**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

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# MOTION RECORD OF THE MONITOR

(Motion Returnable June 26, 2018 – Distribution)

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

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Lawyers for the Monitor
KSV Kofman Inc.

# INDEX

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

## INDEX

# TAB 1

Court File No. CV-16-11549-00CL

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

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

# NOTICE OF MOTION

(Returnable June 26, 2018 – Distribution)

KSV Kofman Inc. ("**KSV**"), in its capacity as the court-appointed monitor (the "**Monitor**") of the Applicants and TCC/Urbancorp (Bay) Limited Partnership ("**Bay LP**") (collectively, the "**CCAA Entities**", and each individually a "**CCAA Entity**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") will make a motion to Mr. Justice Myers sitting as a judge presiding on the Commercial List, on June 26, 2018 at 10:00 a.m., 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 orally.

**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. approving and directing the Monitor to make a $3.05 million distribution to Urbancorp Inc. as outlined in the Monitor's Sixteenth Report to Court dated June 15, 2018 (the "**Report**"); and

3. such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Distribution**

1. as established by the Initial Order granted in these proceedings on October 18, 2016, this is a liquidating CCAA proceeding;

2. In accordance with this Court's endorsement on May 18, 2018, the Foreign Representative (as defined in the Report), on behalf of Urbancorp Inc., filed a late 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.

3. Based on the legal bases and evidence provided by UCI in support of its claim, the Monitor, in consultation with its counsel, admitted Urbancorp Inc.'s claim in the amount of $8 million, plus interest and costs, each of which is to be determined;

4. sufficient proceeds of realization exist to effect a distribution in respect of this claim taking into account appropriate reserves for currently disputed claims and future administrative costs;

5. the distribution is in accordance with all statutory and contractual priorities pertaining to all currently admitted claims;

6. effecting the distribution at this time is appropriate in the circumstances;

**Miscellaneous**

7. Section 11 of the CCAA and this Court's equitable and statutory jurisdiction thereunder;

8. 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; and

9. 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 Report; and

2. such further material as counsel may advise and this Court may permit.

June 15, 2018

**Davies Ward Phillips & Vineberg LLP**
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Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Monitor

**TO:** The E-Service List found at:

http://www.ksvadvisory.com/assets/Uploads/insolvency-case-documents/Urbancorp%20Group/CCAA%20Proceedings%20-%20Urbancorp%20%28Bridlepath%29%20Inc.%20and%20Urbancorp%20%28Woodbine%29%20Inc./Service%20List/CCAA%20Bridlepath%20and%20Woodbine%20Service%20List%20as%20at%20October%2025%2C%202016.pdf

**Court File No. CV-11549-00CL**

**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., ET AL.**

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

**(PROCEEDING COMMENCED AT TORONTO)**

**NOTICE OF MOTION**
(Returnable June 26, 2018 – Distribution)

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**Lawyers for the Monitor**

# TAB 2

# Twenty Sixth 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

June 15, 2018

and

# Sixteenth 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

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### Schedules



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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

TWENTY SIXTH 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

SIXTEENTH REPORT OF KSV KOFMAN INC.

JUNE 15, 2018

## 1.0 Introduction

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 "Cumberland 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"). A copy of the Cumberland Initial Order is attached as Appendix "A".

3. Certain Cumberland CCAA Entities[1] 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[2], other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. ("UCI") (collectively, the "Non-Cumberland Entities"). The corporate chart for the Cumberland CCAA Entities and the Non-Cumberland Entities is provided in Appendix "B".

4. 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 Bridlepath and Woodbine.

5. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel (the "Israeli Court") issued a decision (the "Israeli Appointment Order") appointing Guy Gissin as the functionary officer and foreign representative (the "Foreign Representative") of Urbancorp Inc. ("UCI") and granting him certain powers, authorities and responsibilities over UCI (the "Israeli Proceedings"). A copy of the Israeli Appointment Order is attached as Appendix "C".

[1] 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.

[2] 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.

6. On May 18, 2016, the Court issued two orders under Part IV of the CCAA (the "Part IV Proceedings") 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.

7. 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"). A copy of the Protocol is attached as Appendix "D".

8. Pursuant to an order made by the Court dated October 18, 2016 (the "Bay Initial Order, and together with the Cumberland Initial Order, the "Initial Orders"), 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" and together with the Cumberland CCAA Proceedings, the "CCAA Proceedings").

9. 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 "E".

10. The Initial Orders provide the Monitor with broad authority beyond those typically provided to a CCAA monitor, including decision making and full access to the CCAA Entities' property, books and records.

11. At the commencement of the CCAA Proceedings, the Monitor made an image of the Cumberland CCAA Entities' servers.[3] The Monitor subsequently obtained an image of Alan Saskin's Gmail account which he used for Urbancorp purposes.[4] In connection with obtaining Mr. Saskin's emails on his Gmail account, the Monitor agreed not to provide the emails to any party without advising Mr. Saskin of its intention to do so and to provide Mr. Saskin with an opportunity to respond to any motion in relation to their production.

12. On May 29, 2018, Dentons Canada LLP ("Dentons"), counsel to the Foreign Representative, sent an email to the Monitor requesting certain documents, including business related emails from Alan Saskin's email account (the "Document Request"). A copy of the Dentons request is attached as Appendix "F".

[3] The servers are owned by UTMI, a Cumberland CCAA Entity. The same servers are used by all the entities in the Urbancorp Group, including UCI prior to the CCAA proceedings.

[4] Mr. Saskin also maintained an "Urbancorp.com" email account; however, it appears that the Gmail account was the primary account he used for Urbancorp purposes, at least for the period for which searches were requested by Dentons.

13. 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.

### 1.1 Purposes of this Report

1. The purposes of this report ("Report") are to:

   a) discuss the Document Request;

   b) discuss a claim filed by the Foreign Representative on May 18, 2018 and admitted by the Monitor against Bay LP (the "UCI Claim"); and

   c) recommend the Court make an order:

      i. authorizing the Monitor to provide the Foreign Representative with the emails requested pursuant to the Document Request; and

      ii. authorizing the Monitor to make a $3.05 million distribution to UCI from Bay LP in respect of the UCI Claim.

### 1.2 Currency

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

## 2.0 Background

1. The CCAA Entities, together with several affiliates, comprise the Urbancorp Group of Companies (collectively, the "Urbancorp Group"). The Urbancorp Group primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area. The Urbancorp Group also owns geothermal assets, which provide heating and cooling systems to various projects developed by entities in the Urbancorp Group. Prior to the CCAA proceedings, the Urbancorp Group was controlled by Alan Saskin.

### 2.1 UCI

1. UCI was incorporated in Ontario 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 (the "IPO") of debentures (the "Debentures") in Israel for NIS 180,583,000 (approximately $64 million based on the exchange rate at the time of the IPO). Substantially all of the proceeds from the Israel Bond Issue were advanced to the Urbancorp Group.

2. A summary of UCI's admitted claims and distributions to UCI in the Cumberland CCAA Proceedings to date is provided below.

| ($000s; unaudited) Entities | Claims Filed | Admitted Claims | Distributions | Unpaid Admitted Claims | Total Disputed Claims[a] |
|---|---|---|---|---|---|
| Cumberland Entities | 46,275 | 37,174 | 33,284 | 3,890 | - |
| Non-Cumberland Entities[5] | 11,457 | 10,155 | - | 10,155 | 1,302 |
| | 57,732 | 47,329 | 33,284 | 14,045 | 1,302 |

a) The Monitor disallowed $9.1 million of the UCI claims filed against the Cumberland Entities, which were objected to by UCI. Subsequently, UCI agreed to withdraw its objection.

3. The table reflects that approximately $14 million of UCI's admitted claim against the Cumberland CCAA Entities remains unpaid.

4. In addition to the amounts reflected above, pursuant to an expense reimbursement agreement entered into on May 23, 2018, the Monitor has paid $1.88 million to UCI to reimburse certain expenses incurred by UCI on behalf of the Cumberland Entities. The Monitor understands that UCI's original claim for input tax credits related to expenses incurred in connection with the IPO was denied by the CRA on the basis that UCI was not operating any business. Accordingly, the Foreign Representative approached the Monitor to request that the relevant Cumberland Entities that were the operating entities benefiting from the IPO reimburse UCI for such expenses so that they could claim the relevant input tax credits. Pursuant to the expense reimbursement agreement, any refunds received by the Cumberland Entities will be paid over to UCI provided that no reassessment risk pertaining to the Cumberland Entities remains. As UCI is entitled to all of the funds remaining in the Cumberland CCAA Proceedings, net of the necessary reserves, the economic consequences of this transaction are neutral to them and, as the expenses were in fact incurred, there is no reason not to pursue a refund of the associated input tax credits.

5. The timing and amount of future distributions to UCI depends on the resolution of several disputed claims and realizations from the Cumberland CCAA Entities' remaining assets, including geothermal assets, the Kingsclub development and a joint-venture development between Downsview and Mattamy Homes. These matters are discussed in the Monitor's Twenty Fourth Report to Court dated April 24, 2018, which is attached as Appendix "G", without appendices.

6. The Monitor intends to make further distributions from the Cumberland CCAA Proceedings to UCI as claims are settled or amounts are realized, as requested by the Foreign Representative.

[5] Downsview, UTMI, Vestaco Homes Inc., Vestaco Investments Inc. and 228 Queen Quay West Limited.

7. On June 20, 2017, the Foreign Representative filed a lawsuit in Israel against Mr. Saskin, TCC/Urbancorp Bay Stadium LP, The Webster Trust, Urbancorp Management Inc., Urbancorp Holdco Inc., and Ms. Doreen Saskin (the "Saskin Actions"). The lawsuit alleges that the defendants breached obligations to UCI in connection with the issuance of the Debentures. The lawsuit seeks monetary relief of approximately NIS 95.6 million.[6]

8. On December 6, 2017, the Foreign Representative filed a lawsuit in Israel against Deloitte Brightman Almagor Zohar, Midroog Ltd., Apax Issuances Ltd., Janterra Real Estate Advisors, Mr. Saskin and Philip Gales. The lawsuit alleges that the defendants breached obligations to UCI in connection with the issuance of the Debentures (the "Prospectus Action"). The lawsuit seeks monetary relief of approximately NIS 100 million.[7]

9. On April 25, 2018, the Foreign Representative filed a lawsuit in Canada against Harris Sheaffer LLP ("Harris Sheaffer") and Barry Rotenberg, a former lawyer of Harris Sheaffer (the "Harris Sheaffer Action" and together with the Saskin Actions and the Prospectus Action, the "Israeli Actions"). Harris Sheaffer was legal counsel to UCI and the Cumberland CCAA Entities in connection with the IPO. The lawsuit alleges that Harris Sheaffer and Mr. Rotenberg also breached obligations to UCI in connection with the issuance of the Debentures. The lawsuit seeks damages in the amount of at least $25 million.

## 3.0 Document Request

1. The Monitor performed a preliminary review of the documents requested under the Document Request.

2. To the extent the documents were written by Alan Saskin as a director and officer of the Cumberland CCAA Entities, the documents constitute the business records of the Cumberland CCAA Entities.

3. The Cumberland Entities are all direct or indirect subsidiaries of UCI and as such, UCI would be entitled to the Cumberland Entities' documents in the ordinary course.

4. To the extent the documents were written by Alan Saskin as a director and officer of UCI, the documents constitute the business records of UCI.

5. To the extent that any privilege attaches to any of the documents in favour of the Cumberland CCAA Entities, it is the Monitor who can elect to waive privilege on behalf of the Cumberland CCAA Entities given its powers pursuant to the Initial Orders.

6. To the extent the documents were written by Alan Saskin as a director and officer of UCI, it is the Foreign Representative who can waive privilege on behalf of UCI given

[6] The lawsuit seeks relief of approximately $34.8 million, based on the current exchange rate.

[7] The lawsuit seeks relief of approximately $36.4 million, based on the current exchange rate.

the powers provided to it under the Israeli Appointment Order, which has been recognized by the Court.

7. The Monitor is of the view that providing the documents should assist to facilitate a full factual record in any litigation.

8. To the extent that the Foreign Representative inadvertently receives any privileged and confidential documents from the Monitor, the Foreign Representative should be precluded from using them in any litigation or for any other purpose. In order to reduce this risk, the Monitor requested that the Foreign Representative provide it with a list of keywords, a list of which is provided in Appendix "H". The majority of these documents have been reviewed by the Monitor on a preliminary basis[8]. The Monitor intends to provide these documents electronically to the Foreign Representative. A copy of all documents provided to the Foreign Representative will also be provided to Mr. Saskin.

9. In light of the Israeli Actions, however, the Monitor is seeking this Court's authorization under the circumstances so that any potentially affected party may make submissions to this Court as to why such documents should not be provided to the Foreign Representative.

## 4.0 UCI Distribution

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 due to claims filed against the Bay CCAA Entities by Terra Firma Capital Corporation ("TFCC") and UCI, both of which were disputed by the Monitor.

2. On November 30, 2017, the Court made an order authorizing and directing the Monitor to pay in full all admitted claims, other than intercompany claims. TFCC and UCI consented to the order.

3. The table below provides a summary of the Bay CCAA Entities' distributions to creditors, remaining unpaid claims and disputed claims.

| ($000s; unaudited) | Total Admitted Claims | Distribution | Unpaid Admitted Claims | Total Disputed claims |
|---|---|---|---|---|
| TFCC (secured) | 716 | 716 | - | 6,000 |
| Other third-party creditors | 7,445 | 7,445 | - | 605 |
| Other intercompany creditors | 1,154 | 381 | 773 | - |
| | 9,315 | 8,542 | 773 | 6,605 |

[8] The Monitor's review was not as comprehensive as it would have been as if it was a litigant in the various proceedings. Its review of the emails was cursory. The Monitor is of the view that it is not in a position, nor should it be, to determine on behalf of the Foreign Representative which documents are relevant to the Foreign Representative's litigation, and that the Foreign Representative is the party that should determine this. Additionally, while the Monitor's review sought to exclude any privileged or confidential emails, including personal emails, it cannot guarantee that no such emails will inadvertently be provided to the Foreign Representative.

4. Pursuant to an agreement dated February 13, 2018, TFCC and UCI entered into a settlement ("TFCC/UCI Settlement"). The TFCC/UCI 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.

5. The TFCC/UCI Settlement was conditional on Court approval. The approval motion was heard on May 1, 2018.

6. 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 TFCC/UCI Settlement; and

   b) authorized the Foreign Representative to file a late claim on behalf of UCI.

   A copy of the May 11 Endorsement is attached as Appendix "I".

7. 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 in favour of UTMI, which were assigned to UCI (in the amount of $6 million) and Urbancorp Realtyco Inc. (in the amount of $2 million), a subsidiary of UCI. Based on the legal bases and evidence provided by UCI in support of its claim, the Monitor, in consultation with its counsel, admitted the UCI Claim in the amount of $8 million, plus interest and costs, each of which is to be determined.

8. On June 5, 2018, the Foreign Representative requested that the Monitor make a distribution to UCI, to the extent possible. The Monitor has determined that $3.05 million can be distributed immediately to UCI, after holding back for claims and costs of administration. A summary of the distribution is provided below.

| (C$000s; unaudited) | Amount |
|---|---|
| Cash available for Bay Distribution | |
| Current bank balance | 11,172 |
| Cash holdback for costs in administration | (750) |
| Net cash available | 10,422 |
| Holdback for disputed and unpaid admitted claims | |
| TFCC | 6,000 |
| Intercompany creditors | 773 |
| Disputed claim (Tarion Warranty Corporation) | 605 |
| | 7,378 |
| Amounts available for UCI Distribution (rounded) | 3,044 |
| Rounded | 3,050 |

9. On June 4, 2018, Thornton Grout Finnigan LLP, counsel to TFCC, provided the Monitor with a statement reflecting approximately $5.2 million owing under TFCC's claim, a copy of which is provided in Appendix "J". The Monitor is seeking additional information and clarification with respect to these amounts. The Monitor intends to holdback an additional $800,000 as a contingency to deal with TFCC's claim, including for future interest and costs.

* * *

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**

**Schedule "A"**

Urbancorp (952 Queen West) Inc.

King Residential Inc.

Urbancorp 60 St. Clair Inc.

High Res. Inc.

Bridge on King Inc.

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

**Schedule "B"**

The Townhouses of Hogg's Hollow Inc.

King Towns Inc.

Newtowns at Kingtowns Inc.

Deaja Partner (Bay) Inc.

TCC Urbancorp (Bay) Limited Partnership

# Appendix "A"

Court File No.: CV-16-11389-00CL

*ONTARIO*
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

| | | |
|---|---|---|
| **THE HONOURABLE** | ) | **WEDNESDAY, THE 18TH** |
| | ) | |
| **JUSTICE NEWBOULD** | ) | **DAY OF MAY, 2016** |

**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 RESIDENTIAL 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**

# INITIAL ORDER

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Alan Saskin sworn May 13, 2016 and the Exhibits thereto (the "**Saskin Affidavit**"), the First Report of KSV Kofman Inc. in its capacity as Proposal Trustee and as proposed monitor dated May 13, 2016 (the "**First Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Urbancorp CCAA Entities, counsel for the proposed Monitor, counsel for the Foreign Representative of Urbancorp

Inc., counsel for Mattamy (Downsview) Limited, counsel for King Liberty North Corporation, counsel for the syndicate of lenders represented by the Bank of Nova Scotia as administrative agent, and those other parties listed on the counsel slip, no one appearing for any other person although duly served as appears from the Affidavit of Service of Kyle B. Plunkett sworn May 13, 2016, filed, on reading the consent of KSV Kofman Inc. to act as the Monitor (in such capacity, the "**Monitor**");

**SERVICE**

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

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies, save and except Urbancorp New Kings Inc. ("**UNKI**") which shall not be an Applicant hereunder, and shall be removed from the style of cause in these proceedings and such style of cause shall be hereafter amended to exclude UNKI.

3. **THIS COURT ORDERS AND DECLARES** that although not Applicants, the Urbancorp CCAA Entities' affiliated Corporations and Limited Partnerships listed in **Schedule "A"** to this Order (the "**Non-Applicant UC Entities**") are proper parties to these proceedings and shall enjoy the benefits of the protections and authorizations provided by this Order. (The Applicants together with the Non-Applicant UC Entities are hereinafter referred to as the "**Urbancorp CCAA Entities**").

4. **THIS COURT ORDERS AND DECLARES** that the proposal proceedings of each of Urbancorp Toronto Management Inc. (Estate No. 31-2114055), Urbancorp Downsview Park Developments Inc. (Estate No. 31-2114054), Urbancorp (Patricia) Inc. (Estate No. 31-2114050), Urbancorp (Mallow) Inc. (Estate No. 31-2114049), Urbancorp (Lawrence) Inc. (Estate No. 31-2114048) and Urbancorp (St. Clair Village) Inc. (Estate No. 31-2114053) (collectively, the "**Urbancorp NOI Entities**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), be taken up and continued under the CCAA and that the provisions of Part III of the BIA shall have no further application to the Urbancorp NOI Entities.

**PLAN OF ARRANGEMENT**

5. **THIS COURT ORDERS** that subject to the provisions of this Order, the Applicants shall have the authority to file, and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "**Plan**" or "**Plans**").

**POSSESSION OF PROPERTY AND OPERATIONS**

6. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Urbancorp CCAA Entities shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. Subject to paragraph 29 hereof, the Urbancorp CCAA Entities are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Saskin Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Urbancorp CCAA Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Urbancorp CCAA Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

8. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Urbancorp CCAA Entities in respect of these proceedings, at their standard rates and charges.

9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Urbancorp CCAA Entities shall be entitled but not required to pay all reasonable expenses incurred by the Urbancorp CCAA Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Urbancorp CCAA Entities following the date of this Order.

10. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Urbancorp CCAA Entities in connection with the sale

of goods and services by the Urbancorp CCAA Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Urbancorp CCAA Entities.

11. **THIS COURT ORDERS** that, except where any of the Urbancorp CCAA Entities are a landlord, until a real property lease is disclaimed in accordance with the CCAA, the Urbancorp CCAA Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Urbancorp CCAA Entities and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. **THIS COURT ORDERS** that, except as specifically permitted herein or by further order of this Court, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by an Applicants to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

13. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall not, without further Order of this Court: (a) make any disbursement out of the ordinary course of its Business

exceeding in the aggregate $100,000 in any calendar month; or (b) engage in any material activity or transaction not otherwise in the ordinary course of its Business.

**RESTRUCTURING**

14. **THIS COURT ORDERS** that subject to paragraph 29 herein, the Urbancorp CCAA Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing (including Additional Interim Financing as hereinafter defined) of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue a sale or development of some or all of any Urbancorp CCAA Entity's Business and Property,

all of the foregoing to permit the Urbancorp CCAA Entities to proceed with an orderly restructuring of the Business (the "**Restructuring**").

15. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall provide each of the relevant landlords with notice of the Urbancorp CCAA Entities' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Urbancorp CCAA Entities' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Urbancorp CCAA Entities, or by further Order of this Court upon application by the Urbancorp CCAA Entities on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims the lease governing such leased premises in

accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Urbancorp CCAA Entities' claim to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against that Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE URBANCORP CCAA ENTITIES OR THE PROPERTY**

17. **THIS COURT ORDERS** that until and including June 17, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Urbancorp CCAA Entities or the Monitor, or affecting the Business or the Property, except with the written consent of the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Urbancorp CCAA Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Urbancorp CCAA Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Urbancorp CCAA Entities to carry on

any business which the Urbancorp CCAA Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

19. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Urbancorp CCAA Entities, except with the written consent of the Urbancorp CCAA Entities and the Monitor, or leave of this Court.

**CONTINUATION OF SERVICES**

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

**NON-DEROGATION OF RIGHTS**

21. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or

licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Urbancorp CCAA Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

**PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

22. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Urbancorp CCAA Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Urbancorp CCAA Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Urbancorp CCAA Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Urbancorp CCAA Entities or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

23. **THIS COURT ORDERS** that the Urbancorp CCAA Entities shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Urbancorp CCAA Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. **THIS COURT ORDERS** that the directors and officers of the Urbancorp CCAA Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of $300,000, as security for the indemnity provided in paragraph 23 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45 herein.

25. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Urbancorp CCAA Entities' directors and officers

shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

**INTERIM FINANCING**

26. **THIS COURT ORDERS** that the interim credit facility in the maximum amount of $1,900,000 (the "**Interim Facility**") made available to the Urbancorp CCAA Entities by Urbancorp Partner (King South) Inc. (the "**Interim Lender**") pursuant to the terms of the term sheet dated as of May 13, 2016 (the "**Term Sheet**"), and attached as an Exhibit to the Saskin Affidavit, and the Term Sheet itself, be and are hereby approved, and the Urbancorp CCAA Entities are hereby authorized and empowered to execute and deliver such documents as are contemplated by the Term Sheet.

**PROTOCOL FOR CO-OPERATION**

27. **THIS COURT ORDERS AND DIRECTS** that the "Protocol For Cooperation Among Canadian Court Officer and Israeli Functionary", between KSV Kofman Inc. in its capacity as proposal trustee and as proposed Monitor and Guy Gissin, in his capacity as Functionary Officer appointed by the Israel District Court in Tel Aviv-Yafo in respect of Urbancorp Inc., attached as **Schedule "B"** to this Order (the "**Protocol**"), be and is hereby approved. In the event of a conflict between the terms of this Order and the Protocol, the terms of this Order shall prevail.

**APPOINTMENT OF MONITOR**

28. **THIS COURT ORDERS** that KSV Kofman Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Urbancorp CCAA Entities with the powers and obligations set out in the CCAA or set forth herein and that the Urbancorp CCAA Entities and their shareholders, officers, directors, and Assistants shall not take any steps with respect to the Urbancorp CCAA Entities, the Business or the Property, save and except under the direction of the Monitor, pursuant to paragraph 29 of this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, and without altering in any way the powers, abilities, limitations and obligations of the Urbancorp CCAA Entities within, or as a result of these proceedings, be and is hereby authorized, directed and empowered to:

(a) cause the Urbancorp CCAA Entities, or any one or more of them, to exercise rights under and observe its obligations under paragraphs 8, 9, 10, 11, 12 and 13 above;

(b) conduct a process for the solicitation of proposals for additional interim financing of the Business to replace or augment the Interim Credit Facility (the "**Additional Interim Financing**"), which Additional Interim Financing shall be subject to the approval of the Court;

(c) cause the Urbancorp CCAA Entities to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Urbancorp CCAA Entities in dealing with the Property;

(d) conduct, supervise and direct one or more Court-approved sales and investor solicitation processes (with prior Court approval if deemed appropriate by the Monitor) for portions of the Property or the Business, including the solicitation of development proposals, and any procedures regarding the allocation and/or distribution of proceeds of any transactions;

(e) cause the Urbancorp CCAA Entities to administer the Property and operations of the Urbancorp CCAA Entities, including the control of receipts and disbursements, as the Monitor considers necessary or desirable for the purposes of completing any transaction, or for purposes of facilitating a Plan or Plans for some or all Applicants, or parts of the Business;

(f) propose or cause the Applicants or any one or more of them to propose one or more Plans in respect of the Applicants or any one or more of them;

(g) engage advisors or consultants or cause the Urbancorp CCAA Entities to engage advisors or consultants as the Monitor deems necessary or desirable to carry out the

terms of this Order or any other Order made in these proceedings or for the purposes of the Plan and such persons shall be deemed to be "Assistants" under this Order;

(h) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter;

(i) meet and consult with the directors of the Urbancorp CCAA Entities as the Monitor deems necessary or appropriate;

(j) meet with and direct management of the Urbancorp CCAA Entities with respect to any of the foregoing including, without limitation, operational and restructuring matters;

(k) monitor the Urbancorp CCAA Entities' receipts and disbursements;

(l) approve Drawdown Requests under the Interim Credit Facility and any Additional Interim Facility;

(m) cause any Urbancorp CCAA Entity with available cash (an "**Intercompany Lender**") to loan some or all of that cash to another Urbancorp CCAA Entity (an "**Intercompany Borrower**") on an interest free inter-company basis (an "**Approved Intercompany Advance**") up to an aggregate of $1 million, which Approved Intercompany Advances shall be secured by the Intercompany Lender's Charge against the Property of the Intercompany Borrower, where in the Monitor's view the Approved Intercompany Advance secured by the Intercompany Lender's Charge does not prejudice the interest of the creditors of the Intercompany Lender and does not violate any agreement to which a Non-Applicant UC Entity is a party.

(n) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(o) assist the Urbancorp CCAA Entities in its preparation of the Urbancorp CCAA Entities' cash flow statements and reporting required by the Term Sheet or the Court;

(p) hold and administer creditors' or shareholders' meetings for voting on the Plan or Plans;

(q) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Urbancorp CCAA Entities, to the extent that is necessary to adequately assess the Urbancorp CCAA Entities business and financial affairs or to perform its duties arising under this Order;

(r) be at liberty to engage legal counsel, real estate experts, or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(s) perform such other duties as are required by this Order or by this Court from time to time; and

(t) to comply with the Protocol,

provided, however, that the Monitor shall comply with all applicable law and shall not have any authority or power to elect or to cause the election or removal of directors of any of the Urbancorp CCAA Entities or any of their subsidiaries.

30. **THIS COURT ORDERS** that, until further order of this court, Robert Kofman, or such representative of KSV Kofman Inc. as he may designate in writing from time to time, is authorized, directed and empowered to act as, and is hereby appointed as, the representative of UNKI on the Management Committee of the Kings Club Development Inc. project (the "**Management Committee Member**"). For purposes of this Order, in carrying out its duties as Management Committee Member pursuant to this Order, the Management Committee Member shall have the same protections afforded to the Monitor pursuant to paragraph 35 of this Order. Subject to further order of this Court, on notice to The Bank of Nova Scotia and King Liberty North Corporation, UNKI otherwise remains unaffected by this Order and the CCAA proceedings.

31. **THIS COURT ORDERS** that the Urbancorp CCAA Entities and their advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and

shall provide the Monitor with such assistance as the Monitor may request from time to time to enable the Monitor to carry out its duties and powers as set out in this Order or any other Order of this Court under the CCAA or applicable law generally.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof and that nothing in this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, shall deem the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation.

33. **THIS COURT ORDERS** that, without limiting the provisions herein, all employees of the Urbancorp CCAA Entities shall remain employees of the Urbancorp CCAA Entities until such time as the Urbancorp CCAA Entities may terminate the employment of such employees. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts, as applicable.

34. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Urbancorp CCAA Entities with information provided by the Urbancorp CCAA Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Urbancorp CCAA Entities is confidential, the Monitor shall not

provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Urbancorp CCAA Entities may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Urbancorp CCAA Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Urbancorp CCAA Entities as part of the costs of these proceedings, subject to being assessed by the court. The Urbancorp CCAA Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Urbancorp CCAA Entities and any Assistants retained by the Monitor on a weekly basis and, in addition, the Urbancorp CCAA Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Urbancorp CCAA Entities and any Assistants retained by the Monitor, such reasonable retainers as may be requested to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. The Urbancorp CCAA Entities are also authorized and directed to pay the fees and disbursements of KSV as Proposal Trustee, the fees and disbursements of the Proposal Trustee's counsel and the fees and disbursements of counsel to Urbancorp NOI Entities up to the date of this Order in respect of the proposal proceedings of the Urbancorp NOI Entities.

37. **THIS COURT ORDERS** that KSV in its capacity as Monitor, and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Urbancorp CCAA Entities' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property of the Applicants, which charge shall not exceed an aggregate amount of $750,000, as security for their professional fees and disbursements incurred

at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

**INTERCOMPANY LENDER'S CHARGE**

39. **THIS COURT ORDERS** that an Intercompany Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Intercompany Lender's Charge**") on the Property of the Intercompany Borrower as security for all Approved Intercompany Advances advanced to the Intercompany Borrower. The Intercompany Lender's Charge shall have the priority set out in paragraphs 43 and 45 hereof.

**INTERIM FINANCING**

40. **THIS COURT ORDERS** that the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property of the Applicants as security for all amounts advanced to any Applicant under the Interim Credit Facility and as security for all liabilities and obligations of the Applicant as guarantors pursuant to the Term Sheet. The Interim Lender's Charge shall have the priority set out in paragraphs 43 and 45 hereof.

41. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge;

(b) upon the occurrence of an Event of Default under the Interim Facility Term Sheet, the Interim Lender may terminate the Interim Credit Facility and cease making advances to the Applicants, and, upon five (5) days' notice to the Monitor and the parties on the Service List, may bring a motion for leave to exercise any and all of its rights and remedies against the Applicants or their Property under or pursuant to the Interim Term Sheet, and the Interim Lender's Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a

bankruptcy order against an Applicant and for the appointment of a trustee in bankruptcy of one or more Applicants; and

(c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or their Property.

42. **THIS COURT ORDERS AND DECLARES** that the Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by any Applicant under the CCAA, with respect to any advances made under the Interim Credit Facility.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

43. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge to the maximum amount of $750,000;

Second – Interim Lender's Charge to the maximum amount of $1,900,000 plus accrued interest under the Term Sheet (as against the Property of the Applicants only), and the Intercompany Lender's Charge (as against the Property of the relevant Intercompany Borrower only) on a *pari passu* basis; and

Third – Directors' Charge to the maximum amount of $300,000.

44. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Interim Lender's Charge or the Intercompany Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

45. **THIS COURT ORDERS** that each of the Charges shall rank as against the applicable Property subordinate to all valid perfected security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise granted by each respective

Urbancorp CCAA Entity or to which each respective Urbancorp CCAA Entity is subject (collectively, "**Encumbrances**") as of the date of this Order (collectively, "**Pre-Filing Security Interests**"), save and except the security interests, if any, in favour of Reznik Paz Nevo Trusts Ltd. in its capacity as trustee (the "**Israeli Trustee**") under a certain Deed of Trust dated December 7, 2015 between Urbancorp Inc. and the Israeli Trustee, which shall rank subordinate to the Charges.

46. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by further order of this Court, the Urbancorp CCAA Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges.

47. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; (e) the pendency of the Israeli Court Proceedings; or (f) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Urbancorp CCAA Entities, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, or performance of the Interim Facility Term Sheet shall create or be deemed to constitute a breach by the Urbancorp CCAA Entities of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Urbancorp CCAA Entities entering into the Interim Facility Term Sheet or the creation of the Charges; and

(c) the payments made by the Urbancorp CCAA Entities pursuant to this Order, the Interim Facility Term Sheet, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

48. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Urbancorp CCAA Entity's interest in such real property leases.

**SERVICE AND NOTICE**

49. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail – Toronto Edition, a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Urbancorp CCAA Entities of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

50. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: http://www.ksvadvisory.com/insolvency-cases-2/urbancorp/ .

51. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Urbancorp CCAA Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices

or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Urbancorp CCAA Entities' creditors or other interested parties at their respective addresses as last shown on the records of the Urbancorp CCAA Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

52. **THIS COURT ORDERS** that the Urbancorp CCAA Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

53. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Urbancorp CCAA Entities, the Business or the Property.

54. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in Israel or elsewhere, to give effect to this Order and to assist the Urbancorp CCAA Entities, the Monitor and their respective 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 Urbancorp CCAA Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Urbancorp CCAA Entities and the Monitor and their respective agents in carrying out the terms of this Order.

55. **THIS COURT ORDERS** that each of the Urbancorp CCAA Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

56. **THIS COURT ORDERS** that any interested party (including the Urbancorp CCAA Entities and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

57. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

MAY 18 2016

PER / PAR: RW

**SCHEDULE "A"**

## List of Non Applicant Affilliates

- Urbancorp Power Holdings Inc.
- Vestaco Homes Inc.
- Vestaco Investments Inc.
- 228 Queen's Quay West Limited
- Urbancorp Cumberland 1 LP
- Urbancorp Cumberland 1 GP Inc.
- Urbancorp Partner (King South) Inc.
- Urbancorp (North Side) Inc.
- Urbancorp Residential Inc.
- Urbancorp Realtyco Inc.

SCHEDULE "B"

# PROTOCOL
## For Co-operation Among Canadian Court Officer and Israeli Functionary

BETWEEN:

**GUY GISSIN , in his capacity as Functionary Officer appointed by the Israeli Court for Urbancorp Inc.**

- and -

**KSV KOFMAN INC., in its capacity as proposal trustee and proposed monitor of certain subsidiaries of Urbancorp Inc.**

**WHEREAS** KSV Kofman Inc. ("**KSV**") was appointed the proposal trustee in respect of each of Urbancorp (Lawrence) Inc., Urbancorp (Mallow) Inc., Urbancorp (Patricia) Inc., Urbancorp (St. Clair Village) Inc., Urbancorp Downsview Park Development Inc. and Urbancorp Toronto Management Inc. (the "**Initial Subsidiaries**"), in notice of intention filings made by each of the Initial Subsidiaries under the *Bankruptcy and Insolvency Act* ("BIA") on April 21, 2016 (the "**Proposal Proceedings**");

**AND WHEREAS** Guy Gissin was appointed as Functionary Officer on a preliminary basis (the "**Israeli Parentco Officer**") of Urbancorp Inc. ("**Parentco**"), the parent of the Initial Subsidiaries, by order of the District Court in Tel Aviv-Yafo (the "**Israeli Court**") dated April 25, 2016 (the "**Israeli Functionary Order**") in case number 44348-04-16 *Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.* (the "**Israeli Proceedings**");

**AND WHEREAS** it is anticipated that, with the exception of Bosvest Inc., Edge Residential Inc. and Edge on Triangle Park Inc., which are in separate BIA proposal proceedings with the Fuller Landau Group Inc. as proposal trustee, and Urbancorp Cumberland GP 2 Inc., Urbancorp Cumberland 2 LP and Westside Gallery Lofts Inc. (the "**Excluded Subsidiaries**"), all of the direct and indirect subsidiaries of Urbancorp Inc. (collectively, excluding the Excluded Subsidiaries, the "**Applicants**") will bring an application in the Ontario Superior Court of Justice – Commercial List (the "**Canadian Court**") for relief pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") wherein the Proposal Proceedings will be taken up and continued within the CCAA Proceedings;

**AND WHEREAS** it is anticipated that the Israeli Parentco Officer will seek to have the Israeli Functionary Order and its role as the Israeli Parentco Officer recognized by the Canadian Court for the purpose of representing the interests of Parentco and participating as a stakeholder representative in the Applicants' CCAA Proceedings in connection with protecting the interests of Parentco's creditors, including the holders of the bonds issued on the Tel Aviv Stock Exchange (the "**Parentco Bonds**") pursuant to a deed of trust dated December 7, 2015 (the "**Parentco Bond Indenture**");

**AND WHEREAS** KSV and the Israeli Parentco Officer have agreed to work cooperatively on the terms set out herein to attempt to maximize recoveries through an orderly process for the stakeholders of Parentco and the Applicants (collectively, the "**Urbancorp Group**");

**NOW THEREFORE**, the Israeli Parentco Officer and KSV agree to implement the following protocol to cooperate with each other to maximize recoveries for the stakeholders of the Urbancorp Group:

1. The Israeli Parentco Officer will file an application under Part IV of the *Companies' Creditors Arrangement Act* ("CCAA"), seeking recognition of the Israeli Proceedings and of his appointment as foreign representative of Parentco thereunder, such application to seek recognition of the Israeli Proceedings as the "foreign main proceeding" with respect to Parentco. That application will include a request to appoint KSV as the Information Officer with respect to the Part IV CCAA proceedings of Parentco (the "**Part IV Proceedings**").

2. The Applicants will commence the CCAA Proceedings, proposing KSV to be appointed as Monitor with augmented powers so as to control ordinary course management and receipts and disbursements of funds for the Applicants. KSV acknowledges that the Israeli Parentco Officer shall have standing to appear before the Canadian Court as the representative of Parentco in the CCAA Proceedings.

3. The Israeli Parentco Officer and KSV agree that, with respect to the CCAA Proceedings:

   (a) KSV shall provide the Israeli Parentco Officer with regular and timely information updates regarding the ongoing status of the CCAA Proceedings as they unfold. KSV will also provide information and updates to the Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;

   (b) The Israeli Parentco Officer shall provide KSV with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Israeli Court that will negatively impact the Applicants or the CCAA Proceedings. The Israeli Parentco Officer will also provide information and updates to KSV prior to the commencement of the CCAA Proceedings;

   (c) KSV shall provide the Israeli Parentco Officer with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Canadian Court that will negatively impact the Urbancorp Inc. or the Israeli Proceedings. KSV will also provide information and updates to Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;

   (d) KSV shall provide to the Israeli Parentco Officer copies of all information pertaining to the Applicants:

      (i) in KSV's possession that KSV considers material; or

(ii) as reasonably requested by the Israeli Parentco Officer,

provided that KSV, in good faith, is not of the view that such information is subject to privilege or confidentiality restrictions. If KSV is of the view that such information is subject to privilege or confidentiality restrictions, then KSV shall so inform the Israeli Parentco Officer and shall seek directions from the Canadian Court on notice to the affected parties in the CCAA Proceedings as to whether there are any restrictions which would prevent the disclosure of such information to the Israeli Parentco Officer.

(e) The Israeli Parentco Officer shall provide to KSV, in its capacity as the Information Officer of Parentco in the Part IV Proceedings, copies of all information pertaining to the Israeli Proceedings:

(i) in the Israeli Parentco Officer's possession that it considers material to the Israeli Proceedings and is not subject to privilege or confidentiality restrictions; or

(ii) as reasonably requested by KSV, provided that this shall not entitle KSV or any party requesting information through them to receive information on ongoing reviews or investigations being undertaken by the Israeli Parentco Officer or others in connection with the Israeli Proceedings; and

(f) KSV will run an orderly dual track sale and restructuring process with respect to the Applicants, subject to approval by the Canadian Court in the CCAA Proceedings, which will consider both development opportunities and opportunities to sell the properties of the Applicants. KSV will design such process collaboratively, with the Israeli Parentco Officer, with the understanding that at any time during the pendency of the sales process, should an offer come forward with respect to any or all of the Applicants contemplating a restructuring or other option which is acceptable to both KSV and the Israeli Parentco Officer, the sale process may be truncated in order to pursue the other option with respect to the Applicant(s) in question. Alternatively, should the sale process continue to the point of submission of bids, subject to Section 4(b) below, copies of all bids will be provided to the Israeli Parentco Officer by KSV, and KSV shall discuss same with the Israeli Parentco Officer, with the objective, but not the obligation, of hopefully concurring on the course of action to be followed in terms of which bids to continue negotiating or which bid(s) to select as the successful bidder(s). KSV acknowledges that, throughout these processes, the Israeli Parentco Officer may from time to time require instructions and/or directions from the Israeli Court, and that the process shall be conducted in a fashion to permit the Israeli Parentco Officer the opportunity to do so on a timeframe consistent with the urgency of the circumstances then in question. The Israeli Parentco Officer and KSV agree that, in the event there is a disagreement between the Israeli Parentco Officer and KSV as to the working out of the sale and restructuring process, whether it be in terms of selecting an alternative option to a sale (including, without limitation, pursuing any development opportunities), determining which bids to proceed to negotiate further, or seeking approval of a particular sale from

the Canadian Court supervising the CCAA Proceedings, the ultimate decision and course of action shall be determined by the Canadian Court on application by KSV for directions and provided that the Israeli Parentco Officer shall have standing as representative of Parentco to make full representations to the Canadian Court as to his views and recommendations.

(g) The initial order made in the CCAA Proceedings concerning all of the Applicants shall contain the following paragraph pertaining to material or non-ordinary course decisions or disbursements:

THIS COURT ORDERS that the Applicants shall not, without further order of this Court: (a) make any disbursement out of the ordinary course of its Business exceeding in the aggregate $100,000 in any calendar month; or (b) engage in any material activity or transaction not otherwise in the ordinary course of its Business.

In the event that such paragraph is not included in the initial order for the Applicants or any of them, then any such disbursement or other material activity or transaction shall not be made without the order of the Canadian Court.

4. The Israeli Parentco Officer and KSV further agree to cooperate as follows:

(a) to the extent practicable, each shall share with the other copies of materials to be filed with their respective courts (but not drafts of any such materials), prior to the public filing of same. This provision may not apply to materials submitted in the course of seeking directions from the Canadian Court in the event of a disagreement between the Israeli Parentco Officer and KSV over the working-out of the sale process; and

(b) The Israeli Parentco Officer agrees that any information provided to him by KSV in the course of the sale process or concerning any restructuring alternatives, shall remain confidential and not be disclosed to any party without KSV's consent, not to be unreasonably withheld, it being acknowledged that the Israeli Parentco Officer shall be entitled to provide information to its advisors (provided they agree to be bound by the confidentiality restrictions detailed herein) and to both the Israeli Court and the Official Receiver of the Israeli Ministry of Justice, in each case on a sealed and private basis to obtain directions as needed, or as may be set forth in the Non-Disclosure Agreement executed by the Israeli Parentco Officer on May 11, 2016.

5. The Israeli Parentco Officer and KSV acknowledge that, at present, KSV has the amount of CDN$1.9 million in a trust account, which funds KSV received from Urbancorp Partner (King South) Inc. ("**UPKSI**"), and which funds KSV has proposed to utilize as a form of interim funding for certain costs of the CCAA Proceedings, to be secured by a priming charge in favour of UPKSI against the assets of the entities utilizing the funds. KSV acknowledges that it will seek to obtain, as soon as possible, a general purpose DIP loan from third party sources and sufficient to repay amounts borrowed from UPKSI, using what are otherwise unencumbered assets of the Applicants (the "**DIP Loan**").

Upon being able to draw sufficient funds under the DIP Loan (which DIP Loan subject to the approval of the Canadian Court), KSV agrees that it will repay to UPKSI the interim loan made to that date in the preceding sentence from the DIP Loan and that it will, as the court-appointed monitor of UPKSI and subject to Court approval in the Part IV Proceedings, make available funds from that CDN$1.9 million as an interim loan from UPKSI to Urbancorp Inc., to be secured by a priming DIP charge against the assets of Urbancorp Inc., to assist in the funding of the costs of the Part IV Proceedings including the reasonable costs incurred by the Israeli Parentco Officer in connection with the Part IV Proceedings, the reasonable fees and disbursements of the Israeli Parentco Officer's Canadian counsel and the Information Officer and its counsel.

6. The Israeli Parentco Officer shall support the commencement of the CCAA Proceedings. Provided that KSV is acting in good faith and has not engaged in willful misconduct or gross negligence, the Israeli Parentco Officer shall not take any steps to attempt to remove KSV as either the proposal trustee under the Proposal Proceedings or the monitor under the CCAA Proceedings or to in any way to interfere with or seek to limit KSV's powers in such capacities or to suggest that KSV must take instruction from it or the Israeli Court or terminate the CCAA Proceedings without the consent of KSV or by order of the Canadian Court. Nothing herein shall be deemed to grant any additional claims, rights, security or priority to, or in respect of, the Parentco Bonds or to the trustee under the Parentco Bond Indenture or to the Israeli Parentco Officer as against the Applicants or any affiliate or direct or indirect subsidiary of Parentco. In the event of any restriction or termination of the Israeli Parentco Officer's powers by the Israeli Court, this Protocol shall be deemed to be modified accordingly such that the Israeli Parentco Officer's powers and authority hereunder are no greater that those given to him by the Israeli Court.

7. This Protocol shall be governed by laws of Ontario and the laws of Canada as applicable and all disputes or requests for direction in connection with this Protocol shall be determined by the Canadian Court. Nothing herein is or shall be deemed to be an attornment by KSV to the Israeli Court or the laws of Israel.

8. The Israeli Court Officer and KSV agree to use reasonable efforts to seek to commence the proceedings noted above on or before May 18, 2016. KSV shall support, to the extent necessary, an application by the Israeli Parentco Officer to commence the Part IV Proceedings, on terms consistent with this Protocol, even if commenced before the CCAA Proceedings.

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9. This Agreement is subject to the approval of the Israeli Court and the Canadian Court.

**DATED** this _____ day of May, 2016.

Name of Witness:

Name: **GUY GISSIN**, the Israeli Parentco Officer

**KSV KOFMAN INC. in its capacity as proposal trustee and proposed monitor of certain subsidiaries of Urbancorp Inc., and not in its personal capacity**

By: _____
Name: Robert Kofman
Title: President

Court File No.: CV-16-11389-00CL

**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. (THE "APPLICANTS") AND THE AFFILLIATED ENTITIES LISTED IN SCHEDULE "A" HERETO**

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

PROCEEDINGS COMMENCED AT TORONTO

# INITIAL ORDER

**(May 18, 2016)**


**BORDEN LADNER GERVAIS LLP**
Barristers and Solicitors
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Toronto, ON M5H 3Y4

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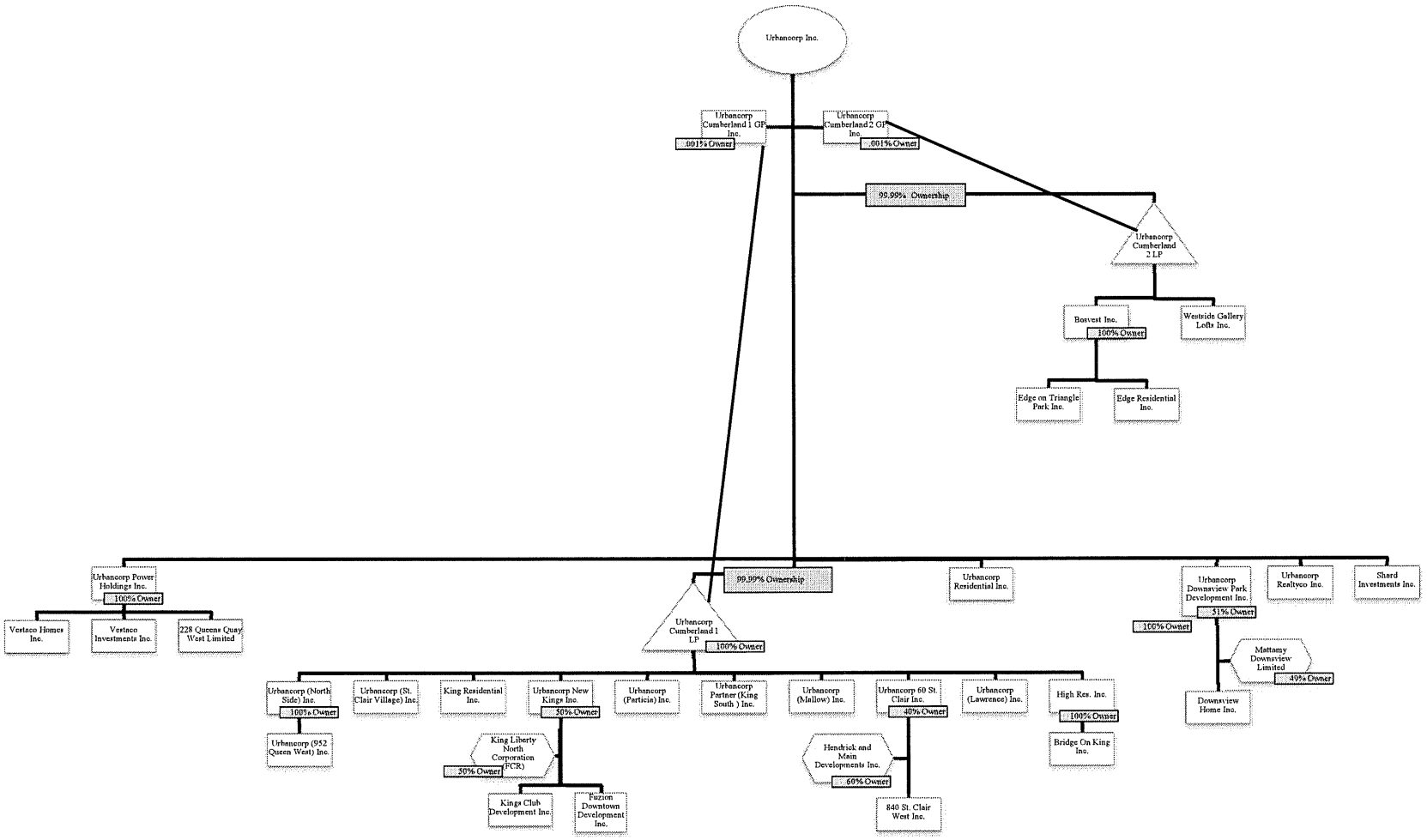
Lawyers for the Applicants

# Appendix "B"


Urbancorp Inc.
Urbancorp Cumberland 1 GP Inc.
.001% Owner
Urbancorp Cumberland 2 GP Inc.
.001% Owner
99.99% Ownership
Urbancorp Cumberland 2 LP
Bosvest Inc.
100% Owner
Westside Gallery Lofts Inc.
Edge on Triangle Park Inc.
Edge Residential Inc.
Urbancorp Power Holdings Inc.
100% Owner
Vestaco Homes Inc.
Vestaco Investments Inc.
228 Queens Quay West Limited
99.99% Ownership
Urbancorp Cumberland 1 LP
100% Owner
Urbancorp Residential Inc.
Urbancorp Downsview Park Development Inc.
51% Owner
100% Owner
Mattamy Downsview Limited
49% Owner
Downsview Home Inc.
Urbancorp Realtyco Inc.
Shard Investments Inc.
Urbancorp (North Side) Inc.
100% Owner
Urbancorp (952 Queen West) Inc.
Urbancorp (St. Clair Village) Inc.
King Residential Inc.
King Liberty North Corporation (FCR)
50% Owner
Kings Club Development Inc.
Urbancorp New Kings Inc.
50% Owner
Fuzion Downtown Development Inc.
Urbancorp (Particia) Inc.
Urbancorp Partner (King South ) Inc.
Urbancorp (Mallow) Inc.
Hendrick and Main Developments Inc.
60% Owner
Urbancorp 60 St. Clair Inc.
40% Owner
840 St. Clair West Inc.
Urbancorp (Lawrence) Inc.
High Res. Inc.
100% Owner
Bridge On King Inc.

# Appendix "C"

"A"

25/04/2016

**The District Court in Tel-Aviv – Yafo**

**Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.**

**Before the Honorable Justice Eitan Orenstein, Vice President**

| | |
|---|---|
| **On the matter of:** | **the Companies Act, 5759-1999** |
| **And on the matter of:** | **the Companies Regulations (Request for Compromise or Arrangement), 5762-2002** |
| **And on the matter of:** | **Article 350 of the Companies Act, 5759-1999** |
| **And on the matter of:** | **Reznik Paz Nevo Trusts Ltd.**<br>**Trustee of holders of bonds (class A) of the company**<br>**By its representatives: Yoel Freilich, Adv., Yael Herschkowitz, Adv., Inbar Hakmian-Nahari, Adv., and Evgeniya Gluchman, Adv.**<br>**The Applicant** |
| **And on the matter of:** | **Urbancorp Inc.**<br>**By its representative: Gad Ticho, Adv.**<br>**The Company** |
| **And on the matter of:** | **the Official Receiver**<br>**By its representative: Roni Hirschenzon, Adv.** |

# Decision

## General

1. Before me is an urgent request for the provision of temporary reliefs and for the appointment of a functionary in Urbancorp Inc. (hereinafter: "**the Company**"), pursuant to Regulation 14(a) of the Companies Regulations ((Request for Compromise or Arrangement), 5762-2002 (hereinafter: "**the Arrangement Regulations**") and Article 350 of the Companies Act, 5759-1999 (hereinafter: "**the Companies Act**").

## Summary of the Facts

2. The Company incorporated in Canada and it is registered in the county of Ontario. Its main occupation is leasing and initiating real-estate for residential and commercial

purposes at the location of its incorporation. The Company operates geothermal systems in several of its projects, which are used for providing heating and cooling for the properties, while using green energy. It is in the control of Mr. Alan Saskin, a citizen of Canada and a resident thereof (hereinafter: "**the Controlling Party**").

In December 2015 the Company raised bonds from the Israeli public, amounting to approximately 180 million ILS, with an interest of 8.15%. The bonds were raised pursuant to a prospectus dated 30/11/2015 and later completions thereof, and were registered for trade at the Tel-Aviv Stock Exchange. It shall be stated that Midroog Ltd. has granted the bonds a rating of A3, a medium-high rank. The underwriter of the issuance was Apex Issuances Ltd., the prospectus was drafted by Shimonov & Co. Law Firm, and the Deloitte firm Brightman, Almagor, Zohar & Co., Accountants. The trustee for the bond holders is Reznik Paz Nevo Trusts Ltd., which has submitted the application (hereinafter: "**the Trustee**").

The consideration of the issuance was intended to serve for shareholders' loan for the Company's subsidiaries which are also incorporated in Canada (hereinafter: "**the Subsidiaries**") and for providing equity for paying off loans in their various projects, as specified in the bill of trust, as well as for the payment of taxes.

The application states that during the months following the issuance, there has been a severe deterioration in the Company's financial state and in its capability to sustain itself, which is the result of a number of events, when according to the Applicant it is impossible to rule out that the share of those had already been known prior to the issuance, but they were not reported. The outcome was that all Company directors, apart from the Controlling Party, have resigned; the Company's trade in securities has ceased; the ranking has ceased, and more. In light of the foregoing, there has been very intensive contact with the Controlling Party, who was supposed to sign a Stand-Still document, and has asked to delay the taking of actions against the Company. Nevertheless, the Trustee was surprised to find out that the Subsidiaries, which excess cash flows were supposed to serve the debt for the holders of bonds, have recently begun an insolvency proceeding in Canada, and a trustee on behalf of the court there has been appointed to them.

## The Request

3. The Trustee points in his request, to a series of severe failures in the Company's conduct, which also constitute a breach of the bill of trust, and give rise to a cause for providing

the debt for immediate repayment and taking proceedings against the Company. For this matter, it has been claimed that it is necessary to immediately intervene in the Company's businesses by appointing a functionary, who shall be granted the authorities of the Company's directorate; who shall exercise the Company's power of control in its Subsidiaries; who shall examine the insolvency proceedings taken by the Subsidiaries; who shall negotiate with the trustee appointed to them; who shall act to obtain all required information pertaining to raising the capital; who shall formulate a recovery plan for the Company, inasmuch as it shall be possible; and who shall enter the Company's premises and its offices and shall seize its assets, including accounts and financial deposits.

4. The request was submitted on 24/04/2016, during the Passover recess, and I have instructed holding an urgent discussion today in the presence of the Company, its former functionaries who provide services to it, the Israeli Securities Authority, the Official Receiver and more. In my decision from yesterday, an order for the prohibition of disposition was also granted, according to which the Company and anyone on its behalf is prevented from making any transaction, of any sort and type whatsoever, with its property.

## The Court Discussion

5. The following were present at the discussion: the Trustee and its representatives; the representative of the recently resigned Company directors; the Company's former legal consultants; the representative of the Tel-Aviv Stock Exchange and members of its legal department; the representative of the Official Receiver, as well as Gad Ticho, Adv., on behalf of the Company, who has notified that he had taken on representing the Company the previous evening.

The Trustee's representative, Yoel Freilich, Adv., has repeated the request during the discussion, and has emphasized the need for granting the urgent reliefs. He clarified that the Trustee has engaged with a law firm in Canada, which shall assist the functionary, should he be appointed, in fulfilling his position; that there is no conflict of interests for the intended functionary; and more.

According to the Company's representative, its client does not object to leaving the order of prohibition of disposition effective, however she does not see the need for appointing a functionary and for granting the requested authorities, and she objects to the identity of

the suggested functionary due to conflict of interests. In addition, the Company's representative has claimed that there is no need for the drastic requested reliefs, that the Company should be given leave to submit a proper response, that in any case a meeting of the holders of bonds is scheduled for May 1, 2016 – in which the meeting shall decide with regards to continuing the proceeding – and that no irreversible damage shall occur should the order not be granted.

The representative of the Official Receiver holds the opinion that the state of the Company justifies granting a relief against it, similar to other cases in which the court has instructed appointing a functionary, even if it is for a limited period of time, until the situation is clarified.

## Discussion and Ruling

6. We are dealing with a request which was submitted urgently during the Passover recess, and which requires an urgent decision, therefore I shall suffice with a brief reasoning.

The Rule

The request, by nature, is a request for temporary relief, and prior to submitting the primary proceeding. Therefore, it should be examined by the rules used for temporary reliefs, namely, does the Applicant meet the test of *prima facie* reliable evidence in the cause of the action as well as the balance of convenience test, and as set in the Civil Procedure Regulations, 5744-1984 and in rulings, when between the two there is a "parallelogram of forces" (see Civil Leave of Appeal 2174/13 **D.K. Shops for Rent in Herzlia HaTze'ira Ltd. Vs. Avraham Cohen & Co. Contracting Company Ltd.** (published on the website of the Judicial Authority, 19/04/2016).

I shall emphasize, that under the circumstances of the request before me, when the primary relief has not yet been requested, the court is required to take extra precautions when ruling on a request for temporary relief, especially given the drastic temporary reliefs requested therein.

The request is accompanying to a primary proceeding which the Trustee is intending to submit pursuant to the provisions of Article 350 of the Companies Act, which deals with an arrangement between a company and its creditors, a proceeding which, according to the word of the law, can also be taken by a creditor of the company, in addition to the company itself, or a participant or a liquidator. As is known, it is possible to appeal for

temporary reliefs even before beginning the primary proceeding, provided that the applicant has met the required conditions stated above.

Another basis for the request, as mentioned, is Regulation 14(a) of the Arrangement Regulations, which authorizes the court to appoint a functionary when discussing a request for arrangement in accordance with Article 350 of the Companies Act, saying:

> **"To appoint a functionary, who shall have all authorities and duties which shall be determined by the court, including managing the company or supervising its management, keeping its assets, as well as examining claims of debt and claims for amending the registry of shareholders in the method specified in Chapter C; the court shall appoint a functionary once it was convinced that the candidate is suitable for the position due to his skills or his experience in formulating compromise arrangements or an arrangement[...]"**

## From the General to the Specific

7. Viewing the statements of claim and their appendixes paints a grim picture, to say the least, of the state of the Company.

On the surface it appears that it is failing to meet the conditions of the bill of trust, in a way which gives rise to a cause for providing the debt for immediate repayment. For this matter, I shall list the breaches, each of which is sufficient to give rise to the stated cause, let alone when put together: the trade in the Company's bonds has been stopped; the Company's rating by Midroog Ltd. has also been stopped; all of the Company's Israeli directors have resigned, as well as its legal consultants and its internal auditor;

And severe failures in the Company's activity have been found, as specified in the report it submitted pertaining to its financial data, dated April 20, 2016. Amongst those: a loss of 15 million Canadian Dollars compared with the current activity in the last quarter of 2015; a decrease in the value of the right of the Controlling Party assigned to the Company to receive loans from corporations in his control, thus from an estimated value of approximately eight million Dollars, the value is expected to drop to an insignificant amount; concern that the Company shall decrease the value of the geothermal assets at a total ranging between four and six million Canadian Dollars. The end of the report even

states that it is possible that the Company's state is far worse and that its losses shall be high.

Another event teaching of failures in the Company which should be stated, is the decision of the Canadian Home Organization Trion dated April 4, 2016, to not extend the Company's license, namely, the Company is not entitled to continue its activity of initiating and selling planned projects.

This is joined by the fact stated above, that the Subsidiaries have recently begun a stay of proceedings in Canada, as part of which a trustee was appointed to them. The Company and the Controlling Party have not brought this important fact to the knowledge of the Trustee, let alone given details pertaining to the proceeding taken, its significance, its implication on the Company and such.

The conclusion drawn from the stated above is that there is total uncertainty with regards to the Company's financial state, its equity, its capability of sustaining itself, and concern for the fate of the investments made by the holders of bonds. Another conclusion is that there is a substantial lack of information pertaining to the occurrences in the Company, and the Trustee is forced to seek in the dark, all when there is concern for the fate of the Company and its assets, including with regards to the occurrences in the Subsidiaries and their assets, which have enjoyed the monies of capital raised by the holders of bonds.

In my opinion, the stated above is sufficient basis for appointing a functionary to the Company, who shall be authorized to receive all information pertaining to the Company, its activity, its property and its rights, including the Subsidiaries and the proceedings conducted in Canada. Simultaneously, the functionary shall be able to track the Company's property, to locate it, to seize it and to prevent making irreversible actions. I shall add that obtaining the information shall also enable making an educated decision regarding taking appropriate proceedings with regards to the Company, to minimize damages and to redirect, as much as possible, the monies which would be could be paid to the holders of bonds.

Needless to say, the Company is in the twilight zone of insolvency, when there is concern for its fate and for the fate of the monies of investors, unless urgent actions are taken. As stated by the representative of the Official Receiver, the court discussing insolvency has a wide range of reliefs at its disposal, which also apply to a situation where the Company is in the twilight zone of insolvency. In this regard I shall refer to a recent ruling by the

**The District Court in Tel-Aviv – Yafo**

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Supreme Court, as said by the Honorable Justice E. Hayut in Civil Appeal 3791/15 **Synergy Cables vs. Hever**, paragraph 8 (published on the website of the Judicial Authority on 19/04/2016):

> **The District Court has not ruled pursuant to which legal authority it appoints the respondent, but as rightfully stated by the respondent, reality shows that there are cases [...] where the court appoints functionaries in proceedings in which the corporation is in the "zone of insolvency", even prior to issuing an order for stay of proceedings or for the liquidation of the company (compare, for example: Liquidation File (Tel-Aviv) 36681-04-13 Hermetic Trusts (1975) Ltd. vs. IDB Development Ltd. (30/04/2013), in which the District Court in Tel-Aviv (Justice E. Orenstein) has decided to appoint a functionary who was defined as an "observer" for the company, while relying for this purpose of the wide authority granted to him in accordance with Regulation 14(a)(1) of the Companies Regulations [...]**
>
> (Emphasis not in the original – E.O.)

This rule also applies to the matter before us.

In my opinion, the circumstances of the case meet the tests required for granting a temporary relief. For this matter, the Company has allegedly breached its undertakings towards the holders of bonds in a way which grants the holders of bonds the right to provide the debt for immediate repayment, and to claim the reliefs due as a result thereof. I shall add that the balance of convenience also leans towards granting the temporary relief. In this context, I shall state that according to the Company's representative, these days a substantial transaction is to be executed, of selling the Company's property, which should provide it with a substantial amount of money; it is not improbable that the consideration shall not be given to the holders of bonds, despite the order of prohibition of disposition, in the absence of practical capability for enforcement, thus causing irreversible damage. Therefore, only a functionary who could also track the stated transaction, could possibly prevent irreversible damage to the holders of bonds.

This conclusion is emphasized noticing the recent problematic conduct of the Controlling Party. As is evident in the request, he has failed to disclose to the Trustee during contacts

conducted these days that the Subsidiaries intend on taking the proceeding of insolvency as they have done.

In fact, the Company has no management core, whereas all directors, apart from the Controlling Party, have resigned, it has no internal auditor, and even the legal consultants have terminated their engagement with it. In this state of affairs, the Company is given to the good will of the Controlling Party, and in light of the problems I have pointed pertaining to him, and in the absence of supervision on his conduct, it would be best to appoint an authority who shall take the Company's reigns and shall supervise the occurrences in the Company at least until the picture is clarified.

I have not ignored the claim made by the Company's representative regarding the damage which could be caused to the Company due to appointing the functionary, but I have not seen that it leads to a different conclusion. I believe that the weight of the reasons I have specified above, exceeds by far the concern raised by Advocate Ticho in this regard. In any case, it is possible to find the required balance between guaranteeing the Company's conduct and the argued damage, by limiting the authorities which shall be granted to the Trustee and the period of time in which he shall be appointed. I shall emphasize that the concern raised by Advocate Ticho, which, according to him, may be a result of appointing a temporary liquidator to the Company, can be abated by not appointing a temporary liquidator, which has not even been requested.

I have also answered the argument made by Advocate Ticho regarding the conflict of interest in which the offered functionary is allegedly in, due to him representing the Trustee. I have not found this argument sufficient reason for not appointing Advocate Gissin, and I shall clarify: Gissin & Co. Law Firm has accepted the representation of the Trustee only recently, as Advocate Freilich has said in the discussion. The firm has not represented the Trustee in the process of preparing the prospectus, its publication and the issuance of the bonds, nor in the following period, but only following the Company's getting into trouble. Therefore, it is impossible to say that he is involved in proceedings preceding this request. In addition, should it be found out in the future, that there is a conflict of interest, the argument shall be made before the court and shall be examined by itself, and the argument shall not prevent the appointment at the preliminary stage we are in.

**The District Court in Tel-Aviv – Yafo**

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8. To complete the picture I shall state that there is no dispute regarding the authority of the court in Israel to grant the requested relief. In this context, I shall refer to the various documents attached by the Trustee to the request, including the prospectus and the bill of trust, which state that the Company acknowledges the authority of the court in Israel to grant the reliefs (see clause 34 of the bill). In addition, I shall state that Article 39a of the Securities Law, 5728-1968, which applies to the prospectus, rules that the provisions of the Companies Act shall apply to any foreign company which has issued securities. Needless to say, the authority of the court to discuss the request is also pursuant to the court ruling given in a case with similar circumstances, and I shall refer to Civil Appeal 2706/11 **Sybil Germany Public Co. Limited vs. Hermetic Trusts (1975) Ltd.** (published on the website of the Judicial Authority on 04/09/2015).

9. **<u>In light of the foregoing I hereby instruct as follows:</u>**

I appoint Advocate Gissin as functionary in Urbancorp Inc. and grant him the authority to exercise the Company's authorities, for all following actions:

- To locate, to track and to seize all Company assets, of any sort and type whatsoever, including its monies and rights in the Subsidiaries;
- To exercise the Company's power of control in the Subsidiaries;
- To obtain all information, of any sort and type whatsoever, pertaining to the Company's activity, its property and its rights; the same applies to the Subsidiaries;
- To negotiate with the Subsidiaries' trustee, and for this purpose, to also approach the Canadian court as an authorized representative of the Company;
- To track the Company's activities prior to the prospectus and thereafter.

For the purpose of exercising these authorities, the functionary is hereby authorized to appear in the Company's name before any body, authority or person in Israel and abroad; to obtain any information whatsoever from any of the Company's factors, from the Controlling Parties, from the authorities and from any person who has provided or is providing services for the Company; and to obtain from them all documents he believes shall be required for fulfilling his position.

NOTAIRE * נוטריון * מיגל דניאל עבאדי MIGUEL DANIEL ABADI

25/04/2016

**The District Court in Tel-Aviv – Yafo**

**Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.**

**Before the Honorable Justice Eitan Orenstein, Vice President**

The functionary shall be authorized to formulate an initial outline of a creditors' arrangement.

The functionary shall approach the court if necessary, and shall request its permission to exercise Company authorities not expressly specified in the decision.

For the avoidance of doubt: the functionary is not authorized to realize the Company's property.

A condition for the appointment is the functionary depositing a personal bond at a total of 250,000 ILS.

The functionary shall do all that he can for obtaining the required information in the coming days, so that it can be presented, as much as possible, before the meeting of holders of bonds set for next Sunday, May 1, 2016.

At this point I set the appointment until May 22, 2016 or as shall be otherwise decided.

A first report of the functionary's actions shall be submitted by May 8, 2016.

The case has been set for discussion **for May 22, 2016 at 11:30**.

**The secretariat shall notify of the decision by telephone and shall also send it by fax.**

**Given today, 17 Nisan 5776 (25th of April 2016),** ***ex parte*****.**

Eitan Orenstein, Justice

Vice President

NOTAIRE * מיגל דניאל עבאדי MIGUEL DANIEL ABADI *

# Appendix "D"

**PROTOCOL**
**For Co-operation Among Canadian Court Officer and Israeli Functionary**

**BETWEEN**:

**GUY GISSIN , in his capacity as Functionary Officer appointed by the Israeli Court for Urbancorp Inc.**

- and -

**KSV KOFMAN INC., in its capacity as proposal trustee and proposed monitor of certain subsidiaries of Urbancorp Inc.**

**WHEREAS** KSV Kofman Inc. ("**KSV**") was appointed the proposal trustee in respect of each of Urbancorp (Lawrence) Inc., Urbancorp (Mallow) Inc., Urbancorp (Patricia) Inc., Urbancorp (St. Clair Village) Inc., Urbancorp Downsview Park Development Inc. and Urbancorp Toronto Management Inc. (the "**Initial Subsidiaries**"), in notice of intention filings made by each of the Initial Subsidiaries under the *Bankruptcy and Insolvency Act* ("**BIA**") on April 21, 2016 (the "**Proposal Proceedings**");

**AND WHEREAS** Guy Gissin was appointed as Functionary Officer on a preliminary basis (the "**Israeli Parentco Officer**") of Urbancorp Inc. ("**Parentco**"), the parent of the Initial Subsidiaries, by order of the District Court in Tel Aviv-Yafo (the "**Israeli Court**") dated April 25, 2016 (the "**Israeli Functionary Order**") in case number 44348-04-16 *Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.* (the "**Israeli Proceedings**");

**AND WHEREAS** it is anticipated that, with the exception of Bosvest Inc., Edge Residential Inc. and Edge on Triangle Park Inc., which are in separate BIA proposal proceedings with the Fuller Landau Group Inc. as proposal trustee, and Urbancorp Cumberland GP 2 Inc., Urbancorp Cumberland 2 LP and Westside Gallery Lofts Inc. (the "**Excluded Subsidiaries**"), all of the direct and indirect subsidiaries of Urbancorp Inc. (collectively, excluding the Excluded Subsidiaries, the "**Applicants**") will bring an application in the Ontario Superior Court of Justice – Commercial List (the "**Canadian Court**") for relief pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") wherein the Proposal Proceedings will be taken up and continued within the CCAA Proceedings;

**AND WHEREAS** it is anticipated that the Israeli Parentco Officer will seek to have the Israeli Functionary Order and its role as the Israeli Parentco Officer recognized by the Canadian Court for the purpose of representing the interests of Parentco and participating as a stakeholder representative in the Applicants' CCAA Proceedings in connection with protecting the interests of Parentco's creditors, including the holders of the bonds issued on the Tel Aviv Stock Exchange (the "**Parentco Bonds**") pursuant to a deed of trust dated December 7, 2015 (the "**Parentco Bond Indenture**");

**AND WHEREAS** KSV and the Israeli Parentco Officer have agreed to work cooperatively on the terms set out herein to attempt to maximize recoveries through an orderly process for the stakeholders of Parentco and the Applicants (collectively, the "**Urbancorp Group**");

**NOW THEREFORE**, the Israeli Parentco Officer and KSV agree to implement the following protocol to cooperate with each other to maximize recoveries for the stakeholders of the Urbancorp Group:

1. The Israeli Parentco Officer will file an application under Part IV of the *Companies' Creditors Arrangement Act* ("CCAA"), seeking recognition of the Israeli Proceedings and of his appointment as foreign representative of Parentco thereunder, such application to seek recognition of the Israeli Proceedings as the "foreign main proceeding" with respect to Parentco. That application will include a request to appoint KSV as the Information Officer with respect to the Part IV CCAA proceedings of Parentco (the "**Part IV Proceedings**").

2. The Applicants will commence the CCAA Proceedings, proposing KSV to be appointed as Monitor with augmented powers so as to control ordinary course management and receipts and disbursements of funds for the Applicants. KSV acknowledges that the Israeli Parentco Officer shall have standing to appear before the Canadian Court as the representative of Parentco in the CCAA Proceedings.

3. The Israeli Parentco Officer and KSV agree that, with respect to the CCAA Proceedings:

    (a) KSV shall provide the Israeli Parentco Officer with regular and timely information updates regarding the ongoing status of the CCAA Proceedings as they unfold. KSV will also provide information and updates to the Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;

    (b) The Israeli Parentco Officer shall provide KSV with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Israeli Court that will negatively impact the Applicants or the CCAA Proceedings. The Israeli Parentco Officer will also provide information and updates to KSV prior to the commencement of the CCAA Proceedings;

    (c) KSV shall provide the Israeli Parentco Officer with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Canadian Court that will negatively impact the Urbancorp Inc. or the Israeli Proceedings. KSV will also provide information and updates to Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;

    (d) KSV shall provide to the Israeli Parentco Officer copies of all information pertaining to the Applicants:

        (i) in KSV's possession that KSV considers material; or

(ii) as reasonably requested by the Israeli Parentco Officer,

provided that KSV, in good faith, is not of the view that such information is subject to privilege or confidentiality restrictions. If KSV is of the view that such information is subject to privilege or confidentiality restrictions, then KSV shall so inform the Israeli Parentco Officer and shall seek directions from the Canadian Court on notice to the affected parties in the CCAA Proceedings as to whether there are any restrictions which would prevent the disclosure of such information to the Israeli Parentco Officer.

(e) The Israeli Parentco Officer shall provide to KSV, in its capacity as the Information Officer of Parentco in the Part IV Proceedings, copies of all information pertaining to the Israeli Proceedings:

(i) in the Israeli Parentco Officer's possession that it considers material to the Israeli Proceedings and is not subject to privilege or confidentiality restrictions; or

(ii) as reasonably requested by KSV, provided that this shall not entitle KSV or any party requesting information through them to receive information on ongoing reviews or investigations being undertaken by the Israeli Parentco Officer or others in connection with the Israeli Proceedings; and

(f) KSV will run an orderly dual track sale and restructuring process with respect to the Applicants, subject to approval by the Canadian Court in the CCAA Proceedings, which will consider both development opportunities and opportunities to sell the properties of the Applicants. KSV will design such process collaboratively, with the Israeli Parentco Officer, with the understanding that at any time during the pendency of the sales process, should an offer come forward with respect to any or all of the Applicants contemplating a restructuring or other option which is acceptable to both KSV and the Israeli Parentco Officer, the sale process may be truncated in order to pursue the other option with respect to the Applicant(s) in question. Alternatively, should the sale process continue to the point of submission of bids, subject to Section 4(b) below, copies of all bids will be provided to the Israeli Parentco Officer by KSV, and KSV shall discuss same with the Israeli Parentco Officer, with the objective, but not the obligation, of hopefully concurring on the course of action to be followed in terms of which bids to continue negotiating or which bid(s) to select as the successful bidder(s). KSV acknowledges that, throughout these processes, the Israeli Parentco Officer may from time to time require instructions and/or directions from the Israeli Court, and that the process shall be conducted in a fashion to permit the Israeli Parentco Officer the opportunity to do so on a timeframe consistent with the urgency of the circumstances then in question. The Israeli Parentco Officer and KSV agree that, in the event there is a disagreement between the Israeli Parentco Officer and KSV as to the working out of the sale and restructuring process, whether it be in terms of selecting an alternative option to a sale (including, without limitation, pursuing any development opportunities), determining which bids to proceed to negotiate further, or seeking approval of a particular sale from

the Canadian Court supervising the CCAA Proceedings, the ultimate decision and course of action shall be determined by the Canadian Court on application by KSV for directions and provided that the Israeli Parentco Officer shall have standing as representative of Parentco to make full representations to the Canadian Court as to his views and recommendations.

(g) The initial order made in the CCAA Proceedings concerning all of the Applicants shall contain the following paragraph pertaining to material or non-ordinary course decisions or disbursements:

THIS COURT ORDERS that the Applicants shall not, without further order of this Court: (a) make any disbursement out of the ordinary course of its Business exceeding in the aggregate $100,000 in any calendar month; or (b) engage in any material activity or transaction not otherwise in the ordinary course of its Business.

In the event that such paragraph is not included in the initial order for the Applicants or any of them, then any such disbursement or other material activity or transaction shall not be made without the order of the Canadian Court.

4. The Israeli Parentco Officer and KSV further agree to cooperate as follows:

(a) to the extent practicable, each shall share with the other copies of materials to be filed with their respective courts (but not drafts of any such materials), prior to the public filing of same. This provision may not apply to materials submitted in the course of seeking directions from the Canadian Court in the event of a disagreement between the Israeli Parentco Officer and KSV over the working-out of the sale process; and

(b) The Israeli Parentco Officer agrees that any information provided to him by KSV in the course of the sale process or concerning any restructuring alternatives, shall remain confidential and not be disclosed to any party without KSV's consent, not to be unreasonably withheld, it being acknowledged that the Israeli Parentco Officer shall be entitled to provide information to its advisors (provided they agree to be bound by the confidentiality restrictions detailed herein) and to both the Israeli Court and the Official Receiver of the Israeli Ministry of Justice, in each case on a sealed and private basis to obtain directions as needed, or as may be set forth in the Non-Disclosure Agreement executed by the Israeli Parentco Officer on May 11, 2016.

5. The Israeli Parentco Officer and KSV acknowledge that, at present, KSV has the amount of CDN$1.9 million in a trust account, which funds KSV received from Urbancorp Partner (King South) Inc. ("**UPKSI**"), and which funds KSV has proposed to utilize as a form of interim funding for certain costs of the CCAA Proceedings, to be secured by a priming charge in favour of UPKSI against the assets of the entities utilizing the funds. KSV acknowledges that it will seek to obtain, as soon as possible, a general purpose DIP loan from third party sources and sufficient to repay amounts borrowed from UPKSI, using what are otherwise unencumbered assets of the Applicants (the "**DIP Loan**").

Upon being able to draw sufficient funds under the DIP Loan (which DIP Loan subject to the approval of the Canadian Court), KSV agrees that it will repay to UPKSI the interim loan made to that date in the preceding sentence from the DIP Loan and that it will, as the court-appointed monitor of UPKSI and subject to Court approval in the Part IV Proceedings, make available funds from that CDN$1.9 million as an interim loan from UPKSI to Urbancorp Inc., to be secured by a priming DIP charge against the assets of Urbancorp Inc., to assist in the funding of the costs of the Part IV Proceedings including the reasonable costs incurred by the Israeli Parentco Officer in connection with the Part IV Proceedings, the reasonable fees and disbursements of the Israeli Parentco Officer's Canadian counsel and the Information Officer and its counsel.

6. The Israeli Parentco Officer shall support the commencement of the CCAA Proceedings. Provided that KSV is acting in good faith and has not engaged in willful misconduct or gross negligence, the Israeli Parentco Officer shall not take any steps to attempt to remove KSV as either the proposal trustee under the Proposal Proceedings or the monitor under the CCAA Proceedings or to in any way to interfere with or seek to limit KSV's powers in such capacities or to suggest that KSV must take instruction from it or the Israeli Court or terminate the CCAA Proceedings without the consent of KSV or by order of the Canadian Court. Nothing herein shall be deemed to grant any additional claims, rights, security or priority to, or in respect of, the Parentco Bonds or to the trustee under the Parentco Bond Indenture or to the Israeli Parentco Officer as against the Applicants or any affiliate or direct or indirect subsidiary of Parentco. In the event of any restriction or termination of the Israeli Parentco Officer's powers by the Israeli Court, this Protocol shall be deemed to be modified accordingly such that the Israeli Parentco Officer's powers and authority hereunder are no greater that those given to him by the Israeli Court.

7. This Protocol shall be governed by laws of Ontario and the laws of Canada as applicable and all disputes or requests for direction in connection with this Protocol shall be determined by the Canadian Court. Nothing herein is or shall be deemed to be an attornment by KSV to the Israeli Court or the laws of Israel.

8. The Israeli Court Officer and KSV agree to use reasonable efforts to seek to commence the proceedings noted above on or before May 18, 2016. KSV shall support, to the extent necessary, an application by the Israeli Parentco Officer to commence the Part IV Proceedings, on terms consistent with this Protocol, even if commenced before the CCAA Proceedings.

****THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK****

9. This Agreement is subject to the approval of the Israeli Court and the Canadian Court.

**DATED** this ___13___ day of May, 2016.

Name of Witness

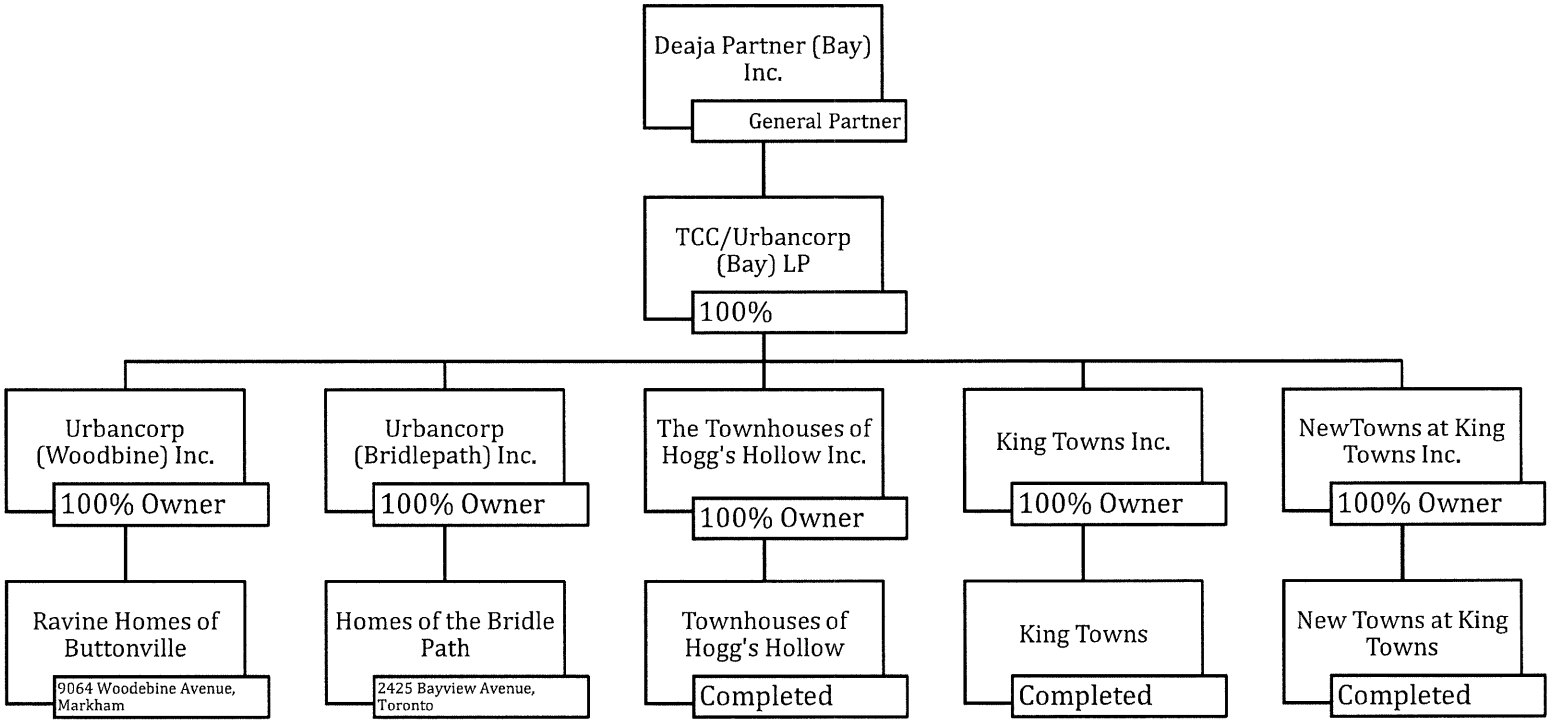
Name: **GUY GISSIN**, the Israeli Parentco Officer

**KSV KOFMAN INC. in its capacity as proposal trustee and proposed monitor of certain subsidiaries of Urbancorp Inc., and not in its personal capacity**

By: _____
Name: Robert Kofman
Title: President

# Appendix "E"

**TCC/URBANCORP (BAY)**



# Appendix "F"

**From:** Rabinovitch, Neil [mailto:neil.rabinovitch@dentons.com]
**Sent:** May 29, 2018 4:19 PM
**To:** Schwill, Robin
**Cc:** Rabinovitch, Neil
**Subject:** Request for Information Pursuant to the Protocol

In accordance with Section 3(d) of the Protocol, request is hereby made for the Monitor to provide the Functionary with copies of the following information in its possession pertaining to Urbancorp Inc. and the Applicants:

All emails and correspondence for the period commencing July 1, 2015 – April 21, 2016 relating to the following:

a. Dealings between Urbancorp and Terra Firma Capital Corporation;
b. Dealings between Urbancorp and Speedy Electric;
c. Dealings between Urbancorp and Mattamy Homes;
d. Dealings between Urbancorp and Janterra;
e. Dealings between Urbancorp and Apax Issuances Ltd. and its Canadian counsel Garfinkle Biderman;
f. Dealings between Urbancorp and Midroog Ltd.
g. Dealings between Urbancorp and Deloitte Brightman Almagor Zohar
h. Dealings between Urbancorp and MNP;
i. Dealings between Urbancorp and First Capital; and
g. All communications between Urbancorp and Harris Sheaffer.

For the sake of clarity, this request relates not only to communications with the foregoing parties (and their respective employees), but as well, to internal Urbancorp communications in respect of those parties. Please consider the foregoing request to include any and all business related e-mails which the Monitor has in its possession from Alan Saskin's personal e-mail accounts which relate to any of the foregoing.

Thank you.

Neil

DENTONS

Neil S. Rabinovitch
Partner

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neil.rabinovitch@dentons.com
Bio | Website

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77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1
Canada

Maclay Murray & Spens > Gallo Barrios Pickmann > Muñoz > Cardenas & Cardenas > Lopez Velarde > Rodyk > Boekel > OPF Partners > 大成 > McKenna Long

# Appendix "G"

# Twenty-Fourth 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, 2018

and

# Fourteenth 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

## Contents



## Schedules and Appendices

**Schedules**

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

TWENTY-FOURTH 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

FOURTEENTH REPORT OF KSV KOFMAN INC.

APRIL 24, 2018

## 1.0 Introduction

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 Companies.

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[1] 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[2], other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. ("UCI") (collectively, the "Non-Cumberland Entities"). The corporate chart for the Cumberland CCAA Entities and the Non-Cumberland Entities is provided in Appendix "A".

4. 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").

5. 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.

6. 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 Bridlepath and Woodbine.

[1] 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.

[2] 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.

7. 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").

8. 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".

9. On January 24, 2018, the Court issued orders extending the stay of proceedings for the Cumberland CCAA Entities and the Bay CCAA Entities to April 30, 2018.

## 1.1 Purposes of this Report

1. The purposes of this report ("Report") are to:

   a) provide an update on the CCAA proceedings;

   b) summarize the terms of Minutes of Settlement between the Monitor and Tarion Warranty Corporation ("Tarion") in respect of claims filed by Tarion against the Cumberland CCAA Entities (the "Cumberland Minutes of Settlement");

   c) summarize the terms of Minutes of Settlement between the Monitor and Tarion in respect of claims filed by Tarion against the Bay CCAA Entities (the "Bay Minutes of Settlement" and together with the Cumberland Minutes of Settlement, the "Minutes of Settlement");

   d) report on the consolidated cash flow projections of the Cumberland CCAA Entities and of the Bay CCAA Entitles for the period May 1, 2018 to July 31, 2018 ("Cash-Flow Statements");

   e) 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") and WeirFoulds LLP[3] ("WeirFoulds"), for the periods referenced in the attached Fee Affidavits; and

[3] On January 1, 2018, the CCAA Entities lead counsel, Edmond Lamek, moved from WeirFoulds to DLA.

f) recommend that the Court issue orders:

i. approving the Minutes of Settlement. including the Bridge Settlement;

ii. granting an extension of the stay of proceedings for the CCAA Entities to July 31, 2018; and

iii. approving the fees and disbursements of the Monitor, Davies and DLA, as detailed in this Report.

### 1.2 Currency

1. All currency references in this Report are to Canadian dollars.

### 1.3 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. The financial information discussed herein is subject to further review. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

2. An examination of the CCAA Entities' 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.

## 2.0 Background

1. The CCAA Entities, together with several affiliates, comprise the Urbancorp Group of Companies (collectively, the "Urbancorp Group"). The Urbancorp Group primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area. The Urbancorp Group also owns geothermal assets.

### 2.1 Urbancorp Inc.

1. UCI was incorporated on June 19, 2015 for the purpose of raising 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 each of 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 the NOI Entities (the "Permitted Obligations").

# 3.0 Update on CCAA Proceedings

## 3.1 Cumberland Entities – Distributions and Disputed Claims

1. 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.

2. On November 22, 2017, the Court made an order authorizing and directing the Monitor to make a further distribution to UCI in the amount of $750,000.

3. On February 26, 2018, the Court made an order (the "February 26th Order") authorizing and directing the Monitor to make a further distribution in the amount of $1.1 million to UCI. At the request of the Foreign Representative, the Monitor has not yet made the $1.1 million distribution to UCI.

4. The February 26th Order also authorized the Monitor to make additional distributions to UCI without further order of the Court. In that respect, on March 2, 2018, the Monitor made a distribution to UCI in the amount of approximately $190,000.

5. A summary of distributions to-date to the Cumberland Entities' creditors and the remaining unpaid and disputed claims is provided in the table below.

| ($000s; unaudited) | Total Admitted Claims | Distribution | Unpaid Admitted Claims | Total Disputed claims |
|---|---|---|---|---|
| UCI (Shareholder Loans) | 36,968[4] | 30,338 | 6,630 | - |
| Other creditors* | 13,510 | 13,510 | - | 11,593 |
| | 50,478 | 43,848 | 6,630 | 11,593 |

* Includes the claims filed by Tarion as a disputed claim as the Tarion settlement discussed in this Report remains subject to Court approval.

6. As repayment of the Shareholder Loans is subordinated to repayment of the Permitted Obligations, UCI was required to assign its distributions to those creditors that have claims for Permitted Obligations until those creditors' claims were repaid in full. Since the remaining admitted unsecured claims were relatively insignificant, the Foreign Representative subordinated repayment of the Shareholder Loans to all currently admitted claims against the Cumberland Entities (but not to any currently disputed claims) such that all currently admitted claims have been repaid in full. Approximately $6.6 million of UCI's claim against the Cumberland Entities remains unpaid.

[4] UCI also has a claim for Shareholder Loans against Downsview.

7. The Monitor issued disallowance notices to several claimants of the Cumberland Entities. The Monitor reserved for the full amount of the disputed claims. Set out below is a summary of the claimants who disputed the disallowance notices, including Tarion.

| ($000s; unaudited)<br>Claimant | Amount |
|---|---|
| Travelers Insurance Company of Canada ("Travelers") | 4,404 |
| Tarion | 2,787 |
| Employee Claims | 2,055 |
| Speedy Electrical Contractors Ltd. ("Speedy") | 2,324 |
| Other | 23 |
| | 11,593 |

8. The following is an update on the Cumberland disputed claims:

   a) Travelers – Travelers filed a claim against the Cumberland Entities in the amount of approximately $4.4 million. The claim has two parts:

      - $3.6 million of the claim relates to a guarantee made by High Res Inc., a Cumberland CCAA Entity, for a bond provided by Travelers to Tarion in respect of a project developed by Urbancorp (Leslieville) Inc. ("Leslieville"). Leslieville is subject to receivership proceedings in which Alvarez & Marsal Canada Inc. ("A&M") is the Court appointed receiver. The actual exposure under the guarantee, if any, will be determined once all 55 homes in the Leslieville proceedings are sold. On April 12, 2018, A&M advised that there are 50 firm home sales, but that the transactions are not expected to close until the Summer of 2018.

      - The balance of the Travelers' claim relates to a $1 million bond (the "Bridge Bond") provided by Travelers to Tarion in respect of a condominium project constructed by Bridge on King Inc. ("Bridge"), a Cumberland Entity (the "Bridge Condo"). Travelers filed a claim against Bridge in the amount of approximately $813,000 in connection with its potential exposure under the Bridge Bond. Pursuant to the terms of the Cumberland Minutes of Settlement, the only exposure remaining to Travelers in respect of the Bridge Bond will be $435,000. Further details concerning the Cumberland Minutes of Settlement are provided in Section 4 below.

   b) Tarion – as part of this motion, the Monitor is recommending that the Court issue an order approving the Cumberland Minutes of Settlement, including the Bridge Settlement, which resolves all Tarion claims against Cumberland CCAA Entities except for the portion of its claim related to delayed occupancy compensation (approximately $1.2 million) (the "DOC Issue"). The Monitor intends to bring a motion shortly to have the DOC Issue determined by the Court.

c) Employee Claims – two former employees of UTMI filed common employer claims against the CCAA Entities, as follows:

- the first employee filed a claim for approximately $400,000. This claim was settled in February 2018; and
- the second employee filed a claim for approximately $2.1 million. An agreement in principle has been reached to settle this claim. The settlement agreement is presently being drafted.

d) Speedy - Speedy filed a secured claim in the amount of $2,323,638 against King Residential Inc. ("KRI"), a Cumberland CCAA Entity (plus interest, fees and costs which continue to accrue). The Speedy Claim is based on a guarantee provided by KRI for liabilities owing by Alan Saskin in the amount of $1,284,727 and for services Speedy provided to Edge on Triangle Parking Inc., an affiliated entity, in the amount of $1,038,911. The Monitor takes the position that no consideration was provided to KRI in connection with the secured guarantee.[5] 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. The motion to determine this claim is scheduled to be heard on May 1, 2018.

### 3.2 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 due to claims filed by Terra Firma Capital Corporation ("TFCC") and UCI, both of which were disputed by the Monitor.

2. On November 30, 2017, the Court made an order authorizing and directing the Monitor to pay in full all admitted claims, other than intercompany claims. The order was made on the consent of TFCC and UCI.

3. A summary of the distributions to the Bay Entities' creditors, the remaining unpaid claims and disputed claims is provided in the table below.

| ($000s; unaudited) | Total Admitted Claims | Distribution | Unpaid Admitted Claims | Total Disputed claims |
|---|---|---|---|---|
| TFCC | 716 | 716 | - | 10,014 |
| Other third-party creditors* | 7,445 | 7,445 | - | 2,772 |
| Other intercompany creditors | 1,154 | 381 | 773 | - |
| | 9,315 | 8,542 | 773 | 12,786 |

* Includes the claims filed by Tarion as a disputed claim as the Tarion settlement discussed in this Report remains subject to Court approval.

[5] Other than $2

4. The Monitor issued disallowance notices to several claimants of the Bay CCAA Entities. The Monitor has reserved for the disputed claims. Set out below is a summary of the claimants who have disputed the disallowance notices, including Tarion.

| (unaudited; $000) | |
|---|---|
| Claimant | Amount |
| Secured Claim | |
| TFCC (principal, interest and cost reserve) | 10,014 |
| Unsecured Claims | |
| Employee Claims | 2,055 |
| Tarion | 717 |
| | 2,772 |
| Total Disputed Claims | 12,786 |

5. In addition to the disputed claims set out above, the Foreign Representative, on behalf of UCI, has filed a motion to late file a claim of $8 million on the basis of misrepresentation and negligent misrepresentation in connection with promissory notes totalling $8 million that were issued by Bay LP (the "UCI Late Filed Claim"). The Court previously issued a decision confirming the Monitor's disallowance of UCI's claim for the amounts owing under the promissory notes.

6. TFCC's disputed claim relates 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. The Monitor has been unable to determine if Bay LP, Bridlepath or Woodbine received any consideration for providing the secured guarantee. The claim was disallowed on the basis that the transaction could be voidable as a transfer at undervalue, and, in addition, voidable as a fraudulent conveyance or preference.

7. Pursuant to an agreement dated February 13, 2018, TFCC and UCI entered into a settlement ("TFCC/UCI Settlement") in respect of their claims against Bay LP and are seeking a distribution of the monies in Bay LP. The key terms of the TFCC/UCI Settlement are as follows:

   a) all remaining third-party claims would either be fully reserved in the Bay CCAA Proceedings or, in the case of the employee claims, fully reserved, and paid from, the Cumberland CCAA Proceedings. The Foreign Representative, as the only creditor affected by this agreement, has agreed that the employee claims may be paid from distributions it would otherwise receive in the Cumberland CCAA Proceedings to the extent these claims are admitted against the Bay CCAA Entities and not admitted and paid in full in the Cumberland CCAA Proceedings;

b) TFCC would receive $3 million in full and final satisfaction of the TFCC Guarantee Claim;

c) UCI's Late Filed Claim would be admitted and UCI would receive an initial distribution of at least $5.5 million at the same time the $3 million is paid to TFCC; and

d) The TFCC/UCI Settlement is conditional on approvals by the Court and the Israeli Court.

8. A motion is scheduled to be heard on May 1, 2018 to approve the TFCC/UCI Settlement. DS (Bay) Holdings Inc. ("DS Bay"), a beneficial owner of Bay LP, has filed materials opposing the settlement.

9. In the event that the Court does not approve the TFCC/UCI Settlement, the TFCC Claim and UCI Late Filed Claim will each need to be determined. If these claims are not ultimately admitted, then all residual funds after the payment of admitted claims and the costs of administration would be paid to the beneficial owners of Bay LP, being DS Bay and Alan Saskin. The Monitor understands that Doreen Saskin, the wife of Alan Saskin, is the owner of DS Bay.

10. Further details regarding the TFCC/UCI Settlement are provided in the Monitor's 13th Report to Court dated February 20, 2018 filed in the Bay CCAA Proceedings.

### 3.3 Geothermal Assets

1. Several Cumberland CCAA Entities have an interest in geothermal assets located at four condominiums developed by entities in the Urbancorp Group (collectively, the "Geothermal Assets").

2. Pursuant to energy supply agreements, each condominium corporation (collectively, the "Condo Corporations") is required to pay Urbancorp Renewable Power Inc. ("URPI") for the supply of the geothermal energy (the "Supply Agreements"). URPI is neither a subsidiary of UCI nor is it subject to CCAA proceedings. The Monitor understands that URPI is owned by Alan Saskin. URPI is required to pay the revenue it receives from the Condo Corporations to the Urbancorp entity that holds the geothermal energy system, net of a management fee of between 3% and 5% payable to URPI (depending on the Supply Agreement) and other costs (such as repairs and maintenance costs).

3. The registered owners of the geothermal energy systems appear to be Vestaco Homes Inc. (Bridge Condo), Vestaco Investments Inc. (Curve Condo) and 228 Queen's Quay West Ltd. (Edge Condo), each of which is a Cumberland CCAA Entity.

4. The registered owner of the Fuzion Condo geothermal energy system appears to be Urbancorp New Kings Inc. ("UNKI") and Urbancorp Management Inc. ("UMI"), each as to 50% and each of which is not subject to CCAA proceedings. UMI purchased its interest in the Fuzion geothermal energy system from King Liberty North Corporation ("KLNC"), an affiliate of First Capital (S.C.) Corporation ("FCSCC"), for $2.35 million. The purchase price was satisfied with a cash payment of $350,000 and a vendor-take-back mortgage of $2 million. The mortgage remains outstanding and FCSCC has not been receiving interest on its mortgage as the Fuzion Condo Corporation has not made any payments in respect of geothermal services provided.

5. The Fuller Landau Group Inc. ("Fuller Landau"), in its capacity as Monitor of certain of the other entities in the Urbancorp Group of Companies, including Edge Residential Inc., Edge on Triangle Park Inc. and Bosvest Inc. (collectively, the "Edge Companies"), has indicated that the Edge Companies may have an interest in the Edge geothermal system. Fuller Landau has been kept apprised of the Monitor's activities concerning the Geothermal Assets.

6. The Bridge and Fuzion Condo Corporations have failed to make payments to URPI under their supply agreements since March 2016. The Edge Condo Corporation has failed to make payments to URPI under its supply agreement since April 2016.[6] The receivables owing to URPI from the Bridge, Fuzion and Edge Condo Corporations total approximately $4.2 million as of March 31, 2018. The Monitor understands that the Condo Corporations have paid approximately $2.1 million of the receivables into their lawyer's trust accounts. The Condo Corporations have requested a reconciliation of URPI's invoices prior to paying more receivables. The Monitor understands that URPI has almost completed the reconciliation and intends to provide it to the Condo Corporations once completed. The Monitor is considering next steps vis-à-vis the amounts which are yet to be paid by the Condo Corporations into trust; however, the Monitor is strongly of the view that these amounts should continue to be paid into trust by the Condo Corporations until the geothermal litigation is resolved.

7. As URPI is not a CCAA entity, it has retained separate counsel to litigate against the Condo Corporations for, *inter alia*, failure to pay the amounts owed under the Supply Agreements. The Condo Corporations have filed cross claims alleging, *inter alia*, that certain of the Geothermal Assets require repairs, there was insufficient disclosure to the Condo Corporations regarding pricing of geothermal energy and that the Condo Corporations are paying more for heating and cooling than traditional energy sources. A trial date has not been scheduled.

8. The Monitor retained a consultant, Beatty Geothermal Inc., to review various issues in the litigation in order to assist in settling the geothermal litigation.

9. The Monitor understands that the Condo Corporation for Curve alleges that it exercised a right to purchase its geothermal system, and, accordingly, is no longer making any payments to URPI. No payment has been received in connection with the alleged purchase. It appears that an arbitration will be scheduled to deal with URPI's claim against the Curve Condo Corporation.

[6] On August 30, 2016, the Edge Condo Corporation made a $260,000 partial payment to URPI in respect of amounts owing.

10. Once the above litigation is resolved or substantially advanced, the Monitor intends to work with Fuller Landau, the Foreign Representative and other affected stakeholders to sell the Geothermal Assets.

### 3.4 URPI Loan Facility

1. URPI has no revenue because it has not been receiving payments from the Condo Corporations in respect of the geothermal systems. URPI requires funding for maintenance and repairs of the geothermal systems and for legal costs in respect of the geothermal litigation.

2. On November 22, 2017, the Court approved a loan facility in the amount of $500,000 between Cumberland, as lender, and URPI, as borrower. To date, approximately $44,000 has been drawn under the loan facility.

### 3.5 Condominium Sale Process

1. On December 14, 2016, the Court issued an order (the "Sale Process Order") approving a sale process for 28 condominiums ("Condos") held by Urbancorp Residential Inc. ("URI") and KRI.[7] Pursuant to the Sale Process Order, Brad J. Lamb Realty Inc. was retained to market the Condos for sale.

2. In connection with the sale process for the 28 Condos, the Monitor has closed twenty-seven transactions and the remaining Condo is expected to close on May 3, 2018. A summary of the total expected net proceeds from the transactions is provided in the table below. [8]

| ($000's; unaudited) | No. of units sold | Gross Proceeds | Mortgages | Costs[9] | Net Proceeds |
|---|---|---|---|---|---|
| KRI | 13 | 5,188 | 2,437 | 371 | 2,380 |
| URI | 15 | 6,074 | 2,936 | 432 | 2,706 |
| | 28 | 11,262 | 5,373 | 803 | 5,086 |

3. The actual results of the sale of the Condos exceeded the original estimate by approximately $2 million.

4. The Monitor continues to list for sale 45 parking spots and 66 lockers held by KRI and URI. The saleability of the parking spots and lockers is uncertain. The Monitor is presently working to sell five parking spots to one buyer.

### 3.6 Urbancorp New Kings Inc.

1. Cumberland is the shareholder of UNKI. UNKI owns an interest in a development located at 1100 King Street West, Toronto (the "Kingsclub Development"). UNKI appears to be a nominee for Cumberland. UNKI is not subject to the CCAA proceedings.

[7] URI and KRI are nominee companies for Urbancorp Realty Co. and Urbancorp Cumberland 1 LP, respectively.

[8] Includes nine parking spots and seven lockers.

[9] Includes professional fees of $10,000 per unit and broker fees.

2. The Kingsclub Development is a significant project located in Liberty Village in Toronto. It is presently under construction and is to consist of retail space, residential space and parking. The development is scheduled to be completed by the end of 2018.

3. The residential component of the Kingsclub Development was originally owned by UNKI (50%) and KLNC (50%).[10] On July 28, 2015, KLNC and UNKI entered into an agreement to sell one-third of the residential component to CAPREIT Limited Partnership ("CAPREIT"), such that KLNC, UNKI and CAPREIT would each have a one-third interest in the residential component of the development upon closing.

4. 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 (the "Management Committee").

5. The Kingsclub Development has incurred significant cost overruns. FCSCC has funded UNKI's share of the cost overruns pursuant to the terms of a Court approved standstill agreement (the "Standstill Agreement"). The Standstill Agreement is intended to facilitate an orderly completion of the Kingsclub Development.

6. As of February 28, 2018, UNKI and KLNC had borrowed approximately $121.9 million from Bank of Nova Scotia and approximately $63.9 million from FCSCC in connection with the financing of the Kingsclub Development. In addition, as of February 28, 2018, pursuant to the terms of the Standstill Agreement, UNKI has borrowed $23.9 million from FCSCC to fund capital cost overruns.

7. The Monitor corresponds regularly with Alan Saskin and FCSCC regarding the Kingsclub Development, including attending development meetings and periodic Management Committee meetings. The Monitor has also met with CAPREIT, which also attends the monthly development meetings.

8. The value of the UNKI interest is presently uncertain; however, the Monitor is considering ways to maximize the value of the UNKI interest.

### 3.7 Downsview

1. Downsview Homes Inc. ("DHI") owns land located at 2995 Keele Street in Toronto which is being developed into condominiums and other residences (the "Downsview Project"). The shares of DHI are owned by Downsview (51%) and Mattamy (Downsview) Limited, an affiliate of Mattamy Homes ("Mattamy") (49%).

2. The Downsview Project consists of two phases. The first phase is scheduled to be completed in the first half of 2018, while the second phase is not expected to be completed for several years.

[10] 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%).

3. The Monitor continues to oversee this project. There is significant uncertainty at this time regarding the value of Downsview's interest in the Downsview Project, although it appears that earlier forecasts of the value of the Downsview interest provided to the Monitor by Mattamy and by representatives of the Urbancorp Group were optimistic. The Downsview Project appears to have underperformed the prior projections.

4. In order to review material negative variances that have arisen on the Downsview Project, the Monitor, in consultation with the Foreign Representative, engaged a cost-consultant, Pelican Woodcliff Inc. ("Pelican"), to audit aspects of the Downsview Project. The scope includes reviewing the Downsview Project's historical financial results, determining the reasonableness of pro-formas prepared for the Downsview Project and other financial matters.

5. The Monitor has received an interim report from Pelican and has provided a copy of the report to the Foreign Representative. The Foreign Representative's financial advisor has attended meetings with Pelican and the Monitor, as well as meetings with the Monitor and Mattamy. The Monitor is reviewing Pelican's report and expects to have additional questions for Mattamy.

### 3.8 Urbancorp Downtown Developments Inc.

1. In or around June 2014, UTMI advanced $750,000 on behalf of Urbancorp Downtown Developments Inc. ("UDDI"), an affiliated entity not subject to insolvency proceedings, to fund a deposit in connection with the purchase of land by UDDI (the "UDDI Deposit"). In December 2014, approximately $250,000 was returned to UTMI by UDDI, thereby reducing the UDDI Deposit to $500,000.

2. The books and records of UTMI also reflect an intercompany balance of $200,000 owing by UDDI to UTMI.

3. The property that was to be purchased by UDDI was expropriated by the Toronto Catholic District School Board ("TCDSB") prior to closing. The TCDSB held back an amount from the price of the expropriated land, including an amount equal to the UDDI Deposit (the "TCDSB Holdback"). The TCDSB Holdback is in respect of potential environmental costs.

4. UDDI has made a claim against TCDSB for: (i) a release of the TCDSB Holdback[11]; and (ii) the increase in the value of the expropriated land between the time UDDI entered into the agreement to purchase the expropriated land and the date TCDSB expropriated the land.

5. UDDI is negotiating a settlement with TCDSB. UDDI has acknowledged by email that any proceeds received from TCDSB with respect to its claims, after costs, will first be used to satisfy the amounts UDDI owes to UTMI.

[11] Through an agreement with the vendor.

## 4.0 Tarion – Minutes of Settlement

1. Tarion filed 21 claims totaling approximately $5.8 billion against the Cumberland CCAA Entities and seven claims totaling approximately $174 million against the Bay CCAA Entities. Substantially all of Tarion's claims are contingent. A summary of the claims filed by Tarion is provided in Appendix "C". The Monitor disallowed Tarion's claims in full.

2. The Monitor could not make a distribution to the creditors of the CCAA Entities due to Tarion's claims. In June 2017, Tarion agreed to withdraw all of its claims other than approximately $2.8 million against the Cumberland CCAA Entities and $716,594 against the Bay CCAA Entities; however, Tarion did not detail the claims it was preserving. Since then, the Monitor and Tarion have been working to resolve Tarion's remaining claims.

3. The Minutes of Settlement are subject to Court approval. As of the date of the Report, Tarion had not executed the Minutes of Settlement. The Monitor has been advised by Tarion's counsel that it is unable to execute the Minutes of Settlement prior to April 25, 2018 at the earliest. The Monitor is hopeful that Tarion executes the Minutes of Settlement in advance of the return of this motion, failing which the Monitor is seeking to have the Cumberland Minutes of Settlement and the Bay Minutes of Settlement approved substantially in the forms attached as Appendices "D" and "E", respectively. The Cumberland Minutes of Settlement require the execution of the Bridge Settlement Agreement (defined below), which is also conditional on Court approval.

4. A summary of Tarion's admitted claims, disputed claims and withdrawn claims as a result of the Minutes of Settlement is provided below.

| (unaudited; $) | Cumberland CCAA Entities | Bay CCAA Entities |
|---|---|---|
| Admitted Claims | 346,655 | 114,025 |
| Withdrawn Claims | 1,240,480 | - |
| Disputed Claims | 1,199,865 | 604,810 |
| Total | 2,787,000 | 718,835[12] |

### 4.1 Admitted Claims

1. Pursuant to the Minutes of Settlement, the following claims have been admitted by the Monitor against the CCAA Entities.

| | Cumberland CCAA Entities | Bay CCAA Entities |
|---|---|---|
| Legal costs | $ 295,661 | $ 98,554 |
| Interest | 47,604 | 15,471 |
| Conciliation Claims | 3,390 | - |
| | $ 346,655 | $ 114,025 |

[12] Tarion's total claim is approximately $2,000 more than the reserve for its claim in the Bay CCAA Proceedings due to interest which has accrued on its claim.

2. A summary of the admitted claims is provided below:

   - Legal costs: the admitted legal costs represent third party legal fees incurred by Tarion. Pursuant to the *Ontario New Home Warranties Plan Act* (the "Warranties Act"), builders that are registered with Tarion (the "Registrants") are required to reimburse Tarion for certain legal costs incurred by Tarion. Several of the CCAA Entities are Registrants.[13]

   - Interest: Pursuant to the Warranties Act, Registrants are required to pay interest to Tarion at a rate of 18% per year on all amounts that are owed to Tarion.

   - Conciliation Claims: represents a liquidated warranty claim charged by Tarion to Bridge in connection with the Bridge Condo.

3. The Monitor intends to pay the admitted claims in full, provided the Minutes of Settlement are approved.

### 4.2 Disputed Claims – Delayed Occupancy Compensation

1. The Monitor and Tarion have not been able to resolve the DOC Issue. Tarion's claims filed in respect of this issue are in the amount of approximately $1.2 million against the Cumberland Entities and approximately $605,000 against the Bay CCAA Entities.

2. Several of the CCAA Entities entered into home buyer agreements with purchasers. These CCAA Entities never built the homes and the properties were sold pursuant to the Court approved transactions.

3. Tarion backstops warranty coverage to new home and condominium purchasers, providing compensation for costs incurred due to delayed occupancy.

4. The Monitor is of the view that there is no obligation owing to Tarion in connection with delayed occupancy compensation because, *inter alia*, the homes were never provided to the home buyers, thus the concept of "delayed occupancy" is not relevant.

5. The Monitor and Tarion have agreed to a litigation schedule to have the DOC Issue determined by the Court. The Monitor intends to bring this motion shortly. Until the matter is resolved, the Monitor will maintain a cash holdback for the amount of the delayed occupancy compensation claims. If the Court upholds the Monitor's disallowance, the Monitor intends to distribute the holdback in respect of this issue to UCI.

[13] St. Clair, Patricia, Mallow, Lawrence, Queen, Bridge, Woodbine and Bridlepath.

### 4.3 Bridge Settlement

1. The Bridge Condo was completed in mid-2011 and was registered on April 5, 2013. Toronto Standard Condominium Corporation No. 2302 (the "Bridge Condominium Corporation") is the legal entity that controls and manages the common elements at the Bridge Condo.

2. Following the registration of the condominium, the Bridge Condominium Corporation retained a consultant to conduct a performance audit to determine the common element deficiencies with respect to the Bridge Condo. The performance audit identified approximately $1.8 million in common element deficiencies.

3. In November 2016, a settlement was reached with the Bridge Condominium Corporation and Bridge to resolve all common element deficiency claims (the "Bridge Settlement Agreement"). Pursuant to the Bridge Settlement Agreement, Bridge agreed to pay the Bridge Condominium Corporation $450,000, including HST, in exchange for, *inter alia*, a release for all common element claims at the Bridge Condo.

4. As discussed in section 3.1 above, Bridge arranged for Travelers to provide Tarion with a $1 million bond for major structural defects and common element deficiencies. The Bridge Bond is partially secured by cash collateral totalling $565,000 (the "Cash Collateral"). On December 9, 2016, the Monitor brought a motion to approve the Bridge Settlement Agreement, which requires Travelers to release a portion of the Cash Collateral to fund the Settlement Agreement. The motion was adjourned at the request of Tarion and Travelers. The Bridge Settlement Agreement is to be approved as an element of the Cumberland Minutes of Settlement. A copy of the unsigned Bridge Settlement Agreement is attached as Appendix "F".[14]

5. Pursuant to the terms of the Cumberland Minutes of Settlement:

    a) Tarion has agreed to reduce the value of the Bridge Bond to $550,000 as the Bridge Settlement Agreement resolves all common element deficiency claims - the only remaining exposure under the Bridge Bond will be for major structural defects;

    b) Travelers has agreed to release $450,000 of the Cash Collateral to fund the Bridge Settlement Agreement; and

    c) Travelers will maintain the balance of the Cash Collateral (being $115,000) in the event of a major structural defect claim. The Cash Collateral will be maintained by Travelers until the Bridge Bond expires on June 30, 2020.

[14] On April 24, 2018, the Monitor was advised that Tarion made amendments to the form of the Bridge Settlement Agreement that the Bridge Condominium Corporation had previously approved. At the date of this Report, the Bridge Condominium Corporation was reviewing the changes proposed by Tarion. The version attached to the Report reflects Tarion's proposed changes.

6. The Cumberland Minutes of Settlement will allow the Monitor to reduce the cash reserve for Travelers under the Bridge Bond to $435,000, being the remaining value of the Bridge Bond ($550,000) less the Cash Collateral being maintained by Travelers ($115,000). On June 30, 2020, the exposure for Travelers under the Bridge Bond will be eliminated and the cash reserves will be available to be released (assuming no claims are made prior to that time).

### 4.4 Recommendation

1. The Monitor recommends that the Court issue an order approving the Minutes of Settlement as:

   a) the Minutes of Settlement, including the Bridge Settlement Agreement, resolve all Tarion claims, other than the DOC Issue, which is to be determined by the Court in the near term;

   b) The Monitor has received satisfactory support for all of Tarion's claims that it is proposing to admit; and

   c) the Foreign Representative, as the major economic interest in these proceedings, has been advised of the terms of the Minutes of Settlement and has not advised of any opposition to it.

## 5.0 Cash Flow Forecasts

1. Consolidated cash flow projections have been prepared for the CCAA Entities for the period May 1, 2018 to July 31, 2018 (the "Period"). 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 "G" and "H", respectively.

2. The expenses in the Cash-Flow Statements are primarily payroll, general and administrative expenses, professional fees and advances to URPI in connection with the Loan Facility. The CCAA Entities have sufficient cash to pay all disbursements during the Period.

3. Based on the Monitor's review of the Cash-Flow Statements, there are no material assumptions which seem unreasonable in the circumstances. The Monitor's statutory reports on the cash flows are attached as Appendix "I".

## 6.0 Request for an Extension

1. The CCAA Entities are seeking an extension of the stay of proceedings from April 30, 2018 to July 31, 2018. The Monitor supports the request for extensions of the stay of proceedings for the following reasons:

   a) the 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, UDDI and the Kingsclub Development;

d) it will allow the Monitor the opportunity to continue to resolve disputed claims in both CCAA Proceedings; and

e) as of the date of this Report, neither the CCAA Entities nor the Monitor is aware of any party opposed to an extension.

## 7.0 Professional Fees

1. The fees and disbursements of the Monitor, Davies and DLA for the period are summarized below.

| | | ($) | | |
|---|---|---|---|---|
| Firm | Period | Fees | Disbursements | Total |
| Cumberland CCAA Entities | | | | |
| KSV | Jan 1/18–March 31/18 | 200,410.00 | 757.47 | 201,167.47 |
| Davies | Jan 1/18–March 31/18 | 205,724.00 | 3,947.84 | 209,671.84 |
| DLA/WeirFoulds | Oct 1/17–Feb 28/18 | 5,855.00 | 384.83 | 6,239.83 |
| Total | | 411,989.00 | 5,090.14 | 417,079.14 |
| Bay CCAA Entities | | | | |
| KSV | Jan 1/18–March 31/18 | 63,940.00 | - | 63,940.00 |
| Davies | Jan 1/18–March 31/18 | 24,365.50 | 242.05 | 24,607.55 |
| DLA/WeirFoulds | Sept 28/17–Feb 28/18 | 6,246.00 | 394.25 | 6,640.25 |
| Total | | 94,551.50 | 636.30 | 95,187.80 |

2. Detailed invoices are provided in appendices to the fee affidavits filed by representatives of KSV, Davies and DLA which are provided in Appendices "J", "K" and "L", respectively.

3. The average hourly rates for the Monitor, Davies and DLA are as follows:

| Firm | Average Hourly Rate ($) |
|---|---|
| Cumberland CCAA Entities | |
| KSV | 523.54 |
| Davies | 749.00 |
| DLA/WeirFoulds | 504.74 |
| Bay CCAA Entities | |
| KSV | 584.19 |
| Davies | 934.00 |
| DLA/WeirFoulds | 516.20 |

# Appendix "H"

- Terrafirma and TFCC;
- Dov Meyer, Glenn Watchorn;
- Mattamy, Mattamy Homes;
- Downsview, Downsview Homes, DHI;
- Brian Johnston, Tim Warner, Brad Carr;
- Prospectus;
- Harris Sheaffer;
- Barry Rotenberg;
- MNP;
- Jeremy Cole;
- Deloitte;
- Shimonov & Co Law Firm;
- Phillip Gales, David Mandell;
- Speedy Electric;
- Janterra;
- Apax Issuances Ltd.;
- Garfinkle Biderman;
- Midroog Ltd.;
- Deloitte Brightman Almagor Zohar;
- First Capital

# Appendix "I"

**CITATION:** Urbancorp Toronto Management Inc. (Re), 2018 ONSC 2965
**COURT FILE NO.:** CV-16-11389-00CL
**DATE:** 20180511

**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**

**BEFORE:** F.L. Myers J.

**COUNSEL:** *Robin B. Schwill,* lawyer for KSV Kofman Inc., in its capacity as monitor
*Neil Rabinovitch and Kenneth Kraft*, lawyers for Guy Gissin, the Israeli court-appointed Functionary and Foreign Representative of Urbancorp Inc.
*Kevin Sherkin and Jeremy Sacks*, lawyers for Speedy Electrical Contractors Ltd.

**HEARD:** May 1, 2018

## ENDORSEMENT

### The Motion

[1] This motion involves a claim against the debtor King Residential Inc. ("KRI").

[2] KSV Kofman Inc., in its capacity as monitor moves for an order disallowing the claim filed by Speedy Electrical Contractors Ltd.

[3] Speedy claims $2,323,638.54 against KRI pursuant to a secured guarantee given by KRI to Speedy. In support of its obligations under the guarantee, KRI granted mortgages in favour of Speedy over 13 condominium units and 13 parking spaces.

[4] The Monitor says that when KRI gave Speedy its guarantee and supporting mortgages it was insolvent. As such, the transaction is reviewable under s. 96 of the *Bankruptcy and*

*Insolvency Act*, RSC 1985, c. B-3 as incorporated into s. 36.1 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36. The Monitor asserts that the guarantee is a transaction at undervalue under s. 96 of the *BIA*, or a fraudulent conveyance under the *Fraudulent Conveyances Act*, RSO 1990, c. F.29, or that it was oppressive under the *Business Corporations Act*, RSO 1990, c. B.16.

[5] For the reason that follow, I dismiss the Monitor's motion and uphold the validity of Speedy's secured claim.

**The Facts**

[6] KRI is a nominee holding title to a condominium being developed by the Urbancorp group of companies. Urbancorp is a complex web of companies and business entities all ultimately owned by Alan Saskin. Mr. Saskin's spouse holds some interests in the corporate structure that do not factor into this motion. KRI was one of many single purpose nominees that held title to a single building that was initially owned through or under TCC/Urbancorp (Bay) LP.

[7] In late 2015, Mr. Saskin reorganized much of the Urbancorp empire for the purpose of raising funds through a bond issuance on public markets in Israel.

[8] Prior to the reorganization, Speedy had loaned $1 million to Mr. Saskin personally. In addition, another Urbancorp entity, that has no relationship to the business of KRI, owed Speedy $1,038,911.44 for electrical services performed by Speedy on a building on Lisgar St. in Toronto. Speedy registered a claim for lien against the Lisgar St. property.

[9] Mr. Saskin wanted to clean up title to the Lisgar St. property so as to be able to offer the unencumbered value of that property to support the Israeli underwriting. Speedy, through its counsel, was pressing Mr. Saskin on his personal debt as well as the liened debt. Speedy was threatening to bring proceedings against Mr. Saskin personally and pressing forward with its lien. Mr. Saskin wanted Speedy to give him time so he could raise funds in Israel to pay Speedy and others.

[10] On November 14, 2016, Speedy and Urbancorp entities entered into a debt extension agreement under which Speedy agreed to extend the due date of Mr. Saskin's personal loan to January 30, 2016; Speedy discharged its claims for lien on Lisgar St.; and KRI provided its secured guarantee for these two outstanding debts plus $5,000 for costs.

[11] Several weeks after Speedy discharged its liens and took the KRI mortgages instead, the financing went ahead in Israel. Urbancorp Inc. raised over $65 million from Israeli bondholders. However, Mr. Saskin did not use the funds to repay Speedy. Moreover, the Urbancorp enterprise collapsed and commenced insolvency proceedings within several months of the Israeli underwriting.

[12] The UCI bondholders, represented by Mr. Gissin, the Israeli court-appointed Functionary and Foreign Representative, are suing Mr. Saskin and others in Israel for a host of causes of action including alleged fraud and securities law violations in connection with that bond underwriting.

**The Monitor's Position**

[13] The Monitor argues that KRI received nothing of value in return for its guarantee and, as such, the guarantee and its supporting security should be declared void as a transfer at undervalue under s. 96 of the *BIA*. Even though KRI's guarantee may have been supported by consideration that would make it valid and binding against a solvent entity, where a guarantee is given by an insolvent company, the court needs to look at whether value has actually been "received by the debtor" commensurate with the obligation undertaken. This requirement is set out in the definition of "transfer at undervalue" in s. 2 of the *BIA*. If there was no value received or if conspicuously less quantifiable value was received than guaranteed, then the transaction diminishes the insolvent company's assets to the prejudice of its existing creditors and may be void under the statutory provisions on which the Monitor relies.

[14] The Monitor argues that Speedy and KRI were not at arm's length so that proof of KRI's insolvency is a sufficient basis to set aside the transaction under s. 96 (1)(b)(ii)(A) of the *BIA*. Alternatively, if the parties were operating at arm's length, the Monitor argues that in addition to proof of insolvency, it has established that KRI gave the guarantee with the intention to defraud, defeat, or delay creditors and therefore it violated s. 96 (1)(a) of the BIA.

**Analysis**

[15] The motion resolves to two findings. First, Speedy and KRI were operating at arm's length. As a result of this holding, s. 96 (1)(a)(iii) of the *BIA* requires that to succeed, the Monitor must establish that in granting the guarantee, KRI intended to defraud, defeat, or delay creditors. In my view, the Monitor has failed to prove that KRI held a fraudulent intention at the relevant time. As such, the claim does not meet the requirements for relief under s. 96 of the *BIA*.

*Arm's Length*

[16] In *Montor Business Corporation v. Goldfinger*, 2016 ONCA 406 (CanLII), the Court of Appeal discussed the inquiry into whether there is an arm's length relationship between a debtor and its creditor as follows:

> [66] Section 4(4) of the *BIA* states: "It is a question of fact whether persons not related to one another were at a particular time dealing with each other at arm's length." As a result, absent a palpable and overriding error, the trial judge's finding on this issue is entitled to deference.

> [67] The trial judge considered the *dicta* in *Abou-Rached (Re)*, 2002 BCSC 1022 (CanLII), 35 C.B.R. (4th) 165, at para. 46:
>
> > [A] transaction at arm's length could be considered to be a transaction between persons between whom there are no bonds of dependence, control or influence, in the sense that neither of the two co-contracting parties has available any moral or psychological leverage sufficient to diminish or possibly influence the free decision-making of the other. Inversely, the transaction is not at arm's length where one of the co-contracting parties is in a situation where he may exercise a control, influence or moral pressure on the free will of the other. Where one of the co-contracting parties is, by reasons of his influence or superiority, in a position to pervert the ordinary rule of supply and demand and force the other to transact for a consideration which is substantially different than adequate, normal or fair market value, the transaction in question is not at arm's length.
>
> [68] He also considered *Piikani Energy Corporation (Trustee of) v. 607385 Alberta Ltd.*, 2013 ABCA 293 (CanLII), 556 A.R. 200, which identified factors that provide guidance on non-arm's length analysis in the context of *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) jurisprudence. These factors, enumerated at para. 29 of *Piikani*, are: was there a common mind which directed the bargaining for both parties to a transaction; were the parties to the transaction acting in concert without separate interests; and was there *de facto* control?
>
> [69] There was no common mind directing Goldfinger and Annopol or indeed, Kimel. They were adverse in interest and on the verge of litigation. The evidence also fails to suggest that they were acting in concert. As discussed, the trial judge did not fail to consider the parties' relationship at the time of the Payments. Nor did Goldfinger or Annopol exercise *de facto* control over the other.

[17] In *Juhasz Estate v Cordeiro*, 2015 ONSC 1781 (CanLII), Wilton-Siegel J. looked at the economics at play and found that a relationship was not arm's length where in the negotiations between the parties there was a lack of incentive for the transferor to maximize the consideration for the property being transferred.

[18] In this case, the Monitor argued that the long term relationship between Mr. Saskin and Speedy and the fact that Speedy had loaned money to Mr. Saskin personally, gave Speedy leverage to subvert normal economic incentives so as to render the relationship non-arm's length.

[19] The Monitor also tried to support its argument by pointing to a document that appears to suggest that the lien filed by Speedy may have been untimely. It questioned Mr. Saskin's *bona fides* in offering up a secured guarantee to remove an invalid lien. But Speedy's witness testified that the lien was timely. He was not confronted on cross-examination with the

document relied upon by the Monitor to enable him to explain any apparent inconsistency. Absent compliance with the rule in *Browne v Dunn* (1893), 6 R. 67 (H.L.), I am not prepared to make a credibility finding against Speedy.

[20] The contemporaneous written communication between counsel for Speedy and Mr. Saskin shows plainly that they were adverse in interest and were operating under normal economic incentives. There is no evidence suggesting that Speedy and KRI were under common control or acting in concert. The Monitor's counsel agreed that with the upcoming refinancing and faced with a late breaking registration against title to a property whose value was being relied upon in the proposed transaction, Mr. Saskin realistically had to respond regardless of the merits of the lien as claimed. Moreover, granting loans to longstanding business associates is perhaps an indication of a degree of trust and a statement of trustworthiness of the borrower's covenant and financial wherewithal. But that is no different than a multitude of relationships between business owners and lenders. Banks have lost on unsecured loans to longstanding personal clients who owned much bigger businesses than Urbancorp. A personal loan to a business owner with whom one has had lengthy business dealings, on its own, is not an indication of a non-arm's length relationship. In my view, there is no evidence to establish that the relationship between Speedy and KRI was anything other than an arm's length, businesslike one.

*Fraudulent Intent*

[21] To become entitled to relief for arm's length transactions that otherwise fall within s. 96 of the *BIA*, the trustee (or the monitor under the *CCAA*) must prove that the transferor (i.e. the bankrupt or the *CCAA* debtor) held the intent to defraud, defeat, or delay its creditors. The intention of the transferee/recipient is not part of the test to challenge a transaction at undervalue under s. 96 of the *BIA*.

[22] It is very difficult for an applicant to prove a debtor's subjective intention to defeat creditors. Therefore, the law provides that the court can infer the existence of a transferor's intention to defeat or delay creditors where there are recognized "badges of fraud" associated with a transaction. If the court draws the inference of fraudulent intent due to the existence of badges of fraud, then an evidentiary burden will fall to the respondent to explain its conduct to try to rebut the inference of fraudulent intent. The ultimate persuasive burden remains on the applicant throughout. *Indcondo v. Sloan*, 2014 ONSC 4018 (CanLII) at para. 53, aff'd 2015 ONCA 752 (CanLII).

[23] In *Indcondo*, Penny J. set out the badges of fraud as follows:

> [52] The badges of fraud derive from *Twyne's Case* (1601) 76 E.R. 809. As interpreted by modern courts, the badges of fraud include:
>
> (d)[*sic*] the donor continued in possession and continued to use the property as his own;

(e) the transaction was secret;
(f) the transfer was made in the face of threatened legal proceedings;
(g) the transfer documents contained false statements as to consideration;
(h) the consideration is grossly inadequate;
(i) there is unusual haste in making the transfer;
(j) some benefit is retained under the settlement by the settlor;
(k) embarking on a hazardous venture; and
(l) a close relationship exists between parties to the conveyance.

[24] On the facts of this case, the adequacy of consideration is disputed. The only apparent badge of fraud is that the transaction was made in face of threatened legal proceedings. On its own however, as in *Montor* above, that badge is barely impactful as it is consistent with a *bona fide* transaction in circumstances such as those before the court. Of greater impact, in my view, is the fact that Speedy registered its mortgages on title. It gave notice to the world as one would expect any *bona fide* commercial creditor to do. There is nothing about the facts of this transaction that leads me to infer that it was made with a fraudulent intent rather than to obtain Speedy's cooperation to allow Urbancorp to refinance as intended at the time.[1]

[25] In *XDG Ltd. v. 1099606 Ontario Ltd.*, 2002 CanLII 22043 (ON SC), on similar facts, (a guarantee by an insolvent affiliate for debts that did not relate to the specific business of the guarantor) D.J. Gordon J. found that there were badges of fraud that were sufficient to make the circumstances strongly suspicious. In that case, Gordon J. held that the lender knew or ought to have known that the debtor was insolvent. There was great haste. Gordon J. found that there was no consideration received by the debtor. Here, the solvency of the debtor depends upon whether one looks at the debtor on its own behalf (as Speedy submits) or considers the position of the beneficial owner TCC/Urbancorp (Bay) LP as a whole (as the Monitor submits). Even if one looks at the financial position of the broader business of TCC/Urbancorp (Bay) LP, with all of its various nominees and buildings, the Monitor accepts that the business was solvent on a balance sheet basis at the relevant time. The liquidity-based insolvency found by the Monitor required much *post facto* adjustment to financial statements. That is not to criticize the Monitor's finding. Rather, I am simply pointing out that the situation in *XDG* was quite different from this case in which the debtor was undertaking obligations to support the refinancing of the overall business within a few weeks' time and the refinancing occurred.

[26] I am therefore unable to infer that the KRI gave its secured guarantee with the intent to defraud, defeat, or delay a creditor.

---

[1] To the extent that the Functionary argues that the secured guarantees at KRI were also relevant in the Israeli underwriting and were not properly disclosed to bondholders, he has his own remedies.

**Outcome**

[27] Having found that the necessary intention was not proved, the remedies under s. 96 of the *BIA* and the *Fraudulent Conveyances Act* cannot apply. The Monitor conceded that the *CCAA* proceeding was brought too late for the presumption of intent in the unjust preference remedy in s. 95 of the *BIA* to apply.

[28] The Monitor has also raised the oppression remedy. Assuming that oppression can be raised in response to a debt in a *CCAA* claim process without an oppression claim being separately heard and an appropriate remedy granted, there is no basis on the evidence for an oppression remedy to lie. There is no evidence that any creditor of the debtor held a reasonable expectation that the debtor would not participate in, or grant security as part of group financing efforts. The entire group was owned by Mr. Saskin. As best as I can tell from these proceedings, businesses that dealt with Mr. Saskin in the ordinary course knew that he owned the entire enterprise and dealt with him accordingly i.e. indifferent as to the technicalities of legal title when the ultimate beneficial ownership all lay in the same hands.

[29] The Israeli bondholders may be an exception to this generality as they did not deal with Mr. Saskin day-to-day like the bulk of the trade creditors. As the granting of the guarantee by KRI pre-dates the bondholders' involvement, it is not clear if they could be entitled to relief for oppression. In responding to a claim in the claims process, I do not understand the Monitor to be purporting to bring an oppression proceeding on behalf of the bondholders or UCI *per se*. But nothing precludes the bondholders, UCI, or their representative from seeking leave to bring proceedings that they may believe appropriate. They have done so already in Mr. Saskin's bankruptcy proposal proceeding.

[30] I note that I have decided this motion based solely on the arm's length relationship and lack of fraudulent intent. It has not been necessary therefore for me to deal with a number of other issues raised by the parties orally and in their factums.

[31] The motion is dismissed.

**Costs**

[32] It was reasonable and appropriate for the Monitor to bring this matter to the court. While in some ways the facts of this case resembled those in the *XDG* case, there are important differences as noted above. Each case is determined on its own facts.

[33] The Monitor argues that there should be no costs unless it was found to have been unreasonable. In my view, the normative approach that costs follow the event should apply in this matter. The issue was one of money as between the other creditors of the debtor and Speedy. It is appropriate that those who would benefit from the proceeding bear their fair share of the costs in the ordinary course by a diminution of the assets of the debtor. The Monitor and Speedy agreed that costs, if appropriate, should be fixed at $25,000 all-

inclusive. Therefore the Monitor, on behalf of the debtor and not in its personal capacity, shall pay costs in the amount of $25,000 to Speedy within 30 days.

F.L. Myers J.

**Date:** May 11, 2018

SCHEDULE "A"

Urbancorp Power Holdings Inc.
Vestaco Homes Inc.
Vestaco Investments Inc.
228 Queen's Quay West Limited
Urbancorp Cumberland 1 LP
Urbancorp Cumberland 1 GP Inc.
Urbancorp Partners (King South) Inc.
Urbancorp (North Side) Inc.
Urbancorp Residential Inc.
Urbancorp Realtyco Inc.

# Appendix "J"

TERRA FIRMA

*22 St. Clair Avenue East*
*Level 2, Suite 200*
*Toronto, Ontario*
*Canada M4T 2S5*
*T: 416 792 4700*
*F: 416 792 4711*

**Date:** June 1, 2018
**Lender Solicitor:**

## Mortgage Statement

**File:** Bridle Path and Woodbione
**Property Address:** 9064-9110 Woodbine Avenue & 2425 Bayview Avenue

| | | | |
|---|---|---|---|
| Interest Rate: | 16.00% | Principal & Interest: | $ 5,200,333.80 |
| Maturity Date: | June 1, 2018 | Property Tax: | |
| Payment Frequency: | Monthly | Escrow: | |
| Next Payment Due: | June 1, 2018 | **TOTAL PAYMENT:** | $ 5,200,333.80 |

| | |
|---|---|
| Loan amount | $ 3,000,000.00 |
| Interest capitalized (from Mar 9, 2016 to Apr 30, 2018) | 1,421,270.97 |
| Accrued interest current (May 1, 2018 - May 31, 2018) | 69,704.97 |
| Fees and expenses | 709,357.86 |
| **Loan balance** | **$ 5,200,333.80** |

**CONDITIONS**

The Borrower is responsible for legal fees and penalties which will be added to the amount of discharge.

This statement is correct only if all payments have been made and honoured and is subject to correction of any errors or omissions.

**THIS STATEMENT IS VALID ONLY UNTIL JUNE 1, 2018.**

Yours truly,

Mano Thiyagarajah
Chief Financial Officer

E&EO

# TAB 3

Court File No. CV-16-11549-00CL

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

| | | |
|---|---|---|
| THE HONOURABLE MR. | ) | TUESDAY, THE 26TH |
| JUSTICE MYERS | ) | DAY OF JUNE, 2018 |

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

**ORDER**
**(Distribution)**

**THIS MOTION**, made by KSV Kofman Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants and TCC/Urbancorp (Bay) Limited Partnership (collectively, the "**CCAA Entities**", and each individually a "**CCAA Entity**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, among other things, authorizing and directing the Monitor to make a $3.05 million distribution to Urbancorp Inc. as outlined in the Monitor's Sixteenth

Report to Court dated June 15, 2018 (the "**Report**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Monitor and the Report, and on hearing the submissions of respective counsel for the Monitor, the CCAA Entities, Adv. Guy Gissin, in his capacity as the Court-appointed Israeli Functionary of Urbancorp Inc., and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits 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.

**DISTRIBUTION**

2. **THIS COURT ORDERS** that the Monitor, for and on behalf of the CCAA Entities, be and is hereby authorized and directed to make a $3.05 million distribution to Urbancorp Inc. as outlined in the Report.

3. **THIS COURT ORDERS AND DECLARES** that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of any creditor or legal representative of the CCAA Entities within the meaning of any relevant legislation and that any distribution ultimately made to any creditor of the CCAA Entities by the Monitor will be deemed to have been made by the CCAA Entities themselves, and the Monitor shall incur no

liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct.

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

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

Court File No. CV-16-11549-00CL

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

Proceeding commenced at Toronto

**ORDER**
**(DISTRIBUTION)**

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**Court File No. CV-16-11549-00CL**

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

**(PROCEEDING COMMENCED AT TORONTO)**

# MOTION RECORD

**(Returnable June 26, 2018 – Distribution)**

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