cost Overruns under the Craft Construction Contract provided by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee; and (c) if the Geo-thermal System Costs

are being funded through a Craft Loan, the amount of Craft Loans received and then currently held by the Construction Receiver to fund Geo-thermal System Costs.

13. In the case of a Drawdown under the Development Tranche, the Costs of Craft to be paid with the proceeds of such Drawdown are within the current Development Budget.
14. After giving effect to the requested Drawdown, the remaining Budgeted Development Costs do not exceed (a) the undrawn Credit Facility Commitment allocated to the Development Tranche and (b) the funding previously received and then currently held by the Construction Receiver for Cost Overruns under the Craft Development Contract provided by Terra Firma, Craft or the Lenders under the TF Cost Overrun Guarantee.
15. I/we confirm, in respect of any Application for Payment (or Application for Final Payment as applicable) under the Construction Contract pending as of the date hereof, that the requisite holdback amounts for the payments thereunder and consistent with that portion of the Project Costs for which payment is being sought, are properly shown in such Application, i.e., as deductions from the net payment to be made thereunder.
16. In my/our opinion, as of the date hereof, Substantial Performance of the Work is projected to occur on or before:

the original Scheduled Substantial Performance Date set forth in the Construction Contract, namely ●, 201●, and in any event, by no later than the Outside Date, namely **[June 15, 2018]**.

or

\_\_\_\_\_, 201●.

Reasons for delay, if applicable, are outlined in the attached schedule.

This certificate is given in connection with the abovementioned Advance to be made to the Construction Receiver under the Credit Agreement, and you may rely upon it in making such advance.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ALTUS GROUP LIMITED**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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<sup>i</sup> Note 1: It should be noted that cost consultants are not qualified to confirm that construction work has been completed in accordance with plans and specifications. In this regard, we will forward certificates provided by the design consultants as available to confirm that the Project is being constructed in accordance with the approved plans and specifications, and the provincial building code. The experience, expressed herein with the respect to environmental issues, is limited to the anticipated impact on budget and schedule based on the experts reports provided.

## **APPENDIX ‘H’**

**EXECUTION VERSION****COST OVERRUN FUNDING AND PERFORMANCE AGREEMENT**

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

**BETWEEN:**

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

**(“Construction Receiver”)**

and

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

**(“Guarantor”)**

and

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

**(“Administrative Agent”)**

and

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

**(“Craft”)**

**WHEREAS:**

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

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

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

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

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions from Craft Construction Contract**

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



## 1.2 Definitions

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

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

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

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

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

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

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

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

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

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

“**CO Work**” means:

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

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

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

“**Construction Dispute Work**” means:

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

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

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

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

“**Cost Overrun**” means:

(a) with respect to the Craft Construction Contract:

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

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

(b) with respect to the Craft Development Contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Development Dispute Services**” means:

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

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

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

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

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

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

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

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

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

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

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

“**Guaranteed Obligations**” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**UC Receivership Proceedings**” means the receivership proceedings commenced in the Ontario Superior Court of Justice [Commercial List] under Court File No. CV-16-11409-00CL pursuant to which Alvarez & Marsal Canada Inc. was appointed as receiver and manager and as construction lien trustee of all of the assets, undertakings, and property acquired for, or used in relation to the business of UC Leslieville, UC Riverdale and UC Beach.

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

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

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

### **1.3 Interpretation**

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

### **1.4 Survival**

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

## **2. COST OVERRUNS**

### **2.1 Change Orders and Construction Disputes**

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

### **2.2 Development Cost Overruns and Development Disputes**

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

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

### **2.3 Disputed Change Orders, Budget Increase Requests and Breaches**

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



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

- (ii) If the Guarantor has defaulted in providing any Dispute Funding as required under this Agreement and Craft has funded the cost of the applicable Dispute Work as required under the applicable Craft C&D Contract, then to the extent Craft was entitled to be paid the cost of the Dispute Work by the Owner pursuant to the terms of such Craft C&D Contract, the cost of such Dispute Work actually paid by Craft shall be, and be deemed to be, a funding by Craft of a Cost Overrun pursuant to Section 2.6(a) or 2.6(b), as the case may be, of this Agreement and, for certainty, Craft shall be entitled to receipt of the additional fees contemplated under Section 2.6(d).
- (iii) Nothing in this Agreement affects or derogates from Craft's obligations under each of the Craft C&D Contracts to pay the cost of all Dispute Work in the first instance.
- (d) Each of the parties hereto agree that it will not be entitled to bring any claim against the Project Monitor for any decision, recommendation, finding or determination of the Project Monitor in relation to (i) paragraph 2.2.12 of GC 2.2 – ROLE OF CONSULTANT, paragraph 6.2.2 or 6.2.8 of GC 6.2 – CHANGE ORDER, paragraph 6.4.3 of GC 6.4 – LATENT DEFECTS AND CONCEALED OR UNKNOWN CONDITIONS, or paragraph 7.1.6 of GC 7.1 – SUSPENSION AND TERMINATION BY OWNER of the Craft Construction Contract, or (ii) Section 4.2(d) or 7.1(e) of the Craft Development Contract.

## 2.4 Funding

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

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

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

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

## 2.5 Notice of Default by Guarantor

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

## 2.6 Craft Funding if Guarantor Defaults

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

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

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

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

## 2.7 Syndicate Funding if Guarantor Defaults and Craft does not Fund

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

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

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

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

## **2.8 Reservation of Rights**

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

## **2.9 Amendments to Section 2.7**

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

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

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

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

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

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

## 2.11 Consent and Approvals

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

## 3. GUARANTEE

### 3.1 Guarantee

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

### 3.2 General Provisions Relating to the Guarantee

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



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

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

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

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

## 4. REPRESENTATIONS AND WARRANTIES

### 4.1 Representations and Warranties

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

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

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

## **5. CONDITIONS PRECEDENT**

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

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

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

## 6. NOTICES

### 6.1 Notices to Parties

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

If to Guarantor:

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

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

If to the Construction Receiver:

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

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

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

and to

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

Attention: Zaspalis, Tony

Fax No: 416-847-5201  
E-mail: [tzaspalis@alvarezandmarsal.com](mailto:tzaspalis@alvarezandmarsal.com)

If to Craft:

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

Attention: Carmine Nigro  
Fax No.: 416-979-0593  
Email: [cnigro@craftgrp.com](mailto:cnigro@craftgrp.com)

and to

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

Attention: Robert Sabato  
Fax No.: 416-979-0593  
Email: [rsabato@craftgrp.com](mailto:rsabato@craftgrp.com)

If to the Administrative Agent:

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

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

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

With a copy to:

Attention: Mauricio Echeverri, Senior Account Manager, Special Loans  
E-mail: [mauricio.echeverri@cibc.com](mailto:mauricio.echeverri@cibc.com)

## 6.2 Change of Address

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

## 6.3 Deemed Receipt of Notices

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

## 6.4 Service on Parties to this Agreement

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



## **7. GENERAL**

### **7.1 Time of the Essence**

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

### **7.2 Limited Recourse against Construction Receiver**

All obligations of the Construction Receiver under or in connection with this Agreement are undertaken by Alvarez & Marsal Canada Inc. solely in its capacity as the Court Appointed Receiver and Manager and Construction Lien Trustee of UC Leslieville and, save and except in the case of gross negligence or wilful misconduct of the Construction Receiver, as determined by a Court of competent jurisdiction, Alvarez & Marsal Canada Inc., shall have no personal or corporate liability under this Agreement. The sole recourse of any of the other parties to this Agreement against the Construction Receiver in connection with such obligations shall be limited solely to a claim against the proceeds of the property and assets of UC Leslieville.

### **7.3 Amendments**

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

### **7.4 Waiver**

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

### **7.5 Entire Agreement**

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

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

## **7.6 Severability**

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

## **7.7 Enurement**

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

## **7.8 Governing Law and Jurisdiction**

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

## **7.9 Cumulative Remedies**

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

## **7.10 Further Assurance**

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

### **7.11 Costs**

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

### **7.12 Language of Agreement**

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

### **7.13 Counterparts**

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

### **7.14 Joint and Several**

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

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

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

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

Per:



Name: Douglas R. McIntosh

Title: President,

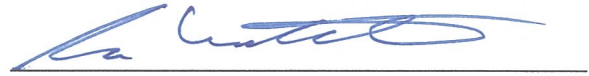
Alvarez & Marsal Canada Inc.

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**Confidential**

**TERRA FIRMA CAPITAL CORPORATION**

Per:




Name: Glenn Watchorn


Title: President and C.E.O.

I/We have authority to bind the corporation

S-3 of 4

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

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

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

I/We have authority to bind the corporation

---

Confidential

*Cost Overrun Funding and Performance Agreement*

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

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

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation

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**Confidential**

*Cost Overrun Funding and Performance Agreement*



**CANADIAN IMPERIAL BANK OF COMMERCE**  
Applicant

v. **URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.**

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD  
(Settlement Approval)  
Returnable May 2, 2017**

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff** - LSUC#: 27344V  
Tel: 416-863-2958  
Fax: 416-863-2653  
Email: pam.huff@blakes.com

**Kelly Peters** – LSUC#: 59914W  
Tel: 416-863-4271  
Fax: 416-863-2653  
Email: kelly.peters@blakes.com

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