

**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

**(Re: Approval of Site Plan Agreement and Lesliville Parkland Dedication,
and Repayment of Borrowings & Ancillary Relief)
Returnable October 26, 2017**

Date: October 20, 2017

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(Riverdale) Developments Inc., and Urbancorp
(The Beach) Developments Inc.

**TO: MASTER SERVICE LIST AND SUPPLEMENTARY SERVICE LIST
(ATTACHED)**

MASTER SERVICE LIST

As of 25 September 2017

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

**URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.,
URBANCORP (RIVERDALE) DEVELOPMENTS INC., &
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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,
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

**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

I N D E X

Tab	Description	Page
1.	Notice of Motion dated October 20, 2017	1
2.	Fifth Report of the Construction Receiver dated October 19, 2017	10
A.	Appendix "A": Draft Site Plan Agreement	31
B.	Appendix "B": Letter dated October 18, 2017 from Canada Revenue Agency	46
C.	Appendix "C": Excess Parking Unit Process Letter	48
D.	Appendix "D": Excerpt of Second Report re Excess Parking Unit Process	55

Tab	Description	Page
E.	Appendix "E": Excess Parking Unit Bidding Form	59
F.	Appendix "F": Interim Statement of Receipts and Disbursements (for Construction Only) for the period June 2, 2017 to September 30, 2017	63
G.	Appendix "G": Interim Statement of Receipts and Disbursements (For Administration/Sales Proceeds Only) for the period May 31, 2016 to September 30, 2017	64
H.	Appendix "H": Fee Approval Endorsement of Regional Senior Justice Morawetz	65
A.	Confidential Appendix "A": Minimum Unit & Excess Parking Price	77
3.	Draft Approval and Vesting Order (Re: Site Plan Agreement & Leslieville Parkland Dedication)	78
4.	Draft Order (Re: Repayment of Borrowings & Ancillary Relief)	89

TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

**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**

**NOTICE OF MOTION
(Re: PARKLAND DEDICATION, PARTIAL REPAYMENT OF BORROWNGS,
AMENDED EXCESS PARKING PROCESS & ANCILLARY RELIEF)
(Returnable October 26th, 2017)**

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. (“**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**”) will make a motion to a Judge of the Commercial List at 10:00 a.m. on October 26, 2017, 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 Fifth Report of the Construction Receiver dated October 19, 2017 (the “**Fifth Report**”).

THE MOTION IS FOR:

- (a) an order, substantially in the form attached at Tab 3 of the Motion Record (the “**Site Plan Agreement & Parkland Dedication Order**”):
 - (i) authorizing the Construction Receiver to execute the site plan agreement, substantially in the form attached as **Appendix “A”** to the Fifth Report (the “**Site Plan Agreement**”) in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate capacity;
 - (ii) vesting in the City of Toronto (the “**City**”) all of UC Leslieville’s right, title and interest in and to the real property identified on **Schedule “A”** of the Site Plan Agreement & Parkland Dedication Order (the “**Leslieville Parkland**”);
- (b) an order, substantially in the form attached at Tab 4 of the Motion Record (the “**Repayment of Borrowings and Ancillary Relief Order**”):
 - (i) authorizing and directing the Construction Receiver to repay to the Canadian Imperial Bank of Commerce (“**CIBC**”), in its capacity as administrative agent (the “**Administrative Agent**”) on its own behalf and on behalf of the senior secured lending syndicate consisting of CIBC, Canadian Western Bank, and Laurentian Bank of Canada (collectively, the “**Syndicate**”), \$2.2 million from Beach Sale Proceeds (defined below) on account of obligations owing to the Syndicate under certificates issued by the Construction Receiver (the “**Receiver’s Certificates**”) pursuant to the Appointment Order (as defined below);
 - (ii) authorizing, to the extent required, the Construction Receiver to use Beach Sale Proceeds to pay administrative expenses incurred by the Construction Receiver in the discharge of its duties;

- (iii) approving an amendment to the Excess Parking Unit Process (as defined below);
 - (iv) sealing from the public record certain commercially sensitive information relating to minimum sale prices; and
 - (v) approving the activities of the Construction Receiver described in the Fifth Report; and
- (c) 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.
4. After protracted negotiations spanning over 8 months, 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**”).
5. The Settlement was agreed to among CIBC, in its capacity as Administrative Agent to 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.

6. 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 following the completion of the development and construction of the Leslieville Project. The construction and development of the Leslieville Project is being completed within these proceedings by Craft pursuant to a fixed-price construction contract (the “**Craft Construction Contract**”) and a development contract (the “**Craft Development Contract**”). Development and construction costs are to be financed by the Syndicate and Craft, with a cost overrun and completion guarantee provided by Terra Firma, all as described in the Second Report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”).

7. Support for the Settlement has been strong with forty (40) of the fifty-four (54) Existing Leslieville Purchasers opting into the Settlement by the deadline (the “**Opt-In Leslieville Purchasers**”). Construction to complete the townhomes has commenced and the unsold townhome units (the “**Unsold Units**”) are being marketed for sale to new third party purchasers (the “**New Leslieville Purchasers**”).

Site Plan Agreement and Parkland Dedication

8. As part of the development services provided by Craft pursuant to the Craft Development Contract, Craft is negotiating development, servicing, site plan, and other similar agreements with the City and has agreed to fulfill all of the conditions under those agreements. In addition, pursuant to the Craft Construction Contract, Craft has agreed to perform all of the work and services required for the completion of the construction of the Leslieville Project, including specifically all work and services required under the Site Plan Agreement. As a result, all of the obligations of UC Leslieville under the Site Plan Agreement will be completed (or caused to be completed) by Craft.

9. Pursuant to the Leslieville Settlement Approval Order, the Construction Receiver is authorized to execute such additional documents and agreements for and on behalf of UC Leslieville (and not in its personal or corporate capacity) that may be necessary for Craft to perform the development services and construction work at the Leslieville Project, all without

any liability on the part of the Construction Receiver, its directors, officers, agents and employees. The Construction Receiver has been advised by Craft that the Site Plan Agreement between UC Leslieville and the City is substantially finalized with only minor modifications from the draft previously attached as a schedule to the Craft Construction Contract.

10. Pursuant to the Site Plan Agreement, UC Leslieville must convey the Leslieville Parkland, a 700.09m² portion of land at the northeast corner of the Leslieville Project, to the City for public parkland purposes (the “**Parkland Conveyance Condition**”).

11. Accordingly, the proposed Site Plan Agreement & Parkland Dedication Order seeks, among other things, specific approval and authorization for the Construction Receiver to execute the Site Plan Agreement for and on behalf of UC Leslieville. Following the execution of the Site Plan Agreement and being advised by the City that all conditions have been satisfied to convey the Parkland, the Site Plan Agreement & Parkland Dedication Order provides that the Construction Receiver is authorized and directed to convey all of UC Leslieville’s right, title and interest in and to the Leslieville Parkland to the City, free and clear of all liens, claims and encumbrances, all as more particularly set out in the draft Order.

12. As the Leslieville Parkland must be conveyed to the City before the condominium at the Leslieville Project can be registered, the Construction Receiver recommends approving the Site Plan Agreement & Parkland Dedication Order so that the Parkland Conveyance Condition can be met.

Amendment to Excess Parking Unit Process

13. 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 Leslieville Purchasers.

14. Two (2) of the Excess Parking Units have been sold to Existing Leslieville Purchasers. Craft has requested certain amendments be made to the Excess Parking Unit Process

to provide greater flexibility with respect to the marketing of Unsold Units together with Excess Parking Units.

15. The Construction Receiver is of the view that greater flexibility will be beneficial to the marketing efforts at the Leslieville Project and the amendments to the Excess Parking Unit Process should be approved by the Court.

Partial Repayment of Receiver's Borrowings

16. Also on May 2, 2017, the Construction Receiver sought and this Court granted an order approving a sale and marketing process with respect to the eight (8) remaining lots located at the Beach Project (the "**Beach Lots**") that were in a very early stage of construction (the "**Beach Sale Process**").

17. The Beach Sale Process was implemented in accordance with its terms, and on July 17, 2017 this Court approved the sale of the Beach Lots to 2583510 Ontario Inc.

18. 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 the Construction Receiver's listing agent (the "**Beach Sale Proceeds**").

19. The Construction Receiver has completed an estimate of its accrued liabilities and future costs to administer these proceedings. Subject to a reserve for administrative and professional costs, the Construction Receiver proposes to repay \$2.2 million from Beach Sale Proceeds to the Syndicate on account of outstanding Construction Receiver's borrowings. The partial repayment will provide a cost savings to the estate as it will reduce the amount of interest that will accrue on outstanding Construction Receiver's borrowings.

20. In the Construction Receiver's view, after the partial repayment is made, there should be sufficient cash on hand to satisfy the anticipated future administrative and professional costs while construction of the Leslieville Project is completed and further proceeds are generated for distribution to creditors.

21. The Construction Receiver intends to use cash on hand from its remaining borrowings to fund its administrative expenses while professional costs secured by the

Receiver's Charge will be paid from asset realizations. Although not anticipated, the Construction Receiver is also seeking authorization for it to pay administrative expenses incurred by the Construction Receiver in the discharge of its duties from Beach Sale Proceeds, if required. Such expenses are not anticipated to be material.

22. Given the cost savings to the estate, the Construction Receiver recommends this Court approve the partial repayment to the Syndicate.

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

24. 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 Fifth Report;
- (b) the Second Report;
- (c) the Leslieville Settlement Approval Order;
- (d) the pleadings and proceedings herein; and
- (e) such further and other material as counsel may advise and this Honourable Court permit.

Date: October 20, 2017

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TO: THE SERVICE LIST AND SUPPLEMENTARY SERVICE LIST

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

V. URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION
RE: PARKLAND DEDICATION,
REPAYMENT OF BORROWNGS et al

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the assets, undertakings and property of
Urbancorp (Leslieville) Developments Inc.,
Urbancorp (Riverdale) Developments Inc., and
Urbancorp (The Beach) Developments Inc.

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:**CANADIAN IMPERIAL BANK OF COMMERCE****Applicant****and**

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

Respondents

**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**

**FIFTH 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.**

October 19, 2017

TABLE OF CONTENTS

1.0	INTRODUCTION AND OVERVIEW	1
1.1	CURRENCY	4
2.0	STATUS OF PROJECTS.....	4
2.1	<i>Leslieville Project</i>	4
2.2	<i>Beach Project.....</i>	7
2.3	<i>Riverdale Project</i>	7
3.0	CONSTRUCTION LIEN CLAIMS	8
4.0	SITE PLAN AGREEMENT AND PARKLAND DEDICATION ORDER.....	10
5.0	STATUS OF EXCESS PARKING UNIT PROCESS & PROPOSED AMENDMENT... 	11
6.0	CONSTRUCTION RECEIVER’S STATEMENTS OF RECEIPTS AND DISBURSEMENTS (“R&D”).....	13
6.1	<i>Construction Receiver’s Interim Statement of Receipts and Disbursements and Current Borrowings (Construction of Leslieville Project)</i>	13
6.2	<i>Construction Receiver’s Interim Statement of Receipts and Disbursements and Current Borrowings (Non-Construction Related)</i>	14
6.3	<i>Repayment of Receiver Borrowings</i>	14
7.0	CONSTRUCTION RECEIVER’S ACTIVITIES.....	15
7.1	<i>Settlement Implementation.....</i>	15
7.2	<i>Conservatory and Security Measures</i>	17
7.3	<i>Asset Review, Analysis & Realizations</i>	17
7.4	<i>Court/Administration/Regulatory</i>	17
8.0	UPCOMING FEE APPROVAL	18
9.0	CONCLUSION	19

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 is to consist of fifty-five (55) condominium townhome units (each with a dedicated underground parking unit), eleven (11) excess underground parking units (the “**Excess Parking Units**”) and thirty-three (33) bicycle storage units (the “**Bicycle Storage Units**”). The units of the Condominium are substantially complete with only certain interior finishes 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.
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 are to be financed by the Syndicate and Craft, 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. Construction to complete the townhomes has commenced and the unsold townhome units (the “**Unsold Units**”) are being marketed for sale.
7. 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 Units. As described

below, two (2) of the Excess Parking Units have been sold to Existing Leslieville Purchasers.

8. 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.
9. 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 sought approval of the engagement of Cushman & Wakefield Ltd., Brokerage (“**CW**”) to implement the Beach Sale Process, subject to the supervision of the Construction Receiver.
10. 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.
11. 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**”).
12. The purpose of this fifth report of the Construction Receiver (the “**Fifth Report**”) is to:
 - a. provide the Court with a general update of the status of the Leslieville Project, Beach Project and Riverdale Project and the Construction Receiver’s activities from May 2, 2017 to date;
 - b. request this Court’s approval of an order (the “**Site Plan Agreement & Parkland Dedication Order**”):
 - (i) authorizing the Construction Receiver to execute the site plan agreement, substantially in the form attached as **Appendix “A”** to this Report (the “**Site Plan Agreement**”) in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate capacity;
 - (ii) vesting in the City of Toronto (the “**City**”) all of UC Leslieville’s right, title and interest in and to the real property identified on

Schedule “A” of the Site Plan Agreement & Parkland Dedication Order (the “**Leslieville Parkland**”);

- c. request this Court’s approval of an order (the “**Repayment of Borrowings and Ancillary Relief Order**”):
 - (i) authorizing and directing the Construction Receiver to repay to CIBC, in its capacity as Administration 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 under certificates issued by the Construction Receiver (the “**Receiver’s Certificates**”) pursuant to the Appointment Order;
 - (ii) approving an amendment to the Excess Parking Unit Process requested by Craft; and
 - (iii) approving the activities of the Construction Receiver described in this Fifth Report; and
- d. 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 September 30, 2017, and the Construction Receiver’s Interim Statement of Receipts and Disbursements for its administration and asset sale accounts for the period of May 31, 2017 to September 30, 2017.

1.1 CURRENCY

- 13. Unless otherwise noted, all currency references in this Fifth Report are to Canadian dollars.

2.0 STATUS OF PROJECTS

2.1 *Leslieville Project*

- 14. A condition precedent to the effectiveness of the Settlement was that at least 40% of the Existing Leslieville Purchasers opted-in to the Settlement on or before 5 pm on May 19, 2017 (the “**Opt-In Deadline**”) and did not rescind their New APS within the 10-day cooling off period after delivery of their executed New APS to the Construction Receiver (the “**Opt-In Threshold Condition**”). All condition precedents to the Settlement were complete as of June 2, 2017, and the Settlement became effective on that date (the “**Effective Date**”).
- 15. Support for the Settlement from the Existing Leslieville Purchasers was strong with forty (40) of the fifty-four (54) Existing Leslieville Purchasers opting into the Settlement, representing a participation rate of over 74%. A detailed overview

of the Settlement is found in the second report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”).

16. As contemplated by the Settlement, the construction and development of the Leslieville Project is being completed within these Receivership Proceedings by Craft, a residential and commercial developer, pursuant to a fixed-price construction contract (the “**Craft Construction Contract**”) and a development contract (the “**Craft Development Contract**”) approved pursuant to the Leslieville Settlement Approval Order.
17. In accordance with the Craft Construction Contract, Craft has retained Urban Renaissance Inc. (“**Urban Renaissance**”) as general contractor to complete the construction of the Leslieville Project. Urban Renaissance is a registered builder with Tarion Warranty Corporation and specializes in providing support services to the residential construction industry.
18. Under the Craft Construction Contract, Craft has total control over all aspects of the construction and is responsible for directing and supervising all work performed on site.
19. The Construction Receiver has been advised by Craft that construction of the Condominium re-commenced on the Effective Date, and the Construction Receiver has been advised by Craft that construction and registration of the Condominium is anticipated to be completed by the end of January 2018.
20. As outlined in the Second Report, Craft has 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 heating and cooling system (the “**Geo-Thermal System**”).
21. As of the date of this Fifth Report, there have been 14 approved and pre-funded change orders totaling approximately \$510,000 plus HST, which are beyond the scope of the fixed price contract.¹ To date, 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 \$1.3 million incurred up to August 31, 2017. Further, Craft has incurred approximately \$65,000 plus HST in Geo-Thermal System recommissioning costs, which are to be reimbursed out of the sale of the Geo-Thermal System.
22. 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

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 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.

of the Leslieville Project, including without limitation, the registration of the Condominium and the marketing and sale of all Unsold Units, Excess Parking Units, Bicycling Storage Units, and coordinating the closing of same (described as “**Development Services**” under the Craft Development Contract).

23. 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 increases to the initial budget totaling approximately \$297,000 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 \$1.243 million. To date, Craft has submitted, draw requests approved by the Project Monitor for costs under the Craft Development Contract of \$279,000.
24. Since the Effective Date, construction work has been focused on utility connections, exterior envelope repairs, mould remediation, wood flooring repairs, installation of ceramic tile and wood decks, completing one model suite, parking garage repairs, and completing certain improvements to the Leslieville Parkland which is to be conveyed to the City pursuant to the Site Plan Agreement. As described in more detail below, Craft has been negotiating with the City to finalize the Site Plan Agreement to be executed by the Construction Receiver for and on behalf of UC Leslieville.
25. In addition, Craft has been coordinating the marketing and sale of the Unsold Units, the Excess Parking Units and the Bicycle Storage Units with real estate brokerage firm, RE/MAX Hallmark Realty Limited, Brokerage (“**RE/MAX**”), as the listing agent for the Unsold Units. Marketing efforts are in their early stage and principally focused on the sale of the Unsold Units. To date, RE/MAX has marketed the Leslieville Project, by:
 - a. establishing a website with floor plans, photos and other details, allowing prospective purchasers to register with RE/MAX to be among the first to view the model suite;
 - b. posting Leslieville Project information on social media (including Facebook and Instagram) and updating same on a weekly basis;
 - c. placing billboard advertising in the Leslieville area beginning in August 2017 for a three-month period;
 - d. placing portable advertisements at street level directing prospective purchasers to the Leslieville Project;

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.

- e. hosting open houses of the model suite for prospective purchasers, including a RE/MAX agents only model suite open house on October 5, 2017; and
 - f. running advertisements online and in the Toronto Star print edition on October 11th and 12th, 2017.
26. With the assistance of RE/MAX, Craft will be marketing for sale the Bicycle Storage Units to Existing Leslieville Purchasers and New Leslieville Purchasers. Craft has agreed upon a minimum sale price for each Bicycle Storage Unit with Terra Firma, the Syndicate and the Construction Receiver.

2.2 ***Beach Project***

27. 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.
28. 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).
29. As described in more detail below, as part of the proposed Repayment of Borrowings and Ancillary Relief Order and to reduce interest expenses, the Construction Receiver is seeking the Court’s authorization to partially repay the obligations owing to the Syndicate under Receiver’s Certificates issued by the Construction Receiver to fund these Receivership Proceedings (*see Section 6.3 – Repayment of Receiver’s Borrowings*).

2.3 ***Riverdale Project***

30. 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.
31. The closing documentation for the Riverdale Project sales was prepared by the Debtors’ solicitors, Harris Sheaffer LLP (“**Harris Sheaffer**”). Total closing proceeds, less costs and HST, of \$18,668,456.18, were remitted to CIBC in respect of the Debtors’ loan obligations to the Syndicate. Harris Sheaffer continues to hold monies related to these closings, totaling \$2,976,772.41, plus accrued interest, that the Construction Receiver understands is being held on account of the HST portion of proceeds collected from purchasers (the “**Residual Closing Monies**”).
32. As previously reported in the Second Report, on April 20, 2016, shortly prior to the dates of the Riverdale Project closings, the Canadian Revenue Agency (“**CRA**”) issued a notice of reassessment to HST registrant Bay/Stadium LP (the Debtors’ parent) in respect of its August 2015 reporting period (the “**August 2015**”).

Reassessment”). The Construction Receiver understands that the HST account in question relates to UC Riverdale.

33. On July 17, 2016, the Construction Receiver filed a notice of objection in respect of the August 2015 Reassessment (the “**Notice of Objection**”) on behalf of UC Riverdale. Further background with respect to the Notice of Objection is set out in the Second Report.
34. In late August, 2017, the Construction Receiver was informed by CRA that the Notice of Objection was allowed in full and that the August 2015 Notice of Reassessment would be reversed. A Notice of Reassessment dated August 31, 2017 was received by the Construction Receiver which shows the net amount owing to CRA at approximately \$3.2 million, which the Construction Receiver understands to be the assessed HST amounts for April/May 2016 of \$3.0 million, plus penalties and interest (the “**HST Reassessment**”).
35. On October 18, 2017, the Construction Receiver received a letter from CRA asserting a statutory trust claim in the amount of \$2,970,083.51, plus \$212,213.05 in penalties and interest pursuant to section 222(3) of the *Excise Tax Act* (Canada) (the “**Deemed Trust Claim**”). A copy of the letter from CRA is attached hereto as **Appendix “B”** to this Report. While the letter makes reference to TCC/Urbancorp (Bay Stadium) Limited Partnership as the GST/HST registrant, the amount appears to correspond with the HST Reassessment relating to UC Riverdale.
36. The Construction Receiver will be responding to the letter to clarify that it is not the Receiver of TCC/Urbancorp (Bay Stadium) Limited Partnership and its view that the HST Reassessment relates to UC Riverdale. In doing so, the Construction Receiver will also advise CRA that UC Riverdale along with the other Debtors were assigned into bankruptcy as required pursuant to the Settlement. As a result, the Deemed Trust Claim is an unsecured claim due to the bankruptcy.
37. 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 issuance of the Leslieville Settlement Approval Order, counsel to Terra Firma has continued such investigations to determine if such monies are recoverable to the estate. Counsel to Terra Firma has indicated to the Construction Receiver an intention to bring a motion to address the Residual Closing Monies. In this regard, the Construction Receiver has responded to information requests made by counsel to Terra Firma and reviewed materials prepared by Terra Firma to ensure the materials accurately reflect the books and records of the Debtors.

3.0 CONSTRUCTION LIEN CLAIMS

38. 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.

39. 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**”).
40. 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.
41. It was intended that the lien claimants would coordinate 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 with the consent of Construction Receiver (the “**Settled Amounts**”).
42. As the subordinate mortgagee, counsel to Terra Firma requested to lead 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. A copy of the letter is attached hereto as **Appendix “C”** to this Report (the “**Process Letter**”).
43. 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**”).
44. The Construction Receiver has been assisting the Vetting Committee in their review of the lien claims with the view of facilitating settlements. Once the Settled Amounts are agreed upon, the Construction Receiver intends to bring a motion or motions (as required) to pay the Settled Amounts to each of the lien claimants from the Estimated Holdback Amount for the Beach Project and for the Leslieville Project once available.

45. Many of the construction lien claimants have submitted affidavits or other documentation which have been reviewed by the Vetting Committee. As of the date of this Fifth Report, counsel to Terra Firma has advised that certain lien claimants have not submitted documentation (the “**Unresponsive Lien Claimants**”). If Terra Firma is not able to resolve the lien claims with respect to the Unresponsive Lien Claimants in the near term, the Construction Receiver intends to return to Court to seek approval of a process or seek advice and directions to address the unresolved lien claims.
46. 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. Counsel to the Syndicate is leading settlement negotiations with respect to the Riverdale Project lien claimants and keeping the Construction Receiver and relevant stakeholders apprised as negotiations progress.

4.0 SITE PLAN AGREEMENT AND PARKLAND DEDICATION ORDER

47. As part of the Development Services provided pursuant to the Craft Development Contract, Craft is negotiating development, servicing, site plan, and other similar agreements with the City and has agreed to fulfill all of the conditions under those agreements. In addition, pursuant to the Craft Construction Contract, Craft has agreed to perform all of the work and services required for the completion of the construction of the Leslieville Project, including specifically all work and services required under the Site Plan Agreement. As a result, all of the obligations of UC Leslieville under the Site Plan Agreement will be completed (or caused to be completed) by Craft. A copy of a draft of the Site Plan Agreement between the City and UC Leslieville is attached as **Schedule “K”** to the Craft Construction Contract and was posted on the Construction Receiver’s website as part of the available information for the Leslieville Settlement Approval Order.
48. A site plan agreement must be executed by the owner of the property (as opposed to the developer). The Leslieville Settlement Approval Order authorized the Construction Receiver to execute such agreements for and on behalf of UC Leslieville (and not in its personal or corporate capacity) without any liability on the part of the Construction Receiver, its directors, officers, agents and employees.
49. The Construction Receiver has been advised by Craft that the Site Plan Agreement between UC Leslieville and the City is substantially finalized with only minor modifications from the draft attached to the Craft Construction Contract. It is anticipated that it will be ready for execution by the Construction Receiver before the end of October. A copy of the current draft of the Site Plan Agreement is attached as **Appendix “A”** to this Report. The Construction Receiver intends to file with the Court the proposed execution copy of the Site

Plan Agreement prior to the return date of the Construction Receiver's motion, if available.

50. The proposed Site Plan Agreement & Parkland Dedication Order seeks specific approval and authorization for the Construction Receiver to execute the Site Plan Agreement on behalf of UC Leslieville, with such minor amendments as the Construction Receiver or the City may deem necessary or desirable. The proposed Order also expressly authorizes UC Leslieville to observe and perform the conditions and covenants contained in the Site Plan Agreement, and take such additional steps and execute such additional documents as the Construction Receiver and the City may consider necessary or desirable to satisfy the conditions contained therein, all without any liability on the part of the Construction Receiver, its directors, officers, agents and employees.
51. One of the conditions under the Site Plan Agreement is to convey the Leslieville Parkland, a 700.09m² portion of land at the northeast corner of the Leslieville Project, to the City for public parkland purposes prior to the registration of the Condominium.
52. The Construction Receiver has been advised by Craft that the Leslieville Project is at a stage where the Leslieville Parkland is ready to be conveyed to the City.
53. Pursuant to the proposed Site Plan Agreement & Parkland Dedication Order, following the execution of the Site Plan Agreement and the Construction Receiver being advised in writing by the City that all conditions have been satisfied to convey the Leslieville Parkland, the Construction Receiver is authorized and directed to execute and deliver a transfer/deed duly executed in the name of and for and on behalf of UC Leslieville in the form prescribed by the *Land Registration Reform Act* with respect to the Leslieville Parkland to and in favour of the City for nil consideration (the "**Transfer/Deed**").
54. Upon the registration of the Transfer/Deed in the applicable Land Titles Division of the Toronto Land Registry Office, all of UC Leslieville's right, title and interest in the Leslieville Parkland will vest in the City, free and clear of all liens, claims and encumbrances, all as more particularly set out therein.
55. The Construction Receiver has provided a copy of the proposed Site Plan Agreement & Parkland Dedication Order to the City and the City is agreeable to the proposed form. Accordingly, the Construction Receiver recommends that this Court grant the proposed Site Plan Agreement & Parkland Dedication Order.

5.0 STATUS OF EXCESS PARKING UNIT PROCESS & PROPOSED AMENDMENT

56. As reported in the Second Report, there were 11 Excess Parking Units at the Leslieville Project which had not been purchased before the commencement of these Receivership Proceedings. As part of the terms of the Settlement, Opt-In Leslieville Purchasers were provided with a first opportunity to purchase an

Excess Parking Unit through the Excess Parking Unit Process that was previously approved by this Court.

57. The Excess Parking Unit Process was described in a supplementary report to the Second Report. A copy of the excerpt describing the Excess Parking Unit Process is attached as **Appendix “D”** to this Fifth Report.
58. In accordance with Excess Parking Unit Process, the Construction Receiver distributed a parking unit bidding form to each Opt-In Leslieville Purchaser (the **“Parking Unit Bidding Form”**). The Parking Unit Bidding Form set out the process for each Opt-In Leslieville Purchaser to submit a bid to purchase an Excess Parking Unit, and set a bid deadline of September 15, 2017 (the **“Excess Parking Unit Bid Deadline”**). The minimum bid price was set at \$35,000 per Excess Parking Unit (inclusive of HST) (the **“Minimum Excess Parking Price”**). A copy of the Parking Unit Bidding Form is attached hereto as **Appendix “E”**.
59. The Construction Receiver received two (2) completed Parking Unit Bidding Forms before the Excess Parking Unit Bid Deadline. Both bids complied with the parameters set out in the Parking Unit Bidding Form. In accordance with the Excess Parking Unit Process Order, the Construction Receiver has notified each bidder that their bid was successful and both parties have executed a binding and irrevocable addendum to their New APS and delivered a deposit in respect of such addendum to Miller Thomson LLP (the **“Construction Receiver’s Real Estate Counsel”**).
60. As a result, there are now nine (9) Excess Parking Units available for sale to New Leslieville Purchasers. The Excess Parking Unit Process expressly contemplates that any remaining Excess Parking Units would be offered to New Leslieville Purchasers by the provision to them of a Parking Unit Bidding Form and by following substantially the same process as was carried out with respect to Opt-In Leslieville Purchasers.
61. To provide greater flexibility with respect to the marketing of Unsold Units together with Excess Parking Units, Craft has requested that the process be amended as follows (the **“Amended Excess Parking Unit Process”**):
 - a. Craft is no longer required to have a New Leslieville Purchaser submit a Parking Unit Bidding Form in order to purchase an Excess Parking Unit as set out in the Excess Parking Unit Process;
 - b. Craft may offer for sale an Excess Parking Unit in conjunction with an Unsold Unit to a potential New Leslieville Purchaser, provided that the aggregate purchase price for the Unsold Unit and the Excess Parking Unit is at least equal to or greater than the Minimum Unit Price (as defined in the Leslieville Settlement Approval Order) plus the Minimum Excess Parking Price. A copy of the minimum price list previously provided to

the Court is attached as *Confidential Appendix “A”* for informational purposes³;

- c. Each Excess Parking Unit will be sold on an “as is where is basis” without any representation or warranty from the Construction Receiver and will be subject to the same terms and conditions set out in the standard form agreement of purchase and sale for the purchase of an Unsold Unit; and
 - d. In accordance with the Craft Development Contract, Craft may offer such Excess Parking Units for sale to either an Existing Leslieville Purchaser or a New Leslieville Purchaser below the Minimum Excess Parking Price if in its reasonable business judgment it is appropriate and the Construction Receiver consents to the sale.
62. The above amendment to the Excess Parking Unit Process does not alter the process for adjusting the Minimum Unit Price for an Unsold Unit, which continues to be governed by the Craft Development Contract previously approved by the Court. The Construction Receiver is of the view that greater flexibility will be beneficial to the marketing efforts at the Leslieville Project. Accordingly, the Construction Receiver recommends this Court approve the Amended Excess Parking Unit Process.

6.0 CONSTRUCTION RECEIVER’S STATEMENTS OF RECEIPTS AND DISBURSEMENTS (“R&D”)

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

63. 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.
64. The Construction Receiver’s Interim Statement of Receipts and Disbursements for the Leslieville Project construction for the period of June 2, 2017 to September 30, 2017 is attached as **Appendix “F”** (the “**Construction R&D**”). The Construction R&D indicates a combined cash balance on hand of \$2,155,325.91 as of September 30, 2017, which includes the Craft Cash Collateral.
65. The following table summarizes the authorized and cumulative actual construction related borrowings of the Construction Receiver as at September 30, 2017:

³ As the schedule contains commercially sensitive information, the Construction Receiver seeks to seal Confidential Appendix “A”.

Lender	Authorized Construction Related Borrowings	Actual Construction Related Borrowings	Governing Agreement
Craft	\$2,000,000.00	\$2,000,000.00	Craft Construction Loan Agreement
Terra Firma	775,427.31	775,427.31	Terra Firma Cost Overrun Agreement
Syndicate	4,500,000.00	\$0.00	Syndicate Construction Loan Agreement
Total	\$7,275,427.31	\$2,775,427.31	

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

66. The Construction Receiver has two non-construction related bank accounts—one for administration costs and the other for asset sales. 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 September 30, 2017 is attached as **Appendix "G"** (the "**Admin/Sales R&D**"). The Admin/Sales R&D indicates a cash balance on hand of \$250,131.12 in the administration account and \$4,738,001.44 in the asset sale account.
67. The balance in the administration account represents cash receipts from Court authorized borrowings issued pursuant to Receiver Certificates, HST refunds and interest on cash balances held, less disbursements consisting primarily of professional fees, repairs and maintenance expenses, realty taxes, insurance, utilities and security.
68. In early October, 2017, the Construction Receiver paid accrued professional fees of approximately \$1,045,000 (inclusive of HST) from Beach Sale Proceeds as permitted by the Appointment Order. As a result, as of the date of this Fifth Report, there is currently a cash balance of \$3,692,564 in the asset sale account consisting of remaining Beach Sale Proceeds, plus interest earned less bank charges.

6.3 *Repayment of Receiver Borrowings*

69. As at the date of this Report, the Construction Receiver has borrowed \$4.8 million from the Syndicate (by way of Receiver Certificates) of its Court authorized borrowing limit of \$6.0 million to fund administrative expenses and professional expenses. The monies borrowed from the Syndicate accrue interest at a rate of CIBC prime plus 5%.
70. With the sale of the Beach Lots complete, the Construction Receiver has proceeds available of \$2.2 million that it can repay the Syndicate on account of outstanding Construction Receiver's borrowings. The partial repayment will provide a cost

savings to the estate as it will reduce the amount of interest that will accrue on outstanding Construction Receiver's borrowings.

71. The Construction Receiver has completed an estimate of its accrued liabilities and future costs. Based on the Construction Receiver's analysis, after the partial repayment of Construction Receiver's borrowings, there should be sufficient cash on hand to satisfy the anticipated future administrative and professional costs while construction of the Leslieville Project is completed and further proceeds are generated for distribution to creditors.
72. Rather than borrowing further monies from the Syndicate, the Construction Receiver intends to use available cash on hand to fund current and future costs. The Construction Receiver believes it has sufficient cash on hand from its administration account to fund its remaining administrative expenses while professional costs secured by the Receiver's Charge would be paid from its asset sales account, which consists currently of Beach Sale Proceeds. Though it is not anticipated, the proposed Order does seek authorization for the Construction Receiver to pay administrative expenses incurred by the Construction Receiver in the discharge of its duties from Beach Sale Proceeds if required. Such expenses primarily relate to insurance premiums and Altus costs and are not anticipated to be material.
73. In the event that proceeds of realization from the Beach Project and Leslieville Project are sufficient to repay Terra Firma in full, a re-allocation of costs to specific projects and general administration costs amongst the projects may be required. In this regard, the Construction Receiver and its counsel have been maintaining separate accounts for each project as well as a general administration account should a re-allocation of costs become necessary.

7.0 CONSTRUCTION RECEIVER'S ACTIVITIES

74. In addition to the foregoing, since the Second 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 security waterfall scenarios to assist in the overall analysis of the Settlement, including related discussions with stakeholders;
- b. reviewing the final settlement documentation, and arranging for implementation of same;
- c. reviewing and executing fifty-four (54) purchaser information packages (the "**Purchaser Packages**") to be distributed to all Existing Leslieville Purchasers;

- d. discussing and corresponding with Existing Leslieville Purchasers in connection with the contents of the Purchaser Packages;
- e. reviewing all Purchaser Packages received prior to the Opt-In Deadline, including follow up discussions with Existing Leslieville Purchasers and legal counsel where necessary;
- f. preparing a summary report with respect to the number of Opt-In Leslieville Purchasers;
- g. reviewing construction lien claims and related discussions with counsel regarding Holdback Deficiencies and the process to determine such claims;
- h. 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;
- i. consulting with CIBC, Terra Firma and Craft in respect of various construction, marketing and administrative matters;
- j. reviewing monthly reporting prepared by Craft in respect of construction, project development and sales;
- k. reviewing Craft's marketing and business plan materials and corresponding with Craft and RE/MAX regarding marketing efforts;
- l. reviewing and executing broker listing agreements with RE/MAX in respect of the Leslieville Project, including attendance at a model suite open house;
- m. discussing with Tarion and Travelers a review process in connection with deposit claims made by Existing Leslieville Purchasers who opted out of the Settlement;
- t. preparing the Parking Unit Bid Form and cover letter and mailing same to all Opt-In Purchasers as required by the Excess Parking Unit Order;
- u. reviewing monthly reports prepared by the Altus Group in connection with draw requests received from Craft, including change orders and budget revisions, preparing related wire transfers to Craft, and establishing appropriate holdback amounts; and
- v. discussing and corresponding with City officials to review the state of the projects, notice of approval conditions, site plan agreements, status of outstanding approvals, status of letters of credit, and other matters.

7.2 *Conservatory and Security Measures*

- a. discussing with Firstbrook Cassie and Anderson Inc., the Construction Receiver's insurance broker, insurance coverage status;
- b. attending the Leslieville Project and Beach Project for periodic site visits;
- c. engaging various contractors and consultants to assist in the preservation and maintenance of the project sites, including in respect of site safety and maintenance, pest control, general clean-up services, among others, and coordinating same with such contractors and consultants; and
- d. reviewing and negotiating extensions of the conditional permit agreements with the City in respect of the Leslieville Project to July 31, 2017 and subsequently to August 31, 2017 and then October 31, 2017.

7.3 *Asset Review, Analysis & Realizations*

- a. assisting CW, listing agent in respect of the Beach Lots, with the preparation of a digital data room, including standard form purchase and sale agreement;
- b. attending numerous meetings, discussions and correspondence with CW in respect of the marketing plan to sell the Beach Lots; and
- c. reviewing offers received on the Beach Lots, and making recommendations to the Court to accept the offer of the Purchaser, as outlined in the Construction Receiver's Fourth Report dated July 17, 2017.

7.4 *Court/Administration/Regulatory*

- a. attending Court for various matters in respect of these Receivership Proceedings;
- b. discussing with 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. establishing new bank accounts with CIBC in the name of Alvarez & Marsal Canada Inc., in its capacity as Construction Receiver, as required pursuant to the Craft Development Contract;

- e. reviewing and executing bankruptcy assignment documents in respect of the Debtors, naming MSI Spergel Inc. (“**Spergel**”) as Trustee in Bankruptcy, as required pursuant to the Settlement;
- f. corresponding with Spergel, in respect of assets, liabilities, and historical transactions of the Debtors;
- g. attending the first meetings of creditors in respect of each of the bankrupt estates on June 20, 2017;
- h. discussing and corresponding with CRA in respect of the Notice of Objection filed by the Construction Receiver relating to the August 2015 Reassessment;
- i. preparing and filing HST returns in respect of the receivership reporting periods ended March 31, 2017 to July 31, 2017;
- j. discussing and corresponding with CRA in respect of delays in receiving post-filing HST refunds;
- k. 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;
- l. preparing a supplemental court report to the Second Report, as well as the Third Report of the Construction Receiver dated May 23, 2017, a supplemental court report to the Third Report, the Fourth Report of the Construction Receiver dated July 6, 2017 and this Fifth Report; and
- m. preparing the Interim Statement of Receiver dated June 10, 2017 pursuant to section 246(2) of the BIA for each of the Debtors and remitting same to the Office of the Superintendent of Bankruptcy.

8.0 UPCOMING FEE APPROVAL

75. 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).

76. 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 (the "**First Fee Approval Motion**").
77. 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**").
78. 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 "H"**. 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).
79. The Construction Receiver intends to seek approval of its accounts subsequent to March 31, 2017 in early 2018, including approval of its costs for the opposed First Fee Approval Motion. The Construction Receiver continues to report to key stakeholders on a regular basis with respect to costs incurred and estimated future administration costs.

9.0 CONCLUSION

80. 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 October, 2017.

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

Per:



Douglas R. McIntosh
President

APPENDIX “A”

SITE PLAN AGREEMENT made this day of, 2017.

B E T W E E N:

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.

(the "Owner")

- and -

CITY OF TORONTO

(the "City")

WHEREAS:

- (A) The Owner is the owner of the land known as **50 Curzon Street**, in the City of Toronto, more particularly described in Schedule "A" to this Agreement (the "Land");
- (B) Pursuant to Subsection 114(12) of the City of Toronto Act, 2006, S.O. Chapter 11, Schedule A, the Council for the City of Toronto by enactment of By-law No. 774-2012 designated the City of Toronto as a site plan control area;
- (C) The Owner has applied to the City under Section 41 of the *Planning Act* and Section 114 of the *City of Toronto Act, 2006*, for site plan approval in respect of its development for a 56 unit row house development with underground parking (the "Project");
- (D) Section 114(17)(b) of the *City of Toronto Act, 2006*, states that the City may by by-law delegate any of the City of Toronto's powers or authority in Section 114 to an appointed official;
- (E) Article 415-19 of the Toronto Municipal Code delegates the powers and authority granted to Council with respect to site plan approval, to the Chief Planner or his/her designates, the Directors of Community Planning;
- (F) The Director of Community Planning, Toronto and East York District, (the "Director") on **January 25, 2016**, issued Notice of Approval Conditions with respect to Application No. **11 154637 STE 30**, wherein the Director indicated that he/she would be in a position to issue the Statement of Approval with respect to the Plans and Drawings listed in Schedule "B" to this Agreement (the "Plans and Drawings") once the Owner has satisfied all of the pre-approval conditions set out in the Notice of Approval Conditions, including the entering into of this Agreement;
- (G) Subsection 114(14) of the *City of Toronto Act, 2006*, provides that an agreement entered into to secure the provision of facilities, works or matters may be registered on the title of the land to which it applies.

IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

DEVELOPMENT OF PROJECT

1. The Owner agrees to develop the Land and construct the Project in substantial conformity with the Plans and Drawings and in accordance with the conditions set out in Schedule "C" to this Agreement, including, without limiting the generality of the foregoing, those Plans and Drawings setting out the approved exterior design and sustainable design features of the Project.

- 2 -

2. The Owner acknowledges and agrees that minor variations from the requirements of this Agreement including the Plans and Drawings may be consented to by the Chief Building Official for the City on amendments necessary to satisfy the requirements of the Ontario Building Code, or in other cases by the Chief Planner or designate, provided that in the opinion of the said Official, the general intent and purpose of this Agreement is maintained.

MAINTENANCE OF THE PROJECT

3. The Owner agrees to maintain the Project in substantial conformity with the Plans and Drawings and in accordance with the conditions set out in Schedule "C" to this Agreement, in default of which the Owner acknowledges that the City may exercise its rights set out in this Agreement.

COMPLETION OF THE PROJECT

4. The Owner agrees to complete the Project as set out in this Agreement within three years from the date of issuance of the Statement of Approval failing which this approval shall require an extension by the Director prior to the issuance of any building permit and the City may exercise the other remedies set out in this Agreement.

SECURITY FOR PERFORMANCE OF OBLIGATIONS

5. Upon execution of this Agreement, the Owner shall, if required in Schedule "C" of this Agreement, submit to the City a letter of credit or cash deposit in an amount satisfactory to the Director to secure the Owner's obligations (the "Security"). Any letter of credit shall be provided in a format acceptable to the City Treasurer and Chief Financial Officer. The Owner acknowledges and agrees security submitted in the form of a cash deposit when returned will not include interest.
6. Where required by Schedule "C" to this Agreement, the Owner agrees to guarantee the performance of the Owner's obligations to the satisfaction of the Director. The City may in its sole discretion reduce the Security and retain the balance until the conclusion of the guarantee period, if required by Schedule "C", and the Owner has completed its obligations to the satisfaction of the City.
7. The Security, or such remaining balance, shall be returned upon the satisfactory completion of the Owner's obligations under this Agreement. If the security is submitted to the City in the form of a cash deposit, it shall be returned to the person or Company having submitted the security, unless a signed Direction is provided to the City indicating otherwise. If the security is submitted in the form of a letter of credit, it will be returned to the Financial Institution.

RIGHT TO ENTER

8. The Owner acknowledges and agrees that the City may enter onto the Land at any time to inspect the Project to ensure substantial conformity with the Plans and Drawings and compliance with the obligations of this Agreement.

NON-COMPLETION

9. If in the opinion of the City, the Project is not being completed within the specified time or not in accordance with the approved Plans and Drawings, or should the Owner neglect or abandon the Project before completion or unreasonably delay the same so that the conditions of this Agreement are being violated, or should the Owner, in any manner, in the opinion of the City, default in the performance of any of the terms of this Agreement, then in such case, the City shall notify the Owner by prepaid registered mail in writing, specifying with reasonable particularity the nature of such default or neglect and require the Owner to remedy the same.

10. If such default or neglect is not remedied within ten (10) working days after such notice or within such greater time period as may be specified by the City, the City thereupon shall have full authority and power immediately to draw on the Financial Security to purchase such materials, tools and machinery and to employ such people as in the City's opinion shall be required for the proper completion of the outstanding obligations in this Agreement.
11. The cost of completion of any outstanding obligations of the Project shall be calculated by the City whose decision shall be final and such costs may be deducted from the Letter of Credit or other Financial Securities provided herein. In the event that the said Letter of Credit or other securities are insufficient to reimburse the City for all expenses incurred by the City to carry out the terms and obligations of this Agreement, then the Owner agrees to pay to the City such additional costs forthwith upon demand and the provisions of Section 386 of the *City of Toronto Act 2006, c.11* as amended, shall apply.

REMEDIES OF CITY

12. The Owner agrees that the City may recover the total cost of all labour and materials in carrying out and completing the obligations of the Owner as set out in this Agreement, plus a management fee equal to 15% of the costs and to do so, may from time to time draw without notice on the Security, in whole or in part, and retain the money secured by the Security.

ADJACENT MUNICIPAL PROPERTY

13. The Owner shall rectify, restore and repair any adjacent municipal property damaged in implementing this Agreement.

INDEMNITY

14. The Owner agrees to defend, indemnify and save the City harmless from and against all claims, demands, losses, costs, charges, expenses, actions and other proceedings made, brought against, suffered by or imposed on the City in respect of any failure by the Owner to fulfill any of its obligations (including the failure to maintain) under this Agreement.
15. The Owner agrees to pay to the City on demand, any loss, costs, or damages which may be sustained, incurred or paid by the City in consequence of the Owner's failure to fulfill any of its obligations (including the failure to maintain) under this Agreement.

NO OBLIGATION TO INSPECT

16. Nothing in this Agreement imposes upon the City any duty or obligation to inspect or examine the Land for compliance, or non-compliance or to provide an opinion or view respecting any condition of development or to request or require compliance with the conditions of this Agreement.

WAIVER

17. The waiver by the City of any provision of this Agreement in one instance shall not constitute a waiver of any other instance and any waiver shall be in writing.
18. No delay or omission by the City in exercising any right or remedy shall operate as a waiver of the right or remedy or of any other right or remedy.

REGISTRATION OF AGREEMENT

19. The Owner consents to the registration of this Agreement against the title of the Land and agrees to pay all of the City's costs with respect to the registration of this Agreement and any other required documents, including but not limited to any applicable subsearch, execution search and registration fees.

NOTICE

20. Any notice given by the City to the Owner pursuant to this Agreement is sufficiently given if sent by prepaid first class mail (addressed to the Owner at the address shown for the Owner on the assessment rolls of the City or on any application for building permit) or by means of facsimile transmission. The notice shall be conclusively deemed to have been received on the third business day following mailing or respectively, the date of transmission contained on the facsimile confirmation printout.

VALIDITY

21. The invalidity of any particular provision of this Agreement shall not affect any other provision, but this Agreement shall be construed as if the invalid provision had been omitted.

SUCCESSORS, ASSIGNS

22. This Agreement enures to the benefit of the City and is binding upon the Owner and its successors and assigns. Notwithstanding anything in this Agreement to the contrary, in the event that the City acquires any part of the Land for any municipal purpose, including a road widening, the City shall not be bound by this Agreement as an Owner.

INTERPRETATION

23. This Agreement is to be read with all changes in gender or number as required by the context.
24. Schedules "A", "B" and "C" shall form part of this Agreement.
25. Notwithstanding anything in this Agreement to the contrary, in the event the City acquires any part of the Land for any municipal purpose, including streets, pedestrian walkways or connections and parks, or for the purposes of any of its boards, commissions, authorities, or agencies, the City shall not be bound by this Agreement as an Owner.
26. The Owner acknowledges that the entering into of this Agreement does not in itself constitute the approval of the Plans and Drawings under Section 114 of the *City of Toronto Act*.

IN WITNESS WHEREOF the Owner and the City have executed this document under the hands of their officers duly authorized in that behalf.

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

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation

CITY OF TORONTO

Lynda Macdonald
Acting Director, Community Planning, Toronto
& East York District

I have authority to bind the Corporation

- 6 -

SCHEDULE "A"**DESCRIPTION OF LAND**

MUNICIPAL ADDRESS:

50 Curzon Street, City of Toronto

LEGAL DESCRIPTION:

P.I.N.:

21051-0408 (LT)

Firstly:

Part Lot 11 Plan 61E, Toronto; Part Lot 11, Con 1 FTB, Designated as Pt 2 Plan 66R-25636;

Secondly: Part Lot 11, Con 1 FTB, Designated as Pt 1 PI 66R-25636;

Thirdly:

Part Lot 11, Con 1 FTB, Commencing at an Iron Bar in the Western Limit of Curzon Street, Distant 595.81 Feet Measured Northerly therealong from the Northern Limit of Queen St East; Thence North 16 Degrees 00 Minutes W Along the said Western Limit of Curzon Street, A Distance Of 65.70 Feet to an Iron Bar; Thence South 74 Degrees 22 Minutes 20 Seconds W, A Distance of 252.43 Feet to an Iron Pipe in the Eastern Limit of Lt 8, according to a Plan filed in the said Registry Office as Number 61E; Thence South 17 Degrees 06 Minutes East Along the Eastern Limits of Lots 8 & 9 according to said Plan 61E, A Distance Of 66.00 Feet to a Spike in a Stump; Thence North 74 Degrees 18 Minutes 20 Seconds East A Distance Of 251.17 Feet to the Point Of Commencement; Subject to an Easement as in AT2958528; Subject to an Easement as in AT3708202; Subject to an Easement as in AT3728135, City of Toronto.

- 7 -

SCHEDULE "B"**APPROVED PLANS AND DRAWINGS**

Title	Plan No.	Prepared By	Rev. No.	Plan Date	Date Stamped
General Notes	A0-01	Kasian Architects	7	April 7, 2015	September 14, 2015
Site Plan	A1-01	Kasian Architects	9	August 7, 2015	September 14, 2015
Exterior Elevations	A4-01	Kasian Architects	8	April 7, 2015	September 14, 2015
Exterior Elevations	A4-02	Kasian Architects	7	April 7, 2015	September 14, 2015
Exterior Elevations	A4-03	Kasian Architects	7	April 7, 2015	September 14, 2015
Exterior Elevations	A4-04	Kasian Architects	7	April 7, 2015	September 14, 2015
Exterior Elevations	A4-05	Kasian Architects	7	April 7, 2015	September 14, 2015
Building Sections	A5-01	Kasian Architects	7	April 7, 2015	September 14, 2015
Building Sections	A5-02	Kasian Architects	7	April 7, 2015	September 14, 2015
Stormwater Tank Section	A5-03	Kasian Architects	4	April 7, 2015	September 14, 2015
Stormwater Tank Section	A5-04	Kasian Architects	4	April 7, 2015	September 14, 2015
Landscape Plan	L-100	Terraplan Landscape Architects	12	April 9, 2015	September 14, 2015
Key Plan	L-200	Terraplan Landscape Architects	12	April 9, 2015	September 14, 2015
Planting Details	L-300	Terraplan Landscape Architects	10	April 9, 2015	September 14, 2015
Hardscape Details	L-301	Terraplan Landscape Architects	10	April 9, 2015	September 14, 2015
Details	L-302	Terraplan Landscape Architects	10	April 9, 2015	September 14, 2015
Tree Protection Plan	TS-1	Terraplan Landscape Architects	10	April 9, 2015	September 14, 2015
Tree Protection Details	TS-2	Terraplan Landscape Architects	10	April 9, 2015	September 14, 2015
Site Servicing and Grading Plan	SS-1	GHD	16	July 7, 2015	September 14, 2015
Cross Sections	SS-2	GHD	11	April 10, 2015	September 14, 2015

SCHEDULE "C"

SITE PLAN CONTROL APPLICATION NO. 11 154637 STE 30 SA 50 CURZON STREET SITE SPECIFIC CONDITIONS

PRE-APPROVAL CONDITIONS

ENGINEERING & CONSTRUCTION SERVICES

1. **Prior to final Site Plan Approval**, the Owner shall provide to the City a draft reference plan (66R# number to be determined after registration) for the public park to be conveyed to the City for parkland purposes, to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager of Parks, Forestry and Recreation and the City Solicitor.
2. **Prior to final Site Plan Approval**, the Owner shall submit to the Executive Director of Engineering & Construction Services a certified cheque, made payable to the City of Toronto, in an amount of \$1,566.18, to cover the costs associated with the installation of the on-street signage signs along Curzon Street to advise the motorists of the current parking bylaw ("No Parking 12:01 am to 7:00 am Except by Permit"), as per the accepted On-street Signage Plan, Drawing No. SN-1, dated December 14, 2-122, revised on January 23, 2012, prepared by BA Group;

CITY PLANNING

3. **Prior to final Site Plan Approval**, the Owner shall submit a financial guarantee in the form of an irrevocable Letter of Credit or certified cheque, made payable to the City of Toronto, in the amount of \$124,300.00, to secure the provision of landscape development works as detailed on the approved Landscape Plans, to the satisfaction of the Director.

URBAN FORESTRY

4. **Prior to final Site Plan Approval**, the Owner shall provide tree removal payment, in the amount of \$1,749.00 (by certified cheque made payable to the Treasurer, City of Toronto), to cover the appraised tree value, and set fees of City owned trees to be removed as part of this Project. This tree removal payment shall be submitted to the attention of the Supervisor of Urban Forestry, Tree Protection & Plan Review. Upon receiving the payment and the completed "Agreement for Contractors to Perform Arboricultural Services on City Owned Street Trees Form" Urban Forestry will issue the permit.
5. **Prior to final Site Plan Approval**, where tree planting to replace trees removed is not physically possible on site at a replacement ratio of 3:1, the General Manager of Parks, Forestry & Recreation will accept a cash-in-lieu payment in an amount of \$9,328.00, (by certified cheque made payable to the Treasurer, City of Toronto), which equals to 120 percent of the cost of replanting and maintaining the trees (\$583.00 / tree) for a period of two years. Only **large growing shade tree** species will be counted in the 3:1 replacement ratio as follows:

The required replacement planting due to trees removed via Private tree by-law is twenty-four (24) trees. There are shown only eight (8) trees that meet the replacement requirements (three (3) Basswood trees, three (3) tulip trees and two (2) Red oak trees). Cash-in-lieu payment in an amount of \$9,328.00 is required.

POST-APPROVAL CONDITIONS

ENGINEERING & CONSTRUCTION SERVICES

6. The Owner shall remove and restore all existing accesses, curb cuts, traffic control signs, etc., along the development site frontages that are no longer required and reinstate the curb, gutter and boulevard within the City's right-of-way, in accordance with City standards, to the satisfaction of the Executive Director of Engineering and Construction Services.
7. The Owner shall maintain and operate the loading space signaling system as recommended in the accepted "Truck Signal Warning System", prepared by BA Group, dated July 20, 2015, to the satisfaction of the Executive Director of Engineering & Construction Services and General Manager, Transportation Services.
8. The Owner shall provide and maintain off-street vehicular loading and parking facilities and access/driveways in accordance with the approved plans and drawings to the satisfaction of the Executive Director, Engineering & Construction Services.
9. The Owner shall construct and maintain all facilities necessary to permit the City to collect bulk-lift, uncompacted garbage, recycling and organic material for the 55-unit multi-residential component of this development.
10. The Owner shall provide and maintain a central solid waste collection and waste diversion facility for the multi-residential component of this development on the basement level, as shown on the Drawing No. A2-01 and accepted by the Executive Director, Engineering & Construction Services.
11. The Owner shall construct any Type G loading space and all driveways and passageways providing access thereto to the requirements of the Ontario Building Code, including allowance for City of Toronto bulk lift and rear bin loading with impact factors where they are to be built as supported structures.
12. The Owner shall construct any decorative unit paver surface to be used within any portion of the Type G loading space and in any area used to access/egress the loading space to applicable City standards to withstand truck traffic, and indemnify the City against any damage that may be caused to the decorative unit pavers through the regular use of the area by City refuse collection vehicles.
13. The Owner shall provide and designate an on-site fully trained staff/maintenance person to move the bins from the garbage/recycling/organics storage space to the collection area and also act as a flagman when garbage trucks and other large vehicles with the back-up manoeuvre to/from type G loading space; control traffic in the area.
14. The Owner agrees that the Type G loading space shall not be occupied during the days where City refuse and recyclable collection is scheduled, and in the event that the Type G loading space is occupied, the collection vehicle will leave the site and not return until the next scheduled collection day.
15. The Owner agrees that in the event the on-site staff member is unavailable at the time the City collection vehicles arrival at the site, the collection vehicle will leave the site and not return until the next scheduled collection day.
16. The Owner shall provide certification to the Executive Director, Engineering & Construction Services from the architect who designed the building to confirm that all solid waste management facilities and the horizontal and vertical clearances required for City collection vehicles have been constructed in accordance with the approved site plan drawings.

- 10 -

17. The Owner shall provide certification to the Executive Director, Engineering & Construction Services, from the Professional Engineer who designed and supervised the construction that the driveway, specifically the portions built over the underground garage and/or intake/outtake grills), can safely support a fully loaded vehicle weighing 35,000 kilograms.
18. The Owner shall notify all Owners/tenants, in writing and in their deeds/leases, of arrangements in place with respect to waste collection for the 55 units, the multi-residential component of this development.
19. The Owner shall notify Solid Waste Management upon completion of the development and complete the necessary application and waiver forms prior to the commencement of City solid waste, recycling and organic materials for this development.
20. The Owner shall construct and maintain the stormwater management measures/facilities and site grading as recommended in the accepted Stormwater Management Report entitled "Site Servicing Assessment & Stormwater Management Implementation Report for proposed residential development located at 50 Curzon Street", revised on July 8, 2015 and Site Servicing and Grading plan, Drawing No. SS-1, revision 16, dated July 7, 2015), both prepared by GHD.
21. The Owner shall construct and maintain site servicing as indicated on the accepted Site Servicing and Grading plan, Drawing No. SS-1, revision 16, dated July 7, 2015) and Cross Section (Drawing No. SS-2, revision 11, dated July 7, 2015), both prepared by GHD.
22. The Owner shall provide certification to the Executive Director, Engineering and Construction Services by the Professional Engineer who designed and supervised the construction that the stormwater management facilities and site grading have been constructed in accordance with the accepted Stormwater Management Report and the accepted Grading plans.
23. The Owner shall provide certification to the Executive Director, Engineering and Construction Services by the Professional Engineer who designed and supervised the construction, that the site servicing facilities have been constructed in accordance with the accepted drawings.
24. The Owner agrees to monitor the quantity and quality of discharge from foundation drains resulting from the groundwater by installing a sampling port and flow meter, approved and accessible to the City and to provide the approved flow meter calibration certificate and the test results of the quality of this discharge, together with a certification from a consultant that it complies with Toronto Municipal Code, Chapter 681, Table 1 – Limits for Sanitary and Combined Sewers Discharge, on a yearly basis to the Environmental Monitoring and Protection, Toronto Water. The quantity of water discharging from the foundation drains must not exceed the maximum flow rate of 120 l/min and maximum total daily volume of 5, 160 L/day determined in the September 8, 2015 Sanitary Discharge Agreement between the City of Toronto and Urbancorp (Leslieville) Developments Inc. and any subsequent agreement(s) in relation thereto. Failure to comply with the requirements of the Sanitary Discharge Agreement will result in the revocation of such agreement and foundation drains will have to be disconnected.
25. **Prior to the registration of the Plan of Condominium**, the Owner shall submit for review to the Executive Director of Engineering & Construction Services, a copy of the proposed Declaration of the Condominium which shall contain the appropriate clause(s) advising owners of all of the obligations of the condominium under the Sanitary Discharge Agreement.

PARKS, FORESTRY AND RECREATION

26. **Prior to the release of the condominium for registration**, the Owner shall convey a 700.09 m² portion of land at the northeast corner of the development site for public parkland purposes, in fee simple, (PART 2 and PART 3 as shown on the draft R-plan 66R# provided). The location and configuration of the land will be to the satisfaction of the General Manager of Parks, Forestry and Recreation and the City Solicitor. The land to be conveyed as parkland shall be free and clear of all physical obstructions, title encumbrances and encroachments, above and below grade, including surface and subsurface easements, save and except for utility poles, unless otherwise approved by the General Manager, Parks, Forestry & Recreation.
27. **Prior to the Letter of Credit being released and the parkland being conveyed**, the Owner shall be responsible for the use, maintenance and liability of the parkland, to the satisfaction of the General Manager, Parks, Forestry & Recreation.
28. **Prior to conveying the parkland to the City**, the Owner shall pay for the costs of the parkland dedication and the preparation and registration of all relevant documents. The Owner shall provide, to the satisfaction of the City Solicitor, all legal descriptions and applicable reference plans for the parkland dedication;
29. **Prior to conveying the parkland to the City**, the Owner shall:
- 29.1. submit a Qualified Person Preliminary Statement Letter, that is dated and signed by the Owner's Qualified Person, as defined in O. Reg. 153/04, as amended, describing the lands to be conveyed to the City, and identifying what environmental documentation will be provided to the City's peer reviewer to support this conveyance; all environmental documentation consistent with O. Reg. 153/04 requirements shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Executive Director of Engineering & Construction Services;
 - 29.2. pay all costs associated with the City retaining a third-party peer reviewer including all administrative costs to the City, and submit an initial deposit towards the cost of the peer review in the form of a certified cheque, to the Executive Director, Engineering & Construction Services. Submit further deposits when requested to cover all costs of retaining a third-party peer reviewer (unused funds will be refunded to the applicant by the City);
 - 29.3. submit, to the satisfaction of the City's peer reviewer, all Environmental Site Assessment reports prepared in accordance with the Record of Site Condition Regulation (Ontario Regulation 153/04, as amended) describing the current conditions of the land to be conveyed to the City and the proposed Remedial Action Plan based on the site condition standards approach, to the Executive Director, Engineering and Construction Services;
 - 29.4. submit, at the completion of the site assessment/remediation process, a Statement from the Qualified Person based on the submitted environmental documents, to the Executive Director, Engineering & Construction Services for peer review and concurrence, which states:
 - 29.4.1. In the opinion of the Qualified Person:
 - i. It is either likely or unlikely that there is off-site contamination resulting from past land uses on the development site that has migrated onto adjacent City lands that would exceed the applicable Site Condition Standards; and

- 12 -

- ii. To the extent that the opinion in 9.4.1(i) is that past migration is likely, it is either possible or unlikely that such off-site contamination on adjacent City lands poses an adverse effect to the environment or human health.

29.4.2. The land to be conveyed to the City meets either:

- i. the applicable Ministry Generic Site Condition Standards for the most environmentally sensitive adjacent land use; or
- ii. the Property Specific Standards as approved by the Ministry for a Risk Assessment/Risk Management Plan which was conducted in accordance with the conditions set out herein;

29.5. The Qualified Person's statement, referenced in 9.4 above, will include a Reliance Letter that is dated and signed by the Owner's Qualified Person, as defined in O. Reg. 153/04, as amended, confirming that both the City and the City's peer reviewer can rely on the environmental documentation submitted, consistent with O. Reg. 153/04 requirements, and the Qualified Person's opinion as to the conditions of the site; all environmental documentation consistent with O. Reg. 153/04 requirements and opinions shall be submitted with reliance extended to the City and its peer reviewer and any limitation on liability and indemnification is to be consistent with Ontario Regulation 153/04, as amended, insurance requirements or such greater amount specified by the Executive Director of Engineering & Construction Services;

29.6. For conveyance of lands requiring a Record of Site Condition, the Owner shall:

29.6.1. file the Record of Site Condition on the Ontario Environmental Site Registry; and

29.6.2. submit the Ministry's Letter of Acknowledgement of Filing of the RSC confirming that the RSC has been prepared and filed in accordance with O. Reg. 153/04, as amended, to the Executive Director, Engineering & Construction Services.

- 30. **Prior to conveyance of the parkland**, the Owner shall be responsible for the installation and maintenance of temporary fencing around the parkland and its maintenance until such time as the development of the park block is completed.
- 31. **Prior to conveyance of the parkland**, the Owner shall ensure that the grading and drainage for the parkland is compatible with the grades of the adjacent lands, and to the satisfaction of the General Manager, Parks, Forestry & Recreation and the Executive Director of Engineering & Construction Services.
- 32. **Prior to the transfer of fee simple of the Park Blocks to the City**, the Park Blocks shall nonetheless be deemed to be parkland in respect of the limiting distance requirements of the *Ontario Building Code Act, 1992* and any structures constructed on the land abutting the Park Blocks shall be subject to limiting distance requirements established under the Ontario Building Code. The Owner must design the building to achieve Ontario Building Code setbacks related to fire separation on their own site. Prior to the issuance of any above grade building permits, the Owner shall provide information to the appropriate staff in Parks, Forestry & Recreation. If the City agrees to enter into a Limiting Distance Agreement, the City will require compensation for the affected area.

- 13 -

33. **Prior to the release of the condominium for registration**, the Owner shall submit working drawings, specifications and landscape plans showing the scope and detail of the work for the Base Park Improvements for review and approval by the General Manager of Parks, Forestry & Recreation.
34. The Owner agrees that the stockpiling of any soils or materials or use as an interim construction staging area on the conveyed parkland is prohibited unless a Park Occupation Permit (POP) has been obtained from the Manager of Business Services – Ryan Glenn, 416-392-8578. The POP, if approved, will outline in detail the insurance requirements, extent of area permitted, permitted use, tree removal and replacement, duration, restoration plan and costs, and compensation to the satisfaction of the General Manager, Parks Forestry & Recreation. The POP must be secured prior to the issuance of any shoring and excavation permits. The owner will indemnify the City against any claim during any interim use of or work carried out by the applicant on the park. Any compensation accrued shall be applied to park improvements within the Ward in consultation with the Ward Councillor.
35. The Owner, at their expense, will be responsible for base construction and installation of the parkland. The Base Park Improvements include the following:
 - i. demolition, removal and disposal of all existing materials, buildings and foundations;
 - ii. grading inclusive of topsoil supply and placement, minimum of 150 mm;
 - iii. sod #1 nursery grade or equivalent value of other approved park development;
 - iv. fencing to City standard (where deemed necessary);
 - v. all necessary drainage systems including connections to municipal services;
 - vi. electrical and water connections (minimum 50 mm) directly to the street line, including back flow preventors, shut off valves, water and hydro chambers;
 - vii. street trees along all public road allowances, which abut future City owned parkland; and
 - viii. standard park sign (separate certified cheque required);
36. The Owner agrees that all work is to be completed to the satisfaction of the General Manager, Parks, Forestry & Recreation. No credit shall be given towards the Parks and Recreation component of the Development Charges for costs associated with Base Park Improvements.
37. The Owner agrees that the Base Park construction shall be completed **prior to the release of the condominium for registration**. Unforeseen delays (e.g. weather) resulting in the late delivery of the park shall be taken into consideration and at the discretion of the General Manager, Parks, Forestry & Recreation when determining a revised delivery date for the park.
38. The Owner, upon satisfactory completion of the construction and installation of the Park Improvements shall be required to guarantee such work and associated materials for a period of not less than 2 years. The Owner shall provide certification from their Landscape Architect certifying that all work has been completed in accordance with the approved drawings.
39. The Owner, upon satisfactory completion of the construction and installation of the Base Park Improvements will be required to guarantee such work and associated materials. The Owner will provide certification from their Landscape Architect certifying all work has been completed. At that time, the submitted letters of credit for park related development will be released, less 20% which shall be retained for a two-year period as a performance guarantee.

40. The Owner agrees that as-built drawings in print/hardcopy and electronic format shall be submitted to Parks, Forestry & Recreation. A complete set of "as built" plans shall be provided electronically on CD in the latest version of AutoCAD, two (2) sets full size bond hard copy and one (1) set 11x17 format to the General Manager, Parks, Forestry & Recreation. The plans shall include, but not be limited to specifications, locations of all hidden services, and all deviations from the design drawings, shop drawings, inspection reports, minutes of meeting, site instructions, change orders, invoices, certificates, progress images, warranties, close out documentation, compliance letters (for any play structures and safety surfaces), manuals etc. The files are to be organized in folders, including a file index and submitted. Written warranties and related documents such as lists of contractor, sub-contractors together with contact persons, telephone numbers, warranty expiry dates and operating manuals.
41. The Owner agrees that spare or replacement parts, special tools, etc. as provided by manufacturers, if any, are to be provided to the Parks, Forestry & Recreation.
42. The Owner agrees that after the two year warranty on the park materials and workmanship, the Owner must ensure through written documentation that:
 - i. there are no outstanding claims against the remaining park security;
 - ii. no liens have been registered against the parkland;
 - iii. written confirmation has been provided to the City that it has not received notice of any claim for lien affecting the parkland;
 - iv. all deficiencies have been rectified; and
 - v. a certificate from the parkland Landscape Architect providing evidence that all lien periods under the Construction Lien Act affecting the parkland have expired.

URBAN FORESTRY

43. The Owner shall have a qualified company implement the approved Landscape Plan and all approved tree preservation and maintenance strategies to the satisfaction of Urban Forestry. As well, prior to construction or grading activities, where necessary to ensure the health and vigour of trees to be preserved, tree maintenance measures must be undertaken by a certified arborist or other qualified expert and according to currently accepted sound arboricultural practices.
44. The Owner agrees that tree planting must be completed according to the approved Landscape Plan and to the satisfaction of Urban Forestry within a reasonable time frame. Any proposed revisions to the planting plan shall first be approved by Urban Forestry.
45. The Owner agrees that the site shall be developed and maintained in accordance with the approved plans and conditions of approval associated with the Site Plan, Grading Plan, Site Servicing Plan, Landscape Plan, Building Permit and Tree Permit(s)/Approvals. Any proposed revisions/alterations to the approved plans or permits that affect trees shall be approved by Urban Forestry, on behalf of the General Manager of Parks, Forestry & Recreation.
46. The Owner agrees that trees proposed for planting on the City road allowance and private property shall be planted in accordance with Planting Detail No. 101 for Balled and Burlapped Trees in Turf Areas, dated June 2002. Please note that the applicant must conduct an investigation of underground utilities prior to

- 15 -

proposing tree planting within the City road allowance. If planting is not possible due to a utility conflict, a utility locate information sheet from the respective utility company should be provided to the City. All underground utilities and services shall be in a common trench.

47. The Owner agrees that Urban Forestry requires that the site be de-compacted as preparation for planting by excavating 100cm of the existing soil, scarify and replacing with top soil, prior to tree planting. A sandy loam soil comprising 50-60 % sand, 20-40 % silt, 6-10 % clay and 2-5 % organic with a pH of 7.5 or less is preferred.
48. The Owner agrees that all trees (on City road allowance and private property) must be planted as per the plans, approved by Urban Forestry and must arrive on site in Balled and Burlapped condition, with a minimum caliper of 70 mm. Each tree shall have the burlap and wire cage opened and soil scraped away until the first proper root is found indicating the top of the real root ball, the tree is then to be planted with this level to be considered the top of root-ball for all other instructions. Any tree found planted with the first proper root more than 2.5cm below planting level will be rejected and require replacement or replanting at the City's discretion.
49. The Owner shall provide a two-year renewable guarantee for all new tree plantings within the City road allowance and shall notify the Supervisor of Urban Forestry, Tree Protection & Plan Review in writing, of the planting date prior to planting. This date is used to establish the anniversary date of the required two-year renewable guarantee.
50. The Owner shall maintain all new tree plantings within the City road allowance in good condition. Trees will be inspected during and prior to the end of the renewable guarantee period. If the trees are in good condition at the end of the renewable guarantee period, the City will assume maintenance and ownership of the trees.
51. The Owner shall be responsible for the maintenance or replacement of all new tree plantings within the City road allowance if during or at the end of the renewable guarantee period the trees are not in good condition, require maintenance, or require replacement. The owner will be responsible for rectifying the problem as determined by and to the satisfaction of the General Manager of Parks, Forestry & Recreation.
52. The Owner shall maintain all newly replanted trees within the City road allowance in good condition and shall provide an additional two-year renewable guarantee.

APPENDIX “B”



Canada Revenue Agency Agence du revenu du Canada

Tax Centre Toronto ON M5J 2X6

October 18, 2017

ALVAREZ & MARSAL CANADA C/O RYAN GRUNEIR ROYAL BANK PLAZA, SOUTH TOWER 200 BAY ST, STE 2900 PO BOX 22 TORONTO ON M5J 2J1

Dear Sir:

Re: TCC/Urbancorp (Bay/Stadium)Limited Partnership sometime carrying on

We understand that you have been appointed (Receiver or Receiver and Manager) for the above GST/HST registrant. Currently, the registrant owes us goods and services tax / harmonized sales tax (GST/HST) of \$3,182,296.56. (AMENDED)

Table with 4 columns: Period outstanding, GST/HST payable, Penalty & Interest, Total payable. Rows for periods 2016-02-29, 2016-04-30, and 2016-05-31.

Under subsection 222(3) of the "Excise Tax Act," \$2,970,083.51 which is included in the above totals, is held in trust and forms no part of the property, business, or estate of TCC/Urbancorp (Bay/Stadium)Limited Partnership sometime carrying on in receivership. This is the case whether or not those funds have in fact, been kept separate and apart from the person's own money or from the assets of the estate.

The Receiver General should be paid the total amount of this trust, namely \$2,970,083.51, out of the realization of any property subject to these statutory trusts. This should take priority over all other creditors. Please forward your payment by return mail as soon as possible. If this is not possible, please indicate when payment will be forthcoming.

Please indicate when you can pay the remaining balance of

.../2



National Insolvency Office 1 Front Street West 2nd Floor Suite 100 Toronto ON M5J 2X6

Local: 416-954-6514 Fax: 416-954-6411 Web site: canacra.ca/taxes

- 2 -

\$212,213.05, plus penalty and interest accrued to the date of payment. We draw your attention to sections 266 and 270 of the "Excise Tax Act."

This letter will also serve to notify you that as a (Receiver or Receiver and Manager) you are required to collect and remit GST/HST according to paragraph 266(2)(d) and to file any applicable returns as provided in paragraphs 266(2)(f) and (g) of the "Excise Tax Act."

If you have any questions, please contact Pat Confalone (1213) of the Revenue Collection Division at one of the telephone numbers provided in this letter.

Yours truly,



Pat Confalone (1213)
Insolvency Officer

APPENDIX “C”

July 25, 2017

DELIVERED BY EMAIL

To: Counsel for the Lien Claimants as set out in Schedule A

Dear Counsel:

RE: Lien Claims against Urbancorp (Leslieville) Developments Inc. and Urbancorp (The Beach) Developments Inc.

Further to Mr. Bissell's letter of May 19, 2017, I have been asked to review the claims for lien and set up a vetting committee for each of these two projects with a view of, hopefully, settling the Holdback deficiencies and having funds distributed at the appropriate time.

As set out in the second report of the Construction Receiver (the "Second Report"), in order to prepare an estimate of the aggregate amount of holdback deficiencies with respect to the Leslieville and Beach Projects, the Construction Receiver's independent counsel requested that the Lien Claimants provide their positions (on a without prejudice basis) as to the total value of materials and services provided by each Lien Claimant to the projects. For counsel who did not respond, the total contract amount claimed by the lien claimant counsel was used. This information was set out in two charts at paragraph 181 of the Second Report.

Based on my review of the pleadings and claims for lien, it appears that the priority holdback on the two projects may be at least \$100,000.00 less than the amounts set out in the Second Report. Accordingly, the accounting between the lien claimants, the Urbancorp companies, and the Second Report needs to be reconciled.

Furthermore, based on my review of the file, it appears that the timeliness of the liens will need to be examined.

As such, I am proposing that the lien claimants each fill in and swear a pro-forma affidavit, a copy of which I enclose, and produce an accounting with supporting documents to confirm the total amount of material/services supplied to each project, the amount paid, and the last date of supply.

Said sworn statements will be relied upon to vet the priority holdbacks for each trade as well as the timeliness and balance of their valid lien claims and any motion regarding disputed liens.

I suggest that said sworn affidavits, with supporting documents, be submitted to the vetting committee by August 11, 2017.

- 2 -

I also propose that the vetting committee meet and review the lien claimants' affidavits and supporting documents by August 18, 2017, and provide the lien claimants with their finding by September 8, 2017.

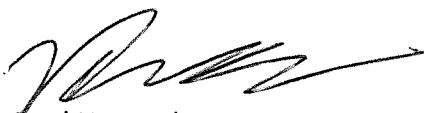
I understand that only Mr. D'Alimonte wishes to participate in vetting the liens, however, in light of the above, if any other person wishes to participate in the vetting committee for either or both the Leslieville project and/or Beach project please advise me of same in writing by noon on Friday, July 28, 2017.

Should you have any questions, please do not hesitate to contact the writer.

Yours truly,

GOLDMAN SLOAN NASH & HABER LLP

Per:



Paul Hancock

PH:mp

Enclosure

c.c.: Tony Zaspalis
Brendan Bissell
Kelly Peters

Schedule A

<p>DRUDI ALEXIOU KUCHAR LLP 7050 Weston Road, Suite 610 Vaughan, ON L4L 8G7</p> <p>Attention: Marco Drudi Tel: (905) 850-6116 Fax: (905) 850-9146 Email: mdrudi@dakllp.com</p> <p>Lawyers for Uptown Hardware Limited</p>	<p>TORKIN MANES LLP 1500-151 Yonge Street Toronto, ON M5C 2W7</p> <p>Attention: Kayla Kwinter Tel: (416) 863-1188 Fax: (416) 863-0305 Email: kkwinter@torkinmanes.com</p> <p>Lawyers for MDF Mechanical Limited</p>
<p>PHILIP HORGAN LAW OFFICE 301-120 Carlton Street Toronto, ON M5A 4K2</p> <p>Attention: Philip Horgan / Mary Zettel Tel: (416) 777-9994 Fax: (416) 777-9921 Email: phorgan@carltonlaw.ca mzettel@carltonlaw.ca</p> <p>Lawyers for Commercial Two Construction Inc.</p>	<p>DELZOTTO, ZORZI LLP 4810 Dufferin Street, Suite D Concord, ON L4K 4L6</p> <p>Attention: Robert Calderwood Tel: (416) 665-5555 Fax: (416) 665-9653 Email: rcalderwood@dzlaw.com</p> <p>Lawyers for Furkin Construction Inc.</p>
<p>D'ALIMONTE LAW Professional Corporation 4300 Steeles Avenue West, Unit # 27 Woodbridge, ON L4L 4C2</p> <p>Attention: Joseph D'Alimonte Tel: (905) 264-1553 Fax: (905) 264-5450 Email: jdalimonte@bellnet.ca</p> <p>Lawyers for NG Marin Inc.</p>	<p>CASSELS BROCK & BLACKWELL LLP Scotia Plaza, 40 King Street West, Suite 2100 Toronto, ON M5H 3C2</p> <p>Attention: Todd Robinson Tel: (416) 869-5300 Fax: (416) 360-8877 Email: trobenson@casselsbrock.com</p> <p>Lawyers for Sterling Tile & Carpet</p>
<p>KENNALEY CONSTRUCTION LAW A professional corporation 58 Peel Street Simcoe, ON N3Y 1S2</p> <p>Attention: Robert J. Kennaley Tel: (519) 426-2577 Fax: (519) 426-3777 Email: rjk@kennaley.ca</p>	<p>BISCEGLIA & ASSOCIATES 7941 Jane Street, Suite 200 Concord, ON L4K 4L6</p> <p>Attention: Emilio Bisceglia Tel: (905) 264-1632 Fax: 264-1059 Email: ebisceglia@lawtoronto.com</p>

Lawyers for Roni Excavating Limited	Lawyers for Alpa Stairs and Railings Inc.
<p>KOSKIE MINSKY LLP 20 Queen Street West, Suite 900 Toronto, ON M5H 3R3</p> <p>Attention: Jeffrey Armel Tel: (416) 595-2125 Fax: (416) 204-2892 Email: jarmel@kmlaw.ca</p> <p>Lawyers for EXP Services Inc.</p>	<p>LOOPSTRA NIXON LLP 135 Queens Plate Drive, Suite 600 Toronto, ON M9W 6V7</p> <p>Attention: Alison Kuchinsky Tel: (416) 748-4771 Fax: (416) 746-8319 Email: akuchinsky@loonix.com</p> <p>Lawyers for Canadian Renal Centres</p>
<p>HAMMOND FLESIAS 3800 Steeles Avenue West, Suite 300 Vaughan, ON L4L 4G9</p> <p>Attention: Richard Hammond Tel: (905) 850-8550 Fax: (905) 850-9998 Email: rhammond@hammond flesias.com</p> <p>Lawyers for Lido Constructions Inc.</p>	<p>JOHN LO FASO PROFESSIONAL CORPORATION 3700 Steeles Ave. W. Suite 600 Woodbridge, ON L4L 8K8</p> <p>Attention: John Lo Faso Tel.: (905) 856-3700 Fax: (905) 850-9969 Email: johnlofaso@westonlaw.ca</p> <p>Lawyers for Silvio Construction Co. Ltd.</p>
<p>Email List: mdrudi@dakllp.com; kkwinter@torkinmanes.com; phorgan@carltonlaw.ca; mzettel@carltonlaw.ca; rcalderwood@dzlaw.com; jdalimonte@bellnet.ca; trobinsont@casselsbrock.com; rjk@kennaley.ca; ebisceglia@lawtoronto.com; jarmel@kmlaw.ca akuchinsky@loonix.com; rhammond@hammond flesias.com</p>	

Court file no.

ONTARIO
SUPERIOR COURT OF JUSTICE
 IN THE MATTER OF THE *Construction Lien Act*, R.S.O. 1990 c.C. 30

B E T W E E N:

[lien claimant]

Plaintiff

- and -

Defendants

AFFIDAVIT

I, [name of representative of claimant], of the [city/municipality]

MAKE OATH AND SAY:

1. I am the [position] of [lien claimant] , a lien claimant, and have authority to bind the corporation.
2. Affixed hereto and marked as Exhibit "A" to this my Affidavit is a copy of the Claim for Lien registered on [date of registration] against title to the project municipally known as [address of property].
3. The lien was for the supply of [material/service supplied] . Affixed hereto and marked as Exhibit "B" is a true copy of the contract for the supply of material and labour.

4. Affixed hereto and marked as Exhibit "C" to this my Affidavit is [lien claimant] 's complete accounting for the project, which contains all amounts invoiced and all payments received.
5. Affixed hereto and marked as Exhibit "D" to this my Affidavit are true copies of all invoices/progress billings/ to the Owner and purchase orders/change orders for material supplied on the improvement which have been approved and billed to the Owner, [name of owner], totalling \$ **[total value of materials/services]**, as calculated in Exhibit "C" to my Affidavit.
6. As also indicated in Exhibit "C" to this my Affidavit, [name of contractor] has received the amount of \$ [amount received] towards the invoices submitted to [name of owner], leaving a balance due and owing of \$ **[balance owing/lien amount]** .
7. The contract in relation to the Claim for Lien was [completed/abandoned/terminated] on the [date] . Attached hereto to this my Affidavit and marked as Exhibit "E" are true copies of documents which are being relied on in support of the timeliness of the Claim for Lien. [examples: correspondence, pictures, notes, etc]
8. I verily believe that our company supplied all labour, services and materials in accordance with the contract drawings and specifications, and in a good and workmanlike manner. I have made inquiries of those responsible for the administration of this project and base my comments on my personal knowledge of this project and as a result of the enquiries which I have made.

9. The Affidavit is made in support of the quantum and timeliness of [lien claimant]'s Claim for Lien for no other improper purpose.

SWORN BEFORE ME at the City of)
_____, in the _____)
_____, in the Province of Ontario)
this)

A Commissioner, etc

APPENDIX “D”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

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

Respondents

**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**

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

April 27, 2017

including year of call, hourly rate, the total hours billed. Using the information in the summary, the combined average hourly rate of the legal professionals involved was \$601.38 and represents a total of 74.1 hours worked.

18. These professional fees represent the culmination of the activities of the Construction Receiver and its counsel from the outset of the Receivership Proceedings as detailed in the Second Report and the invoices attached to each of the Fee Affidavits, of which the pursuit of the Proposed Settlement forms a significant part.
19. The summaries of the professional fees in the Fee Affidavits demonstrate increased effort in February and March 2017 to conclude the Proposed Settlement after negotiations broke down. Costs to that point would have been wasted without the considerable efforts of the Settlement Parties, including the Construction Receiver and each of the Construction Receiver's Independent Counsel, Construction Receiver's Counsel and Construction Receiver's Real Estate Counsel, to come to a successful resolution.
20. The complexity of the voluminous Settlement Definitive Documents addressing a myriad of stakeholder issues is a demonstration of the considerable effort involved, but also resulted in increased costs, as noted in the Second Report. In early April, 2017, Terra Firma required an increase of \$30,000 to the Premium under the New APS (bringing the Premium to \$255,000) to be paid by each Opt-In Leslieville Purchaser in recognition of the substantially higher than anticipated costs associated with the complexities of completing the Settlement Definitive Documents, which increase was ultimately agreed to by Ad Hoc Leslieville Purchaser Counsel after consultation with their clients.
21. At this stage, it is premature for the Construction Receiver to allocate its general costs to the various Projects, and may not be necessary at all since virtually all assets are owned by UC Leslieville and allocation would only be necessary if there is ultimately a distribution to different unsecured creditors in different estates.
22. In light of the foregoing, it is the Construction Receiver's 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.

3.0 EXCESS PARKING UNIT PROCESS

23. As described in the Second Report, there are currently 11 Excess Parking Units at the Leslieville Project, which have not been purchased. As part of the Proposed Settlement, the Settlement Parties agreed to provide the Opt-In Leslieville Purchasers with a first opportunity to purchase an Excess Parking Unit.
24. After consultation with the Settlement Parties regarding the terms of a marketing process, the Construction Receiver recommends the following process to offer the

Excess Parking Units to the Opt-In Leslieville Purchasers (the “**Excess Parking Unit Process**”):

- a. After the number of Opt-In Leslieville Purchasers has been determined, the Construction Receiver will send a bidding form to each Opt-In Leslieville Purchaser (a “**Parking Unit Bidding Form**”);
- b. Each Opt-In Leslieville Purchaser will be entitled to bid on a maximum of one Excess Parking Unit per residential Unit, and will not be entitled to specify which of the Excess Parking Units it is bidding on;
- c. There will be a minimum bid of \$35,000 per Excess Parking Unit (inclusive of HST) (the “**Minimum Bid**”);
- d. Parking Unit Bidding Forms must be submitted to the Construction Receiver by a date to be determined by the Construction Receiver and set out in the Parking Unit Bid Form (the “**Parking Unit Bid Deadline**”);
- e. As soon as is practicable after the Parking Unit Bid Deadline, the bids will be opened by the Construction Receiver, and ranked from highest to lowest bid; in the case of a tie between bids, such tie will be broken by draw;
- f. The Opt-In Leslieville Purchasers with the eleven (11) highest bids will each be a successful bidder for an Excess Parking Unit (each a “**Successful Parking Unit Bidder**”);
- g. Each Successful Parking Unit Bidder will be notified as soon as practicable after the Parking Unit Bid Deadline;
- h. Each Successful Parking Unit Bidder will be required to enter into a binding and irrevocable addendum to their New APS to purchase one of the Excess Parking Units designated by the Construction Receiver for the bid price within ten (10) days after such Successful Parking Unit Bidder has been notified that it is a Successful Parking Unit Bidder (the “**Parking Unit Addendum**”);
- i. Each Successful Parking Unit Bidder will be required to provide a deposit in the amount of 10% of its bid price upon execution of the Parking Unit Addendum;
- j. If the Successful Parking Unit Bidder does not enter into the Parking Unit Addendum, or provide the 10% deposit, within ten (10) days after notification, then such Successful Parking Unit Bidder’s bid will be deemed to be disqualified and the Opt-In Leslieville Purchaser with the next highest bid will become a Successful Parking Unit Bidder; such Successful Parking Unit Bidder will be required to execute into a Parking Unit Addendum and provide a deposit in the amount of 10% of its bid

price within ten (10) days after its notification; in the case of a tie, such tie will be broken by draw;

- k. Each Excess Parking Unit is being sold on an “as is where is basis” without any representation or warranty from the Construction Receiver and will be subject to the terms and conditions set out in the New APS;
- l. If there are fewer than eleven (11) bids equal to or greater to the Minimum Bid, or if fewer than eleven (11) of the Successful Parking Unit Bidders enter into and close their New APS (which includes the Parking Unit Addendum), the remaining Excess Parking Units will be offered to New Leslieville Purchasers by the provision to them of a Parking Unit Bidding Form and following substantially the same process set out above.


25. The Excess Parking Unit Process has been approved by the Settlement Parties (including Ad Hoc Leslieville Purchaser Counsel, who represent the vast majority of Opt-In Leslieville Purchasers), and in the Construction Receiver’s opinion represents a fair and efficient process for selling the Excess Parking Units. Accordingly, the Construction Receiver recommends that this Court approve the Excess Parking Unit Process.

4.0 CONCLUSION

26. The Construction Receiver requests that this Honourable Court approve the professional fees set out in the Fee Affidavits and the Excess Parking Unit Process.

All of which is respectfully submitted, this 27th day of April, 2017.

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

Per: 

Douglas R. McIntosh
President

APPENDIX “E”



August 25, 2017

Dear _____,

**RE: Urbancorp (Leslieville) Developments Inc. – Excess Parking Units Bid Process –
SEPTEMBER 15, 2017, 5:00PM EST BID DEADLINE**

By Order dated May 2, 2017 (the “**Excess Parking Units Process Order**”), the Ontario Superior Court approved a process for selling the eleven (11) excess underground parking units at the Leslieville Project located at 50 Curzon Street, Toronto, Ontario (the “**Excess Parking Units**”).

As an Opt-In Leslieville Purchaser that has executed a New APS, as such terms are defined in the Excess Parking Units Process Order, you are hereby provided with a first opportunity to bid on one of the Excess Parking Units. A diagram highlighting the Excess Parking Units is enclosed with this letter.

To submit a valid bid for an Excess Parking Unit (a “**Valid Bid**”):

- Complete and sign the attached bidding form (the “**Excess Parking Unit Bidding Form**”). A Valid Bid must be submitted in writing on the Excess Parking Unit Bidding Form. **BIDS SUBMITTED IN ANY OTHER FORM WILL NOT BE CONSIDERED VALID BIDS.**
- Return your completed Excess Parking Unit Bidding Form to the Construction Receiver, as defined below, by email or in person at the address on the Excess Parking Unit Bidding Form by no later than **SEPTEMBER 15, 2017 AT 5:00PM EST** (the “**Bid Deadline**”). The Construction Receiver must receive your completed and signed Excess Parking Unit Bidding Form by email, courier or personal delivery by the Bid Deadline. **BIDS RECEIVED AFTER THE BID DEADLINE WILL NOT BE CONSIDERED VALID BIDS.**
- There is a minimum bid of \$35,000 per Excess Parking Unit (inclusive of HST).

The successful bidders will be the Opt-In Leslieville Purchasers who submit the eleven (11) highest Valid Bids. In the case of a tie amongst bids, such tie will be broken by a draw. **Successful bidders will be assigned one of the Excess Parking Units by the Construction Receiver in its sole discretion, and will not be able to choose which of the Excess Parking Units to purchase.** Additional terms and conditions are outlined on the enclosed Excess Parking Unit Bidding Form.

Should you have any questions in respect of the above, please contact Ryan Gruneir at (416) 847-5151.

Yours truly,

Alvarez & Marsal Canada Inc.,

solely in its capacity as Court Appointed Receiver and Manager and Construction Lien Trustee of Urbancorp (Leslieville) Developments Inc. and not its personal or corporate capacity (the “**Construction Receiver**”)

Per: Tony Zaspalis

Enc.



Excess Parking Unit Bidding Form

50 Curzon Street, Toronto ON

BID:

I/we hereby bid \$_____, inclusive of HST, for ONE (1) Excess Parking Unit. I/we acknowledge that we have read and understand the bid terms outlined below and the attached cover letter.

Name (please print)	Signature	Date
---------------------	-----------	------

Name (please print)	Signature	Date
---------------------	-----------	------

BID TERMS:

- Defined terms have the meanings set out in the cover letter to this Excess Parking Unit Bidding Form from the Construction Receiver dated August 25, 2017, unless otherwise defined herein.
- To be considered, this Excess Parking Unit Bidding Form must be fully completed and executed and delivered to the Construction Receiver by email, courier or personal delivery such that it is received prior to the Bid Deadline of **September 15, 2017 at 5:00PM EST** at the following address:

Alvarez & Marsal Canada Inc.

200 Bay Street, Royal Bank Plaza South Tower, Suite 2900

Toronto, ON M5J 2J1

Attn: Mr. Ryan Gruneir

Email: rgruneir@alvarezandmarsal.com

- Each Excess Parking Unit is being sold on an “as is where is basis” without any representation or warranty from the Construction Receiver and will be subject to the terms and conditions set out in your New APS.
- You are entitled to bid on a maximum of ONE (1) Excess Parking Unit per residential Unit, and **will not be entitled to specify which of the Excess Parking Units you are bidding on.**
- Your bid must be a minimum of \$35,000, inclusive of HST.
- The bidders who submit the eleven (11) highest bid prices will be the successful bidders, and any ties will be broken by a draw.



- If you are a successful bidder for an Excess Parking Unit,
 - you will be notified in writing by the Construction Receiver after the Bid Deadline of your successful bid and the offer to sell to you an Excess Parking Unit designated by the Construction Receiver for the bid price;
 - you will be required to enter into a binding and irrevocable addendum to your New APS, in the Construction Receiver's form, to purchase one of the Excess Parking Units designated by the Construction Receiver, in its sole discretion, to close at the same time as the purchase of your residential Unit for the accepted bid price (the "**Parking Unit Addendum**") within ten (10) days after you have been notified that you are a successful bidder (the "**Addendum Deadline**"); and
 - you will be required to provide a deposit in the amount of 10% of your bid price (the "**Parking Unit Deposit**") upon execution of the Parking Unit Addendum.
- If you fail to enter into the Parking Unit Addendum and provide the Parking Unit Deposit by the Addendum Deadline, the offer to sell the Excess Parking Unit to you for the bid price will be revoked and the Excess Parking Unit will be offered to the bidder with the next highest Valid Bid, with any ties broken by a draw.

APPENDIX “F”

**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 September 30, 2017
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	-	-	-	-	-	2,000,000.00
Craft Collateral	-	-	535,000.00	-	-	-	535,000.00
Cost Overrun Advances	-	-	-	775,427.31	-	-	775,427.31
Internal Transfers to Disbursement Account	(921,669.37)	-	-	(333,694.69)	-	1,255,364.06	-
Internal Transfers to Construction Holdback Account	-	-	-	-	97,830.32	(97,830.32)	-
HST Refunds Received	-	-	-	-	-	-	-
Deposit Interest	2,923.09	-	895.57	699.32	38.59	3.10	4,559.67
Total Receipts	1,081,253.72	-	535,895.57	442,431.94	97,868.91	1,157,536.84	3,314,986.98
DISBURSEMENTS:							
Craft Invoices/Soft Costs [1]	-	-	-	-	-	(245,186.58)	(245,186.58)
Craft Invoices/Hard Costs [1]	-	-	-	-	-	(699,298.26)	(699,298.26)
Craft Invoices/Latent Defects [1]	-	-	-	-	-	(79,881.30)	(79,881.30)
HST Paid	-	-	-	-	-	(133,167.60)	(133,167.60)
Bank Charges	(23.00)	(3.51)	(23.00)	(70.00)	(8.00)	(3.50)	(131.01)
Total Disbursements	(23.00)	(3.51)	(23.00)	(70.00)	(8.00)	(1,157,537.24)	(1,157,664.75)
Excess of Receipts over Disbursements	1,081,230.72	(3.51)	535,872.57	442,361.94	97,860.91	(0.40)	2,157,322.23
		[2]				[2]	

NOTES:

- [1] Represents payments for Craft Draw Request #1 (Re: May 2017) dated June 28, 2017 and paid on July 12, 2017, Craft Draw Request #2 (Re: June 2017) dated July 26, 2017 and paid on August 2, 2017 and Craft Draw Request #3 (Re: July 2017) dated August 18, 2017 and paid on September 1, 2017. This amount does not include Craft Draw Request #4 (Re August 2017) dated October 5, 2017 which was paid on October 10, 2017.
- [2] Please note that negative balances are due to month-end bank charges which will be funded, if necessary, through the Construction Receiver's Administration Account post September 30, 2017.

APPENDIX “G”

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 September 30, 2017
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	4,800,000.00	-	4,800,000.00
HST Refunds Received	537,265.29	-	537,265.29
CRAFT Reimbursement for Expenses	6,384.82	-	6,384.82
Deposit Interest	884.48	4,120.91	5,005.39
Total Receipts	5,346,764.31	4,904,120.91	10,250,885.22
DISBURSEMENTS:			
Legal fees [2]	(2,016,809.42)	-	(2,016,809.42)
Construction Receiver fees [3]	(1,395,108.57)	-	(1,395,108.57)
HST Input Tax Credits Paid [4]	(545,201.56)	(19,110.00)	(564,311.56)
Repairs & maintenance [5]	(290,232.17)	-	(290,232.17)
Realty taxes [6]	(290,430.44)	-	(290,430.44)
Listing Brokerage Commissions [7]	-	(147,000.00)	(147,000.00)
Security	(147,453.71)	-	(147,453.71)
Insurance	(139,253.00)	-	(139,253.00)
Altus Group costs	(118,027.06)	-	(118,027.06)
Latent defect testing	(59,199.56)	-	(59,199.56)
Winter heating	(30,250.00)	-	(30,250.00)
Appraisal report costs	(30,120.00)	-	(30,120.00)
Utilities	(17,815.83)	-	(17,815.83)
UTMI staffing costs	(8,426.03)	-	(8,426.03)
Tax Consultant	(4,200.00)	-	(4,200.00)
Office expense	(2,594.68)	-	(2,594.68)
Mediation expense	(1,500.00)	-	(1,500.00)
Bank Charges	(11.16)	(9.47)	(20.63)
Total Disbursements	(5,096,633.19)	(166,119.47)	(5,262,752.66)
Excess of Receipts over Disbursements	250,131.12	4,738,001.44	4,988,132.56

[8]

NOTES:

- [1] The sale of the Beach Project lots for \$4.9 million closed on July 28, 2017.
- [2] Represents Construction Receiver's Legal Counsel Fees (Gowlings) incurred up to March 31, 2017, Construction Receiver's Independent Counsel fees (Blakes) up to March 31, 2017, Construction Receiver's Real Estate Legal Counsel Fees (Miller Thomson) up to March 31, 2017 and Debtors' Legal Counsel Fees (Harris Sheaffer) for transition assistance provided to the Construction Receiver.
- [3] Represents Construction Receiver fees incurred up to March 31, 2017.
- [4] Represents input tax credits (ITCs) paid by the Construction Receiver up to September 30, 2017.
- [5] Consists primarily of mold testing, remediation and related consulting fees.
- [6] Represents property taxes for UC Leslieville and UC Beach projects for installments due up to September 1, 2017. No further property tax installments are scheduled for the remainder of 2017.
- [7] Realtor commissions of 3% on the sale of the Beach Project lots were paid from closing proceeds.
- [8] In early October, 2017, the Construction Receiver paid accrued professional fees of \$1,045,000 (inclusive of HST) from Beach Sale Proceeds as permitted by the Appointment Order. As a result, as at the date of this Fifth Report, there is a balance of \$3,692,564 in the asset sale account consisting of remaining Beach Sale Proceeds, plus interest earned less bank charges.

APPENDIX “H”

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

APPENDIX “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

and

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

Respondents

CONFIDENTIAL APPENDIX

**CONFIDENTIAL APPENDIX “A” TO THE
FIFTH REPORT OF THE CONSTRUCTION RECEIVER
DATED OCTOBER 19, 2017**

TO BE KEPT CONFIDENTIAL BY THE COURT

**THE DOCUMENTS CONTAINED HEREIN ARE SUBJECT TO A
PROTECTIVE ORDER REQUEST AND ARE TO BE KEPT STRICTLY
CONFIDENTIAL AND ARE NOT TO BE DISCLOSED TO ANYONE
EXCEPT THE JUDGE HEARING THE MOTION.**

TAB 3

Court File No. CV-15-11409-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 26 th
)	
JUSTICE MYERS)	DAY OF OCTOBER, 2017

B E T W E E N:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

**APPROVAL AND VESTING ORDER
(Re: Site Plan Agreement & Leslieville Parkland Dedication)**

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 (“**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and in its capacity as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”), pursuant to section 68 of the *Construction*

Lien Act, R.S.O. 1990, c. C.30, as amended (“**CLA**”) (the Receiver, together with the Construction Lien Trustee, the “**Construction Receiver**”), of all of the assets, undertakings, and property acquired for, or used in relation to the business, including all proceeds thereof (the “**Property**”) of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. (“**UC Riverdale**”), and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale and UC Leslieville, the “**Debtors**”), for an order: (i) approving the site plan agreement between UC Leslieville and the City of Toronto (the “**City**”), substantially in the form attached as Appendix “A” to the Report of the Construction Receiver dated October 19, 2017 (the “**Fifth Report**”) (the “**Site Plan Agreement**”), (ii) authorizing the Construction Receiver to execute and deliver to the City the Site Plan Agreement in the name of and for and on behalf of UC Leslieville, and (iii) vesting in the City all of UC Leslieville’s right, title and interest in and to the real property identified in **Schedule “A”** hereto (the “**Leslieville Parkland**”) in accordance with the Site Plan Agreement, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report and on hearing submissions from counsel to the Construction Receiver and counsel on the counsel slip, attached, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of service of ● sworn ●, 2017, filed.

SERVICE

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

SITE PLAN AGREEMENT

2. **THIS COURT ORDERS AND DECLARES** that the execution by the Construction Receiver of 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 delivery to the City is hereby authorized and approved, with such minor amendments as the Construction Receiver and the City may deem necessary or desirable. UC Leslieville is hereby authorized to observe and perform the conditions

and covenants contained therein, and the Construction Receiver may take such additional steps and execute such additional documents as may be necessary or desirable to satisfy the conditions contained therein, all without any liability on the part of the Construction Receiver or its directors, officers, agents and employees.

CONVEYANCE OF LESLIEVILLE PARKLAND

3. **THIS COURT ORDERS** that, following the execution and delivery of the Site Plan Agreement by the City and the Construction Receiver and the City advising the Construction Receiver in writing that all conditions have been satisfied to convey the Leslieville Parkland, the Construction Receiver is hereby authorized and directed to execute and deliver a transfer/deed duly executed (or deemed to be executed through electronic signature) by the Construction Receiver in the name of and for and on behalf of UC Leslieville in the form prescribed by the *Land Registration Reform Act* with respect to the Leslieville Parkland to and in favour of the City for nil consideration (the “**Transfer/Deed**”).

4. **THIS COURT ORDERS AND DECLARES** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed, all of UC Leslieville’s right, title and interest in and to the Leslieville Parkland shall vest absolutely in the City, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Mr. Justice Newbould dated May 31, 2016 and May 2, 2017 (as such orders may be amended, supplemented or restated from time to time, the “**Appointment Order**” and “**Leslieville Settlement Approval Order**”, respectively); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “C”** hereto, the “**Permitted Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances

affecting or relating to the Leslieville Parkland are hereby expunged and discharged as against the Leslieville Parkland.

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

GENERAL

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

- (a) the pendency of these proceedings;
- (b) any application(s) for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of a Debtor and any bankruptcy order issued pursuant to any such application(s);
- (c) any application(s) for an order now or hereafter issued pursuant to the *Companies’ Creditors Arrangement Act* (Canada) in respect of a Debtor and any order issued pursuant to any such application(s); and
- (d) the assignment in bankruptcy made in respect of the Debtors on May 31, 2017 as authorized by the Order of the Honourable Mr. Justice Newbould dated May 2, 2017;

the vesting of the Leslieville Parkland in the City pursuant to this Order shall be binding on the trustee in bankruptcy or monitor appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

SCHEDULE “A”**Part of PIN 21051-0408 (LT)**

Part of Lot 11, Concession 1 FTB (Geographic Township of York) designated as Parts 2 and 3 on Plan 66R-29585, City of Toronto

SCHEDULE “B”**CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY**

1. Instrument No. AT2720786, registered June 15, 2011, being a charge in favour of Travelers Guarantee Company of Canada;
2. Instrument No. AT2958528, registered March 2, 2012, being a transfer of easement in favour of Rogers Communications Inc.;
3. Instrument No. AT3081811, registered July 24, 2012, being a charge in favour of Canadian Imperial Bank of Commerce;
4. Instrument No. AT3082309, registered July 24, 2012, being a postponement of Travelers Insurance Company of Canada charge No. AT2720786 in favour of Canadian Imperial Bank of Commerce charge No. AT3081811;
5. Instrument No. AT3102606, registered August 16, 2012, being a notice with respect to Travelers Insurance Company of Canada charge No. AT2720786;
6. Instrument No. AT3708202, registered October 7, 2014, being a transfer of easement in favour of Bell Canada;
7. Instrument No. AT3728135, registered October 30, 2014, being a transfer of easement in favour of Enbridge Gas Distribution Inc.;
8. Instrument No. AT3954372, registered July 22, 2015, being a charge in favour of Terra Firma Capital Corporation;
9. Instrument No. AT3954373, registered July 22, 2015, being a notice of general assignment of rents in favour of Terra Firma Capital Corporation;
10. Instrument No. AT4011571, registered September 17, 2015, being a construction lien in favour of Alpa Stairs and Railings Inc.
11. Instrument No. AT4039964, registered October 19, 2015, being a certificate of action in favour of Alpa Stairs and Railings Inc.
12. Instrument No. AT4057394, registered November 3, 2015, being a construction lien registered in favour of EXP Services Inc.;
13. Instrument No. AT4072949, registered November 20, 2015, being a construction lien in favour of Roni Excavating Limited;
14. Instrument No. AT4072991, registered November 20, 2015, being a construction lien in favour of Orin Contractors Corp.;
15. Instrument No. AT4073814, registered November 23, 2015, being a construction lien in favour of Sterling Carpet & Tile;

16. Instrument No. AT4106412, registered December 30, 2015, being a certificate of action in favour of Roni Excavating Limited;
17. Instrument No. AT4106476, registered December 30, 2015, being a certificate of action in favour of Orin Contractors Corp.;
18. Instrument No. AT4129370, registered January 26, 2016, being a certificate of action in favour EXP Services Inc.
19. Instrument No. AT4140578, registered February 8, 2016, being a certificate of action in favour of Sterling Tile & Carpet;
20. Instrument No. AT4153410, registered February 25, 2016, being a construction lien in favour of Silvio Construction Co. Ltd.;
21. Instrument No. AT4163132, registered March 8, 2016, being a Notice of Security Interest in favour of Genesis Home Services Inc.
22. Instrument No. AT4165123, registered March 10, 2016, being a construction lien in favour of NG Marin Inc.;
23. Instrument No. AT4165218, registered March 11, 2016, being a construction lien in favour of Commercial Two Construction Inc.;
24. Instrument No. AT4165591, registered March 11, 2016, being a construction lien in favour of MDF Mechanical Limited;
25. Instrument No. AT4166872, registered March 14, 2016, being a construction lien in favour of Uptown Hardware Limited;
26. Instrument No. AT4181331, registered March 31, 2016, being a certificate of action in favour of Silvio Construction Co. Ltd.;
27. Instrument No. AT4194677, registered April 15, 2016, being a construction lien in favour of 207875 Ontario Limited;
28. Instrument No. AT4194686, registered April 15, 2016, being a construction lien in favour of Emergency Propane Services Inc.
29. Instrument No. AT4198081, registered April 20, 2016, being a construction lien in favour of Lido Construction Inc.
30. Instrument No. AT4200385, registered April 22, 2016, being a certificate of action in favour of Uptown Hardware Limited;
31. Instrument No. AT4200654, registered April 25, 2016, being a certificate of action in favour of MDF Mechanical Limited;
32. Instrument No. AT4211208, registered May 4, 2016, being a certificate of action in favour of NG Marin Inc.;

33. Instrument No. AT4215263, registered May 10, 2016, being a certificate of action in favour of Commercial Two Construction Inc.;
34. Instrument No. AT4229855, registered May 30, 2016, being a certificate of action in favour of 207875 Ontario Limited;
35. Instrument No. AT4229857, registered May 30, 2016, being a certificate of action in favour of Emergency Propane Services Inc.;
36. Instrument No. AT4243741, registered June 10, 2016, being an application to register a court order of the Ontario Superior Court of Justice Commercial List appointing Alvarez & Marsal Canada Inc. as appointing receiver and construction lien trustee;
37. Instrument No. AT4244696, registered June 10, 2016, being a certificate of action in favour of Lido Construction Inc.; and
38. Together with such further Claims as may arise and/or be registered against title to the Leslieville Parkland up to and including the time of the delivery of the Transfer/Deed (as set out in more detail by way of solicitor's statement or affidavit annexed to the Transfer/Deed).

SCHEDULE "C"**PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS
RELATED TO THE REAL PROPERTY****(unaffected by the Vesting Order)**

NIL.

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

v.

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**APPROVAL AND VESTING ORDER
(Re: Site Plan Agreement & Leslieville
Parkland Dedication)**

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

TAB 4

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 26 th
)	
JUSTICE MYERS)	DAY OF OCTOBER, 2017

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

ORDER

(Re: Repayment of Borrowings & Ancillary Relief)

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, of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc., and Urbancorp (The Beach)

Developments Inc., for an order: (i) authorizing and directing the Construction Receiver to repay \$2.2 million to the Canadian Imperial Bank of Commerce (“**CIBC**”), in its capacity as administration agent on its own behalf and on behalf of the Syndicate (the “**Administration Agent**”) from Beach Sale Proceeds, (ii) approving the Amended Excess Parking Unit Process (defined below), and (iii) approving the fifth report of the Construction Receiver dated October 19, 2017 (the “**Fifth Report**”) and the Construction Receiver’s activities described therein, was heard this day at 330 University Avenue Toronto, Ontario.

ON READING the Fifth Report of the Construction Receiver dated October 19, 2017 (the “**Fifth Report**”), and on hearing submissions from counsel to the Construction Receiver and counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of ● sworn ●, 2017, filed.

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall have the meanings given to them in the Fifth Report.

SERVICE

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

PARTIAL REPAYMENT OF CONSTRUCTION RECEIVER’S BORROWINGS

3. **THIS COURT ORDERS** that the Construction Receiver be and is hereby authorized and directed to repay from the Beach Sale Proceeds the amount of \$2.2 million to CIBC, in its capacity as Administration Agent on its own behalf and on behalf of the Syndicate, on account of obligations owing to the Syndicate under certificates issued by the Construction Receiver (the “**Receiver’s Certificates**”) pursuant to the Appointment Order.

4. **THIS COURT ORDERS** that, to the extent required, the Construction Receiver be and is hereby authorized to use Beach Sale Proceeds to pay administrative expenses incurred by the Construction Receiver in the discharge of its duties conferred upon it in these proceedings.

AMENDED EXCESS PARKING UNIT PROCESS

5. **THIS COURT ORDERS AND DECLARES** that the amended sale process in respect of the Excess Parking Units as described in the Fifth Report (the “**Amended Excess Parking Unit Process**”), be and is hereby approved, and the Construction Receiver is hereby authorized to take such further steps as it considers necessary or desirable to carry out the Amended Excess Parking Unit Process

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

APPROVAL OF CONSTRUCTION RECEIVER ACTIVITIES

7. **THIS COURT ORDERS** that the Fifth Report, and the activities of the Construction Receiver described therein, are hereby approved.

CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

v.

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.
Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(Re: Repayment of Borrowings & Ancillary
Relief)**

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CANADIAN IMPERIAL BANK OF COMMERCE
Applicant

v. **URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.**

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD
(Re: Approval of Site Plan Agreement and
Lesliville Parkland Dedication, and Repayment
of Borrowings & Ancillary Relief)
Returnable October 26, 2017**

BLAKE, CASSELS & GRAYDON LLP
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Construction Lien Trustee of the assets, undertakings
and property of Urbancorp (Leslieville) Developments
Inc., Urbancorp (Riverdale) Developments Inc., and
Urbancorp (The Beach) Developments Inc.