

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 30TH
)
JUSTICE NEWBOULD) DAY OF JUNE, 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 (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

ORDER

THIS MOTION, made by KSV Kofman Inc. ("**KSV**"), in its capacity as the court-appointed monitor (the "**Monitor**") of the Applicants and the affiliated entities listed in Schedule "A" hereto (collectively, the "**Urbancorp CCAA Entities**"), for an order, among other things:

- a) approving the Sale Process (as defined below), including the engagement of Colliers Macaulay Nicolls (Ontario) Inc. International Inc. ("**Colliers**") as listing agent under the Sale Process;
- b) approving the DIP Facility (as defined below); and
- c) sealing the Realtor Summary and the DIP Summary (each as defined in the Second Report of the Monitor dated June 24, 2016 (the "**Second Report**")) pending further Order of this Court,

was heard this day at the Courthouse located at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor, including the Second Report, and the Supplement to the Second Report dated June 29, 2016 (the "**Supplemental Report**"), each filed,

AND UPON HEARING the submissions of counsel for the Monitor, counsel for the Urbancorp CCAA Entities and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Dina Milivojevic sworn June 24, 2016, and the affidavit of Robin Schwill sworn June 29, 2016, each filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time and manner of service of the Notice of Motion, the Motion Record, including the Second Report, and the Supplemental Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Second Report or the Initial Order dated May 18, 2016 (the "**Initial Order**").

APPROVAL OF REPORTS AND ACTIVITIES

3. **THIS COURT ORDERS** that the Second Report and the Supplemental Report and the activities of the Monitor as set out therein be and are hereby approved.

ENGAGEMENT OF LISTING AGENT

4. **THIS COURT ORDERS** that the Monitor on behalf of the Urbancorp CCAA Entities and Colliers are authorized to execute and to carry out and perform their respective obligations under the Listing Agreement dated June 23, 2016 between Urbancorp (Patricia) Inc., Urbancorp (Mallow) Inc., Urbancorp (St. Clair Village) Inc., and Urbancorp (Lawrence) Inc., as sellers (collectively, the "**Sellers**"), Colliers, as listing agent (the "**Listing Agent**") and the Monitor, attached as Appendix "C" to the Second Report (the "**Listing Agreement**") (including payment of the amounts due to be paid to the Listing Agent pursuant to the terms of the Listing Agreement).

5. **THIS COURT ORDERS** that all claims of the Listing Agent pursuant to the Listing Agreement are not claims that may be compromised pursuant to any plan of compromise or arrangement ("**Plan**") filed by the Urbancorp CCAA Entities under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), any proposal ("**Proposal**") made by any of the Urbancorp CCAA Entities under the *Bankruptcy or Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), or any other restructuring or proceeding, and that no such Plan, Proposal, restructuring or proceeding shall be approved that does not provide for the payment of all amounts due to the Listing Agent pursuant to the terms of the Listing Agreement.

APPROVAL OF SALE PROCESS

6. **THIS COURT ORDERS AND DECLARES** that the sale process (the "**Sale Process**"), as described in Section 3 of the Second Report, be and is hereby approved.
7. **THIS COURT ORDERS** that the Monitor on behalf of the Urbancorp CCAA Entities and the Listing Agent be and are hereby authorized and directed to perform their obligations under and in accordance with the Sale Process, including under the terms of the Listing Agreement, and take such further steps as they consider necessary or desirable in carrying out the Sale Process and any steps taken by the the Monitor and the Listing Agent in connection with the Sale Process prior to the date hereof, as described in the Second Report, be and are hereby approved and ratified.
8. **THIS COURT ORDERS** that the Urbancorp CCAA Entities, the Listing Agent and the Monitor shall have no personal or corporate liability in connection with the Sale Process.

APPROVAL OF DIP FACILITY AND DIP CHARGE

9. **THIS COURT ORDERS** that the Monitor on behalf of Urbancorp (St. Clair Village) Inc. and Urbancorp (Lawrence) Inc. (collectively, the "**Borrowers**") is hereby authorized and empowered to obtain and borrow under a debtor-in-possession credit facility (the "**DIP Facility**") from Atrium Mortgage Investment Corporation (the "**DIP Lender**"), provided that borrowings under the DIP Facility shall not exceed \$10 million unless permitted by further Order of this Court.
10. **THIS COURT ORDERS** that the DIP Facility shall be on the terms and subject to the conditions set forth in the Commitment Letter (the "**Commitment Letter**") dated June

24, 2016 between the DIP Lender and the Monitor, in its capacity as the Monitor of the Borrowers, attached as Appendix "E" to the Second Report.

11. **THIS COURT ORDERS** that the Borrowers are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**") as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Borrowers are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
12. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") over any real property of which either of the Borrowers is the registered owner or any proceeds thereof and any receivables owing to the Borrowers or either one of them by any of the Urbancorp CCAA Entities in connection with intercompany advances made from funds borrowed under the DIP Facility and all other assets of the Borrowers (collectively, the "**Collateral**"). The DIP Lender's Charge shall have the priority set out in paragraphs 15 and 17 hereof.
13. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the Initial Order:
 - (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
 - (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon three days' notice to the Borrowers and the Monitor, may exercise any and all of its rights and remedies against the Borrowers or the Collateral under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Borrowers and set off and/or consolidate any amounts owing by the DIP Lender to the Borrowers against the obligations of the Borrowers to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, 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 the Borrowers and for the appointment of a trustee in bankruptcy of the Borrowers; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Borrowers or the Collateral.

14. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Urbancorp CCAA Parties under the CCAA, or any proposal filed by the Urbancorp CCAA Parties or any of them under the BIA, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES

15. **THIS COURT ORDERS** that notwithstanding paragraphs 43 and 45 of the Initial Order, the priority of the DIP Lender's Charge as against the Collateral shall be as follows:

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

Second – DIP Lender's Charge to a maximum amount of \$12,500,000; and

Third – the Charges (other than the Administration Charge) in the priority set out in paragraphs 43 and 45 of the Initial Order.

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

17. **THIS COURT ORDERS** that the DIP Lender's Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (the "**Encumbrances**"), including, but not limited to, the Charges, but shall rank directly behind the Administration Charge and, for greater certainty, the DIP Lender's Charge shall have priority over any interest of any buyers who paid deposits on homes to be built by either of the Borrowers.

18. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Borrowers shall not grant any Encumbrances over any Collateral that rank in priority to, *pari passu* with, or subordinate to, the DIP Lender's Charge, unless the Borrowers also obtain the prior written consent of the Monitor and the DIP Lender, or further Order of this Court.
19. **THIS COURT ORDERS** that the Commitment Letter, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender 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; or (e) 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 either of the Borrowers, and notwithstanding any provision to the contrary in any Agreement:
- (a) neither the creation of the DIP Charge nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by either of the Borrowers of any Agreement to which it is a party;
 - (b) the DIP Lender shall have no liability to any person whatsoever as a result of any breach of any Agreement caused by or resulting from the Borrowers entering into the Commitment Letter, the creation of the DIP Charge, or the execution, delivery or performance of the Definitive Documents; and
 - (c) the payments made by the Borrowers pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the DIP Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SEALING ORDER

20. **THIS COURT ORDERS** that the Realtor Summary and the DIP Summary, which are attached as Confidential Appendix "1" and Confidential Appendix "2" to the Second Report, respectively, be sealed, kept confidential and not form part of the public record pending further Order of this Court.

GENERAL

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or Israel 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 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, the Monitor and their respective agents in carrying out the terms of this Order.
22. **THIS COURT ORDERS** that the Urbancorp CCAA Entities and the Monitor be at liberty and are 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.



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

JUN 30 2016

PER / PAR: 

Schedule "A"
List of Non-Applicant Affiliates

- 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.

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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

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PROCEEDING COMMENCED AT
TORONTO

ORDER

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