

**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**

AGREED STATEMENT OF FACTS

June 11, 2019

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1.0 OVERVIEW

1. The following parties (collectively, the “**Parties**”) have agreed to this agreed statement of facts (the “**Agreed Statement of Facts**”):
 - a. Terra Firma Capital Corporation (“**Terra Firma**”) ;
 - b. Sahand Pouladi, Susan Pouladi, Wan-Ming Shin, Howard Quinn, Keefe Lee, Robert Gill , Pravin Patel, Emil Calixterio, Trisha Enriquez, Fabian Gilbert, Linda Ing, Selina Nazim, Dan Shemesh, Shayna Segal, Kevin Chi-Kee Shin, Frederick Tang, Allan Chi-Lun Shin, Jimmy Wong, Le Luu, Robert J.D. Bryans, Y-Le Dao, Chen Fai Law, Adam Wright, Ashton Wright, Leona Savoie, Vipin Tiwari, Helen Tang, Dean S. Geggie (By Power of Attorney Jackson Geggie), Samantha S. Burrows (By Power of Attorney Jackson Geggie), Dana Ross, Guomei Pan, Russell S. Morris, Michelle Posner, Eun Lee, Jongho Park, Alvib Yu Bon Poon, Eric Kafka, Blake Smith, Joong Hyup Shin, Won-Mi Shin, Kandia Aird, Issa Guindo, Alison Montone-Lyon and Justin Armstrong (collectively, the “**Certain Curzon Purchasers**”);
 - c. Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the “**Receiver**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended, and as construction lien trustee (in such capacity, the “**Construction Lien Trustee**”, and together with the Receiver, the “**Construction Receiver**”), pursuant to section 68 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, of all of the assets, undertakings, and property acquired for, or used in relation to the business of Urbancorp (Leslieville) Developments Inc. (“**UC Leslieville**”).
2. On May 31, 2016, the Ontario Superior Court of Justice (the “**Court**”) granted an order appointing the Construction Receiver over all of the assets, undertakings,

and property acquired for, or used in relation to the business of, among other parties, UC Leslieville (such proceedings, the “**Receivership Proceedings**”).

3. Between October 18 and 25, 2018, the Construction Receiver closed the sale of residential condominium townhouse units (the “**Leslieville Units**”) within UC Leslieville’s Curzon Street construction project (the “**Project**”) to purchasers, including thirty (30) Leslieville Units sold to the Certain Curzon Purchasers.
4. On closing, purchase price closing adjustments and other amounts were charged by the Construction Receiver to each of the Certain Curzon Purchasers.
5. The Certain Curzon Purchasers object to the Construction Receiver charging the purchase price amount referred to on each Certain Curzon Purchasers’ statement of adjustments as the “**Parks Levy**”.
6. The Construction Receiver and Terra Firma state that the Parks Levy was properly charged to the Certain Curzon Purchasers under the terms of their respective agreements of purchase and sale.
7. Pending the adjudication of the Issue for Determination (defined below), the Construction Receiver has said it will hold the total of \$700,000 in reserve.

2.0 ISSUE FOR DETERMINATION AND ORDERS SOUGHT

8. The Parties seek from the Court a determination of the following issue (the “**Issue for Determination**”):

Was the Parks Levy properly charged by the Construction Receiver to the Certain Curzon Purchasers, pursuant to the terms of their respective agreements of purchase and sale?

9. If the answer to the Issue for Determination is affirmative, the Parties agree that the Court should grant an order approving the Parks Levy.

10. If the answer to the Issue for Determination is negative, the Parties agree that the Court should grant an order directing the Construction Receiver to repay each of the Certain Curzon Purchasers their respective amounts of the Parks Levy, inclusive of HST, as set out in in Exhibit “19”, together with interest at a rate of 2.0% per annum.
11. Each of the Parties reserves the right to seek a costs order.

3.0 AGREED STATEMENT OF FACTS

12. The Parties agree that the facts contained herein are to be admitted in this proceeding for the purpose of the Court determining the Issue for Determination, and for no other purpose. The Parties furthermore agree to the truth and authenticity of the documents contained as Exhibits in the joint brief of documents prepared in connection with this agreed statement of facts and filed herewith (the “**Joint Book of Documents**”). All references to Exhibits are as contained in the Joint Book of Documents.
13. Each of the Parties reserves the right to file additional evidence in this proceeding.

4.0 THE LESLIEVILLE PROJECT PARKLAND DEDICATION

14. Pursuant to section 42(1) of the *Planning Act* (Ontario), as a condition of development of land, a council or local municipality may require that land in an amount not exceeding, in the case of land proposed for residential purposes, 5 per cent of the land be conveyed to the municipality for park or other public recreation purposes.
15. Pursuant to 42(6) of the Planning Act, the council may also require a payment in lieu of a conveyance, to the value of the land otherwise required to be conveyed.

Correspondence Prior to Site Plan Approval

16. On December 15, 2011, an internal City of Toronto memorandum (the “**December Memorandum**”) concluded that a parkland dedication of 696 m² would be required for the Project. A copy of the December Memorandum is attached hereto as Exhibit “1”.
17. In or about late January of 2013, the City sent UC Leslieville a letter dated January 28, 2013, attached as Exhibit “2” (the “**January Letter**”).
18. Shortly following receipt of the January Letter, UC Leslieville obtained letter of credit number SBGT752755, dated February 12, 2013 (the “**Parks LC**”), in the amount of \$769,280. The named beneficiary of the Parks LC was the City of Toronto. A copy of the Parks LC is attached hereto as Exhibit “3”.
19. The Parks LC furthermore provides that it is being delivered pursuant to a “Section 42 Parkland Dedication Agreement dated December 15, 2011”. The Construction Receiver has advised Terra Firma and the Certain Curzon Purchasers that it has searched the UC Leslieville records available to it and has not been able to locate this agreement, and furthermore that it has made inquiries to the City of Toronto about the agreement, and has been advised by a senior lawyer in the City of Toronto Legal Services division that a section 42 Planning Act parkland dedication agreement “wasn’t entered into in this case”. Terra Firma and the Certain Curzon Purchasers have no evidence to contradict the advice received by the Construction Receiver described in the foregoing sentence.
20. The Project’s Notice of Approval Conditions, prepared by the City and dated January 25, 2016 (the “**NOAC**”), is attached as Exhibit “4”.

Site Plan Approval

21. On October 23, 2017, UC Leslieville (by the Construction Receiver) and the City entered into a site plan agreement in respect of the Project (the “**Site Plan**”). A copy of the Site Plan is attached as Exhibit “5”.
22. On October 26, 2017, the Construction Receiver sought and obtained an order of Mr. Justice Myers that, among other things, (a) approved the Construction Receiver executing the Site Plan on behalf of UC Leslieville, and (b) authorized the Construction Receiver to convey part of Lot 11, Concession 1 FTB (Geographic Township of York) Designated as Parts 2 and 3 on Plan 66R29585, City of Toronto (the “**Parkland**”) to the City. A copy of Mr. Justice Myers’ order is attached as Exhibit “6”.
23. By letter dated November 6, 2017, the City advised that the UC Leslieville’s application was approved, as set out in the NOAC. A copy of this November 6, 2017 letter is attached as Exhibit “7”.

Parkland Conveyance

24. On May 23, 2018, the Parkland was conveyed to the City by the Construction Receiver. The square footage of the Parkland that was ultimately conveyed was 700.09 m². A copy of the Parkland transfer is attached as Exhibit “8”.
25. On October 4, 2018, the City returned the Parks LC to the Construction Receiver for cancellation. A copy of the October 4, 2018 letter is attached as Exhibit “9”.

5.0 HISTORY OF THE PURCHASE OF LESLIEVILLE UNITS

26. As of the date of the Construction Receiver’s appointment on May 31, 2016, many of the 55 Leslieville Units had been sold by UC Leslieville pursuant to agreements of purchase and sale (the “**Original Leslieville Purchaser APS**”) executed by UC Leslieville with each purchaser, each dated various months in

2011 (the “**Original Leslieville Purchasers**”). A sample of the Original Leslieville Purchaser APS is attached as Exhibit “10”.

27. On July 15, 2016 Terra Firma served a motion (the “**Terra Firma Motion**”) seeking a declaration, among other things, that the interests of the Original Leslieville Purchasers were subordinate to the interest of Terra Firma, and seeking an order vesting all of UC Leslieville’s right title and interest in the Leslieville Project in Terra Firma – in effect, the Terra Firma motion would have prevented the Original Leslieville Purchasers from closing on Leslieville Units, if and when they were completed.
28. This Court deferred the hearing of the Terra Firma Motion in order to allow discussions to take place between Terra Firma and the key stakeholders, including a subset of forty-six (46) purchasers of the Leslieville Project, who were represented by Dickinson Wright LLP (“**Dickinson Wright**”).
29. Based on the Notice of Appearance and Notice of Change of Lawyer filed by Shibley Righton on behalf of the Certain Curzon Purchasers, attached hereto as Exhibit “11”, and a Notice of Application dated May 5, 2016 filed by Dickinson Wright attached hereto as Exhibit “12”, thirty-four (34) of the Certain Curzon Purchasers were represented by Dickinson Wright.
30. These discussions resulted in an agreement enabling the Original Leslieville Purchasers to complete the purchases of their respective townhomes provided they were prepared to pay an additional \$255,000, referred to as the "top-up" amount (the “**Settlement**”).
31. The Settlement was approved by the Court pursuant to the order of Mr. Justice Newbould, dated May 2, 2017 (and amended on May 11, 2017), a copy of which is attached as Exhibit “13”.

Opt-In Purchasers

32. The terms of the Settlement contemplated that the Original Leslieville Purchasers would be entitled to opt-in, including by paying the top-up amount, thereby becoming “**Opt-In Leslieville Purchasers**”, and execute the Opt-In Leslieville Purchaser agreement of purchase and sale (each an “**Opt-In Leslieville Purchaser APS**”), A sample of the Opt-In Leslieville Purchaser APS is attached as Exhibit “14”.
33. The following subsection 7(d)(iii) was included in each Opt-In Leslieville Purchaser APS executed by each Certain Curzon Purchaser (the “**Park Levy Clause**”):
 - (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
 - (iii) the amount of any parks levy or any charges pursuant to a Section 37 Agreement (pursuant to the *Planning Act*), levied, charged or otherwise imposed with respect to the Condominium, the Property or the Unit by any governmental authority, which is equivalent to the common interest allocation attributable to the Unit as set out in Schedule “D” to the Declaration;
34. The form of Opt-In Leslieville Purchaser APS was approved by the Court in the Purchaser Package Approval Order, as amended (with such non-material amendments to the APS as the Construction Receiver may deem necessary or desirable), on May 2, 2017. A copy of the Purchaser Package Approval Order is attached hereto as Exhibit “15”.
35. All of the Certain Curzon Purchasers purchased their Leslieville Units pursuant to Opt-In Leslieville Purchaser APSs, with the exception of one Certain Curzon Purchaser who bought one Leslieville Unit pursuant to an Opt-In Leslieville

Purchaser APS and one Leslieville Unit pursuant to a New Leslieville Purchaser APS (defined below).

36. Each Original Leslieville Purchaser APS contained at subsection 6(d)(iii) a clause identical to the Park Levy Clause cited above.

New Purchasers

37. In total, fifteen (15) of the fifty-five (55) Leslieville Units were purchased by non-Opt-In Leslieville Purchasers, with such purchasers referred to herein as “**New Leslieville Purchasers**”. None of the Certain Curzon Purchasers are exclusively New Leslieville Purchasers, but one Certain Curzon Purchaser who is an Opt-In Leslieville Purchaser also signed a New Leslieville Purchaser APS for a second Leslieville Unit.
38. New Leslieville Purchasers executed New Leslieville Purchaser agreements of purchase and sale (each a “**New Leslieville Purchaser APS**”), a sample of which is attached as Exhibit “16”.
39. New Leslieville Purchasers of thirteen (13) of Leslieville Units obtained a cap on certain purchase price closing amounts under paragraph 6(d)(iii) to 6(d)(ix) of their New Leslieville Purchaser APS. Total purchase price closing amounts for each New Leslieville Purchasers with caps were \$8,000 plus HST per Leslieville Unit. An additional \$200 was charged for title insurance, for a total purchase price adjustment of \$8,200, plus HST.
40. Each of the New Leslieville Purchaser APS amendments documenting the caps, redacted to protect personal information of the New Leslieville Purchasers (who are not Certain Curzon Purchasers) are attached as Exhibit “17”.

6.0 PURCHASE PRICE ADJUSTMENTS AND THE PARK LEVY

41. On the closing of the Leslieville Units, the Construction Receiver charged purchase price adjustments and other charges to the Certain Curzon Purchasers,

including the Parks Levy, set out in statements of adjustments sent to purchasers' counsel.

42. Attached as Exhibit "18" is a summary of all purchase price adjustments and other amounts charged in respect of the Leslieville Units, prepared by the Construction Receiver (the "**Adjustment Summary**"). Line 16 of the Adjustment Summary aggregates purchase price adjustments and other amounts charged, indicating that purchase price adjustments and other amounts charged in respect of the fifty-five (55) Leslieville Units were a total of approximately \$1.3 million, inclusive of HST.
43. The Construction Receiver charged the forty-two (42) Leslieville Purchasers without caps on their purchase price amounts charged, on closing, a Parks Levy in the aggregate amount of \$588,804.10 (plus \$76,544.53 HST). The amounts paid towards the Parks Levy by Certain Curzon Purchasers, a total of \$417,694.18 (plus \$54,300.21 HST) is broken down by each Certain Curzon Purchaser in the chart summary attached as Exhibit "19".
44. The Construction Receiver's real estate counsel received complaints from counsel to several purchasers upon receipt of statements of adjustments, in each case specifically objecting to the Parks Levy (among other things). Attached as Exhibit "20" is an email exchange in October 2018 between the Construction Receiver and one of the Certain Curzon Purchasers (copying 3 other Certain Curzon Purchasers), reflecting the Certain Curzon Purchaser's concern about the Park Levy.
45. All of the Certain Curzon Purchasers closed their Leslieville Units and paid the Parks Levy set out in their applicable statement of adjustment.
46. The Construction Receiver has advised Terra Firma and Shibley Righton that the quantum of the Parks Levy was calculated by the Construction Receiver based on the face value of the Parks LC and allocated among the common interest allocation attributable to the applicable Leslieville Unit. Terra Firma and the

Certain Curzon Purchasers do not allege any miscalculations were made to any purchaser's proportionate interest/share paid, without prejudice to the Certain Curzon Purchaser's position that no Park Levy should have been charged at all.

7.0 DECLARATION AND OWNERSHIP PERCENTAGE

47. A copy of the Project's condominium declaration, receipted by the land registrar on September 7, 2018, is attached hereto as Exhibit "21".
48. The common interest allocation attributable to each of the Certain Curzon Purchasers is included in Exhibit "22".

CANADIAN IMPERIAL BANK OF COMMERCE V. URBANCORP (LESLIEVILLE)
DEVELOPMENTS INC. et. al.

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

Proceeding commenced at Toronto

**AGREED STATEMENT OF FACTS
(Returnable June 19, 2019)**

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