

Estate Nos. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
URBANCORP (WOODBINE) INC., URBANCORP  
(BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S  
HOLLOW INC., KING TOWNS INC., NEWTOWNS AT  
KINGTOWNS INC., DEAJA PARTNER (BAY) INC., AND  
TCC/URBANCORP (BAY) LIMITED PARTNERSHIP,  
BANKRUPTS**

---

**MOTION RECORD  
OF THE TRUSTEE**

---

**Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

Robin B. Schwill (LSUC #38452I)  
rschwill@dwpv.com  
Tel: 416.863.5502  
Fax: 416.863.0871

Lawyers for the Trustee,  
KSV Kofman Inc.

# Index

Estate Nos. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
URBANCORP (WOODBINE) INC., URBANCORP  
(BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S  
HOLLOW INC., KING TOWNS INC., NEWTOWNS AT  
KINGTOWNS INC., DEAJA PARTNER (BAY) INC., AND  
TCC/URBANCORP (BAY) LIMITED PARTNERSHIP,  
BANKRUPTS**

**INDEX**

<b><u>Tab</u></b>	<b><u>Document</u></b>
1.	Notice of Motion returnable May 22, 2019
2.	First Report of the Trustee dated May 17, 2019
A.	Bay Entities' Corporate Chart
B.	Twenty-First Report
3.	Draft Order

**Tab 1**

Estate Nos. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF  
URBANCORP (WOODBINE) INC., URBANCORP  
(BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S  
HOLLOW INC., KING TOWNS INC., NEWTOWNS AT  
KINGTOWNS INC., DEAJA PARTNER (BAY) INC., AND  
TCC/URBANCORP (BAY) LIMITED PARTNERSHIP,  
BANKRUPTS**

**NOTICE OF MOTION**

KSV Kofman Inc. ("**KSV**"), in its capacity as the trustee in bankruptcy (the "**Trustee**") of each of the Bankrupts will make a motion to Regional Senior Justice Morawetz, on May 22, 2019, or as soon thereafter as the motion can be heard, at the Courthouse located at 330 University Avenue, Toronto, Ontario, Canada.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard in writing because it is unopposed.

**THE MOTION IS FOR AN ORDER:**

1. if necessary, validating and abridging the time of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;
2. substantively consolidating each of the bankrupt estates of the Bankrupts into the bankrupt estate of DEAJA Partner (Bay) Inc. bearing estate file number 31-2510937; and
3. such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. DEAJA Partner (Bay) Inc. is the general partner of TCC/Urbancorp (Bay) Limited Partnership ("**Bay LP**");
2. Each of the Bay LP subsidiaries is a nominee and bare trustee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP and they themselves have no independent assets or creditors;
3. The only remaining asset of Bay LP is approximately \$110,00 and there is only one remaining creditor of Bay LP, being UCI who is owed approximately \$4.9 million;
4. Accordingly, substantively consolidating the bankrupt estates will not prejudice any creditor and is, in fact, of benefit by way of administrative cost savings;
5. Rules 1.04, 2.03, 3.02, 16.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended

6. Bankruptcy and Insolvency Act General Rules 3 and 11; and
7. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. the First Report of the Trustee dated May 17, 2019; and
2. such further material as counsel may advise and this Court may permit.

May 21, 2019

**Davies Ward Phillips & Vineberg LLP**

155 Wellington Street West  
Toronto, ON M5V 3J7

Robin B. Schwill (LSUC #384521)  
Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Trustee

**TO: DLA PIPER (CANADA) LLP**

Suite 6000, Box 367  
1 First Canadian Place  
Toronto, ON M5X 1E2

Danny M. Nunes  
Tel: 416.365.3421  
Email: danny.nunes@dlapiper.com

Lawyers for the Bankrupts

**AND TO: DENTONS CANADA LLP**  
400-77 King Street West, TD Centre  
Toronto, ON M5K 0A1

Neil Rabinovitch / Kenneth Kraft  
Tel: 416-863-4656 / 416-863-4374  
Email: neil.rabinovitch@dentons.com / kenneth.kraft@dentons.com

Lawyers for Adv. Gus Gissin, in his capacity as the Court-appointed Israeli  
Functionary of Urbancorp Inc.

**AND TO: SUPERINTENDENT OF BANKRUPTCY**  
22 St. Clair Avenue East, 6<sup>th</sup> Floor  
Toronto, ON M4T 1M2

Chris Poole  
Tel: 1-877-376-9902  
Email: chris.poole@canada.ca



Court File No. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

IN THE MATTER OF THE BANKRUPTCY OF  
URBANCORP (WOODBINE) INC., URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S  
HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC., DEAJA PARTNER (BAY) INC., AND  
TCC/URBANCORP (BAY) LIMITED PARTNERSHIP, BANKRUPTS

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

**(PROCEEDING COMMENCED AT TORONTO)**

**NOTICE OF MOTION**

**Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

**Robin B. Schwill**  
(LSUC #: 384521)

Telephone: 416.863.5502  
Facsimile: 416.863.0871

**Lawyers for the Trustee**

# Tab 2



**First Report to Court of KSV Kofman Inc. as  
Trustee in Bankruptcy of Urbancorp  
(Woodbine) Inc., Urbancorp (Bridlepath) Inc.,  
The Townhouses of Hogg's Hollow Inc., King  
Towns Inc., Newtowns at Kingtowns Inc.,  
Deaja Partner (Bay) Inc., and TCC/Urbancorp  
(Bay) Limited Partnership**

**May 17, 2019**

<b>Contents</b>	<b>Page</b>
1.0 Introduction.....	1

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Bay Entities' Corporate Chart.....	A
Twenty-First Report .....	B



ESTATE NO.: 31-2510942  
ESTATE NO.: 31-2510941  
ESTATE NO.: 31-2510940  
ESTATE NO.: 31-2510938  
ESTATE NO.: 31-2510939  
ESTATE NO.: 31-2510943  
ESTATE NO.: 31-2510937

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCIES OF URBANCORP (WOODBINE) INC.,  
URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S HOLLOW  
INC., KING TOWNS INC., NEWTOWNS AT KING TOWNS INC., DEAJA PARTNER  
(BAY) INC. AND TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

FIRST REPORT OF KSV KOFMAN INC.

MAY 17, 2019

## 1.0 Introduction

1. On April 25, 2016, Urbancorp (Woodbine) Inc. ("Woodbine") and Urbancorp (Bridlepath) Inc. ("Bridlepath") each filed a Notice of Intention to Make a Proposal (the "NOI Proceedings") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee in the NOI Proceedings.
2. Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated October 18, 2016, Woodbine, Bridlepath, The Townhouses of Hogg's Hollow Inc. ("Hoggs Hollow"), King Towns Inc. ("KingTowns"), Newtowns at Kingtowns Inc. ("Newtowns"), Deaja Partner (Bay) Inc. ("Deaja") and TCC/Urbancorp (Bay) Limited Partnership ("Bay LP") (the "Bay Entities") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") (the "Bay CCAA Proceedings") and KSV was appointed monitor in those proceedings (the "Monitor").
3. Deaja is the general partner of Bay LP. Each of the Bay LP subsidiaries is a nominee and bare trustee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP. A corporate chart for the Bay Entities is attached as Appendix "A".

4. As detailed in the Monitor's Twenty-First Report to Court dated April 24, 2019 (the "Twenty-First Report"), all of the issues in the Bay CCAA Proceedings have now been concluded. As such, on the recommendation of the Monitor, on April 30, 2019, the Court issued an order:
  - a) terminating, upon the filing of the discharge certificate, the Bay CCAA Proceedings and discharging KSV in its capacity as the Monitor of the Bay Entities; and
  - b) authorizing and directing the Monitor to file assignments in bankruptcy on the Bay CCAA Entities' behalf.
5. A copy of the Twenty-First Report is attached as Appendix "B", without appendices.
6. On May 15, 2019, the Monitor filed the assignments in bankruptcy.
7. The purpose of this report is to recommend that the Court issue an order substantively consolidating the Bay Entities' bankruptcy proceedings into the Deaja estate. Doing so will facilitate the orderly administration of the Bay Entities' bankruptcy proceedings and will be more cost efficient than conducting separate bankruptcy proceedings for each Bay Entity given that all of the subsidiaries are merely nominee companies for Bay LP having no independent assets or creditors.
8. The only remaining asset of the Bay Entities is approximately \$110,000 and there is only one remaining creditor of Bay LP, being UCI which is owed approximately \$4.9 million. Accordingly, substantively consolidating the bankrupt estates will have no prejudice on any creditor and is, in fact, of benefit by way of administrative cost savings.
9. The table below provides the BIA estate numbers for each of the Bay Entities, which will be consolidated.

Company	Estate Number
Woodbine	31-2510942
Bridlepath	31-2510941
Hoggs Hollow	31-2510940
KingTowns	31-2510938
Newtowns	31-2510939
Bay LP	31-2510943
Deaja	31-2510937

\* \* \*

All of which is respectfully submitted,



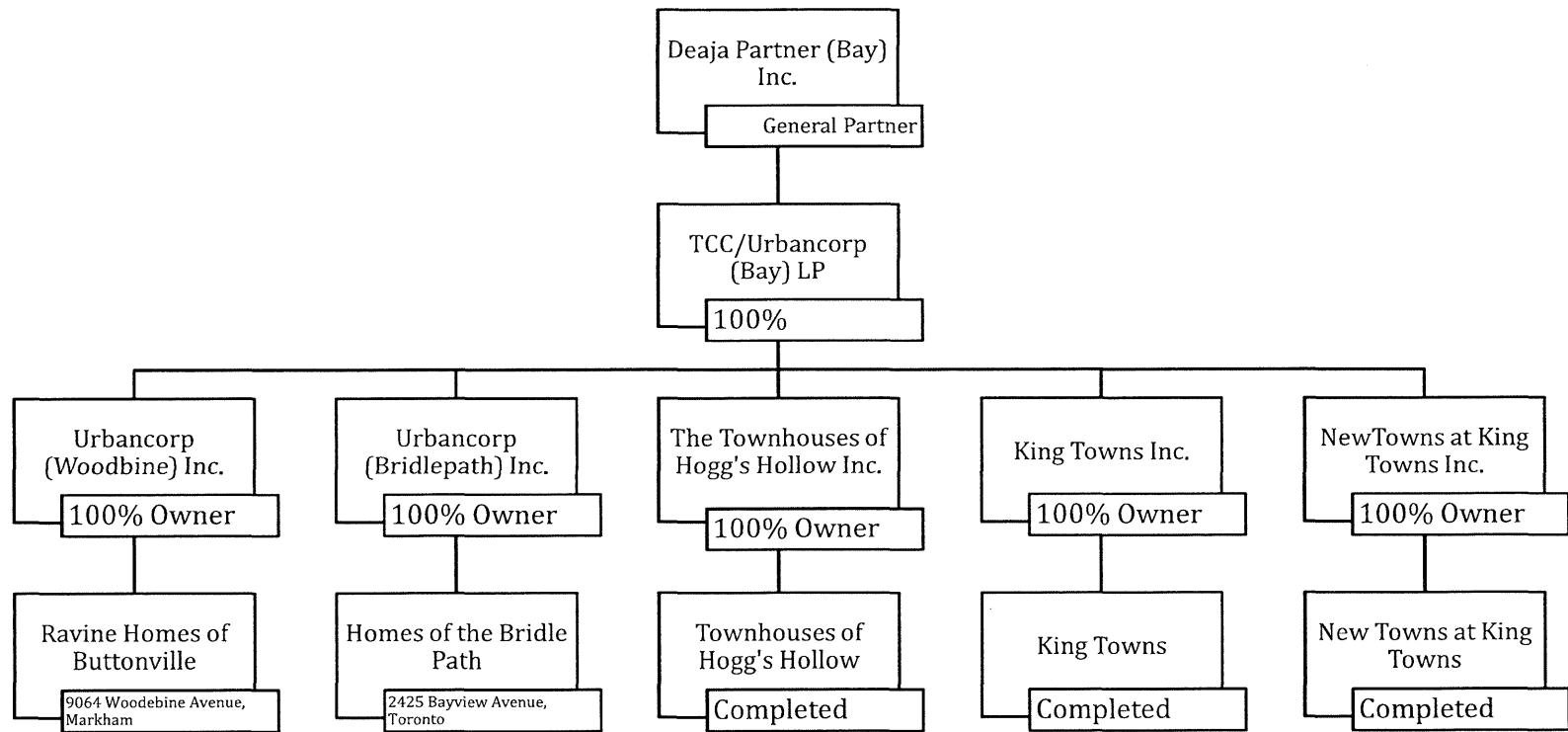
**KSV KOFMAN INC.  
IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF  
THE BAY ENTITIES  
AND NOT IN ITS PERSONAL CAPACITY**

**Tab A**

## **Appendix “A”**



TCC/URBANCORP (BAY)



**Tab B**

## **Appendix “B”**



**Thirty-Third Report to Court of  
KSV Kofman Inc. as CCAA Monitor of  
Urbancorp Toronto Management Inc.,  
Urbancorp (St. Clair Village) Inc., Urbancorp  
(Patricia) Inc., Urbancorp (Mallow) Inc.,  
Urbancorp (Lawrence) Inc., Urbancorp  
Downsview Park Development Inc., Urbancorp  
(952 Queen West) Inc., King Residential Inc.,  
Urbancorp 60 St. Clair Inc., High Res. Inc.,  
Bridge On King Inc. and the Affiliated Entities  
Listed in Schedule "A" Hereto**

**April 24, 2019**

**and**

**Twenty-First Report to Court of KSV Kofman  
Inc. as CCAA Monitor of Urbancorp  
(Woodbine) Inc., Urbancorp (Bridlepath) Inc.,  
The Townhouses of Hogg's Hollow Inc., King  
Towns Inc., Newtowns at Kingtowns Inc.,  
Deaja Partner (Bay) Inc., and TCC/Urbancorp  
(Bay) Limited Partnership**

<b>Contents</b>	<b>Page</b>
1.0 Introduction.....	2
1.1 Cumberland CCAA Entities .....	2
1.2 Bay CCAA Entities .....	2
1.3 Urbancorp Renewable Power Inc. ....	3
1.4 Urbancorp Inc., Recognition of Foreign Proceedings .....	3
1.5 Purposes of this Report.....	4
1.6 Currency .....	5
1.7 Restrictions .....	5
2.0 Background .....	6
2.1 Urbancorp Inc.....	6
3.0 Update on CCAA Proceedings.....	6
3.1 Cumberland Entities – Distributions and Disputed Claims .....	6
3.2 Dolvin Mechanical Contractor Limited .....	8
3.3 Bay Entities – Distributions and Disputed Claims .....	9
3.4 Geothermal Assets.....	10
3.5 URPI .....	12
3.6 Bridge, Fuzion and Edge Condo Corporations .....	12
3.7 Urbancorp New Kings Inc.....	13
3.8 Downsvew.....	14
3.9 Urbancorp Downtown Developments Inc.....	15
4.0 Document Request.....	16
5.0 Cash Flow Forecast.....	17
6.0 Request for an Extension.....	18
7.0 Bay LP Monitor’s Discharge and Bankruptcy of Bay CCAA Entities .....	18
8.0 Professional Fees .....	19
9.0 Conclusion and Recommendation .....	20

## **Schedules and Appendices**

### **Schedules**

Cumberland CCAA Entities.....	A
Bay CCAA Entities .....	B

## Appendix

## Tab

Cumberland CCAA Entities' Corporate Chart.....	A
Bay CCAA Entities' Corporate Chart.....	B
Document Request.....	C
March 27 Letter .....	D
Cash Flows.....	E
Management's reports on the cash flows.....	F
Monitor's statutory reports on the cash flows .....	G
Affidavits of Robert Kofman .....	H
Affidavits of Robin Schwill.....	I
Affidavits of Edmond Lamek .....	J

## Confidential Appendix

## Tab

Gales Emails .....	1
--------------------	---



COURT FILE NO.: CV-16-11389-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR  
VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC.,  
URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK  
DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING  
RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE  
ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE AFFILIATED  
ENTITIES LISTED IN SCHEDULE "A" HERETO

THIRTY-THIRD REPORT OF KSV KOFMAN INC.

COURT FILE NO.: CV-16-11549-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
URBANCORP (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE  
TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT  
KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE  
"APPLICANTS")

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

TWENTY-FIRST REPORT OF KSV KOFMAN INC.

APRIL 24, 2019

## 1.0 Introduction

### 1.1 Cumberland CCAA Entities

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "NOI Entities"). KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee of each of the NOI Entities.
2. Pursuant to an Order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 18, 2016 (the "Initial Order"), the NOI Entities, together with the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities" and each a "Cumberland CCAA Entity") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor of the Cumberland CCAA Entities (the "Monitor") (the "Cumberland CCAA Proceedings").
3. Certain Cumberland CCAA Entities<sup>1</sup> are known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP ("Cumberland"). Collectively, Cumberland and its direct and indirect subsidiaries are the "Cumberland Entities" and each individually is a "Cumberland Entity". Each Cumberland Entity is a nominee for Cumberland and, as such, the assets and liabilities of the Cumberland Entities are assets and liabilities of Cumberland. The remaining Cumberland CCAA Entities<sup>2</sup>, other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. ("UCI") (collectively, the "Non-Cumberland Entities" and each a "Non-Cumberland Entity"). The corporate chart for the Cumberland CCAA Entities and the Non-Cumberland Entities is provided in Appendix "A".

### 1.2 Bay CCAA Entities

1. On April 25, 2016, Urbancorp (Woodbine) Inc. ("Woodbine") and Urbancorp (Bridlepath) Inc. ("Bridlepath") each filed a NOI. KSV was appointed as the Proposal Trustee of each of Woodbine and Bridlepath.
2. Pursuant to an order made by the Court dated October 18, 2016, TCC/Urbancorp (Bay) Limited Partnership ("Bay LP"), Bridlepath and Woodbine and the entities listed on Schedule "B" (collectively, the "Bay CCAA Entities", and together with the Cumberland CCAA Entities, the "CCAA Entities") were granted protection in a separate CCAA proceeding and KSV was appointed Monitor of the Bay CCAA Entities (the "Bay CCAA Proceedings").

---

<sup>1</sup> Being St. Clair, Patricia, Mallow, Lawrence, Urbancorp (952 Queen West) Inc., King Residential Inc., Urbancorp 60 St. Clair Inc., High Res. Inc., Urbancorp Partner (King South) Inc., Urbancorp (North Side) Inc. and Bridge on King Inc.

<sup>2</sup> Being Vestaco Homes Inc., Vestaco Investments Inc., Urbancorp Power Holdings Inc., UTMI, Downsview, 228 Queens Quay West Limited, Urbancorp Residential Inc., Urbancorp Realtyco Inc., Urbancorp Cumberland 1 GP Inc.



3. Each Bay CCAA Entity is a wholly owned subsidiary of Bay LP, except Deaja Partner (Bay) Inc., which is the general partner of Bay LP. Each of Bay LP's subsidiaries is a nominee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP. The corporate chart for the Bay CCAA Entities is provided in Appendix "B".
4. The stay of proceedings for the Cumberland CCAA Entities and the Bay CCAA Entities expires on April 30, 2019.
5. All issues related to the Bay CCAA proceedings have been completed. As further detailed herein, the Monitor recommends that the Bay CCAA Entities be placed in bankruptcy in order to allow for an orderly completion of their restructuring proceedings.

### **1.3 Urbancorp Renewable Power Inc.**

1. Certain of the Non-Cumberland Entities have an interest in geothermal assets (the "Geothermal Assets") located at four condominiums developed by entities in the Urbancorp Group of Companies (the "Urbancorp Group"). The Geothermal Assets provide heating and air conditioning to these condominiums. Urbancorp Renewable Power Inc. ("URPI") was incorporated to manage the Geothermal Assets. Pursuant to a Court order made on June 28, 2018, KSV was appointed as the receiver (the "Receiver") of URPI.

### **1.4 Urbancorp Inc., Recognition of Foreign Proceedings**

1. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel issued a decision appointing Guy Gissin as the functionary officer and foreign representative (the "Foreign Representative") of UCI and granting him certain powers, authorities and responsibilities over UCI (the "Israeli Proceedings").
2. Prior to the commencement of the Cumberland CCAA Proceedings, the Foreign Representative and KSV, in its then capacity as Proposal Trustee, negotiated a protocol that addressed, *inter alia*, the sharing of information in respect of the Cumberland CCAA Proceedings between the Foreign Representative and KSV (the "Protocol").
3. On May 18, 2016, the Court issued two orders under Part IV of the CCAA which:
  - a) recognized the Israeli Proceedings as a "foreign main proceeding";
  - b) recognized Mr. Gissin as Foreign Representative of UCI; and
  - c) appointed KSV as the Information Officer.

## 1.5 Purposes of this Report

1. The purposes of this report (the "Report") are to:
  - a) provide an update on the CCAA proceedings;
  - b) discuss a request made by the Foreign Representative to provide it with certain emails drafted by the CCAA Entities' former Chief Financial Officer, Philip Gales<sup>3</sup> (the "Gales Emails"), which were recently identified by the Monitor;
  - c) report on the consolidated cash flow projection of the Cumberland CCAA Entities for the period May 1, 2019 to July 31, 2019 (the "Cumberland Cash-Flow Statement");
  - d) report on the consolidated cash flow projection of the Bay CCAA Entities for the period May 1, 2019 to May 31, 2019 (the "Bay Cash-Flow Statement" and together with the Cumberland Cash-Flow Statement, the "Cash Flow Statements");
  - e) provide the Monitor's rationale that it be authorized to file assignments in bankruptcy on behalf of the Bay CCAA Entities;
  - f) set out the basis on which it is proposed that the Bay CCAA Proceedings be terminated and the Monitor be discharged upon filing a certificate with the Court (the "Discharge Certificate"), which would happen subsequent to filing assignments in bankruptcy for the Bay CCAA Entities;
  - g) summarize and seek approval of the fees and expenses of KSV, as Monitor of the CCAA Entities, the Monitor's counsel, Davies Ward Phillips & Vineberg LLP ("Davies") and the CCAA Entities' counsel, DLA Piper (Canada) LLP ("DLA"), for the period January 1, 2019 to March 31, 2019;
  - h) recommend that the Court issue orders:
    - i. declaring that the Monitor shall not provide the Foreign Representative with copies of the Gales Emails;
    - ii. sealing the confidential appendix to this Report;
    - iii. granting an extension of the stay of proceedings for the Cumberland CCAA Entities to July 31, 2019;
    - iv. granting an extension of the stay of proceedings for the Bay CCAA Entities to May 31, 2019;

---

<sup>3</sup> Mr. Gales is the son-in-law of Alan Saskin, the principal of the Urbancorp Group.

- v. authorizing and directing the Monitor to file assignments in bankruptcy on the Bay CCAA Entities' behalf;
- vi. terminating, upon the filing of the Discharge Certificate, the Bay CCAA Proceedings and discharging KSV in its capacity as the Monitor of Bay CCAA Entities;
- vii. releasing, upon filing the Discharge Certificate, the Monitor from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting as Monitor in the Bay CCAA Proceedings, save and except for any claims relating to the Monitor's gross negligence or wilful misconduct;
- viii. approving this Report and the activities of the Monitor, as set out in this Report; and
- ix. approving the fees and disbursements of the Monitor, Davies and DLA, as detailed in this Report, and a fee accrual in respect of the Bay CCAA Proceedings estimated not to exceed \$30,000 plus disbursements and harmonized sales tax (the "Fee Accrual").

## **1.6 Currency**

- 1. Unless otherwise stated, all currency references in this Report are to Canadian dollars.

## **1.7 Restrictions**

- 1. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Entities, the books and records of the CCAA Entities and discussions with representatives of the CCAA Entities. The Monitor has not performed an audit or other verification of such information.
- 2. The Monitor has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
- 3. An examination of the Cash Flow Statements as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the CCAA Entities' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.
- 4. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Monitor in preparing this Report. Any party wishing to place reliance on the CCAA Entities' financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

## **2.0 Background**

1. The Urbancorp Group primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area. Entities in the Urbancorp Group also own the Geothermal Assets.

### **2.1 Urbancorp Inc.**

1. UCI was incorporated on June 19, 2015 to raise debt in the public markets in Israel. Pursuant to a Deed of Trust dated December 7, 2015, UCI made a public offering of debentures (the "IPO") in Israel of NIS180,583,000 (approximately \$64 million based on the exchange rate at the time of the IPO) (the "Debentures").
2. From the monies raised under the IPO, UCI made unsecured loans (the "Shareholder Loans") totalling approximately \$46 million to the NOI Entities (other than UTMI) so that these entities could repay loan obligations owing at the time. The loan agreements in respect of the Shareholder Loans set out that repayment of the Shareholder Loans is subordinate to certain other obligations of each of the NOI Entities.

## **3.0 Update on CCAA Proceedings**

### **3.1 Cumberland Entities – Distributions and Disputed Claims**

1. The Monitor carried out a Court-approved claims process in the CCAA Proceedings (the "Claims Process"). Separate claims processes were conducted for the Cumberland Entities and the Bay CCAA Entities.
2. On June 27, 2017, the Court made an order authorizing and directing the Monitor to pay in full the amounts owing to creditors with admitted claims against the Cumberland Entities, other than UCI, which received a partial distribution.
3. Since that time, the Court has made several orders authorizing distributions to UCI. On February 26, 2018, the Court made an order authorizing the Monitor to make additional distributions to repay UCI's claim without further order of the Court, subject to the Monitor maintaining appropriate reserves and holdbacks. On January 2, 2019, the Monitor repaid UCI's debt claims against the Cumberland Entities. Despite repaying UCI's debt claim in full, UCI continues to have significant obligations owing to it under the Debentures as a result of, *inter alia*, advances made to other entities in the Urbancorp Group. On January 30, 2019, the Court made an order authorizing the Monitor to distribute any surplus funds from the Cumberland Entities to UCI.

4. The Monitor issued disallowance notices to several claimants of the Cumberland Entities. All disallowed claims have been resolved, except for those listed in the table below and the claims discussed in section 3.2 below. The Monitor is holding reserves equivalent to each of the claims in the table below.

(\$000s; unaudited)	
Claimant	Amount
Travelers Insurance Company of Canada ("Travelers")	435
Speedy Electrical Contractors Ltd. ("Speedy")	1,039
Other	23
	<u>1,497</u>

5. The following is an update on these claims:
- a) Travelers - Travelers' claim of \$435,000 relates to a \$1 million bond (the "Bridge Bond") provided by Travelers to Tarion Warranty Corporation on a condominium project constructed by Bridge on King Inc. ("Bridge"), a Cumberland Entity. On July 16, 2018, Travelers reduced the value of the Bridge Bond to \$550,000. Travelers holds cash collateral of approximately \$115,000 in respect of the Bridge Bond, such that the Monitor only needs to maintain a cash reserve of \$435,000 to satisfy any potential exposure under the bond. The only remaining exposure under the Bridge Bond is for major structural defects on the Bridge project. On June 30, 2020, the exposure for Travelers is expected to be eliminated and the cash reserves will be available to be released to the Cumberland Entities, assuming no claims are made prior to that time.
  - b) Speedy - Speedy filed a secured claim in the amount of \$2,323,638 (plus interest, fees and costs which continue to accrue) against King Residential Inc. ("KRI"), a Cumberland CCAA Entity. The Speedy claim is based on a guarantee (the "Guarantee") provided by KRI for liabilities owing by Alan Saskin in the amount of \$1,284,727 (the "Saskin Debt") and for services Speedy provided to Edge on Triangle Park Inc., an affiliated entity, in the amount of \$1,038,911 (the "Edge Debt"). The Monitor takes the position that no consideration was provided to KRI in connection with the Guarantee.<sup>4</sup> The Monitor disallowed Speedy's claim on the basis that the transaction could be voidable as a transfer at undervalue, and, in addition, voidable as a fraudulent conveyance or preference.

A motion was heard on May 1, 2018 to determine the claim. On May 11, 2018, Mr. Justice Myers issued a decision admitting Speedy's claim. On June 1, 2018, the Monitor filed a motion seeking leave to appeal the decision. On September 10, 2018, the Court of Appeal for Ontario granted the Monitor's motion for leave.

---

<sup>4</sup> The consideration paid was \$2.

In January 2019, the Monitor obtained a copy of a waiver signed by Speedy acknowledging that the Guarantee does not secure the Saskin Debt. The waiver had not been previously disclosed to the Monitor by Speedy or by representatives of the Urbancorp Group but was obtained by the Foreign Representative in the course of discovery as part of its litigation concerning the issuance of the Debentures. Based on the foregoing, Speedy's counsel agreed to reduce the value of Speedy's claim for the portion related to Saskin Debt (\$1,284,727). On February 25, 2019, the Court made an order reducing the value of the Speedy claim. On March 28, 2019, the Ontario Court of Appeal heard the appeal related to the Edge Debt portion of the Speedy claim. As of the date of this Report, its decision had not been released.

### **3.2 Dolvin Mechanical Contractor Limited**

1. On April 1, 2019, approximately two and a half years after the claims bar date in the Claims Process, legal counsel to Dolvin Mechanical Contractor Limited ("Dolvin") filed a late claim (the "Late Claim") in the amount of \$500,000 against Bridge, Cumberland and High Res Inc., each a Cumberland CCAA Entity. Dolvin characterized this claim as being "supplemental" to its original claim. The Late Claim is in respect of an equity investment it purportedly made in the Bridge condominium development. Dolvin advised the Monitor that the investment in the Bridge condominium was to be secured by a promissory note from Alan Saskin; however, Dolvin is unable to locate Mr. Saskin's promissory note and now appears to believe that it may never have been issued. Dolvin is therefore making a claim directly against Bridge. The Monitor is of the view that the Late Claim is without merit. The Monitor has informed legal counsel to Dolvin that it intends to bring a motion to disallow the Late Claim. The Monitor has previously made distributions to all creditors and has not reserved any funds for the Late Claim.
2. In accordance with the Claim Process, Dolvin filed a claim in the amount of \$917,421.78 against Urbancorp Residential Inc. ("URI"), a Non-Cumberland Entity. Dolvin alleges it provided services to Westside Gallery Lofts Inc. ("Westside"), an entity in the Urbancorp Group which developed condominium projects. Dolvin filed its claim against URI because it believed that Monitor's counsel had informed it that the Westside condominium projects were owned by URI and, therefore, that URI had been unjustly enriched by Dolvin's work for Westside. The Monitor disallowed this claim on the basis that it did not pertain to an obligation of URI. Dolvin disputed the disallowance on the basis that condominium units of the Westside condominium projects had been transferred to URI and that URI had been unjustly enriched as a result. The Monitor is holding a reserve for the entire amount of this claim. A small number of the condominium units originally owned by Westside were transferred to URI prior to the commencement of the CCAA Proceedings. Dolvin recently filed an amended claim against URI claiming a Construction Act trust claim in connection with the transfer of units from Westside to URI but for the full amount of the original claim (\$917,421.78). The Monitor is of the view that this trust claim is really a new claim being asserted by Dolvin well subsequent to the Claims Bar Date and is, therefore, also a late claim.

3. The Fuller Landau Group Inc. ("Fuller Landau"), is the monitor of Westside. Fuller Landau has advised the Monitor that Dolvin has also filed a trust claim against Westside for \$917,421.78. The Monitor understands that Fuller Landau is reviewing the claim and that if Fuller Landau admits the claim, Dolvin will be repaid in full. Accordingly, the Monitor has not brought a motion to deal with this disputed claim yet as it did not want to incur unnecessary professional fees. The Monitor has spoken with Fuller Landau and understands that a decision with respect to Dolvin's claim against Westside will be made shortly. If Fuller Landau disallows the Dolvin claim, the Monitor intends to bring a motion to disallow the Dolvin claim (and amended claim) against URI at the same time it brings a motion to disallow the Late Claim.

### **3.3 Bay Entities – Distributions and Disputed Claims**

1. On June 27, 2017, the Court made an order authorizing and directing the Monitor to pay a 33% dividend to creditors with admitted claims against the Bay CCAA Entities. At that time, the Monitor was unable to recommend that it make any additional distributions because of a secured claim filed by Terra Firma Capital Corporation ("TFCC"), which the Monitor disputed, and a motion made by UCI to file a late claim.
2. On November 30, 2017, the Court made an order authorizing and directing the Monitor to pay in full all then admitted claims against the Bay CCAA Entities, other than intercompany claims. TFCC and UCI consented to the order.
3. Pursuant to an agreement dated February 13, 2018, TFCC and UCI entered into a settlement (the "Original Settlement"). The Original Settlement proposed to, *inter alia*, distribute the remaining funds held by the Bay CCAA Entities to TFCC and UCI, subject to paying all other admitted claims. The Original Settlement was conditional on Court approval. The Monitor was not a party to the Original Settlement, was not asked by TFCC or UCI to take a position on the settlement and did not take a position on the settlement.
4. Pursuant to an Endorsement issued on May 11, 2018 by Mr. Justice Myers (the "May 11 Endorsement"), the Court:
  - a) dismissed the motion to approve the Original Settlement; and
  - b) authorized the Foreign Representative to file a late claim on behalf of UCI.
5. In accordance with the May 11 Endorsement, on May 18, 2018, the Foreign Representative filed a claim for damages in respect of fraudulent representation and conspiracy, among other claims, in connection with \$8 million of promissory notes issued by Bay LP to UTMI, which it assigned to UCI (\$6 million) and to Urbancorp Realtyco Inc. (\$2 million), a subsidiary of UCI. The promissory notes were assigned by Bay LP in connection with the issuance of the Debentures.
6. Based on the evidence provided by UCI in support of its claim, the Monitor admitted the UCI claim in the amount of \$8 million, plus interest and costs, which continue to accrue.

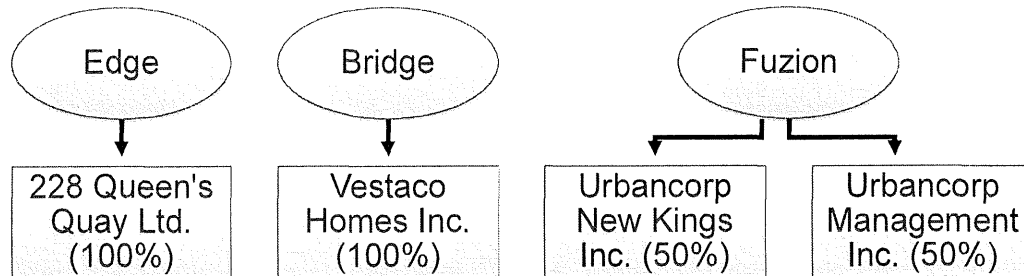
7. Because of the admittance of the UCI claim in an amount not less than \$8 million, the Monitor calculated the minimum distribution to which UCI would be entitled from the Bay CCAA Entities. Based on that calculation, on June 26, 2018, the Court made an order authorizing and directing the Monitor to make a distribution of \$3.05 million to UCI. This amount was distributed on June 28, 2018.
8. TFCC's disputed claim related to a loan provided by TFCC to Urbancorp Holdco Inc., the parent company of UCI, which was guaranteed by, among others, Bay LP, Woodbine and Bridlepath (the "TFCC Guarantee Claim"). As security for the guarantee, Woodbine and Bridlepath granted mortgages to TFCC on real property registered as being owned by Woodbine and Bridlepath. Based on the Monitor's review, it was the Monitor's view that none of Bay LP, Bridlepath or Woodbine received any consideration for providing the guarantee. The Monitor disallowed the claim on the basis that the transaction could be voidable as a transfer at undervalue, and, in addition, voidable as a fraudulent conveyance or preference.
9. On January 30, 2018, the Monitor, TFCC, UCI and Dov Meyer, the former Chief Executive Officer of TFCC, entered into a revised settlement (the "Revised Settlement"), which was subject to approval by the Court and the Israeli Court.
10. Pursuant to the terms of the Revised Settlement, TFCC agreed to assign to UCI, *inter alia*, the TFCC Guarantee Claim and the Monitor and UCI agreed not to oppose TFCC's motion to admit the TFCC Guarantee Claims. In exchange, UCI agreed to withdraw its claim in the Israeli Court against Mr. Meyer and TFCC. UCI, Mr. Meyer and TFCC agreed to execute releases in favour of one another.
11. On March 19, 2019, the Court issued an order approving the Revised Settlement. Pursuant to orders issued on February 20, 2019 and March 24, 2019, the Israeli Court and the Tel Aviv District Court, respectively, approved the Revised Settlement.
12. The effect of the Revised Settlement is that all funds available for distribution in the Bay CCAA proceedings (\$6.95 million), but for an appropriate fee reserve, were distributed to UCI and \$150,000 was distributed to Fuller Landau, in its capacity as Alan Saskin's proposal trustee, in respect of Mr. Saskin's claim against the Bay CCAA Entities.

### **3.4 Geothermal Assets**

1. Several Cumberland CCAA Entities have an interest in the Geothermal Assets located at the Edge, Bridge and Fuzion condominiums developed by entities in the Urbancorp Group. The geothermal energy systems provide heating and air conditioning to the respective condominiums. The Geothermal Assets comprise both physical assets and supply agreements.



2. The registered owners of the physical assets comprising the geothermal energy systems are reflected in the diagram below (in the square boxes).



Both 228 Queen's Quay Ltd. ("228 Queen's Quay") and Vestaco Homes Inc. ("Vestaco Homes") are Cumberland CCAA Entities. Urbancorp New Kings Inc. ("UNKI") and Urbancorp Management Inc. ("UMI") are not Cumberland CCAA Entities; however, UNKI is a nominee company which is beneficially owned by Cumberland. The Monitor understands that UMI is owned by Alan Saskin or individuals or entities related to him.

The above illustration excludes the Curve geothermal system which was sold in October 2018 by the Monitor to the Curve condominium corporation pursuant to a transaction approved by this Court on October 22, 2018.

3. In 2015, the Urbancorp Group completed a corporate reorganization to facilitate the issuance of the Debentures (the "Reorganization"). As part of the Reorganization, Vestaco Homes and 228 Queen's Quay acquired the physical assets related to the Bridge and Edge Geothermal Assets, respectively. These transactions are summarized below.

Geothermal System	Acquirer	Vendor	Amount (\$) <sup>5</sup>
Bridge	Vestaco Homes	Bridge on King Inc.	4,666,976
Edge	228 Queen's Quay	Bosvest Inc. <sup>6</sup>	13,376,171

4. The vendors listed in the table above were the original registered owners of the relevant lands and the declarants for the respective condominium corporation. The original registered owner of the relevant lands and the declarant for the Fuzion condominium corporation is Fuzion Downtown Developments Inc. ("FDDI"). FDDI is not an applicant in these CCAA proceedings.
5. The above acquisitions were satisfied by setting up intercompany indebtedness owing from the acquirer to the vendor for the full amount of the purchase price.
6. Fuller Landau, in its capacity as monitor of Edge Residential Inc., Edge on Triangle Park Inc., Bosvest Inc. and Westside (collectively, the "Edge Companies"), has advised the Monitor that the Edge Companies may have an interest in the Edge geothermal system and the proceeds from the Curve geothermal system.

<sup>5</sup> The amounts listed are as reflected in the books and records of Urbancorp. The amount paid with respect to the transfer of the relevant geothermal condominium units, as reflected in the search on title, is \$50,000 for each transaction.

<sup>6</sup> The registered owner was Edge on Triangle Park Inc., which is a nominee of Bosvest.

### 3.5 URPI

1. URPI was incorporated to manage the geothermal energy systems. Pursuant to energy supply agreements, each condominium corporation is required to pay URPI for the supply of heating and cooling services (the "Supply Agreements"). Pursuant to management agreements, URPI is required to pay the revenue it receives from the condominium corporations (i.e. one of Bridge, Edge, or Fuzion (the "Condo Corporations")) to the Urbancorp entity that owns the geothermal energy system, net of a management fee of between 3% and 5% payable to URPI (with such amount set out in the relevant management agreement) and other costs (such as repairs and maintenance costs).
2. URPI's sole source of revenue is the fees generated pursuant to the Supply Agreements. Notwithstanding that the Condo Corporations continue to be provided heating and cooling, the Bridge and Fuzion Condo Corporations have failed to make payments to URPI since March 2016, while the Edge Condo Corporation has failed to make substantially all payments to URPI since April 2016.<sup>7</sup> A summary of the amounts owing to URPI by the Condo Corporations as at February 28, 2019 is provided in the table below. Fine & Deo LLP ("Fine & Deo"), counsel to the Condo Corporations, has advised the Monitor that it is holding these amounts in a trust account, as summarized below.

(unaudited)	Amount (\$000)
Bridge	2,026
Edge	2,287
Fuzion	904
Total	5,217

3. Prior to its receivership proceedings, URPI required funding for maintenance and potential repairs of the geothermal systems and for legal costs in respect of the geothermal litigation (described below). As URPI has not been receiving collections from the Condo Corporations, Cumberland agreed to lend URPI up to \$500,000. On November 22, 2017, the Court approved the loan facility (the "URPI Loan").
4. After the making of the URPI Loan, it appeared that the professional fees and maintenance costs related to the Geothermal Assets would exceed the amount of the URPI Loan and, accordingly, the Monitor brought an application in June 2018 to have a receiver appointed over URPI's property, assets and undertaking. Pursuant to a Court order made on June 28, 2018, KSV was appointed Receiver of URPI.

### 3.6 Bridge, Fuzion and Edge Condo Corporations

1. Prior to the receivership proceedings, URPI commenced litigation against the Condo Corporations for, *inter alia*, failure to pay the amounts owed under the Supply Agreements.

<sup>7</sup> On August 30, 2016, the Edge Condo Corporation made a \$260,000 payment to URPI.

2. The Condo Corporations filed cross claims alleging, *inter alia*, that certain of the Geothermal Assets require repairs, there was insufficient disclosure to the Condo Corporations regarding the pricing of geothermal energy and that the Condo Corporations are paying more for heating and cooling than they would by using traditional energy sources.
3. Shortly following its appointment, KSV, as Receiver, met with representatives of each of the Condo Corporations to see if the disputes could be resolved. In October 2018, the Receiver provided the Condo Corporations with revised template supply agreements setting out the terms of a new simplified arrangement for the provision of geothermal services, including new economic terms. In December 2018, the Receiver received a counter proposal from the Fuzion Condo Corporation, which the Receiver rejected. The Receiver has not received feedback from the Bridge and Edge Condo Corporations as to the Receiver's proposal.
4. Because of the amount of time that has passed since the Receiver made its settlement proposals, and because of the response received from Fuzion, the Receiver has scheduled a two-day motion on June 3 and 6, 2019 seeking a declaration that the Supply Agreements are enforceable. The Receiver is scheduled to meet with Condo Corporations in May 2019 in order to see if settlements can be reached.

### 3.7 Urbancorp New Kings Inc.

1. Cumberland is the shareholder of UNKI. UNKI owns an interest (the "UNKI Interest") in a development located at 1100 King Street West, Toronto (the "Kingsclub Development"). UNKI is a nominee for Cumberland. UNKI is not subject to the CCAA proceedings.
2. The Kingsclub Development is a joint venture with the Purchaser, which is an affiliate of First Capital Realty Inc. The project is located in Liberty Village in Toronto, which is presently under construction and, when completed, is to consist of retail space, residential space and parking. The project is scheduled to be completed in 2019. The project has incurred multiple delays and is over-budget.
3. Pursuant to the Amended and Restated Co-owners Agreement dated February 1, 2012 (the "Ownership Agreement"), as amended, between UNKI and the Purchaser, the Purchaser has an option to purchase UNKI's interest in the commercial portion of the project at a below market value.<sup>8</sup>
4. The residential component of the Kingsclub Development was originally owned by UNKI (50%) and the Purchaser (50%).<sup>9</sup> On July 28, 2015, the Purchaser and UNKI entered into an agreement (the "CAPREIT Agreement") to sell one-third of the residential component of the project to CAPREIT Limited Partnership ("CAPREIT"), such that the Purchaser, UNKI and CAPREIT will each have a one-third interest in that portion of the development upon closing.

<sup>8</sup> The Ownership Agreement provides KLNC with the option of purchasing UNKI's commercial interest at a 5.5% cap rate.

<sup>9</sup> Kings Club Development Inc., a nominee entity, is the registered owner of the Kingsclub Development on behalf of its beneficial owners, UNKI (50%) and KLNC (50%).

5. Pursuant to the Initial Order, Robert Kofman, the President of KSV and the person with oversight of these proceedings on behalf of the Monitor, or such representative of KSV as Mr. Kofman may designate in writing from time to time, was appointed to the management committee of the Kingsclub Development.
6. The Kingsclub Development has incurred significant cost overruns. First Capital (S.C.) Corporation ("FCSCC"), an affiliate of KLNC, has funded UNKI's share of the cost overruns under a credit facility (the "Standstill Facility") pursuant to the terms of a Court approved standstill agreement between FCSCC, KLNC, UNKI and the Monitor (the "Standstill Agreement"). The total principal amount advanced under the Standstill Facility is approximately \$59 million. There is insufficient availability under the Standstill Facility to fund future projected cost overruns.
7. In late 2018, FCSCC requested that the Monitor sign an amended Standstill Agreement to increase the amount available under the Standstill Facility. The Monitor advised FCSCC that it was not prepared to sign an amended Standstill Agreement because there is a risk that UNKI may be unable to repay such amounts from its remaining interest in the project.
8. The Monitor and FCSCC have substantially advanced an agreement to sell UNKI's interest in the Kingsclub Development to KLNC; however, the agreement had not been finalized. If approved by the Court, the sale would generate recoveries of over \$2 million for creditors. The Monitor is hopeful to seek approval of the transaction by the end of May 2019.

### **3.8 Downsvew**

1. Downsvew Homes Inc. ("DHI") owns land located at 2995 Keele Street in Toronto which is being developed into condominiums and other residences (the "Downsvew Project"). The shares of DHI are owned by Downsvew (51%) and Mattamy (Downsvew) Limited, an affiliate of Mattamy Homes ("Mattamy") (49%).
2. The Downsvew Project consists of two phases. The first phase closed in July 2018 and the second is not expected to be completed for several years.
3. Downsvew's only material asset is its interest in DHI. The shares are subject to transfer restrictions and co-ownership obligations with, and a pledge in favour of, Mattamy.
4. At the commencement of the CCAA Proceedings, Downsvew was required to make an equity injection in the Downsvew Project to secure construction financing. Downsvew could not fund its portion of the required equity and Mattamy agreed to loan Downsvew the funds it required. On June 15, 2017, the Court approved a debtor-in-possession facility (the "DHI Facility") in the amount of \$8 million between Mattamy, as lender, and Downsvew, as borrower, as well as a charge in favour of Mattamy over Downsvew's assets, properties and undertakings to secure repayment of the amounts borrowed by Downsvew under the DHI Facility. To date, approximately \$7.59 million has been borrowed by Downsvew under the DHI Facility. Interest and costs continue to accrue. The DHI Facility was due on December 31, 2018; however, the Monitor and Mattamy agreed to extend the maturity date to June 29, 2019.

5. Mattamy has provided the Monitor with several budgets and financial analyses during these proceedings. The most recent “waterfall” was provided in July 2018, reflecting how Mattamy believes the proceeds from the Downsview Project are to be allocated between Mattamy and Downsview. The Monitor disagrees with Mattamy’s position and believes Downsview is currently owed more than \$14 million by Mattamy and DHI. The Monitor also believes that UTMI is entitled to receive management fees on the project, which Mattamy disputes.
6. The Monitor prepared its Thirty-Second Report to Court dated April 4, 2019 (the “Thirty-Second Report”) concerning its dispute with Mattamy regarding the Downsview Project. The Thirty-Second Report has only been served on Mattamy and the Foreign Representative, with a copy given to the Court, as Mattamy has asserted that the dispute is governed by agreements with confidentiality provisions and/or provisions requiring the dispute to be resolved by arbitration. The Monitor disagrees with Mattamy’s positions on these issues. A motion is scheduled for May 15, 2019 to determine whether this matter needs to be arbitrated.

### **3.9 Urbancorp Downtown Developments Inc.**

1. Around June 2014, UTMI, a Cumberland Entity, advanced \$750,000 on behalf of Urbancorp Downtown Developments Inc. (“UDDI”), an affiliated entity not subject to insolvency proceedings, to purchase certain land from a third party (the “Vendor”) (the “UDDI Deposit”). In December 2014, approximately \$250,000 was repaid to UTMI by UDDI, which reduced the amount owing by UDDI to UTMI to \$500,000.
2. As at the commencement of the Cumberland CCAA Proceedings, the books and records of UTMI reflected an intercompany debt of \$200,000 owing by UDDI to UTMI, such that the total amount owing from UDDI was approximately \$700,000 at that time.
3. The property that was to be purchased by UDDI was expropriated by the Toronto Catholic District School Board (the “School Board”). The School Board held back \$1 million from the price it paid the Vendor for the expropriated land (the “Holdback”) in respect of potential environmental issues.
4. The School Board has since acknowledged that it did not incur any environmental costs and accordingly it released the Holdback to the Vendor. The Vendor has paid UDDI the full amount of the UDDI Deposit, plus interest of \$95,000.
5. UDDI has made a claim against the School Board for the increase in the value of the expropriated land between the time UDDI entered into the agreement with the Vendor to purchase the land and the date it was expropriated by the School Board. UDDI is trying to negotiate a settlement with the School Board.
6. In August 2018, UDDI paid the Monitor \$260,000 (net of its costs to-date) and retained the balance (approximately \$200,000) to fund its negotiations and potential litigation with the School Board.

7. UDDI has acknowledged that any future proceeds received with respect to its claims, or any unused portion of the reserve will first be used to satisfy the amounts UDDI owes to UTMI. The Monitor has not consented to UDDI's costs, which remain subject to review and approval by the Monitor.

## 4.0 Document Request

1. At the commencement of the CCAA proceedings, the Monitor engaged the computer forensics division of Duff & Phelps Canada Limited ("D&P") to make an image of the CCAA Entities' servers, which the Monitor understood to include all emails of the Urbancorp Group.
2. On May 29, 2018, Dentons Canada LLP ("Dentons"), counsel to the Foreign Representative, sent an email to the Monitor requesting certain documents (the "Original Document Request"). Dentons requested that the Monitor direct D&P to conduct keyword searches on the image of the server to identify the documents.
3. The document request was made pursuant to Section 3(d) of the Protocol. Section 3(d) of the Protocol requires the Monitor to, inter alia, provide the Foreign Representative with copies of all information pertaining to the Cumberland CCAA Entities as reasonably requested by the Foreign Representative, provided that the Monitor is of the view that such information is not privileged nor confidential. If the Monitor is of the view that the information is privileged or confidential, the Monitor must advise the Foreign Representative and seek directions from the Court on notice to the affected parties.
4. Due to privilege concerns, on June 26, 2018, the Monitor made a motion seeking this Court's authorization to provide the Foreign Representative with the documents requested pursuant to the Original Document Request. This motion was opposed by Alan Saskin. The Court provided Mr. Saskin time to review the documents and prepare a list of the documents that he contested being provided to the Foreign Representative. Mr. Saskin provided the Monitor with a list of contested documents.
5. The Monitor brought a motion to seek the Court's advice and directions as to the delivery to the Foreign Representative of the contested documents. Prior to the motion date, Mr. Saskin and the Foreign Representative resolved the dispute.
6. In December 2018, the sole remaining employee of the Urbancorp Group resigned. In order to ensure continued access to the CCAA Entities' records, the Monitor obtained remote access to the Urbancorp Group's server. The Monitor reviewed the server and identified certain emails that had not been previously imaged by D&P, including emails written by Mr. Gales, the former Chief Financial Officer of the CCAA Entities.

7. The Monitor advised the Foreign Representative about the Gales Emails but advised that it believes that the Gales Emails are subject to solicitor-client privilege as they are between Mr. Gales and his legal counsel, Macdonald Sager Manis LLP ("MSM"), often with copies to his spouse, but to no other third party. The Gales Emails seek independent legal advice but are sent from his work email account. Copies of the Gales Emails are attached as Confidential Appendix "1". The Monitor is seeking to seal these emails as they may be privileged.
8. On March 20, 2019, Dentons sent an email to the Monitor requesting the Gales Emails pursuant to the terms of the Protocol. A copy of this request is attached as Appendix "C".
9. On March 27, 2019, Davies wrote to MSM advising of the Foreign Representative's request and asking MSM to confirm whether Mr. Gales would be asserting privilege over the Gales Emails. A copy of the March 27 letter is attached as Appendix "D", without appendices.
10. On March 30, 2019, MSM advised that it had not been able to reach Mr. Gales but would continue to try. On April 15, 2019, the Monitor followed up with MSM, which advised it was still unable to reach Mr. Gales. As of the date of this Report, the Monitor has not heard further from MSM. The Monitor is serving this Report on Mr. Gales and on MSM.
11. The Monitor is of the view that the Gales Emails are subject to solicitor-client privilege and is seeking an order declaring that the Gales Emails should not be provided to the Foreign Representative.

## **5.0 Cash Flow Forecast**

1. Consolidated cash flow projections have been prepared for the Cumberland CCAA Entities for the period May 1, 2019 to July 31, 2019 (the "Period") and for the Bay CCAA Entities for the period May 1, 2019 to May 31, 2019. The Cash-Flow Statements and the CCAA Entities' statutory reports on the cash flow pursuant to Section 10(2)(b) of the CCAA are attached as Appendices "E" and "F", respectively.
2. The expenses in the Cumberland Cash-Flow Statement are primarily general and administrative expenses and professional fees. The Cumberland CCAA Entities have sufficient cash to pay all disbursements during the Period.
3. The only expense in the Bay Cash-Flow Statement is professional fees.
4. Based on the Monitor's review of the Cash-Flow Statements, there are no material assumptions which seem unreasonable. The Monitor's statutory reports on the cash flows are attached as Appendix "G".

## **6.0 Request for an Extension**

1. The Cumberland CCAA Entities are seeking an extension of the stay of proceedings from May 1, 2019 to July 31, 2019. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
  - a) the Cumberland CCAA Entities are acting in good faith and with due diligence;
  - b) no creditor will be prejudiced if the extensions are granted;
  - c) it will allow the Cumberland CCAA Entities and the Monitor further time to deal with the remaining assets owned by the Cumberland CCAA Entities, including the Geothermal Assets, the Downsview Project and to close the Transaction;
  - d) it will allow the Monitor the opportunity to resolve disputed claims in the Cumberland CCAA Proceedings; and
  - e) as of the date of this Report, neither the Cumberland CCAA Entities nor the Monitor is aware of any party opposed to an extension.
2. The Bay CCAA Entities are seeking an extension of the stay of proceedings until the earlier of May 31, 2019 and the date the Monitor files assignments in bankruptcy on behalf of the Bay CCAA Entities (as discussed below). The extension will provide the Monitor with time to complete any residual matters in the Bay CCAA Proceedings and to file assignments in bankruptcy on behalf of the Bay CCAA Entities. The Monitor supports the request for a short extension.

## **7.0 Bay LP Monitor's Discharge and Bankruptcy of Bay CCAA Entities**

1. The Monitor believes it is now appropriate for the Bay CCAA Proceedings to be terminated. Subject to Court approval, the Monitor intends to file the Discharge Certificate on or shortly after the date on which the Court grants an order terminating the Bay CCAA Proceedings (the "CCAA Termination Order"). The Monitor is also seeking the Court's authority to file assignments in bankruptcy on the Bay CCAA Entities' behalf as it has exclusive control of these entities pursuant to the terms of the Initial Order issued in the Bay CCAA Proceedings. The Monitor is of the view that the bankruptcies are required to bring these proceedings to an orderly conclusion.
2. The current balance in the Bay CCAA Entities' bank account is approximately \$230,000. Prior to filing the Discharge Certificate, the Monitor intends to make an additional distribution to UCI and to pay the obligations secured by the Administration Charge (as defined in the Initial Order) and other sundry post-filing obligations, if any. The Monitor expects to maintain \$75,000 to deal with the costs of the bankruptcies (seven entities).
3. The Monitor is also seeking an order to consolidate the administration of the Bay CCAA Entities' bankruptcy proceedings into one estate. The consolidation order will facilitate the orderly administration of the Bay Nominee Entities' bankruptcy proceedings and will be more cost efficient than separate bankrupt proceedings for each Bay LP entity given that all of the subsidiaries are merely nominee companies for Bay LP.



4. Upon filing the Discharge Certificate, the Bay CCAA proceedings will terminate and the Monitor will be discharged. Notwithstanding its discharge, the proposed CCAA Termination Order contemplates that the Monitor will continue to have the protections afforded to it at law or pursuant to the CCAA, the Initial Order and other orders issued in these proceedings to the extent it is required to address any sundry matters that arise following the termination of these proceedings.

## 8.0 Professional Fees

1. The fees and disbursements of the Monitor, Davies and DLA for the period January 1, 2019 to March 31, 2019 are summarized below.

Firm	(\$)		
	Fees	Disbursements	Total
<u>Cumberland CCAA Entities</u>			
KSV	131,363.75	291.73	131,655.48
Davies	261,454.00	3,533.13	264,987.13
DLA	1,835.50	212.50	2,048.00
Total	394,653.25	4,037.36	398,690.61
<u>Bay CCAA Entities</u>			
KSV	68,687.50	-	68,687.50
Davies	41,820.00	169.95	41,989.95
DLA	1,606.50	67.50	1,674.00
Total	112,114.00	237.45	112,351.45

2. Detailed invoices are provided in appendices to the fee affidavits filed by representatives of KSV, Davies and DLA which are provided in Appendices "H", "I" and "J" respectively.
3. The Monitor also believes a fee accrual of \$30,000 plus HST and disbursements (which are insignificant) should be sufficient to pay the professional costs incurred since April 1, 2019 to the date of its discharge in the Bay CCAA Proceedings.
4. The average hourly rates for the Monitor, Davies and DLA are as follows:

Firm	Average Hourly Rate (\$)
<u>Cumberland CCAA Entities</u>	
KSV	562.95
Davies	797.00
DLA	550.00
<u>Bay CCAA Entities</u>	
KSV	599.11
Davies	1,025.00
DLA	550.00

5. Since the last fee approval motion, the main matters addressed by Davies include:
- a) dealing with FCR and Torys LLP regarding a potential transaction for UNKI's interest in the Kingsclub Development;
  - b) dealing with the Downsview project, including corresponding with Cassels Brock & Blackwell LLP, counsel to Mattamy, and reviewing and commenting on the Monitor's report concerning this dispute;
  - c) dealing with the appeal of Speedy's claim, including drafting a factum and preparing for and arguing at the Ontario Court of Appeal;
  - d) corresponding with legal counsel to the Condo Corporations concerning the Geothermal Assets, including negotiating a litigation schedule and an agreed statement of facts; and
  - e) corresponding with Dentons regarding all matters in the CCAA proceedings, including the TFCC Guarantee Claim and Downsview.
6. The Monitor is of the view that the hourly rates charged by Davies and DLA are consistent with rates charged by law firms practicing in restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances. As reflected in the table above, DLA has incurred limited professional fees since the last fee approval motion. The Monitor notes that both Davies and DLA have involved a small number of lawyers on this matter.

## 9.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in Section 1.5(1)(h) of this Report.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
THE CCAA ENTITIES  
AND NOT IN ITS PERSONAL CAPACITY**

# Tab 3

Estate Nos. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE	)	WEDNESDAY, THE 22 <sup>ND</sup>
	)	
REGIONAL SENIOR JUSTICE	)	DAY OF MAY, 2019
MORAWETZ	)	

**IN THE MATTER OF THE BANKRUPTCY OF**  
**URBANCORP (WOODBINE) INC., URBANCORP**  
**(BRIDLEPATH) INC., THE TOWNHOUSES OF HOGG'S**  
**HOLLOW INC., KING TOWNS INC., NEWTOWNS AT**  
**KINGTOWNS INC., DEAJA PARTNER (BAY) INC., AND**  
**TCC/URBANCORP (BAY) LIMITED PARTNERSHIP,**  
**BANKRUPTS**

**ORDER**  
**(Substantive Consolidation)**

**THIS MOTION**, made by KSV Kofman Inc., in its capacity as the trustee in bankruptcy (the “**Trustee**”) of each of the Bankrupts for an order, among other things, substantively consolidating each of the bankrupt estates of Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc., The Townhouses Of Hogg’s Hollow Inc., King Towns Inc., Newtowns At Kingtowns Inc., DEAJA Partner (Bay) Inc., And TCC/Urbancorp (Bay)

Limited Partnership (collectively, the "**Estates**") into the estate of DEAJA Partner (Bay) Inc., was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Trustee and the First Report of the Trustee dated May 17, 2019, no one else responding although duly served as appears from the Affidavit of Service as filed:

### **SERVICE**

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

### **SUBSTANTIVE CONSOLIDATION**

2. **THIS COURT ORDERS** that the Estates shall be procedurally and substantively consolidated and the Trustee shall be authorized and directed to administer the Estates on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including, without limitation, as follows:

- (a) calling and conducting any meetings of creditors or inspectors of the Estates pursuant to one combined advertisement and one meeting;
- (b) issuing consolidated reports in respect of the Estates;

- (c) preparing, filing, advertising, and distributing any and all filings and/or notices relating to the administration of the Estates on a consolidated basis;
- (d) establishing a single bank account for the Estates;
- (e) establishing a single consolidated pool of assets containing all assets of the Estates; and
- (f) administering all claims and making all distributions in respect of allowed claims from the consolidated pool.

3. **THIS COURT ORDERS** that the single Court file number of 31-2510937 and the title of proceeding of " In the Matter of the Bankruptcy of Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc., The Townhouses Of Hogg's Hollow Inc., King Towns Inc., Newtowns At Kingtowns Inc., DEAJA Partner (Bay) Inc., And TCC/Urbancorp (Bay) Limited Partnership, Bankrupts" shall be assigned to the proceedings of the bankrupt Estates.

#### **AID AND RECOGNITION**

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Trustee 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 Trustee, as an

officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

---

IN THE MATTER OF THE BANKRUPTCY OF  
URBANCORP (WOODBINE) INC., URBANCORP (BRIDLEPATH) INC., THE  
TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC.,  
NEWTOWNS AT KINGTOWNS INC., DEAJA PARTNER (BAY) INC., AND  
TCC/URBANCORP (BAY) LIMITED PARTNERSHIP, BANKRUPTS

Court File No. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

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

Proceeding commenced at Toronto

**ORDER  
(SUBSTANTIVE CONSOLIDATION)**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 WELLINGTON STREET WEST  
TORONTO, ON M5V 3J7

Robin B. Schwill (LSUC #384521)  
Tel: 416.863.5502  
Fax: 416.863.0871

Lawyers for the Trustee



Estate Nos. 31-2510937  
31-2510938  
31-2510939  
31-2510940  
31-2510941  
31-2510942  
31-2510943

**IN THE MATTER OF THE BANKRUPTCY OF  
URBANCORP (WOODBINE) INC., URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES OF  
HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC., DEAJA PARTNER  
(BAY) INC., AND TCC/URBANCORP (BAY) LIMITED PARTNERSHIP, BANKRUPTS**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
  
(PROCEEDING COMMENCED AT TORONTO)**

**MOTION RECORD**

**Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

**Robin B. Schwill (LSUC #38452I)**  
**rschwill@dwpv.com**

Telephone: 416.863.5502  
Facsimile: 416.863.0871

**Lawyers for the Trustee,  
KSV Kofman Inc.**