

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

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

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

**MOTION RECORD
OF THE MONITOR**
(Document Request)

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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RES. INC., BRIDGE ON KING INC. (COLLECTIVELY, THE
"APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN
SCHEDULE "A" HERETO

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TAB 1

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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MANAGEMENT INC., URBANCORP (ST. CLAIR
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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 August 30, 2021 – Document Request)

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 Chief Justice Morawetz on August 30, 2021 at 2 p.m., or as soon thereafter as the motion can be heard, by judicial videoconference via Zoom due to the COVID-19 pandemic.

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 Mr. Barry Rotenberg deliver up to the Monitor a copy of his complete files (including emails) relating to the Downsview Shareholder's Agreement and the various Amendments to the Shareholder's Agreement (as those terms are referred to in the Document Request as defined in the Report (defined below)) including, without limitation, any documents or emails relating to value attributed to UDPDI's interest in Downsview Homes Inc. during the course of the "soft restructuring" between February 1, 2016 and May 18, 2016 (collectively, the "**Files**");
3. declaring that the Monitor shall provide Guy Gissin, in his capacity as the appointed functionary and foreign representative of Urbancorp Inc. by order of the District Court in Tel Aviv-Yafo, Israel (the "**Israeli Functionary**"), with copies of the Files when received; and
4. such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:**Document Request**

1. The Document Request was made pursuant to Section 3(d) of the Protocol between the Israeli Functionary and the Monitor dated May 13, 2016 (the

“**Protocol**”) as approved by this Court by the Initial Order made in these proceedings on May 18, 2016 (the “**Initial Order**”);

2. The Monitor is of the view that the Files constitute the business records of the CCAA Entities and, as such, the Israeli Functionary is entitled to a copy of them pursuant to the Protocol;

3. To the extent that any privilege attaches to any of the documents in favour of the CCAA Entities, it is the Monitor who can elect to waive privilege on behalf of the CCAA Entities given its powers pursuant to the Initial Order;

4. Mr. Rotenberg is required to deliver to the Monitor a copy of the Files pursuant to the terms of the Initial Order;

Miscellaneous

5. Section 11 of the CCAA and this Court’s equitable and statutory jurisdiction thereunder;

6. 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

7. 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 Forty-Seventh Report of the Monitor dated August 23, 2021 (the “**Report**”); and
2. such further material as counsel may advise and this Court may permit.

August 23, 2021

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TO: The E-Service List found at:
https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/urbancorp-group/cca-proceedings/service-list/service-list-as-at-december-9-2020.pdf?sfvrsn=46b856d5_2

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 August 30, 2021 – Document Request)

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TAB 2



**Forty-Seventh Report to Court of
KSV Restructuring Inc. as CCAA Monitor of
Urbancorp Toronto Management Inc.,
Urbancorp (St. Clair Village) Inc., Urbancorp
(Patricia) Inc., Urbancorp (Mallow) Inc.,
Urbancorp (Lawrence) Inc., Urbancorp
Downsview Park Development Inc., Urbancorp
(952 Queen West) Inc., King Residential Inc.,
Urbancorp 60 St. Clair Inc., High Res. Inc.,
Bridge on King Inc. and the Affiliated Entities
Listed in Schedule “A” Hereto**

August 23, 2021

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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**

FORTY-SEVENTH REPORT OF KSV RESTRUCTURING INC

August 23, 2021

1.0 Introduction

1.1 Cumberland CCAA Entities

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 (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "NOI Entities"). KSV Kofman Inc. ("KSV Kofman") was appointed as the Proposal Trustee of each of the NOI Entities. On August 31, 2020, KSV Kofman changed its name to KSV Restructuring Inc. ("KSV").
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 NOI Entities, 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") of the Cumberland CCAA Entities (the "Cumberland CCAA Proceedings"). A copy of the Initial Order is provided in Appendix "A".

3. The Initial Order provides the Monitor with authority beyond those typically provided to a CCAA monitor, including decision-making and full access to the CCAA Entities' property, books and records.

1.2 Urbancorp Inc., Recognition of Foreign Proceedings

1. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel 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").
2. On May 18, 2016, the Court issued two orders under Part IV of the CCAA which:
 - a) recognized the Israeli Proceedings as a "foreign main proceeding";
 - b) recognized Mr. Gissin as Foreign Representative of UCI; and
 - c) appointed KSV as the Information Officer.
3. Prior to the commencement of the Cumberland CCAA Proceedings, the Foreign Representative and KSV, in its then capacity as Proposal Trustee, negotiated a protocol that addressed, *inter alia*, the sharing of information in respect of the Cumberland CCAA Proceedings between the Foreign Representative and KSV (the "Protocol"). A copy of the Protocol is attached as Appendix "B".

1.3 Downsview

1. Downsview Homes Inc. ("DHI") owns land located at 2995 Keele Street in Toronto, Ontario which is being developed into condominiums and other residences (the "Downsview Project"). The shares of DHI are owned by Downsview (51%) and Mattamy (49%). Downsview's only material asset is its interest in DHI.
2. Pursuant to the terms of the Shareholder Loans, UCI is an unsecured creditor of Downsview in the amount of \$10,094,562.
3. On January 25, 2021, the Foreign Representative served a motion requiring the Monitor to deliver a notice of arbitration to Mattamy in connection with certain of the Downsview Project agreements, particularly the waterfall resulting from the cash flow and profits of the Downsview Project. The Foreign Representative also sought an order assigning the rights in the arbitration to UCI.
4. On February 11, 2021, the Monitor served a motion to approve a proposed sale process for Downsview's interest in DHI, being its 51% ownership interest and its rights and obligations pursuant to several of the Downsview Agreements (the "Sale Process"). The motion for the sale process was an alternative to the arbitration sought by the Foreign Representative.

5. The Monitor and Foreign Representative's motions were heard by the Court on April 5, 2021. Chief Justice Morawetz released his reasons in respect of these motions on June 30, 2021. His decision approves the proposed Sale Process and requires that the arbitration requested by the Foreign Representative be conducted concurrently. Chief Justice Morawetz dismissed the Foreign Representative's request to adjourn the sales process motion until after the completion of the arbitration. A copy of Chief Justice Morawetz's reasons are attached as Appendix "C".
6. The Foreign Representative has served a notice of leave to appeal the dismissal of its request to adjourn the sales process motion.
7. The Monitor understands that Mattamy and the Foreign Representative are in the process of negotiating a schedule for the arbitration.
8. In connection with the arbitration, on July 9, 2021, Dentons LLP ("Dentons"), counsel to the Foreign Representative, sent an email to Davies Ward Phillips & Vineberg LLP ("Davies"), counsel to the Monitor, requesting certain documents, including the files of Urbancorp's former lawyer, Barry Rotenberg, relating to certain issues which are the subject of the arbitration (the "Document Request"). A copy of Denton's request is attached as Appendix "D". Denton's specific request in this regard is as follows:

"As well, please request Barry Rotenberg's file (including emails) relating to the Downsvew Shareholder's Agreement and the various Amendments to the Shareholder's Agreement. Also, please request any documents or emails that Barry has relating to value attributed to Urbancorp's interest in Downsvew during the course of the "soft restructuring" between February 1, 2016 and May 18, 2016."

1.4 Purposes of this Report

1. The purposes of the report ("Report") are to:
 - a) provide background information concerning the Urbancorp proceedings that is pertinent to this motion;
 - b) discuss the Document Request; and
 - c) recommend that the Court issue an order directing Mr. Rotenberg to deliver his files as requested by the Monitor and authorizing the Monitor to provide a copy of same to Dentons.

2.0 Document Request

1. The Document Request was made pursuant to Section 3(d) of the Protocol. 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 such information is not privileged nor 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 the affected parties.
2. The Monitor is of the view that Mr. Rotenberg's files in connection with his engagement by the Cumberland CCAA Entities (the "Files") constitute the business records of the Cumberland CCAA Entities. To the extent that any privilege attaches to any of the documents in favour of the Cumberland CCAA Entities, it is the Monitor who can elect to waive privilege on behalf of the Cumberland CCAA Entities given its powers pursuant to the Initial Order.
3. The Monitor is of the view that providing the documents should assist to facilitate a full factual record in the arbitration.
4. Accordingly, on behalf of the Monitor, Davies requested Mr. Rotenberg to deliver to the Monitor the Files. A copy of this request is provided in Appendix "E".
5. Upon Mr. Rotenberg's request, the Foreign Representative offered to cover Mr. Rotenberg's reasonable costs in providing the Files up to a mutually acceptable maximum amount.
6. The Monitor is aware that the Foreign Representative has commenced proceedings against Mr. Rotenberg for claims in negligence, among other things, and that such claims are being defended by Mr. Rotenberg.
7. Subsequent emails were then exchanged between Davies and Paul Pape, counsel to Mr. Rotenberg, with respect to the Foreign Representative's proceedings against him, with the outcome that Mr. Rotenberg would not deliver the Files without being directed to do so by the Court.
8. In light of the foregoing, the Monitor is seeking this Court's direction to Mr. Rotenberg that a copy of the Files be delivered to the Monitor and that the Monitor provide a copy of the Files to the Foreign Representative.

3.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in Section 1.4.1(c) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Schedule "A"

Urbancorp Toronto Management 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.

Appendix “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 18 TH
)	
JUSTICE NEWBOULD)	DAY OF MAY, 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 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

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

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**");

- 2 -

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

- 3 -

(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

- 4 -

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").

- 5 -

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.

****THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK****

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)

BORDEN LADNER GERVAIS LLP
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Lawyers for the Applicants

Appendix “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**");

- 2 -

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**").
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 - (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;
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 - (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

- 3 -

(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.

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(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

- 4 -

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**").

- 5 -

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.

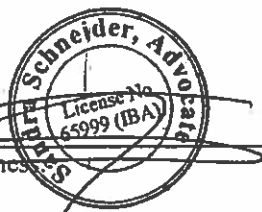
6. The Israeli Parentco Officer shall support the commencement of the CCAA Proceedings. Provided that KSV is acting in good faith and has not engaged in willful misconduct or gross negligence, the Israeli Parentco Officer shall not take any steps to attempt to remove KSV as either the proposal trustee 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 13 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**

Appendix “C”

CITATION: URBANCORP TORONTO MANAGEMENT INC., 2021 ONSC 4262
COURT FILE NO.: CV-16-11389-00CL
DATE: 2021-06-30

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Kenneth Kraft and Neil Rabinovitch*, for Guy Gissin, Israeli Court Appointed
Functionary Officer and the Foreign Representative of Urbancorp Inc.

Robin Schwill and Robert Nicholls, for the Monitor, KSV Restructuring Inc.

Matthew Gottlieb, Sapna Thakker and Jane O. Dietrich, for Mattamy (Downsview)
Limited

ENDORSEMENT

Background

[1] This endorsement addresses two motions.

[2] KSV Restructuring Inc. (“KSV”), 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”) seeks an order approving the sales process (the “Sales Process”) for Urbancorp Downsview Park Development Inc.’s (“Downsview”) interest in Downsview Homes Inc. (“DHI”) and the related project agreements (the “Downsview Interest”), and sealing the confidential appendices (the “Confidential Appendices”) to (i) the Forty-Fourth Report of the Monitor dated February 11, 2021 (the “Report”) and (ii) the supplement to the Report dated March 8, 2021 (the “Supplement”).

[3] The second motion is brought by Guy Gissin, in his capacity as foreign representative of Urbancorp Inc. (“UCI”) (the “Foreign Representative”) for an order that KSV deliver a Notice of Request to Arbitrate to Mattamy (Downsview) Limited, and related companies (collectively, “Mattamy”) (with UCI as an interested party) (the “Notice to Arbitrate”). Alternatively, UCI is seeking an order permitting it to take an assignment of Downsview’s rights to arbitrate the issues with Mattamy and adjourn the Sales Process motion until after the completion of the arbitration.

[4] The Downsview Interest is a 51% joint venture interest in a residential development project being managed and controlled by its co-owner, Mattamy. The Downsview Interest is subject to (i) transfer restrictions in favour of Mattamy; and (ii) related agreements governing the co-ownership of the Project (as defined below).

[5] Mattamy is also the DIP Lender to Downsview and is currently owed over \$9 million. The DHI Facility (defined below) matured on February 3, 2021. Downsview does not have the ability to repay the DHI Facility. Mattamy takes the position that it is entitled to appoint a receiver over Downsview and has made approval of the Sales Process a condition precedent to extending the Maturity Date of the DHI Facility.

[6] There have been many disputes over the interpretation of the Project related agreements that date back almost to when Mattamy first became involved in the Project.

[7] UCI has been attempting to have two issues arbitrated, namely: (i) is Mattamy entitled to an additional payments in priority over Downsview in respect of future profits from DHI; and (ii) the quantum of management fees Mattamy received during Phase 1 of the Project.

[8] The Monitor is of the view that the Sales Process can be conducted without having to first arbitrate the issues, and even if there was a prior arbitration, a sales process may be required in any event to substantiate the market value of the Downsview interest. Further, the Sales Process may also illustrate that the issues to be arbitrated are of no practical relevance (and, therefore, need not be arbitrated).

[9] The Foreign Representative believes that the proposed Sales Process will materially impair value as potential purchasers may be dissuaded from doing due diligence or submitting bids while these issues remain outstanding.

The Facts

[10] The relevant facts with respect to the KSV motion are set out in the Report and the Supplement.

[11] DHI owns land located at 2995 Keele St. in Toronto, on the former Downsview airport lands. It is developing a residential construction project comprised of condominiums, townhomes, semi-detached homes and rental units (the “Project”).

[12] Downsview holds a 51% ownership interest in DHI. The remaining 49% is held by Mattamy. Downsview has rights and obligations under a co-ownership agreement (the “Co-ownership Agreement”) between Downsview and Mattamy, as amended by various related agreements (the “Agreements”) which, among other things, impose certain transfer restrictions on Downsview’s shares of DHI in favour of Mattamy. The Monitor has characterized these

restrictions as providing Mattamy with an effective veto on any potential purchaser of the Downsview Interest.

[13] On June 15, 2016, the court approved a debtor-in-possession facility (the “DHI Facility”) in the amount of \$8 million between Mattamy, as lender and Downsview as borrower, secured by a charge (the “DHI Facility Charge”) in favour of Mattamy over Downsview’s property, including the Downsview Interest (the “Mattamy DIP Order”). The DHI Facility was used by Downsview to fund its portion of the required equity injection in the Project to secure construction financing for Phase 1.

[14] The DHI Facility was subsequently amended and increased to \$9.05 million, plus interest and costs. The DHI Facility matured on February 3, 2021 (the “Maturity Date”).

[15] The Monitor reports that Downsview does not have the ability to repay the DHI Facility and Mattamy has advised the Monitor that is not prepared to further extend the Maturity Date unless a Sales Process is conducted for the Downsview Interest.

[16] Pursuant to the terms of the DHI Facility and the Mattamy DIP Order, Mattamy is entitled to seek the appointment of a receiver over the Downsview Interest upon a continuing event of default under the DHI Facility. Failing to repay the DHI Facility by the Maturity Date is an event of default.

[17] UCI raised approximately \$64 million through public offering of debentures in Israel and made certain unsecured loans to certain of the CCAA Entities (the “Shareholder Loans”). One of the Shareholder Loans was advanced by UCI to Downsview the amount of \$10,094,562 (the “Downsview Shareholder Loan”), which remains outstanding

[18] There is a disagreement between the Monitor, the Foreign Representative and Mattamy with respect to certain accounting matters related to the Project. As a result, on January 25, 2021, the Foreign Representative served its motion

[19] The central issues in the arbitration are whether Mattamy has already received payment as provided in s.8.4(d) and 8.5(d) of the Co-ownership Agreement or whether these amounts remain payable to Mattamy and an accounting of management fees.

Position of the Parties

[20] The Foreign Representative takes the position that Mattamy has paid itself all amounts that it claims to be entitled.

[21] The Foreign Representative also takes the position that the issues in dispute could be resolved expeditiously and this would then allow Downsview’s interest to be properly marketed for sale in an open and transparent sales process or allow alternative financing to replace the DHI Facility.

[22] The Monitor, in consultation with Mattamy, has proposed a Sales Process. Mattamy has advised the Monitor that it consents to the terms of the Sales Process and, if the Sales Process is not approved, Mattamy intends to seek the appointment of a receiver over the Project.

[23] The proposed Sales Process provides that at the end of the sixth week, each bidder will be required to submit letters of intent (“LOIs”). If no LOIs are submitted, the Monitor shall be entitled

to terminate the Sales Process and convey the Downsvew Interest to Mattamy in full satisfaction of all obligations of Downsvew owing to Mattamy.

[24] The Monitor contends that the timelines in the Sales Process are intended to provide the Monitor with an appropriate amount of time to canvass prospective purchasers and to allow for due diligence. The Monitor will have the right to extend or amend the Sales Process timelines should it feel it is warranted.

[25] The Monitor further advised that Mattamy has agreed to pay the Monitor's fees and costs to conduct the Sales Process if the proceeds are insufficient to cover these costs.

[26] The Monitor is of the view that given the efficiencies and cost savings, no better, viable alternative to the proposed Sales Process in respect of the Downsvew Interest is available or otherwise acceptable to Mattamy as DIP Lender.

[27] The Foreign Representative is of the view that it will be practically impossible for any interested bidder to properly assess or conduct due diligence on the likely outcome of the issues as between Downsvew and Mattamy and it is unlikely any party will spend the time and funds and undertake due diligence for the Project when such uncertainty exists. The Foreign Representative contends that the magnitude is such that the outcome could determine whether there is any value in Downsvew's interest in DHI. Further, resolving these issues is critical in the event a Sales Process is to be commenced so that potential purchasers have a clear understanding of whether Mattamy has payments outstanding under the Co-ownership Agreement and the status of the Project management fees, as well as full information regarding the financial condition of the Project.

[28] From the standpoint of the Foreign Representative, conducting a Sales Process in the absence of a determination of issues as between Downsvew and Mattamy is likely to cause irreparable harm to UCI, as it will be nearly impossible to determine which potential bidders were dissuaded from conducting serious due diligence and potentially submitting offers as a result of the material uncertainty over this issue. If the payment issue is resolved in favour of Downsvew, the calculations of both of Monitor and the Foreign Representative show positive value for Downsvew's interest in the Project.

Issues

[29] From the standpoint of the Monitor, the issues are as follows:

- (a) should the Sales Process be approved?;
- (b) should the court grant a sealing order in respect of the Confidential Appendices to the Report and Supplement?

[30] From the standpoint of the Foreign Representative, the issues are as follows:

- (a) should the Monitor be directed to assign to UCI the rights to proceed with arbitration?
- (b) alternatively, should the Monitor be directed to initiate the Notice to Arbitrate with UCI as an interested party?

- (c) should the Monitor's motion to initiate the Sales Process be adjourned pending the arbitration?

Analysis

[31] In my view, it is appropriate to first address the issues raised by the Foreign Representative.

[32] The creditors of Downsvew have a vested interest in ensuring that there is a fair and transparent determination of the issues referenced in the Notice to Arbitrate.

[33] In most CCAA proceedings, it is the Monitor who is charged with reviewing issues of this type. However, if the Monitor, when requested, is unwilling to review the issues, the creditors should, in most circumstances, have the ability to ensure that a review can take place. A procedure that can be modified and adapted is similar to that set out in section 38 of the *Bankruptcy and Insolvency Act* (the "BIA").

[34] In a BIA proceeding, if a creditor requests the trustee to take a proceeding that would be of benefit to the estate and the trustee refuses or neglects to do so, the creditor may move under s. 38 of the BIA for an order permitting it to, in essence, step into the shoes of the trustee, and take the proceeding. The creditor must, of course, offer the opportunity to other creditors to participate in this venture.

[35] In the circumstances of this case, the Monitor has been requested to take the steps necessary to establish the value of Downsvew's interest in UCI. In my view, this necessitates an examination of the issues involved in the arbitration. It could be, in the final analysis, that the interest may have no value, but that does not mean that the issue can be ignored, especially when creditors of Downsvew want the issue determined. The Monitor has the option of either taking steps to proceed with an arbitration or, in the alternative, to assign to UCI the rights to proceed with an arbitration.

[36] Although this is a CCAA proceeding, I agree with the submission of counsel on behalf of the Foreign Representative, that there is no principled reason to distinguish between a trustee in bankruptcy and a Monitor, at least where the Monitor is itself in charge of the debtor's affairs. The trustee has obligations to maximize the assets in the estate, as does the Monitor in this case.

[37] Following the reasoning (*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 24), which states that, to the extent possible, aspects of insolvency law that are common to the BIA and CCAA should be harmonized, it seems to me that it is appropriate to provide for an equivalent process in CCAA proceedings.

[38] Accordingly, the Monitor is directed to issue the Notice to Arbitrate to Mattamy. However, if the Monitor determines that it is not willing to issue such notice, it should assign its right to do so to UCI, in a process that follows the structure as set out in s. 38 of the BIA.

[39] In this case, I am satisfied that the facts as alleged in the Notice to Arbitrate are such that there is threshold merit to the proceeding and that the proceeding could benefit the creditors of Downsvew.

[40] The final issue to consider on the Foreign Representative's motion is whether the Monitor's motion should be adjourned until the arbitration has proceeded and an award granted (if the parties

settle), or in light of my conclusion on the arbitration issue, whether the Sales Process can be run concurrently with the arbitration.

[41] The Foreign Representative submits that the Sales Process contains significant uncertainty as a result of two material outstanding issues, referenced in the Notice to Arbitrate, which could have the effect of chilling or dooming the Sales Process. Further, if the Sales Process fails, Mattamy would simply take Downsview's interest in the Project in satisfaction of its DIP Loan. The Foreign Representative contends that the Monitor has not engaged any industry-specific advice to determine whether the outstanding material issue would likely chill or doom the Sales Process to fail.

[42] The Foreign Representative also points out that the Monitor has proposed to give Mattamy veto rights over who can sign a nondisclosure agreement and thereby access the data room. Mattamy says that this restriction is built into the Mattamy DIP Order. The Foreign Representative submits that the Mattamy DIP Order deals with the conveyance of the interest over which Mattamy appears to have veto rights and that Mattamy has no veto rights on who can participate in the Sales Process by signing a non-disclosure agreement.

[43] Paragraphs [4] and [5] of the Mattamy DIP Order read as follows:

[4] **THIS COURT ORDERS** that UC Downsview shall be and is hereby restricted from transferring or attempting to transfer any of its shares or any economic, right, title or interest in Downsview Homes Inc. ("DHI") to any party prior to obtaining the prior written consent of MDL, which consent is not to be unreasonably withheld. For greater certainty, the restrictions contained in this paragraph 4 will survive the repayment of the DHI Facility.

[5] **THIS COURT ORDERS** that the rights, remedies and recourses provided to and in favour of MDL under or pursuant to this Order and the DHI Term Sheet are in addition to, not in substitution for and without prejudice to, any rights, remedies or recourses provided to MDL under any other agreements with any of the Applicants, including, without limitation, UC Downsview.

[44] The provisions of paragraph [4] impose certain restrictions on Downsview, which in turn, impact the Monitor on any sales process relating to Downsview's interest in DHI. In conducting any sales process, the Monitor has to describe the assets being offered for sale and to do so in a transparent manner. In my view, this includes an obligation to fully describe any restrictions or potential restrictions that may affect the transfer of Downsview's interest in DHI. In my view, such disclosure is required as it falls within the phrase "attempting to transfer any of its shares ..." as referenced in [4]. The failure to disclose these restrictions at the outset of the Sales Process, or to defer addressing the issues until the time of conveyance could result in an increased degree of uncertainty in the entire Sales Process, which is undesirable.

[45] In the circumstances of this case, I have concluded that the Monitor should inform potential purchasers of the requirement to obtain the prior written consent of Mattamy, which consent is not to be unreasonably withheld. Any party seeking such consent is directed to do so on a timely basis,

so as to minimize the time and expense of due diligence and, if necessary, a review of the issue by the court.

[46] In response to the argument that the Sales Process should be adjourned, the Monitor points out that the court has the power to approve a sale of assets in the CCAA proceeding as codified in s. 36 of the CCAA, which sets out the list of non-exhaustive factors for the court to consider in determining whether to approve the sale of the debtor's assets outside the ordinary course of business.

[47] The Monitor further points out that a distinction is drawn between the approval of the Sales Process and the approval of an actual sale. Section 36 of the CCAA is engaged when the court determines whether to approve a sale transaction arising as a result of the sales process. It does not address the factors the court should consider when deciding whether to approve a sales process.

[48] In *(Re) Brainhunter*, 2009 CarswellOnt 8207 at paragraphs 13 – 17, the court considered the criteria to be applied on a motion to approve a stalking horse process under the CCAA, citing *(Re) Nortel Networks Corp.*, 2009 CarswellOnt 467 at para. 49 where the court determined the following four factors to be considered by the court in the exercise of its discretion to determine if the proposed Sales Process should be approved (the "Nortel Criteria"):

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole "economic community"?
- (c) do any of the debtor's creditors have a *bona fide* reason to object to a sale of the business? and
- (d) is there a better viable alternative?

[49] The Monitor contends that the Sales Process is warranted at this time for number of reasons.

[50] First, Mattamy as the DIP Lender, is entitled to exercise its rights over the Downsview Interest in the event that the amounts owing under the DHI Facility are not repaid in full by the Maturity Date. Mattamy has consented to the Sales Process to be undertaken by the Monitor and, absent the commencement of the Sales Process, Mattamy intends to seek the appointment of a receiver to carry out a similar Sales Process.

[51] Second, Downsview's obligations under the DHI Facility continue to accrue. Phase 2 is not expected to be complete for several years and will require additional infusions of capital. If the Sales Process is not implemented, Mattamy's indebtedness will continue to increase, thereby decreasing potential recoveries, if any, for other creditors, including UCI.

[52] Third, the Sales Process can be conducted without requiring a determination of the arbitration in advance. The Sales Process contemplates that bidders will be required to submit two offers: one assuming that Mattamy has already received the payments contemplated by the Agreements and the other assuming Mattamy has not received such payments.

[53] The Monitor and Mattamy are in agreement that the Sales Process will benefit the whole of the economic community and the Sales Process could result in a sale transaction for the Downsview Interest, and Downsview's creditors may be provided with certain recoveries.

[54] The Monitor submits that conditions that have given rise to a concern of a “chilling effect” on the market usually involve (i) significant break fees in a stalking horse agreement, or (ii) significant restrictions in the future sale of the assets, by a right of first refusal or otherwise. (See *Brainhunter, supra*, at para 12; *Mecachrome Canada Inc.*, 2009 Carswell 9963 at para. 35 (Sup. Ct.); *Re Quest University Canada*, 2020 Carswell BC 3091 (SC) at para 63; (*Re Endurance Energy Limited*, 2016 Carswell Alta 1130 (QB)). The Monitor submits that these issues are not present in this case. I agree.

[55] The Monitor is also the view that potential bidders are sufficiently sophisticated such that a requirement to provide two bids prices will not be confusing and thus will not have a “chilling effect” on the market for potential bidders for the Downsview Interest.

[56] The Monitor submits that no creditor has come forward with any *bona fide* concerns. The Monitor also addresses the concerns of the Foreign Representative to the effect that the Sales Process ought not to be initiated until after the arbitration and that to do so beforehand will impair the Sales Process. The Monitor submits that these are conclusory statements made by the Foreign Representative and that the Monitor, on the other hand, has articulated reasons for supporting the Sales Process in its Report. The Monitor’s evidence is that, in its opinion, requesting interested parties to provide two bid prices will not be confusing to the market, will not be a disincentive to providing offers, and may illustrate that the issue of the Mattamy receivable and the management fee are of no practical relevance (and therefore need not be arbitrated). The Monitor submits that the Sales Process is an open and transparent process designed to thoroughly canvass the market with a view to accepting the best offer for the Downsview Interest.

[57] In addition, the Monitor submits that the concerns expressed by the Foreign Representative with respect to the accounting of the Project are not *bona fide* as they do not reflect steps taken by the Monitor to become reasonably comfortable with same. The Monitor, Pelican Woodcliffe Inc. and Altus Group have engaged in a review of the accounting of the Project and have not identified any material concerns.

[58] Finally, the Monitor submits that there is no better or viable alternative to the Sales Process.

[59] In its Reply Factum, the Monitor submits that many of the “facts” pertaining to the Project and the agreements as referenced in the Foreign Representative’s Factum are simply direct references to the Foreign Representative’s own characterizations contained in its own Notice to Arbitrate and, therefore, are not evidence of anything other than the statements made by the Foreign Representative and, accordingly, should be afforded no weight. I agree with this submission. The concerns raised by the Foreign Representative are, at best, speculative and accordingly I discount the statements referenced in the Foreign Representative’s factum.

[60] I have been persuaded by the arguments of the Monitor that the Sales Process should be approved and proceed at this time. In considering this issue, I have taken into account the comments of Jamal J.A. in *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at para. 19.

[19] As already noted, commercial court judges also give substantial deference to the decisions and recommendations of a receiver as an officer of the court. If the receiver’s decisions are within the broad bounds of reasonableness and the receiver proceeded fairly, after considering the interests of all stakeholders, the court will

not intervene: *Ravelston Corp. Ltd. (Re)*, 2007 ONCA 135, at para. 3; *Regal Constellation Hotel Ltd. (Re)* (2004), 71 O.R. (3d) 355 (C.A.), at para. 23. A court will “assume that the receiver is acting properly unless the contrary is clearly shown”: *Regal Constellation Hotel*, at para. 23.

[61] I am satisfied that the Receiver has given due consideration to the issues relating to the proposed Sales Process and that its decisions and recommendations are reasonable in the circumstances. The Sales Process is approved.

Sealing Order

[62] Finally, the Monitor requests a sealing order in respect of the Confidential Appendices. The Monitor’s submissions are set out in paragraphs 53 – 60 of the factum, which reads as follows:

[53] Section 137(2) of the *Courts of Justice Act (Ontario)* provides courts with the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record, notwithstanding the general principle that court hearings should be open to the public.

[54] In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where:

- (a) the order is necessary to prevent serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk and;
- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right of free expression, which includes the public interest in open and accessible court proceedings.

Sierra Club of Canada v. Canada (Minister of Finance), [2002] 2 S.C.R. 522 at para. 53.

[55] In the insolvency context, courts have applied this test and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.

[56] The Monitor is seeking a sealing order in respect of the Confidential Appendices to the Report containing (i) the most recent budget provided by Mattamy to the Monitor as to the distribution of proceeds from the sale of the Downsview Interest as between Mattamy and Downsview; (ii) the Foreign Representative’s estimate of the value of the Downsview Interest; and (iii) the Monitor’s estimate of the value of the Downsview Interest.

[57] The Monitor is also seeking a sealing order in respect of the Confidential Appendices to the Supplement containing (i) various iterations of the waterfalls reflecting the distribution of cash flows from the phases of the Project provided by the Foreign Representative on the one hand and the Monitor on the other; (ii) the decision from the prior confidential arbitration before the Honourable Frank Newbould in September 2019 (the “Prior Arbitration”); and (iii) an affidavit sworn by Chris Strzemiecz in the course of the Confidential Prior Arbitration.

[58] The Confidential Appendices contain highly sensitive commercial information of Downsvew and the Downsvew Interest that could undermine the integrity of the Sale Process and the potential arbitration of the Provisions. The disclosure of the Confidential Appendices prior to the completion of a transaction (or multiple transactions) under the Sale Process would pose a serious risk to the Sale Process in the event that the transaction (or multiple transactions) does not close, as it could jeopardize dealings with any future prospective purchasers or liquidators of the Downsvew Interest. With respect to the Confidential Appendices relating to the Prior Arbitration, their disclosure would breach the relevant confidentiality agreement.

[59] If granted, the sealing order will protect the commercial interests of Downsvew and its stakeholders. This salutary effect greatly outweighs the deleterious effects of not sealing the Confidential Appendices, namely the lack of immediate public access to all documents filed in these proceedings.

[60] As a result, it is submitted that the test for a sealing order has been met and the Court should make an order that the Confidential Appendices be treated as confidential, sealed and not form part of the public record in the within proceedings pending the completion of these proposal proceedings.

[63] The considerations involved in the granting of a sealing order must take into account the recent Supreme Court decision in *Sherman Estate v. Donovan*, 2021 SCC 25 at paras. 37 – 38, where Kasirer J. wrote that:

[37] Court proceedings are presumptively open to the public (*MacIntyre*, at p. 189; *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, [2012] 2 S.C.R. 567, at para. 11).

[38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness – for example, a sealing order, a publication ban, an order excluding the public from a hearing, or redaction order – properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspaper Ltd. v. Ontario*, 2005, SCC 41, [2005] 2 S.C.R. 188, at paras. 7 and 22).

[64] Having reviewed the Confidential Appendices, I am satisfied that the three prerequisites have been satisfied. There is a public interest in ensuring the integrity of the Sales Process and any arbitration. There is no reasonable alternative measure to preserve the integrity of the Sales Process and any arbitration. Finally, as a matter of proportionality, I am satisfied that the benefits of the order outweigh its negative effects. As such, the Sealing Order should be granted, pending further order of the court.

Disposition

[65] In the result, the Foreign Representative's motion is granted, in part. The arbitration can proceed at this time. If the Monitor is not prepared to undertake steps necessary to initiate the arbitration, the Foreign Representative can request an assignment of the Monitor's rights to initiate such arbitration. The request of the Foreign Representative to adjourn the Sales Process motion until after the completion of the arbitration is dismissed.

[66] The Monitor's motion to approve the Sales Process and for a sealing order of the Confidential Appendices is granted.



Chief Justice G.B. Morawetz

Date: June 30, 2021

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 LF

URBANCORP CUMBERLAND 1 GP INC.

URBANCORP PARTNER (KING SOUTH) INC.

URBANCORP (NORTH SIDE) INC.

URBANCORP RESIDENTIAL INC.

URBANCORP REALTYCO INC.

Appendix “D”

From: Rabinovitch, Neil <neil.rabinovitch@dentons.com>
Sent: July 9, 2021 9:43 AM
To: Schwill, Robin <rschwill@dwpv.com>
Cc: Rabinovitch, Neil <neil.rabinovitch@dentons.com>
Subject: Document Request

External Email / Courriel externe

Robin

With respect to the arbitration, can you please have KSV arrange to provide us with the following emails, as well as make requests for files from both Barry Rotenberg and Jeremy Cole as set out below. We are looking to have the arbitration proceed expeditiously so we would appreciate if you can provide the requested documents to us as they are received by you or KSV, as opposed to waiting to receive everything.

All documents/emails relating to the June 3, 2015 Amendment to the Shareholder's Agreement and the June 3, 2015 Shareholders Agreement and Mattamy Note. Specifically, please provide all emails to/from Alan Saskin, Philip Gales and Barry Rotenberg for the period March 1, 2015 – June 30, 2015 which refer to any of the terms "Mattamy", "Downsview", "Shareholder", "Shareholder's Agreement", "Amendment to Shareholder's Agreement", "Mattamy Shareholder Loan", "Downsview Homes Inc.", "DHI", "UDPDI", the "Payment and Profit Distribution Adjustment Agreement", "PPDAA", "21 Million", "Twenty One Million" as well as all emails exchanged between Alan Saskin and anyone from Mattamy or Cassels Brock during this period. Also, all documents/emails to/from Alan Saskin, Phillip Gales, David Mandel, Barry Rotenberg and Ted Saskin between February 1, 2016- May 18, 2016 which reference any of the foregoing terms.

As well, please request Barry Rotenberg's file (including emails) relating to the Downsview Shareholder's Agreement and the various Amendments to the Shareholder's Agreement. Also, please request any documents or emails that Barry has relating to value attributed to Urbancorp's interest in Downsview during the course of the "soft restructuring" between February 1, 2016 and May 18, 2016.

Finally, please request Jeremy Cole's (MNP's) file (including emails) relating to the Shareholder's Agreement and the various Amendments to the Shareholder's Agreement in or around June 2015. Also, please request any emails that Jeremy has relating to value attributed to the interest in Downsview during the course of the "soft restructuring" between February 1, 2016 and May 18, 2016.

Thanks

Neil



Neil S. Rabinovitch

Partner

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

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Sirote > Adepetun Caxton-Martins Agbor & Segun > Davis Brown > East African Law Chambers > Eric Silwamba, Jalasi and Linyama > Durham Jones & Pinegar > LEAD Advogados > Rattagan Macchiavello Arocena > Jiménez de Aréchaga, Viana & Brause > Lee International > Kensington Swan > Bingham Greenebaum > Cohen & Grigsby > Sayarh & Menjra > For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

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Appendix “E”

From: Schwill, Robin <rschwill@dwpv.com>
Sent: July 12, 2021 2:59 PM
To: brotenberg@chaitons.com
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: Urbancorp

Barry,

In response to an information request made of us by counsel to the Israeli Functionary, please provide me with a copy of your file (including emails) relating to the Downsview Shareholder's Agreement and the various Amendments to the Shareholder's Agreement. Also, please provide copies of any documents or emails that you or your previous firm have relating to value attributed to Urbancorp's interest in Downsview during the course of the "soft restructuring" between February 1, 2016 and May 18, 2016.

Robin B. Schwill | [Bio](#) | [vCard](#)
T 416.863.5502
rschwill@dwpv.com

DAVIES

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Toronto, ON M5V 3J7
dwpv.com

DAVIES WARD PHILLIPS & VINEBERG LLP

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TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	MONDAY, THE 30 th
)	
CHIEF JUSTICE MORAWETZ)	DAY OF AUGUST, 2021
)	

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
(Document Request -- Rotenberg)

THIS MOTION, made by KSV Restructuring Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants and the affiliated entities listed on Schedule "A" (collectively, the "**CCAA Entities**", and each individually a "**CCAA Entity**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, among other things, directing Mr. Barry Rotenberg deliver up to the Monitor a copy of his complete files (including emails) relating to the Downsview Shareholder's Agreement and the various Amendments to the Shareholder's Agreement

(as those terms are referred to in the Document Request as defined in the Report (defined below)) including, without limitation, any documents or emails relating to value attributed to UDPDI's interest in Downsview Homes Inc. during the course of the "soft restructuring" between February 1, 2016 and May 18, 2016 (collectively, the "**Files**") and authorizing and directing the Monitor to provide Guy Gissin, in his capacity as the appointed functionary and foreign representative of Urbancorp Inc. by order of the District Court in Tel Aviv-Yafo, Israel (the "**Israeli Functionary**"), with copies of the Files when received, was heard this day by judicial videoconference via Zoom as a result of the COVID-019 pandemic.

ON READING the Notice of Motion of the Monitor, the Forty-Seventh Report of the Monitor dated August 23, 2021 (the "**Report**"), and on hearing the submissions of respective counsel for the Monitor, the Israeli Functionary and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service as filed:

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.

DOCUMENT REQUEST

2. **THIS COURT ORDERS AND DECLARES** that Mr. Barry Rotenberg be and is hereby directed deliver up to the Monitor a copy of the Files.

3. **THIS COURT ORDERS AND DECLARES** that the Monitor be and is hereby authorized and directed to provide the Israeli Functionary with copies of the Files when received.

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
(DOCUMENT REQUEST --
ROTENBERG)**

DAVIES WARD PHILLIPS & VINEBERG LLP
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Lawyers for the Monitor

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

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

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

(PROCEEDING COMMENCED AT TORONTO)

MOTION RECORD
(Document Request)

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