

**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**

**SUPPLEMENTAL MOTION RECORD  
(Re: RETURN OF APPROVAL OF PURCHASE PRICE ADJUSTMENTS, FEES &  
TARION CASH COLLATERAL)**

**(Returnable April 17, 2019)**

April 12, 2019

**BLAKE, CASSELS & GRAYDON LLP**  
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c. C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

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# **TAB 1**

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

**ONTARIO  
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COMMERCIAL LIST**

**BETWEEN:**

**CANADIAN IMPERIAL BANK OF COMMERCE**

Applicant

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**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: RETURN OF APPROVAL OF PURCHASE PRICE ADJUSTMENTS, FEES &  
TARION CASH COLLATERAL)**

**(Returnable April 17, 2019)**

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 of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”), Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc. (collectively, the “**Debtors**”)

will make a motion to a Judge of the Commercial List at 10:00 a.m. on April 17, 2019, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

### **PROPOSED METHOD OF HEARING**

This motion will be heard orally.

### **THIS MOTION IS FOR:**

1. Orders substantially in the form originally sought by the Construction Receiver in its March 18, 2019 motion record (the “**March 18 Motion Record**”), except with respect to the fees of the Construction Receiver’s Real Estate Counsel, and attached at Tabs 4 and 6 to the Supplemental Motion Record:

- a. authorizing and directing the Construction Receiver to pay certain amounts to Tarion as cash collateral, which would otherwise be payable to Travelers pursuant to the Settlement Approval Order, to be held by Tarion pending the expiry of certain warranty periods;
- b. declaring that the Leslieville Purchase Price Adjustments (excluding the Park Levy) are accurate and binding as between the Construction Receiver and Leslieville Purchasers; and
- c. approving the fees and disbursements of:
  - (i) the Construction Receiver for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
  - (ii) the Construction Receiver’s independent counsel, Blake, Cassels & Graydon LLP, for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
  - (iii) the Construction Receiver’s counsel, Gowling WLG (Canada) LLP, for the nine (9) month period of May 1, 2018 through to and including January 31, 2019; and

- (iv) the Construction Receiver's Real Estate Counsel, Miller Thomson LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019.

2. Additionally, the Construction Receiver requests that this Court grant an order directing it to pay \$41,454.09 to Tarion on account of the Pending Tarion Costs (as defined below) without prejudice to the right of Terra Firma to challenge the payment of such costs.

**THE GROUNDS FOR THIS MOTION ARE:**

***Background***

3. The Construction Receiver has filed the Eighth Report of the Construction Receiver dated March 18, 2019 (the "**Eighth Report**") and the Supplement to the Eighth Report, also dated March 18, 2019 (the "**Supplemental Report**"). In addition, the Construction Receiver has prepared the Second Supplemental Report, dated April 12, 2019, attached to this Motion Record at Tab 2 (the "**Second Supplement**").

4. The grounds for this motion are substantially set out in the Construction Receiver's March 18, 2019 notice of motion, the Eighth Report, the Supplemental Report and the Second Supplement. Capitalized terms not defined herein shall have the meaning given to them in the Second Supplement.

5. On March 26, 2019, the Construction Receiver attended before the Court, whereupon certain relief was adjourned, as follows:

- a. The ONHWPA Notice Order and the Tarion Cash Collateral Order were adjourned, pending further discussions among the Construction Receiver, Tarion and Terra Firma;

- b. The Purchase Price Adjustment Approval Order was deferred, pending notice being given to Unrepresented Purchasers pursuant to the Substituted Service Order;
- c. The Court scheduled a return date on April 17, 2019 to hear submissions on the potential conflict of interest regarding Shibley Righton, and June 4, 2019 to adjudicate the Park Levy dispute; and
- d. The Construction Receiver consented to the adjournment of the March Fee Approval Order, at the request of Terra Firma.

*The Tarion Cash Collateral Order*

6. In the March 18 Motion Record, the Construction Receiver sought approval of an arrangement whereby the Construction Receiver would pay the Tarion Cash Collateral directly to Tarion as cash collateral, allowing Travelers to terminate the Tarion Bond without prejudice to Tarion and entitling Tarion to access the Tarion Cash Collateral pursuant to Court order.

7. Subsequent to filing the Eighth Report, Terra Firma raised concerns with the treatment and payment of certain costs incurred by Tarion and their potential impact on the calculation of the Tarion Cash Collateral amount. The Construction Receiver elected to defer its request for the Tarion Cash Collateral Order, pending further discussions with Tarion and Terra Firma.

8. The nature of Terra Firm's concerns lie in the costs incurred by Tarion since the closing of the Leslieville Units in October (the "**Tarion Costs**").

9. Following discussions with Tarion and Terra Firma, the Construction Receiver understands that the parties are in agreement with the payment of the Tarion Cash Collateral to Tarion.

10. \$41,454.09 of the Tarion Costs have been claimed by Tarion from Travelers but not yet funded by Travelers (the “**Pending Tarion Costs**”). The Construction Receiver is therefore seeking an order directing it to pay the Pending Tarion Costs directly to Tarion to avoid the money having to unnecessarily go through Travelers.

***The Purchase Price Adjustment Approval Order***

11. The Substituted Service Order provides that service on each of the Unrepresented Purchasers of any court material in these Receivership Proceedings by way of e-mail to the last known email address for each such Unrepresented Purchaser shall be good and sufficient service of such court material on such Unrepresented Purchaser.

12. On March 18, 2019, Unrepresented Purchasers were provided with the March 18 Motion Record at their last known email addresses. On April 9, 2019, the Construction Receiver’s Independent Counsel sent a Notice Letter to Unrepresented Purchasers at their last known email addresses advising that the Construction Receiver would be seeking the Purchase Price Adjustment Approval Order on April 17, 2019.

13. In the Construction Receiver’s view and for the reasons set out in the Supplemental Report, it is appropriate and in the best interest of the UC Leslieville stakeholders generally for the Court to grant the Purchase Price Adjustment Approval Order.

***The March Fee Approval Order***

14. Prior to the hearing of the Construction Receiver’s motion on March 26, 2019, counsel to Terra Firma expressed to the Construction Receiver that it required more time to review the



relevant invoices and sought the Construction Receiver's consent to adjourn the March Fee Approval Order. The Construction Receiver consented.

15. Since the adjournment of the March Fee Approval Order, the Construction Receiver has obtained the affidavit of Ron Fairbloom, sworn March 27, 2019 in respect of the fees and disbursements of Real Estate Counsel.

16. At this time, the Construction Receiver is seeking approval of:

- a. Construction Receiver in the amount of \$392,314.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019;
- b. Independent Counsel in the amount of \$136,501.30, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019;
- c. Construction Receiver's Counsel in the amount of \$39,679.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019; and
- d. Construction Receiver's Real Estate Counsel in the amount of \$89,685.50 plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019.

17. The Construction Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable.

***Authorities to be Relied on***

18. The Construction Receiver expressly relies on Rules 1.04, 2.03, 3.02, 16.04 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and

19. 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 THIS MOTION:**

1. The Eighth Report, filed;
2. The Supplement to the Eighth Report, filed;
3. The Second Supplement to the Eighth Report, filed;
4. The Construction Receiver's Compendium of Fee Affidavits, filed;
5. The Affidavit of Ron Fairbloom, sworn March 27, 2019, filed;
6. Such further and other material as counsel made advise and this Honourable Court may permit.

April 12, 2019

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**TO: SERVICE LIST**

**AND TO: THE UNREPRESENTED PURCHASERS**

**MASTER SERVICE LIST**

As of 9 April, 2019

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

**Respondents**

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,  
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and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

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**CANADIAN IMPERIAL BANK OF COMMERCE V. URBAN CORP (LESLIEVILLE) DEVELOPMENTS INC.**  
**et.al.**

(Applicant)

(Respondents)

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Re: RETURN OF APPROVAL OF PURCHASE  
PRICE ADJUSTMENTS, FEES & TARIFF  
CASH COLLATERAL)  
(Returnable April 17, 2019)**

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## **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**

**SECOND SUPPLEMENT TO THE EIGHTH 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 12, 2019**

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- A.** Notice Letter to Unrepresented Purchasers, dated April 9, 2019
- B.** Affidavit of Ron Fairbloom, sworn March 27, 2019



## 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, 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. and Urbancorp (The Beach) Developments Inc. (such proceedings, the “**Receivership Proceedings**”).
2. The Construction Receiver has filed the Eighth Report of the Construction Receiver, dated March 18, 2019 (the “**Eighth Report**”) and the Supplement to the Eighth Report, also dated March 18, 2019 (the “**Supplemental Report**”). This second supplement to the Eighth Report (the “**Second Supplemental Report**”) is provided in addition to that Eighth Report and the Supplemental Report to address a number of issues raised therein but not resolved. Capitalized terms used in the Second Supplemental Report not otherwise defined herein shall have the meaning given to them in the Eighth Report.

## 1.1 BACKGROUND

3. The Eighth Report detailed ongoing discussions among the Construction Receiver, Tarion and Terra Firma regarding the funding and protocol for addressing claims by Leslieville Purchasers under the *Ontario New Home Warranties Plan Act* (Ontario) (the “**ONHWPA**”). The Eighth Report concluded by explaining the utility of the Construction Receiver seeking orders:
  - a. authorizing the Construction Receiver to waive certain notice periods provided for in the ONHWPA, in order to permit Tarion to assess and remediate warrantied defect claims at the Leslieville Project more expeditiously (the “**ONHWPA Notice Order**”); and
  - b. authorizing and directing the Construction Receiver to pay certain amounts to Tarion as cash collateral, which would otherwise be payable to Travelers pursuant to the Settlement Approval Order, to be held by Tarion pending the expiry of certain warranty periods (the “**Tarion Cash Collateral Order**”).
4. The Supplemental Report described the closing of the 55 Leslieville Units, detailed the various purchase price adjustments that were charged by the Construction Receiver on closing, and set out the grounds for the Construction Receiver seeking orders:

- a. granting substituted service on Unrepresented Purchasers by email to the last known email address of such Leslieville Purchaser, based on the records of the Construction Receiver's real estate counsel, Miller Thomson LLP (the "**Substituted Service Order**"); and
  - b. declaring that certain purchase price adjustments calculated and charged by the Construction Receiver in connection with the closing of Leslieville Units, excluding the Park Levy, are accurate and binding as between the Construction Receiver and purchasers (the "**Purchase Price Adjustment Approval Order**").
5. The Supplemental Report also described a challenge raised by Shibley Righton to the Park Levy. The Construction Receiver reported that discussions with Shibley Righton were ongoing, and the Supplemental Report set out the grounds for the Construction Receiver's request for an order setting a protocol and schedule for the resolution of the pending motion brought by Shibley Righton, including the threshold matter of a potential conflict of interest issue (the "**Park Levy Protocol Order**").
6. Finally, the Eighth Report sought the approval of (the "**March Fee Approval Order**"):
- a. the Construction Receiver for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
  - b. the Construction Receiver's independent counsel Blake, Cassels & Graydon LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019; and
  - c. the Construction Receiver's counsel Gowling WLG (Canada) LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019
7. On March 26, 2019, the Construction Receiver attended before the Court, whereupon:
- a. The Construction Receiver advised that it would not be seeking the ONHWPA Notice Order and the Tarion Cash Collateral Order, pending further discussions among the Construction Receiver, Tarion and Terra Firma;
  - b. The Substituted Service Order was granted, with prospective application;
  - c. The Purchase Price Adjustment Approval Order was deferred, pending notice being given to Unrepresented Purchasers pursuant to the Substituted Service Order;

- d. The Court scheduled a return date on April 17, 2019 to hear submissions on the potential conflict of interest regarding Shibley Righton, and June 4, 2019 to adjudicate the Park Levy dispute; and
- e. The Construction Receiver consented to an adjournment of the March Fee Approval Order, at the request of Terra Firma.

## 1.2 PURPOSE OF THE SECOND SUPPLEMENTAL REPORT

8. The purpose of this Second Supplemental Report is to update the Court on the status of the foregoing issues, and to support the Construction Receiver's request on the return of its adjourned motion for:
  - a. the Tarion Cash Collateral Order (with some procedural amendments to the version that was served in draft on March 19, 2019, discussed below),
  - b. the Purchase Price Adjustment Approval Order; and
  - c. the March Fee Approval Order (with the addition of the approval of the fees and disbursements of Real Estate Counsel, discussed below).

## 2.0 TARION CASH COLLATERAL AND WARRANTY ISSUES

### *Deferral of Tarion Cash Collateral Order*

9. As described in detail in Section 4.0 of the Eighth Report, the only remaining amounts payable to Travelers under the seventh tier of the Distribution Waterfall are in respect of cash collateral required be paid to secure the Tarion Bond, in the current amount of \$702,257.23 (the "**Bond Amount**").
10. In late 2018 and early 2019, the Construction Receiver, Tarion, Travelers and Terra Firma came to an agreement whereby the Construction Receiver would pay the Bond Amount (which, absent such agreement, is Travelers' entitlement under the seventh tier of the Distribution Waterfall) and Tarion's entitlement under the Distribution Waterfall on account of the Tarion Charge Amount (as defined in the Settlement Approval Order), in the aggregate amount of \$1.1 million, directly to Tarion as cash collateral (such \$1.1 million, the "**Tarion Cash Collateral**"). This arrangement would allow Travelers to terminate the Tarion Bond, without prejudice to Tarion, and entitle Tarion to access the Tarion Cash Collateral pursuant to Court order.
11. The Construction Receiver sought Court approval of this payment arrangement, because it is a deviation from the distribution required by the Distribution Waterfall.
12. Subsequent to filing the Eighth Report, Terra Firma raised concerns with the treatment and payment of certain costs incurred by Tarion, described further

below. As a result of these new Tarion costs, Terra Firma's concerns about them and their potential impact on the calculation of the Tarion Cash Collateral amount, the Construction Receiver elected to defer its request for the Tarion Cash Collateral Order, pending further discussions with Tarion and Terra Firma.

*Tarion Costs*

13. Since closing, Tarion has received a number of claims from Leslieville Purchasers to remediate deficiencies that are, in Tarion's view, covered by the Ontario New Home Warranty Plan. Tarion's costs incurred in respect of this work were submitted to Travelers in the form of a draw on the Tarion Bond, Travelers funded Tarion, and then Travelers submitted a claim to the Construction Receiver to be compensated.
14. To date, \$70,282.77 has been funded to Travelers on account of these Tarion costs (the "**Funded Tarion Costs**"), and an additional \$41,454.09 has been claimed from Travelers by Tarion, but has not yet been funded by Travelers (the "**Pending Tarion Costs**"), together with the Funded Tarion Costs and any other amounts claimed prior to April 17, 2019, the "**Tarion Costs**").
15. The Construction Receiver understands that Tarion's view is that, pursuant to the terms of the Settlement Approval Order, until the Bond Amount is paid to Travelers and the Tarion Charge Amount is paid to Tarion, or the Tarion Cash Collateral is paid to Tarion, the Tarion Costs, and any subsequent costs incurred by Tarion under the Ontario New Home Warranty Plan, are chargeable to Travelers under the Tarion Bond, and subsequently payable to Travelers out of the UC Leslieville estate without a corresponding reduction of the aggregate amount of the Tarion Cash Collateral.
16. The Construction Receiver understands that Terra Firma disputes Tarion's entitlement to be paid the Tarion Costs without a reduction of the Tarion Cash Collateral amount.
17. Terra Firma has advised the Construction Receiver and Tarion that it intends to bring a motion to determine the appropriate treatment of the Tarion Costs. The Construction Receiver will provide the Court with its views on any such motion if and when materials are filed.
18. In the interim, following discussions with Tarion and Terra Firma, the Construction Receiver understands that the parties are in agreement with the payment of the Tarion Cash Collateral to Tarion, on the terms of the order attached to the Construction Receiver's Supplemental Motion Record, dated April 12, 2019 (the "**Supplemental Motion Record**") as Tab 6.
19. Payment of the Tarion Cash Collateral to Tarion at this time will prevent any future Tarion costs from coming out of the UC Leslieville estate by requiring Tarion to fund such costs out of the Tarion Cash Collateral, which will mean that

only the existing Tarion Costs (as defined and quantified above) will be at issue between Terra Firma and Tarion.

20. In order to preserve Terra Firma's right to challenge the treatment of the Tarion Costs, the Construction Receiver is requesting an endorsement to be made that the terms of the Tarion Cash Collateral Order are without prejudice to Terra Firma seeking or obtaining an order on a subsequent motion that all or a portion of the Tarion Costs ought to be refunded to the Construction Receiver.

*Urgency of Payment of Tarion Cash Collateral*

21. The Construction Receiver has been provided with twenty-nine (29) statutory warranty year-end forms that were submitted to Tarion by Leslieville Purchasers, and understands that up to seventeen (17) more could be received before the end of April, and a further nine (9) between May 1 and August 10.
22. These year-end forms detail deficiency claims that Leslieville Purchasers are seeking to be remediated by Tarion. Each are subject to review and confirmation by a Tarion inspector, but the volume of forms indicates to the Construction Receiver that potentially significant additional Tarion costs may be pending. It is critical that the Tarion Cash Collateral be transferred prior to those costs being incurred, to avoid them depleting the UC Leslieville estate's resources. Tarion does not object to the crystallization of these amounts and the payment of the Tarion Cash Collateral, notwithstanding Terra Firma's stated intention to challenge the treatment of the Tarion Costs.

*Payment of Pending Tarion Costs*

23. As discussed above, \$41,454.09 of the total Tarion Costs have been claimed by Tarion from Travelers, but not yet funded by Travelers. Should this Court direct the Construction Receiver to pay the Tarion Cash Collateral to Tarion, Travelers will be able to terminate the Tarion Bond and will have no further interest in these Receivership Proceedings. Consistent with that, the Construction Receiver is seeking an order directing it to pay the Pending Tarion Costs directly to Tarion, to avoid the money having to unnecessarily go through Travelers.
24. The Construction Receiver has discussed the payment of the Pending Tarion Costs directly to Tarion with Terra Firma, Travelers and Tarion, and understands that the three parties consent, without prejudice to Terra Firma seeking a subsequent order that all or a portion of the Tarion Costs ought to be returned to the Construction Receiver.

*Administration of Tarion Warranty Claims*

25. The Construction Receiver, Tarion and Terra Firma have continued to discuss the appropriate protocol for the review, assessment and administration of claims by Leslieville Purchasers against the Ontario New Home Warranty Plan, with the

goal of ensuring that claims are dealt with as efficiently and effectively as possible. The Construction Receiver will update the Court on any developments in this regard at the return of its motion on April 17, 2019.

### 3.0 LESLIEVILLE PURCHASE PRICE ADJUSTMENT APPROVAL

26. The Substituted Service Order provides that service on each of the Unrepresented Purchasers of any court material in these Receivership Proceedings by way of email to the last known email address for each such Unrepresented Purchaser shall be good and sufficient service of such court material on each such Unrepresented Purchaser.
27. On March 18, 2019, Unrepresented Purchasers were provided, at their last known email addresses, with the Construction Receiver's motion record, which included the Eighth Report, the Supplementary Report and the draft order containing the Purchase Price Adjustment Approval Order language. To the extent the Construction Receiver or Real Estate Counsel had email contact information for the real estate counsel that such Unrepresented Purchasers used to close on the Leslieville Units, those real estate counsel were also provided with the Construction Receiver's court materials on March 18, 2019.
28. On April 9, 2019, the Construction Receiver's Independent Counsel sent a letter to Unrepresented Purchasers (the "**Notice Letter**") at their last known email addresses, advising that the Construction Receiver would be seeking the Purchase Price Adjustment Approval Order on April 17, 2019. The Notice Letter included the Supplemental Report, and a draft order. This email was sent at approximately 7:15 p.m. on April 9, 2019, and accordingly pursuant to the language in the Substituted Service Order was deemed to be delivered on April 10, 2019. A copy of the Notice Letter is attached hereto as **Appendix "A"**.
29. The Construction Receiver did not receive any objections from Unrepresented Purchasers following its notification to them of its intent to seek the Purchase Price Adjustment Approval Order on March 18, 2019. As of the date of this Second Supplemental Report, the Construction Receiver has been contacted by real estate counsel to one Unrepresented Purchaser, who had a number of questions about the relief requested and the Receivership Proceedings generally, which questions were answered by the Construction Receiver's Independent Counsel. No Unrepresented Purchasers, or other representatives thereof, have contacted the Construction Receiver or its counsel regarding the relief requested.
30. In the Construction Receiver's view, for the reasons set out in the Supplemental Report, it is appropriate and in the best interest of the UC Leslieville stakeholders generally for the Court to grant the Purchase Price Adjustment Approval Order, which will approve all purchase price adjustments charged on the closing of the Leslieville Units, other than the Park Levy.

#### **4.0 PARK LEVY DISPUTE**

31. On March 26, 2019, the Construction Receiver advised the Court that discussions were ongoing among Shibley Righton and Terra Firma regarding the resolution of Shibley Righton's motion (on behalf of certain Leslieville Purchasers) challenging the Park Levy. The parties also raised with the Court certain concerns about a potential conflict of interest of Shibley Righton.
32. The Court scheduled time on April 17, 2019 to hear and adjudicate on the potential conflict of interest, and June 4, 2019 to hear and adjudicate the challenge to the Park Levy.
33. Since March 26, 2019, the Construction Receiver has had discussions with Shibley Righton and Terra Firma, and can report that the issues surrounding the potential conflict of interest have been settled. The Construction Receiver does not object to Shibley Righton's involvement with the resolution of the Park Levy, provided that one former employee of Miller Thomson who now works at Shibley Righton will be walled-off from the file. Shibley Righton has agreed to this, and accordingly there will be no need for an adjudication of the issue on April 17, 2019.
34. The Construction Receiver is working with Shibley Righton and Terra Firma to make requested disclosure and set timelines for the delivery of documents, in order that the matter of the Park Levy dispute can be heard on June 4, 2019, as scheduled.

#### **5.0 FEE APPROVAL**

35. In the Eighth Report, the Construction Receiver sought approval of its fees and those of its counsel Blake Cassels & Graydon LLP and Gowlings WLG (Canada) LLP in connection with the performance of their duties in the Receivership Proceedings for the nine (9) month period from May 1, 2018 to January 31, 2019. As the Eighth Report states, the Construction Receiver was not seeking the approval of Real Estate Counsel fees and disbursements on March 26, 2019, and would do so at a later date.
36. All of the relevant dockets (redacted to protect privileged, confidential or personal information), summaries of accounting and legal professionals and summaries and averages of fees have been served on the service list and filed with the Court in the Construction Receiver's Fee Compendium, dated March 20, 2019.
37. Prior to the hearing of the Construction Receiver's motion on March 26, 2019, counsel to Terra Firma expressed to the Construction Receiver that it required more time to review the relevant invoices and sought the Construction Receiver's consent to adjourn the March Fee Approval Order. The Construction Receiver consented.

38. Since the adjournment of the March Fee Approval Order, the Construction Receiver has obtained the affidavit of Ron Fairbloom, sworn March 27, 2019 (the "**Fairbloom Affidavit**"), in respect of the fees and disbursements of Real Estate Counsel. The Fairbloom Affidavit sets out a summary which identifies the legal professionals who worked on the Receivership Proceedings, including year of call, hourly rates, total fees and hours billed. This summary indicates that combined total hours worked for the applicable period were 305.4, which computes to a combined average hourly rate of \$293.67. A copy of the Fairbloom Affidavit is attached hereto as **Appendix "B"**.
39. As reflected in the Real Estate Counsel invoice dated November 23, 2018 (Number 3258448), attached to the Fairbloom Affidavit, the services provided to close the sale of the 55 Leslieville Units were provided on a flat rate of \$750.00 per Leslieville Unit (for a total of \$41,250), plus additional flat rates on a per-unit basis for closing-related issues such as administering deposits, preparing status certificates and attending to title insurance issues. Accordingly, \$67,550 of the fees charged by Real Estate Counsel during the applicable fee period were flat-rate fees, charged irrespective of the actual time spent on each closing. This means that 75% of the total fees of \$89,685.50 charged for the applicable fee period were flat rate fees. The Construction Receiver believes that this represents good value for the UC Leslieville estate and its stakeholders.
40. A copy of the Fairbloom Affidavit was provided to counsel to Terra Firma on April 1, 2019.
41. At this time, the Construction Receiver is seeking approval of:
  - a. Construction Receiver in the amount of \$392,314.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019;
  - b. Independent Counsel (Blakes) in the amount of \$136,501.30, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019;
  - c. Construction Receiver's Counsel (Gowlings) in the amount of \$39,679.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019; and
  - d. Construction Receiver's Real Estate Counsel (Miller Thomson) in the amount of \$89,685.50, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019.
42. All of the foregoing professional fees have been reported to secured creditors on an ongoing basis both as part of the Construction Receiver's monthly update on interim receipts and disbursements and accrued commitments, and as part of the Construction Receiver's periodic updates to its Distribution Waterfall analysis.



43. The Construction Receiver is of the 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.

## **6.0 FORM OF ORDERS**

44. All of the orders sought by the Construction Receiver at the return of its motion on April 17, 2019 were requested in its March 18, 2019 motion record, other than the direction to pay Tarion the Pending Tarion Costs and the approval of Real Estate Counsel's fees.
45. Attached as Tab 3 to the Supplemental Motion Record is a blackline of the order seeking the approval of the Leslieville Purchase Price Adjustments and the approval of the Construction Receiver's and its counsels' fees, compared against the version of that order served by the Construction Receiver in its March 18, 2019 motion record at Tab 4. A clean version of this approval order, which the Construction Receiver will be seeking on April 17, 2019, is attached to the Supplemental Motion Record at Tab 4.
46. Attached as Tab 5 to the Supplemental Motion Record is a blackline of the order seeking approval of the payment of the Tarion Cash Collateral and payment of the Pending Tarion Costs, compared against the Tarion Cash Collateral Order served by the Construction Receiver in its March 18, 2019 motion record at Tab 5. A clean version of this order, which the Construction Receiver will be seeking on April 17, 2019, is attached to the Supplemental Motion Record at Tab 6.

## **7.0 CONCLUSION**

47. The Construction Receiver requests that this Court grant the orders, substantially in the form originally sought by the Construction Receiver in its March 18, 2019 motion record and in the form attached to this Second Supplementary Report:
  - a. authorizing and directing the Construction Receiver to pay certain amounts to Tarion as cash collateral, which would otherwise be payable to Travelers pursuant to the Settlement Approval Order, to be held by Tarion pending the expiry of certain warranty periods;
  - b. declaring that the Leslieville Purchase Price Adjustments (excluding the Park Levy) are accurate and binding as between the Construction Receiver and Leslieville Purchasers; and
  - c. approving the fees and disbursements of:
    - (i) the Construction Receiver for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;

- (ii) the Construction Receiver's independent counsel Blake, Cassels & Graydon LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019;
  - (iii) the Construction Receiver's counsel Gowling WLG (Canada) LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019; and
  - (iv) the Construction Receiver's Real Estate Counsel Miller Thomson LLP for the nine (9) month period of May 1, 2018 through to and including January 31, 2019.
48. Additionally, the Construction Receiver requests that this Court grant an order directing it to pay \$41,454.09 to Tarion on account of the Pending Tarion Costs, without prejudice to the right of Terra Firma to challenge the payment of such costs.

[Signature on Next Following Page]

All of which is respectfully submitted, this 12<sup>th</sup> day of April 2019.

**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



Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trade-mark Agents  
 199 Bay Street  
 Suite 4000, Commerce Court West  
 Toronto ON M5L 1A9 Canada  
 Tel: 416-863-2400 Fax: 416-863-2653

April 9, 2019

**VIA E-MAIL**

**Chris Burr**

Partner

Dir: 416-863-3261

chris.burr@blakes.com

Reference: 00099766/000003

Unrepresented Urbancorp Leslieville Purchasers

RE: Urbancorp Leslieville Townhomes

Re: Court Approval of Purchase Price Adjustments

---

Dear Unrepresented Urbancorp Leslieville Purchasers:

On March 18, 2019, you were emailed a copy of the motion record (the "**Motion Record**") of Alvarez & Marsal Canada Inc., in its capacity as receiver and manager and construction lien trustee of the assets, undertakings and property of, among other companies, Urbancorp (Leslieville) Developments Inc. (in such capacity, the "**Construction Receiver**"). A copy of the Motion Record can be found here: [https://www.alvarezandmarsal.com/sites/default/files/canada/motion\\_record\\_of\\_the\\_construction\\_receiver\\_returnable\\_march\\_26\\_2019\\_volume\\_1.pdf](https://www.alvarezandmarsal.com/sites/default/files/canada/motion_record_of_the_construction_receiver_returnable_march_26_2019_volume_1.pdf)

The notice of motion contained at Tab 1 of the Motion Record advised that on March 26, 2019, the Construction Receiver would be seeking, among other things, an order permitting the Construction Receiver to serve court material on "Unrepresented Purchasers" of the Urbancorp Leslieville units by email (the "**Service Order**"), and an order approving all of the purchase price adjustments charged by the Construction Receiver upon closing of the Urbancorp Leslieville units, other than the Park Levy (the "**Purchase Price Adjustment Approval Order**").

On March 26, 2019, the Court granted the Service Order. A copy is attached.

The motion to obtain the Purchase Price Adjustment Approval Order was adjourned by the Court, pending further notice to the Unrepresented Purchasers, including yourself. This letter is to notify you that the Construction Receiver will be attending Court at 330 University Avenue, Toronto, Ontario (8<sup>th</sup> Floor) at 10:00 am on Wednesday, April 17, 2019 to seek the granting of the Purchase Price Adjustment Approval Order.

The Construction Receiver will be relying on the Supplement to the Eighth Report, dated March 18, 2019 (the "**Supplemental Report**"), which was provided to you on March 18, 2019 as Tab 3 of the Motion Record. A copy of the Supplemental Report is also included with the email to which this letter is attached, and can be found here:

23623806.1



[https://www.alvarezandmarsal.com/sites/default/files/canada/construction\\_receivers\\_-\\_supplement\\_eighth\\_report.pdf](https://www.alvarezandmarsal.com/sites/default/files/canada/construction_receivers_-_supplement_eighth_report.pdf)

A draft of the order that will be sought by the Construction Receiver on April 17, 2019 is attached to this letter.

You are receiving this letter because you have been identified by the Construction Receiver as a purchaser of one or more units at the Urbancorp Leslieville project, but have not filed a notice in the Urbancorp receivership proceedings indicating that you have a lawyer. If you do have a lawyer in this matter, kindly forward this email to them and ask them to contact me.

Please don't hesitate to contact me if you have any questions.

Best regards,

per Caitlin McEntyre

Chris Burr

BUR  
Encl.

c. T. Zaspalis

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 26<sup>th</sup>  
RSJ MORAWETZ ) DAY OF MARCH, 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: SUBSTITUTED SERVICE AND APPROVAL OF LIEN SETTLEMENTS &  
PURCHASE PRICE ADJUSTMENTS)**

**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 approvals as set out herein, was heard this day in Toronto, Ontario.

**ON READING** the Notice of Motion dated March 18, 2019, the Seventh Report of the Construction Receiver dated October 5, 2018 (the “**Seventh Report**”), the Eighth Report of the Construction Receiver dated March 18, 2019 (the “**Eighth Report**”), the Supplement to the Eighth Report of the Construction Receiver dated March 18, 2019 (the “**Supplemental 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 March 20, 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.

### **APPROVAL OF LIEN SETTLEMENTS AND DISTRIBUTIONS**

#### *Leslieville Project Lien Settlement*

2. **THIS COURT ORDERS** that the lien settlement amount agreed to by the Vetting Committee (as defined in the Eighth Report) and Lido Construction Inc. (“**Lido**”) against the Respondent UC Leslieville’s construction project located in the Leslieville neighbourhood of Toronto, as set out in Paragraph 24 of the Eighth Report, is 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 amount of \$58,691.18 to Lido from the \$200,000 holdback reserve established by the Construction Receiver in respect of the Leslieville Project (the “**Leslieville Holdback Reserve**”) in accordance with Paragraph 57 of the Order of Mr. Justice Newbould (Settlement Approval Order: RE: Leslieville Project), dated May 2, 2017 (as amended, the “**Settlement Approval Order**”) and Paragraph 3 of the Order of Mr. Justice Penny (RE: Approving Lien Settlements, etc.), dated October 11, 2018 (the “**October 11 Order**”).



4. **THIS COURT ORDERS** that following the distribution provided for in Paragraph 3 hereof, the Construction Receiver shall be under no further obligation to maintain the Leslieville Holdback Reserve, and any amounts remaining after the distribution provided for in Paragraph 3 hereof shall be distributed by the Construction Receiver in accordance with Paragraph 55 of the Settlement Approval Order.

*Beach Project Lien Settlement*

5. **THIS COURT ORDERS** that the lien settlement amount agreed to by the Vetting Committee (as defined in the Eighth Report) and Lido against the Respondent UC Beach's construction project located in The Beach neighbourhood of Toronto, as set out in Paragraph 24 of the Eighth Report, is 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.

6. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the amount of \$71,811.32 to Lido from the \$120,000 holdback reserve established by the Construction Receiver in respect of the Beach Project (the "**Beach Holdback Reserve**") in accordance with Paragraph 5 of the October 11 Order.

7. **THIS COURT ORDERS** that following the distributions provided for in Paragraph 6 hereof, the Construction Receiver shall be under no further obligation to maintain the Beach Holdback Reserve, and any amounts remaining after the distribution provided for in Paragraph 6 hereof shall be distributed by the Construction Receiver in accordance with Paragraph 55 of the Settlement Approval Order.

**APPROVAL OF LIEN CLAIMANTS BALANCE CLAIMS**

8. **THIS COURT ORDERS AND DECLARES** that the Lien Claimants Balance Claims (as defined in the Settlement Approval Order) for each Lien Claimant (as defined in the Settlement Approval Order) shall be in the amount set out in paragraph 32 and Appendix "A" of the Eighth Report.

## **DISCLOSURE AND SERVICE ON UNREPRESENTED LESLIEVILLE PURCHASERS**

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection Act and Electronic Documents Act*, if applicable, the Construction Receiver is hereby authorized to disclose the contact information of purchasers of units of the Leslieville Project in respect of whom a Notice of Appearance or Notice of Change of Lawyer has not been filed in these proceedings (the “**Unrepresented Purchasers**”), including names, last known e-mail addresses, alternative e-mail addresses provided to the Construction Receiver or its counsel, and mailing addresses (if necessary), to any interested party who may request such information from the Construction Receiver for the purposes of serving materials in these proceedings.

10. **THIS COURT ORDERS** that service on each of the Unrepresented Purchasers of any court material in this proceeding by way of e-mail to the last known email address for each such Unrepresented Purchaser based on the records of the Construction Receiver’s counsel, Miller Thomson LLP, or to an alternative e-mail address provided by an Unrepresented Purchaser to the Construction Receiver in writing, shall be good and sufficient service of such court material on each such Unrepresented Purchaser.

11. **THIS COURT ORDERS** that email service in accordance with paragraph 10 above shall be effective immediately upon delivery of such email, or, if delivered after 5:00 p.m. Toronto time, shall be effective the next business day thereafter.

12. **THIS COURT ORDERS** that any Unrepresented Purchaser who does not wish to be subject to paragraphs 9 through 11 of this Order may advise the Construction Receiver in writing (either directly by such Unrepresented Purchaser or through counsel) of the name and contact information of its counsel, following receipt of which counsel information by the Construction Receiver, service of any court material in this proceeding may be made on such Unrepresented Purchaser by duly serving such Unrepresented Purchaser’s counsel.

## **APPROVAL OF INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

13. **THIS COURT ORDERS** that the Construction Receiver’s Interim R&D Statement (as defined in the Eighth Report) is hereby approved.

**ACTIVITY APPROVAL**

14. **THIS COURT ORDERS** that the activities and conduct of the Construction Receiver occurring prior to the date hereof in relation to the Respondents and these proceedings, as are further particularized in the Seventh Report and Eighth Report, are hereby ratified and approved, provided, however, that only the Construction Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**MICELLANEOUS**

15. **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 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 and its agents, 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.



CM CHIBA, Registrar  
Superior Court of Justice

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

MAR 27 2019

330 UNIVERSITY AVE. 330 AVE. UNIVERSITY  
7TH FLOOR 7E ÉTAGE  
TORONTO, ONTARIO TORONTO, ONTARIO  
M5G 1R7 M5G 1R7

PER / PAR: *A.E.*

**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: SUBSTITUTED SERVICE AND  
APPROVAL OF LIEN SETTLEMENTS  
& PURCHASE PRICE ADJUSTMENTS)**

**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.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 17<sup>th</sup>  
 )  
RSJ MORAWETZ ) DAY 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: APPROVAL OF PURCHASE PRICE ADJUSTMENTS)**

**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., for an order granting certain approvals as set out 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 Supplement to the Eighth Report of the Construction Receiver dated March 18, 2019 (the “**Supplemental 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 affidavits of service of Caitlin McIntyre sworn March 20, 2019 and April [10], 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.

**APPROVAL OF LESLIEVILLE PURCHASE PRICE ADJUSTMENTS**

2. **THIS COURT ORDERS AND DECLARES** that the Leslieville Purchase Price Adjustments (as defined in the Supplemental Report), other than the Park Levy (as defined in the Supplemental Report), in the amounts set out in Appendix A to the Supplemental Report are hereby approved, and such amounts shall be final and binding as against the purchasers of the Leslieville Project units to whom they were charged.

**MISCELLANEOUS**

3. **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 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 and its agents, 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.

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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

**ORDER**

**(RE: APPROVAL OF PURCHASE PRICE  
ADJUSTMENTS)**

**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.

# APPENDIX B



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

**AFFIDAVIT OF RONALD FAIRBLOOM  
(sworn March 27, 2019)**

I, RONALD FAIRBLOOM, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner of the law firm Miller Thomson LLP ("**MT**"), the lawyers for 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 (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**"), and as such have knowledge of the matters to which I hereinafter depose.

2. MT was retained by the Construction Receiver to provide legal advice in connection with, among other things; (i) preparing and revising an agreement of purchase and sale and condominium disclosure documents required for both the original purchasers who may opt-in and any new purchasers of units in the proposed condominium located at 50 Curzon Street, Toronto, Ontario; (ii) preparing, completing and sending out the individual purchaser packages containing a settlement notice letter, an executed copy of the agreement of purchase and sale and condominium disclosure documents; (iii) registering the condominium; and (iv) completing the closings of the individual units therein.

3. The Order dated May 31, 2016 appointing the Construction Receiver (the “**Appointment Order**”) provides that the Construction Receiver and its legal counsel shall pass their accounts from time to time, and further provides that the Construction Receiver and its counsel shall be paid their reasonable fees and expenses at their standard rates and charges.

**Period of May 4, 2018 to January 31, 2019**

4. Attached hereto and marked as Exhibit “A” to this my Affidavit is a full copy of the account rendered by MT to the Construction Receiver, as referred to in paragraph 4 above as follows:

- Account dated June 30, 2018 as Invoice Number 3206733 in the amount of \$777.12 (inclusive of fees, disbursements and taxes);
- Account dated August 31, 2018 as Invoice Number 3228606 in the amount of \$510.48 (inclusive of fees, disbursements and taxes);
- Account dated November 23, 2018 as Invoice Number 3258420 in the amount of \$20,905.00 (inclusive of fees, disbursements and taxes);
- Account dated November 23, 2018 as Invoice Number 3258448 in the amount of \$82,847.64 (inclusive of fees, disbursements and taxes);
- Account dated November 30, 2018 as Invoice Number 3267323 in the amount of \$1,148.08 (inclusive of fees, disbursements and taxes);
- Account dated November 30, 2018 as Invoice Number 3267354 in the amount of \$649.75 (inclusive of fees, disbursements and taxes); and
- Account dated January 31, 2019 as Invoice Number 3296664 in the amount of \$1,175.20 (inclusive of fees and taxes).

5. Attached hereto as Exhibit "B" is a summary of additional information with respect to MT's accounts, indicating all members of MT who have worked on this matter, their year of call to the bar, total time charges and hourly rates. I hereby confirm that this list represents a fair and accurate account of such information.

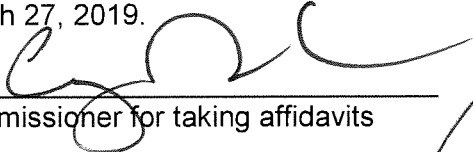
6. Attached hereto as Exhibit "C" is a summary of each invoice with respect to MT's accounts, indicating all fees, disbursements and HST incurred. I hereby confirm that this list represents a fair and accurate account of such information.

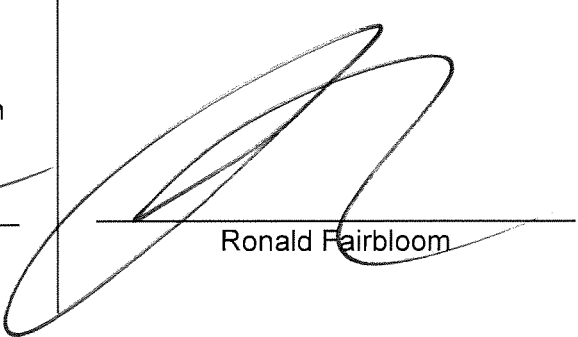
7. Miller Thomson requests that this Honourable Court approve its fees and disbursements as counsel to the Construction Receiver for the period referenced above.

8. To the best of my knowledge, the rates charged by MT are comparable to the rates charged for the provision of similar services by other legal firms in the Toronto market.

9. This Affidavit is sworn in connection with a motion by the Construction Receiver to have, among other things, the fees, taxes and disbursements of its counsel, Miller Thomson LLP, in relation to these proceedings approved by this Honourable Court, and for no improper purpose.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario on  
March 27, 2019.

  
\_\_\_\_\_  
Commissioner for taking affidavits

  
\_\_\_\_\_  
Ronald Fairbloom

This is Exhibit "A" referred to in the affidavit  
of Ronald Fairbloom, sworn before me  
this 27<sup>th</sup> day of March, 2019



---

**A COMMISSIONER FOR TAKING AFFIDAVITS**



**MILLER THOMSON**  
AVOCATS | LAWYERS

MILLER THOMSON LLP  
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**June 30, 2018**

Invoice Number 3206733

Alvarez Marsal Canada Inc., in its capa  
200 Bay Street  
Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

Re: **Ubancorp - Leslieville - condo development**  
**Our File No. 0220330.0001**

Date	Initials	Description	Hours
05/04/2018	PW	Receive instructions; updated PIN; save to system and e-mail a copy to R. Fairbloom, as requested.	0.20
06/12/2018	RF	Call with Tony Zaspalis re Suite 525	0.30
06/13/2018	RF	Call with Tony Zaspalis re Suite 525	0.20
06/14/2018	RF	Call with Lisa S. Come of Dickenson Wright [REDACTED] [REDACTED] Call with Tony Zaspalis re same	0.50
<b>Total Hours</b>			<b>1.20</b>

**Our Fee:** 635.00

TK ID	Initials	Name	Title	Rate	Hours	Amount
02560	PW	P. Watson	Paraprofession al	\$147.80	0.20	\$29.56
00976	RF	R. Fairbloom	Partner	\$605.44	1.00	\$605.44

Please return the Account Summary and Remittance Form with your payment.  
Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be  
charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.



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Page 2

Invoice 3206733

<b>Taxable Disbursements</b>		
Land Registry Office Searches	38.10	
Delivery	14.62	
<b>Total Taxable Disbursements</b>	<u>52.72</u>	<b>\$52.72</b>
<b>Total Fees and Disbursements</b>		<b>\$687.72</b>
<b>Ontario HST 13% (R119440766)</b>		
On Fees		\$82.55
On Disbursements		\$6.85
<b>Total Amount Due</b>		<u><u><b>\$777.12</b></u></u>
E & O.E.		

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**August 31, 2018**

Invoice Number 3228606

Alvarez Marsal Canada Inc., in its capa  
200 Bay Street  
Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

Re: **Ubancorp - Leslieville - condo development**  
**Our File No. 0220330.0001**

Date	Initials	Description	Hours
07/04/2018	RF	Call with Tony Zaspalis [REDACTED]	0.40
07/04/2018	RF	Prepared a draft email to be sent by Tony Zaspalis [REDACTED], based on Tony's discussion with Vince yesterday.	0.30
<b>Total Hours</b>			<b>0.70</b>

**Our Fee:** **444.50**

TK ID	Initials	Name	Title	Rate	Hours	Amount
00976	RF	R. Fairbloom	Partner	\$635.00	0.70	\$444.50

**Taxable Disbursements**

Delivery	7.25	
<b>Total Taxable Disbursements</b>	<b>7.25</b>	<b>\$7.25</b>

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Page 2

Invoice 3228606

<b>Total Fees and Disbursements</b>	<b>\$451.75</b>
<b>Ontario HST 13% (R119440766)</b>	
On Fees	\$57.79
On Disbursements	\$0.94
<b>Total Amount Due</b>	<b><u>\$510.48</u></b>
E.&O.E.	

Please return the Account Summary and Remittance Form with your payment.  
Terms: Accounts due when rendered. Interest at the rate of 12 5/8% per annum will be  
charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.





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November 23, 2018

Invoice Number 3258420

Alvarez & Marsal Canada Inc. in its capacity as  
Court Appointed Receiver, Manager & Construction  
Lien Trustee of Urbancorp (Leslieville) Developments Inc.  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

Re: **Unit Sales**  
**Our File No. 0226784.0002**

Date	Initials	Description	Hours
04/10/2018	SK	Attending to preparation of reporting of post-dated cheques and certified funds including preparation of lists of units and occupancy fees and pro-rated occupancy fees for the month of closing;	2.50
04/17/2018	SK	Attending to preparation of reporting of post-dated cheques and certified funds including preparation of lists of units and occupancy fees and pro-rated occupancy fees for the month of closing;	4.00
09/18/2018	SK	Preparation of final closing notification to purchasers' solicitors;	2.00
10/02/2018	RF	Call with Tony Zaspalis and Chris Burr re the purchase agreement for the Geothermal Unit, closings, statements of adjustments, and the notarial copies of the Settlement Approval Order.	0.20
10/02/2018	RF	Meeting with Sharmilaa Kanthavel to review parking unit allocations based on Amanda's list and what we have in our system.	1.00
10/03/2018	LS	Email from Ron Fairbloom; prepare Application to	1.00

Please return the Account Summary and Remittance Form with your payment  
Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be  
charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.



Date	Initials	Description	Hours
		register court order against all condominium units, including Authorization;	
10/04/2018	LS	Continuing work in completing Application re court order, compile Acknowledgment with the Application and court order and e-mail to Ron Fairbloom forwarding document to arrange execution;	1.00
10/04/2018	SK	Review and correspondences with the client regarding parking and storage units allocation;	6.00
10/10/2018	RF	Conference call with Tony Zaspalis, Peter Griffis, and Helen Pedro re the statements of adjustments and closings.	1.60
10/11/2018	RF	Call to Dickinson Wright LLP re their legal fees for the Ad Hoc Purchasers. Email to David Preger or Lisa Corne of Dickinson Wright LLP re same. Numerous calls with Tony Zaspalis re the Dickinson Wright fees. Several call with David Prefer re same. Meeting with Sharmilaa Kanthavel re the statement of adjustments.	2.20
10/11/2018	LS	Receive executed Acknowledgment; complete registration of the Application to register court order and provide registered copy to Ron Fairbloom;	0.60
10/12/2018	RF	Prepared for closings. Numerous discussions and meetings with Sharmilaa Kanthavel re the closing documents and statements of adjustments. Numerous calls with Tony Zaspalis. Calls with Peter Griffis. Received numerous emails from purchaser's lawyers.	5.00
10/12/2018	SK	Attending to preparation of closings and revision and preparation of Statement of Adjustments including preparation of calculation of utility charges and taxes based on percentage Contribution;	12.50
10/15/2018	RF	Worked with Sharmilaa Kanthavel to prepare closing adjustments. Numerous discussions with Tony Zaspalis. Numerous emails and calls with purchaser's lawyers.	4.00
10/15/2018	SK	Attending to preparation for closings, including numerous revision of statement of adjustments and closing documents;	10.50

Please return the Account Summary and Remittance Form with your payment.  
 Terms: Accounts due when rendered. Interest at the rate of 12 6% per annum will be charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.



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Page 3

Invoice 3258420

Date	Initials	Description	Hours
10/16/2018	RF	Reviewed and revised the draft schedule to the Transfer, referencing the Settlement Approval Order and setting out the list of encumbrances to be deleted.	0.70
10/17/2018	RF	Received and reviewed numerous emails from purchaser's lawyers. Conference call with Peter Griffis, Helen Pedro and Tony Zaspalis re utility connection fees, park land levies, extensions and back up for adjustments.	2.00
10/17/2018	RF	Dealt with numerous closing issues. Numerous emails and discussions with Tony Zaspalis. Numerous meeting with Sharmilaa Kanthavel and Veronica Gavriellov re the closing.	3.00
10/18/2018	RF	Dealt with various closing issues. Numerous discussions with purchasers' lawyers. Drafted a response to numerous emails, including emails re the adjustments, including park land and utilities. Discussions with Tony Zaspalis re closings. Discussions with Peter Griffis.	6.00
10/30/2018	SK	Attending to reporting to client regarding HST application and HST amount collected; attending to payout of commission and Dickinson Wright legal fees and return of overpayment of closing funds;	5.00
<b>Total Hours</b>			<b>70.80</b>

<b>Our Standard Fee:</b>	<b>\$30,775.50</b>
Less Discount	(12,275.50)
<b>Our Fee:</b>	<b>18,500.00</b>
<b>Ontario HST 13% (R119440766) On Fees</b>	<b>\$2,405.00</b>
<b>Total Amount Due</b>	<b><u>\$20,905.00</u></b>

Please return the Account Summary and Remittance Form with your payment.  
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Page 4

Invoice 3258420

Transferred From Trust	\$20,905.00
Balance Owing:	<u>\$0.00</u>
E.&O.E.	

Please return the Account Summary and Remittance Form with your payment.  
Terms: Accounts due when rendered; interest at the rate of 12 0/100 per annum will be  
charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.

## TIME SUMMARY

TK #	TK NAME	TITLE	YOC	LOCATION	HOURS	WORKED RATE	WORKED AMOUNT	STANDARD AMOUNT	BILL AMOUNT	EDITS
02680	Cordiano, Natalie	Articling Student	0	Toronto	2.30	195.00	448.50	448.50	0.00	

## TIME SUMMARY

TK #	TK NAME	TITLE	YOC	LOCATION	HOURS	WORKED RATE	WORKED AMOUNT	STANDARD AMOUNT	BILL AMOUNT	EDITS
00976	Fairbloom, Ron	Partner	2001	Toronto	25.70	635.00	16,319.50	16,319.50	10,903.43	
02589	Kanthavel, Sharmilaa	Paraprofes sional	0	Toronto	47.00	239.95	11,277.50	11,277.50	6,814.86	
02189	McInnes, Lizann	Legal Assistant	0	Toronto	15.60	125.00	1,950.00	1,950.00	0.00	
02471	Semira, Lilian	Paraprofes sional	0	Toronto	2.60	300.00	780.00	780.00	521.14	
02676	Tinney, Scott	Articling Student	0	Toronto	2.00	195.00	390.00	390.00	260.57	

Total Fee:

95.20 31,165.50 31,165.50 18,500.00

Average Rate for Current Prebill

327.37 327.37

Tax on Fee (Ontario HST 13% (R119440766))

2,405.00

Total Fees

20,905.00



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T 416.595.8500  
F 416.595.8595

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November 23, 2018

Invoice Number 3258448

Alvarez & Marsal Canada Inc. in its capacity as  
Court Appointed Receiver, Manager & Construction  
Lien Trustee of Urbancorp (Leslieville) Developments Inc.  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

Re: **Unit Sales**  
**Our File No. 0226784.0002**

TO PROFESSIONAL SERVICES RENDERED with respect to the final closing of units/suites ("Suites") as described below, within the condominium, including the following:

To completing the final closing of the following Suites:

(55 Suites):  
Our Fee - 55 Suites @ \$750.00 per Suite \$41,250.00

To dealing with Deposit Administration/Form 4s.

Our Fee - 110 Form 4s @ \$50.00 per Form 4  
(amounts collected from Purchasers unless capped): \$5,500.00

To Title Insurance Enrolment Fees:

Our Fee - 55 @ \$200.00 per Suite  
(amounts collected from Purchasers unless capped): \$11,100.00

To preparation of Status Certificates:

Our Fee - 55 Suites @ \$100.00 per Suite  
(amounts collected from Purchaser unless capped): \$5,500.00

Please return the Account Summary and Remittance Form with your payment.  
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Page 2

Invoice 3258448

To additional Legal Fees re changes and/or extensions  
for Suites [REDACTED]

Our Fee (all amounts collected from Purchasers) \$3,000.00

To dealing with an Assignment for Suite [REDACTED]

Our Fee (all amounts collected from Purchasers) \$1,200.00

**TOTAL LEGAL FEES RE ABOVE: \$67,550.00**

Our Standard Fee: \$69,039.00

Less Discount (1,489.00)

Our Fee: 67,550.00

**Taxable Disbursements**

Taxi	215.39	
Service Fee	1,590.00	
Land Registry Office Searches	33.90	
Teraview Service Fee	11.98	
Delivèry	144.05	
Couriers	12.99	
Real Estate Levy Surcharge	3,575.00	
<b>Total Taxable Disbursements</b>	<b>5,583.31</b>	<b>\$5,583.31</b>

**Non-Taxable Disbursements**

Registration Fee	63.65	
Bank Charges	143.34	
<b>Total Non-Taxable Disbursements</b>	<b>206.99</b>	<b>\$206.99</b>

**Total Fees and Disbursements \$73,340.30**

**Ontario HST 13% (R119440766)**

On Fees \$8,781.50

On Disbursements \$725.84

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Page 3

Invoice 3258448

Total Amount Due	<u>\$82,847.64</u>
Transferred From Trust	\$82,847.64
Balance Owning:	<u>\$0.00</u>

E.&amp;O.E.

Please return the Account Summary and Remittance Form with your payment.  
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## TIME SUMMARY

TK #	TK NAME	TITLE	YOC	LOCATION	HOURS	WORKED RATE	WORKED AMOUNT	STANDARD AMOUNT	BILL AMOUNT	EDITS
00976	Fairbloom, Ron	Partner	2001	Toronto	40.60	635.00	25,781.00	25,781.00	25,225.04	
02687	Gavriellov, Veronica	Paraprofes	0	Toronto	32.50	240.00	7,800.00	7,800.00	7,631.76	

## TIME SUMMARY

TK #	TK NAME	TITLE	YOC	LOCATION	HOURS	WORKED RATE	WORKED AMOUNT	STANDARD AMOUNT	BILL AMOUNT	EDITS
02589	Kanthavel, Sharmilaa	Paraprofes	0	Toronto	147.50	240.00	35,400.00	35,400.00	34,636.45	
02477	Newbert, Chris	Associate	2016	Toronto	0.20	290.00	58.00	58.00	56.75	

Total Fee: 69,039.00  
Average Rate for Current Prebill 312.68  
Tax on Fee (Ontario HST 13% (R119440766)) 8,781.50  
**Total Fees 76,331.50**



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**November 30, 2018**

Invoice Number 3267323

Alvarez Marsal Canada Inc., in its capacity as Court Appointed Receiver( Urbancorp Leslieville  
Developments  
200 Bay Street  
Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

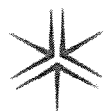
Re: **Ubancorp - Leslieville - condo development**  
Our File No. 0220330.0001

Date	Initials	Description	Hours
11/06/2018	RF	Reviewed an email from Tony Zaspalis [REDACTED] Prepared a draft response and sent same to Tony Zaspalis, Chris Burr and Peter Griffis to review.	1.00
11/23/2018	RF	Call with Tony Zaspalis re the closings and the release of funds, including his hold back to cover adjustments.	0.30
11/26/2018	RF	Call with Tony Zaspalis re reconciling trust funds. Email exchange with Tony re the registered Declaration.	0.30
<b>Total Hours</b>			<b>1.60</b>

**Our Fee: 1,016.00**

TK ID	Initials	Name	Title	Rate	Hours	Amount
00976	RF	R. Fairbloom	Partner	\$635.00	1.60	\$1,016.00

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**MILLER THOMSON**  
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Page 2

Invoice 3267323

**Ontario HST 13% (R119440766)**  
On Fees

\$132.08

**Total Amount Due**

\$1,148.08

E.&O.E.



**MILLER THOMSON**  
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MILLER THOMSON LLP  
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40 KING STREET WEST, SUITE 5800  
P.O. BOX 1011  
TORONTO, ON M5H 3S1  
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T 416.595.8500  
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**November 30, 2018**

Invoice Number 3267354

Alvarez & Marsal Canada Inc. in its capacity as  
Court Appointed Receiver, Manager & Construction  
Lien Trustee of Urbancorp (Leslieville) Developments Inc.  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

Re: **Leslieville - Condo Development**  
**Our File No. 0226784.0001**

Date	Initials	Description	Hours
10/23/2018	LK	Obtain Federal Bankruptcy certificate for Toronto Standard Condominium Corporation No. 2669 and provide same to L. Kaszuba;	0.10
10/23/2018	LK	Obtain updated Federal Bankruptcy certificate for Toronto Standard Condominium Corporation No. 2669 and provide same to L. Kaszuba;	0.10
10/30/2018	RF	Prepared a Reimbursement Agreement re the \$3,000 fee paid by the Receiver on behalf of the proposed condo corp. Sent a copy of same to Tony Zaspalis and Peter Griffis.	0.60
11/23/2018	LK	Separate original documents for record book and to send out original financing documents; prepare memo to S. Dutra regarding record book;	0.70
11/28/2018	SF	Arrange Turnover Meeting; telephone messages to J. McNabb and Audrey; telephone conference with Audrey (FSR);	0.60
11/30/2018	SF	Follow up with Turnover Meeting Date;	0.10

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Page 2

Invoice 3267354

<b>Total Hours</b>		<b>2.20</b>
<b>Our Fee:</b>		<b>500.00</b>
<b>Taxable Disbursements</b>		
Agent's Fees	75.00	
<b>Total Taxable Disbursements</b>	<u>75.00</u>	<b>\$75.00</b>
<b>Total Fees and Disbursements</b>		<b>\$575.00</b>
<b>Ontario HST 13% (R119440766)</b>		
On Fees		\$65.00
On Disbursements		\$9.75
<b>Total Amount Due</b>		<u><u><b>\$649.75</b></u></u>
E.&O.E.		

Please return the Account Summary and Remittance Form with your payment.  
 Terms: Accounts due when rendered. Interest at the rate of 12.0% per annum will be  
 charged on accounts overdue 30 days or more. Any disbursements not posted to your account on the date of this account will be billed later.

TIME SUMMARY

TK #	TK NAME	TITLE	YOC	LOCATION	HOURS	WORKED RATE	WORKED AMOUNT	STANDARD AMOUNT	BILL AMOUNT	EDITS
00976	Fairbloom, Ron	Partner	2001	Toronto	0.60	635.00	381.00	381.00	381.00	
01102	Fazel, Sakina	Associate	2014	Vaughan	0.70	310.00	217.00	217.00	217.00	
05919	Kaszuba, Linda	Paraprofes sional	0	Waterloo	0.70	165.00	115.50	115.50	115.50	
05790	Klassen, Lisa	Paraprofes sional	0	Waterloo	0.20	175.00	35.00	35.00	60.00	

Total Fee:

2.20

748.50

748.50

773.50

Average Rate for Current Prebill

340.23

340.23

Tax on Fee (Ontario HST 13% (R119440766))

100.56

Total Fees

874.06



**MILLER THOMSON**  
AVOCATS | LAWYERS

**MILLER THOMSON LLP**  
SCOTIA PLAZA  
40 KING STREET WEST, SUITE 5800  
P.O. BOX 1011  
TORONTO, ON M5H 3S1  
CANADA

**T** 416.595.8500  
**F** 416.595.8695

**MILLERTHOMSON.COM**

**January 31, 2019**

Invoice Number 3296664

Alvarez Marsal Canada Inc., in its capacity as Court Appointed Receiver (Urbancorp Leslieville Developments)  
200 Bay Street  
Suite 2900  
Toronto, ON M5J 2J1

Attention: Tony Zaspalis, Senior Director

To Professional Services Rendered in connection with the following matter(s) including:

**Re: Ubancorp - Leslieville - condo development**  
**Our File No. 0220330.0001**

<b>Date</b>	<b>Initials</b>	<b>Description</b>	<b>Hours</b>
01/23/2019	RF	Call with Tony Zaspalis re the property taxes and getting on a call with the City's tax department.	0.10
01/25/2019	RF	Call with Tony Zaspalis, Georgia Karakolis, Christopher J Henderson and Sarah Grant from the City of Toronto, property tax department.	1.50
<b>Total Hours</b>			<b>1.60</b>

**Our Fee: 1,040.00**

<b>TK ID</b>	<b>Initials</b>	<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Amount</b>
00976	RF	R. Fairbloom	Partner	\$650.00	1.60	\$1,040.00

**Ontario HST 13% (R119440766)**  
On Fees **\$135.20**




**Total Amount Due**

**\$1,175.20**

E.&O.E.



This is Exhibit "B" referred to in the affidavit  
of Ronald Fairbloom, sworn before me  
this 27<sup>th</sup> day of March, 2019

  
\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS

- 2 -

**ADDITIONAL INFORMATION RELATING TO ACCOUNTS**

<b>LAWYER</b>	<b>TITLE</b>	<b>YEAR OF CALL</b>	<b>HOURS WORKED</b>	<b>WORKED RATE</b>	<b>TOTAL</b>
Ron Fairbloom	Partner	2001	0.60	\$179.16	\$107.50
Ron Fairbloom	Partner	2001	1.00	\$605.44	\$605.44
Ron Fairbloom	Partner	2001	2.30	\$635.00	\$1,460.50
Ron Fairbloom	Partner	2001	25.70	\$424.25	\$10,903.43
Ron Fairbloom	Partner	2001	40.60	\$621.30	\$25,225.04
Ron Fairbloom	Partner	2001	1.60	\$650.00	\$1,040.00
Sharmilaa Kanthavel	Paraprofessional		47.00	\$144.99	\$6,814.86
Sharmilaa Kanthavel	Paraprofessional		147.50	\$234.82	\$34,636.45
Veronica Gavriellov	Paraprofessional		32.50	\$234.82	\$7,631.76
Patti Watson	Paraprofessional		0.20	\$147.80	\$29.56
Chris Newbert	Associate	2016	0.20	\$283.75	\$56.75
Sakina Fazel	Associate	2014	0.70	\$310.00	\$217.00
Linda Kaszuba	Paraprofessional		0.70	\$165.00	\$115.50
Lisa Klassen	Paraprofessional		0.20	\$175.00	\$60.00
Scott Tinney	Articling Student		2.00	\$130.28	\$260.57
Lilian Semira	Paraprofessional		2.60	\$200.44	\$521.14
<b>Total</b>			<b>305.4</b>		<b>\$89,685.50</b>

This is Exhibit "C" referred to in the affidavit  
of Ronald Fairbloom, sworn before me  
this 27<sup>th</sup> day of March, 2019



---

**A COMMISSIONER FOR TAKING AFFIDAVITS**

- 4 -

## INVOICE SUMMARIES

DATE	INVOICE #	FEES	DISBS	SUBTOTAL	HST	TOTAL
June 30, 2018	3206733	\$635.00	\$52.72	\$687.72	\$89.40	\$777.12
August 31, 2018	3228606	\$444.50	\$7.25	\$451.75	\$58.73	\$510.48
November 23, 2018	3258420	\$18,500.00	\$0.00	\$18,500.00	\$2,405.00	\$20,905.00
November 23, 2018	3258448	\$67,550.00	\$5,790.30	\$73,340.30	\$9,507.34	\$82,847.64
November 30, 2018	3267323	\$1,016.00	\$0.00	\$1,016.00	\$132.08	\$1,148.08
November 30, 2018	3267354	\$500.00	\$75.00	\$575.00	\$74.75	\$649.75
January 31, 2019	3296664	\$1,040.00	\$0.00	\$1,040.00	\$135.20	\$1,175.20
<b>TOTAL</b>		<b>\$89,685.50</b>	<b>\$5,925.27</b>	<b>\$95,610.77</b>	<b>\$12,402.50</b>	<b>\$108,013.27</b>

**CANADIAN IMPERIAL BANK OF  
COMMERCE**  
Applicant

And

**URBANCORP  
(LESLIEVILLE)  
DEVELOPMENTS ET  
AL.**  
Respondent

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

**FEE AFFIDAVIT**

**MILLER THOMSON LLP  
SCOTIA PLAZA  
40 KING STREET WEST, SUITE 5800  
P.O. BOX 1011  
TORONTO, ON CANADA M5H 3S1**

Ron Fairbloom LSUC#: 439150  
Tel: 416.595.8637  
Fax: 416.595.8695  
Email: [rfairbloom@millerthomson.com](mailto:rfairbloom@millerthomson.com)

Lawyers for Alvarez & Marsal Canada Inc.,  
in its capacity as Construction Receiver

# **TAB 3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) ~~TUESDAY~~WEDNESDAY, THE 26<sup>17</sup><sup>th</sup>  
 )  
~~MR. JUSTICE~~RSJ MORAWETZ ) DAY OF ~~MARCH~~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: ~~SUBSTITUTED SERVICE AND APPROVAL OF LIEN SETTLEMENTS,  
PURCHASE PRICE ADJUSTMENTS & FEES AND ACTIVITIES~~)

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 approvals as set out herein, was heard this day in Toronto, Ontario.



ON READING the Notice of Motion dated March 18, ~~2018, the Seventh Report of the Construction Receiver dated October 5, 2018 (the "Seventh Report")~~2019, the Eighth Report of the Construction Receiver dated March 18, 2019 ~~(the "Eighth Report")~~, the Supplement to the Eighth Report of the Construction Receiver dated March 18, 2019 (the "Supplemental Report"), the Second Supplement to the Eighth Report of the Construction Receiver, dated April 12, 2019, 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~~affidavits of service of ~~[\*]~~Caitlin McIntyre sworn March ~~18~~20, 2019 and April [\*], 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.

## ~~APPROVAL OF LIEN SETTLEMENTS AND DISTRIBUTIONS~~

### ~~—————~~ *Leslieville Project Lien Settlement*

~~2. ——— THIS COURT ORDERS that the lien settlement amount agreed to by the Vetting Committee (as defined in the Eighth Report) and Lido Construction Inc. ("Lido") against the Respondent UC Leslieville's construction project located in the Leslieville neighbourhood of Toronto, as set out in Paragraph 24 of the Eighth Report, is 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 amount of \$58,691.18 to Lido from the \$200,000 holdback reserve established by the Construction Receiver in respect of the Leslieville Project (the "Leslieville Holdback Reserve") in accordance with Paragraph 57 of the Order of Justice Newbould (Settlement Approval Order: RE: Leslieville Project), dated May 2, 2017 (as amended, the "Settlement Approval Order") and Paragraph 3 of the Order of Justice~~

~~Penny (RE: Approving Lien Settlements, etc.), dated October 11, 2018 (the “October 11 Order”).~~

~~4. THIS COURT ORDERS that following the distribution provided for in Paragraph 3 hereof, the Construction Receiver shall be under no further obligation to maintain the Leslieville Holdback Reserve, and any amounts remaining after the distribution provided for in Paragraph 3 hereof shall be distributed by the Construction Receiver in accordance with Paragraph 55 of the Settlement Approval Order.~~

~~—————*Beach Project Lien Settlements*~~

~~5. THIS COURT ORDERS that the lien settlement amount agreed to by the Vetting Committee (as defined in the Eighth Report) and Lido 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 24 of the Eighth Report, is 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.~~

~~6. THIS COURT ORDERS that the Construction Receiver is hereby authorized and directed to distribute, without further order of the Court, the amount of \$71,811.32 to Lido from the \$120,000 holdback reserve established by the Construction Receiver in respect of the Beach Project (the “Beach Holdback Reserve”) in accordance with Paragraph 5 of the October 11 Order.~~

~~7. THIS COURT ORDERS that following the distributions provided for in Paragraph 6 hereof, the Construction Receiver shall be under no further obligation to maintain the Beach Holdback Reserve, and any amounts remaining after the distribution provided for in Paragraph 6 hereof shall be distributed by the Construction Receiver in accordance with Paragraph 55 of the Settlement Approval Order.~~

~~**APPROVAL OF LIEN CLAIMANTS BALANCE CLAIMS**~~

~~8. THIS COURT ORDERS AND DECLARES that the Lien Claimants Balance Claims (as defined in the Settlement Approval Order) for each Lien Claimant (as defined in the~~

Settlement Approval Order) shall be in the amount set out in paragraph 32 and Appendix “A” of the Eighth Report.

**DISCLOSURE AND SERVICE ON UNREPRESENTED LESLIEVILLE PURCHASERS**

9. — ~~THIS COURT ORDERS~~ that, pursuant to clause 7(3)(c) of the ~~Canada Personal Information Protection Act and Electronic Documents Act~~, if applicable, the Construction Receiver is hereby authorized to disclose the contact information of purchasers of units of the Leslieville Project in respect of whom a Notice of Appearance or Notice of Change of Lawyer has not been filed in these proceedings (the “**Unrepresented Purchasers**”), including names, last known e-mail addresses, alternative e-mail addresses provided to the Construction Receiver or its counsel, and mailing addresses (if necessary), to any interested party who may request such information from the Construction Receiver for the purposes of serving materials in these proceedings.

10. — ~~THIS COURT ORDERS, nunc pro tunc~~, that service on each of the Unrepresented Purchasers of any court material in this proceeding by way of e-mail to the last known email address for each such Unrepresented Purchaser based on the books and records of the Construction Receiver’s counsel, or to an alternative e-mail address provided by an Unrepresented Purchaser to the Construction Receiver in writing, shall be good and sufficient service of such court material on each such Unrepresented Purchaser.

11. — ~~THIS COURT ORDERS~~ that email service in accordance with paragraph 9 above shall be effective immediately upon delivery of such email, or, if delivered after 5:00 p.m. Toronto time, shall be effective the next business day thereafter.

12. — ~~THIS COURT ORDERS~~ that any Unrepresented Purchaser who does not wish to be subject to paragraphs 8 through 10 of this Order may advise the Construction Receiver in writing (either directly by such Leslieville Purchaser or through counsel) of the name and contact information of its counsel, following receipt of which counsel information by the Construction Receiver, service of any court material in this proceeding may be made on such Unrepresented Purchaser by duly serving such Unrepresented Purchaser’s counsel.

**APPROVAL OF LESLIEVILLE PURCHASE PRICE ADJUSTMENTS**

2. ~~13.~~ **THIS COURT ORDERS AND DECLARES** that the Leslieville Purchase Price Adjustments (as defined in the Supplemental Report), other than the Park Levy (as defined in the Supplemental Report), in the amounts set out in Appendix A to the Supplemental Report are hereby approved, and such amounts shall be final and binding as against the purchasers of the Leslieville Project units to whom they were charged.

~~**APPROVAL OF INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**~~

~~14. — **THIS COURT ORDERS** that the Construction Receiver's Interim R&D Statement (as defined in the Eighth Report) is hereby approved.~~

~~**ACTIVITY AND**~~

**FEE APPROVALS**

~~15. — **THIS COURT ORDERS** that the activities and conduct of the Construction Receiver occurring prior to the date hereof in relation to the Respondents and these proceedings, as are further particularized in the Seventh Report and Eighth Report, are hereby ratified and approved.~~

3. ~~16.~~ **THIS COURT ORDERS** that the fees of the Construction Receiver in the amount of \$392,314.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

4. ~~17.~~ **THIS COURT ORDERS** that the fees of the Construction Receiver's independent counsel Blake, Cassels & Graydon LLP in the amount of \$136,501.30, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

5. ~~18.~~ **THIS COURT ORDERS** that the fees of the Construction Receiver's counsel Gowling WLG (Canada) LLP in the amount of \$39,679.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

~~**MICELLANEOUS**~~

6. THIS COURT ORDERS that the fees of the Construction Receiver's real estate counsel Miller Thomson LLP in the amount of \$89,685.50, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

MISCELLANEOUS

7. ~~19.~~ **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 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 and its agents, 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.

---

CANADIAN IMPERIAL BANK OF COMMERCE ~~v.~~ v.  
Applicant Respondents

URBANCORP (LESLIEVILLE) DEVELOPMENTS INC. et al.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER**

**(RE: ~~SUBSTITUTED SERVICE AND~~ APPROVAL  
OF ~~LIEN SETTLEMENTS,~~ PURCHASE PRICE  
ADJUSTMENTS & FEES ~~AND ACTIVITIES~~)**

**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

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.

Document comparison by Workshare 10.0 on Friday, April 12, 2019 1:42:07 PM

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Document 2 ID	PowerDocs://TOR_2528/23623852/1
Description	TOR_2528-#23623852-v1-AM_- _UC_- _April_17_Order_(Purchase_Price_Adjustments)
Rendering set	Standard

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<a href="#">Moved to</a>	
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Format change	
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Inserted cell	
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Split/Merged cell	
Padding cell	

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Deletions	44
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Moved to	1
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Format changed	0
Total changes	67



# **TAB 4**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY, THE 17<sup>th</sup>  
 )  
RSJ MORAWETZ ) DAY 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: APPROVAL OF PURCHASE PRICE ADJUSTMENTS & FEES)**

**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., for an order granting certain approvals as set out 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 Supplement to the Eighth Report of the Construction Receiver dated March 18, 2019 (the “**Supplemental Report**”), the Second Supplement to the Eighth Report of the Construction Receiver, dated April 12, 2019, 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 affidavits of service of Caitlin McIntyre sworn March 20, 2019 and April [\*], 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.

**APPROVAL OF LESLIEVILLE PURCHASE PRICE ADJUSTMENTS**

2. **THIS COURT ORDERS AND DECLARES** that the Leslieville Purchase Price Adjustments (as defined in the Supplemental Report), other than the Park Levy (as defined in the Supplemental Report), in the amounts set out in Appendix A to the Supplemental Report are hereby approved, and such amounts shall be final and binding as against the purchasers of the Leslieville Project units to whom they were charged.

**FEE APPROVALS**

3. **THIS COURT ORDERS** that the fees of the Construction Receiver in the amount of \$392,314.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

4. **THIS COURT ORDERS** that the fees of the Construction Receiver’s independent counsel Blake, Cassels & Graydon LLP in the amount of \$136,501.30, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

5. **THIS COURT ORDERS** that the fees of the Construction Receiver's counsel Gowling WLG (Canada) LLP in the amount of \$39,679.00, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

6. **THIS COURT ORDERS** that the fees of the Construction Receiver's real estate counsel Miller Thomson LLP in the amount of \$89,685.50, plus HST and disbursements, for the nine (9) month period from May 1, 2018 to January 31, 2019 be and hereby are approved.

**MISCELLANEOUS**

7. **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 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 and its agents, 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.

---

**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: APPROVAL OF PURCHASE PRICE  
ADJUSTMENTS & FEES)**

**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.

# **TAB 5**

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

THE HONOURABLE ~~MR.~~ ) TUESDAY, THE 26<sup>17</sup>th DAY  
~~JUSTICE~~RSJ MORAWETZ ) OF ~~MARCH~~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 ~~AND WARRANTY PROCEDURE 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

[23624397.2](#)

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 18, 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) ~~(a)~~ “**BIA**” has the meaning ascribed thereto in the preamble to this Order;
- (c) ~~(b)~~ “**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) ~~(c)~~ “**Claimant**” means a Person asserting a Tarion Claim;



- (e) ~~(d)~~ **“Construction Receiver”** has the meaning ascribed thereto in the preamble to this Order;
- (f) ~~(e)~~ **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (g) ~~(f)~~ **“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) ~~(g)~~ **“Order”** means this Order;
- (i) ~~(h)~~ **“Outside Date”** means September 7, 2025;
- (j) **“Pending Tarion Costs”** has the meaning ascribed thereto in the Second Supplement;
- (k) ~~(i)~~ **“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) ~~(j)~~ **“Project”** means the residential condominium development located at 50 Curzon Street, Toronto, Ontario, and sometimes known as *“Towns on Curzon”*;
- (m) ~~(k)~~ **“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) ~~(l)~~ **“Tarion”** has the meaning ascribed thereto in the preamble to this Order;
- (p) ~~(m)~~ **“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) ~~(n)~~ **“Tarion Cash Collateral”** has the meaning ascribed thereto in paragraph 4;
- (r) ~~(o)~~ **“Tarion Cash Collateral Balance”** has the meaning ascribed thereto in paragraph ~~6~~7(~~eb~~);
- (s) ~~(p)~~ **“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) ~~(g)~~ **“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) ~~(h)~~ **“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) ~~(i)~~ **“Travelers”** has the meaning ascribed thereto in the preamble to this Order; and
- (z) ~~(j)~~ **“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 ~~paragraph~~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) ~~(b)~~ 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

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distrain, 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) ~~(e)~~ 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) ~~(d)~~ 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. ~~7.~~ **THIS COURT ORDERS** that the Construction Receiver is hereby authorized ~~and directed~~ but not required to waive ~~any~~ 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, and that all such notice and vendor repair periods be and they are hereby waived~~ an “Applicable Notice Period”).

9. ~~8.~~ **THIS COURT ORDERS** that in the event that the Construction Receiver waives an Applicable Notice Period, Tarion is ~~hereby~~thereby entitled, in its discretion, to take action and remediate any defects at the Project that are warranted under the ONHWPA immediately upon ~~notice thereof~~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. ~~9.~~ **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. ~~10.~~ **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. ~~11.~~ **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.

14. **THIS COURT ORDERS** that notwithstanding anything in this Order to the contrary, nothing in this Order shall prevent or prejudice Terra Firma from seeking or obtaining an order that (a) any portion of the Tarion Cash Collateral (up to the aggregate amount of the Tarion Costs) must be returned to the Construction Receiver, or (b) all or a portion of the Tarion Costs Payment must be returned to the Construction Receiver.

**MISCELLANEOUS**

15. ~~12.~~ **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.
16. ~~13.~~ **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.
17. ~~14.~~ **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.
-

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

**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: TARIION CASH COLLATERAL ~~AND WARRANTY-~~**  
**~~PROCEDURE ORDER)~~**

**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.



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Document comparison by Workshare 10.0 on Friday, April 12, 2019 1:36:27 PM

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Document 2 ID	file://C:\Users\CAI\AppData\Local\Temp\1\Workshare\wmtmp8b2c8\23624397-v2-AM - UC - Tarion Cash Collateral Order.DOCX
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Legend:	
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Inserted cell	
Deleted cell	
Moved cell	
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<b>Statistics:</b>	
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Insertions	85
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	132

# **TAB 6**

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

**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 18, 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.

14. **THIS COURT ORDERS** that notwithstanding anything in this Order to the contrary, nothing in this Order shall prevent or prejudice Terra Firma from seeking or obtaining an order that (a) any portion of the Tarion Cash Collateral (up to the aggregate amount of the Tarion Costs) must be returned to the Construction Receiver, or (b) all or a portion of the Tarion Costs Payment must be returned to the Construction Receiver.

#### **MISCELLANEOUS**

15. **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.

16. **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.
  
  17. **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.
-

**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: TARION CASH COLLATERAL ORDER)**

**BLAKE, CASSELS & GRAYDON LLP**  
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Suite 4000, Commerce Court West  
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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.

**CANADIAN IMPERIAL BANK OF COMMERCE V. URBAN CORP (LESLIEVILLE DEVELOPMENTS INC.**  
**et.al.**

(Applicant)

(Respondents)

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**SUPPLEMENTAL MOTION RECORD**  
**(Re: RETURN OF APPROVAL OF**  
**PURCHASE PRICE ADJUSTMENTS,**  
**FEES & TARIION CASH**  
**COLLATERAL)**  
**(Returnable April 17, 2019)**

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