

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

**MOTION RECORD
(Returnable June 26th, 2018)**

**ONTARIO
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

NOTICE OF MOTION

**(Re: APPROVALS OF LIEN SETTLEMENTS, GEO THERMAL MARKETING,
CONDOMINIUM BOARD AND FEES)**

(Returnable June 26th, 2018)

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

make a motion to a Judge of the Commercial List at 10:00 a.m. on June 26, 2018, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally.

Capitalized terms not defined herein shall have the meaning given to them in the Sixth Report of the Construction Receiver dated June 19, 2018 (the “**Sixth Report**”).

THE MOTION IS FOR:

- (a) an order, substantially in the form attached at Tab 3 of the Motion Record:
 - (i) approving the settlements reached between the Vetting Committee (as hereinafter defined) and certain lienholders of the Leslieville Project and Beach Project;
 - (ii) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Beach Project from the \$416,000 holdback reserve established by the Construction Receiver;
 - (iii) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Leslieville Project from the \$1,184,000 holdback reserve established by the Construction Receiver;
 - (iv) authorizing the Construction Receiver to reduce the Leslieville Project and Beach Project holdback reserves, after payment of all Settled Liens, to \$200,000 and \$120,000, respectively;
 - (v) approving the marketing process undertaken by Craft and approved by the Construction Receiver in respect of the Geo-Thermal System, and authorizing Craft to seek out financing arrangements to allow the proposed Condominium corporation to purchase the Geo-Thermal System, as outlined in the Declaration Documents previously approved by this Court;
 - (vi) approving the selection of three individuals to act as members of the Board of Directors of the Condominium corporation, and granting certain protections and limitations for liability in favour thereof;
 - (vii) approving the activities of the Construction Receiver described in this Sixth Report; and
 - (viii) approving the fees and disbursements of the Construction Receiver and those of its legal counsel for the thirteen (13) month period of April 1, 2017 through to and including April 30, 2018; and

- (b) such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On May 31, 2016, the Court issued an order appointing A&M as the Construction Receiver of all of the Property of the Debtors (the “**Appointment Order**”).
2. Prior to the appointment of the Construction Receiver, the Debtors had carried on business as land developers principally focused on the development, construction and sale of residential projects located in the Greater Toronto Area.
3. At the commencement of these Receivership Proceedings, the Debtors’ three residential projects—the Riverdale Project, Leslieville Project, and the Beach Project—were at various stages of completion.

Lien Settlements

4. There are nine (9) construction lien claims in the aggregate amount of \$2,058,930.92 registered on title with respect to the Beach Project and 13 construction lien claims in the aggregate amount of \$3,561,770.19 registered on title with respect to the Leslieville Project.
5. The Construction Receiver prepared a conservative estimate of the aggregate amount of holdback deficiencies with respect to the Leslieville Project and the Beach Project (the “**Estimated Holdback Amount**”) for the purposes of establishing a reserve of funds that would be used to pay the priority claims in respect holdback deficiencies after the claim amount was settled and proceeds were available.
6. The lien claimants coordinated amongst themselves, Terra Firma, Travelers and the Administrative Agent to settle the exact amounts of each lien claimant’s priority claim in respect of holdback deficiencies.
7. The Construction Receiver has been advised by counsel to Terra Firma that supporting documentation has been provided by all applicable construction lien claimants, and

that through a negotiation and settlement process with these claimants, the Vetting Committee has recommended (with the Construction Receiver's support) settlement and payment offers to all claimants. As of the date of this Sixth Report, settlement offers have been accepted by all except three (3) lien claimants.

8. Attached as Exhibit "A" to the Sixth Report is a summary of the settlement proposals approved by the Vetting Committee and accepted by the applicable lien claimants for each of the Leslieville Project and the Beach Project.

9. The aggregate claims of the three lien claimants who have not settled, on a conservative basis, are \$112,827.40 in respect of the Beach Project and \$189,441.68 in respect of the Leslieville Project. The Construction Receiver is accordingly seeking an order permitting it to reduce the holdback reserves in respect of these projects to \$120,000 for the Beach Project and \$200,000 for the Leslieville Project.

The Geo-Thermal System Purchase

10. Pursuant to the Craft Construction Contract, Craft is responsible for ensuring that the Leslieville Project has an appropriate and functioning heating and cooling system that complies with all applicable Law, all Development Approvals and each New APS.

11. As at the Effective Date of the Settlement, the Geo-Thermal System was not yet commissioned. The Craft Construction Contract required Craft to test and investigate the Geo-Thermal System in order to determine if the Geo-Thermal System was appropriate and functioning.

12. After an initial investigation by Craft, the Geo-Thermal System was repaired and commissioned by Craft. On April 12, 2018, the Geo-Thermal System was described as fully operational by Innovia, a project management advisory firm retained by Craft to assist with the repair, commissioning and marketing of the Geo-Thermal System

13. As previously reported to this Court, the Disclosure Documentation provided to purchasers outlined two possible Geo-Thermal System sale options available to UC Leslieville: (i) a sale to a third party company, or (ii) a sale to the Condominium for \$800,000.

14. Over the course of the past several months, an information package was prepared and interest was solicited in non-binding expressions of interest to purchase the Geo-Thermal System from ten (10) companies with a history of purchasing geo-thermal systems. A floor price of \$800,000 inclusive of HST (the “**Floor Price**”) was established, as this was the price that the Geo-Thermal System could be sold to the Condominium.

15. To date, there have been no expressions of interest at or above the Floor Price. As such, the Construction Receiver recommends that it pursue a sale to the Condominium at the Floor Price, and that appropriate financing be arranged as soon as possible to allow the Condominium (when it is formed) to purchase the Geo-Thermal System from UC Leslieville.

16. In order to purchase the Geo-Thermal System, the Condominium Corporation will have to enter a loan (to be arranged by UC Leslieville via Craft and the Construction Receiver and then entered into by the Condominium Corporation following its incorporation) with a lender chosen by UC Leslieville in its sole discretion, for the Floor Price.

17. Craft has accordingly begun to explore potential institutions willing to finance the purchase of the Geo-Thermal System by the Condominium Corporation (when it is registered). To date, Craft has reached out to four (4) potential financiers, and expects to be able to finalize a term sheet with one of them, with the Construction Receiver’s consent, within the coming few weeks.

Leslieville Initial Board

18. Pursuant to Section 42 of the *Condominium Act, 1998* (Ontario) (the “**Condominium Act**”), within 10 days after the registration of the declaration and description, a declarant shall appoint the first board of a corporation. This board is required to be constituted by three people, and shall hold office until a new board is appointed at a turnover meeting held in accordance with the Condominium Act.

19. The Construction Receiver anticipates that in respect of the Leslieville Project, a declaration and description will be registered, and UC Leslieville will cease to own a majority of the Leslieville Project units, in the coming months. Accordingly, UC Leslieville (as declarant)

will be required to appoint an interim board of directors for the Condominium Corporation, pending its replacement pursuant to an election among unit owners at the turnover meeting.

20. Three individuals, each associated with Craft, have indicated to the Construction Receiver that they are willing and able to sit as interim directors, pending their replacement at the turnover meeting: Peter Griffis, Amanda Griffis and Robert Sabato (collectively, the “**Proposed Interim Board Members**”).

21. In the Construction Receiver’s view, the Proposed Interim Board Members are the most logical and efficient choice to sit on the interim board. The Proposed Interim Board Members have advised the Construction Receiver that they are not willing to sit on the interim board without Court-ordered protections against personal liability, or without the benefit of directors and officers insurance. The Construction Receiver considers this request reasonable.

Fee Approval

22. Pursuant to the Appointment Order, the Construction Receiver was specifically authorized by the Court to retain counsel to the Syndicate, Gowlings WLG LLP as its counsel (the “**Construction Receiver’s Counsel**”) to advise and represent it, save and except on matters upon which the Construction Receiver in its judgment determines it requires independent advice, in which case the Construction Receiver was authorized to and retained Blake, Cassels & Graydon LLP as its independent counsel (“**Independent Counsel**”).

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

- (a) Construction Receiver in the amount of \$712,331.00, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018, which includes fees of \$40,375.00 plus HST incurred in connection with the opposition of the First Fee Approval Motion;
- (b) Construction Receiver’s Independent Counsel in the amount of \$693,744.80, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to

April 30, 2018, which includes fees of \$61,496.70, plus HST and disbursements, incurred in connection with the opposition of the First Fee Approval Motion;

- (c) Construction Receiver's Counsel in the amount of \$108,100.00, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018; and
- (d) Construction Receiver's Real Estate Counsel in the amount of \$120,318.65, plus HST and disbursements, for the period from April 1, 2017 to June 2, 2017.

24. The Construction Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable.

25. Rules 1.04, 2.03, 3.02 and 37 of *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

26. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Sixth Report, filed;
- (b) the Construction Receiver's Compendium of Fee Affidavits, to be filed;
- (c) the pleadings and proceedings herein; and
- (d) such further and other material as counsel may advise and this Honourable Court permit.

Date: June 19, 2018

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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.

TO: THE SERVICE LIST AND SUPPLEMENTARY SERVICE LIST

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

NOTICE OF MOTION
**(Re: Approval of Lien Settlements, Geo Thermal
Marketing, Condominium Board and Fees)**

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TAB 2

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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CANADIAN IMPERIAL BANK OF COMMERCE

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Respondents

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

**SIXTH REPORT
OF
ALVAREZ & MARSAL CANADA INC.,
AS RECEIVER AND MANAGER AND CONSTRUCTION LIEN TRUSTEE
OF THE ASSETS, UNDERTAKINGS AND PROPERTY OF URBANCORP
(LESLIEVILLE) DEVELOPMENTS INC., URBANCORP (RIVERDALE)
DEVELOPMENTS INC., & URBANCORP (THE BEACH) DEVELOPMENTS INC.**

June 19, 2018

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C	Interim Statement of Receipts and Disbursements for administration and asset realization accounts for the period of May 31, 2016 to May 31, 2018
D	Fee Approval Endorsement

1.0 INTRODUCTION AND OVERVIEW

1. On May 31, 2016, the Ontario Superior Court of Justice (the “**Court**”) granted an order (the “**Appointment Order**”) appointing Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”, and together with the Receiver, the “**Construction Receiver**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the “**CLA**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, the “**Guarantors**”, and the Guarantors, together with UC Leslieville, the “**Debtors**”) (such proceedings, the “**Receivership Proceedings**”).
2. Prior to the appointment of the Construction Receiver, the Debtors carried on business as land developers principally focused on the development, construction and sale of residential projects located in the Greater Toronto Area.
3. Residential projects under development by the Debtors were typically “pre-sold” by unit and/or home pursuant to agreements of purchase and sale with individual purchasers prior to the commencement of construction. At the commencement of these Receivership Proceedings, there were three residential projects that were at various stages of completion:
 - a. The Leslieville Project consists of a proposed residential condominium (the “**Condominium**”) with an adjoining vacant lot located in Toronto’s Leslieville neighbourhood. The Condominium consists of fifty-five (55) condominium townhome units (each with a dedicated underground parking unit), eleven (11) excess underground parking units (the “**Excess Parking Units**”), thirty-three (33) bicycle storage units (the “**Bicycle Storage Units**”) and a geo-thermal heating and cooling system (discussed further below). The exterior of units of the Condominium were substantially complete with only certain interior finishes, exterior weatherproofing and landscaping to be completed. Of the fifty-five (55) condominium units, fifty-four (54) were subject to purchase and sale agreements as at the date of the Appointment Order.
 - b. The Beach Project consists of thirty-two (32) semi-detached freehold homes and one (1) detached home located near east Toronto’s Beach neighbourhood. Twenty-five (25) homes were completed with sales to purchasers having closed in 2014 and 2015 prior to the commencement of these Receivership Proceedings. The remaining eight (8) lots (the “**Beach Lots**”) were in the very early stages of construction. Six (6) of the Beach

Lots were subject to purchase and sale agreements (each an “**Original Beach APS**”) as at the date of the Appointment Order; and

- c. The Riverdale Project consists of forty-two (42) freehold townhome units and a common elements condominium corporation located in east Toronto’s Riverdale neighbourhood. Construction of the Riverdale Project was completed with sales to purchasers having closed in late April and early May 2016 prior to the commencement of these Receivership Proceedings.
4. After protracted negotiations spanning over 8 months with key stakeholders, on May 2, 2017, the Construction Receiver sought and obtained an order (the “**Leslieville Settlement Approval Order**”) approving the various agreements and arrangements to give effect to a settlement with respect to the Leslieville Project (the “**Settlement**”). The Settlement was agreed to among the Canadian Imperial Bank of Commerce (“**CIBC**”) in its capacity as administrative agent (the “**Administrative Agent**”) to the senior secured lending syndicate consisting of CIBC, Canadian Western Bank, and Laurentian Bank of Canada (collectively, the “**Syndicate**”), subordinate mortgagee Terra Firma Capital Corporation (“**Terra Firma**”), a subset of forty-six (46) purchasers at the Leslieville Project, and C.R.A.F.T. Development Corporation (“**Craft**”) as the contractor proposed by Terra Firma to complete construction of the Leslieville Project. A detailed overview of the Settlement is found in the second report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”).
5. Given the near completion stage of the Leslieville Project, the Settlement provided existing purchasers (the “**Existing Leslieville Purchasers**”) with an opportunity to “opt-in” to the Settlement and purchase their respective townhome units at a higher purchase price and subject to other terms and conditions set out in a new agreement of purchase and sale (the “**New APS**”) following the completion of the development and construction of the Leslieville Project. Development and construction costs have been financed by the Syndicate and Craft in accordance with construction financing arrangements under which the Syndicate enjoys first priority, with a cost overrun and completion guarantee provided by Terra Firma. An existing purchaser who opted into the Settlement is known as an “**Opt-In Leslieville Purchaser**”.
6. As described below, forty (40) of the fifty-four (54) Existing Leslieville Purchasers opted into the Settlement by the deadline, leaving fifteen (15) units unsold (fourteen “opt-outs” plus one (1) previously unsold unit (the “**Unsold Residential Units**”). The Unsold Residential Units, Excess Parking Units and Bicycle Storage Units are referred to herein as the “**Unsold Units**”.
7. The Leslieville Settlement Approval Order also authorized Craft to market the right to operate and, if legally available, the right to own the Leslieville Project geo-thermal heating and cooling system (the “**Geo-Thermal System**”), discussed in detail herein.

8. As part of the Settlement, this Court also granted an order (the “**Excess Parking Unit Process Order**”) approving a process to market and sell the Excess Parking Units at the Leslieville Project (the “**Excess Parking Unit Process**”). The Excess Parking Unit Process provided each Opt-In Leslieville Purchaser with a first opportunity to purchase an Excess Parking Unit, after which the Excess Parking Units would be marketed for sale to new third party purchasers (the “**New Leslieville Purchasers**”) who purchased one of the Unsold Residential Units. Two (2) of the Excess Parking Units have been sold to Existing Leslieville Purchasers pursuant to the Excess Parking Unit Process. The Excess Parking Process Order was subsequently amended on October 26, 2017 to allow for greater flexibility in marketing and pricing, subject to the approval of the Construction Receiver.
9. As outlined in greater detail below, the Leslieville Settlement Approval Order authorized and directed the Construction Receiver to establish a holdback reserve of \$1,184,000 from the proceeds of realization from the Leslieville Project for the benefit of Leslieville Project lienholders.
10. Construction of the Leslieville Project recommenced on June 2, 2017, and shortly thereafter, and pursuant to Craft’s recommendation, the Construction Receiver retained Re/Max Hallmark Realty Ltd. to act as its realtor in respect of the Unsold Units.
11. In contrast to the Leslieville Project, a settlement involving a “build out” of the Beach Lots was canvassed with the Syndicate and Terra Firma but was not supported given the very early stage of construction of the Beach Lots.
12. Accordingly, also on May 2, 2017, the Construction Receiver sought and this Court granted an order (the “**Beach Project Order**”) authorizing the repudiation of each Original Beach APS and approving a sales and marketing process with respect to the Beach Lots on an “as is where is” basis, free and clear of each Original Beach APS (the “**Beach Sale Process**”). The Beach Project Order also approved the engagement of Cushman & Wakefield Ltd., Brokerage (“**CW**”) to implement the Beach Sale Process, subject to the supervision of the Construction Receiver, and directed and authorized the Construction Receiver to establish a holdback reserve of \$416,000 from the Beach Sale proceeds for the benefit of Beach Project lienholders.
13. The Beach Sale Process was implemented by CW in accordance with its terms. On July 17, 2017, this Court approved an order (the “**Beach Lots Approval and Vesting Order**”): (i) approving a transaction with 2583510 Ontario Inc. (the “**Purchaser**”) contemplated by the agreement of purchase and sale dated June 23, 2017 and accepted by the Construction Receiver on June 27, 2017 (the “**APS**”), and (ii) vesting title in and to the Purchased Assets (as described in the APS) in the Purchaser free and clear of all liens, claims and encumbrances other than permitted encumbrances.

14. The sale of the Beach Lots closed on July 28, 2017. As a result, the Construction Receiver received \$4,736,120 in sale proceeds, after adjustments and payment of the commission owing to CW (the “**Beach Sale Proceeds**”). Of this amount, the Construction Receiver is holding \$416,000 as a reserve for Beach Project lien claimants, as directed and authorized by the Beach Project Order.
15. On October 26, 2017, this Court granted an order (the “**Site Plan Agreement & Parkland Dedication Order**”) (i) authorizing the Construction Receiver to execute the site plan agreement (the “**Site Plan Agreement**”) in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate capacity, and (ii) vesting in the City of Toronto (the “City”) all of UC Leslieville’s right, title and interest in certain lands known as the “**Leslieville Parkland**”.
16. Also on October 26, 2017, the Court granted an order (the “**Repayment of Borrowings and Ancillary Relief Order**”), among other things, authorizing and directing the Construction Receiver to repay to CIBC, in its capacity as Administrative Agent on its own behalf and on behalf of the Syndicate, an amount of \$2.2 million from Beach Sale Proceeds on account of the obligations owing to the Syndicate for borrowings under certificates issued by the Construction Receivers (the “**Receiver’s Certificates**”) pursuant to the Appointment Order.

1.1 PURPOSE OF REPORT

17. The purpose of this sixth report of the Construction Receiver (the “**Sixth Report**”) is to:
 - a. provide this Court with a general update of the status of the Leslieville Project, Beach Project and Riverdale Project and the Construction Receiver’s activities from the date of the Fifth Report (October 19, 2017) to the date of this Sixth Report;
 - b. provide an update with respect to the Construction Receiver’s Interim Statement of Receipts and Disbursements for the Leslieville Project construction for the period of June 2, 2017 to May 31, 2018, and the Construction Receiver’s Interim Statement of Receipts and Disbursements for its administration and asset sale accounts for the period of May 31, 2016 to May 31, 2018;
 - c. support the Construction Receiver’s motion requesting this Court’s approval of an order (the “**June Order**”):
 - (i) approving the settlements reached between the Vetting Committee (as hereinafter defined) and certain lienholders of the Leslieville Project and Beach Project (the “**Settled Liens**”);
 - (ii) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Beach Project from the

\$416,000 holdback reserve established by the Construction Receiver;

- (iii) authorizing and directing the Construction Receiver to pay the applicable Settled Liens in respect of the Leslieville Project from the \$1,184,000 holdback reserve established by the Construction Receiver;
- (iv) authorizing the Construction Receiver to reduce the Leslieville Project and Beach Project holdback reserves, after payment of all Settled Liens, to \$200,000 and \$120,000, respectively;
- (v) approving the marketing process undertaken by Craft and approved by the Construction Receiver in respect of the Geo-Thermal System, and authorizing Craft to seek out financing arrangements to allow the proposed Condominium corporation to purchase the Geo-Thermal System, as outlined in the Declaration Documents previously approved by this Court;
- (vi) approving the selection of three individuals to act as members of the Board of Directors of the Condominium corporation, and granting certain protections and limitations for liability in favour thereof;
- (vii) approving the activities of the Construction Receiver described in this Sixth Report; and
- (viii) approving the fees and disbursements of the Construction Receiver and those of its legal counsel for the thirteen (13) month period of April 1, 2017 through to and including April 30, 2018.

1.2 CURRENCY

18. Unless otherwise noted, all currency references in this Sixth Report are to Canadian dollars.

2.0 STATUS OF PROJECTS

2.1 *Leslieville Project*

19. As outlined in the Second Report, Craft agreed to complete construction of the Leslieville Project for an all-in fixed construction contract price totaling \$5.35 million (exclusive of HST), excluding work completed by Craft pursuant to approved and pre-funded change orders and costs related to the work and services in respect of the Geo-Thermal System.
20. Construction of the Condominium re-commenced on June 2, 2017, and the Construction Receiver was advised by Craft at the time that construction and

registration of the Condominium was anticipated to be completed by the end of January 2018. However, over the course of construction, unexpected delays and additional work requirements were encountered by Craft resulting in numerous change orders and development budget increases.

21. To date, there have been thirty (30) approved and pre-funded change orders totaling approximately \$1.042 million plus HST, which are beyond the scope of the fixed price contract.¹
22. Craft has submitted draw requests approved by the Altus Group, in its capacity as project monitor (the “**Project Monitor**”), for costs under the Craft Construction Contract of \$5.8 million incurred up to April 15, 2018, or 91% of the revised construction budget (i.e. fixed price plus change orders). Further, Craft has incurred approximately \$165,000 plus HST in Geo-Thermal System recommissioning costs, which are to be reimbursed out of the sale of the Geo-Thermal System.
23. Under the Craft Development Contract, Craft has agreed to perform (or cause to be performed) all of the work and services necessary to complete the development of the Leslieville Project, including without limitation, the registration of the Condominium and the marketing and sale of all Unsold Units and coordinating the closing of same (described as “**Development Services**” under the Craft Development Contract).
24. As outlined in the Second Report, the initial development costs budget prepared by Craft estimated the cost under the Craft Development Contract to be \$945,500. As of the date of this Report, three (3) increases to the initial budget totaling approximately \$399,000 plus HST have been approved by the Project Monitor and the Construction Receiver and have been pre-funded by Terra Firma.² The development costs budget is now \$1.345 million. To date, Craft has submitted draw requests approved by the Project Monitor for costs under the Craft Development Contract of approximately \$654,135, or 49% of the revised development budget.
25. On October 26, 2017, this Court granted the Site Plan Agreement & Parkland Dedication Order (i) authorizing the Construction Receiver to execute the Site Plan Agreement in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate capacity, and (ii) vesting in the City of Toronto (the “City”) all of UC Leslieville’s right, title and interest in the Leslieville Parkland.

¹ Pre-funding has been provided by Terra Firma pursuant to a cost overrun agreement previously approved by this Court as part of the Settlement. Four (4) of the change orders totaling \$219,802.00 were in place at the time of approval of the Settlement and pre-funded by Terra Firma on the Effective Date.

²Two change orders totaling \$197,500 were in place at the time of approval of the Settlement and pre-funded by Terra Firm on the Effective Date.

26. The Site Plan Agreement was executed by the Construction Receiver and the City and registered on title in November 2017. However, significant delays in transferring the Leslieville Parkland to the City were encountered due to unexpected requirements of the City to effect the transfer. After approximately six (6) months of discussions and negotiations with the City, along with additional work performed by Craft, ownership of the Leslieville Parkland was finally transferred to the City on May 23, 2018.
27. Due to the delays in construction as well as delays in transferring the Leslieville Parkland to the City, Craft requested that the Construction Receiver give notice to purchasers that the Final Tentative Occupancy Date of February 1, 2018 (as outlined under Tarion's Statement of Critical Dates attached to the New APS) would be extended to late March 2018 or beyond as a Firm Occupancy Date. After consultation with key stakeholders, the Construction Receiver's Real Estate Counsel provided this notice in early January 2018.
28. Subsequently, it became evident that Craft would not be able to complete construction and condominium registration prior to the first Firm Occupancy Date. As a result, Craft requested that the Construction Receiver allow interim occupancy to occur as of late March 2018, so as to avoid delayed occupancy penalties imposed by Tarion. Pursuant to the Craft Development Contract, interim occupancy of any Unit is not permitted without the prior written approval of the Construction Receiver. After consultation with key stakeholders in early March 2018, the Construction Receiver approved Craft's request to allow interim occupancy.
29. As of the date of this Sixth Report, occupancy permits from the City of Toronto have been issued for all fifty-five (55) Residential Units. Fifty-two (52) Residential Units are currently occupied pursuant to the Occupancy Licence contained in the New APS.
30. Construction of the Leslieville Project is now substantially complete, with only unit pre-delivery inspection ("PDI") work and minor common area work remaining.
31. The City is currently holding two letters of credit ("LCs") (issued by CIBC) totaling \$870,920 related to the construction and development of the Leslieville Project, namely:
 - a. \$769,280 as security for the transfer of the Leslieville Parkland. Given that the Leslieville Parkland was transferred to the City on May 23, 2018, Craft has advised the Construction Receiver that it expects the City to release this LC in full within the next 30 days; and
 - b. \$101,640 as security for baseline Leslieville Parkland improvements. The Construction Receiver has been advised by Craft that all work secured by the LC has been completed and that it expects the City to release the LC

(subject to retaining a relatively small amount to secure potential future warranty claims) within the next 30 days.

32. The City is also holding cash collateral of \$40,000 funded by Terra Firma in connection with the Site Plan Agreement to secure landscape works as detailed on the approved Landscaping Plans. Craft has advised the Construction Receiver that all work secured by the cash collateral has been completed and that it expects the City to release the cash collateral (subject to retaining a relatively small amount to secure potential future warranty claims) within the next 30 days.
33. In respect of unit sales, we note the following:
 - a. All fifty-five (55) Residential Units have been sold, of which fifty-four (54) are subject to firm agreements of purchase and sale. There is one (1) Residential Unit sale that is still within the statutory rescission period which expires on June 26, 2018. Forty (40) of the sales are to Existing Leslieville Purchasers who have “opted-in” to the Settlement and fifteen (15) are to New Leslieville Purchasers.
 - b. Of the eleven (11) Excess Parking Units available for sale, ten (10) have been sold leaving only one (1) unsold unit. Of the thirty-three (33) Bicycle Storage Units available for sale, twenty-one (21) have been sold, leaving twelve (12) unsold units.
 - c. The gross selling price of all unit sales to date is \$52.4 million, inclusive of HST.
 - d. Craft and Re/Max have advised the Construction Receiver that they anticipate the remaining unsold Excess Parking Unit and Bicycle Storage Units will be sold over the coming weeks.

2.2 *Beach Project*

34. The principal asset of the Beach Project was the Beach Lots. As described above, the sale of the Beach Lots closed on July 28, 2017, which generated \$4,736,120 of Beach Sale Proceeds.
35. Pursuant to the Beach Project Order, the Construction Receiver has established a reserve from Beach Sale Proceeds in the amount of \$416,000 (the “**Beach Holdback Reserve**”) to satisfy all claims of the lien claimants of the Beach Project in respect of Holdback Deficiencies (defined below). Further, the Construction was authorized and directed to repay \$2.2 million of Receiver Certificates from Beach Sale Proceeds.

2.3 *Riverdale Project*

36. The sale of the townhome units at the Riverdale Project was completed in late April to early May 2016, prior to the date of the Appointment Order.

37. The closing documentation for the Riverdale Project sales was prepared by the Debtors' solicitors, Harris Sheaffer LLP ("**Harris Sheaffer**"). Total closing proceeds, less costs and HST, of \$18,668,456.18, were remitted to CIBC in respect of the Debtors' loan obligations to the Syndicate. Harris Sheaffer held monies related to these closings, totaling \$2,976,772.41, plus accrued interest, that was being held on account of the HST portion of proceeds collected from purchasers (the "**Residual Closing Monies**").
38. Prior to the Leslieville Settlement Approval Order, the Construction Receiver was investigating the circumstances and the terms and conditions pursuant to which the Residual Closing Monies were retained by Harris Sheaffer. Following the granting of the Leslieville Settlement Approval Order, counsel to Terra Firma continued such investigations to determine if such monies are recoverable to the estate. The Construction Receiver has responded to information requests made by counsel to Terra Firma to assist in these investigations.
39. On April 20, 2018, counsel to Terra Firma filed a motion to have the Residual Closing Monies remitted to the Construction Receiver. The motion was unopposed, and on April 30, 2018 an Order (the "**April 30th Order**") was granted (i) directing Harris Sheaffer to remit the Residual Closing Monies to the Construction Receiver, and (ii) authorizing and directing the Construction Receiver to first repay Terra Firma's costs related to the motion and the Debtors' bankruptcy proceedings, and second, to repay certain debt obligations of the Construction Receiver.
40. On May 31, 2018, the Construction Receiver received from Harris Sheaffer \$3,004,495.32 (being Residual Closing Monies, plus accrued interest of \$27,737,91, less \$15.00 for bank charges). As outlined further below, the Construction Receiver has utilized these proceeds to (i) establish a reserve of \$114,495.32 to repay Terra Firma's costs related to the motion and the Debtors' bankruptcy proceedings, and (ii) repay \$2,890,0000 of Syndicate Construction Loan obligations (being post-filing debt obligations).
41. As at the date of this Report, there are four (4) LCs (issued by CIBC) totaling \$195,039 that are held by City of Toronto as security in connection with the construction and development of the Riverdale Project, namely:
 - a. \$115,504 appears to be in support of future City charges based on the estimated annual average storm water discharge for 13 units along Howie Avenue for a period of 20 years. However, the calculation of the LC amount and the steps to be taken to have the LC released are not clear. Craft has advised the Construction Receiver that it has repeatedly attempted to arrange a meeting with the City's water, planning and legal officials to discuss the matter, but has been unsuccessful. The Construction Receiver has also recently followed up with the City requesting a meeting. If the Construction Receiver is unable to resolve the

matter within the next several weeks, the Construction Receiver may seek advice and direction from this Court.

- b. \$35,835 to secure the completion of works within the City right of way. Craft has advised that this relates to the bollard removal noted below, and that it expects this LC to be released when the bollard removal LC is released.
- c. \$22,700 to secure the cost of traffic impact study and bollard removal. Craft has advised the Construction Receiver that it received a letter from the Riverdale Project property manager requesting that the bollards remain as is, such that no further work is necessary. Craft has advised that it sent a copy of the property manager's letter to the City on March 5, 2018 and is awaiting a response. A follow up email was sent to the City on May 29, 2018. To date, a response has not been received.
- d. \$21,000 held to ensure landscaping works are completed as detailed on the City approved Landscape Plans. According to Craft, the only remaining work to be completed relates to the relocation of bike racks which is scheduled to be completed by June 21, 2018. Following the City's inspection, Craft expects this LC to be released within 30 to 60 days.

3.0 CONSTRUCTION LIEN CLAIMS

Leslieville Project and Beach Project Liens

- 42. As reported in the Second Report, there were nine (9) construction lien claims in the aggregate amount of \$2,058,930.92 registered on title with respect to the Beach Project and 13 construction lien claims in the aggregate amount of \$3,561,770.19 registered on title with respect to the Leslieville Project.
- 43. Pursuant to the CLA, a construction lien claimant with a valid lien claim may assert a priority claim on account of deficiencies in holdbacks that an owner should have maintained in priority to amounts owing to a mortgagee under its charge on the project lands. Under the CLA, where a lien claimant contracted directly with the Debtors (as owners) or their agent(s), a lien claimant is entitled to claim priority for holdback deficiencies in priority to amounts owing to registered mortgagees up to a maximum amount of 10% of the total value of materials and services which the lien claimant provided to the project (the "**Holdback Deficiencies**").
- 44. As part of the Second Report, the Construction Receiver prepared a conservative estimate of the aggregate amount of Holdback Deficiencies with respect to the Leslieville Project and the Beach Project (the "**Estimated Holdback Amount**") for the purposes of establishing a reserve of funds that would be used to pay the priority claims in respect Holdback Deficiencies after the claim amount was settled and proceeds were available.

45. The lien claimants subsequently coordinated amongst themselves, Terra Firma, Travelers (a mortgagee on the Leslieville Project) and the Administrative Agent to settle the exact amounts of each Lien Claimant's priority claim in respect of Holdback Deficiencies.
46. As the subordinate mortgagee, counsel to Terra Firma led the settlement process between the lien claimants and the mortgagees with the assistance of the Construction Receiver. On July 25, 2017, counsel to Terra Firma wrote to counsel to the lien claimants requesting each counsel submit a pro-forma affidavit to confirm the total amount of material/services supplied to the Leslieville Project and the Beach Project, respectively, the amount paid by the Debtors and the last date of supply (the "**Process Letter**").
47. In the Process Letter, counsel to Terra Firma invited the lien claimants and mortgagees to participate in the vetting of the lien claims. A representative from Travelers and two construction lien claimants counsel opted to participate on the committee (the "**Vetting Committee**").
48. The Construction Receiver has been assisting the Vetting Committee in their review of the lien claims with the view of facilitating settlements.
49. The Construction Receiver has been advised by counsel to Terra Firma that supporting documentation has been provided by all applicable construction lien claimants, and that through a negotiation and settlement process with these claimants, the Vetting Committee has recommended (with the Construction Receiver's support) settlement and payment offers to all claimants. As of the date of this Sixth Report, settlement offers have been accepted by all except three (3) lien claimants, being Lido Construction Inc. ("**Lido**"), Orin Contractors Corp. ("**Orin**") and Roni Excavating Limited ("**Roni**", together with Lido and Orin, the "**Outstanding Lien Claimants**"). The Vetting Committee and the Construction Receiver are working to finalize settlements with these three (3) claimants, and will update the Court accordingly.
50. Attached hereto as **Appendix "A"** is a summary of the settlement proposals and holdbacks to be paid, approved by the Vetting Committee and accepted by the applicable lien claimants for each of the Leslieville Project and the Beach Project (other than Lido, Orin and Roni). The Construction Receiver is seeking authorization and direction in the June Order to consummate and make payment of the applicable Settled Lien amounts.
51. The Outstanding Lien Claimants' claims against the Leslieville Project and Beach Project are as follows:

Outstanding Lien Claimant	Beach Project		Leslieville Project	
	Total Claim	10% of Total Claim	Total Claim	10% of Total Claim
Lido	\$866,823.00	\$86,682.30	\$1,548,100.00	\$154,810.00
Orin	\$181,969.72	\$18,196.97	\$179,415.75	\$17,941.58
Roni	\$79,481.33	\$7,948.13	\$166,901.00	\$16,690.10
Total		\$112,827.40		\$189,441.68

52. The Construction Receiver and the Vetting Committee have not agreed to the total claims of the Outstanding Lien Claimants, and accordingly the foregoing chart represents the most conservative calculation of their holdback entitlements. In other words, the holdback figures above represent the most that the Outstanding Lien Claimants would be entitled to.
53. The Construction Receiver is accordingly seeking as part of the June Order authorization to reduce the holdback reserve that it has taken in respect of the Beach Project and the Leslieville Project to \$120,000 and \$200,000, respectively. This will ensure that the Outstanding Lien Claimant’s entitlement to their priority holdback will be protected, while freeing up a material amount of cash for distribution to the secured creditors.

Riverdale Project Liens

54. With respect to the Riverdale Project, the Construction Receiver has been advised by CIBC that the lien claims registered on the Riverdale Project lands were bonded off prior to the Appointment Order to facilitate the closings of the Riverdale Project units in or about late April and early May of 2016. The Construction Receiver has been advised that \$236,336.00 and \$62,121.05 were paid into Court by the Administrative Agent on account of liens claimed by NG Marin Inc. (“**NG Marin**”) and Orin, respectively, in order to facilitate this bonding off. Counsel to the Syndicate has been leading settlement negotiations with respect to the Riverdale Project lien claimants for the pendency of these proceedings, in an effort to effect the distribution of funds paid into Court to the appropriate party, with periodic updates being provided to the Construction Receiver.
55. Counsel to the Syndicate have advised the Construction Receiver that it has settled in principle with the largest lien claimant, NG Marin for the amount of \$90,098.00, and accordingly expects to recover approximately \$146,238 from the monies originally paid in Court by the Administrative Agent. The Construction Receiver is further advised that the Administrative Agent has undertaken due diligence with respect to this settlement and concluded that the quantum of the claim is right and the lien was likely preserved and perfected in time.

56. The Construction Receiver is further advised by counsel to the Syndicate that it anticipates settling the smaller lien claim made by Orin for the amount of \$4,969.68, and accordingly expects to recover approximately \$57,151.37 from the monies originally paid in Court by the Administrative Agent.
57. The Construction Receiver will update the Court further as these settlements progress.

4.0 **LESLIEVILLE PROJECT GEOTHERMAL SYSTEM REPAIRS, COMMISSIONING, MARKETING AND FINANCING**

58. Pursuant to the Craft Construction Contract, Craft is responsible for ensuring that the Leslieville Project has an appropriate and functioning heating and cooling system that complies with all applicable Law, all Development Approvals and each New APS.
59. As at the Effective Date of the Settlement, the Geo-Thermal System installed at the Leslieville Project, was not yet commissioned. The Craft Construction Contract required Craft to test and investigate the Geo-Thermal System in order to determine if the Geo-Thermal System was appropriate and functioning. If, in the opinion of Craft, acting reasonably, the Geo-Thermal System could not be made operative and/or it is more prudent or cost effective to de-commission the Geo-Thermal System, then Craft would de-commission the Geo-Thermal System and install a replacement HVAC System. Otherwise, Craft would commission, and if necessary repair, the Geo-Thermal System to bring it to a satisfactory working order.
60. After an initial investigation by Craft, the Geo-Thermal System was repaired and commissioned by Craft. Repairs and commissioning costs (the “**Craft Geo-Thermal System Costs**”) incurred to date total approximately \$165,000 plus HST and were paid directly by Craft (less applicable holdbacks), with such funding entitled to (i) a first priority fixed and specific charge on any proceeds of the sale of the Geo-Thermal Unit(s) (the “**Geo-Thermal System Proceeds Charge**”), and (ii) a fixed and specific charge on the Leslieville Project with the priority set out in the Leslieville Settlement Approval Order (the “**Craft Geo-Thermal Charge**”).
61. On April 12, 2018, the Geo-Thermal System was described as fully operational by Innovia Corporation (“**Innovia**”), a project management advisory firm retained by Craft to assist with the repair, commissioning and marketing of the Geo-Thermal System.
62. As previously reported to this Court, the Disclosure Documentation provided to purchasers outlined two possible Geo-Thermal System sale options available to UC Leslieville: (i) a sale to a third party company (a “**Geo-Thermal Company**”), or (ii) a sale to the Condominium for \$800,000, inclusive of HST, as described in more detail below:

Sale to Geo-Thermal Company

63. In the event a Geo-Thermal Company purchases the Geo-Thermal System, the Geo-Thermal Company would be required to enter into an agreement with the Condominium Corporation requiring the Geo-Thermal Company to generate and supply heating and cooling to the Condominium at a rate, which is intended to fluctuate based on the rates of other utilities (the “**Geo-Thermal Energy Supply Contract**”). The Geo-Thermal Energy Supply Contract shall provide that the cost of supplying geo-thermal heating and cooling will be based on the consumption of geo-thermal energy by either the Condominium as a whole or the individual Units.
64. Over the course of the past several months, Innovia prepared an information package and solicited non-binding expressions of interest to purchase the Geo-Thermal System from ten (10) companies with a history of purchasing geo-thermal systems. A floor price of \$800,000 inclusive of HST (the “**Floor Price**”) was established, as this was the price that the Geo-Thermal System could be sold to the Condominium.
65. The Construction Receiver has been advised by Innovia that, to date, there have been no expressions of interest at or above the Floor Price. As such, the Construction Receiver recommends that it pursue a sale to the Condominium at the Floor Price, and that appropriate financing be arranged as soon as possible to allow the Condominium (when it is formed) to purchase the Geo-Thermal System from UC Leslieville. This result is, in effect, the default established by the Disclosure Documentation if a sale to a Geo-Thermal Company could not be found at a price greater than the Floor Price.

Sale to Condominium Corporation

66. In order to purchase the Geo-Thermal System, the Condominium Corporation will have to enter a loan (to be arranged by UC Leslieville via Craft and the Construction Receiver and then entered into by the Condominium Corporation following its incorporation) with a lender chosen by UC Leslieville in its sole discretion, for the Floor Price and, possibly, land transfer tax (“**Green Loan**”). The Disclosure Documentation prescribes the anticipated terms of the Green Loan:
 - a. **Term:** Five (5) years, commencing on or shortly following registration of the Condominium;
 - b. **Interest:** It is anticipated that the principal amount from time to time outstanding on the Green Loan shall bear interest at the rate equal to approximately five (5%) percent over the Government of Canada Bond Yield having approximately a ten (10) year term, calculated on the date being one (1) month prior to the date of the transfer of the Geo-Thermal Unit(s). In the event that the interest rate available is based on a fixed rate,

it was anticipated that the annual rate of interest would be approximately 6.65% -7% per annum;

- c. **Amortization Period:** It is anticipated that the Green Loan will be based on an amortization period of between 20 – 25 years. At the discretion of UC Leslieville, the Green Loan may have a term and amortization period of ten (10) years; and
 - d. **Repayment:** The Green Loan will be closed for repayment.
 - e. **Security:** The Green Loan will be secured by a grant of security by the Condominium Corporation, including but not limited to a mortgage on title to the Geo-Thermal Unit(s).
67. In light of the above, Craft (on behalf of UC Leslieville) began to explore potential institutions willing to finance the purchase of the Geo-Thermal System by the Condominium Corporation (when it is registered). To date, Craft has reached out to four (4) potential financiers, and expects to be able to finalize a term sheet with one of them, with the Construction Receiver’s consent, within the coming few weeks.

5.0 LESLIEVILLE PROJECT – INITIAL BOARD OF DIRECTORS OF CONDOMINIUM CORPORATION

68. Pursuant to Section 42 of the *Condominium Act, 1998* (Ontario) (the “**Condominium Act**”), within 10 days after the registration of the declaration and description, a declarant shall appoint the first board of a corporation. This board is required to be constituted by three people, and shall hold office until a new board is appointed at a turnover meeting held in accordance with the Condominium Act. A turnover meeting is mandated by the Condominium Act when a declarant ceases to own a majority of the condominium units.
69. The Construction Receiver anticipates that in respect of the Leslieville Project, a declaration and description will be registered, and UC Leslieville will cease to own a majority of the Leslieville Project units, in the coming months. Accordingly, UC Leslieville (as declarant) will be required to appoint an interim board of directors for the Condominium Corporation, pending its replacement pursuant to an election among unit owners at the turnover meeting.
70. Three individuals, each associated with Craft, have indicated to the Construction Receiver that they are willing and able to sit as interim directors, pending their replacement at the turnover meeting: Peter Griffis, Amanda Griffis and Robert Sabato (collectively, the “**Proposed Interim Board Members**”).
71. In the Construction Receiver’s view, the Proposed Interim Board Members are the most logical and efficient choice to sit on the interim board. As individuals related to Craft, they each have (or have access to) Craft’s institutional knowledge of the Leslieville Project. There are no representatives of UC Leslieville left to sit on the

board, and it would not be cost-effective for representatives of the Construction Receiver to do so.

72. Accordingly, the Construction Receiver recommends that the Proposed Interim Board Members form the interim board, with the Construction Receiver's oversight as an observer.
73. The Proposed Interim Board Members have advised the Construction Receiver that they are not willing to sit on the interim board without Court-ordered protections against personal liability, or without the benefit of directors and officers insurance. The Construction Receiver considers this request reasonable. The tenure of the interim board will be relatively short, and the Proposed Interim Board Members have no personal incentive to act in the face of potential personal liability. Moreover, Sections 38 and 39, respectively, provide for an indemnity for board members from a condominium corporation, and the provision of reasonably available directors and officer's insurance.
74. The Construction Receiver is therefore seeking, as part of the June Order, an order that will limit the personal liability of the Proposed Interim Board Members, if appointed, save and except for gross negligence or wilful misconduct.

6.0 CONSTRUCTION RECEIVER'S STATEMENTS OF RECEIPTS AND DISBURSEMENTS ("R&D") AND CURRENT BORROWINGS

6.1 *Construction Receiver's Interim Statement of Receipts and Disbursements and Current Borrowings (Construction of Leslieville Project)*

75. With the recommencement of construction at the Leslieville Project on June 2, 2017, the Construction Receiver established six new construction-related bank accounts. There is one account for each construction lender (Craft, the Syndicate and Terra Firma), an account for the \$535,000 of cash collateral provided by Craft pursuant to the Craft Development Contract (the "**Craft Cash Collateral**"), a supplier holdback account and a disbursement account.
76. The Construction Receiver's Interim Statement of Receipts and Disbursements for the Leslieville Project construction for the period of June 2, 2017 to May 31, 2018 is attached as **Appendix "B"** (the "**Construction R&D**"). The Construction R&D indicates a combined cash balance on hand of \$979,276.25 as of May 31, 2018, which includes the Craft Cash Collateral.
77. As at the date of this Report, the Construction Receiver has outstanding Leslieville Project construction related borrowings, net of repayments, of \$3.97 million, as summarized below:

Lender	Authorized Construction Related Borrowings	Actual Construction Related Borrowings	Governing Agreement
Syndicate (Original)	\$4,500,000.00	\$3,050,000.00	Syndicate Construction Loan Agreement (2)
Less: Principal repayments made on June 1, 2018 (1)	(2,643,714.65)	(2,643,714.65)	
Syndicate (Remaining Balance)	\$1,856,285.35	\$406,285.35	
Craft	2,000,000.00	2,000,000.00	Craft Construction Loan Agreement (3)
Terra Firma	1,565,473.34	1,565,473.34	Terra Firma Cost Overrun Agreement (4)
Total	\$5,421,758.69	\$3,971,758.69	

- 1 Pursuant to the April 30th Order, the Construction Receiver repaid \$2,890,000 of its Syndicate Construction Loan obligations on June 1, 2018. These obligations consisted of \$2,643,714.65 of principal, \$46,285.35 of accrued interest plus a \$200,000 Deferred Commitment Fee (as outlined in the Syndicate Construction Loan agreement).
- 2 The monies borrowed from the Syndicate accrue interest at a rate of CIBC prime plus 5%.
- 3 The monies borrowed from Craft accrue interest at a rate of 7% p.a.
- 4 The monies funded by Terra Firma accrue interest at a rate of 16% p.a.

78. All monies borrowed plus accrued interest and commitment fees are to be repaid from Proceeds of Realization, in the order of priority outlined under the court-authorized Waterfall (pursuant to the Leslieville Settlement Approval Order).

6.2 ***Construction Receiver’s Interim Statement of Receipts and Disbursements and Current Borrowings (Non-Construction Related)***

79. The Construction Receiver has two non-construction related bank accounts—one for administration and the other for asset realizations. The Construction Receiver’s Interim Statement of Receipts and Disbursements for its administration and asset realization accounts for the period of May 31, 2016 to May 31, 2018 is attached as **Appendix “C”** (the **“Admin/Sales R&D”**). The Admin/Sales R&D indicates a cash balance on hand of \$447,768.28 in the administration account and \$3,907,358.74 in the asset realization account.
80. The balance in the administration account represents (i) cash receipts consisting primarily of Court authorized borrowings issued pursuant to Receiver Certificates, transfers from the asset realization account to fund professional fees (as permitted pursuant to the Order (Re: Repayment of Borrowings & Ancillary Relief) of Mr. Justice Myers dated October 26, 2017), HST refunds and Leslieville Project interim occupancy fees, less (ii) disbursements consisting primarily of professional fees and disbursements, repairs and maintenance expenses, realty taxes, insurance, utilities and security.

81. The balance in the asset realization account consists of Beach Sale Proceeds, interest earned thereon, and Residual Closing Monies plus accrued interest received from Harris Sheaffer on May 31, 2018, less (ii) Receiver Certificate repayments, transfers to the administration account to fund professional fees, and payment of Beach listing brokerage commissions.
82. As outlined earlier in this Report, on June 1, 2018, the Construction Receiver utilized the Residual Closing Monies plus accrued interest thereon to (i) establish a \$114,495.82 reserve to reimburse Tera Firma for the costs of the Residual Closing Monies motion and the trustee fees of MSI Spergel Inc in connection with the bankruptcies of the Debtors, and (ii) repay \$2.89 million of the Construction Receiver's Syndicate Construction Loan obligations, as authorized by the April 30th Order.
83. As previously reported, the Construction Receiver has borrowed monies from the Syndicate with the issuance of Receiver Certificates in order to fund the administrative and operating expenses of the estates plus professional fees and disbursements. As the date of this Report, the Construction Receiver has obligations pursuant to Receiver Certificates of \$2,790,282.41, plus accrued interest, as summarized below.

Certificate No.	Amount	Date Issued
1	\$200,000.00	7-Jun-2016
2	1,100,000.00	2-Aug-2016
3	1,000,000.00	14-Sep-2016
4	700,000.00	7-Dec-2016
5	1,800,000.00	5-May-2017
Sub-total	\$4,800,000.00	
Less: Repayments	(2,009,717.59)	1-Nov-2017 ¹
Net borrowings	\$2,790,282.41	

1. A total payment of \$2.2 million was made pursuant to the Order (Re: Repayment of Borrowings & Ancillary Relief) granted by Mr. Justice Myers on October 26, 2017. This amount consisted of \$2,009,717.59 of principal, plus accrued interest of \$190,282.41.

84. The monies borrowed from the Syndicate under Receiver Certificates accrue interest at a rate of CIBC prime plus 5%. All monies borrowed plus accrued interest are to be repaid from Proceeds of Realization, in the order of priority outlined under the court-authorized Waterfall.
85. The Construction Receiver has completed an estimate of its accrued liabilities and future costs. Based on the Construction Receiver's analysis, there should be

sufficient cash on hand to satisfy the anticipated future administrative and professional costs of these Receivership Proceedings.

7.0 CONSTRUCTION RECEIVER'S ACTIVITIES

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

7.1 *Settlement Implementation*

- a. preparing updated security waterfall scenarios to assist in the overall analysis of the Settlement, including related discussions with stakeholders;
- b. reviewing construction lien claims and related discussions with counsel and the Vetting Committee regarding Holdback Deficiencies and the process to determine and settle such claims;
- c. preparing the monthly reporting package to key stakeholders required by the Craft Development Contract, including statements of receipts and disbursements, summaries of estimated accrued liabilities, summaries of secured creditor balances and estimated future cash needs, and related discussions with stakeholders;
- d. consulting with CIBC, Terra Firma, Travelers and Craft in respect of numerous construction, marketing and administrative matters;
- e. reviewing monthly reporting prepared by Craft in respect of construction, project development and sales;
- f. review of deposit claims made by Existing Leslieville Purchasers who opted out of the Settlement;
- g. reviewing various reports prepared by the Altus Group in connection with draw requests received from Craft, including change orders and budget revisions and related communication with Terra Firma in respect of funding matters;
- h. preparing Drawdown notices, Solvency Certificates and Project Status Certificates in respect of advance requests under the Syndicate Construction Loan, as well as arranging for related wire transfers to Craft, and establishing appropriate holdback amounts;
- i. discussing and corresponding with Craft regarding the state of the Leslieville Project, notice of approval conditions, site plan agreements,

- status of outstanding approvals, status of letters of credit, and other matters on an ongoing basis;
- j. reviewing and executing final version of Leslieville Project Site Plan Agreement;
 - k. reviewing and signing documents in connection with the transfer of the Leslieville Project parkland to the City of Toronto, including numerous discussions with Craft and legal counsel;
 - l. discussions with Tarion in respect of the logistics of warranty coverage for the Leslieville Project under the Ontario New Home Warranty Program;
 - m. discussions with Craft, Altus and legal counsel regarding the threshold for the release of holdback monies;
 - n. attending conference call with Craft and Toronto Water in respect of the Riverdale Project's Sanitary Discharge Agreement, various assignment and assumption agreements with the purchasers of Riverdale Project units, and the return of certain letters of credit held by the City of Toronto;
 - o. discussions with legal counsel about the permissibility of distributions to secured creditors on account of pre-filing debt, having regard to CRA requirements and the possible necessity of a comfort letter from CRA; and
 - p. discussions with stakeholders regarding the make up of the initial Board of Directors of the proposed Leslieville Project condominium corporation, and their request for court ordered protections;

7.2 *Conservatory and Security Measures*

- a. discussing with Firstbrook Cassie and Anderson Inc., the Construction Receiver's insurance broker, insurance coverage renewals;
- b. attending the Leslieville Project for periodic site visits;
- c. reviewing and executing extensions of the conditional permit agreements with the City in respect of the Leslieville Project until final Building Permits were received in February 2018;
- d. retaining First Service Ontario LP as interim property manager in May 2018, for interim occupancy period; and
- e. reviewing and signing property maintenance agreement regarding landscaping and garbage removal at the Leslieville Project during the interim occupancy period.

7.3 *Asset Review, Analysis & Realizations*

- a. reviewing Craft's updated marketing plans in respect of the Leslieville Project residential units, excess parking units and bicycle storage units, and corresponding with Craft and RE/MAX regarding marketing efforts;
- b. reviewing and executing renewed broker listing agreements with RE/MAX in respect of the Leslieville Project, including attendance on site at model suite for various marketing related discussions;
- c. reviewing, commenting on and executing agreements of purchase and sale in respect of the Leslieville Project residential units, excess parking units and bicycle storage units;
- d. reviewing and executing MLS forms Confirmation of Co-operation and Representation in respect of Leslieville Project sales;
- e. reviewing, commenting on and executing numerous Leslieville Project purchase and sale amendments;
- f. reviewing and approving extension notices to purchasers in connection with Final Occupancy dates, as recommended by Craft, including related discussions with major stakeholders;
- g. analysis of Craft's recommendation to commence interim occupancy of the Leslieville Project, including numerous discussions with major stakeholders;
- h. reviewing summaries of interim occupancy closing statements of adjustment, and related review of interim occupancy monthly payment calculations prepared by legal counsel;
- i. reviewing Craft's marketing/financing plan in respect of the Leslieville Project geothermal system, including meetings and follow up discussions with Craft and its consultant, Innovia Corp.
- j. corresponding with Canada Revenue Agency in respect its asserted Deemed Trust Claim;
- k. reviewing and providing comments in respect of the factual content of affidavit and other materials relating to Terra Firma's motion to seek an order to have the Riverdale Residual Closing Monies remitted to the Construction Receiver.

7.4 *Court/Administration/Regulatory*

- a. attending Court for various matters in respect of these Receivership Proceedings;

- b. discussing with current and former representatives of Urbancorp Toronto Management Inc., former construction manager, regarding books and records of the Debtors and coordinating information flow to the Construction Receiver;
- c. updating the Construction Receiver's webpage as new information becomes available;
- d. responding to creditor enquiries about the status of the Receivership Proceedings;
- e. discussing and corresponding with CRA in respect of the Notice of Objection filed by the Construction Receiver relating to the August 2015 Reassessment;
- f. preparing and filing HST returns in respect of the receivership reporting periods ended September 30, 2017 to May 31, 2018;
- g. discussing and corresponding with CRA in respect of delays in receiving post-filing HST refunds;
- h. managing operating costs and expenses of the Receivership Proceedings, including estimating the Construction Receiver's cash requirements, reviewing invoices submitted by contractors and consultants, submitting funding requests through the issuance of Receiver Certificates, and preparing statements of receipts & disbursements and commitments;
- i. preparing the Interim Statements of Receiver dated December 10, 2017 and May 22, 2018 pursuant to section 246(2) of the BIA for each of the Debtors and remitting same to the Office of the Superintendent of Bankruptcy and the Debtors' Licensed Insolvency Trustee, MSI Spergel Inc.; and
- j. preparing this Sixth Report.

8.0 CONSTRUCTION RECEIVER AND LEGAL COUNSEL FEE APPROVAL

87. Pursuant to the Appointment Order, the Construction Receiver was specifically authorized by the Court to retain counsel to the Syndicate, Gowlings WLG LLP as its counsel (the "**Construction Receiver's Counsel**") to advise and represent it, save and except on matters upon which the Construction Receiver in its judgment determines it requires independent advice, in which case the Construction Receiver was authorized to and retained Blake, Cassels & Graydon LLP as its independent counsel ("**Independent Counsel**"). To assist in finalizing the New APS and condominium disclosure documentation, the Construction Receiver also retained Miller Thomson LLP (referred to above as Construction Receiver's Real Estate Counsel).

88. As part of the orders sought by the Construction Receiver on May 2, 2017, the Construction Receiver sought approval of its fees and disbursements and those of the Construction Receiver's Counsel, Independent Counsel, and the Construction Receiver's Real Estate Counsel from the date of its appointment to March 31, 2017, in the aggregate fee amount of \$3,413,473.10 (the "**First Fee Approval Motion**").
89. Prior to the return date of the First Fee Approval Motion, counsel to Terra Firma advised that Terra Firma would be objecting to the relief sought by the Construction Receiver (the "**Terra Firma Fee Objection**").
90. The Terra Firma Fee Objection was heard on May 30, 2017 before Regional Senior Justice Morawetz and an endorsement was released on July 20, 2017 (the "**Fee Approval Endorsement**"). A copy of the Fee Approval Endorsement is attached hereto as **Appendix "D"**. Pursuant to the Fee Approval Endorsement, the Court approved the fees and disbursements of the Construction Receiver and its counsel up to March 31, 2017 in full, subject to a minor fee reduction to Independent Counsel in the amount of \$35,000, plus HST (representing less than 3% reduction in its fees approved).
91. Pursuant to the Appointment Order, the fees and disbursements of the Construction Receiver and the fees and disbursements of its legal counsel were authorized to be paid on a periodic basis based on the fees and expenses incurred in respect of the Leslieville Project, the Beach Project and the Riverdale Project, and for fees and expenses incurred for the general administration of the Receivership Proceedings.
92. The Construction Receiver is seeking approval of its fees and those of its counsel in connection with the performance of their duties in the Receivership Proceedings, in the following amounts:
 - a. Construction Receiver in the amount of \$712,331.00, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018, which includes fees of \$40,375.00 plus HST incurred in connection with the opposition of the First Fee Approval Motion;
 - b. Construction Receiver's Independent Counsel (Blakes) in the amount of \$693,744.80, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018, which includes fees of \$61,496.70, plus HST and disbursements, incurred in connection with the opposition of the First Fee Approval Motion;
 - c. Construction Receiver's Counsel (Gowling WLG (Canada) LLP) in the amount of \$108,100.00, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018; and

- d. Construction Receiver's Real Estate Counsel (Miller Thomson LLP) in the amount of \$120,318.65, plus HST and disbursements, for the period from April 1, 2017 to June 2, 2017.
93. The activities of the Construction Receiver and its counsel undertaken in these Receivership Proceedings are set out in the Third Report through to Sixth Report.
94. The total fees and disbursements of the Construction Receiver are set out in detail in the affidavit of Douglas McIntosh sworn June 19, 2018 (the "**McIntosh Affidavit**"), a copy of which is attached as Tab "A" to the Construction Receiver's Compendium of Fee Affidavits (the "**Fee Compendium**"). The McIntosh Affidavit sets out a summary which identifies the accounting professionals who worked on the Receivership Proceedings, including rank, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$557.86 and 1,276.9 of total hours worked.
95. The total fees and disbursements of the Construction Receiver's Independent Counsel are set out in detail in the affidavit of Milly Chow sworn June 19, 2018 (the "**Chow Affidavit**"), a copy of which is attached as Tab "B" to the Fee Compendium. The Chow Affidavit sets out a summary which identifies the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$586.18 and 1,183.5 of total hours worked.
96. The total fees and disbursements of the Construction Receiver's Counsel are set out in detail in the affidavit of Lilly Wong sworn June 12, 2018 (the "**Wong Affidavit**"), a copy of which is attached as Tab "C" to the Fee Compendium. The Wong Affidavit sets out a summary which identifies the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates a combined average hourly rate of \$739.90 and 146.1 of total hours worked.
97. The total fees and disbursements of the Construction Receiver's Real Estate Counsel are set out in detail in the affidavit of Ronald Fairbloom sworn June 15, 2018 (the "**Fairbloom Affidavit**"), a copy of which is attached as Tab "D" to the Fee Compendium. The Fairbloom Affidavit sets out a summary which identifies the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rate, the total fees and hours billed. This summary indicates a combined average hourly rate of \$373.66 and 322.0 of total hours worked.
98. The Construction Receiver notes that the invoices for the fees incurred by the Construction Receiver and its Independent Counsel in connection with the opposition of the First Fee Approval Motion, totalling \$40,375.00 in respect of the Construction Receiver and \$61,496.70 in respect of Independent Counsel, have not been paid, to date. While in the Construction Receiver's view, these fees could have been paid (subject to subsequent Court approval) at any time, in the interest of transparency, they were not. The Construction Receiver reported at

paragraph 71 of the Fifth Report that it would seek Court approval of the fees incurred in connection with the First Fee Approval Motion in 2018.

99. The foregoing professional fees, including fees in respect of the opposition to the First Fee Approval Motion, have been reported to secured creditors on an ongoing basis, as incurred during the past twelve months, as part of the Construction Receiver's monthly update on interim receipts and disbursements and accrued commitments.
100. The Construction Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable. Accordingly, the Construction Receiver respectfully requests this Court's approval of such fees and disbursements, as more particularly set out in the Fee Affidavits.

9.0 CONCLUSION

101. In light of the foregoing, the Construction Receiver requests that this Honourable Court grant the orders, in the form enclosed in the Motion Record of the Construction Receiver.

All of which is respectfully submitted, this 19th day of June, 2018.

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

Per:



Douglas R. McIntosh
President

APPENDIX A

Beach Project Lien Holdback Settlements

Lien Claimant	PIN	Registered Lien Amount	Accounting after submission of supporting materials	Agreed Holdback to be Paid
207875 Ontario Ltd (o/a Canadian Rental Centres)	21024-0492, 0456, 0455, 0494, 0469, 0493, 0457, 0491	\$74,151.98	Total Invoice: \$106,484.62 Payment: \$32,581.26 Balance: \$73,903.36	\$10,648.46
Alpa Stairs and Railings Inc.	21024-00455	\$33,083.39	Total Invoice: \$294,667.81 Payment: \$261,584.42 Balance: \$33,083.39	\$29,466.78
Furkin Construction Inc.	21024- 0455, 0456, 0457, 0469, 0479, 0490	\$116,337.45	Total Invoice: \$274,914.58 Payment: \$158,577.13 Balance: \$116,337.45	\$27,491.46
NG Marin Inc.	21024- 0455, 0456, 0457, 0469, 0479, 0490	\$646,159.76	Total Invoice: \$646,159.76 Payment: \$0.00 Balance: \$646,159.76	\$64,615.98
Silvio Construction Co. Ltd.	21024- 0455, 0456, 0457, 0469, 0479, 0490	\$35,467.55	Total Contract: \$35,467.55 Balance: \$35,467.55	\$3,342.76
Uptown Hardware Ltd.	21024-0457	\$24,456.76	No Affidavit - Proof of Claim invoices total \$25,456.76	\$2,545.68
			Total	\$138,111.12

Leslieville Project Lien Holdback Settlements

Lien Claimant	PIN	Registered Lien Amount	Accounting after submission of supporting materials	Agreed Holdback to be Paid
207875 Ontario Ltd (o/a Canadian Rental Centres)	21051-0408	\$37,133.02	Total Invoiced: \$77,475.46 Paid: \$40,342.44 Balance: \$37,133.02	\$7,747.55
Alpa Stairs and Railings Inc.	21051-0408	\$179,860.26	Total Invoiced: \$661,526.52 Credits: \$14,672.07 Paid: \$466,994.19 Balance: \$179,860.26	\$64,685.45
Commercial Two Construction Inc.	21051-0408	\$220,067.21	Total Invoiced: \$1,017,000.00 Paid: \$796,932.79 Balance: \$220,067.21	\$101,700.00
Emergency Propane Services Inc.	21051-0408	\$12,022.05	Total Invoiced: \$134,490.57 Paid: \$122,468.52 Balance: \$12,022.05	\$12,022.05
EXP Services Inc.	21051-0408	\$9,377.58	Affidavit does not indicate the total amount invoiced. Two contracts attached to affidavit total \$29,413.90. E-mail indicates that total value of three contracts was \$60,352.17, inclusive of HST.	\$1,130.71

MDF Mechanical Ltd.	21051-0408	\$291,963.55	Total Invoiced:\$1,987,563.21 Paid: \$819,259.60 Balance: \$291,963.55	\$111,122.32
NG Marin Inc.	21051-0408	\$856,928.72	Total Invoiced:\$1,121,247.02 Paid: \$264,318.30 Balance: \$856,928.72	\$112,124.70
Silvio Construction Co. Ltd.	21051-0408	\$40,361.78	Total Contract: \$39,806.77 Balance: \$39,806.77	\$3,980.68
Sterling Carpet and Tile	21051-0408	\$46,997.53	Total Contract: \$332,873.14 Payments: \$285,875.61 Balance: \$46,847.53	\$33,287.31
Uptown Hardware Ltd.	21051-0408	\$72,641.74	Bankruptcy Proof of Claim: \$72,641.74	\$7,264.17
			Total	\$455,064.94

APPENDIX B

**Urbancorp (Leslieville) Developments Inc. (UC Leslieville) By Its Receiver and Manager and Construction Lien Trustee of its assets, Alvarez & Marsal
Canada Inc.**

**Interim Statement of Receipts and Disbursements (for Construction Only)
for the period – June 2, 2017 to May 31, 2018
Unaudited (\$)**

	Craft Const. Loan 82-57310	Syndicate Const. Loan 82-56713	Craft Collateral 82-56918	TF Cost Overruns 82-56810	Craft Const. Holdback 82-57019	Construction Disbursements 82-54613	TOTAL
RECEIPTS:							
Construction Loan Advances	2,000,000.00	3,050,000.00	-	-	-	-	5,050,000.00
Craft Collateral	-	-	535,000.00	-	-	-	535,000.00
Cost Overrun Advances [1]	-	-	-	1,565,473.34	-	-	1,565,473.34
Internal Transfers to Disbursement Account	(2,005,094.27)	(3,025,055.09)	-	(1,556,510.20)	-	6,586,659.56	-
Internal Transfers to Construction Holdback Account	-	-	-	-	296,812.14	(296,812.14)	-
HST Refunds Received - Construction [2]	-	-	-	-	-	361,233.86	361,233.86
HST Refunds Received - Cost Overruns [2]	-	-	-	97,862.35	-	-	97,862.35
Deposit Interest	5,127.77	55.91	4,861.71	4,197.06	1,532.38	436.86	16,211.69
Total Receipts	33.50	25,000.82	539,861.71	111,022.55	298,344.52	6,651,518.14	7,625,781.24
DISBURSEMENTS:							
Craft Invoices/Soft Costs [3]	-	-	-	-	-	(319,087.13)	(319,087.13)
Craft Invoices/Hard Costs [3]	-	-	-	-	-	(4,289,114.05)	(4,289,114.05)
Craft Invoices/Cost Overruns [3]	-	-	-	-	-	(1,273,203.61)	(1,273,203.61)
HST Paid - Construction	-	-	-	-	-	(599,066.82)	(599,066.82)
HST Paid - Cost Overruns	-	-	-	-	-	(165,516.11)	(165,516.11)
Bank Charges	(33.50)	(17.51)	(51.00)	(132.16)	(32.50)	(250.60)	(517.27)
Total Disbursements	(33.50)	(17.51)	(51.00)	(132.16)	(32.50)	(6,646,238.32)	(6,646,504.99)
Excess of Receipts over Disbursements	-	24,983.31	539,810.71	110,890.39	298,312.02	5,279.82	979,276.25
	CLOSED						

NOTES:

- [1] Represents advances received from Terra Firma up to May 31, 2018 for cost overruns.
- [2] Represents HST refunds received that relate to the construction of the UC Leslieville Project.
- [3] Represents payments to Craft for nine (9) draw requests covering the months of May 2017 through to April 15, 2018.

APPENDIX C

Urbancorp (Leslieville) Developments Inc. (UC Leslieville), Urbancorp (Riverdale) Developments Inc. (UC Riverdale) and Urbancorp (The Beach) Developments Inc. (UC Beach) By Its Receiver and Manager and Construction Lien Trustee of its assets, Alvarez & Marsal Canada Inc.
Interim Statement of Receipts and Disbursements (for Administration/Sales Proceeds Only)
for the period – May 31, 2016 to May 31, 2018
Unaudited (\$)

	TOTAL (Administration)	TOTAL (Asset Realizations)	GRAND TOTAL
RECEIPTS:			
Proceeds from Sale of the Beach Project Lots [1]	2,229.72	4,900,000.00	4,902,229.72
Total Receiver Certificates Issued [2]	4,800,000.00	-	4,800,000.00
Receipt of UC Riverdale Residual Closing Monies [3]	-	3,004,495.32	3,004,495.32
Transfers between accounts [4]	1,668,809.04	(1,668,809.04)	-
HST Refunds Received [5]	1,197,118.54	19,110.00	1,216,228.54
Transfer of HST Refunds Received (re: Construction) [6]	(459,096.21)	-	(459,096.21)
Interim Occupancy Fee Receipts	311,963.99	-	311,963.99
Purchaser Deposit - In Trust	27,000.00	-	27,000.00
CRAFT Reimbursement for Expenses	23,998.43	-	23,998.43
Deposit Interest	2,787.18	18,735.93	21,523.11
City of Toronto - Tree Security Deposit Refund	2,915.00	-	2,915.00
Total Receipts	7,577,725.69	6,273,532.21	13,851,257.90
DISBURSEMENTS:			
Legal fees & disbursements [7]	(2,819,968.97)	-	(2,819,968.97)
Receiver's Certificate - Principal Repayment [2]	-	(2,009,717.59)	(2,009,717.59)
Receiver's Certificate - Interest Repayment [2]	-	(190,307.41)	(190,307.41)
Construction Receiver fees & disbursements [8]	(2,068,926.65)	-	(2,068,926.65)
HST Input Tax Credits Paid / PST Paid [9]	(763,462.61)	(19,110.00)	(782,572.61)
Realty taxes [10]	(342,280.50)	-	(342,280.50)
Altus Group costs [11]	(298,861.90)	-	(298,861.90)
Repairs & maintenance [12]	(292,227.17)	-	(292,227.17)
Insurance [13]	(194,097.44)	-	(194,097.44)
Security	(147,748.92)	-	(147,748.92)
Listing Brokerage Commissions [14]	-	(147,000.00)	(147,000.00)
Latent defect testing	(59,199.56)	-	(59,199.56)
Utilities	(33,596.84)	-	(33,596.84)
Winter heating	(30,250.00)	-	(30,250.00)
Appraisal report costs	(30,120.00)	-	(30,120.00)
Purchaser Deposit - released	(27,000.00)	-	(27,000.00)
UTMI staffing costs	(8,426.03)	-	(8,426.03)
Tax Consultant	(4,987.50)	-	(4,987.50)
Interim Property Management Fees [15]	(4,200.00)	-	(4,200.00)
Office expense	(2,690.93)	-	(2,690.93)
Mediation expense	(1,500.00)	-	(1,500.00)
Bank Charges	(412.39)	(38.47)	(450.86)
Total Disbursements	(7,129,957.41)	(2,366,173.47)	(9,496,130.88)
Excess of Receipts over Disbursements	447,768.28	3,907,358.74	4,355,127.02

NOTES:

- [1] The sale of the Beach Project lots for \$4.9 million closed on July 28, 2017.
- [2] Pursuant to the Order (Re: Repayment of Borrowings & Ancillary Relief) granted by Mr. Justice Myers on October 26, 2017, the Construction Receiver repaid \$2.2 million of Receiver Certificates, inclusive of accrued interest, on November 1, 2017.
- [3] Pursuant to the order of Mr. Justice Myers dated April 30, 2018, Harris Sheaffer wired the Construction Receiver funds on May 31, 2018 totaling \$3,004,495.32 (being Residual Closing Monies, plus accrued interest of \$27,787.91, less \$15.00 for bank charges). On June 1, 2018, the Construction Receiver utilized these funds to (i) establish a

reserve of \$114,495.32 to repay Terra Firma's costs related to the motion and the Debtors' bankruptcy proceedings, and (ii) repay \$2,890,0000 of Syndicate Construction Loan obligations.

- [4]** The Construction Receiver utilized approximately \$1.67 million from the Asset Realizations account to pay Construction Receiver fees as well as the Construction Receiver's Legal Counsel Fees (Gowlings), the Construction Receiver's Independent Counsel fees (Blakes) and the Construction Receiver's Real Estate Legal Counsel Fees (Miller Thomson).
- [5]** HST refunds relate to input tax credits generated by the Construction Receiver for administrative costs as well as construction and development costs. For administrative ease, all HST refunds are deposited into the Construction Receiver's administration account.
- [6]** Those HST refunds which relate to construction and development input tax credits but are deposited into the Construction Receiver's administration account, are transferred on a monthly basis to the Construction Receiver's construction disbursement and/or cost overrun account.
- [7]** Represents Construction Receiver's Legal Counsel fees & disbursements (Gowlings) incurred up to April 30, 2018, Construction Receiver's Independent Counsel fees & disbursements (Blakes) up to April 30, 2018, Construction Receiver's Real Estate Legal Counsel fees & disbursements (Miller Thomson) up to August 31, 2017 and Debtors' Legal Counsel fees & disbursements (Harris Sheaffer) for transition assistance provided to the Construction Receiver.
- [8]** Represents Construction Receiver fees & disbursements incurred up to April 30, 2018.
- [9]** Represents input tax credits (ITCs) paid by the Construction Receiver up to April 30, 2018.
- [10]** Represents property tax payment made in respect of (i) the Beach Project for the period 2016 through to closing of the Beach Project sale in July 2017, and (ii) the Leslieville Project for the period 2016 through to the third and final instalment of the 2018 interim tax bill.
- [11]** Represents Altus Group fees up to April 30, 2018.
- [12]** Consists primarily of mold testing, remediation and related consulting fees.
- [13]** Insurance premiums for UC Leslieville have been paid up to July 31, 2018.
- [14]** Realtor commissions of 3% on the sale of the Beach Project lots were paid from closing proceeds.
- [15]** In April 2018, the Receiver retained FirstService Residential Ontario as the Interim Property Manager of the Leslieville Project. Fees paid to FirstService are for services up to and including the month of June 2018.

APPENDIX D

CITATION: Canadian Imperial Bank of Commerce v. Urbancorp (Leslieville) Developments Inc., 2017 ONSC 4205

COURT FILE NO.: CV-16-11409-00CL

DATE: 2017-07-20

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Canadian Imperial Bank of Commerce, Applicant

AND:

Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc., Urbancorp (The Beach) Developments Inc., Respondents

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *Clifton Prophet*, for the Canadian Imperial Bank of Commerce, as Agent

Pamela Huff and Kelly Peters, for Alvarez & Marsal Canada Inc., Construction Receiver

Barbara Green, for Terra Firma Capital Corporation

Philip Horgan, for Commercial Two, Lien Claimant (Leslieville)

HEARD: May 30, 2017

ENDORSED: July 20, 2017

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc. (“A&M”), as receiver and manager (in such capacity, the “Receiver”), and as construction lien trustee (in such capacity, the “Construction Lien Trustee”), (the Receiver, together with the Construction Lien Trustee, the “Construction Receiver”) of all the assets, undertakings and property (the “Property”) of Urbancorp (Leslieville) Developments Inc., (“UC Leslieville”), Urbancorp (Riverdale) Developments Inc. (“UC Riverdale”), and Urbancorp (The Beach) Developments Inc. (“UC Beach”), together with UC Riverdale, the “Guarantors”, and the Guarantors, together with UC Leslieville, the “Debtors” brought this motion for, among other things, approval of various court orders: the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Project Order, and the Receivership Administration Order.

[2] As part of the Receivership Administration Order, the Construction Receiver sought approval of the fees and disbursements of the Construction Receiver and its counsel Gowling WLG (Canada) LLP (“Gowling or Construction Receiver’s Counsel”), Blake, Cassels & Graydon (“Blakes” or “Independent Counsel”) and Miller Thomson LLP (“MT” or “Construction Receiver’s Real Estate Counsel”) (the “Fee Approval Motion”).

[3] On May 2, 2017, the Construction Receiver sought and obtained approval of the various agreements and arrangements that give effect to the proposed settlement (the "Settlement") agreed to among Canadian Imperial Bank of Commerce ("CIBC") in its capacity as Administrative Agent (the "Administrative Agent") to the senior secured lending syndicate consisting of CIBC, Canadian Western Bank, and Laurentian Bank of Canada (collectively, the "Syndicate"), Terra Firma Capital Corporation ("Terra Firma"), the *ad hoc* Leslieville Purchasers, and CRAFT Development Corporation ("CRAFT") as the contractor proposed by Terra Firma to complete construction of the Leslieville Project (collectively, the "Settlement Parties").

[4] Justice Newbould granted the Purchaser Package Approval Order, the Settlement Approval Order, the Beach Project Order, and the Receivership Administration Order with one exception. The Fee Approval Motion was adjourned. The unofficial endorsement of Newbould J. of May 2, 2017 reads as follows:

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

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

[5] On May 16, 2017, Newbould J. ordered that the fee dispute be heard on May 30, 2017.

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

- (i) The Construction Receiver in the amount of \$1,390,042.50, plus HST and disbursements, for the period from May 30, 2016 to March 31, 2017;
- (ii) The Construction Receiver's Independent Counsel in the amount of \$1,328,389.60, plus HST and disbursements, for the period from May 19, 2016 to May 31, 2017;

- (iii) The Construction Receiver's Counsel in the amount of \$629,161.50, plus HST and disbursements, for the period from June 2, 2016 to March 31, 2017; and
- (iv) The Construction Receiver's Real Estate Counsel in the amount of \$44,562.00, plus HST and disbursements, for the period from March 2, 2017 to March 31, 2017.

[7] Terra Firma is the junior general secured creditor of the Debtors. Terra Firma objects to the magnitude of the fees being sought and, more specifically, seeks a reduction in the fees sought by the Construction Receiver and Blakes, by at least 30%. Terra Firma does not oppose the fees being sought by Construction Receiver's Counsel and Construction Receiver's Real Estate Counsel. The position of Terra Firma was supported by Commercial Two.

[8] Terra Firma objects to the A&M fees and the Blakes fees for the following reasons:

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

[9] The Second Report of the Construction Receiver is fifty-eight pages in length. Approximately twenty-eight pages are devoted to UC Leslieville. Six pages are devoted to UC Beach and two pages are devoted to UC Riverdale. The Second Report also covers a review of security and other potential prior ranking claims and these issues cover some ten pages. A summary of the Construction Receiver's activities covers another four pages and is followed by commentary related to the Construction Receiver's Statements of Receipts and Disbursements and estimated funding requirements, approval of fees and activities and conclusions and recommendations.

[10] The Supplementary Report to the Second Report contained in the Supplementary Motion Record of the Construction Receiver contains extensive detail relating to the Fee Approval Motion. Attached to this Supplementary Report as appendices are:

- (i) the Affidavit of Douglas R. McIntosh, President of Alvarez & Marsal;
- (ii) the Affidavit of Milly Chow, Partner at Blakes;
- (iii) the Affidavit of Lilly A. Wong, Partner at Gowling; and
- (iv) the Affidavit of Ronald Fairbloom, Partner at Miller.

[11] The affidavits of Mr. McIntosh, Ms. Chow, Ms. Wong and Mr. Fairbloom disclose, in detail, the name of each person who rendered services, the dates on which services were rendered, the time expended and the rate charged.

[12] There was no suggestion that, in discharging its mandate, the Construction Receiver exceeded its authority.

[13] In response to the preliminary objections raised by Terra Firma, the Construction Receiver submitted the Third Report dated May 23, 2017 and a Supplement to the Third Report dated May 29, 2017.

[14] Terra Firma submitted a Responding Motion Record, a Supplementary Responding Motion Record, a Second Supplementary Responding Motion Record and a Third Supplementary Responding Motion Record. Affidavits were sworn by Glenn Watchorn, President of Terra Firma and Rachel Puma, a law student at Robins Appleby LLP., counsel to Terra Firma.

[15] The Construction Receiver complained about the timelines of the filing of Terra Firma's materials. However, all of the materials were accepted for filing and have been considered by the court.

[16] In his affidavits, Mr. Watchorn states that he has not had sufficient time to prepare a detailed response to the position put forward by the Construction Receiver in support of its claims for its fees and for those its counsel, nor did he have time to review all of the estimates provided to the Construction Receiver related to its estimated fees.

[17] No affidavit was cross-examined.

[18] The timetable for the hearing of this matter was set by Newbould J. in his endorsements of May 2, 2017 and May 16, 2017. The matter proceeded, as scheduled, on May 30, 2017 and I must take the record as it was placed before the court on that date.

[19] I do not propose to recite, in detail, the respective positions taken by the Construction Receiver and Terra Firma. In summary:

- (i) the Construction Receiver is of the view that its hourly rates and those of its counsel, are reasonable. Terra Firma disagrees;
- (ii) the Construction Receiver is of the view that the time spent by the Construction Receiver and its counsel was reasonable, Terra Firma disagrees; and
- (iii) the Construction Receiver is of the view that the Construction Receiver and its counsel minimized duplication and operated efficiently in discharging their mandates. Terra Firma disagrees.

[20] A&M was appointed as Construction Receiver, by order on May 31, 2016.

[21] Terra Firma submits that the receivership involved three small residential projects of which the main project was the build out of a partially constructed fifty-five unit condominium townhouse development, which was 90% complete in terms of its construction at the time of this receivership. Terra Firm submits that it would be grossly excessive and unreasonable if the Receiver recovered its fees and those of its lawyers in the sum of \$3.41 million on account of such a small project. Terra Firma also references that the actual Construction Receiver's and Independent Counsel's fees incurred dramatically exceeded earlier estimates provided by the Construction Receiver to Terra Firma, upon which it relied. Terra Firma concludes that the Construction Receiver and Independent Counsel failed in their obligation to perform their tasks in an economic fashion.

[22] The Reports of the Construction Receiver recite a very different state of affairs in the Receivership process. The history of the settlement negotiations is set out in detail in the Second Report. The Receiver notes that negotiations among the parties were protracted; however, through the perseverance of the settlement parties, Tarion, Travellers, and the efforts of the Construction Receiver and its counsel, after over eight months of negotiations, resulted in the approval of the settlement definitive documents that give effect to the settlement agreed to among the settlement parties.

[23] The Receiver comments that the settlement provides an opportunity for existing Leslieville purchasers to purchase their respective townhome units at a higher purchase price and on terms and conditions set out in a new agreement of purchase and sale following the completion of construction of the Leslieville Project. Financing is provided by the Syndicate and Craft, and guaranteed by Terra Firma. The Receiver notes that to date, thirty-nine fully completed opt-in packages have been received by the Construction Receiver, representing a 72% participation rate.

[24] The Receiver contends that the settlement represents a successful resolution to the extensive negotiations for the benefit of stakeholders, including Terra Firma. The potential recoveries are set out in a Confidential Appendix to the Third Report.

[25] From the standpoint of Terra Firma, the Receivership may have appeared to be straightforward. However, the fact that the physical state of the construction project was well advanced does not, in itself, have any correlation to the complexity of the issues involved in the Receivership Proceedings or indeed to the quantum of issues.

[26] Furthermore, the interest of Terra Firma is, by definition, far narrower than the interests of the Construction Receiver. The Second Report and the Third Report detail a number of activities in which the Construction Receiver and its counsel were involved with, including:

- (i) conservatory and security measures;
- (ii) asset and construction lien review;
- (iii) review of Syndicate, Travellers and Terra Firma security positions;
- (iv) court/administrative and regulatory matters;

- (v) municipal issues;
- (vi) tax related issues; and
- (vii) Tarion negotiations in respect of the status of completion of the Leslieville Project.

[27] The general involvement of the Construction Receiver in these matters may have been known to Terra Firma, but indeed, there is no indication that Terra Firma was fully aware of the specifics and extent of the involvement of the Construction Receiver and its counsel.

[28] The affidavit of Mr. Watchorn, sworn May 26, 2017 principally raises objections relating to the negotiation and finalization of the Settlement. It does not comment on many of the other issues which the Construction Receiver has referred to in its Report.

[29] In Mr. Watchorn's second affidavit, sworn May 30, 2017, Mr. Watchorn responds to a statement of the Construction Receiver to the effect that Terra Firma's principle objection relates to the negotiation and finalization of the Settlement. Mr. Watchorn states that that is simply not true and that Terra Firma objected to the duplication of services, fees too high relative to the size of the project, and poor effectiveness and efficiency. He states that it simply should have not have taken such a long time to finalize matters and he draws the conclusion that the Construction Receiver was not managing the process well.

[30] Mr. Watchorn makes a number of generalized complaints with respect to the conduct of the Construction Receiver and its counsel, but the issues raised by Mr. Watchorn have been, in my view, fully addressed in the Reports submitted by the Construction Receiver. Furthermore, the Reports comment on a number of issues that arose in the Receivership Proceedings that would have no impact on Terra Firm and thus there would be no reason for Terra Firma to have intimate knowledge of the issues addressed by the Construction Receiver's counsel.

[31] It is understandable that Mr. Watchorn would focus on issues involving Terra Firma, but at all times it must be recognized that the Construction Receiver has a mandate to take into account the interests of all stakeholders as well as its obligations to the court.

[32] Having had the opportunity to review the Reports filed by the Construction Receiver, I have concluded that this was not a straightforward engagement. In arriving at this conclusion, I have specifically taken into account paragraphs 19 – 42 of the Third Report.

[33] In particular, I note the comments at paragraph 39 which reads as follows:

[39] To put this in context, the Terra Firma Motion was met with significant resistance and proceeded on a contested litigation path against a subset of forty-six (46) Ad Hoc Leslieville Purchasers. If the Ad Hoc Leslieville Purchasers had been successful on the Terra Firma Motion, the Construction Receiver would likely have been forced to sell the Leslieville Project subject to the pre-existing agreements of purchase and sale executed in 2011, at significant lower value than the then current market prices. As acknowledged by Terra Firma in the Terra Firma Motion, the gross purchase price (less deposits) under the 54 existing

agreements of purchase and sale would not have been sufficient to generate any recovery to Terra Firma.

[34] At paragraph 43 of the Third Report, the Construction Receiver concludes that the settlement represents a successful resolution of extensive negotiations for the benefit of the stakeholders, including Terra Firma.

[35] There is no doubt that this receivership process has been expensive and the requested fees are beyond an amount expected by Terra Firma. However, the results achieved by the Construction Receiver, with the assistance of both Construction Receiver's Counsel and Independent Counsel have translated into a tangible recovery for Terra Firma.

[36] The legal test for reviewing a receiver's fees and the fees of its counsel was recently restated by Newbould J. in *Nortel Networks Corp., Re* 2017 ONSC 673 at paras. 14 and 15:

So far as the test for reviewing a receiver's fees is concerned, the New Brunswick Court of Appeal in *Belyea v. Federal Business Development Bank* (1983), 44 N.B.R. (2d) 248 (C.A.) referred to a number of factors to be considered. These factors have been accepted in Ontario as being a useful guideline but not an exhaustive list as other factors may be material in any particular case. See *Confectionately Yours Inc., Re* (2002), 2002 CanLII 45059 (ON CA), 36 C.B.R. (4th) 200 at para. 51 (Ont. C.A.) ("*Bakemates*") and *Bank of Nova Scotia v. Diemer*, 2014 ONSC 365 (CanLII) at para. 5 (S.C. J.), aff'd (2014), 20 C.B.R. (6th) 292 (Ont. C.A.). In *Diemer*, Pepall J.A. listed the factors as follows:

33 The court endorsed the factors applicable to receiver's compensation described by the New Brunswick Court of Appeal in *Belyea: Bakemates*, at para. 51. In *Belyea*, at para. 9, Stratton J.A. listed the following factors:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and
- the cost of comparable services when performed in a prudent and economical manner.

These factors constitute a useful guideline but are not exhaustive: *Bakemates*, at para. 51.

[15] Justice Pepall further stated:

45 ... That said, in proceedings supervised by the court and particularly where the court is asked to give its imprimatur to the legal fees requested for counsel by its court officer, the court must ensure that the compensation sought is indeed fair and reasonable. In making this assessment, all the *Belyea* factors, including time spent, should be considered. However, value provided should predominate over the mathematical calculation reflected in the hours times hourly rate equation. Ideally, the two should be synonymous, but that should not be the starting assumption. Thus, the factors identified in *Belyea* require a consideration of the overall value contributed by the receiver's counsel. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. Of course, the measurement of accomplishment may include consideration of complications and difficulties encountered in the receivership.

[37] The legal test has to be considered in the context of the facts.

[38] One of the complaints raised by Terra Firma in its factum is that the nature of this receivership did not require the “large resources and correspondingly higher rates of large firms such as A&M and Blakes”. Terra Firma takes the position that there were other options of firms with good reputations and experience in development projects with far more reasonable rates. Terra Firma provided examples of receivership firms as well as firms with experienced insolvency counsel, who, in other mandates, have charged a lower hourly rate.

[39] A&M was appointed Construction Receiver pursuant to the Appointment Order. There have been no subsequent motions by Terra Firma to substitute another receiver in place of A&M.

[40] Terra Firma contends that, pursuant to a subordination agreement with CIBC, it was prohibited from opposing CIBC’s appointment of A&M as a matter of contract law. Notwithstanding the provisions of subordination agreement, the appointment of A&M as Construction Receiver flows from the court order. The subordination agreement is a contract as between the parties. It does not fetter the discretion of the court on the issue of the appointment of a receiver. A&M is the Construction Receiver.

[41] The Appointment Order authorized the Construction Receiver to engage counsel and I am not prepared to second guess the decision of the Construction Receiver to engage Blakes as its counsel of choice. The ability of a receiver to retain its choice of counsel was recognized by the Court of Appeal for Ontario in *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para. 44.

[42] In my view, the complaint of Terra Firm with respect to the appointment of A&M as Construction Receiver and Blakes as its counsel is without foundation.

[43] Terra Firma also objects to the hourly rates being charged by A&M and Blakes, but Terra Firma does not object to the hourly rates of Gowling. I fail to understand how, on a principled basis, Terra Firma can object to the hourly rates of the Construction Receiver and Independent

Counsel and at the same time accept the rates charged by the Construction Receiver's Counsel. As pointed out in Blakes factum at paragraph 29(i) the average hourly rate for the Construction Receiver's professional team is \$537.71. The average hourly rate of Independent Counsel is \$630.94, which is lower than the average hourly rate of Construction Receiver's Counsel which is \$766.44.

[44] Terra Firma has a direct economic interest in the Fee Approval Motion. The projections of the Construction Receiver are such that it is uncertain as to whether Terra Firma will achieve full recovery of its outstanding debt. If Terra Firma does suffer a shortfall, every dollar charged by the Construction Receiver and Independent Counsel will reduce the recovery to Terra Firma. Likewise, every dollar charged by Construction Receiver's Counsel has a corresponding effect on the economic position of Terra Firma. Logically, if Terra Firma was concerned about hourly rates, it would also object to rates charged by Construction Receiver's Counsel. By being selective in its attack on hourly rates, Terra Firma has undermined its argument.

[45] In my view, there is no principled basis on which the position of Terra Firma can be sustained. The affidavits filed in support of the fee requests establish that the rates being charged by both A&M and Blakes are consistent with market rates for receivership proceedings in Toronto. I am satisfied that the Construction Receiver's professional rates and disbursements, as well as those of its counsel, are comparable to the rates charged by other professional firms in the Toronto market for the provision of similar services in a commercial receivership of this type. I am not prepared to reduce the hourly rates of either A&M or Blakes.

[46] Terra Firma also takes the position that the time spent by multiple time keepers is unreasonable and disproportionate and that A&M and Blakes failed to minimize duplication or effect efficiencies.

[47] Two sets of counsel were involved in this receivership acting on behalf of the Receiver. Gowling and Blakes.

[48] As noted in the Third Report, the Construction Receiver was specifically authorized, pursuant to the Appointment Order, to retain counsel to the Syndicate, Gowling, as counsel to the Construction Receiver, save and except on matters upon which the Construction Receiver in its judgment, determined it requires independent advice, in which case the Construction Receiver was authorized to retain Independent Counsel.

[49] Counsel to the Construction Receiver submits that given the realization options available, the competing interests of stakeholders, and the participation of its Syndicate represented by Gowling in the assessment of options and pursuant to the Settlement, the engagement of Independent Counsel to the Construction Receiver became critically important.

[50] I am not prepared to second-guess the basis upon which the Receiver allocated the various tasks to Gowling and to Blakes. As a court officer, the Receiver is expected to obtain independent legal advice and, as noted above, was specifically authorized to obtain independent counsel. Likewise, the Receiver was authorized to retain Gowling for certain matters. I am satisfied, based on the facts set out in the Second Report and the detail set out in the invoices that the Construction Receiver and its counsel played an active role in negotiating the Settlement. I

am also satisfied that the Construction Receiver, with the assistance of its Independent Counsel, combined to design a realization strategy that balanced the competing interests of the stakeholders while maximizing recoveries.

[51] There were occasions when both Gowling and Blakes were involved. The Construction Receiver has addressed this issue at paragraph 35 of its Third Report as well as in the accompanying chart. I am not prepared to second-guess the decisions of the Construction Receiver on the allocation of legal services as between the two law firms. I also accept the explanations provided by the Construction Receiver in the Third Report which detail what firm was doing what work and at what time.

[52] Terra Firma criticizes A&M and Blakes for failing to minimize duplication or effect efficiencies. With respect to the Receiver, Terra Firma points out that the work was, in some instances, duplicitous and, therefore, unduly expensive. Terra Firma submits that it was completely unnecessary to have two senior representatives of the Receiver attend at various meetings with their combined hourly rate of \$1,525.00. In directing its criticism towards Blakes, Terra Firma states that it would be fair to assume that given that Blakes had twenty-five time keepers on the receivership file with sixteen of them being lawyers, there was at least some amount of duplication, such as ramp-up time for the lawyers getting up to speed on various assigned tasks.

[53] With respect to the criticism levelled at the Construction Receiver for having two senior representatives attend at various meetings, at first glance, there may be occasion where this criticism may appear to be justified. However, it is reasonable, in my view, to assume that the representatives did not work in tandem on all aspects of the file and that each individual would have specific areas of responsibility. In addition, it is difficult to ascertain, in advance, what issues will be raised at a particular meeting, especially when negotiations are involved. Although it is inevitable that there is a degree of duplication, I am not prepared, in these circumstances, to second-guess the Construction Receiver on its staffing model. Accordingly, I do not give effect to this aspect of Terra Firma's opposition.

[54] With respect to the criticism levelled at Blakes, I do not take issue with the time spent by the lawyers who were intensively involved in the file. These individuals would have significant knowledge of the engagement and would contribute accordingly. However, I do find that the number of time keepers who were involved to be excessive. Certain time keepers, who were involved in the file for a relatively insignificant time period, would likely have a difficult time trying to discern what specific contribution they made to the file. It is inevitable that a portion of their time would be devoted to learning the file prior to addressing the specific issue assigned to them.

[55] In my view, there is little to be gained by conducting a minute docket-by-docket examination of the accounts. I have concluded that a minor reduction in Blake's account is appropriate to reflect a degree of duplication arising from having sixteen lawyers involved on the file. In this respect, it seems reasonable in the circumstances to discount the time spent by lawyers and students who contributed fewer than thirty hours of docketed time to the file. In my view, a reduction of the Blakes' fee of \$35,000, plus HST is appropriate.

[56] I consider this reduction to be fair and reasonable in the circumstances.

[57] In arriving at my conclusions, on the fee requests of all parties, I have considered the non-exhaustive list of factors that courts have relied on to determine whether a court officer's fees are fair and reasonable. These factors include:

- (a) The nature, extent and value of the assets handled;
- (b) The complications and difficulties encountered;
- (c) The degree of assistance provided by the company, its officers or employees;
- (d) The time spent;
- (e) The receiver's knowledge, experience and skill;
- (f) The diligence and thoroughness displayed;
- (g) The responsibilities assumed;
- (h) The results of the receiver's efforts; and
- (i) The cost of comparable services when performed in a prudent and economical manner.

[58] These factors have been recognized in *Re Nortel Networks Corporation et al.* 2017 ONSC 673 at para. 15, quoting *Bank of Nova Scotia v. Diemer* 2014 ONSC 365 at para. 19, affirmed 2014 ONCA 851, quoting *Belyea v. Federal Business Development Bank*, (1983) Carswell NB 27. The specific application of the facts in this case to the list of factors is set out in the Blakes factum at para. 29.

[59] In the final analysis, it cannot be overlooked that the settlement in which the Construction Receiver and Construction Counsel and Independent Counsel played a necessary role, placed Terra Firma in a position where it will achieve a significant recovery. In my view, the professional fees incurred were necessary to achieve such a result.

[60] In the result, the fee requests of the Construction Receiver, Construction Receiver's Counsel (Gowling), Independent Counsel (Blakes) and Construction Receiver's Real Estate Counsel (Miller Thomson) are approved, subject to the modification referenced at paragraph [55] above with respect to the fees of Independent Counsel.

[61] The parties have requested that the appendix consisting of projections respecting the potential recoveries for Terra Firma be sealed pending further order. I am satisfied that, having taken into account the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 that the disclosure of this information could be harmful to stakeholders. The appendix is to be sealed pending further order.


Regional Senior Justice G.B. Morawetz

Date: July 20, 2017

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 26th
)
MR. JUSTICE MYERS) DAY OF JUNE, 2018

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

**ORDER
(RE: APPROVALS OF LIEN SETTLEMENTS, GEO THERMAL MARKETING,
CONDOMINIUM BOARD AND FEES)**

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) Developments Inc. and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”), for an order granting certain approvals as set out herein, was heard this day in Toronto, Ontario.

ON READING the Notice of Motion dated June 19, 2018, the Sixth Report of the Construction Receiver dated June 19, 2018 (the “**Sixth Report**”), and on hearing the submissions of counsel for the Construction Receiver and the counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served with the Construction Receiver’s Motion Record as appears from the affidavit of service of [NAME] sworn June 19, 2018, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF LIEN SETTLEMENTS AND DISTRIBUTIONS

Leslieville Project Lien Settlements

2. **THIS COURT ORDERS** that the lien settlement amounts agreed to by the Vetting Committee (as defined in the Sixth Report) and parties claiming construction liens against the Respondent UC Leslieville’s construction project located in the Leslieville neighbourhood of Toronto (“**Leslieville Construction Lien Claimants**”), as set out in Paragraph 50 and Appendix A of the Sixth Report, are hereby approved. The Respondent UC Leslieville’s construction project located in Leslieville, Toronto shall be referred to as the “**Leslieville Project**” for the purposes of this Order.

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the settlement amounts hereby approved by this Order to the applicable Leslieville Construction Lien Claimant from the \$1,184,000 holdback reserve established by the Construction Receiver in respect of the Leslieville Project.

4. **THIS COURT ORDERS** that following the distributions provided for in Paragraph 3 hereof, the Construction Receiver shall maintain a holdback reserve in respect of the Leslieville Project in the amount of \$200,000, and any other amounts held by the Construction Receiver as a holdback reserve in respect of the Leslieville Project shall be distributed by the

Construction Receiver in accordance with paragraph 55 of the order of this Court made on May 2, 2017 in these proceedings (the “**Settlement Approval Order**”).

Beach Project Lien Settlements

5. **THIS COURT ORDERS** that the lien settlement amounts agreed to by the Vetting Committee (as defined in the Sixth Report) and parties claiming construction liens against the Respondent UC Beach’s construction project located in The Beach neighbourhood of Toronto (the “**Beach Construction Lien Claimants**”), as set out in Paragraph 50 and Appendix A of the Sixth Report, are hereby approved. The Respondent UC Beach’s construction project located in The Beach, Toronto shall be referred to as the “**Beach Project**” for the purposes of this Order.

6. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the settlement amounts hereby approved by this Order to the applicable Beach Construction Lien Claimant from the \$416,000 holdback reserve established by the Construction Receiver in respect of the Beach Project.

7. **THIS COURT ORDERS** that following the distributions provided for in Paragraph 6 hereof, the Construction Receiver shall maintain a holdback reserve in respect of the Beach Project in the amount of \$120,000, and any other amounts held by the Construction Receiver as a holdback reserve in respect of the Beach Project shall be distributed by the Construction Receiver in accordance with paragraph 55 of the Settlement Approval Order.

APPROVAL OF GEO-THERMAL MARKETING PROCESS & FINANCING

8. **THIS COURT ORDERS** that the sale and solicitation process undertaken by Innovia Corporation and described in Paragraphs 64 and 65 of the Sixth Report to sell the geo-thermal heating and cooling system at the Leslieville Project (the “**Leslieville Geo-thermal System**”) be and is hereby approved, and the Construction Receiver shall have no obligation to market or solicit interest in purchasing the Leslieville Geo-thermal System.

9. **THIS COURT ORDERS** that the Construction Receiver and C.R.A.F.T Development Corporation are hereby authorized and directed to assist in soliciting, negotiating and documenting financing for the purchase of the Leslieville Geo-thermal System by the Leslieville Project condominium corporation (to be incorporated), materially on the terms set out

in Paragraph 66 of the Sixth Report, provided that nothing in this order shall compel the Leslieville condominium corporation to enter into such financing.

APPROVAL OF LESLIEVILLE CONDOMINIUM CORPORATION BOARD

10. **THIS COURT ORDERS AND DECLARES** that Peter Griffis, Amanda Griffis and Robert Sabato are authorized to comprise the first board of directors of the Leslieville Project condominium corporation (collectively, the **“Proposed Interim Board Members”**).

11. **THIS COURT ORDERS** that the Proposed Interim Board Members shall incur no liability or obligation as a result of their appointment as the initial board of directors of the Leslieville Project condominium corporation, save and except for any gross negligence or wilful misconduct on their part.

ACTIVITY AND FEE APPROVALS

12. **THIS COURT ORDERS** that the activities and conduct of the Construction Receiver occurring prior to the date hereof in relation to the Respondents and these proceedings, as are further particularized in the Sixth Report, are hereby ratified and approved

13. **THIS COURT ORDERS** that the fees of the Construction Receiver in the amount of \$712,331.00, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018 be and hereby are approved.

14. **THIS COURT ORDERS** that the fees of the Construction Receiver’s independent counsel Blake, Cassels & Graydon LLP in the amount of \$693,744.80, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018 be and hereby are approved.

15. **THIS COURT ORDERS** that the fees of the Construction Receiver’s counsel Gowling WLG (Canada) LLP LLP in the amount of \$108,100.00, plus HST and disbursements, for the thirteen (13) month period from April 1, 2017 to April 30, 2018 be and hereby are approved.

16. **THIS COURT ORDERS** that the fees of the Construction Receiver's real estate counsel Miller Thomson LLP in the amount of \$120,318.65, plus HST and disbursements, for the period from April 1, 2017 to June 2, 2017 be and hereby are approved.

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

ORDER

**(Approval of Lien Settlements, Geo Thermal
Marketing, Condominium Board and Fees)**

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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.

CANADIAN IMPERIAL BANK OF COMMERCE V. URBANCORP (LESLIEVILLE)
DEVELOPMENTS INC. et. al.

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

Proceeding commenced at Toronto

**MOTION RECORD
(Returnable June 26, 2018)**

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