



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

June 22, 2018

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

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

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

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

TWENTY SEVENTH REPORT OF KSV KOFMAN INC.

JUNE 22, 2018

1.0 Introduction

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "NOI Entities"). KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee of each of the NOI Entities.
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 of the Cumberland CCAA Entities (the "Monitor") (the "Cumberland CCAA Proceedings").

3. Certain Cumberland CCAA Entities¹ are known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP (“Cumberland”). Collectively, Cumberland and its direct and indirect subsidiaries are the “Cumberland Entities” and each individually is a “Cumberland Entity”. Each Cumberland Entity is a nominee for Cumberland and, as such, the assets and liabilities of the Cumberland Entities are assets and liabilities of Cumberland. The remaining Cumberland CCAA Entities², other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. (“UCI”) (collectively, the “Non-Cumberland Entities”). The corporate chart for the Cumberland Entities and the Non-Cumberland Entities is provided in Appendix “A”.
4. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel appointed Guy Gissin as the functionary officer and foreign representative (the “Foreign Representative”) of UCI and granted him certain powers, authorities and responsibilities over UCI (the “Israeli Proceedings”).
5. The CCAA Entities, together with several affiliates, comprise the Urbancorp Group of Companies (collectively, the “Urbancorp Group”). The Urbancorp Group was primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area.
6. Urbancorp Renewable Power Inc. (“URPI”) is an entity in the Urbancorp Group. URPI is not subject to any of the CCAA proceedings. The Monitor understands that URPI is owned by Alan Saskin or persons or entities related to him.
7. URPI was incorporated to manage geothermal energy systems installed at four of the Urbancorp real property developments, being the Fuzion condominium (“Fuzion”), the Bridge condominium (“Bridge”), the Curve condominium (“Curve”) and the Edge condominium (“Edge”) (collectively, the “Geothermal Assets”). The Geothermal Assets provide heating and air conditioning to the condominiums.
8. URPI is the borrower under a secured loan provided by Cumberland in its CCAA proceedings in the maximum amount of \$500,000 and bearing interest at a rate of 12% per annum (the “Loan”). The Loan was approved pursuant to an Order issued by the Court on November 22, 2017 (the “URPI Loan Order”).

1.1 Purposes of this Report

1. The purposes of this report (the “Report”) are to:
 - a) provide an update on the status of Loan;
 - b) request authorization from the Court for the Monitor to commence a receivership application against URPI, on behalf of Cumberland, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (“BIA”) and/or section 101 of the *Courts of Justice Act* (“CJA”);

¹ St. Clair., Patricia, Mallow, Lawrence, Urbancorp (952 Queen West) Inc., King Residential Inc., Urbancorp 60 St. Clair Inc., High Res. Inc., Urbancorp Partner (King South) Inc., Urbancorp (North Side) Inc. and Bridge on King Inc.

² Vestaco Homes Inc., Vestaco Investments Inc., Urbancorp Power Holdings Inc., UTMI, Downsview, 228 Queens Quay West Limited, Urbancorp Residential Inc., Urbancorp Realtyco Inc., Urbancorp Cumberland 1 GP Inc.

- c) recommend that the Court make an order authorizing the Monitor to serve its notice of application, substantially in the form attached as Appendix “B”, upon URPI for the appointment of KSV as receiver and manager of URPI, and certain related relief (the “Application”); and
- d) recommend that, upon the Monitor serving and filing the Application, the Court issue an order appointing KSV as receiver of the assets, property and undertakings of URPI, substantially in the form set out in Appendix “C” herein.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Entities, the books and records of the CCAA Entities and discussions with representatives of the CCAA Entities. The Monitor has not performed an audit or other verification of such information.

2.0 Geothermal Asset Background

1. URPI manages the Geothermal Assets located at the Edge, Bridge, Curve, and Fuzion condominiums developed by the Urbancorp Group.
2. The registered owners of the Geothermal Assets appear to be:
 - a. Vestaco Homes Inc. (Bridge);
 - b. Vestaco Investments Inc. (Curve); and
 - c. 228 Queen’s Quay West Ltd. (Edge).

Each of the foregoing is a Cumberland CCAA Entity.

3. In the case of the Geothermal Assets located at the Fuzion condominium, the registered owners appear to be Urbancorp New Kings Inc.³ (“UNKI”) and Urbancorp Management Inc., each having a 50% interest. Neither of these entities is an applicant within any CCAA proceedings. The ownership of Fuzion’s Geothermal Assets is subject to further review.
4. The Fuller Landau Group Inc. (“Fuller Landau”), in its capacity as Court-appointed monitor of certain other entities in the Urbancorp Group, including Edge Residential Inc., Edge on Triangle Park Inc., and Bosvest Inc. (collectively, the “Edge Companies” and the CCAA proceedings involving the Edge Companies, the “Edge CCAA Proceedings”), has advised the Monitor that the Edge Companies, or some of them, may have an interest in the Geothermal Assets located at the Edge and Curve condominiums.

³ Cumberland is the shareholder of UNKI.

5. URPI provides management services in respect of the Geothermal Assets pursuant to management agreements with each of the registered Geothermal Asset owners (collectively, the “Management Agreements”). Pursuant to the Management Agreements, URPI maintains and provides services in respect of the Geothermal Assets and is to collect, receive and deposit in trust for the owner of the Geothermal Assets all money collected from the relevant condominium corporation, calculated as specified in the Management Agreements. In return for providing such services under the Management Agreements, URPI receives a fee of 3% to 5% of the “Supplier Energy Consumption Charges” set out in the Energy Supply Agreements (as defined and described below).
6. URPI is also party to geothermal energy supply agreements with each of the condominium corporations existing at the developments where the Geothermal Assets are situated:
 - a. Toronto Standard Condominium Corporation No. 2348 (Fuzion),
 - b. Toronto Standard Condominium Corporation No. 2302 (Bridge),
 - c. Toronto Standard Condominium Corporation No. 2355 (Curve); and
 - d. Toronto Standard Condominium Corporation No. 2448 (Edge) (collectively, the “Energy Supply Agreements”).
7. URPI’s sole source of revenue is the fees generated pursuant to the Energy Supply Agreements. The condominium corporations have not paid URPI the payments required by the Energy Supply Agreements since March 2016.⁴ As described below, these amounts are being contested in litigation commenced by each of the condominium corporations and the funds are currently being held in trust by legal counsel to the condominium corporations.
8. Ultimately, with the exception of the Fuzion Geothermal Asset owners, the parties with an economic interest in the Geothermal Assets (as well as being URPI’s only financial stakeholders) are applicants within the Cumberland CCAA Proceedings and the Edge CCAA Proceedings, as well as URPI in respect of its management fees.
9. Upon resolution of the litigation described below, the Monitor intends to commence a realization process for the Geothermal Assets within these CCAA Proceedings.
10. Additional information concerning URPI and the Geothermal Assets is provided in several of the Monitor’s reports, including most recently its Twenty-Fourth Report dated April 24, 2018. A copy of the Twenty Fourth Report is attached as Appendix “D”, without appendices.⁵

⁴ With one exception, being a \$260,000 payment by Edge Condo Corporation to URPI. Additionally, Curve does not appear to owe any amounts to URPI in respect of the payments required under the Energy Supply Agreements.

⁵ The Twenty Fourth Report provides information contained in several of the Monitor’s previously filed reports.

2.1 URPI Litigation

1. The Monitor previously filed with the Court a Case Conference Memorandum dated August 31, 2017 (the “URPI Memo”), providing additional information regarding URPI, the Geothermal Assets, and several related ongoing litigation matters. A copy of this memorandum is attached hereto as Appendix “E”.
2. As set out in the URPI Memo, URPI is currently involved in four ongoing civil proceedings. URPI commenced litigation against the Edge, Bridge and Fuzion condominium corporations for failure to make payments to URPI in accordance with applicable Energy Supply Agreements (Court File Nos. CV-16-11459 and CV-17-11666). Based on information provided to the Monitor by URPI, the receivables owing to URPI from the Bridge, Fuzion and Edge condominium corporations appear to total approximately \$3.8 million as of May 31, 2018. A summary of the amounts owing from each of the condominium corporations is provided in the table below:

Bridge	\$1,463,833
Edge	1,730,912
Fuzion	642,991
	<hr/>
	\$3,837,736

3. The Edge, Bridge and Fuzion condominium corporations have asserted cross-claims against URPI (Court File Nos. CV-16-11524 and CV-17-571851) (collectively with the claims asserted by URPI, the “Litigation”). URPI is represented by its own counsel in the Litigation, and its legal fees in connection with the Litigation are currently being funded by the Loan.
4. The Monitor has retained Beatty Geothermal Inc., a geothermal consultant, to review and advise with respect to various issues in connection with the Geothermal Assets.
5. The Litigation has effectively stalled and no trial dates have been scheduled in any of the actions.
6. In addition, there is a further dispute between URPI and the Curve condominium corporation which may need to be resolved through arbitration. The arbitration has not been scheduled at this time.
7. The Monitor is concerned with the progress of the Litigation, and is of the view that KSV, as receiver and manager of URPI, will be able to advance the Litigation in a more expeditious and efficient manner than is currently the case. The Litigation must be resolved in order to monetize the Geothermal Assets.

2.2 URPI Loan and Default

1. Pursuant to the Term Sheet dated October 24, 2017 and the Promissory Note dated February 2, 2018, the Loan has a maximum availability of \$500,000, bearing interest of 12% *per annum* on drawn amounts. Copies of the Term Sheet and Promissory Note are attached as Appendices “F” and “G”, respectively. The Loan is secured by a General Security Agreement dated January 7, 2018 in favour of Cumberland (the “GSA”). A copy of the GSA is attached hereto as Appendix “H”. Cumberland’s security interest has been registered against URPI pursuant to the *Personal Property Security Act* (Ontario) as Registration No. 20180209 1052 1590 3032.
2. The Loan was provided by the Monitor, on behalf of Cumberland, to URPI for two principal purposes: (i) to finance maintenance and repairs to the Geothermal Assets, and (ii) to fund URPI’s legal and other costs in the Litigation.
3. The events of default under the Term Sheet include the following:
 4. *A liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, any of the Borrower, that will, in the Lender’s judgment, acting reasonably, materially further impair the Borrower’s financial condition, operations or ability to comply with its obligations under this Term Sheet or any Credit Documentation including, without limitation, any ruling, endorsement, judgment or order in the Borrower’s litigation in respect of any of the Geothermal Energy Supply Agreements which in the Lender’s judgment, acting reasonably, is adverse to the interests of the Borrower. [emphasis added]*
4. As of the date of this Report, approximately \$100,000 has been advanced under the Loan, excluding accrued interest.
5. In connection with the negotiation and Court approval of the Loan, the Monitor indicated in its Nineteenth Report dated October 24, 2017 that repairs may be necessary to the Bridge Geothermal Asset totalling as much as \$400,000.
6. On May 16, 2018, the Monitor was advised by email from URPI that anticipated repair costs for the Bridge Geothermal Assets, to the extent necessary, are expected to exceed the prior estimate. Additionally, URPI will continue to incur indeterminate legal costs in respect of the Litigation. These combined costs exceed the previous repair estimate provided to the Monitor, as well as the maximum amount of the Loan.
7. In the Monitor’s view, this increase in estimated repair costs constitutes a material change in URPI’s financial conditions that impairs its ability to comply with its obligations under the Loan. The principal amount of the Loan is not sufficient to cover the projected costs.

8. The principal economic stakeholder in Cumberland (the Lender) is UCI, which is represented by the Foreign Representative. The Monitor sought and obtained the Foreign Representative's consent to make the Loan. The Foreign Representative has indicated that it will not approve any increase in the maximum amount available under the Loan in the present circumstances. Accordingly, based on its current estimated repair and legal costs, URPI does not have, and will not have, sufficient funding to cover its known expenses.
9. Based on the foregoing, URPI is in default of the Loan, and the Lender is entitled to enforce its security in accordance with the Term Sheet and the GSA.

2.3 Need for Appointment of a Receiver and Manager

1. URPI currently has no revenue or other source of cash flow. URPI is unable to pay its liabilities as they become due and is therefore insolvent.
2. Because URPI is not a CCAA applicant, the Monitor has limited ability to control the repair and maintenance of the Geothermal Assets, or URPI's involvement in the Litigation. However, the Litigation must be resolved in order for the Geothermal Assets to be monetized for the benefit of stakeholders, whether such stakeholders are in the Cumberland CCAA Proceedings and/or in the Edge CCAA Proceedings.
3. In accordance with the terms of the Energy Supply Agreements, URPI is only entitled to 3%-5% of the potential benefits of the Litigation, to the extent that an award of damages is made in URPI's favour. In other words, the benefit of up to 97% of any amounts awarded to URPI in the Litigation will accrue to stakeholders of the Cumberland CCAA Entities and the Edge Companies.
4. Accordingly, it is necessary and appropriate that a receiver and manager be appointed in respect of URPI at this time so that progress may resume in furtherance of these objectives for the benefit of the stakeholders of the Cumberland CCAA Proceedings and the Edge CCAA Proceedings, to the extent of their respective interests.
5. Section 101 of the CJA provides that a receiver and manager may be appointed where it is just and convenience to do so. For the reasons set out above, the Monitor views the appointment of KSV as receiver and manager of URPI as just and convenient in the circumstances.

2.4 Financing Receivership Proceedings

1. In order to assist to finance the proposed receivership proceedings, it is proposed that a charge be granted over the Geothermal Assets owned by CCAA Applicants⁶ as security for the fees of the receiver and its counsel. As was the case with the Loan, the receivership, if approved by the Court, will be financed through intercompany loans from Cumberland. Accordingly, the Monitor views a cross-charge over the Geothermal Assets owned by Cumberland CCAA Entities, as well as URPI, in favour of Cumberland as necessary in order to secure any amounts loaned in furtherance of the proposed receivership proceedings.

⁶ I.e. excluding the 50% interest in the Fuzion Geothermal Asset owned by UNKI and UMI.

3.0 Proposed Procedure for Appointment of Receiver and Manager

1. The within motion seeks the authorization of the Court for the Monitor to commence an application to enforce its security under the Loan in accordance with its terms, pursuant to the BIA and CJA. In bringing this motion, the Monitor is cognizant of this Court's direction that a CCAA Monitor "ought typically to consider seeking court approval before undertaking litigation on behalf of particular interests".⁷
2. For the reasons set out above, the Monitor recommends commencing an application to enforce the security under the Loan by appointing KSV as receiver and manager in respect of URPI. The Monitor therefore seeks an order authorizing it to serve and file the Application, then to return for approval of the proposed form of receivership order. The evidence and material on the present motion, however, is the same as would be provided in any application record. Accordingly, the Monitor proposes to simply serve and file the Application and, upon doing so, return to Court for an order seeking the appointment of KSV as receiver and manager of URPI pursuant to section 243 of the BIA and section 101 of the CJA. URPI has been served with notice of this motion.
3. KSV has consented to act as receiver and manager of URPI in connection with the Application, and a copy of KSV's executed consent is attached as Appendix "I".
4. Recognizing that URPI's financial stakeholders are applicants within these CCAA Proceedings and the Edge CCAA Proceedings, compliance with the procedural requirements for commencing an application for the appointment of a receiver pursuant to the BIA and CJA is somewhat artificial in the present case in the sense that those same parties who would receive notice of a receivership application have been served with the within motion record. The Monitor has also advised URPI of its intention to seek the appointment of a receiver and manager in respect of URPI.

3.1 No Requirement for Notice of Intention to Enforce Security

1. Generally, section 244(1) of the BIA requires a secured creditor to serve notice of its intention to enforce its security upon a debtor at least 10 days prior to the appointment of a receiver. An exception to this general rule exists under section 243(1.1)(b) of the BIA, which permits the Court to appoint a receiver in respect of a debtor prior to the expiry of the 10-day notice period if "the court considers it appropriate to appoint a receiver before then".
2. In the Monitor's view, in these circumstances, it would be appropriate for the Court to appoint a receiver and manager in respect of URPI without serving notice of the Monitor's intention to enforce security. First, although URPI is not an applicant within these CCAA Proceedings, its financial stakeholders are CCAA applicants. In recommending the appointment of KSV as receiver and manager of URPI, the Monitor is promoting the financial interests of these stakeholders and their creditors within these CCAA Proceedings.

⁷ *Re Urbancorp Cumberland 2 GP Inc.*, 2017 ONSC 7649, para 26.

3. Second, by bringing this motion on notice to the CCAA Proceedings service list, as well as those parties involved in the Litigation, the Monitor has effectively provided notice on behalf of Cumberland of the intention to enforce security under the Loan.

3.2 KSV is the Appropriate Receiver and Manager

1. In the unique circumstances of this case, KSV is in the novel position of being both the party acting on behalf of the Lender, as well as the entity best positioned to act as the proposed receiver and manager of URPI.
2. KSV has been involved in the oversight of URPI since the outset of these CCAA Proceedings, and has been overseeing the Litigation, including by retaining consultants. Therefore, KSV is apprised of information necessary to commence a receivership role immediately, compared to any alternative, which would require time and resources to ramp up on these issues.
3. Pursuant to paragraph 29(c) of the Initial Order, the Monitor was authorized to “cause the Urbancorp CCAA Entities to perform such further 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”.
4. In this instance, having regard to the Loan, URPI’s default thereunder, and the challenges faced by URPI advancing the Litigation, including its lack of financing to do so, the Monitor considers it necessary to request the Court’s authorization to commence an application seeking to appoint KSV as receiver and manager of URPI to facilitate dealings with the Property, being the Geothermal Assets and the Litigation.
5. Accordingly, KSV is uniquely positioned to expeditiously commence and adequately fulfill this receivership mandate for the benefit of the Lender and the stakeholders in the Geothermal Assets.

All of which is respectfully submitted,



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

SCHEDULE "A"

Urbancorp (952 Queen West) Inc.

King Residential Inc.

Urbancorp 60 St. Clair Inc.

High Res. Inc.

Bridge on King Inc.

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

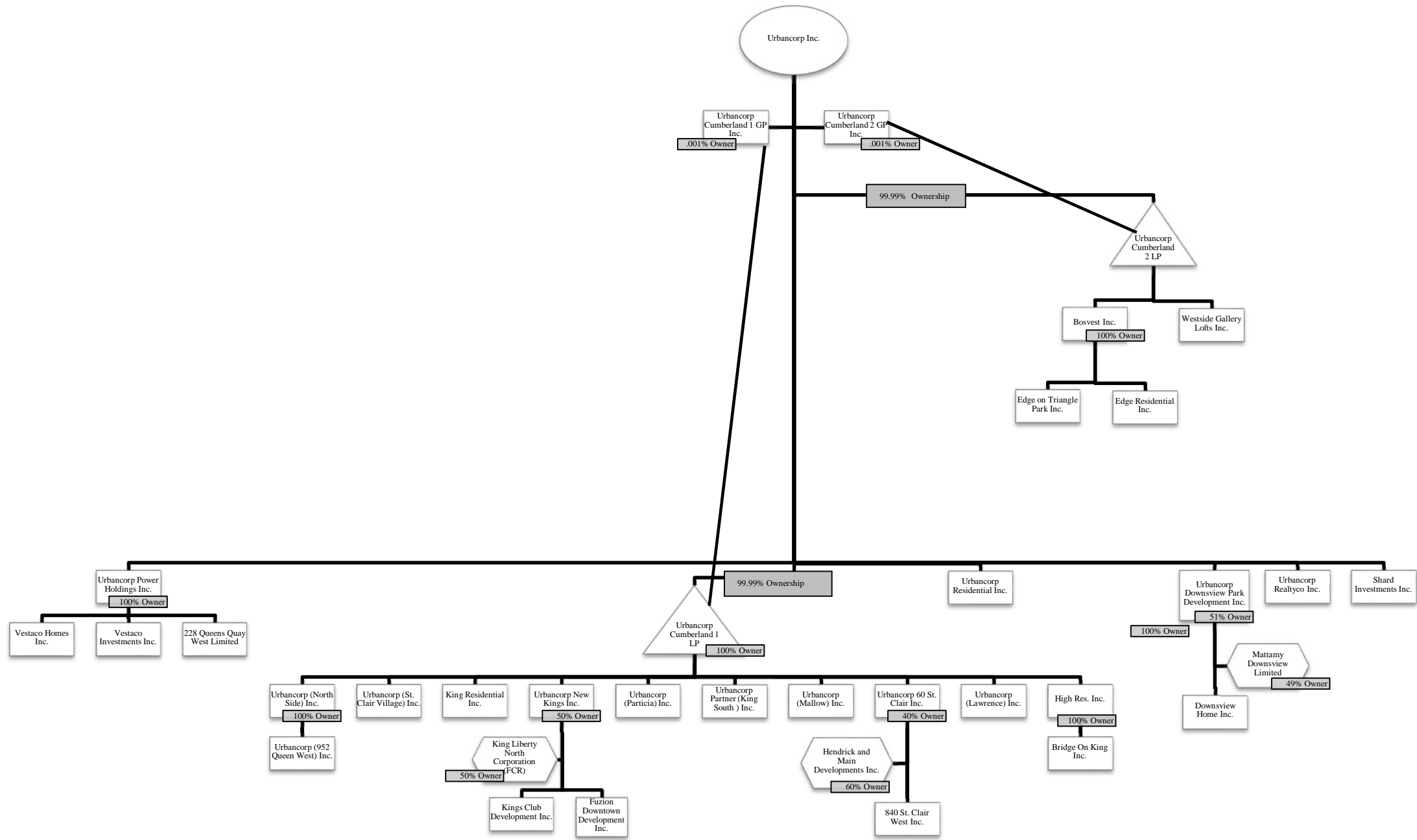
Urbancorp Partner (South King) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

Appendix “A”



Appendix “B”

Court File No.

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

BETWEEN:

**KSV KOFMAN INC., by and on behalf of URBANCORP CUMBERLAND 1 LP
by its general partner URBANCORP CUMBERLAND 1 GP INC.**

Applicant

- and -

URBANCORP RENEWABLE POWER INC.

Respondent

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990,
c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended

NOTICE OF APPLICATION

TO: THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED BY THE APPLICANT. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List at 330 University Avenue, Toronto on June ■, 2018 at 9:00 a.m. or as soon after that time as the matter can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the Application, or to be served with any documents in the Application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your Notice of Appearance, serve a copy of the evidence on the Applicant's lawyer and file it, with proof of service, in the court office where the Application is to be heard as soon as possible, but at least 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: June ■, 2018

Issued by: _____

Address of Court Office:

330 University Avenue, 7th Floor
Toronto, ON M5G 1R7

TO: **Urbancorp Renewable Power Inc.**
P.O. Box 96, Toronto Station C
Toronto, Ontario, M6J 3M7
Attention: Ted Saskin

APPLICATION

1. In its capacity as monitor of Urbancorp Cumberland 1 LP ("**Cumberland**") and Urbancorp Cumberland 1 GP Inc. and certain related and affiliated entities pursuant to the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (as amended, the "**CCA**") The Applicant, KSV Kofman Inc. ("**KSV**") makes this application for an Order:

- (a) abridging the time for, and validating the service of, the Application such that it is properly returnable on June ■, 2018;
- (b) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), appointing KSV Kofman Inc. ("**KSV**") as receiver and manager of all of the assets, undertakings and properties of Urbancorp Renewable Power Inc. (the "**Property**");
- (c) dispensing with the requirement for the delivery of a notice of intention to enforce security in the prescribed form, pursuant to section 243(1.1)(b) of the BIA;
- (d) such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

2. Cumberland was authorized to make a loan to Urbancorp Renewable Power Inc. ("**URPI**") pursuant to an Order issued on November 22, 2017 by the Ontario

Superior Court of Justice – Commercial List. The loan is in the maximum amount of \$500,000 bearing interest at a rate of 12% *per annum*, and is evidenced by a term sheet dated October 24, 2017 (the “**Term Sheet**”) and a promissory note dated February 2, 2018 (the “**Loan**”). The Loan is secured by a general security agreement dated January 7, 2018 registered against URPI in favour of Cumberland.

3. The stated purposes of the Loan are (i) to fund certain repairs and maintenance required in respect of the Geothermal Assets (defined below), and (ii) to finance URPI’s participation in four ongoing civil actions in connection with the Energy Supply Agreements (defined below) (the “**Litigation**”).

4. The current amount outstanding under the Loan is nearly \$100,000, excluding accrued interest.

5. URPI is a corporation incorporated under the laws of Ontario, with its head office in Toronto. The sole shareholder of URPI appears to be Alan Saskin or persons or entities related to him, and URPI is currently not the subject of any insolvency proceedings.

6. URPI manages four geothermal heating/cooling systems located in four real property development projects (collectively, the “**Geothermal Assets**”) pursuant to management agreements entered into between URPI and the registered owners of the Geothermal Assets (collectively, the “**Management Agreements**”), as well as energy supply agreements with each of the condominium corporations existing at each development where the Geothermal Assets are situated (the “**Energy Supply Agreements**”).

7. With the exception of the owners of 50% of the interests in the Fuzion Geothermal Asset, the registered owners of the Geothermal Assets are entities that are subject to the same CCAA proceedings as Cumberland.

8. URPI has no property or assets, other than its entitlement to the payment of fees pursuant to and calculated in accordance with the Management Agreements and Energy Supply Agreements. Since the commencement of the CCAA Proceedings, URPI has received almost no payments under the Energy Supply Agreements, and accordingly has no income or other cash flow sources apart from the Loan at this time.

9. The estimated repair costs for the Geothermal Assets far exceed the maximum amount available under the Loan, without taking into account any amounts required to fund URPI's continued participation in the Litigation.

10. Furthermore, without any income, URPI has no ability to repay the outstanding amount of the Loan absent a sale of the Geothermal Assets. The significant increase in estimated repair expenses represents a material change in URPI's financial condition, and constitutes an event of default under the Term Sheet. Accordingly, on behalf of the Lender, KSV is exercising its discretion to enforce its security by seeking the appointment of a receiver and manager of the Property of URPI.

11. KSV is the most appropriate candidate to act as receiver and manager of URPI, given its involvement as Monitor of the Urbancorp CCAA Entities' CCAA Proceedings, as well as its oversight of URPI since its appointment as Monitor, including with respect to assessing necessary repairs to the Geothermal Assets and oversight of the Litigation.

12. In the circumstances, where the primary economic stakeholders of URPI are the registered owners of the Geothermal Assets, nearly all of which are subject to Cumberland's CCAA proceedings (the exceptions being the holders of the 50% ownership interest in the Fuzion Geothermal Asset referenced above, URPI in respect of its entitlement to management fees under the Energy Supply Agreements, and certain entities within the Urbancorp Cumberland 2 LP CCAA proceedings having Court File No. CV-16-11541-00CL, who have indicated they may have an interest in the Edge and Curve Geothermal Assets), and where KSV has been authorized to take specific actions with respect to URPI on behalf of those stakeholders subject to the CCAA proceedings of Cumberland and related entities (Court File No. CV-16-11389-00CL), it is appropriate for the Court to exercise its discretion to dispense with the need for KSV to serve URPI with notice of intention to enforce its security, pursuant to section 243(1.1)(b) of the BIA.

13. Notice of the intention to enforce on the security under the Loan was provided to all interested parties through the service of the Twenty-Seventh Report of KSV in its capacity as Monitor of the Urbancorp CCAA Entities on June **[21]**, 2018;

14. It is just and convenient to appoint KSV as receiver and manager of URPI in the circumstances.

15. KSV has consented to act as receiver and manager.

16. Section 101 of the CJA and sections 243(1) and 243(1.1)(b) of the BIA.

17. Rules 1.04, 2.03, 3.02, 14.05 and 38 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194.

18. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the Twenty-Seventh Report of KSV in its capacity as Monitor of the Urbancorp CCAA Entities, and the appendices attached thereto;
- (b) the Consent of KSV; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

June ■, 2018

Davies Ward Phillips & Vineberg LLP

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Lawyers for the Applicant

KSV KOFMAN INC., by and on behalf of URBANCORP CUMBERLAND 1 LP and **URBANCORP RENEWABLE POWER INC.**
by its general partner **URBANCORP CUMBERLAND 1 GP INC.**

Respondent

Court File No: CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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Toronto, ON M5V 3J7

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Lawyers for the Applicant

Appendix “C”

counsel for the Applicant, no one appearing for the Debtor although duly served as appears from the affidavit of service, filed, and on reading the consent of KSV to act as the Receiver,

APPOINTMENT

1. THIS COURT ORDERS that pursuant to sections 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$2,000,000, provided that the aggregate consideration for all such transactions does not exceed \$2,000,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

4. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give

unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

6. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

7. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment,

(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 THE RECEIVER

9. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

10. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

11. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided

for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

14. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross

negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

15. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

18. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may

arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property as well as the Geothermal Assets situated at the Bridge, Edge and Curve condominiums (as such terms are defined in the Twenty-Seventh Report dated June 22, 2018 of KSV in its capacity as Court-appointed Monitor of proceedings commenced pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985 c B-3, having Court File No. CV-16-11389-00CL, the "**Cumberland Geothermal Assets**") shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that Urbancorp Cumberland 1 LP shall be entitled to the benefit of and is hereby granted a charge up to the amount of the Receiver's Borrowings Charge on the Cumberland Geothermal Assets as security for all amounts advanced to the Receiver pursuant to paragraph 18 herein.

21. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

22. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

23. 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 “www.ksvadvisory.com/insolvency-cases/■”.

24. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

25. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. THIS COURT ORDERS that the Receiver 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 Receiver 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.

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Tor#: 3840468.4

Draft Order - Blacklined

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE ~~—~~ MR.) ~~WEEKDAY~~ ■, TH# E ■
JUSTICE ~~—~~ MYERS) DAY OF ~~MONTH~~ JUNE, ~~20YR~~ 2018

KSV KOFMAN INC., by and on behalf of URBANCORP CUMBERLAND 1 LP,
by its general partner, URBANCORP CUMBERLAND 1 GP INC.

Applicant

~~PLAINTIFF~~[†]

~~Plaintiff~~

- and -

~~DEFENDANT~~

~~Defendant~~

~~ORDER~~
~~(appointing Receiver)~~

URBANCORP RENEWABLE POWER INC.

Respondent

ORDER
(Receivership)

[†]~~The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

THIS MOTION made by the ~~Plaintiff~~²-Applicant for an Order pursuant to ~~section sections~~ 243(1) and 243(1.1)(b) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~ KSV Kofman Inc. ("KSV") as receiver ~~[and manager]~~ (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ Urbancorp Renewable Power Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at [330 University Avenue], Toronto, Ontario.

ON READING the ~~affidavit of [NAME] sworn [DATE] and the Exhibits thereto~~ Twenty-Seventh Report and the appendices thereto dated June 22, 2018 of KSV, in its capacity as court-appointed monitor of the Applicant and certain related and affiliated entities pursuant to the Companies' Creditors Arrangement Act, RSC 1985 c C-36 in the proceedings having Court File No. CV-16-11389-00CL, and on hearing the submissions of counsel for ~~[NAMES]~~ the Applicant, no one appearing for ~~[NAME] the Debtor~~ although duly served as appears from the affidavit of service ~~of [NAME] sworn [DATE], filed,~~ and on reading the consent of ~~[RECEIVER'S NAME]~~ KSV to act as the Receiver,

SERVICE

~~1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.~~

APPOINTMENT

~~1.~~ 2. THIS COURT ORDERS that pursuant to ~~section sections~~ 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~ KSV is hereby appointed Receiver, without

~~²Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

~~³If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

2. ~~3.~~ THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~2,000,000, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~2,000,000; and

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵~~ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

~~⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

3. ~~4.~~ THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

4. ~~5.~~ THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. ~~6.~~ THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. — THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's 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 Receiver's 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 Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

NO PROCEEDINGS AGAINST THE RECEIVER

6. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

7. ~~9.~~ THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or

with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

8. ~~10.~~ THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER

9. ~~11.~~ THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

10. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

11. ~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

12. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

~~PIPEDA~~

~~15. — THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all~~

~~such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.~~

LIMITATION ON ENVIRONMENTAL LIABILITIES

13. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

14. ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

15. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, ~~as~~ security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BI⁶A.

16. ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

18. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~_____~~1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred

~~⁶Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

upon the Receiver by this Order, including interim expenditures. The whole of the Property as well as the Geothermal Assets situated at the Bridge, Edge and Curve condominiums (as such terms are defined in the Twenty-Seventh Report dated June 22, 2018 of KSV in its capacity as Court-appointed Monitor of proceedings commenced pursuant to the Companies' Creditors Arrangement Act, RSC 1985 c B-3, having Court File No. CV-16-11389-00CL, the "Cumberland Geothermal Assets") shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. ~~22.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. THIS COURT ORDERS that Urbancorp Cumberland 1 LP shall be entitled to the benefit of and is hereby granted a charge up to the amount of the Receiver's Borrowings Charge on the Cumberland Geothermal Assets as security for all amounts advanced to the Receiver pursuant to paragraph 18 herein.

21. ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

22. ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

23. ~~25.~~ 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 ~~'@>~~ ["www.ksvadvisory.com/insolvency-cases/■"](http://www.ksvadvisory.com/insolvency-cases/).

24. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

25. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

27. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

28. ~~30.~~ THIS COURT ORDERS that the Receiver 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 Receiver 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.

~~31. — THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.~~

29. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Tor#: ~~3840468.1~~[3840468.4](#)

Comparison Details	
Title	compareDocs Comparison Results
Date & Time	22/06/2018 3:36:23 PM
Comparison Time	6.18 seconds
compareDocs version	v4.3.100.78

Sources	
Original Document	[#3840468] [v1] URPI Receivership Order
Modified Document	[#3840468] [v4] URPI Receivership Order

Comparison Statistics	
Insertions	13
Deletions	15
Changes	49
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	77

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Insertions	
Deletions	
Moves / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.
Comments color	By Author.
Balloons	False

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after Saving	General	Always
Report Type	Word	Formatting
Character Level	Word	False
Include Headers / Footers	Word	True
Include Footnotes / Endnotes	Word	True
Include List Numbers	Word	True
Include Tables	Word	True
Include Field Codes	Word	True
Include Moves	Word	True
Show Track Changes Toolbar	Word	True
Show Reviewing Pane	Word	True
Update Automatic Links at Open	Word	False
Summary Report	Word	End
Include Change Detail Report	Word	Separate
Document View	Word	Print
Remove Personal Information	Word	False
Flatten Field Codes	Word	True

Appendix “D”



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

April 24, 2018

and

**Fourteenth Report to Court of KSV
Kofman Inc. as CCAA Monitor of
Urbancorp (Woodbine) Inc., Urbancorp
(Bridlepath) Inc., The Townhouses of
Hogg’s Hollow Inc., King Towns Inc.,
Newtowns at Kingtowns Inc., Deaja
Partner (Bay) Inc., and TCC/Urbancorp
(Bay) Limited Partnership**

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

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

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

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

TWENTY-FOURTH REPORT OF KSV KOFMAN INC.

COURT FILE NO.: CV-16-11549-00CL

**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 (WOODBINE) INC. AND URBANCORP (BRIDLEPATH) INC., THE
TOWNHOUSES OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT
KINGTOWNS INC. AND DEAJA PARTNER (BAY) INC. (COLLECTIVELY, THE
"APPLICANTS")**

AND IN THE MATTER OF TCC/URBANCORP (BAY) LIMITED PARTNERSHIP

FOURTEENTH REPORT OF KSV KOFMAN INC.

APRIL 24, 2018

1.0 Introduction

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. (“St. Clair”), Urbancorp (Patricia) Inc. (“Patricia”), Urbancorp (Mallow) Inc. (“Mallow”), Urbancorp Downsview Park Development Inc. (“Downsview”), Urbancorp (Lawrence) Inc. (“Lawrence”) and Urbancorp Toronto Management Inc. (“UTMI”) each filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the “NOI Entities”). KSV Kofman Inc. (“KSV”) was appointed as the Proposal Trustee of each of the Companies.
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 of the Cumberland CCAA Entities (the “Monitor”) (the “Cumberland CCAA Proceedings”).
3. Certain Cumberland CCAA Entities¹ are known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP (“Cumberland”). Collectively, Cumberland and its direct and indirect subsidiaries are the “Cumberland Entities” and each individually is a “Cumberland Entity”. Each Cumberland Entity is a nominee for Cumberland and, as such, the assets and liabilities of the Cumberland Entities are assets and liabilities of Cumberland. The remaining Cumberland CCAA Entities², other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. (“UCI”) (collectively, the “Non-Cumberland Entities”). The corporate chart for the Cumberland CCAA Entities and the Non-Cumberland Entities is provided in Appendix “A”.
4. 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”).
5. 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.
6. On April 25, 2016, Urbancorp (Woodbine) Inc. (“Woodbine”) and Urbancorp (Bridlepath) Inc. (“Bridlepath”) each filed a NOI. KSV was appointed as the Proposal Trustee of each of Bridlepath and Woodbine.

¹ St. Clair., Patricia, Mallow, Lawrence, Urbancorp (952 Queen West) Inc., King Residential Inc., Urbancorp 60 St. Clair Inc., High Res. Inc., Urbancorp Partner (King South) Inc., Urbancorp (North Side) Inc. and Bridge on King Inc.

² Vestaco Homes Inc., Vestaco Investments Inc., Urbancorp Power Holdings Inc., UTMI, Downsview, 228 Queens Quay West Limited, Urbancorp Residential Inc., Urbancorp Realtyco Inc., Urbancorp Cumberland 1 GP Inc.

7. Pursuant to an order made by the Court dated October 18, 2016, TCC/Urbancorp (Bay) Limited Partnership (“Bay LP”), Bridlepath and Woodbine and the entities listed on Schedule “B” (collectively, the “Bay CCAA Entities”, and together with the Cumberland CCAA Entities, the “CCAA Entities”) were granted protection in a separate CCAA proceeding and KSV was appointed Monitor of the Bay CCAA Entities (the “Bay CCAA Proceedings”).
8. Each Bay CCAA Entity is a wholly owned subsidiary of Bay LP, except Deaja Partner (Bay) Inc., which is the general partner of Bay LP. Each of Bay LP’s subsidiaries is a nominee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP. The corporate chart for the Bay CCAA Entities is provided in Appendix “B”.
9. On January 24, 2018, the Court issued orders extending the stay of proceedings for the Cumberland CCAA Entities and the Bay CCAA Entities to April 30, 2018.

1.1 Purposes of this Report

1. The purposes of this report (“Report”) are to:
 - a) provide an update on the CCAA proceedings;
 - b) summarize the terms of Minutes of Settlement between the Monitor and Tarion Warranty Corporation (“Tarion”) in respect of claims filed by Tarion against the Cumberland CCAA Entities (the “Cumberland Minutes of Settlement”);
 - c) summarize the terms of Minutes of Settlement between the Monitor and Tarion in respect of claims filed by Tarion against the Bay CCAA Entities (the “Bay Minutes of Settlement” and together with the Cumberland Minutes of Settlement, the “Minutes of Settlement”);
 - d) report on the consolidated cash flow projections of the Cumberland CCAA Entities and of the Bay CCAA Entities for the period May 1, 2018 to July 31, 2018 (“Cash-Flow Statements”);
 - e) summarize and seek approval of the fees and expenses of KSV, as Monitor of the CCAA Entities, the Monitor’s counsel, Davies Ward Phillips & Vineberg LLP (“Davies”) and the CCAA Entities’ counsel, DLA Piper (Canada) LLP (“DLA”) and WeirFoulds LLP³ (“WeirFoulds”), for the periods referenced in the attached Fee Affidavits; and

³ On January 1, 2018, the CCAA Entities lead counsel, Edmond Lamek, moved from WeirFoulds to DLA.

- f) recommend that the Court issue orders:
 - i. approving the Minutes of Settlement, including the Bridge Settlement;
 - ii. granting an extension of the stay of proceedings for the CCAA Entities to July 31, 2018; and
 - iii. approving the fees and disbursements of the Monitor, Davies and DLA, as detailed in this Report.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Entities, the books and records of the CCAA Entities and discussions with representatives of the CCAA Entities. The Monitor has not performed an audit or other verification of such information. The financial information discussed herein is subject to further review. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report.
2. An examination of the CCAA Entities' Cash Flow Statements as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the CCAA Entities' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

2.0 Background

1. The CCAA Entities, together with several affiliates, comprise the Urbancorp Group of Companies (collectively, the "Urbancorp Group"). The Urbancorp Group primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area. The Urbancorp Group also owns geothermal assets.

2.1 Urbancorp Inc.

1. UCI was incorporated on June 19, 2015 for the purpose of raising debt in the public markets in Israel. Pursuant to a Deed of Trust dated December 7, 2015, UCI made a public offering of debentures (the "IPO") in Israel of NIS180,583,000 (approximately \$64 million based on the exchange rate at the time of the IPO) (the "Debentures").
2. From the monies raised under the IPO, UCI made unsecured loans (the "Shareholder Loans") totalling approximately \$46 million to each of the NOI Entities (other than UTMI) so that these entities could repay loan obligations owing at the time. The loan agreements in respect of the Shareholder Loans set out that repayment of the Shareholder Loans is subordinate to certain other obligations of the NOI Entities (the "Permitted Obligations").

3.0 Update on CCAA Proceedings

3.1 Cumberland Entities – Distributions and Disputed Claims

1. On June 27, 2017, the Court made an order authorizing and directing the Monitor to pay in full the amounts owing to creditors with admitted claims against the Cumberland Entities, other than UCI, which received a partial distribution.
2. On November 22, 2017, the Court made an order authorizing and directing the Monitor to make a further distribution to UCI in the amount of \$750,000.
3. On February 26, 2018, the Court made an order (the “February 26th Order”) authorizing and directing the Monitor to make a further distribution in the amount of \$1.1 million to UCI. At the request of the Foreign Representative, the Monitor has not yet made the \$1.1 million distribution to UCI.
4. The February 26th Order also authorized the Monitor to make additional distributions to UCI without further order of the Court. In that respect, on March 2, 2018, the Monitor made a distribution to UCI in the amount of approximately \$190,000.
5. A summary of distributions to-date to the Cumberland Entities’ creditors and the remaining unpaid and disputed claims is provided in the table below.

(\$000s; unaudited)	Total Admitted Claims	Distribution	Unpaid Admitted Claims	Total Disputed claims
UCI (Shareholder Loans)	36,968 ⁴	30,338	6,630	-
Other creditors*	13,510	13,510	-	11,593
	50,478	43,848	6,630	11,593

* Includes the claims filed by Tarion as a disputed claim as the Tarion settlement discussed in this Report remains subject to Court approval.

6. As repayment of the Shareholder Loans is subordinated to repayment of the Permitted Obligations, UCI was required to assign its distributions to those creditors that have claims for Permitted Obligations until those creditors’ claims were repaid in full. Since the remaining admitted unsecured claims were relatively insignificant, the Foreign Representative subordinated repayment of the Shareholder Loans to all currently admitted claims against the Cumberland Entities (but not to any currently disputed claims) such that all currently admitted claims have been repaid in full. Approximately \$6.6 million of UCI’s claim against the Cumberland Entities remains unpaid.

⁴ UCI also has a claim for Shareholder Loans against Downsview.

7. The Monitor issued disallowance notices to several claimants of the Cumberland Entities. The Monitor reserved for the full amount of the disputed claims. Set out below is a summary of the claimants who disputed the disallowance notices, including Tarion.

(\$000s; unaudited)	
Claimant	Amount
Travelers Insurance Company of Canada ("Travelers")	4,404
Tarion	2,787
Employee Claims	2,055
Speedy Electrical Contractors Ltd. ("Speedy")	2,324
Other	23
	<u>11,593</u>

8. The following is an update on the Cumberland disputed claims:

- a) Travelers – Travelers filed a claim against the Cumberland Entities in the amount of approximately \$4.4 million. The claim has two parts:
- \$3.6 million of the claim relates to a guarantee made by High Res Inc., a Cumberland CCAA Entity, for a bond provided by Travelers to Tarion in respect of a project developed by Urbancorp (Leslieville) Inc. ("Leslieville"). Leslieville is subject to receivership proceedings in which Alvarez & Marsal Canada Inc. ("A&M") is the Court appointed receiver. The actual exposure under the guarantee, if any, will be determined once all 55 homes in the Leslieville proceedings are sold. On April 12, 2018, A&M advised that there are 50 firm home sales, but that the transactions are not expected to close until the Summer of 2018.
 - The balance of the Travelers' claim relates to a \$1 million bond (the "Bridge Bond") provided by Travelers to Tarion in respect of a condominium project constructed by Bridge on King Inc. ("Bridge"), a Cumberland Entity (the "Bridge Condo"). Travelers filed a claim against Bridge in the amount of approximately \$813,000 in connection with its potential exposure under the Bridge Bond. Pursuant to the terms of the Cumberland Minutes of Settlement, the only exposure remaining to Travelers in respect of the Bridge Bond will be \$435,000. Further details concerning the Cumberland Minutes of Settlement are provided in Section 4 below.
- b) Tarion – as part of this motion, the Monitor is recommending that the Court issue an order approving the Cumberland Minutes of Settlement, including the Bridge Settlement, which resolves all Tarion claims against Cumberland CCAA Entities except for the portion of its claim related to delayed occupancy compensation (approximately \$1.2 million) (the "DOC Issue"). The Monitor intends to bring a motion shortly to have the DOC Issue determined by the Court.

- c) Employee Claims – two former employees of UTMI filed common employer claims against the CCAA Entities, as follows:
- the first employee filed a claim for approximately \$400,000. This claim was settled in February 2018; and
 - the second employee filed a claim for approximately \$2.1 million. An agreement in principle has been reached to settle this claim. The settlement agreement is presently being drafted.
- d) Speedy - Speedy filed a secured claim in the amount of \$2,323,638 against King Residential Inc. (“KRI”), a Cumberland CCAA Entity (plus interest, fees and costs which continue to accrue). The Speedy Claim is based on a guarantee provided by KRI for liabilities owing by Alan Saskin in the amount of \$1,284,727 and for services Speedy provided to Edge on Triangle Parking Inc., an affiliated entity, in the amount of \$1,038,911. The Monitor takes the position that no consideration was provided to KRI in connection with the secured guarantee.⁵ The Monitor disallowed Speedy’s claim on the basis that the transaction could be voidable as a transfer at undervalue, and, in addition, voidable as a fraudulent conveyance or preference. The motion to determine this claim is scheduled to be heard on May 1, 2018.

3.2 Bay Entities – Distributions and Disputed Claims

1. On June 27, 2017, the Court made an order authorizing and directing the Monitor to pay a 33% dividend to creditors with admitted claims against the Bay CCAA Entities. At that time, the Monitor was unable to recommend that it make any additional distributions due to claims filed by Terra Firma Capital Corporation (“TFCC”) and UCI, both of which were disputed by the Monitor.
2. On November 30, 2017, the Court made an order authorizing and directing the Monitor to pay in full all admitted claims, other than intercompany claims. The order was made on the consent of TFCC and UCI.
3. A summary of the distributions to the Bay Entities’ creditors, the remaining unpaid claims and disputed claims is provided in the table below.

(\$000s; unaudited)	Total Admitted Claims	Distribution	Unpaid Admitted Claims	Total Disputed claims
TFCC	716	716	-	10,014
Other third-party creditors*	7,445	7,445	-	2,772
Other intercompany creditors	1,154	381	773	-
	9,315	8,542	773	12,786

* Includes the claims filed by Tarion as a disputed claim as the Tarion settlement discussed in this Report remains subject to Court approval.

⁵ Other than \$2

4. The Monitor issued disallowance notices to several claimants of the Bay CCAA Entities. The Monitor has reserved for the disputed claims. Set out below is a summary of the claimants who have disputed the disallowance notices, including Tarion.

(unaudited; \$000)	
Claimant	Amount
Secured Claim	
TFCC (principal, interest and cost reserve)	10,014
Unsecured Claims	
Employee Claims	2,055
Tarion	717
	2,772
Total Disputed Claims	12,786

5. In addition to the disputed claims set out above, the Foreign Representative, on behalf of UCI, has filed a motion to late file a claim of \$8 million on the basis of misrepresentation and negligent misrepresentation in connection with promissory notes totalling \$8 million that were issued by Bay LP (the “UCI Late Filed Claim”). The Court previously issued a decision confirming the Monitor’s disallowance of UCI’s claim for the amounts owing under the promissory notes.
6. TFCC’s disputed claim relates to a loan provided by TFCC to Urbancorp Holdco Inc., the parent company of UCI, which was guaranteed by, among others, Bay LP, Woodbine and Bridlepath (the “TFCC Guarantee Claim”). As security for the guarantee, Woodbine and Bridlepath granted mortgages to TFCC on real property registered as being owned by Woodbine and Bridlepath. The Monitor has been unable to determine if Bay LP, Bridlepath or Woodbine received any consideration for providing the secured guarantee. The claim was disallowed on the basis that the transaction could be voidable as a transfer at undervalue, and, in addition, voidable as a fraudulent conveyance or preference.
7. Pursuant to an agreement dated February 13, 2018, TFCC and UCI entered into a settlement (“TFCC/UCI Settlement”) in respect of their claims against Bay LP and are seeking a distribution of the monies in Bay LP. The key terms of the TFCC/UCI Settlement are as follows:
- a) all remaining third-party claims would either be fully reserved in the Bay CCAA Proceedings or, in the case of the employee claims, fully reserved, and paid from, the Cumberland CCAA Proceedings. The Foreign Representative, as the only creditor affected by this agreement, has agreed that the employee claims may be paid from distributions it would otherwise receive in the Cumberland CCAA Proceedings to the extent these claims are admitted against the Bay CCAA Entities and not admitted and paid in full in the Cumberland CCAA Proceedings;

- b) TFCC would receive \$3 million in full and final satisfaction of the TFCC Guarantee Claim;
 - c) UCI's Late Filed Claim would be admitted and UCI would receive an initial distribution of at least \$5.5 million at the same time the \$3 million is paid to TFCC; and
 - d) The TFCC/UCI Settlement is conditional on approvals by the Court and the Israeli Court.
8. A motion is scheduled to be heard on May 1, 2018 to approve the TFCC/UCI Settlement. DS (Bay) Holdings Inc. ("DS Bay"), a beneficial owner of Bay LP, has filed materials opposing the settlement.
9. In the event that the Court does not approve the TFCC/UCI Settlement, the TFCC Claim and UCI Late Filed Claim will each need to be determined. If these claims are not ultimately admitted, then all residual funds after the payment of admitted claims and the costs of administration would be paid to the beneficial owners of Bay LP, being DS Bay and Alan Saskin. The Monitor understands that Doreen Saskin, the wife of Alan Saskin, is the owner of DS Bay.
10. Further details regarding the TFCC/UCI Settlement are provided in the Monitor's 13th Report to Court dated February 20, 2018 filed in the Bay CCAA Proceedings.

3.3 Geothermal Assets

1. Several Cumberland CCAA Entities have an interest in geothermal assets located at four condominiums developed by entities in the Urbancorp Group (collectively, the "Geothermal Assets").
2. Pursuant to energy supply agreements, each condominium corporation (collectively, the "Condo Corporations") is required to pay Urbancorp Renewable Power Inc. ("URPI") for the supply of the geothermal energy (the "Supply Agreements"). URPI is neither a subsidiary of UCI nor is it subject to CCAA proceedings. The Monitor understands that URPI is owned by Alan Saskin. URPI is required to pay the revenue it receives from the Condo Corporations to the Urbancorp entity that holds the geothermal energy system, net of a management fee of between 3% and 5% payable to URPI (depending on the Supply Agreement) and other costs (such as repairs and maintenance costs).
3. The registered owners of the geothermal energy systems appear to be Vestaco Homes Inc. (Bridge Condo), Vestaco Investments Inc. (Curve Condo) and 228 Queen's Quay West Ltd. (Edge Condo), each of which is a Cumberland CCAA Entity.

4. The registered owner of the Fuzion Condo geothermal energy system appears to be Urbancorp New Kings Inc. (“UNKI”) and Urbancorp Management Inc. (“UMI”), each as to 50% and each of which is not subject to CCAA proceedings. UMI purchased its interest in the Fuzion geothermal energy system from King Liberty North Corporation (“KLNC”), an affiliate of First Capital (S.C.) Corporation (“FCSCC”), for \$2.35 million. The purchase price was satisfied with a cash payment of \$350,000 and a vendor-take-back mortgage of \$2 million. The mortgage remains outstanding and FCSCC has not been receiving interest on its mortgage as the Fuzion Condo Corporation has not made any payments in respect of geothermal services provided.
5. The Fuller Landau Group Inc. (“Fuller Landau”), in its capacity as Monitor of certain of the other entities in the Urbancorp Group of Companies, including Edge Residential Inc., Edge on Triangle Park Inc. and Bosvest Inc. (collectively, the “Edge Companies”), has indicated that the Edge Companies may have an interest in the Edge geothermal system. Fuller Landau has been kept apprised of the Monitor’s activities concerning the Geothermal Assets.
6. The Bridge and Fuzion Condo Corporations have failed to make payments to URPI under their supply agreements since March 2016. The Edge Condo Corporation has failed to make payments to URPI under its supply agreement since April 2016.⁶ The receivables owing to URPI from the Bridge, Fuzion and Edge Condo Corporations total approximately \$4.2 million as of March 31, 2018. The Monitor understands that the Condo Corporations have paid approximately \$2.1 million of the receivables into their lawyer’s trust accounts. The Condo Corporations have requested a reconciliation of URPI’s invoices prior to paying more receivables. The Monitor understands that URPI has almost completed the reconciliation and intends to provide it to the Condo Corporations once completed. The Monitor is considering next steps vis-à-vis the amounts which are yet to be paid by the Condo Corporations into trust; however, the Monitor is strongly of the view that these amounts should continue to be paid into trust by the Condo Corporations until the geothermal litigation is resolved.
7. As URPI is not a CCAA entity, it has retained separate counsel to litigate against the Condo Corporations for, *inter alia*, failure to pay the amounts owed under the Supply Agreements. The Condo Corporations have filed cross claims alleging, *inter alia*, that certain of the Geothermal Assets require repairs, there was insufficient disclosure to the Condo Corporations regarding pricing of geothermal energy and that the Condo Corporations are paying more for heating and cooling than traditional energy sources. A trial date has not been scheduled.
8. The Monitor retained a consultant, Beatty Geothermal Inc., to review various issues in the litigation in order to assist in settling the geothermal litigation.
9. The Monitor understands that the Condo Corporation for Curve alleges that it exercised a right to purchase its geothermal system, and, accordingly, is no longer making any payments to URPI. No payment has been received in connection with the alleged purchase. It appears that an arbitration will be scheduled to deal with URPI’s claim against the Curve Condo Corporation.

⁶ On August 30, 2016, the Edge Condo Corporation made a \$260,000 partial payment to URPI in respect of amounts owing.

- Once the above litigation is resolved or substantially advanced, the Monitor intends to work with Fuller Landau, the Foreign Representative and other affected stakeholders to sell the Geothermal Assets.

3.4 URPI Loan Facility

- URPI has no revenue because it has not been receiving payments from the Condo Corporations in respect of the geothermal systems. URPI requires funding for maintenance and repairs of the geothermal systems and for legal costs in respect of the geothermal litigation.
- On November 22, 2017, the Court approved a loan facility in the amount of \$500,000 between Cumberland, as lender, and URPI, as borrower. To date, approximately \$44,000 has been drawn under the loan facility.

3.5 Condominium Sale Process

- On December 14, 2016, the Court issued an order (the “Sale Process Order”) approving a sale process for 28 condominiums (“Condos”) held by Urbancorp Residential Inc. (“URI”) and KRI.⁷ Pursuant to the Sale Process Order, Brad J. Lamb Realty Inc. was retained to market the Condos for sale.
- In connection with the sale process for the 28 Condos, the Monitor has closed twenty-seven transactions and the remaining Condo is expected to close on May 3, 2018. A summary of the total expected net proceeds from the transactions is provided in the table below.⁸

(\$000's; unaudited)	No. of units sold	Gross Proceeds	Mortgages	Costs ⁹	Net Proceeds
KRI	13	5,188	2,437	371	2,380
URI	15	6,074	2,936	432	2,706
	28	11,262	5,373	803	5,086

- The actual results of the sale of the Condos exceeded the original estimate by approximately \$2 million.
- The Monitor continues to list for sale 45 parking spots and 66 lockers held by KRI and URI. The saleability of the parking spots and lockers is uncertain. The Monitor is presently working to sell five parking spots to one buyer.

3.6 Urbancorp New Kings Inc.

- Cumberland is the shareholder of UNKI. UNKI owns an interest in a development located at 1100 King Street West, Toronto (the “Kingsclub Development”). UNKI appears to be a nominee for Cumberland. UNKI is not subject to the CCAA proceedings.

⁷ URI and KRI are nominee companies for Urbancorp Realty Co. and Urbancorp Cumberland 1 LP, respectively.

⁸ Includes nine parking spots and seven lockers.

⁹ Includes professional fees of \$10,000 per unit and broker fees.

2. The Kingsclub Development is a significant project located in Liberty Village in Toronto. It is presently under construction and is to consist of retail space, residential space and parking. The development is scheduled to be completed by the end of 2018.
3. The residential component of the Kingsclub Development was originally owned by UNKI (50%) and KLNC (50%).¹⁰ On July 28, 2015, KLNC and UNKI entered into an agreement to sell one-third of the residential component to CAPREIT Limited Partnership (“CAPREIT”), such that KLNC, UNKI and CAPREIT would each have a one-third interest in the residential component of the development upon closing.
4. Pursuant to the Initial Order, Robert Kofman, the President of KSV and the person with oversight of these proceedings on behalf of the Monitor, or such representative of KSV as Mr. Kofman may designate in writing from time to time, was appointed to the management committee of the Kingsclub Development (the “Management Committee”).
5. The Kingsclub Development has incurred significant cost overruns. FCSCC has funded UNKI’s share of the cost overruns pursuant to the terms of a Court approved standstill agreement (the “Standstill Agreement”). The Standstill Agreement is intended to facilitate an orderly completion of the Kingsclub Development.
6. As of February 28, 2018, UNKI and KLNC had borrowed approximately \$121.9 million from Bank of Nova Scotia and approximately \$63.9 million from FCSCC in connection with the financing of the Kingsclub Development. In addition, as of February 28, 2018, pursuant to the terms of the Standstill Agreement, UNKI has borrowed \$23.9 million from FCSCC to fund capital cost overruns.
7. The Monitor corresponds regularly with Alan Saskin and FCSCC regarding the Kingsclub Development, including attending development meetings and periodic Management Committee meetings. The Monitor has also met with CAPREIT, which also attends the monthly development meetings.
8. The value of the UNKI interest is presently uncertain; however, the Monitor is considering ways to maximize the value of the UNKI interest.

3.7 Downview

1. Downview Homes Inc. (“DHI”) owns land located at 2995 Keele Street in Toronto which is being developed into condominiums and other residences (the “Downview Project”). The shares of DHI are owned by Downview (51%) and Mattamy (Downview) Limited, an affiliate of Mattamy Homes (“Mattamy”) (49%).
2. The Downview Project consists of two phases. The first phase is scheduled to be completed in the first half of 2018, while the second phase is not expected to be completed for several years.

¹⁰ Kings Club Development Inc., a nominee entity, is the registered owner of the Kingsclub Development on behalf of its beneficial owners, UNKI (50%) and KLNC (50%).

3. The Monitor continues to oversee this project. There is significant uncertainty at this time regarding the value of Downsview's interest in the Downsview Project, although it appears that earlier forecasts of the value of the Downsview interest provided to the Monitor by Mattamy and by representatives of the Urbancorp Group were optimistic. The Downsview Project appears to have underperformed the prior projections.
4. In order to review material negative variances that have arisen on the Downsview Project, the Monitor, in consultation with the Foreign Representative, engaged a cost-consultant, Pelican Woodcliff Inc. ("Pelican"), to audit aspects of the Downsview Project. The scope includes reviewing the Downsview Project's historical financial results, determining the reasonableness of pro-formas prepared for the Downsview Project and other financial matters.
5. The Monitor has received an interim report from Pelican and has provided a copy of the report to the Foreign Representative. The Foreign Representative's financial advisor has attended meetings with Pelican and the Monitor, as well as meetings with the Monitor and Mattamy. The Monitor is reviewing Pelican's report and expects to have additional questions for Mattamy.

3.8 Urbancorp Downtown Developments Inc.

1. In or around June 2014, UTMI advanced \$750,000 on behalf of Urbancorp Downtown Developments Inc. ("UDDI"), an affiliated entity not subject to insolvency proceedings, to fund a deposit in connection with the purchase of land by UDDI (the "UDDI Deposit"). In December 2014, approximately \$250,000 was returned to UTMI by UDDI, thereby reducing the UDDI Deposit to \$500,000.
2. The books and records of UTMI also reflect an intercompany balance of \$200,000 owing by UDDI to UTMI.
3. The property that was to be purchased by UDDI was expropriated by the Toronto Catholic District School Board ("TCDSB") prior to closing. The TCDSB held back an amount from the price of the expropriated land, including an amount equal to the UDDI Deposit (the "TCDSB Holdback"). The TCDSB Holdback is in respect of potential environmental costs.
4. UDDI has made a claim against TCDSB for: (i) a release of the TCDSB Holdback¹¹; and (ii) the increase in the value of the expropriated land between the time UDDI entered into the agreement to purchase the expropriated land and the date TCDSB expropriated the land.
5. UDDI is negotiating a settlement with TCDSB. UDDI has acknowledged by email that any proceeds received from TCDSB with respect to its claims, after costs, will first be used to satisfy the amounts UDDI owes to UTMI.

¹¹ Through an agreement with the vendor.

4.0 Tarion – Minutes of Settlement

1. Tarion filed 21 claims totaling approximately \$5.8 billion against the Cumberland CCAA Entities and seven claims totaling approximately \$174 million against the Bay CCAA Entities. Substantially all of Tarion's claims are contingent. A summary of the claims filed by Tarion is provided in Appendix "C". The Monitor disallowed Tarion's claims in full.
2. The Monitor could not make a distribution to the creditors of the CCAA Entities due to Tarion's claims. In June 2017, Tarion agreed to withdraw all of its claims other than approximately \$2.8 million against the Cumberland CCAA Entities and \$716,594 against the Bay CCAA Entities; however, Tarion did not detail the claims it was preserving. Since then, the Monitor and Tarion have been working to resolve Tarion's remaining claims.
3. The Minutes of Settlement are subject to Court approval. As of the date of the Report, Tarion had not executed the Minutes of Settlement. The Monitor has been advised by Tarion's counsel that it is unable to execute the Minutes of Settlement prior to April 25, 2018 at the earliest. The Monitor is hopeful that Tarion executes the Minutes of Settlement in advance of the return of this motion, failing which the Monitor is seeking to have the Cumberland Minutes of Settlement and the Bay Minutes of Settlement approved substantially in the forms attached as Appendices "D" and "E", respectively. The Cumberland Minutes of Settlement require the execution of the Bridge Settlement Agreement (defined below), which is also conditional on Court approval.
4. A summary of Tarion's admitted claims, disputed claims and withdrawn claims as a result of the Minutes of Settlement is provided below.

(unaudited; \$)	Cumberland CCAA Entities	Bay CCAA Entities
Admitted Claims	346,655	114,025
Withdrawn Claims	1,240,480	-
Disputed Claims	1,199,865	604,810
Total	2,787,000	718,835 ¹²

4.1 Admitted Claims

1. Pursuant to the Minutes of Settlement, the following claims have been admitted by the Monitor against the CCAA Entities.

	Cumberland CCAA Entities	Bay CCAA Entities
Legal costs	\$ 295,661	\$ 98,554
Interest	47,604	15,471
Conciliation Claims	3,390	-
	\$ 346,655	\$ 114,025

¹² Tarion's total claim is approximately \$2,000 more than the reserve for its claim in the Bay CCAA Proceedings due to interest which has accrued on its claim.

2. A summary of the admitted claims is provided below:
 - Legal costs: the admitted legal costs represent third party legal fees incurred by Tarion. Pursuant to the *Ontario New Home Warranties Plan Act* (the “Warranties Act”), builders that are registered with Tarion (the “Registrants”) are required to reimburse Tarion for certain legal costs incurred by Tarion. Several of the CCAA Entities are Registrants.¹³
 - Interest: Pursuant to the Warranties Act, Registrants are required to pay interest to Tarion at a rate of 18% per year on all amounts that are owed to Tarion.
 - Conciliation Claims: represents a liquidated warranty claim charged by Tarion to Bridge in connection with the Bridge Condo.
3. The Monitor intends to pay the admitted claims in full, provided the Minutes of Settlement are approved.

4.2 Disputed Claims – Delayed Occupancy Compensation

1. The Monitor and Tarion have not been able to resolve the DOC Issue. Tarion’s claims filed in respect of this issue are in the amount of approximately \$1.2 million against the Cumberland Entities and approximately \$605,000 against the Bay CCAA Entities.
2. Several of the CCAA Entities entered into home buyer agreements with purchasers. These CCAA Entities never built the homes and the properties were sold pursuant to the Court approved transactions.
3. Tarion backstops warranty coverage to new home and condominium purchasers, providing compensation for costs incurred due to delayed occupancy.
4. The Monitor is of the view that there is no obligation owing to Tarion in connection with delayed occupancy compensation because, *inter alia*, the homes were never provided to the home buyers, thus the concept of “delayed occupancy” is not relevant.
5. The Monitor and Tarion have agreed to a litigation schedule to have the DOC Issue determined by the Court. The Monitor intends to bring this motion shortly. Until the matter is resolved, the Monitor will maintain a cash holdback for the amount of the delayed occupancy compensation claims. If the Court upholds the Monitor’s disallowance, the Monitor intends to distribute the holdback in respect of this issue to UCI.

¹³ St. Clair, Patricia, Mallow, Lawrence, Queen, Bridge, Woodbine and Bridlepath.

4.3 Bridge Settlement

1. The Bridge Condo was completed in mid-2011 and was registered on April 5, 2013. Toronto Standard Condominium Corporation No. 2302 (the “Bridge Condominium Corporation”) is the legal entity that controls and manages the common elements at the Bridge Condo.
2. Following the registration of the condominium, the Bridge Condominium Corporation retained a consultant to conduct a performance audit to determine the common element deficiencies with respect to the Bridge Condo. The performance audit identified approximately \$1.8 million in common element deficiencies.
3. In November 2016, a settlement was reached with the Bridge Condominium Corporation and Bridge to resolve all common element deficiency claims (the “Bridge Settlement Agreement”). Pursuant to the Bridge Settlement Agreement, Bridge agreed to pay the Bridge Condominium Corporation \$450,000, including HST, in exchange for, *inter alia*, a release for all common element claims at the Bridge Condo.
4. As discussed in section 3.1 above, Bridge arranged for Travelers to provide Tarion with a \$1 million bond for major structural defects and common element deficiencies. The Bridge Bond is partially secured by cash collateral totalling \$565,000 (the “Cash Collateral”). On December 9, 2016, the Monitor brought a motion to approve the Bridge Settlement Agreement, which requires Travelers to release a portion of the Cash Collateral to fund the Settlement Agreement. The motion was adjourned at the request of Tarion and Travelers. The Bridge Settlement Agreement is to be approved as an element of the Cumberland Minutes of Settlement. A copy of the unsigned Bridge Settlement Agreement is attached as Appendix “F”.¹⁴
5. Pursuant to the terms of the Cumberland Minutes of Settlement:
 - a) Tarion has agreed to reduce the value of the Bridge Bond to \$550,000 as the Bridge Settlement Agreement resolves all common element deficiency claims - the only remaining exposure under the Bridge Bond will be for major structural defects;
 - b) Travelers has agreed to release \$450,000 of the Cash Collateral to fund the Bridge Settlement Agreement; and
 - c) Travelers will maintain the balance of the Cash Collateral (being \$115,000) in the event of a major structural defect claim. The Cash Collateral will be maintained by Travelers until the Bridge Bond expires on June 30, 2020.

¹⁴ On April 24, 2018, the Monitor was advised that Tarion made amendments to the form of the Bridge Settlement Agreement that the Bridge Condominium Corporation had previously approved. At the date of this Report, the Bridge Condominium Corporation was reviewing the changes proposed by Tarion. The version attached to the Report reflects Tarion’s proposed changes.

6. The Cumberland Minutes of Settlement will allow the Monitor to reduce the cash reserve for Travelers under the Bridge Bond to \$435,000, being the remaining value of the Bridge Bond (\$550,000) less the Cash Collateral being maintained by Travelers (\$115,000). On June 30, 2020, the exposure for Travelers under the Bridge Bond will be eliminated and the cash reserves will be available to be released (assuming no claims are made prior to that time).

4.4 Recommendation

1. The Monitor recommends that the Court issue an order approving the Minutes of Settlement as:
 - a) the Minutes of Settlement, including the Bridge Settlement Agreement, resolve all Tarion claims, other than the DOC Issue, which is to be determined by the Court in the near term;
 - b) The Monitor has received satisfactory support for all of Tarion's claims that it is proposing to admit; and
 - c) the Foreign Representative, as the major economic interest in these proceedings, has been advised of the terms of the Minutes of Settlement and has not advised of any opposition to it.

5.0 Cash Flow Forecasts

1. Consolidated cash flow projections have been prepared for the CCAA Entities for the period May 1, 2018 to July 31, 2018 (the "Period"). The Cash-Flow Statements and the CCAA Entities' statutory reports on the cash flow pursuant to Section 10(2)(b) of the CCAA are attached as Appendices "G" and "H", respectively.
2. The expenses in the Cash-Flow Statements are primarily payroll, general and administrative expenses, professional fees and advances to URPI in connection with the Loan Facility. The CCAA Entities have sufficient cash to pay all disbursements during the Period.
3. Based on the Monitor's review of the Cash-Flow Statements, there are no material assumptions which seem unreasonable in the circumstances. The Monitor's statutory reports on the cash flows are attached as Appendix "I".

6.0 Request for an Extension

1. The CCAA Entities are seeking an extension of the stay of proceedings from April 30, 2018 to July 31, 2018. The Monitor supports the request for extensions of the stay of proceedings for the following reasons:
 - a) the CCAA Entities are acting in good faith and with due diligence;
 - b) no creditor will be prejudiced if the extensions are granted;

- c) it will allow the Cumberland CCAA Entities and the Monitor further time to deal with the remaining assets owned by the Cumberland CCAA Entities, including the Geothermal Assets, the Downsview Project, UDDI and the Kingsclub Development;
- d) it will allow the Monitor the opportunity to continue to resolve disputed claims in both CCAA Proceedings; and
- e) as of the date of this Report, neither the CCAA Entities nor the Monitor is aware of any party opposed to an extension.

7.0 Professional Fees

1. The fees and disbursements of the Monitor, Davies and DLA for the period are summarized below.

Firm	Period	(\$)		
		Fees	Disbursements	Total
<u>Cumberland CCAA Entities</u>				
KSV	Jan 1/18–March 31/18	200,410.00	757.47	201,167.47
Davies	Jan 1/18–March 31/18	205,724.00	3,947.84	209,671.84
DLA/WeirFoulds	Oct 1/17–Feb 28/18	5,855.00	384.83	6,239.83
Total		411,989.00	5,090.14	417,079.14
<u>Bay CCAA Entities</u>				
KSV	Jan 1/18–March 31/18	63,940.00	-	63,940.00
Davies	Jan 1/18–March 31/18	24,365.50	242.05	24,607.55
DLA/WeirFoulds	Sept 28/17–Feb 28/18	6,246.00	394.25	6,640.25
Total		94,551.50	636.30	95,187.80

2. Detailed invoices are provided in appendices to the fee affidavits filed by representatives of KSV, Davies and DLA which are provided in Appendices “J”, “K” and “L”, respectively.
3. The average hourly rates for the Monitor, Davies and DLA are as follows:

Firm	Average Hourly Rate (\$)
<u>Cumberland CCAA Entities</u>	
KSV	523.54
Davies	749.00
DLA/WeirFoulds	504.74
<u>Bay CCAA Entities</u>	
KSV	584.19
Davies	934.00
DLA/WeirFoulds	516.20

4. Since the last fee approval motion, the main matters addressed by Davies include: dealing with the disputed claims (such as the Speedy claim, the Tarion claim, the TFCC/UCI Settlement and the claims filed by employees), dealing with the sale of the Residential Units and dealing with matters related to the Geothermal Assets. As reflected in the table above, DLA and WeirFoulds have incurred limited professional fees.
5. The Monitor is of the view that the hourly rates charged by Davies, DLA and WeirFoulds are consistent with rates charged by law firms practicing in the area of restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances.

8.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,



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

Schedule "A"

Urbancorp (952 Queen West) Inc.

King Residential Inc.

Urbancorp 60 St. Clair Inc.

High Res. Inc.

Bridge on King Inc.

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen's Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

Schedule “B”

The Townhouses of Hogg’s Hollow Inc.

King Towns Inc.

Newtowns at Kingtowns Inc.

Deaja Partner (Bay) Inc.

TCC Urbancorp (Bay) Limited Partnership

Appendix “E”



kvs advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

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ksvadvisory.com

Court File No. CV-16-11459

BETWEEN: ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)
URBANCORP RENEWABLE POWER INC. Applicant
- and -

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2448 Respondents

Court File No. CV-16-11524

BETWEEN: ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2448 Applicant
- and -

URBANCORP RENEWABLE POWER INC. Respondents

Court File No. CV-17-11666

BETWEEN: ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)
URBANCORP RENEWABLE POWER INC. Applicant
- and -

TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2348 AND
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2302 Respondents

Court File No. CV-17-571851

BETWEEN: ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2348 AND
TORONTO STANDARD CONDOMINIUM CORPORATION NO. 2302 Applicant
- and -

URBANCORP RENEWABLE POWER INC. Respondents

CASE CONFERENCE MEMORANDUM
OF KSV KOFMAN INC., THE MONITOR OF THE CUMBERLAND CCAA ENTITIES
(August 31, 2017)

1.0 Introduction

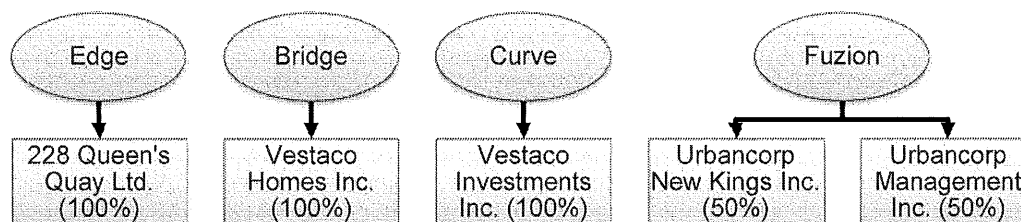
1. Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 18, 2016, the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities" and each a "Cumberland CCAA Entity"), were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV Kofman Inc. was appointed monitor of the Cumberland CCAA Entities (the "Monitor").
2. A corporate chart for the Urbancorp Group is provided in Appendix "A".
3. Certain of the Cumberland CCAA Entities have an interest in geothermal assets (collectively, the "Geothermal Assets") located at four condominium projects developed by entities in the Urbancorp Group. The condominium projects are as follows:

Condominium Name	Address
Edge (TSCC 2448)	36 Lisgar Street, Toronto
Bridge (TSCC 2302)	38 Joe Shuster Way, Toronto
Curve (TSCC 2355)	170 Sudbury Street, Toronto
Fuzion (TSCC 2348)	20 Joe Shuster Way, Toronto

2.0 Geothermal Assets

2.1 Ownership

1. The registered owners of the geothermal energy systems are reflected in the diagram below.



228 Queen's Quay Ltd. ("228 Queen's Quay"), Vestaco Homes Inc. ("Vestaco Homes") and Vestaco Investments Inc. ("Vestaco Investments") are each Cumberland CCAA Entities. Urbancorp News Kings Inc. ("UNKI") and Urbancorp Management Inc. ("UMI") are not Cumberland CCAA Entities; however, UNKI is a nominee company which is beneficially owned by Urbancorp Cumberland 1 LP, a Cumberland CCAA Entity.

2. In 2015, the Urbancorp group of companies completed a corporate reorganization in connection with an Israeli bond issue (the "Reorganization"). As part of the Reorganization, Vestaco Investments, Vestaco Homes and 228 Queens Quay, acquired certain Geothermal Assets, other than the Fuzion geothermal asset, as follows:

Geothermal System	Acquirer	Vendor	Amount (\$)¹
Bridge	Vestaco Homes	Bridge on King Inc.	4,666,976
Curve	Vestaco Investments	Westside Gallery Lofts Inc.	5,676,622
Edge	228 Queens Quay	Bosvest Inc. ²	13,376,171

3. Each Vendor listed above was the original registered owner of the relevant lands and the declarant for the respective condominium corporation. The original registered owner of the relevant lands and the declarant of the Fuzion condominium corporation is Fuzion Downtown Development Inc. ("FDDI"). Bridge on King Inc. is a Cumberland CCAA Entity. FDDI and Westside Gallery Lofts Inc. are not applicants in any CCAA proceeding, although Westside is a nominee of Cumberland 2 LP ("Cumberland 2"), which is subject to CCAA proceedings in which The Fuller Landau Group Inc. ("Fuller Landau") is the CCAA Monitor. Bosvest Inc. ("Bosvest") is another nominee in the Cumberland 2 CCAA proceedings.
4. The above acquisitions were satisfied by setting up intercompany indebtedness for the full amount of the purchase price. Fuller Landau, in its capacity as Monitor of certain of the other entities in the Urbancorp Group of Companies, including Edge Residential Inc., Edge on Triangle Park Inc. and Bosvest (collectively, the "Edge Companies"), has indicated that the Edge Companies may have an interest in the Edge geothermal system.

2.2 The Geothermal Assets

1. The Geothermal Assets include both the physical assets (defined as the geothermal condominium units in the relevant condominium declarations) and the management agreements between each Vendor (as noted above) and Urbancorp Renewable Power Inc. ("URPI"), which provide for payments to be made from the relevant condominium corporation for the supply of geothermal energy (the "Management Agreements"). The Geothermal Assets do not include the value of URPI's fee (between 3% and 5%) embedded in the geothermal energy supply contracts between URPI and the respective condominium corporations.
2. URPI is not subject to any CCAA proceedings. The Monitor understands that URPI is owned by Alan Saskin, the director and principal shareholder³ of the Cumberland CCAA Entities.

¹ The amounts listed are as reflected in the books and records of Urbancorp. The amount paid with respect to the transfer of the relevant geothermal Condominium units, as reflected in the search on title, is \$50,000 for each transaction.

² The registered owner was Edge on Triangle Park Inc., which is a nominee of Bosvest.

³ Directly or indirectly.

3. Pursuant to the Management Agreements, URPI is to collect, receive and deposit in trust for the owner of the Geothermal Assets, all moneys collected from the relevant condominium corporation as determined by the geothermal energy supply agreement. The monies received by URPI are to be deposited in a bank account it maintains in the name of the owner of the Geothermal Assets. All such moneys are to be used to pay items that the owner is obligated to pay under the geothermal energy supply agreement. Each of the Management Agreements provide that URPI maintains the geothermal energy system and administers the supply of geothermal energy on behalf of the owner of the Geothermal Assets in return for a fee of 3% to 5% of the "Supplier Energy Consumption Charges" set out in the geothermal energy supply agreement. Notwithstanding that the owners of the Geothermal Assets are Vestaco Homes, Vestaco Investments, 228 Queens Quay and UNKI/UMI, the Management Agreements are between URPI and Westside Gallery Lofts Inc., Edge on Triangle Park Inc., Bridge on King Inc. and Fuzion Downtown Developments Inc., respectively.

2.3 Litigation

1. The Edge, Bridge and Fuzion condominium corporations have failed to make the payments to URPI under their supply agreements since the Spring of 2016⁴, meaning that no revenue has been paid to URPI which would ultimately be remitted by it (net of its management fee) to the entities entitled to the net cash flow. The Monitor is of the view that 228 Queens Quay, Vestaco Homes and Vestaco Investments are entitled to at least a portion of this cash flow. URPI has commenced litigation against the condominium corporations under Court file Nos. CV-16-11459 and CV-17-11666 (the "Litigation").
2. The Monitor further understands that the Curve condominium corporation ("CCC") alleges that it exercised a right to purchase its geothermal system, and, accordingly, it is no longer making any payments to URPI. No payment has been received by any Urbancorp entity in connection with the alleged purchase. The Monitor has been advised that separate litigation proceedings have been commenced by URPI against CCC.
3. Once the Litigation is resolved, the Monitor intends to work with other relevant parties (primarily Fuller Landau and Saskin) with an interest in these assets to sell the Geothermal Assets.
4. The Cumberland CCAA Entities appear to have the main economic interest in the outcome of the Litigation as the Litigation will determine the cash flow of the Geothermal Assets (which is directly tied to its value), as well as the collectability of the outstanding accounts receivable.

⁴ The Monitor understands that the Edge Condominium Corporation made a partial payment of \$260,000 against receivables owed to URPI in August, 2016.

SCHEDULE "A"

LIST OF APPLICANT ENTITIES

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.

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.

Appendix "A"

URBANCORP RENEWABLE POWER INC., Applicant

and

TSCC NO. 2448, Respondent
Court File No. CV-16 -11459-00CL

TSCC NO. 2448, Applicant

and

URBANCORP RENEWABLE POWER INC., Respondent
Court File No. CV-16-11524-00CL

URBANCORP RENEWABLE POWER INC., Applicant

and

TSCC NO. 2448 and TSCC NO. 2302, Respondents
Court File No. CV-17-11666-00CL

TSCC NO. 2448 and TSCC NO. 2302, Applicants

and

URBANCORP RENEWABLE POWER INC., Respondent
Court File No. CV-17-5718851-00CL

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

Proceeding commenced at Toronto

**CASE CONFERENCE MEMORANDUM OF
KSV KOFMAN INC.,
THE MONITOR OF THE CUMBERLAND
CCAA ENTITIES**

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

Robin B. Schwill (LSUC #384521)
Tel: 416.863.5502
Fax: 416.863.0871

Lawyers for KSV Kofrman Inc.

Appendix “F”

**URPI LOANS TERM SHEET
DATED AS OF OCTOBER 24, 2017**

WHEREAS the Borrower (as defined below) has requested that the Lender (as defined below) provide financing to fund certain of the Borrower's cash requirements during the pendency of the CCAA Proceedings (defined below) in accordance with the terms and conditions set out herein;

NOW THEREFORE the parties, and the consideration of the foregoing and the mutual covenants and agreements contained herein (the receipt and sufficiency of which are hereby irrevocably acknowledged), agree as follows:

- Borrower:** Urbancorp Renewable Power Inc. ("**Borrower**")
- Lender:** Urbancorp Cumberland 1 LP, by its general partner Urbancorp Cumberland 1GP Inc.
- CCAA Proceedings:** The Lender is a company that is currently subject to proceedings pursuant to the Companies' Creditors Arrangement Act (the "**CCAA**") before the Ontario Superior Court of Justice – Commercial List (the "**Court**") bearing Court File No. CV-16-11389-00CL (the "**CCAA Proceedings**").
- Monitor:** KSV Kofman Inc. is the monitor appointed by the Court pursuant to the CCAA Proceedings (the "**Monitor**"). In this capacity, the Monitor has the authority to act for and on behalf of the Lender hereunder.
- Facility:** The Lender agrees to advance to the Borrower up to \$500,000 (the "**Maximum Amount**").
- Advances:** All advances under the Facility require prior written notice from the Borrower to the Lender and approval by the Monitor at least one (1) business day prior to the requested date of the advance, in form and substance satisfactory to the Lender and the Monitor, which notice shall include: (i) the proposed amount of the requested advance; (ii) the date the advance is required; (iii) the specific use for the proceeds of the advance with sufficient supporting invoices or cost estimates or both; and (iv) such other matters required by the Lender.
- Use of Proceeds:** The proceeds of the Facility shall be used solely by the Borrower for funding its legal costs which are directly related to enforcing its rights under its geothermal energy supply agreements with each of Toronto Standard Condominium Corporation No. 2348 (the "**Fuzion Condominium**"), Toronto Standard Condominium Corporation No. 2302 (the "**Bridge Condominium**"), Toronto Standard Condominium Corporation No. 2355 (the "**Curve Condominium**"), and Toronto Standard Condominium Corporation No. 2448 (the "**Edge Condominium**") (collectively, the "**Geothermal Energy Supply Agreements**" and each a "**Geothermal Energy Supply Agreement**") and repair and maintenance costs directly associated with the relevant geothermal energy systems

in the respective condominiums.

The Fuzion Condominium, Bridge Condominium, Curve Condominium and Edge Condominium are referred to collectively herein as the "**Condo Corps**".

Evidence of Indebtedness:

The Lender shall open and maintain accounts and records evidencing advances and any repayments under the Facility and all other amounts owing from time to time hereunder. The Lender's accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the indebtedness of the Borrower to the Lender pursuant to the Facility.

Currency:

Unless otherwise stated, all monetary denominations shall be in lawful currency of Canada.

Interest Rate:

All amounts owing hereunder on account of the principal, overdue interest, fees and expenses shall bear interest at the rate of 12% per annum, compounded monthly, payable in cash on the Maturity Date. To the extent permitted by law, upon the occurrence of an Event of Default (as defined below), interest shall accrue and be calculated at a rate of 15% per annum, compounded monthly.

Other Costs and Expenses:

The Borrower shall pay all reasonable fees, expenses and disbursements of outside counsel, appraisers, field auditors, and any financial consultant in connection with the administration of the Facility after the date on which the Approval Order (defined below) is obtained, including any costs and expenses incurred by the Lender in connection with the enforcement of any of the rights and remedies available hereunder or under any related security.

Repayment and Maturity Date:

All amounts owing to the Lender under the Facility shall be due and payable on the earliest of the occurrence of any of the following:

- (i) on the first anniversary of the date of the first Advance;
- (ii) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"); and
- (v) an Event of Default (as defined below) in respect of which the Lender has elected in its sole discretion to accelerate all amounts owing and demand repayment;

(such earliest date the "**Maturity Date**").

The Lender's commitment to make further advances under the Facility shall expire on the Maturity Date and all amounts outstanding under the Facility shall be permanently and indefeasibly repaid no later than the Maturity Date without the Lender being required to make demand upon the Borrower or other parties or to give notice that the Facility has expired and that the obligations thereunder are due and payable.

**Mandatory
Prepayments:**

Unless the Lender consents otherwise, the Borrower is required to prepay amounts outstanding under the Facility:

- (i) upon the receipt of net cash proceeds from the issuance by the Borrower or any of its subsidiaries of any indebtedness for borrowed money;
- (ii) upon receipt of net cash proceeds from the sale of any equity interests in the Borrower or any of its subsidiaries or the receipt of capital contributions by the Borrower or any of its subsidiaries;
- (iii) upon receipt of any extraordinary payments such as tax refunds by the Borrower or any of its subsidiaries;
- (iv) upon receipt of net cash proceeds from the sale of any of the Collateral (as defined below) by the Borrower or any of its subsidiaries;
- (v) upon receipt of any payments from any of the Condo Corps pursuant to any of the Geothermal Energy Supply Agreements or upon the receipt of any proceeds of any settlement with respect to any litigation in respect of any of the Geothermal Energy Supply Agreements.

Any prepayment required hereunder shall be a permanent reduction of the Facility and may not be re-borrowed without the written consent of the Lender in its sole discretion.

**Optional
Prepayment:**

Amounts outstanding under the Facility may be repaid at any time, in whole or in part, prior to the Maturity Date.

Lender Account:

All payments to the Lender shall be made by wire transfer to the account specified in writing to the Borrower from time to time.

**Conditions
Precedent to
Advances:**

The Lender's agreement to make any advances under the Facility is subject to the following conditions precedent (the "**Funding Conditions**") as determined by the Lender in its sole discretion, acting reasonably:

- 1) This Term Sheet and the entering into thereof by the Lender shall have been approved by an Order of the Court in form and substance satisfactory to the Lender and the Monitor, acting reasonably, (the "**Approval Order**") and the Approval Order shall not be the subject of any appeal or motion to amend, restate or modify the Approval Order in a manner that adversely affects the rights or interests of the Lender without the consent of the Lender;
- 2) The Lender shall be satisfied that the Borrower has complied with and is continuing to comply with in all material respects with all applicable laws, regulations, policies in relation to its property and business;

- 3) All amounts due and owing to the Lender at such time shall have been paid or shall be paid from the requested Advance;
- 4) No Event of Default shall have occurred or will occur as a result of the requested Advance;
- 5) Any necessary third party approvals to preserve or perfect the Lender's Security (as defined below) shall have been obtained;
- 6) There are no Liens (as defined below) ranking in priority to the Security other than as permitted hereunder; and
- 7) The Borrower shall be in compliance with all covenants and obligations contained in this Term Sheet.

Security and Documentation:

All of the obligations of the Borrower under or in connection with the Facility and any other documentation in respect of the Facility that is requested by the Lender (which shall be in form and substance satisfactory to the Lender in its sole discretion, acting reasonably) (collectively, the "**Loan Documents**") shall be secured by the Security (as defined below) (together with the Loan Documents, the "**Credit Documentation**").

All of the obligations of the Borrower under or in connection with the Loan Documents shall be secured by:

- 1) Contractual security documents granted by the Borrower providing for a first ranking security interest (the "**Security**") in and lien on all now-owned and hereafter-acquired assets and property of the Borrower, real and personal, tangible or intangible and all proceeds therefrom (the "**Collateral**").

Indemnity:

The Borrower agrees to indemnify and hold harmless the Lender and its affiliates and officers, directors, employees, representatives, advisors, solicitors and agents (collectively, the "**Indemnified Persons**") from and against any and all actions, lawsuits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever which may be incurred by or suited against or involve any of the Indemnified Persons as a result of, in connection with or in any way related to the Facility, the proposed or actual use of the proceeds of the Facility, this Term Sheet, or the Credit Documentation. Notwithstanding the foregoing, the Borrower shall have no obligation to indemnify any Indemnified Person against such loss, liability, cost or expense to the extent that they are found by final judgment of a court of competent jurisdiction to arise from the gross negligence or willful misconduct of such Indemnified Person or to the extent of any disputes solely among Indemnified Persons other than claims arising out of any act or omission on the part of the Borrower. The Lender shall not be responsible or liable to the Borrower or any other person for any consequential or punitive damages.

Representations

The Borrower represents and warrants to the Lender, upon which the Lender relies

and Warranties: in entering into this Term Sheet and the other Credit Documentation, that:

1. The transactions contemplated by this Term Sheet and the other Credit Documentation:
 - (a) have been duly authorized, executed and delivered by or on behalf of the Borrower;
 - (b) constitute legal, valid and binding obligations of the Borrower; and
 - (c) do not require the consent or approval of, registration or filing with, or any other action by, any governmental authority, other than filings which may be made to register or otherwise record the Security granted pursuant to the Credit Documentation;
2. The Borrower is the legal and beneficial owner of the Collateral and does not hold any of the Collateral in trust for any other person;
3. The business operations of the Borrower and its subsidiaries have been and will continue to be conducted in material compliance with all applicable laws of each jurisdiction in which each such business has been or is being carried on;
4. Each of the Borrower and its subsidiaries has obtained all material licences and permits required for the operation of its business, which licences and permits remain, and after the Facility, will remain in full force and effect. No proceedings have been commenced to revoke or amend any of such licences or permits;
5. Each of the Borrower and its subsidiaries has paid where due its obligations for payroll, employee source deductions, Harmonized Sales Tax, value added taxes and is not in arrears in respect of these obligations;
6. None of the Borrower or any of its subsidiaries has any defined benefit pension plans or similar plans; and
7. All factual information provided by or on behalf of the Borrower to the Lender for the purposes of or in connection with this Term Sheet or any transaction contemplated herein is, to the best of the Borrower's knowledge, true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. In particular, and without limiting the generality of the foregoing, to the best of the Borrower's knowledge, all information regarding the Borrower's and its subsidiaries' corporate structure is true and complete, all public filings and financial reports are complete and true in all material respects and the Borrower has provided the Lender with all title information and opinions and environmental

reports affecting or relating to the property of the Borrower. As used in this section "to the best of the Borrower's knowledge" refers to the actual knowledge of Ted Saskin or Alan Saskin after reasonable inquiry;

**Affirmative
Covenants:**

In addition to all other covenants and obligations contained herein, the Borrower agrees and covenants to perform and do each of the following until the Facility is permanently and indefeasibly repaid and cancelled:

1. Utilize all Advances in a manner that is consistent with the "Use of Proceeds" provided for herein;
2. Provide the Lender and the Monitor with any and all quotes and cost estimates for any repair and maintenance work that the Borrower is considering having done on any of the relevant geothermal energy systems and seeking the Lender's approval of same;
3. Allow the Lender, its designated representatives and financial advisors full access to the books and records of the Borrower and its subsidiaries on one business days' notice and during normal business hours and cause management thereof to fully cooperate with any advisors to the Lender;
4. The Borrower shall not carry out any changes to the composition (including the addition, removal or replacement of directors or officers) of the board of directors or the officers of the Borrower without first consulting with the Lender;
5. Provide to the Lender and Monitor monthly status updates, or more frequent updates as may otherwise be requested by the Monitor, regarding the status of any and all litigation in respect of the Geothermal Energy Supply Agreements;
6. Instruct its counsel in respect of any litigation pertaining to any of the Geothermal Energy Supply Agreements to take instructions directly from the Monitor in respect of such litigation which instructions may include, in the Monitor's sole discretion but after consultation with the Borrower, settling the litigation provided that, in the event of a disagreement between Monitor and Borrower, the Monitor will bring a motion to have the matter determined by the Court;
7. If so requested by the Monitor in its sole discretion, but after consultation with the Borrower, replace the Borrower's litigation counsel in respect of the litigation pertaining to any of the Geothermal Energy Supply Agreements provided that, in the event of a disagreement between Monitor and Borrower, the Monitor will bring a motion to have the matter determined by the Court;
8. Preserve, renew, maintain and keep in full force its corporate

existence and its material licenses, permits, approvals, etc. required in respect of its business, properties, assets or any activities or operations carried out therein and maintain its properties and asset in good working order having regard to the current cessation of operations;

9. Pay all applicable property taxes, permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any lien thereon;

10. Maintain all insurance with respect to the Collateral in existence as of the date hereof;

11. Forthwith notify the Lender of the occurrence of any Event of Default, or of any event or circumstance that, with the passage of time, may constitute an Event of Default;

12. Execute and deliver the Credit Documentation, including such security agreements, financing statements, discharges, opinions or other documents and information, as may be reasonably requested by the Lender in connection with the Facility, which documentation shall be in form and substance satisfactory to the Lender;

13. Subject to the "Costs and Expenses" provision of this Term Sheet, pay upon request by the Lender all documented fees and expenses, provided, however, that if any fees and expenses incurred after the date of this Term Sheet are not paid by the Borrower, the Lender may in its discretion pay all such fees and expenses whereupon such amounts shall be added to and form part of the obligations owing under the Facility and shall reduce the availability under the Facility;

14. Pay when due all principal, interest, fees and other amounts payable by the Borrower under this Term Sheet and under any other Credit Documentation on the dates, at the places and in the amounts and manner set forth herein;

**Negative
Covenants:**

The Borrower covenants and agrees not to do the following, other than with the prior written consent of the Lender from and after the date hereof:

1. Make any payment of any debt or obligation existing as at the date hereof;

2. Authorize any repair and maintenance work to be done on any of the relevant geothermal energy systems;

3. Provide any instructions to its counsel in respect of any litigation pertaining to any of the Geothermal Energy Supply Agreements;

4. Create, incur or permit to exist, or permit any subsidiary to create, incur or permit to exist, any indebtedness for borrowed money or contingent

liabilities other than Advances, and post-filing accounts payable in the ordinary course of business;

5. Make any payments outside the ordinary course of business;
6. Sell, assign, lease, convey or otherwise dispose of any of the Collateral or sell any securities of the Borrower or any of its subsidiaries or permit the sale by the subsidiaries of any securities;
7. Except for as contemplated herein or as otherwise consented to by the Lender, permit any new Liens to exist on any of the properties or assets or the Borrower or its subsidiaries other than the Liens in favour of the Lender as contemplated by this Term Sheet;
8. Create or permit to exist any other Lien which is senior to or *pari passu* with the Security except as contemplated herein;
9. Make any investments in or loans to or guarantee the debts or obligations of any other person or entity or permit any of its subsidiaries to do so;
10. Enter any restrictive covenants or agreements which might affect the value or liquidity of any Collateral;
11. Change or permit any subsidiary to change its jurisdiction of incorporation or registered office; and
12. Change its name, fiscal year end or accounting policies or amalgamate, consolidate with, merge into, dissolve or enter into any similar transaction with any other entity without the consent of the Lender or permit any subsidiary to do so.

Events of Default:

The occurrence of any one or more of the following events shall constitute an event of default (each, an “**Event of Default**”) under this Term Sheet if such event of default is not cured within two business days of the Borrower receiving notice of the event of default (to the extent such event of default is capable of being cured):

1. Failure of the Borrower to pay any amounts when due and owing hereunder;
2. The Borrower ceases to carry on business or operate or maintain its properties in the ordinary course as it is carried on as of the date hereof, except where such cessation is consented to by the Lender in writing;
3. Any representation or warranty by any of the Borrower herein or in any Credit Documentation shall be incorrect or misleading in any material respect when made;

4. A liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, any of the Borrower, that will in the Lender's judgment, acting reasonably, materially further impair the Borrower's financial condition, operations or ability to comply with its obligations under this Term Sheet or any Credit Documentation including, without limitation, any ruling, endorsement, judgment or order in the Borrower's litigation in respect of any of the Geothermal Energy Supply Agreements which in the Lender's judgment, acting reasonably, is adverse to the interests of the Borrower;

5. Failure of the Borrower to perform or comply with any term or covenant of this Term Sheet or any other Credit Documentation;

6. Any proceeding, motion or application is commenced or filed by the Borrower, or if commenced by another party, supported or otherwise consented to by the Borrower, seeking the invalidation, subordination or other challenging of the terms of the Facility, the Security, this Term Sheet, or any of the other Credit Documentation;

7. The Borrower becomes subject to a material environmental liability; or

8. The Approval Order is dismissed, stayed, reversed, vacated, amended or restated without the prior written consent of the Lender.

Remedies:

Upon the occurrence of an Event of Default, the Lender may, in its sole discretion, elect to terminate the Lender's commitment to make further Advances to the Borrower and accelerate all amounts outstanding under the Facility and declare such amounts to be immediately due and payable without any periods of grace. Upon the occurrence of an Event of Default, the Lender may:

1. Apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manager over the Collateral, or for the appointment of a trustee in bankruptcy of the Borrower;

2. Apply to the Court for an order, on terms satisfactory to the Monitor and the Lender, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps to realize on the Collateral;

3. Exercise the powers and rights of a secured party; and

4. Exercise all such other rights and remedies available to the Lender under the Credit Documentation and applicable law.

Lender Approvals:

All consents of the Lender hereunder shall be in writing. Any consent, approval, instruction or other expression of the Lender to be delivered in writing may be

delivered by any written instrument, including by way of electronic mail.

Taxes: All payments by the Borrower under this Term Sheet and the other Credit Documentation, including any payments required to be made from and after the exercise of any remedies available to the Lender upon an Event of Default, shall be made free and clear of, without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "Taxes"); provided, however, that if any Taxes are required by applicable law to be withheld ("Withholding Taxes") from any amount payable to the Lender under this Term Sheet or under any Credit Documentation, the amounts so payable to the Lender shall be increased to the extent necessary to yield to the Lender on a net basis after payment of all Withholding Taxes, the amount payable under such Credit Documentation at the rate or in the amount specified in such Credit Documentation and the Borrower shall provide evidence satisfactory to the Lender that the Taxes have been so withheld and remitted.

Further Assurances:: The Borrower shall, at its own expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Lender may reasonably request for the purpose of giving effect to this Term Sheet.

Entire Agreement: This Term Sheet and the Credit Documentation, constitutes the entire agreement between the parties related to the subject matter hereof. To the extent there is any inconsistency between this Term Sheet and any of the other Credit Documentation, this Term Sheet shall prevail.

Business Days: If any payment is due on a day which is not a business day in Toronto, such payment shall be due on the next following business day.

Amendments and Waivers: No waiver or delay on the part of the Lender in exercising any right or privilege hereunder or under any other Credit Documentation will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this Term Sheet.

Assignment: The Lender may assign this Term Sheet and its rights and obligations hereunder, in whole or in part, or grant a participation in its rights and obligations hereunder to any party acceptable to the Lender in its sole and absolute discretion (subject to providing the Borrower and the Monitor with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the Lender hereunder). Neither this Term Sheet nor any right and obligation hereunder may be assigned by the Borrower.

Severability: Any provision in this Term Sheet or in any Credit Documentation which is

prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or effecting the validity of enforceability of such provision in any other jurisdiction.

No Third Party Beneficiary:

No person, other than the Borrower and the Lender, is entitled to rely upon this Term Sheet and the parties expressly agree that this Term Sheet does not confer rights upon any party not a signatory hereto.

Counter Parts and Facsimile Signatures:

This Term Sheet may be executed in any number of counterparts and delivered by e-mail, including in PDF format, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Agreement by signing any counterpart of it.

Notices:

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

In the case of the Lender or Monitor:

KSV Kofman Inc., in its capacity as the court appointed monitor of Urbancorp Cumberland 1 LP and Urbancorp Cumberland 1 GP Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9
Attention: Robert Kofman
e-mail: bkofman@ksvadvisory.co

With a copy to:

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

Attention: Robin B. Schwill
Email: rschwill@dwpv.com

In the case of the Borrower:

Ted Saskin
36 Lisgar Street
Toronto, ON M6J 3G2

Attention: Ted Saskin
Email: tedsaskin@gmail.com

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 PM local time or on a day other than a business day, in which case the notice shall be deemed to be received the next business day.

English Language: The parties hereto confirm that this Agreement and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*

Governing Law and Jurisdiction: This Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

[Signature pages follow]

AS LENDER:

**KSV KOFMAN INC., IN ITS
CAPACITY AS THE COURT
APPOINTMENT MONITOR OF
URBANCORP CUMBERLAND 1 LP
AND URBANCORP CUMBERLAND 1
GP INC.**

**FOR AND ON BEHALF OF
URBANCORP CUMBERLAND 1 LP
BY ITS GENERAL PARTNER,
URBANCORP CUMBERLAND 1 GP
INC.**

by 

Robert Kofman, President

AS BORROWER:

**URBANCORP RENEWABLE
POWER INC.**

by 

Alan Saskin, President

Appendix “G”

PROMISSORY NOTE

February 2, 2018

FOR VALUE RECEIVED, Urbancorp Renewable Power Inc. (the "Debtor") hereby acknowledges itself indebted to Urbancorp Cumberland 1 LP (the "Lender") and unconditionally promises to pay to, or to the order of, the Lender on the Maturity Date, the principal amount set forth on the grid attached as Schedule A under the column "Aggregate Unpaid Balances of Advances" from time to time in lawful money of Canada together with interest thereon as hereinafter provided.

This Promissory Note evidences a secured loan referred to in and pursuant to the Term Sheet. The Debtor acknowledges that this Promissory Note is subject to the terms and conditions of the Term Sheet. Payment of all amounts due under this Promissory Note in accordance with the Term Sheet shall satisfy the Debtor's obligations hereunder and extinguish the indebtedness evidenced by this Promissory Note.

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions**

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Term Sheet. The following terms used herein shall have the following meanings:

"Term Sheet" means the URPI Loans Term Sheet dated October 24, 2017 between Urbancorp Renewable Power Inc. as Borrower, and Urbancorp Cumberland 1 LP, by its general partner Urbancorp Cumberland 1 GP Inc., as Lender (as may be amended, restated, supplemented, or otherwise modified from time to time); and

"Promissory Note" means this promissory note, as may be amended, restated, supplemented, or otherwise modified from time to time.

1.2 **Currency**

All monetary amounts in this Promissory Note refer to Canadian dollars.

ARTICLE 2 **PRINCIPAL AND INTEREST**

2.1 **Principal**

All amounts owing under the this Promissory Note shall be paid by the Debtor by no later than the Maturity Date.

2.2 Interest

Prior to the Maturity Date, interest shall be payable on the any amounts outstanding under this Promissory Note outstanding from time to time at a rate per annum of 12%. Interest shall accrue daily and compound monthly in arrears. After the Maturity Date, or upon the occurrence of an Event of Default, as defined in the Term Sheet, interest shall accrue and be calculated at a rate of 15% per annum, compounded annually.

2.3 Grid

The Debtor hereby appoints Lender as its duly authorized agent to record on the grid schedule attached hereto (i) all advances made by Lender to the Debtor, and (ii) all payments made by the Debtor on account of the amounts outstanding from time to time under this Promissory Note, and to adjust the balance of amounts owing under this Promissory Note by the Debtor to Lender from time to time.

The amounts outstanding from time to time under this Promissory Note as evidenced on the grid schedule attached hereto as Schedule A shall, in the absence of manifest error, be conclusive and binding on the Debtor; provided that notwithstanding the state of the grid schedule attached hereto, the failure of Lender to record any amounts owing hereunder on the grid schedule attached hereto shall not affect the obligation of the Debtor to pay to Lender the amounts due and payable by the Debtor.

2.4 Payment

All principal and interest payable on this Promissory Note shall be payable to the Monitor or as may be otherwise directed in writing by the Lender.

The Debtor shall make all mandatory prepayments contemplated in and on such terms as are provided for in the Term Sheet.

Prior to the Maturity Date, the whole or any part of the principal amount of this Promissory Note, together with any accrued and unpaid interest thereon, may be prepaid by the Debtor at any time or from time to time without notice, bonus or penalty of any kind.

**ARTICLE 3
MISCELLANEOUS**

3.1 Security for Indebtedness

The principal, interest and any other amounts payable under this Promissory Note shall be secured against all of the property, undertaking and assets now or hereafter owned by the Borrower pursuant to a general security agreement of even date herewith made between the Borrower and the Lender.

3.2 Terms and Conditions of Term Sheet

The Debtor Acknowledges that it is bound by all of the terms and conditions contained in the Term Sheet.

3.3 Governing Law

This Promissory Note is issued pursuant to and shall be interpreted and enforced in accordance with, and the obligations of the Debtor shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in that province.

3.4 Failure or indulgence Not Waiver

No failure or delay on the part of the Lender hereof in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing hereunder are cumulative to, and not exclusive of, any rights or remedies otherwise available.

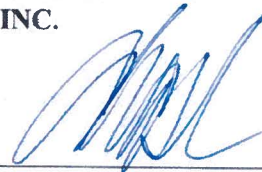
The Debtor hereby waives presentment for payment, notice of non-payment, protest and notice of protest and waives any defences based upon any and all indulgences and forbearances which may be granted by the Lender to the Debtor at any time.

IN WITNESS WHEREOF the Borrower has executed this Promissory Note.

DATED February 2, 2018.

**URBANCORP RENEWABLE
POWER INC.**

by



Alan Saskin, President

Schedule A

Date	Amount of Advance/ Repayment	Aggregate Unpaid Balances of Advances (excluding accrued interest)	Notation Made By

Appendix “H”

GENERAL SECURITY AGREEMENT

THIS AGREEMENT made as of the 7th day of January, 2018,

BETWEEN:

**URBANCORP CUMBERLAND 1 LP, BY ITS
GENERAL PARTNER, URBANCORP
CUMBERLAND 1 GP INC.,**
(hereinafter referred to as the "**Secured Party**").

- and -

URBANCORP RENEWABLE POWER INC.,
a corporation existing under the laws of Ontario.

(hereinafter referred to as the "**Debtor**").

WHEREAS the Secured Party has agreed to advance monies pursuant to a term sheet dated October 24, 2017 (the "**Term Sheet**") between that Secured Party and the Debtor evidenced by a Promissory Note dated February 7, 2018 (the "**Promissory Note**") between the Debtor and the Second Party.

AND WHEREAS, pursuant to the terms of the Promissory Note, the Debtor is required to execute and deliver this Agreement and to grant to the Secured Party a continuing security interest in all of the Collateral to secure all Obligations;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Defined Terms**

For the purpose of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"Act" means the *Personal Property Security Act* (Ontario) and the regulations promulgated thereunder;

"Banking Day" means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario;

"Collateral" means, subject to Sections 2.3 and 2.4, any and all real and Personal Property in which a security interest can be taken, reserved, created or granted whether under the Act or otherwise, and which is now or hereafter owned by the Debtor or in which the Debtor now has or hereafter acquires any interest or rights of any nature whatsoever, excluding Consumer Goods but including, without in any way limiting the generality of the foregoing, all Accounts, Money, Inventory, Equipment, Goods, Intangibles, Investment Property, Intellectual Property, Instruments, Chattel Paper, Documents of Title, insurance policies, insurance proceeds, insurance claims and all ledger sheets, files, records and all Proceeds, products and accessions from, of and to any thereof, and, where the context permits, any reference to "Collateral" shall be deemed to be a reference to **"Collateral or any part thereof"**;

"Contractual Rights" has the meaning given to it in Section 2.4;

"control" has the meaning given to it in the STA;

"Court" means the Ontario Superior Court of Justice (Commercial List);

"Credit Documentation" has the meaning given to it in the Term Sheet;

"Default" means any event or condition that constitutes an Event of Default or that would constitute an Event of Default except for giving of any notice, passage of time, the making of any determination, or any combination thereof;

"Encumbrance" means any hypothec, mortgage, pledge, security interest, encumbrance, lien, charge, deposit arrangement, lease, assignment by way of security, adverse claim, or agreement, trust, deemed trust or any other arrangement or condition that in substance or effect secures payment or performance of an obligation of any of the Borrower or its Subsidiaries, statutory and other non-commercial leases or encumbrances and includes the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement;

"Event of Default" has the meaning given to it in the Term Sheet;

"Expenses" means any and all expenses incurred from time to time by the Secured Party, or any Receiver, in the preparation of this Agreement, in the perfection or preservation of the Security Interest and any and all expenses incurred from time to time by the Secured Party, or any Receiver, in enforcing payment or performance of the Obligations or any part thereof or in locating, taking possession of, transporting, holding, repairing, processing, preparing for and arranging for the disposition of and/or disposing of the Collateral and any and all other expenses incurred by the Secured Party, or any Receiver, as a result of the Secured Party or such Receiver exercising any of its rights or remedies hereunder or under the Act or the STA including, without in any way limiting the

generality of the foregoing, any and all legal expenses (on a full indemnity basis) including those incurred in any legal action or proceeding or appeal therefrom commenced or taken in good faith by the Secured Party and any and all fees and disbursements of any solicitor (on a full indemnity basis), accountant or evaluator or a similar Person employed by the Secured Party in connection with any of the foregoing and the costs of insurance and payment of taxes and other charges incurred in retaking, holding, repairing, processing and preparing for disposition and disposing of the Collateral;

"Governmental Authority" means the government, parliament or legislature of Canada or any other nation, or of any political subdivision thereof, whether federal, provincial, state, municipal or local, and any agency, authority, instrumentality, ministry, tribunal, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency;

"Intellectual Property" means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae, customer lists, data bases, documentation, registrations and franchises relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade-mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs; (viii) any other intellectual property and industrial property; and (ix) all additions and improvements to the foregoing;

"limited liability company" has the meaning given to it in subsection 12(3) of the STA;

"LLC Interest" means any interest in a partnership or limited liability company which is not a Security;

"Monitor" means KSV Kofman Inc., in its capacity as monitor of the Secured Party *et al* pursuant to the order of the Court dated May 18, 2016, pursuant to the *Companies Creditors Arrangement Act*, and not in its personal capacity;

"Obligations" means all indebtedness, liabilities and obligations (whether direct, indirect, absolute, contingent or otherwise and whether in respect of principal or interest thereon) existing from time to time of the Debtor to the Lenders and to the Secured Party (including, for greater certainty, to any successor or permitted assign thereof, whether arising or incurred before or after the date of succession or assignment) and arising pursuant to any of the Credit Documentation, including this Agreement;

"Permitted Encumbrances" has the meaning given to it in the Promissory Note;

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity;

"Rate" shall mean the rate of interest specified in section 2.2 of the Promissory Note;

"Promissory Note" has the meaning given to it in the first recital to this Agreement;

"Receiver" has the meaning given to it in Section 7.1(l);

"Registered Intellectual Property" means any Intellectual Property in respect of which ownership, title, security interests, charges or encumbrances are from time to time registered, recorded or notated with any Governmental Authority pursuant to applicable laws;

"Security Interest" has the meaning given to it in Section 2.1;

"STA" means the *Securities Transfer Act, 2006* (Ontario) and the regulations promulgated thereunder;

"ULC/Partnership" means an unlimited company, unlimited liability company, unlimited liability corporation or general partnership; and

"ULC/Partnership Interest" means the Debtor's interest in any ULC/Partnership or its interest as a general partner in a limited partnership.

1.2 Other Definitions

All capitalized terms used herein and not otherwise defined herein shall, if defined therein, have the respective meanings assigned to them in the Act, including the terms "Accession", "Accounts", "Certificated Security", "Chattel Paper", "Consumer Goods", "Documents of Title", "Equipment", "Financial Asset", "Futures Account", "Goods", "Instrument", "Intangible", "Inventory", "Investment Property", "Money", "Personal Property", "Proceeds", "Securities Account", "Security", "Securities Intermediary" and "Uncertificated Security". All other capitalized terms used herein and not defined shall have the respective meanings assigned to them in the Promissory Note.

1.3 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms "Agreement", "this Agreement", "the Agreement", "hereto," "hereof," "herein," "hereunder," and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to "Articles", "Section", "Schedule" or "Exhibit" followed by a number or letter refer to the specified Article or Section of or Schedule or Exhibit to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and vice versa and words importing the use of any gender shall include all genders;
- (e) the word "including" is deemed to mean "including without limitation";
- (f) the terms "party" and "the parties" refer to a party or the parties to this Agreement;
- (g) any reference to any agreement (including this Agreement), indenture or other instrument in writing means such agreement, indenture or other instrument in writing as amended, modified, replaced or supplemented from time to time;
- (h) any reference to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder;
- (i) any reference in this Agreement to the Secured Party, the Lenders or a Receiver shall be construed to include their respective successors and assigns;
- (j) all dollar amounts refer to Canadian dollars;
- (k) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and
- (l) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Banking Day, such payment shall

be made, action shall be taken or period shall expire on the next following Banking Day.

1.4 Time of Essence

Time shall be of the essence of this Agreement.

1.5 Governing Law and Submission to Jurisdiction

(a) This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in that province.

(b) The Debtor irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such courts and (iii) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

1.6 Conflict

In the event of a conflict or inconsistency between the provisions of this Agreement and the provisions of any other Credit Documentation, the provisions giving the Secured Party greater rights or remedies shall govern (to the maximum extent permitted by applicable laws), it being understood that the purpose of this Agreement and all of the other Credit Documentations is to add to, and not detract from, the rights granted to the Secured Party under the Credit Documentations. In the event of any other conflict or inconsistency between the terms of this Agreement and the Promissory Note, the applicable terms of the Promissory Note shall govern.

1.7 Entire Agreement

This Agreement and the other Credit Documentations to which the Debtor is a party constitute the entire agreement between the Debtor and the Secured Party with respect to the subject matter hereof and thereof, and supersede all prior agreements and understandings, if any, relating to the subject matter hereof or thereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing signed by the parties hereto. Each party hereto acknowledges that it has been advised by counsel in connection with the negotiation and execution of this Agreement and is not relying upon oral representations or statements inconsistent with the terms and provisions hereof.

1.8 Severability

Whenever possible, each provision or portion of any provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law but the invalidity or unenforceability of any provision or portion of any provision of this Agreement in

any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision or portion of any provision, in any other jurisdiction. In addition, should a court determine that any provision or portion of any provision of this Agreement is not reasonable or valid, the parties hereto agree that such provision should be interpreted and enforced to the maximum extent which the court deems reasonable or valid and the parties agree to request that the court apply notional severance to give effect to the provisions of this Agreement to the fullest extent deemed reasonable or valid by the court.

1.9 Incorporation of Schedules

The following Schedules are attached to and form part of this Agreement:

- Schedule 3.3 - Names
- Schedule 3.5 - Location of Collateral
- Schedule 3.6(a) - Securities and LLC Interests
- Schedule 3.6(b) - Other Investment Property
- Schedule 3.6(c) - Location of Investment Property Collateral
- Schedule 3.7 - Intellectual Property

ARTICLE 2
SECURITY INTEREST

2.1 Creation of Security Interest

Subject to Sections 2.3 and 2.4, as continuing security for the due and timely payment and performance by the Debtor of the Obligations, the Debtor hereby grants to the Secured Party, for its own behalf and as agent for and on behalf of the Lenders, a security interest (the "Security Interest") in the Collateral.

2.2 Attachment

The Debtor and the Secured Party acknowledge and agree that value has been given for the granting of the Security Interest and that they have not agreed to postpone the time for attachment, except for after-acquired property forming part of the Collateral the attachment to which will occur forthwith upon the Debtor acquiring rights thereto.

2.3 Exception for Last Day of Leases

The Security Interest granted hereby does not and shall not extend to, and Collateral shall not include, the last day of the term of any lease or sub-lease, oral or written, or any agreement therefor, now held or hereafter acquired by the Debtor, but the Debtor shall stand possessed of such last day in trust to assign the same as the Secured Party shall direct.

2.4 Exception for Contractual Rights

(a) The Security Interest hereby granted does not and shall not extend to, and Collateral shall not include, any agreement, right, franchise, licence or permit (the "**Contractual Rights**") to which the Debtor is a party or of which the Debtor has the benefit, to the extent that the creation of the Security Interest herein would constitute a breach of the terms of or permit any Person to terminate the Contractual Rights, but the Debtor shall hold its interest therein in trust for the Secured Party and shall assign such Contractual Rights to the Secured Party forthwith upon obtaining the consent of the other party thereto.

(b) The Debtor agrees that it shall, upon the request of the Secured Party, use all commercially reasonable efforts to obtain any consent required to permit any Contractual Rights to be subjected to the Security Interest. The Debtor will also use all commercially reasonable efforts to ensure that all agreements entered into on and after the date of this Agreement expressly permit assignments of the benefits of such agreements as collateral security to the Secured Party in accordance with the terms of this Agreement.

(c) Section 2.4(a) shall not apply to any Contractual Rights in so far as they prohibit, restrict or require the consent of the account debtor for the assignment of, or the giving of a security interest in, the whole of an Account or Chattel Paper for Money due or to become due and Collateral shall, notwithstanding Section 2.4(a), include such Contractual Rights.

2.5 Control of Instruments, Securities, etc.

(a) The Debtor shall forthwith deliver to the Secured Party, to be held by the Secured Party hereunder, all Instruments, Certificated Securities, Chattel Paper, Documents of Title, certificated LLC Interests and other negotiable documents of title in its possession or control which pertain to or form part of the Collateral including, without limitation, those Securities and LLC Interests listed on Schedule 3.6 (if any), and shall, where appropriate, duly endorse the same for transfer in blank or as the Secured Party may direct and shall make all reasonable efforts to deliver to the Secured Party any and all consents or other instruments or documents necessary to comply with any restrictions on the transfer thereof in order to transfer the same to the Secured Party. The Debtor agrees to denote the Secured Party's security interest on any Instruments, Certificated Securities, Chattel Paper, Documents of Title or other Collateral in the possession or control of the Debtor.

(b) If the Debtor acquires any Investment Property, LLC Interests or Instruments [(other than Instruments evidencing amounts payable of less than \$5,000.00 or evidencing any rights to goods having a value less than \$5,000.00)], the Debtor will notify the Secured Party in writing and provide the Secured Party with a revised Schedule 3.6(a) or Schedule 3.6(b), as applicable, recording the acquisition and particulars of such Investment Property, LLC Interests or Instruments within five (5) Banking Days after such acquisition. Upon request by the Secured Party, the Debtor will promptly deliver to and deposit with the Secured Party any such Investment Property which is Certificated Securities, certificated LLC Interests or Instruments (other than Instruments evidencing amounts payable of less than \$5,000.00 or evidencing any

rights to goods having a value less than \$5,000.00), or in the case of any other Investment Property, enter into a control agreement with the relevant Securities Intermediary, Futures Intermediary or issuer and the Secured Party (in form and substance satisfactory to the Secured Party) or otherwise grant such control over such Investment Property as the Secured Party requires or considers necessary or desirable to perfect or better perfect its security interest in such Collateral or to give the Security Interest improved priority over the Collateral (including, without limitation, in the case of Uncertificated Securities or uncertificated LLC Interests, either delivering to the Secured Party an irrevocable agreement of the issuer of such Uncertificated Securities or uncertificated LLC Interests, on terms satisfactory to the Secured Party, that such issuer will comply with instructions originated by the Secured Party without the further consent of the Debtor, or causing such issuer to register the Secured Party or its agent or nominee, as directed by the Secured Party, as the registered owner of such Uncertificated Securities or uncertificated LLC Interests).

2.6 Intellectual Property

The Debtor will promptly notify the Secured Party in writing of the acquisition by the Debtor of any Registered Intellectual Property. The Debtor will provide the Secured Party with a revised Schedule 3.7 recording the acquisition and particulars of such additional Intellectual Property.

2.7 Transfer of Title

As further continuing security for the due and timely payment and performance by the Debtor of the Obligations, the Debtor, subject to Sections 2.3 and 2.4, hereby grants, bargains, sells, assigns and transfers to the Secured Party all Collateral (specifically excluding trade-marks and trade names) such that title thereto and ownership therein shall belong to and be vested in the Secured Party, provided that the Secured Party shall not thereby assume or be liable for any obligations or payments in respect of any of the Collateral and provided further that, upon the sale of any Collateral by the Debtor in accordance with Section 4.8, or upon the receipt of dividends or interest in accordance with Section 5.2(a)(ii), title thereto and ownership therein shall be divested automatically from the Secured Party and provided further that, upon the termination of this Agreement in accordance with Section 11.4(b), title to and ownership in the Collateral shall be divested automatically in the Debtor without any further act of the Secured Party or the Debtor.

2.8 Grant of Licence to Use Intellectual Property

At such time as the Secured Party is lawfully entitled to exercise its rights and remedies under Article 7, the Debtor grants (to the extent permitted by the terms of any licence, if applicable) to the Secured Party an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Debtor) to use, assign or sublicense any Intellectual Property in which the Debtor has rights wherever the same may be located, including in such licence access to (i) all media in which any of the licensed items may be recorded or stored, and (ii) all software and computer programs used for compilation or print-out. The

licence granted under this Section is to enable the Secured Party to exercise its rights and remedies under Article 7 and for no other purpose.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE DEBTOR

The Debtor represents and warrants to the Secured Party that as at the date hereof:

3.1 Representations and Warranties in the Term Sheet

The representations and warranties of the Debtor set forth in the Term Sheet are true and correct.

3.2 French Name

The Debtor does not have a French name.

3.3 Business Names, Former Names and Predecessor Names

All business names, former names and names of all predecessors of the Debtor are set forth in Schedule 3.3.

3.4 Location of Debtor

(a) The Debtor is incorporated under the laws of Ontario

(b) The registered office or head office of the Debtor's is located at P.O. Box 96, Toronto Station C, Toronto, Ontario, M6J 3M7.

(c) The Debtor's place of business or, if it has more than one place of business, its chief executive office, is located at P.O. Box 96, Toronto Station C, Toronto, Ontario, M6J 3M7.

(d) The books and records of the Debtor are located at P.O. Box 96, Toronto Station C, Toronto, Ontario, M6J 3M7.

(e) Accounts and invoices of the Debtor are issued from P.O. Box 96, Toronto Station C, Toronto, Ontario, M6J 3M7.

3.5 Location of Collateral

With the exception of Inventory in transit, all tangible assets comprising the Collateral are situate at the addresses set out in Schedule 3.5.

3.6 Investment Property

(a) Schedule 3.6(a) lists all Securities or LLC Interests owned by the Debtor.

(b) Schedule 3.6(b) lists all Investment Property (other than Securities or LLC Interests) which are owned or maintained by or in which the Debtor otherwise has an interest or rights.

(c) Schedule 3.6(c) sets out:

- (i) for all Collateral which is Certificated Securities, the location of the certificate;
- (ii) for all Collateral which is Uncertificated Securities, the location of the issuer's jurisdiction;
- (iii) for all Collateral which is Securities Entitlements or Securities Accounts, the Security Intermediary's jurisdiction; and
- (iv) for all Collateral which is Futures Contracts or Futures Accounts, the Futures Intermediary's jurisdiction.

3.7 Intellectual Property

Schedule 3.7 lists all Registered Intellectual Property owned or used by the Debtor.

3.8 Designation of Partnership and LLC Interests

The terms of each partnership interest or limited liability company interest held by the Debtor, as set out in the applicable partnership agreement, limited liability company agreement or other constating documents and any certificate representing such interest, expressly provide that such interest is a "security" for the purposes of the STA.

3.9 Financial Assets

With respect to any Securities Account, the relevant Securities Intermediary has expressly agreed with the Debtor that all credit balances maintained therein shall not be treated as a Financial Asset.

ARTICLE 4
COVENANTS OF THE DEBTOR

So long as any of the Obligations exist, the Debtor covenants and agrees as follows:

4.1 Maintain Collateral

The Debtor shall keep all Equipment comprising part of the Collateral (other than obsolete Equipment) in good order and repair, subject to normal wear and tear, and shall not use such Equipment in violation of the provisions of this Agreement or any other agreement between the Debtor and the Secured Party relating to Collateral or any policy insuring Collateral or any applicable statute, law, by-law, rule, regulation or ordinance.

4.2 No Accessions

The Debtor shall prevent any Collateral from being or becoming an accession to property.

4.3 Fixtures

The Debtor acknowledges and agrees that no Collateral acquired by the Debtor after the date hereof shall become affixed to any real property except with the prior written consent of the Secured Party.

4.4 Delivery of Documents

In addition to the requirements set out in Section 2.5, the Debtor shall deliver to the Secured Party from time to time promptly upon request:

- (a) all statements of account, bills, invoices and books of account relating to Accounts and all records, ledgers, reports, correspondence, schedules, documents, statements, lists and other writings relating to the Collateral for the purpose of inspecting, auditing or copying the same;
- (b) all policies and certificates of insurance relating to Collateral; and
- (c) such information concerning the Collateral, the Debtor and its business and affairs as the Secured Party may reasonably request.

4.5 Change of Name, Jurisdiction or Location

The Debtor shall not change its name or add any new business name, change its jurisdiction of incorporation or formation, or change any of the locations referred to in Section 3.4 without providing at least fifteen Banking Days' advance written notice to the Secured Party

of such change or addition. The Debtor shall not change its business structure or identity except in accordance with the Promissory Note.

4.6 Creating and Preserving the Security Interest

The Debtor shall, from time to time at the request of the Secured Party, make and do all such acts and things and execute and deliver all such instruments, agreements, financing statements and documents as the Secured Party reasonably requests by notice in writing given to the Debtor in order to create, preserve, perfect, validate or otherwise protect the Security Interest, to enable the Secured Party to exercise and enforce its rights and remedies hereunder and generally to carry out the provisions and purposes of this Agreement and, for greater certainty, the Debtor shall, from time to time at the request of the Secured Party, execute a power of attorney in such form as may be reasonably satisfactory to the Secured Party.

4.7 Restrictions on Dealings with Collateral

Except as provided in Section 4.8, the Debtor agrees that it shall not, without the prior written consent of the Secured Party:

- (a) sell, assign, transfer, exchange, lease, consign or otherwise dispose of any Collateral;
- (b) locate any Collateral at any location other than those set out in Section 3.4;
- (c) create, assume or suffer to exist any Encumbrances upon the Collateral; and
- (d) deliver or grant control over any Investment Property to any Person other than the Secured Party.

4.8 Permitted Dealings with Collateral

Unless and until an Event of Default has occurred and is continuing, the Debtor may, without the consent of the Secured Party:

- (a) sell, assign, transfer, exchange, lease, consign or otherwise dispose of Inventory in the ordinary course of its business;
- (b) sell or otherwise dispose of such part of its Equipment which is no longer necessary or useful in connection with its business or which has become worn out or obsolete or unsuitable for the purpose for which it was intended;
- (c) collect Accounts in the ordinary course of its business.

provided that no permitted action by the Debtor, nor any consent provided by the Secured Party, shall be construed as a subordination or postponement of the Security Interest to or in favour of any other Encumbrance, whether or not such Encumbrance is a Permitted Encumbrance.

4.9 Verification of Collateral

The Secured Party shall have the right at any time and from time to time to verify the existence and state of the Collateral in any reasonable manner the Secured Party may consider appropriate, and the Debtor agrees to furnish all assistance and information and to perform all such acts as the Secured Party may reasonably request in connection therewith and for such purpose to grant to the Secured Party or its agents access to all places where Collateral may be located and to all premises occupied by the Debtor.

4.10 ULC/Partnership Interests

Notwithstanding the grant of the Security Interest set out in Section 2.1 and the transfer of title set out in Section 2.7, the Debtor shall remain registered as the sole registered and beneficial owner of all ULC/Partnership Interests and will remain as registered and beneficial owner until such time as such ULC/Partnership Interests are effectively transferred into the name of the Secured Party or any other Person on the books and records of such ULC/Partnership upon the exercise of rights to sell or otherwise dispose of ULC/Partnership Interests following the occurrence and during the continuance of an Event of Default hereunder. Nothing in this Agreement is intended to or shall constitute the Secured Party, any of the Lenders, or any other Person other than the Debtor as a shareholder, partner or member of any ULC/Partnership until such time as notice is given to such ULC/Partnership and further steps are taken thereunder so as to register the Secured Party or any other Person as the holder of the ULC/Partnership Interests of such ULC/Partnership upon the exercise of rights to sell or otherwise dispose of ULC/Partnership Interests following the occurrence and during the continuance of an Event of Default hereunder. To the extent any provision hereof would have the effect of constituting the Secured Party or any other Person as a shareholder, partner or member of a ULC/Partnership prior to such time, such provision shall be severed therefrom and ineffective with respect to the ULC/Partnership Interests of such ULC/Partnership without otherwise invalidating or rendering unenforceable this Agreement or invalidating or rendering unenforceable such provision insofar as it relates to Securities which are not ULC/Partnership Interests. Except upon the exercise of rights to sell or otherwise dispose of ULC/Partnership Interests following the occurrence and during the continuance of an Event of Default hereunder, the Debtor shall not cause or permit, or enable any ULC/Partnership in which it holds ULC/Partnership Interests to cause or permit, the Secured Party to: (a) be registered as a shareholder, partner or member of such ULC/Partnership; (b) have any notation entered in its favour in the share register of such ULC/Partnership; (c) be held out as a shareholder, partner or member of such ULC/Partnership; (d) receive, directly or indirectly, any dividends, property or other distributions from such ULC/Partnership by reason of the Secured Party holding a security interest in such ULC/Partnership; or (e) act as a shareholder, partner or member of such ULC/Partnership, or exercise any rights of a shareholder, partner or member of such ULC/Partnership including the right to attend a meeting of shareholders, partners or members of such ULC/Partnership, or to vote such ULC/Partnership Interests.

4.11 Designation of Partnership and LLC Interests

The Debtor shall not become a partner of any partnership or a member of any limited liability company unless the terms of the partnership interest or limited liability company interest, as set out in the applicable partnership agreement, limited liability company agreement or other constating documents and any certificate representing such interest, expressly provide that such interest is a "security" for the purposes of the STA.

4.12 Defend

The Debtor shall promptly notify the Secured Party of any Encumbrance or other claim made or asserted against any of the Collateral and shall defend the Secured Party's security interest in the Collateral against any and all claims and demands whatsoever including any adverse claim as defined in the STA.

4.13 Securities Accounts

The Debtor shall, with respect to any Securities Account owned, opened, acquired or maintained by or on behalf of the Debtor on or after the date hereof, prior to opening or acquiring any such Securities Account expressly agree with the relevant Securities Intermediary that any credit balance maintained therein shall not be treated as a Financial Asset.¹

**ARTICLE 5
INVESTMENT PROPERTY**

5.1 Registration in Secured Party's Name

In addition to the rights granted to the Secured Party pursuant to Section 2.5(b) in respect of Uncertificated Securities, if the Collateral at any time includes Investment Property or LLC Interests, upon the occurrence and during the continuance of an Event of Default, the Debtor authorizes the Secured Party to transfer the same or any part thereof into its own name or that of its nominee so that the Secured Party or its nominee may appear as the sole owner of record thereof.

5.2 Voting and Other Rights

- (a) So long as no Event of Default has occurred and is continuing:
 - (i) the Debtor may exercise all rights to vote and to exercise all rights of conversion or retraction or other similar rights with respect to any Securities or LLC Interests; provided that no such exercise, in the

¹ See Section 3.9.

reasonable opinion of the Secured Party, will have an adverse effect on the value of such Securities or LLC Interests and all expenses of the Secured Party in connection therewith have been paid in full and provided further that, upon the exercise of the conversion right or retraction right, the additional Securities, LLC Interests or Money resulting therefrom shall be paid or delivered to the Secured Party; and

- (ii) the Debtor shall, subject to Section 2.5, be entitled to receive all dividends (whether paid or distributed in cash, securities or other property), interest and other distributions declared and paid or distributed in respect of the Securities or LLC Interests.
- (b) Upon the occurrence of an Event of Default and during the continuance thereof:
- (i) no proxy granted by the Secured Party or its nominee to the Debtor or its nominee in respect of any Securities or LLC Interests shall thereafter be effective;
 - (ii) the Debtor shall have no rights to vote or take any other action with respect to any Securities or LLC Interests;
 - (iii) the Secured Party may, but shall not be obligated to, vote and take all other actions with respect to any Securities or LLC Interests; and
 - (iv) the Debtor shall cease to be entitled to receive any dividends, interest or other distributions, whether declared or payable before or after the occurrence of an Event of Default, in respect of the Securities or LLC Interests and such dividends, interest or other distributions shall be received by the Debtor in trust and paid to the Secured Party in accordance with Section 6.2.

ARTICLE 6

COLLECTION OF PROCEEDS AND ACCOUNTS

6.1 Control of Proceeds and Accounts

After the occurrence of an Event of Default and during the continuance thereof, the Secured Party may, acting reasonably, at any time take control of any Proceeds and Accounts, and the Secured Party may notify, acting reasonably, any account debtor of the Debtor or any debtor under any instrument held by the Debtor or the Secured Party in satisfaction *pro tanto* of the Obligations hereunder to make payment directly to the Secured Party whether or not the Debtor has theretofore been making collections on the Collateral. From time to time after the occurrence of an Event of Default and during the continuance thereof and upon the reasonable request in writing of the Secured Party, the Debtor shall also so notify such Persons to make payment directly to the Secured Party and the Secured Party may, in its discretion, apply such in satisfaction *pro tanto* of the Obligations or hold such payments as further Collateral hereunder.

6.2 Money Received by Debtor in Trust

After the occurrence of an Event of Default and during the continuance thereof, if the Debtor shall collect or receive any payments in respect of any Accounts or any dividends, interest or other distributions in respect of any Securities or LLC Interests, or shall be paid for any of the other Collateral, or shall receive any Proceeds, all Money so collected or received by the Debtor shall be received by the Debtor as trustee for the Secured Party and shall be paid to the Secured Party forthwith upon demand and the Secured Party may, in its discretion, apply such in satisfaction *pro tanto* of the Obligations or hold such payments as further Collateral hereunder.

**ARTICLE 7
DEFAULT AND THE SECURED PARTY'S REMEDIES**

7.1 Remedies Upon Default

Upon the occurrence of any Event of Default and during the continuance thereof, all of the Obligations shall without any further notice or any other action on the part of the Secured Party be due and payable forthwith by the Debtor to the Secured Party and the Security Interest hereby granted shall immediately become enforceable and the Secured Party, or the Monitor, as the case may be, may, forthwith or at any time thereafter and without notice to the Debtor, except as provided in the Act or this Agreement:

- (a) declare any or all of the Obligations not then due and payable to be immediately due and payable by giving notice in writing thereof to the Debtor and, in such event, such Obligations shall be due and payable forthwith by the Debtor to the Secured Party;
- (b) commence legal action to enforce payment or performance of the Obligations;
- (c) require the Debtor, at the Debtor's expense, to assemble the Collateral at a place or places designated by notice in writing given by the Secured Party to the Debtor, and the Debtor agrees to so assemble the Collateral;
- (d) require the Debtor, by notice in writing given by the Secured Party to the Debtor, to disclose to the Secured Party the location or locations of the Collateral and the Debtor agrees to make such disclosure when so required by the Secured Party;
- (e) without legal process, enter any premises where the Collateral may be situated and take possession of the Collateral by any method permitted by law;
- (f) repair, process, complete, modify or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Debtor or otherwise and in connection with any such action utilize any of the Debtor's property without charge;

- (g) dispose of the Collateral by private or public sale, lease or otherwise upon such terms and conditions as the Secured Party may determine and whether or not the Secured Party has taken possession of the Collateral;
- (h) carry on all or any part of the business or businesses of the Debtor and, to the exclusion of all others including the Debtor, enter upon, occupy and, subject to any requirements of law and subject to any leases or agreements then in place, use all or any of the premises, buildings, plant, undertaking and other property of, or used by, the Debtor for such time and in such manner as the Secured Party sees fit, free of charge, and except to the extent required by law, the Secured Party shall not be liable to the Debtor for any act, omission or negligence in so doing or for any rent, charges, depreciation or damages or other amount incurred in connection therewith or resulting therefrom;
- (i) file such proofs of claim or other documents as may be necessary or desirable to have its claim lodged in any bankruptcy, winding up, liquidation, dissolution or other proceedings (voluntary or otherwise) relating to the Debtor;
- (j) borrow money for the purpose of carrying on the business of the Debtor or for the maintenance, preservation or protection of the Collateral and mortgage, charge, pledge or grant a security interest in the Collateral, whether or not in priority to the Security Interest hereby created and granted, to secure repayment of any money so borrowed or any interest or fees payable in connection herewith;
- (k) where the Secured Party has taken possession of the Collateral as herein provided, retain the Collateral irrevocably, to the extent not prohibited by law, by giving notice thereof to the Debtor and to any other Persons required by law in the manner provided by law provided that such retention reduces the amount of the Obligations by an amount equal to the fair market value, as reasonably determined by the Secured Party of the Collateral so retained;
- (l) appoint, by an instrument in writing delivered to the Debtor, a receiver, manager or a receiver and manager (a "Receiver") and remove any Receiver so appointed and appoint another or others in its stead, or institute proceedings in any court of competent jurisdiction for the appointment of a Receiver, it being understood and agreed that:
- (m) the Secured Party may appoint any Person as Receiver, including an officer or employee of the Secured Party;
- (n) such appointment may be made at any time after an Event of Default either before or after the Secured Party shall have taken possession of the Collateral;
- (o) the Secured Party may from time to time fix the reasonable remuneration of the Receiver and direct the payment thereof out of the Collateral or Proceeds; and

- (p) the Receiver shall be deemed to be the agent of the Debtor for all purposes and, for greater certainty, the Secured Party shall not be, in any way, responsible for any actions, whether wilful, negligent or otherwise, of any Receiver, and the Debtor hereby agrees to indemnify and save harmless the Secured Party from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Secured Party may hereafter suffer, incur or be required to pay as a result of, in whole or in part, any action taken by the Receiver or any failure of the Receiver to do any act or thing;
- (q) pay or discharge any Encumbrance claimed by any Person and reasonably established to the satisfaction of the Secured Party in the Collateral and the amount so paid shall be added to the Obligations and shall bear interest calculated from the date of payment at the Rate until payment thereof; and
- (r) take any other action, suit, remedy or proceeding authorized or permitted by this Agreement, the Credit Agreement, the other Credit Documents, the Act, the STA or at law or in equity.

7.2 Sale of Collateral

(a) The parties hereto acknowledge and agree that any sale referred to in Section 7.1(g) may be a sale of either all or any portion of the Collateral and may be by way of public auction, public tender, private contract or otherwise without notice, advertisement or any other formality, except as required by law, all of which are hereby waived by the Debtor to the extent permitted by law. To the extent not prohibited by law, any such sale may be made with or without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and from time to time as the Secured Party in its sole discretion thinks fit with power to vary or rescind any such sale or buy in at any public sale and resell. The Secured Party may sell the Collateral for a consideration payable by instalments either with or without taking security for the payment of such instalments and may make and deliver to any purchaser thereof good and sufficient deeds, assurances and conveyances of the Collateral and give receipts for the purchase money, and any such sale shall be a perpetual bar, both at law and in equity, against the Debtor and all those claiming an interest in the Collateral by, from, through or under the Debtor.

(b) Without limiting Section 7.2(a), the parties hereto further acknowledge and agree that in connection with any sale by the Secured Party of any Investment Property or LLC Interest forming part of the Collateral, the Secured Party is authorized to comply with any limitation or restriction as it may be advised by counsel or otherwise considers is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Collateral. The Debtor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to

have been made in a commercially reasonable manner, and the Secured Party will not be liable or accountable to the Debtor for any discount allowed by reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

7.3 Reference to Secured Party Includes Receiver

For the purposes of Sections 7.1 and 7.2, a reference to "the Secured Party" shall, where the context permits, include any receiver appointed for the purpose of exercising the Secured Party's rights or otherwise dealing with the Collateral.

7.4 Payment of Expenses

The amount of the Expenses shall be paid by the Debtor to the Secured Party from time to time forthwith after demand therefor is given by the Secured Party to the Debtor, together with interest thereon calculated from the date of such demand at the Rate, and payment of such Expenses together with such interest shall be secured by the Security Interest.

7.5 No Obligation to Enforce

The Secured Party shall not be under any obligation to, or liable or accountable for any failure to, enforce payment or performance of the Obligations or to seize, realize, take possession of or dispose of the Collateral and shall not be under any obligation to institute proceedings for any such purpose.

7.6 Waiver and Acknowledgment by Debtor

To the fullest extent permitted by law, the Debtor waives all of the rights, benefits and protections given by the provisions of any existing or future statute which imposes limitations upon the powers, rights or remedies of a secured party or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other statute. The Debtor acknowledges that the provisions of this Agreement and, in particular, those respecting rights, remedies and powers of the Secured Party and any Receiver against the Debtor, its business and the Collateral upon the occurrence of an Event of Default, are commercially reasonable and not manifestly unreasonable.

ARTICLE 8
POSSESSION OF COLLATERAL BY THE SECURED PARTY

8.1 Possession of Collateral

Where any Collateral is in the possession of or controlled by the Secured Party:

- (a) the Secured Party may, at any time following the occurrence of an Event of Default which is continuing, grant or otherwise create a security interest in such Collateral upon any terms, whether or not such terms impair the Debtor's right to redeem such Collateral;

- (b) the Secured Party may, at any time following the occurrence of an Event of Default which is continuing, use such Collateral in any manner and to such extent as it deems necessary or desirable; and
- (c) the Secured Party shall have no obligation to keep fungible Collateral in its possession identifiable.

8.2 Duty of the Secured Party

The Secured Party shall have no duty with respect to any of the Collateral in its possession other than the duty to use the same degree of care in the safe custody of the Collateral in its possession as it uses with respect to property which it owns.

**ARTICLE 9
CONTINUING OBLIGATIONS**

9.1 Continuing Obligations

Notwithstanding any other term or condition of this Agreement, this Agreement shall not relieve the Debtor or any other party to any of the Collateral from the observance or performance of any term, covenant, condition or agreement on its part to be observed or performed thereunder or from any liability to any other party or parties thereto or impose any obligation on the Secured Party or the Lenders to observe or perform any such term, covenant, condition or agreement to be so observed or performed, and the Debtor hereby agrees to indemnify and hold harmless the Secured Party and the Lenders from and against any and all losses, liabilities (including liabilities for penalties), costs and expenses which may be incurred by the Secured Party or the Lenders under the Collateral and from all claims, demands, actions, suits and judgments which may be asserted against the Secured Party or the Lenders by reason of any alleged obligation or undertaking on their part to observe, perform or discharge any of the terms, covenants, conditions and agreements contained in the Collateral. The Secured Party may, at its option, perform any term, covenant, condition or agreement on the part of the Debtor to be performed under or in respect of the Collateral (and/or enforce any of the rights of the Debtor thereunder) without thereby waiving any rights to enforce this Agreement. Nothing contained in this Section 9.1 shall be deemed to constitute the Secured Party or the Lenders the mortgagee in possession of the Collateral or the lessee under any lease or agreement to lease unless the Secured Party has agreed to become such mortgagee in possession or to be a lessee.

**ARTICLE 10
ACKNOWLEDGEMENT BY THE DEBTOR**

10.1 Acknowledgements

The Debtor:

- (a) acknowledges receipt of a true copy of this Agreement;

- (b) waives the right to receive a copy of the verification statement in respect of the financing statement registered under the Act evidencing the Security Interest, in accordance with subsection 46(6.1) of the Act; and
- (c) acknowledges and agrees that this Agreement may be assigned by the Secured Party to any Person, as the Secured Party may determine and, in such event, such assignee shall be entitled to all of the rights and remedies of the Secured Party as set forth in this Agreement or otherwise and the Secured Party shall be released and discharged from its further obligations hereunder upon the assumption of same by the assignee.

ARTICLE 11
MISCELLANEOUS

11.1 Remedies Cumulative

The rights and remedies of the Secured Party under this Agreement are cumulative and not alternative. Any single or partial exercise by the Secured Party of any right or remedy for a default of any term, covenant, condition or agreement in this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other rights or remedies to which the Secured Party may be lawfully entitled for the same default. Such rights and remedies are in addition to and not in substitution for any rights or remedies provided by applicable laws.

11.2 Notices

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by fax or e-mail or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

- (i) if to the Secured Party, at:

KSV Kofman Inc., in its capacity as the court appointed monitor of the Debtor and Urbancorp. Cumberland 1 GP Inc.
150 King Street
Suite 2308
Toronto, ON M5H 1J9
Attention: Robert Kofman
E-mail address: bkofman@kruadvisery.co

(ii) if to the Debtor, at:

Ted Saskin
P.O. Box 96, Toronto Station C
Toronto, Ontario, M6J 3M7
Attention: Ted Saskin
E-mail address: tedsaskin@gmail.com

(b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Banking Day or if delivery or transmission is made on a Banking Day after 5:00 p.m. at the place of receipt, then on the next following Banking Day) or, if mailed, on the third Banking Day following the date of mailing; provided, however, that if at the time of mailing or within three Banking Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

(c) Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section.

11.3 Waiver

(a) No amendment or waiver of any provision of this Agreement shall be binding on the Secured Party unless consented to in writing by the Secured Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

(b) No waiver by the Secured Party of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained shall be deemed to be a waiver of any subsequent default. No waiver shall be inferred from or implied by any failure to act or delay in acting by the Secured Party in respect of any default or by anything done or omitted to be done by the Debtor.

(c) The Secured Party may, at any time, grant extensions of time or other indulgences to, accept compositions from or grant releases and discharges to the Debtor in respect of the Collateral or otherwise deal with the Debtor or with the Collateral and other security held by the Secured Party, all as the Secured Party may see fit, and the Debtor agrees that any such act or any failure by the Secured Party to exercise any of its rights or remedies, whether provided for herein or otherwise, shall in no way affect or impair the Security Interest or the rights and remedies of the Secured Party, whether provided for in this Agreement or otherwise.

11.4 Effective Date and Termination

(a) This Agreement shall become effective according to its terms immediately upon the execution hereof by the Secured Party and the Debtor.

(b) This Agreement may be terminated by:

- (i) written agreement made between the Secured Party and the Debtor; or
- (ii) notice in writing given by the Debtor to the Secured Party at any time when all of the Obligations have been fully satisfied and performed by the Debtor and the Promissory Note has been terminated in accordance with its terms.

(c) Upon termination of this Agreement in accordance with the provisions of Section 11.4(b), the Secured Party shall, at the request and expense of the Debtor, make and do all such acts and things and execute and deliver all such financing statements, instruments, agreements and documents as the Debtor considers necessary or desirable to discharge the Security Interest, to release and discharge the Collateral therefrom and to record such release and discharge in all appropriate offices of public record.

11.5 Other Security

This Agreement and the Security Interest are in addition to and not in substitution for any other agreement made between the Secured Party and the Debtor or any other security granted by the Debtor to the Secured Party or a Lender, whether before or after the execution of this Agreement.

11.6 Power of Attorney

(a) The Debtor hereby appoints the Secured Party, or a Receiver as the agent of the Debtor, as the Debtor's attorney, with full power of substitution, in the name and on behalf of the Debtor, to execute, deliver and do all such acts, deeds, leases, documents, transfers, demands, conveyances, assignments, contracts, assurances, consents, financing statements and things as the Debtor has herein agreed to execute, deliver and do as may be required by the Secured Party to give effect to the Promissory Note and/or this Agreement or in the exercise of any rights, powers or remedies hereby or thereby conferred on the Secured Party, and generally to use the name of the Debtor in the exercise of all or any of the rights, powers or remedies hereby or thereby conferred on the Secured Party including, without limitation, the right to bring actions for and in the name of the Debtor, the right to collect Accounts, and the right to exercise the rights of the Debtor under all agreements or contracts to which it is a party and to cure any defaults thereunder.

(b) The Secured Party shall only exercise its rights pursuant to Section 11.6(a) after the occurrence of and during the continuance of, an Event of Default except that the Secured Party may exercise its rights under Section 11.6(a) from the date of this Agreement with respect

to preparation and filing of financing statements or mortgages and such other documents and instruments as may be required to register or give notice of or perfect or preserve the Security Interest or to give effect to Section 11.7.

(c) The appointment in Section 11.6(a) is coupled with an interest and shall not be revoked by the insolvency, bankruptcy, dissolution, liquidation or other termination of the existence of the Debtor or for any other reason.

11.7 Registrations

The Debtor will, from time to time at the request of the Secured Party, promptly effect all registrations, filings, recordings and all re-registrations, re-filings and re-recordings of or in respect of this Agreement and the Security Interest in such offices of public record and at such times as may be necessary or of advantage in perfecting, maintaining and protecting the validity, effectiveness and priority of this Agreement and/or of the Security Interest.

11.8 Application of Payments

Subject to the provisions of the Promissory Note, any and all payments made by the Debtor to the Secured Party in respect of the Obligations from time to time and any and all moneys realized by the Secured Party whether hereunder or otherwise may be applied by the Secured Party to such part or parts of the Obligations as the Secured Party shall in its sole discretion determine. The Secured Party shall at all times and from time to time have the right to change any application so made.

11.9 Assignment

Except as permitted under the Promissory Note, the Debtor may not assign any of its rights or benefits under this Agreement or delegate any of its duties or obligations without the prior written consent of the Secured Party.

11.10 Successors and Assigns

This Agreement shall:

- (a) be binding upon and enforceable against the Debtor, its successors and permitted assigns; and
- (b) enure to the benefit of and be enforceable by the Secured Party and its successors and assigns.

11.11 Further Assurances

The Debtor shall, from time to time hereafter and upon any reasonable request of the Secured Party, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the Debtor, all further acts, documents and things as may be required or necessary

for the purposes of giving effect to this Agreement or to more fully state the obligations of the Debtor as set out herein or to make any recording, file any notice or obtain any consents, all as may be necessary or appropriate in connection therewith.

11.12 Counterparts

(a) This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in counterparts, with the same effect as if both parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

(b) To evidence the fact that it has executed this Agreement or any other document contemplated by or delivered under or in connection with this Agreement, a party may transmit an executed copy to the other party by fax or by electronic mail. The transmitting party shall be deemed to have delivered this Agreement or such document, as the case may be, on the date it so transmitted such executed copy, unless the parties agree to some other date as the date of delivery.

(c) Unless otherwise provided or agreed by the parties, a party transmitting an executed copy of this Agreement or such other document by such electronic means shall promptly thereafter deliver to the other party a copy bearing its original signature, but any failure or delay in so doing shall not derogate in any way from the sufficiency or effectiveness of that party having electronically transmitted its executed copy.

(d) The signature of an individual executing this Agreement or such other document on behalf of a party, if sent and received by electronic mail or fax transmission, will be deemed to be genuine in the absence of evidence to the contrary and thus effective in the hands of the recipient, and binding upon the individual whose signature it reproduces and upon the party on whose behalf that individual signed, for all purposes and with the same effect as if it were the original signature of that individual.

11.13 Survival

It is the express intention and agreement of the parties hereto that all covenants, representations, warranties and waivers and indemnities made by the Debtor herein shall survive the execution and delivery of this Agreement until all Obligations have been fully satisfied and performed by the Debtor and the Promissory Note has been terminated in accordance with its terms.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

CUMBERLAND 1 LP, by its general
partner, URBANCORP
CUMBERLAND 1 GP INC.

by

Noah Goldstein
Marcus J. Smith
URBANCORP RENEWABLE
POWER INC.

by

Name:

Title:

Alan Sustkin
President

SCHEDULE 3.3

NAMES

Business Names

Urbancorp Renewable Power Inc.

SCHEDULE 3.5

LOCATION OF COLLATERAL

- 1. 170 SUDBURY STREET, TORONTO**
- 2. 150 SUDBURY STREET, TORONTO**
- 3. 38 JOE SHUSTER WAY, TORONTO**
- 4. 36 LISGAR STREET, TORONTO**

SCHEDULE 3.6(A)
SECURITIES AND LLC INTERESTS

SCHEDULE 3.6(B)
OTHER INVESTMENT PROPERTY

SCHEDULE 3.6(C)

LOCATION OF INVESTMENT PROPERTY COLLATERAL

SCHEDULE 3.7
INTELLECTUAL PROPERTY

Appendix “I”

Court File No.

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

BETWEEN:

**KSV KOFMAN INC., by and on behalf of URBANCORP CUMBERLAND 1 LP,
by its general partner, URBANCORP CUMBERLAND 1 GP INC.**

Applicant

- and -

URBANCORP RENEWABLE POWER INC.

Respondent

Application Under Section 101 of the *Courts of Justice Act*, R.S.O. 1990,
c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, as amended

CONSENT

The undersigned, KSV Kofman Inc., hereby consents to act as receiver and receiver and manager, without security, of all assets, undertakings and properties of Urbancorp Renewable Power Inc., pursuant to the provisions of subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and the terms of an order substantially in the form filed in the above proceeding.

DATED at Toronto, this 21st day of June, 2018.

KSV KOFMAN INC

by 

Name: Bobby Kofman
Title: Managing Director

**KSV Kofman Inc., by and on behalf of Urbancorp and Urbancorp Renewable Power Inc.
Cumberland 1 LP**

Court File No: CL

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

CONSENT

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