

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.) WEDNESDAY, THE 22ND
JUSTICE MYERS) DAY OF NOVEMBER, 2017
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)

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
(URPI Loan Approval & Distribution to UCI)**

THIS MOTION, made by KSV Kofman Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants and the affiliated entities listed on Schedule "A" (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, approving a loan to Urbancorp Renewable Power Inc. ("**URPI**"), together with the motion made by Guy Gissin, in his capacity as the appointed functionary and foreign representative of Urbancorp Inc. (the "**Israeli**

Functionary") by order of the District Court in Tel Aviv-Yafo, Israel (the "**Israeli Court**") for an order, among other things, authorizing and directing the Monitor to pay certain professional fees of the Israeli Functionary, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Nineteenth Report of the Monitor dated October 24, 2017 (the "**Report**"), the Motion Record and Responding Motion Record of the Israeli Functionary, and on hearing the submissions of respective counsel for the Monitor, the Israeli Functionary, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service as filed:

APPROVAL OF ACTIVITIES

1. **THIS COURT ORDERS** that Section 3.3 of the Report and the activities of the Monitor as set out in Section 3.3 of the Report are hereby approved.

URPI LOAN

2. **THIS COURT ORDERS** that the Monitor, on behalf of Urbancorp Cumberland 1 LP, (the "**Lender**") be and is hereby authorized and empowered to lend URPI up to a maximum amount of \$500,000 on the terms and subject to the conditions set forth in the Term Sheet dated as of October 24, 2017 as attached as Appendix "H" to the Report (the "**Term Sheet**") and the Monitor is hereby authorized and directed, on behalf of the Lenders, to take such additional steps and execute such additional

documents as may be necessary or desirable for the completion of the loan transaction as set out in the Term Sheet.

3. **THIS COURT ORDERS** that no advance shall be made pursuant to the Term Sheet until the distribution referred to in paragraph 2 of Section 3.3 of the Report has been paid in full.

4. **THIS COURT ORDERS** that URPI shall only use advances made pursuant to the Term Sheet for the use as specifically provided therein and that no such funds shall be remitted in any way, directly or indirectly, to Alan Saskin or any member of Alan Saskin's family.

5. **THIS COURT ORDERS** that the Maturity Date (as defined in the Term Sheet) shall not be extended without agreement of the Monitor and the Israeli Functionary or further order of this Court;

6. **THIS COURT ORDERS** that the Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Lender's Charge**") on all of the real property owned by Vestaco Homes Inc., Vestaco Investments Inc. and 228 Queen's Quay West Limited (collectively, the "**Geothermal Systems Owners**") as security for all amounts advanced to URPI under the Term Sheet.

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

- (a) the Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Lender's Charge;
- (b) upon the occurrence of an Event of Default under the Term Sheet, and after consultation with the Israeli Functionary, the Lender may terminate the facility and cease making advances to URPI, and may bring a motion for leave to exercise any and all of its rights and remedies against URPI or the Geothermal Systems Owners under or pursuant to the Term Sheet and the 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 URPI or any of the Geothermal Systems Owners and for the appointment of a trustee in bankruptcy of one or more of URPI or any of the Geothermal Systems Owners; and
- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of URPI or any of the Geothermal Systems Owners or any of their respective property.

8. **THIS COURT ORDERS** that the filing, registration or perfection of the Lender's Charge shall not be required, and that the 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 Lender's Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. **THIS COURT ORDERS** that the Lender's Charge shall rank as against the applicable real property of the Geothermal Systems Owners subordinate only to the Administration Charge and Interim Lender's Charge (as those terms are defined in the Initial Order made in these proceedings), and the charge registered on November 25, 2014 as Instrument No. AT3749062 in favour of the Toronto-Dominion Bank against the real property owned by Vestaco Homes Inc.

10. **THIS COURT ORDERS** that Urbancorp Equity Inc. ("**UEI**") shall have 10 days from receiving a copy of this Order to bring a motion before this court, on service to the E-Service List in these proceedings, seeking to vary the priority of the Lender's Charge over the charge registered on August 31, 2011 as Instrument No. AT2799704 in favour of UEI against the real property owned by 228 Queen's Quay West Limited (the "**UEI Charge**") failing which the Lender's Charge shall maintain its priority over the UEI Charge as provided for herein.

11. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by further order of this Court, the Geothermal Systems Owners shall not grant any encumbrances over any of their respective real property that ranks in priority to, or *pari passu* with, the Lender's Charge.

12. **THIS COURT ORDERS** that the Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the 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 the Bankruptcy and Insolvency Act (the "**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 any of the Geothermal Systems Owners, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Lender's Charge shall not create or be deemed to constitute a breach by any of the Geothermal Systems Owners of any Agreement to which it is a party;
- (b) the Lender shall have no liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Lender's Charge; and
- (c) the payments made by any of the Geothermal Systems Owners pursuant to this Order and the granting of the Lender's 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.

DISTRIBUTION TO URBANCORP INC.

13. **THIS COURT ORDERS** that the Monitor, for and on behalf of the CCAA Entities, be and is hereby authorized and directed to distribute the amount of \$750,000 to Urbancorp Inc. or as the Israeli Functionary may otherwise direct in writing.

14. **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

15. **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.

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

NOV 22 2017

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

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

Proceeding commenced at Toronto

**ORDER
(URPI LOAN APPROVAL AND
DISTRIBUTION TO UCI)**

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