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Please reply to the TORONTO OFFICE

March 18, 2019

**Delivered via email to the Recipients on the attached Schedule "A"**

Dear All:

**Re: Sales re Urbancorp (Leslieville) Developments Inc. by Alvarez & Marsal Canada Inc.**

We act for The Certain Curzon Purchasers concerning this matter.

Please find enclosed a Notice of Motion returnable March 26, 2019 which is served upon you under the *Rules of Civil Procedure*.

Yours very truly,  
**Shibley Righton LLP**

Megan Mackey  
MLM/nsg

Enclosure

SCHEDULE "A"

**MASTER AND SUPPLEMENTARY E-SERVICE LIST**

As of 25 September 2017

**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., &  
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**

**NOTICE OF MOTION**

The Certain Curzon Purchasers identified on Schedule "B" hereto will make a motion to the Judge on Tuesday, March 26, 2019, at 10:00 a.m., or soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

*(choose appropriate option)*

- in writing under subrule 37.12.1 (1) because it is ;
- in writing as an opposed motion under subrule 37.12.1 (4);
- orally.

THE MOTION IS FOR

1. An order declaring that 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. (the "**Receiver**") had no right, title, or interest to the Parks Levy (defined below) that it demanded and received from the Certain Curzon Purchasers (identified on Schedule "B") as a condition of closing the sales of their respective condominium units;
2. an order declaring that the Certain Curzon Purchasers alone have right, title and interest in the Parks Levy that each of them paid as a condition of closing of their respective condominium units (the "Closings");
3. an order requiring the Receiver to repay to each of the Certain Curzon Purchasers the amount of the Park Levy (inclusive of HST) that each of them paid at the time of the Closings, together with interest calculated in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 128;
4. an interim order requiring the Receiver to create and maintain a segregated account and to retain in that account an amount equal to the amount of the Parks Levy (inclusive of HST) that each of the Certain Curzon Purchasers paid at the time of the Closings until such time as the issues on this motion are finally resolved;
5. if necessary, an order imposing a constructive trust on the Parks Levy paid by the Certain Curzon Purchasers and an order tracing any amounts paid by the Receiver on or after the Closings to give effect to this order;



6. if necessary, an order declaring that the funds collected as the Parks Levy are funds held in Trust for the benefit of the Certain Curzon Purchasers;
7. if necessary in order to give effect to the relief sought on this motion, an order granting the Certain Curzon Purchasers leave to commence an action against the Receiver for damages or compensation arising out of the collection of the Parks Levy;
8. if necessary in order to give effect to the relief sought on this motion, an order varying the Appointment Order made May 31, 2016 by the Honourable Mr. Justice Newbould herein and any other order made affecting this receivership;
9. if necessary, an order directing the Receiver to deliver the following documents and information to the Certain Curzon Purchasers in advance of the hearing to adjudicate the relief requested above:
  - (a) Confirmation of the amount of money held aside with respect to the claim for the return of the Parks Levy, if any;
  - (b) An accounting of funds collected from the Certain Curzon Purchasers and others (if any) with respect to the Parks Levy;
  - (c) For those purchasers who were not charged their full proportionate share of the Parks Levy, a copy of their agreements of purchase and sale and statements of adjustments (redacted if necessary to remove personal/identifying information);
  - (d) A copy of all correspondence with the City of Toronto pertaining to the request for Parks Levy/transfer of land and the request for a letter of credit, including a

complete copy of the letter dated January 28, 2013 from the City of Toronto with respect to this issue;

- (e) A copy of the Site Plan Agreement;
  - (f) A copy of the transfer of the parkland to the City of Toronto; and
  - (g) A copy of all correspondence received from purchasers (or their lawyers) disputing payment of the Park Levy and all responses sent by or on behalf of the Receiver; and
10. Such further and other relief as counsel may advise and this Honourable Court may permit.

#### **THE GROUNDS FOR THE MOTION ARE**

11. Each of the Certain Curzon Purchasers (jointly or alone) purchased one or more condominium units from the Receiver in respect of Urbancorp's Leslieville project. Many of the Certain Curzon Purchasers had entered into agreements of purchase and sale with Urbancorp (Leslieville) Developments Inc. prior to its receivership. The original interim occupancy date for these Leslieville units was February 2013.
12. Occupancy was delayed by five years and in the interim the Receiver was appointed. The agreements of purchase and sale provided that the lenders would have priority over the purchase agreements.
13. In the course of this receivership, the agreements of purchase and sale of the Certain Curzon Purchasers were renegotiated and the purchase price per unit was increased by

approximately \$255,000 per unit. The form of these renegotiated agreements of purchase and sale was approved by this Honourable Court on May 11, 2017. The court-approved renegotiated agreement of purchase and sale included (*inter alia*) for the following adjustment, which wording was derived from the Tarion condominium form:

“(iii) the amount of any parks levy or other charges pursuant to a Section 37 Agreement (pursuant to the *Planning Act*), levied, charged or otherwise imposed with respect to the Condominium, the Property or the Unit by any governmental authority, which is equivalent to the common interest allocation attributable to the Unit as set out in Schedule ‘D’ to the Declaration;”

14. There was no parks levy or other charges levied, charged or otherwise imposed in respect of any of the Certain Curzon Purchasers’ units. Despite this, each of the Certain Curzon Purchasers were required by the Receiver to pay an adjustment for a “Parks Levy” in order to close on the sale of the units that had been delayed for as much as five years, with HST payable on the Parks Levy;
15. There was no contractual obligation and/or juridical reason or basis upon which the Receiver could charge purchasers an amount on behalf of a Parks Levy. The “Parks Levy” should be returned to the Certain Curzon Purchasers. The Receiver is unjustly enriched if it is permitted to retain the “Parks Levy”. In the alternative, the Receiver is in breach of contract and has committed tortious conversion and should return the Parks Levy to the Certain Curzon Purchasers with interest. In any event, the Certain Curzon Purchasers are entitled to the relief claimed herein.

16. The Certain Curzon Purchasers rely on ss. 96, 97, and 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, all of the provisions of the *Condominium Act, 1998* and 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:

17. The affidavit of one or more of the Certain Curzon Purchasers, to be sworn.

March 18, 2019

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Lawyers for Certain Curzon Purchasers (More particularly set out in Schedule "B")

TO: **Schedule "A"**

SCHEDULE "A"

**MASTER AND SUPPLEMENTARY E-SERVICE LIST**

As of 25 September 2017

**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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CANADIAN IMPERIAL BANK OF COMMERCE  
Applicant

- and -

URBANCORP (LESLIEVILLE) DEVELOPMENTS  
INC. et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION**

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