

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

THE HONOURABLE) TUESDAY, THE 17th DAY
RSJ MORAWETZ) OF APRIL, 2019

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: TARION CASH COLLATERAL ORDER)**

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 (the “**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 (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., for an order approving the Tarion Cash Collateral Procedure (as defined herein) was heard this day in Toronto, Ontario.

ON READING the Notice of Motion dated March 18, 2019, the Eighth Report of the Construction Receiver dated March 18, 2019, the Second Supplement to the Eighth Report of the Construction Receiver, dated April 12, 2019 (the “**Second Supplement**”) and on hearing the submissions of counsel for the Construction Receiver, Tarion Warranty Corporation (“**Tarion**”), Terra Firma Capital Corporation (“**Terra Firma**”) and Travelers Guarantee Company of Canada/Travelers Insurance Company of Canada (“**Travelers**”) 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 March 20, 2019 and April 12, 2019, 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.

INTERPRETATION

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following terms shall have the following meanings:

- (a) “**Applicable Notice Period**” has the meaning ascribed thereto in paragraph 8;
- (b) “**BIA**” has the meaning ascribed thereto in the preamble to this Order;
- (c) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (d) “**Claimant**” means a Person asserting a Tarion Claim;
- (e) “**Construction Receiver**” has the meaning ascribed thereto in the preamble to this Order;

- (f) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (g) “**ONHWPA**” means the *Ontario New Home Warranties Plan Act* (Ontario), R.S.O. 1990, c. O.31, as amended, and the regulations promulgated thereunder;
- (h) “**Order**” means this Order;
- (i) “**Outside Date**” means September 7, 2025;
- (j) “**Pending Tarion Costs**” has the meaning ascribed thereto in the Second Supplement;
- (k) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (l) “**Project**” means the residential condominium development located at 50 Curzon Street, Toronto, Ontario, and sometimes known as “*Towns on Curzon*”;
- (m) “**Property**” has the meaning ascribed thereto in the preamble to this Order;
- (n) “**Second Supplement**” has the meaning ascribed thereto in the preamble to this Order;
- (o) “**Tarion**” has the meaning ascribed thereto in the preamble to this Order;
- (p) “**Tarion Bond**” means bond no. 10030498 dated May 19, 2011, in the original amount of \$1,260,000.00 issued by Travelers in favour of Tarion;
- (q) “**Tarion Cash Collateral**” has the meaning ascribed thereto in paragraph 4;
- (r) “**Tarion Cash Collateral Balance**” has the meaning ascribed thereto in paragraph 7(b);
- (s) “**Tarion Cash Collateral Claims**” means amounts claimed in respect of accepted Tarion Claims, administration fees, legal fees, interest and other fees and costs paid or incurred by Tarion in connection with the administration of the Tarion Cash Collateral Procedure and any other amounts to which Tarion is entitled pursuant to the Tarion Bond;

- (t) “**Tarion Cash Collateral Procedure**” means the procedures outlined in this Order, including, without limitation, in connection with the payment, holding, administration, and release of the Tarion Cash Collateral;
- (u) “**Tarion Claim**” means any right or claim of any Person against Tarion under the ONHWPA in respect of the Project;
- (v) “**Tarion Costs**” has the meaning ascribed to it in the Second Supplement;
- (w) “**Tarion Costs Payment**” has the meaning ascribed thereto in paragraph 10;
- (x) “**Terra Firma**” has the meaning ascribed thereto in the preamble to this Order;
- (y) “**Travelers**” has the meaning ascribed thereto in the preamble to this Order; and
- (z) “**UC Leslieville**” has the meaning ascribed thereto in the preamble to this Order.

3. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

TARION CASH COLLATERAL

- 4. **THIS COURT ORDERS** that the Construction Receiver shall pay to Tarion, within five (5) Business Days of the granting of this Order, the amount of \$1,100,000.00 to Tarion (the “**Tarion Cash Collateral**”), against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims in accordance with this Order.
- 5. **THIS COURT ORDERS** that upon Tarion's receipt of the Tarion Cash Collateral pursuant to paragraph 4, Tarion shall deliver to Travelers the Tarion Bond for immediate cancellation and neither Tarion nor Travelers shall have any further obligations or liability whatsoever in respect of the Tarion Bond, the Property or the Project (in the case of Tarion, subject only to any Tarion Claims that are to be dealt with pursuant to paragraphs 6 and 7).

TARION CLAIMS

6. **THIS COURT ORDERS** that:

- (a) Tarion shall, unless otherwise agreed in writing among all of the Construction Receiver, Tarion and Terra Firma:
 - (i) review any Tarion Claim filed prior to the Outside Date and not already satisfied as of the date hereof, and accept, revise or reject them in accordance with Tarion's ordinary claims review procedures provided, however, that Tarion shall have the right, but not the obligation, to consult with Terra Firma and the Construction Receiver during its review of a Tarion Claim;
 - (ii) advise Terra Firma and the Construction Receiver of the particulars of the payment of any Tarion Claim within ten (10) days after the payment of any such Tarion Claim, and
 - (iii) provide a report to Terra Firma and the Construction Receiver as to the Tarion Claims received, Tarion Claims and Tarion Cash Collateral Claims paid and the amount of Tarion Cash Collateral remaining as at the date of such report, with such reports due on September 7, 2019, September 7, 2020, September 7, 2021, September 7, 2022, September 7, 2023, September 7, 2024, September 7, 2025;

7. **THIS COURT ORDERS** that:

- (a) Tarion shall be entitled to utilize the Tarion Cash Collateral and process payments therefrom on account of accepted Tarion Claims and Tarion Cash Collateral Claims 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, rights of distraint, 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, and without further authorization from any Person or this Court;

- (b) the balance of the Tarion Cash Collateral (the “**Tarion Cash Collateral Balance**”), if any, shall be paid by Tarion to the Construction Receiver, within ten (10) Business Days following the later of:
 - (i) the Outside Date;
 - (ii) the completion of the review by Tarion of all Tarion Claims filed prior to the Outside Date;
 - (iii) in the event that Tarion revises or rejects any Tarion Claim, the resolution of such Tarion Claim in accordance with the procedures provided for in the ONHWPA; and
 - (iv) the processing and payment by Tarion of any Tarion Claims and Tarion Cash Collateral Claims from the Tarion Cash Collateral; and
- (c) Tarion shall have no further obligations or liability whatsoever in respect of the Tarion Cash Collateral Balance following Tarion's payment of the Tarion Cash Collateral Balance to the Construction Receiver.

WAIVER OF NOTICE OF ONHWPA NOTICE AND TARION AUTHORIZATION

- 8. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized but not required to waive all applicable statutory notice and vendor repair periods, if any, to which it or UC Leslieville may be entitled under the ONHWPA in respect of any warranty claims made in respect of the Project (each, an “**Applicable Notice Period**”).
- 9. **THIS COURT ORDERS** that in the event that the Construction Receiver waives an Applicable Notice Period, Tarion is thereby entitled, in its discretion, to take action and remediate any defects at the Project that are warrantied under the ONHWPA immediately upon receipt of confirmation of waiver of any such Applicable Notice Period,

notwithstanding any applicable notice or vendor repair periods in favour of a vendor prescribed by the ONHWPA, provided that (i) the ONHWPA and the regulations promulgated thereunder shall otherwise apply to all such remedial action taken by Tarion and (ii) nothing in this Order shall affect Tarion's determination of whether or not a defect is covered by the ONHWPA.

PAYMENT OF PENDING TARION COSTS

10. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to pay to Tarion the amount of \$41,454.09 on account of the Pending Tarion Costs (the "Tarion Costs Payment"), and that Travelers shall have no liability or obligation to Tarion for such Pending Tarion Costs.

TRAVELERS, TARION AND THE CONSTRUCTION RECEIVER

11. **THIS COURT ORDERS** that none of Travelers, Tarion, Terra Firma or the Construction Receiver shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of Travelers, Tarion, Terra Firma or the Construction Receiver in connection with the carrying out of the provisions of this Order except with the written consent of Travelers, Tarion, Terra Firma or the Construction Receiver, as applicable, or with leave of this Court on seven (7) Business Days' notice to Travelers, Tarion, Terra Firma or the Construction Receiver, as applicable. This Order is without prejudice to any other limitation of liability or protection afforded to Travelers, Tarion or the Construction Receiver by order of the Court or otherwise.
12. **THIS COURT ORDERS** that, in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so 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, rights of distraint, 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.

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

- (a) the pendency of these proceedings;
- (b) UC Leslieville's bankruptcy order; and
- (c) any additional assignment in bankruptcy made in respect of UC Leslieville, the Property or the Project,

the Tarion Cash Collateral Procedure and its implementation 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, the Property or the Project and shall not be void or voidable by creditors, 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.

MISCELLANEOUS

14. **THIS COURT ORDERS** that nothing in this Order shall derogate from this Court's order dated October 11, 2018, including, without limitation, the cash collateral charges and other protections provided for therein.

15. **THIS COURT ORDERS** that each of Tarion and the Construction Receiver may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to give effect to this Order and to assist Tarion, the Construction Receiver and their respective 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 Tarion, the Construction Receiver and their respective agents, as may be necessary or desirable to give effect to this Order or to assist Tarion, the Construction Receiver and their respective agents, in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to be "A. H. Jones P.S.", is written over a horizontal line.

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

APR 17 2019

PER / PAR: *RW*

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
(RE: TARIION CASH COLLATERAL ORDER)

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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.