

**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**

**BRIEF OF DOCUMENTS
(RE: LIMITED LIFT STAY ORDER)
Returnable September 25, 2017**

September 25, 2017

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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.

TO: SERVICE LIST

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BRIEF OF DOCUMENTS

I N D E X

Tab	Description
1.	Second Report of the Construction Receiver dated April 21, 2017 (excerpt)
2.	Appointment Order dated May 31, 2016
3.	Beach Project Order dated May 2, 2017 (without schedules)
4.	Leslieville Settlement Approval Order dated May 2, 2017(excerpt)

TAB 1

**ONTARIO
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BETWEEN:

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

Respondents

**IN THE MATTER OF 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 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 21, 2017

5.6 CONSTRUCTION LIEN CLAIMS AGAINST DEBTORS

178. The Construction Receiver has been advised by CIBC that the lien claims registered on the Riverdale Project lands were bonded off prior to the Appointment Order to facilitate the closings of the Riverdale Project units in or about late April and early May of 2016. The Construction Receiver has been advised by the Construction Receiver's Independent Counsel that its review of the parcel registers for property identifiers (PINs) for the Riverdale Project indicated that there were no remaining lien claims registered against the title to the Riverdale Project lands.
179. As set out in the charts below, as at January, 30, 2017, there were 22 lien claims in the aggregate amount of \$5,620,701.11 (collectively, the "**Lien Claims**") registered on title against the Debtors with respect to the Leslieville Project and the Beach Project (collectively, the "**Projects**"). There are 13 Lien Claims in the aggregate amount of \$3,561,770.19 registered on title with respect to the Leslieville Project and 9 Lien Claims in the aggregate amount of \$2,058,930.92 registered on title with respect to the Beach Project.

5.7 PRIORITY CLAIMS FOR HOLDBACK DEFICIENCIES

180. Pursuant to the CLA, a construction lien claimant with a valid lien claim may assert a priority claim on account of deficiencies in holdbacks that an owner should have maintained in priority to amounts owing to a mortgagee under its charge on the project lands. Under the CLA, where a lien claimant contracted directly with the Debtors (as owners) or their agent(s), a lien claimant is entitled to claim priority for holdback deficiencies in priority to amounts owing to CIBC and Terra Firma up to a maximum amount of 10% of the total value of materials and services which the lien claimant provided to the Projects (the "**Holdback Deficiencies**").
181. Given the status of these proceedings, a construction lien claims process has not been established to determine, among other things, the quantum, validity and priority of the Lien Claims or to determine the total value of materials and services provided to the Projects by the lien claimants (collectively, the "**Lien Claimants**"). However, in order to prepare an estimate of the aggregate amount of Holdback Deficiencies with respect to the Projects (the "**Estimated Holdback Amount**") for the purpose of the Terra Firma Motion, Construction Receiver's Independent Counsel requested that the Lien Claimants provide their positions (on a without prejudice basis) as to the total value of materials and services provided by each Lien Claimant to the projects. These amounts are set out in the following charts with the exception of two (2) Lien Claimants who did not respond in which case the total contract amount claimed by these two (2) Lien Claimants in their Lien Claims has been used (the Lien Claimants were advised that total contract amounts would be used if they did not respond):

a. *Lien and Holdback Claims – UC Leslieville Project*

Lien Claimant	Total Lien Amount	Total Value		Priority Holdback Amount (10%)
			Materials/Services	
207875 Ontario Ltd (o/a Canadian Rental Centres)	\$ 37,133.02	\$ 77,475.56	\$ 7,747.56	
Alpa Stairs and Railings Inc.	179,860.26	646,854.45	64,685.45	
Commercial Two Construction Inc.	220,067.21	1,017,000.00	101,700.00	
Emergency Propane Services Inc.	12,022.05	134,490.57	13,449.06	
EXP Services Inc.	9,377.58	151,220.77	15,122.08	
Lido Construction Inc.	1,548,100.00	1,548,100.00	154,810.00	
MDF Mechanical Ltd.	291,963.55	1,558,547.10	155,854.71	
NG Marin Inc.	856,928.72	1,121,247.02	112,124.70	
Orin Contractors Corp.	179,415.75	179,415.75	17,941.58	
Roni Excavating Limited	66,901.00	66,901.00	6,690.10	
Silvio Construction Co. Ltd.	40,361.78	40,361.78	4,036.18	
Sterline Carpet and Tile	46,997.53	364,012.55	36,401.26	
Uptown Hardward Ltd.	72,641.74	292,731.04	29,273.10	
TOTAL	\$ 3,561,770.19	\$ 7,198,357.59	\$ 719,835.78	

b. *Lien and Holdback Claims – UC Beach Project*

Lien Claimant	Total Lien Amount	Total Value		Priority Holdback Amount (10%)
			Materials/Services	
207875 Ontario Ltd. (o/a Canadian Rental Centres)	\$ 74,151.96	\$ 106,733.22	\$ 10,673.32	
Alpa Stairs and Railings Inc.	33,083.39	295,326.86	29,532.69	
Furkin Construction Inc.	116,337.45	188,636.24	18,863.62	
Lido Construction Inc.	866,823.00	866,823.00	86,682.30	
NG Marin Inc.	646,159.76	646,159.76	64,615.98	
Orin Contractors Corp.	181,969.72	181,969.72	18,196.97	
Roni Excavating Ltd.	79,481.33	79,481.33	7,948.13	
Silvio Construction Co. Ltd.	35,467.55	35,467.55	3,546.76	
Uptown Hardward Ltd.	25,456.76	133,103.62	13,310.36	
TOTAL	\$ 2,058,930.92	\$ 2,533,701.30	\$ 253,370.13	

182. As set out in the above charts, the total Estimated Holdback Amount is \$973,205.89, based on 10% of the aggregate total value of materials and services provided to the Projects by the Lien Claimants of \$9,732,058.89. This amount is based on the following assumptions: (i) each Lien Claimant contracted directly with the owner/debtor; (ii) the amounts in the charts represent the total value of materials and services actually provided by the Lien Claimants to the Projects; (iii) all Lien Claims are validly registered and are valid as to quantum; (iv) no holdback amounts were retained by the Debtors such that each Lien Claimant is entitled to a priority for 10% of their total value of materials and services provided to the Projects; and (v) the Lien Claimants have no additional priority claims under section 78 of the CLA.

5.8 TREATMENT OF CONSTRUCTION LIEN CLAIMS UNDER SETTLEMENT APPROVAL ORDER AND BEACH PROJECT ORDER

183. To date, no information has been provided which would indicate that the total value of materials and services provided to the Projects by the Lien Claimants could exceed the amounts set out in the charts above.
184. Accordingly, based on the information currently available to the Construction Receiver and the assumptions set out above, it is the Construction Receiver's view that the Estimated Holdback Amount of \$973,205.89 is sufficient to satisfy the Holdback Deficiencies. However, in an abundance of caution, the Settlement Parties have agreed to set aside a reserve amount of \$1.6 million from the Proceeds of Realization (\$1,184,000 reserve for the Leslieville Project (the "**Leslieville Project Holdback Reserve**") and \$416,000 reserve for the Beach Project (the "**Beach Project Holdback Reserve**"), respectively) to be held by the Construction Receiver in full and final satisfaction of all claims of the Lien Claimants and their subcontractors, if any, in respect of any deficiencies in the holdbacks required to have been retained by any statutory "owner" of the Leslieville Project and Beach Project, as that term is defined in section 1(1) of the CLA that have priority to amounts that were owing to any mortgagee against the Leslieville Project and Beach Project pursuant to Part IV of the CLA (the "**Holdback Deficiencies**").
185. Pursuant to the Settlement Approval Order, the Construction Receiver is authorized and directed to hold the Leslieville Project Holdback Reserve in an interest bearing account for amounts owed to the Lien Claimants for Holdback Deficiencies. The Leslieville Project Holdback Reserve will stand in place and stead of the Leslieville Project, to be used to satisfy the entirety of claims by the Lien Claimants, and their subcontractors, if any, with respect to Holdback Deficiencies, and all actions or proceedings commenced against UC Leslieville, the Administrative Agent, Travelers, and Terra Firma by the Lien Claimants, and their subcontractors, if any, with respect to the Holdback Deficiencies.
186. Once the Leslieville Project Holdback Reserve is established by the Construction Receiver using Proceeds of Realization, all actions or proceedings commenced by the Lien Claimants (as set out in **Schedule "E"** to the Settlement Approval Order) or their subcontractors, if any, as applicable, against UC Leslieville, Terra Firma, the Administrative Agent, and Travelers with respect to: (i) Holdback Deficiencies; (ii) trust or damage claims (if any); or (iii) otherwise claiming priority over any mortgagee (collectively, the "**Mortgagee Actions**") will be dismissed as against UC Leslieville, Terra Firma, the Syndicate, as applicable, on a with prejudice without costs basis.
187. It is intended that the Lien Claimants will coordinate amongst themselves, Terra Firma, Travelers and Administrative Agent to settle the exact amounts of each Lien Claimant's claim in respect of Holdback Deficiencies with the consent of Construction Receiver (the "**Settled Amounts**"). Once such Settled Amounts are

agreed upon, the Construction Receiver will bring a motion or motions (as required) to pay the Settled Amounts to each of the Lien Claimants and to distribute any residual amount, if any, in accordance with the distribution Waterfall.

188. The same structure is contemplated in the Beach Project Order with respect to Lien Claims registered on title against the Beach Project.

5.9 REVIEW OF MORTGAGE ADVANCES

189. By letter dated July 22, 2016, counsel for MDF Mechanical Ltd. requested certain information from CIBC and Terra Firma pursuant to section 39 of the CLA including the dates and amounts of advances made by CIBC and Terra Firma pursuant to their respective mortgages registered on title to the Leslieville Project. Copies of the responses provided by counsel for CIBC and Terra Firma dated August 22, 2016 and September 16, 2016, respectively, are attached as **Appendix “T”**.
190. The information provided by CIBC in its response raised potential issues with respect to the timing of a subsequent advance by CIBC under its mortgage and the discharge of a Lien Claim registered on title to the Leslieville Project. In particular, Blueline Rental, Inc. (“**Blueline**”) registered a Lien Claim on title on September 30, 2014, which was discharged on October 24, 2014 and the CIBC response indicated that CIBC made an intervening advance of \$657,344 on October 16, 2014. A copy of the PIN for the Leslieville Project as at March 30, 2017, is attached as **Appendix “U”**. On its face, this information suggested that CIBC made an advance while Blueline’s Lien Claim was registered on title which, pursuant to section 78(4) of the CLA, would result in CIBC losing priority over this advance to the Lien Claimants with valid Lien Claims on the Leslieville Project. Accordingly, counsel for MDF Mechanical Ltd. requested that counsel for the Construction Receiver review the timing of this advance.
191. In response to requests for additional information by counsel for the Construction Receiver, counsel for CIBC advised that, as a result of certain clerical errors, the dates of CIBC’s advances set out in its letter dated August 22, 2016 were incorrect, as those dates reflected the date the Draw Notice was received by CIBC, not the dates on which advances were made. Rather, the advance of \$657,344 was actually made on October 27, 2014, after the discharge of Blueline’s Lien Claim. Copies of a spreadsheet setting out the dates and amounts of advances by CIBC with respect to the Projects (and the Riverdale Project), bank statements for UC Leslieville and a letter of direction dated August 1, 2012 with respect to the initial advance, were provided to the Construction Receiver and reviewed by Construction Receiver’s Independent Counsel.
192. Attached as **Appendix “V”** is a copy of letter dated October 26, 2016 from counsel for CIBC to counsel for Commercial Two Construction Inc. in response

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

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TUESDAY, THE 31ST DAY

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JUSTICE NEWBOULD

)

OF MAY, 2016

)

BETWEEN:



CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

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**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*,
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C.30, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

APPOINTMENT ORDER
(Appointing Receiver & Construction Lien Trustee)

THIS APPLICATION made by the Canadian Imperial Bank of Commerce (“CIBC” or the “Applicant”) for an Order pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the “CLA”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as

amended (the “**CJA**”) appointing Alvarez & Marsal Canada Inc. (**A&M**) as receiver and manager (in such capacity, the “**Receiver**”), without security, and Construction Lien Trustee (in such capacity, the “**Construction Lien Trustee**”) 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, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Paul Montgomery, sworn May 25, 2016 (the “**Montgomery Affidavit**”), and the Exhibits thereto, and on hearing the submissions of counsel for CIBC, and those other counsel and parties listed on the Counsel Slip, no one else on the Service List appearing although duly served as appears from the Affidavit of Service of Fiorella Sasso sworn May 26, 2016, filed, and the Affidavit of Service of Delna Contractor sworn May 30, 2016, and on reading the Consent of A&M to act as the Receiver and Construction Lien Trustee,

SERVICE

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

CAPITALIZED & DEFINED TERMS

2. **THIS COURT ORDERS** that any capitalized and/or defined terms not defined herein this Appointment Orders shall have the meanings and definitions ascribed to them in the Montgomery Affidavit.

APPOINTMENT OF RECEIVER

3. **THIS COURT ORDERS** that pursuant to section 243 of the BIA and section 101 of the CJA, A&M is hereby appointed Receiver and Construction Lien Trustee (in its capacities as Receiver and Construction Lien Trustee jointly, the “**Construction Receiver**”), without security,

of all of the assets, undertakings, and property of the Debtors acquired for, or used in relation to the Debtors' business including all proceeds thereof (the "**Property**").

APPOINTMENT OF CONSTRUCTION LIEN TRUSTEE

4. **THIS COURT ORDERS** that pursuant to section 68 of the CLA, A&M is hereby appointed Construction Lien Trustee, without security, of the Property of the Debtors.

RECEIVER'S & CONSTRUCTION LIEN TRUSTEE'S POWERS

5. **THIS COURT ORDERS** that the Receiver and Construction Lien Trustee are hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Construction Receiver is hereby expressly empowered and authorized to do any of the following where the Construction Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts, and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the power to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage contractors, trades, architects, engineers, consultants, construction consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Construction Receiver's powers and duties, including without limitation those conferred by this Order, and in this

regard the Construction Receiver is specifically authorized to retain counsel for the Applicant to advise and represent it save and except on matters upon which the Construction Receiver in its judgment determines it requires independent advice, in which case the Receiver shall retain ~~Blake, Cassels & Graydon LLP;~~ ^{Independent counsel} HT.

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend, or compromise any indebtedness owing to the Debtors;
- (h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of any such trust funds pursuant to section 85 of the CLA;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Construction Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Construction Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) with the approval of this Court, to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts

thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (l) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Construction Receiver deem appropriate on all matters relating to the Property and the receivership and trusteeship, and to share information, subject to such terms as to confidentiality as the Construction Receiver deem advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Construction Receiver, in the name of the Debtors and to execute any agreements required in connection with or as a result of such permits, licences, approvals, or permissions (but solely in its capacity as Construction Receiver and not in its personal or corporate capacity);
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to

enter into occupation agreements for any property owned or leased by the Debtors;

- (s) to make payments, as required, under any contract in relation to the Projects, without assuming any liability or obligations thereunder;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (u) to exercise the powers provided by section 68(2) of the CLA;
- (v) to repudiate such contracts or agreements to which a Debtor is a party or in respect of the Property, provided that with respect to contracts between the Debtors and residential real estate purchasers, this power to repudiate shall not be exercised pending further Order of the Court; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Construction Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER & CONSTRUCTION LIEN TRUSTEE

6. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) Urbancorp Toronto Management Inc. (**“Urbancorp Management”**), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being **“Persons”** and each being a **“Person”**) shall forthwith advise the Construction Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Construction Receiver, and shall deliver all such Property to the Construction Receiver upon the Construction Receiver’s request.

7. **THIS COURT ORDERS** that all Persons, including, without limitation, Urbancorp Management, shall forthwith advise the Construction Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Construction Receiver or permit the Construction Receiver to make, retain and take away copies thereof and grant to the Construction Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Construction Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. The Construction Receiver is authorized to take possession and control of the Records of the Debtors located at the offices of Urbancorp Management and Urbancorp Management shall cooperate and shall provide reasonable assistance to the Construction Receiver with respect to such Records and information contained in such Records with respect to the Property, including the Project and the Project Lands.

8. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records, including, without limitation, Urbancorp Management, shall forthwith give unfettered access to the Construction Receiver for the purpose of allowing the Construction Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Construction Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Construction Receiver. Further, for the purposes of this paragraph, all such Persons, including, without limitation, Urbancorp Management, shall provide the Construction Receiver with all such assistance in gaining immediate access to the information in the Records as the Construction Receiver may in its discretion require including providing the Construction Receiver with instructions on the use of

any computer or other system and providing the Construction Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Construction Receiver except with the written consent of the Construction Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Construction Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Construction Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Construction Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) empower the Receiver, Construction Lien Trustee, or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Construction Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety, or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE CONSTRUCTION RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Construction Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Construction Receiver, and that the Construction Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Construction Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Construction Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, including trust funds, monies, cheques, instruments, and other forms of payments received or collected by the Construction Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the Construction Lien Trustee (the "**Post Construction Lien Trustee Accounts**") and the monies standing to the credit of such Post Receivership Accounts and Post Construction Lien Trustee Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver and the Construction Lien Trustee to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Debtors, if any, shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related

liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Construction Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian *Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall

exempt the Receiver and Construction Lien Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Construction Receiver shall not, as a result of this Order or anything done in pursuance of the Construction Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver and Construction Lien Trustee shall incur no liability or obligation as a result of their appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on their part, or in respect of their obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA and the Construction Lien Trustee by the provisions of the CLA, including but not limited to sections 68 and 78(7) of the CLA, or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that the Construction Receiver and counsel to the Construction Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, provided that the said accounts shall be presented based on the fees and expenses incurred in respect of each of the Projects (as defined in the Montgomery Affidavit), and for fees and expenses incurred for general administration and that the Construction Receiver and counsel to the Construction Receiver shall be entitled to and are hereby granted a charge (the **"Construction Receiver's Charge"**) on all of the Property, as security for all such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Construction Receiver's Charge shall form a first charge on all of the Property in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Construction Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Construction Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Construction Receiver be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Construction Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP & CONSTRUCTION LIEN TRUSTEESHIP

22. **THIS COURT ORDERS** that the Receiver and the Construction Lien Trustee be at liberty and are hereby empowered to borrow by way of a revolving credit or otherwise, from any one or more members of the Syndicate or such other entity as deemed appropriate by the Receiver and Construction Lien Trustee in their sole discretion (the **“Receivership/Trusteeship Borrowing Lender”**), such monies from time to time as they may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$3,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as they deem advisable for such period or periods of time as they may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Construction Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the **“Receiver’s Borrowings Charge”** and the **“Construction Lien Trustee’s Borrowing Charge”**) as security for the payment of the monies borrowed from the Receivership/Trusteeship Borrowing Lender (but only if the Receivership/Trusteeship Borrowing Lender is the Syndicate or any member thereof), together with interest and charges thereon, in priority to all security interests, trusts, liens, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Construction Receiver’s Charge and the other amounts and/or charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and the provisions of the CLA.

23. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the Receivership/Trusteeship Borrowing Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record, or perfect the Receiver's Borrowing Charge and Construction Lien Trustee's Borrowing Charge.

24. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge, Construction Lien Trustee's Borrowing Charge, nor any other security granted by the Receiver or Construction Lien Trustee in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. **THIS COURT ORDERS** that the Receiver and Construction Lien Trustee are at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**" or the "**Construction Lien Trustee's Certificates**", as applicable) for any amount borrowed by it pursuant to this Order.

26. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver and/or Construction Lien Trustee from the Receivership/Trusteeship Borrowing Lender pursuant to this Order or any further order of this Court and any and all Receiver's Certificates and Construction Lien Trustee's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates or Construction Lien Trustee's Certificates.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at www.ontariocourts.ca/scl/en/commercialist) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.alvarezandmarsal.com/urbancorp.

28. **THIS COURT ORDERS** that the Construction Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or notice by courier, personal delivery or electronic mail or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

29. **THIS COURT ORDERS** that the Applicant, the Construction Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Construction Receiver may post a copy of any or all such materials on its website at www.alvarezandmarsal.com/urbancorp.

GENERAL

30. **THIS COURT ORDERS** that the Construction Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Construction Receiver from acting as a trustee in bankruptcy of any or all of the Debtors.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Construction Receiver and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory, and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Construction Receiver, as officers of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that the Construction Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of

this Order, and that the Construction Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis, to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

35. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Construction Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

MAY 3 1 2016

PER / PAR: *Rw*

SCHEDULE "A"

**RECEIVER'S CERTIFICATE /
CONSTRUCTION LIEN TRUSTEE'S CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Alvarez & Marsal Canada Inc. ("**A&M**"), the Receiver (the "**Receiver**") and Construction Lien Trustee of the assets, undertakings, and property 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, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 31st day of May, 2016 (the "**Order**") made in an action having Court file number CV16-11409-00CL, has received as such Receiver and Construction Lien Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver and Construction Lien Trustee is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Canadian Imperial Bank of Commerce from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver and Construction Lien Trustee pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the

Bankruptcy and Insolvency Act, and the right of the Receiver and Construction Lien Trustee to indemnify themselves out of such Property in respect of their remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver and Construction Lien Trustee to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver and Construction Lien Trustee to deal with the Property (as defined in the Order) as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver and Construction Lien Trustee do not undertake, and are not under any personal liability, to pay any sum in respect of which they may issue certificates under the terms of the Order.

DATED the ____ day of _____, 201_.

Alvarez & Marsal Canada Inc. solely in its capacity
as Receiver and Construction Lien Trustee of the
Property (as defined in the Order), and not in its
personal or corporate capacity

Per: _____

Name:

Title:

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

- and -

URBANCORP (LESLIEVILLE DEVELOPMENTS) INC. et al.

- Applicant -

- Respondents -

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

(PROCEEDING COMMENCED AT TORONTO)

APPOINTMENT ORDER

(Appointing Receiver & Construction Lien Trustee)

GOWLING WLG (CANADA) LLP

Barristers and Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario, Canada, M5X 1G5

Clifton P. Prophet / Frank Lamie
LSUC No.: 34845K / 54035S

Telephone: (416) 862-3509 / (416) 862-3609
Facsimile: (416) 862-7661

**Solicitors for the Applicant,
Canadian Imperial Bank of Commerce**

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
MR. JUSTICE NEWBOULD

)
)
)

TUESDAY, THE 2nd
DAY OF MAY, 2017

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

**SALE PROCESS ORDER
(RE: BEACH PROJECT)**

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. (“**UC Riverdale**”) and Urbancorp (The Beach) Developments Inc. (“**UC Beach**”, together with UC Riverdale, and UC Leslieville, the “**Debtors**”), for an order approving the Beach Sale Process (defined below), including the engagement of Cushman & Wakefield Ltd., Brokerage (the “**Beach Listing Agent**”) as listing agent under the Beach Sale Process, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the second report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”) and on hearing the submissions of counsel for the Construction Receiver, Canadian Imperial Bank of Commerce (as administrative agent and lender), the Ad Hoc Leslieville Purchasers, Terra Firma Capital Corporation, Travelers Guarantee Corporation of Canada, Tarion Warranty Corporation, and counsel on the counsel slip, attached, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Kelly Peters sworn April 28, 2017 filed,

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined shall have the meaning given to them in **Schedule “A”** hereto.

REPUDIATION AND TERMINATION OF EACH ORIGINAL BEACH APS

2. **THIS COURT ORDERS** that the Construction Receiver be and is hereby authorized to repudiate each and every Original Beach APS, with such repudiation to be effective on the granting of this Order.

3. **THIS COURT ORDERS AND DECLARES** that as a result of the repudiation by the Construction Receiver pursuant to paragraph 2 of this Order, each Original Beach APS is not capable of performance and may be terminated by each Existing Beach Purchaser.

4. **THIS COURT ORDERS** that notice of the termination by each Existing Beach Purchaser of their Original Beach APS shall be deemed to be provided to the Construction Receiver on the granting of this Order.

NON-RECOURSE AGAINST PROPERTY

5. **THIS COURT ORDERS AND DECLARES** that all Existing Beach Purchasers and Beach Assignors shall have no right, title, interest, claim or recourse as against any of the Property of the Debtors, and any such claim held by an Existing Beach Purchaser or Beach Assignor against the Debtors shall be limited to (a) an unsecured claim against the estate of the Debtors and (b) a Tarrion Deposit Claim, each to the extent available.

APPROVAL OF BEACH SALE PROCESS

6. **THIS COURT ORDERS AND DECLARES** that the sale process in respect of the Beach Project Lands as described in Section 3.5 of the Second Report (the "**Beach Sale Process**"), be and is hereby approved, and the Construction Receiver is hereby authorized to take such further steps as it considers necessary or desirable to carry out the Beach Sale Process.

7. **THIS COURT ORDERS** that the execution of the Beach Listing Agreement by the Construction Receiver is hereby authorized and approved, with such non-material amendments as the Construction Receiver may deem necessary or desirable and the Construction Receiver be and the Construction Receiver is hereby authorized to execute and to carry out and perform its obligations under the Beach Listing Agreement, including the payment of any amounts due to be paid to the Beach Listing Agent by the Construction Receiver pursuant to the terms thereof, and to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Beach Listing Agreement.

CONSTRUCTION LIEN CLAIMS AND HOLDBACK

8. **THIS COURT ORDERS** that, after provision for the Construction Receiver's Reserve, the Construction Receiver is hereby authorized and directed to retain from the Proceeds of Realization the amount of \$416,000 (the "**Beach Holdback Reserve**") in full and final satisfaction of all claims of the construction lien claimants of the Beach Project Lands as set out at **Schedule "C"** hereto (the "**Lien Claimants**") and their subcontractors, if any, in respect of any deficiencies in the holdbacks required to have been retained by any statutory "owner" of the Beach Project Lands, as that term is defined in section 1(1) of the CLA that have priority to

amounts that were owing to any mortgagee against the Projects pursuant to Part IV of the CLA (the "**Beach Holdback Deficiencies**").

9. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to hold the Beach Holdback Reserve in an interest bearing account for amounts owed to the Lien Claimants for the Beach Holdback Deficiencies and the Beach Holdback Reserve shall stand in place and stead of the Beach Projects Lands, subject to the entirety of claims by the Lien Claimants and their subcontractors, if any, with respect to Beach Holdback Deficiencies, and all actions or proceedings commenced against the Debtors, Administrative Agent and Terra Firma by the Lien Claimants, and their subcontractors, if any, with respect to the Beach Holdback Deficiencies shall be satisfied from the Beach Holdback Reserve.

10. **THIS COURT ORDERS** that, upon the establishment of the Beach Holdback Reserve by the Construction Receiver, all actions or proceedings commenced by the Lien Claimants as set out at **Schedule "D"** hereto or their subcontractors, if any, as applicable, against the Debtors, Terra Firma, and the Administrative Agent with respect to: (i) the Beach Holdback Deficiencies; (ii) trust or damage claims (if any); or (iii) otherwise claiming priority over any mortgagee (collectively, the "**Mortgagee Actions**"), are hereby dismissed as against the Debtors, Terra Firma, and the Administrative Agent, as applicable, on a with prejudice without costs basis.

11. **THIS COURT ORDERS** that, upon settlement of the Beach Holdback Deficiencies owed to the Lien Claimants from the Beach Holdback Reserve, as may be agreed between Terra Firma, the Administrative Agent and the Lien Claimants, with the consent of the Construction Receiver (the "**Settled Amounts**"), the Construction Receiver shall bring a motion or motions, as applicable, from time to time, as the Construction Receiver in its sole discretion deems appropriate, to pay the Settled Amounts to each of the Lien Claimants.

12. **THIS COURT ORDERS** that this Order is without prejudice to the rights of the Construction Receiver, the Lien Claimants, or any of them, to, at any time, bring a motion(s) to this Court seeking, among other things, payment of their respective claims for the Beach Holdback Deficiencies, refer any issues to a Construction Lien Master or any other relief with

respect to the determination of their claims for the Beach Holdback Deficiencies to be paid from the Beach Holdback Reserve.

GENERAL

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Construction Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.



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

MAY 02 2017

PER / PAR:



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

BEACH PROJECT ORDER

BLAKE, CASSELS & GRAYDON LLP

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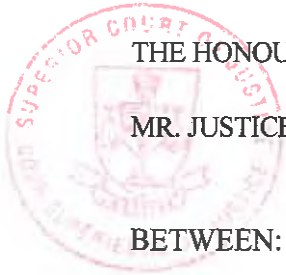
Kelly Peters - LSUC#: 59914W

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Email: kelly.peters@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 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST



THE HONOURABLE)

TUESDAY, THE 2nd

MR. JUSTICE NEWBOULD)

DAY OF MAY, 2017

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

SETTLEMENT APPROVAL ORDER
(RE: LESLIEVILLE PROJECT)

THIS MOTION, made by Alvarez & Marsal Canada Inc. ("A&M"), 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 ("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 ("CLA") (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, and UC Leslieville, the “**Debtors**”), for an order approving various agreements and arrangements in order to give effect to a proposed settlement amongst the Syndicate, Terra Firma, Craft, and the Ad Hoc Leslieville Purchasers (each as defined in **Schedule “A”** hereto, and collectively, the “**Settlement Parties**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion and the second report of the Construction Receiver dated April 21, 2017 (the “**Second Report**”) and on hearing the submissions of counsel for the Construction Receiver, the Syndicate, Terra Firma, Craft, the Ad Hoc Leslieville Purchasers, Tarion, and Travelers, and the counsel on the counsel slip, attached, no one else appearing for any other person on the service list although properly served as appears from the affidavit of service of Kelly Peters sworn April 28, 2017, filed,

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms shall have the meanings given to them in **Schedule “A”** hereto.

CONDITION PRECEDENT TO THIS ORDER

2. **THIS COURT ORDERS** that this Order will only become effective upon the filing by the Construction Receiver with the Court of a certificate confirming the satisfaction or waiver by the Settlement Parties of the Opt-In Threshold no later than two Business Days after the Ultimate Rescission Bar Date, or such later date as may be agreed to by the Settlement Parties. The date of the filing of such certificate shall be the Effective Date.

AUTHORITY TO ENTER INTO AGREEMENTS AND DOCUMENTS FOR AND ON BEHALF OF UC LESLIEVILLE

3. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized to execute such agreements authorized by paragraphs 4, 8, 10, 25, 26, 27, 28, 31 and 41 of this Order in the name of and for and on behalf of UC Leslieville, and not in its personal or corporate

held by Tarion and/or the Construction Receiver upon terms and conditions to be agreed upon by Tarion, the Construction Receiver, Terra Firma, the Syndicate and Craft or as otherwise ordered by the Court as security for the obligations described in this paragraph;

- (n) fourteenth, to Lien Claimants in respect of the balance of their valid lien claims (other than claims for Holdback Deficiencies), such claims and their respective allocation between the Lien Claimants and the respective Projects to be determined, if necessary, by further order of the Court; and
- (o) the balance, if any, to unsecured creditors of the Debtors on a pro-rata basis, such claims to be determined, if necessary, by further order of the Court.

56. **THIS COURT ORDERS** that, any payments, distributions and disbursements under this Order by the Construction Receiver shall not constitute a “distribution” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 107 of the *Corporations Tax Act* (Ontario), section 117(1) of the *Taxation Act, 2007* (Ontario), or any other similar federal or provincial tax legislation (collectively, the “**Tax Statutes**”), and that the Construction Receiver, in making such payments, distributions or disbursements is not “distributing”, nor shall be considered to “distribute” nor to have “distributed”, such funds for the purposes of the Tax Statutes, and shall have no obligation to obtain a clearance certificate in respect of such payments, distributions or disbursements. The Construction Receiver shall not incur any liability under the Tax Statutes in respect of its making any payments ordered or permitted by this Order, and is hereby forever released and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made under this Order and any claims of this nature are hereby forever barred.

CONSTRUCTION LIEN CLAIMS AND HOLDBACK

57. **THIS COURT ORDERS** that, subject to the Waterfall set out in paragraph 55, upon receipt of any Proceeds of Realization, the Construction Receiver is hereby authorized and directed to retain from the Proceeds of Realization the amount of \$1,184,000 (the “**Holdback**”

Reserve) in full and final satisfaction of all claims of the construction lien claimants of the Leslieville Project as set out at **Schedule “D”** hereto (the **“Lien Claimants”**) and their subcontractors, if any, in respect of any deficiencies in the holdbacks required to have been retained by any statutory **“owner”** of the Leslieville Project, as that term is defined in section 1(1) of the CLA that have priority to amounts that were owing to any mortgagee against the Leslieville Project pursuant to Part IV of the CLA (the **“Holdback Deficiencies”**).

58. **THIS COURT ORDERS** that the Construction Receiver is hereby authorized and directed to hold the Holdback Reserve in an interest bearing account for amounts owed to the Lien Claimants for Holdback Deficiencies and the Holdback Reserve shall stand in place and stead of the Leslieville Project, subject to the entirety of claims by the Lien Claimants, and their subcontractors, if any, with respect to Holdback Deficiencies, and all actions or proceedings commenced against UC Leslieville, the Administrative Agent, Travelers, and Terra Firma by the Lien Claimants, and their subcontractors, if any, with respect to the Holdback Deficiencies shall be satisfied by the Holdback Reserve.

59. **THIS COURT ORDERS** that, upon the establishment of the Holdback Reserve by the Construction Receiver, all actions or proceedings commenced by the Lien Claimants as set out at **Schedule “E”** hereto or their subcontractors, if any, as applicable, against UC Leslieville, Terra Firma, the Administrative Agent, and Travelers with respect to: (i) Holdback Deficiencies; (ii) trust or damage claims (if any); or (iii) otherwise claiming priority over any mortgagee (collectively, the **“Mortgagee Actions”**) are hereby dismissed as against UC Leslieville, Terra Firma, the Syndicate, as applicable, on a with prejudice without costs basis.

60. **THIS COURT ORDERS** that, upon settlement of the Holdback Deficiencies owed to the Lien Claimants from the Holdback Reserve, as may be agreed between Terra Firma, Travelers, the Administrative Agent and the Lien Claimants, with the consent of the Construction Receiver (the **“Settled Amounts”**), the Construction Receiver shall bring a motion or motions, as applicable, from time to time, as the Construction Receiver in its sole discretion deems appropriate, to pay the Settled Amounts to each of the Lien Claimants and to pay the amount, if any, by which the Holdback Reserve exceeds the Settled Amounts in accordance with the Waterfall set out in paragraph 55 of this Order.

61. **THIS COURT ORDERS** that this Order is without prejudice to the rights of the Construction Receiver, the Lien Claimants, or any of them, to, at any time, bring a motion(s) to the Court seeking, among other things, payment of their respective claims for Holdback Deficiencies, refer any issues to a Construction Lien Master or any relief with respect to the determination of their claims for Holdback Deficiencies to be paid from the Holdback Reserve.

PRIORITY REALTY TAX CLAIM RESERVE

62. **THIS COURT ORDERS** that, subject to the Waterfall set out in paragraph 55 of this Order, upon receipt of any Proceeds of Realization, the Construction Receiver is hereby authorized and directed to retain from the Proceeds of Realization an amount satisfactory to the Construction Receiver to be held by the Construction Receiver in an interest bearing account on account of any Priority Realty Tax Claims (the “**Priority Realty Tax Claim Reserve**”), and the Priority Realty Tax Claim Reserve shall stand in place and stead of the Property.

ROLE OF CONSTRUCTION RECEIVER

63. **THIS COURT ORDERS** that the obligations of the Construction Receiver with respect to the completion of the Leslieville Project shall be limited only to those obligations specified under the Project Agreements, and, for greater certainty, the Construction Receiver shall have no obligation or responsibility for any onsite supervision, review or certification of the Construction Work or the Development Services completed by Craft, its consultants, subcontractors and/or any other party, in respect of the Leslieville Project. The Construction Receiver shall at all times be entitled to rely only on that information provided by Craft, its consultants and subcontractors, including but not limited to, with respect to information contained in the monthly progress reports provided by Craft to the Construction Receiver, the Project Monitor and the Administrative Agent, regarding the progress of the Construction Work and the Development Services. In exercising its limited mandate under the Project Agreements, the Construction Receiver is hereby authorized, as the Construction Receiver considers it advisable or appropriate, to consult with and rely on any information and advice provided by the Project Monitor. For greater certainty, the Construction Receiver is not a “declarant” within the meaning of the *Condominium Act* (Ontario) and shall not be liable for the obligations of a declarant arising thereunder.

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.

67. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Construction Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.

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

69. **THIS COURT ORDERS** that pursuant to the BIA, section 195, this Order is subject to provisional execution notwithstanding any appeal therefrom.



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

MAY 02 2017

PER / PAR: 

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SETTLEMENT APPROVAL 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

**BRIEF OF DOCUMENTS
(RE: LIMITED LIFT STAY ORDER)
Returnable September 25, 2017**

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Inc., Urbancorp (Riverdale) Developments Inc., and
Urbancorp (The Beach) Developments Inc.