

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MRC  
JUSTICE PENNY

)  
)  
)

THURSDAY, THE 11<sup>th</sup>  
DAY OF OCTOBER, 2018



BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

- and -

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

Respondents

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

ORDER

(RE: APPROVING LIEN SETTLEMENTS, AUTHORIZING ASSIGNMENTS OF SALE  
AGREEMENTS & CHARGING CASH COLLATERAL)

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

**ON READING** the Notice of Motion dated October 5, 2018, the Seventh Report of the Construction Receiver dated October 5, 2018 (the “**Seventh Report**”), and on hearing the submissions of counsel for the Construction Receiver and the counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served with the Construction Receiver’s Motion Record as appears from the affidavit of service of Caitlin McIntyre sworn October 5, 2018, filed,

**SERVICE**

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

**APPROVAL OF LIEN SETTLEMENTS AND DISTRIBUTIONS**

*Leslieville Project Lien Settlements*

2. **THIS COURT ORDERS** that the lien settlement amounts agreed to by the Vetting Committee (as defined in the Seventh Report) and parties claiming construction liens against the Respondent UC Leslieville’s construction project located in the Leslieville neighbourhood of Toronto (“**Leslieville Construction Lien Claimants**”), as set out in Paragraph 9 of the Seventh Report, are hereby approved. The Respondent UC Leslieville’s construction project located in Leslieville, Toronto shall be referred to as the “**Leslieville Project**” for the purposes of this Order.

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the settlement amounts hereby approved by this Order to the applicable Leslieville Construction Lien Claimant from the \$200,000 holdback reserve established by the Construction Receiver in respect of the Leslieville Project, and such reserve shall be reduced by an amount equal to such distribution.

*Beach Project Lien Settlements*

4. **THIS COURT ORDERS** that the lien settlement amounts agreed to by the Vetting Committee (as defined in the Seventh Report) and parties claiming construction liens against the Respondent UC Beach’s construction project located in The Beach neighbourhood of

Toronto (the “**Beach Construction Lien Claimants**”), as set out in Paragraph 9 of the Seventh Report, are hereby approved. The Respondent UC Beach’s construction project located in The Beach, Toronto shall be referred to as the “**Beach Project**” for the purposes of this Order.

5. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the settlement amounts hereby approved by this Order to the applicable Beach Construction Lien Claimant from the \$120,000 holdback reserve established by the Construction Receiver in respect of the Beach Project, and such reserve shall be reduced by an amount equal to such distribution.

#### **AUTHORIZATION TO CONSENT TO ASSIGNMENT OF LESLIEVILLE PROJECT AGREEMENTS OF PURCHASE AND SALE**

6. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized, in its sole discretion, to consent to the assignment by purchasers of any agreement of purchase and sale in respect of units in the Leslieville Project, upon such terms and conditions as the Construction Receiver may determine to be reasonable or necessary in the circumstances, including without limitation an assignment fee of CDN\$15,000, or such other amount as may be determined by the Construction Receiver.

#### **CASH COLLATERAL CHARGES**

##### *Administrative Agent Cash Collateral Charge*

7. **THIS COURT ORDERS** that Canadian Imperial Bank of Commerce, in its capacity as administrative agent (the “**Administrative Agent**”) shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (“**CIBC Cash Collateral Charge**”) in all amounts distributed to the Administrative Agent by the Construction Receiver from Proceeds of Realization (as defined in the Settlement Approval Order) pursuant to the Waterfall (as defined in the Settlement Approval Order) as cash collateral for the liabilities and obligations under or in connection with the outstanding letters of credit issued by Canadian Imperial Bank of Commerce (the “**CIBC LCs**”) forming part of the Syndicate Pre-Filing Secured Obligations (as defined in the Settlement Approval Order) (together with all income earned thereon and accretions thereto from time to time, the “**CIBC Cash Collateral**”).

8. **THIS COURT ORDERS AND DECLARES** the CIBC Cash Collateral shall be in such amount as agreed between the Construction Receiver and the Administrative Agent, or such amount as may be further ordered by this Court, and is to be held by the Administrative Agent upon terms and conditions to be agreed upon by the Construction Receiver, the Administrative Agent, Terra Firma Capital Corporation and C.R.A.F.T. Development Corporation, or as otherwise ordered by the Court, as security for the liabilities and obligations under or in connection with the CIBC LCs

9. **THIS COURT ORDERS** that the CIBC Cash Collateral Charge shall rank in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, “**Encumbrances**”) against the CIBC Cash Collateral from time to time.

*Travelers Cash Collateral Charge*

10. **THIS COURT ORDERS** that Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”) shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (“**Travelers Cash Collateral Charge**”) in all amounts distributed to Travelers by the Construction Receiver from Proceeds of Realization pursuant to the Waterfall as cash collateral for certain of the Travelers Secured Obligations (as defined in the Settlement Approval Order) as provided by the terms of the Waterfall (together with all income earned thereon and accretions thereto from time to time, the “**Travelers Cash Collateral**”).

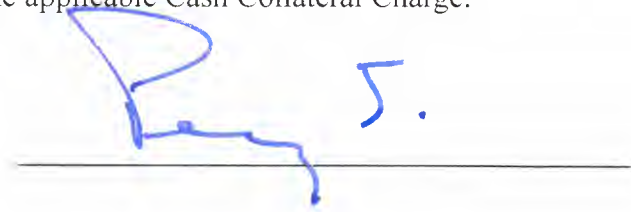
11. **THIS COURT ORDERS** that the Travelers Cash Collateral Charge shall rank in priority to all Encumbrances against the Travelers Cash Collateral from time to time.

*Tarion Cash Collateral Charge*

12. **THIS COURT ORDERS** that Tarion Warranty Corporation (“**Tarion**”) shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (“**Tarion Cash Collateral Charge**”) in all amounts distributed to Tarion by the Construction Receiver from Proceeds of Realization pursuant to the Waterfall as cash collateral for certain of the Tarion Secured Obligations (as defined in the Settlement Approval Order) as provided by the terms of the Waterfall (together with all income earned thereon and accretions thereto from time to time, the “**Tarion Cash Collateral**”).

13. **THIS COURT ORDERS** that the Tarion Cash Collateral Charge shall rank in priority to all Encumbrances against the Tarion Cash Collateral from time to time.

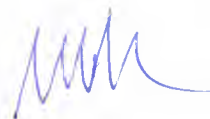
14. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the CIBC Cash Collateral Charge, the Travelers Cash Collateral Charge and the Tarion Cash Collateral Charge (collectively, the “**Cash Collateral Charges**”) shall not be required and that each of the Cash Collateral Charges shall be valid and enforceable for all purposes including, without limitation, as against any right, title or interest filed, registered, recorded or perfected subsequent to any of the Cash Collateral Charges coming into existence notwithstanding any such failure to file, register, record or perfect. Each of the Cash Collateral Charges may be enforced upon the terms and conditions and at the times as may be agreed between the Construction Receiver and the beneficiary of the applicable Cash Collateral Charge.



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

OCT 11 2018

PER / PAR:



CANADIAN IMPERIAL BANK OF COMMERCE  
Applicant

V.

Court File No. CV-16-11409-00CL  
URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

**(APPROVING LIEN SETTLEMENTS,  
AUTHORIZING ASSIGNMENTS &  
CHARGING CASH)**

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Chris Burr** – LSO#: 55172H  
Tel: 416-863-3261  
Fax: 416-863-2653  
Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

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.