

**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 RESIDENTIAL INC.,
URBANCORP (952 QUEEN WEST) INC., KING
RESIDENTIAL INC., URBANCORP NEW KINGS 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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WEST) INC., KING RESIDENTIAL INC.,
URBANCORP NEW KINGS INC., URBANCORP 60
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KING INC. (COLLECTIVELY THE
“APPLICANTS”) AND THE AFFILIATED
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PART I OVERVIEW

1. The Applicants, Urbancorp Toronto Management Inc. (“**UTMI**”), Urbancorp Downsview Park Development Inc. (“**UC Downsview**”), Urbancorp (St. Clair Village) Inc. (“**UC St. Clair**”), Urbancorp (Patricia) Inc. (“**UC Patricia**”), Urbancorp (Mallow) Inc. (“**UC Mallow**”), Urbancorp (Lawrence) Inc. (“**UC Lawrence**” and together with UC Downsview, UC St. Clair, UC Patricia and UC Mallow, the “**Backup Subsidiaries**” and together with UTMI, the “**Urbancorp NOI Entities**”) Urbancorp New Kings Inc. (“**UC New Kings**”), Urbancorp 60 St. Clair Inc., High Res. Inc., and Bridge on King Inc. seek relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). In addition the Applicants, the Applicants also seek relief in respect of the following non-applicant affiliated entities,

which are limited partnerships and/or may not themselves be insolvent: (i) Urbancorp Power Holdings Inc. (“**UC Power Holdings**”), (ii) Urbancorp Cumberland 1 GP Inc., which is the general partner of Urbancorp Cumberland 1 LP (“**Cumberland 1 LP**”), (iii) Vestaco Homes Inc. (“**Vestaco Homes**”), (iv) Vestaco Investments Inc. (“**Vestaco Investments**”), (v) 228 Queen’s Quay West Limited (“**Queens Quay**”), (vi) Urbancorp Partner (King South) Inc. (“**UC King South**”), (vii) Urbancorp Realtyco Inc. (“**UC Realty**”), (viii) Urbancorp Residential Inc. (“**UC Residential**”) and (ix) Urbancorp (North Side) Inc. (“**UC North Side**”) (collectively, and including Cumberland 1 LP, the “**Non-Applicant UC Entities**”, and together with the Applicants, the “**Urbancorp CCAA Entities**”)

2. The Urbancorp CCAA Entities other than UTMI are all direct or indirect subsidiaries of Urbancorp Inc. (“**UC Inc.**”), which itself is indirectly owned by Alan Saskin or members of his family, as are the other related Urbancorp companies (collectively, the “**Urbancorp Group**”) not involved in these proceedings. The Urbancorp Group primarily engages in the construction of residential projects in the greater Toronto area. The majority of the Urbancorp CCAA Entity corporations have been formed as single purposes entities in connection with the construction and ownership of specific development projects. The Applicants do not represent all of the subsidiaries of UC Inc., as certain other UC Inc. subsidiaries (the “**Cumberland 2 Entities**”) are the subject of separate insolvency proceedings or have not commenced proceedings, and one, Shard Investments Inc., was incorporated for a project that never took place, and accordingly has no assets or liabilities.

3. While the Urbancorp Group has real estate assets which remain very valuable, the Urbancorp Group has recently started to experience significant cash flow challenges which have limited its ability to continue and complete work on the majority of its projects.

4. As a result of the liquidity crisis and other developments described below, on April 21, 2016, in an effort to stabilize the environment surrounding the Urbancorp Group and their secured and unsecured creditors, each of the Urbancorp NOI Entities

filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, C. B-3, as amended (the “**BIA**”), naming KSV as the proposal trustee (collectively, the “**Proposal Proceedings**”). No proposals have been filed in respect of the Urbancorp NOI Entities in the Proposal Proceedings.

5. The various projects, including the Backup Projects (as defined below) being undertaken by the Urbancorp NOI Entities, currently underway by the Urbancorp Group require tens of millions of dollars to develop and/or complete. The Urbancorp Group does not currently have sufficient liquidity to advance the projects, resulting in the accumulated value inherent in them becoming stranded.

6. The Applicants are seeking an initial stay of proceedings.

PART II FACTS

7. The facts with respect to the Applicants are more fully set out in the Affidavit of Alan Saskin, sworn May 13, 2016 (the “**Saskin Affidavit**”).

I. Introduction

8. Urbancorp Group builds homes (condominiums, townhouses, apartments and houses) in the GTA. The Urbancorp Group itself has been in business for 25 years and has built over 5500 homes. The Urbancorp Group delivered 1,028 homes in the past two years, and currently has 1,058 additional homes under construction.

9. Since 2015, the Urbancorp Group has essentially been organised into two (2) branches – the corporations which are owned directly or indirectly by me or members of the Saskin family (the “**Non UC Inc. Entities**”), which includes UTMI, and the entities that, as of December 2015, became UC Inc. subsidiaries.

Saskin Affidavit, at para 10.

10. The Urbancorp Group has re-developed over 100 acres of former industrial lands in the GTA, turning them into thriving downtown neighbourhoods, home to thousands of families. The Urbancorp Group was the first developer in the King West village area of Toronto and created the neighbourhood named “King West Village”. In

the West Queen West Triangle area of Toronto, across from the landmark Drake hotel, the Urbancorp Group developed most of the homes, over 1,600 in that neighbourhood alone. In partnership with Artscape, a non-profit provider of affordable artist housing, the Urbancorp Group developed 72 units of affordable artist housing in West Queen West. The Urbancorp Group has donated land and paid for public parks all over the city of Toronto, including four public parks in the King and Queen West areas.

Saskin Affidavit, at paras 13-14.

11. However, as a result of the recent lack of liquidity described in detail in the Saskin Affidavit, the Applicants are insolvent and cannot meet their liabilities generally as they become due, and as a result, the operations of all of the Urbancorp CCAA Entities has been put at risk. On April 21, 2016, each of the Urbancorp NOI Entities began a Proposal Proceedings. No proposals have been filed in respect of the Urbancorp NOI Entities in the Proposal Proceedings.

Saskin Affidavit, at para 16.

II. Israeli Debentures and Subsidiary Financing

12. On or about November 30, 2015, UC Inc. published a supplementary prospectus, as amended on December 7, 2015, and a supplementary notice on December 8, 2015 (collectively, the “**Prospectus**”), within which UC Inc. offered to the Israeli public debentures (the “**Debentures**”) under the terms and conditions set forth in a Deed of Trust dated December 7, 2015 (the “**Israeli Deed of Trust**”) entered into between UC Inc. and Reznik Paz Nevo Trusts Ltd., in its capacity as the indenture trustee (the “**Israeli Trustee**”).

13. As a result of the issuance of the Prospectus, UC Inc. issued NIS 180,583,000 (approx. \$64 million based on the exchange rate at that time) par value of Debentures, which traded on Tel Aviv Stock Exchange.

14. Approximately \$58.0 million of the proceeds from the Debentures was transferred to UC Inc., of which approximately \$46.0 million was used to repay existing secured loan obligations owing by the Backup Subsidiaries, all in accordance

with the terms of each of the Subsidiary Loan Agreements (as defined below) and the Israeli Deed of Trust.

15. The terms of the Debentures contemplate UC Inc. repaying the Debentures in five (5) unequal installments on December 31, 2017, June 30, 2018, December 31, 2018, June 30, 2019 and December 31, 2019. The interest rate on the Debentures is 8.15%, which is subject to adjustment and payable semi-annually on June 30th and December 31st.

16. On December 21, 2015, each of the Backup Subsidiaries executed separate loan agreements setting out the terms of the arrangement as between each of the Backup Subsidiaries and UC Inc. (each a “**Subsidiary Loan Agreement**”).

17. Each Subsidiary Loan Agreement sets out that any “Surplus” which a Backup Subsidiary would be entitled to receive must first be used to repay the amount owing to UC Inc. under such Subsidiary Loan Agreement, and that the “Repayment Amount” of the Subsidiary Loan would be due in December of 2019.

18. Each of the Subsidiary Loan Agreements also includes an acknowledgement by the Backup Subsidiary that all of the rights and interests of UC Inc. under the Subsidiary Loan Agreement is pledged in favour of the Israeli Trustee on behalf of the Israeli debenture holders, for as long the Debentures have not been repaid in full by UC Inc..

19. However, that pursuant to the terms of the Israeli Deed of Trust, the Israeli Trustee has no interest, lien, charge, over the Property of the Backup Subsidiaries, other than in connection with the Surplus, nor any ability to control or influence the management of the “Backup Projects” or in respect or the budgets or withdrawal of funds from the revenue of the Backup Projects.

Saskin Affidavit, at paras 26 to 30.

20. Recently, the Israeli Trustee alleged that UC Inc. has defaulted under the terms of the Israeli Deed of Trust. On or about April 24, 2016, the Israeli Trustee initiated

court proceedings as against UC Inc. in the Israeli District Court in Tel Aviv-Yafo (the “**Israeli Court**”).

21. On April 25, 2016, the Israeli Court issued an order for, among other things, the temporary appointment of Advocate Gus Gissin as the functionary of UC Inc. (the “**Israeli Parentco Officer**”) pursuant to Regulation 14(a) of the Companies Regulations, 5759-1999, and Article 350 of the *Companies Act*, 5759-1999.

22. On April 21, 2016, the trading of the Debentures was suspended on the TASE by the Israeli securities regulators.

23. In the days building up to the Israeli Trustee’s application, the Urbancorp Group’s Israeli auditors, Israeli legal counsel and UC Inc.’s board of directors resigned, leaving Alan Saskin as the sole director of UC Inc.

Saskin Affidavit, at paras 18 to 23.

III. Interim Financing

24. On May 13, 2016, each of the Urbancorp CCAA Entities, as borrowers, and UC King South, as lender, entered into an intercompany interim credit facility term sheet whereby UC King South agreed to make available to the Urbancorp NOI Entities a revolving credit facility in the amount of \$1.9 million (the “**Interim Loan**”) to finance their day-to-day operations and ongoing projects, (the “**Interim Facility Term Sheet**”). All proceeds of the Interim Loan continue to be held by KSV in its trust account. Based upon the anticipated cash flow needs of the Urbancorp CCAA Entities during these restructuring proceedings, including professional fees associated with these proceedings, it is likely that the \$1.9 million may not be sufficient to see the restructuring through to its completion. As a result, the Applicant intends to commence a process to secure third party debtor-in-possession (“**DIP**”) financing in the near term.

Saskin Affidavit, at paras 105 to 106.

IV. Urbancorp Group's Financial Position

25. On or about March 31, 2015, Tarion Warranty Corporation (“**Tarion**”), which provides warranties on new residential builds in Ontario for registered builders, issued a notice of proposal to revoke 17 of the Urbancorp Group’s registrations, including the registrations of the Backup Subsidiaries, as a result of concerns about the Urbancorp Group’s financial position and the high number of warranty claims made against two Non UC Inc. Entities.

26. The Urbancorp Group has since appealed Tarion’s decision for 11 of the 17 registrations, and allowed the balance to expire. No decision has been rendered in connection with the appeal as of the date hereof.

27. As a result of the various factors described herein, and in particular the Isralie Court proceedings and Tarion registration revocation, the Urbancorp Group determined it was necessary to commence formal restructuring proceedings in order to provide the Urbancorp CCAA Entities and all of its affiliated entities with a stabilized environment under the supervisions of the Court to explore all of its restructuring alternatives, while working in consultation with the Israeli Parentco Officer and all of the Urbancorp CCAA Entities other stakeholders.

Saskin Affidavit, at paras 112 to 118.

PART III LAW AND ARGUMENT

I. Continuation Under CCAA

A. BIA proceedings can be taken up under the CCAA

28. Each of the Urbancorp NOI Entities previously filed a notice of intention under the BIA. Under Section 11.6 of the CCAA, proceedings commenced under Part III of the BIA may be taken up and continued under the CCAA. On a motion to continue under the CCAA, an applicant should place before the court evidence that there has been statutory compliance with Section 11.6(a) of the CCAA.

*Re Clothing for Modern Times Ltd. (2011), 88 C.B.R. (5th)
329 (Ont. S.C.J. [Commercial List]) [Re Clothing].*

29. Section 11.6(a) sets out that:

11.6 Notwithstanding the Bankruptcy and Insolvency Act,

(a) proceedings commenced under Part III of the Bankruptcy and Insolvency Act may be taken up and continued under this Act only if a proposal within the meaning of the Bankruptcy and Insolvency Act has not been filed under that Part; and

30. The Urbancorp NOI Entities have each filed a notice of intention under Subsection 50.4(1) of the BIA on April 21, 2016. No proposal has been filed with respect to any of the Urbancorp NOI Entities.

Saskin Affidavit, at para 16.

31. Accordingly, each of the Urbancorp NOI Entities' BIA proceedings satisfies the requirements under Section 11.6(a) of the CCAA for continuation under the CCAA.

B. The proposed continuation is consistent with the purpose of the CCAA

32. As established in *Re Clothing*, under Section 11.6 of the CCAA, the applicant company should place before the court, in addition to evidence of compliance with Section 11.6(a), evidence that the proposed continuation would be consistent with the purposes of the CCAA.

33. As discussed in greater detail below and elsewhere in this Application, the businesses of the Urbancorp NOI Entities are highly interconnected with the other Urbancorp CCAA Entities, including intercompany advances, nominee ownership structures and management services being provided principally by UTMI. Given the heavily intertwined nature of the businesses and finances of the Urbancorp CCAA Entities, the filing of all of the Urbancorp CCAA Entities serves the purpose of the CCAA to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy.

Elan Corporation v Comiskey (Trustee of) (1990), 1 OR (3d) 289, OJ No 2180 at paras 22 and 56-60 (Ont. CA); *Comstock Canada Ltd., Re*, 2013 ONSC 4756, 25 C.L.R. (4th) 175 [*Comstock*].

II. The Applicants are Entitled to Seek Protection Under the CCAA

A. The Applicants are insolvent

34. The CCAA applies to a “debtor company” or affiliated debtor companies where the total claims against the debtor or its affiliates exceeds five million dollars. Pursuant to Section 2 of the CCAA, a “debtor company” is defined as a company that is insolvent.

CCAA, section 2 and subsection 3(1).

35. To determine if a company is insolvent for the purposes of this definition within the CCAA, reference is made to the definition of “insolvent person” under the BIA. The definition of “insolvent person” under the BIA is as follows:

s. 2(1) [...] “insolvent person” means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

36. The test for “insolvency” is to be given an expanded meaning so as best to effect the objectives of the CCAA in allowing the debtor to obtain the required “breathing room” to undertake a restructuring. In applying this approach, the court will determine if it is reasonably expected at the time of filing that, without the benefit of a stay of proceedings, the applicant will run out of liquidity before the time that would reasonably be required to implement a restructuring.

Stelco Inc., Re (2004), 48 C.B.R. (4th) 299, 2004 CarswellOnt 1211 (Ont. S.C.J. [Commercial List]). Leave to appeal to C.A. refused 2004 CarswellOnt 2936 (Ont. C.A.), leave to appeal to S.C.C. refused 2004 CarswellOnt 5200 (S.C.C.), at para 26 [*Stelco*].

37. The Applicants and the Non-Applicant UC Entities have total claims against them in excess of \$5 million.

Saskin Affidavit, at para 120.

38. Furthermore, the Applicants are currently unable or will imminently be unable to meet such claims generally as they become due, making them insolvent under the *Stelco* test. In instances where CCAA applicants form part of a significantly interconnected group of affiliated debtor companies, it may not be legally necessary to find that each applicant or Non-Applicant UC Entities is insolvent on a standalone basis. The Applicants are requesting that these CCAA proceedings include the Non-Applicant UC Entities as they and their stakeholders, assets (in many cases beneficial ownership of the assets of Applicants), and intercompany payables and receivables in particular, form an integral part of the operations of the Urbancorp Group.

***Re First Leaside Wealth Management Inc.*, 2012 ONSC 1299
(S.C.J.), at paras 28 to 30 [*Re First Leaside*].**

Sasking Affidavit, at para 123.

39. The majority of the Urbancorp CCAA Entities function primarily as single purpose vehicles for the construction of real estate projects in the GTA, or provide support service to these projects. The primary financial challenge facing the Urbancorp CCAA Entities at this time, and the Backup Subsidiaries in particular, is their inability to raise the necessary financing to advance their major projects beyond their current stages of development. This is due to a number of events, including the recent steps by Tarion to revoke certain Tarion registration certificates, and events relating to UC Inc. and the Israeli Debentures.

40. The Urbancorp CCAA Entities have recently experienced enforcement of certain debts and restrictions on cash management that have resulted in the Urbancorp Group as a whole being unable to meet its claims as they generally become due.

Siskin Affidavit, at paras 10 and 15.

41. The Applicants are therefore, by application of the BIA definition or the *Stelco* test, insolvent and are debtors companies to which the CCAA applies. Although the Urbancorp CCAA Entities maintain significant assets that can potentially be used in a restructuring to create value for creditors, the Applicants believe that they cannot effectively unlock the collective value of these assets without the “breathing space” provided for under the stay of proceedings and related relief provided for under the CCAA.

Saskin Affidavit, at para 12.

B. The Applicants chief place of business is Ontario

42. Subsection 9(1) of the CCAA sets out the court that has jurisdiction with respect to a CCAA application. It states that:

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

43. Each of the Applicants is a “company” to which the CCAA applies as they are each incorporated pursuant to the *Business Corporations Act* (Ontario) R.S.O. 1990, c. B.16 and have their chief place of business in Toronto. Accordingly, the criteria of Subsection 9(1) of the CCAA are satisfied.

Siskin Affidavit, at para 119.

III. The Applicants are Entitled to a Broad Stay of Proceedings

A. The stay should be extended to Non-Applicant UC Entities

44. As noted above, in instances where the entities seeking protection under the CCAA form part of a significantly interconnected group of affiliated debtor companies, it may not be legally necessary to find that each filing entity is insolvent on a standalone basis.

***Re First Leaside*, at paras 28 to 30.**

45. The Non-Applicant UC Entities are significantly interconnected with the insolvent Applicants as they and their stakeholders, assets (in many cases beneficial

ownership of the assets of Applicants), and intercompany payables and receivables in particular, form an integral part of the operations of the Urbancorp Group. As such, the participation of Non-Applicant UC Entities is necessary for a proper restructuring of the operations of the Urbancorp CCAA Entities.

Saskin Affidavit, at para 123.

46. Under the expanded definition of “insolvent” under the *Stelco* test, the Non-Applicant UC Entities may seek protection since, although not currently technically insolvent, it is reasonably expected at the time of filing that, without the benefit of a stay of proceedings, the financially troubled Non-Applicant UC Entities will run out of liquidity before the time that would reasonably be required to implement a restructuring. This interpretation reflects the “rescue” emphasis of the CCAA.

***Stelco*, at para 26; *Priszm Income Fund, Re*, 2011 ONSC 2061, at para 21 [*Priszm*]; *Target Canada Co., Re*, 2015 ONSC 303, at paras 26 to 27 [*Target*].**

47. The inclusion of Non-Applicant UC Entities should also extend to the Non-Applicant UC Entities which are partnership. By its express terms, the CCAA applies to debtor companies, but not partnerships. However, where the operations of these Non-Applicant UC Entities partnerships are integral and closely related to the operations of the Applicants, it is well established in the case law that a CCAA court has the jurisdiction to extend the protection of the stay of proceedings to partnerships where such extension promotes the achievement of the CCAA’s purposes.

***Re Smurfit-Stone Container Canada Inc.*, 2009 CarswellOnt 391 (SCJ) at para 19; *Priszm Income Fund*, at paras 26 and 27; *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 222 [*Canwest Publishing*] at paras 33 and 34; *Re Canwest Global Communications Corp.*, 2009 CarswellOnt 6184 [*Canwest Global*] at paras 28 to 29; *Target*, at paras 42 to 43.**

48. The stay of proceedings should be extended to the Non-Applicant UC Entities, including the partnerships, on the basis that each is significantly interrelated to the business of the Applicants and business of the Urbangroup Group generally. To exclude the Non-Applicant UC Entities from a stay of proceedings would substantially frustrate

the purposes allowing the CCAA Applicants “breathing room” in the restructuring efforts of the business and liabilities of the Urbancorp CCAA Entities as a whole.

IV. Court Ordered Charges

B. Administration Charge

49. The Applicants are seeking a charge over all of the assets, property and undertakings of the Urbancorp Entities in an amount of \$750,000 (the “**Administration Charge**”) in order to secure the fees and disbursements at the standard rate of the Monitor, legal counsel to the Monitor and counsel to the Urbancorp Entities. This charge would rank immediately behind any existing secured creditors with valid security over the property of the Urbancorp CCAA Entities, other than any security in favour of the Israeli Trustee (the “**Third Party Secured Creditors**”).

Saskin Affidavit, at paras 134 to 135.

50. Section 11.52 of the CCAA provides the court with jurisdiction to grant an administrative charge.

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor’s duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

51. Administration charges have been granted by the courts pursuant to Section 11.52 in a number of cases including *Timminco*, *Canwest Publishing*, and *Comstock*.

Re Timminco Ltd., 2012 ONSC 106, 63 CBR (5th) 115 (WL Can) (Commercial List) [*Timminco*]; *Canwest Publishing*, at para 55; *Comstock* at para 48.

52. In *Canwest Publishing*, the factors to consider in making an assessment under Section 11.52 were determined to include:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the views of the Monitor.

Canwest Publishing, at para 54.

53. With respect to the Applicants and the requested Administrative Charge:

- (a) the nature of the Urbancorp CCAA Entities' business and operations requires the expertise, knowledge and continuing participation of the proposed beneficiaries of the Administration Charge in order to complete a successful restructuring;
- (b) the professionals that are to be beneficiaries of the Administration Charge have contributed, and continue to contribute, to the restructuring of the Urbancorp CCAA Entities; and
- (c) the Monitor supports the granting and the quantum of the requested Administrative Charge.

Saskin Affidavit, at para 135.

C. Interim Lender's Charge and Intercompany Lender's Charge

54. The Applicants are seeking a charge (the "**Interim Lender's Charge**") in favour of Urbancorp Partner (King South) Inc. on the assets, properties and undertakings of the Urbancorp CCAA Entities as security for all amounts advanced to

any Urbancorp CCAA Entities under an interim credit facility in the maximum amount of \$1,900,000, plus accrued interest (the “**Interim Facility**”).

Siskin Affidavit, paras 131 to 133.

55. The Applicants also seek the authority for the Monitor to utilize an aggregate of up to \$1 million of cash which exists within the Urbancorp CCAA Entities, to fund the cash flow requirements of other Urbancorp CCAA Affiliates on and intercompany basis during these proceedings, secured by a charge (the “**Intercompany Lender’s Charge**”) over the borrower entity’s assets, properties and undertakings in favour of the lender entity, to rank *pari passu* with the Interim Lender’s Charge.

56. The Interim Lender’s Charge and Intercompany Lender’s Charge will be subordinate in priority to the Administration Charge and Third Party Secured Creditors, but otherwise in priority to all other present and future security interests.

Siskin Affidavit, at para 133.

57. Section 11.2 of the CCAA provides the court with the express jurisdiction to grant an interim financing charge:

11.2(1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge – in an amount that the court considers appropriate – in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

11.2(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

58. Under Section 11.2(4) of the CCAA, specific factors to be considered by the court when determining whether to grant an interim financing charge are set out:

11.2(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company’s business and financial affairs are to be managed during the proceedings;

- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

59. In the recent decision of *Target*, this Honourable Court approved a debtor-in-possession (“DIP”) facility provided by a company related to the Applicants. This Honourable Court has also recognized that it is not realistic for the DIP lender to provide the DIP facility without an interim financing charge.

***Target*, at para 70; *Re US Steel Canada Inc.*, 2014 ONSC 6145, at para 18.**

60. Furthermore, applying the factors enumerated in Section 11.2(4) to the proposed Interim Lender's Charge and Intercompany Lender's Charge supports the approval of the interim financing charge:

- (a) the Interim Lender's Charge and Intercompany Lender's Charge will not secure any pre-filing obligations in accordance with Subsection 11.2(1) of the CCAA;
- (b) the Urbancorp CCAA Entities have an immediate requirement for liquidity and the Interim Facility and intercompany lending authority is providing the liquidity necessary for the Applicants to engage in a controlled restructuring process;
- (c) the Interim Lender's Charge and Intercompany Lender's Charge will rank behind Third Party Secured Creditors with properly perfected security interests registered and, accordingly, will not affect the security interest of existing secured creditors;
- (d) the Monitor, in acting as a super Monitor, will be able to review and approve advances made under the Interim Facilities and on an

intercompany basis, and recommends that the Court approve the Interim Facilities, Interim Lender's Charge, intercompany lending authority and Intercompany Lender's Charge.

D. Director's Charge

61. The Applicants seek a director's and officer's charge (the "**Director's Charge**") to the maximum amount of \$300,000 in favour of the sole director of the Applicants as security for the Urbancorp CCAA Entities' indemnification obligations for the potential obligations and liabilities he may incur during the pendency of these proceedings. The charge will be secured by the assets and property of the Urbancorp CCAA Entities and will rank behind any Third Party Secured Creditors, the Administration Charge and the Interim Lender's Charge and Intercompany Lender's Charge.

Saskin Affidavit, at para 137.

62. Under Section 11.51 of the CCAA, the Court has express jurisdiction to grant a security charge over the Applicant's property in favour of the any director or officer:

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

The factors to be considered in applying Section 11.51 of the CCAA were set out in *Canwest Global* as follows:

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities they could incur during the restructuring: *Re General Publishing Co.* [(2003), 39 C.B.R. (4th) 216].

Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by experienced senior management. The proposed Monitor believes that the charge is required and reasonable in the circumstances and also observes that it will not cover all of the directors' and officers' liabilities in the worst case scenario. In all of these circumstances, I approved the request.

Canwest Global (Initial Order), at para 48.

63. At this time, there is no existing D&O insurance policy in place that would cover directors and officers of any of the Urbacorp CCAA Entities. As such, notwithstanding the proposed reduced role of the sole Director in the day-to-day operations of the Urbacorp CCAA Entities, the Applicants are of the belief that the sole Director has specialized knowledge and relationships with the Urbacorp CCAA Entities' suppliers, employees, major joint venture partners, and other stakeholders, that cannot be replicated or easily replaced. Accordingly, the sole Director should be provided with the benefit of the Director's Charge in order to ensure continued access to this specialized knowledge.

Saskin Affidavit, at para 136 to 138.

PART IV ORDER REQUESTED

1. For the foregoing reasons, the Applicants request that this Honourable Court issue an Order substantially in the form of the draft Initial Order attached as Tab "3" to the Application Record Returnable May 18, 2016.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 16, 2016

Edmond F.B. Lamek

SCHEDULE "A" – AUTHORITIES CITED

1. *Re Clothing for Modern Times Ltd.* (2011), 88 C.B.R. (5th) 329 (Ont. S.C.J. [Commercial List]).
2. *Elan Corporation v Comiskey (Trustee of)* (1990), 1 OR (3d) 289, OJ No 2180 (Ont. CA).
3. *Comstock Canada Ltd., Re*, 2013 ONSC 4756, 25 C.L.R. (4th) 175.
4. *Stelco Inc., Re* (2004), 48 C.B.R. (4th) 299, 2004 Carswell Ont 1211 (Ont. S.C.J. [Commercial List]).
5. *Re First Leaside Wealth Management Inc.*, 2012 ONSC 1299 (S.C.J.).
6. *Re Prizm Income Fund*, 2011 ONSC 2061.
7. *Target Canada Co., Re*, 2015 ONSC 303.
8. *Re Smurfit-Stone Container Canada Inc.*, 2009 CarswellOnt 391 (S.C.J.).
9. *Re Canwest Publishing Inc./Publications Canwest Inc.*, 2010 ONSC 222.
10. *Re Canwest Global Communications Corp.*, 2009 CarswellOnt 6184.
11. *Re Timminco Ltd.*, 2012 ONSC 106, 63 CBR (5th) 115 (WL Can) (Commercial List).
12. *Re US Steel Canada Inc.*, 2014 ONSC 6145.

SCHEDULE "B" – LEGISLATION CITED

Bankruptcy and Insolvency Act, R.S.C., 1985, C. B-3, as amended

2. [...]

"insolvent person"

« *personne insolvable* »

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

Notice of Intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and

(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books, and attaching thereto a copy of the consent referred to in paragraph (b).

[...]

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

2.(1) [...]

"debtor company"

« *compagnie débitrice* »

"debtor company" means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and*

Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent;

[...]

Application

3. (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

Jurisdiction of court to receive applications

9. (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[...]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

[...]

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[...]

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the Bankruptcy and Insolvency Act,

(a) proceedings commenced under Part III of the Bankruptcy and Insolvency Act may be taken up and continued under this Act only if a proposal within the meaning of the Bankruptcy and Insolvency Act has not been filed under that Part; and

[...]

SCHEDULE “C” – SCHEDULE “A” TO STYLE OF CAUSE

List of Non-Applicant Affiliated Companies

- 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.

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 NEW KINGS 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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

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