

**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**

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**FACTUM OF THE MONITOR  
(DOCUMENT REQUEST)**

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August 26, 2021

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**TO:** The E-Service List found at:  
[https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/urbancorp-group/ccaa-proceedings/service-list/service-list-as-at-december-9-2020.pdf?sfvrsn=46b856d5\\_2](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/urbancorp-group/ccaa-proceedings/service-list/service-list-as-at-december-9-2020.pdf?sfvrsn=46b856d5_2)

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**FACTUM OF THE MONITOR**

**PART I – OVERVIEW**

1. On this motion the Monitor seeks an order (the "**Document Request Order**") (i) requiring that Mr. Barry Rotenberg deliver to the Monitor a copy of his complete files (including emails) (the "**Files**") relating to, *inter alia*, the Downsview Shareholder's Agreement and the various Amendments to the Shareholder's Agreement, and (ii) authorizing the Monitor to provide copies of the Files once received to the Foreign Representative, all as more fully detailed in the Forty-Seventh Report of the Monitor dated August 23, 2021 (the "**Report**").
2. Mr. Rotenberg is required to deliver a copy of the Files to the Monitor pursuant to the Initial Order. The Monitor is required to deliver such Files to the Foreign Representative pursuant to the Protocol, which was approved pursuant to the Initial Order.
3. The Files constitute the business records of the Cumberland CCAA Entities, and, as such, the Foreign Representative is entitled to a copy of them pursuant to the Protocol, subject to the direction of this Court. Providing copies of the Files will assist to facilitate a full factual record in the ongoing arbitration between Mattamy and the Foreign Representative (the "**Arbitration**").

## PART II – FACTS

4. The facts relevant to this motion are set out in the Report. All capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Report. The following is a summary of some of the central facts to this motion.

### Foreign Proceedings Protocol

5. Prior to the commencement of the Cumberland CCAA Proceedings, the Foreign Representative and the Monitor, in its then capacity as Proposal Trustee, negotiated the Protocol that addressed, *inter alia*, the sharing of information in respect of the Cumberland CCAA Proceedings between the Foreign Representative and the Monitor. The Protocol was approved by this Court pursuant to the Initial Order.

Report, s. 1.2(3).

Initial Order, at para 27.

6. Section 3(d) of the Protocol requires the Monitor to, *inter alia*, provide the Foreign Representative with copies of all information pertaining to the Cumberland CCAA Entities as reasonably requested by the Foreign Representative, provided that the Monitor is of the view that the information is not privileged or confidential. If the Monitor is of the view that the information is privileged or confidential, the Monitor must advise the Foreign Representative and seek directions from the Court on notice to affected parties.

Report, s. 2.0(1)

Protocol, s. 3(d).

### The Downsview Arbitration

7. Pursuant to the decision of Chief Justice Morawetz released on June 30, 2021, the Sale Process for Downsview's interest in DHI, as proposed by the Monitor, was approved. The

Arbitration requested by the Foreign Representative was also required to be conducted concurrently with the Sale Process.

Report, s. 1.3(5).

### **The Document Request**

8. In connection with the Arbitration, on July 9, 2021, counsel to the Foreign Representative requested certain documents, including the Files, relating to certain issues which are the subject of the Arbitration.

Report, s. 1.3(8).

9. The Monitor is of the view that providing the documents should assist to facilitate a full factual record in the Arbitration and requested Mr. Rotenberg to deliver the Files to the Monitor on July 12, 2021. Counsel to Mr. Rotenberg informed Monitor's counsel that Mr. Rotenberg would not deliver the Files without being directed to do so by this Court.

Report, ss. 2.0 (3)-(4), (7).

### **PART III – ISSUE**

10. There is only one issue before the Court which this factum addresses: should the Document Request Order be granted?

### **PART IV – LAW & ARGUMENT**

#### **The Law – Initial Order**

11. The Initial Order in these proceedings authorized, directed and empowered the Monitor to:

(j) meet with and direct management of the Urbancorp CCAA Entities [Cumberland CCAA Entities] with respect to any of the foregoing [Monitor's powers] including, without limitation, operational and restructuring matters;...

(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;...

(t) to comply with the Protocol

Initial Order, at para 29(j), (q), (t).

12. The Initial Order had the effect of granting the Monitor augmented powers to control management and operations of the Cumberland CCAA Entities, effectively removing Alan Saskin as a decision-maker for those companies.

*Urbancorp Inc. (Re)*, 2016 ONSC 3288, at para 15, Book of Authorities Tab 1 [*Initial Order Endorsement*].

13. The advisors of the Cumberland CCAA Entities were ordered to “cooperate fully with the Monitor and any directions it may provide” and to “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”.

Initial Order at para 31.

## The Protocol

14. Section 3(d) of the Protocol reads:

KSV [the Monitor] shall provide to the Israeli Parentco Officer [the Foreign Representative] copies of all information pertaining to the Applicants [the Cumberland CCAA Entities]:

(i) in KSV's possession that KSV considers material; or

(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.

Protocol, s. 3(d).

15. The Document Request will facilitate a full factual record at the Arbitration. As a reasonable request, the Monitor is required to provide copies of such requested information to the Foreign Representative pursuant to the Protocol, subject to privilege and confidentiality restrictions.

16. The Monitor was empowered to control management and operations of the Cumberland CCAA Entities pursuant to the Initial Order – replacing the then current mind and management of the entities. Such power permits the Monitor to waive the privilege of such entities.

Initial Order at para 29(j).

*Initial Order Endorsement, supra*, at para 15.

17. Pursuant to the Initial Order, Mr. Rotenberg, as an advisor to the Cumberland CCAA Entities, is required to cooperate fully with the Monitor to enable the Monitor to carry out its duties and powers. Mr. Rotenberg is thus required to deliver copies of the Files to the Monitor, upon request, pursuant to the Initial Order.

Initial Order, at para 31.

18. The Monitor was empowered to have full and complete access to the books, records, and data (including data in electronic form) of the Cumberland CCAA Entities and to comply with the Protocol. The delivery of the Files to the Monitor and their disclosure to the Foreign Representative is necessary for the Monitor to perform its duties arising under the Initial Order and to comply with the Protocol. In order to perform such duties, the Monitor requires Mr. Rotenberg to deliver copies of the Files to the Monitor.

19. Mr. Rotenberg thus must be ordered to deliver copies of the Files to the Monitor for disclosure to the Foreign Representative.

**PART V – ORDER SOUGHT**

20. The Monitor respectfully requests that this Court grant the relief sought on this motion in the draft form of Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

August 26, 2021



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Robin B. Schwill

Lawyers for the Monitor  
KSV Restructuring Inc.

## **SCHEDULE "A"**

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.



**SCHEDULE "B"**  
**LIST OF AUTHORITIES**

1. *Urbancorp Inc. (Re)*, 2016 ONSC 3288

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

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PROCEEDING COMMENCED AT  
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