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

June 21, 2023

and

Third Report to Court of KSV Restructuring Inc. as Licensed Insolvency Trustee of Urbancorp Management Inc.

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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

FIFTY-SEVENTH REPORT OF KSV RESTRUCTURING INC. AS MONITOR

- AND -

Estate File No.: 31-2743224

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF URBANCORP MANAGEMENT INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

THIRD REPORT OF KSV RESTRUCTURING INC.
AS LICENSED INSOLVENCY TRUSTEE OF
URBANCORP MANAGEMENT INC.

JUNE 21, 2023

1.0 Introduction

1.1 Cumberland CCAA Entities

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("**Patricia**"), Urbancorp (Mallow) Inc. ("**Mallow**"), Urbancorp Downsview Park Development Inc. ("**Downsview**"), Urbancorp (Lawrence) Inc. ("**Lawrence**") and Urbancorp Toronto Management Inc. ("**UTMI**") each filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence and UTMI are referred to as the "**NOI Entities**"). KSV Kofman Inc. was appointed as the Proposal Trustee of each of the NOI Entities. On August 31, 2020, KSV Kofman changed its name to KSV Restructuring Inc. ("**KSV**").

2. Pursuant to an Order dated May 18, 2016 (the "**Initial Order**") made by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), the NOI Entities, together with the entities listed on Schedule "A" attached (collectively, the "**Cumberland CCAA Entities**" and each a "**Cumberland CCAA Entity**") were granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") and KSV was appointed monitor (the "**Monitor**") of the Cumberland CCAA Entities (the "**CCAA Proceedings**"). A copy of the Initial Order is attached as Appendix "A". The corporate chart for the Cumberland CCAA Entities is provided in Appendix "B".

3. The stay of proceedings for the Cumberland CCAA Entities expires on June 30, 2023.

4. The material issues remaining to be addressed in these proceedings are:

   a) completing litigation with Mattamy Homes Inc. ("**Mattamy**") in respect of whether any management fees are payable to UTMI (the "**Management Fees**") on the Downsview Project (as defined below), and the distribution to creditors if UTMI receives any Management Fees; and

   b) dealing with Canada Revenue Agency ("**CRA**") to attempt to obtain clearance certificates in respect of the Geothermal Asset Owners (as defined below) so that the Monitor can make the final distributions in these proceedings, which would be made by way of intercorporate dividend to Urbancorp Inc. ("**UCI**") from the funds held by the Monitor on behalf of the Geothermal Asset Owners.

5. As discussed below, the Monitor has advanced both issues since the last stay extension motion; however, the management fee issue is subject to ongoing litigation with Mattamy (as discussed herein) and the amount of time required to resolve tax matters with CRA is beyond the Monitor's control.

6. The Monitor is seeking an extension of the stay of proceedings until September 29, 2023 to advance the remaining issues. The Monitor is of the view that unless a settlement is reached with Mattamy, it is unlikely that the litigation with Mattamy will be resolved prior to the end of September, and the tax issues are unlikely to be resolved by that date. Accordingly, the Monitor believes an extension to the end of September is appropriate in the circumstances.

1.2 Urbancorp Management Inc.

1. A bankruptcy order was made against Urbancorp Management Inc. ("**UMI**") by this Court on May 20, 2021 based on an application made on January 26, 2021 by the Monitor of UTMI. KSV was appointed as licensed insolvency trustee (the "**Trustee**") of UMI. Upon resolution of certain tax issues resulting from the Urbancorp Group's historical tax planning, the Trustee intends to immediately make distributions to UMI's creditors and to seek its discharge. The Urbancorp Group's historical tax planning has required significant investigation by the Trustee and various other professionals involved in these proceedings. An update on UMI's bankruptcy is provided in Section 5 below.

1.3 Urbancorp Inc., Recognition of Foreign Proceedings

1. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel issued a decision appointing Guy Gissin as the functionary officer and foreign representative (the "**Foreign Representative**") of UCI and granting him certain powers, authorities and responsibilities over UCI (the "**Israeli Proceedings**").

2. On May 18, 2016, the Court issued two orders under Part IV of the CCAA, which:

   a) recognized the Israeli Proceedings as a "foreign main proceeding";

   b) recognized Mr. Gissin as Foreign Representative of UCI; and

   c) appointed KSV as the Information Officer.

1.4 Purposes of this Report

1. The purposes of this report ("**Report**") are to:

   a) provide an update on the CCAA Proceedings;

   b) provide the rationale for extending the stay of proceedings from June 30 to September 29, 2023;

   c) report on the consolidated cash flow projection of the Cumberland CCAA Entities from July 1 to September 30, 2023 (the "**Cash-Flow Statement**");

   d) summarize and seek approval of the fees and expenses of KSV, as Monitor of the Cumberland CCAA Entities, the Monitor's counsel, Davies Ward Phillips & Vineberg LLP ("**Davies**"), and the Cumberland CCAA Entities' counsel, DLA Piper (Canada) LLP ("**DLA**"), from March 1 to May 31, 2023;

   e) provide an update on the bankruptcy proceedings of UMI; and

   f) recommend that the Court issue orders:

      i. granting an extension of the stay of proceedings for the Cumberland CCAA Entities to September 29, 2023;

      ii. approving this Report and the activities of the Monitor, as detailed in this Report; and

      iii. approving the fees and disbursements of the Monitor, Davies and DLA, as detailed in this Report.

1.5 Currency

1. Unless otherwise stated, all currency references in this Report are to Canadian dollars.

1.6 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the Cumberland CCAA Entities, the books and records of the Cumberland CCAA Entities, discussions with representatives of the Cumberland CCAA Entities, discussions with the financial and legal advisors of the Foreign Representative, being B. Riley Farber (formerly the Farber Group) and Dentons Canada LLP ("**Dentons**"), respectively, and representatives of Mattamy, and its legal counsel, Cassels Brock & Blackwell LLP and Lax O'Sullivan Lisus Gottlieb LLP. The Monitor has not performed an audit or other verification of such information.

2. The Monitor has not audited, reviewed or otherwise verified the accuracy or completeness of the financial information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

3. An examination of the Cash Flow Statement 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 Cumberland CCAA Entities' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

4. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Monitor in preparing this Report. Other than the Court, any party wishing to place reliance on the Cumberland CCAA Entities' financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

2.0 Background

1. The Urbancorp Group of Companies (the "**Urbancorp Group**") was primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area.

2. UCI was incorporated on June 19, 2015 to raise 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**").

3. From the monies raised in the IPO, UCI made unsecured loans (the "**Shareholder Loans**") totalling approximately $46 million to the NOI Entities (other than UTMI) so that these entities could repay loan obligations owing at the time.

2.1 Distributions

1. KSV has distributed approximately $71 million to UCI as of the date of this Report.

2. UCI, through the Foreign Representative, has also obtained recoveries in Israel from litigation it commenced against various parties involved in the underwriting of the Debentures, and is expected to have further recoveries in these CCAA Proceedings and from the CCAA proceedings in which The Fuller Landau Group Inc. ("**Fuller Landau**") is the CCAA monitor.

3. It is unclear to the Monitor whether the Debentureholders will have a full recovery on their advances to UCI, inclusive of interest and costs; however, the amounts repaid by KSV in its various capacities in these proceedings exceed the principal amount that was owing to the Debentureholders at the commencement of these proceedings.

4. The cash balance in the bank accounts of the Cumberland CCAA Entities and the Geothermal Asset Owners is provided below[1]:

(unaudited; $000s)	Bank Balance	Administration Cost Holdback	UCI Holdback
Cumberland CCAA Entities	238	238	-
Geothermal Asset Owners	2,790	600	2,190
	3,028	838	2,190

5. The amount held back for UCI ($2.190 million) (the "**UCI holdback**") is discussed in Section 3.3 below.

3.0 Update on CCAA Proceedings

3.1 Downsview

1. Downsview Homes Inc. ("**DHI**") owns land located at 2995 Keele Street in Toronto which is being developed into condominiums and other residences (the "**Downsview Project**"). At the outset of the Cumberland CCAA Proceedings, the shares of DHI were owned by Downsview (51%) and Mattamy (Downsview) Limited ("**Mattamy**") (49%).

2. Downsview's only material assets were its common shares in DHI and the agreements (the "**Project Agreements**") relating to the Downsview Project (collectively, the "**Downsview Interest**").

3. In accordance with an approval and vesting order (the "**AVO Order**") issued by the Court on December 29, 2021, the Court approved a sale of the Downsview Interest to Mattamy in full satisfaction of all obligations owing by Downsview to Mattamy (the "**Transaction**"). The Transaction closed in early January 2022.

4. Pursuant to the terms of the AVO Order and the Transaction, UTMI retained whatever rights it may have, if any, to recover Management Fees under the Project Agreements, without prejudice to Mattamy's position that neither Downsview nor UTMI is entitled to the payment of Management Fees. If UTMI was successful arguing its entitlement to the Management Fees, a portion of the amounts paid in respect of those fees would ultimately be paid to UCI. The Monitor, Mattamy and the Foreign Representative agreed to have the Honourable Mr. Frank Newbould, K.C. (the "**Arbitrator**") arbitrate the Management Fee dispute (the "**Arbitration**").

5. On July 6, 2022, Mr. Newbould issued a decision awarding the Monitor the full amount it claims is owing to UTMI in respect of unpaid Management Fees (the "**Award**"), being $5.9 million. Costs in the amount of $91,800 were also awarded to the Monitor and $48,600 to the Foreign Representative (the "**Cost Award**") (the Award, together with the Cost Award, is defined as the "**Disputed Amount**").

[1] Excludes amounts held by KSV as Trustee of Urbancorp Management Inc.

6. On August 5, 2022, Mattamy issued an application on the Civil List pursuant to the *Arbitration Act, 1991* (the "**Application**") seeking an order:

   a) setting aside the Award pursuant to section 46 of the *Arbitration Act, 1991*;

   b) directing a new arbitration before a new arbitrator;

   c) setting aside the Cost Award; and

   d) staying the Award and the Cost Award pending the resolution of the Application.

7. Mattamy paid the Disputed Amount to the Monitor, in trust, pending hearing the Application.

8. By order of this court made on September 1, 2022, the Application was transferred to the Commercial List to be heard by this Court in the CCAA proceedings. The Application was heard on March 10, 2023. On May 19, 2023, Madam Justice Kimmel issued her Reasons for Decision (the "**Arbitration Decision**") which found that the Award be set aside because the Arbitrator refused to admit certain evidence which Mattamy sought to have admitted. The Arbitration Decision ordered a new arbitration before a new arbitrator. The Arbitration Decision also required the Monitor and Foreign Representative to pay partial indemnity costs to Mattamy in the amount of $30,000 (the "**Costs**"). A copy of the Arbitration Decision is attached as Appendix "C".

9. The Monitor has repaid the Disputed Amount to Mattamy, along with the Costs.

10. On June 9, 2023, the Monitor and the Foreign Representative brought a Joint Notice of Motion for Leave to Appeal the Arbitration Decision (the "**Appeal Notice**").

11. Recently, there have been settlement discussions among the Monitor, Foreign Representative and Mattamy. No settlement has been reached as of the date of this Report. Discussions are ongoing.

3.2 Geothermal Assets

1. Certain of the Cumberland CCAA Entities had an interest in geothermal assets (the "**Geothermal Assets**") located at four condominiums developed by entities in the Urbancorp Group, being the Edge, Bridge, Fuzion and Curve condominiums.

2. Urbancorp Renewable Power Inc. ("**URPI**") was incorporated to manage the Geothermal Assets. Pursuant to a Court order made on June 28, 2018, KSV was appointed as the receiver (the "**Receiver**") of URPI.

3. Through two transactions approved by the Court in these proceedings, the Geothermal Assets were sold for approximately $25 million (the "**Geothermal Transactions**").

4. Prior to the Geothermal Transactions, the Geothermal Assets were owned directly by 228 Queen's Quay West Ltd. ("**228**"), Vestaco Homes Inc. ("**Vestaco Homes**"), Urbancorp New Kings Inc. ("**UNKI**") and Vestaco Investments Inc. ("**Vestaco Investments**"), and indirectly by Urbancorp Power Holdings Inc. ("**UPHI**"), the parent company of 228, Vestaco Homes and Vestaco Investments [2] (collectively, the "**Geothermal Asset Owners**"). UCI is the parent of UPHI.

5. Additional recoveries from settlements between the Receiver and the condominium corporations for each of the Curve, Edge, Bridge and Fuzion condominiums totalled approximately $7 million. Net of realization costs and harmonized sales tax remitted, the proceeds from the Geothermal Transactions have been distributed as set out in the table below.

(unaudited; $000s)					
Recipient	Edge[3]	Bridge[4]	Fuzion[5]	Curve[6]	Total
UCI	1,584	5,725	2,675	12	9,996
Fuller Landau	8,288	-	-	700	8,988
King Towns North Inc.	-	2,049	-	-	2,049
Other[7]	-	-	2,182		2,182
Total	9,872	7,774	4,857	712	23,215

3.3 UCI Holdback

1. Pursuant to orders of the court dated May 27, 2021, the Monitor was authorized to distribute to UCI $1,584,000 and $4,974,000 from 228 and Vestaco Homes, respectively. These amounts were paid by the Monitor on June 1, 2021.

2. The Monitor filed 2020 tax returns for 228 and Vestaco Homes and paid taxes of approximately $93,000 and $2,428,000 for 228 and Vestaco Homes, respectively. The Monitor also filed nil returns for 2021 for 228 and Vestaco Homes. At the time of filing the Vestaco Homes 2020 tax return, the claim filed by UMI[8] against Vestaco Homes for additional rent of $2,049,000 (the "**Additional Rent**") had not been determined. On September 16, 2021, this Court ordered, *inter alia*, the Monitor, on behalf of Vestaco Homes, to pay $2,049,000 to UMI. The Monitor paid this amount to UMI, which, as noted, is in bankruptcy.

[2] Urbancorp Power Holdings Inc. is a direct subsidiary of UCI and owned each of the Geothermal Asset Owners other than UNKI, which owned the Fuzion asset and was indirectly owned by Urbancorp Cumberland 1 LP. ("**Cumberland**")

[3] Owned by 228.

[4] Owned by Vestaco Homes.

[5] Owned by UNKI.

[6] Owned by Vestaco Investments.

[7] Mainly represents distributions to First Capital Realty Inc. in respect of a mortgage on the Fuzion geothermal assets.

[8] This claim was made by UMI prior to its bankruptcy. The shareholder of UMI is believed to be the Saskin Family Trust, which is not subject to the CCAA proceedings. Subsequently, KSV was appointed as the Licensed Insolvency Trustee of this entity.

3. The Geothermal Asset Owners are solvent[9] and all residual funds, net of professional fees, can be distributed by dividend to UCI as the sole shareholder of UPHI. On July 27, 2022, the Court issued an order authorizing the Monitor to wind-up and dissolve each of the Geothermal Asset Owners and to distribute by way of intercorporate dividends the UCI Holdback, together with tax refunds referenced in subsection 4. below, to UCI. As part of the wind-up, the Monitor requires clearance certificates from CRA confirming that the Geothermal Asset Owners are not indebted to CRA for income taxes or HST (the "**Clearance Certificates**"). The process to request Clearance Certificates requires the Geothermal Asset Owners to first file up to date tax returns and to obtain assessments or re-assessments from CRA. As the Geothermal Asset Owners have not been carrying on any business activities since completion of the sale of the Geothermal Assets in 2020, the Monitor intends to request Clearance Certificates for the periods up to December 31, 2022.

4. As a result of being required to pay the Additional Rent, the Monitor is required to file an amended 2020 tax return for Vestaco Homes. On a preliminary basis, it appears the filing of the amended 2020 tax return would result in a refund of approximately $540,000. In addition, it appears that there is a potential refundable tax of approximately $1,145,000 available to Vestaco Homes; this potential refundable tax would be available provided Vestaco Homes pays dividends of approximately $3 million. The Monitor is working with tax advisors from Davies and the Urbancorp Group's accountants, MNP LLP ("**MNP**"), on the preparation of amended tax returns and the 2022 tax returns for the Geothermal Asset Owners. Due to the CCAA proceedings, and the significant tax refunds that will be claimed, the Monitor is unable to predict when the tax returns will be assessed, and the refunds and Clearance Certificates received. There is significant complexity related to the tax filings given the historical tax planning undertaken by the Urbancorp Group.

3.4 UTMI

1. UTMI provided back-office support for the Urbancorp Group, including human resources and accounting.

2. If the Monitor and Foreign Representative are successful in their litigation with Mattamy, UTMI would be entitled to approximately $5.9 million. If Mattamy is successful in the litigation, no amounts would be payable to UTMI.

3. UCI indirectly has claims against UTMI as a result of intercompany advances made during the CCAA proceedings by Cumberland to UTMI to fund UTMI's payroll, professional fees and other back-office expenses. These advances (the "**Intercompany Advances**") are secured by an intercompany charge in the amount of $1 million approved in the Initial Order. The Monitor has performed a reconciliation of all amounts advanced from Cumberland to fund UTMI during these proceedings. The Monitor's reconciliation reflects that $4.2 million was owing to Cumberland as of December 31, 2022, including interest at 15%[10], which continues to accrue. If there are recoveries as a result of the Downsview litigation, the Monitor intends to bring a motion on notice to UTMI's largest unsecured creditors (based on its present creditors' list) to increase the charge for the amounts owing to UCI.

[9] Other than Vestaco Investments Inc. The Monitor will not take steps to wind-up and dissolve this entity.

[10] The interest rate on the Intercompany Advances was calculated at 15% based on the Mattamy debtor-in-possession loan approved at the outset of the Cumberland CCAA Proceedings.

4. On September 15, 2016, the Court issued an order establishing a procedure to identify and quantify claims against the Cumberland CCAA Entities and against the current and former directors and officers of the Cumberland CCAA Entities, as amended by a further order dated October 25, 2016 (the "**Claims Procedure**").

5. Pursuant to the terms of the Claims Procedure, the Monitor carried out a claims process. At the date of the Claims Procedure, there were no assets available for distribution by UTMI and it was not foreseeable at that time that there would be. Accordingly, the Monitor did not believe it was appropriate to incur professional costs reviewing claims against UTMI when it appeared that there would be no monies available for distribution to UTMI's creditors. The Monitor only intends to review the claims against UTMI if there are monies available following resolution or settlement of the Management Fee issue.

4.0 Proposal by Dig Developments

1. On April 16, 2023, Dig Developments Inc., a company owned and controlled by Alan Saskin's family, filed a settlement proposal in the Israeli Court overseeing UCI's proceedings in Israel (the "**Settlement Proposal**"). The Settlement Proposal provides "*monetary consideration for creditors in the sum of up to 39 million NIS (including 18 million NIS of funds currently deposited with the Officer of the Court*[11]*), as well as fees for the Officer of the Court in the additional sum of 2 million NIS (including VAT)*[12]*. Against all of this, the Investor requests to receive the Company as well as a full exemption from claims against the Company, the officers and its shareholders*". A copy of the Settlement Proposal is attached as Appendix "D". The Monitor understands a date has not yet been scheduled to vote on the Settlement Proposal.

2. Since the time of the Settlement Proposal, the Foreign Representative and Mr. Saskin have requested certain information from the Monitor regarding potential recoveries from the Cumberland CCAA Entities. The Monitor provided a copy of an analysis it prepared to the Foreign Representative, Mr. Saskin and a representative of the individual who is believed to represent the largest Debentureholder. The Monitor advised each of these parties that it provided the same information to all parties. The analysis reflects that potential recoveries to UCI range from $1.6 million to $9.6 million. The major factors affecting the range include potential tax refunds and the results of the Mattamy litigation.

5.0 UMI

1. KSV is Trustee of UMI.

2. Based on the UMI Decision, UMI received $2.049 million from the sale of the Geothermal Assets owned by Vestaco Homes as Additional Rent.

[11] Believed to be Mr. Gissin, the Foreign Representative, as an officer of the Israeli Court.

[12] 41 million NIS is approximately C$15.2 million assuming the exchange rate of June 15, 2023 (NIS1/CAD0.37).

3. The claims filed against UMI total approximately $30.5 million (the "**Claims**"). A summary of the approximate amount of the Claims filed in the bankruptcy is provided in the table below.

Creditor	$000s
Claimants controlled by KSV	8,800
Claimants controlled by the Saskin family	1,619
Claimants controlled by Fuller Landau	1,453
UCI	18,600
Third parties	71
Total	$30,543

4. The Claims, with the exception of the UCI claim (the "**UCI Claim**"), which is discussed separately below, are primarily a result of related-party transactions over numerous years. In order to verify the accuracy of the Claims, the Trustee has relied on the records of the Cumberland CCAA Entities and UMI. The Trustee has communicated with representatives of the Saskin family and Fuller Landau regarding issues with their respective claims.

5. The Foreign Representative has filed a claim of approximately $18.6 million in the UMI estate on behalf of UCI. The basis for the UCI Claim is a judgment obtained by the Foreign Representative in Israel against, among others, UMI (the "**Israeli Judgment**"). The Israeli Judgment was obtained after the commencement of the bankruptcy, without notice to the Trustee, and in spite of the stay of proceedings against UMI. The Trustee has been in discussions with the Foreign Representative's advisors concerning this claim. The difference in the amount that would be received by UCI as a result of admitting its claim and not admitting its claim is approximately $200,000. The Trustee is arranging an inspector meeting to discuss this claim so that it can be resolved.

6. The Trustee has been in communications with MNP regarding the tax position of UMI. The Trustee, in consultation with MNP, has identified two potential tax issues, being (i) the $2,049,000 "Additional Rent" that UMI received from Vestaco Homes could create a tax liability for UMI that might be required to be reported over a period to 2060 (the term of the underlying lease); and (ii) UMI has a $5 million Promissory Note Receivable from UTMI (the "**Promissory Note**"). The Promissory Note was established in 2012 as part of a tax plan; the Promissory Note, for tax purposes, has a NIL cost base. Any recovery on the Promissory Note, including by way of set-off, could create additional taxable income for UMI. The Trustee is working with MNP to consider the tax consequences to the UMI estate of the foregoing two issues.

7. Once the tax matters are finalized, the Trustee intends to recommend to the Inspector of UMI that a distribution be made to UMI's creditors and to discharge the Trustee.

8. The Trustee continues to advance the administration of the UMI bankruptcy estate. Addressing issues arising from the Urbancorp's historical tax planning are once again a gating issue to completion.

6.0 Cash Flow Forecast

1. A consolidated cash flow projection has been prepared for the Cumberland CCAA Entities from July 1, 2023 to September 30, 2023 (the "**Period**"). The Cash-Flow Statement and the Cumberland CCAA Entities' statutory report on the cash flow pursuant to Section 10(2)(b) of the CCAA are attached in Appendices "E" and "F", respectively.

2. The expenses in the Cash-Flow Statement are primarily general and administrative expenses and professional fees. The Cumberland CCAA Entities are projected to have sufficient cash to pay all disbursements during the Period.

3. Based on the Monitor's review of the Cash-Flow Statement, there are no material assumptions which appear unreasonable. The Monitor's statutory report on the cash flow is attached as Appendix "G".

7.0 Request for an Extension

1. The Cumberland CCAA Entities are seeking an extension of the stay of proceedings from July 1 to September 29, 2023. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:

   a) the Cumberland CCAA Entities are acting in good faith and with due diligence;

   b) no creditor will be prejudiced if the extensions are granted;

   c) as of the date of this Report, neither the Cumberland CCAA Entities nor the Monitor is aware of any party opposed to an extension; and

   d) it will provide the Monitor further time to:

      i. advance, and potentially resolve, the litigation with Mattamy;

      ii. advance the claims determination process for UTMI depending on the outcome of the litigation with Mattamy; and

      iii. deal with outstanding administrative matters, including filing tax returns and dealing with CRA regarding the clearance certificates, which will allow for further distributions to UCI once received.

8.0 Professional Fees

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

		($)			
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	Mar 1/23 – May 31/23	69,163.80	-	68,163.80	667.41
Davies	Mar 1/23 – May 31/23	113,144.50	108.83	113,253.33	1,328.00
DLA	Mar 1/23 – May 31/23	4,117.50	339.00	4,456.50	675.00
Total		186,425.80	447.83	185,873.63	

2. Detailed invoices are provided in the exhibits to the fee affidavits filed by representatives of KSV, Davies and DLA which are provided in Appendices "H", "I" and "J", respectively.

3. Since the last fee approval motion, the main matters addressed by Davies include the litigation with Mattamy and dealing with tax matters.

4. As reflected in the table above, DLA's legal fees since the last fee approval motion have been insignificant.

5. The Monitor is of the view that the hourly rates charged by Davies and DLA are consistent with rates charged by law firms practicing in restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances.

9.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in Section 1.4(1)(f) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

AND IN ITS CAPACITY AS LICENSED INSOLVENCY TRUSTEE OF
URBANCORP MANAGEMENT INC.
AND NOT IN ITS PERSONAL CAPACITY

Schedule “A”

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

Appendix “A”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	**WEDNESDAY, THE 18TH**
	)	
JUSTICE NEWBOULD	)	**DAY OF MAY, 2016**

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

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

INITIAL ORDER

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

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

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

SERVICE

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

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies, save and except Urbancorp New Kings Inc. ("**UNKI**") which shall not be an Applicant hereunder, and shall be removed from the style of cause in these proceedings and such style of cause shall be hereafter amended to exclude UNKI.

3. **THIS COURT ORDERS AND DECLARES** that although not Applicants, the Urbancorp CCAA Entities' affiliated Corporations and Limited Partnerships listed in **Schedule "A"** to this Order (the "**Non-Applicant UC Entities**") are proper parties to these proceedings and shall enjoy the benefits of the protections and authorizations provided by this Order. (The Applicants together with the Non-Applicant UC Entities are hereinafter referred to as the "**Urbancorp CCAA Entities**").

4. **THIS COURT ORDERS AND DECLARES** that the proposal proceedings of each of Urbancorp Toronto Management Inc. (Estate No. 31-2114055), Urbancorp Downsview Park Developments Inc. (Estate No. 31-2114054), Urbancorp (Patricia) Inc. (Estate No. 31-2114050), Urbancorp (Mallow) Inc. (Estate No. 31-2114049), Urbancorp (Lawrence) Inc. (Estate No. 31-2114048) and Urbancorp (St. Clair Village) Inc. (Estate No. 31-2114053) (collectively, the "**Urbancorp NOI Entities**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), be taken up and continued under the CCAA and that the provisions of Part III of the BIA shall have no further application to the Urbancorp NOI Entities.

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Urbancorp CCAA Entities in respect of these proceedings, at their standard rates and charges.

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

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Urbancorp CCAA Entities following the date of this Order.

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

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Urbancorp CCAA Entities in connection with the sale

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

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

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

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

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

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

RESTRUCTURING

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

(a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding $250,000 in any one transaction or $1,000,000 in the aggregate;

(b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

(c) pursue all avenues of refinancing (including Additional Interim Financing as hereinafter defined) of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) pursue a sale or development of some or all of any Urbancorp CCAA Entity's Business and Property,

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

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

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

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

NO PROCEEDINGS AGAINST THE URBANCORP CCAA ENTITIES OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

NON-DEROGATION OF RIGHTS

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

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

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

INTERIM FINANCING

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

PROTOCOL FOR CO-OPERATION

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

APPOINTMENT OF MONITOR

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

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

(a) cause the Urbancorp CCAA Entities, or any one or more of them, to exercise rights under and observe its obligations under paragraphs 8, 9, 10, 11, 12 and 13 above;

(b) conduct a process for the solicitation of proposals for additional interim financing of the Business to replace or augment the Interim Credit Facility (the "**Additional Interim Financing**"), which Additional Interim Financing shall be subject to the approval of the Court;

(c) cause the Urbancorp CCAA Entities to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Urbancorp CCAA Entities in dealing with the Property;

(d) conduct, supervise and direct one or more Court-approved sales and investor solicitation processes (with prior Court approval if deemed appropriate by the Monitor) for portions of the Property or the Business, including the solicitation of development proposals, and any procedures regarding the allocation and/or distribution of proceeds of any transactions;

(e) cause the Urbancorp CCAA Entities to administer the Property and operations of the Urbancorp CCAA Entities, including the control of receipts and disbursements, as the Monitor considers necessary or desirable for the purposes of completing any transaction, or for purposes of facilitating a Plan or Plans for some or all Applicants, or parts of the Business;

(f) propose or cause the Applicants or any one or more of them to propose one or more Plans in respect of the Applicants or any one or more of them;

(g) engage advisors or consultants or cause the Urbancorp CCAA Entities to engage advisors or consultants as the Monitor deems necessary or desirable to carry out the

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

(h) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter;

(i) meet and consult with the directors of the Urbancorp CCAA Entities as the Monitor deems necessary or appropriate;

(j) meet with and direct management of the Urbancorp CCAA Entities with respect to any of the foregoing including, without limitation, operational and restructuring matters;

(k) monitor the Urbancorp CCAA Entities' receipts and disbursements;

(l) approve Drawdown Requests under the Interim Credit Facility and any Additional Interim Facility;

(m) cause any Urbancorp CCAA Entity with available cash (an "**Intercompany Lender**") to loan some or all of that cash to another Urbancorp CCAA Entity (an "**Intercompany Borrower**") on an interest free inter-company basis (an "**Approved Intercompany Advance**") up to an aggregate of $1 million, which Approved Intercompany Advances shall be secured by the Intercompany Lender's Charge against the Property of the Intercompany Borrower, where in the Monitor's view the Approved Intercompany Advance secured by the Intercompany Lender's Charge does not prejudice the interest of the creditors of the Intercompany Lender and does not violate any agreement to which a Non-Applicant UC Entity is a party.

(n) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(o) assist the Urbancorp CCAA Entities in its preparation of the Urbancorp CCAA Entities' cash flow statements and reporting required by the Term Sheet or the Court;

(p) hold and administer creditors' or shareholders' meetings for voting on the Plan or Plans;

(q) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Urbancorp CCAA Entities, to the extent that is necessary to adequately assess the Urbancorp CCAA Entities business and financial affairs or to perform its duties arising under this Order;

(r) be at liberty to engage legal counsel, real estate experts, or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(s) perform such other duties as are required by this Order or by this Court from time to time; and

(t) to comply with the Protocol,

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

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

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

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

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

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

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

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

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

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

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

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

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

INTERCOMPANY LENDER'S CHARGE

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

INTERIM FINANCING

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

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

(a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge;

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

(a) neither the creation of the Charges nor the execution, delivery, or performance of the Interim Facility Term Sheet shall create or be deemed to constitute a breach by the Urbancorp CCAA Entities of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Urbancorp CCAA Entities entering into the Interim Facility Term Sheet or the creation of the Charges; and

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

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

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

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

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

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

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

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

MAY 18 2016

PER / PAR: RW

SCHEDULE "A"

List of Non Applicant Affilliates

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

SCHEDULE "B"

PROTOCOL
For Co-operation Among Canadian Court Officer and Israeli Functionary

BETWEEN:

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

- and -

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

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

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

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

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

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

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

1. The Israeli Parentco Officer will file an application under Part IV of the *Companies' Creditors Arrangement Act* ("CCAA"), seeking recognition of the Israeli Proceedings and of his appointment as foreign representative of Parentco thereunder, such application to seek recognition of the Israeli Proceedings as the "foreign main proceeding" with respect to Parentco. That application will include a request to appoint KSV as the Information Officer with respect to the Part IV CCAA proceedings of Parentco (the "**Part IV Proceedings**").

2. The Applicants will commence the CCAA Proceedings, proposing KSV to be appointed as Monitor with augmented powers so as to control ordinary course management and receipts and disbursements of funds for the Applicants. KSV acknowledges that the Israeli Parentco Officer shall have standing to appear before the Canadian Court as the representative of Parentco in the CCAA Proceedings.

3. The Israeli Parentco Officer and KSV agree that, with respect to the CCAA Proceedings:

   (a) KSV shall provide the Israeli Parentco Officer with regular and timely information updates regarding the ongoing status of the CCAA Proceedings as they unfold. KSV will also provide information and updates to the Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;

   (b) The Israeli Parentco Officer shall provide KSV with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Israeli Court that will negatively impact the Applicants or the CCAA Proceedings. The Israeli Parentco Officer will also provide information and updates to KSV prior to the commencement of the CCAA Proceedings;

   (c) KSV shall provide the Israeli Parentco Officer with at least three business days' prior notice (including full materials, translated into English) of any proceeding, motion or action it takes in the Canadian Court that will negatively impact the Urbancorp Inc. or the Israeli Proceedings. KSV will also provide information and updates to Israeli Parentco Officer prior to the commencement of the CCAA Proceedings;

   (d) KSV shall provide to the Israeli Parentco Officer copies of all information pertaining to the Applicants:

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

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

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

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

(i) in the Israeli Parentco Officer's possession that it considers material to the Israeli Proceedings and is not subject to privilege or confidentiality restrictions; or

(ii) as reasonably requested by KSV, provided that this shall not entitle KSV or any party requesting information through them to receive information on ongoing reviews or investigations being undertaken by the Israeli Parentco Officer or others in connection with the Israeli Proceedings; and

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

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

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

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

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

4. The Israeli Parentco Officer and KSV further agree to cooperate as follows:

(a) to the extent practicable, each shall share with the other copies of materials to be filed with their respective courts (but not drafts of any such materials), prior to the public filing of same. This provision may not apply to materials submitted in the course of seeking directions from the Canadian Court in the event of a disagreement between the Israeli Parentco Officer and KSV over the working-out of the sale process; and

(b) The Israeli Parentco Officer agrees that any information provided to him by KSV in the course of the sale process or concerning any restructuring alternatives, shall remain confidential and not be disclosed to any party without KSV's consent, not to be unreasonably withheld, it being acknowledged that the Israeli Parentco Officer shall be entitled to provide information to its advisors (provided they agree to be bound by the confidentiality restrictions detailed herein) and to both the Israeli Court and the Official Receiver of the Israeli Ministry of Justice, in each case on a sealed and private basis to obtain directions as needed, or as may be set forth in the Non-Disclosure Agreement executed by the Israeli Parentco Officer on May 11, 2016.

5. The Israeli Parentco Officer and KSV acknowledge that, at present, KSV has the amount of CDN$1.9 million in a trust account, which funds KSV received from Urbancorp Partner (King South) Inc. ("**UPKSI**"), and which funds KSV has proposed to utilize as a form of interim funding for certain costs of the CCAA Proceedings, to be secured by a priming charge in favour of UPKSI against the assets of the entities utilizing the funds. KSV acknowledges that it will seek to obtain, as soon as possible, a general purpose DIP loan from third party sources and sufficient to repay amounts borrowed from UPKSI, using what are otherwise unencumbered assets of the Applicants (the "**DIP Loan**").

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

6. The Israeli Parentco Officer shall support the commencement of the CCAA Proceedings. Provided that KSV is acting in good faith and has not engaged in willful misconduct or gross negligence, the Israeli Parentco Officer shall not take any steps to attempt to remove KSV as either the proposal trustee under the Proposal Proceedings or the monitor under the CCAA Proceedings or to in any way to interfere with or seek to limit KSV's powers in such capacities or to suggest that KSV must take instruction from it or the Israeli Court or terminate the CCAA Proceedings without the consent of KSV or by order of the Canadian Court. Nothing herein shall be deemed to grant any additional claims, rights, security or priority to, or in respect of, the Parentco Bonds or to the trustee under the Parentco Bond Indenture or to the Israeli Parentco Officer as against the Applicants or any affiliate or direct or indirect subsidiary of Parentco. In the event of any restriction or termination of the Israeli Parentco Officer's powers by the Israeli Court, this Protocol shall be deemed to be modified accordingly such that the Israeli Parentco Officer's powers and authority hereunder are no greater that those given to him by the Israeli Court.

7. This Protocol shall be governed by laws of Ontario and the laws of Canada as applicable and all disputes or requests for direction in connection with this Protocol shall be determined by the Canadian Court. Nothing herein is or shall be deemed to be an attornment by KSV to the Israeli Court or the laws of Israel.

8. The Israeli Court Officer and KSV agree to use reasonable efforts to seek to commence the proceedings noted above on or before May 18, 2016. KSV shall support, to the extent necessary, an application by the Israeli Parentco Officer to commence the Part IV Proceedings, on terms consistent with this Protocol, even if commenced before the CCAA Proceedings.

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

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

DATED this _____ day of May, 2016.

Name of Witness:

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

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

By: _____
Name: Robert Kofman
Title: President

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

INITIAL ORDER
(May 18, 2016)

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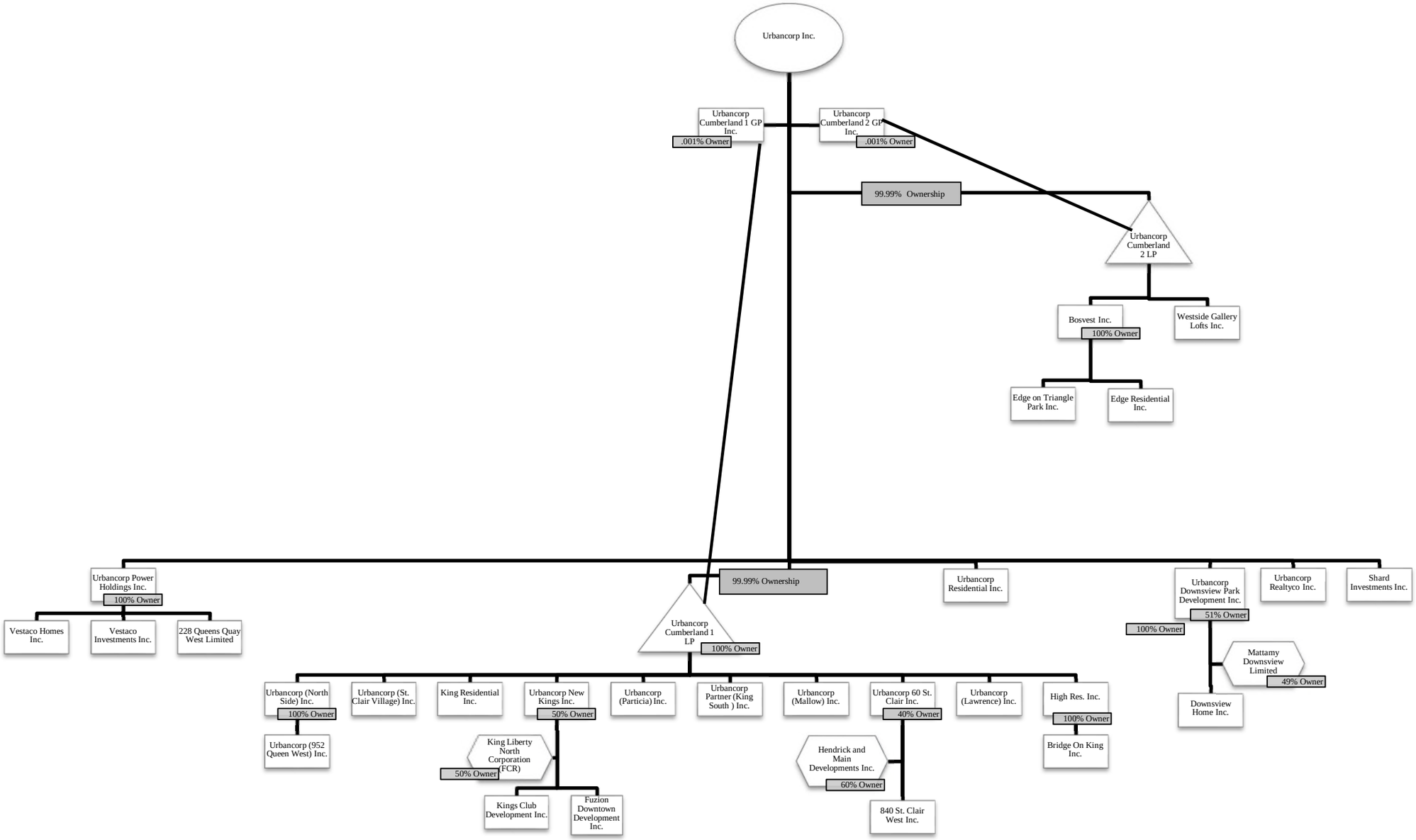
Lawyers for the Applicants

Appendix “B”

Appendix “A”


Urbancorp Inc.
Urbancorp Cumberland 1 GP Inc.
.001% Owner
Urbancorp Cumberland 2 GP Inc.
.001% Owner
99.99% Ownership
Urbancorp Cumberland 2 LP
Bosvest Inc.
100% Owner
Westside Gallery Lofts Inc.
Edge on Triangle Park Inc.
Edge Residential Inc.
Urbancorp Power Holdings Inc.
100% Owner
Vestaco Homes Inc.
Vestaco Investments Inc.
228 Queens Quay West Limited
99.99% Ownership
Urbancorp Cumberland 1 LP
100% Owner
Urbancorp Residential Inc.
Urbancorp Downsview Park Development Inc.
51% Owner
100% Owner
Mattamy Downsview Limited
49% Owner
Downsview Home Inc.
Urbancorp Realtyco Inc.
Shard Investments Inc.
Urbancorp (North Side) Inc.
100% Owner
Urbancorp (952 Queen West) Inc.
Urbancorp (St. Clair Village) Inc.
King Residential Inc.
Urbancorp New Kings Inc.
50% Owner
King Liberty North Corporation (FCR)
50% Owner
Kings Club Development Inc.
Fuzion Downtown Development Inc.
Urbancorp (Particia) Inc.
Urbancorp Partner (King South) Inc.
Urbancorp (Mallow) Inc.
Urbancorp 60 St. Clair Inc.
40% Owner
Hendrick and Main Developments Inc.
60% Owner
840 St. Clair West Inc.
Urbancorp (Lawrence) Inc.
High Res. Inc.
100% Owner
Bridge On King Inc.

Appendix “C”

CITATION: Mattamy (Downsview) Limited v. KSV Restructuring Inc. (Urbancorp), 2023 ONSC 3013
COURT FILE NO.: CV-16-11389-00CL and CV-22-00688349-00CL
DATE: 20230519

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

BETWEEN:	
MATTAMY (DOWNSVIEW) LIMITED Applicant	*Matthew Gottlieb* and *Niklas Holmberg*, for the Applicant
– and –	
KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE COURT APPOINTED MONITOR OF URBANCORP DOWNSVIEW PARK DEVELOPMENT INC. PURSUANT TO THE COMPANIES' CREDITORS ARRANGMENT ACT R.S.C. 1985, C. C-6. AS AMENDED, GUY GISSIN, IN HIS CAPACITY AS THE COURT APPOINTED FUNCTIONARY AND FOREIGN REPRESENTATIVE OF URBANCORP INC. BY ORDER OF THE DISTRICT COURT IN TEL AVIV-YAFO, ISRAEL Respondents	*Robin B. Schwill*, for the Respondent KSV Restructuring Inc., in its capacity as Monitor *Neil Rabinovitch*, for the Respondent Guy Gissin, in his capacity as the Court-appointed Israeli Functionary Officer and Foreign Representative of Urbancorp Inc. (the "Foreign Representative")
	HEARD: March 10, 2023

REASONS FOR DECISION
(Application to set aside Arbitral Award)

KIMMEL J.

The Application and Summary of Outcome

[1] Mattamy (Downsview) Limited ("Mattamy") seeks to set aside the arbitration award of the Honourable Frank J.C. Newbould, K.C. dated July 6, 2022 (the "Award") pursuant to s. 46 of the *Arbitration Act*, 1991 S.O. 1991, c. 17 (the "Act"). Mattamy does so on the basis that Mr. Newbould (the "Arbitrator") exceeded his jurisdiction by raising and deciding a New Issue (defined below) and on grounds of unfairness arising from his refusal to permit Mattamy to present certain evidence that it considered relevant to the New Issue, once raised.

[2] The relevant facts for this s. 46 application (having to do with the manner in which the New Issue arose and the submissions and evidence about it were received) and the applicable law regarding the test for a court to set aside a domestic arbitration award are, for the most part, not contentious. The parties disagree about the scope of the questions put to the Arbitrator (that set the parameters of his jurisdiction) and about whether the Arbitrator's exclusion of certain evidence amounts to a procedural unfairness that offends the principles of natural justice.

[3] For the reasons that follow, I find that the Arbitrator had the jurisdiction to raise the New Issue, which came within the broad scope of the questions submitted to arbitration. However, I find that the Arbitrator's refusal to admit certain evidence that Mattamy sought to tender in respect of the New Issue (with the consent of the respondents) was procedurally unfair to Mattamy and led to a failure of natural justice in the arbitration process. In these circumstances, the Award must be set aside and a new arbitration before a new arbitrator is ordered.

[4] The court does not lightly interfere with arbitration awards. Accordingly, I have undertaken a thorough review the history of the proceedings, the context in which the New Issue arose and was considered and the evidence that was permitted, and that which was excluded, in the process.

The CCAA Proceedings

[5] Downsview Homes Inc. ("DHI") owns land located at 2995 Keele St. in Toronto, on the former Downsview airport lands. On those lands, DHI developed a residential construction project comprised of condominiums, townhomes, semi-detached homes, and rental units (the "Downsview Project"). Urbancorp Downsview Park Development Inc. ("UDPDI") held a 51% ownership interest in DHI. The remaining 49% was held by Mattamy. The rights and obligations of UDPDI and Mattamy as co-owners of DHI were set out in the Amended and Restated Co-Ownership Agreement (the "Co-Ownership Agreement") signed in June and amended in July 2013. Additional terms were incorporated into from a separate Payment and Profit Distribution Adjustment Agreement dated July 29, 2013.

[6] UDPDI eventually sold its interest in DHI to Mattamy in the context of a CCAA proceeding that has been ongoing for seven years. On May 18, 2016, KSV Restructuring Inc. was appointed

monitor (the "Monitor") over UDPDI and its affiliated entities pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") in a proceeding on the Commercial List (the "CCAA Proceeding"). Mattamy became a lender in the CCAA Proceeding under a debtor-in-possession facility (the "DIP Facility"), secured by a charge over UDPDI's property that included its interest in DHI.

[7] The court subsequently approved a sale process proposed by the Monitor for the sale of UDPDI's interest in DHI in order to satisfy the outstanding DIP Facility by order dated June 30, 2021 (the "Sale Process Order").

The Arbitration

The Sale Process Order and Direction to Arbitrate the Consulting Fee Dispute

[8] In the Sale Process Order, the court also directed the Monitor to arbitrate various disputes (or assign them to the Court-appointed Israeli Functionary Officer and Foreign Representative of Urbancorp Inc. (the "Foreign Representative" or "Functionary") to arbitrate). The issues to be submitted to arbitration included, among other things, the determination of any Urbancorp Consulting Fees (as defined in the Co-Ownership Agreement) payable to Urbancorp Toronto Management Inc. ("UTMI") under the "Co-Ownership Agreement" (the "Consulting Fee Dispute"). The parties had agreed to submit any dispute arising under the Co-Ownership Agreement to arbitration pursuant to s. 12 thereof.

[9] The sale process did not result in any interest from potential purchasers, and eventually the court approved the sale of UDPDI's interest in DHI to Mattamy in consideration for, *inter alia*, the extinguishment of the DIP Facility. The agreement of purchase and sale (approved by this court's approval and vesting order dated December 29, 2021) provided in s. 2.7 that this purchase and sale was:

> Without prejudice to the Purchaser's [Mattamy's] position that neither the Seller [UDPDI]] nor UTMI are entitled to the payment of any amounts in respect of the Urbancorp Consulting Fee, the Purchaser acknowledges that no consideration is being paid to UTMI in respect of the Urbancorp Consulting Fee and as such UTMI retains whatever rights it may have, if any, to recover such amounts.

[10] This purchase and sale transaction (the "Transaction") closed in early January 2022 (the "Transfer Date").

The Terms of Appointment of the Arbitrator

[11] The Arbitrator was appointed pursuant to Terms of Appointment of the Arbitrator signed on May 18 and 19, 2022. The parties agreed that the arbitration "shall be final and binding and shall be the sole and exclusive remedy between the Parties regarding any claims presented to the Arbitrator." The Arbitrator was granted all of the powers of a Superior Court Judge under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 unless otherwise agreed by the parties.

[12] The Terms of Appointment also provided in s. 2.4 that:

> The arbitration shall be conducted in accordance with the agreement of the parties, and any mandatory requirements prescribed by law. The parties shall advise the Arbitrator as to the matters on which they have agreed respecting the conduct of the Arbitration. The Arbitrator shall provide directions, initially and from time to time, as to procedural matters on which the parties are not in agreement.

The Pleadings and Submissions in the Arbitration: Framing the Issues

[13] In the Notice of Request to Arbitrate dated March 23, 2022, the Monitor and the Foreign Representative sought a determination that UTMI was entitled to the Urbancorp Consulting Fee as at the Transfer Date. The amount claimed was $5.9 million. This was based on a calculation of Gross Receipts (as defined in the Co-Ownership Agreement) for the Downsview Project and the corresponding 1.5 percent Consulting Fee entitlement, with an acknowledgement that the threshold payment of $13,200,822 (on account of Mattamy's 4.5 percent Development Fee entitlement) had to first have been earned by, and paid to, Mattamy in accordance with the terms of the Co-Ownership Agreement.

[14] In their factum for the Arbitration, the Monitor and the Foreign Representative explained that the two key principles underlying the Consulting Fees Dispute were:

a. If and when UTMI became entitled to the Consulting Fees; and

b. The mechanics and timing of when they have to be paid.

[15] The evidence and written submissions for the Arbitration were pre-filed. The parties made oral submissions on June 3, 2022.

[16] Various points of dispute were raised during the Arbitration regarding the determination of UTMI's entitlement to the Urbancorp Consulting Fees as at the Transfer Date when UDPDI ceased to be a party to the Co-Ownership Agreement. One area of disagreement involved the interpretation of the definition of Gross Receipts in the Co-Ownership Agreement and whether Gross Receipts include the purchase price payable from the sale of residential condominium units that had been sold but had not closed as of Transfer Date.

[17] The definition of Gross Receipts in the Co-ownership Agreement is as follows:

> "Gross Receipts" means all cash revenues for any Accounting Period as determined in accordance with ASPE, including without limitation, proceeds from sale of all or any part of the Project Property (other than any sale under the Purchase Agreement), recoveries from front-ending of development charges items, revenues of a capital nature and proceeds from any financing derived by or on behalf of the Co-Owners from the ownership and operation of the Project Property *and including*: (1) *all revenues received from the sale of residential dwelling units*, parking units

> or storage units forming part of the Project; and … *provided however, that the following items of Gross Receipts shall be included on a cash basis*: … and (4) *the sale of all or any part of the Project Property (other than any sale under the Purchase Agreement), other than residential dwelling units, if applicable*. [Emphasis added.]

[18] The Monitor and Foreign Representative (on behalf of UDPDI and UTMI, the "Urbancorp parties") asserted in their factum that the definition of Gross Receipts specifically included revenues from the sale of residential dwellings on a non-cash basis and that this implied that revenues from sales were to be included in the Gross Receipts when the units were sold, not when the sale proceeds were actually collected. However nuanced this may be, the Urbancorp parties did not specifically assert in any of their pre-filed material for the Arbitration that the sale proceeds for the sale of residential condominium units in Phase 2 (Block A and P units) had been received, within the meaning of the definition of "Gross Receipts," prior to the Transfer Date.

The New Issue

[19] During the arbitration hearing, the Arbitrator asked questions about the following points that had not been covered in the parties' pre-filed evidence or submissions:

a. What do the ASPE [accounting standards for private enterprises] require for the sale of residential condominium units;

b. How the auditors on the project accounted for the sale of residential condominium units; and

c. The closing status for [Phase 2] Block A and P units, including dates of actual and anticipated closings.

[20] Mattamy says these questions were all directed to the "New Issue" of when the purchase price for residential condominium units in Phase 2, that had been sold but had not closed, ought to be considered or treated as having been received for the purposes of determining the Gross Receipts as at the Transfer Date.

[21] The unchallenged evidence of Mattamy on this application is that, "[b]efore the Arbitrator raised [the New Issue] at the hearing, there was no dispute between the parties as to when Gross Receipts were to be considered received. None of the parties took the position that Gross Receipts for Phase 2 (Block A and P units) had been received prior to the Transfer Date." The Urbancorp parties do not dispute that this was a New Issue raised by the Arbitrator.

[22] Mattamy's evidence that, if the New Issue had been raised before the hearing, Mattamy "would have made different arguments, lead different evidence, conducted cross-examinations differently and considered obtaining expert evidence from an accountant specializing in the application of ASPE accounting principles to the sale of residential condominium units" has also not been challenged.

The Arbitrator's Decision Regarding the Supplementary Evidence

[23] Since the parties had not filed any evidence or made any submissions about the New Issue raised by the Arbitrator, the hearing was adjourned and the parties were directed to deliver supplementary material. The further evidence that Mattamy sought to adduce in respect of the New Issue included a June 15, 2022 affidavit that attached portions of the ASPE as well as a handbook published by the Real Property Association of Canada ("REALPAC") entitled "Recommended Accounting Practices for Real Estate Investment and Development Entities Reporting in Accordance with ASPE" (the "Handbook"). The Handbook gives specific guidance on how ASPE is applied to sales of condominium units:

> 402.9.5. In Canada, the accounting for the sale of condominium units demonstrates the practical application of the requirements for significant acts of performance to be completed before revenue is recorded. Typically, a unit purchaser arranges to make the purchase and occupy the unit long before it is legally possible to obtain title because the declaration of the condominium corporation has not been registered. The date the declaration is registered is referred to as the date of final closing. However, unless there is reason to believe that the declaration would not ultimately be obtained, the sale is recorded once the purchaser has paid all amounts due on the interim closing, has undertaken to assume a mortgage for the balance of the purchase price, has the right to occupy the premises and has received an undertaking from the developer to be assigned title in due course.

[24] The Urbancorp parties objected to some aspects of Mattamy's proposed June 15, 2022 affidavit (although not the Handbook) and a case conference was scheduled for June 27, 2022. Mattamy advised that if there continued to be objections to its proposed supplementary evidence that it would bring a motion for leave to file the evidence based on a proper record. Further revisions were made to Mattamy's proposed supplementary evidence submitted in a June 23, 2022 affidavit (the "June 23 Affidavit") and negotiations between the parties continued in respect of same.

[25] The Arbitrator indicated on June 24, 2022 that he would rule on the evidence at the case conference. Mattamy asked that it be permitted to bring a formal motion for leave to file the June 23 Affidavit and to make submissions about it. The Arbitrator determined that he would make a decision about the proposed supplementary evidence at the case conference and invited the parties to make submissions at that time, which they both did in writing and orally.

[26] The Arbitrator orally ruled on which portions of the June 23 Affidavit would be allowed into evidence. He admitted the financial statements of DHI that state that they adopted a revenue recognition policy for pre-sold condominium units in accordance with ASPE. Revenue for the residential condominium sales was recognized in the financial statements as at the date of interim occupancy under the *Condominium Act*, 1998, S.O. 1998, c. 19, which had not been achieved as of the Transfer Date for units sold in Phase 2 Blocks A and P.

[27] However, among other deletions, the Arbitrator struck any and all references to the Handbook from the June 23 Affidavit. The ASPE revenue recognition policy adopted in DHI's financial statements was consistent with the guidance provided in the Handbook. The Handbook elaborates upon the rationale for this policy.

[28] The Arbitrator did not provide written reasons for his rulings. He was aware that the Urbancorp parties did not object to the inclusion of the Handbook references in evidence, but stated that, despite their consent, he had a "mind of his own".

The Arbitrator's Determination of the Consulting Fees Issue

[29] In accordance with the Arbitrator's ruling, Mattamy delivered a revised version of the June 23 Affidavit without the parts and exhibits that the Arbitrator struck. References to the Handbook and its excerpts were removed. Mattamy relied upon the DHI financial statements and their application of ASPE to support its contention that Gross Receipts should not include revenue from sales until that revenue had been recognized from an accounting point of view, at the interim closing date. That would have excluded the Phase 2 condominium sales, none of which reached the interim closing stage until after the Transfer Date.

[30] The Urbancorp parties provided supplementary submissions in response. They argued that revenue recognition principles for accounting purposes were not relevant to the calculation of Gross Receipts, which is not an accounting concept and was not stated to be tied to how a particular revenue item was recorded in the financial statements. To include non-cash revenues of a sale implies inclusion of the revenues when the units are sold and not when the sale proceeds are collected. They argued that, as a matter of contract interpretation, the definition of Gross Receipts provides "that revenues from sales are to be included even though certain amounts remain to be collected."

[31] The Arbitrator released the Award on July 6, 2023. The Award granted the Monitor the full amount claimed as owing to UTMI ($5.9 million) in respect of unpaid Urbancorp Consulting Fees, plus costs.

[32] The Arbitrator found that s. 6.15 of the Co-Ownership Agreement, read together with s. 6.6 and other provisions of that agreement, entitled Urbancorp to receive the Urbancorp Consulting Fee as long as it carried out its prescribed and assigned duties. The Arbitrator determined that the fact that Mattamy never requested Urbancorp to carry out any duties was irrelevant.

[33] The Arbitrator concluded that that the entitlement to the Urbancorp Consulting Fees was absolute until UDPDI ceased to be a co-owner under the Co-Ownership Agreement on the Transfer Date, to be calculated under s. 6.6 of the Co-Ownership Agreement based on 1.5 percent of Gross Receipts. The Arbitrator further ruled that Mattamy's obligation to pay the Consulting Fee was deferred until Mattamy received the agreed threshold amount of $13,200,822. There is no dispute that Mattamy has been or will eventually be paid this amount. This deferral did not impact UTMI's entitlement to the calculated fees accrued prior to the Transfer Date.

[34] Later in the Award, at paragraph 18, the Arbitrator stated that:

> I interpret the definition of Gross Receipts to not require that cash has actually been received before being included in Gross Receipts. I agree with Urbancorp that for the purposes of the Co-Ownership Agreement, revenues to determine Urbancorp's entitlement to its 1.5% consulting fee are to be treated as received when the units are sold, not when the sale proceeds are actually collected.

[35] Mattamy maintains that the decision to treat proceeds from the sale of Phase 2 condominium units as having been "received" prior to the Transfer Date was a function of the New Issue that the Arbitrator identified at the June 3, 2022 hearing. Mattamy complains that this issue was outside of the scope of the Arbitrator's jurisdiction and/or that it was unfair and a breach of the principles of natural justice for the New Issue to be decided without the evidence about the Handbook that the Arbitrator refused to allow Mattamy to file.

This Application – Issues and Analysis

[36] Mattamy commenced an application on the regular civil list in Toronto (under court file No. CV-22-00685084-0000) asking the court to set aside the Award and order a new arbitration under s. 46 of the Act. Upon a motion by the respondents, on September 1, 2022, Morawetz C.J. transferred Mattamy's application to the Commercial List to be heard in the CCAA proceedings (under court file No. CV-16-11389-00CL).

[37] Mattamy asks the court to determine whether:

a. the Award should be set aside pursuant to s. 46(1)3 of the Act for exceeding the scope of the Arbitration and the Arbitrator's jurisdiction?

b. the Award should be set aside pursuant to s. 46(1)6 of the Act for breach of the requirements of procedural fairness?

[38] This is not an appeal from the Arbitrator's Award. This application is concerned with the Arbitrator's approach to the determination of UMTI's entitlement to the Urbancorp Consulting Fees from a jurisdictional and fairness perspective.

a) Did the Arbitrator Exceed his Jurisdiction?

[39] Pursuant to s. 46(1)3 of the Act, the court may set aside an arbitral award if the "award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement".

[40] An arbitrator does not have inherent jurisdiction. Rather, an arbitrator's jurisdiction is derived exclusively from the authority conferred by the parties in their arbitration agreement and the terms of appointment of the arbitrator. See *Cricket Canada v. Bilal Syed*, 2017 ONSC 3301, at para. 35 and *Advanced Explorations Inc. v. Storm Capital Corp.*, 2014 ONSC 3918, 30 B.L.R. (5th) 79, at para. 57. This lack of inherent jurisdiction is not changed by the parties' agreement (in the Terms of Appointment) to give the Arbitrator all of the powers of a judge of the Ontario Superior Court of Justice.

[41] In any event, judges, even with inherent jurisdiction, do not have the jurisdiction to decide matters that fall outside of the scope of what the parties have claimed. See *Labatt Brewing Company Ltd v. NHL Enterprises Canada, L.P.*, 2011 ONCA 511, 106 O.R. (3d) 677, at para. 5.

[42] That said, the Urbancorp parties' Notice of Request to Arbitrate expressly sought a determination that UTMI was entitled to the Urbancorp Consulting Fees, calculated to be $5.9 million in accordance with the Co-Ownership Agreement.

[43] This Consulting Fee Dispute was broken down in the pre-filed factum of the Urbancorp parties to include the following determinations:

a. If and when UTMI became entitled to the Urbancorp Consulting Fees; and

b. The mechanics and timing of when they must be paid.

[44] The Arbitrator decided both the issues of UTMI's entitlement to Consulting Fees and the mechanics and timing of payment of same. It was decided that UTMI was entitled to unpaid Consulting Fees of $5,911,624 as at the Transfer Date which are to be paid at the same time as any further Development Management Fees beyond the amount of $13,200,822 are paid to Mattamy.

[45] According to the Court of Appeal in *Mexico v. Cargill, Incorporated*, 2011 ONCA 622, 107 O.R. (3d) 528, at para. 52, the determination of whether the Award went beyond the scope of the Arbitrator's jurisdiction involves the consideration of three questions:

a. What was the issue that the arbitral tribunal decided?

b. Was that issue within the submission to arbitration?

c. Is there anything in the arbitration agreement, properly interpreted, that precluded the tribunal from making the award?

[46] The questions of UTMI's entitlement to any Consulting Fees and the mechanics and timing of when they have to be paid that were decided by the Arbitrator fell squarely within the relief claimed in the Notice of Request to Arbitrate. These were the issues set out in the pleadings, which were provided to the Arbitrator prior to the Terms of Appointment being executed. They reflect the parties' agreement as to the matters in dispute and the bounds of the Arbitrator's jurisdiction. There was nothing in the Co-Ownership Agreement (that contains the parties' agreement to arbitrate) or the Terms of Appointment of the Arbitrator that precluded the Arbitrator from making the Award he did.

[47] Within the framework of the pleadings, there was always a dispute with respect to Phase 2 of the Project about entitlement to Consulting Fees on amounts received after the Transfer Date. The Urbancorp parties maintained that UTMI was entitled to Urbancorp Consulting Fees on those receipts for the reasons set out in their Request to Arbitrate and written submissions. Mattamy disagreed.

[48] The New Issue raised by the Arbitrator shifted the analysis by introducing a new point of interpretation and raising the question of whether monies paid after the Transfer Date could be considered or treated to have been received before the Transfer Date within the meaning of the

definition of Gross Receipts. Although this was a new way of looking at the question of entitlement to Consulting Fees and the determination of their quantum, I find that it did not fall outside of the scope of the broad questions that had been submitted to the Arbitrator to decide.

[49] The Arbitrator decided that UTMI had an entitlement to be paid Urbancorp Consulting Fees as at the Transfer Date, and determined the quantum of those fees and the mechanics and timing of when they must be paid. These were precisely the issues submitted to him to decide. The issues of entitlement (and quantum) of Urbancorp Consulting Fees as at the Transfer Date was tied to the competing interpretations that the parties put forward of the definition of Gross Receipts and what should be included in that calculation as at the Transfer Date. The New Issue was simply another data point and perspective to be considered as part of the entitlement and quantum questions.

[50] I find that the Arbitrator did not exceed his jurisdiction by having raised and considered the New Issue. I find no basis upon which the Award should be set aside under s. 46(1)3 of the Act.

b) Was there a Procedural Unfairness As a Result of the New Issue Raised by the Arbitrator?

[51] While I have determined that it was open to the Arbitrator to identify a New Issue that might inform the analysis and determination of a question that was been submitted to Arbitration, it remains to be determined whether the manner in which the evidence and submissions about the New Issue was received and considered was procedurally unfair to Mattamy.

[52] Section 19 of the Act requires that each party be treated equally and fairly. This incorporates the requirements of natural justice and procedural fairness, and not only the right to be heard but the right to an independent and impartial hearing. See *Baffinland v. Tower-EBC*, 2022 ONSC 1900, at para. 77.

[53] Section 46(1)6 of the Act empowers the Court to set aside an award on the basis that the applicant was not treated equally and fairly, or was not given an opportunity to present a case or to respond to another party's case. Having regard to the context of the proceeding as a whole, if the court determines that the applicant was denied natural justice or procedural fairness, any resulting award must be set aside. See *Nasjjec v. Nuyork*, 2015 ONSC 4978, 51 B.L.R. (5th) 182, at paras. 40, 41.

[54] When assessing the level of procedural fairness, courts examine various factors including sufficiency of opportunity granted to parties' counsel to present their case and the thoroughness of the procedure engaged by the parties. See *Baffinland*, at paras. 84, 89.

[55] The parties agree that the Arbitrator raised a New Issue not previously identified by either side. The three specific points about which the Arbitrator invited the parties to submit further evidence were focused on the New Issue (namely, whether the purchase price payable for residential condominium units in Phase 2 Blocks A and P that were under contract for sale before the Transfer Date had been "received" for the purposes of determining the Gross Receipts as at that date, even though the purchase monies had not actually been paid).

[56] As described earlier in this endorsement, during the Arbitration hearing, the Arbitrator asked about the following three points that had not been covered in the parties' pre-filed evidence or submissions about whether UTMI was entitled to any Consulting Fees as at the Transfer Date:

a. What the ASPE accounting principles require for the sale of residential condominium units?

b. How the auditors on the project accounted for the sale of residential condominium units?

c. The closing status for [Phase 2] Block A and P units, including dates of actual and anticipated closings.

[57] This led to further evidence from Mattamy and submissions from each side. However, the Arbitrator declined Mattamy's request to schedule a motion to determine the admissibility of its proposed evidence on these points. Instead, at a June 27, 2022 case conference, the Arbitrator refused to admit certain of Mattamy's proposed new evidence about the Handbook, but admitted some of its other proposed evidence.

[58] The Urbancorp parties maintain that the Arbitrator was entitled to rule on the admissibility of evidence proffered, that the Arbitrator was not required to make this determination on a formal motion, and that there was nothing procedurally unfair about proceeding in this manner. This submission (found at paragraph 60 of their factum) finds support in the relevant statutes:

> Section 20(1) of the *Arbitration Act*, 1991 provides that the arbitral tribunal may determine the procedure to be followed in the arbitration. Further Section 21 of the *Arbitration Act*, 1991 provides that Sections 14-16 of the *Statutory Powers and Procedures Act*, 1990 (the "SPPA") apply to an arbitration. Section 15 of the SPPA provides that a tribunal may admit into evidence any document that is relevant. Sections 21 of the *Arbitration Act*, 1991 and 15 of the SPPA do not require any particular evidence to be admitted, but rather provide discretion to the adjudicator or arbitrator to admit evidence that might otherwise not be admissible in court. Ultimately, the issue of whether or not to admit any given evidence is a discretionary and procedural decision of the arbitrator.

[59] There is no question that the Arbitrator had the authority to determine the procedure and make rulings regarding the admissibility of the proposed evidence. However, that does not mean that the rulings he made did not result in a procedural unfairness. That entails a further inquiry as to whether a sufficient opportunity was afforded to Mattamy's counsel to present their case and whether the procedure engaged to do so was thorough: see *Baffinland*, at paras. 84 and 89.

[60] Mattamy argues that when the Arbitrator ruled the Handbook excerpts and evidence related to it inadmissible, he denied it the opportunity to file relevant evidence in response to a New Issue that the Arbitrator himself had raised. He thereby denied Mattamy the opportunity to present its case

without having engaged in a thorough procedure for the determination of the admissibility of that evidence and the appropriate way for it to be received. I agree.

Was Mattamy Afforded a Sufficient Opportunity to Present its Case on the New Issue?

[61] The Handbook is relevant to the New Issue. It addresses the very points that the Arbitrator specifically asked the parties to address in their supplementary evidence and submissions when the New Issue was raised:

a. It provides context and guidance and an explanation about the ASPE accounting principles applicable to the recognition of revenue from the sale of residential condominium units; which in turn

b. Provide the rationale for why the Phase 2 residential condominium sales were not included in DHI's revenue in its financial statements for the year in which the Transfer Date occurred; because

c. The anticipated closing dates for those purchases were not until future undetermined dates, and the purchases had not yet even reached the stage of interim closing.[1]

[62] Section 402.9.5 of the Handbook explains why, from an accounting and financial reporting perspective, revenue from the sale of residential condominium units is to be recognized at the time of interim closing and not at the time the units are contracted for sale or at the time that the sale closes. The Handbook explains the rationale for the ASPE accounting principles that were applied for purposes of recognizing revenue in the DHI financial statements and explains why the sales of these units would not have been recorded as revenue as at the Transfer Date, and more specifically, why they are treated as having be received for revenue recognition purposes as at the date of interim closing.

[63] In the context of a hearing in which, at the Arbitrator's request, the parties' evidence and submissions became focused upon a New Issue, the question of how and when revenues from the sale of residential condominium units are or should be considered to be recognized from an accounting and financial reporting perspective, and the rationale for so doing, became relevant and important. The fact that other evidence (the applicable ASPE and the DHI financial statements for the relevant years) was admitted reinforces this. There were no reasons given for the Arbitrator's ruling regarding the inadmissibility of the Handbook excerpts and related evidence. The justification for differentiating between the Handbook and the other evidence in the June 23 Affidavit that the Arbitrator did admit, about the ASPE principles and how they were in fact applied, is not obvious.

[64] The Urbancorp parties try to rationalize its exclusion by suggesting that the Handbook adds nothing to the evidence about the ASPE principles and the financial statements that was admitted. They further argue that even if there was a procedural unfairness in the refusal to admit the Handbook

[1] It is, and was, undisputed that interim closing had not occurred for the Phase 2 units prior to the Transfer Date.

it was simply a third piece of evidence that reinforced the same points made in the two admitted pieces of evidence. They contend that, in these circumstances, its exclusion was not egregious enough to rise to the level of a failure of natural justice. Since the entire analysis under s. 46 of the Act is discretionary, it was suggested that this case is distinguishable from *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 S.C.R. 471, in which the refusal to allow any evidence on a point was found to be a failure of natural justice (at p. 491-92, at para. 43).

[65] I disagree with this characterization of the Handbook. I am not satisfied that the proposed evidence regarding the Handbook excerpts can be said to be simply corroborative of the other evidence admitted. It provides additional context.

[66] The Urbancorp parties also contend that the Handbook was not relevant or important, and the Arbitrator's decision to exclude it did not rise to the level of a denial of natural justice, because neither the New Issue nor any of the evidence and submissions that the Arbitrator received in connection with it were central to the eventual outcome of the Arbitration. They maintain that the Arbitrator ultimately decided that the definition of Gross Receipts was not tied to, nor dependent upon, the manner in which revenue was recognized and accounted for in financial statements from an accounting point of view. I will come back to this point later, as the leading authorities are clear that the court should not engage in any assessment of whether the outcome would have been different if the procedural unfairness had not occurred.

[67] However, in this case the Arbitrator did not completely disregard the other evidence that was admitted regarding the ASPE and accrual accounting methods employed by DHI in its financial statements. The Arbitrator's reasoning (at paras. 15-17 of the Award) reveals that the focus of his assessment was on the contractual interpretation point that the proceeds of residential condominium sales were not required to be considered on a cash basis for purposes of determining Gross Receipts.

[68] The Arbitrator approached the question of when revenues were to be treated as received as binary: either on a cash basis when actually collected or when the units were sold (when the agreements of purchase and sale were signed). Paragraph 18 of the Award reads as follows:

> I interpret the definition of Gross Receipts to not require that cash has actually been received before being included in Gross Receipts. I agree with Urbancorp that for the purposes of the Co-Ownership Agreement, revenues to determine Urbancorp's entitlement to its 1.5% consulting fee are to be treated as received when the units are sold, not when the sale proceeds are actually collected.

[69] The Arbitrator's reasoning about when consideration is said to have been received on a non-cash basis did not have the benefit of the full context which, in the accounting realm, differentiates not only between the date of the sale (contract) and the date of the actual receipt of funds on final closing, but also allows for revenue recognition at the intermediary stage of interim closing. This is when, according to the Handbook, significant acts of performance will have been completed by the purchaser, including: payment of the amounts due on the interim closing, undertaking to assume a mortgage for the balance of the purchase price, receipt of the right to occupy the premises and receipt of an undertaking from the developer to be assigned title in due course.

[70] The Handbook is an interpretative guide that explains the rationale for the accounting treatment and why, in residential condominium sales, performance is considered to have been achieved at the time of the interim closing. From an industry perspective, according to the Handbook, this is when there exists a reasonable assurance of the measurement and collectability of the agreed purchase price, which is the point at which the ASPE principles allow for revenue to be recognized.

[71] Questions were asked by the Arbitrator about ASPE and the accounting principles that were actually applied when the New Issue was raised. Even if ultimately the accounting approach to recognition of this type of revenue was found not to be determinative of the specific contract interpretation question of when it is to be treated as received for purposes of the definition of "Gross Receipts", the complete accounting rationale is still a relevant data point that Mattamy should have had the opportunity to present in support of its submissions in respect of the New Issue.

[72] If the Arbitrator's concern about the Handbook was that it was not properly supported by an expert opinion, that is something that Mattamy says it would and could have rectified and maintains that it should have been given the opportunity to do so, even if it resulted in a delay of the Arbitration.

[73] Mattamy's uncontroverted evidence is that, if the issue of when the Gross Receipts were to be considered "received" had been raised prior to the hearing, Mattamy would have led independent expert evidence on the proper application of accounting principles to revenue recognition on the sale of residential condominium units. Mattamy was not given that opportunity.

[74] By the Arbitrator's refusal to allow Mattamy to submit the Handbook excerpts into evidence, Mattamy was deprived of the opportunity to present the complete evidentiary context and rationale for the accounting treatment before the Arbitrator dismissed it in favour of another approach. I find that Mattamy was not afforded a sufficient opportunity to present its case on the New Issue.

<u>Did the Arbitrator Engage in a Thorough Procedure to Determine Whether to Admit the Handbook Excerpts into Evidence?</u>

[75] The Arbitrator's decision made at the June 27, 2022 case conference to strike the portions of the June 23 Affidavit and exhibits referencing the Handbook was made despite:

a. The lack of any objection from the respondents to this evidence;

b. Mattamy's request for an opportunity to bring a motion for leave to file the June 23 Affidavit if there was a question about the admissibility of any of the evidence contained in it; and

c. The admission of other evidence about the application of ASPE principles (expressly referred to in the definition of Gross Receipts) and about how the Phase 2 Parts A and P residential condominium sales were actually accounted for in the financial statements of the project company.

[76] It is this confluence of factors which Mattamy contends deprived it of its right to procedural fairness. The Arbitrator's decision, made without the benefit of a motion and supporting record, to

exclude evidence that Mattamy sought to rely upon to address a New Issue that the Arbitrator himself had raised appears (in the absence of any reasons) to have been arbitrary and was unfair to Mattamy.

[77] The learned Arbitrator is a former judge of this court with extensive trial experience. There is a high threshold to meet under s. 46 of the Act for the court to intervene in the conduct of an arbitration proceeding. However, without any reasons given, aside from the remark by the Arbitrator that he had a "mind of his own," I am not satisfied that a thorough procedure was engaged in to determine whether the admit the Handbook excerpts into evidence.

What Flows from the Finding of Procedural Unfairness?

[78] The Urbancorp parties contend that the New Issue was not critical, central or dispositive to the dispute being arbitrated because the Arbitrator found that UTMI's entitlement to the Urbancorp Consulting Fee: (a) is governed by s. 6.6 of the Co-Ownership Agreement (not the definition of Gross Receipts); (b) existed on and survived the Transfer Date; and (c) is payable when Mattamy is paid its Development Management Fee (as defined in the Co-Ownership Agreement).

[79] I am not sure I agree that (or fully understand how) the final outcome of the Award could have been reached without any consideration of the amount of Gross Receipts as at the Transfer Date and whether the Phase 2 pre-sales of residential condominiums should be included in that calculation. Even if the timing and mechanics for payment is deferred, as I understand it, there needed to be some amount of accrued and unpaid Gross Receipts as at the Transfer Date for there to be any entitlement to Consulting Fees as at that date.

[80] However, this is not something I need to understand to decide this motion. Having found that there was a procedural unfairness and failure of natural justice, there is a strong line of authority (*Laroque*, *Baffinland*, *Nasjjec*, above) that states that where there is a finding of procedural unfairness, the Award must be set aside and the court should not engage in any assessment of whether the outcome would have been different if the procedural unfairness had not occurred. A new arbitration must be ordered.

[81] The Supreme Court of Canada stated in *Laroque*, at p. 493:

> [T]he rules of natural justice have enshrined certain guarantees regarding procedure, and it is the denial of those procedural guarantees which justifies the courts in intervening. The application of these rules should thus not depend on speculation as to what the decision on the merits would have been had the rights of the parties not been denied. I concur in this regard with the view of Le Dain J ., who stated in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 661:
>
> > ... the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have.

See also *Nasjjec*, at para. 41.

[82] The hindsight perspective (that the entitlement to Urbancorp Consulting Fees could be determined without regard to the New Issue and was not dependent upon the application of accounting principles) offered by the Urbancorp parties cannot remedy the procedural unfairness that arose from the Arbitrator having raised the New Issue, requested further evidence and submissions about it and then refused to allow Mattamy to tender the complete package and full context. The test is whether evidence was sufficiently important that its exclusion at the time was a denial of natural justice (as I have found it was). It is not a test that is applied in hindsight based upon the eventual reasoning of the Award.

[83] I have not considered or been influenced by the substance of the dispute or any consideration of the correctness of the Arbitrator's decision or of the outcome of the Arbitration.

[84] The Urbancorp parties argue that this application is just an attempt to appeal the Award (from which the parties agreed there would be appeal) dressed up as a s. 46(1) review. Quite to the contrary, I make no assessment and offer no observations about whether consideration of the Handbook excerpts would make any difference to the outcome, or about whether the accounting treatment (on a non-cash basis) should inform the court's interpretation of Gross Receipts or any other aspect of the Co-Ownership Agreement on the question of UTMI's entitlement to Consulting Fees as at the Transfer Date.

[85] I am mindful of the caution from the Court of Appeal in *Tall Ships Development Inc. v. Brockville (City)*, 2022 ONCA 861, at para. 2, that:

> This court has recently emphasized the narrow basis for setting aside an arbitral award under s. 46 of the *Arbitration Act*, which is not concerned with the substance of the parties' dispute and is not to be treated as an alternate appeal route: *Alectra Utilities Corporation v. Solar Power Network Inc.*, 2019 ONCA 254 ... *Mensula Bancorp Inc. v. Halton Condominium Corporation No. 137*, 2022 ONCA 769, at paras. 5, 40.

Are Procedural Decisions of Arbitrator's Immune from Review by the Court?

[86] I turn now to briefly address one further argument raised by the Urbancorp parties, namely that procedural decisions of arbitrators are immune from review by the court. This is very much a context driven proposition. If it were to be applied to a so-called "procedural" decision to exclude evidence, that would be directly contrary to the decision of the Supreme Court in *Laroque*, which found a failure of natural justice arising from the exclusion of evidence. Arguably, decisions about the admission or exclusion of evidence are substantive rather than procedural, in any event.

[87] Similarly, there must be a distinction drawn between a procedural decision and a consideration of whether a procedure that was adopted was thorough, because that too has been held to be a ground for a finding of procedural unfairness. See *Baffinland*, at paras. 84, 89.

[88] There is a difference between discrete procedural interim motions in the cases relied upon by the Urbancorp parties, dealing with the admission of fresh evidence (*Nasjjec*, at para. 130) or for

security for costs (*Inforica Inc. v. CGI Information Systems and Management Consultants Inc.*, 2009 ONCA 642, 97 O.R. (3d) 161, at para. 18) and determinations such as were made in this case that resulted in a party not having been afforded a sufficient opportunity to present their case.

[89] The issues in this case do not fall within any blanket category of procedural decisions of arbitrators that are immune from review.

Conclusion: Procedural Unfairness and Failure of Natural Justice

[90] The confluence of circumstances in this case, of:

> the Arbitrator having decided at a case conference without a formal motion not to admit some of the evidence tendered by Mattamy and not objected to by the Urbancorp parties in response to the New Issue raised by the Arbitrator, despite his invitation to the parties to provide further evidence, and the absence of any principled distinction between the relevance or admissibility of the Handbook excerpts and the other evidence that was admitted about the ASPE and actual accounting treatment of revenues from the sale residential condominium units in Phase 2 of the Downsview Project,

in my view, amounts to a procedural unfairness to Mattamy and a failure of natural justice.

[91] I find that Mattamy was unable to present a full case in response to the New Issue raised for the first time by the Arbitrator at the hearing and that the decision not to admit the Handbook excerpts was not the product of a thorough procedure. Section 46(1)6 of the Act expressly authorizes the court to intervene in such circumstances to prevent the unfair treatment of parties and to protect the integrity of the arbitral process. I order that the Award be set aside and that the parties proceed to a new arbitration before a different arbitrator, in accordance with such procedure and based on such evidence and submissions as the new arbitrator may direct.

Residual Issue: Will this Decision Give Rise to an Order Made Under the CCAA?

[92] An issue was raised at the conclusion of oral argument about whether the decision in this application would give rise to an order made in the CCAA proceedings. The applicant argued that it would not; the respondents argued that it would. The parties requested that the court determine this question so that they have certainty regarding the appeal route from this decision which, pursuant to s. 13 of the CCAA, would require leave to appeal if it is found to be "an order, or a decision made under [the CCAA]."

[93] Following the most recent appellate authority on this question, the answer is yes, this decision will give rise to an order made under the CCAA. I find that the decision in this application is "bound up with and incidental to the CCAA proceedings out of which the present proceedings arose." It arises out of an Arbitration that was expressly authorized by an order made in the CCAA proceedings dating back to June 30, 2021. Further, this application was ordered to be heard in the CCAA proceedings by Morawetz C.J. on September 1, 2022.

[94] The analytical framework for this determination was recently endorsed by the Court of Appeal in *Urbancorp Inc. v. 994697 Ontario Inc.*, 2023 ONCA 126, at paras. 9-12, adopting the framework conveniently summarized by Brown J. (as he then was) in *Essar Steel Algoma (Re)*, 2016 ONCA 138, 33 C.B.R. (6th) 172, at para. 34:

> To aid that purpose-focused inquiry, the case law has identified some indicia about when an order is "made under" the CCAA. In [*Redfern Resources Ltd. (Re)*, 2011 BCCA 333, 94 C.B.R. (5th) 53], Tysoe J.A. stated a court should ask whether the order was "necessarily incidental to the proceedings under the CCAA" or "incidental to any order made under the CCAA": at paras. 9 and 10. In [*Monarch Land Limited v. CIBC Mortgages Inc.*, 2014 ABCA 143, 575 A.R. 46], O'Brien J.A. looked at whether the order required the interpretation of a previous order made in the CCAA proceeding or involved an issue that impacted on the restructuring organization of the insolvent companies: at paras. 8 and 15. As mentioned, in [*Sandhu v. MEG Place LP Investment Corporation*, 2012 ABCA 91], Paperny J.A. stated that s. 13 of the CCAA would apply if "CCAA considerations informed the decision of and the exercise of discretion by the chambers judge" or "if a claim is being prosecuted by virtue of or as a result of the CCAA": at paras. 16 and 17. [Emphasis added in *Urbancorp Inc.*; citations edited in *Urbancorp Inc*.]

[95] This decision and any order arising from it is necessarily incidental to the proceedings under the CCAA and to orders made under the CCAA. It involves an issue that impacts at least one of the companies that is the subject of these CCAA proceedings (UTMI). It further involves claims that are being prosecuted as a result of the CCAA proceedings that led to the restructuring of Urbancorp. As the Court of Appeal stated in *Urbancorp Inc.*, at para. 20, where the court's jurisdiction to hear a matter, such as in this case,

> [E]manates from both the CCAA and another statute, it is unhelpful to deconstruct the proceedings to determine which elements of the case fall under the CCAA and therefore require leave. Rather, as Paperny J.A. noted in *Sandhu*, at para. 17, "if a claim is being prosecuted by virtue of or as a result of the *CCAA*, section 13 applies.

[96] I do not accept the applicant's contention that the September 1, 2022 order transferring this application to the Commercial List "to be heard in these [CCAA] proceedings" was just a means of getting it onto the Commercial List to be heard more quickly. Applications seeking to set aside arbitration awards made in connection with commercial contract disputes (as the Award was) can be commenced on, or transferred to, the Commercial List in their own right. To give full meaning and effect to the September 1, 2022 order, it must be read as intending that this application be heard in the CCAA proceedings.

Costs and Final Disposition

[97] For the foregoing reasons, this application is granted and the Award is set aside. The parties are directed to submit their Consulting Fees Dispute to arbitration before a new arbitrator to be agreed upon, or, failing agreement, to be appointed by the court. The procedure for the new arbitration, including the pleadings and the timing and manner in which the arbitrator will receive the evidence and submissions, shall be determined by the new arbitrator. The court encourages the parties to make use of the extensive materials and submissions that have already been prepared, subject to the discretion and directions of the new arbitrator.

[98] In accordance with the parties' agreement, the Urbancorp parties shall pay forthwith (within 30 days) to Mattamy its all-inclusive partial indemnity costs of this application fixed in the amount of $30,000.

KIMMEL J.

Released: May 19, 2023

CITATION: Mattamy (Downsview) Limited v. KSV Restructuring Inc.(Urbancorp), 2023 ONSC 3013
COURT FILE NO.: CV-16-11389-00CL and CV-22-00688349-00CL
DATE: 20230519

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

BETWEEN:

MATTAMY (DOWNSVIEW) LIMITED

Applicant

– and –

KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE COURT APPOINTED MONITOR OF URBANCORP DOWNSVIEW PARK DEVELOPMENT INC. PURSUANT TO THE COMPANIES' CREDITORS ARRANGMENT ACT R.S.C. 1985, C. C-6. AS AMENDED, GUY GISSIN, IN HIS CAPACITY AS THE COURT APPOINTED FUNCTIONARY AND FOREIGN REPRESENTATIVE OF URBANCORP INC. BY ORDER OF THE DISTRICT COURT IN TEL AVIV-YAFO, ISRAEL

Respondents

REASONS FOR DECISION
(Application to set aside Arbitral Award)

Kimmel J.

Released: May 19, 2023

Appendix “D”

תאריך חתימת המסמך: 22.5.2023

בבית המשפט המחוזי
בתל אביב – יפו

פר"ק 44348-04-16
בקשה מס' __
בפני ס' הנשיא כב' השופט ח. ברנר

בעניין:	**חוק חדלות פירעון ושיקום כלכלי, התשע"ח-2018** **תקנות חדלות פירעון ושיקום כלכלי, התשע"ט-2019**	**חוק חדלות פירעון:** **תקנות חדלות פירעון:**
ובעניין:	**אורבנקורפ אינק. מס' חברה בקנדה 2471774**	**"החברה"**
ובעניין:	**עו"ד גיא גיסין – בעל התפקיד -** **הנאמן לביצוע הסדר הנושים של החברה** ע"י ב"כ עוה"ד יעל הרשקוביץ ו/או עידן דנינו ו/או דור רומנו ממשרד גיסין ושות', עורכי דין מרח' הברזל 38ב, תל אביב 6971054 טל': 03-7467777; פקס': 03-7467700	**"בעל התפקיד"**
ובעניין:	**רזניק פז נבו נאמנויות בע"מ** **הנאמן למחזיקי אגרות החוב (סדרה א') שהנפיקה החברה** ע"י ב"כ עוה"ד אמיר פלמר ו/או אביתר קרמר ואח' 51261	**"הנאמן"**
	TORONTO ONTARIO CANADA M5M 1K4 ע"י ב"כ עוה"ד [illegible] ו/או [illegible] גל שבי (מ.ר 65929) [illegible]ת', עורכי דין 6701101 gals@gkh-law.com *** נחתם דיגיטאלית ***	**"המבקשת (המשקיעה)"**
ובעניין:	**הממונה על הליכי חדלות פירעון ושיקום כלכלי** מרח' השלושה 2, תל אביב 61090 טל': 03-6899695; פקס': 02-6462502	**"הממונה"**
ובעניין:	**רשות ניירות ערך** על ידי פרקליטות מחוז תל אביב – אזרחי דרך מנחם בגין 154 תל אביב טל': 073-3736222; פקס': 073-3736590/1	**"הרשות"**

הצעת הסדר לנושי החברה

ובקשה למתן הוראות לבעל התפקיד לכינוס אסיפת נושים לאישור ההסדר המוצע

המבקשת, DIG Developments Inc (להלן: "**המבקשת**" או "**המשקיעה**"), מתכבדת בזאת להגיש הצעה להסדר חוב לנושי החברה בהתאם לחוק חדלות פירעון. העתק תכנית ההסדר המוצע בשפה האנגלית מצ"ב כ**נספח 1** לבקשה זו (להלן: "**ההסדר המוצע**" או "**תוכנית הסדר החוב המוצע**"). יצוין, כי הנוסח המחייב של תכנית ההסדר המוצע הוא הנוסח בשפה האנגלית. כמו כן, בכוונת המשקיעה להעביר לנושי החברה תרגום נוחות של תוכנית ההסדר לשפה העברית.

בית המשפט הנכבד מתבקש בזאת להורות כדלקמן:

א. להורות לבעל התפקיד לנקוט בכל הפעולות הנדרשות לשם כינוס אסיפה של נושי החברה (קרי, נושים שתביעות חוב שלהם אושרו) לשם הצבעה האם לאשר את ההסדר המוצע.

ב. לעשות שימוש בסמכותו מכח סעיף 329(ג) לחוק חדלות פירעון ולהורות שבנסיבות העניין אין צורך במינוי מומחה.

ג. ליתן כל הוראה אחרת, ככל שיימצא בית המשפט הנכבד לנכון, בקשר לאישור ההסדר המוצע.

<u>ואלו נימוקי הבקשה</u>:

1. המשקיעה הנה חברה פרטית שהתאגדה באונטריו, קנדה והינה בבעלות ובשליטת משפחתו של מר אלן ססקין, מנהל החברה לשעבר.

2. על פי דיווחים תקופתיים שהוגשו על ידי בעל התפקיד לתיק בית המשפט, לרבות בדוח פעילות מרכז של בעל התפקיד שהוגש לבית המשפט ביום 21.7.2022, אושרו על-ידי בעל התפקיד תביעות חוב מצד נושי החברה בסך כולל של 214,158,218 ש"ח, ובעל התפקיד ביצע חלוקות לנושים בסך מצטבר של 163,198,390 ש"ח.

3. למיטב ידיעת המשקיעה, נכון למועד הגשת בקשה זו, בעל התפקיד מחזיק בידו סך של כ- 18 מיליון ש"ח, לכל הפחות, שמקורם בהליכי מימוש נכסים שהיו בבעלות החברה, לרבות באמצעות תאגידים מוחזקים על ידה. בנוסף, בעל התפקיד מנהל ו/או מעורב במספר תביעות נוספות בחו"ל ובישראל.

4. ההסדר המוצע מגלם הצעה ובה תמורה כספית לנושים בסך כולל של עד 39 מיליון ש"ח (כולל 18 מיליון ש"ח מתוך הכספים המופקדים כבר כיום בידי בעל התפקיד), וכן שכ"ט לבעל התפקיד על סך 2 מיליון ש"ח נוספים (כולל מע"מ). כנגד כל זאת, המשקיעה מבקשת לקבל לידיה את החברה וכן פטור מלא מתביעות נגד החברה, נושאי המשרה ובעלי מניותיה (כולל בעל השליטה); והכל כמפורט בתוכנית הסדר החוב המוצע.

5. להערכת המשקיעה, ההסדר המוצע יאפשר לנושים למקסם את החזר החוב, בצורה יעילה ומהירה, וזאת חלף המשך ניהול הליכים משפטיים והליכי מימוש, שמטבעם הינם ארוכים, אינם ודאיים וכרוכים בעלויות משמעותיות.

6. **יצוין, כי בהתאם להוראות תוכנית הסדר החוב המוצע, בד בבד עם הגשתה לבית המשפט הנכבד, הופקד סך של שני מיליון (2,000,000) דולר קנדי בידי IBI נאמנויות בע"מ כדמי רצינות ולשם הבטחת יישום הסדר החוב ככל שיתקיימו כל התנאים המתלים לביצועו; כמפורט בתוכנית הסדר החוב המוצע.**

<u>פטור ממינוי מומחה</u>

7. ככלל, בהתאם להוראות סעיפים 328 ו- 329 לחוק חדלות פירעון, היכן שמדובר בהסדר חוב מהותי, קמה על הנאמנים חובה לפנות לבית המשפט בבקשה למינוי מומחה לבחינת הסדר החוב.

8. ואולם המשקיעה סבורה כי בנסיבות העניין מתקיימות נסיבות המצדיקות שלא למנות מומחה וזאת בהתאם להוראות סעיף 329(ג) לחוק חדלות פירעון, כמפורט להלן:

8.1. המדובר בתיק חדלות פירעון המתנהל מזה מספר שנים, כאשר רב נכסי החברה מומשו וכיום הנכס העיקרי שנותר הנו ניהול הליכי תביעה (שמטבעם הינם ארוכים, אינם ודאיים וכרוכים בעלויות משמעותיות) מתוך ציפיה שזכיה בהם (אם בכלל) תניב סכומי כסף נוספים לקופת הנושים.

8.2. נוכח העובדה שמדובר בתיק שמנוהל שנים רבות ולא נותרו נכסים פיזיים, אזי מצב החברה והאפשרויות שבפני הנושים ברורות לכל – המשך ניהול הליכים משפטיים על פני השנים כאמור לעיל.

8.3. ההסדר המוצע על ידי המשקיעה הנו הסדר פשוט הכולל תמורה בכסף בלבד (קרי, ללא תמורות בעין) כנגד סיום ההליכים והעברת החברה למשקיעה.

8.4. הנשייה הנותרת הנה נשייה בלתי מובטחת שתתחלק בנכסים באופן יחסי ואין שונות בין הנושים היוצרת להם ניגודי אינטרסים המחייבים התייחסות שונה לנושים השונים.

8.5. האלטרנטיבה האחרת שבפני הנושים היא כאמור קבלה לידם של הכספים הקיימים כיום בידי בעל התפקיד (בסכום של כ- 18 מיליון ש"ח) והמשך ניהול ההליכים המשפטיים שתוצאתם איננה וודאית ועם השלמת ההליכים המשפטיים הללו (בין אם תתקבל בעדם תמורה ובין אם לאו) תפורק החברה.

8.6. בהנחה שהסדר החוב יאושר, אזי יתכן והתמורה הכוללת לנושים תהא בסכום שהנו קרוב לסכומי הקרן של תביעות החוב שאושרו על ידי בעל התפקיד, באופן שאישור ההסדר מביא לכך שהנושים יראו כמעט את מלוא סכום הקרן של תביעותיהם.

<u>סוף דבר</u>

9. כפי שפורט במסגרת בקשה זו לעיל, המבקשת מגישה הצעה להסדר זו והיא סבורה כי לא זו בלבד שיש בה ממש, היא מקנה ודאות וחיסכון בהוצאות משמעותיות לנושי החברה, ועל כן בית המשפט הנכבד יתבקש בזאת להורות כמבוקש בבקשה זו.

10. לבקשה זו מצורף תצהירו של מר אלן ססקין, המכהן כמנהל כללי במבקשת.

ב/

בן ליפץ, עו"ד **גל שבי, עו"ד**

גולדפרב גרוס זליגמן ושות'

ב"כ המבקשת

AFFIDAVIT

A. I the undersigned, Mr. Alan Saskin, holder of Canadian passport, number QK215602, after being warned that I must state the truth or be liable to penalties under the law, hereby declare as follows.

I am making this affidavit on behalf of DIG Developments Inc., a private company incorporated under the laws of the Province of Ontario, Canada company number 2790438 which is wholly owned and controlled by my family. (hereinafter: the "**Applicant**" or the "**Investor**"), in support of the Motion for Proposal of Settlement for the Creditors of the Company and a Motion to give Instructions to the Officer of the Court to Convene a Meeting of Creditors for Approving the Proposed Arrangement (hereinafter: the "**Motion**") in Civil Action No. 44348-01-16 Reznik Paz Nevo Trusts Ltd vs. Urbancorp Inc. No. 2471774 in the Tel Aviv-Jaffa District Court.

B. All the facts in this affidavit are known to me by virtue of my position as General Manager of the Applicant. All and any legal claims pleaded herein are raised based on legal advice that I have received and in which I believe.

C. I hereby declare that I have read and understood the arrangement plan proposal and Motion and hereby confirm that the Applicant has approved the Proposed Arrangement and Motion.

D. The Applicant respectfully submits a proposal for a debt arrangement for Urbancorp Inc. (hereinafter: "**The Company**") creditors in accordance with the Insolvency Law. A copy of the proposed arrangement plans in the English language is attached as **Appendix 1** to my Affidavit (hereinafter: "**the Proposed Arrangement**" or "**the Proposed Debt Arrangement Plan**").

For convenience purposes I also attach translation of the Proposed Debt Arrangement Plan into the Hebrew language.

It should be noted that the binding version of the proposed arrangement plan is the English version.

E. I hereby declare that I have read and understood the Proposed Arrangement and Motion (which was translated for me into English) and hereby confirm that the Applicant has approved the Proposed Arrangement and Motion.

1. I am the former controlling officer of the Company.

2. According to periodic reports submitted by the Officer of the Court to the court, including in the report submitted to the court on 21.7.2022, debt claims by the Company's creditors were approved by the Officer of the Court in the total amount of 214,158,218 NIS, and

the Officer of the Court made distributions to creditors in the aggregate amount of 163,198,390 NIS.

3. To the best of my knowledge, as of the date of signing this affidavit, the Officer of the Court holds more than 18 million NIS (originating from the realization procedures of assets owned by the Company, including through corporations held by it) and in addition he manages and/or is involved in several additional legal claims in Israel and abroad.

4. The proposed arrangement represents a proposal that includes monetary consideration for creditors in the sum of up to 39 million NIS (including 18 million NIS of the funds currently deposited with the Officer of the Court), as well as fees for the Officer of the Court in the additional sum of 2 million NIS (including VAT). Against all of this, the Investor requests to receive the Company as well as a full exemption from claims against the Company, the officers, and its shareholders (including the controlling shareholder); and all as set forth in the proposed debt arrangement plan.

5. According to my assessment, the proposed arrangement will enable creditors to maximize the repayment of the debt, efficiently and quickly, instead of continuing legal proceedings and realization proceedings, which are by nature long, uncertain and involve significant costs.

6. Based on legal advice that I have received and in which I believe, under the circumstances of the case there are circumstances that justify not appointing an expert and this in accordance with the provisions of section 329(c) of the Insolvency Law, as follows:

   6.1. This is an insolvency case that has been going on for several years, when most of the Company's assets have been realized and today the main asset remaining are managing claims proceedings (which by nature are long, uncertain and involve significant costs) with the expectation that winning them (if at all) will produce additional funds to the creditors' account.

   6.2. Because this is a case that has been going on for many years and no physical assets remain, the status of the Company and the options available to the creditors are clear to all – the continuation of legal proceedings for years as stated above.

   6.3. The arrangement proposed by the Investor is a simple arrangement that includes money consideration only (i.e., without consideration in kind) against ending the proceedings and transferring the Company to the Investor.

6.4. The remaining debt is not secure, it will be divided in assets proportionally and there is no difference between the creditors that creates conflicts of interest that require different treatment of the different creditors.

6.5. The other alternative before the creditors is as mentioned to receive the funds currently held by the Officer of the Court (in the amount of approximately 18 million NIS) and to continue managing the legal proceedings whose outcome is uncertain and upon completion of these legal proceedings (whether or not consideration is received for them), the Company will be dissolved.

6.6. Assuming that the debt arrangement is approved, it is possible that the total consideration to the creditors will be in an amount that is close to the principal amounts of the debt claims approved by the Officer of the Court, in a way that the approval of the arrangement would lead to the creditors seeing almost the full principal amount of their claims.

7. As set forth in the framework of this Affidavit above, the Applicant is submitting a proposal for this arrangement and it is of the opinion that not only is it substantial, but it also provides certainty and it saves significant expenses for the Company's creditors, and therefore the Honorable Court is hereby requested to instruct as requested in this motion.

I declare that this is my name and my signature and that the contents of this affidavit are true.

Mr. Alan Saskin

May 13/23
Date

תוכן עניינים

נספח 1

החסדר המוצע

עמ' 9

נספח 1

SETTLEMENT PLAN – May 22, 2023

1. Definitions

The following definitions shall have the meaning ascribed to them opposite their name:

"Affiliate" -	Any direct or indirect, current or future subsidiary of the Company, or any other entity which is controlled by the Company or which controls the Company.
"Bonds" -	Series A Bonds issued by the Company to the public in Israel whose aggregate nominal value as of the date of their initial issuance was ILS 180,583,000.
"Closing Date" -	A Trading Day, following the satisfaction of all the conditions precedent specified in section 5 below, which will be determined in coordination between the Investor and the Officer of the Court (but no later than 60 days after the satisfaction of all the conditions precedent) and will be published by the Company in the Magna in advance (prior to the Closing Date); until which all The actions that must be carried out until the Closing Date (according to this Settlement Plan), will be performed.
"Company" -	Urbancorp Inc.
"Control" -	The ability to direct the activity of a corporation/entity, with the exception of an ability deriving solely from the service as a director or other position in the corporation.
"Conditions Precedents" -	The conditions precedent detailed in Section 4.1;
"Court" -	The Department of Economic Affairs of the Tel Aviv-Jaffa District Court in Israel.
"Creditors" -	All the creditors who submitted debt claims and their debt claims were approved, in full or in part, by the Officer of the Court.
"Downsview Trigger Event" -	Downsview Trigger Event shall mean that KSV Restructuring Inc. ("**KSV**") has received funds with respect to the Downsview Appeal.
"Downsview Appeal"-	matter of which is the subject of Court File No. CV-22-00688349-00CL between Mattamy (Downsview) Limited as Applicant KSV Restructuring Inc. in its capacity as the Court Appointed Monitor of Urbancorp Downsview Park Development Inc. pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, C. C-36, as amended, Guy Gissin, in his capacity as the appointed Functionary and Foreign Representative of Urbancorp Inc. by Order of the District Court in Tel Aviv-Yafo, Israel, as Respondents and is distributing any portion of those funds to Urbancorp Inc.
"ILS" and "NIS"-	New Israeli Shekels.

"Investor" -	DIG Developments Inc., a private company incorporated under the laws of the Province of Ontario, Canada company number 2790438 which is wholly owned and controlled by the family of Alan Saskin.
"Officer of the Court" -	Mr. Guy Gissin, Adv.
"Relative" -	A spouse, sibling, parent, parents of a parent, descendant, and descendant, sibling, or parent of the spouse or spouse of any of the above.
"Settlement", "Settlement Plan", "Plan"-	The plan detailed in this document, including the annexes thereto.
"TASE" -	Tel Aviv Stock Exchange Ltd.
"Trading Day" -	A day on which trading takes place on both the Tel Aviv Stock Exchange Ltd. and the Toronto Stock Exchange.
"Trustee" -	Reznik, Paz Nevo Trustees Ltd.

2. Annexes

The following are the annexes to this Settlement Plan

Annex A -	Mr. Alan Saskin's undertaking not to intervene in the legal proceedings with respect to the Downsview Arbitration.
Annex B -	Escrow Agreement.
Annex C -	Letter of Assignment.
Annex D -	Notice to the Tel Aviv District Court
Annex E -	Notice to the Court in Ontario, Canada

3. The Settlement Plan

Upon the closing Date, all the following actions shall be carried out concurrently, and none of the actions shall be valid without the other actions being carried out:

3.1. The Investor shall deposit with the Officer of the Court fourteen million New Israeli Shekels (ILS14,000,000).

3.2. The Investor shall deposit with the Officer of the Court a signed copy of an irrevocable letter of assignment, attached as **Annex C** hereto, according to which, upon the occurrence of the Downsview Trigger Event, the Canadian Monitor (KSV) is instructed to transfer all amounts derived from the Downsview Appeal and up to a total of $3,350,000 CDN (three million and three hundred and fifty thousand Canadian Dollars) to the Officer of the Court.

3.3. All legal proceedings against the Company will be terminated, including the legal proceedings in case number 44348-04-16 and 12055-12-17, in the Tel Aviv District Court.

3.4. Without derogating from the generality of Section 3.3 above, the Officer of the Court will submit a notice to the court in Tel Aviv District Court and Ontario, Canada regarding the complete, final and irrevocable cancellation and deletion of the following legal proceedings: 12055-12-17, 42263-0647 and CV-18-596633 Ontario Superior Court of Justice, respectively, in the form attached as **Annex D and E** hereto.

3.5. The assignment of claim rights to the Officer of the Court according to the court's decision in the liquidation case 44348-04-16 will expire and be canceled in a final and irrevocable manner.

3.6. The appointment and the duties of the Officer of the Court shall be terminated, and all his powers will expire, with the exception of the rights to: (i) distribute funds he is holding to the Creditors in accordance with the provisions of this Settlement Plan; and (ii) updating the Creditors regarding the Downsview Appeal (if necessary), but without having any authority in relation to the Company, its business and its shareholders or to intervene in the said legal proceedings.

3.7. All claims, demands and rights, directly or indirectly, existing and future, of the Company's creditors towards the Company, will be definitively, fully and irrevocably assigned to the Investor.

3.8. All (100%) of the issued and outstanding share capital of the Company will be registered in the name of and will be owned and held by – the Investor.

3.9. The Officer of the Court will transfer to the Investor all the Company's assets held by him and/or by anyone on his behalf, except for the amount of eighteen million NIS (18,000,000) mentioned in section 4.1.1 below. For the avoidance of doubt and without detracting from the generality of the above: (i) Amounts of money held by the Officer of the Court in excess of the said amount (if any) will be transferred by the Officer of the Court to the Investor at the Closing Date; (b) The Officer of the Court will transfer to the Investor all the documents and correspondence held by him and/or by anyone on his behalf in connection with the Company (including regarding legal procedures taken by him and the realization of the Company's assets and including documents submitted to the tax authorities in Israel or any other territory).

3.10. The fees to the Trustee, the Trustee's attorney (Amir Flamer & Co. Law Offices) and the bond holders' representative – Mr. Mayan Paz, in connection with the approval and execution of this Settlement Plan, will be paid in full out of the Expenses Deposit.

3.11. The Investor shall submit with the Officer of the Court a signed copy of **Annex A** hereto.

3.12. Waiver and Release

As of the Closing Date, and subject to the performance of all actions scheduled to be performed until the Closing Date (inclusive), the following instructions will apply:

3.12.1. The Creditors, the Trustee and the Officer of the Court waive, fully, definitively and irrevocably, any claim and/or demand and/or cause of action (of any kind), whether known to them or unknown to them, existing or future,

either directly or indirectly, against the Investor, the Company, its Affiliates, any of the Company's and/or Affiliate's and/or the Investor's consultants (including accountants appraisers and lawyers) officers and shareholders (including the controlling shareholders) and their Relatives and any one acting on behalf of any of the above ("**Released Parties**"); which arose in the period up to the Closing Date; including (but not limited to) in connection with the Settlement Plan, the approval of the Settlement Plan and all the decisions and actions required for its implementation.

3.12.2. No procedure (including legal proccdures) will be taken and/or continued by any one (including any of the Creditors, the Trustee and the Officer of the Court and any one acting on their behalf) against the Released Parties, in whole or in part, in connection with debts and/or claim and/or demand that arose in the period up to the Closing Date, whether a debt claim has been filed or not.

3.12.3. All pending proceedings against any of the Released Parties will be cancelled, terminated and discharged as soon as possible, including but not limited to all legal proceedings initiated in Israel, Canada or elsewhere against the Company, its past and present directors and officers and shareholders and Doreen Saskin, any of their Relatives or anyone under their Control or on their behalf, including any entity for the benefit of any of the above or their Relative (collectively, the "**Parties**") and including the Liquidation Case No.44348-04-16 at Court, Civil Case No. 12055-12-17 at Court, Civil Case No. 46263-06-17 at Court.

4. Distribution to the Creditors of up to ILS39,000,000

4.1. Following the Closing date, the Officer of the Court will distribute the total sum of thirty-two million New Israeli Shekels (ILS32,000,000) among the Creditors in a manner determined by them and approved by the Court based upon the following:

4.1.1. Eighteen million New Israeli Shekels (ILS18,000,000) currently deposited with the Officer of the Court will be distributed to the Creditors.

4.1.2. An additional twelve million Shekels (ILS12,000,000) (out of the amount deposited by the Investor according to Section 3.1 above) will be distributed to the Creditors.

4.1.3. Two million New Israeli Shekels (ILS2,000,000) (out of the amount deposited by the Investor according to Section 3.1 above) will be transferred to the Officer of the Court as full and final payment for his fees including in connection with this Settlement Plan and the amounts paid to the Creditors (including any amount received from KSV based upon section 4.2 below). The said amount of ILS2,000,000 includes VAT.

4.2. In addition, upon the occurrence of the Downsview Trigger Event, the Officer of the Court will be entitled to receive from KSV an additional amount of up to a total of $3,350,000 CDN (three million and three hundred and fifty thousand Canadian Dollars) and once those funds are received by the Officer of the Court, the Officer of

the Court will distribute the said amount among the Creditors in a manner determined by it and approved by the Court.

4.3. The distribution of the funds as stated in this Section 4 will be done by the Officer of the Court without the involvement of the Investor and the Investor has no obligation and/or responsibility in connection with this, except for the deposit of the funds by him as stated in section 3.1 above.

5. Conditions Precedents.

5.1. The execution of the Settlement Plan is subject to the satisfaction of all of the following conditions (the "**Conditions Precedents**") no later than the dates specified in Section5.2 below:

5.1.1. Approval of the Settlement Plan by the Creditors in a Creditors' meeting (without any changes to it, except for changes approved by the Investor in writing and in advance).

5.1.2. Receipt of a final and irrevocable ruling from the Court approving this Settlement Plan (including the Waiver and Release in Section 3.12 above) (without any changes to it, except for changes approved by the Investor in writing and in advance) and its execution.

5.1.3. The absence of an impediment by virtue of a judicial order to approve and execute the Settlement Plan;

5.2. If the Court did not order the convening of Creditors' meeting by June 30, 2023 (the "**Date of Receipt of Court Order**"), or if the Creditors' meeting have not approved, at the required majority, the Settlement Plan by August 30, 2023 (the "**Final Meetings Date**"), or if all the Conditions Precedent are not satisfied by December 31, 2023 (the "**Final Date for Completion**"), this Settlement Plan shall automatically expire and neither the Investor, the Company, the Officer of the Court, the Creditors, the Trustee, nor any one on their behalf shall have any claim and/or demand against each other in connection with the Settlement Plan and its expiry. Notwithstanding the foregoing, the Investor shall have the right, at its sole discretion, to extend the Date of Receipt of Court Order, the Final Meetings Date and/or the Final Date for Completion by up to 30 days each, by sending a written notice to that effect to the Officer of the Court.

6. financing of expenses

6.1. Concurrent with the submission of this Settlement Plan to the Israeli Court, the Investor will deposit fifty thousand (50,000) Canadian Dollar to cover the expected costs and expenses of the Trustee, the Trustee's attorney (Amir Flamer & Co. Law Offices) and the bond holders representative – Mr. Mayan Paz, in connection with the approval and execution of this Settlement Plan ("**Expense Deposit**").

6.2. No later than 3 Trading Days following receipt of a Court ruling for the convening of Creditors' meetings for the approval of this Settlement Plan (but prior to such actual meetings taking place), the Investor shall deposit with Poalim IBI, a total amount of five million (5,000,000) New Israeli Shekels (the "**Collateral**") which will be used as

collateral in accordance with the provisions of the Escrow Agreement attached as **Annex B** hereto. In the event that all the Conditions Precedent are met in a timely manner (as detailed in Section 5 above) and the Investor does not transfer the payment as stated in Section 3.1 above, then the Officer of the Court will be entitled to forfeit the Collateral in accordance with the provisions of the Escrow Agreement and such forfeit of the Collateral shall be the sole and exclusive remedy against the Investor in the aforementioned case.

7. Miscellaneous

7.1. If and to the extent that after the Closing Date the Officer of the Court receives any documents and/or assets and/or rights (including funds) of or for the Company (including tax and/or VAT refunds, as they may be), then the Officer of the Court will transfer them to the Company as soon as possible and no later than within 5 Business Days of the date of receipt. In addition, the Officer of the Court will cooperate with the Company for the purpose of collecting funds due to it, including refunds from the tax authorities.

7.2. From the Closing Date, the Settlement Plan may not be revoked by either party for any reason.

7.3. Any change to the provisions of this Settlement Plan will be valid and binding only if it is made in writing and duly approved by the Creditors and the Investor and approved by the court (to the extent that its consent is indeed required).

7.4. This Settlement Plan shall be binding in all jurisdictions, including Israel and Canada, and the Parties shall be entitled to seek recognition of this settlement and any Orders of the Court in all Jurisdictions, including Canada, and the Investor and the Trustee and the Officer of the Court and the Company shall fully cooperate in connection with any efforts in that regard.

* * *

Annex A - Mr. Alan Saskin's letter of undertaking

UNDERTAKING

TO: KSV RESTRUCTURING INC.

AND TO: GUY GISSIN

RE: Court File No. CV-22-00688349-00CL
Mattamy (Downsview) Limited as Applicant
KSV Restructuring Inc. in its capacity as the
Court Appointed Monitor of Urbancorp Downsview Park
Development Inc. pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, C. C-36, as amended,
Guy Gissin, in his capacity as the appointed
Functionary and Foreign Representative of Urbancorp Inc.
by Order of the District Court in Tel Aviv-Yafo, Israel
as Respondents (collectively, the **"Action"**)

I HEREBY UNDERTAKE to not intervene, directly or indirectly, with respect to Court File No. CV-22-00688349-00CL between Mattamy (Downsview) Limited as Applicant KSV Restructuring Inc. in its capacity as the Court Appointed Monitor of Urbancorp Downsview Park Development Inc. pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, C. C-36, as amended, Guy Gissin, in his capacity as the appointed Functionary and Foreign Representative of Urbancorp Inc. by Order of the District Court in Tel Aviv-Yafo, Israel as Respondents.

DATED at Toronto this ___ day of [_____], 2023.

Witness: _____

Alan Saskin: _____

Annex B – Escrow Agreement

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (the "**Agreement**") is made and entered into as of the May 16th, 2023, by and among DIG Developments Inc. (a private company (incorporated under the laws of the Province of Ontario, Canada; company number 2790438) which is wholly owned and controlled by the family of Alan Saskin) (the "**Investor**") and IBI Trust Management as trustee (the "**Trustee**") and Silpit Industries Co. Ltd. (a private company incorporated under the laws of the Province of Manitoba Canada; company number 2938856) ("**Silpit**"); (each of the Investor, Trustee and Silpit, a "**Party**", and collectively, the "**Parties**"). Capitalized terms used herein, unless otherwise defined, shall have the meanings assigned to them in the Plan (as defined below).

WHEREAS, the Investor is about to submit a debt settlement plan (Attached as **Exhibit A** to this Agreement) to the creditors of Urbancorp Inc. ("**Plan**", "**Urbancorp**" and "**Creditors**", respectively) as part of a Tel Aviv District Court case numbered 44348-04-16 ("**Case**"); and

WHEREAS, If the Plan is approved, then the Investor will be required to transfer a payment of NIS 14 million for the benefit of the Creditors; and

WHEREAS, according to the Plan, as collateral for making the aforementioned payment, the Investor is required to deposit a total of NIS 5 million with the Trustee ("**Escrow Amount**") with instructions for the release of the Escrow Amount as detailed below; and

WHEREAS Silpit will be providing $1,500,000 CDN of the Escrow Amount;

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Interpretation**

1.1. **Definitions**

In this Agreement, the following definitions shall have the following meanings:

"Business Day"	a day other than Sunday, Saturday or Friday, or other day on which commercial banks in Tel Aviv or in the US are authorized or required by applicable law to close.
"Closing Date"	As such term is defined in the Plan.
"Escrow Account"	the account listed in **Exhibit B** hereto.
"Expiration Date"	December 31st, 2023
"Liability"	any loss, damage, cost, charge, claim, demand, expense, penalty, judgment, demand, or other liability whatsoever actually incurred, and reasonable legal fees

	and expenses actually incurred in direct connection therewith.
"Officer of the Court" -	Mr. Guy Gissin, Adv.

1.2. In this Agreement, unless the context otherwise requires, references to a Party include references to the successors or assigns (immediate or otherwise) of that Party.

2. **Appointment Of the Trustee**

The Investor hereby appoints the Trustee as Trustee, effective as of the date hereof, for the purposes set out in this Agreement, and the Trustee hereby accepts such appointment, subject to the terms set out in this Agreement.

3. **The Escrow Amount**

3.1. At the time of submitting the Plan to the court, the Investor and silpit shall deposit the full Escrow Amount with the Trustee, in the Escrow Account. Promptly upon receipt of the Escrow Amount in the Escrow Account, the Trustee shall notify the Investor, Silpit and the Officer of the Court, in writing, of the amount received and the date of receipt thereof.

3.2. Trustee shall release the Escrow Amount (or any portion thereof) to: (i) the Officer of the Court; or (ii) the Investor and Silpit, as applicable (each, the "**Receiving Party**"), subject to, and in accordance with, the provisions of Section 4 below.

3.3. During the term of this Agreement, the Escrow Amount shall be held in the Escrow Account, for the benefit of the Investor and Silpit (Silpit to the extent of the first $1,500,000 CDN) solely unless the conditions for the transfer of the funds to the Officer of the Court (as specified in section 4.1 below) are met.

3.4. The Escrow Amount shall be invested in a NIS interest bearing weekly deposit, or in any other deposit as instructed in writing, from time to time, by the Investor.

3.5. Any amount accumulated in the Escrow Account in excess of five (5) million NIS will be paid to the Investor and Silpit (Silpit to the extent of the first $1,500,000 CDN) together with the final distribution of the Escrow Amount by the Trustee.

4. **Release Of The Escrow Amount**

4.1. Release of the Escrow Amount to the Officer of The Court

To the extent that the Investor and/or the Officer of the Court shall deliver to the Trustee, no later than the Expiration Date, a written notice (signed by it) in the form attached as **Exhibit C** hereto (such written notice shall hereinafter be referred to as: "**Notice of Approval**"); Then, the Trustee will transfer the Escrow Amount to the Officer Of The Court's bank account (the details of which will be provided to the Trustee by the Officer Of The Court in writing and in advance), at the Closing Date but not before the lapse of at least five (5) business days after receiving the Notice of Approval.

4.2. Release of the Escrow Amount to the Investor

To the extent that the Investor and/or the Officer of the Court shall not deliver the Notice of Approval to the Trustee, prior to the Expiration Date, then by the end of the Expiration Date the Trustee irrevocably undertakes to the Investor and Silpit to transfer the full Escrow Amount to the Investor and Silpit accounts in accordance with the instructions in 4.21 and 4.2.2 below:

4.2.1. The first One and a half million (1,500,000) Canadian Dollars out of the Escrow Amount will be transferred back to the account listed below in this Section 4.2.1:

Bank	Royal Bank of Canada
Branch Number	00238
Account Number	1001254
Account Name	Allan M. Kaufman Professional Corporation
Swift code	ROYCCAT2

4.2.2. The remainder of the Escrow Amount will be transferred back to the account listed below:

Bank	Bank of Montreal
Branch Number	24892
Account Number	1029662
Account Name	Chaitons LLP
Swift code	BOFMCAM2

5. **Representations And Warranties**

Each of the Parties hereby represents and warrants that: (i) it has the power and authority to sign and to perform its obligations under this Agreement, and (ii) this Agreement is duly authorized and signed thereby and it constitutes a legal, valid, and binding obligation thereof.

6. **Liability Of The Trustee**

6.1. Trustee shall not be liable or responsible for any Liabilities or inconvenience which may result from any act performed (or omitted) by it in accordance with the provisions of this Agreement, and shall bear no obligation or responsibility to any person in respect of the operation of the Escrow Account unless such Liability arises as a result of gross negligence, fraud, bad faith or willful or material default on the part of Trustee.

6.2. The Trustee shall not be obliged to perform any additional duties unless it has previously agreed (or will agree in the future) to perform such duties. The Trustee shall not be under any obligation to take any action under this Agreement, if it reasonably expects that such action will result in any expense to, or Liability for, the payment of which is not, in its opinion, assured to be made to it within a reasonable time.

6.3. The Investor hereby agree to indemnify and hold harmless the Trustee for an amount equal to any and all Liabilities that may be imposed on, or incurred by, the Trustee in connection with any action, claim or proceeding of any kind brought or threatened to be brought against it as a result of its acting hereunder. Notwithstanding the aforesaid, the Investor shall not have any obligation

to indemnify the Trustee or any of its officers and employees or any other person for any Liabilities arising in consequence of the gross negligence, fraud, bad faith or willful or material default on the part of the Trustee.

6.4. The Trustee shall be entitled to rely on, and shall not be liable for acting upon, and shall be entitled to treat as genuine and as the document it purports to be, any written instruction, letter, written notice or other document furnished to it by the Investor and Silpit; or the Officer of the Court, or by any lawyer or other expert on their behalf, in whatever written format and by whatever means, including electronic, provided it is reasonably believed by the Trustee, in its absolute discretion, to be genuine and to have been signed and presented by the proper person or persons.

6.5. The Trustee shall not act on the instructions of any other person/entity in relation to the Escrow Account and the Escrow Amount, other than the instructions of the Investor and Silpit; and/or the Officer of the Court as set forth in Section 4 above.

6.6. (i) In the event of any disagreement or dispute resulting in conflicting claims or demands being made by the Investor and Silpit; and the Officer of the Court in connection with this Agreement, then subject to the delivery of a written notice to the Investor and Silpit; and the Officer of the Court, Trustee shall refrain from taking any action until: (a) it is directed otherwise by a written letter signed by both the Investor, Silpit; and the Officer of the Court; or (b) he receives instructions from a competent court on how he must act and waited until the period in which such an instruction can be appealed has passed.

(ii) For the avoidance of doubt, if the Notice of Approval is not submitted to the Trustee prior to the Expiration Date, then the Trustee must return the Escrow Amount to the Investor and Silpit in accordance with Section 4.2 within five (5) Business Days of the Expiration Date and the provisions of Section 6.6(i) shall not apply.

6.7. The indemnities contained in this Section 6 shall survive the termination of this Agreement.

7. Fees and Expenses

In consideration for the Trustee's services, the Investor shall pay the Trustee the fees set forth in Exhibit D (the "Fees"). The payment of the Fees by the Investor shall be made together with the transfer of the Escrow Amount to the Escrow Account.

8. Termination

This Agreement shall terminate automatically immediately following the release of the Escrow Amount to the Investor and Silpit; or the Officer of the Court in accordance with the provisions of Section 4 above.

9. Miscellaneous

9.1. Entire Agreement. This Agreement, together with the Plan, and all ancillary documents thereto, represent the whole agreement between the Parties in relation to the subject matter hereof and thereof and supersedes all prior representations, promises, agreements and understandings in relation therewith.

9.2. Amendments. No modification to, or variation of, this Agreement (or any document entered into by the Parties pursuant to, or in connection with, this Agreement) shall be valid, unless it is in writing and signed by, or on behalf of, each of the Parties thereto and shall also require the prior written approval of the Officer of the Court.

9.3. Governing Law. This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Israel (without regard to its conflict of laws provisions).

9.4. Jurisdiction. Any disagreement or dispute between the Parties arising under, in connection with, or in relation to this Agreement shall be resolved exclusively by the competent courts of Tel Aviv-Jaffa. The provisions of this Section 9 with respect to the *Governing Law* or *Jurisdiction* shall survive termination of this Agreement, and shall remain in full force and effect thereafter.

9.5. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by registered or certified mail (return receipt requested) or sent via email (with automated confirmation of receipt) to the Parties: (A) Any notice (i) if delivered personally or sent by email, shall conclusively deemed to have been given or served at the time of dispatch if sent or delivered on a Business Day or, if not sent or delivered on a Business Day, on the next following Business Day and (ii) if mailed by registered or certified mail (return receipt requested) shall conclusively be deemed to have been received on the tenth (10th) Business Day after the post of the same; and (B) at the following address (or at such other address as such Party may designate from time to time by means of five (5) days advance written notice to the other Party, given in the manner provided in this Section 9):

(i) if to Trustee, to:

IBI Trust Management

Eham Ha'am 9, Tel Aviv (Shalom Tower)

Attention: Mr. Tzvika Bernstein, Mrs. Keren Talmor

Telephone No.: +972 506 209 410/+972 542 327 686

Facsimile No.: +972 3 519 0341 (Attn: Tzvika)

E- Mail: Tzvika@102trust.com/Keren_T@IBI.co.il

(ii) if to Investor, to:

alansaskin@gmail.com

(iii) if to Silpit, to:

Allan Kaufman – am.kaufman@outlook.com

[signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Escrow Agreement to be executed and delivered by their respective officers thereunto duly authorized, which may be entered into in any number of counterparts, and by the Parties on different counterparts, each of which, when executed and delivered, shall be an original, but all the counterparts shall together constitute one and the same instrument, all as of the date first written above.

I.B.I. Trust Management
Reg. No. 515020428

IBI TRUST MANAGEMENT

By: Tzvika Bernstein

Title: _____

DocuSigned by:
Alan Saskin
C41508718DCE4C2...

DIG Developments Inc.

By: Alan Saskin

Title: General Manager

DocuSigned by:
Allan Kaufman
E118AC9099E4494...

Silpit Industries Co. Ltd.
Allan Kaufman

By: [redacted]

President

Title: [redacted]

Exhibit A – Settlement Plan

Exhibit B - Escrow Account Details

Bank Name:	Bank Hapoalim Ltd.
Branch Number:	600
Branch Address:	26 Harokmim St. Holon, Israel
Account Name:	Israel Brokerage and Investment I.B.I.
Account Number:	454340
Beneficiary Address:	Ehad Ha'am 9, Tel-Aviv
SWIFT Code:	POALILIT
IBAN:	IL650126000000000454340
F/B/O:	IBI Trust Management in trust for DIG Developments Inc. Transaction; Account number: **98921**

Exhibit C – Notice of Approval

[ ] [ ], 2023

To

Mr. Tzvika Bernstein

IBI Trust Management

RE: Urbancorp – Notice of Approval

In accordance with the provisions of Section 4.1 of the Trust Agreement signed between IBI Trust Management ("**Trustee**") and DIG Developments Inc. (the "**Investor**") on May [ ], 2023 (the "**Trust Agreement**"), I hereby approach you as follows:

1. I hereby confirm that all the conditions precedent specified in section [ ] of the debt Settlement Plan attached as **Exhibit A** to the Trust Agreement (the "**Plan**") have been met.
2. I hereby confirm that on [ ] [ ], 2023 a court order was received approving the Plan (without any changes to it except for changes approved in writing and in advance by the Investor). The court order is attached to this letter.
3. I hereby confirm that the deadline for submitting objections to the Plan has passed and no such objection has been submitted; or - such objection has been submitted and rejected by the Court
4. Attached to this letter is a signed version of annexes [ ], [ ] and [ ] to the Plan (to be transferred by you directly to the Investor).
5. In light of all of the above and in accordance with the provisions of Section 4.1 of the Trust Agreement, I hereby instruct you to transfer the Escrow Amount to the Officer of the Court's bank account at the Closing Date.

Sincerely Yours,

[ ]

Attention:

1. Mr. Guy Gissin, Adv. – Officer Of The Court.

2. Reznik, Paz Nevo Trustees Ltd - Trustee to the Series A Bonds issued by Urbancorp Inc.

3. DIG Developments Inc.

Exhibit D - Fee Schedule

A fee, to be paid by the Investor upon the execution of the Agreement, as follows:

An amount of US$ 3,500[1] + VAT (totaling to an aggregate amount of US$ 4,095)

Commission upon wire:

US$ Transfer Commission:	US$ 25 per each wire.
NIS Transfer Commission:	NIS 20 per each wire.

By paying the foregoing fee, the Investor is exempted from all fixed and variable costs related to the opening and maintenance of the Escrow Account.

1 Since the funds are managed in the Escrow Account, the Trustee, [I.B.I. Group (Israel Brokerage and Investment I.B.I. Ltd., I.B.I. Trust Management Ltd.) IBI Capital Trust Ltd. etc.], may receive certain benefits in connection with managing the transaction Account.

Annex C - Letter of Assignment

IRREVOCABLE DIRECTION/ASSIGNMENT

TO: KSV RESTRUCTURING INC.

RE: Court File No. CV-22-00688349-00CL
Mattamy (Downsview) Limited as Applicant
KSV Restructuring Inc. in its capacity as the
Court Appointed Monitor of Urbancorp Downsview Park
Development Inc. pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, C. C-36, as amended,
Guy Gissin, in his capacity as the appointed
Functionary and Foreign Representative of Urbancorp Inc.
by Order of the District Court in Tel Aviv-Yafo, Israel
as Respondents (collectively, the **"Action"**)

YOU ARE HEREBY AUTHORIZED AND DIRECTED to pay the proceeds received by you arising a result of the above-noted Action as follows:

1. The first $3,350,000 CDN received by you from the Action and that you are entitled to distribute to Urbancorp Inc. shall be paid to Mr. Guy Gissin, in his capacity as the appointed Functionary and Foreign Representative of Urbancorp Inc. by Order of the District Court in Tel Aviv-Yafo, Israel;

2. The balance you are entitled to distribute from the Action to Urbancorp Inc. shall be paid to Urbancorp Inc. or whomever they may direct.

AND THIS SHALL BE your good and sufficient and irrevocable authority for so doing.

The parties hereto agree that this Irrevocable Direction may be transmitted by facsimile, email, DocuSign or such similar device and that the reproduction of signatures by facsimile, email, DocuSign or such similar device will be treated as binding as if an original.

This Irrevocable Direction may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall be but one and the same instrument.

DATED at Toronto this ___ day of [_____], 2023.

DIG DEVELOPMENTS INC.

Per:_____
Alan Saskin
General Manager
I have the authority to bind the Corporation

Annex D

בבית המשפט המחוזי
בתל אביב-יפו

ת"א 12055-12-17
בפני כב' השופט מ. אלטוביה

בעניין:

עו"ד גיא גיסין בעל התפקיד הנאמן לביצוע הסדר הנושים
לחברת אורבנקורפ אינק.
ע"י ב"כ עוה"ד יעל הרשקוביץ ו/או אמיר פז
ממשרד גיסין ושות'
מרחוב הברזל 28 (B) תל אביב 6971054
טל': 03-7467777 ; פקס': 03-7467700

התובע

– נגד –

1. **Mr. Alan Saskin**
ע"י ב"כ עוה"ד יורי נחושתן (מ.ר 14850) ואח'
ממשרד גולדפרב גרוס זליגמן ושות', עורכי-דין
ממרכז עזריאלי 1, הבניין העגול, קומה 37, תל-אביב 67010
טל': 03-6074539 ; פקס': 03-6074820
2. **Mr. Philip Glaes**
3. **Deloitte - בריטמן אלמוגר זהר (נמחקה)**
4. **אימפקס הנפקות בע"מ (נמחקה)**
5. **מידרוג**
הנתבעת 5 באמצעות ב"כ עוה"ד אגמון ושות' רוזנברג הכהן ושות'
מרחוב יגאל אלון 98 (בניין אלקטרה), תל אביב 6789141
טלפון 03-6078607 ; פקס: 03-607866
ובאמצעות ב"כ עוה"ד יורם סמואל ושות'
מרחוב יגאל אלון 155, תל אביב 6744363
טלפון: 03-6858216 ; פקס: 03-6857533
6. **Janterra Real Estate Advosors Inc.**
ע"י ב"כ עוה"ד אלון פומרנץ ו/או עומר מאירי ו/או ארז נעים
ממשרד ליפא מאיר ושות', עורכי דין (בייפוי כח מוגבל)
מרחוב ויצמן 2 (בית אמות משפט), תל אביב 6423902
טל': 03-6070600 ; פקס': 03-6070666
7. **AIG Europ Limited (נמחקה)**
8. **AIG Europ (Services) Limited (נמחקה)**
9. **TCC/ Urbancorp Bay Stadium (ניתן פסק דין)**
10. **The Webster Trust (ניתן פסק דין)**
11. **Urbancorp Manag,ent inc. (ניתן פסק דין)**
12. **Urbancorp Holdco Inc (ניתן פסק דין)**
הנתבעות 9-12 באמצעות ב"כ עוה"ד יורי נחושתן (מ.ר 14850) ואח'
ממשרד גולדפרב גרוס זליגמן ושות', עורכי-דין
ממרכז עזריאלי 1, הבניין העגול, קומה 37, תל-אביב 67010
טל': 03-6074539 ; פקס': 03-6074820
13. **Mrs. Doreen saskin**
הנתבעת 13 ע"י ב"כ עוה"ד יהודה רוזנטל ו/או אסף דהן ו/או מרב בסון
ממשרד גולדפרב גרוס זליגמן ושות', עורכי דין
מרחוב יגאל אלון 98, תל אביב
טלפון: 03-7101616 ; פקס: 03-7101617
14. **Terra Firma Capital corporation(נמחקה)**
15. **מר דב מאייר (נמחק)**

הנתבעים

ובעניין:

כונס הנכסים הרשמי
מרח' השלושה 2, תל אביב

הכנ"ר

הודעה מטעם התובע ובקשה להפסקת התובענה

התובע, עו"ד גיא גיסין, בעל התפקיד הנאמן לביצוע הסדר הנושים בחברת אורבנקורפ אינק, (בהסדר נושים) (להלן: "**החברה**") בהליך פר"ק (מחוזי ת"א) 44348-04-16 (להלן: "**הליך חדלות הפירעון**"), מתכבד להודיע לבית המשפט הנכבד כדלקמן.

1. בהליך חדלות הפירעון אושר כדין הסדר חוב עם כל נושי החברה ולפיו, בין היתר, יבוטלו וידחו כל התביעות וההליכים המשפטיים בקשר עם הליך חדלת הפירעון, לרבות תביעה זו.

מצ"ב ההחלטה בהליך חדלות הפירעון כנספח 1.

2. בהתאם, מתבקש בית המשפט הנכבד ליתן פסק דין המורה על **הפסקת התובענה, וכן להורות על דחייתה, ללא צו להוצאות.**

3. כמו כן, מתבקש בית המשפט הנכבד להורות על ביטול פסק הדין החלקי שניתן ביום 23.6.2022 כנגד הנתבעות 12-9, ועל ביטול הפסיקתא שנחתמה ביום 12.8.2022 כנגד הנתבעות 12-9, וכן להורות על דחיית התובענה, ללא צו להוצאות, גם כנגד הנתבעות 12-9.

יעל הרשקוביץ, עו"ד
גיסין ושות', עורכי-דין
ב"כ התובע

Annex E1

Court File No. CV-18-596633-00A1

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

GUY GISSIN SOLELY IN HIS CAPACITY AS ISRAELI COURT APPOINTED FUNCTIONARY OFFICER AND FOREIGN REPRESENTATIVE OF URBANCORP INC. and GUY GISSIN SOLELY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE AND AS TRUSTEE OF THE CLAIMS OF THE HOLDERS OF BONDS ISSUED BY URBANCORP INC. AND NOT IN HIS PERSONAL CAPACITY

Plaintiffs

- and-

HARRIS SHEAFFER LLP and BARRY ROTENBERG

Defendants

- and -

SHIMONOV & CO., APEX ISSUANCES LTD. and NIR COHEN SASSON

Third Parties

CONSENT

THE PARTIES, hereto by their respective lawyers, do hereby consent to an Order, a copy of which is annexed as Schedule "A" to this consent.

THE LAWYERS certify that no party to this consent is under any disability.

May __, 2023

Michael Beeforth
Dentons LLP
Lawyers for the Plaintiff

May __, 2023

Paul J. Pape
Pape Chaudhury LLP
Lawyers for the Defendants

May __, 2023

Matthew Latella / Michael Nowina
BAKER & Mckenzie LLP
Lawyers for the Third Party, APEX Issuances Ltd.

May __, 2023

Tyr LLP
James Doris
Lawyers for the Third Parties, Shimonov & Co., and Nir Cohen Sasson

GUY GISSIN et al.
Plaintiffs

-and-

HARRIS SHEAFFER LLP et al.
Defendants
Court File No. CV-18-596633-00A1

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

CONSENT

PAPE CHAUDHURY LLP
Suite 1701
150 York Street
Toronto, Ontario
M5H 3S5

Paul J. Pape, LSO #12548P
paul@papechaudhury.com
Tel: 416.364.8755
Fax: 416.364.8855

Lawyers for the defendants

Annex E2

Court File No: CV-18-596633-00A1

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	, THE
	)	
JUSTICE	)	
	)	DAY OF , 2023

B E T W E E N:

GUY GISSIN SOLELY IN HIS CAPACITY AS ISRAELI COURT APPOINTED FUNCTIONARY OFFICER AND FOREIGN REPRESENTATIVE OF URBANCORP INC. and GUY GISSIN SOLELY IN HIS CAPACITY AS FOREIGN REPRESENTATIVE AND AS TRUSTEE OF THE CLAIMS OF THE HOLDERS OF BONDS ISSUED BY URBANCORP INC. AND NOT IN HIS PERSONAL CAPACITY

Plaintiffs

- and-

HARRIS SHEAFFER LLP and BARRY ROTENBERG

Defendants

- and -

SHIMONOV & CO., APEX ISSUANCES LTD. and NIR COHEN SASSON

Third Parties

ORDER

THIS MOTION, being brought by the Defendants, Harris Sheaffer and Barry Rotenberg ("**Defendants**"), for an Order dismissing the action against the Defendants ("**Main Action**"), and the Defendants' action against the Third Parties, Shiminov & Co., Apex Issuances Ltd., and Nir Cohen Sasson ("**Third Party Action**") without costs was read this day at the courthouse, 393 University Avenue, Toronto, Ontario.

ON READING the consent of the parties by their lawyers, filed:

1. **THIS COURT ORDERS** that the Main Action and the Third Party Action are hereby dismissed, without costs.

GUY GISSIN SOELY IN HIS CAPACITY AS ISRAELI COURT APPOINTED FUNCTIONARY OFFICER AND FOREIGN REPRESENTATIVE OF URBANCORP INC. et al Plaintiffs	and	**HARRIS SHEAFFER LLP** Defendants And **SHIMONOV & CO., APEX ISSUANCES LTD. and NIR COHEN SASSON** Third Parties	Court File No.: CV-18-596633-00A1

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

ORDER

PAPE CHAUDHURY LLP
Suite 1701
150 York Street
Toronto, Ontario
M5H 3S5

Paul J. Pape, LSO #12548P
paul@papechaudhury.com
Tel: 416.364.8755
Fax: 416.364.8855

Lawyers for the Defendants

POWER OF ATTORNEY

I, the undersigned, **DIG Developments Inc.**, a private company incorporated under the laws of the Province of Ontario, Canada company number 2790438, appoint and empower by these presents Adv. Ben Lipetz and/or Adv. Gal Shabi and/or any other attorney from Goldfarb Gross Seligman & Co. Law Offices to be my true and lawful attorney and, without prejudice to the general purport thereof, to perform and/or sign all or any of the actions, matters, agreements and/or documents hereinafter with regard to the legal proceedings and other matters regarding Proposal of Settlement for the Creditors of the Company submitted in Case No. 44348-04-16 Reznik Paz Nevo Trusts Ltd vs. Urbancorp unc No. 2471774 in the Tel Aviv-Jaffa District Court and in such proceedings:

1. To request, to demand, to sue for, to receive, to collect and to hold amounts of money which belong or shall belong to me or are owed or shall be owed to me by others or are or will be payable to me, whether by virtue of securities or of any balance or settlement of accounts or in any other manner whatsoever, to sign, execute and give valid receipts, discharges, releases and other discharges for all manner of assets, whether realty of personality, whether now or in the future including matters under claim, and in respect of all moneys which do or shall belong or be due to me, whether by myself of jointly with any person, body or corporate body.
2. In my name and in my place to settle, pay, finish, liquidated, arbitrate and compromise in respect of accounts, calculations, claims or disputes of any kind in which I have or shall at any time have an interest or which do or shall at any time affect me on connection with any person whatsoever, and to pay or receive any balance of any account, calculation, claim or dispute, as may be required from case to case.
3. In my name and in my place to compromise and grant concessions or rebates with or to any person in respect of any debt or claim due or payable to me or in my favor now or at any future time.
4. To receive in my name and behalf any registered or other mail or postal parcel and to sign receipts in connection therewith.
5. To enter, conduct, maintain, execute, disregard, annual, defend, oppose, present counter-claim, demand setoff, compromise, settle, arbitrate, or appeal in all law suits, legal proceedings, applications, disputes, financial claims and demands, accounts and all matters pending or being submitted now or to be pending or be submitted in the future between me and any person or persons, corporate or other body of any kind, to appear in my name and behalf or to represent me in any court of law and before all law and other offices whatsoever, as my Attorney may deem meet and rights.
6. To participate by consent in any matter or any of the above matters or activities, together with anybody or association.
7. To represent me and to appear in my name and behalf before any authority in all matters affecting or connected with my affairs, and to sign and execute all manner of certificates, documents and contracts before such authorities or offices and to perform all actions and matters which may be required by those authorities, or offices.

I herewith undertake to confirm and uphold any act or matter which my Attorney of his deputy or agent or agents to be appointed by him under this Power of Attorney do or shall do, cause or shall cause by virtue of this Power of Attorney.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL TODAY, May 16, 2023.

DIG Developments Inc

By: Mr. Alan Saskin
Title: General Manager

I hereby confirm my client's signature above.

גל שבי, עו"ד *
Gal Shabi, Adv.
L.N. 65929 מ.ר.
גרוס ושות'

Appendix “E”

Urbancorp Filing Entities Listed on Schedule "A"

Projected Statement of Cash Flow [1]

For the Period Ending September 30, 2023

(Unaudited; $C)

	Note	Week Ending 07-Jul-23	14-Jul-23	21-Jul-23	28-Jul-23	04-Aug-23	11-Aug-23	18-Aug-23	25-Aug-23	01-Sep-23	08-Sep-23	15-Sep-23	22-Sep-23	30-Sep-23	Total
Total Receipts		-	-	-	-	-	-	-	-	-	-	-			-
Disbursements															
Sundry	2	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	13,000
Professional fees	3	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	260,000
Total disbursements		21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	273,000
Net Cash Flow	4	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(21,000)	(273,000)

Urbancorp Filing Entities Listed on Schedule "A"
Notes to Projected Statement of Cash Flow
For the Period Ending September 30, 2023
(Unaudited; $C)

Purpose and General Assumptions

1. The purpose of the projection ("Projection") is to present a cash flow forecast of the entities listed on Schedule "A" ("Urbancorp CCAA Entities") for the period July 1, 2023 to September 30, 2023 (the "Period") in respect of their proceedings under the *Companies' Creditors Arrangement Act* .

   The projected cash flow statement has been prepared based and most probable assumptions.

Most Probable Assumptions

2. Represents sundry costs, including translation costs and postage.

3. The professional fees are in respect of the Monitor, its legal counsel and legal counsel to the Urbancorp CCAA Entities. The amounts reflected are estimates only.

4. The cash flow deficiency will be funded from cash on hand. The cash flow excludes any potential recoveries of management fees.

Schedule A

Urbancorp Filing Entities

1. Urbancorp Toronto Management Inc.
2. Urbancorp Downsview Park Development Inc.
3. Urbancorp (St. Clair Village) Inc.
4. Urbancorp (Patricia) Inc.
5. Urbancorp (Mallow) Inc.
6. Urbancorp (Lawrence) Inc.
7. Urbancorp (952 Queen West) Inc.
8. King Residential Inc.
9. Urbancorp New Kings Inc.
10. Urbancorp 60 St. Clair Inc.
11. High Res. Inc.
12. Bridge on King Inc.
13. Urbancorp Power Holdings Inc.
14. Vestaco Homes Inc.
15. Vestaco Investments Inc.
16. 228 Queen's Quay West Limited
17. Urbancorp Cumberland 1 LP
18. Urbancorp Cumberland 1 GP Inc.
19. Urbancorp Partner (King South) Inc.
20. Urbancorp (North Side) Inc.
21. Urbancorp Residential Inc.
22. Urbancorp Realtyco Inc.

Appendix “F”

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., AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

The management 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., Hi Res. Inc. Bridge on King Inc. and the affiliated entities listed in Schedule "A" Hereto (collectively, the "Companies"), have developed the assumptions and prepared the attached statement of projected cash flow as of the 20th day of June, 2023 for the period July 1, 2023 to September 30, 2023 ("Cash Flow").
All such assumptions are disclosed in Notes 2 to 4.

The probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 4. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 20th day of June, 2023.

KSV Restructuring Inc.

KSV RESTRUCTURING INC.

SCHEDULE "A"

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

Appendix “G”

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., AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

MONITOR'S REPORT ON CASH FLOW STATEMENT

(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow as of the 20th day of June, 2023 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., Hi Res. Inc. Bridge on King Inc. and the affiliated entities listed in Schedule "A" Hereto (collectively, the "Urbancorp CCAA Entities") consisting of a weekly projected cash flow statement for the period July 1, 2022 to September 30, 2023 ("Cash Flow") has been prepared by the management of the Urbancorp CCAA Entities for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2 to 4.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by the management and employees of the Urbancorp CCAA Entities. We have reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow.
Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

a) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Urbancorp CCAA Entities or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or

b) the Cash Flow does not reflect the probable assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 20th day of June, 2023.

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

SCHEDULE "A"
List of Non-Applicant Affiliated Companies

- 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 “H”

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

AFFIDAVIT OF NOAH GOLDSTEIN
(sworn June 21, 2023)

I, **NOAH GOLDSTEIN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am a Managing Director at KSV Restructuring Inc. ("KSV"), the Court-appointed monitor (the "Monitor") of the Applicants and the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities"), and as such I have knowledge of the matters deposed to herein.

2. Pursuant to an order of the Ontario Superior Court of Justice ("Court") made on May 18, 2016, the Cumberland CCAA Entities were granted protection under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") and KSV was appointed as the Monitor in these proceedings.

3. This Affidavit is sworn in support of a motion seeking, among other things, approval of the Monitor's fees and disbursements for the period March 1, 2023 to May 31, 2023 (the "Period").

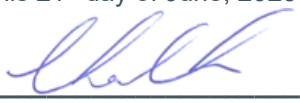
4. The Monitor's invoices for the Period disclose in detail: the nature of the services rendered; the time expended by each person and their hourly rates; and the total charges for the services rendered; and disbursements charged. Copies of the Monitor's invoices are attached hereto as Exhibit "A" and the billing summary is attached hereto as Exhibit "B".

5. The Monitor spent a total of 103.63 hours on this matter during the Period, resulting in fees totalling $69,163.80, excluding disbursements and HST, as summarized in Exhibit "B".

6. As reflected on Exhibit “B”, the Monitor’s average hourly rate for the Period was $667.41.

7. I verily believe that the time expended and the fees charged are reasonable in light of the services performed and the prevailing market rates for services of this nature in downtown Toronto.

SWORN before me at the City of Toronto, in the Province of Ontario this 21st day of June, 2023



Catherine Anne Stuyck-Theriault, a Commissioner, etc.,
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.
Expires February 19, 2025

NOAH GOLDSTEIN

Attached is Schedule “A”

Referred to in the

AFFIDAVIT OF NOAH GOLDSTEIN

Sworn before me

this 21st day of June, 2023

Catherine Anne Stuyck-Theriault, a Commissioner, etc.,
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.
Expires February 19, 2025

Schedule “A”

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

Attached is Exhibit “A”

Referred to in the

AFFIDAVIT OF NOAH GOLDSTEIN

Sworn before me

this 21st day of June, 2023

Catherine Anne Stuyck-Theriault, a Commissioner, etc.,
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.
Expires February 19, 2025

ksv advisory inc.
220 Bay St., Suite1300 PO Box 20
Toronto, Ontario, M5J 2W4
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

INVOICE

The Urbancorp Group
Suite 2A - 120 Lynn Williams Street
Toronto, ON M6K 3P6

April 20, 2023

Invoice No: 3084
HST #: 818808768 RT0001

Re: The entities listed on Schedule "A" attached (collectively, the "Companies")

For professional services rendered during March 2023 by KSV Restructuring Inc. in its capacity as Monitor (the "Monitor") in the Companies' proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA"), including:

Downsview

- corresponding with Davies Ward Phillips & Vineberg LLP ("Davies"), counsel to the Monitor, to discuss the management fee dispute (the "Management Fee Dispute") between Urbancorp Toronto Management Inc. ("UTMI") and Mattamy (Downsview) Inc. ("Mattamy");
- reviewing and commenting on the Joint Responding Factum of the Monitor and the Foreign Representative filed on February 28, 2023 in response to the Mattamy Factum;
- attending Court on March 10, 2023 concerning the arbitration decision of Frank Newbould in favour of UTMI;

Stay Extension

- reviewing and commenting on Court materials prepared by DLA Piper LLP, counsel to the Companies, and by Davies, in respect of a motion returnable March 21, 2023 (the "Stay Extension Motion"), seeking, *inter alia*, an extension of the stay of proceedings;
- preparing a cash flow projection ("Cash Flow Projection") in the context of the Stay Extension Motion;
- preparing Management's Report on Cash Flow Statement and the Monitor's Report on Cash Flow Statement in connection with the Cash Flow Projection;

- preparing the Fifty-Sixth Report of the Monitor dated March 16, 2022 in connection with the Stay Extension Motion;

- attending at Court on March 21, 2023;

General

- continuing the process to obtain tax clearance certificates for certain of the Companies, including corresponding with MNP LLP ("MNP"), the Companies' external accountants, and Davies, and attending calls with MNP on March 1, 3, 5 and 8, 2023;

- reviewing and commenting on the Companies' tax returns prepared by MNP;

- reviewing claims against UTMI and having several internal discussions regarding same;

- preparing harmonized sales tax returns for several of the Companies; and

- to all other matters not specifically addressed above.

* * *

Total fees per attached time summary	$	36,555.50
HST		4,752.22
Total Due	$	41,307.72

KSV Restructuring Inc.

Urbancorp Group

Time Summary

For the month ending March 2023

Personnel	Rate ($)	Hours	Amount ($)
Robert Kofman	800	23.65	18,920.00
Noah Goldstein	700	8.75	6,125.00
Robert Harlang	650	16.30	10,595.00
Other staff and administration		4.65	915.50
Total Fees		37.05	36,555.50

Schedule “A”

Urbancorp Toronto Management Inc.
Urbancorp (St. Clair Village) Inc.
Urbancorp (Patricia) Inc.
Urbancorp (Mallow) Inc.
Urbancorp (Lawrence) Inc.
Urbancorp Downsview Park Development Inc.
Urbancorp (952 Queen West) Inc.
King Residential Inc.
Urbancorp 60 St. Clair Inc.
High Res. Inc.
Bridge on King Inc.
Urbancorp Power Holdings Inc.
Vestaco Homes Inc.
Vestaco Investments Inc.
228 Queen’s Quay West Limited
Urbancorp Cumberland 1 LP
Urbancorp Cumberland 1 GP Inc.
Urbancorp Partner (King South) Inc.
Urbancorp (North Side) Inc.
Urbancorp Residential Inc.
Urbancorp Realtyco Inc.

ksv advisory inc.
220 Bay St., Suite 1300 PO Box 20
Toronto, Ontario, M5J 2W4
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

INVOICE

The Urbancorp Group
Suite 2A - 120 Lynn Williams Street
Toronto, ON M6K 3P6

June 20, 2023

Invoice No: 3170
HST #: 818808768 RT0001

Re: The entities listed on Schedule "A" attached (collectively, the "Companies")

For professional services rendered from April 1 to May 31, 2023 by KSV Restructuring Inc. in its capacity as Monitor (the "Monitor") in the Companies' proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA"), including:

- corresponding with Davies Ward Phillips & Vineberg LLP ("Davies"), counsel to the Monitor, to discuss the management fee dispute (the "Management Fee Dispute") between Urbancorp Toronto Management Inc. ("UTMI") and Mattamy (Downsview) Inc. ("Mattamy");
- reviewing the decision of Justice Kimmel dated May 19, 2023 regarding the Management Fee Dispute and discussing same with Davies and Dentons (Canada) LLP, counsel to Guy Gissin in his capacity as Foreign Representative of Urbancorp Inc. ("UCI");
- corresponding with Davies and Dentons regarding potentially resolving the Management Fee Dispute, including emails and calls on May 24 and 31, 2023;
- corresponding with a representative of the bondholders of UCI, including emails on April 2, 3 and May 24, 2023;
- reviewing a proposal by Dig Developments Inc. made in the Israeli Court and discussing same with Chaitons LLP, counsel to Alan Saskin, and Davies;
- continuing the process to obtain tax clearance certificates for certain of the Companies, including corresponding with MNP LLP ("MNP"), the Companies' external accountants, and Davies, and attending calls with MNP on April 4, 12, 17, 29 and May 9 and 18, 2023;
- reviewing and commenting on the Companies' tax returns prepared by MNP;
- reviewing claims against UTMI and having several internal discussions regarding same;

- preparing harmonized sales tax returns for several of the Companies; and
- to all other matters not specifically addressed above.

* * *

Total fees per attached time summary	$	32,608.30
HST		4,239.08
Total Due	$	36,847.38

KSV Restructuring Inc.

Urbancorp Group

Time Summary

For the period April 1, 2023 to May 31, 2023

Personnel	Rate ($)	Hours	Amount ($)
Robert Kofman	800	14.95	11,960.00
Noah Goldstein	700	6.50	4,550.00
Other staff and administration		28.83	16,098.30
Total Fees		50.28	32,608.30

Schedule “A”

Urbancorp Toronto Management Inc.
Urbancorp (St. Clair Village) Inc.
Urbancorp (Patricia) Inc.
Urbancorp (Mallow) Inc.
Urbancorp (Lawrence) Inc.
Urbancorp Downsview Park Development Inc.
Urbancorp (952 Queen West) Inc.
King Residential Inc.
Urbancorp 60 St. Clair Inc.
High Res. Inc.
Bridge on King Inc.
Urbancorp Power Holdings Inc.
Vestaco Homes Inc.
Vestaco Investments Inc.
228 Queen’s Quay West Limited
Urbancorp Cumberland 1 LP
Urbancorp Cumberland 1 GP Inc.
Urbancorp Partner (King South) Inc.
Urbancorp (North Side) Inc.
Urbancorp Residential Inc.
Urbancorp Realtyco Inc.

Attached is Exhibit “B”

Referred to in the

AFFIDAVIT OF NOAH GOLDSTEIN

Sworn before me

this 21st day of June, 2023

Catherine Anne Stuyck-Theriault, a Commissioner, etc.,
Province of Ontario, for KSV Advisory Inc. and KSV Restructuring Inc.
Expires February 19, 2025

Cumberland CCAA Entities

Schedule of Professionals' Time and Rates

For the Period from March 1, 2023 to May 31, 2023

Personnel	Title	Hours	Billing Rate ($ per hour)	Amount ($)
Robert Kofman	Managing Director	38.60	800	30,880.00
Noah Goldstein	Managing Director	15.25	700	10,675.00
Other staff and administrative	Various	49.78	125-650	27,608.80
Total fees				69,163.80
Total hours				103.63
Average hourly rate				$ 667.41

Appendix “I”

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 DEVELOPMENTS INC., URBANCORP (952 QUEEN WEST) INC., KING RESIDENTIAL INC., URBANCORP NEW KINGS INC., URBANCORP 60 ST. CLAIR INC., HIGH RES.INC., BRIDGE ON KING INC. (THE "APPLICANTS") AND THE AFFILIATED ENTITIES LISTED IN SCHEDULE "A" HERETO

AFFIDAVIT OF
ROBIN B. SCHWILL
(Sworn June 20, 2023)

I, Robin B. Schwill, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a partner with Davies Ward Phillips & Vineberg LLP ("**Davies**"), solicitors for KSV Restructuring Inc. in its capacity as the court-appointed CCAA monitor (the "**Monitor**") of Urbancorp Toronto Management Inc., Urbancorp (St. Clair Village) Inc., Urbancorp (Patricia) Inc., Urbancorp (Mallow) Inc., Urbancorp (Lawrence) Inc., Urbancorp Downsview Park Developments Inc., Urbancorp (952 Queen West) Inc., King Residential Inc., Urbancorp New Kings Inc., Urbancorp 60 St. Clair Inc., High Res. Inc., Bridge On King Inc. and their affiliates listed in Schedule A hereto. As such, I have knowledge of the matters deposed to herein.

2. This affidavit is sworn in support of a motion to be made in these proceedings seeking, among other things, approval of the fees and disbursements of Davies for the period from March 1, 2023 to May 31, 2023 (the "**Period**"). There may be additional time for this Period which has been accrued but not yet billed.

3. During the Period, Davies has provided services and incurred fees and disbursements in the amounts of $113,144.50 and $108.83 (excluding harmonized sales tax ("**HST**")).

4. A billing summary of all invoices rendered by Davies during the Period is attached hereto as Exhibit "A". A summary of the hourly rates of each person who rendered services, the total time expended by such person and the aggregate blended rate of all professionals at Davies who rendered services on this matter is attached hereto as Exhibit "B". Copies of the actual invoices are attached hereto as Exhibit "C". The invoices disclose in detail: (i) the names of each person who rendered services on this matter during the Period; (ii) the dates on which the services were rendered; (iii) the time expended each day; and (iv) the total charges for each of the categories of services rendered during the Period.

5. I have reviewed the Davies invoices and believe that the time expended and the legal fees charged are reasonable in light of the services performed and the prevailing market rates for legal services of this nature in downtown Toronto.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 20th day of June, 2023

Commissioner for taking affidavits

Natalie Renno

Robin B. Schwill

SCHEDULE "A"

LIST OF NON APPLICANT AFFILIATES

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

This is Exhibit "A" referred to in the Affidavit of Robin B. Schwill sworn before me this 20th day of June, 2023.

Commissioner for Taking Affidavits

Natalie Renner

Exhibit "A"

Billing Summary

Invoice Date	Docket Entry Periods	Fees	Disbursements	HST	Total
April 12, 2023	March 1, 2023 to March 31, 2023	$69,325.00	$108.83	$9,026.40	$78,460.23
May 10, 2023	April 1, 2023 to April 30, 2023	$10,177.00	$0.00	$1,323.01	$11,500.01
June 9, 2023	May 1, 2023 to May 31, 2023	$33,642.50	$0.00	$4,373.53	$38,016.03
	TOTALS	$113,144.50	$108.83	$14,722.94	$127,976.27

This is Exhibit "B" referred to in the Affidavit of Robin B. Schwill sworn before me this 20th day of June, 2023.

Commissioner for Taking Affidavits

Natalie Renner

Exhibit "B"

Aggregate Blended Rate Summary

Individual	Title	Hourly Rate	Total Hours
Robin B. Schwill	Partner	$1350.00	70.10
Matthew Milne-Smith	Partner	$1250.00	1.70
Ioana Hancas	Lawyer	$940.00	0.30
Martina Williams	Law Clerk	$260.00	2.50
Paul Lamarre	Partner	$1350.00	10.60

Total Fees from Exhibit "A"	$113,144.50
Total Hours	85.20
Average Blended Hourly Rate (rounded to the nearest dollar)	$1328.00

This is Exhibit "C" referred to in the
Affidavit of Robin B. Schwill sworn
before me this 20th day of June 2023.

Commissioner for Taking Affidavits

Natalie Renner

DAVIES

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

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

Attention: Robert Kofman
Managing Director
bkofman@ksvadvisory.com

CC: Noah Goldstein
ngoldstein@ksvadviosry.com

Invoice #:	749482
Date:	April 12, 2023
Client/Matter #:	126507.256201
GST/HST:	118882927 RT0001
Billing Lawyer:	Robin Schwill
Email:	rschwill@dwpv.com
Phone:	416.863.5502

Privileged & Confidential

For professional services rendered through March 31, 2023 in connection with UrbanCorp (Matter #: 256201)

Our Fee		69,325.00
Disbursements		108.83
HST ON (13%)		9,026.40
Total Due	**Canadian Dollars (CAD)**	**$ 78,460.23**

Payment Due Upon Receipt

Canadian Dollar Payment

Beneficiary Bank:	Canadian Imperial Bank of Commerce 199 Bay Street Commerce Court-Main Banking Centre Toronto, Ontario M5L 1G9 Canada	Account Name: Bank Institution #: SWIFT Code: Bank Transit #: Bank Account #:	Davies Ward Phillips & Vineberg LLP 010 CIBCCATT 00002 2909219
Beneficiary:	Davies Ward Phillips & Vineberg LLP 155 Wellington Street West Toronto, Ontario M5V 3J7 Canada	Clearing Code:	CC001000002

Billing questions can be made out to Billing@dwpv.com. Payment remittances should be directed to AR@dwpv.com.

Any fees and disbursements recorded after the above mentioned period will appear on subsequent statements. Invoices are due upon receipt. Interest will be charged on all amounts owing over 30 days. The interest rate is set at 12% per year.

Please see important terms of client service, including file retention and disposal policy, on our website, www.dwpv.com/serviceterms

Timekeeper Summary

Timekeeper	Rate	Hours	Amount
Robin B. Schwill	1,350.00	50.70	68,445.00
Ioana Hancas	940.00	0.30	282.00
Martina Williams	260.00	2.30	598.00
Total		**53.30**	**$ 69,325.00**

Time Detail

Date	Timekeeper	Description	Hours
01/Mar/23	Robin B Schwill	Emails regarding Israeli bond trustee questions;	0.20
02/Mar/23	Robin B Schwill	Telephone conversation with counsel to the Israeli Functionary regarding Mattamy application;	0.20
02/Mar/23	Martina Williams	Telephone discussion with Ioana Hancas regarding Authorization for KSV Restructuring Inc. with respect to obtaining further information from the City of Toronto and MPAC. Preparing Authorization for KSV Restructuring Inc. and forwarding to Ioana Hancas, Bobby Kaufman and Noah Goldstein; revising same; receiving executed Authorization. Exchanging emails with Narda O'Brien, Revenue Analyst at the City of Toronto and forwarding a copy of the signed Authorization.	1.60
02/Mar/23	Ioana Hancas	Emails and discussions with Martina Williams re authorization to tax authority.	0.30
03/Mar/23	Robin B Schwill	Reading cases in Mattamy's Book of Authorities;	3.80
05/Mar/23	Robin B Schwill	Reading Mattamy cases;	4.40
06/Mar/23	Robin B Schwill	Reading Mattamy cases; considering oral submissions;	3.40
07/Mar/23	Robin B Schwill	Engaged regarding Mattamy application and preparing oral submissions;	4.90
08/Mar/23	Robin B Schwill	Preparing oral submissions for Mattamy hearing; reviewing court material;	5.60
09/Mar/23	Robin B Schwill	Drafting oral submissions; reviewing court material for same; calls with counsel to the Israeli Functionary regarding same;	3.80
10/Mar/23	Robin B Schwill	Preparing for and attending on Mattamy application hearing; debriefing regarding same;	6.00
13/Mar/23	Robin B Schwill	Telephone conversation with counsel to Israeli Functionary regarding report to Justice Kimmel on court direction to arbitrate; reviewing court endorsements and orders regarding same; drafting reporting email;	3.30
14/Mar/23	Robin B Schwill	Conference call with Israeli bondholder and his counsel; drafting email regarding Mattamy arbitration; reading case law on "made in CCAA proceedings";	3.40

Time Detail

Date	Timekeeper	Description	Hours
15/Mar/23	Robin B Schwill	Engaged in Mattamy application matters; engaged in stay extension report and materials review and comment;	1.90
16/Mar/23	Robin B Schwill	Engaged in stay extension materials;	0.70
16/Mar/23	Martina Williams	Emailing Narda O 'Brien at the City of Toronto for a status update regarding release of KSV Restructuring Inc.'s tax arrear information.	0.20
20/Mar/23	Martina Williams	Responding to email from Narda O'Brien at the City of Toronto and reviewing Property Tax Account Statements for Roll Nos. 1904-04-1-460-03557 & 1904-04-1-460-03555 and exchanging emails regarding same. Responding to email from Ioana Hancas regarding tax statements. Emailing Bobby Kofman and Noah Goldstein at KSV Advisory and forwarding copies of the Property Tax Account Statements received from the City of Toronto and exchanging emails regarding same.	0.50
20/Mar/23	Robin B Schwill	Emails regarding follow-up note to Justice Kimmel;	0.80
21/Mar/23	Robin B Schwill	Emails regarding follow-up note to Justice Kimmel; reviewing and commenting on Information Officer report;	3.90
22/Mar/23	Robin B Schwill	Emails regarding information officer report;	0.30
23/Mar/23	Robin B Schwill	Conference call with counsel to the Israeli Functionary regarding Information Officer report; reviewing and commenting on final draft; revising service list and serving same; related emails;	3.40
24/Mar/23	Robin B Schwill	Emails regarding stay extension;	0.10
31/Mar/23	Robin B Schwill	Reviewing Kraft affidavit; related calls and emails with Bobby Kofman;	0.60
Total Hours			**53.30**

Disbursement Summary

	Amount
Teraview Searches	41.40
Searches - Library	67.43
Total	**108.83**

DAVIES

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

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

Attention: Robert Kofman
Managing Director
bkofman@ksvadvisory.com

CC: Noah Goldstein
ngoldstein@ksvadviosry.com

Invoice #:	752073
Date:	May 10, 2023
Client/Matter #:	126507.256201
GST/HST:	118882927 RT0001
Billing Lawyer:	Robin Schwill
Email:	rschwill@dwpv.com
Phone:	416.863.5502

Privileged & Confidential

For professional services rendered through April 30, 2023 in connection with UrbanCorp (Matter #: 256201)

Our Fee		10,177.00
HST ON (13%)		1,323.01
Total Due	**Canadian Dollars (CAD)**	**$ 11,500.01**

Payment Due Upon Receipt

Canadian Dollar Payment

Beneficiary Bank:	Canadian Imperial Bank of Commerce 199 Bay Street Commerce Court-Main Banking Centre Toronto, Ontario M5L 1G9 Canada	Account Name: Bank Institution #: SWIFT Code: Bank Transit #: Bank Account #:	Davies Ward Phillips & Vineberg LLP 010 CIBCCATT 00002 2909219
Beneficiary:	Davies Ward Phillips & Vineberg LLP 155 Wellington Street West Toronto, Ontario M5V 3J7 Canada	Clearing Code:	CC001000002

Billing questions can be made out to Billing@dwpv.com. Payment remittances should be directed to AR@dwpv.com.

Any fees and disbursements recorded after the above mentioned period will appear on subsequent statements. Invoices are due upon receipt. Interest will be charged on all amounts owing over 30 days. The interest rate is set at 12% per year.

Please see important terms of client service, including file retention and disposal policy, on our website, www.dwpv.com/serviceterms

Timekeeper Summary

Timekeeper	Rate	Hours	Amount
Paul Lamarre	1,350.00	4.10	5,535.00
Robin B. Schwill	1,350.00	3.40	4,590.00
Martina Williams	260.00	0.20	52.00
Total		**7.70**	**$ 10,177.00**

Time Detail

Date	Timekeeper	Description	Hours
03/Apr/23	Martina Williams	Responding to email from Narda O'Brien and reviewing Statement Balance for Roll No. 1904-04-1-460-03556 with respect to KSV properties.	0.20
10/Apr/23	Paul Lamarre	Review and consider emails re various tax matters; Review files re same; Email exchange with R Schwill re same	0.90
10/Apr/23	Robin B Schwill	Reviewing Vestaco Homes Inc. tax considerations on receipt and payment of Berm Lease proceeds; related emails;	0.90
12/Apr/23	Robin B Schwill	Conference call regarding Vestaco tax considerations;	0.80
13/Apr/23	Paul Lamarre	Call with R Schwill re tax questions	0.40
13/Apr/23	Robin B Schwill	Discussion with Paul Lamarre regarding Vestaco Homes tax considerations;	0.70
14/Apr/23	Paul Lamarre	Email exchange re tax matters	0.20
18/Apr/23	Paul Lamarre	Call with R Schwill and R Harlang re various tax considerations; Review materials re same; Emails re same	2.10
18/Apr/23	Robin B Schwill	Conference call regarding Vestaco Homes tax considerations and related issues;	1.00
19/Apr/23	Paul Lamarre	Call re tax matters	0.50
Total Hours			**7.70**

DAVIES

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

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

Attention: Robert Kofman
Managing Director
bkofman@ksvadvisory.com

CC: Noah Goldstein
ngoldstein@ksvadviosry.com

Invoice #:	754488
Date:	June 9, 2023
Client/Matter #:	126507.256201
GST/HST:	118882927 RT0001
Billing Lawyer:	Robin Schwill
Email:	rschwill@dwpv.com
Phone:	416.863.5502

Privileged & Confidential

For professional services rendered through May 31, 2023 in connection with UrbanCorp (Matter #: 256201)

Our Fee		33,642.50
HST ON (13%)		4,373.53
Total Due	**Canadian Dollars (CAD)**	**$ 38,016.03**

Payment Due Upon Receipt

Canadian Dollar Payment

Beneficiary Bank:	Canadian Imperial Bank of Commerce 199 Bay Street Commerce Court-Main Banking Centre Toronto, Ontario M5L 1G9 Canada	Account Name: Bank Institution #: SWIFT Code: Bank Transit #: Bank Account #:	Davies Ward Phillips & Vineberg LLP 010 CIBCCATT 00002 2909219
Beneficiary:	Davies Ward Phillips & Vineberg LLP 155 Wellington Street West Toronto, Ontario M5V 3J7 Canada	Clearing Code:	CC001000002

Billing questions can be made out to Billing@dwpv.com. Payment remittances should be directed to AR@dwpv.com.

Any fees and disbursements recorded after the above mentioned period will appear on subsequent statements. Invoices are due upon receipt. Interest will be charged on all amounts owing over 30 days. The interest rate is set at 12% per year.

Please see important terms of client service, including file retention and disposal policy, on our website, www.dwpv.com/serviceterms

Timekeeper Summary

Timekeeper	Rate	Hours	Amount
Matthew Milne-Smith	1,250.00	1.70	2,125.00
Paul Lamarre	1,350.00	6.50	8,775.00
Robin B. Schwill	1,350.00	16.00	21,600.00
Total		**24.20**	**$ 32,500.00**

Time Detail

Date	Timekeeper	Description	Hours
01/May/23	Paul Lamarre	Draft email re treatment of indebtedness and review legislation and related materials re same; Brief review of MNP memo re timing of income inclusion re Berm lease payment	2.00
02/May/23	Paul Lamarre	Finalize and send email re debt forgiveness	0.50
02/May/23	Robin B Schwill	Emails regarding Vestaco Homes tax considerations;	0.20
11/May/23	Paul Lamarre	Review and consider MNP memo re timing of income inclusion; Call with R Schwill and R Harlang re various tax matters	2.70
11/May/23	Robin B Schwill	Conference call regarding Vestaco Homes tax considerations; reviewing related material; related emails;	2.10
16/May/23	Paul Lamarre	Email exchange re tax matters re payment under lease	0.30
17/May/23	Matthew Milne-Smith	Telephone conversation With Robin Schwill re pending appeal and new case law.	0.20
17/May/23	Robin B Schwill	Reviewing court of appeal decision; discussion with Matt Milne Smith regarding same; Telephone conversation with counsel to the Israeli Functionary regarding same; related emails;	1.80
19/May/23	Paul Lamarre	Call with R Harlang re HST re Vestaco rent payment	0.20
19/May/23	Robin B Schwill	Reading decision of Kimmel J. on Mattamy's motion to set aside arbitration award; related emails; Telephone conversation with Bobby Kofman regarding same;	1.80
23/May/23	Robin B Schwill	Reviewing UCI Settlement Plan; Telephone conversation with counsel to the Israeli Functionary regarding same and with respect to Mattamy Arbitration decision; related emails;	1.80
24/May/23	Paul Lamarre	Discuss HST matters re Berm lease payment and emails re same and consider same	0.80
24/May/23	Robin B Schwill	Emails regarding UCI Settlement Plan; Telephone conversation with counsel to the Israeli Functionary regarding same;	0.50
26/May/23	Robin B Schwill	Emails regarding appeal of Kimmel's arbitration decision and return of funds to Mattamy;	0.30
29/May/23	Matthew Milne-Smith	Reviewing Urbancorp decision of Kimmel J.	0.70

Time Detail

Date	Timekeeper	Description	Hours
29/May/23	Robin B Schwill	Telephone conversation with Bobby Kofman regarding appeal of Kimmel's Mattamy decision; Telephone conversation with counsel to the Israeli Functionary regarding same; related emails;	0.80
30/May/23	Robin B Schwill	Telephone conversation with counsel to the Israeli Functionary regarding appeal of Justice Kimmel's decision; related emails;	1.20
30/May/23	Matthew Milne-Smith	Reviewing judgment of Kimmel.	0.70
31/May/23	Matthew Milne-Smith	Emails with Robin Schwill re potential appeal of Kimmel judgment.	0.10
31/May/23	Robin B Schwill	Telephone conversation with counsel to the Israeli Functionary regarding appeal of Kimmel J.'s decision; Telephone conversation with Bobby Kofman regarding same; related emails; drafting form of order; drafting notice of motion for leave;	5.50
Total Hours			**24.20**

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF ROBIN B. SCHWILL

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

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

Lawyers for the Monitor

Appendix “J”

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

FEE AFFIDAVIT OF EDMOND F.B. LAMEK
(sworn June 21, 2023)

I, EDMOND F. B. LAMEK, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a partner in the law firm of DLA Piper (Canada) LLP ("**DLA**"), the solicitors to the Applicants and entities listed in Schedule "A" to the Initial CCAA Order (the "**Urbancorp CCAA Entities**"). I have knowledge of the matters hereinafter deposed to.

2. Attached hereto as **Exhibit "A"** is a copy of the Statement of Account of DLA in respect of services rendered to the Urbancorp CCAA Entities during the period from March 1, 2023 to May 31, 2023 (the "**Billing Period**"). During the Billing Period, the total fees billed by DLA were $4,117.50, plus disbursements in the amount of $339 and applicable taxes in the amount of $535.28.

3. As set out in the following table, 6.1 hours were billed by DLA personnel during the Billing Period, resulting in an average hourly rate of $675 (exclusive of applicable taxes):

Lawyers/Clerks	Hours	Rate/Hr.
Danny Nunes	6.1	$675
TOTAL	**6.1**	**Avg. Rate/Hr: $675**

4. The activities detailed in the Statement of Account attached as Exhibit "A" accurately reflect the services provided by DLA and the rates charged are the standard hourly rates of those individuals at DLA at the time they were incurred.

5. I swear this affidavit in support of a motion for, *inter alia*, approval of the fees and disbursements of DLA set out above and for no other or improper purpose.

Sworn before me at the City of Toronto, in the Province of Ontario, this 21 day of June, 2023.

A Commissioner for taking affidavits, etc.

DANNY NUNES

EDMOND F.B. LAMEK

This is Exhibit A referred to in the
affidavit of EDMOND LAMEK
sworn before me, this 21
day of JUNE 20 23

A COMMISSIONER FOR TAKING AFFIDAVITS

DANNY NUNES

DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
www.dlapiper.com
T 416.365.3500
F 416.365.7886

Urbancorp CCAA Entities c/o KSV Advisory Inc.
Private and Confidential
150 King Street West
Suite 2308, Box 42
Toronto, ON M5H 1J9 Canada
Attention: Bobby Kofman/Noah Goldstein

Our File No: 038694-00001

Urbancorp Toronto Management Inc.
Re: CCAA Proceedings

Date: May 23, 2023
Invoice Number: 2195584

PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through April 30, 2023.

Date	Professional	Description	Hours	Amount
02/27/23	Danny Nunes	Correspondence regarding stay extension motion;	0.10	67.50
03/08/23	Danny Nunes	Correspondence with commercial list regarding scheduling stay extension motion; correspondence with R. Schwill and N. Rabinovitch regarding same;	0.30	202.50
03/09/23	Danny Nunes	Correspondence with commercial court regarding scheduling stay extension motion; correspondence with R. Schwill regarding same;	0.20	135.00
03/10/23	Danny Nunes	Correspondence with commercial court regarding scheduling stay extension motion; correspondence with R. Schwill and N. Rabinovitch regarding same; draft stay extension motion materials;	0.90	607.50
03/13/23	Danny Nunes	Draft stay extension motion materials; correspondence to N. Goldstein regarding same;	1.50	1,012.50
03/14/23	Danny Nunes	Finalize stay extension motion materials; correspondence with B. Kofman, R. Schwill and N. Goldstein regarding same; review draft Monitor's report;	0.60	405.00
03/15/23	Danny Nunes	Revise draft stay extension materials; correspondence to R. Schwill, B. Kofman and N. Goldstein regarding same;	0.40	270.00

Date	Professional	Description	Hours	Amount
03/16/23	Danny Nunes	Finalize stay extension motion materials and serve same;	0.90	607.50
03/21/23	Danny Nunes	Review materials for stay extension motion; attend same; correspondence to service list regarding same;	1.10	742.50
03/22/23	Danny Nunes	Review stay extension endorsement; correspondence to service list regarding same;	0.10	67.50
Total Hours and Fees:			**6.10**	**$4,117.50**

PROFESSIONAL SERVICES SUMMARY

Professional	Rate	Hours	Amount
Danny Nunes	675.00	6.10	4,117.50
Total Fees:			**$4,117.50**

DISBURSEMENT SUMMARY

Disbursements

Non-Taxable Disbursements

Description	Amount
Filing Fees - Non Taxable	$339.00
Non-Taxable Disbursements:	**$339.00**

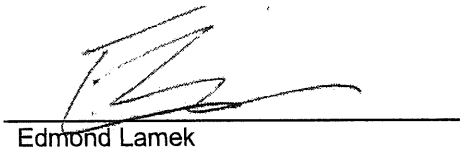
BILL SUMMARY

	Total Fees:	$	4,117.50
	Total Disbursements:	$	339.00
REG # 110 152 824	Total HST:	$	535.28
	Total Current Invoice Due:	**CAD $**	**4,991.78**

This is our account.

DLA Piper (Canada) LLP

Per:



Edmond Lamek

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

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

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

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ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced at Toronto

AFFIDAVIT OF EDMOND F.B. LAMEK
(sworn June 21, 2023)

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Lawyers for the Urbancorp CCAA Entities