

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

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**AFFIDAVIT OF PAUL MONTGOMERY**  
(Sworn May 25, 2016)

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**I, PAUL MONTGOMERY**, of the City of Toronto, in the Province of Ontario,  
**MAKE OATH AND SAY:**

1. I am a Senior Director, Special Loans, for Canadian Imperial Bank of Commerce, (“CIBC” or the “Applicant”). I have day-to-day responsibility for the accounts of UC Leslieville, UC Riverdale, and UC Beach (each as defined below) on behalf of CIBC and, as such, I have personal knowledge of the matters herein deposed, save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true.

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## I. PURPOSE

2. I am swearing this affidavit in support of an application by CIBC, in its capacity as Administrative Agent and Syndication Agent for the Lenders (defined below) for an Order, *inter alia*, appointing Alvarez & Marsal Canada Inc. (“A&M”) as receiver and manager pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”) and s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 (the “CJA”) (in such capacity, the “Receiver”), without security, and Construction Lien Trustee, without security, pursuant to s. 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the “CLA”) (in such capacity, the “Construction Lien Trustee” and collectively with the Receiver, the “Construction Receiver”) of all of the property, assets, and undertakings of (a) Urbancorp (Leslieville) Developments Inc. (“UC Leslieville”), (b) Urbancorp (Riverdale) Developments Inc. (“UC Riverdale”); and (c) Urbancorp (The Beach) Developments Inc. (“UC Beach”, together with UC Riverdale, the “Guarantors”, and the Guarantors, together with UC Leslieville, the “Debtors”) acquired for, or used in relation to the Debtors’ business and the Projects (as defined below).

3. CIBC, in its capacity as Administrative Agent and Syndication Agent (in such capacity, the “Agent”) for CIBC, Canadian Western Bank (“CWB”), and Laurentian Bank of Canada (“Laurentian”, and together with CIBC and CWB, the “Lenders” or the “Syndicate”), which together are the senior secured and largest creditor of the Debtors, is seeking the appointment of the Construction Receiver because the Syndicate Loan (defined below) to UC Leslieville is in default and has matured, a material adverse change in the Debtors’ business has occurred as a result of, among other things, significant project cost overruns, and the Debtors’ current financial circumstances seriously impair their viability and negatively impact the value of the Lenders’ collateral, all of which is set out in more detail below.

4. CIBC and the other Lenders have now lost all confidence in the management of the Debtors’ in view of, *inter alia*, (a) the significant cost overruns in relation to the Projects, (b) the mismanagement of the Projects thereby resulting in the registration of claims for lien, as described below, and (c) the Debtors’ continuing failure to repay the Syndicate Loan more than six (6) months following its maturity on October 31, 2015.

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5. As at May 12, 2016, the Debtors are indebted to the Lenders in the amount of \$27,221,342.01.

## II. BACKGROUND

6. UC Leslieville, UC Riverdale, and UC Beach are corporations incorporated pursuant to Ontario's *Business Corporations Act* with their head offices located at 120 Lynn Williams Street, Toronto, Ontario, Canada. UC Leslieville, UC Riverdale, and UC Beach are privately-owned corporations carrying on business as land developers principally focused on the purchase of lands, the construction and development of improvements on the lands, and the sale of residential units on residential projects situate on the Leslieville Project Lands, Riverdale Project Lands, and Beach Project Lands (each as defined below and collectively, the **"Project Lands"**). Corporate Profile Reports in respect of UC Leslieville, UC Riverdale, and UC Beach are attached hereto as **Exhibits "A", "B", and "C"** (collectively, the **"Corporate Profile Reports"**).

7. The Project Lands are owned by UC Leslieville and each of UC Leslieville, UC Riverdale, and UC Beach are responsible for the marketing, construction, and development of the Projects.

8. UC Leslieville, UC Riverdale, and UC Beach are part of the Urbancorp group of land development companies controlled by Mr. Alan Saskin (the **"Urbancorp Group"**).

9. According to the Corporate Profile Reports, Mr. Alan Saskin is the sole Director and President of UC Leslieville, UC Riverdale, and UC Beach.

10. On April 21, 2016 and April 25, 2016, certain entities in the Urbancorp Group filed Notices of Intention to Make a Proposal (**"NOIs"**) under the BIA (collectively, the **"Urbancorp NOI Proceedings"**). On April 29, 2016, other related companies in the Urbancorp Group – Bosvest Inc., Edge Residential Inc., and Edge on Triangle Park Inc. – filed NOIs under the BIA. UC Leslieville, UC Riverdale, and UC Beach are not included in the Urbancorp NOI Proceedings.

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11. On April 29, 2016, Mr. Saskin filed a Notice of Intention to Make a Proposal pursuant to the BIA in respect of Mr. Saskin personally. A copy of a Bankruptcy and Insolvency Records Search in respect of Mr. Saskin as issued by the Office of the Superintendent of Bankruptcy Canada is attached hereto as **Exhibit "D"**.

12. On May 18, 2016, a number of entities in the Urbancorp Group, including certain of those entities that had previously sought and obtained protection under the Urbancorp NOI Proceedings, sought and obtained protection under the *Companies' Creditors' Arrangement Act* (Canada) (the "**CCAA**") from the Ontario Superior Court of Justice (Commercial List) (the "**Urbancorp Group CCAA Proceedings**") pursuant to the CCAA Initial Order issued by the Honourable Mr. Justice Newbould on May 18, 2016 (the "**Initial Order**"). UC Leslieville, UC Riverdale, and UC Beach are not included in the Urbancorp Group CCAA Proceedings. Counsel for the CCAA debtors in the Urbancorp CCAA Proceedings and counsel for the Monitor thereof will be caused to be served with notice of this Application. A copy of the Initial Order is attached hereto as **Exhibit "E"**.

### **III. URBANCORP DEBT AND SYNDICATE SECURITY**

13. Pursuant to a Credit Agreement dated July 13, 2012, and amendments thereto (collectively, the "**Credit Agreement**"), the Lenders advanced loans to UC Leslieville, as guaranteed by the Guarantors pursuant to the Credit Agreement and certain guarantees, under the following credit facilities: (a) a term construction facility in respect of the Leslieville Project (the "**Leslieville Construction Facility**") in an amount up to \$21,124,985; (b) a term construction facility in respect of the Riverdale Project (the "**Riverdale Construction Facility**") in an amount up to \$18,560,460; (c) a term construction facility in respect of the Beach Project (the "**Beach Construction Facility**") in an amount up to \$17,967,395; (d) a demand revolving letter of credit facility (the "**LC Facility**") in an amount up to \$3,000,000; and (e) a capital loan facility (the "**Capital Loan Facility**") in an amount up to a further \$2,500,000 million (collectively, the "**Syndicate Facility**", and the loans advanced thereunder, the "**Syndicate Loan**"). A copy of the Credit Agreement is attached hereto as **Exhibit "F"**.

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14. The funds advanced pursuant to the Syndicate Loan were for the purposes of, *inter alia*, financing the construction, development, and sale of residential lot subdivisions and construction of presold condominiums, townhomes, and semi-detached / detached houses located on the Projects Lands.

15. The Project Lands and the Projects thereon comprise:

- (a) **UC Leslieville:** UC Leslieville condominium development bearing Property Identification Number (“PIN”) 21051-0408 (LT) located in vicinity of Curzon Street and Jones Avenue, Toronto (the “**Leslieville Project Lands**”). A copy of the Parcel Register in respect of the Leslieville Project Lands is attached hereto as **Exhibit “G”**.
- (b) **UC Riverdale:** UC Riverdale development bearing numerous PINs located in vicinity of Howie Avenue and Boulton Avenue, Toronto (the “**Riverdale Project Lands**”). Copies of various Parcel Registers in respect of the Riverdale Project Lands are attached hereto as **Exhibit “H”**;
- (c) **UC Beach:** UC Beach development bearing numerous PINs located in vicinity of Vince Avenue and Hemlock Avenue, Toronto (the “**Beach Project Lands**”). Copies of various Parcel Registers in respect of the Beach Project Lands are attached hereto as **Exhibit “I”**;

(each of the Project Lands, together with the projects thereon, the “**Leslieville Project**”, the “**Riverdale Project**”, and the “**Beach Project**”, respectively, and as more particularly described below and collectively, the “**Projects**”).

16. As security for all of the Debtors’ indebtedness owing to the Syndicate under the Credit Agreement, the Syndicate was granted, *inter alia*:

- (a) a Demand Debenture dated July 13, 2012, in favour of CIBC as Agent for and on behalf of the Lenders, in the principal sum of \$70,000,000, a copy of which is attached hereto as **Exhibit “J”**;

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- (b) a Charge/Mortgage of Land between UC Leslieville, as Chargor, and CIBC, as Agent for and behalf of the Lenders, as Chargee, registered on July 24, 2012, as Instrument No. AT3081811 against the Leslieville Project Lands, the Riverdale Project Lands, and the Beach Project Lands, a copy of which is attached hereto as **Exhibit "K"**;
- (c) an Assignment of Unit Sales Agreements and Deposits dated July 13, 2012, in favour of CIBC as Agent for and on behalf of the Lenders, a copy of which is attached as **Exhibit "L"**; and
- (d) an Assignment of Construction Contracts date July 13, 2012, in favour of CIBC as Agent for and on behalf of the Lenders, a copy of which is attached as **Exhibit "M"**;

collectively, the "**Syndicate Security**", and together with the Credit Agreement, the "**Loan Documents**".

17. The Lenders' security interests in respect of personal property are perfected in the Province of Ontario by registrations under the *Personal Property Security Act* (Ontario) (the "**PPSA**"). Personal Property Security Registration System Certificates in respect of UC Leslieville, UC Riverdale, and UC Beach are attached hereto as **Exhibits "N", "O", and "P"**.

18. As noted above, the Lenders' security interests in respect of the Project Lands are first registered in priority against the Project Lands.

19. In addition to the foregoing, the Debtors, Mr. Saskin, and Urbancorp Toronto Management Inc. ("**Urbancorp Management**") executed a Cost Overrun and Completion Guarantee dated July 13, 2012, in favour of CIBC as Agent for and on behalf of the Lenders (the "**Cost Overrun Guarantee**") pursuant to which the Debtors, Mr. Saskin, and Urbancorp Management agreed to pay all Non-Financed Costs and all Cost Overruns (both as defined in the Credit Agreement) and to indemnify CIBC in its capacity as Agent for the Lenders from any costs, expenses, losses, and damages resulting from any Cost Overruns or actual costs for any

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items or services exceeding budgeted costs in connection with the Projects. A copy of the Cost Overrun Guarantee is attached hereto as **Exhibit "Q"**.

20. Pursuant to the Urbancorp Group Initial Order, Urbancorp Management is currently subject to the Urbancorp Group CCAA Proceedings.

21. The Agent understands that Urbancorp had provided management services to the Debtors and that it is currently in possession of all of the books and records of the Debtors. The Agent also understands that the Debtors have no employees. Accordingly, the proposed Construction Receiver, if appointed by this Court, will require timely possession of the Debtors' books and records and the cooperation and assistance of Urbancorp Management with respect to understanding the information contained in the Debtors' books and records. As noted above, counsel for the CCAA debtors in the Urbancorp Group CCAA Proceedings, including Urbancorp Management, and counsel for the Monitor thereof will be caused to be served with notice of this Application.

22. In breach of the Credit Agreement, the Debtors have suffered a material adverse change in their financial condition and operations, are facing a financial crisis in their business, and have failed to repay the Syndicate Loan, the details of which are set out below.

#### **IV. OTHER SECURED CREDITORS AND INTER-CREDITOR ARRANGEMENTS**

23. In addition to the Lenders' secured claims, Travelers Insurance Company of Canada ("**Travelers**") and Terra Firma Capital Corporation ("**Terra Firma**") claim security over the Debtors' property, in each case subordinate to the Syndicate Security (other than in respect of deposits from purchasers as set out below).

24. Terra Firma claims that it had advanced certain loans to UC Leslieville in connection with the Projects and has registered a mortgage against the Projects in respect of such loans.

25. The Terra Firma indebtedness and security is subordinate to the Syndicate Loan and Syndicate Security pursuant to a Subordination and Standstill Agreement dated July 22, 2015

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(the **“Terra Subordination and Standstill Agreement”**). Attached hereto and marked as **Exhibit “R”** is a copy of the Terra Subordination and Standstill Agreement.

26. Travelers has provided certain credit support to the Debtors in relation to their registrations with Tarion Warranty Corporation (**“Tarion”**) and has registered a mortgage against the Projects in respect of such credit support. Travelers has also provided excess condominium insurance coverage for deposits above and beyond the limits insured by Tarion.

27. Pursuant to the *Ontario New Home Warranties Plan Act*, Tarion provides new home buyers with the certain statutory deposit and warranty coverage as set out in such Act.

28. On July 24, 2012, CIBC as Agent entered into a Priority Agreement pursuant to which, *inter alia*, Travelers agreed to subordinate and postpone its indebtedness and security to the Syndicate’s indebtedness and security in respect of the Leslieville Project, with the exception of the cash deposits provided to the Debtors by purchasers so long as such cash deposits remained held in trust, in respect of which Travelers retained priority. Attached hereto and marked as **Exhibit “S”** is a copy of the Priority Agreement dated July 24, 2012.

29. Based on information provided by counsel for Travelers, I understand that, at present, UC Leslieville has a liability to Travelers pursuant to an outstanding Travellers bond in favour of Tarion, which liability is subordinate to the Syndicate Security (except in respect of purchaser deposits as set out in paragraph 28 directly above).

30. In addition to the claims of Travelers and Terra Firma, I am advised by Lilly Wong, a partner with Gowling Lafleur Henderson LLP, solicitors for CIBC, that the search report of registrations filed under the Ontario Personal Property Security Registry reflect a number of additional registrations not related to the Credit Facility provided by the Syndicate. The registrations appear to be in relation to certain other financing and equipment lessors, each of whom will be caused to be served with notice of this Application.

## **V. OTHER CREDITORS – LIEN CLAIMANTS & UNSECURED CREDITORS**

### **Trade Creditors**

31. Based on reporting provided by Altus Group Limited, construction cost management consultants in respect of the UC Leslieville, UC Riverdale, and UC Beach Projects, dated as at September 15, 2015, the Debtors' records reflected that they owed approximately:

- (a) \$4,064,528.40 of unsecured trade debt payables to approximately 71 trade creditors in connection with the Leslieville Project;
- (b) \$914,722.25 of unsecured trade debt payables to approximately 54 trade creditors in connection with the Riverdale Project; and
- (c) \$2,980,271.98 of unsecured trade debt payables to approximately 91 trade creditors in connection with the Beach Project.

The Agent has not received any updated unsecured trade debt payables numbers from the Debtors nor has it been able to obtain access to the Debtors' books and records since on or about September 15, 2015, but the Agent notes that it appears that no work has been performed on the Projects since around that time period. Therefore, the Agent believes the amount of unsecured trade debt payables should not have materially increased. A more accurate calculation of the unsecured trade debt payables will be obtainable if the proposed Construction Receiver is appointed and performs a review of the Debtors' books and records.

### **Tax Arrears**

32. The Agent understands that in April 2016, Canada Revenue Agency ("CRA") issued a reassessment of potential additional amounts owing in respect of HST in respect of the Riverdale Project in the approximate amount of \$4.36 million. The Agent has not been able to confirm the status of the reassessment with the Debtors but it believes the amount subject to such reassessment remains unpaid.

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### **Purchasers**

33. I understand that pursuant to a Deposit Trust Agreement with Travelers dated May 19, 2011, UC Leslieville was obliged to hold a certain minimum amount of the cash deposits collected from customers for the purchase of condominium units at the Leslieville Project, in trust. As at August 31, 2015, the Agent was advised that UC Leslieville's counsel was holding approximately \$250,000 in cash deposits, plus accrued interest thereon, in trust, for a total of approximately \$333,000. The Agent has not been able to confirm the current amount of cash deposits held in trust by UC Leslieville's counsel.

### **Lien Claimants**

34. Based on a subsearch conducted of the Project Lands, as at May 17, 2016, a number of entities have registered construction liens or made claims for lien in the total aggregate amount of \$2,407,012.22 against the Projects in respect of labour and materials allegedly supplied as improvements in relation to the Projects. The entities with lien registrations and claims include:

- (a) Alpha Stairs and Railings Inc.;
- (b) Orin Contractors Corp.;
- (c) Roni Excavating Limited;
- (d) EXP Services Inc.;
- (e) Furkin Construction Inc.;
- (f) Silvio Construction Co. Ltd.;
- (g) Uptown hardware Ltd.;
- (h) NG Marin Inc.; and
- (i) MDF Mechanical Ltd.

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A chart summarizing the entities that have registered liens in respect of the Leslieville Project Lands, the Riverdale Project Lands, and the Beach Project Lands and the amounts of each of those liens is attached hereto as **Exhibit "T"**.

35. As of the date of this Affidavit, the liens registered by Orin Contractors Corp. and NG Marin in respect of the Riverdale Project Lands have been bonded off.

36. Notice of this Application will be given to all lien claimants in respect of the Projects.

## **VI. URBANCORP'S FINANCIAL PROBLEMS**

### **Status of the Projects**

#### **A. UC Leslieville**

37. The Leslieville Project Lands are owned by UC Leslieville. UC Leslieville is also the project developer and the Vendor noted in the Leslieville Project's Purchase and Sale Agreement (the "PSA").

38. The Leslieville Project comprises 56 homes (55 condominium townhomes and a proposed freehold detached house). The condominium townhomes are located at 50 Curzon Street in east Toronto's Leslieville neighbourhood. The proposed detached house is located on Jones Avenue, adjacent to the condominium townhomes.

39. All but one of the Leslieville Project condominium units have been "presold" pursuant to PSAs, which were executed back in 2011, prior to construction commencing.

40. The condominium townhome units come in two models, (i) 1505 sq ft, and (ii) 1975 sq ft. The proposed detached house is intended to be 2,282 sq ft. Each unit comes with one parking space. There are 10 excess parking spaces available for sale which have not been sold.

41. The exterior of the condominium is substantially completed (other than water/sewer connections, internal catch basins, certain rear decks and landscaping). The interior of the 55

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condominium townhomes are at varying stages of completion. Construction of the proposed detached house has not commenced.

42. It appears that there has been no work conducted at the Leslieville Project site for several months and the Syndicate is concerned that the condition of the Leslieville Project has deteriorated given its unfinished state and weather conditions and that further deterioration will continue the longer the Leslieville Project is left without proper management and remains exposed to inclement weather conditions.

43. There are approximately \$871,000 in letters of credit outstanding in support of UC Leslieville's development obligations to the City of Toronto.

**B. Urbancorp Riverdale**

44. As noted above, the Riverdale Project Lands are owned by UC Leslieville. UC Riverdale is the project developer and is the Vendor noted in the Riverdale Project's PSA.

45. The Riverdale Project comprises forty-two (42) freehold townhomes, together with certain common elements.

46. The Riverdale Project is located in east Toronto's Riverdale neighbourhood, with twenty-two (22) homes located on Howie Avenue and twenty (20) homes located on Boulton Avenue. All of the townhomes are the same size (2,085 square feet) and include a detached garage.

47. The common elements are comprised of, among other things, the laneway between Howie and Boulton Avenues (which provides the purchasers with access to their detached garages) and the walkways between certain blocks of townhomes. The common elements condominium corporation was registered on June 25, 2015.

48. Most of the 42 units were pre-sold in 2011, prior to construction commencing. The Riverdale project is now fully constructed, and all unit sales have recently been completed. Approximately \$18.7 million was received as proceeds of sale and applied against the Syndicate Loan, subject to certain amounts held back for contingencies. CIBC, on behalf of the Syndicate,

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is in the process of registering partial discharges of the Syndicate's security in respect of the Riverdale Project lands.

49. There are approximately \$638,000 in letters of credit held by the City of Toronto in support of UC Riverdale's outstanding development obligations to the City of Toronto.

**C. UC Beach**

50. The Beach Project Lands are also owned by UC Leslieville. UC Beach is the project developer and is the Vendor noted in the Beach Project's PSA.

51. The Beach Project comprises thirty-three (33) homes comprising: (a) thirty-two (32) semi-detached homes; and (b) one (1) detached home. The semi-detached and detached homes are freehold properties. The Beach Project is located on Vince Avenue (30 homes) and Hemlock Avenue (3 homes), a short distance from east Toronto's Beach neighbourhood.

52. Of the 33 homes in the Beach Project, 25 have been fully constructed and the sale of these homes to the purchasers have been completed. The size of the constructed sold homes varies significantly from 1,675 sq ft to 2,990 sq ft. The Lenders have provided a partial discharge of their security in respect of the 25 homes sold.

53. Currently, there are eight (8) lots remaining to be constructed or completed which are in the very early stages of construction (from raw land to initial framing). Four of these 8 homes have been pre-sold pursuant to PSAs.

54. The size of the homes that were to be constructed range from 3,645 sq. ft. to 3,965 sq. ft. It appears that there has been no work conducted at the site for several months.

55. The Syndicate is concerned that the condition of the Beach Project has deteriorated given its unfinished state and weather conditions and that further deterioration will continue the longer the Beach Project is left without proper management and remains exposed to inclement weather conditions. There are letters of credit in the approximate amounts of \$846,000 and \$26,000

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outstanding in support of UC Beach's outstanding development obligations to the City of Toronto and Toronto Hydro, respectively.

## **VII. EVENTS OF DEFAULT**

56. The Debtors are in default of their obligations to CIBC under the Credit Agreement. The Debtors have failed to, *inter alia*:

- (a) repay in full the outstanding principal amount of the Syndicate Loan on or before the Maturity Date (as defined in the Credit Agreement), being October 31, 2015, as required pursuant to section 6.01(1) of the Credit Agreement;
- (b) repay the Lenders the outstanding amount owing to the Lenders under the Syndicate Loan upon demand; and
- (c) prevent the registration, accrual, and/or defence of claims, including claims for lien and CRA claims, as required under the Credit Agreement, all of which has had a material adverse effect on the Debtors' business.

57. The Debtors are also unable to meet their liabilities as they generally become due. This is evidenced by, *inter alia*, the amounts owed to construction lien claimants and the registration of the claims for lien against the Project Lands as described above.

58. Neither UC Leslieville, UC Riverdale, nor UC Beach can repay the Syndicate Loan.

59. The Debtors are unable to continue their operations and the appointment of the Construction Receiver is necessary in order to permit the orderly management, marketing, realization, and maximization of value of the Debtors' assets. The appointment of the Construction Receiver will also assist in an orderly resolution and administration of the construction lien claims in respect of the Projects.

### VIII. DEMAND & NOTICE OF INTENTION TO ENFORCE SECURITY

60. By letter dated May 12, 2016 (the “**Demand Letter**”), CIBC as Agent made demand for immediate repayment of the indebtedness owed by the Debtors. Attached to the Demand Letter addressed to UC Leslieville and the Guarantors was a Notice of Intention to Enforce Security pursuant to section 244 of the BIA (the “**244 Notice**”). Attached hereto as **Exhibit “U”** are copies of the Demand Letter and 244 Notices.

61. To date, the defaults as set out in the Demand Letter have not been remedied by either the Debtors or the Guarantors. The Lenders have received and applied against the Syndicate Loan, a series of partial payments in the approximate amount of \$18.7 million, less certain amounts held back for contingencies, from the proceeds of sale of the townhomes from the Riverdale Project.

62. The Debtors are indebted to the Lenders in the approximate amount of CDN \$27,221,342.01, as at May 12, 2016, plus interest and costs after such date (the “**Debt**”).

### IX. NEED FOR A CONSTRUCTION RECEIVER

63. The Lenders have lost all confidence in the management of the Debtors in view of, *inter alia*, (a) the significant cost overruns to date, (b) the non-disclosure of such cost overruns to the Lenders, and (c) the mismanagement of the Projects, thereby resulting in the registration of claims for lien, as described above.

64. CIBC and the other members of the Syndicate have suffered and are expected to suffer further substantial prejudice and significant losses with respect to the Syndicate Loan, unless the proposed Construction Receiver is appointed to immediately secure and take over control and management of the Projects.

65. Reputation is fundamental to the operation of a condominium unit marketing operation. The continuation of defaults without an effective strategy to complete the Projects and sell and close units risks undermining the value of the Project Lands, to the detriment of the Syndicate and the Debtors’ other stakeholders. Any further delay will further prejudice the Syndicate and the Debtors’ other stakeholders. Therefore, there is urgency that the proposed Construction

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Receiver be appointed to take over control and management of the Projects immediately in order to prevent further deterioration of the Projects. Upon appointment, the proposed Construction Receiver will secure the Projects and assess the state of each of the Projects, with a view to determining an effective strategy, with the advice and directions of the Court as appropriate, to best maximize realizations in respect of the Projects for the benefit of the Debtor's stakeholders. In order to do so, the proposed Construction Receiver will require funding to conduct its due diligence and assessment as the Debtors currently have no cash and no revenue. The Lenders believe that approximately \$1.5 million in funding will be required during this estimated 6.5 week period and an additional \$1.5 million in funding for the implementation of a marketing process estimated to be completed by the end of September 2016, for a total of \$3.0 million. If a determination is made by the Construction Receiver to complete construction of one or more of the Projects, additional funding will be required on the advice and directions of the Court.

66. The appointment of a Construction Lien Trustee is also required in order to administer and manage the Projects, conduct sales, deal with the lien claims and the applicable holdbacks and trust funds pursuant to the CLA, as appropriate, all with a view to, *inter alia*, preserving the value of the Projects and minimizing the prejudice to the stakeholders, including the Syndicate and the currently existing and potential lien claimants.

67. The Syndicate anticipates providing operating financing to the Receiver and Construction Lien Trustee, as applicable, in connection with the Projects on a case-by-case basis pursuant to the issuance of Receiver's Certificates and Construction Lien Trustee's Certificates in its favour on the condition that the financing be in priority to all other charges and encumbrances and in priority to all present and future construction liens and trust claims whether or not perfected or preserved, in accordance with the terms of the Commercial List Users Committee Model Receivership Appointment Order and section 78(7) of the CLA.

## **X. CONCLUSION & RELIEF SOUGHT**

68. The Debtors are in default under the provisions of the Credit Agreement and a material adverse change in the Debtors' business has occurred. The Debtors are insolvent and unable to meet all of their obligations as they generally become due. The Syndicate is concerned that

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immediate steps must be taken in order to preserve the value of the Project Lands. In particular, a Construction Receiver is necessary to ensure that the Projects operated by the Debtors are properly managed following the Debtors' cessation of ongoing construction.

69. Failure to appoint the Construction Receiver will likely result in a further significant decrease in the value of the Debtors' business and a reduction in recoveries for their stakeholders, including the Syndicate.

70. The Syndicate has provided the Debtors with numerous opportunities and significant time within which to meet its obligations. The Syndicate is concerned, however, given the financial condition and status of the Urbancorp Group and that the Debtors do not appear to have any viable strategy or resources to complete the construction, development, and sale of the Projects. The Syndicate is particularly concerned since it appears that no work has been performed on the Projects since last fall. The Syndicate believes that immediate steps must be taken by the Construction Receiver to take control of the Projects to secure and assess the state of each of the Projects with a view to developing a strategy with respect to such Projects, which strategy may include completing the construction and development of the Projects which are in various stages of completion or a sale of such Projects to one or more developers in their current state.

71. Should the appointment of A&M as Construction Receiver be granted, A&M will deal with the Project Lands and the applicable Projects in an organized and efficient manner for the benefit of those with a real economic stake in the Project Lands and the Projects.

72. The appointment of A&M as the Construction Receiver of the assets and property of the Debtors is necessary to, *inter alia*, (a) protect the Syndicate's interests and collateral and to prevent further deterioration of the Syndicate's collateral; (b) manage and realize on the Project Lands with a view to protecting the interests of stakeholders; (c) complete required registration and compliance steps under the *Condominium Act*, if determined to be advisable, (d) continue and complete the construction, development, marketing, sale, and closing of the condominium units, if determined to be advisable; (e) deal with construction lien claims, including trust claims; and (f) provide a mechanism for further required funding of the Projects, if deemed advisable, through the issuance of the Construction Receiver's certificates to the Syndicate.

