

**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

**MOTION RECORD
OF THE MONITOR**

(Motion Returnable December 14, 2016 – Additional Matters)

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**ONTARIO
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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

NOTICE OF MOTION

(Returnable December 14, 2016 – Additional Matters)

KSV Kofman Inc. ("**KSV**"), in its capacity as the 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**") will make a motion to a judge presiding on the Commercial List, on December 14, 2016 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 the Standstill Agreement entered into between King Liberty North Corporation ("**KLNC**"), Urbancorp New Kings Inc. ("**UNKI**"), the Monitor and First Capital (S.C.) Corporation on November 22, 2016 with an effective date of November 7, 2016 (the "**Standstill Agreement**");
3. approving the Release and Settlement Agreement to be entered into between Bridge on King Inc. ("**BOKI**") and Toronto Standard Condominium Corporation No. 2302 ("**TSCC 2302**") (the "**Settlement Agreement**");
4. approving a sales process for the condominium units of which Urbancorp Residential Inc. and King Residential Inc. are currently the registered owners and the entering into a Sales Agency Agreement with Brad J. Lamb Realty Inc. with respect thereto; and
5. such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Standstill Agreement

1. UNKI is not an applicant in these proceedings;
2. Urbancorp Cumberland 1 LP, to which these proceedings pertain, is the sole shareholder of UNKI;
3. KLNC and UNKI are co-owners of the lands described as the Kingsclub Development for which Kingsclub Development Inc. is the registered owner as nominee and bare trustee for and on behalf of KLNC and UNKI;

4. Pursuant to paragraph 30 of the Initial Order made in these proceedings, Robert Kofman, or such representative of the Monitor as Mr. Kofman may designate in writing from time to time, was authorized, directed and empowered to act as the representative of UNKI on the Management Committee of the Kingsclub Development;

5. UNKI is in default of the relevant co-owners agreement and related agreements primarily as a result of its failure to meet certain financial obligations under such agreements;

6. The Standstill Agreement provides for an orderly completion of the Kingsclub Development in a manner that will prevent the commencement of court proceedings or the enforcement of security in order to maximize the value of the project which is in the best interest of each of the co-owners;

7. Seeking this Court's approval of the Standstill Agreement and of UNKI's and the Monitor's obligations thereunder is a term of the Standstill Agreement;

8. The Standstill Agreement and its terms and conditions are fair and reasonable under the circumstances and benefit the administration of these proceedings;

The Settlement Agreement

9. TSCC 2302 retained a consultant to conduct a performance audit in order to determine the common element deficiencies with respect to the condominium. The performance audit identified approximately \$1.8 million in common element deficiencies;

10. The Settlement Agreement provides for BOKI to pay \$450,000 (inclusive of HST) to TSCC 2302 in return for a full release of all common elements deficiency claims;

11. BOKI has posted a \$500,000 cash secured bond (the "**Cash Security**") with Tarion Warranty Corporation ("**Tarion**") which was held as security for, among other things, the common element deficiencies. Tarion has agreed to release the Cash

Security so that BOKI can fund the settlement, with the remaining \$50,000 of Cash Security being returned to BOKI;

12. The Settlement Agreement is conditional on this Court's approval;

13. The Settlement Agreement and its terms and conditions are fair and reasonable under the circumstances and benefit the administration of these proceedings;

The Condominium Sales Process

14. Paragraph 29(d) of the Initial Order dated May 18, 2016 (the "**Initial Order**") empowers the Monitor to conduct, supervise and direct one or more Court-approved sales and investor solicitation processes for portions of the Urbancorp CCAA Entities' assets, undertakings and properties;

15. Urbancorp Residential Inc. is currently the registered owner of 8 residential condominium units in the Curve condominium located at 170 Sudbury Street, Toronto and 7 residential condominium units in the Westside Gallery Lofts condominium located at 150 Sudbury Street, Toronto;

16. King Residential Inc. is currently the registered owner of 13 residential condominium units in the Bridge condominium located at 38 Joe Shuster Way, Toronto;

17. With the assistance of Brad J. Lamb Realty Inc. ("**Lamb Realty**"), the Monitor has designed a process for the sale of the above-noted residential condominium units (collectively, the "**Condos**") which seeks to maximize the aggregate realizable value of the Condos (the "**Sales Process**");

18. The Monitor selected Lamb Realty as listing agent for the Condos as a result of, among other factors, Lamb Realty's experience in selling condominium units in Toronto, their knowledge of the local condominium market and, subject to this Court's approval, the Monitor will enter into a Sales Agency Agreement with Lamb Realty with respect thereto (the "**Sales Agency Agreement**");

19. The Sales Process and Sales Agency Agreement are fair and reasonable under the circumstances and benefit the administration of these proceedings;

20. Sections 9-11 of the CCAA and this Court's equitable and statutory jurisdiction thereunder;

21. 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

22. 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 Tenth Report of the Monitor date December 9, 2016; and
2. such further material as counsel may advise and this Court may permit.

December 9, 2016

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Lawyers for the Monitor

TO: The E-Service List found at:
<http://ksvadvisory.com/assets/Uploads/insolvency-case-documents/Urbancorp%20Group/CCAA%20Proceedings/Service%20List/Urbancorp%20CCAA%20Service%20List%20as%20at%20September%2013%2C%202016.pdf>

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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MANAGEMENT INC., ET AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(Returnable December 14, 2016 – Additional
Matters)

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Lawyers for the Monitor

TAB 2



**Tenth 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**

December 9, 2016

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

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DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN
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"A" HERETO

TENTH REPORT OF KSV KOFMAN INC.

DECEMBER 9, 2016

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 (the "NOI Proceedings"). Collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "Companies". KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee in the NOI Proceedings.
2. Pursuant to an Order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 18, 2016 (the "Initial Order"), the Applicants (which include the Companies) together with the entities listed on Schedule "A" attached (collectively, the "Urbancorp CCAA Entities") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor (the "Monitor").
3. Pursuant to an order issued by the Court on November 16, 2016, the stay of proceedings for the Urbancorp CCAA Entities was extended to January 31, 2017.

4. The principal purpose of the restructuring proceedings is to create a stabilized environment to allow the Urbancorp CCAA Entities the opportunity to consider their restructuring options, including selling some or all of their properties and other assets through a Court approved sale process.
5. This report (the "Report") is filed by KSV in its capacity as Monitor.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide an update on the status of the CCAA proceedings;
 - b) summarize the recommended sale process ("Sale Process") pursuant to which 28 condominium units (the "Residential Units") owned by Urbancorp Residential Inc. ("URI") and King Residential Inc. ("KRI")¹ (jointly, the "Residential Unit Owners") are to be marketed for sale, including the Monitor's recommended retention of Brad J. Lamb Realty Inc. ("Brad Lamb Realty") to act as listing agent for the Residential Units;
 - c) summarize a Standstill Agreement ("Standstill Agreement") among the Monitor, King Liberty North Corporation ("KLNC"), Urbancorp New Kings Inc. ("UNKI") and First Capital (S.C.) Corporation ("FCSCC") in respect of a development located at 1100 King Street West, Toronto (the "Kingsclub Development");
 - d) summarize a Release and Settlement Agreement (the "Settlement Agreement") between the Bridge on King Inc. ("Bridge") and Toronto Standard Condominium Corporation No. 2302 (the "Condominium Corporation") in respect of common element deficiencies at the condominium developed and constructed by Bridge located at 38 Joe Shuster Way, Toronto (the "Bridge Condo");
 - e) recommend that the Court issue orders:
 - i. approving the Sale Process;
 - ii. approving the retention of Brad Lamb Realty to act as listing agent for the Residential Units by entering into the sales agency agreement (the "Sales Agency Agreement");
 - iii. approving the Standstill Agreement; and
 - iv. approving the Settlement Agreement.

¹ Urbancorp Residential Inc. and King Residential Inc. are nominee companies for Urbancorp Realty Co. and Urbancorp Cumberland 1 LP, respectively.

1.2 Currency

1. Unless otherwise noted, 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 Urbancorp CCAA Entities, the books and records of the Urbancorp CCAA Entities and discussions with representatives of the Urbancorp CCAA Entities, including their management. The Monitor has not performed an audit or other verification of such information. The financial information discussed herein is preliminary and remains subject to further review. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

2.0 Background

1. The Urbancorp CCAA Entities, together with several affiliates, comprise the Urbancorp Group (collectively, the "Group"). The business of the Group commenced in 1991. The Group primarily engages in the development, construction and sale of residential properties in the Greater Toronto Area. The Group also owns rental properties and geothermal assets. A condensed corporate chart for the Group is provided in Appendix "A".
2. Additional background concerning the Group is provided in KSV's previous reports. The reports and other materials filed in these proceedings with the Court are available on KSV's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

3.0 Update on the CCAA Proceedings

1. On November 8, 2016, the Court issued an order approving the sale of a property in which Urbancorp 60 St. Clair Inc. ("60 St. Clair") had a 40% interest (the "St. Clair Property"). On December 6, 2016, the Monitor closed the transaction for the St. Clair Property.
2. On November 16, 2016, the Court issued an order approving the sale of a property for which Lawrence was the registered owner (the "Lawrence Property"). On November 17, 2016, the Monitor closed the transaction for the Lawrence Property. The Monitor had previously closed transactions for the real estate held by Patricia, Mallow and St. Clair.

- On September 15, 2016, the Court made an order (the "Claims Procedure Order") approving a claims process ("Claims Process") for the Urbancorp CCAA Entities and any of the Urbancorp CCAA Entities' directors and officers (the "D&Os"). The claims bar date was October 21, 2016. The Monitor received approximately 240 claims, including approximately 30 claims against the D&Os. The Monitor issued 84 Notices of Revision or Disallowance (the "Revision and Disallowance Notices") in respect of the claims received. Parties that received a Revision and Disallowance Notice have 21 days to file a Notice of Dispute from the date they were deemed to have received the Revision and Disallowance Notice. The Monitor intends to file a further report to Court concerning the Claims Process.

4.0 Residential Units

- The table below provides a summary of the Residential Units.

Condo Name	Address	Registered Owner	Number of Units
Bridge Condominium	38 Joe Shuster Way, Toronto	KRI	13
Curve Condominium	170 Sudbury Street, Toronto	URI	8
Westside Gallery Lofts	150 Sudbury Street, Toronto	URI	7

- The Residential Units are owned by the entities listed in the table above, each of which is a direct or indirect subsidiary of Urbancorp Inc. Many of the Residential Units are currently being leased to tenants.

4.1 Secured Lenders

- The table below summarizes the mortgages on the Residential Units.

Company	Lender	Security	Amount (\$)
KRI	Canadian Imperial Bank of Commerce	7 units	1,134,387
KRI	TD Bank	6 units	1,340,581
URI	TD Bank	15 units	3,035,794
			<u>5,510,762²</u>

- In addition to the mortgages reflected in the table above, there is a mortgage registered against KRI in favour of Speedy Electrical Contractors Ltd. ("Speedy") in the amount of \$2.4 million against each condominium unit owned by KRI. The mortgage is to secure a guarantee provided by KRI in connection with amounts owing to Speedy by Alan Saskin and Edge on Triangle Park Inc., an affiliate of the Urbancorp CCAA Entities. The Monitor has disallowed Speedy's claim against KRI in full in the Claims Process. Speedy has issued a Notice of Dispute in connection with the disallowance.

² Total amount owing is likely not inclusive of all interest and other fees that may be payable.

3. Rental income generated from the Residential Units has been used to, *inter alia*, service the mortgages during the CCAA proceedings. The proceeds from the sale of the units will be first used to repay the mortgage obligations on the Residential Units on a unit-by-unit basis (other than Speedy's mortgage claim which is currently being disputed).

5.0 Sale Process

5.1 Proposals from Realtors

1. Edge Residential Inc. and Edge on Triangle Park Inc. (jointly, the "Edge Entities") are affiliates of the Urbancorp CCAA Entities. The Edge Entities are subject to CCAA proceedings in which the Fuller Landau Group Inc. ("Fuller Landau") is the CCAA monitor. In July 2016, Fuller Landau solicited proposals from 13 realtors to sell 37 residential condominium units owned by the Edge Entities (the "Edge Units"). Following interviews with realtors and discussions with the Group's management, Fuller Landau selected Brad Lamb Realty to list the Edge Units for sale.
2. The Residential Units are similar to the Edge Units. They were both built by the Group and are in close proximity to one another. In order to avoid professional fees associated with soliciting new proposals from realtors, and to allow the Monitor to commence the Sale Process expeditiously, the Monitor obtained copies of the realtor proposals that were submitted to Fuller Landau.
3. The Monitor discussed the proposals with Fuller Landau and the Group's management. Fuller Landau advised that Brad Lamb Realty was selected as listing agent as, among other things, the firm is a leading realtor focused on the Toronto condominium market. Fuller Landau also advised that it is pleased with Brad Lamb Realty's performance to-date.
4. Brad Lamb Realty has also provided the Monitor with an action plan for selling the Residential Units over a period of time, as well as the suggested listing prices for the Residential Units. It has also agreed to reduce its commission for this assignment from 2.5% to 2.15%. The Monitor intends to enter into the Sales Agency Agreement, subject to Court Approval. A copy of the Sales Agency Agreement is attached as Appendix "B".

5.2 Sale Process

1. A summary of the recommended Sale Process is provided below:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Preparation and Due Diligence</i>		
Due diligence	<ul style="list-style-type: none"> ➤ Brad Lamb Realty will inspect the Residential Units. ➤ Brad Lamb Realty and the Monitor will compile all relevant due diligence documents, including floor plans, unit descriptions, condominium status certificates and leases. 	By December 31, 2016
Finalize marketing materials	<ul style="list-style-type: none"> ➤ To the extent the Residential Units are vacant, Brad Lamb Realty will stage the Residential Units for showings. ➤ Brad Lamb Realty will prepare a marketing brochure for each of the Residential Units, including pictures of the units. 	
<i>Phase 2 – Marketing</i>		
Marketing	<ul style="list-style-type: none"> ➤ Brad Lamb Realty will: <ul style="list-style-type: none"> ○ list the Residential Units for sale on MLS. The MLS listings will be limited to a few Residential Units at a time. When an offer is accepted, Brad Lamb Realty and the Monitor will identify the next Residential Unit to be listed for sale; ○ post on its website details of the Residential Units listed for sale; ○ arrange for open house showings; ○ conduct an “e-blast” marketing campaign (an email detailing the offering to over 155,000 contacts in Brad Lamb Realty’s database); and ○ provide interested parties with a copy of the Purchase and Sale Agreement (the “PSA”) to be utilized for the Residential Units. ➤ Brad Lamb Realty and the Monitor will be available during the marketing phase to respond to questions from potential purchasers. 	Commencing January 2, 2017

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Proposals	➤ As offers are presented, they will be reviewed by Brad Lamb Realty and a recommendation will be made by Brad Lamb Realty to the Monitor.	As received

2. In addition to the foregoing:
 - a) the Residential Units will be marketed for sale on an “as is, where is” basis; and
 - b) the Monitor will have the right to reject any and all offers, including the highest offers.

5.3 Sale Process Recommendation

1. The Monitor recommends that the Court issue an order approving the Sale Process, including the retention of Brad Lamb Realty and the execution of the Sales Agency Agreement for the following reasons:
 - a) Brad Lamb Realty is a leading Toronto realtor focused on the local condominium market. Its team is being led by an individual who has significant experience selling residential condominium properties. Brad Lamb Realty has developed a proven marketing strategy and has an extensive network of buyers. Its commission structure has been reduced for this assignment given the number of units to be sold;
 - b) the Monitor is of the view that the Sale Process strategy is appropriate and will assist to maximize value for the Residential Units; and
 - c) the recommended order provides the Monitor the right to amend the Sale Process should it feel that it is warranted.

6.0 Kingsclub Development

1. The Kingsclub Development is a significant development presently under construction and is to consist of residential and retail space together with related residential and retail parking space.

2. UNKI is an indirect subsidiary of Urbancorp Inc. It is not subject to the CCAA proceedings. UNKI owns a 50% interest in the Kingsclub Development. The remaining 50% interest of the Kingsclub Development is owned by KLNC, an affiliate of FCSCC.³ Urbancorp Cumberland 1 LP, to which these proceedings pertain, is the shareholder of UNKI.
3. KLNC and UNKI (each a “Co-Owner”) are parties to an amended and restated Co-Owners Agreement dated February 1, 2012 (the “Co-Owners Agreement”).
4. On July 28, 2015, KLNC and UNKI, as vendors, entered into a purchase and sale agreement for the residential component of the Kingsclub Development with CAPREIT Limited Partnership (“CAPREIT”) (the “CAPREIT APS”). Further to the CAPREIT APS, each of KLNC, UNKI and CAPREIT GP Inc., an affiliate of CAPREIT, entered into a management agreement dated July 28, 2015 (the “CAPREIT Management Agreement”).
5. Pursuant to the Initial Order, Robert Kofman, the President of KSV and the person with oversight of these proceedings on behalf of the Monitor, or such representative of KSV as Mr. Kofman may designate in writing from time to time, was appointed to the management committee of the Kingsclub Development (the “Management Committee”).
6. As of September 30, 2016, UNKI and KLNC had borrowed approximately \$151 million in connection with the financing of the Kingsclub Development, consisting of an approximately \$69.3 million loan from FCSCC (the “FCSCC Loan”) and \$81.8 million from Bank of Nova Scotia (the “BNS Loan”).
7. UNKI has also borrowed from KLNC: (i) approximately \$2.9 million to fund costs associated with the Kingsclub Development (the “Urbancorp Loan”); and (ii) \$2.1 million, together with Urbancorp Management Inc., an affiliate of UNKI, in connection with the purchase of geothermal assets from KLNC (the “Geothermal Loan”).
8. On September 30, 2016, the Management Committee of the Kingsclub Development authorized additional costs for the Kingsclub Development in the amount of \$24.7 million (the “Cost Increase”). Pursuant to the terms of the Co-Owners Agreement, each Co-Owner is obligated to contribute 50% of the Cost Increase. The Urbancorp CCAA Entities and/or UNKI are not in a position to fund the Cost Increase.
9. Since the commencement of the CCAA Proceedings, the Monitor has considered options to monetize UNKI’s interest in the Kingsclub Development, including commencing formal insolvency proceedings in respect of UNKI so that a sale process could be conducted for UNKI’s interest in the development, is possible.

³ 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%).

10. The Monitor considers that the best approach to maximize value for the UNKI interest at this time is to retain it until the development is completed. The Standstill Agreement assists to accomplish this. Pursuant to the terms of the Standstill Agreement, KLNC has agreed to advance UNKI's portion of the Cost Increase on the terms set out therein and to consider funding further potential Cost Increases, if and when necessary. The Standstill Agreement is not subject to Court approval, but requires such court approval to be sought.

6.1 Standstill Agreement⁴

1. A copy of the Standstill Agreement is attached as Appendix "C". The material terms of the Standstill Agreement are as follows:
 - a) Effective Date: November 7, 2016
 - b) Interim Borrowing: KLNC has agreed to make secured advances to UNKI of up to \$15 million at the interest rate prescribed in the Co-Owners Agreement (the "Capital Contribution Loan") in order to permit UNKI to fund its Cost Increase Capital Contribution and its portion of any additional cost increases approved in accordance with the terms of the Co-Owners Agreement, which provides that either Co-Owner may advance funds to the other Co-Owner for the purposes of funding costs of the Kingsclub Development.
 - c) Security: the Capital Contribution Loan will be secured under an existing charge on UNKI's interest in the Kingsclub Development in favour of KLNC (the "Co-Owners Cross Charge"), but the quantum of such charge shall be increased by \$15 million.
 - d) KLNC and FCSCC agree to forbear from exercising their rights and remedies under their loans provided to UNKI and under the Co-Owners Agreement until the earlier of:
 - o each of the following occurring: (i) completion of the Kingsclub Development; and (ii) repayment in full of the BNS Loan, the Urbancorp Loan, the Geothermal Loan and the amounts funded under the Standstill Agreement (i.e. the Capital Contribution Loan); or
 - o the occurrence of an Additional Event of Default (such earlier date being the "Termination Date");

⁴ Terms not defined in this section have the meanings ascribed to them in the Standstill Agreement.

- e) Additional Events of Default:
- Subject to Section 3(d) of the Standstill Agreement, any Event of Default under the Co-Owners Agreement, the Urbancorp Loan, or the Geothermal Loan that is existing as of the Effective Date or that may occur at any time on or after the Effective Date;
 - any insolvency, bankruptcy, restructuring or similar proceedings, including under any applicable insolvency legislation, are commenced against UNKI, in Canada or elsewhere, or any action is taken by UNKI in response to any such proceedings;
 - UNKI or KSV fails to comply with, or defaults in, the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in the Standstill Agreement;
 - UNKI fails to comply with, breaches, or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in the other Loan Documents;
 - an Event of Default occurs under the BNS Loan; and
 - KLNC and FCSCC fails to increase the amounts available to fund UNKI's Cost Increase Capital Contribution within 30 days of such request being made;
- f) subject to paragraph 6.1 (1)(g) below, UNKI agrees not to:
- seek any creditor protection without the prior consent of KLNC and to oppose any application brought by another party to commence any similar proceeding on an involuntary basis. As the party controlling UNKI, the Monitor agrees not to take any steps that would result in UNKI breaching its obligation; and
 - take any steps to terminate, disclaim or resiliate the Co-Owners Agreement, the CAPREIT APS, the CAPREIT Management Agreement and the Standstill Agreement (the "Material Contracts");
- g) If the Termination date occurs as a result of:
- i. insolvency proceedings being commenced by KLNC, FCSCC or BNS against UNKI, then steps may be taken to place UNKI in any form of Debtor Relief Law and, in such proceedings, UNKI reserves the right to disclaim one or more Material Contracts, and KLNC reserves all rights with respect to such actions;

- ii. KLNC or FCSCC failing to increase the Capital Contribution Loan, then steps may be taken to place UNKI in any form of Debtor Relief Law and, in such proceedings, UNKI reserves the right to disclaim one or more Material Contracts, and KLNC reserves all rights with respect to such actions; and
 - iii. any other reason than (i) or (ii) above, then steps may be taken to place UNKI in any form of Debtor Relief Law and, in such proceedings, provided that funding for UNKI's portion of any additional cost increases approved in accordance with the terms of the Co-Owners Agreement continue to be provided by KLNC pursuant to the Standstill Agreement, UNKI shall not seek to disclaim the Material Contracts.
2. The Monitor recommends the Court approve the Standstill Agreement. The Standstill Agreement provides for an orderly completion of the Kingsclub Development, which has the best prospect of providing value for UNKI. It is unclear whether a sale of the UNKI interest today would generate value for UNKI. A filing of UNKI would be complex and would affect third parties, such as CAPREIT. The Standstill Agreement also provides a mechanism for UNKI to fund Cost Increases associated with the Kingsclub Development, which UNKI would otherwise be unable to fund.

7.0 Bridge on King Inc.

1. High Res Inc. is the sole shareholder of Bridge, which was the registered owner and title nominee for the property municipally known as 38 Joe Shuster Way, Toronto (the "Bridge Property"). The Bridge Condo is a 534 unit residential development which completed construction in mid-2011. The Bridge Condo was registered on April 5, 2013. The 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 Condominium Corporation retained a consultant to conduct a performance audit in order to determine the common element deficiencies with respect to the Bridge Condo. The performance audit identified approximately \$1.8 million in common element deficiencies. After lengthy negotiations (which commenced prior to the CCAA proceedings), the Condominium Corporation and Bridge reached the Settlement Agreement in respect of all common element deficiencies. A copy of the Settlement Agreement is attached as Appendix "D".
3. Pursuant to the Settlement Agreement, Bridge agreed to pay the Condominium Corporation \$450,000, including HST, in exchange for, *inter alia*, the Condominium Corporation agreeing to release Bridge from all claims arising out of the development in respect of common elements at the Bridge Condo.

4. Well prior to the CCAA proceedings, Bridge had posted a \$500,000 cash secured bond (the "Cash Security") with Tarion Warranty Corporation ("Tarion") which was held as security for, among other things, the common element deficiencies. The Monitor has been advised by the Group's management that Tarion has agreed to release the Cash Security so that Bridge can fund the settlement, with the remaining \$50,000 of Cash Security being returned to Bridge. The Settlement Agreement is contingent on Court approval.
5. The Monitor recommends the Court approve the Settlement Agreement as:
 - a) the Settlement Agreement was the result of extensive negotiations between the Condominium Corporation and the management of Bridge. Management has negotiated a significant decrease from the amount claimed in the original performance audit. Management has advised that it believes the Monitor should accept the Settlement Agreement;
 - b) the Monitor has reviewed the performance audit and discussed the terms of the Settlement Agreement with management and believes that the terms of the Settlement Agreement are reasonable; and
 - c) the Monitor understands that the terms of the settlement are acceptable to Tarion.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (e) of this Report.

* * *

All of which is respectfully submitted,



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

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 Partner (King South) Inc.

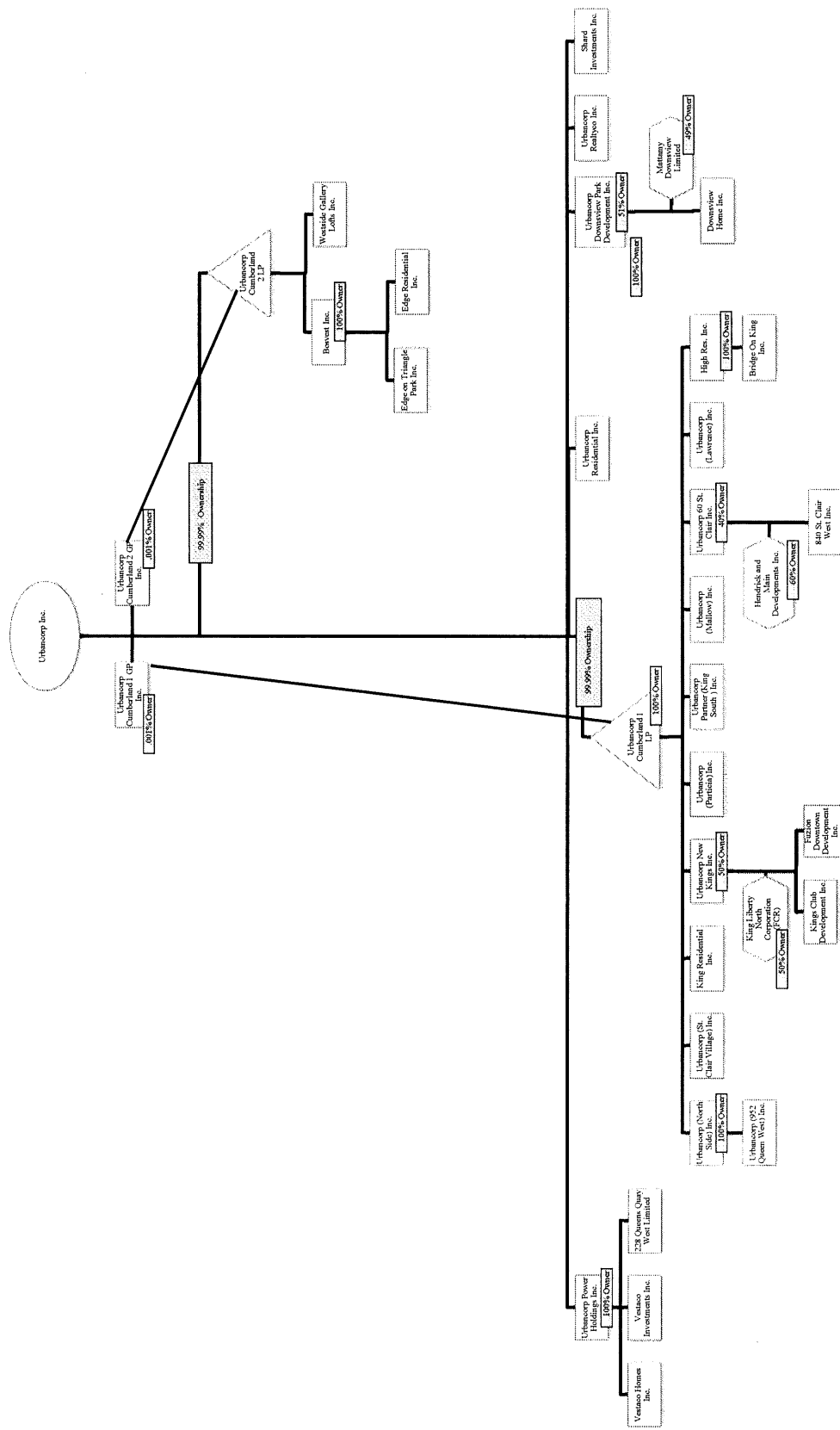
Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

TAB A

Appendix "A"



TAB B

Appendix “B”

SALES AGENCY AGREEMENT

To: Brad J. Lamb Realty Inc. (the "Sales Agent")

In consideration of your acting as Sales Agent in listing and agreeing to offer for sale certain condominium units located at the condominium property known as Westside (150 Sudbury Street, Toronto), Curve (170 Sudbury Street, Toronto) & Bridge (38 Joe Shuster Way, Toronto) (collectively, the "**Property**") on behalf of KSV Kofman Inc., in its capacity as Court-appointed Monitor of Urbancorp Residential Inc. and King Residential Inc. and not in its personal or corporate capacity (the "**Vendor**" or the "**Monitor**"), the undersigned hereby grants to you sole and exclusive authority, irrevocable except in accordance with the terms hereinafter contained, to offer the Property for sale upon the terms and conditions hereinafter set out:

1. The various units comprising the Property shall be offered at the sale prices set out in Schedule "B" to be attached at a later date. (The Vendor may amend these prices upwards or downwards by written notice to Sales Agent). The complete list of units to be sold is attached as Schedule "A" (the "**Units**").
2. For units that are sold on an individual basis, the Vendor agrees to pay you a commission of 2.15 percent, plus HST if applicable, of the total net sale price of each unit comprising the Property. For the purpose of the within agreement, the total net sale price shall be defined as the sale price of each such unit, as set out in Schedule "A" attached hereto, plus without limiting the generality of the foregoing, the price of any parking space(s), locker(s), or appliances, added to or included as part of the purchase price in any Agreement of Purchase and Sale, for any units comprising the Property, less any applicable HST. The cooperating agent will be paid a commission of 2.5 percent for an individual unit on the same basis. All commissions owing (to both the Sales Agent and the Cooperating Agent) will be paid by the Vendor to the Sales Agent.
3. The Vendor further agrees that the full commission calculated in accordance with the provisions of paragraph 2 hereof, shall become due and payable upon the final closing with respect to the relevant Unit.
4. The parties hereto covenant and agree that the within agreement may only be terminated in the event that:
 - I. all of the Units are sold and the final closing with respect to all related Agreements of Purchase and Sale has occurred;

- II. in the discretion of the Monitor if it is dissatisfied, acting reasonably, with the performance of the Sales Agent in conduct of this mandate; and
 - III. the Ontario Superior Court of Justice – Commercial List (the "**Court**") issues an order discharging the Monitor or prohibiting the Monitor from offering the Property for sale.
- b) the within agreement may be terminated by either party giving thirty (30) days written notice to the other party, at any time, provided that in such event all commissions due and payable in accordance with the provisions of paragraph 3 hereof are paid in full, and will continue to be paid in full. For greater certainty, in the event all commissions due to the Sales Agent for all sales that have been entered into by the Sales Agent for prospective purchase but which are not yet firm and binding at the time of such termination, and they become firm and binding thereafter, will be due and payable upon the final closing thereof.
5. The Sales Agent acknowledges and agrees that it has the authority to offer the Property for sale pursuant to an Order of the Court approving the entering into of this Sales Agreement. The Vendor further agrees that it will not hold the Sales Agent responsible for any loss or damage to the persons, property or its contents occurring or arising during the term of this agreement however caused, including without limiting the generality of the foregoing, by way of theft, fire or vandalism, or otherwise than by the gross negligence or willful acts of the Sales Agent, or those for whom in law the Sales Agent is responsible.
 6. The Sales Agent agrees to pay for all marketing costs as discussed, which will include the following:
 - a) E-blasts to all real estate Sales Representatives (both commercial and residential)
 - b) E-blasts to the Sales Agent's database of past purchasers and all property inquiries/registrations
 - c) All graphic design and printing costs associated with site handouts/packages for prospective purchasers
 - d) All costs related to staging 2 units at a time
 7. The Vendor agrees to the following:
 - (a) that the Sales Agent shall have the right to design all marketing material and advertising or other materials pertaining to the Property in its sole discretion, subject to the prior review and approval of the Monitor;
 8. Any commissions payable to co-operating brokers (including Brad J. Lamb Realty Inc. agents working independently and introducing their own clients) for introducing a purchaser to the Property (and then subsequently proceeding with a firm and binding Purchase & Sale Agreement) are outside of this agreement. Said commissions are the responsibility of the Vendor to pay and subject to the Vendor's approval. If a Sales Agent of Brad J. Lamb Realty Inc. (not assigned to the Property) brings a successful sale to a Unit, the total commission will be reduced to 4%.
 9. The within agreement is binding upon the parties hereto and their respective successors and assigns.

Vendor and Sales Agent agree that a facsimile or copy of this agreement shall be legal and binding to all parties.

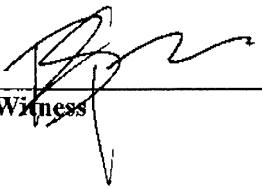
This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in that province. Each of the parties irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the Court over any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such Court and (iii) agrees not to assert that such Court is not a convenient forum for the determination of any such action or proceeding.

No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

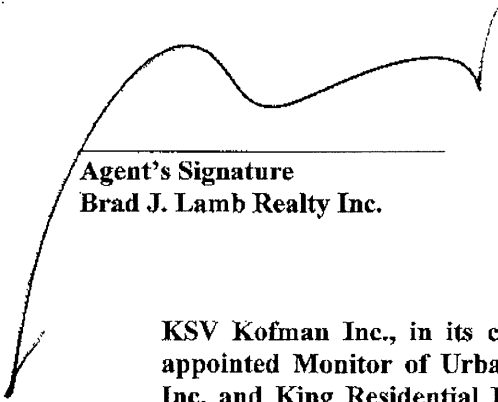
Neither party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written consent of the other party.

This agreement is subject to the approval of the Court.

Dated at TORONTO this 9TH day of December 2016.



Witness



Agent's Signature
Brad J. Lamb Realty Inc.

DEC 8/16

Date

KSV Kofman Inc., in its capacity as Court-appointed Monitor of Urbancorp Residential Inc. and King Residential Inc. and not in its personal or corporate capacity.

Per: Robert Kofman

SCHEDULE A – UNITS TO BE INCLUDED IN RESIDENTIAL SALES

BRIDGE

UNIT	SIZE
102	525SF
104	585SF
105	500SF
201	675SF
202	785SF
416	520SF
710	540SF
1002	690SF
1323	650SF
1418	600SF
1422	650SF
1423	650SF
1909	420SF

CURVE

UNIT	SIZE
101	560SF
103	595SF
106	755SF
107	715SF
110	710SF
116	655SF
214	650SF
316	810SF

WESTSIDE

UNIT	SIZE
106	605SF
430	725SF
531	725SF
1216	630SF
1704	890SF
1802	670SF
2016	630SF

TAB C

Appendix “C”

STANDSTILL AGREEMENT

BETWEEN:

KING LIBERTY NORTH CORPORATION

– and –

URBANCORP NEW KINGS INC.

– and –

**KSV KOFMAN INC., in its role as Monitor of
Urbancorp Cumberland 1 LP,
Urbancorp Cumberland 1 GP Inc. and certain related entities,
and not in its personal capacity**

– and –

FIRST CAPITAL (S.C.) CORPORATION

November 22, 2016

STANDSTILL AGREEMENT

THIS AGREEMENT is made as of the 22nd day of November, 2016, but effective as of November 7, 2016

B E T W E N:

KING LIBERTY NORTH CORPORATION (“KLNC”)

– and –

URBANCORP NEW KINGS INC. (“UNKI”)

– and –

**KSV KOFMAN INC., in its role as Monitor of
Urbancorp Cumberland 1 LP,
Urbancorp Cumberland 1 GP Inc. and certain related entities,
and not in its personal capacity
(the “Monitor”)**

– and –

FIRST CAPITAL (S.C.) CORPORATION (“FCSCC”)

RECITALS:

- A. KLNC and UNKI are co-owners of the lands described in Schedule “A” under the heading “Phase II Lands” (the “**Kingsclub Development**”) and Kingsclub Development Inc. is the registered owner of the Phase II Lands, *inter alia*, as nominee and bare trustee for and on behalf of KLNC and UNKI.
- B. KLNC and UNKI (each a “**Co-Owner**”, and collectively, the “**Co-Owners**”) are parties to an amended and restated Co-Owners Agreement dated February 1, 2012, as amended by amending agreements made as of April 2013, March 28, 2014, July 18, 2014, November 16, 2014 and July 28, 2015 (collectively, the “**Co-Owners Agreement**”).
- C. Each of KLNC and UNKI are borrowers under a credit agreement, originally entered into with FCRI as lender, dated April 19, 2012 and amended on May 15, 2014, November 20, 2014, January 1, 2015, April 30, 2015, June 29, 2015, and July 28, 2015 (the “**Early Works Loan**”).
- D. Pursuant to a loan assignment agreement dated as of May 15, 2014, FCRI assigned its right, title and interest under the Early Works Loan to FCSCC.

- E. UNKI is a borrower pursuant to an amended and restated credit agreement dated as of November 24, 2010 with KLNC as lender (the “**Urbancorp Loan Agreement**”).
- F. KLNC and UNKI, as Vendors, entered into a purchase and sale agreement dated as of July 28, 2015, for the residential component of the Kingsclub Development with CAPREIT Limited Partnership (the “**CAPREIT APS**”). FCRI is a guarantor under the CAPREIT APS.
- G. Further to the CAPREIT APS, each of KLNC, UNKI and CAPREIT GP Inc. have entered into a management agreement dated July 28, 2015 (the “**CAPREIT Management Agreement**”).
- H. KSV was appointed monitor of Urbancorp Cumberland 1 LP, the shareholder of UNKI, and certain related entities, pursuant to an order made under the *Companies' Creditors Arrangement Act* by the Honourable Mr. Justice Newbould on May 18, 2016 (the “**CCAA Order**”).
- I. Pursuant to paragraph 30 of the CCAA Order, Robert Kofman, or such representative of KSV as Mr. Kofman may designate in writing from time to time, was authorized, directed and empowered to act as the representative of UNKI on the Management Committee (as defined in the Co-Owners Agreement) of the Kingsclub Development.
- J. On September 30, 2016, the Management Committee of the Kingsclub Development authorized additional costs for the project in the amount of \$24.7 million (the “**Cost Increase**”) and it is an obligation of each Co-owner under the Co-Owners Agreement to contribute its respective 50% share of the Cost Increase (the “**Cost Increase Capital Contribution**”) to the project.
- K. Neither UNKI, nor the Monitor, is in a position to advance UNKI’s portion of the Cost Increase.
- L. UNKI has requested that KLNC advance funds on UNKI’s behalf on the basis provided for under Section 9.2(b) of the Co-Owners Agreement with respect to UNKI’s Cost Increase Capital Contribution, with such funds to be used solely to pay costs associated with the Kingsclub Development including, without limitation, the Cost Increase.
- M. The Parties acknowledge and agree that the Material Contracts are an integral part of the development and completion of the Kingsclub Development and that the undertaking by UNKI to honour these agreements to the extent provided herein is the primary inducement for KLNC to provide the credit facilities contemplated herein.
- N. The parties have agreed to enter into this Standstill Agreement to provide for an orderly completion of the Kingsclub Development in a manner that will prevent the commencement of court proceedings or the enforcement of security in order to maximize the value of the project which is in the best interest of each of the Co-Owners.

NOW THEREFORE, in consideration of the mutual covenants and agreements between the Parties contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Interpretation

(a) Definitions

Each capitalized term used and not otherwise defined in this Agreement shall have the meaning given to it in the Co-Owners Agreement.

(b) Other Definitions

In this Agreement the following terms have the following meanings:

- (i) **“Approval Order”** has the meaning attributed to such term in Section 7(b).
- (ii) **“BIA”** means the *Bankruptcy and Insolvency Act* (Canada).
- (iii) **“CAPREIT APS”** has the meaning attributed to such term in Recital F.
- (iv) **“CAPREIT Management Agreement”** has the meaning attributed to such term in the Recitals.
- (v) **“CCAA”** means the *Companies’ Creditors Arrangement Act* (Canada).
- (vi) **“CCAA Order”** has the meaning attributed to such term in Recital H.
- (vii) **“Completion”** means the later to occur of the day immediately following the date on which:
 - (A) the option to purchase in favour of KLNC pursuant to Section 10.8(b) of the Co-owners Agreement (the **“Phase 2 Retail Option”**) has expired without KLNC having exercised its option to purchase;
 - (B) KLNC (or an Affiliate thereof) has acquired Urbancorp’s Co-ownership Interest in the Phase 2 Retail Component (each as defined in the Co-owners Agreement) pursuant to the Phase 2 Retail Option;
 - (C) the CAPREIT APS has been terminated and the purchase rights/obligations and/or transfers described in Section 2.2(6) and/or 2.2(7), as applicable, of the CAPREIT APS have been completed; and
 - (D) CapREIT Limited Partnership (or a successor or permitted assign) has purchased all of the Purchased Property (as defined in the CAPREIT APS) pursuant to the terms of the CAPREIT APS.
- (viii) **“Co-Owners”** has the meaning attributed to such term in the Recitals.

- (ix) **“Co-Owners Agreement”** has the meaning attributed to such term in Recital B.
- (x) **“Cost Increase”** has the meaning attributed to such term in Recital J.
- (xi) **“Cost Increase Capital Contribution”** has the meaning attributed to such term in Recital J.
- (xii) **“Early Works Loan”** has the meaning attributed to such term in Recital C.
- (xiii) **“Effective Date”** means the date of this Agreement.
- (xiv) **“FCR Lenders”** means, collectively, KLNC and FCSCC.
- (xv) **“FCRI”** means First Capital Realty Inc.
- (xvi) **“FCSCC”** has the meaning attributed to such term in the pre-amble.
- (xvii) **“Fuzion Geothermal Assets”** means the geothermal utility assets, including any geothermal room units located in the residential condominium building constructed at 20 Joe Shuster Way, Toronto and more particularly described in Schedule “B” attached hereto;
- (xviii) **“Geothermal Loan”** means the agreement pursuant to which KLNC agreed to loan Urbancorp Management Inc. and UNKI the sum of \$2,000,000 on the terms contained in: (i) the purchase agreement between KLNC, as vendor, and Urbancorp Management Inc., as purchaser, in respect of KLNC’s interest in the Fuzion Geothermal Assets dated March 7, 2016, and (ii) the vendor take-back mortgage registered against title to the Fuzion Geothermal Assets on March 7, 2016;
- (xix) **“KLNC”** has the meaning attributed to such term in the pre-amble.
- (xx) **“Kingsclub Development”** has the meaning attributed to such term in Recital A.
- (xxi) **“Loan Agreements”** means, collectively, the Urbancorp Loan Agreement and the Early Works Loan Agreement and all security with respect thereto.
- (xxii) **“Material Contracts”** means the Co-Owners Agreement, the CAPREIT APS, the CAPREIT Management Agreement and this Agreement.
- (xxiii) **“Parties”** means KLNC, FCSCC, the Monitor and UNKI, and **“Party”** means any one of them.
- (xxiv) **“Relief Period”** means the period of time starting on the Effective Date and ending on the Termination Date.

- (xxv) “**Termination Date**” has the meaning attributed to such term in Section 3(a).
- (xxvi) “**Urbancorp CCAA Entities**” means 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., 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. and Urbancorp Realtyco Inc.
- (xxvii) “**Urbancorp Cumberland 1**” means, collectively, Urbancorp Cumberland 1 LP and Urbancorp Cumberland 1 GP Inc.
- (xxviii) “**Urbancorp Loan Agreement**” has the meaning attributed to such term in Recital E.
- (xxix) “**UNKI**” has the meaning attributed to such term in the pre-amble.
- (xxx) “**UNKI Co-Owners Cross Charge**” means, collectively, (i) a charge in the principal amount of \$75,000,000 by UNKI in favour of KLNC which was registered on October 8, 2009 as Instrument No. AT2199344; and (ii) a charge in the principal amount of \$75,000,000 by UNKI in favour of KLNC which was registered on November 24, 2010 as Instrument No. AT2559562, as such Charges were amended and assigned by UNKI to Kingsclub Development Inc. pursuant to a mortgage and other security assumption and confirmation agreement made as of April 19, 2012 between Kingsclub Development Inc., KLNC, UNKI and Fuzion Downtown Developments Inc.

(c) **Rules of Interpretation**

- (A) Number and Gender. In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.
- (B) Headings. Headings, subheadings and any table of contents or index contained in this Agreement are inserted for convenience of reference only, and will not affect the construction or interpretation of the Agreement.
- (C) Subdivisions. Unless otherwise expressly stated, reference herein to a Schedule or to an Article, Section, paragraph or other subdivision

is a reference to such Schedule to this Agreement, or such Article, Section, paragraph or other subdivision of this Agreement.

- (D) Time. Time is and will be of the essence of this Agreement. Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of the time period is not a Banking Day, the time period will end on the next Business Day.
- (E) Statutes, Regulations and Rules. Unless otherwise expressly stated, any reference in this Agreement to any applicable Law is and will be a reference to that applicable Law as amended, supplemented, re-enacted or replaced from time to time, and, in the case of a statute, shall include all regulations and rules in force and effect in respect of such statute.
- (F) Monetary References. Whenever an amount of money is referred to herein, such amount will, unless otherwise expressly stated, be in Canadian Dollars.

(d) **Schedules**

The following is a list of the Schedules to this Agreement:

- Schedule "A" - Phase II Lands
- Schedule "B" - Geothermal Assets

2. Acknowledgments

(a) **Acknowledgments of UNKI**

UNKI acknowledges that:

- (i) jointly with KLNC as of September 30, 2016, it is indebted to FCSCC in the amount of \$69,279,302.44 (including accrued interest) with respect to the Early Works Loan;
- (ii) as of September 30, 2016, it is indebted to KLNC in the amount of \$2,851,434.90 (including accrued interest) with respect to the Urbancorp Loan Agreement;

- (iii) jointly with KLNC, as of October 3, 2016, it is indebted to Bank of Nova Scotia in the amount of \$81,739,390.00 with respect to the BNS Credit Facility;
- (iv) jointly with Urbancorp Management Inc., as of September 30, 2016, it is indebted to KLNC in the amount of \$2,060,000.00 (including accrued interest) with respect to the Geothermal Loan;
- (v) each of the Early Works Loan, the Urbancorp Loan Agreement and the BNS Credit Facility are secured against UNKI's interest in the Kingsclub Development;
- (vi) UNKI is unable to make the Cost Increase Capital Contribution and, at UNKI's request, KLNC is agreeing herein to make a loan to UNKI under the terms of the Co-Owners Agreement to fund UNKI's Cost Increase Capital Contribution; and
- (vii) it is currently in the best interests of the Kingsclub Development and UNKI that construction continue in the normal course and that no steps are taken to place UNKI into any form of Debtor Relief Law including, without limitation, the existing CCAA Proceedings for the Urbancorp CCAA Entities.

(b) **Acknowledgements of KSV**

KSV acknowledges that, until the Termination Date:

- (i) as Monitor of Urbancorp Cumberland 1, the shareholder of UNKI, it has an interest in the Kingsclub Development; and
- (ii) it is in the best interests of the Kingsclub Development, UNKI and Urbancorp Cumberland 1 that construction continue in the normal course and that no steps are taken to place UNKI into any form of Debtor Relief Law including, without limitation, the existing CCAA Proceedings for the Urbancorp CCAA Entities.

(c) **Acknowledgements of UNKI and KSV**

UNKI and KSV acknowledge that upon and after the Termination Date:

- (i) if the Termination Date occurs as a result of any insolvency, bankruptcy, restructuring or similar proceedings, including under any Debtor Relief Law, being commenced by the FCR Lenders or BNS against UNKI, in Canada or elsewhere, then steps may be taken to place UNKI into any form of Debtor Relief Law including, without limitation, the existing CCAA Proceedings for the Urbancorp CCAA Entities and, in such proceedings, UNKI reserves the right to seek to disclaim any one or more of the Material Contracts (and the FCR Lenders reserve all rights with respect thereto);

- (ii) if the Termination Date occurs as a result of the FCR Lenders failing to increase to the amounts available pursuant to Section 5 of this Agreement upon a request being made pursuant to Section 2(d)(iii) of this Agreement, then steps may be taken to place UNKI into any form of Debtor Relief Law including, without limitation, the existing CCAA Proceedings for the Urbancorp CCAA Entities and, in such proceedings, UNKI reserves the right to seek to disclaim any one or more of the Material Contracts (and the FCR Lenders reserve all rights with respect thereto); and
- (iii) if the Termination Date occurs for any other reasons other than (i) or (ii) above, then steps may be taken to place UNKI into any form of Debtor Relief Law including, without limitation, the existing CCAA Proceedings for the Urbancorp CCAA Entities and, in such proceedings, provided that funding for UNKI's portion of any additional cost increases approved in accordance with the terms of the Co-owners Agreement continue to be provided by KLNC pursuant to this Agreement, UNKI shall not seek to disclaim any one or more of the Material Contracts, and each of UNKI and KSV shall oppose any steps taken by any other party seeking to disclaim such contracts.

(d) **Acknowledgments of the FCR Lenders**

Each of the FCR Lenders acknowledge that:

- (i) it is in the best interests of the Kingsclub Development and the FCR Lenders that construction continue in the normal course and that no steps are taken to place UNKI into any form of Debtor Relief Law including, without limitation, the existing CCAA Proceedings for the Urbancorp CCAA Entities;
- (ii) KLNC, or an affiliate thereof, should advance funds to UNKI, secured against UNKI's interest in the Kingsclub Development, in order to fund UNKI's Cost Increase Capital Contribution; and
- (iii) in the event that the Management Committee of the Kingsclub Development authorizes further additional costs, and UNKI is not able to contribute its share of such additional costs, the FCR Lenders will consider in good faith the request for an increase to the amounts available pursuant to Section 5 of this Agreement.

(e) **Acknowledgments of UNKI and KLNC**

- (i) UNKI and KLNC acknowledge that the Cost Increase has been approved by the Management Committee, that funds are not otherwise available and must be funded by way of a capital call, and deem this agreement to satisfy any requirement in the Co-Owners Agreement for the Management Committee to issue in writing a call for capital from the Co-Owners with respect to the Cost Increase or any part thereof.

3. **Relief**

(a) **Forbearance of Enforcement Action**

Each of the FCR Lenders, in reliance upon the acknowledgements, confirmations, representations, warranties, covenants and agreements of UNKI and KSV contained in this agreement, and subject to the terms and conditions of this agreement and any documents or instruments executed in connection herewith, agree to forbear from exercising their rights and remedies under the Loan Documents and the Co-Owners Agreement commencing on the Effective Date and ending on the earlier of:

- (i) Each of the following occurring: (x) Completion of the Kingsclub Development project; and (y) indefeasible repayment in full, in cash of the obligations outstanding under each of the BNS Credit Agreement, the Loan Documents, the Geothermal Loan and this Agreement; and
- (ii) the occurrence or existence of an Additional Event of Default,

(such earlier date being the "**Termination Date**").

Effective upon the Termination Date, the agreement of the FCR Lenders to forbear from exercising their rights and remedies as set forth herein shall automatically and without further notice, demand or other requirement expire and be of no further force and effect, it being expressly agreed that the effect of such expiration will be to permit the FCR Lenders to exercise, without further notice or demand, their rights and remedies immediately. For greater certainty, nothing in this Agreement (including Section 3(d) hereof): (i) restricts, alters or limits any rights that the FCR Lenders have to receive any amounts payable to UNKI under the CAPREIT APS or section 10.8 of the Co-Owners Agreement and all rights and remedies with respect to such payments are preserved; and (ii) restricts KLNC's right and entitlement to receive payments under the Geothermal Loans from any proceeds received from the use of the Geothermal Assets; (iii) restricts, alters or limits KLNC's rights to receive payments pursuant to section 8.1(a)(iv) of the Co-Owners Agreement; and (iv) restricts, alters or limits any rights that First Capital (King Liberty-Retail) Corporation has under a lease agreement with Urbancorp Toronto Management Inc. dated September 21, 2011, as amended on March 2, 2016, with respect to the premises located at 120 Lynn Williams Street, Toronto, Ontario.

(b) **No Other Waivers and Reservation of Rights**

No waiver or indulgence by the FCR Lenders of any of their rights and remedies hereunder or under the Loan Agreements or the Co-Owners Agreement shall be construed as a waiver of any other or subsequent right or remedy and no delay or omission in the exercise or enforcement of their rights and remedies hereunder shall be construed as a waiver of any right or remedy of such parties and they reserve all rights, claims and remedies that they have or may have against UNKI hereunder or under the Loan Agreements, the Co-Owners Agreement or under applicable law:

- (i) except as expressly set out herein, the FCR Lenders have not waived, and are not by this Agreement waiving, and have no intention of waiving, any

Default or Event of Default (as such terms are defined in the Early Works Loan and the Urbancorp Loan Agreement) that exists or may be continuing on the Effective Date or any Additional Event of Default; and

- (ii) subject to Section 3(a) of this Agreement, the FCR Lenders reserve the right, in their sole discretion, to exercise any or all of their rights or remedies under any of the Loan Agreements, the Geothermal Loan, the Co-Owners Agreement or applicable Law as a result of any Additional Events of Default, and the FCR Lenders have not waived any such rights or remedies.

(c) **Additional Agreements**

UNKI agrees to the following:

- (i) Adherence to Agreements. Subject to Section 3(d), UNKI shall strictly adhere to all of the terms, conditions and covenants of this Agreement, the Material Contracts, the Geothermal Loan, and the Loan Agreements.
- (ii) Corporate Status. UNKI shall maintain its existence as a valid and subsisting corporation.
- (iii) Operation of Business. Notwithstanding anything else in the Loan Documents, UNKI shall not, other than in the ordinary course of business and consistent with past practice, incur or enter into any new material liability or obligation, of any nature or kind, during the Relief Period, without the prior written consent of KLNC.
- (iv) Continuation of Business without Interruption. Subject to section 2(c) hereof: (a) UNKI shall not seek any form of protection from its creditors, whether pursuant to any Debtor Relief Law or any similar legislation, without the prior written consent of KLNC; and (b) UNKI shall oppose any application brought by any other party to commence any similar proceeding on an involuntary basis.
- (v) No Interference with Material Contracts. Subject to section 2(c) hereof, UNKI agrees that it shall take no steps to terminate, disclaim or resiliate the Material Contracts and agrees to oppose any attempt to terminate, disclaim or resiliate any Material Contract.
- (vi) Geothermal Assets. UNKI agrees that payments received for the use of the Geothermal Assets shall be applied against the Geothermal Loan in accordance with its terms. In the event that UNKI's interest in the Geothermal Assets are sold, UNKI agrees to maintain any proceeds, after repayment of the Geothermal Loan, in an account in UNKI's name.

As Monitor of Urbancorp Cumberland 1 LP, the shareholder of UNKI, KSV agrees that it shall not take any action or steps that would result in UNKI breaching its obligations herein,

and it shall oppose any steps taken by UNKI or any other party which could result in UNKI breaching such obligations.

(d) **Reservation**

Notwithstanding any other provision of this Agreement, the FCR Lenders acknowledge and agree that any failure of UNKI to make a payment of principal, interest, fees and any other amounts when due under any of the Material Contracts, Loan Agreements and Geothermal Loan, or any breach of any representation, warranty or covenant under any of the Material Contracts Loan Agreements and Geothermal Loan (together with any and all related security agreements) arising as a result of such failure, shall not constitute a breach of any terms, representations or warranties of this Agreement and, specifically without limiting the generality of the foregoing, shall not constitute or otherwise be maintained as grounds for an Additional Event of Default hereunder.

4. **Representations and Warranties**

(a) **Representations and Warranties of UNKI**

UNKI hereby represents and warrants to each of KLNC and FCSCC as follows:

- (i) each of the Recitals set out above is true and correct in all material respects and that such Recitals form an essential part of this Agreement;
- (ii) this Agreement, the Loan Agreements, the Geothermal Loan and any other agreements or documents entered into by it pursuant to this Agreement have been duly authorized, executed and delivered, are in full force and effect, as modified hereby, and constitute legal, valid and binding obligations enforceable against it in accordance with their terms;
- (iii) each of the representations and warranties made by UNKI in any of the Loan Agreements and the Geothermal Loan was true and correct when made, and in all material respects, or in all respects to the extent such representations and warranties are already qualified by materiality, remains, subject to Section 3(d) of this Agreement, true and correct on the Effective Date (except to the extent stated to be made only as of a specified date), with the same full force and effect as if each of those representations and warranties had been made by UNKI on the date of, and within, this Agreement;
- (iv) there is no matter, fact or event that is known to it that has not been disclosed to the FCR Lenders that is likely to have a material adverse effect on the performance of their obligations under this Agreement, and it has conducted such investigations as it considers reasonably necessary to make this representation and warranty; and
- (v) the authorization, execution and delivery and performance of this Agreement by it will not violate any applicable Law or any order, declaration or judgment binding on it, any consent, license, permit or

approval to which it is party or beneficiary, or any agreement to which it is a party and will not result in, or require, the creation or imposition of any lien on any of its assets, property or undertaking.

(b) **Representations and Warranties of KSV**

KSV hereby represents and warrants to the FCR Lenders that:

- (i) pursuant to the CCAA Order, it is the Monitor and sole decision-maker for Urbancorp Cumberland 1; and
- (ii) subject to obtaining the Approval Order, this Agreement, and any other agreements or documents entered into pursuant to this Agreement have been duly authorized, executed and delivered by, as applicable to the extent it is a party thereto, are in full force and effect and constitute legal, valid and binding obligations enforceable against it in accordance with their terms.

(c) **Representations and Warranties of KLNC and FCSCC**

Each of KLNC and FCSCC hereby represents and warrants to UNKI as follows:

- (i) each of the Recitals set out above is true and correct in all material respect and that such Recitals form an essential part of this Agreement; and
- (ii) this Agreement, and any other agreements or documents entered into pursuant to this Agreement have been duly authorized, executed and delivered by them, as applicable to the extent the party thereto, are in full force and effect, and constitute legal, valid and binding obligations enforceable against it in accordance with their terms.

5. Interim Borrowing

In order to permit UNKI to fund its Cost Increase Capital Contribution and its portion of any additional cost increases approved in accordance with the terms of the Co-owners Agreement, and as consideration for the undertakings and agreements set out herein, the Parties have agreed as follows: (i) KLNC has agreed to make secured advances to UNKI as permitted by section 9.2(b) of the Co-Owners Agreement up to the maximum amount of \$15 million (the “**Capital Contribution Loan**”), and in accordance with the terms and conditions set out in section 9.2(b) of the Co-Owners Agreement; (ii) interest shall accrue on the Capital Contribution Loan from the date of the first advance thereunder in accordance with the provisions of the Co-Owners Agreement; (iii) UNKI agrees and acknowledges that the advances contemplated by this section shall be secured by the UNKI Co-Owners Cross Charge; (iv) KLNC and UNKI hereby agree to increase the principal amount of the UNKI Co-Owners Charge to \$90 million and register such amended charge on title to the Kingsclub Development; (v) UNKI, as beneficial owner, agrees to enter into a beneficial owner’s direction in favour of Kingsclub Development Inc. to authorize and direct Kingsclub Development Inc. to enter into the amended charge referenced in (iv), and to confirm that it remains liable for the debts, covenants under such amended charge; and (vi) KLNC

and UNKI will work co-operatively to obtain any necessary consent from BNS to the loan and security contemplated by this provision.

The Capital Contribution Loan shall be used solely for the following permitted purposes:

- (i) to fund UNKI's Cost Increase Capital Contribution; and
- (ii) to fund payments to creditors that have provided goods or services to the Kingsclub Development where funds are not available under the BNS Facility until the Cost Increase is fully funded by the Co-Owners.

6. Conditions to Effectiveness

(a) **Conditions to Effectiveness**

This Agreement, including, without limitation, the agreement of the FCR Lenders to forbear enforcement contained herein, shall not be effective unless and until:

- (i) The FCR Lenders have received a copy of this Agreement, duly authorized, executed and delivered by UNKI and KSV;
- (ii) The principal amount of the UNKI Co-Owners Charge shall have been increased to \$90 million and such amended charge shall have been registered as contemplated by Section 5;
- (iii) Subject to Section 3(d) hereof, no Event of Default has occurred under the Co-Owners Agreement (except for any default related to payment of UNKI's Cost Increase Capital Contribution);
- (iv) Subject to Section 3(d) hereof, no Default or Event of Default (as such terms are defined and used in each of the Loan Agreements) has occurred under the Loan Agreements; and
- (v) BNS shall have provided its consent to this Agreement and to each of the documents contemplated by this Agreement.

(b) **Post-Closing Best Efforts Requirement for Court Approval**

Each of the parties hereto agree that they shall use commercially reasonable efforts as soon as practicable to obtain an order in the CCAA proceedings approving this Agreement and declaring that the obligations of UNKI and KSV under this Agreement, including those set out in Section 3 hereof, are approved, such order to be in a form that is satisfactory to each of KSV and the FCR Lenders (the "Approval Order").

7. Events of Default under the Agreement

(a) **Events of Default**

Subject to Section 7(b), the following shall each be and be considered to be an “**Additional Event of Default**” under this Agreement (without limiting any event, action or occurrence that constitutes a Default or Event of Default under the Loan Agreements):

- (i) subject to Section 3(d), any Event of Default under the Co-Owners Agreement, the Loan Agreements or the Geothermal Loan that is existing as of the Effective Date or that may occur at any time on or after the Effective Date;
- (ii) any insolvency, bankruptcy, restructuring or similar proceedings, including under any Debtor Relief Law, are commenced against UNKI, in Canada or elsewhere, or any action is taken by UNKI in response to any such proceedings;
- (iii) UNKI or KSV, as the case may be, fails to comply with or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in this Agreement;
- (iv) UNKI fails to comply with, breaches, or defaults in the performance or observance of any of the terms, conditions, covenants, agreements or undertakings under or provided for in the other Loan Documents (other than as contemplated by Section 3(d) hereof);
- (v) an Event of Default occurs under the BNS Credit Agreement; and
- (vi) the FCR Lenders fail to increase to the amounts available pursuant to Section 5 of this Agreement upon a request being made pursuant to Section 2(d)(iii) of this Agreement within 30 days of such request being made.

(b) **Notice Required**

Notwithstanding Section (a) hereof, the occurrence of the events set out in Sections (a)(i), (a)(iii) and (a)(iv) shall only become an Additional Event of Default hereunder upon the FCR Lenders declaring such event to be an Additional Event of Default in writing.

(c) **Reservation of Rights**

Nothing in this Agreement shall prejudice any of the FCR Lenders’ respective rights to pursue any of their remedies including, without limitation, enforcing the Loan Agreements or the Co-Owners Agreement upon the Termination Date (whether arising from the expiration or termination of the Relief Period or otherwise). Upon the occurrence of an Additional Event of Default, KLNC shall not be obligated to provide further advances pursuant to Section 5 of this Agreement.

8. General Provisions

(a) **Entire Agreement**

This Agreement, together with the other Loan Documents and the agreements and other documents to be delivered pursuant to this Agreement, constitute the entire agreement between the FCR Lenders on the one hand, and UNKI or KSV on the other hand, pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties, waivers or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Loan Documents or any other agreements and documents delivered pursuant to this Agreement.

(b) **Severability**

If the whole or any portion of this Agreement or application thereof to any circumstance will be held invalid or unenforceable to an extent that does not affect the operation of this Agreement in a fundamental way, the remainder of this Agreement or its application to any circumstance other than to which it has been held invalid or unenforceable, will not be affected thereby and will be valid and enforceable to the fullest extent permitted by applicable Law.

(c) **Loan Agreements**

In all respects, other than as expressly set out herein, the provisions of the Loan Agreements shall remain in full force and effect, and all such Loan Agreements are hereby specifically ratified, restated, and confirmed by all Parties that are a party thereto as of the Effective Date.

(d) **Governing Law**

This Agreement will be governed by and construed in accordance with the law in force in the Province of Ontario and the federal laws of Canada applicable therein, from time to time.

(e) **Attornment**

The Parties hereto do hereby irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario for all matters arising out of or relating to this Agreement or any of the transactions contemplated thereby and to the extent legally permitted, waive any right they may have to, or to apply for, trial by jury in connection with any matter, action, proceeding, claim or counterclaim arising out of or relating to the Agreement or any of the transactions contemplated hereby.

(f) **Conflicts**

To the extent that there is any inconsistency or ambiguity between the provisions of this Agreement, and any of the Loan Agreements, the Material Contracts or the Geothermal Loan Agreement, the provisions of this Agreement will govern to the extent necessary to eliminate such conflict, inconsistency or ambiguity.

(g) **Further Assurances**

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, all at the expense of UNKI.

(h) **Enurement**

This Agreement shall be binding upon and enure to the benefit of each of the Parties and its respective successors and permitted assigns.

(i) **Costs and Expenses**

UNKI hereby absolutely and unconditionally agrees to pay to and fully indemnify the FCR Lenders, whether or not all or any of the transactions contemplated by this Agreement are consummated, all reasonable fees and disbursements of any counsel to the FCR Lenders, any other consultant (financial, appraiser, technical, or otherwise, including any FCR Lender advisor) or agent and all other expenses incurred by the FCR Lenders in connection with this Agreement or the Loan Agreements, including, without limitation: (a) reasonable legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement or the Loan Agreements; (b) all reasonable expenses of advisors and consultants to the FCR Lenders (including, for certainty, (i) legal expenses on a full indemnity basis and (ii) all costs and expenses of any advisor or consultant incurred in connection with the protection and enforcement of this Agreement or the Loan Agreements.

UNKI agrees that the legal fees incurred by the FCR Lenders and their affiliates with respect to protection and enforcement of the Loan Agreements are for the account of UNKI and shall be added to the indebtedness of UNKI owing to KLNC under the Urbancorp Loan Agreement. As of September 30, 2016, the amount of such legal fees that had been invoiced was \$266,019.55.

(j) **Survival of Representations and Warranties**

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document, and no investigation by the FCR Lenders or any closing shall affect the representations and warranties or the rights of the FCR Lenders to rely upon such representations and warranties.

(k) **Assignment**

UNKI and KSV shall not be entitled to assign their respective rights and/or obligations hereunder or any interest herein without the prior written consent of the FCR Lenders.

(l) **Limited Liability of KSV**

The Parties acknowledge that KSV is executing this document solely in its capacity as Monitor of the Urbancorp CCAA Entities and not in its personal capacity.


(m) **Execution**

This Agreement may be executed in any number of counterparts (including by facsimile transmission or other electronic transmission) and by different Parties in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above mentioned.

KING LIBERTY NORTH CORPORATION

Per: 
Name: ROGER CHOUINARD

Title:

Per: _____
Name:

Title:

URBANCORP NEW KINGS INC.

Per:

Name:

Title:

Per:

Name:

Title: *President*

KSV KOFMAN INC., in its role as
Monitor of Urbancorp Cumberland 1 LP,
Urbancorp Cumberland 1 GP Inc. and
certain related entities, and not in its
personal capacity

Per: 

Name: ROBERT KOFMAN

Title: PRESIDENT

Per:

Name:

Title:

**FIRST CAPITAL (S.C.)
CORPORATION**

Per:



Name: ROGER CHOUINARD

Title: VICE PRESIDENT & SECRETARY

Per:

Name: _____

Title:

Schedule "A"

Phase II Lands

PIN 21298-0366(LT)

Part of Block 6, Plan Ordnance Reserve, Designated as Part 1, Plan 66R-22678;
Together with an easement over Part of Block 6, Plan Ordnance Reserve, designated as Part 4,
Plan 66R-22678 for the purposes as set out in AT702144;
Together with a right-of-way over Part of Block 6, Plan Ordnance Reserve, designated as Part 3,
Plan 66R-22678 for ingress and egress of pedestrians and motor vehicles until such time as the
said Part 3, Plan 66R-22678 is dedicated as a public roadway as described in AT1276608; City Of
Toronto.

PIN 21298-0473

Part of Block 6, Plan Ordnance Reserve, designated as Part 1 on Plan 66R-21448;
Together with an easement as in CT712270; City Of Toronto.

Schedule "B"

Geothermal Assets

PIN 26348-0287

UNIT 39, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0637

UNIT 117, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0638

UNIT 118, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0639

UNIT 119, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0640(LT)

UNIT 120, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0641(LT)

UNIT 121, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0642(LT)

UNIT 122, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0643(LT)

UNIT 123, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

PIN 76348-0644(LT)

UNIT 124, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

TAB D

Appendix “D”

RELEASE AND SETTLEMENT AGREEMENT

BETWEEN:

BRIDGE ON KING INC.

(hereinafter called the “**Developer**”)

OF THE FIRST PART

-and-

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302**

(hereinafter collectively called the “**Corporation**”)

OF THE SECOND PART

WHEREAS the Developer is the Declarant of the Corporation and has constructed a condominium (the “**Building**”) on the lands described in the Declaration and Description of the Corporation registered pursuant to the to the *Condominium Act, 1998*, S.O. 1998, C 19 (the “**Act**”);

AND WHEREAS the Corporation was created by the registrations of its Declaration and Description;

AND WHEREAS the Developer is currently an applicant in proceedings pursuant to the *Companies' Creditors Arrangement Act* before the Ontario Superior Court of Justice – Commercial List (the “**CCAA Proceedings**”);

AND WHEREAS the parties have agreed to enter into this Release and Settlement Agreement (the “**Agreement**”);

NOW THEREFORE in consideration of the sum of (\$398,230.09 plus HST \$51,769.91) \$450,000.00 DOLLARS paid by the Developer to the Corporation and in consideration of the mutual covenants and agreements set out herein, the parties hereto agree as follows:

1. The Corporation on behalf of itself, and for and on behalf of each and every unit owner, insofar as each owner has an undivided interest in the common elements, and its and their respective heirs, trustees, administrators, successors and assigns hereby releases and forever discharges the Developer and its successors and assigns, legal representatives, shareholders, directors, officers, employees and agents, (the “**Releasees**”) of and from all manner of actions, causes of action, suits, debts, dues, accounts, assessments, bonds, covenants, contracts, complaints, claims and demands for damages, monies, losses,

indemnity, costs, fees, claims for return of fees, interest in loss, profits or loss thereof or injuries howsoever arising which hereto may have been or may hereafter be sustained by the Corporation arising out of the development, construction work, design, engineering, consulting, architectural services and other services with respect to the common elements of a residential condominium complex located at 38 Joe Shuster Way in Toronto, Ontario, including, without limitation, any and all alleged deficiencies identified or not identified in the First and Second year Performance Audits and for which any warranty claim could have been initiated, and from any and all actions, causes of action, claims or demands of whatsoever nature, whether in contract or in tort or arising as a result of a fiduciary duty or by virtue of any statute or upon or by reason of any damage, loss or injury arising out of the matters set forth above.

2. Without limiting the generality of the foregoing, the Corporation declares that the intent of this Release and Settlement Agreement is to conclude all issues arising from the matters set forth above and it is understood and agreed that this Release is intended to cover, and does cover, not only all known injuries, losses and damages, but also injuries, losses and damages not now known or anticipated but which may later develop or be discovered, including all the effects and consequences thereof.
3. Notwithstanding the foregoing, this Release and Settlement Agreement shall not affect or apply to: (a) the Corporation's warranty that remains in effect pursuant to the *Ontario New Home Warranties Plan Act* in respect of any "major structural defect"; and, (b) the Developer's obligation to transfer the Bridge Visitor Parking Units, as that term is defined in the Corporation's declaration.
4. It is agreed and understood that the Corporation will not make any claim or take any proceedings against the Releasees or any of them, or any person or corporation who might claim, in any manner or forum, contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or under any successor legislation thereto, and/or under the *Rules of Civil Procedure*, from the Releasees or any of them discharged by this Full and Final Release, in connection with the matters outlined above. It is further agreed and understood that if the Corporation commences such an action, or takes such proceedings, and the Releasees or any of them is added to such proceeding in any manner whatsoever, whether justified in law or not, the Corporation will immediately discontinue the proceedings and/or claims, and the Corporation will be liable to any therein named Releasee for the legal costs incurred in any such proceeding, on a substantial indemnity basis. This Full and Final Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Corporation with respect to the matters covered by this Release and Settlement

Agreement. This Release and Settlement Agreement may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by the Corporation in any subsequent action that the other parties in the subsequent action were not privy to formation of this Release.

5. The Corporation further covenants and agrees that in the event the Corporation or any owner or mortgagee of a unit in the Corporation makes any claim or takes or continues any proceedings against any person, partnership or corporation which then claims contribution, indemnity or relief over, against the Releasees, pursuant to the provisions of any statute, agreement or otherwise, with respect to any of the matters which are the subject matter of this Release and Settlement Agreement, the Corporation shall indemnify and save harmless the Releasees from any such claims, including all costs on a full indemnity basis of defending such actions.
6. Each of the parties hereto agree to give all such further assurances and execute all such further release documents as may be reasonably required from time to time to effectively accomplish the intent of the Agreement.
7. The Corporation agrees that it will sign this Release and Settlement Agreement with the understanding that it shall be delivered to the law firm of Harris Sheaffer LLP which shall hold same in escrow until the settlement funds of \$450,000.00 are delivered to the Corporation. The Developer agrees that it will deliver the settlement funds to the Corporation within 30 calendar days of all of the following conditions having been met: (a) the Corporation delivering this signed Release and Settlement Agreement to Harris Shaeffer LLP; (b) the receipt of the written approval of Tarion Warranty Corporation that funds being held by Harris Shaeffer LLP as security for a bond can be released to the Corporation to fund this settlement agreement; and (c) the Ontario Superior Court of Justice – Commercial List issuing an order within the CCAA Proceedings approving this Release and Settlement Agreement and of the Developer's entering into of same.
8. This Agreement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.
9. Any notices required to be delivered pursuant to this Agreement shall be delivered and deemed to have been effectively delivered by:

Email transmission:

(i) to the Developer c/o tedsaskin@gmail.com

(ii) to the Corporation c/o sunny@goldview.ca

Delivery:

(i) to the Developer

120 Lynn Williams Street, Suite 2A
Toronto, Ontario, M6K 3N6

(i) to the Corporation

38 Joe Shuster Way
Toronto, Ontario, M6K 0A5

or at such other address or facsimile number as the Corporation or the Developer advises in writing.

IN WITNESS WHEREOF, we have hereunto affixed our corporate seals attested by the hands of our proper officers, this ____ day of _____, 2016

**TORONTO STANDARD CONDOMINIUM
CORPORATION NO. 2302**

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the Corporation

BRIDGE ON KING INC.

Per:

Name:

Title:

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) WEDNESDAY, THE 14TH
)
JUSTICE) DAY OF DECEMBER, 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
(Approval of Additional Matters)**

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 the Standstill Agreement, Settlement Agreement, Sales Process and Sales Agency Agreement (all as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

DRAFT

ON READING the Notice of Motion of the Monitor and the Tenth Report of the Monitor dated December 9, 2016 (the "**Report**") and on hearing the submissions of respective counsel for the Monitor, the CCAA Entities and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service as filed:

SERVICE

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

STANDSTILL AGREEMENT

2. **THIS COURT ORDERS** that the Standstill Agreement entered into between King Liberty North Corporation ("**KLNC**"), Urbancorp New Kings Inc. ("**UNKI**"), the Monitor and First Capital (S.C.) Corporation on November 22, 2016 with an effective date of November 7, 2016 (the "**Standstill Agreement**"), and UNKI's and the Monitor's obligations thereunder, be and are hereby approved.

3. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of

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UNKI and any bankruptcy order issued pursuant to any such applications;
and

- (c) any assignment in bankruptcy made in respect of UNKI;

the approval of the Standstill Agreement and all transactions contemplated therein, including any security granted with respect thereto, shall be binding on any trustee in bankruptcy that may be appointed in respect of UNKI and shall not be void or voidable by creditors of UNKI, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

SETTLEMENT AGREEMENT

4. **THIS COURT ORDERS** that the Release and Settlement Agreement to be entered into between Bridge on King Inc. ("**BOKI**") and Toronto Standard Condominium Corporation No. 2302 ("**TSCC 2302**") (the "**Settlement Agreement**"), in substantially the same form as appended to the Report, be and is hereby approved and the Monitor be and is hereby authorized and directed to execute the Settlement Agreement on behalf of BOKI and to take such additional steps and execute such additional documents as may be necessary or desirable in connection with the Settlement Agreement.

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CONDOMINIUM UNITS SALES PROCESS

5. **THIS COURT ORDERS** that sales process for the condominium units that Urbancorp Residential Inc. and King Residential Inc. are currently the registered owners of, as outlined in the Report, (the "**Sales Process**") be and is hereby approved and that the Monitor be and is hereby authorized and directed to enter into a Sales Agency Agreement with Brad J. Lamb Realty Inc. ("**Lamb Realty**"), in substantially the same form as appended to the Report (the "**Sales Agency Agreement**"), with respect thereto and to take such additional steps and execute such additional documents as may be necessary or desirable in connection therewith.

6. **THIS COURT ORDERS** that Monitor may amend the Sale Process from time to time should it determine that such amendments are warranted in the circumstances.

7. **THIS COURT ORDERS** that all claims of Lamb Realty pursuant to the Sales Agency 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 CCAA, any proposal ("**Proposal**") made by any of the Urbancorp CCAA Entities under the 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 Lamb Realty pursuant to the terms of the Sales Agency Agreement.

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

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

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 DEVELOPMENTS 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. (THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

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

Proceeding commenced at Toronto

**ORDER
(APPROVAL OF ADDITIONAL
MATTERS)**

DAVIES WARD PHILLIPS & VINEBERG LLP
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TORONTO, ON M5V 3J7

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Tel: 416.863.5502
Fax: 416.863.0871

Lawyers for the Monitor

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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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)**

**MOTION RECORD
(Returnable December 14, 2016 – Additional
Matters)**

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