In the Financial Division of the
Tel Aviv-Jaffa District Court

CF 12055-12-17
Before His Honor Deputy President Judge K. Kabub

In re: **Adv. Guy Gissin, Functionary for Implementation of the Creditors Arrangement for Urbancorp Inc.**
by its attorneys, Adv. Yael Hershkovitz and/or Amir Paz, of Gissin & Co., Law Offices, of 38B Habarzel Street, Tel Aviv 6971054, Tel. 03-7467777, Fax. 03-7457700

the Plaintiff

- against -

1. **Mr. Alan Saskin**
by his attorneys Boaz Ben Tzur and/or Tomer Shikarchy, of 4 Berkowitz Street, Tel Aviv, Tel. 03-6075001, Fax. 03-6075029

2. **Mr. Philip Gales**
by his attorneys Adv. Gad Ticho and/or Ishai Shidlowsky-Or, of Caspi & Co., Law Offices, 33 Yaavetz Street, Tel Aviv 6525832, tel. 03-7961000, Fax. 03-7961001

3. **Deloitte - Brightman Almagor Zohar**
by its attorneys Fischer Bechar Chen Well Orion & Co., Law Offices, of 3 Daniel Frisch Street, Tel Aviv, Tel. 03-6944111, Fax. 03-6091116

4. **Apex Issuances Ltd, Private Company 514941525**
by its attorneys, Erdinast, Ben-Nathan, Toledano & Co., Law Offices, of 4 Berkowitz Street (Museum Tower), Tel Aviv 6423806, Tel. 03-7770111, Fax. 03-7770101

5. **Midroog Ltd**
by its attorneys Agmon & Co. Rosenberg Hacohen & Co., of 98 Yigal Alon Street (Electra Tower), Tel Aviv 6789141, Tel. 03-6078607, Fax. 03-7770101

   and by its attorney Adv. Yoram Samuel & Co., of 155 Yigal Alon Street, Tel Aviv 6744363, Tel. 03-6858216, Fax. 03-6857533

6. **Janterra Real Estate Advisors Inc.**
by its attorneys Advs. Alon Pomerantz and/or Omer Meiri and/or Erez Naim of Lipa Meir & Co., Law Offices (with a limited power of attorney), of 2 Weizman Street (Amot Mishpat House), Tel Aviv 6423902, Tel. 03-6070600, Fax. 03-6070666

7. AIG Europe Limited

8. AIG Europe (Services) Limited

Defendants 7 and 8 by their attorneys, Advs. Alex Hertman and/or Noam Zamir, of S. Horowitz & Co., Law Offices, 31 Ahad Ha'am Street, Tel Aviv 6520204, Tel. 03-5670700, Fax. 03-5660974

9. TCC/Urbancorp Bay Stadium LP

10. The Webster Trust

11. Urbancorp Management Inc.

12. Urbancorp Holdco Inc.

Defendants 9-12 by their attorney Dr. Roy Bar-Kahan, of Bar-Kahan, Zigenlaub & Co., Law Offices, 5 Azrieli, Tel Aviv, Floor 26, Tel. 03-6962999, Fax. 03-6966191

13. Mrs. Doreen Saskin
by her attorney Adv. Aaron Michaeli and/or Yehuda Rosenthal, of Goldfarb Seligman & Co., Law Offices[1], 98 Yigal Alon Street, Tel Aviv, Tel. 03-7101616, Fax. 03-7101617

<u>the Defendants</u>

and in re: The Official Receiver
of 2 Hashlosha Street, Tel Aviv

<u>The Official Receiver</u>

<u>Nature of the claim</u>: **Pecuniary, declaratory, misleading detail in prospectus.**

<u>Amount of the claim</u>: **NIS 195,628,659**

[1] At this stage, pursuant to a limited power of attorney solely for the purpose of filing an application to set aside leave for service outside the jurisdiction.

Consolidated Statement of Claim

In accordance with the Honorable Court's decision of June 21, 2018, the Plaintiff, Adv. Guy Gissin, the Functionary entrusted with implementation of the creditors arrangement in Urbancorp Inc. (in a creditors arrangement) (the **"Company"**) is respectfully filing a consolidated statement of claim on his behalf, that consolidates these proceedings and the proceedings in CF (Tel Aviv District) 46263-06-17.

In light of the contents of this statement of claim, the Honorable Court is moved to direct as follows:

a. to direct that Defendants 1-8 are jointly and severally liable for all the damage occasioned in consequence of misleading details that were discovered in the Company's issue prospectus that was published on December 7, 2015 (the **"prospectus"**);

b. to direct that Defendants 1 and 9-13 are jointly and severally liable for all the damage occasioned to the Company in consequence of a breach of obligations included in the Company's issue prospectus, in accordance with the details appearing below in this statement of claim;

c. to give any other relief to exhaust the Plaintiff's rights;

d. to order the Defendants to pay [trial] costs and lawyers' fees together with due VAT.

All the emphases appearing below are not in the original, unless stated otherwise.

A. Introduction

1. This claim is being filed by the Plaintiff by virtue of his appointment as Functionary for the Company, in accordance with the approval of the Tel Aviv District Court of April 21, 2016, April 24, 2016 and December 5, 2017 in LF (Tel Aviv District) 44348-04-16 (as the context admits - the **"insolvency proceedings"** and the **"court of insolvency"**) and by virtue of assignment of the rights of claim of the Company's creditors that were given to the Plaintiff in the Company's creditors arrangement proceedings.

2. This action tells a sad and grim story, of a company which raised from investors on the Tel Aviv Stock Exchange a huge sum of NIS 180,000,000 by way of an issue of bonds, and resoundingly collapsed after **about four months(!)** only from the issue date.

3. After the Company's collapse and appointment of the Plaintiff as Functionary for the Company (the **"Plaintiff"** or the **"Functionary"**) in the insolvency

proceedings, the Plaintiff sought to formulate a creditors arrangement for the Company and to investigate the circumstances of its collapse.

4. From an investigation into the circumstances of the Company's collapse, grave findings have to date been made against each one of the Defendants, which [translator - also includes "who"], by their acts and omissions, caused considerable financial damage to the Company and its bondholders, in respect of which this claim is being filed.[2]

Misleading details in the issue prospectus on the basis of which the bonds were issued to the public

5. As detailed below, from the investigation into the circumstances of the Company's collapse, it emerged that Defendants 1-6, which on the relevant dates **were supposed to serve as the public's gatekeepers** by virtue of their position as directors of the Company who signed the issue prospectus; the issue underwriter which signed the issue prospectus; the rating company which granted the Company a credit rating of A3, that was annexed to the issue prospectus of the Company; the auditors of the Company which audited and reviewed the Company's financial statements that were annexed to the issue prospectus; and the appraisers of the Company's material assets the valuations of which were included and mentioned in the Company's issue prospectus; **all the aforesaid failed in performing their position, when the Company's issue prospectus turned out to be a line of misleading details, pertaining to the Company's financial position and the description of its material assets.**

6. Accordingly, the importance of this claim component is therefore in exhausting the law with those gatekeepers, in reliance on the warranties, signatures, opinions and reports of which, that were included and mentioned in the prospectus, the public accepted the bond offer pursuant to the prospectus.

Below is a list of the misleading details in brief:

a. **Misleading detail regarding the valuation of the Kings Club project** - this is a real estate project that was described as one of the company's most significant projects. In the prospectus and the reports annexed thereto, this project was attributed a value of approx. 137 million CAD and the value of the Company's holdings in the project was put at approx. 43 million CAD; the trouble is that this inflated valuation omitted a material detail regarding a material increase in the budget for the project's costs, that was known at the time of the issue, **and that materially affects the value attributed to this project.** Correct as at today, the Company's subsidiary which holds the project (Urbancorp New King

[2] To complete the picture, it is noted that the action is also being filed against the insurance companies which insured the liability of the Company and its officers pursuant to the prospectus.

Inc.) is under the management of the monitor who was appointed to manage the insolvency proceedings of most of the companies in the group. According to information furnished by the Canadian monitor, the Company's expected return, if at all, in respect of this project is not clear (appendix 11 below).

b. **Misleading detail regarding the Downsview project** - this is another material real estate project of the Company, that is jointly owned by a subsidiary of the Company and another corporation, which is also the project's development manager. The Company's issue prospectus described a set of agreements between the subsidiary and the partner corporation in a misleading way **both** with regard to the mechanism for the distribution of profits in the project between the Company's subsidiary and the partner corporation, **and** in relation to the decision-making mechanism for the project, it being written in the prospectus that there is a joint decision-making mechanism.

As detailed below, it transpired that the representations included in the prospectus were given on the basis of information that was not current, and that disregarded amendments to the project management and partnership agreements between the subsidiary and the partner corporation (appendices 15-16 below), which were executed a considerable period of time prior to publication of the prospectus.

Pursuant to the amendment to the partnership agreement between the subsidiary and the partner corporation, **the profit distribution mechanism was amended** in a way that significantly harms the Company's position and significantly prejudices its right to profits from the project. In addition this amendment **canceled the subsidiary's right to participate in making decisions about the project** (the sole right being given to the partner corporation to make all the decisions about the project).

c. **Misleading detail regarding the value of the geothermal assets** - in the prospectus the value of the Company's holdings in the geothermal assets was valued at approx. 44,000,000 CAD. One of the assumptions on which this valuation was supposedly based is the cash flow that will be received from these assets over an operating period of 60 years. In fact, this assumption turned out to be totally unfounded and it transpired that it even contradicts the engineering opinion that was furnished to the Company - **the findings of which were not mentioned in the prospectus**.

Moreover, during the investigations carried out by the Plaintiff by virtue of his position, it transpired that legal proceedings are being conducted in

relation to these assets based *inter alia* on contractual pleas, pleas of over-collection and of technical flaws in the systems relating to these assets (that it is pleaded were known for many years before publication of the prospectus). The Plaintiff also learned that at least from commencement of the insolvency proceedings the Company had not earned any income from those geothermal assets.

d. **Misleading detail regarding a debt arrangement in the Edge group** - involved is a real estate project in Toronto, in the framework of which residential units were built, that was also defined as one of the Company's material assets, which a subsidiary of the Company owned jointly (66%) with a local partner (which held approx. 33% of the rights in the project). It was also noted in the prospectus that in accordance with the separation agreement executed between the subsidiary and the local partner, the Company was left with 53 residential units, and this transaction was described as an "owner's contribution" by the controlling shareholder.

However, from the Plaintiff's investigations it transpired that just before the date of publication of the issue prospectus (during the Road Show of the Company), Defendant 1, Mr. Alan Saskin, led a debt arrangement with his personal creditors and with creditors of companies under his control which are not related to the Company, in the framework of which Defendant 1 transferred residential units in the project to his personal creditors, such that on the prospectus publication date the Company was left **with approx. 37 residential units only!**

It also transpired that not only was the transaction for separation from the partner not an owner's contribution, but that it included an overpayment of approx. 5 million dollars to the partner, at the expense of another partnership, with the same partner in a private joint loss-making project of the controlling shareholder.

It emerges that besides the fact that we are dealing with a blatant mixing of assets, we are also dealing with another representation that was made by the Company in the prospectus that turned it to be mistaken and misleading.

e. **Misleading detail regarding an assignment of rights in a value of 8 million dollars to the Company** - the Company's issue prospectus provided that Defendant 1, Mr. Alan Saskin, together with members of his family and companies under his control, would assign to the Company a right to repayment of loans in a sum of 8 million CAD. This assignment was intended to be executed by way of an assignment to the Company of two promissory notes issued by a private company under the control of Defendant 1 - TCC/Urbancorp (Bay) Limited Partnership

(**"TCC"**). TCC entered into insolvency proceedings and a monitor was appointed for it.

However, contrary to the express representations in the prospectus, the debt claim filed by the Plaintiff with the monitor of TCC was rejected by the monitor, **who found that the promissory notes are not enforceable, in light of the fact that on the date on which the receipts by virtue of the promissory notes were assigned, TCC did not have a debt to the relevant companies.** This finding was approved by the Canadian court, which held that TCC knew or at the least should have known about the defect in the promissory notes. That is to say, those promissory notes that were classified in the prospectus and in the financial statements annexed thereto as **"current assets"** turned out to be documents not worth the paper they were written on.

7. Hence, we are dealing with a long line of misleading details that were included in the issue prospectus relating to the financial position of the Company and primarily the Company's most material assets. This is self-explanatory and strongly attests to the helplessness of Defendants 1-6 which in accordance with the provisions of the law are liable for the truthfulness of the information detailed in the prospectus **and the burden of truth (insofar as their position is that they are not liable for this information) rests with them**.

Breach of undertakings given by Defendants 1 and 9-13 and included in the issue prospectus

8. If this is not enough, the investigation into the circumstances of the Company's collapse revealed that there was a line of obligations included in the issue prospectus that were assumed by Defendant 1, Mr. Alan Saskin, and Defendants 9-13 (Alan Saskin's wife and companies under the control of Alan Saskin and owned by Mr. Saskin's wife) to inject monies and assets into the Company that were blatantly breached by them. As a result of the breach of these obligations, the Company was occasioned damages in an estimated sum of 32.5 million CAD. Below are details of the aforesaid in brief.

   a. **Breach of an obligation to assign to the Company a right to receive monies from related parties at a value of 8 million CAD** - as detailed above and will still be detailed at length below in this statement of claim, Mr. Saskin, his wife and companies under his control undertook in the prospectus to assign to the Company a right to receive 8 million CAD, by way of assignment of promissory notes from TCC to the Company. As detailed above and as will be detailed at length, this obligation was blatantly breached, it emerging from the Plaintiff's investigations that we are dealing with an obligation to inject an "asset" into the Company that lacks any value in the form of an unenforceable obligation.

b. **Breach of an obligation to provide the Company with an owner's contribution to capital in a sum of 12 million CAD** - in the issue prospectus Mr. Alan Saskin, through a company under his control (Defendant 5), undertook to provide the Company with an owner's contribution in a sum of 12 million CAD. Mr. Saskin went even further **and in two immediate reports, he purported to claim that these monies were actually deposited in the Company's bank account**. The trouble is that the Plaintiff's investigations revealed that the owner's contribution was not deposited in the Company's bank account and the monies earmarked for this purpose were paid directly by the financing entity to the tax authorities in Canada, without obtaining any approval as required in accordance with the law and the signatory rights in the Company.

c. **Breach of an obligation to transfer residential units in the Edge project to the Company** - as detailed above and as will be detailed at length below, the prospectus included an obligation to transfer residential units in the Edge project to the Company. This obligation as detailed above and as will still be detailed below at length was blatantly breached, when Mr. Saskin made use of a considerable part of these residential units for the purpose of paying personal debts, in the framework of a private debt arrangement that he purported to formulate close to the prospectus publication date.

d. **Breach of an obligation to transfer receipts to the Company from the sale of the Queen 952 asset in a sum of approx. 3 million CAD** - involved is a real estate project that was sold by a subsidiary of the Company and the receipts from it (in a sum of approx. 3 million CAD) were expected to be injected into the Company **for the purpose of financing its current activity**. The trouble is that in fact these proceeds were not transferred to the Company, but were used to cover debts of other companies owned by the Defendants and their personal debts.

9. Thus, involved is a line of obligations included in the prospectus that Defendants 1 and 9-13 assumed, and that they blatantly breached, when they purported to serially conceal assets from the Company with a lack of good faith. In doing so, the Defendants caused considerable financial damages to the Company and its creditors.

10. On the basis of all the aforesaid and on the basis of the set of facts detailed below, the Honorable Court is moved to allow the action.

B. The parties

11. **The Plaintiff**, Adv. Guy Gissin, is the Functionary for the Company, who filed this action by virtue of approvals given by the Honorable Court hearing the

insolvency proceedings and by virtue of assignment of rights of claim given in the framework of the creditors arrangement.

12. **Defendant 1**, Mr. Alan Saskin (**"Mr. Saskin"**), served on the dates relevant to the action as chairman of the board of directors, president and CEO of the Company. Mr. Saskin is the Company's founder and the driving force behind the activity of the Urbancorp group that includes the Company and several related companies. In the issue prospectus Mr. Saskin was presented as the controlling shareholder and sole shareholder (in a chain) of the Company. Mr. Saskin is a signatory to the Company's issue prospectus.

13. It is expressed that Mr. Saskin is currently involved in insolvency proceedings in Canada and a trustee has been appointed for him (The Fuller Landau Group Inc.). For the sake of good order, it is noted that in order not to hear a plea of stay of the proceedings because of the insolvency proceedings in which Mr. Saskin is involved, the Plaintiff applied to the court in Canada for leave to conduct the action against Mr. Saskin.

14. On January 23, 2018 the court of insolvency in Canada approved the conduct of this claim against Mr. Saskin.

    - A copy of the court's approval for continued conduct of the action against Mr. Saskin is annexed hereto as **appendix 1**.

15. **Defendant 2**, Mr. Philip Gales (**"Mr. Gales"**) is Mr. Saskin's son-in-law and served at the relevant times as a director as a director of the Company and as CFO of the Company and underwriter of the Company's issue prospectus.

16. **Defendant 3,** Deloitte, Brightman, Almagor, Zohar (**"Deloitte"**) served at the relevant times as the Company's firm of auditors. Deloitte audited the statements in relation to the separate financial information of the Company for June 30, 2015 and September 30, 2015, reviewed the Company's pro forma consolidated financial statements for June 30, 2015 and audited the Company's pro forma consolidated financial statements for 2012-2014. **These statements were included in the issue prospectus and constitute part thereof.**

17. According to the financial statements reviewed by Deloitte, the Company's equity correct as at June 30, 2015 is approx. 72 million CAD (before provision of an owner's loan in a sum of 12 million CAD that the controlling shareholder undertook to provide to the Company).

18. **Defendant 4**, Apex Issuances Ltd (**"Apex"**) served as the pricing underwriter **which is a signatory to the prospectus** (as defined in section 1 of the Securities Law), was involved in determining the structure of the prospectus, **and signed the drafts and the prospectus that was published for the investor public.**

19. **Defendant 5**, Midroog Ltd (**"Midroog"**) is the rating company which granted the Company's bonds a rating of A3, **the rating report of which is annexed to the prospectus** (see as from page B-33 of the prospectus to the end of Chapter B. [translator - the page numbers in this document refer to the Hebrew, unless the reference is to an original English document]) (the **"rating report"**). On the basis of this rating, it was provided in the issue prospectus, *inter alia*, that the Company is not required to meet the equity demands of the Stock Exchange. The participation of some of the institutional investors in the issue was also only possible in light of the existence of an investment rating or the offered bonds.

20. **Defendant 6, Janterra Real Estate Advisors Inc.** (**"Janterra"**) is the Company's appraiser which, as detailed below, provided valuations of the main real estate assets of the Company and companies under its control and of the geothermal assets. Janterra's valuations were included and mentioned in the prospectus. In paragraph 7.20.9 of the prospectus it was provided as follows:

> "The main appraiser of the Company's assets is Janterra Real Estate Advisors. The assets valued by Janterra Real Estate Advisors constitute the full value of the income-producing real estate assets in the Company's balance sheet, in an amount of approx. 120,918,000 CAD. Janterra Real Estate Advisors is not dependent on the Company.
>
> For details on the essentials of the contract with the appraiser, in accordance with section 2 of the Third Schedule to the Securities (Periodic and Immediate Reports) Regulations, 5730-1970, see tables in sections 7.7.6.1(h) and 7.7.6.2(f), as the case may be, and in the very material valuations of the Company in Chapter 10 after the financial statements.
>
> For details of the principal assumptions underlying the valuations made by Janterra Real Estate Advisors, see notes 8.d and 9.d to the Company's financial statements for December 31, 2014."

Also annexed to the prospectus is Janterra's valuation for the Kings Club project, as detailed below. Janterra's valuations for other assets that were received by the Company (and to the best of the Functionary's knowledge also by other Defendants[3]), were mentioned and used as a basis for a description of the Company's assets and their value in the framework of the issue prospectus and the financial statements included therein.

21. **Defendants 7 and 8,** AIG Europe Limited (formerly - Landmark Insurance Company) and AIG Europe (Services) Limited (formerly AIG Europe (UK) Limited) (jointly - the **"insurers"**) issued to the Company, to the best of the Functionary's knowledge, two insurance policies:

[3] Such as Midroog and Deloitte.

21.1 A Corporate Guard (AIGMLCCGPOSI 12/14/16) Public Offering of Securities Insurance policy, intended to cover liability claims by virtue of a prospectus first submitted against an insured during the period of the policy (seven years) and reported to the insurer in accordance with the policy's requirements. The scope of the cover pursuant to the policy is 10 million US dollars. The policy includes a standard version of the policy together with a supplemental document that was received by the Company on behalf of Liderim Insurance Agency (1995) Ltd (**"Liderim"**), that includes specific reference to the terms, conditions and extensions agreed with the Company (the **"prospectus policy"**).

Pursuant to the terms and conditions of the prospectus policy, it also covers exposure for officers' liability (actual and potential), both in respect of the controlling shareholder's liability and for the liability of the issue underwriters (Defendant 4). The policy also includes a special extension, *inter alia*, to prospectus claims that are fled by holders of securities and by other entities, on causes deriving from the purchase of securities or their offer to the public. Below is a definition of "prospectus claim" in the policy's extension document:

"3.22 Prospectus Claim - shall be amended by adding the following:

(i) The following sub paragraph shall be added:

c. any written demand and/or civil, criminal, regulatory, administrative proceeding and/or investigation, alleging a violation of any laws (statutory or common),rules or regulations regulating securities:

I. in respect of the purchase or sale or offer or solicitation of an offer to purchase or sell securities, or any registration or listing relating to such securities;

II. brought by any person or entity or official body alleging, arising out of, based upon or attributable to the purchase or sale, or offer or solicitation of an offer to purchase or sell any securities of a the insurer; or

III. bought by a security holder with respect to such security holder's interest in securities of the Policyholder or any of its subsidiaries; or

IV. brought derivatively on behalf of an issuer by a security holder o that issuer.

(ii) The term 'insured person' shall be replaced by the term 'insured'."

21.2 A Corporate Guard Israel 09/97 Directors and Officers Liability Insurance policy intended to provide insurance cover for liability of the Company's directors and officers. The policy includes a standard version of the policy together with a supplemental document of Liderim that includes specific reference to extensions and understandings agreed upon with the Company (**"officers liability policy"**). The scope of the cover under the officers liability policy is 10 million US dollars.

22. Defendants 9-12 are companies from the Urbancorp group that are owned and managed by Mr. Saskin and by Defendant 13, Ms. Doreen Saskin, wife of Mr. Alan Saskin (**"the family companies"**). The family companies hold shares in the Company indirectly through Defendant 12.[4]

- A copy of a holdings diagram for the Urbancorp group depicting, *inter alia*, ownership of the family company and an explanatory note on the holdings, as received from the trustee of Alan Saskin in his personal insolvency proceedings, is annexed hereto as **appendix 2**.

23. In accordance with the provisions of the issue prospectus, the family companies undertook to transfer to the Company assets owned by them or rights to receive monies.[5]

24. From a study of the group's holdings diagram (appendix 2 above), it emerges that Defendants 1 and 13 (Alan and Doreen Saskin) acted jointly through a group of companies (including the family companies), in a way that liability for those companies were apportioned consistently, such that Ms. Doreen Saskin is the beneficiary (together with other family members or exclusively) of the capital value of those companies, while Alan Saskin is the only person bearing liability deriving from their management.[6]

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4 So the family companies declared in the insolvency proceedings: **"... involved are three foreign corporations, which as noted in the joining application, hold shares in the Company the subject of the proceedings ..., through a corporation by the name of Urbancorp Holdco Inc."**

5 See for example the prospectus binder, paragraphs 1.4.2, 3.2.2.

6 Thus, for example, in relation to Holdco (Defendant 5), the voting shares are held by Mr. Saskin on trust for Ms. Saskin, while the capital rights are held by Defendants 9-11 (jointly with two other companies), most of which were also vested in Ms. Saskin. Even the holdings in TCC Stadium (Defendant 9) include management of Mr. Saskin and rights of Ms. Saskin as a limited partner only.

25. This separation was intended, apparently, at protecting the assets of Mr. and Ms. Saskin against Mr. Saskin's insolvency, which was apparently on the agenda at the time of raising the bonds.

26. **Defendant 13**, Ms. Doreen Saskin, is Mr. Saskin's wife, and is the owner of the capital rights, directly and indirectly, in the family companies.[7]

27. In the prospectus Defendant 13 assumed obligations to transfer assets and rights to the Company.

28. As we will see below, these obligations were blatantly breached by her.

29. In addition, in accordance with the report of the trustee for the assets of Mr. Saskin of May 24, 2016, **Mr. Saskin does not have any monthly income and his expenses are financed by Ms. Saskin or by family funds in respect of which it is pleaded that he is not the beneficiary.**[8]

C. Factual background

30. Pursuant to the provisions of the published prospectus, the Company incorporated on June 19, 2015, pursuant to the laws of the District of Ontario, Canada, **especially for the purpose of raising debt on the capital market in Israel**, for investment in real estate in Canada, through an issue of bonds that would be listed for trade on the Tel Aviv Stock Exchange.

31. The Company issued approx. NIS 180,000,000 n.v. of bonds (the **"bonds"**) that were listed for trade on the Tel Aviv Stock Exchange on December 10, 2015, in accordance with the prospectus of November 30, 2015, and the amendment thereto of December 7, 2015 (the **"issue"** and the **"prospectus"**). In the prospectus, the Company contracted in a trust deed that was signed on December 12, 2015 (the **"trust deed"**) with Reznik Paz Nevo Trusts Ltd as trustee.

- A copy of the "supplemental prospectus amendment" published by the Company on December 7, 2015 is annexed hereto as **appendix 3**.

- A copy of a supplemental notice pursuant to the supplemental prospectus published by the Company on December 9, 2015 is annexed hereto as **appendix 4**.

- A copy of a notice on the issue results is annexed hereto as **appendix 5**.

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7 In such regard it is noted for example that in the holdings diagram (appendix 2 above), Mr. Alan Saskin is registered as the holder of 100% of the ordinary shares of Defendant 12 (Holdco) for Ms. Saskin, who is the beneficial owner in the company.

8 It seems that one of these funds is Defendant 10.

32. Annexed to the published prospectus were opinions of Defendant 6, Janterra, on the value of the Company's material assets, financial statements that were reviewed and audited by Defendant 3, Deloitte and a rating report prepared by Defendant 5, Midroog. According to the rating report, the Company's bonds were given a high credit rating of A3.

- For the Honorable Court's convenience, annexed are copies of the financial statements included in the prospectus (that was annexed as appendix 3 above), marked as **appendix 6**.

- For the Honorable Court's convenience, annexed is the rating report included in the prospectus (that was annexed as appendix 3 above, marked as **appendix 7**.

33. In the prospectus members of Mr. Alan Saskin's family and Defendants 9-13 undertook to transfer assets and rights belonging to them to the Company in consideration for an allotment of shares in the Company.

C.1 The Company's collapse and appointment of the Plaintiff as Functionary

34. Within about four months from the date of the prospectus's publication and raising of the bonds, the Company collapsed. Trade in the Company's bonds was halted pursuant to a decision of the Stock Exchange of April 21, 2016 for **"lack of clarity with regard to the Company, as emerges from its reports ..."**, and insolvency proceedings were commenced against it in Israel, while insolvency proceedings were commenced against its subsidiaries in Canada.

35. On April 21, 2016, on the initiative of Mr. Saskin, five subsidiaries of the Company, which held main assets of the group, and the surplus cash flow of which was supposed to serve the debt to the Company's bondholders, commenced voluntary insolvency proceedings in Canada pursuant to the Companies Creditors Arrangement Act (CCAA).

36. On April 24, 2016, the bond trustee applied to the Honorable Court for the appointment of a functionary for the Company. The Honorable Court (His Honor President Orenstein) first ordered the grant of an interim injunction prohibiting dispositions and subsequently, on April 25, 2016, ordered the appointment of the Plaintiff as the Company's functionary.[9]

37. In the framework of his position the Plaintiff acted to formulate a creditors arrangement for the Company and this was approved on September 26, 2017.

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[9] On May 18, 2016 Canadian court recognized the decision of this Court, and approved the proceedings in Israel as foreign main proceedings in relation to the Company, and the appointment and powers of the Functionary as a foreign representative of the Company.

38. In the framework of the creditors' arrangement, the Functionary was assigned the rights of claim of the Company's creditors, including bondholders, in respect of any plea, demand, cause of action or any relief available to them including - any relief available to them by virtue of the Securities Law or the trust deeds, against any third party, for the purpose of taking action and instituting legal proceedings against third parties which in accordance with the Functionary's investigations were involved in the Company's collapse, in Canada and in Israel, including officers and third parties, professional consultants, underwriters and the like and directions necessary for the financing of such acts. Thus, in the wording of paragraph 57 of the creditors arrangement:

> **"The Company's creditors are hereby absolutely and irrevocably assigning, in favor of the Functionary, all their rights of claim against any third party, including debtors, State authorities, former officers of the Company, the Company's controlling shareholder, family members and entities related to him, accountants, auditors, consultants, underwriters, various institutional entities in Israel or Canada ... including in connection with the circumstances leading to the Company's collapse (jointly - "assignment of rights of claim" and the "third parties", respectively), including in respect of any plea and/or demand and/or cause of action and/or any relief available to them ... for the purpose of taking action and instituting legal proceedings that are necessary in accordance with the investigations carried out by the Functionary, in relation to the involvement of these entities or any of them in the Company's collapse ..."**

- A copy of the creditors arrangement that was approved by the Honorable Court is annexed hereto as **appendix 8**.

39. In the course of performing his position his office staff, with the assistance of lawyers and financial advisors in Canada, did various acts, in Israel and in Canada, in order to investigate the causes for the Company's collapse, including attending meetings, investigations and questioning of entities which were involved in the Company's activity in general and the issue of the bonds pursuant to the prospectus in particular.

40. As we will show at length below, from the Functionary's investigations it emerges (*inter alia*) that the prospectus is rife with misleading details, in relation to the Company's main assets, most of which were defined in the prospectus as **"very material projects"**.

41. The investigation into the circumstances of the Company's collapse also revealed that a line of undertakings given by Defendants 9-13 in the issue prospectus were blatantly breached, which caused the Company considerable financial damages on a scale of tens of millions of CAD.

42. The Plaintiff is continuing to investigate the circumstances of the Company's collapse and is reserving his rights to amend or add to this statement of claim based on new facts that come to light from time to time.

43. Below we will cover the matters at length.

D. The misleading details that were included in the prospectus

D.1 The first misleading detail - the value of the Kings Club project

44. The Kings Club project was described in the prospectus as a significant project that included three residential and commercial buildings jointly held in equal parts with the First Capital Reality Co. group. **In the prospectus the project (100%) was attributed a value of approx. 137 million CAD, and the value of the charged part of the Company's holdings in the project was valued at approx. 43 million CAD** (see pages G-38 to G-46 of the prospectus, appendix 3 above) based on Janterra's valuation.

45. In light of the material nature of the asset in the Company's eyes, annexed to the prospectus as aforesaid was a valuation prepared by Janterra, supporting the said value, together with an ancillary letter approving the valuation's attachment to the prospects as aforesaid (see the end of Chapter 10 - financial statements - from page 515 of the prospectus).

- For the Honorable Court's convenience, annexed is a copy of the valuation and the letter ancillary thereto marked **appendix 9**.

46. The rating report published by Defendant 5 and included in the prospectus (see from page B-33 of the prospectus until the end of Chapter B.) also gives this project significant weight and *inter alia* provides that: **"The Kings Club project is expected to be responsible for about 25% of the NOI (Net Operating Income - the undersigned) from the income-producing assets on stabilization of this activity"**[10] and that the project has a **"surplus value of another approx. 8 million dollars that is not portrayed in the financial statements because of the accounting classification of one of the buildings under construction (2 of 3 of the residential buildings in the project are presented at fair value while one building is presented at cost method)"**.[11]

47. However, as the Plaintiff learned in the course of his investigations and examinations, there was no basis for the value given to the Kings Club project in the financial statements. Correct as at today, according to information in the possession of KSV Kofman Inc., which was appointed as monitor on behalf of

[10] Page 13 of the rating report.
[11] Page 14 of the rating report.

the Canadian court for most of the Company's subsidiaries (the **"monitor"**), **it is not at all clear what return, if at all, the Company can expect from this project.**

- A copy of report no. 10 of the Canadian monitor of October 24, 2017 is annexed hereto as **appendix 10**.[12]

48. Thus, it emerges that a project that was described as a material project in the prospectus, with a value of more than 40 million CAD, might turn out to be a project with zero value to the Company.

49. From the Plaintiff's investigations it emerges that the budget for the project's costs as at June 30, 2015,[13] as sent to the Company's management, denominated **an overall amount of approx. 300 million CAD**, while the budget for the project's construction that was included in Janterra's valuation and even in the body of the prospectus itself, **is only approx. 268 million CAD**.

50. Thus, in a report on the project as at June 30, 2015, that was prepared by the consulting company Finnegan Marshall Inc., for the purpose of bank financing to Nova Scotia Bank in relation to the Kings Club project, it was prominently highlighted at the beginning of the report that **based on the assumptions and information detailed in the report, the budget for the project's construction amounted to a sum of 300 million CAD** (refer to the relevant page). It goes without saying that the report was based on data of the project itself and that Defendants 1 and 2, directors and managers of the Company, received copies in real time.

- A copy of the report sent by the Company to the bank financing the Kings Club project is annexed hereto as **appendix 11**.

51. Thus, the material difference in the estimate of the budget for the project's costs, between the data presented in the prospectus and the data provided to the financing bank in those days, which is at least one of the central causes of the drop in the value of the holdings in this project (of more than 30 million CAD), **was not reported in the prospectus and did not affect the value attributed to the project in the prospectus that was published, as will be recalled, in December 2015.**

52. The project's budget as aforesaid was not even mentioned in the valuation prepared and published by Janterra (see page 41 of Janterra's opinion - appendix 9 above), in the body of the issue prospectus (see page G-42 of the

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12 See page 15 of the monitor's report.

13 The date as at which the financial statements included in the prospectus were prepared, which is more than five months prior to the prospectus's publication!

issue prospectus - appendix 3) or in the financial statements that were annexed to the prospectus.

D.2 The second misleading detail - the description of the joint holding in the Downsview project

53. According to the prospectus, the Downsview project is a mixed real estate project, that includes an income-producing part and a development part (in this Chapter below - the **"Downsview project"** or the **"project"**). According to the prospectus, the project includes more than 1,000 residential units in various stages, and is one of the "backing assets" the proceeds from which are earmarked for use for the bonds' payment.

54. Moreover, approx. 10 million CAD from the issue consideration were transferred as an owner's loan to Downsview company.

- A copy of the owner's loan agreement with Downsview company is annexed hereto as **appendix 12**.

55. The project is jointly held by a subsidiary of the Company, Urbancorp Downsview Park Development Inc. (the **"Downsview company"**) together with Mattamy (Downsview) Limited and Downsview Park Management Inc. (**"Mattamy"**), which is also the project's development manager.

56. The joint holding in the project is through a joint company, in which Downsview company holds 51%.

57. **The Downsview project has always been presented as a very central and material asset of the Urbancorp group and in the prospectus,[14] the gross profit supposedly receivable from it correct as t June 30, 2015 for the first stage of the project only (based on 10% of the project) is approx. 36.8 CAD.**

58. **The gross profit for (100%) of the following stages of the project was estimated in the designated disclosure to the bondholders that was included in the prospectus at approx. 40 CAD.[15]**

59. Even according to the rating report **"the cash flow from the Downsview project relative to the entire cash flow expected from the development of housing for sale is approx. 40% (taking into account all the stages of the project) and most of it is expected to be received during the years 2017-2018**.[16]

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[14] Under the Chapter "Very Material Projects" - see paragraph 7.8.6.2 of the prospectus - appendix 3.

[15] According to the data included in the prospectus - 16.5% gross profit from 150,921 thousand CAD plus 29.2% gross profit from 49,085 thousand CAD - see pages G-102 and G-105 of the prospectus - appendix 3.

[16] See page 13 of the rating report at the end of Chapter B of the prospectus - appendix 3.

60. The description of the Downsview project in the prospectus included a description of the mechanism for the sharing of profits amongst the partners (a payment waterfall), which generally provides that after payment of the project's expenses (including to Mattamy for the project's development), Mattamy will be paid an additional sum of 21 million CAD, after which the profits will be shared amongst Downsview company (50%), Mattamy (49%) and the development manager (Mattamy - 1%) (see page G-65 of the prospectus - appendix 3).

61. The objective of the payment mechanism for the Downsview project was clear to all, and it was not in vain that the Company also declared in paragraph 6.9.10 of the trust deed of the bonds (see page 27 of the trust deed - from page B-31 of the prospectus - appendix 3) that **"the payment waterfall in the Downsview project is as provided in paragraph 7A.6.8.2 of the prospectus"**.

62. The prospectus also provided a mechanism for joint decision-making on the Downsview project through a joint committee including a representative of the Company. According to the mechanism that was described, no material decision on the project would be made with the consent of the Company's representative (see page G-4 of the prospectus - appendix 3).

- A copy of the relevant pages from the prospectus relating to the Downsview project is annexed hereto as **appendix 13**.

63. However, from investigations carried out by the Functionary, it emerges that the description given to the Downsview project in the prospectus was misleading and not current.

64. Thus, the description included in the prospectus in relation to the Downsview project "omitted" amendments made to the agreement between the project's partners (the **"partnership agreement"**), that materially affect both the payment mechanism for the project and the project's decision-making mechanisms.

65. These amendments materially worsen the position of Downsview company with regard to the receipt of payments in the project and effectively deny Downsview company the management and decision-making rights in the project and leave it with limited control rights only.

- A copy of the amendment to the partnership agreement of June 30, 2015 is annexed hereto as **appendix 14**.

66. Thus, pursuant to the amendment to the partnership agreement of July 30, 2013 - about two and a half years before publication of the prospectus - an amendment and adjustment was made in the payment mechanism under the agreement for cases in which the profits from the project were less than 40 or 30

million CAD, with adjustments being made **that might significantly reduce the value of the Company's holdings in the project**.

67. In addition, in accordance with another amendment to the partnership agreement of July 22, 2015 (four and a half months before publication of the prospectus), Downsview company's partnership rights in the project committee were cancelled, as well as its right to take part in material decisions, insofar as a certain amount was not paid to the project company by November 15, 2015 and in the event that it was not paid, supposedly gives the management and decision-making rights exclusively to Mattamy.

68. Accordingly, correct as at today the monitor appointed for Downsview company by the Canadian court is not a member of the project committee on behalf of Downsview company and is not a party to material decisions made in connection with the project.[17]

- A copy of the amendment to the partnership agreement of July 22, 2015 is annexed hereto as **appendix 15**.

69. From the Plaintiff's investigations it emerges that the said amendments to the partnership agreements, which were not disclosed in the prospectus, were sent to at least some of the Defendants as part of the due diligence materials that they received for the purpose of the issue or preparation of the financial statements.

70. It emerges that the description in the prospectus in relation to the payment waterfall and in relation to the Company's management rights in the project is misleading, even though the amendments to the partnership agreements were signed several years or months before the issue.

71. In parenthesis and in a different context, it is noted that the Functionary is currently in the process of clarifying information vis-à-vis Mattamy in relation to the data and value of Downsview company's holdings in the project and it is difficult at this stage to assess the full damage occasioned to the Company itself as a result of the changes deriving from the amendments to the partnership agreement.

72. However, for the purposes of this claim - there is not and cannot be any doubt that the lack of description of the amendments and their significance in the prospectus constitutes the inclusion of misleading details or at the last, a material shortcoming in the description in the prospectus, since they are such as

[17] It is expressed that the Functionary is currently checking Downsview company's right to get back its rights in connection with the project management and decision-making, by virtue of the payment made through the owner's loan monies that the Company transferred to Urbancorp Downsview in the framework of the issue, as provided above.

to significantly reduce the value of the Company's holdings in the project and the involvement of the group in its development.

D.3 <u>The third misleading detail - the value of the geothermal assets</u>

73. The geothermal assets are heating and cooling systems installed in residential buildings that were built and sold by the Urbancorp group. The income from these assets is made up of fixed income for use and from income for 50% of the savings resulting from the use of these systems.

74. **The value of these assets was estimated in the prospectus to be tens of millions of CD, as detailed below.**

75. According to information included in the prospectus on the basis of the Company's pro forma consolidated statements, that were audited and reviewed by Deloitte, the value of the geothermal assets correct as at June 30, 2015 is **approx. 58 million CAD**, and the liabilities in respect of them are in a sum of approx. 4.6 million CAD (see pageG-23 of the prospectus - appendix 3).

7.6 In paragraph 7.9.1.9 of the prospectus, **the value of the Company's holdings in all the geothermal assets (according to its percentage holdings of any assets) is estimated to be approx. 44 million CAD**.

77. The prospectus also included individual information on the breakdown of the overall value of the geothermal assets between each one of the assets, in accordance with the valuation prepared by Janterra (see page G-74 to G-76 of the prospectus). One of the assumptions on which the valuations were based is that the operating period of the assets is for 60 (sixty!) years from the date of installation, except for the asset Fuzion, where the assumption referred to an operating period of 50 (fifty!) years only from the date of installation.

- A copy of the relevant pages of the prospectus regarding the geothermal assets is annexed hereto as **<u>appendix 16</u>**.

- A copy of the relevant pages from the financial statements regarding the geothermal assets is annexed hereto as **<u>appendix 17</u>**.

78. This assumption (the reasonableness of which we will dwell on below) is also inconsistent with the engineering opinion that was sent to the Company as part of the due diligence examinations and was found in materials sent by the accountants to the Plaintiff.

79. According to the engineering opinion, the heating system of the geothermal systems "might have" a use period of 50 years, but this is only on fulfillment of certain factual assumptions, **the fulfillment of which is not howsoever confirmed** by the engineering opinion.

- A copy of the engineering opinion of June 25, 2015 is annexed hereto as **appendix 18**.

80. Unlike the valuations, according to the rating report[18] the reference was only to the period of the existing tenancy agreements - 20 years. It was written as follows: **"The Company has four tenancy agreements of the Triple Net type that are signed for 20 years and are expected to yield approx. 1.4 million CAD a year (not including various linkages)**."

81. **Effectively, after the Functionary's appointment, it came to light that legal proceedings are being conducted in relation to the four geothermal assets between the condominium corporations and that companies which hold the systems, *inter alia* on the grounds that the agreements should be terminated; that the user fees were overcharged; and that there are defects in the systems (that were allegedly known to the management company of these assets for many years). As a result of these legal proceedings and pleas, the Plaintiff learned that the relevant subsidiaries do not receive any income from these assets (at least since the commencement of the Company's insolvency proceedings).**

82. Thus, it is argued by the corporations of the condominiums in which the systems are installed, *inter alia* in light of a decrease in alternative energy prices, that the user prices for the system are not resulting in any savings on costs and they are even **higher than the user cost for ordinary systems**.

83. The condominium corporations also pointed out the existence of defects and malfunctions in the systems, the existence of which or possibility of the occurrence of which was already known to the engineers for the management company from the Urbancorp group since 2010 or 2011 (depending on the relevant asset).

84. Finally, the condominium corporations are arguing that there were material defects in the way in which the user fees were charged, in the lack of due disclosure with respect thereto in an intended and misleading way, and in the contracts themselves, that according to the condominium corporations are in violation of the Canadian law. Thus, for example, it is argued that the user prices for the system (as can be seen from Janterra's valuations, as provided below), are raised arbitrarily.

- A copy of examples of pleadings that were filed by the condominium corporations is annexed hereto as **appendix 19**.

[18] See page 10 of the rating report - at the end of Chapter B. of the prospectus.

85. The references to the value of the geothermal assets in the prospectus make no mention whatsoever of any of the above pleas and risk factors, especially in relation to pleas regarding existing defects in the systems, **which according to the condominium corporations have been known already since 2010.**

86. Moreover, the valuations assume the existence of an expected cash flow over a period of 60 (!) years, that was capitalized for the purpose of the valuation, based on an optimistic assumption even compared to valuations of the Company's management to the effect that the **"lifespan of the geothermal facilities is approx. 50-60 years"**.[19]

87. See for example page G-74 of the prospectus - the valuation of the Edge assets[w1]:

(Data pursuant to 100%; the corporation's share of asset - 66.67%	30.06.2015	2014	2013	2012
Value determined	19,430	19,180	12,060	10,390
The appraiser's identity	Janterra Real Estate Advisors			
Is the appraiser independent?	Yes	Yes	Yes	Yes
Is there an indemnity agreement?	No	No	No	No
Effective date of the valuation (the date to which the valuation refers)	30.06.2015	31.12.2014	31.12.2013	31.12.2012
The valuation model (comparison / income / other cost)	Capitalization of income cash flow			
Principal assumptions used for the purpose of the valuation - capitalization of income cash flow				
Use	189	378	378	378
Savings on energy	42	84	84	84
Cost to complete system's installation	706	4,928	9,275	11,390
Operating period (in years)	59	60	60	60
Annual long-term growth forecast	4%	4%	4%	4%
WACC	4.85%	4.85%	6.51%	6.86%
Other central variables	---	---	Estimated completion date in October 2014	Estimated completion date in October 2014

88. Also in the body of the prospectus itself there was no disclosure of the risks emerging from the pleas of the condominium corporations (some of which, it is pleaded, have already been known since 2010/2011), and *inter alia* - there was no disclosure of claims regarding defects in the systems; of illegality of the contracts for the provision of services and the possibility of their termination (or breach!); of defects in the discovery to the apartment purchasers; and of the manner of determining the user fees; al the risk that a drop in prices of the energy used as an alternative to the geothermal systems would render the systems inefficient from a financial point of view in a way that might justify their replacement was also not taken into account in the prospectus or in Janterra's valuations.

[19] See page 15 of the pro forma audited statements for 2013-2014.

89. It is noted that a drop in prices of the energy alternatives as aforesaid significantly increases the possibility and financial feasibility of the apartment owners to replace the systems and hence - casts a very heavy shadow on the working assumption of the existence of a fixed expected cash flow that increases from year to year over a period of 60 (!) years.

90. In addition, it was not disclosed in the prospectus that there are weighty restrictions on sale of the rights in the geothermal assets. A sale as aforesaid might be restricted to specific parties only, due to the fact that the assets are built in to the condominiums that they serve.

91. It was not disclosed in the prospectus that the valuations are based on especially optimistic assumptions, like exercise of options, extension of the contract for two additional periods of 20 years each by the condominium corporations, and the maximum lifespan of the systems even according to the Company's management. The geothermal assets were effectively described as **financial assets that are virtually free of risks the expected income from which was capitalized for a period of six decades**.

92. In fact, the disclosure in the prospectus in relation to the risks of the geothermal assets came down to the following laconic paragraph, that does not refer to all the relevant risks that materialized, and that were expressly defined as a risk of **"little impact"** on the corporation's activity:[20]

> **"The risks of the geothermal sector - in the Company's assessment this sector of activity has two main risk factors: (a) a commercial risk: during the first year of the transfer of control in the condo corporation, the elected board of directors of the condo corporation may choose to terminate the supply contract, on notice of 60 days; and (b) an operating risk: malfunctions or a fault in equipment might cause disruptions in the cash flow."**

93. Finally, the value of the geothermal assets noted in the prospectus turned out to be unfounded, even in light of requests for the purchase of these assets that were received by the Functionary from third parties, which were denominated in far lower values than those noted in the prospectus, and even under the assumption of successful completion of the legal proceedings in relation to these assets.

94. It emerges that the information included in the prospectus in relation to the geothermal assets also included material misleading details. The prospectus failed to detail concrete and tangible risks, the lion's share of which was already known or had already materialized on the relevant date, and all in a manner that deceived the investors who participated in the bonds' issue.

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[20] See pages G-84 and G-85.

D.4 The fourth misleading detail - the debt arrangement for the Edge project

95. The Edge project is a real estate project that was jointly owned by a subsidiary of the Company together with a local partner. The subsidiary's percentage holdings in the project was 66.67%.

96. This project is located in the City of Toronto and includes two buildings of 21 and 22 floors and tens of residential units as well as commercial and office areas for rental, the construction of which is complete (the **"Edge project"**).

97. **The Edge project is described in the prospectus** (see paragraph 7.7.6 on page G-34 of the prospectus) **as a "very material project" that includes 87 residential units the value of which (based on 100%) is approx. 10.3 million CAD, according to Janterra's valuation.**

- A copy of the relevant page from the prospectus in relation to the Edge project is annexed hereto as **appendix 20**.

98. According to the prospectus, in June 2015 the Company entered into an agreement with the partner in the project for termination of the partnership in the project, in consequence of which the subsidiary was left with rights in 53 residential units in the project and the partner with 24 apartments. It is also noted as a footnote that the rest of the residential units in the project had been used for payment to suppliers which are third parties.

99. The transaction for separation from the partner as aforesaid is described in the Company's pro forma financial statements as at June 30, 2015, as part of a transaction for separation from the partner also in another project that was jointly held, and according to note 8D to the pro forma financial statements (see page 18 of the pro forma financial statements that were annexed to the prospectus), **"the difference between the fair value of the assets and liabilities given and received from the projects as aforesaid, respectively, was credited to capital as an owner's contribution"**.

The note stated as follows:

> d. On June 22, 2015 the Company entered into an agreement with a third party, not related to the Company, which holds 33.33% of a mixed project, that includes an income-producing part, a development part and geothermal systems, which is known by the name Edge (**"Edge"**). In the framework of the agreement, the balance of the Edge assets were distributed, such that the Company would hold 100% of the geothermal assets, 53 residential units, a commercial area and office areas. Simultaneously with this transaction, the controlling shareholder

entered into a transaction with the same third party for the distribution of another project between the parties. The difference between the fair value of the assets and liabilities given and received from the projects as aforesaid, respectively, was credited to capital as an owner's contribution. On July 6, 2015, the transaction was completed.

100. However, investigations of the Plaintiff and his staff revealed that **as of July 2015 (about six months before publication of the prospectus), simultaneously with intensive activity of the Company and the "Road Show" with a view to the issue of bonds and raising from the Israeli public, Mr. Saskin led a "debt arrangement"**, which was informal, that included the transfers of tens of units in the Edge project (which is owned by subsidiaries of the company) to his personal creditors and creditors of several other companies owned by him which are not part of the Company's group, against the writing off of debts to the said creditors.

101. According to information given to the Functionary by the monitor appointed to manage the Edge group's assets in the framework of the insolvency proceedings in Canada (the **"Edge monitor"**) in a report prepared at the Functionary's request (the **"Edge monitor's report"**), the value of the units transferred in the framework of the said creditors arrangement was **approx. 10 million CAD. The prospectus did not include a disclosure to the effect that Mr. Saskin or companies owned by the Company were experiencing financial difficulties or that they were unable to pay their debts in the ordinary course of business.**

102. According to the Edge monitor's report, the personal creditors of Alan Saskin or of the companies owned by him had been offered apartments in the project in lieu of the payment of debts to these entities. It goes without saying that this "debt arrangement" and the use of residential units to pay personal debts of the Defendants was not howsoever detailed in the prospectus. Instead, in the prospectus the Company was presented as the full owner of the Edge project and as such expected to receive monies from its units.

103. According to the Edge monitor's report, the most significant transaction for the transfer of residential units from Edge as aforesaid for the benefit of Mr. Saskin's creditors is the transaction for separation from the partner, as detailed above, in the Edge project and in another joint project - the Epic project.

104. To the best of the Plaintiff's knowledge and according to information given to him, the Epic project is an unprofitable project in the framework of which companies owned by Mr. Saskin which are not part of the Company's group had considerable debts to the partner.

105. To the best of the Functionary's knowledge, the separation agreement between Mr. Saskin and the partner included a transfer of residential units, parking bays and storerooms from Edge to the partner, in consideration for the release of Saskin and the company owned by him from the Epic project.

106. According to information given to the Functionary, the results of the transaction with the partner were the transfer of assets worth approx. 5 million dollars of the subsidiary of the Company to the personal creditors of Mr. Alan Saskin and of companies under his control as detailed in the Edge monitor's report; **and all contrary to the presentation in the financial statements annexed to the issue prospectus in the framework of which the gap between the value of the proceeds in both projects was presented as an owner's contribution of Mr. Saskin to the Company.**

107. In addition to the transaction for separation from the partner, it emerges from the Edge monitor's report that as of August 2015 additional residential units in the Edge project were transferred to the private creditors of Saskin and companies owned by him, **in a value amounting at the least to a sum of 4,608,770 CAD, in consideration for the writing off of private debts of Mr. Saskin and companies owed by him which are not part of the Company's group.**

- A copy of the Edge monitor's report in relation to transfer of the units in the Edge project is annexed hereto as **appendix 21**.

108. None of the aforesaid was mentioned in the prospectus, and contrary to the provisions of the prospectus to the effect that **53 residential units are owned by the Company**, according to information sent to the Functionary by the Edge monitor correct as at the date of commencement of the insolvency proceedings in the Edge group (June 7, 2016), the Edge group **only had 37 residential units** and five units of commercial areas.

109. It emerges that the description of the Edge project in the prospectus does not bear even the slightest resemblance to the true state of affairs that already existed in June-August 2015 (about six months before publication of the prospectus), during which a process commenced of an informal creditors arrangement that used the subsidiary's assets for the purpose of paying personal debts of the controlling shareholder and the companies owned by him, and transfers were made of assets of the subsidiary in aggregate amounts of approx. 10 million CAD, and all while leading the entire Edge companies group into a state of insolvency.

D.5 The fifth misleading detail - an assignment of rights worth 8 million CAD

110. In the prospectus, Mr. Saskin, members of his family and companies owned by them[21] undertook that **against an allotment of shares of the Company to a company owned by them**, before the listing for trade and subject to the issue's success, **they would assign rights to the Company for receipts from loans of companies owned by them in a sum of approx. 8 million CAD** (the **"assignment of rights"**) (see paragraph 7.1.6 on pages G-5 and G-6 of the prospectus).

111. Effectively the assignment of rights took place through an assignment of two promissory notes (the **"promissory notes"**) that were issued by TCC/Urbancorp (Bay) Limited Partnership (**"TCC Bay"**), which amount to a sum of 6 million CAD, and a sum of 2 million CAD respectively to the Company and to Urbancorp Realtyco Inc. (a fully owned subsidiary of the Company), by the management company owned by the controlling shareholder - Defendant 1 (the **"management company"**).

- A copy of the promissory notes and the deeds of assignment are annexed hereto as **appendix 22**.

112. The rights assigned by virtue of the assignment of rights, in their full value, 8 million CAD, are described as "current assets" in the balance sheet included in the Company's audited pro forma financial statements as at December 31, 2014, as though they had been received on the date of the relevant statement or were expected to be received and used by the Company for its short-term business activity (see the balance sheets included in the consolidated audited pro forma financial statements and in the consolidated and reviewed statements included in the prospectus).

	As at June 30		As at December 31
	2015	2014	2014
	(Unaudited)		Audited
Current assets	CAD thousands		
Cash and cash equivalent	315	2,693	592
Limited and earmarked deposits	2,048	3,939	3,901
Debtors and debit balances	11,477	9,138	9,307
Customers - apartment purchasers	4,785	802	43,523
Deposits from customers held on trust	8,199	5,694	7,160
Interim inventory for sale	(*)109,438	125,352	107,133
Related parties	8,000	-	(**)-
	144,262	147,618	171,616

	As at December 31	
	2014	2013

[21] For the sake of good order, it is noted that for the breach of this obligation additional remedies are being claimed from Defendants 1 and 9-13 in the framework of this action.

	Note	CAD thousands	
Current assets			
Cash and cash equivalent		592	449
Limited and earmarked deposits	3	3,901	5,978
Debtors and debit balances	4	9,307	20,899
Customers - apartment purchasers		43,523	45,063
Deposits from customers held on trust		7,160	7,551
Interim inventory for sale	7	107,133	108,106
Related parties	20	8,009	-
		179,616	188,046

113. TCC Bay entered into insolvency proceedings in Canada and a monitor was appointed for it - KSV Kofman Inc. (**"TCC Bay's monitor"**).

114. TCC Bay's monitor acted to realize its assets and pursuant to the report filed on its behalf, the receipts from the assets owned by subsidiaries of TCC Bay are expected to enable payment of most of TCC Bay's debts, including partial payment at least of the rights that the controlling shareholder purported to assign to the Company as aforesaid.

115. The Plaintiff filed a debt claim with TCC Bay's monitor in a sum of 6 million CAD, on the basis of the promissory notes that were assigned by the management company to the Company.

166. TCC Bay's monitor rejected the debt claim, *inter alia* on the grounds that **on December 11, 2015 (the date on which the promissory note was assigned), TCC Bay did not have any debt to the management company and accordingly there was no consideration receivable in respect of the promissory notes' issue**.

- A copy of the debt claim and the notice of the debt claim's rejection by TCC Bay's monitor is annexed hereto as **appendix 23**.

117. The Plaintiff appealed to the Canadian court against the debt decision. The Canadian court, in its decision of May 11, 2017, approved the debt claim's rejection by the TCC monitor. **However, in its judgment the court expressly stated that Mr. Saskin should certainly have known that TCC Bay did not have any debt to the management company when it signed the promissory notes.**

- A copy of the court's decision on the appeal in respect of the debt claim is annexed hereto as **appendix 24**.

118. It emerges that the description in the prospectus regarding the rights assigned to the Company having a value of 8 million CAD is misleading, since it is not

possible to prove the existence of a real debt underlying them on the date of the assignment.

119. The prospectus does not state any qualification regarding the ability to enforce this obligation and as provided above, this right was described as a current asset in the audited pro forma statements annexed to the prospectus.

120. In order to complete the picture, it is noted that in light of the Canadian court's decision and the lack of any validity to the promissory notes, the Plaintiff subsequently filed a claim against TCC with the Canadian monitor on the grounds of negligence by TCC in that they created a representation of assignment of promissory notes of value, which as aforesaid were unenforceable. This claim was allowed and by virtue thereof the Functionary received a partial amount of 3 million CAD.

E. <u>Breach of the obligations included in the prospectus by Defendants 1 and 9-13</u>

121. From the Plaintiff's investigations and examinations, it emerges that Defendant 1 together with his wife (Defendant 13) and certain private companies owned and controlled by them, directly and indirectly (Defendants 12-13), they breached obligations that they assumed to the Company in the prospectus. The Company relied on these obligations and included them in the prospectus that it published for the purpose of raising bonds from the Israeli public.

122. Thus, already on the binder of the prospectus, in the second paragraph on page A-8 of the prospectus and in other places in the prospectus (appendix 3 above) mention is made of an obligation assumed by Mr. Saskin personally, as well as in the name of members of his family (including in the name of Ms. Saskin) and corporations under the control of Mr. Saskin and members of his family, to transfer to the Company (through subsidiaries) assets and rights.

123. According to the provisions of the prospectus, these undertakings were given **against an allotment of shares of the Company to Defendant 12**, before the listing for trade and subject to the issue's success. The prospectus provided as follows:

> **"The controlling shareholder and members of his family (jointly - the "holders of the rights") will transfer to the Company, before the listing for trade on the Stock Exchange of the series "A" bonds offered to the public pursuant to this prospectus, their rights (including indirectly through Canadian corporations under his full ownership and control) in five corporations which hold - in a chain - rights in real estate for investment assets and real estate for development assets in Toronto, Ontario, Canada, against an issue of shares of the Company's class to a corporation owned by the holders**

of the rights, which is under the full control of Saskin (the "transferred rights" and the "transferred companies", as the case may be."

124. The prospectus also included, further on (in paragraph 3.3.2) a specific obligation of the family companies (Defendants 9-12) to transfer assets and rights to the Company:

> **"Urbancorp Toronto, Urbancorp Holdco Inc., Urbancorp Management Inc., The Webster Trust, TCC/Urbancorp (Bay) Limited Partnership and .Management Inc. [sic], TCC/Urbancorp (Bay/Stadium) Limited Partnership, all entities held by Alan Saskin and members of his family (the "holders of the rights") undertook that before the listing for trade on the Stock Exchange of the series "A" bonds offered to the public pursuant to this prospectus and subject to the public issue's success, they would transfer to the Company their rights (including their holdings indirectly through rights in corporations owned by them (in the transferred corporations, which would hold - in a chain - rights in the real estate for investment assets, real estate for development assets and geothermal assets in Toronto, Ontario, Canada, including obligations in respect thereof (the "transferred rights" and the "transferred companies", respectively), against an issue of special class A shares, special Class B shares, special class C shares, special class D shares, special class E shares of the Company to Holdco, which would allot shares of a parallel class to the holders of the rights, and which would be under the full control of Saskin. It is expressed that the transfer of the transferred rights is not subject to any conditions precedent and will take effect subject to the success of the issue to the public."**

- A copy of the second page of the prospectus's binder and pages A-8, C-1 and C-2 of the prospectus is annexed hereto as **appendix 25**.

125. As we will show below, these obligations were blatantly breached by the Defendants.

E.1 Breach of a first obligation - regarding assignment of a right to receive monies from related parties worth 8 million CAD

126. In paragraph 7.1.6 of the prospectus Mr. Alan Saskin and members of his family (who are defined in the prospectus as the "holders of the rights") undertook to assign to the Company as follows:

> **"7.1.6 Purchase of the transferred companies by the Company from the holders of the rights against an allotment of shares**

The holders of the rights (as defined above) undertook that before the listing for trade on the Stock Exchange of the series "A" bonds offered to the public pursuant to this prospectus and subject to success of the issue to the public, they would transfer to the Company their rights (including indirectly through corporations owned by them) in the transferred companies, which would hold - in a chain - rights in real estate for investment assets, real estate for development assets and geothermal assets in Toronto, Ontario, Canada, including obligations in respect thereof, and would assign to the Company their right to receive loans from corporations held by them, the amount of which reached approx. 8,000 thousand CAD (jointly - the 'transferred rights'), against an issue of class shares of a corporation under Saskin's full control, that Urbancorp Holdco Inc. would allot, the Company to class shares parallel to the holders of the rights."???

- A copy of pages G-5 and G-6 and ofpageI-1 of the prospectus is annexed hereto as **appendix 26**.

127. As noted in Chapter D.5 of this statement of claim (and there is no need to repeat matters), this obligation that the Defendants purported to assume at the end of the process turned out to be ineffective, when the "asset" underlying it turned out to be an unenforceable obligation.

128. It is noted that as a director of the Company and in his capacity as an officer who was a signatory to the representations included in the prospectus, Mr. Saskin had a fiduciary duty in connection with the assignment of rights.

129. According to legal advice received by the Functionary, pursuant to the laws of insolvency in Canada, a claim the cause of which is fraud or embezzlement while acting under a fiduciary duty or creating a debt deriving from receiving property or services by deceit or a misrepresentation cannot be subjugated to a stay of proceedings in the framework of the insolvency proceedings in Canada (BIA). As noted in appendix 1 above, the Canadian court approved management of the claim against Mr. Saskin, despite a stay of proceedings order in his personal insolvency proceedings.

130. Moreover, according to information furnished by the TCC monitor, as a result of realization of TCC Bay's assets, and rejection of the debt claim filed by the Plaintiff and insofar as certain other appeals in respect of rejection of debt claims filed by other creditors are also dismissed, TCC Bay's shareholders are expected to receive considerable amounts. In such context it is noted that according to information furnished by the TCC monitor, the Saskin's are claiming that by virtue of the alleged existing agreement between Mr. Saskin

and companies owned by Ms. Saskin, these amounts will be paid in full on trust for Ms. Saskin.

131. The Functionary again demanded that given the possible lack of validity of the promissory notes, Ms. Saskin agree in advance that any distribution that she is expected to receive from TCC Bay by reason of the PNs lack of validity will be paid to the Company in order to give effect to the obligations assumed by her and by her husband and the companies under their control. Correct as at today, Ms. Saskin is refusing to meet this demand.

132. In these circumstances, the Functionary saw fit to act simultaneously on two planes: the first - together with an appeal against the TCC monitor's decision on the debt claim, the Functionary filed a claim with the court of insolvency in Canada for the grant of a declaratory order determining that any proceeds that Ms. Saskin or a company owned by her are expected to receive due to the PNs' lack of validity will be held on trust for the benefit of the Company and paid to it; the second - the filing of this claim.

133. Moreover, Defendant 9, TCC Stadium, guaranteed the performance of all TCC Bay's obligations in relation to the assignment of rights (the **"guarantee"**). The signature of Defendant 9 on the guarantee shows that it was directly involved in the acts the subject of these legal proceedings.

134. **Thus, if it is determined that the promissory notes lack validity, all the Defendants, jointly and severally, directly or indirectly, breached their obligations that was included in the issue prospectus as provided above in a manner that deprived the Company, at the least, of a sum of 8 million CAD, amounting to a sum of NIS 22,842,400[22] that Defendants 1 and Defendants 9-13, jointly and severally, are liable to repay the Company through the Functionary's fund.**

E.2 Breach of a second obligation - the obligation to provide an owner's contribution in sum of 12 million CAD

135. The prospectus included an undertaking to provide the Company, through a company under the control of Mr. Saskin (Defendant 12, Holdco) with an owner's contribution in a sum of 12 million CAD (the **"owner's contribution"**, subject to the issue' success.

136. In accordance with the provisions on page A-7 of the prospectus, these monies were expected to contribute to the Company's pro forma equity. The prospectus provided as follows:

[22] Based on the representative rate on December 10, 2015 (the issue completion date): NIS 2.8553.

"Saskin, the controlling shareholder, intends providing the Company, through a company fully held by Saskin, subject to the issue's success, with an owner's contribution amounting to a sum of approx. 12 million CAD, to capital (the 'owner's contribution'). In consequence of the said owner's contribution, the pro forma equity attributed to the Company's shareholders (not including minority rights) will increase from approx. 72.5 million CAD as detailed in the pro forma financial statements as at June 30, 2015 to approx. 84.5 million CAD (information based on the reported pro forma equity amount of the Company as at June 30, 2015) ..."

- A copy of page A-7 of the prospectus is annexed hereto as **appendix 27**.

137. Subsequently thereto, two immediate reports were published on behalf of the Company - signed by Mr. Saskin, in which it was alleged that the monies from the owner's contribution were actually transferred to the Company.

138. Thus, on January 2, 2016 an immediate report was published by the Company, that was signed by Mr. Saskin, in which it was written, *inter alia*, as follows: **"... On December 31, 2015, Mr. Alan Saskin, the Company's controlling shareholder, provided, through a company fully held by him, an owner's contribution amounting to a sum of approx. 12 million CAD to the Company's capital ...".**

- A copy of the immediate report of January 2, 2016 is annexed hereto as **appendix 28**.

139. However, it transpired that these monies never constituted an owner's contribution, in that they were not transferred to the Company but to an account in the name of a subsidiary fully owned by the Company - an account to which the Company was never given access; in addition, according to a report of March 10, 2016 by virtue of an agreement the details of which were not reported between Mr. Saskin and Terra Firma Capital Corporation, the Company did not have any right to use the monies, which were under the control of Terra Firma Capital Corporation and intended for limited purposes.

140. In light of the aforesaid, the controlling shareholder acted to obtain alternative financing, and on March 10, 2016 the Company published another immediate report that was also signed by Mr. Saskin, in which it was written, under the heading "owner's contribution", *inter alia* as follows: **"On March 8, 2016 Saskin entered into a new transaction with the lender, in the framework of which the lender provided Saskin with a loan in a sum of approx. 10 million CAD (instead of 12 million CAD that were repaid to the lender in the framework of the loan transaction's termination) (the "new loan") against a charge of the charged assets, which together with other amounts injected into the Company would amount to 12 million CAD, without any restrictive**

conditions." Further on in paragraph 4 of the report it was written that **"a sum of 12 million CAD was deposited in the Company's account on March 10, 2016"**.

- A copy of the immediate report of March 10, 2016 is annexed hereto as **appendix 29**.

141. The trouble is that after the Plaintiff carried out examinations and investigations in such regard, it came to light that despite the provisions of the prospectus and despite the immediate reports, to the effect that the monies were supposedly provided as required, and totally contrary to all the aforesaid, the "owner's contribution" was never deposited in the Company's account.

142. As revealed by the Plaintiff's investigation, the monies earmarked for the purpose of paying the owner's contribution were transferred in March 2016 directly by the financing entity which transferred those monies to Mr. Saskin, Terra Firma Capital Corporation (**"Terra Firma"**), to the Canadian income tax authorities to cover VAT payments in Canada for another company in the group (Edge).

143. To put things in perspective, correct as at today Edge is in insolvency proceedings in Canada and a monitor has been appointed for it (the **"Edge monitor"**).[23]

144. **From the report filed by the Edge monitor[24] on June 8, 2017 with the court in Canada, it emerges that Edge, for which the VAT payments were transferred as aforesaid, was already insolvent on the date of payment.**

145. **It also emerges from the report filed by the Edge monitor that the payment constitutes preference of creditors vis-à-vis the tax authorities and effectively reduced the personal debt of Mr. Saskin as a director of that company, jointly and severally with the Company, for the aforesaid VAT payments and effectively limited it by 12 million CAD (paragraph 35 of the**

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[23] As stated in report no. 8 that was filed by the Plaintiff on March 30, 2017 in the insolvency proceedings (application no. 36), the Edge companies group, which includes primarily the subsidiaries' holdings in the Edge project, is in insolvency proceedings in Canada and a monitor has been appointed for it (the **"Edge monitor"**). On January 25, 2017 the Plaintiff filed a debt claim with the Edge monitor in a sum of approx. 17 million CAD, in respect of inter-company loans. This debt claim includes the sum of approx. 12 million CAD that were transferred as aforesaid for the purpose of VAT payments on the Edge group's assets. On March 3, 2017 the Edge monitor approved a sum of approx. 16.5 million CAD of the debt claim filed by the Functionary. The approved amount of the debt claim or part thereof has not been paid to the date of filing this claim, and in any event the Plaintiff is not expected to receive the full amount that was transferred to the tax authorities in Canada, if at all. The Edge monitor commenced proceedings against the tax authorities for a refund of the payments on the grounds of prohibited preference pursuant to the Canadian Bankruptcy Law. The proceedings were dismissed and no appeal was filed on behalf of the Edge monitor.

[24] Paragraph 35 of the report, on page 6.

report on page 6. With regard to preference of creditors - paragraph 24 of the report).

35. Furthermore, the payment to CRA had the additional effect of reducing the director's liability to Triangle's sole director, Alan Saskin. Pursuant to s. 323 of the ETA, Mr. Saskin was jointly and severally liable, together with Triangle, for the unremitted net tax assessed by CRA. The payment of $ 12 million to CRA consequently reduced that

- A copy of the Edge monitor's report of June 8, 2017 is annexed hereto as **appendix 30**.

E.2.A Mr. Saskin's pleas in other legal proceedings illustrate the fact that an obligation was breached

146. For the purpose of completing the picture, we would note that on March 28, 2017 Mr. Saskin filed a reply on his behalf to the claim for approval of a class action - CA 1746-04-16, **Pechthold v. Urbancorp *et al*** (the **"approval application"**). In his reply to the approval application, that was supported by Mr. Saskin's affidavit, Mr. Saskin failed to refer to the provisions of the report of March 10, 2016 to the effect that **"the sum of 12 million CAD was deposited in the Company's account on March 10, 2016"**; his entire plea in such regard was that it was sufficient that the sum of 12 million CAD **"was provided in cash in an account held by a subsidiary fully owned by the Company"**, in order to fulfill the obligation that he assumed in the framework of the prospectus (see paragraph 12 of the affidavit annexed to Mr. Saskin's reply to the approval application).

- A copy of Mr. Saskin's reply to the approval application together with his affidavit is annexed hereto as **appendix 31**.

147. **However this statement is also not accurate, since according to the provisions of the immediate report the monies were not even provided to an "account held by a subsidiary ...".**

148. Moreover, according to examinations carried out by the Plaintiff and information reaching him, on March 6, 2018 a letter of intent was signed that was intended to replace the letter of intent and financing agreement signed between Defendant 12, Holdco, and Terra Firma in December 2015.

- A copy of the letter of intent and the financing agreement between Holdco and Terra Firma of March 6, 2016 is annexed hereto as **appendix 32**.

149. According to this letter of intent (appendix 36 above), the monies intended to be used for the purpose of the owner's contribution were apparently transferred directly by Terra Firma, in accordance with the agreement between Mr. Saskin and Terra Firma, to Harris Sheaffer (a Canadian law firm that represented several companies of Mr. Saskin) and from Harris Sheaffer they were transferred directly to the tax authorities in Canada to cover the VAT payments of a company from the Edge group.

- A copy of the instruction of March 8, 2016 for a transfer in a sum of 10 million CAD to the Canadian tax authorities is annexed hereto as **appendix 33**.

150. Not only were these monies not transferred either to the Company or to a subsidiary of the Company, but directly to the Canadian tax authorities, but pursuant to that financing agreement, the amount transferred from Terra Firma was approx. 10 million CAD and not 12 million CAD in accordance with the obligation in the issue prospectus.

151. In such regard Mr. Saskin is pleading in his reply to the approval application, vaguely and without particulars or references, that "together with other amounts that were provided they amounted to a sum of 12 million CAD". Mr. Saskin chose, for his own reasons, not to detail what other amounts were involved.[25] **One way or another, it is not disputed that the sum of 12 million CAD was never to transferred to the Company's account as a contribution to the Company's capital, such being both contrary to the obligations in the issue prospectus and contrary to Mr. Saskin's statements in reports of January 2, 2016 and of March 10, 2016**.

152. Moreover, on March 8, 216 Mr. Saskin signed an instruction for endorsement of the payment in a sum of 10 million CAD that was received from Terra Firma as aforesaid pursuant to the financing agreement to the Canadian tax authorities. **In his reply to the approval application and the affidavit annexed thereto, Mr. Saskin confirms that these monies were transferred to the Canadian tax authorities and not to the Company - as for the rest, go and learn it.**

153. **Thus, the owner's contribution was never transferred to the Company as required in the framework of the prospectus for the purpose of its inclusion in the equity; the use of these monies for the VAT payments of Edge was never approved by the Company's board of directors; nor was it approved in accordance with the signatory rights in the Company.[26]**

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[25] According to information in the Functionary's possession, at least part of the balance of the owner's contribution originates in monies of the Company itself, that the management company of the controlling shareholder (UTMI) should have paid the Company, which were used to pay the balance of the debt to the Canadian tax authorities in a sum of 12 million.

[26] For the sake of good order, it is noted that the matter was only discussed by the audit committee after the fact, at the beginning of April 2016.

E.2.B <u>In addition to all the aforesaid - the transfer of monies to cover the VAT payments of the Edge companies is an irregular transaction</u>

154. As provided in the prospectus, the Company expressly undertook to adopt and apply to itself the relevant provisions of the Companies Law, pertaining to the approval of transactions with interested parties that requires the approval of the board of directors and the approval of the audit committee for irregular transactions with the controlling shareholder, or for transactions in which the controlling shareholder has a personal interest (see the provisions on the prospectus's binder and on page 12 of the prospectus).

- A copy of the relevant pages from the prospectus showing the applications of sections 275 and 270(4) of the Companies Law to the Company is annexed as **<u>appendix 35</u>**.

155. It is obvious that Mr. Saskin and his relatives had a direct personal interest in the monies' transfer directly to the Canadian tax authorities, in that it enabled Mr. Saskin, who served as a director of the Edge companies, to evade personal liability for the VAT payments of the Edge companies.

156. In these circumstances, the use of monies that should have reached the Company as a contribution to equity, for the purpose of paying the debt of an insolvent related company, for which Mr. Saskin would otherwise be personally liable, necessarily falls within the definition of an "irregular transaction" in which Mr. Saskin, as the Company's controlling shareholder, had a personal interest.

157. The decision to transfer the monies earmarked for payment of the owner's loan was made by Mr. Saskin independently and it is obvious that he should have disqualified himself from being involved in the Company's decision-making process, pursuant to the Israeli Companies Law and pursuant to the Canadian Companies Act.

158. For the sake of good order, it is noted that the matter was discussed by the audit committee **only after the fact**.

159. Since Holdco, the company through which Mr. Saskin sought to provide the owner's contribution, is held directly and indirectly by the family companies and Mr. and Ms. Saskin, these entities should be held jointly and severally liable.[27]

[27] Also according to the approach of the Defendants themselves in the framework of the joining application that they filed in the insolvency proceedings, in which they pleaded that there was no significance to the question if they hold the Company directly or indirectly and in light of the artificial separation that was made by the Saskins as provided above.

160. **In light of the aforesaid, all the Defendants, jointly and severally, should be held liable to pay the Company the amount of the obligation to provide <u>an owner's contribution in a sum of 12 million CAD</u>, which amounts to a sum of NIS 35,295,600**.[28]

E.3 <u>Breach of a third obligation - regarding a transfer of residential units in the Edge project to private creditors</u>

161. As detailed at length the Edge project is a project owned by a subsidiary of the Company, that includes hundreds of residential units, commercial areas and offices for rent.

162. As described above at length (and we will not repeat the aforesaid), from the Plaintiff's investigations it transpired that residential units described in the prospectus as units owned by the Company were actually used for a "debt arrangement" with private creditors of Mr. Alan Saskin and creditors of other private companies, in respect of debts that had nothing to do with the Edge project. According to information furnished to the Functionary, the aggregate value of the transferred units was approx. 10 million CAD.

163. According to information furnished to the Functionary, the personal creditors of Alan Saskin and/or the companies owned by him were made an offer to accept apartments in the project instead of the payment of debts to these entities. It goes without saying that this "debt arrangement" and the use of residential units to pay personal debts of the Defendants, including the financial difficulties that the controlling shareholder was experiencing, were not howsoever detailed in the prospectus. On the other hand, in the prospectus the Company was presented as the full owner of the Edge project and as expected to receive proceeds from its units.

164. The most significant transfer transaction executed in such regard by Mr. Saskin was a transaction between him and a company by the name of 994697 Ontario Inc. (**"994"**), which is a partner in another unprofitable project of his - the Epic project. To the best of the Plaintiff's knowledge, Epic is an unprofitable project in the framework of which a company owned by Mr. Saskin and a subsidiary of Defendant 9 (TCC Stadium) had considerable debts to 994.

165. The agreement between Mr. Saskin and 994 included a transfer of residential units, parking bays and storerooms to 994 in consideration for the exit of the private company of Saskin from the Epic project (the **"994 transaction"**); the transaction was presented in the Company's financial statements as an owner's contribution that was credited to the Company's capital.

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[28] Based on the representative rate on March 10, 2016 (the date on which pursuant to the publication of March 10, 2016 (which turned out to be incorrect) the sum of 12 million CAD was transferred to the Company's account): NIS 2.8553.

166. Thus, in the Company's pro forma financial statements as at June 30, 2015 that was annexed to the issue prospectus (page 18, paragraph D.), it was noted as follows:

> "On June 22, 2015 the Company entered into an agreement with a third party which is not related to the Company, which holds 33.33% of a mixed project, that includes an income-producing part, a development part and geothermal assets, which is known by the name 'Edge' ('Edge'). In the framework of the agreement, the balance of the assets in Edge were distributed such that the Company would hold 100% of the geothermal assets, 53 residential units, the office area and office areas [sic]. **Simultaneously with this transaction, the controlling shareholders entered into a transaction with the same third party for the division of another project between the parties. The difference between the far value of the geothermal assets given and received from the projects as aforesaid, respectively, was credited to capital as an owner's loan. On July 6, 2015 the transaction was completed."**

167. However, from the Functionary's investigations it emerges that not only did the transaction not constitute an owner's contribution, effectively the consequences of the 994 transaction were **a transfer of assets with a surplus residual value of approx. 5 million dollars to the creditors of Mr. Alan Saskin and of companies under his control.**[29]

168. As detailed above, the 994 transaction is merely an example of the way in which this obligation - that was included in the prospectus - regarding the Company's holding of residential units in the project, was breached. As emerges from a report published by the Edge monitor on June 13, 2017, the Company was deprived, as of August 2015, of **additional** residential units in the Edge project that were transferred to additional creditors of Mr. Saskin and companies that are not companies from the Company's group, and all contrary to the Company's interest, of a value amounting at the least to a sum of 4,608,770 CAD - **which amounts to a sum of NIS 13,606,011.**[30]

- A copy of the Edge monitor's report of June 13, 2017 is annexed hereto as **appendix 36**.

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[29] The Functionary has information that was received from the Edge monitor in relation to the value of the surplus units that was transferred in the framework of the 994 transaction as provided above, compared to the amounts that actually reached 994 from the Edge group. Nonetheless, at the request of the Edge monitor and in accordance with the provisions of the confidential agreement that was executed between him and the Functionary, the Functionary was asked not to add information that was not public in relation to the units' transfer. Even though to the best of the Functionary's knowledge, the Defendants, or some of them, have a copy of or access to the said letter, and in view of the confidentiality agreement, this letter will not be added at this stage to the claim, and the Functionary is reserving his right to do so in future, insofar as necessary.

[30] Based on the average representative rate between the dates of signature of each one of the transfer agreements - NIS 2.9522.

169. **In total, the Company was occasioned - as a result of this breach - damages and/or financial losses in a value of 9,568,770 CAD[31], amounting to NIS 28,566,859 that were unlawfully transferred from the Edge group companies, contrary to the interest of the Company and its group and in breach of representations included in the Company's pro forma financial statements, and all to pay debts of Defendants 1 and 9 jointly. Also liable for these damages and/or financial losses is Holdco as the Company's direct controlling shareholder.**

E.4 Breach of a fourth obligation - to transfer the proceeds from sale of an asset of the subsidiary Queen 952

170. The Queen 952 project was an asset owned by the Company Urbancorp (952 Queen West) Inc., which was held in a chain by the Company (see the companies diagram - appendix 2 above) (**"Queen"**). Involved is a real estate project that includes a residential building of eight floors, with more than 100 residential units, and commercial units (the **"Queen 952 project"**).

171. This project was sold before publication of the prospectus - in October 2015 - and the proceeds from the sale should have been used for the Company's current expenses. So it was stated in such regard in the issue prospectus (pages G-100 and G-1189):

> **"The Company's management believes that the cash flow from current activity and sale of the Queen 952 project will enable it to finance its current activity."**

- A copy of pages G-100 and G-101 of the issue prospectus are annexed hereto as **appendix 37**.

172. Notwithstanding the provisions of the prospectus, these proceeds in a sum of approx. 3 million CAD were actually transferred to other companies owned by Alan and Doreen Saskin for the purpose of paying their debts that were not related to the Company, and without the Company howsoever benefitting therefrom.

173. To the best of the Plaintiff's knowledge, these money transfers were made without Queen receiving due consideration, without obtaining approvals as required pursuant to the law and without disclosure and reporting in respect thereof and contrary to statements included in the prospectus.

174. To the best of the Plaintiff's knowledge, a sum of approx. 1.5 million CAD was transferred to a management company privately owned by Mr. Saskin; a sum of

[31] 4,608,770 plus 4,960,000.

approx. 732,000 CAD was transferred to Terra Firma for payment of interest debts in respect of a loan taken from it by another private company of Saskin. Moreover, several days before sale of the asset a loan in a sum of 750,000 CAD was provided to Defendant 11 by Terra Firma, that was repaid several days later from proceeds received from Queen.

- A copy of documents attesting to provision of the loan in a sum of 750,000 CAD to Defendant 11 is annexed hereto as **appendix 38**.

- A copy of an e-mail from Defendant 2 of April 10, 2016 to the effect that 732,000 CAD were transferred to Terra Firma for payment of the interest of another private company of Saskin vis-à-vis it is annexed hereto as **appendix 39**.

175. On March 21, 2016 the chairman of the Company's audit committee, the director Dr. Eyal Geva, sent a letter to Defendants 1-2 asking them to clarify data and provide explanations in relation to various money transfers (the **"audit committee's letter"**).

176. In reply to this letter, on March 22, 2016 Defendant 2, Mr. Philip Gales, sent an e-mail, in which he clarified that at the least 2.8 million CAD received from the sale of the Queen 952 assets **were not transferred** for the purpose of financing the Company's current activity, **as obliged by the prospectus.**

- A copy of the audit committee's letter of March 21, 2016 and a copy of the e-mail in reply of Mr. Gales of March 22, 2016 is annexed hereto as **appendix 40**.

177. The contents of this e-mail are consistent with the analysis of transactions with related parties that was sent to the Functionary by the Company's Israeli legal advisors (from the law firm of Agmon): "Related Party Offsetting via Fees and APs 25-Mar-2016". This table details the financial relations between the group of Urbancorp companies (which also include private companies of Mr. Saskin and the its various projects correct as at such date.

178. A study of this table shows that the debts of companies owned by the controlling shareholder to the Company in respect of the Queen 952 project amount to approx. 2.8 million CAD - the same amount to which Mr. Gales refers in his e-mail of March 22, 2016.

- A copy of the table depicting an analysis of transactions with third parties is annexed hereto as **appendix 41**.

179. **Thus, as a result of the transactions described above, which amount to approx. 3 million CAD, or NIS 8,923,800**,[32] were unlawfully transferred from Queen to Mr. Saskin or Defendant 11, UMI, which is owned by him.

F. The causes of action against the Defendants

F.1 The causes of action against Defendants 1-8

180. **Liability for a misleading detail in a prospectus** - in section 1 of the Securities Law the expression "misleading detail" is defined as follows: **"including something that is likely to mislead a reasonable investor, and any matter the omission of which is likely to mislead a reasonable investor"**.

180.1 The range of misleading details included in the prospectus are detailed above at length in the statement of claim. These misleading details are material matters that go to the root of the prospectus, the representations therein and the reliance of anyone who purchased the bonds or traded in them and who naturally relied on these details in the prospectus.

180.2 Section 31(a)(1) of the Securities Law, headed **"Liability for damage because of a misleading chapter in a prospectus"**, provides that **"anyone who has signed a prospectus pursuant to section 22 is liable to anyone who has purchased securities in the framework of the sale of the prospectus, and to anyone who has sold or purchased securities in the course of trade on or off the Stock Exchange, for damage occasioned by reason of the fact that there was a misleading detail in the prospectus"**. Section 31(a)(2) of the Securities Law also imposes liability on the controlling shareholder and on the CEO.

180.3 Section 32 of the Securities Law, headed **"Liability of experts"**, provides that **"anyone who has given an opinion, report, review or approval that was included or mentioned in a prospectus with his prior consent, will be liable as provided in section 31(a) for damage occasioned by reason of the fact that there was a misleading detail in the opinion, report, review or approval given by him, including in an opinion, report, review or approval that was included in the prospectus by way of reference"**.

180.4 Section 34 of the Securities Law provides that the liability of the various entities will be joint and several.

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[32] Based on the representative rate on October 19, 2015 (the Queen 952 transaction completion date): NIS 2.9746.

181. **Negligent misrepresentation** - besides the liability of the Defendants pursuant to the securities law (*inter alia* by virtue of the sections quoted above), as detailed at length, the prospectus includes misleading information and misrepresentations about the Company's main assets, which were described as material assets of the Company and on the basis of which the Company raised more than NIS 180 million from the Israeli public. In fact, it transpired, as detailed above in the statement of claim, that involved are misleading representations and it is therefore clear that the Defendants or some of them committed the wrong of a negligent misrepresentation.

182. Anyone who purchased bonds offered in the prospectus, whether the purchase was effected on issue or thereafter in the course of trade on the Stock Exchange, and who holds the bonds today, is entitled to the remedies claimed in the framework of this claim from the Defendants jointly and severally, remedies the causes of action pursuant to which as aforesaid were assigned to the Plaintiff.

F.2 The causes of action against Defendants 1 and 9-13

183. In our case it cannot be disputed that the issue prospectus is a statement of the Company's rights and liabilities. Hence, the Defendants' obligations to the Company, as described in the prospectus, are contractual obligations to the Company.

184. **The acts described above constitute a breach of an express contractual obligation on the part of all the Defendants, jointly and severally, vis-à-vis the Company and vis-à-vis its creditors.**

185. **Defendants 1 and 9-13, given that all of them are closely inter-related and under the direct or indirect control of Mr. Saskin and as beneficiaries for the allotment of the Company's shares in accordance with the prospectus, were aware (or at the least should have been aware) of the representations and undertakings given in the prospectus, and accordingly they are liable for all the breaches of the representations and undertakings as aforesaid.**

186. In the circumstances described above, Defendants 1 and 9-13 owe the creditors fund, jointly and severally, for the damage and financial loss occasioned to the Company as detailed above as a result of breaches of contractual obligations pursuant to the issue prospectus, as well as by virtue of the laws of tort and by virtue of the Contracts (Remedies for Breach of Contract) Law, 1970.

G. The damage and the requested remedies

187. **For the misleading details in the prospectus** - the damages occasioned to the bondholders amount to a sum of NIS 180,583,000 plus annual contractual interest of 8.15% a year (from December 10, 2015 until the date of actual

payment),[33] plus default interest at a rate of 3% a year (from the date of the bonds being called for immediate payment to the date of actual payment), plus the expenses of the bonds' trustee and the bondholders' share of all the expenses of the Company's insolvency proceedings and setting off monies actually received by them to date in the framework of the Company's insolvency proceedings.

188. For fee considerations and taking into account the fact that additional amounts are expected to be received in future from the insolvency proceedings, this element of the claim has been put at a sum of only NIS 100 million.

189. **For breach of the obligations included in the prospectus** - the amount of the damage and financial loss occasioned to the Company and its creditors in connection with the breaches and wrongful conduct detailed above amounts to **32,568,770 CAD** in their value in accordance with the representative rate on the date designated for the performance of any obligation **in a sum of NIS 95,628,659**, as detailed below:

Breach	CAD	At Rate	As At	Date	NIS	Defendants
1	8,000,000	NIS 2.8553	10/12/2015	Issue completion date	22,842,400	1, 9-13
2	12,000,000	NIS 2.9413	10/03/2016	Date of report's publication	35,295,600	1, 9-13
3	4,960,000	NIS 3.0163	01/07/2015	994 transaction completion date	14,960,848	1,9,12
3	4,608,770	NIS 2.9522			13,606,011	1,9,12
4	3,000,000	NIS 2.9746	19/10/2015	Queen 952 transaction completion date	8,923,800	1, 11
Total	**32,568,770**				**95,628,659**	

Conclusion

190. The Honorable Court has local and subject-matter jurisdiction to hear this action in light of the amount of the claim and in light of the causes of action.

191. Accordingly, the Honorable Court is moved to summon the Defendants to trial and to order them to pay the amount of the claim detailed above together with interest and linkage from the date on which the cause of action arose until the date of actual payment. The Honorable Court is also moved to order the Defendants to pay the Plaintiff's costs and lawyers' fees together with due VAT.

(Signed) (Signed)

Yael Hershkovitz, Adv. Amir Paz, Adv.

[33] Together with a rise in the interest between April 12, 2016 to the date of calling for immediate payment in respect of the lowering of the Company's rating, at an annual rate of 0.5%, as detailed in the Company's report of April 13, 2016, reference no. 2016-01-047758.

Gissin & Co., Law Offices
The Plaintiff's Attorneys

Today, September 6, 2018