

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

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

Respondents

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

**THIRD 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.**

May 23, 2017

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1.0 INTRODUCTION

1. On May 31, 2016, the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Appointment Order**”) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”, 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, 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. The Construction Receiver served its Second Report dated April 21, 2017 (the “**Second Report**”) in support of its motion returnable May 2, 2017, which sought approval of various court orders: the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Project Order, and the Receivership Administration Order. As part of the Receivership Administration Order, the Construction Receiver sought approval of the fees and disbursements of the Construction Receiver and its counsel Gowling WLG (Canada) LLP (“**Gowling**” or “**Construction Receiver’s Counsel**”), Blake, Cassels & Graydon LLP (“**Blakes**” or “**Independent Counsel**”) and Miller Thomson LLP (“**MT**” or “**Construction Receiver’s Real Estate Counsel**”) (the “**Fee Approval Motion**”).
3. Capitalized terms shall have the meanings ascribed to them in the Second Report unless otherwise defined herein.
4. On April 27, 2017, the Construction Receiver served its first supplementary report to the Second Report dated April 27, 2017 (the “**First Supplement**”) in support of its Fee Approval Motion. The Fee Approval Motion included the affidavits from each firm which attached detailed accounts (redacted for privileged and confidential information) (the “**Invoices**”) and provided summaries identifying the professionals who worked on the Receivership Proceedings (the “**Fee Affidavits**”).
5. Prior to the return date of the Fee Approval Motion, counsel to Terra Firma advised that Terra Firma would be objecting to the relief sought by the Construction Receiver (the “**Terra Firma Objection**”). No other parties have objected to the Fee Approval Motion.

6. On May 2, 2017, the Construction Receiver sought and obtained approval of the various agreements and arrangements that give effect to the proposed settlement (the “**Settlement**”) agreed to among 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 C.R.A.F.T. Development Corporation (“**Craft**”) as the contractor proposed by Terra Firma to complete construction of the Leslieville Project (collectively, the “**Settlement Parties**”).
7. The Court granted the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Project Order, and the Receivership Administration Order, with one exception. The Construction Receiver agreed to adjourn the Fee Approval Motion in accordance with an endorsement of Mr. Justice Newbould dated May 2, 2017 (the “**Fee Endorsement**”), a copy of which is attached hereto as **Appendix “A.”** The Fee Endorsement was granted on the consent of Terra Firma and was established to address the sole objections of Terra Firma and to provide a fair and reasonable process for the advancement of such objections and the opportunity of the professionals to respond.
8. As described in more detail in this third report of the Construction Receiver (the “**Third Report**”), Construction Receiver’s Independent Counsel has corresponded with counsel to Terra Firma in an attempt to obtain further particulars with respect to the Terra Firma Objection since the issuance of the Fee Endorsement. To date, counsel to Terra Firma has only provided a generalized objection to the Fee Approval Motion with no particulars. It has indicated that it objects only to the fees and disbursements of the Construction Receiver and its Independent Counsel.
9. The purpose of this Third Report is to provide this Court with an overview and analysis of the evidence previously filed by the Construction Receiver to assist in the assessment of the fees and disbursements of the Construction Receiver and its Independent Counsel.¹

1.1 CURRENCY

10. Unless otherwise noted, all currency references in this Third Report are to Canadian dollars.

2.0 DISPUTED FEES AND FEE APPROVAL PROCESS

11. 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

¹The analysis of the activities of the Construction Receiver and its Independent Counsel described in this Third Report are based on the detailed time entries in the Invoices of the Construction Receiver and Independent Counsel contained in the Fee Affidavits, the Second Report and the First Supplement previously filed with this Court.

Proceedings, as detailed in the Second Report, the First Supplement and in the Invoices 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 \$629,161.50², 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, 2017 to March 31, 2017
12. Pursuant to the Fee Endorsement, the following protocol was established to allow Terra Firma to advance the Terra Firma Objection:
- a. **By May 10, 2017:** counsel for Terra Firma was to provide a letter (the "**Objection Letter**") setting out the grounds and nature of each objection to the fees and disbursements, including particulars of any specific fee and/or disbursement amounts that were objected to and any additional evidence proposed to be filed;
 - b. **By May 15, 2017:** counsel for the professionals subject to the Terra Firma Objection would provide a response to each objection and particulars of any additional evidence proposed to be filed; and
 - c. **Week of May 15, 2017:** Terra Firma and the professionals subject to the objections would schedule a 9:30 appointment the week of May 15th to establish a timetable for the hearing of the Terra Firma Objection.
13. On May 10, 2017, counsel to Terra Firma delivered the Objection Letter to Independent Counsel. A copy of the Objection Letter is attached hereto as **Appendix "B"**.
14. In the Objection Letter, Terra Firma objects to the approval of the fees of the Construction Receiver as set out in the fee affidavit of Douglas McIntosh sworn April 27, 2017 (the "**McIntosh Affidavit**"), and the fees of the Construction Receiver's Independent Counsel as set out in the affidavit of Milly Chow sworn April 27, 2017 (the "**Chow Affidavit**") on three general grounds:

²Since the filing of the Second Report, the amount of Construction Receiver's Counsel fees were reduced by \$21,318 to \$629,161.50 as such amount was re-allocated to fees of the Administrative Agent as explained in the Wong Affidavit.

- a. The hourly rates charged are unreasonable in light of the nature of the work involved and the amounts in issue;
 - b. The time spent by multiple timekeepers is unreasonable and disproportionate; and
 - c. The Construction Receiver and Independent Counsel failed to minimize duplication or effect efficiencies.
15. In the Construction Receiver's view, the Objection Letter did not comply with the Fee Endorsement as it did not provide any particulars of the specific fees and/or disbursement amounts that were the subject of the Terra Firma Objection. Accordingly, on May 12, 2017, Independent Counsel responded to the Objection Letter. A copy of the letter from Independent Counsel to counsel to Terra Firma is attached hereto as **Appendix "C"** to this Report.
 16. On the same date, counsel to Terra Firma responded by e-mail to Independent Counsel. A copy of the email from counsel to Terra Firma is attached hereto as **Appendix "D"** to this Report.
 17. On May 15, 2017, Independent Counsel delivered a further letter responding to the general objections set out by Terra Firma in the Objection Letter, a copy of which is attached hereto as **Appendix "E"** to this Third Report.
 18. In accordance with the Fee Endorsement, a chambers appointment was scheduled on May 16, 2017 to establish a timetable to hear the Terra Firma Objection. At the chambers appointment, the Fee Approval Motion was scheduled to be heard on May 30, 2017. A copy of the endorsement of Mr. Justice Newbould is attached hereto as **Appendix "F"** to this Third Report.

3.0 CONSTRUCTION RECEIVER'S ROLE AND KEY PERSONNEL

19. The Construction Receiver was appointed by this Court pursuant to the Appointment Order on May 31, 2016.
20. Pursuant to the Appointment Order, the Construction Receiver's mandate was to, among other things, take possession, 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.
21. Near the outset of the Receivership Proceedings, Terra Firma served the Terra Firma Motion³. As a result, a significant part of the Construction Receiver's

³The Terra Firma Motion sought, 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, 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

mandate focused on facilitating extensive negotiations among the Settlement Parties necessary to achieve the successful Settlement outlined in detail in the Second Report and avoid the delay, litigation costs and uncertainty of the outcome of the Terra Firma Motion.

22. In addition to these activities, since its appointment, the Construction Receiver has undertaken a variety of other significant activities necessary for the administration of these Receivership Proceedings, including, among other things, (i) various conservatory and security measures, (ii) asset and construction lien review and analysis, (iii) review of the Syndicate, Travelers and Terra Firma security positions, and (iv) court/administrative and regulatory matters. These activities are summarized in the Second Report under *Section 6.0 Construction Receiver's Activities to Date*. A copy of this Section is attached as **Appendix "G"** to this Report for ease of reference.
23. The Construction Receiver's lead professionals in these Receivership Proceedings are Doug McIntosh, Managing Director of A&M, and Tony Zaspalis, Senior Director of A&M. A&M's other staff members are: Amanda Favot (Director), Ryan Grunier (Associate) and Audrey Singels-Ludvik (Associate).
24. **Exhibit "B"** to the McIntosh Affidavit (set out below) is a summary of the professionals whose services are reflected in the invoices for the period of May 30, 2016 to March 31, 2017 (the "**Fee Period**"), including title, hourly rate, total fees and hours billed.

Staff Member	Title	Total Hours	Rate (\$CAD)	Amount Billed (\$CAD)
Doug McIntosh	Managing Director	171.4	850	145,690.00
Tony Zaspalis	Senior Director	851.5	675	574,762.50
Amanda Favot	Director	439.0	575	252,425.00
Ryan Gruneir	Associate	1,069.4	375	401,025.00
Audrey Singels-Ludvik	Associate	53.8	300	16,140.00
Total Fees (excl. Disbursements and HST)		2,585.1	Avg Rate \$537.71	\$1,390,042.50

25. As indicated above, an aggregate total of 2,585.1 hours were billed during the Fee Period by the Construction Receiver. Of the total hours, an aggregate total of 1,920.9 hours were billed by a senior director (T. Zaspalis) and an associate (R. Gruneir). Mr. Grunier had the highest number of hours (1,069.4 hours).
26. The average hourly rate for the Construction Receiver's professional team is \$537.71. Despite its standard hourly rates increasing in 2017, the Construction Receiver did not increase its rates charged in respect of the Receivership Proceedings from 2016 to 2017.

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**").

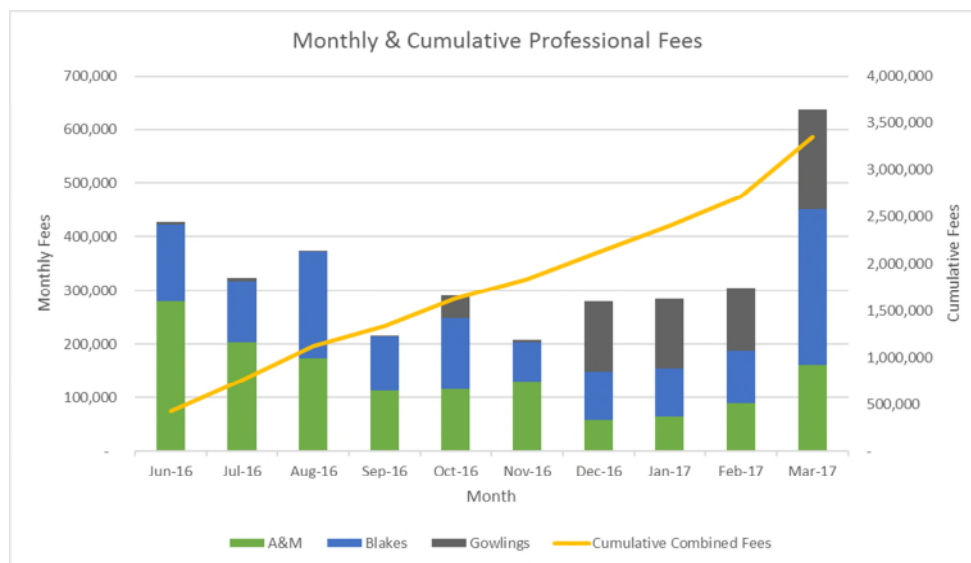
4.0 INDEPENDENT COUNSEL'S ROLE AND KEY PERSONNEL

27. The Construction Receiver was specifically authorized pursuant to the Appointment Order to retain counsel to the Syndicate, Gowling, as counsel to the Construction Receiver, save and except on matters upon which the Construction Receiver in its judgment determines it requires independent advice, in which case the Construction Receiver was authorized to retain independent counsel.
28. Given the variety of realization options available to the Construction Receiver, the competing interests of the stakeholders, and the participation of the Syndicate represented by Gowling in the assessment of options and pursuit of the Settlement, the engagement of independent counsel to provide independent legal advice to the Construction Receiver became critically important.
29. As reported in the Second Report, the First Supplement and as set out in the detailed Invoices, the Construction Receiver and its counsel had to take a very active role in facilitating the Settlement under very challenging circumstances. The fees and disbursements of the Construction Receiver and its counsel resulting from the activities in the Second Report are significant. However, they reflect the complexity of the Settlement and the difficulties encountered in finding and successfully achieving a realization strategy that balanced the competing interests of the stakeholders while maximizing recoveries.
30. The Construction Receiver did promote efficiency and avoided duplication of efforts between Gowling and Blakes. As evidenced by the detailed Invoices of Independent Counsel, there were several tasks that were exclusively led by Independent Counsel, including but not limited to the following:
 - a. **Security Review:** Independent Counsel completed a review of the security of the Syndicate, Terra Firma and Travelers, and delivered opinions to the Construction Receiver in respect thereto.
 - a. **Construction Lien Matters:** Independent Counsel reviewed the lien claims for both the Leslieville Project and Beach Project, and engaged in discussions with counsel to Lien Claimants regarding holdback amounts.
 - b. **Municipality Matters:** Independent Counsel assisted the Construction Receiver in addressing various matters involving the City of Toronto, including but not limited to, negotiating extensions to the conditional permit agreements with the City of Toronto in respect of the Leslieville Project.
 - c. **HST Matters:** Independent Counsel assisted the Construction Receiver with discussions with CRA relating to various issues, including the treatment by CRA of certain HST refund claims submitted by the Construction Receiver in respect of each of the Debtors.

- d. **Negotiations with Tarion:** Independent Counsel led discussions with Tarion to establish “substantial completion” in respect of the state of completion of the Leslieville Project and Tarion coverage under the ONHWPA, a condition of the Settlement, which included assisting the Construction Receiver in preparing a Special Report to Tarion; and
 - e. **Court Matters:** Independent Counsel assisted the Construction Receiver in the preparation of all court materials in the Receivership Proceedings, including all reports and court orders sought in these Receivership Proceedings.
- 31. The Independent Counsel’s lead professionals in the Receivership Proceedings are restructuring and insolvency counsel, Pamela Huff (Partner), Milly Chow (Partner), and Kelly Peters (Associate). The other professionals involved in the Receivership Proceedings are listed in **Exhibit “B”** to the Chow Affidavit.
 - 32. An aggregate total of 2,105.4 hours were billed by Independent Counsel for the period from May 19, 2016 to March 31, 2017. Of the total hours, 1,514.10 hours were billed by the above-noted insolvency counsel, with 737.2 hours being billed by Ms. Peters, a senior associate. In contrast (and due to their engagement as counsel to Syndicate), only minimal hours were billed to the Construction Receiver by the primary insolvency litigation counsel from Gowling.
 - 33. As set out in the Chow Affidavit, the average hourly rate of Independent Counsel is \$630.94. The average hourly rate of Independent Counsel is lower than that of Construction Receiver’s Counsel, which average hourly rate Terra Firma does not object to. With the exception of a few non-core personnel, Independent Counsel did not increase its hourly rates for its lawyers from 2016 to 2017 in respect of the Receivership Proceedings.

5.0 MILESTONES IN THE RECEIVERSHIP PROCEEDINGS

- 34. To assist the Court, the Construction Receiver has reviewed the Invoices contained in the Fee Affidavits of the Construction Receiver, Independent Counsel and Construction Receiver’s Counsel on a monthly and cumulative basis and prepared the following chart.



35. As evidenced by the above chart and as set out in the detailed Invoices, at various junctures in the Receivership Proceedings the role of the Construction Receiver (*green bars*) and Independent Counsel (*blue bars*) was expanded. Notably, due to their mandate as counsel to the Syndicate, for the first six months of the Receivership Proceedings (from June 2016 to November 2016), the services rendered by Gowling as Construction Receiver's Counsel (*black bars*) were minimal as independent legal advice was required in balancing the competing interests of the stakeholders. The significant increase of legal costs in March 2017 is a demonstration of the increased requirement of the Construction Receiver to complete the negotiation and finalization of the Settlement Definitive Documentation within the deadlines set by the Settlement Parties. The deadlines set by the Settlement Parties to conclude the Settlement necessitated a collaborative approach among all counsel in order to obtain the successful result achieved within such deadlines.
36. To put the above chart in further context, the below sets out the various phases in these Receivership Proceedings and the activities undertaken by the Construction Receiver and Independent Counsel (excerpted from the Second Report and the detailed Invoices of the Construction Receiver and Independent Counsel):
- a. **June 2016 to mid-July 2016:** The initial phase of these Receivership Proceedings included asset preservation, information gathering and development of an asset realization plan.⁴ The fees of the Construction Receiver reflect a "ramp up" that is common when a receiver is first appointed to review the books and records and take appropriate preservation and security measures with respect to the property, which in this case, involved two construction sites. As the preparation of an asset realization strategy required the balancing of various competing

⁴ Second Report at para. 5.

stakeholder interests, Independent Counsel was the primary counsel that assisted the Construction Receiver in this phase.

- b. **Mid-July 2016 to October 2016:** On July 15, 2016, Terra Firma served the Terra Firm Motion seeking the Redemption Order.⁵ 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. The settlement negotiations proceeded in parallel with a litigation timetable for the Terra Firma Motion set and revised at various chambers appointments by this Court on July 19th, August 10th, August 19th, and August 29th, 2016.⁶ 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 the Settlement Parties was conducted by The Honourable Mr. Jack Ground. As a result of this “dual track” approach and the litigious nature of the proceedings at this time, the cost of the administration of the Receivership Proceedings increased and independent legal advice was required by the Construction Receiver.
- c. **November 2016 to early December 2016:** In early November 2016, the Construction Receiver was advised of a critical impasse between Craft and the Syndicate in the settlement negotiations.⁷ The Construction Receiver facilitated various meetings with Craft and the Syndicate to gain an understanding of, and to work with the parties to resolve, the impasse. A more extensive, comprehensive solution was ultimately achieved, which also included the resolution of a further issue that had arisen and was addressed by the Construction Receiver by allowing Craft and URI (the proposed builder) to conduct an additional level of due diligence during the month of December 2016 (which was ultimately extended to mid-January 2017)⁸. In early December, 2016, a non-binding settlement framework was agreed to by the Settlement Parties and the Construction Receiver (the “**Settlement Framework**”).⁹
- d. **Early December 2016 to Late-February 2017:** Subsequent to the conclusion of the Settlement Framework, the parties actively negotiated the Settlement Definitive Documents¹⁰. The Settlement Definitive Documents are complex and voluminous.¹¹ Gowling was the primary

⁵ Second Report at para. 6.

⁶ Second Report at para. 24.

⁷ Second Report at para. 27.

⁸ Second Report at para. 29.

⁹ Second Report at para. 30.

¹⁰ Second Report at para. 31.

¹¹ The Settlement Definitive Documents include: the Craft Construction Contract, the Craft Development Contract, the TF Cost Overrun Agreement, the Syndicate Construction Loan Agreement, the Craft Loan Agreement, a form of

drafter of most of the Settlement Definitive Documents (and billed the Construction Receiver for these services). Independent Counsel was the primary drafter of all court orders and assisted the Construction Receiver in preparing a comprehensive Second Report to the Court in support of the Settlement.

- e. **Late February to March 2017:** In late February, settlement discussions were again on the precipice of failure.¹² As a result, intensive negotiations among Craft, Terra Firma, the Syndicate and the Construction Receiver and their respective counsel took place throughout late February, March and early April in an effort to resolve outstanding issues and finalize the Settlement Definitive Documents. These efforts included, among other things: (i) the attendance at a number of “all hands” meetings hosted by Independent Counsel among Craft, the Syndicate, the Construction Receiver, their counsel and counsel for Terra Firma to finalize the various Settlement Definitive Documents within the short timeframe mandated by the Settlement Parties, (ii) negotiations by Independent Counsel with Tarion with respect to warranty coverage¹³, as well as (iii) the engagement of the Construction Receiver’s Real Estate Counsel to assist in finalizing the New APS and Disclosure Documentation.¹⁴
- f. **April, 2017:** In mid-April 2017, the Settlement Definitive Documents were executed by the applicable Settlement Parties. Independent Counsel prepared and served the comprehensive Second Report and motion materials seeking approval of the Settlement Approval Order, Purchaser Package Approval Order, Beach Project Order, Receivership Administration Order and, subsequently, the Excess Parking Unit Process Order.

6.0 INVOLVEMENT OF TERRA FIRMA AND EXPECTATION OF RECOVERY

- 37. As one of the Settlement Parties and a subordinate mortgagee, Terra Firma was a critical participant in the Settlement. Counsel to Terra Firma attended every

purchase agreement to be offered to Existing Leslieville Purchasers, a form of purchase agreement to be offered to new purchasers in respect of unsold Units, condominium disclosure documentation for all purchasers, a purchaser information package to be provided to Existing Leslieville Purchasers providing information with respect to the Settlement, and court orders giving effect to the Settlement (consisting of the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Project Order, the Excess Parking Unit Process Order, and the Receivership Administration Order).

¹²Ad Hoc Leslieville Purchasers Counsel specifically contacted the Construction Receiver and requested to the Construction Receiver’s input and assistance to facilitate a resolution among the Settlement Parties. A copy of the email from Ad Hoc Leslieville Purchasers Counsel to the Construction Receiver is attached as **Appendix “H”**.

¹³ See Second Report paras. 44-47.

¹⁴The engagement of the Construction Receiver’s Real Estate counsel was at the request of Craft, Terra Firma’s proposed contractor in the Settlement. As evidenced by the invoices contained in the fee affidavit of Ronald Fairbloom, Independent Counsel and the Construction Receiver had to spend a significant amount of time assisting the Construction Receiver’s Real Estate in order to finalize the condominium documents within the deadlines mandated by the Settlement Parties.

chambers appointment in the Receivership Proceedings and was extensively involved in the negotiation and conclusion of the Settlement.

38. In its Objection Letter, counsel to Terra Firma advised that, if Terra Firma did not incur a shortfall in its recovery of its loan, it will not oppose the approval of the fees of the Construction Receiver and Independent Counsel.
39. To put this in context, the Terra Firma Motion was met with significant resistance and proceeded on a contested litigation path against a subset of forty-six (46) Ad Hoc Leslieville Purchasers. If the Ad Hoc Leslieville Purchasers had been successful on the Terra Firma Motion, the Construction Receiver would likely have been forced to sell the Leslieville Project subject to the pre-existing agreements of purchase and sale executed in 2011, at significant lower value than the then current market prices. As acknowledged by Terra Firma in the Terra Firma Motion, the gross purchase price (less deposits) under the 54 existing agreements of purchase and sale would not have been sufficient to generate any recovery to Terra Firma.
40. Pursuant to the Settlement, following completion of construction and condominium registration of the Leslieville Project, closings of the Units will occur and Proceeds of Realization will be generated. To facilitate negotiations among the Settlement Parties, on numerous occasions, the Construction Receiver prepared for the Settlement Parties (including Terra Firma) a calculation of the expected recoveries to creditors (referred to as the “Waterfall” in the Second Report) to assist in the overall analysis of the Settlement.
41. The Waterfall for the Settlement was ultimately crystallized and is set out in paragraph 55 of the Settlement Approval Order. As part of the Settlement, Terra Firma agreed to share in its recovery from the Leslieville Project, over and above the first \$6.5 million of Terra Firma’s debt,¹⁵ on a 50-50 basis with the Existing Leslieville Purchasers who opt-in to the Settlement and pay the Premium.
42. Attached as **Confidential Appendix “A”** is a copy of the current Waterfall analysis prepared by the Construction Receiver based on the number of Existing Leslieville Purchasers that have opted into the Settlement by the deadline established by the Purchaser Package Approval Order. Due to the commercially sensitive nature of the information contained in the Waterfall, the Construction Receiver will be seeking to seal Confidential Appendix “A”.

7.0 CONCLUSION

43. The Settlement represents a successful resolution of extensive negotiations for the benefit of the stakeholders, including Terra Firma.

¹⁵As at March 31, 2017, the Terra Firma Indebtedness is \$7,163,546.74 with interest continuing to accrue.

44. The rates and disbursements of the Construction Receiver and its counsel are comparable to the rates and disbursements charged for the provision of similar services by other similar firms in the Toronto market.
45. The detailed Invoices demonstrate that leadership on particular tasks was taken by professionals with the appropriate level of seniority and that the work required for the administration of the Receivership Proceedings and the achievement of the Settlement was allocated among its counsel to promote efficiency.
46. It is the Construction Receiver's view that the fees and disbursements incurred by it and its counsel are fair and reasonable in the circumstances. Accordingly, the Construction Receiver respectfully requests this Court's approval of such fees and disbursements, as more particularly set out in the Fee Affidavits.

All of which is respectfully submitted, this 23rd day of May, 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”

**ONTARIO
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BETWEEN:

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Respondents

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

**UNOFFICIAL TRANSCRIPT OF ENDORSEMENT OF
MR. JUSTICE NEWBOULD
RE: TIMETABLE FOR FEE APPROVAL
dated May 2, 2017**

Counsel:

C. Prophet and T. Gertner, counsel for Syndicate as Agent

P. Huff and K. Peters, counsel for the Receiver and Construction Lien Trustee, Alvarez & Marsal Canada Inc.

D. Preger, counsel for Represented Leslieville Purchasers

A. Slavens, counsel for Tarion Warranty Corporation

L. Goldberg, counsel for Fuller Landau

A. Kauffman, counsel for Travelers Insurance Company of Canada

B. Bissell, counsel for Terra Firma Capital Corporation and C.R.A.F.T. Development Corporation

P. Horgan, counsel for Commercial Two, lien claimant for Leslieville

A. Tatari, self-represented

N. Palomino, self-represented

J. D'Alimonte, counsel to NG Marin

No other party but Terra Firma has indicated an objection to the motion for approval of professional fees. The objections of Terra Firma are to be advanced as follows:

1. By Wednesday, May 10th, counsel for Terra Firma to provide a letter setting out the grounds and nature of each objection to the fees and disbursements, including particulars of any specific fee and/or disbursement amounts that are objected to and any additional evidence proposed to be filed;
2. By Monday, May 15th, counsel for the professionals subject to the objections to provide a response to each objection and particulars of any additional evidence proposed to be filed;
3. Terra Firma and the professionals subject to the objections will schedule a 9:30 appointment the week of May 15th to establish a timetable for the hearing of the objections; and
4. The Construction Receiver will be seeking to have the matter heard before May 30th.

“Newbould J”

May 2, 2017
Approved

Sheet 5

**Endorsement of Justice Newbould
Re: Timetable for Fee Approval**

No other party but Terra Firma has indicated an objection to the motion for approval of professional fees. The objections of Terra Firma are to be advanced as follows:

1. By Wednesday, May 10th, counsel for Terra Firma to provide a letter setting out the grounds and nature of each objection to the fees and disbursements, including particulars of any specific fee and/or disbursement amounts that are objected to and any additional evidence proposed to be filed;

2. By Monday, May 15th, counsel for the professionals subject to the objections to provide a response to each objection and particulars of any additional evidence proposed to be filed;

3. Terra Firma and the professionals subject to the objections will schedule a 9:30 appointment the week of May 15th to establish a timetable for the hearing of the objections; and

4. The Construction Receiver will be seeking to have the matter heard before May 30th.

on May 16/17 & 2017

APPENDIX “B”



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Dominique Michaud
T. 416.360.3795
E. dmichaud@robapp.com
F. 416.868.0306

Delivered by: E-mail
File No.: 1600180

May 10, 2017

Blake, Cassels & Graydon LLP
Suite 4000-199 Bay Street
Commerce Court West
Toronto, ON M5L 1A9

Attention: Pamela Huff

Dear Ms. Huff:

**Re: Canadian Imperial Bank of Commerce v. Urbancorp (Leslieville) Developments Inc.
et al.- CV-16-11409-00CL**

Terra Firma Capital Corporation Position on Fee Approval Motion

We are writing to you pursuant to the protocol in respect of the contemplated fee approval motion (the "**Fee Approval Motion**") as set out in the Endorsement of Justice Newbould dated May 2, 2017.

Please be advised that Terra Firma Capital Corporation ("**TFCC**") objects to the approval of the fees of Alvarez & Marsal Canada Inc. ("**A&M**") as set out in the affidavit of Douglas McIntosh sworn April 27, 2017 (the "**A&M Fees**") and the fees of Blake, Cassels & Graydon LLP ("**Blakes**") as set out in the affidavit of Milly Chow sworn April 27, 2017 (the "**Blakes Fees**").

TFCC does not object to the approval of the fees of Gowling WLG (Canada) LLP as set out in the affidavit of Lilly Wong sworn April 26, 2017, or the fees of Miller Thomson LLP as set out in the affidavit of Ronald Fairbloom sworn April 5, 2017.

TFCC objects to the A&M Fees and Blakes Fees for, *inter alia*, the following reasons:

1. the hourly rates charged are unreasonable in light of the nature of the work involved and the amounts in issue;
2. the time spent by multiple timekeepers is unreasonable and disproportionate; and
3. A&M and Blakes failed to minimize duplication or effect efficiencies.

TFCC anticipates that it will deliver affidavit evidence and/or an expert report and conduct cross-examinations to support its position on the Fee Approval Motion.



Please be advised that as a result of my schedule, TFCC will not be in a position to deliver responding material and conduct cross-examinations on a timetable to have the Fee Approval Motion heard before May 30, 2017. This will not cause any prejudice to A&M and Blakes as they have already been paid as set out in paragraph 12 of the Supplementary Report to the Second Report.

Lastly, TFCC proposes that the Fee Approval Motion be scheduled for a date in July 2017. This approach is preferable as it will allow TFCC to properly respond to this motion. It will also allow TFCC to obtain clarity on how many purchasers will opt into the Purchaser Settlement. This information will allow TFCC to assess its financial position and determine whether it will incur a shortfall. As discussed with counsel, if TFCC does not incur a shortfall, it will no longer oppose the A&M Fees and the Blakes Fees.

If you have any questions, please contact me at the coordinates set out above.

Yours very truly,

ROBINS APPLEBY LLP

Per:



Dominique Michaud

DM:wl

robapp\3864889.1

APPENDIX “C”



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

May 12, 2017

VIA EMAIL

Dominique Michaud
Robins Appleby LLP
Suite 2600, 120 Adelaide Street West,
Toronto, Ontario M5H 1T1

Dear Mr. Michaud:

Re: Receivership of Urbancorp (Leslieville) Developments Inc. et. al.

Reference: 99766/3

Thank you for your letter dated May 10, 2017. Your letter does not comply with the Endorsement of Mr Justice Newbould dated May 2, 2017, a copy of which is attached.

The Endorsement required counsel for Terra Firma to provide by Wednesday May 10th, a letter setting out the grounds and nature of each objection to the fees and disbursements, including particulars of any specific fee and/or disbursement amounts that are objected to and any additional evidence proposed to be filed. You asked for more time in this schedule to be able to prepare your objections, yet failed to provide any particulars of any specific fee and/or disbursement amounts, which you were ordered to do.

We have a 9:30 appointment booked before Mr. Justice Newbould on Tuesday May 16th to address this matter. We will provide a response to the generalities in your letter of May 10th, although not in compliance with the Endorsement. At that appointment, we will be asking for the following timetable to be set by the Court, so that the fee approval motion can be addressed by the judge presiding over this matter from the outset.

1. Wednesday May 17th - counsel for Terra Firma to comply with the Endorsement and provide particulars of any specific fee and/or disbursement amounts which are objected to, so the court and counsel can assess the quantum and specifics of fees which are the subject of the objection;
2. Friday, May 19th - counsel to deliver any supplementary evidence in connection with the motion for approval of fees;
3. Tuesday, May 23rd – Construction Receiver to provide a confidential calculation of expected recoveries to Terra Firma, based on number of purchasers opt-ing in by the Opt-In deadline of May 19th (subject to suitable confidentiality agreements);
4. Wednesday May 24th and Thursday 25th – to be made available for cross-examinations, times

23121218.1



to be scheduled;

5. Friday May 26th – delivery of facta;
6. Monday May 29th – hearing.

We are providing you with plenty of advance notice of our intention to seek the timetable so you can ensure proper preparation in the event the Court endorses the proposed timetable.

Yours truly,

Pamela L. J. Huff

PLJH:sk
Enclosures.

cc. D. McIntosh
M. Chow
T. Zaspalis

23121218.1

APPENDIX “D”

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Friday, May 12, 2017 12:22 PM
To: HUFF, PAM
Cc: CHOW, MILLY; dmcintosh@alvarezandmarsal.com; tzaspalis@alvarezandmarsal.com
Subject: RE: Receivership of Urbancorp (Leslieville) Developments Inc. et. al.

Pam:

Thank you for your letter. I disagree with you.

As I previously advised, I am unable to deal with this matter on your proposed timetable. I have multiple other matters with hard deadlines that are subject to court ordered timetables during this time period. I am also away during this time period.

This matter is not urgent and should be dealt with on a timetable where we are provided a reasonable period to respond and deal with the substantive issues.

If you wish to discuss please call me.

Have a good weekend.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: KOHLI, SONIA [<mailto:SONIA.KOHLI@blakes.com>]
Sent: Friday, May 12, 2017 9:28 AM
To: Dominique Michaud
Cc: HUFF, PAM; CHOW, MILLY; dmcintosh@alvarezandmarsal.com; tzaspalis@alvarezandmarsal.com
Subject: Receivership of Urbancorp (Leslieville) Developments Inc. et. al.

Good morning Mr. Michaud,

Please find attached correspondence from Pam Huff of today's date.

Regards,

Sonia Kohli
Legal Assistant
sonia.kohli@blakes.com
Dir: (416) 863-5815



Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400 Fax: 416-863-2653

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APPENDIX “E”



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199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

May 15, 2017

Pamela L. J. Huff

Dir: 416-863-2958

pamela.huff@blakes.com

VIA EMAIL

Reference: 99766/3

Dominique Michaud
Robins Appleby LLP
Suite 2600, 120 Adelaide Street West,
Toronto, Ontario M5H 1T1

Dear Mr. Michaud:

Re: Receivership of Urbancorp (Leslieville) Developments Inc. et. al.

We are responding to your letter dated May 10, 2017 purportedly provided pursuant to the protocol in respect of the contemplated fee approval motion (the "**Fee Approval Motion**") as set out in the Endorsement of Mr. Justice Newbould dated May 2, 2017 (the "**Endorsement**"). As you know from my letter dated May 12, 2017, it is the position of both the Construction Receiver, Alvarez & Marsal Canada Inc. ("**A & M**"), and its Independent Counsel, Blake, Cassels & Graydon LLP ("**Blakes**") that Terra Firma Capital Corporation ("**Terra Firma**") has not complied with the Endorsement and provided any particulars to which Blakes and A & M can respond.

Unless otherwise defined herein, terms have the meaning as set out in the Second Report of the Construction Receiver dated April 21, 2017.

With respect to the three objections raised in your letter dated May 10, 2017, Blakes and A & M respond as follows:

1. **Objection:** Hourly rates charged are unreasonable in light of the nature of the work involved and the amounts in issue

Response:

(a) The hourly rates charged by Blakes and A & M are comparable to the rates charge for the provision of similar services by other similar law firms in the Toronto market. The hourly rates are comparable to those of Gowling WLG (Canada) LLP to which Terra Firma takes no issue. No particulars are provided as to which hourly rates and for what work are the subject of the objection.

(b) The nature of the work involved was complex in order to achieve the Proposed Settlement for the benefit of the stakeholders, including Terra Firma. The scope of the issues addressed in the voluminous Definitive Settlement Documents, and the efforts to conclude the Definitive Settlement Documents, are set out in detail in the Second Report and in the detailed accounts of Blakes and
23133127.2

A & M. The Proposed Settlement achieves an expected recovery for Terra Firma. If the Existing Leslieville Purchasers had been successful in asserting that the Leslieville Project remained subject to the Original Leslieville APSs, Terra Firma would have recovered nothing. For that reason, Terra Firma was motivated to pursue the Proposed Settlement, but now complains of the costs of achieving that successful result for its benefit. No particulars are provided as to the nature of the work performed by the Construction Receiver and its Independent Counsel which is the subject of the objection.

(c) As noted in the Supplementary Report to the Second Report dated April 27, 2017, the complexity of the voluminous Settlement Definitive Documents addressing a myriad of stakeholder issues is a demonstration of the considerable effort involved, but also resulted in increased costs. Those myriad of issues included extensive negotiations with Terra Firma itself, addressing its role and responsibilities in the Proposed Settlement as well as its proposed contractor Craft. The total fees, although higher than expected given the complexities of the Proposed Settlement, are not out of proportion to the claim amounts addressed in the Proposed Settlement. The secured claims of the Syndicate, Terra Firma, Travelers and the Lien Claimants alone exceed \$43 Million as at March 31, 2017.

2. Objection: The time spent by multiple timekeepers is unreasonable and disproportionate

No particulars are provided as to what time, what timekeepers and in respect of what tasks are the subject of the objection. The detailed accounts of A & M and Blakes disclose the time spent on particular tasks, all of which were required for the administration of the Receivership and the achievement of the Proposed Settlement.

3. Objection: A & M and Blakes failed to minimize duplication or effect efficiencies

No particulars are provided as to what time, what timekeepers and in respect of what tasks are the subject of the objection. The detailed accounts of A & M and Blakes disclose the opposite, that leadership on particular tasks was taken by professionals with the appropriate seniority. Blakes' average hourly rate on the main Receivership accounts is \$641.41. A & M's average hourly rate is \$537.71, which demonstrate that tasks were being conducted by the professionals at the appropriate level of seniority. These averages are significantly below the hourly rates of the senior professionals with overall responsibility for the matter.

The purpose of the Endorsement was to establish a reasonable process for Terra Firma to provide particulars of its objections to the Fee Approval Motion, so that Blakes and A & M could properly respond, and the parties could properly consider what further evidence the parties may wish to file in light of the particulars of the objections. The absence of particulars in your May 10th letter makes it impossible to do so. Blakes, A & M and the Court are unable to assess the quantum and specifics of fees which are the subject of the objections.

Blakes

Page 3

Yours truly,

Kelly Peter

to Pamela L. J. Huff

PLJH:sk

cc. D. McIntosh

M. Chow

T. Zaspalis

23133127.2

APPENDIX “F”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

**UNOFFICIAL TRANSCRIPT OF ENDORSEMENT OF
MR. JUSTICE NEWBOULD
RE: SCHEDULING OF TERRA FIRMA FEE OBJECTION
dated May 16, 2017**

Counsel:

P. Huff, counsel for the Receiver and Construction Lien Trustee, Alvarez & Marsal Canada Inc.
D. Michaud, counsel for Terra Firma Capital Corporation

The hearing of this matter is to be heard on May 30, 2017 for one hour and a half. If Terra Firma's counsel cannot do it, Terra Firma will have to retain new counsel. Justice Morawetz to hear it.

"Newbould J"

ADD-ON

COUNSEL SLIP

COURT FILE NO CV-16-11409-00CL

DATE May 16, 2017

NO ON LIST _____

TITLE OF
PROCEEDING

Canadian Imperial Bank of
Commerce v. UrbanCorp (Chesleville)
Developments Inc.

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

Pamela Huff for
Alvarez & Marsal
Canada Inc. in its
capacity as construction

PHONE & FAX NOS

T 416-863-2958

F 416-863-2653

COUNSEL FOR:
DEFENDANT(S)
RESPONDENT(S)

Receivers
Dominique Michaud
for Terra Firma
Capital Corporation

PHONE & FAX NOS

T 416-360-3795

F 416-868-0306

May 16, 2017

The hearing of this matter is to be heard on May 30/17
for one hour and a half. If Terra Firma's counsel
cannot do it, Terra Firma will have to retain new
counsel. Justice Macneil to hear it.

D.J.

APPENDIX “G”

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

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 firm¹², 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;

¹²Altus 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 geo-thermal 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
TOTAL	\$ 3,000,000	

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

APPENDIX “H”

From: Zaspalis, Tony <tzaspalis@alvarezandmarsal.com>
Sent: Saturday, February 25, 2017 3:44 PM
To: McIntosh, Doug; CHOW, MILLY; PETERS, KELLY
Subject: Fwd: Leslieville

[REDACTED]

Sent from my iPhone

Begin forwarded message:

From: "David P. Preger" <DPreger@dickinson-wright.com>
Date: February 25, 2017 at 3:33:58 PM EST
To: "tzaspalis@alvarezandmarsal.com" <tzaspalis@alvarezandmarsal.com>
Cc: Laura Micoli <LMicoli@dickinson-wright.com>
Subject: Leslieville

Brendan tells me the settlement has collapsed [REDACTED]. I trust cooler heads will prevail with the Receiver's input and assistance. It would be a colossal tragedy if this really falls apart.

Sent from my iPhone

David P. Preger Partner

Dickinson Wright LLP
199 Bay Street
Suite 2200
Commerce Court West
Toronto ON M5L 1G4

Phone 416-646-4606
Fax 844-670-6009
Email DPreger@dickinsonwright.com

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**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

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX “A” TO THE THIRD REPORT
OF THE CONSTRUCTION RECEIVER
DATED MAY 23, 2017**

**WATERFALL ANALYSIS PROVIDED TO
COUNSEL FOR TERRA FIRMA**

TO BE KEPT CONFIDENTIAL BY THE COURT

**THE DOCUMENTS CONTAINED HEREIN ARE SUBJECT TO A
PROTECTIVE ORDER REQUEST AND ARE TO BE KEPT STRICTLY
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