

**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**

**BRIEF OF AUTHORITIES
(RE: SALE OF BEACH LOTS)
Returnable July 17, 2017**

July 12, 2017

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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.

TO: MASTER SERVICE LIST AND SUPPLEMENTARY SERVICE LIST

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BRIEF OF AUTHORITIES

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Original

1991 CarswellOnt 205
Ontario Court of Appeal

Royal Bank v. Soundair Corp.

1991 CarswellOnt 205, [1991] O.J. No. 1137, 27 A.C.W.S. (3d) 1178,
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**ROYAL BANK OF CANADA (plaintiff/respondent) v. SOUNDAIR CORPORATION
(respondent), CANADIAN PENSION CAPITAL LIMITED (appellant)
and CANADIAN INSURERS' CAPITAL CORPORATION (appellant)**

Goodman, McKinlay and Galligan JJ.A.

Heard: June 11, 12, 13 and 14, 1991

Judgment: July 3, 1991

Docket: Doc. CA 318/91

Counsel: *J. B. Berkow* and *S. H. Goldman* , for appellants Canadian Pension Capital Limited and Canadian Insurers' Capital Corporation.

J. T. Morin, Q.C. , for Air Canada.

L.A.J. Barnes and *L.E. Ritchie* , for plaintiff/respondent Royal Bank of Canada.

S.F. Dunphy and *G.K. Ketcheson* , for Ernst & Young Inc., receiver of respondent Soundair Corporation.

W.G. Horton , for Ontario Express Limited.

N.J. Spies , for Frontier Air Limited.

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Headnote

Receivers --- Conduct and liability of receiver — General conduct of receiver

Court considering its position when approving sale recommended by receiver.

S Corp., which engaged in the air transport business, had a division known as AT. When S Corp. experienced financial difficulties, one of the secured creditors, who had an interest in the assets of AT, brought a motion for the appointment of a receiver. The receiver was ordered to operate AT and to sell it as a going concern. The receiver

had two offers. It accepted the offer made by OEL and rejected an offer by 922 which contained an unacceptable condition. Subsequently, 922 obtained an order allowing it to make a second offer removing the condition. The secured creditors supported acceptance of the 922 offer. The court approved the sale to OEL and dismissed the motion to approve the 922 offer. An appeal was brought from this order.

Held:

The appeal was dismissed.

Per Galligan J.A.: When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. The court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver.

The conduct of the receiver should be reviewed in the light of the specific mandate given to him by the court. The order appointing the receiver did not say how the receiver was to negotiate the sale. The order obviously intended, because of the unusual nature of the asset being sold, to leave the method of sale substantially to the discretion of the receiver.

To determine whether a receiver has acted providently, the conduct of the receiver should be examined in light of the information the receiver had when it agreed to accept an offer. On the date the receiver accepted the OEL offer, it had only two offers: that of OEL, which was acceptable, and that of 922, which contained an unacceptable condition. The decision made was a sound one in the circumstances. The receiver made a sufficient effort to obtain the best price, and did not act improvidently.

The court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an unusual asset. It is important that prospective purchasers know that, if they are acting in good faith, bargain seriously with a receiver and enter into an agreement with it, a court will not lightly interfere with the commercial judgment of the receiver to sell the assets to them.

Per McKinlay J.A. (concurring in the result): It is most important that the integrity of procedures followed by court-appointed receivers be protected in the interests of both commercial morality and the future confidence of business persons in their dealings with receivers. In all cases, the court should carefully scrutinize the procedure followed by the receiver. While the procedure carried out by the receiver in this case was appropriate, given the unfolding of events and the unique nature of the asset involved, it may not be a procedure that is likely to be appropriate in many receivership sales.

Per Goodman J.A. (dissenting): It was imprudent and unfair on the part of the receiver to ignore an offer from an interested party which offered approximately triple the cash down payment without giving a chance to the offeror to remove the conditions or other terms which made the offer unacceptable to the receiver. The offer accepted by the receiver was improvident and unfair insofar as two creditors were concerned.

Table of Authorities**Cases considered:**

Beauty Counsellors of Canada Ltd., Re (1986), 58 C.B.R. (N.S.) 237 (Ont. S.C.) — referred to

British Columbia Development Corp. v. Spun Cast Industries Ltd. (1977), 26 C.B.R. (N.S.) 28, 5 B.C.L.R. 94 (S.C.) — referred to

Cameron v. Bank of Nova Scotia (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.) — referred to

Crown Trust Co. v. Rosenberg (1986), 67 C.B.R. (N.S.) 320n, 60 O.R. (2d) 87, 22 C.P.C. (2d) 131, 39 D.L.R. (4th) 526 (H.C.) — applied

Salima Investments Ltd. v. Bank of Montreal (1985), 59 C.B.R. (N.S.) 242, 41 Alta. L.R. (2d) 58, 65 A.R. 372, 21 D.L.R. (4th) (C.A.) — referred to

Selkirk, Re (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C.) — referred to

Selkirk, Re (1987), 64 C.B.R. (N.S.) 140 (Ont. S.C.) — referred to

Statutes considered:

Employment Standards Act, R.S.O. 1980, c. 137.

Environmental Protection Act, R.S.O. 1980, c. 141.

Appeal from order approving sale of assets by receiver.

Galligan J.A. :

1 This is an appeal from the order of Rosenberg J. made on May 1, 1991. By that order, he approved the sale of Air Toronto to Ontario Express Limited and Frontier Air Limited, and he dismissed a motion to approve an offer to purchase Air Toronto by 922246 Ontario Limited.

2 It is necessary at the outset to give some background to the dispute. Soundair Corporation ("Soundair") is a corporation engaged in the air transport business. It has three divisions. One of them is Air Toronto. Air Toronto operates a scheduled airline from Toronto to a number of mid-sized cities in the United States of America. Its routes serve as feeders to several of Air Canada's routes. Pursuant to a connector agreement, Air Canada provides some services to Air Toronto and benefits from the feeder traffic provided by it. The operational relationship between Air Canada and Air Toronto is a close one.

3 In the latter part of 1989 and the early part of 1990, Soundair was in financial difficulty. Soundair has two secured creditors who have an interest in the assets of Air Toronto. The Royal Bank of Canada (the "Royal Bank") is owed at least \$65 million dollars. The appellants Canadian Pension Capital Limited and Canadian Insurers' Capital Corporation (collectively called "CCFL") are owed approximately \$9,500,000. Those creditors will have a deficiency expected to be in excess of \$50 million on the winding up of Soundair.

4 On April 26, 1990, upon the motion of the Royal Bank, O'Brien J. appointed Ernst & Young Inc. (the "receiver") as receiver of all of the assets, property and undertakings of Soundair. The order required the receiver to operate Air Toronto and sell it as a going concern. Because of the close relationship between Air Toronto and Air Canada, it was contemplated that the receiver would obtain the assistance of Air Canada to operate Air Toronto. The order authorized the receiver:

(b) to enter into contractual arrangements with Air Canada to retain a manager or operator, including Air Canada, to manage and operate Air Toronto under the supervision of Ernst & Young Inc. until the completion of the sale of Air Toronto to Air Canada or other person.

Also because of the close relationship, it was expected that Air Canada would purchase Air Toronto. To that end, the order of O'Brien J. authorized the Receiver:

(c) to negotiate and do all things necessary or desirable to complete a sale of Air Toronto to Air Canada and, if a sale to Air Canada cannot be completed, to negotiate and sell Air Toronto to another person, subject to terms and conditions approved by this Court.

5 Over a period of several weeks following that order, negotiations directed towards the sale of Air Toronto took place between the receiver and Air Canada. Air Canada had an agreement with the receiver that it would have exclusive negotiating rights during that period. I do not think it is necessary to review those negotiations, but I note that Air Canada had complete access to all of the operations of Air Toronto and conducted due diligence examinations. It became thoroughly acquainted with every aspect of Air Toronto's operations.

6 Those negotiations came to an end when an offer made by Air Canada on June 19, 1990, was considered unsatisfactory by the receiver. The offer was not accepted and lapsed. Having regard to the tenor of Air Canada's negotiating stance and a letter sent by its solicitors on July 20, 1990, I think that the receiver was eminently reasonable when it decided that there was no realistic possibility of selling Air Toronto to Air Canada.

7 The receiver then looked elsewhere. Air Toronto's feeder business is very attractive, but it only has value to a national airline. The receiver concluded reasonably, therefore, that it was commercially necessary for one of Canada's two national airlines to be involved in any sale of Air Toronto. Realistically, there were only two possible purchasers, whether direct or indirect. They were Air Canada and Canadian Airlines International.

8 It was well known in the air transport industry that Air Toronto was for sale. During the months following the collapse of the negotiations with Air Canada, the receiver tried unsuccessfully to find viable purchasers. In late 1990, the receiver turned to Canadian Airlines International, the only realistic alternative. Negotiations began between them. Those negotiations led to a letter of intent dated February 11, 1990. On March 6, 1991, the receiver received an offer from Ontario Express Limited and Frontier Airlines Limited, who are subsidiaries of Canadian Airlines International. This offer is called the OEL offer.

9 In the meantime, Air Canada and CCFL were having discussions about making an offer for the purchase of Air Toronto. They formed 922246 Ontario Limited ("922") for the purpose of purchasing Air Toronto. On March 1, 1991, CCFL wrote to the receiver saying that it proposed to make an offer. On March 7, 1991, Air Canada and CCFL presented an offer to the receiver in the name of 922. For convenience, its offers are called the "922 offers."

10 The first 922 offer contained a condition which was unacceptable to the receiver. I will refer to that condition in more detail later. The receiver declined the 922 offer and on March 8, 1991, accepted the OEL offer. Subsequently, 922 obtained an order allowing it to make a second offer. It then submitted an offer which was virtually identical to that of March 7, 1991, except that the unacceptable condition had been removed.

11 The proceedings before Rosenberg J. then followed. He approved the sale to OEL and dismissed a motion for the acceptance of the 922 offer. Before Rosenberg J., and in this court, both CCFL and the Royal Bank supported the acceptance of the second 922 offer.

12 There are only two issues which must be resolved in this appeal. They are:

- (1) Did the receiver act properly when it entered into an agreement to sell Air Toronto to OEL?
- (2) What effect does the support of the 922 offer by the secured creditors have on the result?

13 I will deal with the two issues separately.

1. Did the Receiver Act Properly in Agreeing to Sell to OEL?

14 Before dealing with that issue, there are three general observations which I think I should make. The first is that the sale of an airline as a going concern is a very complex process. The best method of selling an airline at the best price is something far removed from the expertise of a court. When a court appoints a receiver to use its commercial expertise to sell an airline, it is inescapable that it intends to rely upon the receiver's expertise and not upon its own. Therefore, the court must place a great deal of confidence in the actions taken and in the opinions formed by the receiver. It should also assume that the receiver is acting properly unless the contrary is clearly shown. The second observation is that the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by its receiver. The third observation which I wish to make is that the conduct of the receiver should be reviewed in the light of the specific mandate given to him by the court.

15 The order of O'Brien J. provided that if the receiver could not complete the sale to Air Canada that it was "to negotiate and sell Air Toronto to another person." The court did not say how the receiver was to negotiate the sale. It did not say it was to call for bids or conduct an auction. It told the receiver to negotiate and sell. It obviously intended, because of the unusual nature of the asset being sold, to leave the method of sale substantially in the discretion of the receiver. I think, therefore, that the court should not review minutely the process of the sale when, broadly speaking, it appears to the court to be a just process.

16 As did Rosenberg J., I adopt as correct the statement made by Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 60 O.R. (2d) 87, 67 C.B.R. (N.S.) 320n, 22 C.P.C. (2d) 131, 39 D.L.R. (4th) 526 (H.C.), at pp. 92-94 [O.R.], of the duties which a court must perform when deciding whether a receiver who has sold a property acted properly. When he set out the court's duties, he did not put them in any order of priority, nor do I. I summarize those duties as follows:

1. It should consider whether the receiver has made a sufficient effort to get the best price and has not acted improvidently.
2. It should consider the interests of all parties.
3. It should consider the efficacy and integrity of the process by which offers are obtained.
4. It should consider whether there has been unfairness in the working out of the process.

17 I intend to discuss the performance of those duties separately.

1. Did the Receiver make a sufficient effort to get the best price and did it act providently?

18 Having regard to the fact that it was highly unlikely that a commercially viable sale could be made to anyone but the two national airlines, or to someone supported by either of them, it is my view that the receiver acted wisely and reasonably when it negotiated only with Air Canada and Canadian Airlines International. Furthermore, when Air Canada said that it would submit no further offers and gave the impression that it would not participate further in the receiver's efforts to sell, the only course reasonably open to the receiver was to negotiate with Canadian Airlines International. Realistically, there was nowhere else to go but to Canadian Airlines International. In doing so, it is my opinion that the receiver made sufficient efforts to sell the airline.

19 When the receiver got the OEL offer on March 6, 1991, it was over 10 months since it had been charged with the responsibility of selling Air Toronto. Until then, the receiver had not received one offer which it thought was acceptable. After substantial efforts to sell the airline over that period, I find it difficult to think that the receiver acted improvidently in accepting the only acceptable offer which it had.

20 On March 8, 1991, the date when the receiver accepted the OEL offer, it had only two offers, the OEL offer, which was acceptable, and the 922 offer, which contained an unacceptable condition. I cannot see how the receiver, assuming for the moment that the price was reasonable, could have done anything but accept the OEL offer.

21 When deciding whether a receiver had acted providently, the court should examine the conduct of the receiver in light of the information the receiver had when it agreed to accept an offer. In this case, the court should look at the receiver's conduct in the light of the information it had when it made its decision on March 8, 1991. The court should be very cautious before deciding that the receiver's conduct was improvident based upon information which has come to light after it made its decision. To do so, in my view, would derogate from the mandate to sell given to the receiver by the order of O'Brien J. I agree with and adopt what was said by Anderson J. in *Crown Trust Co. v. Rosenberg*, supra, at p. 112 [O.R.]:

Its decision was made as a matter of business judgment *on the elements then available to it*. It is of the very essence of a receiver's function to make such judgments and in the making of them to act seriously and responsibly so as to be prepared to stand behind them.

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.

[Emphasis added.]

22 I also agree with and adopt what was said by Macdonald J.A. in *Cameron v. Bank of Nova Scotia* (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), at p. 11 [C.B.R.]:

In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances *at the time existing* it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement.

[Emphasis added.]

23 On March 8, 1991, the receiver had two offers. One was the OEL offer, which it considered satisfactory but which could be withdrawn by OEL at any time before it was accepted. The receiver also had the 922 offer, which contained a condition that was totally unacceptable. It had no other offers. It was faced with the dilemma of whether it should decline to accept the OEL offer and run the risk of it being withdrawn, in the hope that an acceptable offer would be forthcoming from 922. An affidavit filed by the president of the receiver describes the dilemma which the receiver faced, and the judgment made in the light of that dilemma:

24. An asset purchase agreement was received by Ernst & Young on March 7, 1991 which was dated March 6, 1991. This agreement was received from CCFL in respect of their offer to purchase the assets and undertaking of Air Toronto. Apart from financial considerations, which will be considered in a subsequent affidavit, the *Receiver determined that it would not be prudent to delay acceptance of the OEL agreement to negotiate a highly uncertain arrangement with Air Canada and CCFL*. Air Canada had the benefit of an 'exclusive' in negotiations for Air Toronto and had clearly indicated its intention take itself out of the running while ensuring that no other party could seek to purchase Air Toronto and maintain the Air Canada connector arrangement vital to its survival. The CCFL offer represented a radical reversal of this position by Air Canada at the eleventh hour. However, it contained a significant number of conditions to closing which were entirely beyond the control of the Receiver. As well, the CCFL offer

came less than 24 hours before signing of the agreement with OEL which had been negotiated over a period of months, at great time and expense.

[Emphasis added.] I am convinced that the decision made was a sound one in the circumstances faced by the receiver on March 8, 1991.

24 I now turn to consider whether the price contained in the OEL offer was one which it was provident to accept. At the outset, I think that the fact that the OEL offer was the only acceptable one available to the receiver on March 8, 1991, after 10 months of trying to sell the airline, is strong evidence that the price in it was reasonable. In a deteriorating economy, I doubt that it would have been wise to wait any longer.

25 I mentioned earlier that, pursuant to an order, 922 was permitted to present a second offer. During the hearing of the appeal, counsel compared at great length the price contained in the second 922 offer with the price contained in the OEL offer. Counsel put forth various hypotheses supporting their contentions that one offer was better than the other.

26 It is my opinion that the price contained in the 922 offer is relevant only if it shows that the price obtained by the receiver in the OEL offer was not a reasonable one. In *Crown Trust Co. v. Rosenberg*, supra, Anderson J., at p. 113 [O.R.], discussed the comparison of offers in the following way:

No doubt, as the cases have indicated, situations might arise where the disparity was so great as to call in question the adequacy of the mechanism which had produced the offers. It is not so here, and in my view that is substantially an end of the matter.

27 In two judgments, Saunders J. considered the circumstances in which an offer submitted after the receiver had agreed to a sale should be considered by the court. The first is *Re Selkirk* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C.), at p. 247:

If, for example, in this case there had been a second offer of a substantially higher amount, then the court would have to take that offer into consideration in assessing whether the receiver had properly carried out his function of endeavouring to obtain the best price for the property.

28 The second is *Re Beauty Counsellors of Canada Ltd.* (1986), 58 C.B.R. (N.S.) 237 (Ont. S.C.), at p. 243:

If a substantially higher bid turns up at the approval stage, the court should consider it. Such a bid may indicate, for example, that the trustee has not properly carried out its duty to endeavour to obtain the best price for the estate.

29 In *Re Selkirk* (1987), 64 C.B.R. (N.S.) 140 (Ont. S.C.), at p. 142, McRae J. expressed a similar view:

The court will not lightly withhold approval of a sale by the receiver, particularly in a case such as this where the receiver is given rather wide discretionary authority as per the order of Mr. Justice Trainor and, of course, where the receiver is an officer of this court. Only in a case where there seems to be some unfairness in the process of the sale or *where there are substantially higher offers which would tend to show that the sale was improvident* will the court withhold approval. It is important that the court recognize the commercial exigencies that would flow if prospective purchasers are allowed to wait until the sale is in court for approval before submitting their final offer. This is something that must be discouraged.

[Emphasis added.]

30 What those cases show is that the prices in other offers have relevance only if they show that the price contained in the offer accepted by the receiver was so unreasonably low as to demonstrate that the receiver was improvident in accepting it. I am of the opinion, therefore, that if they do not tend to show that the receiver was improvident, they should not be considered upon a motion to confirm a sale recommended by a court-appointed receiver. If they were, the process would be changed from a sale by a receiver, subject to court approval, into an auction conducted by the court

at the time approval is sought. In my opinion, the latter course is unfair to the person who has entered bona fide into an agreement with the receiver, can only lead to chaos, and must be discouraged.

31 If, however, the subsequent offer is so substantially higher than the sale recommended by the receiver, then it may be that the receiver has not conducted the sale properly. In such circumstances, the court would be justified itself in entering into the sale process by considering competitive bids. However, I think that that process should be entered into only if the court is satisfied that the receiver has not properly conducted the sale which it has recommended to the court.

32 It is necessary to consider the two offers. Rosenberg J. held that the 922 offer was slightly better or marginally better than the OEL offer. He concluded that the difference in the two offers did not show that the sale process adopted by the receiver was inadequate or improvident.

33 Counsel for the appellants complained about the manner in which Rosenberg J. conducted the hearing of the motion to confirm the OEL sale. The complaint was that when they began to discuss a comparison of the two offers, Rosenberg J. said that he considered the 922 offer to be better than the OEL offer. Counsel said that when that comment was made, they did not think it necessary to argue further the question of the difference in value between the two offers. They complain that the finding that the 922 offer was only marginally better or slightly better than the OEL offer was made without them having had the opportunity to argue that the 922 offer was substantially better or significantly better than the OEL offer. I cannot understand how counsel could have thought that by expressing the opinion that the 922 offer was better, Rosenberg J. was saying that it was a significantly or substantially better one. Nor can I comprehend how counsel took the comment to mean that they were foreclosed from arguing that the offer was significantly or substantially better. If there was some misunderstanding on the part of counsel, it should have been raised before Rosenberg J. at the time. I am sure that if it had been, the misunderstanding would have been cleared up quickly. Nevertheless, this court permitted extensive argument dealing with the comparison of the two offers.

34 The 922 offer provided for \$6 million cash to be paid on closing with a royalty based upon a percentage of Air Toronto profits over a period of 5 years up to a maximum of \$3 million. The OEL offer provided for a payment of \$2 million on closing with a royalty paid on gross revenues over a 5-year period. In the short term, the 922 offer is obviously better because there is substantially more cash up front. The chances of future returns are substantially greater in the OEL offer because royalties are paid on gross revenues, while the royalties under the 922 offer are paid only on profits. There is an element of risk involved in each offer.

35 The receiver studied the two offers. It compared them and took into account the risks, the advantages and the disadvantages of each. It considered the appropriate contingencies. It is not necessary to outline the factors which were taken into account by the receiver because the manager of its insolvency practice filed an affidavit outlining the considerations which were weighed in its evaluation of the two offers. They seem to me to be reasonable ones. That affidavit concluded with the following paragraph:

24. On the basis of these considerations the Receiver has approved the OEL offer and has concluded that it represents the achievement of the highest possible value at this time for the Air Toronto division of SoundAir.

36 The court appointed the receiver to conduct the sale of Air Toronto, and entrusted it with the responsibility of deciding what is the best offer. I put great weight upon the opinion of the receiver. It swore to the court which appointed it that the OEL offer represents the achievement of the highest possible value at this time for Air Toronto. I have not been convinced that the receiver was wrong when he made that assessment. I am, therefore, of the opinion that the 922 offer does not demonstrate any failure upon the part of the receiver to act properly and providently.

37 It follows that if Rosenberg J. was correct when he found that the 922 offer was in fact better, I agree with him that it could only have been slightly or marginally better. The 922 offer does not lead to an inference that the disposition strategy of the receiver was inadequate, unsuccessful or improvident, nor that the price was unreasonable.

38 I am, therefore, of the opinion the the receiver made a sufficient effort to get the best price, and has not acted improvidently.

2. Consideration of the Interests of all Parties

39 It is well established that the primary interest is that of the creditors of the debtor: see *Crown Trust Co. v. Rosenberg*, supra, and *Re Selkirk*, supra (Saunders J.). However, as Saunders J. pointed out in *Re Beauty Counsellors*, supra at p. 244 [C.B.R.], "it is not the only or overriding consideration."

40 In my opinion, there are other persons whose interests require consideration. In an appropriate case, the interests of the debtor must be taken into account. I think also, in a case such as this, where a purchaser has bargained at some length and doubtless at considerable expense with the receiver, the interests of the purchaser ought to be taken into account. While it is not explicitly stated in such cases as *Crown Trust Co. v. Rosenberg*, supra, *Re Selkirk* (1986), supra, *Re Beauty Counsellors*, supra, *Re Selkirk* (1987), supra, and (*Cameron*), supra, I think they clearly imply that the interests of a person who has negotiated an agreement with a court-appointed receiver are very important.

41 In this case, the interests of all parties who would have an interest in the process were considered by the receiver and by Rosenberg J.

3. Consideration of the Efficacy and Integrity of the Process by which the Offer was Obtained

42 While it is accepted that the primary concern of a receiver is the protecting of the interests of the creditors, there is a secondary but very important consideration, and that is the integrity of the process by which the sale is effected. This is particularly so in the case of a sale of such a unique asset as an airline as a going concern.

43 The importance of a court protecting the integrity of the process has been stated in a number of cases. First, I refer to *Re Selkirk*, supra, where Saunders J. said at p. 246 [C.B.R.]:

In dealing with the request for approval, the court has to be concerned primarily with protecting the interest of the creditors of the former bankrupt. A secondary but important consideration is that the process under which the sale agreement is arrived at should be consistent with commercial efficacy and integrity.

In that connection I adopt the principles stated by Macdonald J.A. of the Nova Scotia Supreme Court (Appeal Division) in *Cameron v. Bank of N.S.* (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), where he said at p. 11:

In my opinion if the decision of the receiver to enter into an agreement of sale, subject to court approval, with respect to certain assets is reasonable and sound under the circumstances at the time existing it should not be set aside simply because a later and higher bid is made. To do so would literally create chaos in the commercial world and receivers and purchasers would never be sure they had a binding agreement. On the contrary, they would know that other bids could be received and considered up until the application for court approval is heard — this would be an intolerable situation.

While those remarks may have been made in the context of a bidding situation rather than a private sale, I consider them to be equally applicable to a negotiation process leading to a private sale. Where the court is concerned with the disposition of property, the purpose of appointing a receiver is to have the receiver do the work that the court would otherwise have to do.

44 In *Salima Investments Ltd. v. Bank of Montreal* (1985), 59 C.B.R. (N.S.) 242, 41 Alta. L.R. (2d) 58, 65 A.R. 372, 21 D.L.R. (4th) 473 at p. 476 [D.L.R.], the Alberta Court of Appeal said that sale by tender is not necessarily the best way to sell a business as an ongoing concern. It went on to say that when some other method is used which is provident, the court should not undermine the process by refusing to confirm the sale.

45 Finally, I refer to the reasoning of Anderson J. in *Crown Trust Co. v. Rosenberg*, supra, at p. 124 [O.R.]:

While every proper effort must always be made to assure maximum recovery consistent with the limitations inherent in the process, no method has yet been devised to entirely eliminate those limitations or to avoid their consequences. *Certainly it is not to be found in loosening the entire foundation of the system. Thus to compare the results of the process in this case with what might have been recovered in some other set of circumstances is neither logical nor practical.*

[Emphasis added.]

46 It is my opinion that the court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an unusual asset. It is important that prospective purchasers know that, if they are acting in good faith, bargain seriously with a receiver and enter into an agreement with it, a court will not lightly interfere with the commercial judgment of the receiver to sell the asset to them.

47 Before this court, counsel for those opposing the confirmation of the sale to OEL suggested many different ways in which the receiver could have conducted the process other than the way which he did. However, the evidence does not convince me that the receiver used an improper method of attempting to sell the airline. The answer to those submissions is found in the comment of Anderson J. in *Crown Trust Co. v. Rosenberg*, supra, at p. 109 [O.R.]:

The court ought not to sit as on appeal from the decision of the Receiver, reviewing in minute detail every element of the process by which the decision is reached. To do so would be a futile and duplicitous exercise.

48 It would be a futile and duplicitous exercise for this court to examine in minute detail all of circumstances leading up to the acceptance of the OEL offer. Having considered the process adopted by the receiver, it is my opinion that the process adopted was a reasonable and prudent one.

4. Was there unfairness in the process?

49 As a general rule, I do not think it appropriate for the court to go into the minutia of the process or of the selling strategy adopted by the receiver. However, the court has a responsibility to decide whether the process was fair. The only part of this process which I could find that might give even a superficial impression of unfairness is the failure of the receiver to give an offering memorandum to those who expressed an interest in the purchase of Air Toronto.

50 I will outline the circumstances which relate to the allegation that the receiver was unfair in failing to provide an offering memorandum. In the latter part of 1990, as part of its selling strategy, the receiver was in the process of preparing an offering memorandum to give to persons who expressed an interest in the purchase of Air Toronto. The offering memorandum got as far as draft form, but was never released to anyone, although a copy of the draft eventually got into the hands of CCFL before it submitted the first 922 offer on March 7, 1991. A copy of the offering memorandum forms part of the record, and it seems to me to be little more than puffery, without any hard information which a sophisticated purchaser would require in order to make a serious bid.

51 The offering memorandum had not been completed by February 11, 1991. On that date, the receiver entered into the letter of intent to negotiate with OEL. The letter of intent contained a provision that during its currency the receiver would not negotiate with any other party. The letter of intent was renewed from time to time until the OEL offer was received on March 6, 1991.

52 The receiver did not proceed with the offering memorandum because to do so would violate the spirit, if not the letter, of its letter of intent with OEL.

53 I do not think that the conduct of the receiver shows any unfairness towards 922. When I speak of 922, I do so in the context that Air Canada and CCFL are identified with it. I start by saying that the receiver acted reasonably when it entered into exclusive negotiations with OEL. I find it strange that a company, with which Air Canada is closely

and intimately involved, would say that it was unfair for the receiver to enter into a time-limited agreement to negotiate exclusively with OEL. That is precisely the arrangement which Air Canada insisted upon when it negotiated with the receiver in the spring and summer of 1990. If it was not unfair for Air Canada to have such an agreement, I do not understand why it was unfair for OEL to have a similar one. In fact, both Air Canada and OEL in its turn were acting reasonably when they required exclusive negotiating rights to prevent their negotiations from being used as a bargaining lever with other potential purchasers. The fact that Air Canada insisted upon an exclusive negotiating right while it was negotiating with the receiver demonstrates the commercial efficacy of OEL being given the same right during its negotiations with the receiver. I see no unfairness on the part of the receiver when it honoured its letter of intent with OEL by not releasing the offering memorandum during the negotiations with OEL.

54 Moreover, I am not prepared to find that 922 was in any way prejudiced by the fact that it did not have an offering memorandum. It made an offer on March 7, 1991, which it contends to this day was a better offer than that of OEL. 922 has not convinced me that if it had an offering memorandum, its offer would have been any different or any better than it actually was. The fatal problem with the first 922 offer was that it contained a condition which was completely unacceptable to the receiver. The receiver, properly, in my opinion, rejected the offer out of hand because of that condition. That condition did not relate to any information which could have conceivably been in an offering memorandum prepared by the receiver. It was about the resolution of a dispute between CCFL and the Royal Bank, something the receiver knew nothing about.

55 Further evidence of the lack of prejudice which the absence of an offering memorandum has caused 922 is found in CCFL's stance before this court. During argument, its counsel suggested as a possible resolution of this appeal that this court should call for new bids, evaluate them and then order a sale to the party who put in the better bid. In such a case, counsel for CCFL said that 922 would be prepared to bid within 7 days of the court's decision. I would have thought that, if there were anything to CCFL's suggestion that the failure to provide an offering memorandum was unfair to 922, that it would have told the court that it needed more information before it would be able to make a bid.

56 I am satisfied that Air Canada and CCFL have, and at all times had, all of the information which they would have needed to make what to them would be a commercially viable offer to the receiver. I think that an offering memorandum was of no commercial consequence to them, but the absence of one has since become a valuable tactical weapon.

57 It is my opinion that there is no convincing proof that if an offering memorandum had been widely distributed among persons qualified to have purchased Air Toronto, a viable offer would have come forth from a party other than 922 or OEL. Therefore, the failure to provide an offering memorandum was neither unfair, nor did it prejudice the obtaining of a better price on March 8, 1991, than that contained in the OEL offer. I would not give effect to the contention that the process adopted by the receiver was an unfair one.

58 There are two statements by Anderson J. contained in *Crown Trust Co. v. Rosenberg*, supra, which I adopt as my own. The first is at p. 109 [O.R.]:

The court should not proceed against the recommendations of its Receiver except in special circumstances and where the necessity and propriety of doing so are plain. Any other rule or approach would emasculate the role of the Receiver and make it almost inevitable that the final negotiation of every sale would take place on the motion for approval.

The second is at p. 111 [O.R.]:

It is equally clear, in my view, though perhaps not so clearly enunciated, that it is only in an exceptional case that the court will intervene and proceed contrary to the Receiver's recommendations if satisfied, as I am, that the Receiver has acted reasonably, prudently and fairly and not arbitrarily.

In this case the receiver acted reasonably, prudently, fairly and not arbitrarily. I am of the opinion, therefore, that the process adopted by the receiver in reaching an agreement was a just one.

59 In his reasons for judgment, after discussing the circumstances leading to the 922 offer, Rosenberg J. said this:

They created a situation as of March 8th, where the Receiver was faced with two offers, one of which was in acceptable form and one of which could not possibly be accepted in its present form. The Receiver acted appropriately in accepting the OEL offer.

I agree.

60 The receiver made proper and sufficient efforts to get the best price that it could for the assets of Air Toronto. It adopted a reasonable and effective process to sell the airline which was fair to all persons who might be interested in purchasing it. It is my opinion, therefore, that the receiver properly carried out the mandate which was given to it by the order of O'Brien J. It follows that Rosenberg J. was correct when he confirmed the sale to OEL.

II. The effect of the support of the 922 offer by the two secured creditors.

61 As I noted earlier, the 922 offer was supported before Rosenberg J., and in this court, by CCFL and by the Royal Bank, the two secured creditors. It was argued that, because the interests of the creditors are primary, the court ought to give effect to their wish that the 922 offer be accepted. I would not accede to that suggestion for two reasons.

62 The first reason is related to the fact that the creditors chose to have a receiver appointed by the court. It was open to them to appoint a private receiver pursuant to the authority of their security documents. Had they done so, then they would have had control of the process and could have sold Air Toronto to whom they wished. However, acting privately and controlling the process involves some risks. The appointment of a receiver by the court insulates the creditors from those risks. But, insulation from those risks carries with it the loss of control over the process of disposition of the assets. As I have attempted to explain in these reasons, when a receiver's sale is before the court for confirmation, the only issues are the propriety of the conduct of the receiver and whether it acted providently. The function of the court at that stage is not to step in and do the receiver's work, or change the sale strategy adopted by the receiver. Creditors who asked the court to appoint a receiver to dispose of assets should not be allowed to take over control of the process by the simple expedient of supporting another purchaser if they do not agree with the sale made by the receiver. That would take away all respect for the process of sale by a court-appointed receiver.

63 There can be no doubt that the interests of the creditor are an important consideration in determining whether the receiver has properly conducted a sale. The opinion of the creditors as to which offer ought to be accepted is something to be taken into account. But if the court decides that the receiver has acted properly and providently, those views are not necessarily determinative. Because, in this case, the receiver acted properly and providently, I do not think that the views of the creditors should override the considered judgment of the receiver.

64 The second reason is that, in the particular circumstances of this case, I do not think the support of CCFL and the Royal Bank of the 922 offer is entitled to any weight. The support given by CCFL can be dealt with summarily. It is a co-owner of 922. It is hardly surprising and not very impressive to hear that it supports the offer which it is making for the debtor's assets.

65 The support by the Royal Bank requires more consideration and involves some reference to the circumstances. On March 6, 1991, when the first 922 offer was made, there was in existence an inter-lender agreement between the Royal Bank and CCFL. That agreement dealt with the share of the proceeds of the sale of Air Toronto which each creditor would receive. At the time, a dispute between the Royal Bank and CCFL about the interpretation of that agreement was pending in the courts. The unacceptable condition in the first 922 offer related to the settlement of the inter-lender dispute. The condition required that the dispute be resolved in a way which would substantially favour CCFL. It required that CCFL receive \$3,375,000 of the \$6 million cash payment and the balance, including the royalties, if any, be paid to the Royal Bank. The Royal Bank did not agree with that split of the sale proceeds.

66 On April 5, 1991, the Royal Bank and CCFL agreed to settle the inter-lender dispute. The settlement was that if the 922 offer was accepted by the court, CCFL would receive only \$1 million, and the Royal Bank would receive \$5 million plus any royalties which might be paid. It was only in consideration of that settlement that the Royal Bank agreed to support the 922 offer.

67 The Royal Bank's support of the 922 offer is so affected by the very substantial benefit which it wanted to obtain from the settlement of the inter-lender dispute that, in my opinion, its support is devoid of any objectivity. I think it has no weight.

68 While there may be circumstances where the unanimous support by the creditors of a particular offer could conceivably override the proper and provident conduct of a sale by a receiver, I do not think that this is such a case. This is a case where the receiver has acted properly and in a provident way. It would make a mockery out of the judicial process, under which a mandate was given to this receiver to sell this airline if the support by these creditors of the 922 offer were permitted to carry the day. I give no weight to the support which they give to the 922 offer.

69 In its factum, the receiver pointed out that, because of greater liabilities imposed upon private receivers by various statutes such as the *Employment Standards Act*, R.S.O. 1980, c. 137, and the *Environmental Protection Act*, R.S.O. 1980, c. 141, it is likely that more and more the courts will be asked to appoint receivers in insolvencies. In those circumstances, I think that creditors who ask for court-appointed receivers and business people who choose to deal with those receivers should know that if those receivers act properly and providently, their decisions and judgments will be given great weight by the courts who appoint them. I have decided this appeal in the way I have in order to assure business people who deal with court-appointed receivers that they can have confidence that an agreement which they make with a court-appointed receiver will be far more than a platform upon which others may bargain at the court approval stage. I think that persons who enter into agreements with court-appointed receivers, following a disposition procedure that is appropriate given the nature of the assets involved, should expect that their bargain will be confirmed by the court.

70 The process is very important. It should be carefully protected so that the ability of court-appointed receivers to negotiate the best price possible is strengthened and supported. Because this receiver acted properly and providently in entering into the OEL agreement, I am of the opinion that Rosenberg J. was right when he approved the sale to OEL and dismissed the motion to approve the 922 offer.

71 I would, accordingly, dismiss the appeal. I would award the receiver, OEL and Frontier Airlines Limited their costs out of the Soundair estate, those of the receiver on a solicitor-client scale. I would make no order as to the costs of any of the other parties or intervenors.

McKinlay J.A. :

72 I agree with Galligan J.A. in result, but wish to emphasize that I do so on the basis that the undertaking being sold in this case was of a very special and unusual nature. It is most important that the integrity of procedures followed by court-appointed receivers be protected in the interests of both commercial morality and the future confidence of business persons in their dealings with receivers. Consequently, in all cases, the court should carefully scrutinize the procedure followed by the receiver to determine whether it satisfies the tests set out by Anderson J. in *Crown Trust Co. v. Rosenberg* (1986), 67 C.B.R. (N.S.) 320n, 60 O.R. (2d) 87, 22 C.P.C. (2d) 131, 39 D.L.R. (4th) 526 (H.C.). While the procedure carried out by the receiver in this case, as described by Galligan J.A., was appropriate, given the unfolding of events and the unique nature of the assets involved, it is not a procedure that is likely to be appropriate in many receivership sales.

73 I should like to add that where there is a small number of creditors who are the only parties with a real interest in the proceeds of the sale (i.e., where it is clear that the highest price attainable would result in recovery so low that no other creditors, shareholders, guarantors, etc., could possibly benefit therefore), the wishes of the interested creditors should be very seriously considered by the receiver. It is true, as Galligan J.A. points out, that in seeking the court appointment of a receiver, the moving parties also seek the protection of the court in carrying out the receiver's functions. However, it

is also true that in utilizing the court process, the moving parties have opened the whole process to detailed scrutiny by all involved, and have probably added significantly to their costs and consequent shortfall as a result of so doing. The adoption of the court process should in no way diminish the rights of any party, and most certainly not the rights of the only parties with a real interest. Where a receiver asks for court approval of a sale which is opposed by the only parties in interest, the court should scrutinize with great care the procedure followed by the receiver. I agree with Galligan J.A. that in this case that was done. I am satisfied that the rights of all parties were properly considered by the receiver, by the learned motions court judge, and by Galligan J.A.

Goodman J.A. (dissenting):

74 I have had the opportunity of reading the reasons for judgment herein of Galligan and McKinlay J.J.A. Respectfully, I am unable to agree with their conclusion.

75 The case at bar is an exceptional one in the sense that upon the application made for approval of the sale of the assets of Air Toronto, two competing offers were placed before Rosenberg J. Those two offers were that of OEL and that of 922, a company incorporated for the purpose of acquiring Air Toronto. Its shares were owned equally by CCFL and Air Canada. It was conceded by all parties to these proceedings that the only persons who had any interest in the proceeds of the sale were two secured creditors, viz., CCFL and the Royal Bank of Canada. Those two creditors were unanimous in their position that they desired the court to approve the sale to 922. We were not referred to, nor am I aware of, any case where a court has refused to abide by the unanimous wishes of the only interested creditors for the approval of a specific offer made in receivership proceedings.

76 In *British Columbia Developments Corp. v. Spun Cast Industries Ltd.* (1977), 26 C.B.R. (N.S.) 28, 5 B.C.L.R. 94 (S.C.), Berger J. said at p. 30 [C.B.R.]:

Here all of those with a financial stake in the plant have joined in seeking the court's approval of the sale to Fincas. This court does not have a roving commission to decide what is best for investors and businessmen when they have agreed among themselves what course of action they should follow. It is their money.

77 I agree with that statement. It is particularly apt to this case. The two secured creditors will suffer a shortfall of approximately \$50 million. They have a tremendous interest in the sale of assets which form part of their security. I agree with the finding of Rosenberg J. that the offer of 922 is superior to that of OEL. He concluded that the 922 offer is marginally superior. If by that he meant that mathematically it was likely to provide slightly more in the way of proceeds, it is difficult to take issue with that finding. If, on the other hand, he meant that having regard to all considerations it was only marginally superior, I cannot agree. He said in his reasons:

I have come to the conclusion that knowledgeable creditors such as the Royal Bank would prefer the 922 offer even if the other factors influencing their decision were not present. No matter what adjustments had to be made, the 922 offer results in more cash immediately. Creditors facing the type of loss the Royal Bank is taking in this case would not be anxious to rely on contingencies especially in the present circumstances surrounding the airline industry.

78 I agree with that statement completely. It is apparent that the difference between the two offers insofar as cash on closing is concerned amounts to approximately \$3 million to \$4 million. The bank submitted that it did not wish to gamble any further with respect to its investment, and that the acceptance and court approval of the OEL offer in effect supplanted its position as a secured creditor with respect to the amount owing over and above the down payment and placed it in the position of a joint entrepreneur, but one with no control. This results from the fact that the OEL offer did not provide for any security for any funds which might be forthcoming over and above the initial down payment on closing.

79 In *Cameron v. Bank of Nova Scotia* (1981), 38 C.B.R. (N.S.) 1, 45 N.S.R. (2d) 303, 86 A.P.R. 303 (C.A.), Hart J.A., speaking for the majority of the court, said at p. 10 [C.B.R.]:

Here we are dealing with a receiver appointed at the instance of one major creditor, who chose to insert in the contract of sale a provision making it subject to the approval of the court. This, in my opinion, shows an intention on behalf of the parties to invoke the normal equitable doctrines which place the court in the position of looking to the interests of all persons concerned before giving its blessing to a particular transaction submitted for approval. In these circumstances the court would not consider itself bound by the contract entered into in good faith by the receiver but would have to look to the broader picture to see that that contract was for the benefit of the creditors as a whole. When there was evidence that a higher price was readily available for the property the chambers judge was, in my opinion, justified in exercising his discretion as he did. Otherwise he could have deprived the creditors of a substantial sum of money.

80 This statement is apposite to the circumstances of the case at bar. I hasten to add that in my opinion it is not only price which is to be considered in the exercise of the judge's discretion. It may very well be, as I believe to be so in this case, that the amount of cash is the most important element in determining which of the two offers is for the benefit and in the best interest of the creditors.

81 It is my view, and the statement of Hart J.A. is consistent therewith, that the fact that a creditor has requested an order of the court appointing a receiver does not in any way diminish or derogate from his right to obtain the maximum benefit to be derived from any disposition of the debtor's assets. I agree completely with the views expressed by McKinlay J.A. in that regard in her reasons.

82 It is my further view that any negotiations which took place between the only two interested creditors in deciding to support the approval of the 922 offer were not relevant to the determination by the presiding judge of the issues involved in the motion for approval of either one of the two offers, nor are they relevant in determining the outcome of this appeal. It is sufficient that the two creditors have decided unanimously what is in their best interest, and the appeal must be considered in the light of that decision. It so happens, however, that there is ample evidence to support their conclusion that the approval of the 922 offer is in their best interests.

83 I am satisfied that the interests of the creditors are the prime consideration for both the receiver and the court. In *Re Beauty Counsellors of Canada Ltd.* (1986), 58 C.B.R. (N.S.) 237 (Ont. S.C.), Saunders J. said at p. 243:

This does not mean that a court should ignore a new and higher bid made after acceptance where there has been no unfairness in the process. The interests of the creditors, while not the only consideration, are the prime consideration.

84 I agree with that statement of the law. In *Re Selkirk* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C.), Saunders J. heard an application for court approval of the sale by the sheriff of real property in bankruptcy proceedings. The sheriff had been previously ordered to list the property for sale subject to approval of the court. Saunders J. said at p. 246:

In dealing with the request for approval, the court has to be concerned primarily with protecting the interests of the creditors of the former bankrupt. A secondary but important consideration is that the process under which the sale agreement is arrived at should be consistent with commercial efficacy and integrity.

85 I am in agreement with that statement as a matter of general principle. Saunders J. further stated that he adopted the principles stated by Macdonald J.A. in *Cameron*, supra, quoted by Galligan J.A. in his reasons. In *Cameron*, the remarks of Macdonald J.A. related to situations involving the calling of bids and fixing a time limit for the making of such bids. In those circumstances the process is so clear as a matter of commercial practice that an interference by the court in such process might have a deleterious effect on the efficacy of receivership proceedings in other cases. But Macdonald J.A. recognized that even in bid or tender cases where the offeror for whose bid approval is sought has complied with all requirements, a court might not approve the agreement of purchase and sale entered into by the receiver. He said at pp. 11-12 [C.B.R.]:

There are, of course, many reasons why a court might not approve an agreement of purchase and sale, viz., where the offer accepted is so low in relation to the appraised value as to be unrealistic; or, where the circumstances indicate that insufficient time was allowed for the making of bids or that inadequate notice of sale by bid was given (where the receiver sells property by the bid method); or, where it can be said that the proposed sale is not in the best interest of either the creditors or the owner. Court approval must involve the delicate balancing of competing interests and not simply a consideration of the interests of the creditors.

86 The deficiency in the present case is so large that there has been no suggestion of a competing interest between the owner and the creditors.

87 I agree that the same reasoning may apply to a negotiation process leading to a private sale, but the procedure and process applicable to private sales of a wide variety of businesses and undertakings with the multiplicity of individual considerations applicable and perhaps peculiar to the particular business is not so clearly established that a departure by the court from the process adopted by the receiver in a particular case will result in commercial chaos to the detriment of future receivership proceedings. Each case must be decided on its own merits, and it is necessary to consider the process used by the receiver in the present proceedings and to determine whether it was unfair, improvident or inadequate.

88 It is important to note at the outset that Rosenberg J. made the following statement in his reasons:

On March 8, 1991 the trustee accepted the OEL offer subject to court approval. The Receiver at that time had no other offer before it that was in final form or could possibly be accepted. The Receiver had at the time the knowledge that Air Canada with CCFL had not bargained in good faith and had not fulfilled the promise of its letter of March 1st. The Receiver was justified in assuming that Air Canada and CCFL's offer was a long way from being in an acceptable form and that Air Canada and CCFL's objective was to interrupt the finalizing of the OEL agreement and to retain as long as possible the Air Toronto connector traffic flowing into Terminal 2 for the benefit of Air Canada.

89 In my opinion there was no evidence before him or before this court to indicate that Air Canada, with CCFL, had not bargained in good faith, and that the receiver had knowledge of such lack of good faith. Indeed, on his appeal, counsel for the receiver stated that he was not alleging Air Canada and CCFL had not bargained in good faith. Air Canada had frankly stated at the time that it had made its offer to purchase, which was eventually refused by the receiver, that it would not become involved in an "auction" to purchase the undertaking of Air Canada and that, although it would fulfil its contractual obligations to provide connecting services to Air Toronto, it would do no more than it was legally required to do insofar as facilitating the purchase of Air Toronto by any other person. In so doing, Air Canada may have been playing "hardball," as its behaviour was characterized by some of the counsel for opposing parties. It was nevertheless merely openly asserting its legal position, as it was entitled to do.

90 Furthermore, there was no evidence before Rosenberg J. or this court that the receiver had assumed that Air Canada and CCFL's objective in making an offer was to interrupt the finalizing of the OEL agreement and to retain as long as possible the Air Toronto connector traffic flowing into Terminal 2 for the benefit of Air Canada. Indeed, there was no evidence to support such an assumption in any event, although it is clear that 922, and through it CCFL and Air Canada, were endeavouring to present an offer to purchase which would be accepted and/or approved by the court in preference to the offer made by OEL.

91 To the extent that approval of the OEL agreement by Rosenberg J. was based on the alleged lack of good faith in bargaining and improper motivation with respect to connector traffic on the part of Air Canada and CCFL, it cannot be supported.

92 I would also point out that rather than saying there was no other offer before it that was final in form, it would have been more accurate to have said that there was *no unconditional* offer before it.

93 In considering the material and evidence placed before the court, I am satisfied that the receiver was at all times acting in good faith. I have reached the conclusion, however, that the process which he used was unfair insofar as 922 is concerned, and improvident insofar as the two secured creditors are concerned.

94 Air Canada had been negotiating with Soundair Corporation for the purchase from it of Air Toronto for a considerable period of time prior to the appointment of a receiver by the court. It had given a letter of intent indicating a prospective sale price of \$18 million. After the appointment of the receiver, by agreement dated April 30, 1990, Air Canada continued its negotiations for the purchase of Air Toronto with the receiver. Although this agreement contained a clause which provided that the receiver "shall not negotiate for the sale ... of Air Toronto with any person except Air Canada," it further provided that the receiver would not be in breach of that provision merely by receiving unsolicited offers for all or any of the assets of Air Toronto. In addition, the agreement, which had a term commencing on April 30, 1990, could be terminated on the fifth business day following the delivery of a written notice of termination by one party to the other. I point out this provision merely to indicate that the exclusivity privilege extended by the receiver to Air Canada was of short duration at the receiver's option.

95 As a result of due diligence investigations carried out by Air Canada during the months of April, May and June of 1990, Air Canada reduced its offer to \$8.1 million conditional upon there being \$4 million in tangible assets. The offer was made on June 14, 1990, and was open for acceptance until June 29, 1990.

96 By amending agreement dated June 19, 1990, the receiver was released from its covenant to refrain from negotiating for the sale of the Air Toronto business and assets to any person other than Air Canada. By virtue of this amending agreement, the receiver had put itself in the position of having a firm offer in hand, with the right to negotiate and accept offers from other persons. Air Canada, in these circumstances, was in the subservient position. The receiver, in the exercise of its judgment and discretion, allowed the Air Canada offer to lapse. On July 20, 1990, Air Canada served a notice of termination of the April 30, 1990 agreement.

97 Apparently as a result of advice received from the receiver to the effect that the receiver intended to conduct an auction for the sale of the assets and business of the Air Toronto division of Soundair Corporation, the solicitors for Air Canada advised the receiver by letter dated July 20, 1990, in part as follows:

Air Canada has instructed us to advise you that it does not intend to submit a further offer in the auction process.

98 This statement, together with other statements set forth in the letter, was sufficient to indicate that Air Canada was not interested in purchasing Air Toronto in the process apparently contemplated by the receiver at that time. It did not form a proper foundation for the receiver to conclude that there was no realistic possibility of selling Air Toronto [to] Air Canada, either alone or in conjunction with some other person, in different circumstances. In June 1990, the receiver was of the opinion that the fair value of Air Toronto was between \$10 million and \$12 million.

99 In August 1990, the receiver contacted a number of interested parties. A number of offers were received which were not deemed to be satisfactory. One such offer, received on August 20, 1990, came as a joint offer from OEL and Air Ontario (an Air Canada connector). It was for the sum of \$3 million for the good will relating to certain Air Toronto routes, but did not include the purchase of any tangible assets or leasehold interests.

100 In December 1990, the receiver was approached by the management of Canadian Partner (operated by OEL) for the purpose of evaluating the benefits of an amalgamated Air Toronto/Air Partner operation. The negotiations continued from December of 1990 to February of 1991, culminating in the OEL agreement dated March 8, 1991.

101 On or before December 1990, CCFL advised the receiver that it intended to make a bid for the Air Toronto assets. The receiver, in August of 1990, for the purpose of facilitating the sale of Air Toronto assets, commenced the preparation of an operating memorandum. He prepared no less than six draft operating memoranda with dates from

October 1990 through March 1, 1991. None of these were distributed to any prospective bidder despite requests having been received therefor, with the exception of an early draft provided to CCFL without the receiver's knowledge.

102 During the period December 1990 to the end of January 1991, the receiver advised CCFL that the offering memorandum was in the process of being prepared and would be ready soon for distribution. He further advised CCFL that it should await the receipt of the memorandum before submitting a formal offer to purchase the Air Toronto assets.

103 By late January, CCFL had become aware that the receiver was negotiating with OEL for the sale of Air Toronto. In fact, on February 11, 1991, the receiver signed a letter of intent with OEL wherein it had specifically agreed not to negotiate with any other potential bidders or solicit any offers from others.

104 By letter dated February 25, 1991, the solicitors for CCFL made a written request to the receiver for the offering memorandum. The receiver did not reply to the letter because he felt he was precluded from so doing by the provisions of the letter of intent dated February 11, 1991. Other prospective purchasers were also unsuccessful in obtaining the promised memorandum to assist them in preparing their bids. It should be noted that, exclusivity provision of the letter of intent expired on February 20, 1991. This provision was extended on three occasions, viz., February 19, 22 and March 5, 1991. It is clear that from a legal standpoint the receiver, by refusing to extend the time, could have dealt with other prospective purchasers, and specifically with 922.

105 It was not until March 1, 1991, that CCFL had obtained sufficient information to enable it to make a bid through 922. It succeeded in so doing through its own efforts through sources other than the receiver. By that time the receiver had already entered into the letter of intent with OEL. Notwithstanding the fact that the receiver knew since December of 1990 that CCFL wished to make a bid for the assets of Air Toronto (and there is no evidence to suggest that at that time such a bid would be in conjunction with Air Canada or that Air Canada was in any way connected with CCFL), it took no steps to provide CCFL with information necessary to enable it to make an intelligent bid, and indeed suggested delaying the making of the bid until an offering memorandum had been prepared and provided. In the meantime, by entering into the letter of intent with OEL, it put itself in a position where it could not negotiate with CCFL or provide the information requested.

106 On February 28, 1991, the solicitors for CCFL telephoned the receiver and were advised for the first time that the receiver had made a business decision to negotiate solely with OEL and would not negotiate with anyone else in the interim.

107 By letter dated March 1, 1991, CCFL advised the receiver that it intended to submit a bid. It set forth the essential terms of the bid and stated that it would be subject to customary commercial provisions. On March 7, 1991 CCFL and Air Canada, jointly through 922, submitted an offer to purchase Air Toronto upon the terms set forth in the letter dated March 1, 1991. It included a provision that the offer was conditional upon the interpretation of an inter-lender agreement which set out the relative distribution of proceeds as between CCFL and the Royal Bank. It is common ground that it was a condition over which the receiver had no control, and accordingly would not have been acceptable on that ground alone. The receiver did not, however, contact CCFL in order to negotiate or request the removal of the condition, although it appears that its agreement with OEL not to negotiate with any person other than OEL expired on March 6, 1991.

108 The fact of the matter is that by March 7, 1991, the receiver had received the offer from OEL which was subsequently approved by Rosenberg J. That offer was accepted by the receiver on March 8, 1991. Notwithstanding the fact that OEL had been negotiating the purchase for a period of approximately 3 months, the offer contained a provision for the sole benefit of the purchaser that it was subject to the purchaser obtaining "a financing commitment within 45 days of the date hereof in an amount not less than the Purchase Price from the Royal Bank of Canada or other financial institution upon terms and conditions acceptable to them. In the event that such a financing commitment is not obtained within such 45 day period, the purchaser or OEL shall have the right to terminate this agreement upon giving written

notice of termination to the vendor on the first Business Day following the expiry of the said period." The purchaser was also given the right to waive the condition.

109 In effect, the agreement was tantamount to a 45-day option to purchase, excluding the right of any other person to purchase Air Toronto during that period of time and thereafter if the condition was fulfilled or waived. The agreement was, of course, stated to be subject to court approval.

110 In my opinion, the process and procedure adopted by the receiver was unfair to CCFL. Although it was aware from December 1990 that CCFL was interested in making an offer, it effectively delayed the making of such offer by continually referring to the preparation of the offering memorandum. It did not endeavour during the period December 1990 to March 7, 1991, to negotiate with CCFL in any way the possible terms of purchase and sale agreement. In the result, no offer was sought from CCFL by the receiver prior to February 11, 1991, and thereafter it put itself in the position of being unable to negotiate with anyone other than OEL. The receiver then, on March 8, 1991, chose to accept an offer which was conditional in nature without prior consultation with CCFL (922) to see whether it was prepared to remove the condition in its offer.

111 I do not doubt that the receiver felt that it was more likely that the condition in the OEL offer would be fulfilled than the condition in the 922 offer. It may be that the receiver, having negotiated for a period of 3 months with OEL, was fearful that it might lose the offer if OEL discovered that it was negotiating with another person. Nevertheless, it seems to me that it was imprudent and unfair on the part of the receiver to ignore an offer from an interested party which offered approximately triple the cash down payment without giving a chance to the offeror to remove the conditions or other terms which made the offer unacceptable to it. The potential loss was that of an agreement which amounted to little more than an option in favour of the offeror.

112 In my opinion the procedure adopted by the receiver was unfair to CCFL in that, in effect, it gave OEL the opportunity of engaging in exclusive negotiations for a period of 3 months, notwithstanding the fact that it knew CCFL was interested in making an offer. The receiver did not indicate a deadline by which offers were to be submitted, and it did not at any time indicate the structure or nature of an offer which might be acceptable to it.

113 In his reasons, Rosenberg J. stated that as of March 1, CCFL and Air Canada had all the information that they needed, and any allegations of unfairness in the negotiating process by the receiver had disappeared. He said:

They created a situation as of March 8, where the receiver was faced with two offers, one of which was acceptable in form and one of which could not possibly be accepted in its present form. The Receiver acted appropriately in accepting the OEL offer.

If he meant by "acceptable in form" that it was acceptable to the receiver, then obviously OEL had the unfair advantage of its lengthy negotiations with the receiver to ascertain what kind of an offer would be acceptable to the receiver. If, on the other hand, he meant that the 922 offer was unacceptable in its form because it was conditional, it can hardly be said that the OEL offer was more acceptable in this regard, as it contained a condition with respect to financing terms and conditions "*acceptable to them*."

114 It should be noted that on March 13, 1991, the representatives of 922 first met with the receiver to review its offer of March 7, 1991, and at the request of the receiver, withdrew the inter-lender condition from its offer. On March 14, 1991, OEL removed the financing condition from its offer. By order of Rosenberg J. dated March 26, 1991, CCFL was given until April 5, 1991, to submit a bid, and on April 5, 1991, 922 submitted its offer with the inter-lender condition removed.

115 In my opinion, the offer accepted by the receiver is improvident and unfair insofar as the two creditors are concerned. It is not improvident in the sense that the price offered by 922 greatly exceeded that offered by OEL. In the final analysis it may not be greater at all. The salient fact is that the cash down payment in the 922 offer constitutes proximately two thirds of the contemplated sale price, whereas the cash down payment in the OEL transaction constitutes

1991 CarswellOnt 205, [1991] O.J. No. 1137, 27 A.C.W.S. (3d) 1178, 46 O.A.C. 321...

approximately 20 to 25 per cent of the contemplated sale price. In terms of absolute dollars, the down payment in the 922 offer would likely exceed that provided for in the OEL agreement by approximately \$3 million to \$4 million.

116 In *Re Beauty Counsellors of Canada Ltd.*, supra, Saunders J. said at p. 243 [C.B.R.]:

If a substantially higher bid turns up at the approval stage, the court should consider it. Such a bid may indicate, for example, that the trustee has not properly carried out its duty to endeavour to obtain the best price for the estate. In such a case the proper course might be to refuse approval and to ask the trustee to recommence the process.

117 I accept that statement as being an accurate statement of the law. I would add, however, as previously indicated, that in determining what is the best price for the estate, the receiver or court should not limit its consideration to which offer provides for the greater sale price. The amount of down payment and the provision or lack thereof to secure payment of the balance of the purchase price over and above the down payment may be the most important factor to be considered, and I am of the view that is so in the present case. It is clear that that was the view of the only creditors who can benefit from the sale of Air Toronto.

118 I note that in the case at bar the 922 offer in conditional form was presented to the receiver before it accepted the OEL offer. The receiver, in good faith, although I believe mistakenly, decided that the OEL offer was the better offer. At that time the receiver did not have the benefit of the views of the two secured creditors in that regard. At the time of the application for approval before Rosenberg J., the stated preference of the two interested creditors was made quite clear. He found as fact that knowledgeable creditors would not be anxious to rely on contingencies in the present circumstances surrounding the airline industry. It is reasonable to expect that a receiver would be no less knowledgeable in that regard, and it is his primary duty to protect the interests of the creditors. In my view, it was an improvident act on the part of the receiver to have accepted the conditional offer made by OEL, and Rosenberg J. erred in failing to dismiss the application of the receiver for approval of the OEL offer. It would be most inequitable to foist upon the two creditors, who have already been seriously hurt, more unnecessary contingencies.

119 Although in other circumstances it might be appropriate to ask the receiver to recommence the process, in my opinion, it would not be appropriate to do so in this case. The only two interested creditors support the acceptance of the 922 offer, and the court should so order.

120 Although I would be prepared to dispose of the case on the grounds stated above, some comment should be addressed to the question of interference by the court with the process and procedure adopted by the receiver.

121 I am in agreement with the view expressed by McKinlay J.A. in her reasons that the undertaking being sold in this case was of a very special and unusual nature. As a result, the procedure adopted by the receiver was somewhat unusual. At the outset, in accordance with the terms of the receiving order, it dealt solely with Air Canada. It then appears that the receiver contemplated a sale of the assets by way of auction, and still later contemplated the preparation and distribution of an offering memorandum inviting bids. At some point, without advice to CCFL, it abandoned that idea and reverted to exclusive negotiations with one interested party. This entire process is not one which is customary or widely accepted as a general practice in the commercial world. It was somewhat unique, having regard to the circumstances of this case. In my opinion, the refusal of the court to approve the offer accepted by the receiver would not reflect on the integrity of procedures followed by court-appointed receivers, and is not the type of refusal which will have a tendency to undermine the future confidence of business persons in dealing with receivers.

122 Rosenberg J. stated that the Royal Bank was aware of the process used and tacitly approved it. He said it knew the terms of the letter of intent in February 1991, and made no comment. The Royal Bank did, however, indicate to the receiver that it was not satisfied with the contemplated price, nor the amount of the down payment. It did not, however, tell the receiver to adopt a different process in endeavouring to sell the Air Toronto assets. It is not clear from the material filed that at the time it became aware of the letter of intent that it knew that CCFI was interested in purchasing Air Toronto.

123 I am further of the opinion that a prospective purchaser who has been given an opportunity to engage in exclusive negotiations with a receiver for relatively short periods of time which are extended from time to time by the receiver, and who then makes a conditional offer, the condition of which is for his sole benefit and must be fulfilled to his satisfaction unless waived by him, and which he knows is to be subject to court approval, cannot legitimately claim to have been unfairly dealt with if the court refuses to approve the offer and approves a substantially better one.

124 In conclusion, I feel that I must comment on the statement made by Galligan J.A. in his reasons to the effect that the suggestion made by counsel for 922 constitutes evidence of lack of prejudice resulting from the absence of an offering memorandum. It should be pointed out that the court invited counsel to indicate the manner in which the problem should be resolved in the event that the court concluded that the order approving the OEL offer should be set aside. There was no evidence before the court with respect to what additional information may have been acquired by CCFL since March 8, 1991, and no inquiry was made in that regard. Accordingly, I am of the view that no adverse inference should be drawn from the proposal made as a result of the court's invitation.

125 For the above reasons I would allow the appeal one set of costs to CCFL-922, set aside the order of Rosenberg J., dismiss the receiver's motion with one set of costs to CCFL-922 and order that the assets of Air Toronto be sold to numbered corporation 922246 on the terms set forth in its offer with appropriate adjustments to provide for the delay in its execution. Costs awarded shall be payable out of the estate of Soundair Corporation. The costs incurred by the receiver in making the application and responding to the appeal shall be paid to him out of the assets of the estate of Soundair Corporation on a solicitor-client basis. I would make no order as to costs of any of the other parties or intervenors.

Appeal dismissed.

TAB 2

Revised: January 21, 2014

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____) ~~WEEKDAY~~ MONDAY, THE # 17th
JUSTICE ~~_____~~ MYERS) DAY OF ~~MONTH~~ JULY, ~~20YR~~ 2017

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

~~DEFENDANT~~

Defendant

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 ~~[RECEIVER'S NAME]~~ Alvarez & Marsal Canada Inc.
("A&M"), in its capacity as ~~the Court-appointed receiver (the "Receiver") of the undertaking,~~

~~property and assets of [DEBTOR] (the "Debtor")~~ 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 ~~[NAME OF PURCHASER]~~2583510 Ontario Inc. (the "**Purchaser**") dated ~~[DATE]~~June 23, 2017 and appended to the Report of the Construction Receiver dated ~~[DATE]~~July 5, 2017 (the "**Report**"), and vesting in the Purchaser ~~each of the Debtor's Debtors'~~ right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

~~ON READING the Report~~ 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, [NAMES OF OTHER PARTIES APPEARING], 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 [NAME] sworn [DATE] filed[†]:

1. Capitalized terms not defined herein shall have the meaning given to them in the Beach Project Order.

[†]This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

2. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Construction Receiver³ 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. ~~2.~~ **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"), ~~all~~ each of the ~~Debtor's Debtors'~~ right, title and interest in and to the Purchased Assets described in the Sale Agreement ~~and listed, which includes the real property identified~~ on **Schedule B** hereto⁴ (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**"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

⁴ ~~To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

⁵ ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

charges created by the Order of the Honourable Mr. Justice [NAME] dated [DATE] 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. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~{Toronto Land Registry Division of {LOCATION} 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 ~~{Land Titles Division of {LOCATION} of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act}~~⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject ~~real property~~ Real Property identified in **Schedule B** hereto ~~(the "Real Property")~~ 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. ~~4.~~ **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 proceeds⁷ 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

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

to the sale⁸, 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. ~~5.~~ **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. ~~6.~~ **THIS COURT ORDERS** that, ~~pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~ 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. ~~7.~~ **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 ~~the~~each Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ~~the~~each Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy ~~that may be~~ appointed in respect of ~~the~~each Debtor and shall not be

⁸~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

void or voidable by creditors of ~~the~~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.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

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.

Revised: January 21, 2014

Schedule A – Form of Construction Receiver’s Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

~~BETWEEN:~~

~~PLAINTIFF~~

~~Plaintiff~~

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

~~DEFENDANT~~

~~Defendant~~

~~RECEIVER’S CERTIFICATE~~

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

Respondents

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Mr. Justice Newbould of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ 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 ~~[DEBTOR]~~ (the "Debtor" 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 ~~[DATE]~~, 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 ~~[DATE OF AGREEMENT]~~ June 23, 2017 (the "Sale Agreement") between the Construction Receiver ~~[Debtor] and [NAME OF PURCHASER]~~ and 2583510 Ontario Inc. (the "Purchaser") and provided for the vesting in the Purchaser of ~~the~~ 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 ~~section~~ 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 ~~section~~ 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].

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

Per: _____

Name:

Title:

Revised: January 21, 2014

Schedule B – ~~Purchased Assets~~ 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

- 2 -

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

Revised: January 21, 2014

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)

3.

**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)

BLAKE, CASSELS & GRAYDON LLP

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

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE)
MR. JUSTICE NEWBOULD)

TUESDAY, THE 2nd
DAY OF MAY, 2017

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

**SALE PROCESS ORDER
(RE: BEACH PROJECT)**

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

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Developments Inc. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, and UC Leslieville, the “**Debtors**”), for an order approving the Beach Sale Process (defined below), including the engagement of Cushman & Wakefield Ltd., Brokerage (the “**Beach Listing Agent**”) as listing agent under the Beach Sale Process, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the second report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”) and on hearing the submissions of counsel for the Construction Receiver, Canadian Imperial Bank of Commerce (as administrative agent and lender), the Ad Hoc Leslieville Purchasers, Terra Firma Capital Corporation, Travelers Guarantee Corporation of Canada, Tarion Warranty Corporation, 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 service of Kelly Peters sworn April 28, 2017 filed,

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined shall have the meaning given to them in **Schedule “A”** hereto.

REPUDIATION AND TERMINATION OF EACH ORIGINAL BEACH APS

2. **THIS COURT ORDERS** that the Construction Receiver be and is hereby authorized to repudiate each and every Original Beach APS, with such repudiation to be effective on the granting of this Order.

3. **THIS COURT ORDERS AND DECLARES** that as a result of the repudiation by the Construction Receiver pursuant to paragraph 2 of this Order, each Original Beach APS is not capable of performance and may be terminated by each Existing Beach Purchaser.

4. **THIS COURT ORDERS** that notice of the termination by each Existing Beach Purchaser of their Original Beach APS shall be deemed to be provided to the Construction Receiver on the granting of this Order.

NON-RECOURSE AGAINST PROPERTY

5. **THIS COURT ORDERS AND DECLARES** 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, and any such claim held by an Existing Beach Purchaser or Beach Assignor against the Debtors shall be limited to (a) an unsecured claim against the estate of the Debtors and (b) a Tarion Deposit Claim, each to the extent available.

APPROVAL OF BEACH SALE PROCESS

6. **THIS COURT ORDERS AND DECLARES** that the sale process in respect of the Beach Project Lands as described in Section 3.5 of the Second Report (the “**Beach Sale Process**”), be and is hereby approved, and the Construction Receiver is hereby authorized to take such further steps as it considers necessary or desirable to carry out the Beach Sale Process.

7. **THIS COURT ORDERS** that the execution of the Beach Listing Agreement by the Construction Receiver is hereby authorized and approved, with such non-material amendments as the Construction Receiver may deem necessary or desirable and the Construction Receiver be and the Construction Receiver is hereby authorized to execute and to carry out and perform its obligations under the Beach Listing Agreement, including the payment of any amounts due to be paid to the Beach Listing Agent by the Construction Receiver pursuant to the terms thereof, and to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Beach Listing Agreement.

CONSTRUCTION LIEN CLAIMS AND HOLDBACK

8. **THIS COURT ORDERS** that, after provision for the Construction Receiver’s Reserve, the Construction Receiver is hereby authorized and directed to retain from the Proceeds of Realization the amount of \$416,000 (the “**Beach Holdback Reserve**”) in full and final satisfaction of all claims of the construction lien claimants of the Beach Project Lands as set out at **Schedule “C”** hereto (the “**Lien Claimants**”) and their subcontractors, if any, in respect of any deficiencies in the holdbacks required to have been retained by any statutory “owner” of the Beach Project Lands, as that term is defined in section 1(1) of the CLA that have priority to

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amounts that were owing to any mortgagee against the Projects pursuant to Part IV of the CLA (the “**Beach Holdback Deficiencies**”).

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

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

11. **THIS COURT ORDERS** that, upon settlement of the Beach Holdback Deficiencies owed to the Lien Claimants from the Beach Holdback Reserve, as may be agreed between Terra Firma, the Administrative Agent and the Lien Claimants, with the consent of the Construction Receiver (the “**Settled Amounts**”), the Construction Receiver shall bring a motion or motions, as applicable, from time to time, as the Construction Receiver in its sole discretion deems appropriate, to pay the Settled Amounts to each of the Lien Claimants.

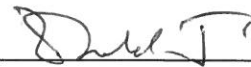
12. **THIS COURT ORDERS** that this Order is without prejudice to the rights of the Construction Receiver, the Lien Claimants, or any of them, to, at any time, bring a motion(s) to this Court seeking, among other things, payment of their respective claims for the Beach Holdback Deficiencies, refer any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

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respect to the determination of their claims for the Beach Holdback Deficiencies to be paid from the Beach Holdback Reserve.

GENERAL

13. **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:

MAY 02 2017

PER / PAR:



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SCHEDULE "A"

DEFINITIONS:

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

"Appointment Order" means the order of this Court appointing the Construction Receiver dated May 31, 2016, as it may be amended, restated or supplemented from time to time;

"Beach Assignor" means a person who has entered into an Original Beach APS with UC Beach, and assigned such Original Beach APS to a person or persons who is now an Existing Beach Purchaser;

"Beach Holdback Deficiencies" has the meaning given to it in paragraph 8 of this Order;

"Beach Holdback Reserve" has the meaning given to it in paragraph 8 of this Order;

"Beach Listing Agent" has the meaning given to it in the recitals of this Order;

"Beach Listing Agreement" means the listing agreement in the form of the listing agreement attached as Appendix "L" to the Second Report;

"Beach Project Lands" means the lands and premises owned by UC Leslieville and/or UC Beach located at 42 Edgewood Avenue, Toronto, Ontario, as more particularly described in Schedule "B";

"Beach Sale Process" has the meaning given to it in paragraph 6 of this Order;

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

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

"Construction Lien Trustee" has the meaning given to it in the recitals of this Order;

"Construction Receiver" has the meaning given to it in the recitals of this 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;

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

"Debtors" has the meaning given to it in the recitals of this Order;

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

“**Lien Claimants**” has the meaning given to it in paragraph 8 of this Order;

“**Mortgagee Actions**” has the meaning given to it in paragraph 10 of this Order;

“**Original Beach APS**” means an existing agreement of purchase and sale for a freehold semi-detached home located on the Beach Project Lands between UC Beach, as vendor, and an Existing Beach Purchaser, together with all related amendments and ancillary agreements;

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

“**Proceeds of Realization**” means the net proceeds derived from the Beach Sale Process;

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

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

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

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

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

“**Settled Amounts**” has the meaning given to it in paragraph 11 of this Order;

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

“**Tarion Deposit Claim**” means a claim to Tarion Warranty Corporation for compensation for purchase price deposits paid pursuant to an Original Beach APS (up to a maximum amount of \$40,000) pursuant to the *Ontario New Home Warranties Plan Act* (Ontario);

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

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

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

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“**UC Riverdale** has the meaning given to it in the recitals of this Order.

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SCHEDULE "B"

Beach Project Lands - 42 Edgewood Avenue, Toronto, Ontario

THE BEACH

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

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**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

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SCHEDULE "C"
LIEN CLAIMANTS

207875 Ontario Ltd. (o/a Canadian Rental Centres)
Alpa Stairs and Railings Inc.
Furkin Construction Inc.
Lido Construction Inc.
NG Marin Inc.
Orin Contractors Corp.
Roni Excavating Limited
Silvio Construction Co. Ltd.
Uptown Hardware Limited

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SCHEDULE "D"**List of actions or proceedings commenced by the Lien Claimants**

	Plaintiff	Defendants	Court File No.
1.	207875 Ontario Limited	Urbancorp (The Beach) Developments Inc., Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-554931
2.	Alpa Stairs and Railings Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-537936
3.	Furkin Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543051
4.	Lido Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Canadian Imperial Bank of Commerce, and Terra Firma Capital Corporation	CV-16-556542
5.	NG Marin Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552135
6.	Orin Contractors Corp.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543581
7.	Roni Excavating Limited	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543577

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	Plaintiff	Defendants	Court File No.
8.	Silvio Construction Co. Ltd.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-549973
9.	Uptown Hardware Limited	Urbancorp (Leslieville) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551477

10:00 A.M.
COUNSEL SLIP

N

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

NO ON LIST 10

TITLE OF
PROCEEDING

✓ CANADIAN IMPERIAL BANK OF COMMERCE
URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.
etal.

COUNSEL FOR:

PLAINTIFF(S)

APPLICANT(S)

PETITIONER(S)

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

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COUNSEL FOR:

DEFENDANT(S)

RESPONDENT(S)

Receiver, Moving Party

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for Terra Firma Capital

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

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

BEACH PROJECT ORDER

BLAKE, CASSELS & GRAYDON LLP

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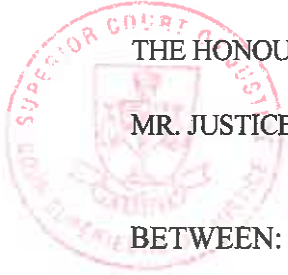
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Independent Counsel for Alvarez & Marsal Canada Inc., in its capacity as both Receiver and Manager, and Construction Lien Trustee of the assets, undertakings and property of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments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

TAB 4

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE)

TUESDAY, THE 2nd

MR. JUSTICE NEWBOULD)

DAY OF MAY, 2017

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

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

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

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

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

DEFINITIONS

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

CONDITION PRECEDENT TO THIS ORDER

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

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

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

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

SALE OF UNITS TO OPT-IN LESLIEVILLE PURCHASERS

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

OPT-IN LESLIEVILLE PURCHASERS’ PREMIUM CHARGE

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

SALE OF UNSOLD UNITS TO NEW PURCHASERS

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

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

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

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

FUNDING FAILURE

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

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

VESTING OF RESIDENTIAL UNITS

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

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

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

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

REPUDIATION AND TERMINATION OF EACH ORIGINAL LESLIEVILLE APS

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

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

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

COMMISSIONS ON AN ORIGINAL LESLIEVILLE APS

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

NON-RECOURSE AGAINST PROPERTY

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

RECOURSE FOR DEPOSIT CLAIMS

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

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

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

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

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

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

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

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

TARION CHARGE

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

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

TRAVELERS EXCESS INSURANCE POLICY AND CASH COLLATERAL

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

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

CRAFT CONSTRUCTION CONTRACT

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

ENGAGEMENT OF PROJECT MONITOR

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

CRAFT DEVELOPMENT CONTRACT

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

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

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

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

VACANT LOT

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

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

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

GEO-THERMAL SYSTEM

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

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

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

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

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

FINANCING OF LESLIEVILLE CONSTRUCTION

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

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

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

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

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

TF COST OVERRUN AGREEMENT

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

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

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

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

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

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

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

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

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

48. **THIS COURT ORDERS** that in the event that the Syndicate defaults in providing any advance of loans under the Syndicate Construction Loan Agreement which has been requested by the Construction Receiver and for which all conditions precedent thereunder have been satisfied (a “**Defaulted Syndicate Advance**”) and either or both of Craft and Terra Firma fund such Defaulted Syndicate Advance in accordance with the TF Cost Overrun Agreement (such amount, a “**Syndicate Default Funded Amount**”), then Craft and/or Terra

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

PRIORITY AND VALIDITY OF CHARGES

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

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

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

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

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

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

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

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

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

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

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

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

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

DISTRIBUTION WATERFALL

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

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

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

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

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

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

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

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

CONSTRUCTION LIEN CLAIMS AND HOLDBACK

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

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

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

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

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

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

PRIORITY REALTY TAX CLAIM RESERVE

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

ROLE OF CONSTRUCTION RECEIVER

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

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

SEALING OF CONFIDENTIAL APPENDIX

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

GENERAL

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

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

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

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

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

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



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LE / DANS LE REGISTRE NO:

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SCHEDULE "A"

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) if, at any time and for whatever reason (including by reason of default by Craft or the repair or replacement of any damage or destruction to all or any part of the Leslieville Project), the estimated cost to complete the Construction Work (including rectifying all known Latent Defects and completing all warranty work) and the Development Services, as determined by the Project Monitor, acting reasonably, is greater than the aggregate amount of: (i) all funding available for the Leslieville Project pursuant to the Craft Loan Agreement, the Syndicate Construction Loan Agreement and, to the extent available, the Craft Cash Collateral, and (ii) Terra Firma (or to the extent permitted (or required) under the TF Cost Overrun Agreement, Craft and the Syndicate) declines (or fails) to fund the difference pursuant to the TF Cost Overrun Agreement; or
- (b) if, at any time, a Cost Overrun is not funded by Terra Firma as required under the TF Cost Overrun Agreement (or by Craft or the Syndicate as required or permitted under the TF Cost Overrun Agreement);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Tarion” means Tarion Warranty Corporation;

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

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

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

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

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

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

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

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

“Terra Firma” means Terra Firma Capital Corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(unaffected by the Vesting Order)

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

SCHEDULE "D"
LIST OF LIEN CLAIMANTS

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

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SCHEDULE "E"**LIEN CLAIMANT ACTIONS**

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

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

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

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SCHEDULE "F"

Legal Description

Leslieville Project Lands - 50 Curzon Street, Toronto, Ontario

PIN 21051-0408 (LT)

Owner: Urbancorp (Leslieville) Developments Inc.

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

Vacant Lot

Owner: Urbancorp (Leslieville) Developments Inc.

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

10:00 A.M.
COUNSEL SLIP

N

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

NO ON LIST 10

CANADIAN IMPERIAL BANK OF COMMERCE

TITLE OF PROCEEDING

✓ URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.

COUNSEL FOR:

PLAINTIFF(S)

APPLICANT(S)

PETITIONER(S)

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

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416 862-7661

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COUNSEL FOR:

DEFENDANT(S)

RESPONDENT(S)

Receiver, Moving Party

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ADAM SLAVENS

FOR TARION WARRANTY CORPORATION

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F 416 865 7380

Lori Goldberg
For Fuller Landau

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Corporation and Craft
Development Corporation

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Ali Tatari 647-297-3625

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for Commercial Two (Pien & Associates)
Leslieville

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Joseph D'Alimonte
counsel to NG Morin
email: jdalimonte@bellnet.ca

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SETTLEMENT APPROVAL ORDER

BLAKE, CASSELS & GRAYDON LLP
199 Bay Street
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Toronto, Ontario M5L 1A9

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

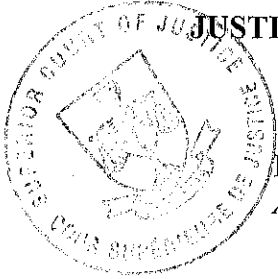
TAB 5

Court File No.: CV-16-11389-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.)
)
 JUSTICE NEWBOULD)

THURSDAY THE 15TH
 DAY OF SEPTEMBER, 2016



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF URBANCORP TORONTO
 MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE)
 INC., URBANCORP (PATRICIA) INC., URBANCORP
 (MALLOW) INC., URBANCORP (LAWRENCE) INC.,
 URBANCORP DOWNSVIEW PARK DEVELOPMENT INC.,
 URBANCORP (952 QUEEN WEST) INC., KING
 RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC.,
 HIGH RES. INC., BRIDGE ON KING INC. (Collectively the
 "Applicants") AND THE AFFILIATED ENTITIES LISTED IN
 SCHEDULE "A" HERETO

APPROVAL AND VESTING ORDER
[Urbancorp (Lawrence) Inc.]

THIS MOTION, made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Urbancorp (Lawrence) Inc. ("**UC Lawrence**") and Fernbrook Homes Limited, In Trust for a company to be incorporated and without personal liability ("**Fernbrook**") dated August 16, 2016 and appended as a Confidential Appendix to the Fifth Report of KSV Kofman Inc., the Applicants' Court-appointed Monitor ("**KSV**" or the "**Monitor**"), dated September 8, 2016 (the "**Fifth Report**"), and vesting the purchased assets as

described in the Sale Agreement and in Schedule “B” hereto (the “**Purchased Assets**”) in Fernbrook Homes (Lawrence) Limited (the “**Purchaser**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and those other parties listed on the counsel slip, no one else appearing for any other person although duly served as appears from the affidavit of service of Danny Nunes sworn September 12, 2016, filed.

1. **THIS COURT ORDERS** that the time for service of the Applicants’ Notice of Motion and Motion Record in respect of this motion be and it is hereby abridged and that the motion is properly returnable today and that the service of the Notice of Motion and Motion Record herein as effected by the Applicants is hereby validated in all respects and this Court hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Monitor on behalf of UC Lawrence is hereby authorized and approved, with such minor amendments as the Monitor may deem necessary. The Monitor on behalf of UC Lawrence 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 Monitor’s certificate to the Purchaser substantially in the form attached as Schedule “C” hereto (the “**Monitor’s Certificate**”), the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from: (i) any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract creating any of the foregoing (collectively, “**Encumbrances**”) listed on Schedule “D” hereto (the “**Expunged Encumbrances**”, which term shall not include the permitted Encumbrances described on Schedule “E” hereto (“**Permitted Encumbrances**”)); (ii) all court ordered charges in these proceedings; and (iii) any

right of occupation or right of possession of the Property and, for greater certainty, this Court orders that all of the Expunged 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 Land Titles Division of Toronto No. ~~66~~ of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act* with respect to the real property which is identified in Schedule "B" hereto (the "**Property**"), the Land Registrar is hereby directed to enter the Purchaser as the owner of the Property in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Expunged Encumbrances listed in Schedule "D" hereto. 25

5. **THIS COURT ORDERS** that the Monitor or the Purchaser with the prior written consent of the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Expunged Encumbrances.

6. **THIS COURT ORDERS** that, without in any way limiting the efficacy of paragraph 3 of this Order, the Purchaser shall not assume or be deemed to have assumed any obligations in respect of or pursuant to the Excluded Assets (as defined in the Sale Agreement, being the right, title and interest of UC Lawrence in and to all leases, licenses, agreements or contracts affecting the Property and any agreements of purchase and sale entered into by UC Lawrence with respect to the Property or any dwellings or structures to be constructed on the Property), no rights in respect of or pursuant to any Excluded Assets are or have been assigned to the Purchaser, all Excluded Assets are hereby terminated in all respects as against the Property and the Purchaser, and no party to any Excluded Asset shall have any right, interest or claim thereunder as against the Property or the Purchaser. For greater certainty, this Court orders that any and all claims against the Property or the Purchaser from any purchasers of dwellings or other structures to be constructed on the Property by UC Lawrence or any other party be and are hereby terminated.

7. **THIS COURT ORDERS** that 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 Monitor's Certificate all Expunged 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.

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

9. **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 UC Lawrence and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of UC Lawrence;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of UC Lawrence and shall not be void or voidable by creditors of UC Lawrence, 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.

10. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. **THIS COURT ORDERS** that the Monitor or the Purchaser with the prior written consent of the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.

12. **THIS COURT ORDERS** that the Confidential Appendices to the Fifth Report be kept confidential and under seal until further Order of this Court.


13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or Israel to give effect to this Order and to assist the Urbancorp CCAA Entities, the Monitor and their respective 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 Urbancorp CCAA Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Urbancorp CCAA Entities and the Monitor and their respective agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that each of the Urbancorp CCAA Entities and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.



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

SEP 15 2016

PER / PAR: 

SCHEDULE "A"**List of Non Applicant Affiliates**

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queens Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

SCHEDULE "B"**PURCHASED ASSETS/PROPERTY**

MUNICIPAL ADDRESS: 1780 LAWRENCE AVENUE WEST, TORONTO, ONTARIO

LEGAL DESCRIPTION OF THE LANDS: PIN 10330-0233(LT)

Part Block A, Plan 2525 North York as in NY66298 & NY14061; S/T NY396185; Toronto (North York); City of Toronto

SCHEDULE C

FORM OF MONITOR'S CERTIFICATE

Court File No.: CV-16-11389-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF URBANCORP TORONTO
MANAGEMENT INC., URBANCORP (ST. CLAIR
VILLAGE) INC., URBANCORP (PATRICIA) INC.,
URBANCORP (MALLOW) INC., URBANCORP
(LAWRENCE) INC., URBANCORP DOWNSVIEW PARK
DEVELOPMENT INC., URBANCORP (952 QUEEN WEST)
INC., KING RESIDENTIAL INC., URBANCORP 60 ST.
CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC.
(Collectively the "Applicants") AND THE AFFILIATED
ENTITIES LISTED IN SCHEDULE "A" HERETO**

**MONITOR'S CERTIFICATE
(Re: Urbancorp (Lawrence) Inc.)**

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 18, 2016, KSV Kofman Inc. was appointed as the Applicants' monitor (the "**Monitor**").

B. Pursuant to an Order of the Court dated September 15, 2016, the Court approved the agreement of purchase and sale made as of August 16, 2016 (the "**Sale Agreement**") between Urbancorp (Lawrence) Inc. ("**UC Lawrence**") and Fernbrook Homes Limited, In Trust for a company to be incorporated and without personal liability ("**Fernbrook**"), and provided for the

vesting of the Purchased Assets in Fernbrook Homes (Lawrence) Limited (the “**Purchaser**”), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor 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 Article 4 of the Sale Agreement have been satisfied or waived by the Monitor on behalf of UC Lawrence and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and UC Lawrence 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 Article 4 of the Sale Agreement have been satisfied or waived by the Monitor on behalf of UC Lawrence and the Purchaser.
3. The Transaction has been completed to the satisfaction of the Monitor.
4. This Certificate was delivered by the Monitor at _____ on ● _____, 2016.

KSV KOFMAN INC., in its capacity as CCAA
Monitor of the Urbancorp CCAA Entities and
not in its personal capacity

Per: _____
Name:
Title:

SCHEDULE D**EXPUNGED ENCUMBRANCES**

Instrument No. AT3393441

Instrument No. AT4212755

Instrument No. AT4231629

Instrument No. AT4279934

SCHEDULE E
PERMITTED ENCUMBRANCES

Instrument No. NY396185

Instrument No. AT2343343

All Encumbrances other than Expunged Encumbrances

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP TORONTO
MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP
(MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC.,
URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES.
INC., BRIDGE ON KING INC. (THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE
"A" HERETO

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER
RE: URBANCORP (LAWRENCE) INC.

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Lawyers for the Urbancorp CCAA Entities

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

**BRIEF OF AUTHORITIES
(RE: SALE OF BEACH LOTS)
Returnable July 17, 2017**

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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.