

COURT OF APPEAL FOR ONTARIO

**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**

**APPEAL BOOK AND COMPENDIUM OF THE APPELLANT
KSV KOFMAN INC., IN ITS CAPACITY AS MONITOR**

VOLUME I OF II

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COURT OF APPEAL FOR ONTARIO

**IN THE MATTER OF THE COMPANIES' CREDITORS
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C65891

Court of Appeal File No. M49270
 Court File No. CV-16-11389-00CL

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COURT OF APPEAL FOR ONTARIO
 FILED / DÉPOSÉ
 SEP 20 2018
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NOTICE OF APPEAL

THE APPELLANT, KSV KOFMAN INC., IN ITS CAPACITY AS COURT APPOINTED MONITOR, APPEALS to the Court of Appeal from the Order and Endorsement of the Honourable Mr. Justice Myers, dated May 11, 2018 (the "Judgment"), made at Toronto, Ontario.

THE APPELLANT ASKS that the Judgment be set aside and this Court grant an Order:

- (a) vacating the Judgment which declined the Monitor's motion for an order upholding its disallowance of the claim filed by Speedy Electrical Contractors Ltd. ("Speedy") pursuant to the Claims Procedure Order made in these *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

(“**CCAA**”) proceedings on September 15, 2016 (the “**Claims Procedure Order**”);

- (b) affirming the Monitor’s disallowance of the claim filed by Speedy referred to in paragraph (a) immediately above; and
- (c) such further and other relief as the Appellant may request and this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

A. Overview

2. The central issue on this appeal is whether the principal of a group of insolvent real estate companies is permitted to use the assets of a particular company in the group to satisfy: (a) his own unrelated personal liabilities; and (b) liabilities of other companies in the group to the detriment of the creditors of the particular company. Essentially, the issue can be summarized as whether the principal of a group of companies can take from creditors of Peter to pay the creditors of Paul. The Motions Judge held that such behaviour is permissible.

3. These CCAA proceedings concern a number of members of the Urbancorp Group of companies (the “**Urbancorp Group**”), the principal of which is Alan Saskin. Speedy has claimed \$2,323,638.54 against King Residential Inc. (“**KRI**”, an Applicant in these CCAA proceedings and a member of the Urbancorp Group) in respect of a guarantee and collateral mortgage (the “**Secured Guarantee**”) that KRI provided to Speedy. Speedy provided no goods or services to KRI. It advanced no funds to KRI. In fact, KRI received

no consideration whatsoever from Speedy, other than a token \$2. Rather, KRI provided the Secured Guarantee in respect of pre-existing unsecured personal debts owing by Alan Saskin, and pre-existing unsecured business debts owing by Edge on Triangle Park Inc. ("**Edge**"), another insolvent Saskin-controlled entity not subject to these CCAA proceedings.

4. KRI granted the Secured Guarantee within one year of the commencement of these CCAA proceedings at a time when it was insolvent. At the time, Speedy was also not dealing at arm's length from KRI or Mr. Saskin, and KRI granted the Secured Guarantee with the intent to defeat, hinder or delay KRI's creditors. At all times, both KRI and Edge were not dealing at arm's length from Mr. Saskin. The granting of the Secured Guarantee was therefore a transfer at undervalue and a fraudulent conveyance, and cannot form the basis for a valid claim by Speedy.

B. Background Facts

(i) The Parties

5. At the Guarantee Date (as defined below), KRI was a wholly-owned subsidiary and nominee of TCC/Urbancorp (Bay) LP ("**Bay LP**"). At the relevant time, Alan Saskin held a 79.99% limited partnership interest in Bay LP. Bay LP owned a number of nominees through which it held various distinct real estate projects.

6. At the relevant time, Edge was a wholly-owned subsidiary and nominee of TCC/Urbancorp (Bay Stadium) Limited Partnership ("**Bay Stadium LP**"), whose general partner was Deaja Partner (Stadium) Inc. (wholly owned by Mr. Saskin) and whose sole limited partner was Vestaco Investments (Stadium) Inc. (wholly owned by Mr. Saskin's

spouse, Doreen Saskin). Bay Stadium LP also held distinct real estate projects through various nominees.

7. While both Bay LP and Bay Stadium LP were controlled by Mr. Saskin, they were separate corporate groups engaged in various separate and distinct real estate projects. Edge was in one, and KRI was in the other. While they did not operate at arm's length given their ultimate common control at the hands of Mr. Saskin (directly or via family members or family trusts), they were distinct legal entities, each having its own distinct creditors and assets.

8. Speedy operates an electrical contracting business, and the Urbancorp Group of companies, which included Bay LP and Bay Stadium LP, had been one of Speedy's clients for more than 20 years. The President of Speedy, Albert Passero, has a long-standing relationship with Mr. Saskin.

9. In May 2016, the Urbancorp Group collapsed and the Applicants (a subset of the Urbancorp Group), including KRI, commenced the present insolvency proceedings under the CCAA. The moving party, KSV, was appointed by the Court to act as Monitor of the Applicants.

10. In addition, Edge is currently the subject of its own, separate CCAA proceedings and Mr. Saskin is currently the subject of a Proposal under the *Bankruptcy and Insolvency Act* ("**BIA**"). Speedy has filed proofs of claim in both the Edge CCAA proceedings, and in connection with Mr. Saskin's Proposal, for the same debt which is the subject of its claim against KRI.

(ii) Debts Owning by Edge to Speedy

11. On September 23, 2014, Mr. Saskin approached the President of Speedy and obtained a personal loan from Speedy for \$1 million. These funds were not paid to or for the benefit of KRI or Bay LP. This loan was evidenced by a one year term promissory note (due September 23, 2015) providing for 12.5% annual interest, payable biannually (the “**Note**”).

12. Shortly thereafter, Speedy completed the work on a \$6 million electrical contract for a condominium development owned by Edge. Speedy certified under oath that the last day of supply of services and materials for the project was October 22, 2014, at which time Speedy invoiced Edge for release of the *Construction Lien Act* (“**CLA**”) holdback amount of \$695,408.07.

13. The holdback amount, together with other outstanding amounts owing by Edge to Speedy, totalled \$1,038,911.34.

14. In or around the end of August 2015, Speedy became aware that Edge was having cash flow issues and Speedy began pressing Edge for payment. Mr. Saskin offered to provide Speedy with certain Edge condominium units as payment for the amounts owing by Edge to Speedy. This proposal was not accepted by Speedy, as Speedy was aware that it would be contrary to provisions of the CLA relating to improper preference or priority over other potential trade creditors or lien claimants. Instead, as set out below, Speedy proceeded to improperly register a claim for lien, threaten personal bankruptcy proceedings against Mr. Saskin, and ultimately improperly obtained the Secured Guarantee from KRI as security for the debts of Edge and Mr. Saskin.

15. On August 31, 2015, Speedy issued a further invoice to Edge for an additional holdback amount of \$7,348.75 in respect of work invoiced on December 19, 2014. This amount forms part of the \$1,038,911.34 claimed by Speedy.

16. On September 23, 2015, Mr. Saskin defaulted on the Note.

17. On September 30, 2015, almost a year after the last day of supply of service and materials for the project and well outside the 45 day time period provided for under s. 31(3) of the CLA, Speedy registered a claim for a construction lien against the Edge project pursuant to the CLA in the sum of \$1,038,911.44 (the “**Lien**”).

18. In the period that followed, Speedy threatened to petition Mr. Saskin into personal bankruptcy in respect of his personal debt and to bring legal proceedings in respect of the Lien.

19. At this time, KRI had no liability for either Mr. Saskin’s personal debt, or the Edge debt.

(iii) The Israeli Bond Issuance and the Secured Guarantee

20. In the summer and fall of 2015, Mr. Saskin was in the process of raising funds through a bond issuance on the public markets in Israel. The bond issuance was completed in December 2015, and Urbancorp Inc. raised \$64 million.

21. The bond issuance required that the Lien on Edge be discharged. Speedy was aware that the presence of its Lien on the Edge development precluded Mr. Saskin from being able to complete the Israeli bond issuance. Mr. Saskin approached Speedy and asked for a discharge of the Lien, as well as an extension of time for payment on the Note,

with the promise that the funds raised through the bond issuance would be used to repay Speedy and others who were owed money by Mr. Saskin and the Urbancorp Group.

22. In November 2015, Speedy, Mr. Saskin, Edge, and KRI entered into a debt extension agreement (the “**Debt Extension Agreement**”). Pursuant to the terms of the Debt Extension Agreement: (a) Speedy agreed to discharge the Lien, but maintained the claim for the underlying debt against Edge; (b) the maturity date of the Note for the personal debt owing to Speedy by Mr. Saskin was extended to January 30, 2016; and (c) Mr. Saskin agreed to cause KRI to provide a limited guarantee to Speedy for Mr. Saskin’s and Edge’s outstanding obligations to Speedy together with a mortgage on thirteen specific condominiums and thirteen specific parking spots of which KRI was the registered owner (the “**Secured Guarantee**”). KRI received no consideration for guaranteeing and securing debts owed by Mr. Saskin and Edge, other than a nominal \$2. At this time, KRI was insolvent and had its own creditors, which were distinct from those of Mr. Saskin and Edge.

23. One of the effects of KRI’s secured guarantee of the Note was to convert an unsecured obligation of Mr. Saskin into a secured obligation of KRI.

24. Consistent with the terms of the Debt Extension Agreement, the Lien was discharged and the Secured Guarantee was registered on title on November 16, 2015 (the “**Guarantee Date**”). KRI was insolvent as of the Guarantee Date.

25. The \$2 paid to KRI was grossly inadequate and entirely disproportionate to the value of the Secured Guarantee, which Speedy now claims is worth over \$2.3 million with costs and interest. Extending the maturity date of the Note did not benefit KRI and served

only to benefit Mr. Saskin personally, while the discharge of the Lien against Edge (even assuming that it were ever valid) by Speedy did not benefit KRI, but instead benefited Edge.

26. As required in order to complete the bond issuance, counsel for Urbancorp Inc. provided opinions which disclosed the existence and later removal of the Lien, but did not disclose that KRI had provided a secured guarantee in respect of the liabilities of Mr. Saskin and Edge at all, let alone without receiving any material consideration for having done so.

27. On December 7, 2015, the Tel Aviv Stock Exchange authorized the registration of a prospectus in connection with of the bond issuance. The prospectus does not disclose the existence of the Secured Guarantee.

28. Although Urbancorp Inc. raised approximately \$64 million in the bond issuance, Mr. Saskin did not use any of those funds to repay Speedy. Nor did any of these funds flow to KRI.

29. Soon after the bond issuance, the Urbancorp Group collapsed. On May 18, 2016, insolvency proceedings in respect of the Applicants (of which KRI is one) were commenced under the CCAA. Notably, given that the Secured Guarantee was granted by KRI to Speedy on November 16, 2015, the Secured Guarantee was granted within one year of the commencement of the CCAA proceedings.

30. The effect of the Secured Guarantee will be to defeat or hinder recoveries to the creditors of Urbancorp Inc., including the Israeli bondholders. Specifically, the Secured

Guarantee will deprive Urbancorp Inc. of approximately \$2.3 million it would have received (and expected to receive pursuant to the bond prospectus) but for the issuance of the Secured Guarantee. If the Secured Guarantee is invalid, Speedy retains the claims it has filed against both Edge and Mr. Saskin in their respective proceedings.

(iv) Speedy's Claim

31. On October 19, 2016, Speedy filed a proof of claim against KRI in the amount of \$2,323,638.54, comprising the \$1 million personal loan made to Mr. Saskin as well as the amounts owing to Speedy in respect of the Edge project (plus interest and costs that continue to accrue).

32. On November 11, 2016, the Monitor disallowed the claim in full on the basis that the granting of the Secured Guarantee was voidable as a transfer at undervalue pursuant to s. 96 of the BIA and void as a fraudulent conveyance under the *Fraudulent Conveyances Act* (“**FCA**”).

33. On November 25, 2016, Speedy filed a Notice of Dispute. Paragraph 36(b) of the Claims Procedure Order provides that in the event that an objection raised in a Notice of Dispute is not settled within a time period or in a manner satisfactory to the Monitor, the Monitor may refer the objection raised to the Court for adjudication.

C. The Motion Below and the Judgment

34. By Notice of Motion dated March 7, 2018, the Monitor brought a motion seeking to uphold its disallowance of Speedy's claim in full.

35. Mr. Justice Myers heard the Monitor's motion on May 1, 2018.

36. By way of Endorsement and Order dated May 11, 2018, the Motions Judge dismissed the Monitor's motion seeking to disallow Speedy's claim. He did so "based solely on the arm's length relationship and lack of fraudulent intent", finding that it was therefore unnecessary to deal with "a number of other issues" raised by the parties on the motion.

37. Unlike other types of determinations often made by supervising judges in CCAA proceedings, the Judgment did not involve an exercise of discretion by the Motions Judge in the context of managing an ongoing restructuring process. To the contrary, the Judgment arose from a straightforward adjudication of Speedy's claim and involved the application of relevant provisions of the CCAA, BIA and the FCA.

38. The Motions Judge ordered the Monitor to pay costs to Speedy in the amount of \$25,000, notwithstanding: (i) his express finding that "[i]t was reasonable and appropriate for the Monitor to bring this matter to the court"; and (ii) paragraph 36(b) of the Claims Procedure Order which expressly directs the Monitor to bring unsettled objections to the Court for adjudication.

D. Reversible Errors

39. The Monitor respectfully submits that the Motions Judge made reversible errors in reaching the Judgment, such that this Court can and should set aside the Judgment and dismiss Speedy's claim in full. In particular, the Motions Judge made a number of reversible errors, including:

- (a) erring in law and in principle and committing palpable and overriding errors by concluding that the Secured Guarantee should not be declared void as a transfer at undervalue under s. 96 of the BIA, including;
- (i) by concluding that Speedy and KRI were dealing with one another at arm's length at the time the Secured Guarantee was given by KRI;
 - (ii) by not addressing the fact that Mr. Saskin, Edge and KRI were not dealing with one another at arm's length at the time the Secured Guarantee was given by KRI;
 - (iii) by concluding that KRI, at the direction of Mr. Saskin, did not have the intention to defraud, defeat, or delay creditors, including:
 - (A) by treating Edge, KRI and Mr. Saskin as a single consolidated entity for purposes of determining whether there was a transfer at undervalue notwithstanding the fact that each had its own creditors;
 - (B) by disregarding clear evidence of numerous "badges of fraud", including:
 - (I) the insolvency of KRI at the Guarantee Date;
 - (II) the lack of consideration received by KRI in exchange for the Secured Guarantee;

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- (III) the failure to have protected the distinct creditors of KRI;
 - (IV) the close relationship between Speedy and Mr. Saskin, and the economic pressure that Speedy exerted over Mr. Saskin;
 - (V) the transfer being made in the face of threatened legal proceedings which to the knowledge of Speedy would have prevented the bond issuance; and
 - (VI) the fact that the transfer was kept secret from the main creditor prejudiced by the transfer, as evidenced by the fact that Mr. Saskin and his counsel (in the opinions provided in anticipation of the bond issuance) disclosed the existence and removal of the Lien, but failed to disclose that KRI had provided the Secured Guarantee in respect of the personal debts of Mr. Saskin and the liabilities of Edge;
- (C) by placing undue weight on the fact that Speedy registered its mortgages over the KRI condominium units on title as evidencing no secrecy in the transfer;
- (iv) by misinterpreting clear evidence that KRI was insolvent on a cash flow basis at the time it granted the Secured Guarantee; and

- (v) by misapplying the ruling in *Browne v. Dunn* (1893), 6 R. 67 (H.L.), and in doing so failing to conclude that the Lien was invalid under s. 31 of the CLA in face of clear evidence of its invalidity and, in particular, Speedy's sworn Statement of Last Supply under the CLA;
- (b) erring in law and in principle by concluding that the Secured Guarantee is not void as a fraudulent conveyance under the FCA for the same reasons set out immediately above; and
- (c) erring in law and in principle by ordering the Monitor to pay costs to Speedy in the amount of \$25,000 in the context of a court ordered claims process, in circumstances where the Motions Judge expressly found that it was both "reasonable and appropriate" for the Monitor to bring the dispute before the Court.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

- 40. The Endorsement of Justices Lauwers, Miller and Nordheimer granting leave to appeal to this Court dated September 10, 2018.
- 41. The Judgment is a final order of a judge of the Superior Court of Justice pursuant to s. 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
- 42. Sections 11, 13 and 14 of the CCAA.

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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., et al.

Court of Appeal File No. M49270
Court File No. CV-16-11389-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPEAL

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Court of Appeal File No. **M49270**
Court File No. CV-16-11389-00CL

COURT OF APPEAL FOR ONTARIO

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

Applicant

**NOTICE OF MOTION
FOR LEAVE TO APPEAL**

The court appointed monitor, KSV Kofman Inc. ("**KSV**" or the "**Monitor**"), will make a motion for leave to appeal to the Court of Appeal for Ontario, pursuant to sections 13 and 14 of the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Subject to any motion for directions, the Court will hear the motion in writing at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N5.

PROPOSED METHOD OF HEARING: The motion is to be heard in writing, 36 days after service of the Monitor's motion record, factum and transcripts, if any, or on the filing of the Monitor's reply factum, if any, whichever is earlier, unless the Court orders an oral hearing.

THE MOTION IS FOR:

1. An order granting the Monitor leave to appeal the Order and Endorsement of Mr. Justice Myers dated May 11, 2018 (the "**Decision**"), declining the Monitor's motion for an order upholding its disallowance of the claim filed by Speedy Electrical Contractors Ltd. ("**Speedy**") pursuant to the Claims Procedure Order made in these CCAA proceedings on September 15, 2016 (the "**Claims Procedure Order**"); and
2. Such further and other relief as may be requested and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:**A. Overview**

3. Speedy has claimed \$2,323,638.54 against King Residential Inc. ("**KRI**", an Applicant in these CCAA proceedings) in respect of a guarantee and collateral mortgage (the "**Secured Guarantee**") that KRI provided despite receiving no consideration from Speedy. Rather, KRI provided the Secured Guarantee in respect of antecedent unsecured personal debts owing by Alan Saskin and antecedent unsecured business debts owing by Edge on Triangle Park Inc. ("**Edge**"), an entity not subject to these CCAA proceedings.
4. KRI granted the Secured Guarantee within one year of the commencement of these CCAA proceedings at a time when it was insolvent, and received only a nominal \$2 in return. In addition, at the time, Speedy was not dealing at arm's length with KRI or Mr. Saskin, and KRI granted the Secured Guarantee with the intent to defeat, hinder or delay KRI's creditors. The granting of the Secured Guarantee was therefore a transfer at undervalue and a fraudulent conveyance.

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5. The proposed appeal deals with matters of importance to the Monitor, creditors of the Applicants, creditors of other Urbancorp affiliated entities which are the subject of other, separate insolvency proceedings with similar reviewable transaction issues with 14 similar actions outstanding, and future parties to insolvency proceedings generally.

6. The purpose and continued efficacy of provincial and federal fraudulent conveyance laws are placed into doubt by the Decision in the context of a corporate group controlled by the same individual. The Decision supports the proposition that, when insolvent, such an individual can ignore the best interests of any individual entity in the group (and those of the discrete creditors of each entity) if the prejudice incurred by the individual entity is of benefit to the group generally and the controlling individual personally. Accordingly, the Decision deals with a pervasive issue in commercial insolvencies – namely, how the rights of creditors of each separate entity in a group are to be analyzed when there has been a procedural consolidation of the proceedings but no substantive consolidation of the group.

7. In particular, the proposed appeal addresses, among other things, whether an insolvent entity controlled by an individual should be permitted to grant security over its assets to a third party for the antecedent unsecured debts of that individual and other entities controlled by that individual (which other entities have their own creditors and no interrelated business dealings with the first entity other than common control and management), in return for no consideration. The Decision answers this in the affirmative in the context of a party pressuring the insolvent entity to provide such security or risk the ability of affiliated companies to continue as a going

concern. This is precisely the type of prejudicial behaviour that the fraudulent conveyance laws applicable in this case are designed to safeguard against, and not condone, especially when dealing with entities under common control where the safeguards of independent directors and management do not exist. In this regard, the Decision undermines the very rationale for the existence of such legislation.

8. The issue of whether, as a matter of both law and policy, costs should be awarded in the context of reasonable claims disputes pursuant to claims procedure orders, will also be addressed.

B. Background Facts

(i) The Parties

9. At the Guarantee Date (as defined below), KRI was a wholly-owned subsidiary and nominee of TCC/Urbancorp (Bay) LP ("**Bay LP**"). At the relevant time, Alan Saskin held a 79.99% limited partnership interest in Bay LP.

10. At the relevant time, Edge was a wholly-owned subsidiary and nominee of TCC/Urbancorp (Bay Stadium) Limited Partnership, whose general partner was Deaja Partner (Stadium) Inc. (wholly owned by Mr. Saskin) and whose sole limited partner was Vestaco Investments (Stadium) Inc. (wholly owned by Mr. Saskin's spouse, Doreen Saskin).

11. Edge and KRI belonged to separate corporate groups. While they did not operate at arm's length given their ultimate common control at the hands of Mr. Saskin (directly or via family members or family trusts), they were distinct legal entities, each having its own creditors.

12. Speedy operates an electrical contracting business, and the Urbancorp group of companies (the “**Urbancorp Group**”) had been one of Speedy’s clients for more than 20 years. The President of Speedy, Albert Passero, has a long-standing relationship with Mr. Saskin.

13. In May 2016, the Urbancorp Group collapsed and the Applicants (a subset of the Urbancorp Group) commenced the present insolvency proceedings under the CCAA. The moving party, KSV, was appointed by the Court to act as Monitor of the Applicants.

(ii) **Debts Owning by Edge to Speedy**

14. On September 23, 2014, Mr. Saskin approached the President of Speedy and obtained a personal loan from Speedy for \$1 million, ostensibly to enable Mr. Saskin to fund some of his building projects. These funds were not paid to or for the benefit of KRI. This loan was evidenced by a one year term promissory note (due September 23, 2015) providing for 12.5% annual interest payable biannually (the “**Note**”).

15. Shortly thereafter, Speedy completed the work on a \$6 million electrical contract for a condominium development owned by Edge. Speedy certified that the last day of supply of service and materials for the project was October 22, 2014, at which time Speedy invoiced Edge for release of a *Construction Lien Act* (“**CLA**”) holdback amount of \$695,408.07.

16. The holdback amount, together with other outstanding amounts owing by Edge to Speedy, totalled \$1,038,911.34.

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17. In or around the end of August 2015, Speedy became aware that Edge was having cash flow issues and Speedy began pressing Edge for payment. Mr. Saskin offered to provide Speedy with certain Edge condominium units as payment for the amounts owing by Edge to Speedy. This proposal was not accepted by Speedy as it would be contrary to provisions of the CLA relating to improper preference or priority over other potential trade creditors or lien claimants.

18. On August 31, 2015, Speedy issued a further invoice to Edge for an additional holdback amount of \$7,348.75 in respect of work invoiced on December 19, 2014. This amount forms part of the \$1,038,911.34 claimed by Speedy.

19. On September 23, 2015, Mr. Saskin defaulted on the Note.

20. On September 30, 2015, almost a year after the last day of supply of service and materials for the project and well outside the 45 day time period provided for under s. 31(3) of the CLA, Speedy registered a claim for a construction lien against the Edge project pursuant to the CLA in the sum of \$1,038,911.44 (the "Lien").

21. In the period that followed, Speedy threatened to petition Mr. Saskin into personal bankruptcy in respect of his personal debt and to bring legal proceedings in respect of the Lien.

22. At this time, KRI had no liability for either Mr. Saskin's personal debt, or the Edge debt.

(iii) **The Israeli Bond Issuance and the Secured Guarantee**

23. In the summer and fall of 2015, Mr. Saskin was in the process of raising funds through a bond issuance on the public markets in Israel.

24. The bond issuance required that the Lien on Edge be discharged. Speedy was aware that the presence of its Lien on the Edge development precluded Mr. Saskin from being able to complete the Israeli bond issuance. Mr. Saskin approached Speedy and asked for a discharge of the Lien, as well as an extension of time for payment on the Note, with the promise that the funds raised through the bond issuance would be used to repay Speedy and others who were owed money by Mr. Saskin and the Urbancorp Group.

25. In November 2015, Speedy, Mr. Saskin, Edge, and KRI entered into a debt extension agreement (the "**Debt Extension Agreement**"). Pursuant to the terms of the Debt Extension Agreement: (a) Speedy agreed to discharge the Lien, but maintained the claim for the underlying debt against Edge; (b) the maturity date of the Note for the personal debt owing to Speedy by Mr. Saskin was extended to January 30, 2016; and (c) KRI agreed to provide a limited guarantee to Speedy for Mr. Saskin's and Edge's outstanding obligations to Speedy together with a mortgage on thirteen specific condominiums and thirteen specific parking spots for which KRI was the registered owner (the "**Secured Guarantee**"). KRI received no consideration for guaranteeing and securing debts owed by Mr. Saskin and Edge, other than a nominal \$2. At this time, KRI had its own creditors, which were distinct from those of Mr. Saskin and Edge.

26. One of the effects of KRI's guarantee of the Note was to make an unsecured obligation of Mr. Saskin a secured obligation of KRI.

27. Consistent with the terms of the Debt Extension Agreement, the Lien was discharged and the Secured Guarantee was registered on title on November 16, 2015 (the "**Guarantee Date**").

28. The \$2 paid to KRI was grossly inadequate and entirely disproportionate to the value of the Secured Guarantee, which Speedy now claims is worth over \$2.3 million with costs and interest. Extending the maturity date of the Note did not benefit KRI and served only to benefit Mr. Saskin personally, while the discharge of the Lien (to the extent it was ever valid) by Speedy did not benefit KRI but instead benefited Edge.

29. As required in order to complete the bond issuance, counsel for Urbancorp Inc. provided opinions which disclosed the existence and later removal of the Lien, but intentionally failed to disclose that KRI had provided a guarantee in respect of the liabilities of Mr. Saskin and Edge without receiving any material consideration for having done so.

30. On December 7, 2015, the Tel Aviv Stock Exchange authorized the registration of a prospectus in connection with of the bond issuance. The prospectus does not disclose the existence of the Secured Guarantee.

31. Although Urbancorp Inc. raised approximately \$64 million in the bond issuance, Mr. Saskin did not use any of those funds to repay Speedy.

32. Soon after the bond issuance, the Urbancorp Group collapsed. On May 18, 2016, insolvency proceedings in respect of the Applicants (of which KRI is one) were commenced under the CCAA. Notably, given that the Secured Guarantee was granted by KRI to Speedy on November 16, 2015, the Secured Guarantee was granted within one year of the commencement of the CCAA proceedings.

33. The effect of the Secured Guarantee will be to defeat or hinder recoveries to the creditors of Urbancorp Inc., including the Israeli bondholders. Specifically, the Secured Guarantee will deprive Urbancorp Inc. of approximately \$2.3 million it would have received (and expected to receive pursuant to the bond prospectus) but for the issuance of the Secured Guarantee.

(iv) Speedy's Claim

34. On October 19, 2016, Speedy filed a proof of claim against KRI in the amount of \$2,323,638.54, comprising the \$1 million personal loan made to Mr. Saskin as well as the amounts owing to Speedy in respect of the Edge project (plus interest and costs that continue to accrue).

35. On November 11, 2016, the Monitor disallowed the claim in full on the basis that the granting of the Secured Guarantee was voidable as a transfer at undervalue pursuant to s. 96 of the *Bankruptcy and Insolvency Act* ("BIA") and void as a fraudulent conveyance under the *Fraudulent Conveyances Act* ("FCA"). As noted above, at the time the Secured Guarantee was granted, KRI was not dealing with Speedy at arm's length and was insolvent. Further, KRI received purely token consideration (\$2) in exchange for the Secured Guarantee which was made by KRI with

the intent to defraud, defeat, hinder or delay creditors (including the Israeli bondholders).

36. On November 25, 2016, Speedy filed a Notice of Dispute. Paragraph 36(b) of the Claims Procedure Order provides that in the event that an objection raised in a Notice of Dispute is not settled within a time period or in a manner satisfactory to the Monitor, the Monitor may refer the objection raised to the Court for adjudication.

D. The Motion Below and the Decision

37. By Notice of Motion dated March 7, 2018, the Monitor brought a motion seeking to uphold its disallowance of Speedy's claim in full.

38. Mr. Justice Myers heard the Monitor's motion on May 1, 2018.

39. By way of Endorsement and Order dated May 11, 2018, the Motions Judge dismissed the Monitor's motion seeking to disallow Speedy's claim. He did so "based solely on the arm's length relationship and lack of fraudulent intent", finding that it was therefore unnecessary to deal with "a number of other issues" raised by the parties on the motion.

40. Unlike other types of determinations often made by supervising judges in CCAA proceedings, the Decision did not involve an exercise of discretion by the Motions Judge in the context of managing an ongoing restructuring process. To the contrary, the Decision arose from a straightforward adjudication of Speedy's claim and involved the application of relevant provisions of the CCAA, BIA and the FCA.

41. The Motions Judge ordered the Monitor to pay costs to Speedy in the amount of \$25,000, notwithstanding: (i) his express finding that “[i]t was reasonable and appropriate for the Monitor to bring this matter to the court”; and (ii) paragraph 36(b) of the Claims Procedure Order which expressly directs the Monitor to bring unsettled objections to the Court for adjudication.

D. Leave to Appeal Should be Granted

42. Leave to appeal the Decision should be granted in the present case. There is good reason to doubt the correctness of the Decision, the proposed appeal is *prima facie* meritorious and the proposed appeal involves matters of importance to the Monitor, creditors of the Applicants, creditors of other Urbancorp affiliated entities which are the subject of other, separate insolvency proceedings with similar reviewable transaction issues (which proceedings are listed below), and future parties to insolvency proceedings generally.

43. The Monitor respectfully submits that the Motions Judge made reversible errors in reaching the Decision, such that this Court can and should intervene and set aside the Decision and dismiss Speedy’s claim in full. In particular, the Motions Judge made a number of reversible errors, including:

- (a) erring in law and in principle and committing palpable and overriding errors by concluding that the Secured Guarantee should not be declared void as a transfer at undervalue under s. 96 of the BIA, including;

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- (i) by concluding that Speedy and KRI were dealing with one another at arm's length at the time the Secured Guarantee was given by KRI;
- (ii) by concluding that KRI did not have the intention to defraud, defeat, or delay creditors, including:
 - (A) by treating Edge, KRI and Mr. Saskin as a single consolidated entity for purposes of determining whether there was a transfer at undervalue;
 - (B) by disregarding clear evidence of numerous "badges of fraud", including:
 - (I) the insolvency of KRI at the Guarantee Date;
 - (II) the lack of consideration received by KRI in exchange for the Secured Guarantee;
 - (III) the failure to have protected the distinct creditors of KRI;
 - (IV) the close relationship between Speedy and Mr. Saskin;
 - (V) the transfer being made in the face of threatened legal proceedings; and
 - (VI) the secrecy of the transfer from the main creditor prejudiced by the transfer as evidenced by the fact that Mr. Saskin and his counsel (in the opinions provided in anticipation of the bond issuance)

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disclosed the existence and removal of the Lien, but failed to disclose that KRI had provided the Secured Guarantee in respect of the personal debts of Mr. Saskin and the liabilities of Edge;

- (C) by placing undue weight on the fact that Speedy registered its mortgages over the KRI condominium units on title as evidencing no secrecy in the transfer;
 - (iii) by disregarding and/or misinterpreting clear evidence that KRI was insolvent on a cash flow basis at the time it granted the Secured Guarantee; and
 - (iv) by misapplying the ruling in *Browne v. Dunn* (1893), 6 R. 67 (H.L.), and in doing so failing to conclude that the Lien was invalid under s. 31 of the CLA in face of clear evidence of its invalidity and, in particular, Speedy's sworn Statement of Last Supply under the CLA;
- (b) erring in law and in principle by concluding that the Secured Guarantee is not void as a fraudulent conveyance under the FCA for the same reasons set out immediately above; and
 - (c) erring in law and in principle by ordering the Monitor to pay costs to Speedy in the amount of \$25,000 in the context of a court ordered claims process, in circumstances where the Motions Judge expressly found that it was both "reasonable and appropriate" for the Monitor to bring the dispute before the Court.

44. The proposed appeal will not unduly hinder the progress of the underlying “liquidating CCAA” proceedings. There is no ongoing operating business. The proceedings involve only the orderly disposition of various real estate assets, much of which has been completed to date. Accordingly, these proceedings primarily involve resolving a handful of disputed claims (of which Speedy is one) so as to be able to distribute the remaining money in the estate to its proven creditors.

45. Moreover, there are 14 other similar proceedings in the related Urbancorp Cumberland 2LP CCAA proceedings which will be affected by the determination herein, namely:

- (a) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. FirstService Residential Property Services Ontario Ltd.* (Court File No. CV-18-596827-00CL);
- (b) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Barry Kerbel* (Court File No. CV-18-596828-00CL);
- (c) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al. v. MF Mechanical Ltd. et al.* (Court File No. CV-18-596830-00CL);
- (d) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Elite Stone Design Corp. et al.* (Court File No. CV-18-596832-00CL);

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- (e) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Lido Construction Inc. et al. (Court File No. CV-18-596834-00CL);*
- (f) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Triumph Roofing and Sheet Metal Inc. et al. (Court File No. CV-18-596936-00CL);*
- (g) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Pacific Hardwood Limited (Court File No. CV-18-596837-00CL);*
- (h) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. CLM General Enterprise Ltd. et al. (court File No. CV-18-596838-00CL);*
- (i) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Furkin Construction Inc. (Court File No. CV-18-596840-00CL);*
- (j) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. M5V Realty Inc. et al. (Court File No. CV-18-596842-00CL);*
- (k) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Olena Shcherbakova (Court File No. CV-18-596844-00CL);*

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- (l) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. Trang Tan* (Court File No. CV-18-596845-00CL);
- (m) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al .v. Wayne Cameron Murdock* (Court File No. CV-18-596846-00CL); and
- (n) *The Fuller Landau Group Inc. in its capacity as Court-Appointed Monitor of Urbancorp Cumberland 2 GP Inc. et al v. 994697 Ontario Inc. et al.* (Court File No. CV-18-596847-00CL).

46. Rules 37, 61.03.1 and 61.16 of the *Rules of Civil Procedure*.

47. Sections 11, 13 and 14 of the CCAA.

48. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1. The materials that were before Mr. Justice Myers on the Motion below;
- 2. The Endorsement and Order of Mr. Justice Myers dated May 11, 2018;
and
- 3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

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June 1, 2018

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TO: ATTACHED SERVICE LIST

Schedule "A"

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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., et al.

Court of Appeal File No. **M49270**
Court File No. CV-16-11389-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
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NOTICE OF MOTION FOR LEAVE TO APPEAL

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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., et al.

Court of Appeal File No. M49270
Court File No. CV-16-11389-00CL

Court of Appeal for

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD OF KSV KOFMAN INC., IN ITS
CAPACITY AS COURT-APPOINTED MONITOR**
(MOTION FOR LEAVE TO APPEAL)

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LAUWERS J.A. **MILLER J.A.**
NORDHEIMER J.A.

COURT OF APPEAL FOR ONTARIO
BEFORE

DATE ~~Aug 31 2018~~ *September 10, 2018*
DISPOSITION OF MOTION

Leave is granted. Costs reserved to be heard at the appeal.

Pharos
[Signature]
[Signature]

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



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
 JUSTICE MYRES

) *FRIDAY* THE *11TH* DAY OF MAY, 2018
)
)
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
 ARRANGEMENT OF URBANCORP TORONTO
 MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE)
 INC., URBANCORP (PATRICIA) INC., URBANCORP
 (MALLOW) INC., URBANCORP (LAWRENCE) INC.,
 URBANCORP DOWNSVIEW PARK DEVELOPMENT INC.,
 URBANCORP (952 QUEEN WEST) INC., KING
 RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC.,
 HIGH RES. INC., BRIDGE ON KING INC. (Collectively the
 "Applicants") AND THE AFFILIATED ENTITIES LISTED IN
 SCHEDULE "A" HERETO

ORDER

THIS MOTION, made by KSV Kofman Inc., 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 disallowing the claim filed by Speedy Electrical Contractors Ltd. ("**Speedy**"), was heard on May 1, 2018 at 330 University Avenue, Toronto, Ontario.

ON READING the materials filed by the parties, and on hearing the submissions of counsel for the Monitor, counsel for Guy Gissin (the Israeli court-appointed Functionary and Foreign Representative of Urbancorp Inc.) and counsel for Speedy;

1. **THIS COURT ORDERS** that the Monitor's motion is dismissed.


2. **THIS COURT ORDERS** that the Monitor, on behalf of the debtor and not in its personal capacity, shall pay costs in the amount of \$25,000 to Speedy within 30 days.



The Honourable Justice F.L. Myres

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

MAY 30 2018

PER / PAR: 

SCHEDULE "A"
LIST OF NON APPLICANT AFFILIATES

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

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

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

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF URBANCORP TORONTO
MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE)
INC., URBANCORP (PATRICIA) INC., URBANCORP
(MALLOW) INC., URBANCORP (LAWRENCE) INC.,
URBANCORP DOWNSVIEW PARK DEVELOPMENT INC.
URBANCORP (952 QUEEN WEST) INC., KING
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RES INC., BRIDGE ON KING INC. (COLLECTIVELY, THE
"APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN
SCHEDULE "A" HERETO**

BEFORE: F.L. Myers J.

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Kevin Sherkin and Jeremy Sacks, lawyers for Speedy Electrical Contractors Ltd.

HEARD: May 1, 2018

ENDORSEMENT

The Motion

- [1] This motion involves a claim against the debtor King Residential Inc. ("KRI").
- [2] KSV Kofman Inc., in its capacity as monitor moves for an order disallowing the claim filed by Speedy Electrical Contractors Ltd.
- [3] Speedy claims \$2,323,638.54 against KRI pursuant to a secured guarantee given by KRI to Speedy. In support of its obligations under the guarantee, KRI granted mortgages in favour of Speedy over 13 condominium units and 13 parking spaces.
- [4] The Monitor says that when KRI gave Speedy its guarantee and supporting mortgages it was insolvent. As such, the transaction is reviewable under s. 96 of the *Bankruptcy and*

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

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

The Facts

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

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

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

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

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

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

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

The Monitor's Position

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

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

Analysis

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

Arm's Length

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

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

[67] The trial judge considered the *dicta* in *Abou-Rached (Re)*, 2002 BCSC 1022 (CanLII), 35 C.B.R. (4th) 165, at para. 46:

[A] transaction at arm's length could be considered to be a transaction between persons between whom there are no bonds of dependence, control or influence, in the sense that neither of the two co-contracting parties has available any moral or psychological leverage sufficient to diminish or possibly influence the free decision-making of the other. Inversely, the transaction is not at arm's length where one of the co-contracting parties is in a situation where he may exercise a control, influence or moral pressure on the free will of the other. Where one of the co-contracting parties is, by reasons of his influence or superiority, in a position to pervert the ordinary rule of supply and demand and force the other to transact for a consideration which is substantially different than adequate, normal or fair market value, the transaction in question is not at arm's length.

[68] He also considered *Piikani Energy Corporation (Trustee of) v. 607385 Alberta Ltd.*, 2013 ABCA 293 (CanLII), 556 A.R. 200, which identified factors that provide guidance on non-arm's length analysis in the context of *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) jurisprudence. These factors, enumerated at para. 29 of *Piikani*, are: was there a common mind which directed the bargaining for both parties to a transaction; were the parties to the transaction acting in concert without separate interests; and was there *de facto* control?

[69] There was no common mind directing Goldfinger and Annopol or indeed, Kimel. They were adverse in interest and on the verge of litigation. The evidence also fails to suggest that they were acting in concert. As discussed, the trial judge did not fail to consider the parties' relationship at the time of the Payments. Nor did Goldfinger or Annopol exercise *de facto* control over the other.

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

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

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

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

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

Fraudulent Intent

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

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

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

[52] The badges of fraud derive from *Twyne's Case* (1601) 76 E.R. 809. As interpreted by modern courts, the badges of fraud include:

(d)[sic] the donor continued in possession and continued to use the property as his own;

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

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

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

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

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

Outcome

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

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

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

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

[31] The motion is dismissed.

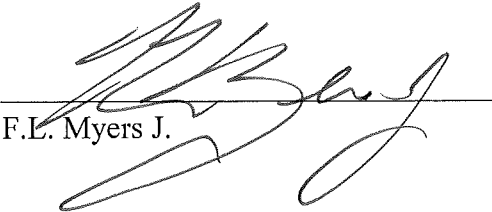
Costs

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

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

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



F.L. Myers J.

Date: May 11, 2018

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SCHEDULE "A"

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

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (Collectively the "Applicants") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

NOTICE OF MOTION

(Returnable May 1, 2018 – Speedy Electrical Contractors Ltd. Claim)

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 Mr. Justice Myers, on May 1, 2018 at 10:00 a.m., or as soon thereafter as the motion can be heard, at the Courthouse located at 330 University Avenue, Toronto, Ontario, Canada.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

1. if necessary, validating and abridging the time of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;
2. declaring that the claim filed by Speedy Electrical Contractors Ltd. ("**Speedy**") pursuant to the Claims Procedure Order made in these proceedings on September 15, 2016 (the "**Claims Procedure Order**") be disallowed in full; and
3. such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. On October 19, 2016, Speedy filed a proof of claim (the "**Proof of Claim**") against King Residential Inc. ("**KRI**") in the amount of \$2,323,638.54 (the "**Claim**") in respect of a limited guarantee provided by KRI on November 15, 2015 to Speedy for debts owing by Alan Saskin ("**Saskin**") and by Edge on Triangle Park Inc. ("**Edge**") (the "**Guarantee**");
2. KRI is a CCAA Entity and Edge is not;
3. As security for the Guarantee, KRI provided a collateral mortgage (the "**Mortgage**") to Speedy on thirteen specific condominiums and thirteen specific parking spots;
4. The Monitor was (and remains) unable to determine that anything more than nominal consideration was received by KRI for the Guarantee and/or Mortgage (the "**Secured Guarantee**"). Accordingly, on November 11, 2016, the Monitor issued a Notice of Revision or Disallowance to Speedy disallowing its Claim in full (the "**Disallowance**") on the basis that the granting of the Secured Guarantee could be voidable as a transfer at undervalue and as a fraudulent conveyance or preference;

5. The granting of the Secured Guarantee could also be considered to have been oppressive or unfairly prejudicial to or to have unfairly disregarded the interest of KRI's other creditors at the time it was granted;
6. On November 25, 2016, Speedy filed a Notice of Dispute of Revision or Disallowance with the Monitor (the "**Notice of Dispute**");
7. Paragraph 36(b) of the Claims Procedure Order provides that in the event that an objection raised in a Notice of Dispute is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the CCAA Entities, the Monitor may refer the objection raised in the Notice of Dispute to the Court for adjudication;
8. The relevant corporate entity was insolvent at the time the Secured Guarantee was granted;
9. KRI received conspicuously less than fair market value consideration for the granting of the Secured Guarantee;
10. The effect of the Secured Guarantee will defeat or hinder recoveries to the creditors of the CCAA Entities;
11. KRI intended to defeat, hinder or delay the creditors of the CCAA Entities by granting the Secured Guarantee;
12. Sections 9-11 of the CCAA and this Court's equitable and statutory jurisdiction thereunder;
13. 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
14. 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 Twenty-Second Report of the Monitor date February 2, 2018; and
2. such further material as counsel may advise and this Court may permit.

March 7, 2018

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

Robin B. Schwill (LSUC #38452I)
Tel: 416.863.5502
Fax: 416.863.0871

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.

Court File No. CV-11389-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP TORONTO
MANAGEMENT INC., ET AL.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(Returnable May 1, 2018— Speedy Electrical Claim)

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(LSUC #: 384521)

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Facsimile: 416.863.0871

Lawyers for the Monitor

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE JUSTICE NEWBOULD)))	WEDNESDAY, THE 18TH DAY OF MAY, 2016
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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 RESIDENTIAL INC.,
URBANCORP (952 QUEEN WEST) INC., KING
RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC.,
HIGH RES. INC., BRIDGE ON KING INC. (Collectively the
"Applicants") AND THE AFFILIATED ENTITIES LISTED
IN SCHEDULE "A" HERETO**

INITIAL ORDER

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

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

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

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies, save and except Urbancorp New Kings Inc. (“**UNKI**”) which shall not be an Applicant hereunder, and shall be removed from the style of cause in these proceedings and such style of cause shall be hereafter amended to exclude UNKI.
3. **THIS COURT ORDERS AND DECLARES** that although not Applicants, the Urbancorp CCAA Entities’ affiliated Corporations and Limited Partnerships listed in **Schedule “A”** to this Order (the “**Non-Applicant UC Entities**”) are proper parties to these proceedings and shall enjoy the benefits of the protections and authorizations provided by this Order. (The Applicants together with the Non-Applicant UC Entities are hereinafter referred to as the “**Urbancorp CCAA Entities**”).
4. **THIS COURT ORDERS AND DECLARES** that the proposal proceedings of each of Urbancorp Toronto Management Inc. (Estate No. 31-2114055), Urbancorp Downsview Park Developments Inc. (Estate No. 31-2114054), Urbancorp (Patricia) Inc. (Estate No. 31-2114050), Urbancorp (Mallow) Inc. (Estate No. 31-2114049), Urbancorp (Lawrence) Inc. (Estate No. 31-2114048) and Urbancorp (St. Clair Village) Inc. (Estate No. 31-2114053) (collectively, the “**Urbancorp NOI Entities**”) commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), be taken up and continued under the CCAA and that the provisions of Part III of the BIA shall have no further application to the Urbancorp NOI Entities.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Urbancorp CCAA Entities in respect of these proceedings, at their standard rates and charges.

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

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Urbancorp CCAA Entities following the date of this Order.

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Urbancorp CCAA Entities in connection with the sale

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

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

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

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

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

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

RESTRUCTURING

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing (including Additional Interim Financing as hereinafter defined) of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue a sale or development of some or all of any Urbancorp CCAA Entity's Business and Property,

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

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

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

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

NO PROCEEDINGS AGAINST THE URBANCORP CCAA ENTITIES OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

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

INTERIM FINANCING

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

PROTOCOL FOR CO-OPERATION

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

APPOINTMENT OF MONITOR

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

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

- (a) cause the Urbancorp CCAA Entities, or any one or more of them, to exercise rights under and observe its obligations under paragraphs 8, 9, 10, 11, 12 and 13 above;
- (b) conduct a process for the solicitation of proposals for additional interim financing of the Business to replace or augment the Interim Credit Facility (the “**Additional Interim Financing**”), which Additional Interim Financing shall be subject to the approval of the Court;
- (c) cause the Urbancorp CCAA Entities to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Urbancorp CCAA Entities in dealing with the Property;
- (d) conduct, supervise and direct one or more Court-approved sales and investor solicitation processes (with prior Court approval if deemed appropriate by the Monitor) for portions of the Property or the Business, including the solicitation of development proposals, and any procedures regarding the allocation and/or distribution of proceeds of any transactions;
- (e) cause the Urbancorp CCAA Entities to administer the Property and operations of the Urbancorp CCAA Entities, including the control of receipts and disbursements, as the Monitor considers necessary or desirable for the purposes of completing any transaction, or for purposes of facilitating a Plan or Plans for some or all Applicants, or parts of the Business;
- (f) propose or cause the Applicants or any one or more of them to propose one or more Plans in respect of the Applicants or any one or more of them;
- (g) engage advisors or consultants or cause the Urbancorp CCAA Entities to engage advisors or consultants as the Monitor deems necessary or desirable to carry out the

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

- (h) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter;
- (i) meet and consult with the directors of the Urbancorp CCAA Entities as the Monitor deems necessary or appropriate;
- (j) meet with and direct management of the Urbancorp CCAA Entities with respect to any of the foregoing including, without limitation, operational and restructuring matters;
- (k) monitor the Urbancorp CCAA Entities’ receipts and disbursements;
- (l) approve Drawdown Requests under the Interim Credit Facility and any Additional Interim Facility;
- (m) cause any Urbancorp CCAA Entity with available cash (an “**Intercompany Lender**”) to loan some or all of that cash to another Urbancorp CCAA Entity (an “**Intercompany Borrower**”) on an interest free inter-company basis (an “**Approved Intercompany Advance**”) up to an aggregate of \$1 million, which Approved Intercompany Advances shall be secured by the Intercompany Lender’s Charge against the Property of the Intercompany Borrower, where in the Monitor’s view the Approved Intercompany Advance secured by the Intercompany Lender’s Charge does not prejudice the interest of the creditors of the Intercompany Lender and does not violate any agreement to which a Non-Applicant UC Entity is a party.
- (n) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (o) assist the Urbancorp CCAA Entities in its preparation of the Urbancorp CCAA Entities’ cash flow statements and reporting required by the Term Sheet or the Court;

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- (p) hold and administer creditors' or shareholders' meetings for voting on the Plan or Plans;
- (q) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Urbancorp CCAA Entities, to the extent that is necessary to adequately assess the Urbancorp CCAA Entities business and financial affairs or to perform its duties arising under this Order;
- (r) be at liberty to engage legal counsel, real estate experts, or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (s) perform such other duties as are required by this Order or by this Court from time to time; and
- (t) to comply with the Protocol,

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

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

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

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

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

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

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

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

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

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

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

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

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

INTERCOMPANY LENDER'S CHARGE

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

INTERIM FINANCING

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

- (a) neither the creation of the Charges nor the execution, delivery, or performance of the Interim Facility Term Sheet shall create or be deemed to constitute a breach by the Urbancorp CCAA Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Urbancorp CCAA Entities entering into the Interim Facility Term Sheet or the creation of the Charges; and

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

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

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

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

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

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

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



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

MAY 18 2016

PER / PAR: *RW*

SCHEDULE "A"**List of Non Applicant 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.

SCHEDULE "B"

PROTOCOL

For Co-operation Among Canadian Court Officer and Israeli Functionary

BETWEEN:

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

- and -

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

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

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

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

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

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

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

1. The Israeli Parentco Officer will file an application under Part IV of the *Companies' Creditors Arrangement Act* ("CCAA"), seeking recognition of the Israeli Proceedings and of his appointment as foreign representative of Parentco thereunder, such application to seek recognition of the Israeli Proceedings as the "foreign main proceeding" with respect to Parentco. That application will include a request to appoint KSV as the Information Officer with respect to the Part IV CCAA proceedings of Parentco (the "Part IV Proceedings").
2. The Applicants will commence the CCAA Proceedings, proposing KSV to be appointed as Monitor with augmented powers so as to control ordinary course management and receipts and disbursements of funds for the Applicants. KSV acknowledges that the Israeli Parentco Officer shall have standing to appear before the Canadian Court as the representative of Parentco in the CCAA Proceedings.
3. The Israeli Parentco Officer and KSV agree that, with respect to the CCAA Proceedings:
 - (a) KSV shall provide the Israeli Parentco Officer with regular and timely information updates regarding the ongoing status of the CCAA Proceedings as they unfold. KSV will also provide information and updates to the Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;
 - (b) The Israeli Parentco Officer shall provide KSV with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Israeli Court that will negatively impact the Applicants or the CCAA Proceedings. The Israeli Parentco Officer will also provide information and updates to KSV prior to the commencement of the CCAA Proceedings;
 - (c) KSV shall provide the Israeli Parentco Officer with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Canadian Court that will negatively impact the Urbancorp Inc. or the Israeli Proceedings. KSV will also provide information and updates to Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;
 - (d) KSV shall provide to the Israeli Parentco Officer copies of all information pertaining to the Applicants:
 - (i) in KSV's possession that KSV considers material; or

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

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

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

- (i) in the Israeli Parentco Officer's possession that it considers material to the Israeli Proceedings and is not subject to privilege or confidentiality restrictions; or
- (ii) as reasonably requested by KSV, provided that this shall not entitle KSV or any party requesting information through them to receive information on ongoing reviews or investigations being undertaken by the Israeli Parentco Officer or others in connection with the Israeli Proceedings; and

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

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

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

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

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

4. The Israeli Parentco Officer and KSV further agree to cooperate as follows:
- (a) to the extent practicable, each shall share with the other copies of materials to be filed with their respective courts (but not drafts of any such materials), prior to the public filing of same. This provision may not apply to materials submitted in the course of seeking directions from the Canadian Court in the event of a disagreement between the Israeli Parentco Officer and KSV over the working-out of the sale process; and
 - (b) The Israeli Parentco Officer agrees that any information provided to him by KSV in the course of the sale process or concerning any restructuring alternatives, shall remain confidential and not be disclosed to any party without KSV's consent, not to be unreasonably withheld, it being acknowledged that the Israeli Parentco Officer shall be entitled to provide information to its advisors (provided they agree to be bound by the confidentiality restrictions detailed herein) and to both the Israeli Court and the Official Receiver of the Israeli Ministry of Justice, in each case on a sealed and private basis to obtain directions as needed, or as may be set forth in the Non-Disclosure Agreement executed by the Israeli Parentco Officer on May 11, 2016.
5. The Israeli Parentco Officer and KSV acknowledge that, at present, KSV has the amount of CDN\$1.9 million in a trust account, which funds KSV received from Urbancorp Partner (King South) Inc. ("UPKSI"), and which funds KSV has proposed to utilize as a form of interim funding for certain costs of the CCAA Proceedings, to be secured by a priming charge in favour of UPKSI against the assets of the entities utilizing the funds. KSV acknowledges that it will seek to obtain, as soon as possible, a general purpose DIP loan from third party sources and sufficient to repay amounts borrowed from UPKSI, using what are otherwise unencumbered assets of the Applicants (the "DIP Loan").

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

6. The Israeli Parentco Officer shall support the commencement of the CCAA Proceedings. Provided that KSV is acting in good faith and has not engaged in willful misconduct or gross negligence, the Israeli Parentco Officer shall not take any steps to attempt to remove KSV as either the proposal trustee under the Proposal Proceedings or the monitor under the CCAA Proceedings or to in any way to interfere with or seek to limit KSV's powers in such capacities or to suggest that KSV must take instruction from it or the Israeli Court or terminate the CCAA Proceedings without the consent of KSV or by order of the Canadian Court. Nothing herein shall be deemed to grant any additional claims, rights, security or priority to, or in respect of, the Parentco Bonds or to the trustee under the Parentco Bond Indenture or to the Israeli Parentco Officer as against the Applicants or any affiliate or direct or indirect subsidiary of Parentco. In the event of any restriction or termination of the Israeli Parentco Officer's powers by the Israeli Court, this Protocol shall be deemed to be modified accordingly such that the Israeli Parentco Officer's powers and authority hereunder are no greater than those given to him by the Israeli Court.
7. This Protocol shall be governed by laws of Ontario and the laws of Canada as applicable and all disputes or requests for direction in connection with this Protocol shall be determined by the Canadian Court. Nothing herein is or shall be deemed to be an attachment by KSV to the Israeli Court or the laws of Israel.
8. The Israeli Court Officer and KSV agree to use reasonable efforts to seek to commence the proceedings noted above on or before May 18, 2016. KSV shall support, to the extent necessary, an application by the Israeli Parentco Officer to commence the Part IV Proceedings, on terms consistent with this Protocol, even if commenced before the CCAA Proceedings.

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

DATED this _____ day of May, 2016.

Name of Witness:



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

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

By: _____

Name: Robert Kofman
Title: President

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP TORONTO MANAGEMENT INC.,
URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP
(LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING
RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (THE "APPLICANTS") AND THE
AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

INITIAL ORDER
(May 18, 2016)

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Lawyers for the Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY, THE 15 TH
)	
JUSTICE NEWBOULD)	DAY OF SEPTEMBER, 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

CLAIMS PROCEDURE ORDER

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 establishing a claims procedure for the identification and quantification of certain claims against (i) the CCAA Entities and (ii) the current and former directors and officers of the CCAA Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Fifth Report of the Monitor dated September 8, 2016 (the "**Fifth 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.

DEFINITIONS AND INTERPRETATION

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order in these proceedings dated May 18, 2016, as amended, restated, supplemented and/or modified from time to time (the "**Initial Order**").

3. For the purposes of this Order the following terms shall have the following meanings:

- (a) "**Assessments**" means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;

- (b) "**Business Day**" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) "**CCAA Proceedings**" means the CCAA proceedings commenced by the CCAA Entities in the Court under Court File No. CV-16-11389-00CL;
- (d) "**Claim**" means:
- (i) any right or claim of any Person against any of the CCAA Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such CCAA Entities in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the CCAA Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against any of the CCAA Entities for

indemnification by any Director or Officer in respect of a D&O Claim (but excluding any such claim for indemnification that is covered by the Directors' Charge (as defined in the Initial Order)) (each, a "**Pre-Filing Claim**", and collectively, the "**Pre-Filing Claims**");

- (ii) any right or claim of any Person against any of the CCAA Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such CCAA Entity to such Person arising out of the restructuring, disclaimer, resiliation, repudiation, rescinding, termination or breach by such CCAA Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral (each, a "**Restructuring Period Claim**", and collectively, the "**Restructuring Period Claims**"); and
- (iii) any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present arising

or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a "**D&O Claim**", and collectively, the "**D&O Claims**"),

provided however that in any case "**Claim**" shall not include an Excluded Claim, but for greater certainty, shall include any Claim arising through subrogation against any CCAA Entity or Director or Officer;

- (e) "**Claimant**" means a Person asserting a Pre-Filing Claim or a Restructuring Period Claim (including in each case, for greater certainty, an Inter-CCAA Entity Claim) against the CCAA Entities, or any of them, and a Person asserting a D&O Claim against any of the Directors or Officers of any of the CCAA Entities;
- (f) "**Claims Bar Date**" means 5:00 p.m. on October 21, 2016;
- (g) "**Claims Officer**" means the individuals designated by the Court pursuant to paragraph 42 of this Order;
- (h) "**Claims Package**" means the document package which shall be disseminated by the Monitor to any potential Claimant in accordance with the terms of this Order and shall consist of a copy of this Order (without schedules) and such other materials as the Monitor, in consultation with the CCAA Entities, may consider appropriate;

- (i) **"Claims Process"** means the procedures outlined in this Order in connection with the assertion of Claims against the CCAA Entities and/or the Directors and Officers;
- (j) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (k) **"Cumberland Entities"** means all of the CCAA Entities excluding the Non-Cumberland Entities;
- (l) **"D&O Claim Instruction Letter"** means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule "B" hereto;
- (m) **"D&O Proof of Claim"** means the proof of claim referred to herein to be filed by Claimants in connection with any D&O Claim, substantially in the form attached hereto as Schedule "C" hereto, which shall include all supporting documentation in respect of such D&O Claim;
- (n) **"Director"** means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the CCAA Entities, in such capacity;
- (o) **"Excluded Claim"** means any:
 - (i) Claim secured by the Administration Charge, the Interim Lender's Charge, the Intercompany Lender's Charge, the Directors' Charge, the UDDI Administration Charge and DHI Facility Charge (as

defined in the order of this Court in these CCAA Proceedings dated June 15, 2016), and the DIP Lender's Charge (as defined in the order of this Court in these CCAA Proceedings dated June 30, 2016);

- (ii) Claim enumerated in sections 5.1(2) and 19(2) of the CCAA;
- (p) "**Filing Date**" means May 18, 2016;
- (q) "**Home Buyer**" means any Person who is a party to a Home Buyer Agreement which has been terminated, disclaimed, resiliated, repudiated, rescinded or fundamentally breached in the context of these CCAA Proceedings;
- (r) "**Home Buyer Agreement**" means any agreement of purchase and sale with a CCAA Entity for a portion of the lands owned by the relevant CCAA Entity on which was to be constructed a dwelling unit (such as a free-hold town home) as described and provided for in such agreement;
- (s) "**Home Buyer Claim Notice**" means the notice provided by the Monitor to Home Buyers setting out the Monitor's determination of the Home Buyer's Restructuring Period Claim arising as a result of the termination, disclaimer, resiliation, repudiation, rescinding or fundamental breach of the corresponding Home Buyer Agreement, which notice shall be substantially in the form attached as Schedule "D" hereto;

- (t) **"Home Buyer Objection Notice"** means the form substantially in the form attached as Schedule "E" hereto;
- (u) **"Inter-CCAA Entity Claim"** means any Claim of any CCAA Entity against any other CCAA Entity, but excluding any Claim pertaining to the Interim Lender's Charge or the Intercompany Lender's Charge;
- (v) **"Meetings"** and each a **"Meeting"** means a meeting of the creditors of the CCAA Entities called for the purpose of considering and voting in respect of a Plan;
- (w) **"Monitor's Website"** means <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>;
- (x) **"Monitor's Inter-CCAA Entity Claims Report"** shall have the meaning set out in paragraph 39 herein;
- (y) **"Non-Cumberland Entities"** means Urbancorp Toronto Management Inc., Urbancorp Downsview Park Development Inc., Urbancorp Power Holdings Inc., Vestaco Holdings Inc., Vestaco Investments Inc., 228 Queens Quay Inc., Urbancorp Residential Inc., Urbancorp Realtyco Inc., and Urbancorp Cumberland 1 GP Inc.
- (z) **"Notice to Claimants"** means the notice for publication by the Monitor as described in paragraph 15 herein, substantially in the form attached as Schedule "F" hereto;

- (aa) "**Notice of Dispute of Revision or Disallowance**" means the form substantially in the form attached as Schedule "G" hereto;
- (bb) "**Notice of Revision or Disallowance**" means the form substantially in the form attached as Schedule "H" hereto;
- (cc) "**Officer**" means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the CCAA Entities, in such capacity;
- (dd) "**Order**" means this Claims Procedure Order;
- (ee) "**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (ff) "**Plan**" means any proposed plan of compromise or arrangement that may be filed in respect of any or all of the CCAA Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance the terms thereof;
- (gg) "**Proof of Claim**" means the proof of claim referred to herein to be filed by Claimants in respect of Pre-Filing Claims and Restructuring Period Claims (excluding, in each case, an Inter-CCAA Entity Claim), substantially in the

form attached hereto as Schedule "I" hereto, which shall include all supporting documentation in respect of such Claim;

(hh) "**Proof of Claim Instruction Letter**" means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule "J" hereto; and

(ii) "**Restructuring Period Claims Bar Date**" means, in respect of a Restructuring Period Claim, the later of (i) thirty (30) days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Period Claim or, where applicable, a Home Buyer Claim Notice and (ii) the Claims Bar Date.

4. **THIS COURT ORDERS** that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. **THIS COURT ORDERS** that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

GENERAL PROVISIONS

6. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date.

7. **THIS COURT ORDERS** that notwithstanding any other provisions of this Order, the solicitation by the Monitor or the CCAA Entities of Proofs of Claim and D&O Proofs of Claim, the delivery to any Home Buyer of a Home Buyer Claim Notice, and the filing by any Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any person any standing in the CCAA Proceedings or rights under any Plan.

8. **THIS COURT ORDERS** that the Monitor is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor is satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms.

9. **THIS COURT ORDERS** that amounts claimed in Assessments issued after the Filing Date shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment where such Assessment was issued after the Filing Date.

MONITOR'S ROLE

10. **THIS COURT ORDERS** that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Claims Process set out herein, including completing and delivering Home Buyer Claim Notices and preparing the Monitor's Inter-CCAA Entity Claims Report, and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. **THIS COURT ORDERS** that the Monitor (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the CCAA Entities and any information provided by the CCAA Entities, all without independent investigation, provided that any Inter-CCAA Entity Claim is subject to independent investigation by the Monitor as provided in paragraph 39 herein; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, including in respect of the preparation and delivery of Home Buyer Claim Notices and the Inter-CCAA Entity Claims Report; and (v) may seek such assistance as may be reasonably required to carry out its duties and obligations pursuant to this Order.

12. **THIS COURT ORDERS** that the CCAA Entities and their current and former shareholders, Officers, Directors, employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order.

NOTICE TO CLAIMANTS

13. **THIS COURT ORDERS** that as soon as practicable, but no later than 5:00 p.m. on September 22, 2016, the Monitor shall cause a Claims Package to be sent to:

- (a) Each party that appears on the Service List or has requested a Claims Package; and
- (b) All known Claimants (other than the CCAA Entities), as evidenced by the books and records of the CCAA Entities at their respective last known addressees as recorded in the CCAA Entities' books and records.

14. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants to be published for at least two (2) Business Days in The Globe and Mail (National Edition), by no later than 5:00 p.m. on September 22, 2016.

15. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Claimants and the Claims Package to be posted to the Monitor's Website by no later than 5:00 p.m. on September 19, 2016.

16. **THIS COURT ORDERS** that to the extent any Claimant requests documents or information relating to the Claims Process prior to the Claims Bar Date or if the CCAA Entities or the Monitor become aware of any further Claims, the Monitor

shall forthwith send such Claimant a Claims Package, direct such Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor may consider appropriate in the circumstances.

17. **THIS COURT ORDERS** that the Claims Process and the forms of Notice to Claimants, Home Buyer Claim Notice, Home Buyer Objection Notice, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute of Revision or Disallowance are hereby approved. Notwithstanding the foregoing, the Monitor may, from time to time, make minor non-substantive changes to the forms as the Monitor, in its sole discretion, may consider necessary or desirable.

18. **THIS COURT ORDERS** that the sending of the Claims Package to the Claimants and the publication of the Notice to Claimants, in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice of this Order, the Claims Bar Date and the Restructuring Period Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

HOME BUYER CLAIMS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, Home Buyers are not required to file a Proof of Claim for any Restructuring Period

Claim that they may have as a result of the termination, disclaimer, resiliation, repudiation, rescinding or fundamental breach of their Home Buyer Agreement in the context of these CCAA Proceedings. Any such claim shall be determined by the Monitor and set out in a Home Buyer Claim Notice which the Monitor shall send to the relevant Home Buyer.

20. **THIS COURT ORDERS** that a Home Buyer Claim Notice together with the form of Home Buyer Objection Notice shall be included in any Claims Package sent to a Home Buyer.

21. **THIS COURT ORDERS** that if a Home Buyer intends to object to his or her Restructuring Period Claim as determined by the Monitor and set out in the Home Buyer Claim Notice, then the Home Buyer must deliver a completed Home Buyer Objection Notice, together with the reasons for such objection, to the Monitor on or before the Restructuring Period Claims Bar Date, unless otherwise ordered by this Court.

22. **THIS COURT ORDERS** that if the Monitor does not receive a Home Buyer Objection Notice by the date required in paragraph 21 herein, then the Home Buyer's Restructuring Period Claim shall be deemed to have been accepted as set out in the relevant Home Buyer Claim Notice and such Home Buyer shall have no further right to dispute same.

23. **THIS COURT ORDERS** that, in the event that an objection raised in a Home Buyer Objection Notice is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the CCAA Entities, the Monitor shall refer

the objection raised in the Home Buyer Objection Notice to a Claims Officer or the Court for adjudication at the Monitor's election.

24. **THIS COURT ORDERS** that any Home Buyer who believes that he or she has any Claim in addition to the Restructuring Period Claim as set out in its Home Buyer Claim Notice, or has not received a Home Buyer Claim Notice, is required to file a Proof of Claim or D&O Proof of Claim, as applicable, in accordance with the terms of this Order.

FILING OF PROOFS OF CLAIM

(A) Pre-Filing Claims

25. **THIS COURT ORDERS** that any Claimant that intends to assert a Pre-Filing Claim or D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim, as applicable, must be filed by every Claimant in respect of every Pre-Filing Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of such Pre-Filing Claim or D&O Claim has been previously commenced.

26. **THIS COURT ORDERS** that any Claimant (other than a CCAA Entity) that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim, is received by the Monitor on or before the Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Pre-Filing Claim against any of the CCAA Entities or any D&O Claim relating to such Pre-Filing Claim and all such Pre-Filing Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Pre-Filing Claim(s) or D&O Claim(s) relating to the Pre-Filing Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the CCAA Entities become aware that such Claimant has a Restructuring Period Claim or D&O Claim relating to the Restructuring Period Claim; and
- (d) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Pre-filing Claim(s) or D&O Claim(s).

27. **THIS COURT ORDERS** that the provisions of paragraphs 25 and 26 herein shall not apply to Inter-CCAA Entity Claims.

(B) Restructuring Period Claims

28. **THIS COURT ORDERS** that upon becoming aware of a circumstance giving rise to a Restructuring Period Claim, the Monitor shall send a Claims Package to the Claimant in respect of such Restructuring Period Claim in the manner provided for herein.

29. **THIS COURT ORDERS** that any Claimant that intends to assert a Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed by every Claimant in respect of every Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or D&O Claim has been previously commenced.

30. **THIS COURT ORDERS** that any Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim against any of the CCAA Entities or any D&O Claim relating to such Restructuring Period Claim and

all such Restructuring Period Claim or D&O Claims shall be forever extinguished;

- (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or D&O Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the CCAA Entities become aware that such Claimant has another Restructuring Period Claim or D&O Claim relating to such additional Restructuring Period Claim; and
- (d) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Restructuring Period Claim(s) or D&O Claim(s).

31. **THIS COURT ORDERS** that the provisions of paragraphs 28 through to and including 30 herein shall not apply to Inter-CCAA Entity Claims.

ADJUDICATION OF CLAIMS (OTHER THAN INTER-CCAA ENTITY CLAIMS)

32. **THIS COURT ORDERS** that, for greater certainty, the procedures outlined in paragraphs 33 to 38 herein shall not apply to the adjudication of Inter-CCAA Entity Claims.

33. **THIS COURT ORDERS** that the Monitor shall review all Proofs of Claim received on or before the Claims Bar Date or the Restructuring Period Claims Bar Date and shall accept, revise or reject each Claim. With respect to a D&O Claim set out in a

D&O Proof of Claim, the Monitor shall, in consultation with the CCAA Entities and the Directors and Officers named in respect of such D&O Claim as to the merits of such Claim(s), as applicable, accept, revise or reject such D&O Claim.

34. **THIS COURT ORDERS** that if the Monitor intends to revise or reject a Claim, the Monitor shall notify the Claimant who has delivered such Proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Revision or Disallowance by no later than November 11, 2016, unless otherwise ordered by this Court on application by the Monitor.

35. **THIS COURT ORDERS** that if the Monitor does not send a Notice of Revision or Disallowance by the date required in paragraph 34 herein, then the Claim shall be deemed to have been accepted as set out in the relevant Proof of Claim or D&O Proof of Claim, as applicable.

36. **THIS COURT ORDERS** that any Claimant who intends to dispute a Notice of Revision or Disallowance hereof shall:

- (a) deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute, to the Monitor by no later than twenty-one (21) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing; and

- (b) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the CCAA Entities, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election.

37. **THIS COURT ORDERS** that where a Claimant that receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 36(a), such Claimant's Claim or D&O Claim relating to such Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such Claimant shall have no further right to dispute same.

38. **THIS COURT ORDERS** that the Monitor may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the Claimant at any time.

ADJUDICATION OF INTER-CCAA ENTITY CLAIMS

39. **THIS COURT ORDERS** that the Monitor shall prepare a report to be served on the Service List and filed with the Court detailing its review of all claims between the Non-Cumberland Entities and the Cumberland Entities and assessing in detail, with reasonably sufficient particulars and analysis, the validity and quantum of such transactions for the purpose of determining such Inter-CCAA Entity Claims (the "**Monitor's Inter-CCAA Entity Claims Report**"), subject to further review and adjustments in respect of claims that may be pursued by the Monitor in accordance with

section 36.1 of the CCAA. The Monitor's Inter-CCAA Entity Claims Report shall include: (i) the amount of the debt; (ii) whether cash or services were provided by the creditor CCAA Entity to the debtor CCAA Entity; and (iii) a description of the transaction. The Monitor's Inter-CCAA Entity Claims Report shall be served no later than October 27, 2016 together with a notice of motion seeking this Court's approval of same, unless otherwise ordered by this Court on application by the Monitor. The return date for this motion shall be no later than November 30, 2016. For greater certainty, nothing in the Monitor's Inter-CCAA Entity Claims Report shall bind the Court with respect to its determination of such Inter-CCAA Entity Claims as the Court sees fit, including without limitation, the validity or quantum of such Inter-CCAA Entity Claims.

40. **THIS COURT ORDERS** that, after the service of the Monitor's Inter-CCAA Entity Claims Report, any Claimant may serve and file a responding motion record and factum, which may include, but are not limited to, any argument asserted for the subordination of outstanding intercompany debts of any of the CCAA Entities, any relief regarding claimed priority rights, and the validity and quantum of Inter-CCAA Entity Claims and any claim relating to debt recharacterization. Such responding motion record shall be served no later than November 15, 2016 and be returnable at the same time as the Monitor's motion seeking approval of the Monitor's Inter-CCAA Entity Claims Report as set out in paragraph 39 herein.

SET-OFF

41. **THIS COURT ORDERS** that nothing in this Order affects the rights of any Person pursuant to section 21 of the CCAA.

CLAIMS OFFICERS

42. **THIS COURT ORDERS** that, on application of the Monitor, a Claims Officers may be appointed by the Court.

43. **THIS COURT ORDERS** that the decision as to whether the disputed Claim should be adjudicated by the Court or a Claims Officer shall be in the sole discretion of the Monitor.

44. **THIS COURT ORDERS** that a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

45. **THIS COURT ORDERS** that the Monitor, the Claimant or the applicable CCAA Entity may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a Claimant's Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 44 or otherwise to the Court by filing a notice of appeal, and the appeal shall be initially returnable within ten (10) days of filing such notice of appeal.

46. **THIS COURT ORDERS** that if no party appeals the determination of value of a Claim by a Claims Officer within the time set out in paragraph 45, above, the decision of the Claims Officer in determining the value of the Claimant's Claim shall be final and binding upon the relevant CCAA Entity, the Monitor, and the Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

47. **THIS COURT ORDERS** that the provisions of paragraphs 42 to 46 herein shall not apply to Inter-CCAA Entity Claims.

NOTICE OF TRANSFEREES

48. **THIS COURT ORDERS** that from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, to the extent required, leave is hereby granted to permit a Claimant to provide notice of assignment or transfer of a Claim to any third party to the Monitor.

49. **THIS COURT ORDERS** that subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the CCAA Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of such

Claim or D&O Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the CCAA Entities may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the CCAA Entities.

50. **THIS COURT ORDERS** that no transfer or assignment shall be effective for voting purposes at any Meeting unless sufficient notice and evidence of such transfer or assignment has been received by the Monitor no later than 5:00 p.m. on the date that is seven (7) days prior to the date fixed by the Court for any Meeting, failing which the original Claimant shall have all applicable rights as the "Claimant" with respect to such Claim as if no transfer or assignment of the Claim had occurred.

SERVICE AND NOTICE

51. **THIS COURT ORDERS** that the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Claims Package, and any letters, notices or other documents, to the Claimants or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the CCAA Entities or set out in such Claimant's Proof of Claim. Any such service and delivery

shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth (10th) Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

52. **THIS COURT ORDERS** that any notice or communication required to be provided or delivered by a Claimant to the Monitor under this Order shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email addressed to:

KSV Kofman Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266

53. **THIS COURT ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not,

absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

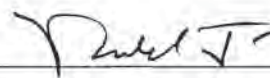
MISCELLANEOUS

54. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court to extend the time for any action which the Monitor is required to take and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

55. **THIS COURT ORDERS** that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the CCAA Entities' insurance and any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any CCAA Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that she is covered by, the CCAA Entities' insurance or any Director's or

Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a CCAA Entity or Director or Officer as applicable.

56. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada, Israel or elsewhere to give effect to this Order and to assist the CCAA Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the CCAA Entities and the Monitor and their respective agents in carrying out the terms of this Order.



3389902

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

SEP 15 2016

PER / PAR: 

SCHEDULE "A"
LIST OF NON APPLICANT AFFILIATES

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

SCHEDULE "B"

CLAIMANT'S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS AND/OR OFFICERS OF THE CCAA ENTITIES¹

This Guide has been prepared to assist Claimants in filling out the D&O Proof of Claim form for claims against the Directors and/or Officers of the CCAA Entities. If you have any additional questions regarding completion of the D&O Proof of Claim, please consult the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/> or contact the Monitor, whose contact information is shown below.

The D&O Proof of Claim form is for Claimants asserting a claim against any Directors and/or Officers of the CCAA Entities, and NOT for claims against the CCAA Entities themselves. For claims against the CCAA Entities, please use the form titled "Proof of Claim Form for Claims Against the CCAA Entities", which is available on the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

Additional copies of the D&O Proof of Claim form may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on September 15, 2016 (the "**Claims Procedure Order**"), the terms of the Claims Procedure Order will govern.

SECTION 1 – DEBTOR

1. The full name of all the CCAA Entities' Directors or Officers against whom the Claim is asserted must be listed.

SECTION 2(a) – ORIGINAL CLAIMANT

2. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the CCAA Entities' Directors or Officers.
3. The Claimant shall include any and all D&O Claims it asserts against the CCAA Entities' Directors or Officers in a single D&O Proof of Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

6. If the claim has been assigned or transferred to another party, Section 2(b) must also be completed.
7. Unless the claim is assigned or transferred, all future correspondence, notices, etc. regarding the claim will be directed to the address and contact indicated in this section.

SECTION 2(b) – ASSIGNEE

8. If the Claimant has assigned or otherwise transferred its claim, then Section 2(b) must be completed.
9. The full legal name of the Assignee must be provided.
10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
11. If the Monitor in consultation with the CCAA Entities is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR

12. Indicate the amount the Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the Amount of Claim column.

Currency

13. The amount of the claim must be provided in the currency in which it arose.
14. Indicate the appropriate currency in the Currency column.
15. If the claim is denominated in multiple currencies, use a separate line to indicate the claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
16. If necessary, currency will be converted in accordance with the Claims Procedure Order.

SECTION 4 - DOCUMENTATION

17. Attach to the D&O Proof of Claim form all particulars of the claim and supporting documentation, including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the claim.

SECTION 5 - CERTIFICATION

18. The person signing the D&O Proof of Claim should:
 - (a) be the Claimant or authorized representative of the Claimant.

- (b) have knowledge of all the circumstances connected with this claim.
 - (c) assert the claim against the Debtor(s) as set out in the D&O Proof of Claim and certify all supporting documentation is attached.
 - (d) have a witness to its certification.
19. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Debtor(s).

SECTION 6 - FILING OF CLAIM

20. **The D&O Proof of Claim must be received by the Monitor on or before 5:00 p.m. (Toronto time) on October 21, 2016 (the "Claims Bar Date") (or within thirty (30) days after the date on which the Monitor had sent you a Claims Package with respect to a Restructuring Period Claim) by **prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:****

**KSV Kofman Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9**

**Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266**

Failure to file your D&O Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m., on the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, will result in your claim being barred and you will be prevented from making or enforcing a claim against the Directors and Officers of the CCAA Entities. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in the CCAA Entities' CCAA proceedings.

SCHEDULE "C"

PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS OR OFFICERS OF THE CCAA ENTITIES¹ (the "D&O Proof of Claim")

This form is to be used only by Claimants asserting a claim against any Directors and/or, Officers of the CCAA Entities and NOT for claims against the CCAA Entities themselves. For claims against the CCAA Entities, please use the form titled "Proof of Claim Form for Claims Against the CCAA Entities", which is available on the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

1. Name of CCAA Entity Officer(s) and/or Director(s) (the "Debtor(s)):

Debtor(s): _____

(A) Original Claimant (the "Claimant")

Legal Name of Claimant _____	Name of Contact _____
Address _____	Title _____
_____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	email _____
Postal/Zip Code _____	

(B) Assignee, if claim has been assigned

Legal Name of Assignee _____	Name of Contact _____
Address _____	Phone # _____
_____	Fax # _____
City _____ Prov /State _____	email: _____
Postal/Zip Code _____	

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

2. Amount of Claim

The Debtor(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s), and/or Officers	Currency	Amount of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Documentation

Provide all particulars of the Claim and supporting documentation, including any claim assignment/transfer agreement or similar document, if applicable, and including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim.

4. Certification

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor(s) as set out above.
4. Complete documentation in support of this Claim is attached.

Signature: _____ Name: _____ Title: _____	Witness: _____ (signature) _____ (print)
---	--

Dated at _____ this _____ day of _____, 2015

5. Filing of Claim

This D&O Proof of Claim must be received by the Monitor on or before 5:00 p.m. (Toronto time) on October 21, 2016 (or within thirty (30) days after the date on which the Monitor had sent you a Claims Package with respect to a Restructuring Period Claim) **by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**KSV Kofman Inc.
 150 King Street West
 Suite 2308
 Toronto, ON M5H 1J9**

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Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266

For more information see <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>, or contact the Monitor by telephone (416.932.6207)

SCHEDULE "D"

HOME BUYER CLAIM NOTICE

With respect to the CCAA Entities¹

YOU ARE RECEIVING THIS NOTICE PURSUANT TO THE CLAIMS PROCEDURE ORDER BECAUSE THE MONITOR HAS DETERMINED THAT YOU ARE A HOME BUYER WITH A RESTRUCTURING PERIOD CLAIM AS A RESULT OF THE TERMINATION, DISCLAIMER, RESILIATION, REPUDIATION, RESCINDING OR FUNDAMENTAL BREACH OF YOUR CORRESPONDING HOME BUYER AGREEMENT.

Capitalized terms used in this notice and not otherwise defined have the meaning given to them in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the CCAA Entities dated September 15, 2016 (the "**Claims Procedure Order**"). A copy of the Claims Procedure Order can be found on the Monitor's website at: <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

Claim Reference Number: ■

Contact Details

Name of Home Buyer (Claimant): ■

Address of Claimant: ■

E-mail: ■

Telephone Number: ■

Fax Number: ■

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

**Details of Allowed Restructuring
Period Claim**

CCAA Entity with which Home Buyer ■
has a Home Buyer Agreement:

Description of Home Buyer ■
Agreement:

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that it has determined your allowed Restructuring Period Claim as a result of the termination, disclaimer, resiliation, repudiation, rescinding or fundamental breach of your corresponding Home Buyer Agreement in the context of these CCAA Proceedings. Subject to further dispute by you in accordance with the Claims Procedure Order, your Restructuring Period Claim will be as follows:

Allowed Claim Amount:

Deposit Amount \$■

Interest \$■

Total Allowed Restructuring Period ■
Claim Amount \$■

Legal Nature of Claim: Unsecured

SERVICE OF HOME BUYER OBJECTION NOTICES

If you intend to object to this Home Buyer Claim Notice, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is the later of the Claims Bar Date or 30 days after the date this Home Buyer Claim Notice is deemed to have been received by you (in accordance with paragraph 51 of the Claims Procedure Order), deliver a Home Buyer Objection Notice to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

**KSV Kofman Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9**

Attention: Noah Goldstein

SCHEDULE "E"

HOME BUYER OBJECTION NOTICE

With respect to the CCAA Entities¹

Claims Reference Number: _____

1. Particulars of Claimant:

Full Legal Name of Claimant (include trade name, if different)

 (the "Claimant")

Full Mailing Address of the Claimant:

Other Contact Information of the Claimant:

Telephone Number: _____

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

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2. Particulars of original Claimant from whom you acquired the Claim or D&O Claim, if applicable

Have you acquired this purported Claim by assignment?

Yes:

No:

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): _____

3. Objection to Home Buyer Claim Notice:

The Claimant hereby disagrees with the value of its Claim, as set out in the Home Buyer Claim Notice and asserts its Claim as follows:

	Currency	Amount allowed by Monitor: (Home Buyer Claim Notice)	Amount claimed by Claimant:²
A. Deposit		\$	\$
B. Interest		\$	\$
Total Claim		\$	\$

4. Reasons for Objection to Home Buyer Claim Notice:
(Please detail reasons below)

² If necessary, currency will be converted in accordance with the Claims Procedure Order.

SCHEDULE "F"

**NOTICE TO CLAIMANTS WITH CLAIMS
AGAINST THE CCAA ENTITIES**

RE: NOTICE OF CLAIMS PROCESS FOR 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., URBANCORP REALTYCO INC. (COLLECTIVELY, THE "CCAA ENTITIES") PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (the "CCAA")

PLEASE TAKE NOTICE that on September 15, 2016, the Ontario Superior Court of Justice (Commercial List) issued an order (the "**Claims Procedure Order**") in the CCAA proceedings of the CCAA Entities (capitalized terms used in this notice and not otherwise defined have the meaning given to them in the Claims Procedure Order). A copy of the Claims Procedure Order can be found on the Monitor's website at: <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

ATTENTION HOME BUYERS. Home Buyers with Claims arising as a result of the termination, disclaimer, rescission, repudiation, rescinding or fundamental breach of their corresponding Home Buyer Agreement in the context of these CCAA Proceedings **DO NOT NEED TO FILE ANY PROOF OF CLAIM.** Rather, the Monitor will send you a Home Buyer Claim Notice reflecting its determination and acceptance of your Restructuring Period Claim. If you object to the amount of your Restructuring Period Claim as set out in the Home Buyer Claim Notice that you receive, then you are required to fill out and send to the Monitor a Home Buyer Objection Notice as set out in the Claims Procedure Order. If you believe that you have a Claim in addition to that set out in your Home Buyer Claim Notice, then you must follow the procedure set out below for all other creditors.

Other than for the Restructuring Period Claims of Home Buyers outlined above, the Claims Procedure Order requires that all Persons who assert a Claim against the CCAA Entities, whether unliquidated, contingent or otherwise, and all Persons who assert a claim against Directors and Officers of the CCAA Entities (as defined in the Claims Procedure Order, a "**D&O Claim**"), must file a Proof of Claim (with respect to Claims against the CCAA Entities) or D&O Proof of Claim (with respect to D&O Claims) with KSV Kofman Inc. (the "**Monitor**") **on or before 5:00**

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p.m. (Toronto time) on October 21, 2016 (the "Claims Bar Date"), by sending the Proof of Claim or D&O Proof of Claim to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**KSV Kofman Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9**

**Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266**

Pursuant to the Claims Procedure Order, Claims Packages, including the form of Proof of Claim and D&O Proof of Claim, will be sent to all known Claimants by mail, on or before September 22, 2016. Claimants may also obtain the Claims Procedure Order and a Claims Package from the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>, or by contacting the Monitor by telephone (416.932.6207).

Other than for Restructuring Period Claims, only Proofs of Claim and D&O Proofs of Claim actually received by the Monitor on or before 5:00 p.m. (Toronto time) on October 21, 2016 will be considered filed by the Claims Bar Date. **It is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the Claims Bar Date.**

CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

DATED this ● day of ●, 2016.

SCHEDULE "G"

NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE

With respect to the CCAA Entities¹

Claims Reference Number: _____

1. Particulars of Claimant:

Full Legal Name of Claimant (include trade name, if different)

 (the "Claimant")

Full Mailing Address of the Claimant:

Other Contact Information of the Claimant:

Telephone Number: _____

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

2. Particulars of original Claimant from whom you acquired the Claim or D&O Claim, if applicable

Have you acquired this purported Claim by assignment?

Yes:

No:

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): _____

3. Dispute of Revision or Disallowance of Claim:

The Claimant hereby disagrees with the value of its Claim, as set out in the Notice of Revision or Disallowance and asserts a Claim as follows:

	Currency	Amount allowed by Monitor: (Notice of Revision or Disallowance)	Amount claimed by Claimant:²
A. Unsecured		\$	\$
B. Secured		\$	\$
C. D&O Claim		\$	\$
E. Total Claim		\$	\$

4. Reasons for Dispute of Revision or Disallowance of Claim:
(Please detail reasons below)

² If necessary, currency will be converted in accordance with the Claims Procedure Order.

SCHEDULE "H"

NOTICE OF REVISION OR DISALLOWANCE

**For Persons that have asserted Claims against the CCAA Entities¹,
D&O Claims against the Directors and/or Officers of the CCAA Entities**

Claims Reference Number: _____ ● _____

TO: ● _____

(the "Claimant")

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the CCAA Entities dated September 15, 2016 (the "**Claims Procedure Order**").

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim or D&O Proof of Claim and has revised or disallowed all or part of your purported Claim. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be as follows:

	Amount as submitted		Amount allowed by Monitor
	Currency		
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. D&O Claim		\$	\$
E. Total Claim		\$	\$

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

Reasons for Revision or Disallowance:**SERVICE OF DISPUTE NOTICES**

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is twenty-one (21) Calendar Days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 36(a) of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

KSV Kofman Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this _____ day of _____, 2016.

KSV Kofman Inc., solely in its capacity as Court-appointed Monitor of the CCAA Entities, and not in its personal or corporate capacity

Per: _____

For more information see <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>, or contact the Monitor by telephone (416.932.6207)

SCHEDULE "I"
**PROOF OF CLAIM FORM FOR CLAIMS AGAINST
 THE CCAA ENTITIES¹**

1. Name of CCAA Entity or Entities (the "Debtor"):

Debtor: _____

2(a) Original Claimant (the "Claimant")

Legal Name of
Claimant _____

Name of
Contact _____

Address _____

Title _____

Phone

Fax # _____

City _____ Prov
/State _____

email _____

Postal/Zip
Code _____

2(b) Assignee, if claim has been assigned

Legal Name of
Assignee _____

Name of
Contact _____

Address _____

Phone

Fax # _____

City _____ Prov
/State _____

email: _____

Postal/Zip
Code _____

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

3. Amount of Claim

The Debtor was and still is indebted to the Claimant as follows:

Currency	Amount of Claim	Unsecured Claim	Secured Claim
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor as set out above.
4. Complete documentation in support of this claim is attached.

Signature: _____ Name: _____ Title: _____	Witness: _____ (signature) _____ (print)
Dated at _____ this _____ day of _____, 2016	

6. Filing of Claim

This Proof of Claim **must be received by the Monitor on or before 5:00 p.m. (Toronto time) on October 21, 2016** (or within thirty (30) days after the date on which the Monitor had sent you a Claims Package with respect to a Restructuring Period Claim) **by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**KSV Kofman Inc.
 150 King Street West
 Suite 2308
 Toronto, ON M5H 1J9**

- 3 -

Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266

For more information see <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>, or contact the Monitor by telephone (416.932.6207)

SCHEDULE "J"

CLAIMANT'S GUIDE TO COMPLETING THE PROOF OF CLAIM FORM FOR CLAIMS AGAINST THE CCAA ENTITIES¹

This Guide has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against the CCAA Entities. If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/> or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on September 15, 2016 (the "**Claims Procedure Order**"), the terms of the Claims Procedure Order will govern.

SECTION 1 – DEBTOR

1. The full name of the CCAA Entity or Entities against which the Claim is asserted must be listed (see footnote 1 for complete list of CCAA Entities).

SECTION 2(a) – ORIGINAL CLAIMANT

2. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the CCAA Entities, or any of them.
3. The Claimant shall include any and all Claims it asserts against the CCAA Entities, or any of them, in a single Proof of Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
6. If the Claim has been assigned or transferred to another party, Section 2(b) must also be completed.
7. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

¹ 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., Urbancorp Realtyco Inc. (collectively, the "CCAA Entities").

SECTION 2(b) – ASSIGNEE

8. If the Claimant has assigned or otherwise transferred its Claim, then Section 2(b) must be completed.
9. The full legal name of the Assignee must be provided.
10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
11. If the Monitor in consultation with the CCAA Entities is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR

12. Indicate the amount the CCAA Entity or Entities was and still is indebted to the Claimant in the Amount of Claim column.

Currency

13. The amount of the Claim must be provided in the currency in which it arose.
14. Indicate the appropriate currency in the Currency column.
15. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
16. If necessary, currency will be converted in accordance with the Claims Procedure Order.

Unsecured Claim

17. Check this box ONLY if the Claim recorded on that line is an unsecured claim.

Secured Claim

18. Check this box ONLY if the Claim recorded on that line is a secured claim.

SECTION 4 - DOCUMENTATION

19. Attach to the Proof of Claim form all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected CCAA Entity to the Claimant and estimated value of such security.

SECTION 5 - CERTIFICATION

20. The person signing the Proof of Claim should:
- (a) be the Claimant or authorized representative of the Claimant.
 - (b) have knowledge of all the circumstances connected with this Claim.
 - (c) assert the Claim against the Debtor as set out in the Proof of Claim and certify all supporting documentation is attached.
 - (d) have a witness to its certification.
21. By signing and submitting the Proof of Claim, the Claimant is asserting the Claim against the CCAA Entity or Entities.

SECTION 6 - FILING OF CLAIM

22. **The Proof of Claim must be received by the Monitor on or before 5:00 p.m. (Toronto time) on October 21, 2016 (the "Claims Bar Date") (or within thirty (30) days after the date on which the Monitor had sent you a Claims Package with respect to a Restructuring Period Claim) by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

**KSV Kofman Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9**

**Attention: Noah Goldstein
Email: ngoldstein@ksvadvisory.com
Fax: 416.932.6266**

Failure to file your Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m., on the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, will result in your claim being barred and you will be prevented from making or enforcing a Claim against the CCAA Entities. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in the CCAA Entities' CCAA proceedings.

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
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

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

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

Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 WELLINGTON STREET WEST
TORONTO, ON M5V 3J7

Robin B. Schwill (LSUC #38452D)
Tel: 416.863.5502
Fax: 416.863.0871

Lawyers for the Monitor



**Twenty-Second 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.,
KRI Residential Inc., Urbancorp 60 St.
Clair Inc., High Res. Inc., Bridge On King
Inc. and the Affiliated Entities Listed in
Schedule "A" Hereto**

February 2, 2018

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

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR
VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW)
INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK
DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING
RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC.,
BRIDGE ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE
AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO**

TWENTY-SECOND REPORT OF KSV KOFMAN INC.

February 2, 2018

1.0 Introduction

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (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 Companies, together with the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities" and each a "Cumberland CCAA Entity") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor (the "Monitor") (the "Cumberland CCAA Proceedings").

3. On September 15, 2016, the Court issued an order establishing a procedure to identify and quantify claims against the Cumberland CCAA Entities and against the current and former directors and officers of the Cumberland CCAA Entities and providing procedures for the resolution of any disputes arising therefrom (the "Claims Procedure Order").
4. On October 19, 2016, Speedy Electrical Contractors Ltd. ("Speedy") filed a proof of claim (the "Proof of Claim") against King Residential Inc. ("KRI") in the amount of \$2,323,638.54 (the "Claim") in respect of a limited guarantee provided on November 15, 2015 (the "Guarantee Date") by KRI to Speedy for debts owing by Alan Saskin ("Saskin") and by Edge on Triangle Park Inc. ("Edge") (the "Guarantee"); KRI is a Cumberland CCAA Entity and Edge is not.
5. As security for the Guarantee, KRI provided a collateral mortgage (the "Mortgage") to Speedy on thirteen specific condominiums and thirteen specific parking spots¹ (collectively, the "Residential Units"). A copy of the Proof of Claim is attached as Appendix "A".
6. The Monitor was (and remains) unable to determine that anything more than nominal consideration was received by KRI for the Guarantee and/or Mortgage (the "Secured Guarantee"). Accordingly, on November 11, 2016, the Monitor issued a Notice of Revision or Disallowance to Speedy disallowing its Claim in full (the "Disallowance"). The Claim was disallowed on the basis that the granting of the Secured Guarantee could be voidable as a transfer at undervalue and as a fraudulent conveyance or preference. A copy of the Disallowance is attached as Appendix "B".
7. The Monitor also notes that the granting of the Secured Guarantee could be considered to have been oppressive or unfairly prejudicial to or to have unfairly disregarded the interest of KRI's other creditors at the time it was granted.
8. On November 25, 2016, Speedy filed a Notice of Dispute of Revision or Disallowance with the Monitor (the "Notice of Dispute"). A copy of the Notice of Dispute is attached as Appendix "C". The Claim remains unresolved and therefore the parties have agreed to have it determined by the Court.
9. Additional information relating to these CCAA proceedings, including all reports previously filed by the Monitor, is available at the Monitor's website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

1.1 Purpose of this Report

1. The purposes of this report (the "Report") are to:
 - a) provide background information concerning the Cumberland CCAA Entities and these proceedings;
 - b) set out the Monitor's review of the Claim, including the solvency of Cumberland CCAA Entities at the Guarantee Date, and the basis for the Disallowance; and

¹ KRI owns 48 parking spots. The Speedy parking spots are a subset of those parking spots.

- c) recommend the Court make an order:
 - (i) confirming the Disallowance;
 - (ii) setting aside the Secured Guarantee as void as against KRI and the Monitor; and
 - (iii) declaring the Mortgage as unenforceable or, if the Court determines that the Claim is valid, limiting the Secured Guarantee to the net realizations from the sale of the Residential Units.

1.2 Restrictions

1. In preparing this Report, the Monitor has reviewed the following information:
 - a) unaudited financial and other information of the Urbancorp Group;²
 - b) accounting records for the Bay Entities;³ and
 - c) the Proof of Claim and Notice of Dispute.
2. In preparing this Report, the Monitor also relied on discussions with the Urbancorp Group's management, including Saskin and James Greff, an employee of UTMI.
3. The Monitor has not performed an audit or other independent verification of the information discussed herein. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report. The Monitor has reviewed but not confirmed information and documentation concerning the Reorganization, as defined in Section 2.0 below.

2.0 Background

1. The Urbancorp Group appears to have been founded in 1991 by Saskin. The Urbancorp Group is principally involved in the development of residential real estate projects in the Greater Toronto Area.
2. The Urbancorp Group set up single purpose, project-specific corporations that in most instances acted as bare trustee corporations or nominees for their beneficial owners.
3. Prior to a corporate reorganization completed on or around December 15, 2015 (the "Reorganization"), the beneficial owners of the various development projects were limited partnerships each owned by Saskin and/or members of his family. The limited partnerships that were the beneficial owners of the various projects prior to the Reorganization were:
 - TCC/Urbancorp (Bay) LP ("Bay LP");
 - Urbancorp (Bay/Stadium) LP ("Bay/Stadium LP"); and

² The Cumberland CCAA Entities together with several affiliates comprise the "Urbancorp Group".

³ The direct and indirect subsidiaries of TCC/Urbancorp (Bay) LP comprise the Bay Entities.

- Urbancorp (Stadium Road) LP ("Stadium Road").
4. The ownership of Bay LP at the Guarantee Date is believed to have been:
 - Deaja Partner (Bay) Inc. – General Partner - .01%
 - Saskin – Limited Partner – 79.99%
 - Vestaco Investments Inc., as nominee for Doreen Saskin – Limited Partner – 20.00%
 5. A copy of the corporate chart reflecting the ultimate owners of Bay/Stadium LP and Stadium Road at the Guarantee Date is attached as Appendix "D".
 6. The Secured Guarantee was provided prior to the Reorganization. At the time the Secured Guarantee was provided, KRI was a wholly-owned subsidiary and nominee of Bay LP and Edge was a wholly-owned subsidiary and nominee of Bay/Stadium LP.

2.1 Bay LP

1. The Monitor understands that Bay LP was formed in 1999. Bay LP owned and developed various real estate projects through nominee corporations.
2. A copy of Bay LP's corporate chart prior to the Reorganization is provided in Appendix "E".
3. Bay LP owned, directly or indirectly, each of the following entities prior to the Reorganization:⁴
 - KRI
 - St. Clair
 - Patricia
 - Mallow
 - Lawrence
 - Urbancorp (North Side) Inc. ("North Side")
 - Urbancorp (952 Queen West) Inc. ("Queen")
 - Urbancorp New Kings Inc. ("UNKI")
 - Urbancorp Partner (King South) Inc. ("King South")
 - Urbancorp 60 St. Clair Inc. ("60 St. Clair")
 - Urbancorp (Woodbine) Inc. ("Woodbine")
 - Urbancorp (Bridlepath) Inc. ("Bridlepath")
 - High Res Inc. ("High Res")
 - Urbancorp the Bridge Inc. (the "Bridge")⁵
 - The Townhouses of Hogg's Hollow Inc. ("Hoggs Hollow")
 - King Towns Inc. ("King Towns")
 - Newtowns at Kingtowns Inc. ("Newtowns")

⁴ Downsview was also a subsidiary of Bay LP. It was transferred to Urbancorp Inc. prior to the Reorganization.

⁵ The name of this entity was subsequently changed to The Bridge on King Inc.

Collectively, the direct and indirect subsidiaries of Bay LP prior to the Reorganization are referred to as the "Bay Entities" and each individually is a "Bay Entity". The Monitor understands that prior to the Reorganization, each Bay Entity was a nominee for Bay LP and, as such, their assets and liabilities were assets and liabilities of Bay LP.

4. Set out in Appendix "F" is a brief description of the purpose of each Bay Entity, each of which is believed to be a single purpose entity.

2.2 Reorganization

1. Urbancorp Inc. ("UCI") was incorporated in June, 2015 in connection with the Reorganization for the purpose of raising capital through a bond issuance in the public markets in Israel (the "Israel Bond Issue"). As part of the Reorganization, the following entities were formed and became wholly-owned subsidiaries of UCI:
 - Urbancorp Realtyco Inc.;
 - Urbancorp Residential Inc.;
 - Urbancorp Cumberland 1 LP ("Cumberland 1"); and
 - Urbancorp Cumberland 2 LP ("Cumberland 2").
2. In connection with the Israel Bond Issue:
 - a) all Bay Entities were transferred to Cumberland 1 (collectively, the "Cumberland Entities"⁶), except for Woodbine, Bridlepath, Hoggs Hollow, King Towns and Newtowns, all of which remained subsidiaries of Bay LP (the "Remaining Bay Entities"); and
 - b) Bay/Stadium LP transferred certain of its subsidiaries to Cumberland 2, including Edge.
3. In exchange for these transfers:
 - a) Bay LP received Class D Shares of Urbancorp Holdco Inc. ("UHI"), the parent company of UCI; and
 - b) Bay/Stadium LP received Class "E" shares of UHI.
4. The UCI group's corporate organizational chart after the Reorganization is attached as Appendix "G".
5. The Remaining Bay Entities are subject to separate CCAA proceedings pursuant to which KSV is also the monitor (the "Bay Monitor"). The Reorganization is discussed in greater detail in the Bay Monitor's Tenth Report to Court, dated July 24, 2017, which can be found on the Monitor's website at: <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.

⁶ St. Clair, Patricia, Mallow, Lawrence, KRI, North Side, Queen, UNKI, King South, 60 St. Clair, High Res and Bridge.

2.3 The Israel Bond Issue

1. The Israel Bond Issue closed in December, 2015. UCI raised approximately \$64.2 million before costs and reserves for future interest and expenses totaling approximately \$7.4 million. The net proceeds received by UCI from the Israel Bond Issue was approximately \$56.8 million (the "Proceeds"). Of this amount, \$51.9 million was used to repay secured debt owed by various indirect subsidiaries of UCI and the remainder was used for general working capital purposes.

2.4 Insolvency of the Urbancorp Group

1. Within five months of the Israel Bond Issue, substantially all of the entities in the Urbancorp Group were subject to insolvency proceedings, including all direct and indirect subsidiaries of UCI.⁷ In addition to the Cumberland CCAA Proceedings, the following insolvency proceedings were commenced:
 - a) on April 25, 2016, the District Court in Tel Aviv-Yafo issued a decision appointing Guy Gissin as the functionary officer and foreign representative (the "Foreign Representative") of UCI and granting him certain powers, authorities and responsibilities over UCI (the "Israeli Proceedings"). The Israeli Proceedings have been recognized in Canada under Part IV of the CCAA. KSV was appointed as the Information Officer in the Israeli Proceedings;
 - b) on April 25, 2016, Woodbine and Bridlepath each filed a Notice of Intention to file a Proposal ("NOI") pursuant to the *Bankruptcy and Insolvency Act* ("BIA"). KSV was appointed as the Proposal Trustee in these proceedings. Pursuant to an order made by the Court dated October 18, 2016, the Remaining Bay Entities, Bay LP and Deaja Partner (Bay) Inc., the general partner of Bay LP (collectively, the "Bay CCAA Entities"), were granted CCAA protection and KSV was appointed as the Bay Monitor;
 - c) on April 29, 2016, Edge, Bosvest Inc. and Edge Residential Inc. (collectively, the "Edge Entities") each filed a NOI pursuant to the BIA. On October 16, 2016, the Edge Entities, Cumberland 2 and Urbancorp Cumberland 2 GP Inc. (collectively, the "Cumberland 2 Entities") filed for and were granted protection under the CCAA (the "Cumberland 2 CCAA Proceedings"). The Fuller Landau Group Inc. ("Fuller Landau") is the Monitor in the Cumberland 2 CCAA Proceedings;
 - d) on April 29, 2016, Saskin filed a NOI pursuant to the BIA. Fuller Landau is the Proposal Trustee in Saskin's proposal proceedings; and

⁷ Other than UNKI. Pursuant to the Initial Order, Robert Kofman, the President of KSV and the person with primary 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 project owned by UNKI in place of Saskin, the sole officer and director of UNKI.

- e) on May 31, 2016, the Court issued an order appointing Alvarez & Marsal Canada Inc. as receiver and manager of Urbancorp (Leslieville) Developments Inc. ("Leslieville"), Urbancorp (Riverdale) Developments Inc. and Urbancorp (The Beach) Developments Inc. (the "Leslieville Entities"). The Leslieville Entities are subsidiaries of Bay/Stadium LP.

3.0 Overview of Speedy's Claim

1. There are two components to Speedy's claim:
 - a \$1 million unsecured loan to Saskin, plus interest and costs which continue to accrue (the "Saskin Loan"); and
 - \$1,038,911.44 the ("Edge Amount") in respect of electrical services provided by Speedy to Edge in respect of a project located at 38 Lisgar Street, Toronto (the "Edge Project").
2. The following is a chronology of the events relevant to Speedy's Claim:
 - The Saskin Loan was made pursuant to a promissory note dated September 22, 2014. It bears interest at 12.5% per annum and originally matured on September 23, 2015. This loan was not connected to the business and operations of KRI; and
 - From 2012 to 2015, Speedy provided electrical contracting services on the Edge Project. At the time, Edge was a wholly-owned subsidiary and nominee of Bay/Stadium LP – it is now a subsidiary and nominee of Cumberland 2. On September 30, 2015, Speedy registered a construction lien against title to the Edge Project for the amounts owed to it related to the Edge Project (the "Lien").

3.1 Debt Extension Agreement (November 14, 2015)

1. On November 14, 2015, Speedy, Saskin, Edge and KRI executed a Debt Extension Agreement (the "Debt Extension Agreement") pursuant to which:
 - Speedy paid \$2 to KRI;
 - the maturity date of the Saskin Loan was extended to January 30, 2016;⁸
 - the Lien was discharged; and
 - KRI provided the Secured Guarantee for obligations owed to Speedy in respect of the Saskin Loan and the outstanding Edge Amount. The Secured Guarantee is limited to the value of the assets charged by the Mortgage, plus up to \$5,000 for legal costs. A copy of the Mortgage is attached as Appendix "H".

⁸ Saskin does not recall extending the Saskin Loan after the January 30, 2016 maturity date.

2. Saskin has advised the Monitor that KRI entered into the Debt Extension Agreement in order to facilitate the Israel Bond Issue. According to Saskin, the Israel Bond Issue could not be completed with the Lien registered on the Edge Project.
3. From a review of the Urbancorp Group's books and records, it appears that as early as October 1, 2015, Speedy was pressing certain claims against Edge and Saskin, including looking to petition Saskin into bankruptcy. Attached as Appendix "I" are copies of e-mails dated October 1, 2015 from Speedy's counsel and a UTMI employee reflecting that Speedy was considering petitioning Saskin into bankruptcy. It also appears that settlement discussions ensued quickly thereafter and that Speedy was concerned with determining the creditors of Edge at that time. Attached as Appendix "J" is an e-mail from Saskin to a UTMI employee regarding Speedy attempting to determine the creditors of Edge.
4. The settlement ultimately reached appears to be reflected in the terms of the Debt Extension Agreement which appears to have been signed by Saskin on November 1, 2015 and implemented on November 16, 2015, the date on which the Mortgage was registered on title and the Lien discharged. A copy of the Parcel Register (the "Parcel Register") from the Land Registry Office reflecting the discharge of the Lien is attached as Appendix "K".
5. The Secured Guarantee was provided to Speedy by KRI in November 2015, approximately six months before the Cumberland CCAA Entities filed for and obtained protection under the CCAA (May 18, 2016).
6. A copy of the Debt Extension Agreement included with the Proof of Claim was not executed by Speedy. The Monitor's counsel, Davies Ward Phillips & Vineberg LLP, has requested a fully executed copy of this agreement from Speedy's counsel, but as of the date of this Report it has not been provided.
7. Together with applicable interest and legal fees payable under the Saskin Loan, Speedy's Proof of Claim asserts a secured claim against all Cumberland CCAA Entities in the total amount of \$2,323,638.54, comprised of \$1,274,727.10 owing under the Saskin Loan (with interest), legal fees of \$10,000 and the outstanding Edge Amount of \$1,038,911.44.

3.2 The Secured Guarantee

3.2.1 Current Value

1. The Secured Guarantee is limited to the value of the Residential Units and the legal costs to a maximum of \$5,000 in connection with the enforcement of the Mortgage. The Mortgage was registered on title subsequent to mortgages on the Residential Units held by TD Bank and Canadian Imperial Bank of Commerce ("CIBC").
2. Pursuant to Court orders issued in the Cumberland CCAA Proceedings, the Monitor is carrying out a sale process for 28 condominiums, 51 parking spots and seven lockers owned by the Cumberland CCAA Entities, including the Residential Units. Of the thirteen condominiums and thirteen parking spots subject to the Secured Guarantee, nine condominiums and one parking spot have been sold. The remaining condominiums are expected to be sold over the next few months. It is unclear if all of the parking spots are saleable.

3. The estimated value of the Secured Guarantee is set out in the below table.

(\$000s; unaudited)	
Description	Amount
Net realizations to date (9 condominiums and one parking spot)	1,427
Expected future gross realizations (4 condominiums)	1,141
Costs	
TD Bank/CIBC Secured Debt	(705)
Expected future realtor commissions (4.6% of list prices)	(52)
Projected professional fees ⁹	(40)
	<u>(797)</u>
Estimated Value of Secured Guarantee, before realizing on the parking spots	<u>1,771</u>

4. Based on the table above, the estimated value of the Secured Guarantee is approximately \$1.771 million, prior to the sale of the remaining twelve parking spots. The projected proceeds from the parking spots have been excluded from this estimate because of the uncertainty related to their saleability. The ultimate value of the Secured Guarantee cannot be fully determined until each of the Residential Units has been sold.

3.2.2 Guarantee Date Value

1. The Monitor has also estimated the value of the Secured Guarantee as of the Guarantee Date.

(\$000s; unaudited)	
Description	Amount
Fair value of condominiums ¹⁰	3,141
CIBC/TD mortgages	<u>(2,487)</u>
Estimated Value of Secured Guarantee, before realizing on the parking spots	<u>654</u>

2. Based on the table above, the estimated value of the Secured Guarantee at the Guarantee Date was approximately \$654,000, prior to the realization of the thirteen parking spots. Accordingly, KRI provided a secured guarantee valued at \$654,000 in return for \$2.

3.3 Impact of the Speedy Claim on UCI

1. UCI raised approximately \$64.2 million through the Israel Bond Issue. Substantially all of the proceeds from the Israel Bond Issue were advanced to the Urbancorp Group.

⁹ Assumes professional fees on the sale of each unit are \$10,000. Includes professional fees of the Monitor and its legal counsel. Also includes an allocation of the fees relating to the condominium sale process motion across each unit.

¹⁰ The fair value analysis for the condominiums is provided in Note 7 to Appendix "N".

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

(\$000s; unaudited)					
Entities	Claims Filed	Admitted Claims	Distributions	Unpaid Admitted Claims	Total Disputed Claims ^a
Cumberland Entities	46,275	37,174	30,352	6,822	-
Non-Cumberland Entities ¹¹	11,457	10,155	-	10,155	1,302
	57,732	47,329	30,352	16,977	1,302

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

3. The table reflects that approximately \$17 million of UCI's admitted claim against the Cumberland CCAA Entities remains unpaid. There are approximately \$12 million of claims against the Cumberland CCAA Entities subject to dispute; all other claims have been paid in full.
4. The Cumberland CCAA Entities have realized on all of their assets, other than eight condominiums, 47 parking spots, three lockers,¹² geothermal assets and their interests in Downsview and the Kingsclub development owned by UNKI.
5. In addition to the Cumberland CCAA Entities, UCI may also generate recoveries from:
- distributions to UCI from the Cumberland 2 Entities;
 - distributions to UCI from the Bay CCAA Entities; and
 - realizations from litigation commenced by UCI against Saskin and individuals and entities related to Saskin and other parties.
6. It is uncertain whether UCI will generate recoveries sufficient to fully repay the amounts owing from the Israel Bond Issue. Monies paid to satisfy the Speedy Claim will reduce the amounts ultimately recoverable by UCI.

¹¹ Downsview, UTMI, Vestaco Homes Inc., Vestaco Investments Inc. and 228 Queen Quay West Limited.

¹² Four of these condominiums and 12 of these parking spots are subject to the Secured Guarantee.

3.4 Edge and Bay Creditor Groups

- The Bay Entities and Edge¹³ had different creditor groups as of the Guarantee Date. Accounts payable ledgers for the Bay Entities and Edge as of the Guarantee Date are attached as Appendix "L" and "M", respectively. A summary of each of the accounts payable ledgers is provided in the table below.¹⁴

(\$000s; unaudited)	Edge	Bay Entities
Amount owing	21,163	6,970
Largest creditor	Canada Revenue Agency (14,533)	City of Toronto (978)

4.0 Solvency of Bay LP

- In performing its assessment of Speedy's claim, and as required under the BIA, *Fraudulent Conveyances Act (Ontario)* ("FCA") and *Assignment and Preferences Act (Ontario)* ("APA"), the Monitor has considered the debtor's solvency at the time of and in connection with the Secured Guarantee transaction.
- At the time of the Debt Extension Agreement and the Guarantee Date, KRI was a nominee of Bay LP. Accordingly, the Monitor has prepared a solvency analysis of Bay LP, as discussed below.

4.1 Definition of an Insolvent Person

- An "insolvent person" is defined in section 2 of the BIA as:

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

 - who is, for any reason, unable to meet his obligations as they generally become due, or
 - who has ceased paying his current obligations in the ordinary course of business generally as they become due, or
 - the aggregate of whose property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

Items (a) and (b) are known as the "cash flow" test and item (c) is known as the "balance sheet" test.

¹³ At the Guarantee Date, Edge was a nominee of Bay/Stadium LP. The table in Section 3.4 provides a summary of the creditors of Edge at the Guarantee Date to illustrate that the composition of its creditors was different than the Bay Entities' creditor composition. Bay/Stadium LP had creditors at the Guarantee Date, in addition to those in Edge.

¹⁴ According to the Urbancorp Group's books and records as at the Guarantee Date.

4.2 Balance Sheet Test

1. The Monitor has reviewed the books and records of the Bay Entities as at the Guarantee Date. The Bay LP balance sheet has been adjusted to estimate the fair valuation of Bay LP's assets. Set out below is the Bay LP estimated balance sheet as at the Guarantee Date (November 15, 2015), both at book value and at estimated fair valuation:¹⁵

(\$000's; unaudited)	Book Value	Fair Value Adjustments	Fair Valuation
Assets			
Current Assets			
Bank	(224)	224	-
Restricted Cash	1,542	(1,542)	-
Short term investments	531	(531)	-
Intercompany receivables	11,392	(11,392)	-
Sundry Assets	4,494	(2,473)	2,021
	<u>17,735</u>	<u>(15,714)</u>	<u>2,021</u>
Property held for Development	98,541	4,254	102,795
	<u>116,276</u>	<u>(11,460)</u>	<u>104,816</u>
Liabilities			
Current liabilities			
Accounts payable	6,969	224	7,194
Mortgages (Laurentian Bank of Canada) ¹⁶	12,680	-	12,680
Total current liabilities.	<u>19,649</u>	<u>224</u>	<u>19,873</u>
Long term debt			
Purchaser Deposits	16,198	(1,542)	14,656
Mortgages and other loans	55,676	-	55,676
Intercompany payable	7,400	-	7,400
Guarantee (contingent obligation) ¹⁷	-	2,400	2,400
Other	357	-	357
Total long term debt	<u>79,631</u>	<u>858</u>	<u>80,489</u>
Total liabilities	<u>99,280</u>	<u>1,082</u>	<u>100,362</u>
Partners' Equity	16,996	(12,542)	4,453
Total Liabilities and Equity	<u>116,276</u>	<u>(11,460)</u>	<u>104,816</u>

¹⁵ The Bay Entities do not maintain general ledgers for UNKI and North Side. The value of the assets of UNKI at the time of the Guarantee Date is uncertain. Realizations from UNKI are uncertain and may not be significant – it may not generate any recoveries. The Monitor understands that North Side's only asset is its ownership interest in Bridge and the assets and liabilities of the Bridge are included in the estimated fair valuation. UNKI and North Side have been excluded from the estimated fair valuation.

¹⁶ The Laurentian Bank of Canada ("LBC") mortgage has been classified as a current liability as LBC had advised the Bay Entities that it would not be renewing its loans.

¹⁷ For presentation purposes, the Secured Guarantee has been reflected at its face value of \$2.4 million. The Bay Entities also guaranteed a bond from Travelers Guarantee Company of Canada ("Travelers") in the amount of approximately \$9.3 million in respect of the Leslieville project. Travelers filed a contingent claim in the CCAA proceedings for approximately \$4.4 million. As at the date of the Report, the value of the guarantee is undetermined; however, the guarantee has not been reflected as a fair value adjustment as it appears that there will be no exposure to the Cumberland CCAA Entities under the Guarantee.

2. Based on the above, it appears that Bay LP had book equity of approximately \$4.453 million as at the Guarantee Date, after giving effect to the Secured Guarantee.
3. A schedule detailing each of the fair value adjustments is provided in Appendix "N".

4.3 Cash Flow Test

1. As at the Guarantee Date, the Bay Entities were facing a liquidity crisis. The Bay Entities were not regularly paying vendors and were facing pressure from their lenders. The following sections provide an overview of the Bay Entities' liquidity at the time. In order to perform this review, the Monitor has considered the Bay Entities' obligations at the Guarantee Date to determine if they were being serviced in the ordinary course.
2. It should also be noted that within five months of providing the Secured Guarantee, certain of the Cumberland CCAA Entities had filed NOIs pursuant to the BIA and shortly thereafter substantially all of the Urbancorp Group was subject to some form of insolvency process.

4.4 Accounts payable

1. A summary of the aging of the accounts payable for the Bay Entities at the Guarantee Date is provided in the following table.¹⁸

(\$000's unaudited)					
0-60 days	60-90 days	+90 days	Total	% over 90 days	
199	197	6,572	6,969	94%	

2. The table above reflects that 94% of the Bay Entities' accounts payable were aged more than 90 days at the Guarantee Date.¹⁹ The majority of the over 90-day payables are in respect of vendors that were required to develop the projects, including architects, consultants and legal counsel in respect of predevelopment activities.²⁰ A creditors' list for the Bay Entities as of the Guarantee Date is attached as Appendix "L".
3. The Monitor understands from Saskin that, as at the Guarantee Date, the Bay Entities had no access to additional liquidity to pay these liabilities or to bring them current. The Urbancorp Group undertook the Israeli Bond Issue and the Reorganization to address these and other liquidity issues.

¹⁸ Excludes the fair value adjustment of \$225,000.

¹⁹ According to the Bay Entities' aged payable sub-ledgers as of November 15, 2015.

²⁰ The accounts payable balance includes \$278,112 owing to UTMI. Of the balance owed to UTMI, \$35,348 is aged under 60 days, \$17,488 is aged 60-90 days and \$225,276 is aged greater than 90 days.

4.5 Mortgages

- Each of the Bay Entities' properties was subject to a mortgage at the Guarantee Date. A summary of the mortgages is provided in the table below.

(\$000s; unaudited)		Amount Outstanding	Percentage of Total Mortgage Debt
Mortgagee	Security		
Terra Firma Capital Corporation	St. Clair, Lawrence, Patricia, Mallow, 60 St. Clair, Bridlepath, King South	42,644	62.4%
Laurentian Bank	Patricia, Woodbine	12,680	18.6%
Other lenders	Patricia, 60 St. Clair, King South, Lawrence	13,032	19.0%
Total		68,356	100%

4.6 Terra Firma Capital Corporation

- Terra Firma Capital Corporation ("TFCC") provided secured advances to numerous Bay Entities²¹. The Bay Entities collectively owed TFCC approximately \$42.644 million as at the Guarantee Date.
- During the latter part of 2014 and throughout 2015, the Urbancorp Group required liquidity and was having difficulty servicing its various loans, including the loans from TFCC. In order to keep the TFCC loans from going into arrears, TFCC extended or renewed loans at higher amounts, the effect of which was to capitalize unpaid interest and costs.
- Examples of TFCC extending or renewing loans at higher loan levels include:
 - Loan renewal for Lawrence dated October 5, 2015. The loan was increased to \$7,953,495 to include accrued interest of \$483,496 from the initial advance date. The loan renewal for Lawrence is attached as Appendix "O".
 - Loan renewal for St. Clair Village dated November 24, 2015. The loan was increased to \$7,380,000 to include accrued interest of \$450,000 from the initial advance date. The loan renewal for St. Clair Village is attached as Appendix "P".
- The above two loans were renewed after the loans had matured and therefore at the time of the renewal the loans were already due and payable.

²¹ Includes loans administered by Terra Firma Capital Corporation.

4.7 Laurentian Bank of Canada (“LBC”)

1. At the Guarantee Date, LBC had two loans outstanding to the Bay Entities: one for approximately \$7.7 million owing from Patricia and one for approximately \$5 million owing from Woodbine. In September, 2015, LBC placed these loans in their special loans group.
2. LBC was also part of the banking syndicate (led by CIBC) that provided a loan to Leslieville, which is not a Bay Entity. By mid-2015, Leslieville was in default on the loan. As a result, LBC advised Saskin that it would not be renewing or extending any loans to any Urbancorp Group entity upon maturity.
3. The LBC loan to Woodbine matured on February 1, 2016, approximately four months after the Guarantee Date. On March 4, 2016, LBC demanded repayment and issued a Notice of Intention to Enforce Security under Section 244 of the BIA. As of March 4, 2016, Woodbine owed LBC interest arrears of approximately \$44,000. The LBC Loan was repaid in October 2016 from the proceeds of sale of the property owned by Woodbine in the sale process conducted by KSV as the Bay Monitor.
4. A portion of the Proceeds from the Israel Bond Issue was used to repay LBC’s loan to Patricia.

4.8 Other Indicators of Distress

1. In addition to the cash flow issues reflected above, other indicators of financial distress in October, 2015 include:
 - a) the Urbancorp Group retained A. Farber & Partners (“Farber”) to provide distressed consulting services. Farber’s engagement letter with the Urbancorp Group is dated October 19, 2015;
 - b) virtually all of the Urbancorp Group’s projects were delayed. In that respect, Tarion Warranty Corporation, the Ontario regulator for home builders, was investigating delays on construction of the Urbancorp Group’s Leslieville project. An email dated October 16, 2015 from Tarion to Saskin regarding the delays on Leslieville is attached as Appendix “Q”; and
 - c) liens had been placed on several projects, including the Edge Project, and vendors were applying pressure to be repaid. Based on the Parcel Register for the Edge Project, liens had been registered on the Edge Project by, among others, Speedy, Lido Construction Inc. and EXP services Inc. As evidenced by the e-mails provided in Appendix “I”, Speedy was applying payment pressure. Speedy and its counsel appear to have been well aware of the financial distress being encountered by Saskin and the Urbancorp Group.

5.0 Conclusion

1. Based on the Monitor's review of the Claim in context, the following overall conclusions can be made:
 - i. Based on the cash flow test, Bay LP was insolvent at the Guarantee Date;
 - ii. Saskin entered into the Debt Extension Agreement at the time he controlled both Edge and KRI;
 - iii. Bay LP, through its KRI subsidiary, does not appear to have received any benefit, other than the nominal consideration of \$2.00, in return for granting the Secured Guarantee with a value of approximately \$654,000 at the time;
 - iv. releasing the Lien pursuant to the Debt Extension Agreement benefited the creditors of Bay/Stadium LP, Edge's beneficial owner, without providing any benefit to KRI;
 - v. in respect of the Saskin Loan, providing the Secured Guarantee pursuant to the Debt Extension Agreement benefited Saskin personally and Speedy in providing valuable security for the recovery of what was an unsecured personal obligation at the time without providing any benefit to KRI;
 - vi. Speedy and Saskin were aware of the Urbancorp Group's financial distress at the time and Speedy was granted and took security over assets held by KRI to address this risk;
 - vii. the effect of the Secured Guarantee will defeat or hinder recoveries to the creditors of the Cumberland CCAA Entities, namely UCI's creditors, primarily the Israeli bondholders;
 - viii. given the foregoing, the Monitor considers that having Edge and KRI enter into the Debt Extension Agreement was oppressive, unfairly prejudicial to or unfairly disregarded the interests of Bay LP's creditors while providing a benefit to Speedy and personally to Saskin;
 - ix. given the foregoing, it is also the Monitor's position that the Secured Guarantee is voidable as a "transfer at undervalue" under the BIA, fraudulent conveyance under the FCA, or fraudulent preference under the APA; and
 - x. even if the Claim is valid, the value of the Secured Guarantee should be limited to the net realizations from the Residential Units.

6.0 Recommendation

1. Based on the foregoing, the Monitor recommends the Court make an order as set out in Section 1.1 1(c).

* * *

All of which is respectfully submitted,



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

Schedule "A"

Urbancorp (952 Queen West) Inc.
King Residential Inc.
Urbancorp 60 St. Clair Inc.
High Res. Inc.
Bridge on King Inc.
Urbancorp Power Holdings Inc.
Vestaco Homes Inc.
Vestaco Investments Inc.
228 Queen's Quay West Limited
Urbancorp Cumberland 1 LP
Urbancorp Cumberland 1 GP Inc.
Urbancorp Partner (King South) Inc.
Urbancorp (North Side) Inc.
Urbancorp Residential Inc.
Urbancorp Realtyco Inc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF URBANCORP TORONTO MANAGEMENT INC., URBANCORP (ST. CLAIR VILLAGE) INC., URBANCORP (PATRICIA) INC., URBANCORP (MALLOW) INC., URBANCORP (LAWRENCE) INC., URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP 60 ST. CLAIR INC., HIGH RES. INC., BRIDGE ON KING INC. (COLLECTIVELY, THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

TENTH REPORT TO THE COURT OF GUY GISSIN, IN HIS CAPACITY AS COURT APPOINTED FUNCTIONARY AND FOREIGN REPRESENTATIVE OF URBANCORP INC.

February 27, 2018

A. BACKGROUND

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc., Urbancorp (Patricia) Inc., Urbancorp (Mallow) Inc., Urbancorp Downsview Park Development Inc., Urbancorp (Lawrence) Inc., and Urbancorp Toronto Management Inc. (collectively, the "**Cumberland 1 Entities**") each filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) and KSV Kofman Inc. ("**KSV**") was appointed as the proposal trustee. The Cumberland 1 Entities are wholly-owned, indirect subsidiaries of Urbancorp Inc. ("**UCI**").
2. On April 29, 2016, Bovest Inc., Edge on Triangle Park ("**Edge**") and Edge Residential Inc. (collectively, the "**Edge Entities**") each filed an NOI and The Fuller Landau Group Inc. ("**FL**") was appointed as proposal trustee.

3. On April 25, 2016, pursuant to an application under Israel's insolvency regime (the "**Israeli Proceedings**") brought by the indenture trustee of certain notes issued by UCI to bond holders (the "**Bondholders**") on the Tel Aviv Stock Exchange (the "**Bond Issuance**"), the District Court in Tel Aviv-Jaffa, Israel (the "**Israeli Court**") granted an order appointing Guy Gissin as functionary officer of UCI (the "**Functionary**") and giving him certain management powers, authorities and responsibilities over UCI.
4. In connection with the Bond Issuance, UCI had issued an initial prospectus (the "**Initial Prospectus**") on November 27, 2015, which was supplemented by the Supplemental Prospectus (the "**Supplemental Prospectus**", and together with the Initial Prospectus, the "**Prospectus**") that was issued on December 7, 2015.
5. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") granted an initial order under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") in respect of the Cumberland 1 Entities and appointed KSV as monitor (the "**Monitor**"). This order also approved the cooperation protocol entered into by the Functionary and KSV (the "**Protocol**"). The Protocol contemplated, among other things, that the Cumberland 1 Entities and certain other entities would file for protection under the CCAA (the "**Cumberland 1 CCAA Proceedings**").
6. Also on May 18, 2016, the Ontario Court granted two orders under Part IV of the CCAA, which:
 - (a) recognized the Israeli Proceedings in respect of UCI as a "foreign main proceeding";
 - (b) recognized the Functionary as the foreign representative of UCI (hereinafter, the "**Foreign Representative**"); and
 - (c) appointed KSV as the Information Officer (the "**Information Officer**") in respect of UCI.
7. On May 20, 2016, Urbancorp Cumberland 2 GP Inc. and Cumberland 2 L.P. (together with the Edge Entities, the "**Cumberland 2 Entities**") each filed an NOI and appointed FL as proposal trustee. The Cumberland 2 Entities are wholly-owned, direct and indirect subsidiaries of UCI.

8. On October 6, 2016, the Ontario Court granted an initial order under the CCAA pursuant to which the NOI proceedings of the Cumberland 2 Entities were continued under the CCAA (the “**Cumberland 2 CCAA Proceedings**”) and FL was appointed as monitor of the Cumberland 2 Entities (the “**Cumberland 2 Monitor**”).
9. Capitalized terms used but not defined herein are as defined in the Monitor’s Twenty-Second Report to the Court dated February 2, 2018 (the “**Twenty-Second Report**”).

B. PURPOSE OF THE REPORT

10. This report is filed in support of the Monitor’s recommendation, as set out in the Twenty-Second Report, for an Order:
 - (a) confirming the Disallowance;
 - (b) setting aside the Secured Guarantee as void against King Residential Inc. (“**KRI**”) and the Monitor; and
 - (c) declaring the Mortgage as unenforceable or, if the Court determines that the Claim is valid, limiting the Secured Guarantee to the net realizations from the sale of the Residential Units.

C. THE SPEEDY CLAIM

11. On September 30, 2015, Speedy Electric Contractors Ltd. (“**Speedy**”) registered a claim for lien (the “**Lien**”) against Edge, a copy of which is attached hereto as Appendix “A”.
12. It appears from information obtained by the Foreign Representative from the Cumberland 2 Monitor that the Lien may have been out of time. The Lien indicates that the contract price was \$6,159,625 and that services and materials were supplied between August 1, 2012 and August 31, 2015. On December 3, 2014, Tina Passero, Secretary Treasurer of Speedy swore a statutory declaration stating that the last date of supply of services or materials was October 22, 2014. A copy of this statutory declaration is attached hereto as Appendix “B”. Further, by invoice dated

October 22, 2014, Speedy invoiced for release of the holdback. The invoice indicates that the contract price was \$6,159,625. A copy of the invoice is attached hereto as Appendix “C”.

13. Based on the information received from the Cumberland 2 Monitor, Speedy has also filed a proof of claim in the Cumberland 2 CCAA Proceedings. In support of its proof of claim, Speedy attached a statement of account for both the main contract and for alleged extras. The last invoice on the statement of account is dated May 15, 2015. Copies of the Speedy statements of account are attached hereto as Appendix “D”. The Lien claims the last date of supply as August 31, 2015. This corresponds to an invoice from Speedy dated August 31, 2015, which merely claims payment of the holdback in respect of work invoiced on December 19, 2014. Copies of the December 19, 2014 and August 31, 2015 invoices are attached hereto as Appendix “E”.
14. Based on information recently provided to the Foreign Representative, it appears that as of September 23, 2015, Alan Saskin was in default of a \$1 million promissory note in favour of Speedy dated September 23, 2014, a copy of which is attached hereto as Appendix “F”. It further appears that Speedy was threatening to initiate an application for a bankruptcy order as against Alan Saskin. A copy of correspondence from counsel for Speedy to counsel for Saskin, dated September 30, 2015, is attached hereto as Appendix “G”.
15. Additionally, the correspondence among counsel on this issue, attached hereto as Appendix “H”, further evidences negotiations in mid-October, to enter into an agreement to discharge the Lien and grant Speedy security from KRI for both the Edge debt and Alan Saskin’s personal debt.
16. By email dated October 10, 2015, Barry Rotenberg (“**Rotenberg**”) of Harris Sheaffer LLP (“**Harris Sheaffer**”), counsel for UCI, asked Kevin Sherkin, counsel for Speedy, to move the maturity date of the Debt Extension Agreement (as defined below) from December 31, 2015 to January 30, 2016, “...as its November and Christmas could screw up Urbancorp’s financing...” (i.e. the Bond Issuance). A copy of this email, with its attachment, is attached hereto as Appendix “I”.
17. On November 1, 2015, Alan Saskin signed a debt extension agreement (the “**Debt Extension Agreement**”), a copy of which is attached hereto as Appendix “J”, pursuant to which Speedy agreed to discharge the Lien on Edge and extend the due date of the promissory note in exchange

for a guarantee (the “**Guarantee**”) from KRI that was secured by a mortgage (the “**Mortgage**”, together with the Guarantee, the “**Secured Guarantee**”) on 13 specific condominium units and 13 parking spots (collectively, the “**Residential Units**”). Speedy co-signed the Debt Extension Agreement on November 6, 2015. The Mortgage was registered on November 15, 2015.

18. Pursuant to an officer’s certificate of UCI dated November 6, 2015 (“**Officer’s Certificate**”) and delivered to Apex Issuances (the underwriter) (“**Apex**”), Harris Sheaffer, Shimonov & Co. (UCI’s Israeli counsel) (“**Shimonov**”), and Doron, Tikotzky, Kantor, Gutman, Cederboun & Co (Apex’ Israeli counsel) (“**DTKGC**”), Alan Saskin confirmed that “Except as set out in Schedule B attached hereto (x) no Urbancorp individuals [sic] Entity is the guarantor of any debt or obligation of another or otherwise obligated to provide a guaranty, and (y) no person has given any guaranty or any other security for or is obligated to so provide for any obligation of any other Urbancorp individuals Entity. For the purpose of this paragraph 6.2 “person” shall mean any individual, corporation, partnership, joint venture, trust or unincorporated organization.” Schedule B does not list the Secured Guarantee. A copy of the Officer’s Certificate is attached hereto as Appendix “K”.¹
19. Contrary to the assertions in the Officer’s Certificate, as at November 6, 2016, KRI was obliged to provide the Secured Guarantee in favour of Speedy in respect of the liabilities of Edge and Alan Saskin personally to Speedy.
20. On November 26, 2015, in anticipation of the closing of the Bond Issuance, Rotenberg delivered a number of opinions addressed to UCI, Shimonov, Apex, and DTKGC. Each of the opinions has an effective date of November 6, 2015.
21. The opinion relating to Edge identifies a construction lien in favour of Speedy in the amount of \$1,038,911, which was registered on September 30, 2015. A copy of the Edge opinion is attached hereto as Appendix “L”.
22. Harris Sheaffer provided two opinions relating to KRI dated November 26, 2015 (the “**KRI Opinions**”), copies of which are attached hereto as Appendix “M” and Appendix “N”. The

¹ Note that the official documents are in Hebrew. These are translations that were provided at the time.

effective date of the KRI Opinions was November 6, 2015. The KRI Opinions do not disclose either the Mortgage or Guarantee that KRI granted in favour of Speedy pursuant to the Debt Extension Agreement or the acknowledgment and direction authorizing the registration of the Mortgage, each of which were executed by Alan Saskin on November 1, 2015. Further, the KRI Opinions do not disclose that KRI provided the Secured Guarantee in respect of debts owed to Speedy by Edge and by Alan Saskin personally.

23. The KRI Opinions expressly state that they are provided “in connection with Shimonov’s preparation (with Urbancorp) of a proposed initial public offering in Israel of non-convertible debentures (Series A) of Urbancorp.”
24. The Prospectus outlined a corporate reorganization that transferred a series of subsidiaries to UCI the value of which was intended to enhance the value of UCI. There was no disclosure of any transferred subsidiary taking on debt for other subsidiaries or for Alan Saskin personally.
25. The Initial Prospectus was published on November 30, 2015. The Initial Prospectus does not refer to KRI, which was being transferred to UCI as part of the consideration for the Bond Issuance, as being subject to secured liabilities in respect of Alan Saskin’s personal debts. Further, the Initial Prospectus does not disclose that in exchange for discharging Speedy’s Lien on Edge, but not releasing the Speedy debt claim against Edge, Alan Saskin caused KRI to grant the Secured Guarantee in respect of both the Edge debt, as well as his personal debts owing to Speedy.
26. By memo dated November 26, 2015 (“**November 26 Memo**”), Rotenberg wrote to Ran Felder (“**Felder**”) of Shimonov advising that, with respect to Edge, “the Speedy Electric lien was discharge[d] last week...”. Under the headings for KRI in the November 26 Memo, there is no reference to the Secured Guarantee, despite the fact that the Mortgage was registered on November 16, 2015, and that the agreement to provide the Mortgage was executed by Alan Saskin on November 1, 2015. A copy of the November 26 Memo is attached hereto as Appendix “O”.
27. On November 28, 2015, Rotenberg wrote to Felder clarifying certain matters referenced in the various KRI Opinions (the “**November 28 Letter**”). The November 28 Letter does not mention

the Secured Guarantee that Alan Saskin caused KRI to provide in favour of Speedy. A copy of the November 28 Letter is attached hereto as Appendix “P”.

28. On December 7, 2015, UCI published its Supplemental Prospectus. The Supplemental Prospectus does not disclose the existence of the Secured Guarantee.
29. On December 7, 2015, the Tel Aviv Stock Exchange authorized UCI’s registration in respect of the Bond Issuance.
30. On December 8, 2015, after the Prospectus was issued and available to the public, Rotenberg wrote to Shimonov, Apex, DTKGC and UCI (the “**December 8 Letter**”) confirming the status of the assets described in the KRI Opinions as clarified in the November 28 Letter. A copy of the December 8 Letter is attached hereto as Appendix “Q”. In the December 8 Letter, Rotenberg affirmed the accuracy of the KRI Opinions, save and except that: “Since November 6, 2015, various condominium units at the projects commonly referred to as ‘Edge on Triangle Park’, ‘Westside Gallery Lofts’ and ‘King Residential’ have been either:
 - (a) sold and transferred to arm’s length purchasers;
 - (b) transferred to trades who provided services to the Assets (the “**Trades**”), in exchange for a reduction of an agreed upon value in accounts receivable; or
 - (c) been given as collateral security for obligations of Edge.”
31. There is no disclosure of Alan Saskin causing KRI to provide the Secured Guarantee to secure his personal indebtedness to Speedy.
32. The result of KRI granting the Secured Guarantee to Speedy, if valid, is to reduce the equity that would otherwise flow to UCI from KRI and to reduce or release Alan Saskin from his personal liability to Speedy.
33. But for the Secured Guarantee, all remaining funds at KRI would flow to UCI, which would accord with the expectations of the Bondholders at the time of the Bond Issuance. The effect of the Debt Extension Agreement is that Speedy: (i) retained a \$1,074,227.69 unsecured claim as against Edge; (ii) retained a claim against Alan Saskin for approximately \$1.3 million; and (iii)

obtained a \$2.3 million secured claim as against KRI. If the Disallowance is set aside, UCI will be deprived of up to \$2.3 million in value that it could otherwise receive.

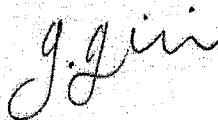
34. Even if Speedy is able to establish that the Lien would otherwise be valid, Speedy should only be entitled to assert such a claim as against the Edge estate in the Cumberland 2 CCAA Proceedings, since the improvements giving rise to the Lien were made to the Edge property. Speedy has filed a proof of claim in the Cumberland 2 CCAA Proceedings. There is no prejudice in limiting Speedy to claim against Edge as no distributions have been made to creditors from the Edge estate to date as confirmed in the Tenth Report to the Court of the Cumberland 2 Monitor dated January 22, 2018 (the “**Tenth Report of the Cumberland 2 Monitor**”), a copy of which (without appendices) is attached hereto as Appendix “R”.
35. Similarly, Speedy’s claim in respect of the personal loan to Alan Saskin should be limited to Alan Saskin’s proposal proceedings. Alan Saskin filed an NOI on April 26, 2016 and FL was appointed as proposal trustee (the “**Saskin Proposal Trustee**”). As set out in the Sixth Report to the Court of the Saskin Proposal Trustee dated January 18, 2018 (the “**Proposal Trustee Report**”), a copy of which (without appendices) is attached hereto as Appendix “S”, there are currently no material assets available for distribution to creditors in Alan Saskin’s estate. As a result, the Secured Guarantee has the effect of elevating Speedy’s position in respect of the debt it is owed by Alan Saskin by allowing Speedy to recover same from the KRI estate.

D. RECOMMENDATIONS

36. The Foreign Representative respectfully requests that this Honourable Court grant an Order:
 - (a) confirming the Disallowance;
 - (b) setting aside the Secured Guarantee as void against KRI and the Monitor; and
 - (c) declaring the Mortgage as unenforceable or, if the Court determines that the Claim is valid, limiting the Secured Guarantee to the net realizations from the sale of the Residential Units.

ALL OF WHICH IS RESPECTFULLY
SUBMITTED THIS 27 DAY OF
FEBRUARY, 2018.

Guy Gissin, in his capacity as Court-Appointed
Functionary and Foreign Representative of
Urbancorp Inc., and not in his personal or
corporate capacity



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.

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF URBANCORP TORONTO MANAGEMENT
INC., URBANCORP 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

AFFIDAVIT OF ALBERT PASSERO

I, ALBERT PASSERO, of the City of Vaughan, in the Regional Municipality of York, in the
Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President and one of the owners of Speedy Electric Contractors Limited ("Speedy Electric") and as such, have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I indicate that I have obtained the information from other sources, I verily believe those facts to be true.

2. My company, Speedy Electric, has been in the electrical contracting business for many years. Urbancorp was one of our client for more than 20 years. During those 20 years I came to know the owner of Urbancorp, Alan Saskin ("Alan"), and over those years built a relationship with him. From the outset of our relationship, Alan told me he was the owner of Urbancorp and its companies.
3. In or about September 2014, Alan approached me and advised me that he was in need of funds for some of his projects and asked if he could personally borrow 1 million dollars from us to put into the building projects at issue and would pay the money back within one year. Since he had told me many times that he was the owner, and given that we had a long-standing relationship, I did not have any difficulty in doing so, and as a result, we signed the attached Promissory Note for 1 million dollars and advanced him the funds. Attached hereto and marked as **Exhibit "A"** is a true copy of the Promissory Note.
4. By the end of the summer towards the end of August 2015, it was apparent that the Edge Project, which we were supplying electrical contracting work for, was having cash flow issues and I started to have conversations with Alan about payment.
5. In or about August 2015, Alan had offered to provide us with security on the Edge units for the money that was owed to us and told us that money would be paid to us at the end of October 2015. Attached hereto and marked as **Exhibit "B"** is a true copy of the email from Joe Pietrangelo of Urbancorp in that regard dated August 20, 2015.
6. In response to the email from Urbancorp, I had my counsel, Kevin Sherkin, provide an answer to Mr. Mandell, the Vice President of Urbancorp. Based on my understanding,

there was concerns about taking security on the units because of the limitations and requirements under the *Construction Lien Act*. Attached hereto and marked as **Exhibit "C"** is a true copy of the email from Kevin Sherkin to Mr. Mandell dated August 20, 2018.

7. In response to Mr. Sherkin's email, Mr. Mandell advised he would consult with Alan. Attached hereto and marked as **Exhibit "D"** is a true copy of email from Mr. Mandell to Mr. Sherkin dated August 20, 2015.
8. I am advised by Mr. Sherkin and do verily believe, that following Mr. Mandell's email dated August 20, 2015, Mr. Rotenberg, counsel for Urbancorp, called Mr. Sherkin and they had a long discussion about the difficulties relating to the *Construction Lien Act* and the offer being made.
9. Ultimately, the parties were not able to come to an agreement at the time and in or about August 24, 2015, Mr. Sherkin, Mr. Rotenberg, Alan and I met on August 26, 2015.
10. Following the meeting on August 26, 2015, on August 27, 2015, Mr. Sherkin sent an Offer to Settle to Mr. Rotenberg based on the discussions we had at the meeting. Attached hereto and marked as **Exhibit "E"** is a true copy of the Offer to Settle dated August 27, 2015.
11. Following the discussion, we heard back from Urbancorp's counsel. Attached hereto and marked as **Exhibit "F"** is a true copy of the email from Mr. Rotenberg to Kevin Sherkin dated August 31, 2015, which confirmed basically that they were in agreement to the framework of settlement of the matter, but still had to obtain instructions.

12. Throughout this time, we were repeatedly advised by Mr. Rotenberg and I was being advised by Alan directly that he was negotiating a financing in Israel and the money from that financing would be used to pay us and other trades who were owed funds.
13. Attached hereto and marked as **Exhibit "G"** is a true copy of an email from Mr. Sherkin to Mr. Rotenberg dated September 4, 2015.
14. Following the email on September 4, 2015, we did not hear from Urbancorp and again Mr. Sherkin emailed counsel for Alan and Urbancorp on September 9, 2015. Attached hereto and marked as **Exhibit "H"** is a true copy of the email from Kevin Sherkin to Mr. Rotenberg dated September 9, 2015.
15. Attached hereto and marked as **Exhibit "I"** is a true copy of the email from Mr. Rotenberg to Mr. Sherkin dated September 11, 2015.
16. Because we were not getting anywhere and because of certain timing issues relating to the ongoing work up to the end of August for the Edge on Triangle Park Project, we determined it was appropriate to register a lien. Attached hereto and marked as **Exhibit "J"** is a true copy of the email from Mr. Sherkin to Mr. Mandell, in-house counsel for Urbancorp, dated September 30, 2015, together with a copy of the lien that was registered at that time.
17. I can advise the Court that it was always our position that the Defendants, given that they were not paying their debts when due had committed a technical act of bankruptcy which allowed us to suggest that we would take steps in the Bankruptcy Court and that is why we suggested in some of the correspondence that we would proceed forward with the insolvency court matter.

18. Following the filing of our lien, we were requested by their litigation counsel, Jack Berkow, that we attend at their office for an urgent meeting as they wanted to now proceed with their previous offer which was to provide security on units in another long-completed project which would allow us to not be concerned with the difficulties proposed by us under the *Construction Lien Act*.
19. On the same day, Mr. Mandell forwarded an email to Mr. Sherkin with the proposed units they were prepared to provide to us by forwarding a copy of a summary sheet with inventory and equity in units in a project that was long completed I believe in 2010 called the Bridge and owned by King Residential Inc. Attached hereto and marked as **Exhibit "K"** is a true copy of the email from Mr. Mandell together with a copy of the attachment is entitled "Bridge Inventory". This showed that there was approximately 1.7 million dollars of equity in the units.
20. Following the receipt of the list, we enquired to ensure that the common expenses and the taxes on the units they proposed that we receive were in good standing and to find out if the units were rented. Attached hereto and marked as **Exhibit "L"** is a true copy of the email to Mr. Mandell and Mr. Berkow from Mr. Sherkin dated October 7, 2015.
21. Following receipt of the inventory from Mandell, we attended at a meeting at Berkow Cohen's office at 141 Adelaide Street, Suite 400 on October 10, 2015.
22. Following the meeting on October 10, 2015, Mr. Sherkin exchanged emails with Mr. Berkow on October 12, 2015 reflecting our proposal and provided him with a copy of the original Promissory Note signed by the parties.


23. As part of the agreement, they were to provide us with parking units for each one of the units to ensure that they were properly saleable if they defaulted and following our meeting by the 19th of October we were still waiting for the pin details for all of the parking units so we could finish the agreement and the draft mortgage. Attached hereto and marked as **Exhibit "M"** is a true copy of the email from Mr. Sherkin to Mr. Berkow dated October 19, 2015 in that regard.
24. By October 20, 2015, we were still not in receipt of the information and the agreement had not been signed nor the matter closed. Accordingly, I instructed my counsel to send a letter to Mr. Berkow. Attached hereto and marked as **Exhibit "N"** is a true copy of the letter from Mr. Sherkin to Mr. Berkow dated October 20, 2015.
25. By October 21, 2015, we were getting impatient because we were still not in receipt of the parking unit pins so that they could be incorporated into the settlement for the mortgage. Attached hereto and marked as **Exhibit "O"** is a true copy of the email exchange between Mr. Sherkin and Mr. Berkow in that regard.
26. On October 21, 2015, following that email, Mr. Sherkin finally received indication that we would receive pins from Mr. Rotenberg. Attached hereto and marked as **Exhibit "P"** is a true copy of the email from Mr. Rotenberg to Mr. Sherkin dated October 21, 2015.
27. Later on the same day, Mr. Sherkin received an email from Harris Sheaffer with the pin numbers for the parking units. Attached hereto and marked as **Exhibit "Q"** is a true copy of the email from Mr. Sheaffer to Mr. Sherkin dated October 21, 2015.

28. After received the pins, we provided both Mr. Berkow and Mr. Rotenberg a draft of the Debt Extension Agreement (“Agreement”), which Agreement was self-explanatory and which provided for the removal of the lien and other items set out therein including the mortgage in dispute. Attached hereto and marked as **Exhibit “R”** is a true copy of the email from Mr. Sherkin to Mr. Berkow and Mr. Rotenberg dated October 23, 2015.
29. On October 30, 2015, we received an email from Mr. Rotenberg with requested changes to the Agreement confirming that taxes were paid and that common expenses were up to date. Attached hereto and marked as **Exhibit “S”** is a true copy the email from Mr. Rotenberg to Mr. Sherkin dated October 30, 2015.
30. On November 1, 2015, we executed the Agreement between us and prior to the signature they requested one additional change to defer the payment to January, which was originally to be in December. Attached hereto and marked as **Exhibit “T”** is a true copy of the email from Mr. Rotenberg to Mr. Sherkin dated November 1, 2015.
31. Following that day, Mr. Sherkin had a bout of vertigo and was not in the office for a few days, however, the Agreement was signed on November 6, 2015 and sent to Mr. Rotenberg. Attached hereto and marked as **Exhibit “U”** is a true copy of the email from Mr. Sherkin to Mr. Rotenberg dated November 6, 2015.
32. Following the delivery of the Agreement, Mr. Sherkin in accordance with same, discharged the lien and registered the Charge on the units and confirmed that the matter was closed. Attached hereto and marked as **Exhibit “V”** is a true copy of the email from Mr. Sherkin

to Mr. Rotenberg dated November 16, 2015 together with the discharge of the lien and a copy of the Charge that was registered.

33. In or about December 2015, I was contacted by Alan requesting that we modify some of the terms of our signed Agreement, which I refused to do. In that regard, Mr. Sherkin wrote to Mr. Rotenberg on December 8, 2015. Attached hereto and marked as **Exhibit "W"** is a true copy of the email from Mr. Sherkin to Mr. Rotenberg in that regard.
34. In January, they did not pay back the funds. I agreed to the transaction because I was told by Alan that we would receive our money from the Israeli financing. Prior to the CCAA filing, I had never heard of Bay LP
35. I make this Affidavit in support of finding Speedy Electrical's mortgage valid.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on the
12th day of March, 2018



Commissioner for Taking Affidavits
(or as may be)

Kevin D. Sherkin



ALBERT PASSERO

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF URBANCORP TORONTO MANAGEMENT
INC., URBANCORP TORONTO MANAGEMENT INC.,
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DEVELOPMENT INC., URBANCORP (952 QUEEN WEST) INC.,
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HIGH RES. INC., BRIDGE ON KING INC. (COLLECTIVELY, THE
"APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN
SCHEDULE "A" HERETO

AFFIDAVIT OF ALBERT PASSERO

I, Albert Passero, of the City of Vaughan, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and one of the owners of Speedy Electric Contractors Limited, and as such, have knowledge of the following matters to which I hereinafter depose. Unless I indicate to the contrary, these facts are within my personal knowledge and are true. Where I indicate that I have obtained information from other sources, I verily believe those facts to be true.
2. Further to my affidavit, sworn March 12, 2018 (the "First Affidavit"), I wanted to provide further particulars of what I was told by Alan Saskin ("Alan") about the financing that Urbancorp and Alan were to receive from Israel, which I have already referenced in my previous affidavit at paragraph 12 and 34.
3. On or about October 10, 2015, a meeting was held at the law office of Jack Berkow (litigation counsel for Alan and Urbancorp), which meeting included Jack Berkow, Alan, Kevin

Sherkin (my counsel), and myself. At the time of the meeting, Speedy had already registered a construction lien about 10 days prior (on September 30, 2015) against the Edge on Triangle Park project, for its outstanding account, in the sum of \$1,038,911.44, which construction lien can be found attached as Exhibit "J" to my First Affidavit.

4. At the meeting held on October 10, 2015, Alan and his counsel, Jack Berkow, confirmed to us that Urbancorp was having some temporary cash flow problems that were going to be resolved by the financing that was coming from Israel. Alan advised that the purpose of the financing from Israel was to ensure the timely payment to all trade creditors for the various Urbancorp projects that were ongoing at the time, including Speedy. At the time, I was aware that Urbancorp had a number of active projects that were still being completed, and others that had already finished the construction phase, but where the units had not been completely sold. These Urbancorp projects included Edge on Triangle, and other active projects. At no time did I have an awareness or understanding of the actual ownership structure of Urbancorp, and I believed that Alan owned and operated everything based on how Alan conducted himself and Urbancorp affairs, and based on previous statements Alan had made to me.

5. What we were told at the meeting, on October 10, 2015, was that the financing from Israel could not occur unless Speedy agreed to remove its construction lien from the Edge project. Meaning, if Speedy did not remove its construction lien, Urbancorp could not make timely payments to the various trade creditors, including Speedy, for work supplied to the various Urbancorp projects. This was one of the factors I considered when deciding whether to discharge Speedy's lien from the Edge project, in exchange for the mortgage to be held by Speedy against the Bridge project units (owned by King Residential).

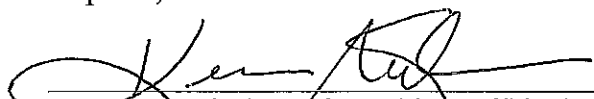
-3-

6. I did not believe that the mortgage provided to Speedy, in exchange for Speedy agreeing to discharge its construction lien, would have any negative consequence on any other creditor of Urbancorp. In fact, it is my understanding that Speedy was actually facilitating the ability of Urbancorp and Alan to make timely payments to other Urbancorp creditors by enabling Urbancorp to obtain the financing from Israel. Further, it was, and is, my belief and understanding that Urbancorp and Alan were simply changing the form of security to be held by Speedy for the debt owed to Speedy by Urbancorp and Alan. In essence, Urbancorp and Speedy were agreeing to exchange one form of security (a construction lien) for another form of security (a mortgage), and I believed that the form of security was not really relevant to anyone, other than for the purpose of allowing Urbancorp to be able to obtain the financing from Israel, so that our company (and other creditors) could be paid.

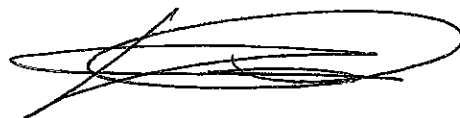
7. Further, it was never suggested to me, by Alan or his lawyers, that Alan or Urbancorp were insolvent. To the contrary, from what I was aware, and based on the statements made by Alan at our meetings, Alan and the Urbancorp group of companies were doing well financially, but were having a temporary cash flow blip.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on

April 7, 2018



Commissioner for Taking Affidavits
(or as may be)
KEVIN SHIELLY
Jeremy Sacks



Albert Passero

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 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

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

**ONTARIO
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COURT OF APPEAL FOR ONTARIO

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

APPELLANT'S CERTIFICATE RESPECTING EVIDENCE

The Appellant, KSV KOFMAN INC., in its capacity as court-appointed Monitor, certifies that all of the evidence relied upon in support of the Appellant's motion for leave to appeal is required for this appeal, in the Appellant's opinion.

September 19, 2018

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IN THE MATTER OF the Companies' *Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
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Court of Appeal File No. M49270
Court File No. CV-16-11389-00CL

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
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COURT OF APPEAL FOR ONTARIO

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

CERTIFICATE OF COMPLETENESS

I, Chantelle Cseh, lawyer for the Appellant, KSV Kofman Inc., in its Capacity as Monitor, certify that the appeal book and compendium in this appeal is complete and legible.

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IN THE MATTER OF the Companies' *Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended
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Court of Appeal File No. C65891

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