

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) MONDAY, THE 17th
)
MR. JUSTICE MYERS) DAY OF JULY, 2017
)



BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

APPROVAL AND VESTING ORDER
(RE: BEACH LOTS)

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

(The Beach) Developments Inc. (“**UC Beach**”, together UC Leslieville, the “**Debtors**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Construction Receiver and 2583510 Ontario Inc. (the “**Purchaser**”) dated June 23, 2017 and appended to the Report of the Construction Receiver dated July 6, 2017 (the “**Report**”), and vesting in the Purchaser each of the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Report, considering the Order of the Honourable Mr. Justice Newbould dated May 2, 2017 (the “**Beach Project Order**”), which approved, among other things, the repudiation by the Construction Receiver of each and every Original Beach APS, and declared that all Existing Beach Purchasers and Beach Assignors have no right, title, interest, claim or recourse as against any of the Property of the Debtors, and on hearing the submissions of counsel for the Construction Receiver and counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Nancy Thompson sworn July 7, 2017, filed:

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meaning given to them in the Beach Project Order.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Construction Receiver is hereby authorized and approved, with such minor amendments as the Construction Receiver may deem necessary. The Construction Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Construction Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Construction Receiver's Certificate**”), each of the Debtors’ right, title and interest in and to the Purchased Assets described in the Sale Agreement, which includes the real property identified on **Schedule B** hereto (the “**Real Property**”), shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or

otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims (including, without limitation, the claims of all Existing Beach Purchasers and Beach Assignors), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, encumbrances, title retention agreements, each and every Original Beach APS, judgments, adverse claims or interests, exceptions, reservations, easements, encroachments, servitudes, restrictions on use, any right of occupancy, any matter capable of registration against title, options, rights of first refusal or similar rights, rights of pre-emption or privilege or any contract creating any of the foregoing (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice Newbould dated May 31, 2016, as amended from time to time, and Order of the Honourable Mr. Justice Newbould dated May 2, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Toronto Land Registry Office (No. 66) of a Transfer(s)/Deed(s) of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Construction Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in **Schedule B** hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C** hereto.

5. **THIS COURT ORDERS** that, subject to paragraph 8 of the Beach Project Order which authorizes the Construction Receiver to retain the Construction Receiver's Reserve and the Beach Holdback Reserve, for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Construction Receiver's Certificate

all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Construction Receiver to file with the Court a copy of the Construction Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that the Construction Receiver may rely on written notice from the Purchaser regarding fulfillment of conditions to closing under the Sale Agreement and shall incur no liability with respect to the delivery of the Construction Receiver's Certificate.

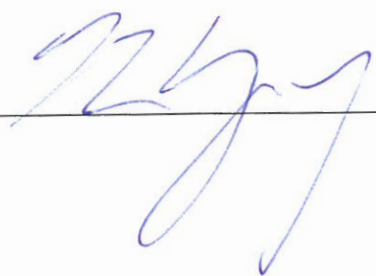
8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of each Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of each Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy appointed in respect of each Debtor and shall not be void or voidable by creditors of each Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 17 2017

PER / PAR: 

Schedule A – Form of Construction Receiver’s Certificate

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

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice Newbould of the Ontario Superior Court of Justice (the "**Court**") dated May 31, 2016, as amended, Alvarez & Marsal Canada Inc. was appointed as the receiver and manager (the "**Receiver**") and construction lien trustee (the "**Construction Lien Trustee**", together with the Receiver, the "**Construction Receiver**") of the undertaking, property and assets of Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc. (the "**Debtors**").

B. Pursuant to an Order of the Honourable Mr. Justice Newbould of the Court dated May 2, 2017, the Court approved, among other things, the repudiation by the Construction Receiver of each and every Original Beach APS, and declared that all Existing Beach Purchasers and Beach Assignors shall have no right, title, interest, claim or recourse as against any of the Property of the Debtors.

C. Pursuant to an Order of the Court dated July 17, 2017, the Court approved the agreement of purchase and sale made as of June 23, 2017 (the "**Sale Agreement**") between the Construction Receiver and 2583510 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of each Debtor’s right, title and interest in and to the Purchased Assets, which vesting

is to be effective with respect to the Purchased Assets upon the delivery by the Construction Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Articles 5 and 6 of the Sale Agreement have been satisfied or waived by the Construction Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Construction Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE CONSTRUCTION RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Construction Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Articles 5 and 6 of the Sale Agreement have been satisfied or waived by the Construction Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Construction Receiver.
4. This Certificate was delivered by the Construction Receiver at _____ [TIME] on _____ [DATE].

Alvarez & Marsal Canada Inc., in its capacity as Construction Receiver of the undertaking, property and assets of Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc., and not in its personal capacity or corporate capacity

Per: _____
Name:
Title:

Schedule B – Real Property

1. Registered Owner: Urbancorp (Leslieville) Developments Inc.

PIN 21024-0455 (LT):

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

PIN 21024-0456 (LT):

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

PIN 21024-0492 (LT):

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

PIN 21024-0494 (LT):

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

2. Registered Owners: Urbancorp (Leslieville) Developments Inc. (99.999%) Urbancorp (The Beach) Developments Inc. (0.001%)

PIN 21024-0457 (LT):

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

PIN 21024-0469 (LT):

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

PIN 21024-0491 (LT):

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

PIN 21024-0493 (LT):

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

Schedule C – Claims to be deleted and expunged from title to Real Property

PINs 21024-0455(LT), 21024-0456(LT), 21024-0457(LT), 21024-0469(LT), 21024-0491(LT), 21024-0492(LT), 21024-0493(LT) and 21024-0494(LT)

1. Instrument No. AT3081811 registered on July 24, 2012, being a Charge in favour of Canadian Imperial Bank of Commerce
2. Instrument No. AT3106431 registered on August 21, 2012, being Postponement (Canadian Imperial Bank of Commerce to City of Toronto)
3. Instrument No. AT3954373 registered on July 22, 2015, being a Notice of Assignment of Rents – General in favour of Terra Firma Capital Corporation
4. Instrument No. AT4066190 registered on November 13, 2015, being a Construction Lien in favour of Furkin Construction Inc.
5. Instrument No. AT4102182 registered on December 22, 2015, being a Certificate of Action (Furkin Construction Inc.)
6. Instrument No. AT4153436 registered on February 25, 2016, being a Construction Lien in favour of Silvio Construction Co. Ltd.
7. Instrument No. AT4166072 registered on March 11, 2016, being a Construction Lien in favour of Ng Marin Inc.
8. Instrument No. AT4181438 registered on March 31, 2016, being a Certificate of Acton (Silvio Construction Co. Ltd.)
9. Instrument No. AT4198082 registered on April 20, 2016, being a Construction Lien in favour of Lido Construction Inc.
10. Instrument No. AT4210320 registered on May 3, 2016, being a Construction Lien in favour of 207875 Ontario Limited Operating as Canadian Rental Centres
11. Instrument No. AT4210969 registered on May 4, 2016, being a Certificate of Action (Ng Marin Inc.)
12. Instrument No. AT4243741 registered on June 10, 2016, being an Application to Register Court Order (Ontario Superior Court of Justice Commercial List and Alvarez & Marsal Canada Inc.)
13. Instrument No. AT4250965 registered on June 17, 2016, being a Certificate of Action (207875 Ontario Limited)
14. Instrument No. AT4277318 registered on July 13, 2016, being a Certificate of Action (Lido Construction Inc.)

15. Together with such further Claims as may arise and/or be registered against title to the Real Property up to and including the time of Closing of the transaction (as set out in more detail by way of solicitor's statement or affidavit annexed to the Transfer/Deed).

PINs 21024-0455(LT), 21024-0456(LT), 21024-0457(LT) and 21024-0469(LT)

1. Instrument No. AT3601546 registered on June 6, 2014, being a Postponement (Canadian Imperial Bank of Commerce to City of Toronto)
2. Instrument No. AT3601547 registered on June 6, 2014, being a Postponement (Mattamy (Downsview) Limited to City of Toronto)

PINs 21024-0455(LT), 21024-0457(LT), 21024-0469(LT), 21024-0493(LT) and 21024-0494(LT)

1. Instrument No. AT3954372 registered on July 22, 2015, being a Charge in favour of Terra Firma Capital Corporation

PINs 21024-0456(LT), 21024-0457(LT), 21024-0491(LT), 21024-0492(LT), 21024-0493(LT) and 21024-0494(LT)

1. Instrument No. AT4072928 registered on November 20, 2015, being a Construction Lien in favour of Roni Excavating Limited
2. Instrument No. AT4072965 registered on November 20, 2015, being a Construction Lien in favour of Orin Contractors Corp.
3. Instrument No. AT4106423 registered on December 30, 2015, being a Certificate of Action (Roni Excavating Limited)
4. Instrument No. AT4106505 registered on December 30, 2015, being a Certificate of Action (Orin Contractors Corp.)

PIN 21024-0455(LT)

1. Instrument No. AT4011572 registered on September 17, 2015, being a Construction Lien in favour of Alpa Stairs and Railings Inc.
2. Instrument No. AT4039965 registered on October 19, 2015, being a Certificate of Action (Alpa Stairs and Railings Inc. and Ontario Superior Court of Justice)

PIN 21024-0457(LT)

1. Instrument No. AT4166869 registered on March 14, 2016, being a Construction Lien in favour of Uptown Hardware Limited
2. Instrument No. AT4200072 registered on April 22, 2016, being a Certificate of Action (Uptown Hardware Limited)

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

PINs 21024-0455(LT), 21024-0456(LT), 21024-0457(LT), 21024-0469(LT), 21024-0491(LT), 21024-0492(LT), 21024-0493(LT) and 21024-0494(LT)

1. Instrument No. AT3106430 registered on August 21, 2012, being a Notice (City of Toronto and Urbancorp (Leslieville) Developments Inc.)
2. Instrument No. AT3604533 registered on June 11, 2014, being a By-Law (City of Toronto)
3. Instrument No. AT3673934 registered on August 28, 2014, being an Application to Annex Restrictive Covenants (Urbancorp (Leslieville) Developments Inc.)

PINs 21024-0455(LT), 21024-0456(LT), 21024-0457(LT) and 21024-0469(LT)

1. Instrument No. AT3689468 registered on September 16, 2014, being a Plan Correction (Assistant Examiner of Surveys)

PINs 21024-0491(LT) and 21024-0492(LT)

1. Instrument No. AT3690147, being an Easement as in the thumbnail description.

PIN 21024-0494(LT)

1. Instrument No. ET127629, being an Easement as in the thumbnail description.

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

**APPROVAL AND VESTING ORDER
(RE: BEACH LOTS)**

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