

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR

)

THURSDAY, THE 11<sup>th</sup>

JUSTICE PENNY

)

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: APPROVAL AND VESTING ORDER - GEOTHERMAL UNIT)

**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. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc., for an order (i) approving the sale transaction (the “**Geothermal Transaction**”) contemplated by an agreement of purchase and sale to be entered into by the Construction Receiver and Toronto Standard Condominium Corporation Number 2669 (the “**Purchaser**”), substantially in the form of the agreement attached as Appendix A to

the Seventh Report (defined below) (the “**Geothermal APS**”); and (ii) vesting in the Purchaser all of UC Leslieville’s right, title and interest in and to the Property (as defined in the Geothermal APS);.

**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.

### **GEOHERMAL TRANSACTION APPROVED**

2. **THIS COURT ORDERS** that the Geothermal Transaction and the Geothermal APS are hereby approved, and the Construction Receiver is hereby authorized to execute and enter into a purchase and sale agreement (the “**Sale Agreement**”) in the name of and on behalf of UC Leslieville, and not in its personal or corporate capacity, which Sale Agreement shall be substantially on the terms set out in the Geothermal APS, subject to such amendments, additions and/or deletions as may be negotiated between the Construction Receiver and the Purchaser.

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Geothermal Transaction, and for the conveyance of the Property to the Purchaser.

4. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to perform all of their obligations and agreements under the Sale Agreement and any ancillary documents related thereto (collectively, the “**Transaction Documents**”).

5. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Construction Receiver to proceed with the Geothermal Transaction and the Transaction Documents in the name of and on behalf of UC Leslieville, and that no shareholder or other corporate approval, if applicable, shall be required in connection therewith.

#### **VESTING OF GEOTHERMAL UNIT**

6. **THIS COURT ORDERS** that upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed in respect of the Geothermal Unit (as defined in the Condominium Documents) (the "**Geothermal Unit**"), all of UC Leslieville's right, title and interest in and to the Geothermal Unit and UC Leslieville's interest in and to the common elements appurtenant to such Geothermal Unit (collectively, the "**Property**") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims with respect to such Property, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, encumbrances, title retention agreements, judgments, adverse claims or interests, exceptions, reservations, easements, encroachments, servitudes, restrictions on use, any right of occupancy, any matter capable of registration against title, options, rights of first refusal or similar rights, rights of pre-emption or privilege or any contract creating any of the foregoing (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by this Order, the Order of Mr. Justice Newbould dated May 2, 2017 and the Order of Mr. Justice Newbould dated May 31, 2016; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "A"** 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 "B"** and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

7. **THIS COURT ORDERS** that, upon the registration in the Land Titles Division of the Toronto Land Registry Office (No. 66) of the Transfer/Deed in respect of the Geothermal Unit, the Land Registrar is hereby directed to enter the Purchaser as the owner of the Geothermal

Unit, and is hereby directed to delete and expunge from title to the Geothermal Unit all of the Claims listed in **Schedule “A”** hereto, including such further Claims as may have arisen and/or been registered against title to the Geothermal Unit as more particularly set out by way of solicitor’s statement or affidavit annexed to such Transfer/Deed (as contemplated by **Schedule “A”**).

8. **THIS COURT ORDERS AND DECLARES** that, notwithstanding:

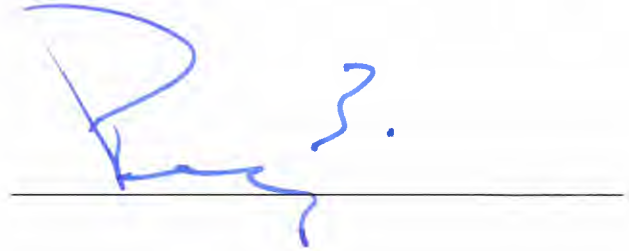
- (a) the pendency of these proceedings;
- (b) any bankruptcy order issued in respect of UC Leslieville; and
- (c) any assignment in bankruptcy made in respect of UC Leslieville;

the entering into of the Transaction Documents and the vesting of the Property in the Purchaser pursuant to this Order shall be binding on UC Leslieville’s trustee in bankruptcy, and any subsequent trustee in bankruptcy that may be appointed in respect of UC Leslieville and shall not be void or voidable by creditors of UC Leslieville, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

#### **MISCELLANEOUS**

9. **THIS COURT ORDERS 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.

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



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:  
OCT 11 2018

PER / PAR:



**Schedule A**

**CLAIMS TO BE EXPUNGED FROM TITLE**

1. Instrument No. AT2720786 registered June 15, 2011 is a Charge from Urbancorp (Leslieville) Developments Inc. to Travelers Guarantee Company of Canada in the principal amount of \$6,000,000.00, which will be discharged upon registration of the Order and certification of same by the LRO.
2. Instrument No. AT3081811 registered July 24, 2012 is a Charge from Urbancorp (Leslieville) Developments Inc. to Canadian Imperial Bank of Commerce in the principal amount of \$70,000,000.00, which will be discharged upon registration of the Order and certification of same by the LRO.
3. Instrument No. AT3082309 registered July 24, 2012 is a Postponement from Travelers Insurance Company of Canada to Canadian Imperial Bank of Commerce (postponing AT2720786 to AT3081811), which will be discharged upon registration of the Order and certification of same by the LRO.
4. Instrument No. AT3102606 registered August 16, 2012 is a Notice from Urbancorp (Leslieville) Developments Inc. to Travelers Insurance Company of Canada, which will be discharged upon registration of the Order and certification of same by the LRO.
5. Instrument No. AT3954372 registered July 22, 2015 is a Charge from Urbancorp (Leslieville) Developments Inc. and Urbancorp (Riverdale) Developments Inc. to Terra Firma Capital Corporation in the principal amount of \$5,500,000.00, which will be discharged upon registration of the Order and certification of same by the LRO.
6. Instrument No. AT3954373 registered July 22, 2015 is a Notice of Assignment of Rents from Urbancorp (Leslieville) Developments Inc. and Urbancorp (Riverdale) Developments Inc. to Terra Firma Capital Corporation, which will be discharged upon registration of the Order and certification of same by the LRO.
7. Instrument No. AT4011571 registered September 17, 2015 is a Construction Lien from Alpa Stairs and Railings Inc. to Ontario Superior Court of Justice in the amount of \$179,860.00, which will be discharged upon registration of the Order and certification of same by the LRO.
8. Instrument No. AT4039964 registered October 19, 2015 is a Certificate from Alpa Stairs and Railings Inc. relating to AT4011571, which will be discharged upon registration of the Order and certification of same by the LRO.
9. Instrument No. AT4057394 registered November 3, 2015 is a Construction Lien from EXP Services Inc. in the amount of \$9,378.00, which will be discharged upon registration of the Order and certification of same by the LRO.

10. Instrument No. AT4072949 registered November 20, 2015 is a Construction Lien from Roni Excavating Limited in the amount of \$66,901.00, which will be discharged upon registration of the Order and certification of same by the LRO.
11. Instrument No. AT4072991 registered November 20, 2015 is a Construction Lien from Orin Contractors Corp. in the amount of \$179,416.00, which will be discharged upon registration of the Order and certification of same by the LRO.
12. Instrument No. AT4073814 registered November 23, 2015 is a Construction Lien from Sterling Carpet & Tile in the amount of \$46,998.00, which will be discharged upon registration of the Order and certification of same by the LRO.
13. Instrument No. AT4106412 registered December 30, 2015 is a Certificate from Roni Excavating Limited relating to Certificate of Action Lien #AT4072949, which will be discharged upon registration of the Order and certification of same by the LRO.
14. Instrument No. AT4106476 registered December 30, 2015 is a Certificate from Orin Contractors Corp. relating to Certificate of Action #AT4072991, which will be discharged upon registration of the Order and certification of same by the LRO.
15. Instrument No. AT4129370 registered January 26, 2016 is a Certificate from Exp Services Inc. to Urbancorp (Leslieville) Developments Inc.; Urbancorp Inc.; Travelers Guarantee Company of Canada; Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation relating to AT4057394, which will be discharged upon registration of the Order and certification of same by the LRO.
16. Instrument No. AT4140578 registered February 9, 2016 is a Certificate from Sterling Tile & Carpet (Cert of Action), which will be discharged upon registration of the Order and certification of same by the LRO.
17. Instrument No. AT4153410 registered February 25, 2016 is a Construction Lien from Silvio Construction Co. Ltd. in the amount of \$40,362.00, which will be discharged upon registration of the Order and certification of same by the LRO.
18. Instrument No. AT4163132 registered March 8, 2016 is a Notice of Security Interest from Genesis Home Services Inc. in the amount of \$290,975.00, which will be discharged upon registration of the Order and certification of same by the LRO.
19. Instrument No. AT4165123 registered March 10, 2016 is a Construction Lien from NG Marin Inc. in the amount of \$856,929.00, which will be discharged upon registration of the Order and certification of same by the LRO.
20. Instrument No. AT4165218 registered March 11, 2016 is a Construction Lien from Commercial Two Construction Inc. in the amount of \$220,067.00, which will be discharged upon registration of the Order and certification of same by the LRO.

21. Instrument No. AT4165591 registered March 11, 2016 is a Construction Lien from MDF Mechanical Limited in the amount of \$291,964.00, which will be discharged upon registration of the Order and certification of same by the LRO.
22. Instrument No. AT4166872 registered March 14, 2016 is a Construction Lien from Uptown Hardware Limited in the amount of \$72,642.00, which will be discharged upon registration of the Order and certification of same by the LRO.
23. Instrument No. AT4181331 registered March 31, 2016 is a Certificate from Silvio Construction Co. Ltd. relating to AT4153410, which will be discharged upon registration of the Order and certification of same by the LRO.
24. Instrument No. AT4194677 registered April 15, 2016 is a Construction Lien from 207875 Ontario Limited in the amount of \$37,133.00, which will be discharged upon registration of the Order and certification of same by the LRO.
25. Instrument No. AT4194686 registered April 15, 2016 is a Construction Lien from Emergency Propane Services Inc. in the amount of \$12,022.00, which will be discharged upon registration of the Order and certification of same by the LRO.
26. Instrument No. AT4198081 registered April 20, 2016 is a Construction Lien from Lido Construction Inc. in the amount of \$1,548,100.00, which will be discharged upon registration of the Order and certification of same by the LRO.
27. Instrument No. AT4200385 registered April 22, 2016 is a Certificate from Uptown Hardware Limited relating to AT4166872, which will be discharged upon registration of the Order and certification of same by the LRO.
28. Instrument No. AT4200654 registered April 25, 2016 is a Certificate from MDF Mechanical Limited relating to AT4165591, which will be discharged upon registration of the Order and certification of same by the LRO.
29. Instrument No. AT4211208 registered May 4, 2016 is a Certificate from NG Marin Inc. relating to AT4165123, which will be discharged upon registration of the Order and certification of same by the LRO.
30. Instrument No. AT4215263 registered May 10, 2016 is a Certificate from Commercial Two Construction Inc. relating to AT4165218, which will be discharged upon registration of the Order and certification of same by the LRO.
31. Instrument No. AT4229855 registered May 30, 2016 is a Certificate from 207875 Ontario Limited relating to Construction Lien AT4194677, which will be discharged upon registration of the Order and certification of same by the LRO.
32. Instrument No. AT4229857 registered May 30, 2016 is a Certificate from Emergency Propane Services Inc. relating to Construction Lien AT4194686, which will be discharged upon registration of the Order and certification of same by the LRO.



33. Instrument No. AT4243741 registered June 10, 2016 is an Application for Court Order from Ontario Superior Court of Justice Commercial List to Alvarez & Marsal Canada Inc. , which will be discharged upon registration of the Order and certification of same by the LRO.
34. Instrument No. AT4244696 registered June 10, 2016 is a Certificate from Lido Construction Inc. regarding AT4198081, which will be discharged upon registration of the Order and certification of same by the LRO.

**Schedule B**

**PERMITTED ENCUMBRANCES**

1. Instrument No. AT2958528 registered March 2, 2012 is a Transfer Easement from Urbancorp (Leslieville) Developments Inc. to Rogers Communications Inc.
2. Instrument No. AT3708202 registered October 7, 2014 is a Transfer Easement from Urbancorp (Leslieville) Developments Inc. to Bell Canada.
3. Instrument No. AT3728135 registered October 30, 2014 is a Transfer Easement from Urbancorp (Leslieville) Developments Inc. to Enbridge Gas Distribution Inc.
4. Instrument number AT4735221, registered November 17, 2017, being a Notice of an agreement, being a site plan agreement.
5. TCP2669 registered September 7, 2018, being Standard Condo Plan
6. Instrument Number AT4952987, registered September 7, 2018, being a Condominium Declaration.

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**

**(APPROVAL AND VESTING ORDER –  
GEOTHERMAL UNIT)**

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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.