

Court File No. CV-16-11392-00CL

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

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

**AND IN THE MATTER OF URBANCORP INC.**

**APPLICATION OF GUY GISSIN, THE FOREIGN REPRESENTATIVE OF**  
**URBANCORP INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS***  
***ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AFFIDAVIT OF KENNETH DAVID KRAFT**  
**(affirmed March 31, 2023)**

I, **KENNETH DAVID KRAFT**, of the City of Toronto in the Province of Ontario,  
SOLEMNLY AFFIRM AND SAY:

1. I am one of the Canadian counsel for Guy Gissin, in his capacity as Israeli Court appointed Functionary (the "**Functionary**") and Foreign Representative of Urbancorp Inc. ("**UCI**") and as such have knowledge of the matters to which I depose, unless stated to be on information and belief, in which case, I have stated the source of that information and believe them to be true. In making this affidavit there is no intention to waive matters which would otherwise be privileged.
2. This affidavit responds to the 8th Report of KSV Restructuring Inc. ("**KSV**"), dated March 23, 2022 ("**8<sup>th</sup> Report**"). KSV filed the 8<sup>th</sup> Report purportedly acting in its capacity as Information Officer of UCI in this proceeding. Yael Hershkovitz, Israeli counsel to the Functionary, informs me that counsel for the Israeli bond trustee ("**Trustee**") recently filed the 8<sup>th</sup> Report with the Israeli court in connection with the Functionary's motion before the Israeli court for approval of its fees.
3. Due to time constraints, as well as the lengthy and extensive nature of the Urbancorp restructuring proceedings in Canada, this affidavit does not address all issues raised in the

8th Report. Instead it highlights material concerns, inaccuracies and discrepancies in respect of the contents of the 8th Report. I believe that the 8th Report materially understates the value that the participation of the Functionary in the Canadian proceedings has created for UCI, directly and indirectly. I also believe that the 8th Report was outside the scope of the Order appointing KSV as Information Officer.

4. The 8th Report purports to respond to questions posed to KSV from counsel for the Trustee and certain bondholders seeking KSV's view on the contribution of the Functionary to recoveries in the CCAA proceedings. The specific question the 8<sup>th</sup> Report purports to address is whether the realizations in the CCAA proceedings would have been "materially inferior" if the Functionary had not been appointed as the Foreign Representative of UCI. Neither the Functionary, nor its Canadian counsel, was provided with the question(s) that were posed to KSV, nor was there any inquiry from KSV in advance of the release of the 8th Report as to whether certain facts that the Trustee provided to KSV, and attributed to the Israeli Functionary, were accurate.
5. Additionally, it appears that KSV did not review the materials the Functionary filed in Israel in respect of its fee request prior to filing the 8th Report. Yael Herskhovitz advises me that if KSV had consulted with the Functionary before releasing the 8th Report or independently reviewed the Materials that the Functionary filed, it would have been advised, or become aware, that numerous statements that the Trustee attributed to the Functionary were inaccurate. Additionally, the Functionary would have also clarified for KSV that the fees allegedly paid to date to the Functionary in its capacity as Functionary were, in fact, materially less than what KSV reflects in its report and represent less than 1/7 of the fees paid to the Canadian court officers.
6. Shortly after the various Urbancorp CCAA proceedings commenced, the Israeli Functionary and the Canadian Monitors, KSV in respect of both Cumberland 1 and TCC Bay, and Fuller Landau Group Inc. ("**Fuller Landau**") in respect of Cumberland 2, entered into protocols which were intended to set out the cooperative basis on which they would all operate given the fact that there were proceedings in both Canada and Israel. The basic premise of the protocols were that the court officers would work cooperatively in order to

seek to maximize realizations from the various Urbancorp companies. Over the course of the 7 years of the various Urbancorp restructuring proceedings, generally speaking there has been active cooperation between the Functionary and his advisors and the two Canadian Monitors (KSV and Fuller Landau) and their advisors. On occasion there have been differences of opinion, some of which were resolved with the assistance of the Canadian court.

7. All of the Urbancorp proceedings have been highly complicated and contentious and have resulted in a significant number of contested court hearings, a number of which have been appealed to the Court of Appeal for Ontario. Additionally, there have been two significant arbitrations relating to Urbancorp's interest in the Downsview Project. UCI has been directly involved in many of those hearings and was a co-applicant in the arbitrations. The complexity and contentiousness of the various proceedings have largely been the result of actions taken and agreements Alan Saskin entered into prior to the commencement of the insolvency proceedings.
8. Further, KSV fails to reflect the significant value to UCI and its stakeholders that the Functionary, both through the Israeli proceedings, as well as its active participation in the Canadian proceedings has generated. As outlined below, I firmly believe that the efforts of the Functionary in Canada generated material value for UCI, both directly and indirectly.
9. The 8<sup>th</sup> Report is incomplete or inaccurate in a number of respects. In addition to inaccurately summarizing the filings in Israel (as Yael Hershkovitz advises me), the 8<sup>th</sup> Report does not acknowledge the material recoveries to UCI that arose solely or primarily as a result of the Functionary's actions. Furthermore, the real question is not whether the Functionary materially contributed to creditor recoveries (even though it did), but rather did the Functionary contribute materially to the recovery for UCI's creditors. The answer to this second question is yes.
10. The following recoveries, among others, are directly as a result of the Functionary's efforts: Mattamy first arbitration; Mattamy second arbitration; First Capital Realty Inc.

(“FCR”) settlement, Terra Firma Capital Corporation (“TFCC”) settlement, and Geothermal/Cumberland 2 allocation dispute.

11. The first arbitration relating to Mattamy was pursued at the request and instigation of the Functionary. The Functionary was a co-applicant along with KSV. As a result of the first arbitration, the arbitrator ordered a material reduction in the Mattamy DIP loan by approximately \$8 million. The Functionary’s Israeli counsel was present throughout the arbitration.
12. In mid- 2021, the Functionary was concerned about numerous accounting issues relating to the Downsview Project which impacted the waterfall calculations that Mattamy prepared. It requested that KSV commence an arbitration against Mattamy to determine the quantum of an additional priority payment to which Mattamy claimed to be entitled to receive before any distributions of profit from the Project. Additionally, the Functionary was of the view that Mattamy owed approximately \$750,000 in respect of consulting fees earned for phase 1 of the Project. When KSV refused to pursue the arbitration, the Functionary obtained an Order requiring KSV to either commence an arbitration or assign the right to arbitrate to the Functionary. KSV elected to assign the right to arbitrate to the Functionary who commenced an arbitration against Mattamy with respect to the foregoing issues.
13. Ultimately, that arbitration was partially superseded by the sale process for the sale of the Urbancorp interest in the Project which was initiated by the Monitor and approved by the court. The sale process yielded no positive result as no purchaser came forward (a concern that the Functionary had argued would result from the sale process KSV proposed but which the Canadian court ultimately approved notwithstanding the Functionary’s concerns). As a result of that sales process, the issue of the quantum of priority distributions of profits from the Project was rendered moot. Mattamy ultimately took Urbancorp’s interest in satisfaction of the outstanding DIP loan. However, the agreement of purchase and sale preserved Urbancorp’s right to pursue a claim against Mattamy for consulting fees for the entire Project (including the Phase 1 fees which were the subject of the arbitration claim referred to in paragraph 12 above).

14. The Functionary and KSV, on behalf of UTMI, commenced an arbitration against Mattamy seeking payment of consulting fees to UTMI relating to the entirety of the Project. The Functionary was a co-applicant and had full standing in the arbitration. The Functionary filed his own affidavit materials and collaborated closely with KSV in the preparation of KSV's materials, including joint written submissions. The affidavit that the Functionary filed was key to Mattamy abandoning one of its arguments on why the management fees had not been payable. The Functionary's Israeli counsel was present throughout the arbitration. After hearing submissions from both KSV and the Functionary, the arbitrator ruled in favour of UTMI and ordered Mattamy to pay \$5.9 million.
15. Mattamy recently sought to have the arbitral decision set aside and an application to set it aside was heard on March 10, 2023 ("**Application**"). The Functionary was a party to the Application and filed joint materials with KSV opposing the Application. The Functionary appeared at the Application in person and counsel for the Functionary made argument to the Court in addition to counsel for KSV. The court has not yet ruled on the Application.
16. It is inaccurate in the 8<sup>th</sup> Report to simply state that any management fees are payable to Urbancorp Toronto Management Inc. ("**UTMI**") and that UCI will only recover "...a fraction of the \$6 million in management fees." KSV stated in its recent 56<sup>th</sup> report<sup>1</sup> that UCI is expected to receive approximately \$4.2 million of the amounts that would otherwise be payable to UTMI as a result of amounts owed for intercompany advances (this would be subject to a motion to amend the charge under the original order that is capped at \$1 million). A copy of the 56<sup>th</sup> report, without the schedule or appendices, is attached as **Exhibit "A"**.
17. Accordingly, the Functionary's active participation in the proceedings relating to Mattamy resulted in a reduction of \$8 million in monies owed to Mattamy, as well as an Order that Mattamy pay \$5.9 million, of which at least \$4.2 million is expected to flow to UCI (subject to a decision on the Application).

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<sup>1</sup> Dated March 16, 2023.

18. FCR was another creditor that asserted claims related to the Kingsclub development. FCR had paid \$2.15 million to acquire the interest of Urbancorp New Kings Inc. (“**UNKI**”) in that development. KSV held these proceeds while the Functionary litigated with FCR over whether FCR had a valid mortgage over UNKI’s interest in a geothermal system. The Functionary ended up settling with FCR such that \$1.4 million of the settlement proceeds was paid to UCI, about \$554,000 went to FCR, and KSV would hold the balance of about \$200,000 in favour of UCI, subject to holdbacks for certain costs. A copy of this settlement is attached as **Exhibit “B”**.
19. The Functionary was also successful in obtaining an \$8 million negligent misrepresentation claim recognized in the Bay CCAA Proceeding which generated the recovery out of that proceeding, initially of about \$3 million, before addressing issues with TFCC.
20. TFCC was another material creditor in the TCC Bay CCAA Proceedings. The Functionary had also commenced legal proceedings against TFCC in Israel alleging that TFCC, and one of its principals, had acted improperly in respect of the Israeli bond raise. TFCC asserted a secured claim against TCC Bay which, if upheld, could have resulted in TFCC receiving a distribution in the amount of approximately \$6 million.
21. The Functionary was involved in legal proceedings with TFCC in the CCAA seeking to have TFCC’s entitlement disallowed. Ultimately, the Functionary and TFCC entered into a comprehensive settlement agreement which settled all claims in both Canada and Israel and resulted in TFCC assigning the proceeds it was to receive from TCC Bay to UCI. As a result of the settlement, UCI received an additional \$6.9 million and the TCC Bay proceedings were terminated. Thus the net proceeds that UCI received out of TCC Bay was about \$10 million, all of which recovery on behalf of UCI’s creditors can be traced to activities of the Functionary.
22. The settlement with TFCC also assigned any claims that TFCC had against Alan Saskin to the Functionary and those potential additional recoveries are currently the subject of litigation against Alan Saskin and various of his family members. A copy of this settlement is attached as **Exhibit “C”**.

23. In the Urbancorp Management Inc. (“**UMI**”) bankruptcy proceeding, KSV is currently holding approximately \$1.9 million, which subject to obtaining a tax clearance certificate will be available for distribution. Doreen Saskin initially asserted a secured claim in excess of \$2 million, which, if accepted would have resulted in all available funds being paid to her. The Functionary currently has litigation outstanding against Doreen Saskin both in Israel and Ontario.
24. The Functionary expressed concerns to KSV about the legitimacy of her secured claim. KSV requested that Doreen Saskin produce documents to substantiate her secured claim, or it would be disallowed. Doreen Saskin refused to produce the requested documents due to her concern that any documents she produced would be provided to the Functionary and ultimately used by the Functionary in proceedings against her. As a result, her claim was disallowed and she did not appeal the disallowance.
25. Accordingly, the actions of the Functionary in litigating against Doreen Saskin were a critical factor in her deciding not pursue an appeal from the disallowance of her alleged secured claim. The result of the disallowance of her claim will be that UCI should receive at least 75% of the funds currently being held by the Monitor in respect of UMI. This recovery percentage may increase as a result of the judgement that the Functionary obtained against UMI in Israel. Had Doreen Saskin’s secured claim been allowed there would have been no recovery from UMI for UCI.
26. The Functionary was intimately involved in litigating and resolving issues around the settlement of the allocation of proceeds from the geothermal assets. Fuller Landau, KSV, and the Functionary disagreed on how to allocate these assets. The Functionary negotiated a settlement that resulted in a material reduction in the amount that was allocated to the Cumberland 2 estate from that which Fuller Landau claimed or which KSV was prepared to recommend, and which freed up an additional \$3.25 million for UCI, subject to certain tax holdbacks. The settlement also enabled UCI to receive \$1.3 million from a subrogated claim against a party that had a trust claim and also generated a payment of approximately \$900,000 related to Westside Galleries (another Urbancorp entity).

27. The Functionary provided evidence on this issue that challenged the entitlement of Fuller Landau to anywhere near the amount they claimed to be entitled.
28. In addition, the subrogated trust claim arose from litigation that the Canadian court had instructed the Functionary to take on behalf of all creditors in the Cumberland 2 proceeding on the issue of whether certain trust claims had priority to the other creditors. This issue was viewed as material enough that the Canadian court ordered Fuller Landau to reimburse the Functionary for all legal costs associated with this dispute. This was one of the issues that went to the Court of Appeal for Ontario.
29. The foregoing shows material recoveries for UCI that arose from the efforts of the Functionary.
30. I also note that while the 8<sup>th</sup> Report appears to be critical of the impact of the Functionary on any recoveries, it does not take issue with the activities of the Functionary's Canadian counsel and financial advisor. The 8<sup>th</sup> Report does not seem to recognize that the activities of counsel and advisor were based on instructions received from the Functionary.
31. In terms of inaccuracies, the 8<sup>th</sup> Report materially overstates what the Functionary has been paid to date in his capacity as Functionary and what the Functionary has reported to the Israeli court in terms of its work in Canada. To date, Yael Hershkovitz advises me that the Functionary has received in the Israeli insolvency proceeding NIS 2.85 million (~\$1.1 million Canadian) and is seeking in his fee application pending before the Israeli Court a further NIS 6.5 million (~\$2.5 million Canadian). Additional amounts were received as a contingent fee amount for settlements achieved in Israeli litigation.
32. To date, the Functionary has been paid approximately 1/7 of the fees paid to KSV and Fuller Landau. Additionally, the 8<sup>th</sup> Report does not reflect that the Canadian professionals are paid on an on-going current basis, while the Functionary receives the bulk of its fees, as percentage of what's actually distributed to the creditors, at the end of the restructuring, which has now been going on for almost 7 years.
33. Pursuant to the Plan of Arrangement of UCI which both the Israeli and Canadian courts approved, the Functionary is entitled to receive 20% of all litigation recoveries. In this



respect, the Functionary is assuming the risk of the litigation in the event there is no recovery. To date, the Functionary has settled certain litigation claims in Israel and has been paid 20% of those litigation recoveries.

34. The suggestion in the 8<sup>th</sup> Report that the Functionary said that it participated in approximately 90 hearings in Canada is incorrect. Yael Hershkovitz advises me that the Functionary never represented that he personally participated in approximately 90 hearings in Canada. The reference is to the Functionary's Canadian advisors who have appeared at virtually every hearing. The correct excerpts from the Israeli report on this issue (as Yael Hershkovitz advises me), are below:

**6. באי כוחו הקנדים של בעל התפקיד, לעיתים בנוכחות בעל התפקיד עצמו או באת כוחו, השתתפו עד מועד הגשת דוח זה ב-83 דיונים בבית המשפט הקנדי<sup>2</sup> בנוגע לזכויות החברה וצדדים שלישיים, נכסי חברות הבת, הליכי מימושם, חקירות שנעשו כלפי בעלי השליטה וגורמים הקשורים אליו ובשני הליכי בורות בקנדה (בהשתתפות באת כוח בעל התפקיד).**

and

**38. בעל התפקיד, עצמו או צוות משרדו, באמצעות באי כוחו הקנדים, השתתפו עד מועד זה ב-90 דיונים בבית המשפט הקנדי,<sup>1</sup> במסגרת שישה הליכים שונים של חברות הקבוצה ובעל השליטה.**

35. The Functionary, through its Canadian counsel has repeatedly provided both KSV and Fuller Landau with assistance in respect of their investigation of various claims and assets. There have been numerous examples of this cooperation.

36. The most recent example relates to the \$12.5 million claim Plazacorp recently asserted in the Cumberland 2 CCAA . If the claim is allowed, it will significantly dilute recoveries to UCI from Cumberland 2. Additionally, the Plazacorp claim has prevented Fuller Landau from making a distribution to unsecured creditors despite the fact that it previously obtained court authority to distribute. Counsel for the Functionary has provided significant background materials relating to that alleged claim to Fuller Landau and its counsel.

37. A motion to determine Plazacorp's claim is scheduled to be heard on April 6, 2023. On March 27, 2023, Plazacorp sought to adjourn that motion. Counsel for the Functionary

worked closely with counsel for Fuller Landau to oppose the request, which the Canadian Court denied. Accordingly, the motion is proceeding as scheduled on April 6, 2023.

38. The role of the Information Officer was set out in the May 18, 2016 order appointing KSV in that role. Specifically, the Information Officer is to report to the Canadian Court periodically on the status of the Israeli insolvency proceedings of UCI to the extent that such is relevant to the ongoing Canadian proceedings. The Information Officer was not authorized or empowered to indirectly participate in what is a fee dispute in Israel between the Functionary and the Trustee. A copy of the May 18, 2016 order is attached as **Exhibit “D”**.

39. I make this affidavit in response to the 8<sup>th</sup> Report and for no other or improper purpose.

**AFFIRMED** by Kenneth David Kraft of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario on March 31, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



DocuSigned by:  
*Neil Rabinovitch*

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A Commissioner for taking affidavits.  
Neil Rabinovitch

DocuSigned by:  
*Ken Kraft*

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**KENNETH DAVID KRAFT**

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF KENNETH DAVID KRAFT  
AFFIRMED BEFORE ME THIS 31ST DAY OF  
MARCH, 2023.

DocuSigned by:

*Neil Rabinovitch*

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A Commissioner for Taking Affidavits, etc.



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

**March 16, 2023**

**and**

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

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**Schedules**

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

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

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

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

**FIFTY-SIXTH REPORT OF KSV RESTRUCTURING INC. AS MONITOR**

**- AND -**

**Estate File No.: 31-2743224**

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

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

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

**MARCH 16, 2023**

**1.0 Introduction**

**1.1 Cumberland CCAA Entities**

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

2. Pursuant to an Order dated May 18, 2016 (the "Initial Order") made by the Ontario Superior Court of Justice (Commercial List) (the "Court"), the NOI Entities, together with the entities listed on Schedule "A" attached (collectively, the "Cumberland CCAA Entities" and each a "Cumberland CCAA Entity") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed monitor (the "Monitor") of the Cumberland CCAA Entities (the "CCAA Proceedings"). A copy of the Initial Order is attached as Appendix "A". The corporate chart for the Cumberland CCAA Entities is provided in Appendix "B".
3. The stay of proceedings for the Cumberland CCAA Entities expires on March 31, 2023.
4. The material issues remaining to be addressed in these proceedings are:
  - a) determining whether any management fees are payable to UTMI (as defined below) on the Downsview Project, and the distribution to creditors if received by UTMI; and
  - b) dealing with Canada Revenue Agency ("CRA") to attempt to obtain clearance certificates in respect of the Geothermal Asset Owners (as defined below) so that the Monitor can make the final distributions in these proceedings, which would be made by way of intercorporate dividend to UCI from the funds held by the Monitor on behalf of the Geothermal Asset Owners.
5. As discussed below, the Monitor has advanced both issues since the last stay extension motion; however, the management fee issue is subject to ongoing litigation with Mattamy Homes Inc. ("Mattamy") (as discussed herein) and resolving tax matters with CRA is beyond the Monitor's control from a timing perspective.
6. The Monitor is seeking an extension of the stay of proceedings until June 30, 2023 to advance the remaining issues. Based on the status of the two remaining issues, a further extension is likely to be required at that time.

## **1.2 Urbancorp Inc., Recognition of Foreign Proceedings**

1. On April 25, 2016, the District Court in Tel Aviv-Yafo, Israel issued a decision appointing Guy Gissin as the functionary officer and foreign representative (the "Foreign Representative") of UCI and granting him certain powers, authorities and responsibilities over UCI (the "Israeli Proceedings").
2. On May 18, 2016, the Court issued two orders under Part IV of the CCAA, which:
  - c) recognized the Israeli Proceedings as a "foreign main proceeding";
  - d) recognized Mr. Gissin as Foreign Representative of UCI; and
  - e) appointed KSV as the Information Officer.

### 1.3 Purposes of this Report

1. The purposes of this report ("Report") are to:
  - a) provide an update on the CCAA Proceedings;
  - b) provide the rationale for extending the stay of proceedings from March 31 to June 30, 2023;
  - c) report on the consolidated cash flow projection of the Cumberland CCAA Entities from April 1 to June 30, 2023 (the "Cash-Flow Statement");
  - d) summarize and seek approval of the fees and expenses of KSV, as Monitor of the Cumberland CCAA Entities, the Monitor's counsel, Davies Ward Phillips & Vineberg LLP ("Davies"), and the Cumberland CCAA Entities' counsel, DLA Piper (Canada) LLP ("DLA"), from November 1, 2022 to February 28, 2023;
  - e) provide an update on the bankruptcy proceedings of Urbancorp Management Inc. ("UMI"); and
  - f) recommend that the Court issue orders:
    - i. granting an extension of the stay of proceedings for the Cumberland CCAA Entities to June 30, 2023;
    - ii. approving this Report and the activities of the Monitor, as detailed in this Report; and
    - iii. approving the fees and disbursements of the Monitor, Davies and DLA, as detailed in this Report.

### 1.4 Currency

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

### 1.5 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of the Cumberland CCAA Entities, the books and records of the Cumberland CCAA Entities, discussions with representatives of the Cumberland CCAA Entities, discussions with the financial and legal advisors of the Foreign Representative, being B. Riley Farber (formerly the Farber Group) and Dentons Canada LLP ("Dentons"), respectively, and representatives of Mattamy, and its legal counsel, Cassels Brock & Blackwell LLP and Lax O'Sullivan Lisus Gottlieb LLP. The Monitor has not performed an audit or other verification of such information.
2. The Monitor has not audited, reviewed or otherwise verified the accuracy or completeness of the financial information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.



3. An examination of the Cash Flow Statement as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Cumberland CCAA Entities' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.
4. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Monitor in preparing this Report. Other than the Court, any party wishing to place reliance on the Cumberland CCAA Entities' financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

## 2.0 Background

1. The Urbancorp Group of Companies (the "Urbancorp Group") was primarily engaged in the development, construction and sale of residential properties in the Greater Toronto Area.
2. UCI was incorporated on June 19, 2015 to raise debt in the public markets in Israel. Pursuant to a Deed of Trust dated December 7, 2015, UCI made a public offering of debentures (the "IPO") in Israel of NIS180,583,000 (approximately \$64 million based on the exchange rate at the time of the IPO) (the "Debentures").
3. From the monies raised in the IPO, UCI made unsecured loans (the "Shareholder Loans") totalling approximately \$46 million to the NOI Entities (other than UTMI) so that these entities could repay loan obligations owing at the time.

## 2.1 Distributions

1. KSV has distributed approximately \$71 million to UCI as of the date of this Report.
2. UCI, through the Foreign Representative, has also obtained recoveries in Israel from litigation it commenced against various parties involved in the underwriting of the Debentures, and is expected to have further recoveries in these CCAA Proceedings and from the CCAA proceedings in which The Fuller Landau Group Inc. ("Fuller Landau") is the CCAA monitor.
3. It is unclear to the Monitor whether the Debentureholders will have a full recovery on their advances to the UCI.
4. The Monitor is maintaining the following holdbacks in these proceedings:<sup>1</sup>

(unaudited; \$000s)	Administration Cost		
	Bank Balance	Holdback	UCI Holdback
Cumberland CCAA Entities	598	598	-
Geothermal Asset Owners	3,158	250	2,908
	3,756	848	2,908

5. The UCI holdback ("UCI Holdback") is discussed in Section 3.3 below.

<sup>1</sup> Excludes amounts held by KSV Restructuring Inc. in its capacity as licensed insolvency trustee of Urbancorp Management Inc.

### 3.0 Update on CCAA Proceedings

#### 3.1 Downsview

1. Downsview Homes Inc. ("DHI") owns land located at 2995 Keele Street in Toronto, Ontario which is being developed into condominiums and other residences (the "Downsview Project"). The shares of DHI were owned by Downsview (51%) and Mattamy (Downsview) Limited ("Mattamy") (49%).
2. Downsview's only material assets were its common shares in DHI and the agreements (the "Project Agreements") relating to the Project (collectively, the "Downsview Interest").
3. In accordance with an approval and vesting order (the "AVO Order") issued by the Court on December 29, 2021, the Court approved a sale of the Downsview Interest to Mattamy in full satisfaction of all obligations owing by Downsview to Mattamy (the "Transaction"). The Transaction closed in early January 2022.
4. Pursuant to the terms of the AVO Order and the Transaction, UTMI retained whatever rights it may have, if any, to recover management fees under the Project Agreements, without prejudice to Mattamy's position that neither Downsview nor UTMI is entitled to the payment of Management Fees. If UTMI was successful arguing its entitlement to the Management Fees, a portion of the amounts paid in respect of those fees would ultimately be paid to UCI.
5. The Monitor, Mattamy and the Foreign Representative agreed to have the Honourable Mr. Frank Newbould, K.C. (the "Arbitrator") arbitrate the management fee dispute (the "Arbitration").
6. On July 6, 2022, Mr. Newbould issued a decision awarding the Monitor the full amount it claims is owing to UTMI in respect of unpaid management fees (the "Decision"), being \$5.9 million. Costs in the amount of \$91,800 were also awarded to the Monitor and \$48,600 to the Foreign Representative.
7. On August 5, 2022, Mattamy issued an application on the Civil List pursuant to the *Arbitration Act, 1991* (the "Application") seeking an order:
  - a) setting aside the Decision pursuant to section 46 of the *Arbitration Act, 1991* (the "Arbitration Act");
  - b) directing a new arbitration before a new arbitrator;
  - c) setting aside the Cost Award; and
  - d) staying the Decision and the Cost Award pending the resolution of the Application.
8. By order of this court made on September 1, 2022, the Application was transferred to the Commercial List to be heard by this Court within the current proceedings. The Application was heard by Madam Justice Kimmel on March 10, 2023. Her Honour reserved her decision.

9. There is a dispute concerning whether Her Honour's decision will be an order made in these CCAA proceedings. If made in these CCAA proceedings, as the Monitor and Foreign Representative believe should be the case, then leave to appeal would need to be sought prior to any appeal being made. If considered an order made in the separate Arbitration Act proceedings initiated by the Application, as Mattamy has suggested, then leave to appeal would not be required.

### 3.2 Geothermal Assets

1. Certain of the Cumberland CCAA Entities had an interest in geothermal assets (the "Geothermal Assets") located at four condominiums developed by entities in the Urbancorp Group, being the Edge, Bridge, Fuzion and Curve condominiums.
2. Urbancorp Renewable Power Inc. ("URPI") was incorporated to manage the Geothermal Assets. Pursuant to a Court order made on June 28, 2018, KSV was appointed as the receiver (the "Receiver") of URPI.
3. Through two transactions approved by the Court in these proceedings, the Geothermal Assets were sold for approximately \$25 million (the "Transactions").
4. Prior to the Transactions, the Geothermal Assets were owned directly by 228 Queen's Quay Ltd. ("228"), Vestaco Homes Inc. ("Vestaco Homes"), Urbancorp New Kings Inc. ("UNKI") and Vestaco Investments Inc. ("Vestaco Investments"), and indirectly by Urbancorp Power Holdings Inc. ("UPHI")<sup>2</sup> (collectively, the "Geothermal Asset Owners").
5. Additional recoveries from settlements reached between the Receiver and the condominium corporations for each of the Curve, Edge, Bridge and Fuzion condominiums totalled approximately \$7 million. Net of realization costs and harmonized sales tax remitted, the proceeds from the geothermal transactions have been distributed as set out in the table below.

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

<sup>2</sup> Urbancorp Power Holdings Inc. is an indirect subsidiary of UCI and owned each of the Geothermal Asset Owners other than UNKI, which owned the Fuzion asset and was indirectly owned by Cumberland.

<sup>3</sup> Mainly represents distributions to First Capital Realty Inc. in respect of a mortgage on the Fuzion geothermal assets.

### 3.3 UCI Holdback

1. The Geothermal Asset Owners are solvent<sup>4</sup> and all residual funds, net of professional fees, can be distributed by dividend to UCI as the sole shareholder of UPHI. As part of the wind-up, the Monitor requires clearance certificates from CRA confirming that the Geothermal Asset Owners are not indebted to CRA for income taxes or HST (the "Clearance Certificates"). The process to request Clearance Certificates requires the Geothermal Asset Owners to first file up to date tax returns and to obtain assessments or re-assessments from CRA. As the Geothermal Asset Owners have not been carrying on any business activities since completion of the sale of the Geothermal Assets in 2020, the Monitor intends to request Clearance Certificates for the periods up to December 31, 2022.
2. The Monitor has filed the 2022 income tax return for 228. The Monitor is in the process of amending the 2020 tax return for Vestaco Homes to reflect that \$2,049,000 of the proceeds from the Transactions belonged, in effect, to UMI and not Vestaco Homes, as a result of a Court order issued in respect of the Berm Lease with King Towns North Inc. after the tax return was prepared (the "UMI Decision"). A preliminary estimate indicates that amending the 2020 tax return would result in a refund to Vestaco Homes of approximately \$500,000. The Monitor is also in the process of filing the 2022 tax returns for Vestaco Homes, Vestaco Investments and UPHI, which are each due by June 30, 2023. These returns are expected to be filed by the end of March 2023. The Monitor is unable to predict the amount of time that will be required to obtain the Clearance Certificates.

### 3.4 UTMI

1. UTMI provided back-office support for the Urbancorp Group, including human resources and accounting.
2. If the Monitor and Foreign Representative are successful on Mattamy's Application, UTMI is entitled to approximately \$5.9 million, plus costs awarded in the Arbitration.
3. UCI indirectly has claims against UTMI as a result of intercompany advances made during the CCAA proceedings by Cumberland to UTMI to fund UTMI's payroll, professional fees and other back-office expenses. These advances (the "Intercompany Advances") are secured by an intercompany charge approved in the CCAA Proceedings. The Monitor and UCI have agreed that this amount totals approximately \$4.2 million, plus ongoing interest. Paragraph 29 (m) of Initial Order provides for a charge of up to \$1 million for all Intercompany Advances. If there are recoveries as a result of the Downsvue litigation, the Monitor is considering bringing a motion on notice to UTMI's largest unsecured creditors to amend the charge for the amounts owing to UCI.
4. On September 15, 2016, the Court issued an order establishing a procedure to identify and quantify claims against the Cumberland CCAA Entities and against the current and former directors and officers of the Cumberland CCAA Entities, as amended by a further order dated October 25, 2016 (the "Claims Procedure").

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<sup>4</sup> Other than Vestaco Investments Inc. The Monitor will not take steps to wind-up and dissolve this entity.

5. Pursuant to the terms of the Claims Procedure, the Monitor carried out a claims process. At the date of the Claims Procedure, there were no assets available for distribution by UTMI and it was not foreseeable at that time that there would be. Accordingly, the Monitor did not believe it was appropriate to incur professional costs reviewing claims against UTMI when it appeared that there would be no monies available for distribution to UTMI's creditors.
6. If the Monitor is successful against Mattamy, there will be funds available for UTMI's unsecured creditors after repayment of the Intercompany Advances. The Monitor does not intend to review the unsecured claims against UTMI until the final outcome of Mattamy's Application is known.

#### **4.0 Cash Flow Forecast**

1. A consolidated cash flow projection has been prepared for the Cumberland CCAA Entities from April 1, 2023 to June 30, 2023 (the "Period"). The Cash-Flow Statement and the Cumberland CCAA Entities' statutory report on the cash flow pursuant to Section 10(2)(b) of the CCAA are attached in Appendices "C" and "D", respectively.
2. The expenses in the Cash-Flow Statement are primarily general and administrative expenses and professional fees. The Cumberland CCAA Entities are projected to have sufficient cash to pay all disbursements during the Period.
3. Based on the Monitor's review of the Cash-Flow Statement, there are no material assumptions which appear unreasonable. The Monitor's statutory report on the cash flow is attached as Appendix "E".

#### **5.0 Request for an Extension**

1. The Cumberland CCAA Entities are seeking an extension of the stay of proceedings from March 31 to June 30, 2023. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
  - a) the Cumberland CCAA Entities are acting in good faith and with due diligence;
  - b) no creditor will be prejudiced if the extensions are granted;
  - c) as of the date of this Report, neither the Cumberland CCAA Entities nor the Monitor is aware of any party opposed to an extension; and
  - d) it will provide the Monitor further time to:
    - i. advance, and hopefully resolve, the litigation with Mattamy;
    - ii. advance the claims determination process for UTMI depending on the outcome of the litigation with Mattamy; and
    - iii. deal with outstanding administrative matters, including filing tax returns and dealing with CRA regarding the clearance certificates, which will allow for further distributions to UCI once received.

## 6.0 Professional Fees

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

(\$)					
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	Nov 1/22 – Feb 28/23	80,272.75	5,946.44	86,219.19	656.90
Davies	Nov 1/22 – Feb 28/23	136,902.50	228.17	137,130.67	943.00
DLA	Nov 1/22 – Feb 28/23	2,860.00	320.00	3,180.00	650.00
Total		220,035.25	6,494.61	226,529.86	

- Detailed invoices are provided in the exhibits to the fee affidavits filed by representatives of KSV, Davies and DLA which are provided in Appendices "F", "G" and "H", respectively.
- Since the last fee approval motion, the main matters addressed by Davies include dealing with issues related to the Downsvew Project, including arbitrating the management fee issue.
- As reflected in the table above, DLA's legal fees since the last fee approval motion have been insignificant.
- The Monitor is of the view that the hourly rates charged by Davies and DLA are consistent with rates charged by law firms practicing in restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances.

## 7.0 UMI

- KSV is the licensed insolvency trustee (the "Trustee") of UMI.
- Based on the UMI Decision, UMI received \$2.049 million from the sale of the Geothermal Assets owned by Vestaco Homes as additional rent.
- The claims filed against UMI total approximately \$30.5 million (the "Claims"). A summary of the approximate amount of the Claims filed in the bankruptcy is provided in the table below.

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

4. The Claims, with the exception of the UCI claim (the "UCI Claim"), which is discussed separately below, are primarily as a result of related party transactions over numerous years. In order to verify the accuracy of the Claims, the Trustee has relied on the records of the Cumberland CCAA Entities and UMI. The Trustee has communicated with representatives of the Saskin family and Fuller Landau regarding issues with their respective claims.
5. The Foreign Representative has filed a claim of approximately \$18.6 million in the UMI estate on behalf of UCI. The basis for the UCI Claim is a judgment obtained by the Foreign Representative in Israel against, among others, UMI (the "Israeli Judgment") after the bankruptcy of UMI. The Trustee and its counsel are reviewing the Israeli Judgment to determine whether UCI Claim should be allowed or disallowed. Among other issues with the UCI Claim, the Trustee notes that the Israeli Judgment was obtained after the UMI bankruptcy, when the Foreign Representative knew, or ought to have known, there was a stay of proceedings with respect to UMI. If the UCI Claim is allowed, UCI would receive the majority of the UMI distribution to creditors.
6. The Trustee has been in communications with MNP LP ("MNP"), UMI's accountants, regarding the tax position of UMI. The Trustee, in consultation with MNP, has identified two potential tax issues, being (i) the revenue of the \$2,049,000 additional rent from Vestaco Homes could create a tax liability for UMI that might be required to be reported over a period to 2060; and (ii) UMI has a \$5 million Promissory Note Receivable from UTMI (the "Promissory Note"). The Promissory Note was established in 2012 as part of a tax plan; the Promissory Note, for tax purposes, has a NIL cost base. Any recovery on the Promissory Note could create additional taxable income for UMI. The Trustee is working with MNP to consider the tax consequences to the UMI estate of the foregoing two issues.
7. The Trustee continues to advance the administration of this estate.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make an order granting the relief detailed in Section 1.3(1)(f) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

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

THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF KENNETH DAVID KRAFT  
AFFIRMED BEFORE ME THIS 31ST DAY OF  
MARCH, 2023.

DocuSigned by:

*Neil Rabinovitch*

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A Commissioner for Taking Affidavits, etc.



## **MINUTES OF SETTLEMENT**

**WHEREAS** Urbancorp Cumberland 1 LP ("Cumberland 1") and various related entities were granted protection under the CCAA on May 18, 2016 (the "Cumberland CCAA Proceedings");

**WHEREAS** UNKI is a nominee of Cumberland 1;

**WHEREAS** KSV Kofman Inc. is monitor in the Cumberland CCAA Proceedings;

**WHEREAS** URPI is subject to a receivership order dated June 28, 2018 and KSV was appointed the receiver (the "Receiver");

**WHEREAS** the Monitor and Receiver were each granted court-ordered charges for their fees and costs (the "Professional Fee Charges")

**WHEREAS** King Liberty North Corporation ("KLNC"), Urbancorp New Kings Inc. ("UNKI") and Urbancorp Management Inc. ("UMI") are parties to a geothermal purchase agreement (the "Geothermal Purchase Agreement") and a mortgage in the principal face amount of \$2 million dated March 7, 2016, bearing instrument number AT4162089 (the "Mortgage") in favour of KLNC, granting it security over the Fuzion geothermal assets described in Schedule "A" hereto (the "Fuzion Geothermal Assets");

**AND WHEREAS** UNKI owned an interest in the Kingsclub Development ("Kingsclub") located in Toronto, Ontario;

**AND WHEREAS** UNKI sold its interest in Kingsclub to KLNC for the sum of \$2.150 million (the "Kingsclub Sales Proceeds");

**AND WHEREAS** the Kingsclub Sales Proceeds are currently being held by KSV Kofman ("KSV"), in its capacity as Monitor of UNKI;

**AND WHEREAS** on October 1, 2019, KLNC amalgamated with First Capital Realty Inc., and continued under First Capital Realty Inc. ("FCR");

**AND WHEREAS** UCI is the ultimate shareholder of UNKI, and the Monitor has advised that UCI is entitled to the Kingsclub Sales Proceeds, subject to any Mortgage covenant claim of FCR and the Professional Fee Charges;

**AND WHEREAS** URPI holds settlement proceeds as a result of settling certain litigation in relation to the Fuzion Geothermal Assets (the "Fuzion Geothermal Settlement Proceeds");

**AND WHEREAS** by Notice of Motion dated November 7, 2019, UCI sought relief in respect of the Mortgage, including, *inter alia*, a declaration that the principal amount of the Mortgage should be reduced and that the Mortgage should not encumber the 50% of the Fuzion Geothermal Assets owned by UNKI (the "UCI Motion");

**AND WHEREAS** FCR and Guy Gissin, in his capacity as the Israeli Court appointed Functionary Officer of UCI (the "Functionary") have agreed to settle and resolve all matters in dispute between them on the below terms:

**THE PARTIES AGREE AS FOLLOWS:**

1. The Functionary shall withdraw the UCI Motion with prejudice under the terms set forth herein. Subject to Section 13 below, within 2 days of the of payment of the amounts provided for under the Minutes of Settlement, UCI shall inform the Ontario Superior Court of Justice (Commercial List) of the withdrawal on a with prejudice and without costs basis.
2. FCR will release any claim it has to the Kingsclub Sales Proceeds in the amount of \$2.150 million subject to the terms below.
3. The Monitor will release \$1.4 million from the Kingsclub Sales Proceeds to the Functionary (the "Functionary's Distribution").
4. The Functionary will consent to the distribution of \$553,473.85 to FCR from the Kingsclub Sale Proceeds in full satisfaction of FCR's accrued and outstanding interest under the Geothermal Purchase Agreement and the Mortgage to and including April 30, 2020 (the "FCR Distribution") and the Monitor will release such funds to FCR no later than the Functionary's Distribution.
5. The Monitor will retain \$196,526.15 (the "KS Residual Balance") being the Kingsclub Sales Proceeds less the sum of the Functionary's Distribution and the FCR Distribution.
6. FCR will have no further claim to the KS Residual Balance. The Monitor will hold the KS Residual Balance in favour of the Functionary (subject to any charges in the CCAA Proceedings).
7. Until the sale process for the Fuzion Geothermal Assets has been completed, interest will continue to accrue on the Geothermal Purchase Agreement and the Mortgage and the parties agree that any distributions by the Receiver of Fuzion Geothermal Settlement Proceeds before the closing of the sale process we are the receiver of URPI for this purpose:
  - (a) will be used first to pay FCR's then accrued and outstanding interest under the Geothermal Purchase Agreement and the Mortgage; and

- (b) any remainder of such will be distributed to the Functionary, subject to the terms of paragraph 0 of these Minutes of Settlement.

For example, if the Monitor distributes another \$100,000.00 prior to the sale of the Fuzion Geothermal Assets, then FCR would be paid its then accrued and unpaid interest on the Geothermal Purchase Agreement and the Mortgage and the remainder would be distributed to the Functionary.

8. Notwithstanding paragraph 7 above, to the extent that any income is received by KSV in relation to the Fuzion Geothermal Assets prior to their sale, or in respect of any period prior to their sale, but for greater certainty, excluding the Fuzion Geothermal Settlement Proceeds, and that income is distributed, that income shall be paid to FCR and be applied (i) first, to accrued and outstanding interest on the Mortgage; and (ii) second, to the principal of the Mortgage (inclusive of any fees, expense or legal fees permitted under the Mortgage, the "Principal") or any shortfall in the payment of Principal should one occur as a result of the sale. Upon the closing of the sale of the Fuzion Geothermal Assets, Principal and interest on the Geothermal Purchase Agreement and the Mortgage would be paid first from the Fuzion Geothermal Assets net sale proceeds (the "Fuzion Geothermal Sale Proceeds"), second, from any income received by the Receiver in relation to the Fuzion Geothermal Assets in respect of any period prior to their sale, and third from the remaining Fuzion Geothermal Settlement Proceeds after any distributions provided for in Section 7 above.
9. Other than the FCR Distribution, FCR's sole recourse shall be from the Fuzion Geothermal Sale Proceeds, the income received in relation to the Fuzion Geothermal Assets and the Fuzion Geothermal Settlement Proceeds.
10. Nothing in this Agreement affects the Professional Fee Charges.
11. In the event that the aggregate sum of the Fuzion Geothermal Settlement Proceeds, the income received in relation to the Fuzion Geothermal Assets and the Fuzion Geothermal Sale Proceeds exceed the amount necessary to repay the Geothermal Purchase Agreement and the Mortgage in full, including accrued interest, and provided that FCR has received payment in full of the Principal and accrued interest under the Geothermal Purchase Agreement and the Mortgage, UCI shall be entitled to priority over any surplus proceeds to a maximum of \$553,473.85 on account of the monies paid under paragraph 3 above, which but for this agreement, would have been satisfied in full from the Fuzion Geothermal Settlement Proceeds, Fuzion Geothermal Sales Proceeds and income received in relation to the Fuzion Geothermal Assets and UCI shall be subrogated into the rights of FCR in respect of those assets.
12. The parties shall execute the mutual release attached as Schedule B to these Minutes of Settlement.
13. These Minutes of Settlement are not severable and are conditional upon the approval of the Israeli Insolvency Court in Tel Aviv approval. The Minutes of Settlement and the Mutual Release become effective upon the approval of the Israeli Court and receipt of

payments set forth herein. The Functionary agrees to provide evidence of the approval of the Israeli Court within 2 business days of the Israeli Court's approval and, if the relevant documents from the Israeli Court are not in English, to provide a certified translation of the Israeli Court approval to FCR within two weeks of the approval of the Israeli Court.

DATED at this day of June, 2020.

עו"ד גיא גיסין בעל תפקיד  
לחברת Urbancorp Inc.  
מ"ק 44348-04-16

Guy Gissin  
In his capacity as the Israeli Court  
appointed Functionary Officer of  
Urbancorp Inc. and not in his personal  
capacity

**FIRST CAPITAL REALTY INC.**

By: 

Name: Alison Harnick  
Title: SVP, General Counsel &  
Corporate Secretary

**Schedule "A"**

**"Fuzion Geothermal Assets"** means the geothermal utility assets, including any geothermal room units located in the residential condominium building constructed at 20 Joe Shuster Way, Toronto and more particularly described below;

Geothermal Assets

**PIN 26348-0287**

UNIT 39, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0637**

UNIT 117, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0638**

UNIT 118, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0639**

UNIT 119, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0640(LT)**

UNIT 120, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0641(LT)**

UNIT 121, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0642(LT)**

UNIT 122, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0643(LT)**

UNIT 123, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO

**PIN 76348-0644(LT)**

**UNIT 124, LEVEL D, TORONTO STANDARD CONDOMINIUM PLAN NO. 2348 AND ITS APPURTENANT INTEREST; SUBJECT TO AN EASEMENT AS IN AT3508399; CITY OF TORONTO**

**Schedule "B"**

**MUTUAL FINAL RELEASE**

**WHEREAS** the signatories set out below (the "Parties") have executed Minutes of Settlement dated June \_\_\_\_ 2020 (the "Settlement Agreement"), in which the Parties agreed to fully and finally settle the Disputes on the terms set out therein;

**AND WHEREAS** all terms herein commencing with initial capital letters shall bear the respective meanings set out in the Settlement Agreement.

**NOW THEREFORE** in consideration of the mutual covenants contained in the Settlement Agreement and this Mutual Release and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party agrees to release the other party on the following terms:

**(a) Release**

1. First Capital Realty Inc., its respective successors, assigns, associated and related partnerships, subsidiaries, affiliated and related companies, and each of their respective directors, officers, shareholders, employees, servants, agents, representatives, administrators, trustees, successors and assigns (and any party or parties who claim a right or interest through any of them) and Urbancorp Inc, as represented by Guy Gissin solely in his capacity as Israeli Court Appointed Functionary Officer, and not in his personal capacity, (collectively the "Parties") irrevocably and unconditionally release and discharge each other and any and all of their past, present or future respective successors, assigns, associated and related partnerships, subsidiaries, affiliated and related companies, and each of their respective directors, officers, shareholders, employees, servants, agents, representatives, administrators, trustees, successors and assigns from all actions, causes of action, claims, demands, damages, costs and expenses at law or in equity, known or unknown, that they had or, now have from or arising out of any cause, matter or thing occurring up to and including the Settlement Date (the "Released Matters")
2. The Parties agree that they will make no future claim or take any future proceedings against any other person or entity who might reasonably claim contribution, indemnity or other relief from the other Parties to this Mutual Final Release in respect of the Released Matters.
3. This Mutual Final Release shall operate conclusively as an estoppel of any future claim, action, complaint or proceeding regarding or related to the Released Matters. If any such claim, action, complaint or proceeding is brought, this Mutual Final Release may be pleaded as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and the Party commencing such proceedings shall indemnify the other Party for the full and actual costs and expenses of responding.

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- 9 -

**(b) No Prior Assignment**

4. The Parties declare and confirm that they have not assigned to any person or entity any of the claims, causes of action, suits or demands released by this Mutual Release.

**(c) Consideration**

5. The Parties agree that the consideration set out in the Settlement Agreement, the receipt and sufficiency of which is acknowledged, is the sole consideration for this Mutual Release. The Parties have agreed further that they have voluntarily accepted the consideration to make full and final compromise, adjustment and settlement of all claims in respect of the Released Matters.

**(d) No Admission of Liability**

6. This Mutual Release is being entered to terminate the disputes and other matters of controversy among the parties and no admissions of liability or of the other party's claims are made by any Party. Each Party agrees that the terms of this Mutual Release are accepted voluntarily and not influenced by any representations of any kind made by the Parties.

**(e) Governing Law**

7. This Mutual Release is governed by and shall be construed under the laws of Ontario and the laws of Canada as applicable.

**(f) Execution in Counterparts**

8. The parties agree that this Mutual Release may be executed in counterparts and delivered by email or facsimile, and together the counterparts shall constitute the same instrument notwithstanding their date of actual execution.

*[Signature page follows]*

- 10 -

עו"ד גיא גיסין בעל תפקיד  
Urbancorp Inc. לחברת  
פר"ק 44348-04-16

Guy Gissin

In his capacity as the Israeli Court  
appointed Functionary Officer of  
Urbancorp Inc. and not in his personal  
capacity .

**FIRST CAPITAL REALTY INC.**

By: 

Name: Alison Harnick

Title: SVP, General Counsel &  
Corporate Secretary

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF KENNETH DAVID KRAFT  
AFFIRMED BEFORE ME THIS 31ST DAY OF  
MARCH, 2023.

DocuSigned by:

*Neil Rabinovitch*

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A Commissioner for Taking Affidavits, etc.

Court File No. CV-16-11549-00CL

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

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

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

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

**MINUTES OF SETTLEMENT**

**PARTIES:**

**GUY GISSIN**, in his capacity as Israeli court-appointed functionary ("**Functionary**") of Urbancorp Inc. ("**UCI**") and trustee of the claims of the bondholders of UCI pursuant to a Plan of Arrangement, and not in his personal capacity, of the First Part

**TERRA FIRMA CAPITAL CORPORATION**, a corporation organized and existing under the laws of the Province of Ontario ("**TFCC**"), of the Second Part,

**DOV MEYER** ("**Meyer**"), in his personal capacity, of the Third Part,

**KSV KOFMAN INC.** ("**KSV**"), solely in its capacity as Monitor of TCC/Urbancorp (Bay) Limited Partnership

(collectively, the "**Parties**")

**RECITALS:**

- A. TFCC has commenced a motion (the "**TFCC Motion**") in the Ontario Superior Court of Justice (Commercial List) (the "**Ontario Court**") seeking to appeal the disallowance of

- 2 -

its secured claims (the "**Secured Claim**") against, among others, TCC/Urbancorp (Bay) Limited Partnership ("**TCC Bay**") in the aggregate amount of \$5,565,907, inclusive of interest and costs as at January 1, 2019(the "**Indebtedness**"). In the alternative, TFCC is alleging that if it does not have a secured claim, it has an unsecured claim in tort against TCC Bay for an amount equal to the Indebtedness (the "**Alternative Claim**" and collectively with the Secured Claim, the "**TFCC Claims**").

- B. The TFCC Motion is currently scheduled to be heard on February 21, 2019.
- C. The Functionary has an allowed unsecured claim against TCC Bay in the amount of \$8,000,000, plus interest and costs, of which \$3,050,000 has previously been paid.
- D. The Functionary has also commenced legal proceedings against TFCC and Meyer in Israel in relation to their alleged participation in the issuance of the UCI bonds and the circumstances leading to UCI collapse (the "**Israeli Action**"). In addition to TFCC and Meyer, the Israeli Action names numerous other Defendants.
- E. TFCC has filed an Amended Proof of Claim claiming a secured claim in the amount of \$14,265,067.87 and an unsecured claim in the amount of \$2,894,901.01 against Alan Saskin in the Proposal proceedings of Alan Saskin. The Proof of Claim has been allowed, with the amount to be determined.
- F. The Functionary, TFCC and Meyer want to resolve all matters as between them, which will allow the Monitor to distribute the proceeds that the Monitor currently holds in connection with Urbancorp (Woodbine) Inc. ("**Woodbine**"), Urbancorp (Bridlepath) Inc. ("**Bridlepath**") and TCC Bay, and to otherwise settle matters between UCI and TFCC.

**NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Parties hereby agree as follows:

1. KSV and the Functionary will not oppose the TFCC Motion.
2. Subject to an Order from the Ontario Court granting the TFCC Motion and approving these Minutes of Settlement, UCI shall be entitled to receive, in

respect of the TFCC Claims and security in relation to TCC Bay assigned to it pursuant to paragraph 4 below and in respect of UCI's unsecured claim against TCC Bay, all amounts to be distributed from the Applicants' estate, other than validly determined claims previously asserted against the Applicants, and claims for which the Monitor has currently reserved funds.

3. TFCC hereby irrevocably authorizes and directs the Monitor to pay the distribution referred to in paragraph 2 of these Minutes of Settlement directly to the Functionary in satisfaction of its obligations hereunder and in consideration for the releases contemplated herein.
4. TFCC hereby irrevocably assigns to the Functionary any and all claims and security that it has against Woodbine, Bridlepath, and TCC Bay, as well as Alan Saskin, including but not limited to those claims against Alan Saskin set out in its Amended Proof of Claim in respect of the Proposal of Alan Saskin dated July 6, 2017, a copy of which is attached hereto as Appendix "A". TFCC makes no representations or warranties regarding the claims and security being assigned to the Functionary.
5. These Minutes of Settlement shall be subject to approval of both the Ontario Court and the Israeli District Court for Tel Aviv-Jaffa ("Israeli Court") and shall take effect on the first Business Day following the date on which the Settlement Orders, as defined in paragraph 7 below, become final in their respective jurisdictions. Business Day shall mean a day, other than Saturday or Sunday, when banks are generally open for business in Toronto, Ontario and Tel Aviv, Israel.
6. TFCC and UCI shall jointly seek approval from the Ontario Court of the terms of these Minutes of Settlement and the proposed distributions provided herein on notice to all affected parties. The TFCC Motion shall be returnable contemporaneously with the Ontario motion to approve these Minutes of Settlement. The form of order approving the settlement from the Ontario Court, which shall include an order granting the TFCC Motion, ("**Ontario**

**Approval Order**") shall be consistent with these Minutes of Settlement and be in a form acceptable to both Parties, acting reasonably. UCI shall seek approval of the Israeli Court ("**Israeli Approval Order**" and together with the Ontario Approval Order, the "**Settlement Orders**") and the form of the Israeli Approval Order shall also be consistent with these Minutes of Settlement and be in a form acceptable to both Parties, acting reasonably.

7. The Ontario Approval Order shall direct the Monitor to forthwith make the distributions provided in paragraph 2 above, forthwith upon both Settlement Orders becoming final in their respective jurisdictions.
8. The provisions of these Minutes of Settlement are not severable and in the event that the Settlement Orders contemplated hereunder are not received and the distributions paid, these Minutes of Settlement shall be of no force and effect and the parties will be restored to their respective positions as they existed immediately prior to execution of these Minutes of Settlement.
9. Immediately after the Settlement Orders become final orders in their respective jurisdictions, the TFCC Motion and the Functionary's claim against TFCC and Meyer in the Israeli Action shall both be considered settled and withdrawn with no orders as to costs. For clarity, save and except as provided for below, the settlement and withdrawal of the Israeli Action shall only operate as against TFCC and Meyer and not as against any other Defendant or other individual or entity. Further, upon the Settlement Orders becoming final, each Party hereby remises, releases and forever discharges the other Party (including their officers, directors, employees, shareholders and representatives) of and from all actions, causes of action, suits, debts, dues, accounts, contracts, claims and demands of every nature and kind howsoever arising, including but not limited to by statute or common law, by reason of the commission of a tort, breach of any contract or other agreement, or by reason of any breach of duty, which that Party ever had,

now has or may hereafter have against the other Party in any way related to UCI.

10. The Functionary further agrees that in the event that any party to the Israeli Action subsequently succeeds in obtaining judgment for contribution or indemnity against TFCC and/or Meyer, the Functionary shall reduce the amount to be recovered by the Functionary from such party by a corresponding amount, with the result that TFCC and Meyer shall not have any liability to any other party in the Israeli Action nor will they be required to pay the same party any payment as a result of such a claim, including any interim payment. Without limiting the generality of the foregoing, the parties acknowledge and agree that the intention of the parties in this regard is to ensure that TFCC and Meyer shall under no circumstances, whether pending appeal or otherwise, have any liability for any claims for contribution and indemnity asserted by any other party to the Israeli Action. The parties agree that nothing herein in any way reduces the liability of any other party or person to the Israeli Action.
11. In the event that final Settlement Orders are not obtained from both the Ontario Court and the Israeli Court within 90 days hereof (unless extended by the mutual consent in writing of TFCC and UCI), these Minutes of Settlement shall become null and void and shall not be admissible for the purpose of adjudicating the TFCC Motion or any other purpose and the TFCC Motion shall proceed on the basis of the current schedule, adjusted as necessary.
12. At this stage and until the end of the date for receipt of the final Settlement Orders, all proceedings in the Israeli Action involving TFCC and Meyer will be suspended. In the event that the final Settlement Orders are not obtained by either the Israeli Court or the Ontario Court, the proceedings in the Israeli Action against TFCC and Meyer shall continue.




13. These Minutes of Settlement shall be interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Nevertheless, Israeli law shall apply to all proceedings in Israel, the Israeli Action, and to the parties' undertakings in connection therewith.
14. Time shall be of the essence herein.
15. These Minutes of Settlement may be executed in any number of separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of such counterparts shall together constitute one and the same instrument. Any Party may execute these Minutes of Settlement via scanned portable document format sent via electronic mail.
16. These Minutes of Settlement, together with any agreements and other documents to be delivered pursuant hereto, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties.

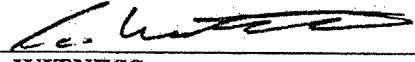
DATED as of the 28<sup>th</sup> day of January, 2019.

**GUY GISSIN, in his capacity as Court-Appointed Functionary and Foreign Representative of URBANCORP INC., and not in his personal or corporate capacity**

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**TERRA FIRMA CAPITAL CORPORATION**

By:   
Name: Glenn Watchorn  
Title: President & CEO

  
\_\_\_\_\_  
WITNESS

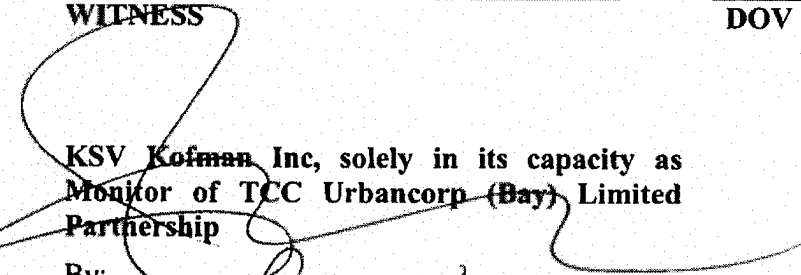
  
\_\_\_\_\_  
DOV MEYER

**KSV Kofman Inc, solely in its capacity as  
Monitor of TCC Urbancorp (Bay) Limited  
Partnership**

By: \_\_\_\_\_  
Name:  
Title:

WITNESS

DOV MEYER

  
KSV Kofman Inc, solely in its capacity as  
Monitor of TCC Urbancorp (Bay) Limited  
Partnership

By: \_\_\_\_\_

Name: ROBERT KOFMAN

Title: PRESIDENT

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF KENNETH DAVID KRAFT  
AFFIRMED BEFORE ME THIS 31ST DAY OF  
MARCH, 2023.

DocuSigned by:

*Mil Rabinovitch*

342E2B2DBAB4415...

A Commissioner for Taking Affidavits, etc.

Court File No.: CV-16-11392-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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



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

AND IN THE MATTER OF URBANCORP INC.

APPLICATION OF GUY GISSIN, THE FOREIGN REPRESENTATIVE OF  
URBANCORP INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by Guy Gissin, the Functionary Officer and foreign representative of Urbancorp Inc. appointed by the District Court of Tel Aviv-Yafo, Israel (the "**Israeli Court**") by Order dated April 25, 2016 (the "**Israeli Court Order**"), in his capacity as foreign representative (the "**Foreign Representative**") of Urbancorp Inc. pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an Order substantially in the form enclosed in the Application Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the affidavit of Guy Gissin sworn May 16, 2016 (the "**Gissin Affidavit**"), the report dated May 13, 2016 (the "**Report**") of KSV Kofman Inc. ("**KSV**") (filed in Court File No. CV-16-11389-00CL), the affidavit of Tamryn Jacobson sworn May 18, 2016, each filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of

counsel for the Foreign Representative, counsel for KSV in its capacity as the proposed Information Officer, counsel for Urbancorp Inc., counsel for a number of direct or indirect subsidiaries of Urbancorp Inc. who are concurrently commencing proceedings under the CCAA, counsel for Alan Saskin, and those other parties present, no one else appearing, and upon reading the affidavit of service of Rebecca Burrows, sworn May 17, 2016, and on reading the consent of KSV to act as the information officer:

**SERVICE**

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

**INITIAL RECOGNITION ORDER**

2. THIS COURT ORDERS that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated May 18, 2016 (the "**Recognition Order**") in these proceedings.

3. THIS COURT ORDERS that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

**RECOGNITION OF FOREIGN ORDERS**

4. THIS COURT ORDERS that the Israeli Court Order, a copy of which is attached as Schedule "A" to this Order, made by the Israeli Court in the Foreign Proceeding is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA, provided, however, that in the event of any conflict between the terms of the Israeli Court Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada. For greater certainty, further to the provisions of the Israeli Court Order, Urbancorp Inc. shall not be

- 3 -

entitled to take steps to deal with its Property in Canada (including, without limitation, its shareholdings in any subsidiary or affiliate) or enter into any transactions without the consent of the Foreign Representative and Order of this Court on notice to the Foreign Representative and the Information Officer (as defined below).

#### **APPROVAL OF PROTOCOL FOR CO-OPERATION AMONG COURT OFFICERS**

5. THIS COURT ORDERS that the Protocol for Co-operation Among Canadian Court Officer and Israeli Functionary Officer dated as of May 13, 2016 (the “**Co-operation Protocol**”) be and the same is hereby approved.

#### **APPOINTMENT OF INFORMATION OFFICER**

6. THIS COURT ORDERS that KSV (the “**Information Officer**”) is hereby appointed as an officer of this Court, with the powers and duties set out herein.

#### **NO PROCEEDINGS AGAINST URBANCORP INC. OR THE PROPERTY**

7. THIS COURT ORDERS that until such date as this Court may order (the “**Stay Period**”) no proceeding or enforcement process in any court or tribunal in Canada (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Foreign Representative, Urbancorp Inc. or affecting its business (the “**Business**”) or its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except with leave of this Court, and any and all Proceedings currently under way against or in respect of any of Urbancorp Inc. or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

8. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Foreign Representative, Urbancorp Inc., or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower

Urbancorp Inc. to carry on any business in Canada which it is not lawfully entitled to carry on, (iii) affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

9. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by Urbancorp Inc. and affecting the Business in Canada, except with leave of this Court.

#### **ADDITIONAL PROTECTIONS**

10. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with Urbancorp Inc. or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of Urbancorp Inc., are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by Urbancorp Inc., and that Urbancorp Inc. shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.

11. THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.



**OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

12. THIS COURT ORDERS that the Information Officer:

- (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (b) shall report to this Court at least once every three months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;
- (c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;
- (d) shall have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of Urbancorp Inc., to the extent that is necessary to perform its duties arising under this Order; and
- (e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

13. THIS COURT ORDERS that Urbancorp Inc. and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by Urbancorp Inc. or by the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. THIS COURT ORDERS that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

15. THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

16. THIS COURT ORDERS that the Information Officer may provide any creditor of Urbancorp Inc. with information provided by Urbancorp Inc. or the Foreign Representative, as the case may be, in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by Urbancorp Inc. or the Foreign Representative is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the Urbancorp Inc. may agree.

17. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by Urbancorp Inc. their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. Urbancorp Inc. is hereby authorized and directed, with the consent of the Foreign Representative, not to be unreasonably withheld, and subject to paragraph 18 hereof, to pay the accounts of the Information Officer and counsel for the Information Officer on a monthly basis.

18. THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior

Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. THIS COURT ORDERS that the Foreign Representative (solely with respect to the reasonable expense he may incur in connection with these proceedings), the legal and financial advisors to the Foreign Representative, the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property in Canada, which charge shall not exceed an aggregate amount of \$400,000, as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs 24 and 26 hereof.

#### INTERIM FINANCING

20. THIS COURT ORDERS that Urbancorp Inc. is hereby authorized and empowered to obtain and borrow up to \$1,900,000 under an interim lending facility from Urbancorp Partner (King South) Inc. or any of the Applicants in the CCAA proceeding in Court File No. CV -16-11389-00CL (each, an "**Interim Lender**") in order to finance the reasonable expenses of the Foreign Representative, the reasonable fees and disbursements of the legal and financial advisors to the Foreign Representative, and the reasonable fees and disbursements of the Information Officer and its counsel in these proceedings, all <sup>✓</sup> *of the above on the terms and conditions* as set out in the Term Sheet (as defined below), *201* provided that the borrowings under such interim lending facility shall not exceed \$1,000,000 unless permitted by further Order of this Court.

21. THIS COURT ORDERS THAT such interim lending facility shall be on the terms and subject to the conditions set forth in the intercompany interim financing revolving credit facility term sheet between Urbancorp Inc. and the Interim Lender dated as of May 18, 2016 (the "**Term Sheet**"), filed.

22. THIS COURT ORDERS that the Foreign Representative, for and on behalf of Urbancorp Inc., is hereby authorized and empowered to execute and deliver the Term Sheet, and Urbancorp Inc. is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Term Sheet as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

23. THIS COURT ORDERS that the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property in Canada, which Interim Lender's Charge (i) shall not secure an obligation that exists before this Order is made, and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs 24 and 26 hereof, and further provided that the Interim Lender's Charge shall not be enforced except with leave of this Court.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

24. THIS COURT ORDERS that the priorities of the Administration Charge and the Interim Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$400,000); and

Second – Interim Lender's Charge.

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

26. THIS COURT ORDERS that each of the Administration Charge and the Interim Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

27. THIS COURT ORDERS that, except as may be approved by this Court, Urbancorp Inc. shall not grant any Encumbrances over any Property in Canada without the approval of the Foreign Representative, and no such Encumbrances shall rank in priority to, or *pari passu* with,

the Administration Charge or the Interim Lender's Charge without the prior written consent of the Information Officer and the Interim Lender.

28. THIS COURT ORDERS that the Administration Charge and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and any declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds Urbancorp Inc., and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by Urbancorp Inc. of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by Urbancorp Inc. to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

29. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge of Urbancorp Inc.'s interest in such real property leases.

### **SERVICE AND NOTICE**

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

31. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Service Protocol is not practicable, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Urbancorp Inc.’s creditors or other interested parties at their respective addresses as last shown on the records of the Urbancorp Inc. and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

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

33. THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of Urbancorp Inc., the Business or the Property.

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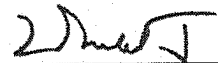
34. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the State of Israel, to give effect to this Order and to assist Urbancorp Inc., the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Urbancorp Inc., the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist Urbancorp Inc., the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

35. THIS COURT ORDERS that each of the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

36. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days' notice to the Foreign Representative, the Information Officer and their respective counsel, and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

37. THIS COURT ORDERS that notwithstanding the immediately preceding paragraph, the Interim Lender shall be entitled to rely on the priority granted to the Interim Lender and the Interim Lender's Charge up to and including the date on which this Order may be varied or modified.

38. THIS COURT ORDERS that this Order shall be effective as of 12/01/08 Eastern Standard Time on the date of this Order.

  
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**SCHEDULE A – ISRAELI COURT ORDER**



מס' 3180 No.

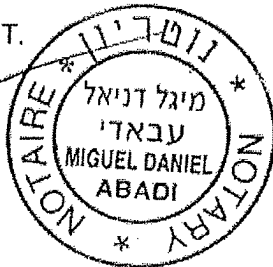
**CERTIFICATE OF TRANSLATION**

I the undersigned, Miguel Daniel Abadi, Notary at 20 Borochov St. Raanana, Israel, hereby declare that I am well acquainted with the **Hebrew** and **English** languages and that the document attached to this certification marked "A" is a correct **English translation** of the **original** document drawn up in the **Hebrew** language which has been produced to me and a photocopy of which is also attached hereto and marked "B".

In witness whereof I certify the correctness of the said translation, and that **is a correct copy of the original document**, by my signature and seal. This 1 day of May 2016.

Notary Fee: 3657 NIS + V.A.T.

  
Signature



Notary's Seal

**אישור תרגום**

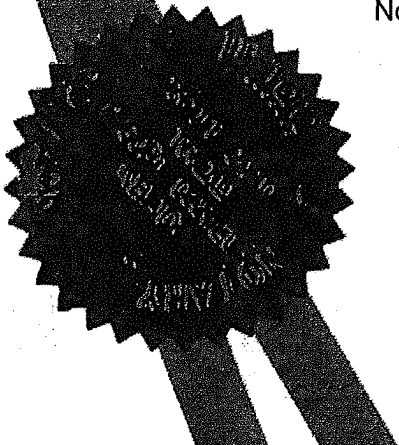
אני הח"מ, מיגל דניאל עבאדי, נוטריון ברעננה, רח' בורוכוב 20, רעננה מצהיר כי אני שולט בשפות אנגלית ועברית, וכי המסמך המצורף ומסומן באות "A" הינו תרגום באנגלית מדויק של המסמך הערוך בשפה העברית שהוצג בפניי ומצורף עתק ממנו גם הוא לאישור זה ומסומן באות "B".

ולראיה הנני מאשר את דיוק התרגום הנ"ל בחתימת ידי ובחותמתי, היום 1 לחודש מאי 2016.

שכר נוטריון 3657 ₪ + מע"מ.

  
חתימה

חותם הנוטריון



סיגליט שורץ  
SIGALIT SCHWARTZ  
- 1-05-2016  
כפר סבא Kfar Saba

סיגליט שורץ  
SIGALIT SCHWARTZ  
- 1-05-2016  
כפר סבא Kfar Saba

# APOSTILLE

(Convention de la Haye du 5 Octobre 1961)

1. STATE OF ISRAEL

1. מדינת ישראל

This public document

מסמך ציבורי זה

2. Has been signed by

מיגל דניאל עבאדי, עו"ד  
MIGUEL DANIEL ABADI, ADV.

2. נחתם בידי

Advocate

עו"ד

3. Acting in capacity of Notary

3. המכהן בתור נוטריון.

4. Bears the seal/stamp

4. נושא את החותם/החותמת

the above Notary

של הנוטריון הנ"ל

**Certified**

**אושר**

5. At the Magistrates Court of Kfar Sava

5. בבית משפט השלום בכפר סבא

6. Date

1-05-2016

6. ביום

7. By an official appointed by

7. על ידי מיו שמונה בידי שר

Minister of Justice under the

המשפטים לפי חוק הנוטריונים,

Notaries Law, 1976.

התש"ל - 1976

8. Serial number

2682

2682

8. מס' סידורי

9. Seal/Stamp

9. החותם / החותמת

10. Signature

10. חתימת



סיגליט שורץ  
SIGALIT SCHWARTZ  
- 1-05-2016  
כפר סבא Kfar Saba

סיגליט שורץ  
SIGALIT SCHWARTZ  
- 1-05-2016  
כפר סבא Kfar Saba

"A"

25/04/2016



The District Court in Tel-Aviv – Yafo

Liquidation File 44348-04-16 Reznik Paz Nevo Trusts Ltd. Vs. Urbancorp Inc.

Before the Honorable Justice Eitan Orenstein, Vice President

On the matter of: the Companies Act, 5759-1999

And on the matter of: the Companies Regulations (Request for Compromise or Arrangement), 5762-2002

And on the matter of: Article 350 of the Companies Act, 5759-1999

And on the matter of: Reznik Paz Nevo Trusts Ltd.  
Trustee of holders of bonds (class A) of the company  
By its representatives: Yoel Freilich, Adv., Yael Herschkowitz, Adv., Inbar Hakmian-Nahari, Adv., and Evgeniya Gluchman, Adv.

The Applicant

And on the matter of: Urbancorp Inc.  
By its representative: Gad Ticho, Adv.

The Company

And on the matter of: the Official Receiver  
By its representative: Roni Hirschenzon, Adv.

Decision

General

1. Before me is an urgent request for the provision of temporary reliefs and for the appointment of a functionary in Urbancorp Inc. (hereinafter: "the Company"), pursuant to Regulation 14(a) of the Companies Regulations ((Request for Compromise or Arrangement), 5762-2002 (hereinafter: "the Arrangement Regulations") and Article 350 of the Companies Act, 5759-1999 (hereinafter: "the Companies Act").

Summary of the Facts

2. The Company incorporated in Canada and it is registered in the county of Ontario. Its main occupation is leasing and initiating real-estate for residential and commercial



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purposes at the location of its incorporation. The Company operates geothermal systems in several of its projects, which are used for providing heating and cooling for the properties, while using green energy. It is in the control of Mr. Alan Saskin, a citizen of Canada and a resident thereof (hereinafter: **“the Controlling Party”**).

In December 2015 the Company raised bonds from the Israeli public, amounting to approximately 180 million ILS, with an interest of 8.15%. The bonds were raised pursuant to a prospectus dated 30/11/2015 and later completions thereof, and were registered for trade at the Tel-Aviv Stock Exchange. It shall be stated that Midroog Ltd. has granted the bonds a rating of A3, a medium-high rank. The underwriter of the issuance was Apex Issuances Ltd., the prospectus was drafted by Shimonov & Co. Law Firm, and the Deloitte firm Brightman, Almagor, Zohar & Co., Accountants. The trustee for the bond holders is Reznik Paz Nevo Trusts Ltd., which has submitted the application (hereinafter: **“the Trustee”**).

The consideration of the issuance was intended to serve for shareholders' loan for the Company's subsidiaries which are also incorporated in Canada (hereinafter: **“the Subsidiaries”**) and for providing equity for paying off loans in their various projects, as specified in the bill of trust, as well as for the payment of taxes.

The application states that during the months following the issuance, there has been a severe deterioration in the Company's financial state and in its capability to sustain itself, which is the result of a number of events, when according to the Applicant it is impossible to rule out that the share of those had already been known prior to the issuance, but they were not reported. The outcome was that all Company directors, apart from the Controlling Party, have resigned; the Company's trade in securities has ceased; the ranking has ceased, and more. In light of the foregoing, there has been very intensive contact with the Controlling Party, who was supposed to sign a Stand-Still document, and has asked to delay the taking of actions against the Company. Nevertheless, the Trustee was surprised to find out that the Subsidiaries, which excess cash flows were supposed to serve the debt for the holders of bonds, have recently begun an insolvency proceeding in Canada, and a trustee on behalf of the court there has been appointed to them.

**The Request**

3. The Trustee points in his request, to a series of severe failures in the Company's conduct, which also constitute a breach of the bill of trust, and give rise to a cause for providing



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The District Court in Tel-Aviv – Yafo

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Before the Honorable Justice Eitan Orenstein, Vice President

the debt for immediate repayment and taking proceedings against the Company. For this matter, it has been claimed that it is necessary to immediately intervene in the Company's businesses by appointing a functionary, who shall be granted the authorities of the Company's directorate; who shall exercise the Company's power of control in its Subsidiaries; who shall examine the insolvency proceedings taken by the Subsidiaries; who shall negotiate with the trustee appointed to them; who shall act to obtain all required information pertaining to raising the capital; who shall formulate a recovery plan for the Company, inasmuch as it shall be possible; and who shall enter the Company's premises and its offices and shall seize its assets, including accounts and financial deposits.

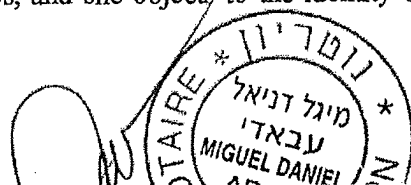
4. The request was submitted on 24/04/2016, during the Passover recess, and I have instructed holding an urgent discussion today in the presence of the Company, its former functionaries who provide services to it, the Israeli Securities Authority, the Official Receiver and more. In my decision from yesterday, an order for the prohibition of disposition was also granted, according to which the Company and anyone on its behalf is prevented from making any transaction, of any sort and type whatsoever, with its property.

The Court Discussion

5. The following were present at the discussion: the Trustee and its representatives; the representative of the recently resigned Company directors; the Company's former legal consultants; the representative of the Tel-Aviv Stock Exchange and members of its legal department; the representative of the Official Receiver, as well as Gad Ticho, Adv., on behalf of the Company, who has notified that he had taken on representing the Company the previous evening.

The Trustee's representative, Yoel Freilich, Adv., has repeated the request during the discussion, and has emphasized the need for granting the urgent reliefs. He clarified that the Trustee has engaged with a law firm in Canada, which shall assist the functionary, should he be appointed, in fulfilling his position; that there is no conflict of interests for the intended functionary; and more.

According to the Company's representative, its client does not object to leaving the order of prohibition of disposition effective, however she does not see the need for appointing a functionary and for granting the requested authorities, and she objects to the identity of



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the suggested functionary due to conflict of interests. In addition, the Company's representative has claimed that there is no need for the drastic requested reliefs, that the Company should be given leave to submit a proper response, that in any case a meeting of the holders of bonds is scheduled for May 1, 2016 – in which the meeting shall decide with regards to continuing the proceeding – and that no irreversible damage shall occur should the order not be granted.

The representative of the Official Receiver holds the opinion that the state of the Company justifies granting a relief against it, similar to other cases in which the court has instructed appointing a functionary, even if it is for a limited period of time, until the situation is clarified.

Discussion and Ruling

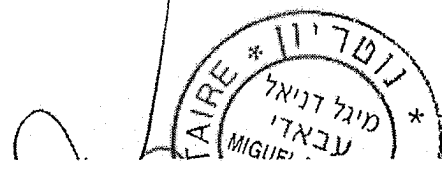
- 6. We are dealing with a request which was submitted urgently during the Passover recess, and which requires an urgent decision, therefore I shall suffice with a brief reasoning.

The Rule

The request, by nature, is a request for temporary relief, and prior to submitting the primary proceeding. Therefore, it should be examined by the rules used for temporary reliefs, namely, does the Applicant meet the test of *prima facie* reliable evidence in the cause of the action as well as the balance of convenience test, and as set in the Civil Procedure Regulations, 5744-1984 and in rulings, when between the two there is a "parallelogram of forces" (see Civil Leave of Appeal 2174/13 **D.K. Shops for Rent in Herzlia HaTze'ira Ltd. Vs. Avraham Cohen & Co. Contracting Company Ltd.** (published on the website of the Judicial Authority, 19/04/2016).

I shall emphasize, that under the circumstances of the request before me, when the primary relief has not yet been requested, the court is required to take extra precautions when ruling on a request for temporary relief, especially given the drastic temporary reliefs requested therein.

The request is accompanying to a primary proceeding which the Trustee is intending to submit pursuant to the provisions of Article 350 of the Companies Act, which deals with an arrangement between a company and its creditors, a proceeding which, according to the word of the law, can also be taken by a creditor of the company, in addition to the company itself, or a participant or a liquidator. As is known, it is possible to appeal for



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temporary reliefs even before beginning the primary proceeding, provided that the applicant has met the required conditions stated above.

Another basis for the request, as mentioned, is Regulation 14(a) of the Arrangement Regulations, which authorizes the court to appoint a functionary when discussing a request for arrangement in accordance with Article 350 of the Companies Act, saying:

“To appoint a functionary, who shall have all authorities and duties which shall be determined by the court, including managing the company or supervising its management, keeping its assets, as well as examining claims of debt and claims for amending the registry of shareholders in the method specified in Chapter C; the court shall appoint a functionary once it was convinced that the candidate is suitable for the position due to his skills or his experience in formulating compromise arrangements or an arrangement[...].”

From the General to the Specific

- 7. Viewing the statements of claim and their appendixes paints a grim picture, to say the least, of the state of the Company.

On the surface it appears that it is failing to meet the conditions of the bill of trust, in a way which gives rise to a cause for providing the debt for immediate repayment. For this matter, I shall list the breaches, each of which is sufficient to give rise to the stated cause, let alone when put together: the trade in the Company's bonds has been stopped; the Company's rating by Midroog Ltd. has also been stopped; all of the Company's Israeli directors have resigned, as well as its legal consultants and its internal auditor;

And severe failures in the Company's activity have been found, as specified in the report it submitted pertaining to its financial data, dated April 20, 2016. Amongst those: a loss of 15 million Canadian Dollars compared with the current activity in the last quarter of 2015; a decrease in the value of the right of the Controlling Party assigned to the Company to receive loans from corporations in his control, thus from an estimated value of approximately eight million Dollars, the value is expected to drop to an insignificant amount; concern that the Company shall decrease the value of the geothermal assets at a total ranging between four and six million Canadian Dollars. The end of the report even

*Miguel Daniel Abadi*  
נוטריון \*  
מיגל דניאל  
עבאדי  
MIGUEL DANIEL  
ABADI

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states that it is possible that the Company's state is far worse and that its losses shall be high.

Another event teaching of failures in the Company which should be stated, is the decision of the Canadian Home Organization Trion dated April 4, 2016, to not extend the Company's license, namely, the Company is not entitled to continue its activity of initiating and selling planned projects.

This is joined by the fact stated above, that the Subsidiaries have recently begun a stay of proceedings in Canada, as part of which a trustee was appointed to them. The Company and the Controlling Party have not brought this important fact to the knowledge of the Trustee, let alone given details pertaining to the proceeding taken, its significance, its implication on the Company and such.

The conclusion drawn from the stated above is that there is total uncertainty with regards to the Company's financial state, its equity, its capability of sustaining itself, and concern for the fate of the investments made by the holders of bonds. Another conclusion is that there is a substantial lack of information pertaining to the occurrences in the Company, and the Trustee is forced to seek in the dark, all when there is concern for the fate of the Company and its assets, including with regards to the occurrences in the Subsidiaries and their assets, which have enjoyed the monies of capital raised by the holders of bonds.

In my opinion, the stated above is sufficient basis for appointing a functionary to the Company, who shall be authorized to receive all information pertaining to the Company, its activity, its property and its rights, including the Subsidiaries and the proceedings conducted in Canada. Simultaneously, the functionary shall be able to track the Company's property, to locate it, to seize it and to prevent making irreversible actions. I shall add that obtaining the information shall also enable making an educated decision regarding taking appropriate proceedings with regards to the Company, to minimize damages and to redirect, as much as possible, the monies which would be could be paid to the holders of bonds.

Needless to say, the Company is in the twilight zone of insolvency, when there is concern for its fate and for the fate of the monies of investors, unless urgent actions are taken. As stated by the representative of the Official Receiver, the court discussing insolvency has a wide range of reliefs at its disposal, which also apply to a situation where the Company is in the twilight zone of insolvency. In this regard I shall refer to a recent ruling by the

Handwritten signature and circular notary stamp: OTAIRE \* 117710, מיגל דניאל עבאד, MIGUEL DANIEL AB.



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Supreme Court, as said by the Honorable Justice E. Hayut in Civil Appeal 3791/15 Synergy Cables vs. Hever, paragraph 8 (published on the website of the Judicial Authority on 19/04/2016):

The District Court has not ruled pursuant to which legal authority it appoints the respondent, but as rightfully stated by the respondent, reality shows that there are cases [...] where the court appoints functionaries in proceedings in which the corporation is in the “zone of insolvency”, even prior to issuing an order for stay of proceedings or for the liquidation of the company (compare, for example: Liquidation File (Tel-Aviv) 36681-04-13 Hermetic Trusts (1975) Ltd. vs. IDB Development Ltd. (30/04/2013), in which the District Court in Tel-Aviv (Justice E. Orenstein) has decided to appoint a functionary who was defined as an “observer” for the company, while relying for this purpose of the wide authority granted to him in accordance with Regulation 14(a)(1) of the Companies Regulations [...]

(Emphasis not in the original – E.O.)

This rule also applies to the matter before us.

In my opinion, the circumstances of the case meet the tests required for granting a temporary relief. For this matter, the Company has allegedly breached its undertakings towards the holders of bonds in a way which grants the holders of bonds the right to provide the debt for immediate repayment, and to claim the reliefs due as a result thereof. I shall add that the balance of convenience also leans towards granting the temporary relief. In this context, I shall state that according to the Company’s representative, these days a substantial transaction is to be executed, of selling the Company’s property, which should provide it with a substantial amount of money; it is not improbable that the consideration shall not be given to the holders of bonds, despite the order of prohibition of disposition, in the absence of practical capability for enforcement, thus causing irreversible damage. Therefore, only a functionary who could also track the stated transaction, could possibly prevent irreversible damage to the holders of bonds.

This conclusion is emphasized noticing the recent problematic conduct of the Controlling Party. As is evident in the request, he has failed to disclose to the Trustee during contacts



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conducted these days that the Subsidiaries intend on taking the proceeding of insolvency as they have done.

In fact, the Company has no management core, whereas all directors, apart from the Controlling Party, have resigned, it has no internal auditor, and even the legal consultants have terminated their engagement with it. In this state of affairs, the Company is given to the good will of the Controlling Party, and in light of the problems I have pointed pertaining to him, and in the absence of supervision on his conduct, it would be best to appoint an authority who shall take the Company's reigns and shall supervise the occurrences in the Company at least until the picture is clarified.

I have not ignored the claim made by the Company's representative regarding the damage which could be caused to the Company due to appointing the functionary, but I have not seen that it leads to a different conclusion. I believe that the weight of the reasons I have specified above, exceeds by far the concern raised by Advocate Ticho in this regard. In any case, it is possible to find the required balance between guaranteeing the Company's conduct and the argued damage, by limiting the authorities which shall be granted to the Trustee and the period of time in which he shall be appointed. I shall emphasize that the concern raised by Advocate Ticho, which, according to him, may be a result of appointing a temporary liquidator to the Company, can be abated by not appointing a temporary liquidator, which has not even been requested.

I have also answered the argument made by Advocate Ticho regarding the conflict of interest in which the offered functionary is allegedly in, due to him representing the Trustee. I have not found this argument sufficient reason for not appointing Advocate Gissin, and I shall clarify: Gissin & Co. Law Firm has accepted the representation of the Trustee only recently, as Advocate Freilich has said in the discussion. The firm has not represented the Trustee in the process of preparing the prospectus, its publication and the issuance of the bonds, nor in the following period, but only following the Company's getting into trouble. Therefore, it is impossible to say that he is involved in proceedings preceding this request. In addition, should it be found out in the future, that there is a conflict of interest, the argument shall be made before the court and shall be examined by itself, and the argument shall not prevent the appointment at the preliminary stage we are in.



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Before the Honorable Justice Eitan Orenstein, Vice President

8. To complete the picture I shall state that there is no dispute regarding the authority of the court in Israel to grant the requested relief. In this context, I shall refer to the various documents attached by the Trustee to the request, including the prospectus and the bill of trust, which state that the Company acknowledges the authority of the court in Israel to grant the reliefs (see clause 34 of the bill). In addition, I shall state that Article 39a of the Securities Law, 5728-1968, which applies to the prospectus, rules that the provisions of the Companies Act shall apply to any foreign company which has issued securities. Needless to say, the authority of the court to discuss the request is also pursuant to the court ruling given in a case with similar circumstances, and I shall refer to Civil Appeal 2706/11 Sybil Germany Public Co. Limited vs. Hermetic Trusts (1975) Ltd. (published on the website of the Judicial Authority on 04/09/2015).

9. In light of the foregoing I hereby instruct as follows:

I appoint Advocate Gissin as functionary in Urbancorp Inc. and grant him the authority to exercise the Company's authorities, for all following actions:

- ❖ To locate, to track and to seize all Company assets, of any sort and type whatsoever, including its monies and rights in the Subsidiaries;
- ❖ To exercise the Company's power of control in the Subsidiaries;
- ❖ To obtain all information, of any sort and type whatsoever, pertaining to the Company's activity, its property and its rights; the same applies to the Subsidiaries;
- ❖ To negotiate with the Subsidiaries' trustee, and for this purpose, to also approach the Canadian court as an authorized representative of the Company;
- ❖ To track the Company's activities prior to the prospectus and thereafter.

For the purpose of exercising these authorities, the functionary is hereby authorized to appear in the Company's name before any body, authority or person in Israel and abroad; to obtain any information whatsoever from any of the Company's factors, from the Controlling Parties, from the authorities and from any person who has provided or is providing services for the Company; and to obtain from them all documents he believes shall be required for fulfilling his position.



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The functionary shall be authorized to formulate an initial outline of a creditors' arrangement.

The functionary shall approach the court if necessary, and shall request its permission to exercise Company authorities not expressly specified in the decision.

For the avoidance of doubt: the functionary is not authorized to realize the Company's property.

A condition for the appointment is the functionary depositing a personal bond at a total of 250,000 ILS.

The functionary shall do all that he can for obtaining the required information in the coming days, so that it can be presented, as much as possible, before the meeting of holders of bonds set for next Sunday, May 1, 2016.

At this point I set the appointment until May 22, 2016 or as shall be otherwise decided.

A first report of the functionary's actions shall be submitted by May 8, 2016.

The case has been set for discussion for May 22, 2016 at 11:30.

The secretariat shall notify of the decision by telephone and shall also send it by fax.

Given today, 17 Nisan 5776 (25<sup>th</sup> of April 2016), *ex parte*.

Eitan Orenstein, Justice  
Vice President



26.4.2016

"B"



בית המשפט המחוזי בתל-אביב-יפו  
פר"ק 16-04-44348 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אולנשטיין, סגן נשיאה

בעניין: חוק החברות, התשנ"ט-1999

ובעניין: תקנות החברות (בקשה למשרה או להסדר), התשס"ב-2002

ובעניין: סעיף 350 לחוק החברות, תתשנ"ט-1999

ובעניין: רזניק פז נבו נאמנויות בע"מ

המבקשת הנאמנת למחזיקי איגרות החוב (סדרה א) של החברה  
ע"יב"כ עו"ד יואל פרייליך, עו"ד יעל  
הרשקוביץ,  
עו"ד ענבל חכימיאן-נהרי ועו"ד  
יבגניה גלוחמן

ובעניין: Urbancorp Inc.

החברה ע"יב"כ עו"ד גד טיכו

ובעניין: כונס הנכסים הרשמי

ע"יב"כ עו"ד רוני הירשנזון

החלטה

כללי

1. מונחת לפני בקשה דחופה למתן סעדים זמניים ולמינוי בעל תפקיד ב-Urbancorp Inc. (להלן: "החברה"), על יסוד תקנה 14(ג) לתקנות החברות (בקשה למשרה או להסדר), התשס"ב-2002 (להלן: "תקנות החסדר") וסעיף 350 לחוק החברות, התשנ"ט-1999 (להלן: חוק החברות).

תמצית העובדות

2. החברה התאגדה בקנדה והיא רשומה במחוז אונטריו. עיסוקה העיקרי הוא בהשכרה וביזום של נדל"ן למגורים ולמסחר במקום התאגדותה. החברה מפעילה בכמה מיוזמים מערכות גאותרמיות המשמשות להספקת חימום וקירור לנכסים, אגב שימוש באנרגיה ירוקה. היא נמצאת בשליטתו של Mr. Alan Saskin, אזרח קנדה ותושב בה (להלן: "בעל השליטה").



25.4.2016



בית המשפט המחוזי בתל-אביב-יפו  
פרי"ק 16-04-44348 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

**לפני כבוד השופט איתן אורנשטיין, סגן נשיאה**

בחודש דצמבר 2015 גייסה החברה איגרות חוב מהציבור בישראל שסכומן כ-180 מיליון ש"ח, בריבית של 8.15%. איגרות החוב גויסו על-פי תסקיף מיום 30.11.15 והסלמות מאוחרות לו, ונרשמו למסחר בבורסה לניירות ערך בתל-אביב. יצוין כי מדרוג בעימ העניקה לאג"חיים דירוג A3, דירוג בינוני-גבוה. חתמת החנפקה הייתה חברת איפקס הנפקות בע"מ, את התסקיף ערך משרד שמעוטוב ושות', עורכי-דין, ורואר החשבון שימש משרד Deloitte בריטמן אלמגור זר ושות', רואי-חשבון. הנאמן למחזיקי האג"ח הוא "רזניק פז נבו נאמנויות בע"מ", שהגישה את הבקשה (להלן: "הנאמן").

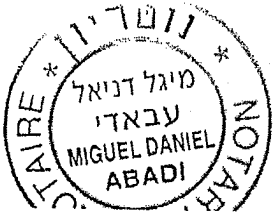
תמורת החנפקה נועדה לשמש להלוואות בעלים לחברות הבנות של החברה שאף הן מאוגזות בקנדה (להלן: "חברות הבנות") ולחעמדת חון עצמי לפירעון הלוואות במיזמים שונים שלהן, כמפורט בטר חנאמנות, וכן לתשלום מסים.

בבקשה נטען כי במהלך החדשים שמוז החנפקה חלה חמרה ניכרת במצבה הפיננסי של החברה ויכולתה לשרוד שנובעת ממספר אירועים, כאשר לשיטת המבקשת לא ניתן לשלול שחלקם של אלה כבר היו ידועים עוד קודם לחנפקה אך לא דווחו. הדברים הגיעו לידי כך שכל חדריקטוריים של החברה, פרט לבעל השליטה התפטר, חופסק המסחר בניייע של החברה; הדירוג פסק עווד. נוכח האמור נוהלו מגעים אינטנסיביים עם בעל השליטה שהיה אמור לחתום על מסמך Stand Still וביקש לחשחות נקיטת פעולות נגד החברה. חרף זאת הופתע הנאמן עת שנודע לו שתחברות הבנות שעודפי התזרימים שלהן היו אמורים לשרת את החוב למחזיקי האג"ח, נקטו בימים אלה בחליך חדלות פירעון בקנדה ומונה לחן נאמן מטעם בית המשפט שם.

**הבקשה**

3. הנאמן מצביע בבקשה על שורת כשלים חמורים בחתנהלות החברה, המחווים גם חפרה של שטר חנאמנות ומקימים עילח לחעמדת החוב לפירעון מידי ונקיטת חליכים נגד החברה. לעניין זה נטען שיש חכרח בחתערבות מקיטת בענייני החברה וזאת באמצעות מינוי בעל תפקיד אשר תוקנינה לו סמכויות חדריקטוריון של החברה; אשר יפעיל את כוח השליטה של החברה בחברות הבנות שלה; אשר יבחן את חליכי חדלות הפירעון שנקטו החברות הבנות; אשר יבוא בדברים עם הנאמן שמונה לחן; אשר יפעל להשגת כל המידע הדרוש בכל הנוגע לגיוס החון; אשר יגבש תכנית הבראה לחברה, ככל שיתאפשר; ואשר ייכנס לחצרי החברה ולמשרדיה ויתפוס את נכסיה, לרבות חשבונות ופיקדונות כספיים.

4. הבקשה תוגשח ביום 24.04.16, במחלך פגרת הפסח, וחוריתי על קיום דיון דחוף היום במעמד החברה, בעלי תפקידים לשעבר בה, חנותנים לח שירותים, רשות ניירות ערך, כונס הנכסים חרשמי



25.4.2016



**בית המשפט המחוזי בתל-אביב-יפו**

פרי"ק 16-04-44348 לזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

**לפני כבוד השופט איתן אורנשטיין, סגן נשיאה**

ועוד. בהחלטתי מאתמול ניתן גם צו איסור דיספוזיציה שלפיו נמנע מהחברה ומכל מי מטעמה לעשות כל עסקה מכל מין וסוג שהוא ברכוש.

**חדיון בבית המשפט**

5. לדיון התייצבו הנאמן ובאי-כוחו; באי-כוח הדירקטורים של החברה, שהתפטרו באחרונה; היועצים המשפטיים של החברה לשעבר; באי-כוח הבורסה לניירות ערך וחברות במחלקה המשפטית שלה; באי-כוח כונס הנכסים הרשמי וכן עו"ד גד טיכו בשם החברה. הלך הודיע כי קיבל אמש את ייצוג החברה.

בדיון חזר באי-כוח הנאמן, עו"ד יואל פרייליך, על הבקשה וחייד את הצורך במתן הסעדים החדופים. הוא חבחר כי הנאמן התקשר עם משרד עורכי-דין בקנה וכי זה יסיע לבעל התפקיד, אם ימונה, במילוי תפקידו; כי אין ניגוד עניינים לבעל התפקיד המיועד, ועוד.

לדברי בא כוח החברה, מרשנו אינה מתנגדת להותרת צו איסור הדיספוזיציה על כנו, אך אינה רואה מקום למינוי בעל תפקיד ולהקניית חסמכויות המבוקשות, והיא משיגה על זהותו של בעל התפקיד חמוצע מהמת ניגוד עניינים. עוד הוסיף באי-כוח החברה וטען שאין צורך בסעדים הדרסטיים המבוקשים, שיש לאפשר לחברה שהות להגיש תגובה סדורה, שממילא אמורה להתכנס אספת מחזיקי איגרות החוב ביום 01.05.16 – שבה תקבל האספה החלטה באשר לחמשך החליך – ושלא ייגרם נזק בלתי הפיך אם לא יינתן הצו.

באי-כוח הכני"ר ברעה שמצב החברה מצדיק נקיטת סעד נגדה, בדומה למקרים אחרים שבהם הורה בית המשפט על מינוי בעל תפקיד, אם גם לתקופה קצובה, עד להתבררות המצב לאשורו.

**דיון והכרעה**

6. עסקינן בבקשה שהוגשה בדהיפות בגרת הפסח ושנדרשת בה החלטה דחומה ומשכך אסתפק בחנמקה תמציתית.

**החלכה**

הבקשה במהותה היא בקשה לסעד זמני ובטרם הוגש הליך עיקרי. משכך יש לבחון אותה כללים חנוהגים בסעדים זמנים, קרי, האם המבקש עומד במבחן ראיות מהימנות לכאורה בעילת התביעה ובמבחן מאזן חנוחות, וכקבוע בתקנות סדר הדין האזרחי, הונשמ"ד-1984 (בהלכה הפסוקה, כאשר



25.4.2016



בית המשפט המחוזי בתל-אביב-יפו  
מ"ק 44348-04-16 רזניק פז נכנ נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אולנשטיין, סגן נשיאה

בין שני אלה "מקבילית כוחות" (ראה רע"א 2174/13 ד.כ. חנויות להשכרה בהרצליה הצעירה בע"מ  
נ' חברת אברתם כהן ושות' חברה קבלנית בע"מ (פורסם באר"ש, 19.04.2016).

אדגיש שבנסיבות הבקשה שלפני כשטרם התבקש הסעד העיקרי, שומה על בית המשפט לנקוט משנה  
זהירות בבואו להכריע בבקשה לסעד זמני, לא כל שכן בהינתן הסעדים הזמניים הדרסטיים  
חמבוקשים בה.

הבקשה נלווית להליך עיקרי שבכוונת הנאמן להגיש על יסוד הוראת סעיף 350 לחוק החברות שעניינו  
הסדר בין החברה לבין נושיה, הליך שבהתאם ללשון החוק רשאי גם לנקוט נושה של החברה, בנוסף  
לחברה עצמה או משותף או מפרק. כידוע ניתן לעתור לסעדים זמניים עוד לפני שנפתח ההליך  
העיקרי, ובלבד שהמבקש עמד בתנאים הנדרשים שצוינו לעיל.

אך נוסף שעליו תבקשה מושגתת כזכור הוא תקנה 14(א) לתקנות ההסדר, המסמיכה את בית  
המשפט למנות בעל תפקיד בדונו בבקשה להסדר לפי סעיף 350 לחוק החברות, לאמור:

"למנות בעל תפקיד, ויחיו לו כל הסמכויות והחובות שיקבע בית המשפט,  
לרבות ניהול החברה או פיקוח על ניהולה, שמירה על נכסיה, וכן בדיקת  
תביעות תוב ותביעות לתיקון מרשם בעלי המניות בדרך הממולטת בפרק ג'  
בית המשפט ימנה בעל תפקיד לאחר ששוכנע כי המועמד מתאים לתפקיד  
בשל כישוריו או ניסיונו בגיבוש הסדרי פשרה או הסדר[...]".

מן הכלל אל הפרט

7. מעיין בכתבי הטענות ובנספחים מצטיירת תמונה עגומה, בלשון המעטה, של מצב החברה.

על פני הדברים עולה שהיא אינה עומדת בתנאי שטר הנאמנות, באופן שמקים עילה להעמדת החוב  
לפירעון מיידי. לעניין זה אמנה את ההפרות שבכל אחד מהם יש כדי להקים את העילה האמורה, לא  
כל שכן משקלם המצטבר: המסחר באיגרות החוב של החברה הופסק; זירוג של החברה על ידי מידרג  
בע"מ הופסק אף הוא; כל חזירקטורים הישראלים של החברה התפטרו, וכך גם יועציה המשפטיים  
ומבקר הפנים שלה;

והתגלו כשלים חמורים בפעילותה של החברה וכמפורט בדיווח שהגישה על אודות הנתונים הכספיים  
מיום 20.04.16. בין אלה: הפסד בסך של 15 מיליון דולר קנדי לעומת הפעילות השוטפת ברבעון



Handwritten signature



15.4.2016



**בית המשפט המחוזי בתל-אביב-יפו**

**פרייק 04-16-44348 רזניק מז נבו נאמגויות בע"מ נ' Urbancorp Inc.**

**לפני כבוד השופט איתן אורנשטיין, סגן נשיאה**

האחרון של שנת 2015; הפחתת שווי זכותו של בעל השליטה שהומחנה לחברה, לקבל הלוואות מתאגידים המוחזקים בדיו, כך שמשווי מוערך בסך כשמונה מיליון דולר הערך צפוי לצנוח לסכום זניח; חשש שהחברה תפחית את שוויים של חכססים הגאונרמיים בסך המג בין בין ארבעה לשישה מיליון דולר קנדי. בסוף הדיווח אף נכתב כי ייתכן שמצבה של החברה גדוע חזרבה וכי הפסדיה יהיו גבוהים.

אירוע נוסף המלמד על כשלים בחברה ושיש לצינו הוא החלטת ארגון הכתים הקנדי Teion מיום 04.04.16 שלא להאריך את תוקפו של רישיון החברה, משמע החברה אינה רשאית להמשיך בפעילות היזום והמכירה במזמם בתכנון.

לכך מצטרפת העובדה שצוינה לעיל, החברות הבנות נקטו בימים האחרונים בחלק של הקפאת החלכים בקנדה שבמסגרתו מונה לזון נאמן. החברה ובעל השליטה לא הביאו עובדה חשובה זו לדעת התאמן, ומקל וחומר לא ניתנו פרטים באשר לחלק שנקט, למשמעותו, להשלכתו על החברה וכיוצא באלו.

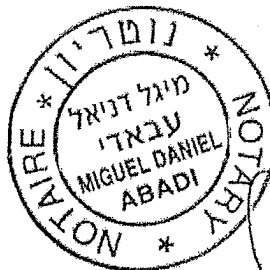
המסקנה המתבקשת מהמקובץ דלעיל היא שקיים חוסר ודאות מוחלט באשר למצבה הכספי של החברה, להונה העצמי, ליכולתה לחוסף ולהתקיים, וחשש לגורל חשקעתם של מחזיקי האג"ח. מסקנה נוספת הינה שקיים חוסר מידע מהותי באשר למתרחש בחברה והנאמן טאף לגשש באפלה ותכל כאשר קיים חשש לגורל החברה ולנכסיה, לרבות באשר למתרחש בחברות הבנות ונכסיהם, שהן אשר נתנו מכספי גיוס החון מן המחזיקים באיגרות החוב.

לטעמי האמור מקים מסד מספק למינוי בעל תפקיד לחברה שיוסמך לקבל את מלוא המידע בנוגע לחברה, פעילותה, לרכושה ולזכויותיה לרבות בחברות הבנות והחלכים המתנהלים בקנדה. במקביל יוכל בעל התפקיד להתחקות אחר רכוש החברה, לאתרו, לתופסו ולמנוע ביצוע פעולות בלתי הפיכות. אוסף שקבלת המידע תאפשר גם קבלת החלטה מושכלת על נקיטה בהלכים מתאימים לגבי החברה, למזער נזקים ולהשיא במידת האפשר את הכספים שיהיה ניתן לשלם למחזיקי איגרות החוב.

לא למותר לציין שהחברה נמצאת באזור תדמדומים של חדלות פירעון, כאשר קיים חשש לגורלה ולגורל כספי המשקיעים אם לא ייקטו פעולות דחופות. כפי שציין באיכות הכניר, באמתחתו של בית המשפט הון בחדלות פירעון מנעד רחב של סעדים, ואלה חלים גם במצב שבו חברה נמצאת באזור תדמדומים של חדלות הפירעון. בחקשר זה אפנה לפסיקות בית המשפט העליון מהעת האחרונה, לדברי כבוד השופטת א' חיות בעי"א 3791/15 סינגלי כבלים נ' חבר, פסקה 8 (פורסם באר"ש, 19.04.2016):

בית המשפט המחוזי לא קבע מתוקף איזו סמכות שבדין הוא ממנה את המשיב, אך כמי שציין המשיב בצדק, המציאות מלמדת כי ייתכנו מקרים [...] בתם ממנה

5 מתוך 8



4.2016



בית המשפט המחוזי בתל-אביב-יפו  
מ"ק 44348-04-16 ד"ק מו נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

בית המשפט בעלי תפקיד בתליכים בהם נתון התאגיד ב, אזור חדלות הפירעון (zone of insolvency), ועוד' בטרם ניתן צו לתקופת תליכים או לפירוק החברה (תשון, למשל: פר"ק (תי"א) 13-04-36681 הדמטיק נאמנות (1975) בע"מ נ' אי די בי חברה לפתוח בע"מ (30.4.2013) בו החליט בית המשפט המחוזי בתל אביב (השופט א' אורנשטיין) למנות בעל תפקיד שהוגדר כ"משקיף" לחברה, תוך שתוא נסמך לצורך כך על הסמכות הרחבה הנתונה לו לפי תקנה 14(א1) לתקנות החברות [...]

(ההדגשה אינה במקור-א.א.)

יפה החלכה דלעיל גם על עניינו.

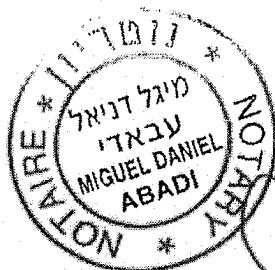
לטעמי נסיבות המקרה ועונות על המבחנים הדרושים למתן סעד זמני. לעיין זה החברה הפרה לכאורה את התחייבויותיה כלפי מחזיקי האג"ח ובאופן שמקנה למחזיקי האג"ח את הזכות להעמיד את החוב לפירעון מיד ולתבוע את הסעדים המגיעים כתוצאה מכך. אוסיף גם מאזן הנוחות נוטה למתן הסעד הזמני. בהקשר זה אציין שלדברי בא"כוח החברה, בימים אלה אמורה לצאת לפועל עסקה מהותית של מכירת רכוש החברה ושעתיד להניב לה סכום כסף ניכר; לא מן הנמנע כי התמורה לא תגיע לכיסם של מחזיקי האג"ח, חרף צו איסור הדיספוזיציה בחעדור יכולת איכיפה מעשית, ובכך ייגרם נזק בלתי הפיך. משכך רק בעל תפקיד שיוכל להתחקות גם אחר העסקה האמורה יוכל למנוע במידת האפשר פגיעה בלתי הפיכה במחזיקי האג"ח.

מסקנתי זו מתעצמת בשים לב להתנהלות הבעייתית של בעל השליטה בעת האחרונה. זה, כעולה מהבקשה, לא גילה לנאמן במהלך המגעים המתנהלים בימים אלו כי בכוונת החברות חבנות לנקוט את חחליך של חדלות הפירעון כמות שנעשה על ידם.

הלכה למעשה אין לחברת שדרת ניתול, שכן כל הדירקטורים פרט לבעל השליטה התפטרו, אין לה מבקר פנימי ואף היועצים המשפטיים הפסיקו את ההתקשרות עמה. במצב דברים זה נתונה החברה לרצונו הטוב של בעל השליטה ונכח הבעייתיות עליה הצבעתי בנוגע אליו, העדר פיקוח על התנהלותו נכון יחיה למנות גורם שיטול את המושכות של החברה ולמצער ועד שתתברר התמונה ישגיח על חנעשה בחברה.

לא התעלמתי מטענת בא"כוח החברה בדבר הנזק שעלול לחיגור לחברה ממינוי בעל התפקיד, אך לא ראיתי בכך כדי להגיב למסקנה שונה. סבורני שמשקלם של הטעמים שפירטתי לעיל, עולה במידה ניכרת על החשש שעליו הצביע עו"ד טיכו בהקשר זה. מכל מקום ניתן למצוא את האיזון הנדרש בין הבטחת התנהלות החברה לבין הנזק הנטען באמצעות הגבלת הסמכויות שתוקניתה לנאמן ופרק הזמן שבו ימונה. אטעים שאת החשש שעליו הצביע עו"ד טיכו, שעלול לבוע לדבריו ממינוי מפרק זמני לחברה, ניתן להפיג בכך שלא ימונה מפרק זמני שאף לא התבקש.

6 מתוך 8



25.4.2016



בית המשפט המחוזי בתל-אביב-יפו  
פר"ק 16-04-44348 רזניק פז נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

נתתי דעתי גם לטענת עו"ד טייב בדבר ניגוד העניינים שבו טרוי כביכול בעל התפקיד המוצע, בהיותו מייצג את הנאמן. לא מצאתי בטענה זו סיבה מספקת שלא למנות את עו"ד גיסין, ואבחיר. משרד גיסין ושותי קיבל את ייצוג הנאמן רק באחרונה, כדברי עו"ד פרייליך בדיון. המשרד לא ייצג את הנאמן בחליף הכנת התשקיף, פרסומו והנפקת אגרות החוב ואף לא בתקופת שלאחר מכן אלא רק בעקבות ההסתבכות של החברה. משכך לא ניתן לומר כי הוא מעורב בהליכים שקדמו לבקשה זו. נוסף על כך, אם יתברר בעתיד שקיים ניגוד עניינים תיטען הטענה לפני בית המשפט ותישקל לגופה ואין בכוחה של הטענה למנוע את חמינוי בשלב המקדמי שבו אנו מצויים.

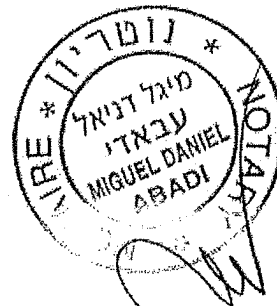
לחשלת הדברים אציין שאין עוררין על סמכותו של בית המשפט בישראל ליתן את הסעד המבוקש. אמנה בחקשר זה למסמכים השונים שצירף הנאמן לבקשה, ובהם התשקיף ושטר הנאמנות, שבהם נקבע שהחברה מכירה בסמכותו של בית המשפט בישראל להעניק את הסעדים נ"א סעיף 34 (לשטר). כמרכן אציין שבתשקיף הוחל סעיף 39 לחוק ניירות ערך, התשכ"ח-1968, אשר קובע כי הוראות חוק החברות תחולנה על כל חברה זרה שהנפיקה ניירות ערך. לא למותר להוסיף כי סמכותו של בית המשפט לדון בבקשה נובעת גם מחלכה של בית המשפט שניתנה במקרה שנסבותיו דומות ואמנה לע"א 2706/11 SYBIL GERMANY PUBLIC CO. LIMITED נ' הרמטיס נאמנות (1975) בע"מ (פורסם באר"ש, 04.09.2015).

9. לאני כל האמור לעיל אני מורה בדלקמן:

אני ממנה את עו"ד גיא גיסין לבעל תפקיד ב-Urbancorp Inc. ומקנה לו הסמכות להפעיל את סמכויות החברה, וזאת לכל הפעולות האמורות להלן:

- \* לאתר, לחתתקות ולתפוס את כל גכסי החברה, מכל מין וסוג שהוא, ובכללם כספיה וזכויותיה בחברות הבנות.
- \* להפעיל את כוח השליטה של החברה בחברות הבנות.
- \* לקבל את כל המידע, מכל מין וסוג שהוא, על פעילות החברה, על רכוש ועל זכויותיה. הוא חרין בחברות הבנות;
- \* לבוא בדברים עם הנאמן לחברות הבנות, ולשם כך גם לפנות לבית המשפט הקנדי כנציג מוסמך של החברה;
- \* להתחקות אחר פעילות החברה עובר לתשקיף ולאחריו.

לצורך מימוש סמכויות אלו בעל התפקיד מוסמך בזאת להופיע בשם החברה לפני כל גוף, רשות או אדם בישראל ומחוצה לה; לקבל כל מידע מכל גורם של החברה מבעלי השליטה, מהורשויות וממי



25.4.2016



בית המשפט המחוזי בתל-אביב-יפו

פ"מ 44348-04-16 רוניק מ' נבו נאמנויות בע"מ נ' Urbancorp Inc.

לפני כבוד השופט איתן אורנשטיין, סגן נשיאה

שנתן או נתן שירותים לחברה; ולקבל מהם את כל המסמכים שיהיה סבור כי הם דרושים למילוי תפקידיו.

בעל התפקיד יוסמך לגבש מתווה ראשוני של הסדר נושים.

בעל התפקיד יפנה לבית המשפט במידת הצורך ויבקש אישורו להפעלת סמכויות החברה שלא פורטו במפורש בהחלטה.

להסרת ספק: בעל התפקיד אינו מוסמך לממש רכוש של החברה.

תנאי למינוי הוא הפקדת התחייבות עצמית של בעל התפקיד בסך של 250,000 ₪.

בעל התפקיד יעשה כל שניתן בשביל לקבל את המידע הדרוש כבר בימים חקרובים, כך שניתן יהיה להציגו במידת האפשר לפני מחזיקי איגרות חובו באספה שקבועה ליום א' חקרוב, 01.05.16.

בשלב זה אני קוצב את המינוי עד ליום 22.05.16 או עד החלטה אחרת.

דוח ראשון על פעולותיו של בעל התפקיד יוגש עד ליום 08.05.16.

חתיק נקבע לדיון ביום 22.5.16 בשעה 11:30.

המזכירות תודיע על ההחלטה טלפונית וכן תשלג אותה במקס

ניתנה היום, י"ז ניסן תשע"ו (25 באפריל 2016), בהעדר הצדדים.

איתן אורנשטיין, שופט  
סגן נשיאה



Court File No.: CV-16-11392-00CL

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

**AND IN THE MATTER OF URBANCORP INC.**

**APPLICATION OF GUY GISSIN, THE FOREIGN REPRESENTATIVE OF URBANCORP INC., UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto, Ontario, Canada

**SUPPLEMENTAL ORDER  
(FOREIGN MAIN PROCEEDING)**

**GOODMANS LLP**

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Lawyers for the Foreign Representative

Court File No. CV-16-11392-00CL

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. c-36, AS AMENDED, AND IN THE MATTER OF UCL, APPLICATION OF GUY GISSIN, THE FOREIGN REPRESENTATIVE OF URBANCORP INC., UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

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

Proceeding commenced at Toronto

**AFFIDAVIT OF KENNETH DAVID KRAFT  
(affirmed March 31, 2023)**

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*Lawyers for the Moving Party, Guy Gissin, the Israeli  
Court-appointed fiduciary officer and foreign  
representative of Urbancorp Inc.*