

**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 Tarion 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 À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAY 02 2017

PER / PAR:



SCHEDULE "A"

DEFINITIONS:

“**Administrative Agent**” means Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the Syndicate under the Pre-Filing Syndicate Credit Agreement;

“**Appointment Order**” means the order of this Court appointing the Construction Receiver dated May 31, 2016, as it may be amended, restated or supplemented from time to time;

“**Beach Assignor**” means a person who has entered into an Original Beach APS with UC Beach, and assigned such Original Beach APS to a person or persons who is now an Existing Beach Purchaser;

“**Beach Holdback Deficiencies**” has the meaning given to it in paragraph 8 of this Order;

“**Beach Holdback Reserve**” has the meaning given to it in paragraph 8 of this Order;

“**Beach Listing Agent**” has the meaning given to it in the recitals of this Order;

“**Beach Listing Agreement**” means the listing agreement in the form of the listing agreement attached as Appendix “L” to the Second Report;

“**Beach Project Lands**” means the lands and premises owned by UC Leslieville and/or UC Beach located at 42 Edgewood Avenue, Toronto, Ontario, as more particularly described in Schedule “B”;

“**Beach Sale Process**” has the meaning given to it in paragraph 6 of this Order;

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

“**CLA**” means the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended;

“**Construction Lien Trustee**” has the meaning given to it in the recitals of this Order;

“**Construction Receiver**” has the meaning given to it in the recitals of this Order;

“**Construction Receiver’s Counsel**” means Gowlings WLG (Canada) LLP;

“**Construction Receiver’s Independent Counsel**” means Blake, Cassels & Graydon LLP;

“**Construction Receiver’s Real Estate Counsel**” means Miller Thomson LLP;

“**Construction Receiver’s Reserve**” means a reserve in an amount satisfactory to the Construction Receiver to serve as cash collateral sufficient to secure the payment of the Professional Expenses;

“**Debtors**” has the meaning given to it in the recitals of this Order;

“**Existing Beach Purchaser**” mean a person who has entered into a Beach APS with UC Beach, or where such person or persons has/have assigned its/their Beach APS, the assignee(s) thereof;

“**Lien Claimants**” has the meaning given to it in paragraph 8 of this Order;

“**Mortgagee Actions**” has the meaning given to it in paragraph 10 of this Order;

“**Original Beach APS**” means an existing agreement of purchase and sale for a freehold semi-detached home located on the Beach Project Lands between UC Beach, as vendor, and an Existing Beach Purchaser, together with all related amendments and ancillary agreements;

“**Pre-Filing Syndicate Credit Agreement**” means the credit agreement made as of July 13, 2012 between UC Leslieville (as borrower), Alan Saskin, Urbancorp Toronto Management Inc., UC Riverdale and UC Beach (as guarantors), and the Syndicate (as lenders), as amended, restated and supplemented from time to time;

“**Proceeds of Realization**” means the net proceeds derived from the Beach Sale Process;

“**Professional Expenses**” means (i) all accrued but unpaid fees and disbursements of the Construction Receiver, the Construction Receiver’s Counsel, the Construction Receiver’s Independent Counsel and the Construction Receiver’s Real Estate Counsel, and (ii) the fees and disbursements as estimated from time to time by the Construction Receiver to complete the Receivership Proceeding;

“**Property**” has the meaning given to it in the recitals of this Order;

“**Receiver**” shall have the meaning given to it in the recitals of this Order;

“**Receivership Proceeding**” means the receivership proceeding with respect to the Debtors commenced by the Appointment Order bearing Court File No. CV-16-11409-00CL;

“**Second Report**” has the meaning given to it in the recitals of this Order;

“**Settled Amounts**” has the meaning given to it in paragraph 11 of this Order;

“**Syndicate**” means Canadian Imperial Bank of Commerce, Canadian Western Bank, and Laurentian Bank, or their assignees, as represented by the Administrative Agent;

“**Tarion Deposit Claim**” means a claim to Tarion Warranty Corporation for compensation for purchase price deposits paid pursuant to an Original Beach APS (up to a maximum amount of \$40,000) pursuant to the *Ontario New Home Warranties Plan Act* (Ontario);

“**Terra Firma**” means Terra Firma Capital Corporation;

“**UC Beach**” has the meaning given to it in the recitals of this Order;

“**UC Leslieville**” has the meaning given to it in the recitals of this Order; and

“**UC Riverdale** has the meaning given to it in the recitals of this Order.

SCHEDULE "B"

Beach Project Lands - 42 Edgewood Avenue, Toronto, Ontario

THE BEACH

1. Registered Owner: Urbancorp (Leslieville) Developments Inc.

PIN 21024-0455 (LT):

PART OF LOT 66 & 67 PLAN 481E DESIGNATED AS PART 1 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

PIN 21024-0456 (LT):

PART OF LOTS 8 & 9 PLAN 504 (MIDWAY) DESIGNATED AS PART 2 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

PIN 21024-0492 (LT):

PT LTS 5, 6 & 7 PLAN 504 BEING PT 35 PL 66R27603 AND PT LT 5 PL 504 BEING PT 2 PL 66R27625; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504 & PT LT 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 2 PL 66R27625 IN FAVOUR OF PT LT 4 PL 504 AS IN AT3690147; CITY OF TORONTO

PIN 21024-0494 (LT):

PT LT 69 PL 481E BEING PTS 16 & 18 PL 66R27603; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504, PT LTS 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 18 PL 66R27603 IN FAVOUR OF PT LT 70 PL 481E AS IN ET127629; CITY OF TORONTO

**2. Registered Owners: Urbancorp (Leslieville) Developments Inc. (99.999%)
Urbancorp (The Beach) Developments Inc. (0.001%)**

PIN 21024-0457 (LT):

PART OF LOTS 8 & 9 PLAN 504 (MIDWAY) DESIGNATED AS PART 3 PLAN 66R27603 TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO, DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

PIN 21024-0469 (LT):

PART OF LOT 66 PLAN 481E DESIGNATED AS PART 15 PLAN 66R27603; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 7 AND 8 PL 504 (MIDWAY) AND PART OF LOTS 67 AND 68, PLAN 481E, TORONTO, DESIGNATED AS PART 3 ON PLAN 66R26973 UNTIL SUCH TIME AS SAID PART 3 IS DEDICATED AS PUBLIC HIGHWAY AS IN AT3535638; CITY OF TORONTO

PIN 21024-0491 (LT):

PT LTS 5, 6 & 7 PLAN 504 BEING PT 36 PL 66R27603 AND PT LT 5 PLAN 504 BEING PT 1 PL 66R27625; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504 & PT LT 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; SUBJECT TO AN EASEMENT OVER PT 1 PL 66R27625 IN FAVOUR OF PT LT 4 PL 504 AS IN AT3690147; CITY OF TORONTO

PIN 21024-0493 (LT):

PT LTS 68 & 69 PL 481E BEING PT 17 PL 66R27603; TOGETHER WITH AN EASEMENT OVER PT LTS 7 & 8 PL 504, PT LTS 67 & 68 PL 481E PT 3 PL 66R26973 AS IN AT3535638; TOGETHER WITH AN EASEMENT OVER PT LT 70 PL 481E PT 3 PL 66R25512 AS IN ET127629; CITY OF TORONTO

SCHEDULE "C"
LIEN CLAIMANTS

207875 Ontario Ltd. (o/a Canadian Rental Centres)
Alpa Stairs and Railings Inc.
Furkin Construction Inc.
Lido Construction Inc.
NG Marin Inc.
Orin Contractors Corp.
Roni Excavating Limited
Silvio Construction Co. Ltd.
Uptown Hardware Limited

SCHEDULE "D"

List of actions or proceedings commenced by the Lien Claimants

	Plaintiff	Defendants	Court File No.
1.	207875 Ontario Limited	Urbancorp (The Beach) Developments Inc., Urbancorp (Leslieville) Developments Inc., Urbancorp Construction Company Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-554931
2.	Alpa Stairs and Railings Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-537936
3.	Furkin Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543051
4.	Lido Construction Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp Inc., Canadian Imperial Bank of Commerce, and Terra Firma Capital Corporation	CV-16-556542
5.	NG Marin Inc.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-552135
6.	Orin Contractors Corp.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543581
7.	Roni Excavating Limited	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-15-543577

	Plaintiff	Defendants	Court File No.
8.	Silvio Construction Co. Ltd.	Urbancorp (Leslieville) Developments Inc., Urbancorp (The Beach) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-549973
9.	Uptown Hardware Limited	Urbancorp (Leslieville) Developments Inc., Canadian Imperial Bank of Commerce and Terra Firma Capital Corporation	CV-16-551477

10:00 A.M.
COUNSEL SLIP

N

COURT FILE NO CV-16-11409-00CL DATE MAY 2, 2017

NO ON LIST 10

TITLE OF
PROCEEDING

✓ CANADIAN IMPERIAL BANK OF COMMERCE
URBANCORP (LESLIEVILLE) DEVELOPMENTS INC.
etal.

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PETITIONER(S)

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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

BEACH PROJECT ORDER

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Independent Counsel for Alvarez & Marsal Canada Inc., in its capacity as both Receiver and Manager, and Construction Lien Trustee of the assets, undertakings and property of Urbancorp (Leslieville) Developments Inc., Urbancorp (Riverdale) Developments Inc., and Urbancorp (The Beach) Developments Inc.