Supplement to the First Report to Court of KSV Restructuring Inc. as Receiver and Manager of all partnership interests in Mizrahi Constantine (180 SAW) LP owned by Sam M (180 SAW) LP Inc. and all shares in the capital of Mizrahi Constantine (180 SAW) Inc. owned by Sam M (180 SAW) Inc.

July 8, 2024

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COURT FILE NO.: CV-24-00715326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CONSTANTINE ENTERPRISES INC.

APPLICANT

AND

SAM M (180 SAW) LP INC. AND SAM M. (180) INC.

RESPONDENTS

JULY 8, 2024

1.0 Introduction

1. This report (the "**Supplemental Report**") supplements the First Report of KSV Restructuring Inc. dated June 14, 2024 in its capacity as receiver and manager (the "**Receiver**") of (i) all partnership interests in Mizrahi Constantine (180 SAW) LP owned by Sam M (180 SAW) LP Inc. ("**Mizrahi Partner**"); and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the "**General Partner**") owned by Sam M (180 SAW) Inc. ("**Mizrahi Shareholder**", and together with Mizrahi Partner, the "**Respondents**").

2. This Supplemental Report is subject to the restrictions in the First Report. Defined terms in this Supplemental Report have the meaning provided to them in the First Report unless otherwise defined herein.

1.1 Purposes of this Report

1. The purposes of this Supplemental Report are to (I) respond to concerns raised about CEI's rights in the Sale Process, as set out in a factum served on the Service List on July 5, 2024 by Sam Mizrahi and the Respondents (the "**Mizrahi Factum**"), and (ii) provide a limited update on the status of the Sale Process, since the granting of the sale process order on June 21, 2024 (the "**Sale Process Order**").

2.0 Receiver's Response

1. After the granting of the Sale Process Order but prior to receiving the Mizrahi Factum, the Receiver offered a call with the Respondents' counsel to attempt to address the Respondents' concerns regarding the Stalking Horse APS. The Respondents' counsel did not take this opportunity to engage with the Receiver, and instead, served the Mizrahi Factum. A copy of email correspondence in this regard is provided in Appendix "A".

2. The Sale Process is structured to maximize value for stakeholders in these proceedings while recognizing CEI's interests as senior secured creditor of the Respondents, two-thirds partner of the Partnership and 50% partner shareholder of the General Partner.

3. The Sale Process provides consent and consultation rights to CEI. Contrary to the positions taken in the Mizrahi Factum, the Receiver does not have the authority to compel CEI to accept any party as its partner. Additionally, it is common for senior lenders and other critical stakeholders to have consent rights in a court-supervised sale process.

4. The structure of the Sale Process also considers the size and scale of the 180 Steeles Project, being a multi-billion-dollar development project. CEI's future partner will need to be well-capitalized, and it is likely that CEI will require its future partner to have significant real estate development experience. CEI will also need to know that it and its future partner have a similar vision for the project and that they can have a constructive working relationship. The Receiver does not believe the positions set out in the Mizrahi Factum are practical in these circumstances of these proceedings.

5. The Sale Process requires that CEI provide the Receiver with a list of CEI Acceptable Bidders. CEI, with the assistance of CBRE (the sales agent in the Sale Process), has identified 36 such parties. Following the commencement of the Sale Process, CEI consented to the participation in the Sale Process of a party who was not on the original list of CEI Acceptable Bidders (and has not refused to add to the list any potential purchaser suggested by the Receiver or CBRE). CEI has advised the Receiver that it will consider additional prospective bidders who express an interest in this opportunity. On July 5, 2024, CBRE advised the Receiver that it had contacted all 36 CEI Acceptable Bidders. The Confidential Information Memorandum prepared by CBRE discloses the requirement for CEI's consent to any transaction. The Receiver is not aware of any potential bidders having raised concerns regarding CEI's rights in the Sale Process or as a prospective partner in the 180 SAW Project.

6. KSV is also the monitor (the "**Urbancorp Monitor**") and receiver of various entities in the Urbancorp Group of Companies (the "**Urbancorp Group**"). The Urbancorp Group was a major Toronto-based real estate developer that was granted protection under the *Companies' Creditors Arrangement Act* on May 18, 2016. The Urbancorp Group proceedings are ongoing.

7. Downsview Homes Inc. ("**DHI**"), an entity in the Urbancorp Group, owned a 51% interest (the "**Downsview Interest**") in an entity which was developing a large residential project (the "**Downsview Project**") at 2995 Keele Street in Toronto (formerly the Downsview Airport lands). The 49% interest in the Downsview Project was owned by Mattamy (Downsview) Limited ("**Mattamy**").

8. KSV, as the Urbancorp Monitor, served a motion on February 11, 2021 to approve a sale process for the Downsview Interest (the "**Downsview Sale Process**"). As Mattamy had a 49% interest in the Downsview Project, as well as other rights for which it had bargained in its dealings with the Urbancorp Group, the Downsview Sale Process provided Mattamy with various rights, including *veto* rights, as to the purchaser of the Downsview Interest. The sale process was opposed by the "Foreign Representative[1]" appointed in the Urbancorp Group proceedings. On June 30, 2021, Chief Justice Morawetz released his reasons approving the Sale Process (the "**Downsview Decision**"). The Foreign Representative appealed the Downsview Decision to the Ontario Court of Appeal. The appeal was dismissed (the "**Court of Appeal Decision**"). The 49th report of the Urbancorp Monitor (the "**49th Report**") discusses the Downsview Sale Process, and includes a copy of the Downsview Sale Process, the Downsview Decision and the Court of Appeal Decision. A copy of the 49th Report is provided in Appendix "B".

3.0 Conclusion and Recommendation

1. Based on the foregoing, KSV continues to respectfully recommend that the Court should approve the Sale Process as set out in the First Report, without amendment.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
ALL PARTNERSHIP INTERESTS IN MIZRAHI CONSTANTINE (180 SAW) LP OWNED BY SAM M (180 SAW) LP INC. AND ALL SHARES IN THE CAPITAL OF
MIZRAHI CONSTANTINE (180 SAW) INC. OWNED BY SAM M (180 SAW) INC.

[1] Urbancorp issued bonds in Israel. The Foreign Representative is an Israeli firm that was appointed under Part IV of the CCAA early in the CCAA proceedings to represent the Israeli Court on behalf of stakeholders in Israel.

Appendix “A”

From: Jennifer Stam (she/her)
To: Weisz, Steven J
Cc: bkofman@ksvadvisory.com; "jdietrich@cassels.com"; Jerome Morse; David Trafford; Osborne, Michael G.
Subject: RE: 180 SAW
Date: July 4, 2024 9:59:53 AM
Attachments: Endorsement - Jun 21-2024(CAN_DMS_1005955619.1).pdf

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Steve

I would suggest that you refer to Justice Black's endorsement – and specifically paragraph 17 of the endorsement - as to the purpose of the hearing next week – the only issue to be addressed are any concerns that the two respondents have in respect of the 180 SAW Stalking Horse. The rest of the matter was dealt with on the 21st.

I am fine to canvass dates with you in the future -however given your client's are subject to a receivership their role is obviously extremely limited or non-existent.

As per my previous email, if you have specific concerns about the 180 SAW Stalking Horse, please feel free to let us know.

thanks

Jennifer Stam
Partner

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jennifer.stam@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Weisz, Steven J <SWeisz@cozen.com>
Sent: Wednesday, July 3, 2024 1:50 PM
To: Jennifer Stam (she/her) <jennifer.stam@nortonrosefulbright.com>
Cc: bkofman@ksvadvisory.com; 'jdietrich@cassels.com' <jdietrich@cassels.com>; Jerome Morse <jmorse@morseshannon.com>; David Trafford <DTrafford@morseshannon.com>; Osborne, Michael G. <MOsborne@cozen.com>
Subject: RE: 180 SAW

Jenn,

I returned to the office yesterday from a vacation in Italy that commenced in the evening of the 14th of June. Michael Osborne provided the concerns and objections to the sales process at the court hearing on the 21st. David Trafford, Jerome Morse and I were all unavailable on the 21st and we should have been consulted on and agreed to the scheduling of the motion before it was booked with the Commercial List Office or a case conference should have been arranged for those purposes. I trust that going forward that you will proceed on that basis and the procedures under the Commercial List Practice Direction will be followed. We will deliver responding materials setting out the concerns and objections that Mr. Osborne raised at the Court hearing on June 21 this week.

Thanks,
Steve

COZEN O'CONNOR LLP

Steven Weisz
Chair, Canadian Bankruptcy, Insolvency and Restructuring Group | Cozen O'Connor LLP
Bay Adelaide Centre North Tower, 40 Temperance St. Suite 2700 | Toronto, ON, M5H 0B4
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Email | Map| cozen.com

From: Jennifer Stam (she/her) <jennifer.stam@nortonrosefulbright.com>
Sent: Wednesday, July 3, 2024 10:38 AM
To: Weisz, Steven J <SWeisz@cozen.com>
Cc: bkofman@ksvadvisory.com; 'jdietrich@cassels.com' <jdietrich@cassels.com>
Subject: 180 SAW

****EXTERNAL SENDER****

Steve,

I wanted to follow up on the SAW stalking horse and the endorsement of Justice Black from the June 21 hearing which provides for a comeback on the SAW stalking horse approval. We remain unaware of what your client's specific concerns are and it would be useful if you could explain the respondent's concern on the stalking horse itself as soon as possible. Given that the comeback is next Tuesday we would also appreciate receiving any responding materials you may intend to file by no later than 12pm noon tomorrow. Thanks.

Jennifer Stam
Partner

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NORTON ROSE FULBRIGHT

Appendix “B”

Forty-Ninth 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

November 17, 2021

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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

FORTY-NINTH REPORT OF KSV RESTRUCTURING INC.

NOVEMBER 17, 2021

1.0 Introduction

1.1 Cumberland CCAA Entities

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

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

3. Downsview Homes Inc. ("DHI") owns land located at 2995 Keele Street in Toronto, Ontario which is being developed into condominiums and other residences (the "Project"). The common shares of DHI are owned by Downsview (51%) and Mattamy (Downsview) Limited ("Mattamy") (49%).

[1] Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

4. Downsview's only material assets consist of cash of approximately $239,000, the common shares in DHI (the "Shares"), Downsview's interests and rights pursuant to agreements relating to the Project (collectively, the "Agreements") and any potential proceeds received or owing to Downsview on account of the Shares and the Agreements (the "Downsview Interest"), including certain management fees potentially owing from DHI to UTMI (the "Management Fees").

5. Pursuant to an order issued by the Court on June 30, 2021 (the "Sale Process Order"), the Monitor was authorized and directed to conduct a sale process (the "Sale Process") for the Downsview Interest.

1.2 Urbancorp Inc.

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 and responsibilities over UCI (the "Israeli Proceedings").

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

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

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

   c) appointed KSV as the Information Officer.

3. 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, being approximately $64 million based on the exchange rate at the time of the IPO (the "Debentures").

4. 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 loans owing at the time. One of the Shareholder Loans was advanced by UCI to Downsview in the amount of $10,094,562 (the "Downsview Shareholder Loan"). The Downsview Shareholder Loan remains outstanding.

5. Distributions from KSV[2] to UCI since the commencement of these proceedings total approximately $70 million. UCI, through the Foreign Representative, has also had recoveries in Israel from litigation it commenced against various parties involved in the underwriting of the Debentures, and will have further recoveries in these CCAA Proceedings and from the CCAA proceedings in which The Fuller Landau Group Inc. is the CCAA monitor.

6. KSV, as Information Officer of UCI, has requested financial information from the Foreign Representative regarding the administration of UCI's insolvency proceedings. Full financial disclosure has not been made to the Information Officer in this regard.

[2] Includes distributions in these CCAA Proceedings and distributions by KSV in its capacity as Monitor of TCC/Urbancorp (Bay) Limited Partnership and its subsidiaries.

1.3 Purposes of this Report[3]

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

    a) provide background information on the Project;

    b) summarize the results of the Sale Process;

    c) summarize an Agreement of Purchase and Sale dated November 17, 2021 ("APS") between Downsview and Mattamy for the sale of the Downsview Interest to Mattamy in full satisfaction of all obligations owing by Downsview to Mattamy (the "Transaction");

    d) recommend that the Court issue an order:

        i. terminating the Sale Process in accordance with the terms of the Sale Process Order;

        ii. approving the Transaction;

        iii. vesting title in and to the Purchased Assets (as defined in the APS) in Mattamy, free and clear of all liens, claims and encumbrances upon filing a certificate confirming, among other things, the completion of the Transaction (the "Certificate");

        iv. deeming that the DHI Facility has been fully repaid upon filing the Certificate;

        v. releasing the DHI Facility Charge and UDDI Administration Charge[4] upon filing the Certificate; and

        vi. sealing the confidential appendices to this Report pending further order of the Court.

1.4 Currency

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

1.5 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of DHI and the Cumberland CCAA Entities, the books and records of the Cumberland CCAA Entities and DHI, and discussions with representatives of the Cumberland CCAA Entities, Mattamy (and its legal counsel) and the Foreign Representative (and its advisors) (collectively, the "Information").

[3] Capitalized terms not defined in this section are defined in other sections of the Report.

[4] This is mis-defined as the UDDI Administration Charge in the June 15, 2016 Court order, whereas it should be the UDPDI Administration Charge.

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

3. The Monitor expresses no opinion or other form of assurance with respect to the Information presented in this Report or relied upon by the Monitor in preparing this Report. Any creditor or interested party wishing to place reliance on the Information in this Report should perform its own diligence. The Monitor accepts no responsibility to any such party for any reliance placed on the Information.

2.0 Downsview

1. The Project is a large residential development comprised of condominiums, townhomes, semi-detached homes and rental units.

2. Downsview has rights and obligations under a co-ownership agreement, as amended by various related agreements between, among other related parties, Downsview and Mattamy (the "Ownership Agreement"). Pursuant to the Ownership Agreement and the other Agreements, which Agreements predate these CCAA Proceedings, the Shares are subject to transfer restrictions in favour of Mattamy and are pledged as security to Mattamy.

3. The Project consists of two phases:

   a) phase one, which is complete, involves the construction of approximately 500 townhouses, semi-detached homes and stacked townhouses ("Phase One"); and

   b) phase two, which is planned to have approximately 470 low-rise and mid-rise rental or condominium units and 80 semi-detached freehold homes ("Phase Two").

4. At the commencement of the CCAA Proceedings, Downsview and Mattamy were required to make an equity injection in the Project to secure construction financing for Phase One. Downsview could not fund its portion of the required equity and Mattamy agreed to loan Downsview the funds it required. In this regard, On June 15, 2016, the Court granted an Order (the "DHI Facility Order") that approved a debtor-in-possession facility (the "DHI Facility") in the amount of $8 million between Mattamy, as lender, and Downsview, as borrower, as well as a charge in favour of Mattamy over Downsview's property, assets and undertaking (the "DHI Interest") to secure repayment of the amounts borrowed by Downsview under the DHI Facility (the "DHI Facility Charge"). Interest on the DHI Facility accrues at an annual rate of 15%.

5. The DHI Facility Order provided for a charge on the DHI Interest in favour of the Monitor, its counsel and counsel to Mattamy in an amount not to exceed $300,000 as security for professionals' costs (defined as the "UDDI Administration Charge" in the order).

6. Phase One closed in July 2018 and the construction financing for Phase One has been repaid in full. Phase Two is not expected to be completed until mid-2022.

7. The Project has taken longer to complete than originally forecasted. Most recently, delays have been caused by the COVID-19 pandemic.

8. On November 3, 2020 (the "November 3rd Motion"), the Court approved an amendment to the DHI Facility (the "DHI Amendment"), provided for a further advance by Mattamy to Downsview of approximately $6.5 million and extended the maturity date to February 3, 2021 (the "Maturity Date"), on which date the DHI Facility became due and payable. Downsview does not have the ability to repay the DHI Facility.

9. The current amount owing under the DHI Facility is approximately $10.1 million, plus interest and costs, which continue to accrue.

10. At the November 3rd Motion, the Foreign Representative raised various issues in the context of the extension of the maturity date of the DHI Facility. The Monitor's Forty-First Report dated October 27, 2020 and its supplemental reports dated October 29, 2020 and November 1, 2020 addressed the issues raised by the Foreign Representative. Prior to agreeing to a Maturity Date of February 3, 2021, Mattamy was prepared to extend the Maturity Date to the completion of the Project. The Monitor recommended that the Foreign Representative accept Mattamy's offer. The Foreign Representative negotiated for the Maturity Date of February 3, 2021. Copies of the Forty-First Report and its two supplemental reports are provided in Appendix "B", without appendices.

11. On January 25, 2021, the Foreign Representative served a motion requiring the Monitor to deliver a notice of arbitration to Mattamy in connection with certain aspects of the Agreements, particularly the sharing of cash flow and profits in the Project between Downsview and Mattamy. As alternative relief, the Foreign Representative also sought an order assigning the rights in the arbitration to UCI if the Monitor refused to deliver a notice of arbitration. The central issue in the Foreign Representative's arbitration request is to determine whether Mattamy has already received payments as provided for in Section 8.4(d) and 8.5(d) of the Co-Ownership Agreement (the "Provisions") or whether these amounts remain payable to Mattamy (the "Arbitration Issue").

12. On February 11, 2021, the Monitor served a motion to approve the Sale Process for the Downsview Interest.

13. The Monitor's and Foreign Representative's motions were heard by Chief Justice Morawetz on April 6, 2021. Chief Justice Morawetz released his reasons on June 30, 2021 (the "Downsview Decision"). The Downsview Decision approved the Sale Process (a copy of the Sale Process Order is provided in Appendix "C") and requires that the arbitration (the "Arbitration") requested by the Foreign Representative be initiated. Chief Justice Morawetz dismissed the Foreign Representative's request to adjourn the Sale Process until after the completion of the Arbitration. A copy of the Downsview Decision is attached as Appendix "D".

14. In light of the Downsview Decision, on July 6, 2021, the Monitor informed the Foreign Representative that the Foreign Representative should take carriage of the Arbitration and that the Monitor would be proceeding with the Sale Process. The Arbitration is scheduled to be heard in February 2022 before the Honourable Mr. Frank Newbould, Q.C., who conducted a prior arbitration in these proceedings regarding the Project.

15. On July 21, 2021, the Foreign Representative served a Notice of Motion for Leave to Appeal the Court's approval of the Downsview Sale Process (the "Leave Motion").

16. On August 6, 2021, the Foreign Representative served a motion to stay the Downsview Decision pending the determination of the leave application (the "Stay Motion").

17. On September 9, 2021, Mr. Justice Miller of the Court of Appeal for Ontario (the "Court of Appeal") issued an endorsement dismissing the Stay Motion. A copy of Justice Miller's endorsement is attached as Appendix "E".

18. On November 10, 2021, the Court of Appeal issued an order dismissing the Leave Motion and granting costs to the respondents in the amount of $5,000 each. A copy of this order is attached as Appendix "F".

2.1 Sale Process

1. As set out below, the Monitor carried out the Sale Process on the basis approved by the Court. A copy of the Sale Process is provided in Appendix "G".

2.2 Phase 1 - Pre-Marketing (June 30, 2021 to September 22, 2021)[5]

1. The Monitor assembled information to be made available to interested parties in a virtual data room ("VDR"). The information in the VDR included:

    a) general corporate information concerning DHI, including corporate by-laws, minute books and tax returns;

    b) Project information, including environmental reports, a geotechnical report, site surveys and permits;

    c) unaudited financial statements for DHI as at June 30, 2021 and for the year ended May 31, 2021;

    d) audited financial statements for DHI for the year ended May 31, 2020;

    e) Phase One financial results and Phase Two financial projections;

    f) a summary of pricing for sold and unsold Phase Two units;

    g) cost consultant reports prepared by Altus Group, the cost consultant retained by the lender for Phase 2 of the Project;

[5] The pre-marketing phase was scheduled to be fifteen business days; however, once the Foreign Representative served its Stay Motion, the Monitor advised Mattamy and the Foreign Representative that it would wait for a decision on the Stay Motion before commencing the Sale Process.

h) the material Project agreements, site drawings, site inspections and insurance certificates;

i) the Ownership Agreement and other key Agreements; and

j) the Monitor's waterfall (the "Waterfall") for the distribution of cash from each phase of the Project.

2. The Monitor prepared:

a) a teaser summarizing the opportunity (the "Teaser");

b) a confidentiality agreement (the "CA"); and

c) a Confidential Information Memorandum (the "CIM", and together with the CA and the Teaser, the "Sale Process Materials").

3. As required under the Sale Process, the Sale Process Materials:

a) provided that bidders were required to submit two offers: one assuming that Mattamy has already received the payment contemplated by the Provisions and the other assuming it has not received those payments;

b) provided that in advance of the commencement of the Sale Process, Mattamy would acknowledge that it would consider a renegotiation of the Agreements and that it is prepared to enter into new agreements concerning the Project. A copy of Mattamy's acknowledgement is provided in Appendix "H"; and

c) were reviewed and were in a form acceptable to Mattamy.

4. Mattamy provided the Monitor with the name of eight parties that it would accept as a buyer of the Downsview Interest (the "Mattamy Acceptable Buyers"). The Mattamy Acceptable Buyers are developers with experience in the GTA. The Sale Process provided veto rights as to the purchaser of the Downsview Interest because Mattamy holds a 49% interest in the Project, the Shares are subject to transfer restrictions set out in the DHI Facility Order in favour of Mattamy and Mattamy is the DIP Lender.

2.3 Phase 2 – Marketing and Due Diligence (September 23, 2021 to October 29, 2021)

1. On September 23, 2021, the Monitor distributed the Teaser and CA to the Mattamy Acceptable Buyers.

2. To obtain a copy of the CIM and access to the VDR, interested parties were required to sign the CA.

3. On September 24, 2021, the Monitor advertised the opportunity in the national edition of *The Globe and Mail* newspaper. In response to the advertisement, two parties contacted the Monitor and requested further details regarding the process. Pursuant to the terms of the Sale Process, the Monitor was required to obtain Mattamy's consent to the participation in the Sale Process of non-Mattamy Accepted Buyers. Mattamy provided its consent to allow these two parties to participate in the Sale Process.

4. The Monitor was also approached by Alan Saskin to request that Dig Developments Inc. ("DDI") be designated a Mattamy Acceptable Buyer. Mr. Saskin advised that DDI is owned by a Saskin family trust. Mattamy did not consent to DDI being a Mattamy Approved Buyer.

5. On September 23, 2021, the Monitor provided the Foreign Representative's financial advisor with the Sale Process Materials.

6. The Foreign Representative neither requested to be a Mattamy Acceptable Buyer nor did it participate in the Sale Process.

7. Eight Mattamy Approved Buyers executed CAs and were provided access to the VDR and a copy of the CIM. The Monitor facilitated diligence by the Mattamy Approved Buyers and followed up with each of these parties on several occasions in order to gauge their interest and to understand their views concerning the opportunity. None of the parties that performed due diligence raised the issue of submitting two offers as a concern.

2.4 Phase 3 – LOI Bid Deadline (October 29, 2021)

1. The Sale Process provides that letters of intent ("LOIs") be delivered by October 29, 2021; however, none were received.

2. On October 30, 2021, the Monitor advised Mattamy of the results of the Sale Process. The Sale Process provides that if no LOIs are submitted, the Monitor can bring a motion to terminate the Sale Process and to convey the Downsview Interest to Mattamy in full satisfaction of Downsview's obligations owing to Mattamy.

3. Pursuant to the terms of the Sale Process, if the Downsview Interest is not conveyed to a third party, and there are no cash proceeds of realization, Mattamy is required to fund the Monitor's fees and costs to conduct the Sale Process, including the cost of its legal counsel. These costs are estimated to be $381,000, plus the costs of this motion (plus HST) (the "Sale Process Costs"). The requirement to fund the Sale Process Costs is a condition to closing the Transaction. Mattamy has agreed to pay the Sale Process Costs.

4. The Sale Process stipulates that at its conclusion Mattamy will attest that it did not participate in any meetings with any interested parties regarding the Project and the Sale Process without the Monitor in attendance unless consented to by the Monitor. Attached as Appendix "I" is an email from counsel to Mattamy which provides this confirmation.

5. A copy of the APS between the Monitor and Mattamy is provided in Appendix "J".

2.5 Transaction

1. A summary of the Transaction is as follows:

   - **Purchaser:** Mattamy

   - **Purchased Assets:** the right, title and interest of Downsview in and to the common shares in Downsview Homes Inc., all cash held by Downsview, all contracts to which Downsview is party which relate in any way to the Downsview project and all related proceeds;

   - **Purchase Price:** $10.1 million[6] plus Mattamy's fees, costs and accruing interest to the date of Closing;

   - **Management Fees:** Mattamy acknowledges and agrees that the entitlement of UTMI to the Management Fees remains unresolved, that Mattamy is not providing consideration to UTMI as a part of the Transaction and as such UTMI retains whatever rights it may have, if any, to recover such amounts;

   - **Representation and Warranties:** consistent with standard terms of an insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties;

   - **Closing:** five days after the Court grants the Approval and Vesting Order (or such earlier day after the Court grants the Approval and Vesting Order that is agreed to by the parties), provided that if such day is not a business day, then the closing date will be the next following business day;

   - **Material Conditions include:**

     (i) the Court shall have issued an Approval and Vesting Order; and

     (ii) Mattamy shall have paid the Sale Process Costs.

2.6 Management Fees

1. The Monitor estimates that the Management Fees presently total approximately $5.5 million, including HST. Mattamy does not agree that any Management Fees are payable.

2. The issue as to whether UTMI is entitled to the Management Fees has not yet been resolved. The Monitor and the Foreign Representative take the position that the Management Fees are payable to UTMI. Mattamy disputes this.

3. The Sale Process provided that if no consideration was paid for the Management Fees, UTMI will retain whatever rights it may have, if any, to recover such fees from Mattamy, without prejudice to Mattamy's position that neither Downsview nor UTMI is entitled to the payment of Management Fees.

[6] Being the estimated amount of the DHI Facility as of November 2, 2021.

4. The Monitor has recommended to Mattamy and the Foreign Representative that the Management Fee issue be settled. Mattamy and the Foreign Representative have expressed an interest in resolving all issues related to Downsview, including the Management Fees. As of the date of this Report, the Monitor is unable to comment as to whether the discussions will result in a settlement. The Monitor will update the Court regarding the Management Fee issue on the return of this motion.

2.7 Conclusions

1. The Monitor is of the view that the Transaction is the best available in the circumstances for the following reasons:

   a) the Sale Process was conducted in accordance with its terms;

   b) the Transaction was specifically contemplated by the Sales Process if no LOIs are received;

   c) the DHI Facility matured on February 3, 2021 and became due and payable at that time. Downsview does not have the ability to repay the DHI Facility;

   d) Mattamy provided the Monitor with eight Mattamy Approved Buyers prior to the commencement of the Sale Process and agreed to two additional parties participating in the Sale Process. Mattamy worked cooperatively with the Monitor to carry out the Sale Process;

   e) In the Monitor's view, the Mattamy Approved Buyers were all credible parties capable of fully participating in the Sales Process and closing any resulting transaction;

   f) Mattamy confirmed that it was prepared to renegotiate the Agreements, as required pursuant to the Sale Process. The Agreements address the economics of the Project, i.e. the sharing of profit and cash flow;

   g) the Foreign Representative did not request to be a Mattamy Approved Buyer. The Foreign Representative has received proceeds of at least $70 million since the commencement of these proceedings. To the extent that the Foreign Representative believes that there is value in the Project, it could have asked to participate as prospective purchaser or it could have repaid the DHI Facility;

   h) it is the Monitor's view that the fact that no LOIs were submitted for the Downsview Interest reflects that the potential return to a purchaser does not justify the cost[7], time and risk associated with acquiring the Downsview Interest, regardless of the outcome of the Arbitration;

   i) in the Monitor's view, the lack of interest from Mattamy Approved Buyers illustrates that the outcome of the Arbitration is irrelevant. In these circumstances, the Monitor sees no basis to wait for the outcome of the Arbitration to seek approval of the Transaction;

[7] Repayment in full of the DHI Facility.

j) in accordance with the terms of the Sale Process Order, Mattamy has agreed to pay the Sale Process Fees. Accordingly, the Sale Process will not be funded by monies that would otherwise be distributable to UCI; and

k) absent the Transaction, there will be ongoing professional fees and other costs for which there is no benefit to the CCAA proceedings.

3.0 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)(d) of this Report.

* * *

All of which is respectfully submitted,

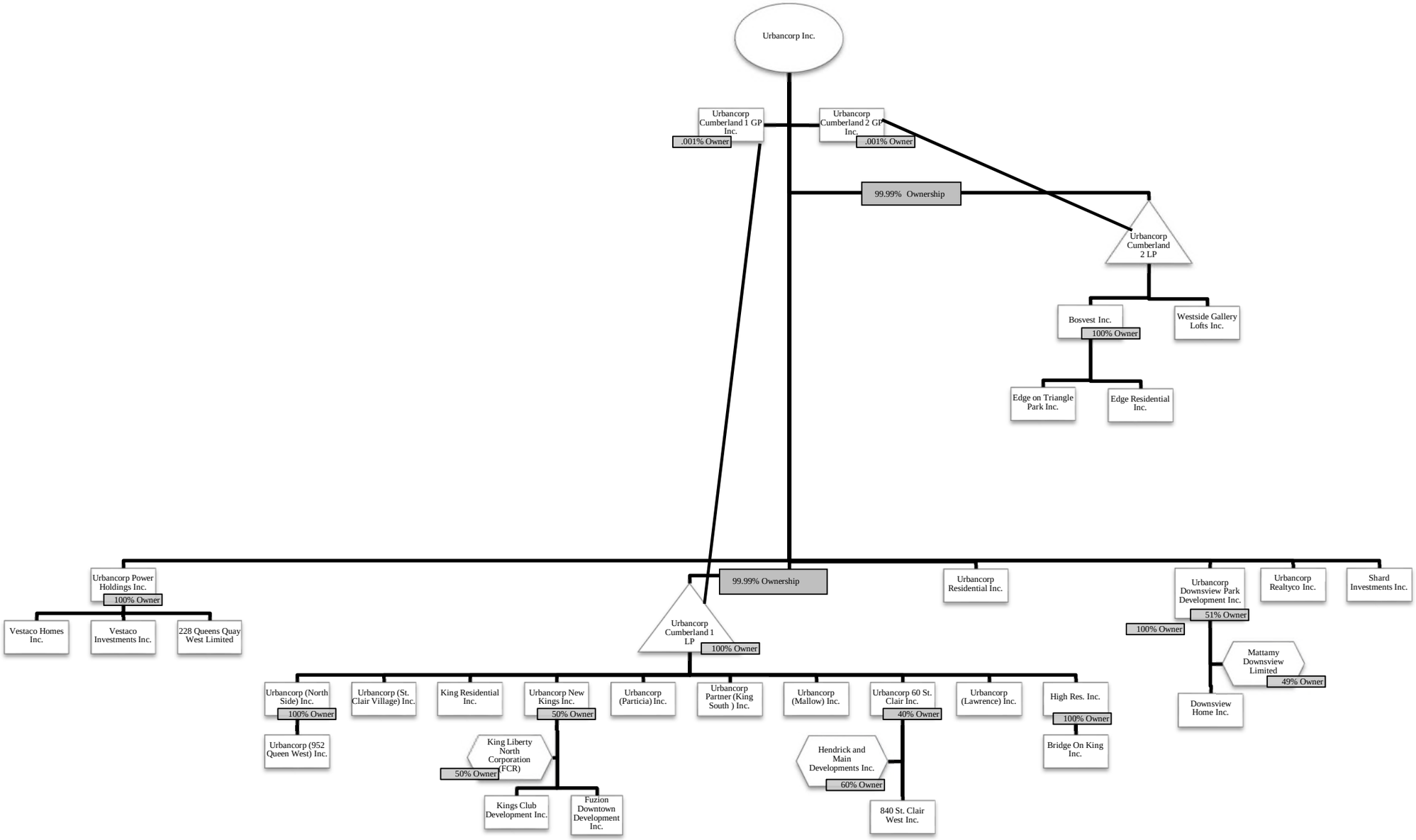
KSV Restructuring Inc.

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

Schedule “A”

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

Appendix “A”


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

Appendix “B”

Forty-First 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

October 27, 2020

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Schedules and Appendices

Schedules

Appendix **Tab**

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

FORTY-FIRST REPORT OF KSV RESTRUCTURING INC.

October 27, 2020

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.[1] ("KSV") was appointed as the Proposal Trustee of each of the NOI Entities.

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

[1] Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

3. Certain Cumberland CCAA Entities[2] are known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP ("Cumberland"). Collectively, Cumberland and its direct and indirect subsidiaries are the "Cumberland Entities" and each individually is a "Cumberland Entity". Each Cumberland Entity is a nominee for Cumberland and, as such, the assets and liabilities of the Cumberland Entities are assets and liabilities of Cumberland. The remaining Cumberland CCAA Entities[3], other than UTMI, are directly or indirectly wholly owned by Urbancorp Inc. ("UCI") (collectively, the "Non-Cumberland Entities" and each a "Non-Cumberland Entity"). The corporate chart for the Cumberland CCAA Entities and the Non-Cumberland Entities is provided in Appendix "A".

1.2 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 "Project").

2. Downsview has a 51% ownership interest in DHI and Mattamy (Downsview) Limited ("Mattamy") has a 49% interest in DHI.

3. The Project consists of two phases:

   a) phase one, which is complete, involves the construction of just under 500 townhouses, semi-detached homes and stacked townhouses ("Phase One"); and

   b) phase two, which is presently planned to have approximately 470 low to mid-rise rental or condominium units and 80 semi-detached freehold homes ("Phase Two").

4. At the commencement of the CCAA Proceedings, Downsview was required to make an equity injection in the Project to secure construction financing for the First Phase. Downsview could not fund its portion of the required equity and Mattamy agreed to loan Downsview the funds it required.

5. On June 15, 2016, the Court approved a debtor-in-possession facility (the "DHI Facility") in the amount of $8 million between Mattamy, as lender, and Downsview, as borrower, as well as a charge in favour of Mattamy over Downsview's assets, properties and undertakings to secure repayment of the amounts borrowed by Downsview under the DHI Facility (the "DHI Facility Charge"). Interest on this facility accrues at an annual rate of 15%.

6. Phase One closed in July 2018 and the Phase One construction financing has been repaid in full. Phase Two is not expected to be completed for several years.

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

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

7. The Project has taken longer to complete than forecasted earlier in these proceedings. Most recently, delays have been caused by the COVID-19 pandemic.

8. As of July 20, 2018[4], the amount owing under the DHI Facility was $4,603,923.91. Interest and costs continue to accrue. The maturity date of the DHI Facility was March 31, 2020; however, Downsview and Mattamy have been treating the DHI Facility as if the term had been extended.

9. Pursuant to a term sheet dated February 5, 2020 (the "NBC Term Sheet"), National Bank of Canada ("NBC") is prepared to provide up to $178.6 million for construction financing for Phase Two. The NBC Term Sheet requires $18,803,333 of equity in the Project. DHI currently has equity of $6,126,455. Accordingly, Downsview is required to inject equity in the amount of $6,465,207[5]. As Downsview does not have the capital to fund its commitment, Mattamy has agreed to lend Downsview the amounts required pursuant to the terms of an amendment to the DHI Facility (the "DHI Amendment").

1.3 Purposes of this Report

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

   a) summarize the DHI Amendment; and

   b) recommend that the Court issue an order approving the DHI Amendment and increasing the amount of the DHI Facility to $14,465,207.

1.4 Currency

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

1.5 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information of DHI, Mattamy and the Cumberland CCAA Entities, the books and records of the Cumberland CCAA Entities, Mattamy and DHI and discussions with representatives of the Cumberland CCAA Entities and Mattamy (the "Information").

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

[4] This date has been used because there is agreement among the parties as to the amount outstanding under the DHI Facility as at that date. There are certain awards related to the Arbitration (as defined below) that may further affect the amount outstanding under the DHI Facility.

[5] ($18,803,333-$6,126,455) * 51% ownership interest of Downsview = $6,465,207.

3. The Monitor expresses no opinion or other form of assurance with respect to the Information presented in this Report or relied upon by the Monitor in preparing this Report. Any creditor or investor wishing to place reliance on the Information herein should perform its own diligence. KSV accepts no responsibility to any such party for any reliance placed on the Information

4. The COVID-19 pandemic may have a material impact on the Project, its timelines for completion and the financial success of the Project. The impact of the COVID-19 pandemic on the Project cannot be forecasted at this time.

2.0 Background

2.1 Urbancorp Inc.

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

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

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

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

   c) appointed KSV as the Information Officer.

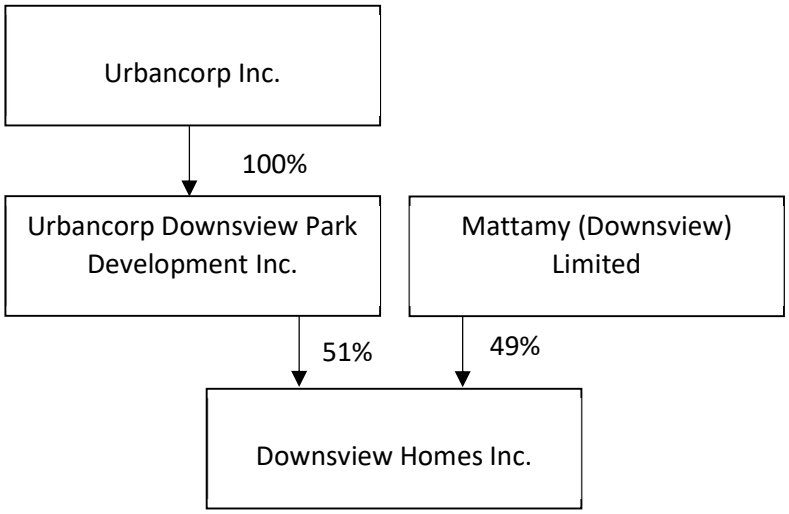
3. UCI was incorporated on June 19, 2015 to raise debt in the public markets in Israel. Pursuant to a Deed of Trust dated December 7, 2015, UCI made a public offering of debentures (the "IPO") in Israel of NIS180,583,000, being approximately $64 million based on the exchange rate at the time of the IPO (the "Debentures").

4. 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. One of the Shareholder Loans was advanced by UCI to Downsview in the amount of $10,094,562. The Downsview Shareholder Loan remains outstanding.

3.0 Downsview

3.1 Ownership

1. The ownership structure of the Project is presented below.



2. The Project is situated on the site of a former Canadian Forces Base in Toronto, Ontario (the Downsview Airport lands) and the surrounding area has been designated as Canada's first national urban park.

3. Downsview's only material asset is its 51% interest in DHI. Downsview's shares in DHI are subject to transfer restrictions and co-ownership obligations with, and a pledge in favour of, Mattamy, as general and continuing security for the payment of all monies owed by Downsview to Mattamy.

4. Mattamy has provided the Monitor with several budgets and "waterfalls" during these proceedings. Mattamy's waterfalls reflect Mattamy's view as to how the proceeds from Downsview are to be distributed to each of Mattamy and Downsview. The Monitor and the Foreign Representative have expressed concerns to Mattamy throughout the course of these proceedings regarding the waterfalls, including that they do not appear to have been consistently prepared. Mattamy provides the accounting for the Project and maintains its books and records.

3.2 DHI Facility

1. A copy of the DHI Facility Term Sheet dated June 8, 2016 is attached as Appendix "B". A summary of the terms of the DHI Facility Term Sheet is provided in the Monitor's First Report to Court dated June 9, 2016 (the "First Report"). A copy of the First Report is attached as Appendix "C", without appendices.

2. The DHI Amendment amends the DHI Facility Term Sheet. A copy of the DHI Amendment with a blackline to the original DHI Facility Term Sheet is attached as Appendix "D". The only material changes to the DHI Facility Term Sheet are as follows:

   a) Amount available: increased by $6,465,207, being the capital Downsview requires to fund its portion of the equity required under the NBC Term Sheet;

   b) DHI Facility Charge: increased to $14,465,207, representing the original amount approved to be advanced under the DHI Facility ($8 million) and the new approved advance amount of approximately $6.5 million;

   c) Maturity date: the earliest of (i) June 20, 2022; (ii) the date upon which all conditions precedent to a plan under the CCAA have been satisfied; (iii) the date on which Downsview has sufficient funds to repay the DHI Facility in full; and (iv) such earlier date upon which repayment is required due to the occurrence of an event of default;

   d) Further Advances: if NBC requires that the shareholders contribute additional amounts to fund construction of the Downsview Project, each of Downsview, Mattamy and the Monitor agree that Mattamy will contribute the additional amounts and the amounts will be deemed to be Expenses (as defined in the Restated Co-Ownership Agreement dated July 30, 2013 between Mattamy, Downsview, DHI and Downsview Park Management Inc.) and shall be paid to Mattamy prior to any other amounts in the waterfall.

3.3 Monitor's Recommendation

1. The Monitor believes that the DHI Amendment is required to complete or significantly advance the Project and therefore recommends its approval. In making this recommendation, the Monitor considered the applicable factors in Section 11.2 of the CCAA.

   a) Whether the loan would enhance the prospects of a viable compromise or arrangement.

   - Downsview does not have the liquidity to advance the Project absent funding by NBC under the terms of the NBC Term Sheet;
   - the NBC Term Sheet requires the DHI Amendment;
   - Mattamy has advised that absent approval of the DHI Amendment, it is considering enforcing its security on the shares of DHI. The result of an enforcement process is uncertain, but would likely result in material delays in the completion of the Project;
   - the Monitor understands that Mattamy funding under the DHI Amendment is conditional upon execution of the DHI Amendment;

- the interest rate on the funds under the DHI Amendment is the same as the interest rate on the DHI Facility (15%) and was previously approved by the Court in these proceedings; and

- no additional security is being pledged to secure Downsview's obligations.

b) *Whether any creditor would be materially prejudiced as a result of the security or charge*

- The only material creditors of Downsview are Mattamy and the Foreign Representative. Mattamy is supportive of the DHI Amendment. Legal counsel to the Foreign Representative has provided the Monitor with comments on the DHI Amendment, which the Monitor has discussed with the Foreign Representative. The Monitor understands that the Foreign Representative may file responding materials addressing certain of its concerns with the DHI Amendment.

c) *The nature and value of the company's property.*

- Downsview has a 51% interest in the Project. Completion of the Project will provide more certainty as to the value of the Downsview interest. Further delays to the Project will add to its cost.

4.0 Timeline

1. The Monitor has encouraged the Foreign Representative to engage in a dialogue with Mattamy to settle the issues relevant to the value of the Downsview interest in the Project. There have been several disagreements among the parties over numerous issues affecting the Project since the commencement of these proceedings. Certain of the disagreements were addressed in an arbitration before the Honourable Frank Newbould in September 2019 (the "Arbitration"). There are several remaining issues. Absent a settlement of these matters, the CCAA proceedings may be required to continue until the Project is completed, which may be several years from now.

5.0 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)(b) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Schedule “A”

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

Supplement to the Forty-First 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

October 29, 2020

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Appendices

Confidential Appendix

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

SUPPLEMENT TO FORTY-FIRST REPORT OF KSV RESTRUCTURING INC.

October 29, 2020

1.0 Introduction

1. This supplemental report (the "Report") supplements the Forty-First Report of the Monitor dated October 27, 2020 ("Forty-First Report").

2. Defined terms in this Report have the meaning provided in the Forty-First Report unless otherwise defined herein.

3. This Report is subject to the restrictions and qualifications in the Forty-First Report.

4. The Report addresses certain comments in the Affidavit of Guy Gissin affirmed on October 29, 2020 (the "Gissin Affidavit").

2.0 Response to Gissin Affidavit

1. The DHI Amendment specifically preserves the right to determine the amount owing under the DHI Facility. To the Monitor's knowledge, Mattamy has not failed to pay any amounts owing under the Arbitration decision rendered by Mr. Justice Newbould in September 2019. There are ongoing disputes between the Foreign Representative and Mattamy concerning amounts outstanding under this facility.

2. A copy of the NBC Credit Facility was recently provided by Mattamy's counsel to the Monitor. With the consent of Mattamy, the Monitor provided it to legal counsel for the Foreign Representative on the evening of October 29, 2020.

3. Mattamy has advised the Monitor that it is prepared to reduce the maximum of the DHI Facility Charge to $11 million.

4. Mattamy has advised that it is prepared to consent to a maturity date of three months from the date of execution of DHI Amendment.

5. Attached as Confidential Appendix "1" is an email from October 1, 2020 from counsel for Mattamy to counsel for the Foreign Representative. The email responds to the email included in the Confidential Appendix in the Gissin Affidavit affirmed on October 29, 2020.

6. The Monitor believes it is appropriate to seal Confidential Appendix "1" as it responds to a confidential appendix in the Gissin Affidavit.

* * *

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

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Urbancorp Residential Inc.
Urbancorp Realtyco Inc.

November 1, 2020

Second Supplement to the Forty-First 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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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SECOND SUPPLEMENT TO FORTY-FIRST REPORT OF KSV RESTRUCTURING INC.

November 1, 2020

1.0 Introduction

1. This second supplemental report (the "Report") further supplements the Forty-First Report of the Monitor dated October 27, 2020 (the "Forty-First Report").

2. Defined terms in this Report have the meaning provided to them in the Forty-First Report or in the First Supplement to the Forty-First Report, unless otherwise defined herein.

3. This Report is subject to the restrictions and qualifications in the Forty-First Report.

4. This Report is intended to provide the Court with background information regarding the Project and to frame the dispute presently before the Court.

5. The Monitor is of the view that none of the issues raised by the Foreign Representative in the Gissin Affidavit are pertinent to approval of the DHI Amendment, particularly given Mattamy's agreement to have the DHI Facility mature on January 31, 2021 and the reduction in the maximum amount of the DHI Facility Charge, both of which were requested by the Foreign Representative. As further detailed below, none of the matters raised in the Gissin Affidavit are affected by the DHI Amendment.

2.0 History of the DHI Dispute

1. The relevant entities with an interest in the Project are Mattamy and UDPDI, a CCAA applicant over which the Monitor has been appointed. UDPDI is the co-owner of the Project via its equity interest in DHI, the legal and beneficial owner of the Project.

2. The shares of DHI are owned by UDPDI (51%) and Mattamy (49%). UDPDI's only material asset is its interest in DHI. It also has a small cash balance.

3. The Foreign Representative represents UCI, the shareholder of UDPDI. UCI is an unsecured creditor of UDPDI in the amount of $10,094,562. It is not a shareholder of DHI nor a creditor of DHI.

4. UCI was incorporated on June 19, 2015 to raise debt in the public markets in Israel. UCI made a public offering of debentures (the "IPO") in Israel that raised approximately $64 million. UCI's loan to UDPDI was made with proceeds sourced from the IPO.

5. According to the Gissin Affidavit, the prospectus issued by UCI in connection with the IPO forecasted that the Project would generate gross profit of approximately $76 million[1]. However, based on financial information provided by Mattamy, the first phase of the Project underperformed significantly. The second phase of the Project is currently projected to be profitable, but the actual profitability will not be determined for several years, and the value of UDPDI's participation in the profit is uncertain. Mattamy has provided the Monitor and the Foreign Representative with financial forecasts reflecting that the UDPDI interest has no value.

6. At the commencement of the Cumberland CCAA Proceedings, UDPDI was required to make an equity injection into the Project of approximately $8 million to secure construction financing. UDPDI did not have the cash to fund its portion of the required equity; however, Mattamy agreed to loan UDPDI the funds it required. The Court approved the DHI Facility in June 2017. Pursuant to the terms of the DHI Facility, Mattamy has security over UDPDI's property, assets and undertaking for all present and future obligations owing by UDPDI to Mattamy in respect of the Project.

7. UDPDI also has obligations to Mattamy under a co-ownership agreement with Mattamy (the "Ownership Agreement"). Pursuant to the Ownership Agreement, UDPDI's shares of DHI are subject to transfer restrictions in favour of Mattamy and are pledged as security to Mattamy[2]. Mattamy and UDPDI have entered into several other agreements in respect of the Project (collectively, the Ownership Agreement and the other agreements are referred to as the "Agreements").

8. The amount presently owing under the DHI Facility ranges from approximately $2 million and $5 million (plus interest and costs which continue to accrue). The amount owing is subject to disputes based on the treatment of certain items decided in favour of UDPDI at an arbitration conducted before Former Justice Newbould (the "Arbitrator") in September 2019 (the "Arbitration"). This is discussed in greater detail in paragraphs 12 and 13 below.

[1] It is not clear that this correct; however, the Prospectus suggests that the Project would generate significant gross profit.

[2] While the agreement to provide security is in the Ownership Agreement, upon transferring the beneficial ownership in the Project to DHI in exchange for equity in DHI, there is a separate Share Pledge Agreement dated June 3, 2015 which secures all obligations under the Agreements (not just the Ownership Agreement) and the payment of all monies owed by UDPDI to Mattamy.

9. Mattamy has provided the Monitor and Foreign Representative with budgets and "waterfalls" during these proceedings. Mattamy maintains the books and records for the Project and performs all accounting for it. The Foreign Representative and the Monitor are reliant on Mattamy for that information.

10. The budgets reflect the results of the Project at a point in time, as well as the forecasted results of the balance of the Project at that time. The waterfalls reflect Mattamy's view at certain points in time as to how the proceeds from the Project are to be distributed to each of Mattamy and UDPDI in each phase of the Project. The budgets and waterfalls have been updated as the Project advanced. The Monitor, on behalf of UDPDI, and the Foreign Representative have expressed concerns to Mattamy that, *inter alia*, the budgets and waterfall have been inconsistently prepared.

11. Since the outset of the CCAA Proceedings, there have been several disagreements among Mattamy, the Foreign Representative and the Monitor on behalf of UDPDI concerning the interpretation of the Agreements. In certain instances, the Monitor has disagreed with the Foreign Representative and in others it has disagreed with Mattamy.

12. The Arbitration was intended to resolve disagreements over aspects of the waterfall. The Arbitrator decided some of the issues in favour of UDPDI and others in favour of Mattamy. The Foreign Representative agreed that certain amounts decided in favour of UDPDI could be set off against the DHI Facility. The treatment of other matters decided in favour of UDPDI has not been settled, including an issue concerning certain project expenses[3] funded by UDPDI many years ago. Based on the Gissin Affidavit, the Foreign Representative appears to be suggesting that the project expense amount should be set off against the DHI Facility.

13. As a result of the Arbitration decision, the differing views on the Agreements and Project accounting matters, the amount presently owing under the DHI Facility remains unresolved.

3.0 Conclusion

1. Construction financing is required to advance the Project. Mattamy has arranged and negotiated the NBC Facility. UDPDI is required to provide 51% of the equity required under the NBC Facility. UDPDI is impecunious. It cannot fund its portion of the required equity. Pursuant to the DHI Amendment, Mattamy has offered to advance UDPDI the required capital. Without the NBC Facility, the Project will be delayed. Delays will negatively affect the Project's stakeholders, including Mattamy as secured creditor, trades which have been providing, and which continue to provide, goods and services to the Project, purchasers who have bought units in the development and the Foreign Representative.

2. Nothing in the DHI Amendment affects the issues in dispute between the Foreign Representative, Mattamy and the Monitor on behalf of UDPDI.

[3] The principal amount owing for project expenses is $2.2 million. The $4.2 million amount was calculated by the Foreign Representative and appears to include interest at 15% per annum. Mattamy has not had the opportunity to provide its opinion on this matter to the Monitor. The Monitor does not believe that Mattamy would have been aware of the Foreign Representative position on the project expense setoff prior to the Gissin Affidavit.

3. There is no commercially reasonable basis for believing that UDPDI's required equity contribution would be funded by anyone other than Mattamy given the co-ownership structure and Mattamy's existing security and control over the development of the Project.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Schedule “A”

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

Appendix “C”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 30TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF JUNE, 2021
	)	

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

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

ORDER
(Sale Process for UDPDI's Interest in DHI)

THIS MOTION, made by KSV Restructuring Inc. (formerly KSV Kofman Inc.), in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants and the affiliated entities listed on Schedule "A" (collectively, the "**CCAA Entities**", and each individually a "**CCAA Entity**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, among other things, approving a sales process for Urbancorp Downsview Park Development Inc.'s ("**UDPDI**") interest in Downsview Homes Inc. and related project agreements as set out the Monitor's Forty-

Fourth Report to Court dated February 11, 2021 (the "**Report**") , was heard on April 6, 2021 by judicial videoconference using Zoom due to the COVID-19 pandemic.

ON READING the Notice of Motion of the Monitor, the Report and on hearing the submissions of respective counsel for the Monitor, Mattamy (Downsview) Limited, Adv. Guy Gissin in his capacity as the Court-appointed Israeli Functionary of Urbancorp Inc., and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service as filed:

SERVICE

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

APPROVAL

2. **THIS COURT ORDERS** that the Sales Process as defined and set out in the Report be and is hereby approved and that the Monitor be and is hereby authorized and directed to conduct the Sales Process.

SEALING

3. **THIS COURT ORDERS** that the Confidential Appendices to the Report be and are hereby sealed and shall not be made part of the public record pending further order of this Court.

4. **THIS COURT ORDERS** that the un-redacted copies of the following materials:

(a) Motion Record of the Foreign Representative, dated January 25, 2021 (Arbitration Request);

(b) Motion Record of the Monitor (Sale Process);

(c) Responding Motion Record of the Foreign Representative, dated March 1, 2021;

(d) Supplement to the 44th Report of the Monitor;

(e) Supplementary Affidavit of Guy Gissin, affirmed March 16, 2021;

(f) Factum of Guy Gissin, the Foreign Representative, dated March 24, 2021;

(g) Factum of Mattamy (Downsview) Limited, dated March 24, 2021;

(h) Reply Factum of the Foreign Representative, dated March 31, 2021;

(i) Reply Factum of the Monitor, March 31, 2021; and

(j) Reply Factum of Mattamy (Downsview) Limited, March 31, 2021

be and are hereby sealed and shall not be made part of the public record pending further order of this Court.

Chief Justice G.B. Morawetz

SCHEDULE "A"

LIST OF NON APPLICANT AFFILIATES

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen’s Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER
(Sale Process for UDPDI's Interest In DHI)

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Lawyers for the Monitor

Appendix “D”

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

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Chief Justice G.B. Morawetz

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

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

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

ENDORSEMENT

Background

[1] This endorsement addresses two motions.

[2] KSV Restructuring Inc. ("KSV"), in its capacity as court-appointed Monitor (the "Monitor") of the Applicants and the Affiliated Entities listed on Schedule "A" ((collectively, the "CCAA Entities"), and each individually (a "CCAA Entity")), pursuant to the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C–36, as amended (the "CCAA") seeks an order approving the sales process (the "Sales Process") for Urbancorp Downsview Park Development Inc.'s ("Downsview") interest in Downsview Homes Inc. ("DHI") and the related project agreements (the "Downsview Interest"), and sealing the confidential appendices (the "Confidential Appendices") to (i) the Forty-Fourth Report of the Monitor dated February 11, 2021 (the "Report") and (ii) the supplement to the Report dated March 8, 2021 (the "Supplement").

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

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

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

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

[7] UCI has been attempting to have two issues arbitrated, namely: (i) is Mattamy entitled to an additional $21 million priority over Downsview in respect of future profits from DHI; and (ii) the quantum of management fees Mattamy received during Phase 1 of the Project.

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

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

The Facts

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

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

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

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

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

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

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

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

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

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

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

Position of the Parties

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

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

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

[23] The proposed Sales Process provides that at the end of the sixth week, each bidder will be required to submit letters of intent ("LOIs"). If no LOIs are submitted, the Monitor shall be entitled to terminate the Sales Process and convey the Downsview Interest to Mattamy in full satisfaction of all obligations of Downsview owing to Mattamy.

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

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

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

[27] The Foreign Representative is of the view that it will be practically impossible for any interested bidder to properly assess or conduct due diligence on the likely outcome of the issues as between Downsview and Mattamy and it is unlikely any party will spend the time and funds and undertake due diligence for the Project when such uncertainty exists. The Foreign Representative contends that the magnitude is such that the outcome could determine whether there is any value in Downsview's interest in DHI. Further, resolving these issues is critical in the event a Sales Process is to be commenced so that potential purchasers have a clear understanding of whether Mattamy has $21 million outstanding under the Co-ownership Agreement and the status of the Project management fees, as well as full information regarding the financial condition of the Project.

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

Issues

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

(a) should the Sales Process be approved?;

(b) should the court grant a sealing order in respect of the Confidential Appendices to the Report and Supplement?

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

(a) should the Monitor be directed to assign to UCI the rights to proceed with arbitration?

(b) alternatively, should the Monitor be directed to initiate the Notice to Arbitrate with UCI as an interested party?

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

Analysis

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

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

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

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

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

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

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

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

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

[40] The final issue to consider on the Foreign Representative's motion is whether the Monitor's motion should be adjourned until the arbitration has proceeded and an award granted (if the parties settle), or in light of my conclusion on the arbitration issue, whether the Sales Process can be run concurrently with the arbitration.

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

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

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

> [4] **THIS COURT ORDERS** that UC Downsview shall be and is hereby restricted from transferring or attempting to transfer any of its shares or any economic, right, title or interest in Downsview Homes Inc. ("DHI") to any party prior to obtaining the prior written consent of MDL, which consent is not to be unreasonably withheld. For greater certainty, the restrictions contained in this paragraph 4 will survive the repayment of the DHI Facility.
>
> [5] **THIS COURT ORDERS** that the rights, remedies and recourses provided to and in favour of MDL under or pursuant to this Order and the DHI Term Sheet are in addition to, not in substitution for and without prejudice to, any rights, remedies or recourses provided to MDL under any other agreements with any of the Applicants, including, without limitation, UC Downsview.

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

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

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

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

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

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

(a) is a sale transaction warranted at this time?

(b) will the sale benefit the whole "economic community"?

(c) do any of the debtor's creditors have a *bona fide* reason to object to a sale of the business? and

(d) is there a better viable alternative?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sealing Order

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

> [53] Section 137(2) of the *Courts of Justice Act (Ontario)* provides courts with the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed, and not form part of the public record, notwithstanding the general principle that court hearings should be open to the public.
>
> [54] In *Sierra Club of Canada* v. *Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where:
>
> (a) the order is necessary to prevent serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk and;
>
> (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right of free expression, which includes the public interest in open and accessible court proceedings.
>
> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 at para. 53.
>
> [55] In the insolvency context, courts have applied this test and authorized sealing orders over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.
>
> [56] The Monitor is seeking a sealing order in respect of the Confidential Appendices to the Report containing (i) the most recent budget provided by Mattamy to the Monitor as to the distribution of proceeds from the sale of the Downsview Interest as between Mattamy and Downsview; (ii) the Foreign Representative's estimate of the value of the Downsview Interest; and (iii) the Monitor's estimate of the value of the Downsview Interest.

> [57] The Monitor is also seeking a sealing order in respect of the Confidential Appendices to the Supplement containing (i) various iterations of the waterfalls reflecting the distribution of cash flows from the phases of the Project provided by the Foreign Representative on the one hand and the Monitor on the other; (ii) the decision from the prior confidential arbitration before the Honourable Frank Newbould in September 2019 (the "Prior Arbitration"); and (iii) an affidavit sworn by Chris Strzemiecz in the course of the Confidential Prior Arbitration.
>
> [58] The Confidential Appendices contain highly sensitive commercial information of Downsview and the Downsview Interest that could undermine the integrity of the Sale Process and the potential arbitration of the Provisions. The disclosure of the Confidential Appendices prior to the completion of a transaction (or multiple transactions) under the Sale Process would pose a serious risk to the Sale Process in the event that the transaction (or multiple transactions) does not close, as it could jeopardize dealings with any future prospective purchasers or liquidators of the Downsview Interest. With respect to the Confidential Appendices relating to the Prior Arbitration, their disclosure would breach the relevant confidentiality agreement.
>
> [59] If granted, the sealing order will protect the commercial interests of Downsview and its stakeholders. This salutary effect greatly outweighs the deleterious effects of not sealing the Confidential Appendices, namely the lack of immediate public access to all documents filed in these proceedings.
>
> [60] As a result, it is submitted that the test for a sealing order has been met and the Court should make an order that the Confidential Appendices be treated as confidential, sealed and not form part of the public record in the within proceedings pending the completion of these proposal proceedings.

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

> [37] Court proceedings are presumptively open to the public (*MacIntyre*, at p. 189; *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, [2012] 2 S.C.R. 567, at para. 11).
>
> [38] The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

(1) court openness poses a serious risk to an important public interest;

(2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

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

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

Disposition

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

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

Chief Justice G.B. Morawetz

Date: June 30, 2021

SCHEDULE "A'

LIST OF NON-APPLICANT AFFILIATES

URBANCORP POWER HOLDINGS INC.

VESTACO HOMES INC.

VESTACO INVESTMENTS INC.

228 QUEEN'S QUAY WEST LIMITED

URBANCORP CUMBERLAND 1 LF

URBANCORP CUMBERLAND 1 GP INC.

URBANCORP PARTNER (KING SOUTH) INC.

URBANCORP (NORTH SIDE) INC.

URBANCORP RESIDENTIAL INC.

URBANCORP REALTYCO INC.

SCHEDULE "B"

IN THE MATTER OF THE ARBITRATION ACT, 1991, S.O.1991, c.17AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

GUY GISSIN IN HIS CAPACITY AS THE FOREIGN REPRESENTATIVE AND FUNCTIONARY OFFICER OF URBANCORP INC.

Claimant

- and -

MATTAMY HOMES LIMITED

Respondent

NOTICE OF REQUEST TO ARBITRATE

WHEREAS the Urbancorp Downsview Park Developments Inc., a wholly-owned subsidiary of Urbancorp Inc., the Claimant and the Respondent (together, the "Parties") are parties to a co-ownership agreement dated July 30, 2013 (the "Co-Ownership Agreement ") and various other agreements relating to a real estate development located at Downsview Park (the "Project"), as well as various other agreements relating to the Project ;

AND WHEREAS a dispute has arisen between the Parties regarding the interpretationand performance of the Co-Ownership Agreement and the other agreements relating to the Project;

AND WHEREAS the Co-Ownership Agreement provides that any disputes that arisebetween the Parties under or by virtue of the Co-Ownership Agreement shall be resolved by arbitration;

NOW THEREFORE the Claimant gives notice of his intention to commence arbitrationpursuant to the Co-Ownership Agreement and the various agreements relating to the Project.

The full particulars of the Claimant's claim are set out in its Claim , which is attached.

January 18, 2021

DENTONS CANADA LLP

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neil .rabinovitch@dentons.com

Lawyers for the Claimant ,

Guy Gissin, in his capacity as Foreign Representative and Functionary Officer of Urbancorp Inc, and not in his personal capacity

,"

- .) -

(i) SCHEDULE "A" -ARBITATION CLAIM

1. Guy Gissin in his capacity as foreign representative ("Foreign Representative") ofUrbancorp Inc. ("UCI") claims:

   (a) A declaration that the $21 million obligation from Downsview Homes Inc. ("DHI") in favour of Mattamy (Downsview) Limited ("Mattamy") provided for under the June 3, 2015 Amendment to the Shareholder's Agreement (the "Mattamy Shareholder Loan") as evidenced by the Mattamy Note is duplicativeof the $21 million priority payment to Mattamy under Section 8.4(d) of the Co-Ownership Agreement (the "Mattamy Co-Ownership Payment) in relation to the Downsview Project ("Project");

   (b) In the alternative to an Order rectifying the June 3, 2015 Amendment to theShareholder's Agreement to provide that the Mattamy Shareholder Loan is insubstitution for the Mattamy Co-Ownership Payment;

   (c) A declaration that the Mattamy Shareholder's Loan, the Mattamy Note and theMattamy Co-Ownership Payment have been fully satisfied as a result of the payment by DHI to Mattamy of $21 million, plus interest on July 20, 2018;

   (d) In the further alternative to a. and b. above , a declaration that Mattamy is estopped from claiming payment of the Mattamy Co-Ownership Payment; and

   (e) An accounting of all Project Management Fees paid to or received by Mattamywith respect to the Project.

(ii) PARTIES

2. Urbancorp Downsview Development lnc. ("UDPDI") is a wholly owned subsidiary of UCI. UDPDI's sole asset is a 51% interest in DHI.

3. Mattamy owns the remaining 49% interest in DHI.

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[1] Described in paragraph 20 below.

4. DHI is the owner of the Project. Mattamy controls all disbursements from DHI and is theProject Manager.

5. On April 21, 2016, UDPDI was one of several related companies that filed a notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* ("BIA "). KSV Restructuring Inc. ("KSV")[2] was appointed as proposal trustee.

6. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) ("Court"), granted UDPDI, along with the other related entities, protection under the *Companies' Creditors Arrangement Act* ("CC AA") and the BIA proposal proceeding continued under the CCAA. KSV was appointed monitor ("Monitor").

7. UCI was incorporated on June 19, 2015, to raise debt in the Israeli public market. Pursuant to a Deed of Trust, dated December 7, 2015, UCI made a public offering of debentures (the "Bond Proceeds") in Israel of NISl 80,583,000 (being approximatelyCA$64,000,000 based on the then applicable rate of exchange).

8. UCI used the monies raised, in part, to make a $10,094,562 loan to UDPDI. UDPDI usedthese funds to repay various obligations that UDPDI had owed to Mattamy in relation to the Project.

9. On April 25, 2016, the District Court in Tel Aviv-Jaffa appointed the ForeignRepresentative and granted him various powers in relation to UCI ("Israeli Proceedings").

10. On May 18 , 2016, the Court issued orders under the CCAA that recognized the Israeli Proceedings as a foreign main proceeding, recognized the appointment of the Foreign Representative, and also appointed KSV as the information officer in relation to UCL

OVERVIEW

11. This arbitration relates to a dispute between UCI and Matta.my as to whether the various agreements relating to the Project provide for both payment to Mattamy of the $21

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[2] At that time named KSV Kaufman Inc..

million Mattamy Co-Ownership Payment, in addition to the payment to Mattamy of the $21 million Mattamy Shareholder Loan, or whether they are duplicative of each other andaccordingly the satisfaction of one fully satisfies both. The Mattamy Shareholder Loan was repaid in full with interest on July 20, 2018.

12. With respect to the issue of the duplicative $21 million payments, in summary, the economic arrangement originally agreed to between Urbancorp and Mattamy was that Mattamy would pay Urbancorp $21 million in exchange for a 49% interest in the Project.The $21 million was essentially a pre-payment to Urbancorp of profit from the Project which had not yet been earned. Accordingly, Mattamy was entitled to recover the first$21 million of profits from the project, prior to any additional profits being distributed51/49 in accordance with their respective ownership interests.

13. Prior to June 3, 2015, DHI held both Urbancorp and Mattamy's interest in the Project as abare trustee. Pursuant to a Shareholder' s Agreement dated June 3, 2015, both Urbancorp and Mattamy conveyed their interests in the Project to DHI with the effect that DHI became the beneficial owner of the Project. The stated consideration for Mattamy' s transfer was $21 million. That $21 mi Ilion consideration was intended to be the same $21 million as provided for in the Co-Ownership Agreement Waterfall, except that it would be paid by DHI as debt instead of being a distribution of profit. The Shareholder' s Agreement did not and was not intended to change the overall economics between Urbancorp and Mattamy.

14. Additionally, under the Co-Ownership Agreement , Mattamy was entitled to a Development Management Fee equal to 4.5% of the Gross Receipts[3]. As set out in more detail below , initially Mattamy confirmed it had received $15.4 million on account of the Phase I Development Management Fees. Mattamy has subsequently provided various re calculations claiming to have been paid a reduced amount or no Development Management Fees at all in respect of Phase 1. The determination of the quantum of

Development Management Fees received by Mattamy for Phase I directly affects the

[3] Both " Development Management Fee"' and '·Gross Receipts are defined in the Co-Ownership Agreement.

Phase 2 waterfall, including what funds, if any, must be paid out to Mattamy prior to Urbancorp receiving payment of its 1.5% management fee.

DOWNSVIEW PROJECT AND RELEVANT AGREEMENTS

15. There are numerous agreements which govern the Project and the relationship between UDPDI, Mattamy and DHI. The agreements provide, inter alia, for a waterfall of payments related to proceeds from the Project, both in respect of third parties, as well asdistributions between UDPDI and Mattamy.

16. The Project is comprised of two phases. Phase 1, which is now completed, involved the construction of about 500 townhouses , semi-detached homes , and stacked townhouses. Phase 2, construction of which has now commenced, is planned to have approximately 555 low to mid-rise rental or condominium units and 58 semi-detached freehold homes.

17. On August 3, 2011 , UDPDI entered into agreements ("Purchase Agreement ") to purchase from Pare Downsview Park Inc. ("PDP") that land on which the Project is to bebuilt. Under the Purchase Agreement , PDP was responsible to convey fully serviced lots to UDPDI. There were some amendments to the Purchase Agreement over time. The purchase with PDP closed on June 4, 2015.

JULY 30, 2013 AGREEMENTS

18. A series of agreements related to the Project were entered into, all of which were dated July 30, 2013.

19. UDPDI and Downsview Park Homes lnc.4, as vendors , and Mattamy, as purchaser , entered into a purchase agreement pursuant to which Mattamy acquired a 49% interest inthe Project ("Co-Interest Purchase Agreement ").

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[4] This is believed to be the original nominee . Urbancorp nominee entity that held UDPDI's interest in the Project. However, this is not certain and this entity is not relevant to the issues.

20. UDPDI, Mattamy, PDP, and Mattamy Homes Limited entered into an assignment agreement whereby UDPDI assigned to Mattamy an undivided 49% interest in thePurchase Agreement ("First Assignment Agreement ").

21. Mattamy was to pay a purchase price of $21 million to UDPDI to acquire the 49% interest. The payment was to take place in two installments of $10.5 million each (called "the First Mattamy Payment" and the "Second Mattamy Payment", respectively).

22. Mattamy, UDPDI, DHI, Downsview Park Homes Inc., and Downsview Park Management Inc. entered into an amended and restated co-ownership agreement ("Co Ownership Agreement"). The Co-ownership Agreement provides, in part, that DHI and Downsview Park Homes Inc. will hold the Project (and the Project Property as defined in the Co-Ownership Agreement) as bare trustees for Mattamy (as to 49%) and UDPDI (as to 51%). The Co-Ownership Agreement also provides that Downsview Park Management Inc.; an affiliate of Mattamy is identified as the development manager for the Project.

23. Mattamy, UDPDI , Downsview Park Homes Inc., and DHI also entered into a payment and profit distribution agreement ("PPDA"). The PPDA creates a waterfall of distributions to be made from "Gross Receipts". This is a term that is defined in the CoOwnership Agreement and which, in general terms , covers all revenues generated from the Project.

(iii) APRIL 23, 2014 AGREEMENTS

24. By agreements dated April 23, 2014 both the Co-Ownership Agreement and the PPDAwere amended.

25. The amending agreement to the Co-Ownership Agreement replaced certain schedules to the Co-ownership Agreement. The PPDA amendment revised the Project' s budgets and extended the due date for the Second Mattamy Payment under the Co-Interest PurchaseAgreement to April 29, *2014.*

26. That same date minutes of settlement ("Minutes of Settlement") were entered into amongst Mattamy , DHI, UDPDl, Downsview Park Management Inc. ,and Downsview

Park Homes Inc. As part of the Minutes of Settlement, the Second Mattamy Payment was paid to UDPDI.

(iv) REARRANGEMENT AGREEMENT

27. On November 14, 2014, Mattamy , UDPDI , DHI, Downsview Park Homes Inc. , Downsview Park Management Inc., and Alan Saskin entered into a co-owner rearrangement agreement ("Rearrangement Agreement"). The Rearrangement Agreement provided for certain buy outs to be entered into on or before December 1 9,2014, pursuant to which Mattamy would purchase UDPDI's interest for $17.8 million,Mattamy would assign to UDPDI the right to purchase certain lots for $6 million and UDPDI would purchase certain other lots from Mattamy for $8 million.

28. The Rearrangement Agreement also provides that Mattamy would advance $4.5 milliontо UDPDl ("Third Mattamy Payment") with respect to the $17.8 million purchase. UDPDI was required to repay the Third Mattamy Payment if the buy outs did not proceed. The Rearrangement Agreement provides that the Third Matta.my Payment is considered a loan from Mattamy to DHI pursuant to the Co-Owners hip Agreement andbears interest at 15% per annum ("DHI Shareholder Loan"). The buyouts were never completed.

(v) SECOND ASSIGNMENT AGREEMENT

29. On June I , 2015, UDPDI, Mattamy, PDP, Mattai11y Homes Limited , and DHI entered into an assignment agreement ("Second Assignment Agreement") . Pursuant to the Second Assignment Agreement, UDPDI assigned its 51% beneficial interest in the Project to DHI ai1d Mattamy assigned its 49% beneficial interest in the Project to DHI.The Second Assignment Agreement does not specify any consideration for the assignments.

(vi) SHAREHOLDER AGREEMENT

30. On June 3, 2015, Mattan1y, UDPDI, DHI, Downsview Park Homes Inc., Downsview Park Management Inc., and Alan Saskin , enter into a shareholder agreement with respect to DHI ("Shareholder Agreement"). The purpose of the Shareholder Agreement was to transform DHI from being a bare trustee for each of Mattamy and UDPDI to DHI beingthe beneficial owner. The Shareholder Agreement provides that the co-ownership management arrangements in the Co-Ownership Agreement , with a few modifications, will govern the parties' rights as shareholders in DHI.

31. The Shareholder Agreement also provides that the consideration for the assignments to DHI of the beneficial interests was $21 million with respect to Mattamy’s 49%, securedby DHT issuing a $21 million promissory note to Mattamy ("Mattamy Note") and $4.5 million with respect to UDPD I' s 51% interest, secured by a $4 .5 million note to UDPDI ("UDPDI Note").

32 . UDPDI also agreed to assign the UDPDI Note to Mattamy in consideration for UDPDI having received the Third Mattamy Payment. The result was that UDPDI repaid the ThirdMattamy Payment with the assignment of the UDPDI Note. The Mattamy loan to DHI in the Rearrangement Agreement was replaced by the

UDPDI Note now assigned to Mattamy.

33. The Mattamy Note securing the Mattamy Shareholder Loan bears interest at the Prime Rate (as defined in the Mattamy Note) plus 5%.

34. The Mattamy Shareholder's Loan and the Mattamy Note represent the original capital that Mattamy invested in the Project which it was entitled to be repaid pursuant to Section 8.4(d) of the Co-Ownership Agreement. It did not represent any new advances byMattamy to DHI, nor at that time was there any reason for UDPDI to agree to an additional payment to Mattamy of $21 million beyond the pre-existing Mattamy Co-Ownership Payment. The Shareholder Agreement states that the Mattamy Shareholder Loan to be secured by the Promissory Note was in consideration for the assignment and conveyance of Mattamy's share and was not intended to create a new $21 million obligation in favour of Mattamy which would need to be satisfied prior to UDPDIreceiving any distributions of profit from the Project.

AMENDING AGREEMENTS

35. A further series of amending agreements were entered into on June 29, 2015, July 13, 2015, July 22, 2015, and November 15, 2015. These amending agreements extended the time to repay the DHT Shareholder Loan until, ultimately, December 15, 2015. The DHl Shareholder Loan was repaid to Mattamy out of the Bond Proceeds in December 2015.

WATERFALL

36. Section 8.4 of the Co-Ownership Agreement provides for the distribution of funds from the Project. However , Section 6 of the PPDA substantially modifies the payment waterfall depending on whether the estimated or actual profit from Phase 1 of the Project is less than $40 million. Based on the information received from Mattamy, Phase 1 generated a loss so the modification related to there being less than $40 million in profitsapplies.

37. Mattamy had paid itself all amounts that it claimed to be entitled and had argued that noamounts were owed to UDPDI, either from Mattamy or DHI.

38. In July 2018, Mattamy presented to the Foreign Representative and the Monitor a waterfall of proceeds from Phase I of the Project (the "First Waterfall") that showed, among other things the following payments to Mattamy: (a) $21 million plus interest of

$5.9 million that was paid on July 20, 2018, to repay the Mattamy Note and (b) $15.4 million in project management fees ("Project Management Fees"). There is no reference to the Mattamy Co-Ownership Payment in the First Waterfall.

39. Section 8.4 of the Co-Ownership Agreement sets out a payment waterfall as:

(a) Expenses[3];

(b) third party loans;

[5] As defined in the Co-ownership Agreement.

(c) outstanding amounts owed to Downsview Park Management Inc. (other than theDevelopment Management Bonus Fee[6]) ;

(d) payment to Mattamy of $21 million (i.e. the Mattamy Co-Ownership Payment);and

(e) any remaining balance would go 50% to UDPDI, 49% to Mattamy, and 1 % to Downsview Park Management Inc. to pay the Development Management BonusFee.[7]

40. However, given that the profit for Phase 1 ended up being less than $40 million , Section

6 of the PPDA provides that the proceeds from Phase I shall be distributed as follows:

(a) Expenses;

(b) third party loans ;

(c) outstanding amounts owed to Downsview Park Management Inc. (other than theDevelopment Management Bonus Fee);

(d) payment to Mattamy of$21 million (i.e. the Mattamy Co-Ownership Payment);

(e) payment to Mattamy of $9.5 million;

(f) payment to UDPDI of $9.5 million; and

(g) any remaining balance would go 50% to UDPDI , 49% to Mattamy, and 1 % to Downsview Park Management Inc. to pay the Development Management Bonus Fee.

41. The PPDA fu1ther provides that the remaining (i.e. other than Phase I) proceeds shall be

distributed as follows:

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[6] Ibid.

[7] T here are some exceptions to this location but they are not relevant to the present situation.

(a) Expenses;

(b) third party loans;

(c) outstanding amounts owed to Downsview Park Management Inc. (other than theDevelopment Management Bonus Fee);

(d) payment to Mattamy , without duplication, of any portion of the $21 million (i.e. the Mattamy Co-Ownership Payment) that has not been repaid pursuant to Section 8.4(d) from the proceeds of Phase l and, in such case, the payment due toMattamy under Section 8.4(d) shall be reduced by an equivalent amount; and

(e) any remaining balance would go 50% to UDPDI, 49% to Mattamy, and 1% to Downsview Park Management Inc. to pay the Development Management BonusFee.

42. Accordingly, as of the date of the PPDA, Mattamy was entitled to be repaid the $21 million Mattamy Co-Ownership Payment prior to the distribution of profits between UDPDI and Mattamy.

43. Section 2(c) of the Shareholder Agreement provides that the shareholder loans, which the Mattamy Note and the DHI Note secures:

"...shall be repaid prior to any loan repayments to Mattamy pursuant to Section 8.1 of the Co-Ownership Agreement, which shall still be paid (as set out in Section 8.1) prior to any distributions listed in Section 8.4 of the Co-Ownership Agreement".

PREVIOUS ARBITRATION BEFORE THE HONOURABLE FRANK NEWBOULD QC

44. In 2019, the Foreign Representative and the Monitor took issue with Mattamy's approach to the Waterfall and with the fact that Mattamy denied that any amounts were owed to UDPDI in respect of Phase I of the Project. These disputes were the subject of an arbitration ("Arbitration") before the Honourable Frank Newbould, QC ("Arbitrator ").

45. For the purposes of the present matter, there were two findings in the Arbitration that arerelevant. The Arbitrator found that (a) UDPDI was entitled to be the repaid the UDPDI Note at the same time as the Mattamy Note; and (b) Urbancorp Toronto Management Inc.("UTMI") was entitled to receive a 1.5% management fee at the same time as Mattamy, after Mattamy had received $13.2million in management fees.

(vii) ADDITIONAL $21 MILLION MATTAMY CLAIM

46. Following the Arbitrator's decision, Mattamy prepared a revised waterfall (the "Revised Waterfall") which reflected the payment of the Mattamy Note and the UDPDI Note, together with accrued interest, as the first payments out of the Phase I proceeds. The Revised Mattamy Waterfall purports to provide for payment in favour of Mattamy of the

$21 million Mattamy Co-Ownership Payment prior to any distribution of profits and insupport references Section 8.5(d) of the PPDA.

47. The Revised Mattamy waterfall was the first time during the currency of the CCAA proceedings that Mattamy alleged that it was entitled to the Mattamy Co-Ownership Payment in addition to the Mattamy Note in priority to UDPDI. Notably, the First Waterfall only provided for payment of the Mattamy Note (which at the time that theFirst Waterfall was provided had already been paid in full).

48. An additional payment of $21 million to Mattamy under the PPDA in priority to anydistribution to UDPDI would be a duplication of the payment of the Mattamy Note, which was fully repaid in 2018.

49. Mattamy initially purchased its 49% interest in the Project for $21 million. Thereafter (leaving aside the payment of management and project development

fees), profits were tobe divided between UDPDI and Mattamy on a 50/50 basis.

50. The posit ion Mattamy is now asserting does not make commercial sense, nor is it consistent with the intention of the parties. The only sensible commercial conclusion is that the $21 million Mattamy Shareholder Loan, secured by the Mattamy Note is the

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[8] Although UDPD I had a 51% interest, 1% of its interest would instead go to the Project Manager, a Mattamy company, so the effective return is split 50/50.

same $21 million as the Mattamy Co-Ownership Payment that is referenced in Section 8of the PPDA.

51. At the time that the Shareholder Agreement was entered into there was no intention oragreement to provide Mattamy with an additional $21 million payment in priority to UDPDI.

52. To the extent that on a literal reading of the PPDA, Shareholder Agreement and the Mattamy Note, Mattamy would be entitled to payment of the $21 million Mattamy CoOwnershjp Payment in addition to payment of the Mattamy Shareholder Loan, secured by the Mattamy Note, which is denied, UDPDI seeks rectification of the Shareholder Agreement to provide that the Mattamy Shareholder Loan and the Mattamy Note are in substitution for the payment of the $21 million Mattamy Co-Ownership Payment underSection 8(d) of the PPDA.

53. In the Prospectus filed in respect of the Israeli Bond Raise , UCI provided significant details in respect of the financial projections of the Project including profitability and a description of the waterfall. The Prospectus only discloses one payment of $21 million to Mattamy. The position of the Prospectus relating to the Project was reviewed prior to publication by Urbancorp's accountants and lawyers. Additionally, the disclosure in the Prospectus relating to the Project was the subject of significant discussions between Urbancorp and Mattamy given the significance of the value attributed to Urbancorp's interest in the Project which was crucial to the success of the bond raise, as well as the fact that a significant portion of the monies raised were being advanced by UCI to UDPDI for repayment of obligations owed to Mattamy.

54. At no time did Mattamy advise that the disclosure contained in the Prospectus was inaccurate or incorrect or disabuse UCI of the fact that Mattamy believed there were two priority payments of $21 million each which had to be paid to Mattamy prior to any distributions of profit to UDPDI. In failing to disabuse Urbancorp of this , Mattamy breached its duty of good faith with the result that UCT proceeded to raise the equivalentof $64 mill i on, over $10 million of which was advanced by UCI to UDPDl and paid to Mattamy.

55. Further, in around February-March 2016, just prior to the commencement of formalrestructuring proceedings of the Urbancorp Group of Companies, Urbancorp was attempting to engage in an informal debt restructuring. As part of that informal debtrestructuring, Urbancorp assessed likely recovery from various assets, including the Project. Those projections reflected that Matta.my was owed a single $21 million prioritypayment.

56. The 2019 financial statements for DHI do not reflect any amount owing to Mattamy inrespect of the Mattamy Co-Ownership Payment.

57. UCI therefore states that Mattamy is estopped from asserting that the $21 million Mattamy Co-Ownership Payment remains outstanding.

PROJECT MANAGEMENT FEE CALCULATION

58. Subsequent to completion of the arbitration before the Honourable Mr. Newbould in 2019, Mattamy advised that the $15.4 million Project Management Fees it had previouslyacknowledged receiving would need to be recalculated now that the UDPDI Note had to be added into the waterfall as a result of the outcome of the arbitration. Mattamy stated that there was no longer sufficient cash available to pay the Project Management Fees in full. Mattamy has subsequently provided numerous calculations of the Project Management Fees received from Phase I which are inconsistent and now alleges that Mattamy has received no Project Management Fees for Phase I as a result of various adjustments.

59. Based on the First Waterfall that showed Mattamy as having received $15.4 million in management fees, UTMI would have been owed about $726,000 in additional management fees as Mattamy would have exceed the $13.2 million threshold to trigger additional management fees owed to UTMI.

60. The adjustment to the First Waterfall to reflect payment of the UDPDI Note should be $5.8 million, with the result that Mattamy should have been paid $9.6 million in ProjectManagement Fees for Phase I (i.e. $15.2 million - $5.8 million).

61. The most recent version of the waterfall that Mattamy has provided purports to reflectthat Mattamy has received no Project Management Fees for Phase 1.

62. UCI therefore seeks an accounting of the Project Management Fees paid to Mattamy to date and a reconciliation of the various waterfalls. UCI further seeks an Order directing payment by DHI of any Management Fees owing to UTMI in the event it is determined that Mattamy has received more than $13.2 million in Project Management Fees to date.

Appendix “E”

COURT OF APPEAL FOR ONTARIO

CITATION: Urbancorp Toronto Management Inc. (Re), 2021 ONCA 613
DATE: 20210909
DOCKET: M52721
(M52689)

Miller J.A. (Motions Judge)

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

Kenneth Kraft, Neil Rabinovitch and Michael Beeforth, for the moving party, Guy Gissin, in his capacity as the Foreign Representative of Urbancorp Inc.

Robin Schwill, Matthew Milne-Smith and Robert Nicholls, for the responding party, KSV Restructuring Inc., in its capacity as Monitor

Matthew Gottlieb, James Renihan and Jane Dietrich, for the responding party, Mattamy Homes Limited

Heard: August 26, 2021 by video conference

ENDORSEMENT

[1] This motion arises out of long-running CCAA proceedings involving a group of companies ultimately owned by Urbancorp Inc. ("UCI"). The moving party, the

Foreign Representative of UCI, seeks a stay pending its motion for leave to appeal an order of the supervising judge. That order authorized a process for the sale of a 51% interest in a real estate development project called Downsview Homes Inc. ("DHI"), owned by Urbancorp Downsview Park Development Inc. ("Downsview"), a subsidiary of UCI. The responding party, Mattamy Homes Limited ("Mattamy"), owns the other 49% of DHI.

[2] Mattamy is the lender to Downsview under a debtor-in-possession facility (the "DHI Facility"), which matured eight months ago, on February 3, 2021. Downsview owes Mattamy over $9 million pursuant to the terms of the DHI Facility and the order approving the DHI Facility (the "DIP Order"). Downsview cannot repay the debt, and Mattamy will not extend the deadline for payment any further unless a sales process is conducted for Downsview's interest in DHI.

[3] There is also a dispute as to whether Mattamy is entitled to a substantial payment from Downsview under the co-ownership agreement they entered into with respect to DHI. The supervising judge ordered arbitration of that payment dispute. The outcome of the arbitration will have a material impact on the value of Downsview's interest in the project. If Mattamy is entitled to the payment, Downsview's interest in the project will be essentially worthless. If Mattamy is not entitled, then Downsview's interest will be worth millions of dollars, even after the repayment of the DHI Facility.

[4] Downsview argued before the supervising judge that the sale process for Downsview's interest proposed by the Monitor be postponed until the question of the disputed payment could be arbitrated. Downsview was (and remains) concerned that the uncertainty about the value of its interest in DHI will have a chilling effect on the sale process. It is conceivable, Downsview says, that no bidder will step forward because of the difficulty they would encounter conducting due diligence and ascertaining the probable value of DHI in light of the disputed payment. If the sale process fails and no bidder is found, Mattamy could, under the proposed terms of the sale process, seize Downsview's interest. This would result in a windfall to Mattamy – even if the arbitration of the disputed payment were to be resolved in Downsview's favour later.

[5] The supervising judge was persuaded by the arguments of the Monitor and decided that the sale process should not be postponed until after the arbitration. He highlighted three of the Monitor's arguments. First, that Mattamy, as the debtor-in-possession lender, was entitled to assert its rights over Downsview's interest in DHI in the event Downsview did not repay the DHI Facility. Second, that Downsview's obligations under the DHI Facility continued to accrue. Third, that the proposed sale process could be conducted without knowing the outcome of the arbitration, because the process contemplated the bidders submitting two offers – one on the basis that Mattamy was entitled to the additional payment and one on the basis that it was not.

[6] The Monitor had considered and rejected Downsview's concerns that the proposed sale process would create a "chilling effect" on potential bidders. The Monitor concluded that potential bidders would be sophisticated enough to conduct due diligence and assess both possible outcomes of the disputed payment issue, and would not be dissuaded or confused by being asked to submit separate bids for both possible outcomes. It argued that Downsview was merely speculating that potential bidders would be dissuaded from bidding.

[7] The supervising judge agreed with the Monitor that Downsview's concerns were speculative and ought to have been given no weight.

[8] Downsview is seeking leave to appeal to this court. It will argue that the supervising judge erred in concluding that its concerns were speculative, and erred in not ordering the sale process to be delayed until after the conclusion of the arbitration.

[9] Downsview argues for a stay of the sale process until the leave application can be decided. If leave to appeal is denied, then that will be the end of things and the sale process can unfold. However, if leave is granted, Downsview will seek a motion for a further stay of the order – and the sale process – pending the disposition of the appeal.

ANALYSIS

[10] The test for staying an order pending appeal is analogous to the test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334 for granting an interlocutory injunction: (i) is there a serious issue to be determined on appeal; (ii) will the moving party suffer irreparable harm if the stay is not granted; and (iii) does the balance of convenience favour the granting of the stay: *Belton v. Spencer*, 2020 ONCA 623, paras. 20-21.

A. A SERIOUS QUESTION TO BE DETERMINED ON APPEAL

[11] The moving party set out four issues that it characterized as important, both to the parties and to the CCAA process as a whole: (i) the level of deference owed by the court to a “Super Monitor”; (ii) the extent to which a Super Monitor needs to obtain independent evidence to support the fairness and viability of a proposed sale process; (iii) whether the evidentiary onus regarding fairness and viability of the sale process remains with the Super Monitor or shifts to the party objecting to the sale process; and (iv) the extent to which a court can rely on a decision that is released after the parties’ hearing.

[12] Although it may seem unlikely the moving party will succeed on a motion for leave to appeal, the first two issues are at least arguable, if weak. The latter two issues would be highly unlikely to attract leave. First, although there seems to be little reason why a “Super Monitor” should be given less than the substantial

deference that a supervising judge gives to the decisions and recommendations of a receiver, there is no authority from this court settling the issue. Second, the idea that a Monitor must obtain independent evidence as to the fairness and viability of the sale process seems premised on the idea that an independent party would have greater expertise than the Monitor. Were the moving party correct, it would seem to undermine the speed at which the process is meant to operate. Third, the question of whether there was a shift in evidentiary onus is not a genuine issue – the supervising judge found that the Monitor had satisfied the evidentiary burden necessary to establish that the sale process was fair and reasonable. Fourth, the question of whether the supervising judge ought not to have cited a decision subsequently released by this court is of no importance. The decision in question did not change the law, and the ground is further weakened by the moving party's failure to outline the submissions on the decision that it would have made before the supervising judge if it had the opportunity.

[13] Above all, the moving party faces the high hurdle of the standard of review applicable to a decision of the supervising judge in a CCAA proceeding. The supervising judge had to determine whether the Sale Process ought to commence immediately or wait until the arbitration was concluded. The supervising judge applied the appropriate criteria set out in *(Re) Brainhunter* (2009), 62 C.B.R. (5th) 41 (Ont. Sup. Ct.), at para. 13, in deciding whether to order a particular sale process, all of which are factual in nature. The findings of the supervising judge

will be entitled to deference on appeal, should leave be granted. The decision to order the sale process was itself made on the recommendations of the Monitor within the context of a long-running CCAA proceeding, compounding the nature of the deference owed by this court: *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, 90 C.B.R. (6th) 39, at para 19.

[14] Given the weakness of the grounds for appeal that have been articulated, as well as the unlikelihood that the moving party will satisfy the other grounds of the test for leave to appeal, the moving party is unlikely to obtain leave to appeal. This factor weighs in favour of dismissal.

B. IRREPARABLE HARM

[15] As the moving party argued, the criterion of irreparable harm refers to the nature of the harm rather than its magnitude: *RJR-MacDonald*, at p. 341. The question is whether refusal to grant relief would so adversely affect the moving party's interests that the harm could not be remedied were the moving party to lose the motion but succeed on the appeal: *RJR-MacDonald*, at p. 341.

[16] The moving party argues that if the sale process is not deferred until after the arbitration is completed, and Downsview's interest in DHI is sold, it will be impossible to know whether a higher purchase price could have been obtained had the sale process been deferred. Additionally, if the stay motion is not granted

and a sale is concluded prior to the appeal being heard, the moving party's appeal will have been rendered moot.

[17] Mattamy argues in reply that the supervising judge already adjudicated the issue of whether the sale process constitutes irreparable harm to the moving party. The supervising judge dismissed as speculative the argument that the sale process would generate a chill that would result in a lower sale price. Mattamy argues that if I were to find the prospect of irreparable harm, I would be finding that the prospect of a chill is more than speculative, and effectively would be reversing a factual finding of the supervising judge, contrary to the role of this court on a stay motion: *Hodgson v. Johnston*, 2015 ONCA 731, at para. 9.

[18] In addition, if the sale process is frustrated, Mattamy would be entitled, as a result of the moving party's default under the terms of the DHI Facility, to simply enforce its security and run another sale process, involving additional time and expense.

[19] I agree with the submissions of Mattamy. There is no basis on which I can substitute my evaluation of the efficacy of the sale process over that of the supervising judge and find that not granting the stay could result in irreparable harm to the moving party.

C. THE BALANCE OF CONVENIENCE

[20] Determining the balance of convenience requires an inquiry into which of the two parties will suffer the greater harm from granting or refusing the stay: *RJR-MacDonald*, at p. 342.

[21] The moving party argues that it will suffer the greater harm if a stay is refused, because it owns the 51% interest in DHI at issue, and therefore bears the risk of the interest being sold for a lower price than what otherwise could have been obtained. It also bears the risk of the sale process failing to attract any bids, which could result in Mattamy foreclosing on its interest. It argues that Mattamy faces no conceivable harm in delaying the sale process until such time as this court decides whether to grant leave to appeal.

[22] Mattamy and the Monitor argue to the contrary that Mattamy will suffer irreparable harm if there is further delay, and that the balance of convenience favours Mattamy. Mattamy has presented evidence on this motion that it has approached eight potential bidders since the sale process order was issued, and is concerned that those potential bidders will lose interest and faith in the sale process if it continues to be bogged down in litigation. Mattamy attests that the current market is favourable for investments of this nature because of favourable interest rates. These market conditions can change at any time, and prospective

bidders can lose faith in the process because of procedural delay and decline to participate.

[23] Comparing the potential commercial prejudice to Mattamy from delaying the sale process against what the supervising judge concluded to be an absence of genuine prejudice to the moving party in proceeding with the sale process prior to the conclusion of the arbitration, I find that the balance of convenience favours Mattamy. I would dismiss the motion.

D. SEALING ORDER

[24] All parties request a sealing order on the same basis and on analogous terms as the sealing order granted by the supervising judge, in order to preserve the integrity of the sale process and the pending arbitration. I am prepared to grant that order.

E. DISPOSITION

[25] The motion to stay is dismissed. The request for a sealing order is granted. If parties are unable to agree on an order for costs for this motion, I will receive submissions from each party not exceeding three pages within 10 days of these reasons.

J. A.

SCHEDULE “A’
LIST OF AFFILIATED ENTITIES

Urbancorp Power Holdings Inc.

Vestaco Homes Inc.

Vestaco Investments Inc.

228 Queen’s Quay West Limited

Urbancorp Cumberland 1 LP

Urbancorp Cumberland 1 GP Inc.

Urbancorp Partner (King South) Inc.

Urbancorp (North Side) Inc.

Urbancorp Residential Inc.

Urbancorp Realtyco Inc.

Appendix “F”

COURT OF APPEAL FOR ONTARIO

BEFORE: DOHERTY, PARDU & THORBURN JJ.A.

DATE: NOVEMBER 10, 2021

COURT FILE NO.: M52689

TITLE OF PROCEEDING:

The Matter of the Companies Creditors Act et al.

DISPOSITION OF COURT HEARING:

Leave to appeal is refused. Costs to the respondents in the amount of $5,000 each, inclusive of disbursements and relevant taxes.

J.A.

J.A.

J.A.

Appendix “G”

Sale Process

The below is an excerpt from Forty Fourth Report of the Monitor dated February 11, 2021 (the "Forty Fourth Report"). Terms not defined below, have the meaning provided them in the Forty Fourth Report.

1. The Sale Process is set out below:

   a) The Sale Process will be for the Downsview Interest.

   b) The Sale Process and any resulting transaction will be subject to Court approval.

   c) At the end of the sixth week of the Sale Process, bidders will be required to submit Letters of Intent ("LOIs"). If no LOIs are submitted at that time, the Monitor shall be entitled to bring a motion to terminate the Sale Process and to convey the Downsview Interest to Mattamy in full satisfaction of all obligations of Downsview owing to Mattamy.

Summary of Sale Process		
Milestone	**Description of Activities**	**Timeline**
Phase 1 – Pre-Sale Process Preparation		
Due diligence	➢ Monitor to upload documentation concerning the Project to a virtual data room (the "VDR") so that prospective purchasers can conduct diligence on the Project. ➢ The VDR will include all information required to allow an interested party to submit a bid for the Downsview Interest. The Monitor has requested such information from DHI for this purpose and DHI has agreed to provide the requested information.	To be completed within 15 business days of court approval of the sale process
Marketing materials	➢ The Monitor will prepare a: o short teaser summarizing the opportunity (the "Teaser"); o confidentiality agreement ("CA"); and o Confidential Information Memorandum ("CIM"). ➢ The Teaser, CA and CIM shall be reasonably acceptable to Mattamy.	
Prospect Identification	➢ Mattamy will provide the Monitor with a list of at least 8 parties that it would accept as a buyer of the Downsview Interest (the "Mattamy Acceptable Buyers"). ➢ Monitor to advertise this opportunity in such journals and publications as it believes appropriate to generate interest in this opportunity. ➢ Any party expressing an interest in this opportunity at any time during this process to the Monitor who is not a Mattamy Acceptable Buyer will be presented by the Monitor to Mattamy for its consent that such party can participate in the Sale Process. The Monitor will pre-qualify these parties by requesting certain information, including: o the representatives of the bidder; o financial ability to close a transaction; o previous real estate experience; and o reference checks, if applicable.	

Summary of Sale Process		
Milestone	**Description of Activities**	**Timeline**
	➢ With Mattamy's consent, such party will become a Mattamy Acceptable Buyer. Mattamy's consent to a party as a Mattamy Acceptable Buyer does not obviate the need for Mattamy's consent to a final transaction.	
Phase 2 – Marketing, Due Diligence and Offer Solicitation		
Stage 1	➢ Market introduction: o the Monitor will send the Teaser to Mattamy Acceptable Buyers; o the Monitor will advertise this opportunity in journals and publications it believes appropriate; and o the Monitor will seek Mattamy's consent for any non-Mattamy Acceptable Buyers who express an interest in this opportunity. Mattamy's consent to a party as a Mattamy Acceptable Buyer does not obviate the need for Mattamy's consent to a final transaction.	Weeks 1 – 2
Stage 2	➢ Due Diligence o Only Mattamy Acceptable Buyers who sign a CA will be provided access to confidential information and will be allowed to perform diligence. o Upon execution of the CA, Mattamy Acceptable Buyers will be provided a copy of the CIM, access to the VDR and meetings with Mattamy. o Mattamy will make its representatives available for meetings with Mattamy Acceptable Buyers as necessary to allow all interested parties to perform due diligence. o Monitor to participate in all discussions between Mattamy and any Mattamy Acceptable Buyer.	Week 3-6
Stage 3	➢ LOIs to be submitted at start of end of week 6. ➢ LOIs may be non-binding but must indicate any additional diligence that needs to be performed and key terms of a transaction, including the consideration payable by the prospective purchaser if section 8.4(d) or 8.5(d) of the Ownership Agreement is and is not applicable. ➢ Monitor, in consultation with Mattamy, will engage in discussions with parties that submitted an LOI with a view to selecting the best offer or offers by the end of week 8. This party or parties will be the "Selected Bidder(s)". ➢ The Selected Bidder(s) will be provided the opportunity to perform additional diligence and address the conditions, if any, in its/their LOI with a view to entering into definitive transaction documents (the "Definitive Documents") in a form acceptable to the Monitor and to Mattamy. The Definitive Documents will: o indicate the consideration payable by the Selected Bidder; o include a deposit of 15% of the purchase price; o not be conditioned on: (i) the outcome of any further due diligence; or (ii) financing; o provide two purchase prices: one assuming section 8.4(d) or 8.5(d) of the Co-Ownership Agreement is applicable and one assuming it is not applicable;	Week 7 and 8

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	○ provide the names of the representatives who are authorized to appear and act on behalf of the Selected Bidder; ○ identify the person or people who will be sponsoring or participating in, or benefiting from, the transaction; ○ provide sufficient financial information to determine that the Selected Bidder has the ability to satisfy and perform any liabilities or obligations assumed pursuant to the Definitive Documents; ○ include acknowledgements and representations that confirm that the transaction is on an "as is, where is" basis; the bidder has had an opportunity to conduct any and all due diligence necessary prior to entering into the Definitive Documents and has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the property in making its bid; and it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the executed Definitive Documents; and ○ include any other terms or conditions the Selected Bidder believes are material to the transaction.	
Phase 3 – Offer Review and Negotiations		
Sale Approval Motion and Closing	➢ Prepare materials to seek approval of the transaction. ➢ Close transaction following court approval.	ASAP after finalizing definitive documents

2. Additional aspects of the Sale Process include:

a) Mattamy will acknowledge at the outset of the process that it will consider a renegotiation of the Agreements and that it is prepared to enter into new agreements concerning the Project;

b) Mattamy will attest at the conclusion of the Sale Process that it did not participate in any meetings with any interested parties regarding the Project and this process without the Monitor in attendance unless consented to by the Monitor;

c) the assets will be marketed on an "as is, where is" basis;

d) the Monitor will be entitled to extend any deadlines in the Sale Process if it considers it appropriate or necessary to maximize value;

e) the Monitor will provide the Foreign Representative with periodic updates on the status of the Sale Process;

f) pursuant to the terms of the Agreements, UTMI may be entitled to receive project management fees. Without prejudice to Mattamy's position that neither Downsview nor UTMI is entitled to the payment of management fees, if no consideration is paid for such fees, UTMI will retain whatever rights it may have, if any, to recover such fees from Mattamy;

g) Mattamy has agreed to fund the Monitor's fees and costs to conduct the Sale Process, including the cost of its legal counsel, if the proceeds of realization are not sufficient to cover such costs; and

h) the Monitor will have the right to reject any and all offers, including the highest dollar value offer.

Appendix “H”

From: Dietrich, Jane <jdietrich@cassels.com>
Sent: July 27, 2021 4:27 PM
To: Bobby Kofman <bkofman@ksvadvisory.com>
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Robin B. Schwill Esq. (rschwill@dwpv.com) <rschwill@dwpv.com>
Subject: RE: Teaser - Downsview - v6

Bobby;
I have instructions to make that acknowledgement on behalf of Mattamy.

Jane

Cassels

JANE O DIETRICH
t: +1 416 860 5223
e: jdietrich@cassels.com

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Toronto, ON Canada M5H 3C2 Canada
Services provided through a professional corporation

From: Bobby Kofman <bkofman@ksvadvisory.com>
Sent: Tuesday, July 27, 2021 12:03 PM
To: Dietrich, Jane <jdietrich@cassels.com>
Cc: Noah Goldstein <ngoldstein@ksvadvisory.com>; Robin B. Schwill Esq. (rschwill@dwpv.com) <rschwill@dwpv.com>
Subject: FW: Teaser - Downsview - v6

Jane,

Can you have your client acknowledge this comment, which was in our 44th report, which addresses the sale process.

Bobby

KSV

Bobby Kofman
President and Managing Director

T 416.932.6228
M 647.282.6228
W www.ksvadvisory.com

From: Bobby Kofman
Sent: July 27, 2021 12:02 PM
To: Jordan Wong <Jwong@ksvadvisory.com>
Cc: Eli Brenner <ebrenner@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>
Subject: RE: Teaser - Downsview - v6

This answers your question.

We need the acknowledgement.

2. Additional aspects of the Sale Process include:

   a) Mattamy will acknowledge at the outset of the process that it will consider a renegotiation of the Agreements and that it is prepared to enter into new agreements concerning the Project;

KSV
Bobby Kofman
President and Managing Director

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Appendix “I”

From: Dietrich, Jane <jdietrich@cassels.com>
Sent: November 17, 2021 1:58 PM
To: Noah Goldstein <ngoldstein@ksvadvisory.com>
Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Schwill, Robin <rschwill@dwpv.com>
Subject: RE: Sale Process

Noah;

David George advise me that to the best of his knowledge and belief Mattamy did not participate in any meetings with any of the parties interested in the Project and the process without the Monitor in attendance.

Cassels

JANE O DIETRICH
t: +1 416 860 5223
e: jdietrich@cassels.com

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Toronto, ON Canada M5H 3C2 Canada
Services provided through a professional corporation

Appendix “J”

EXECUTION COPY

AGREEMENT OF PURCHASE AND SALE

MATTAMY (DOWNSVIEW) LIMITED

and

KSV Restructuring Inc., in its capacity as the Court-appointed monitor of Urbancorp Downsview Park Development Inc.

November 17, 2021

THIS AGREEMENT is made as of the 17th day of November, 2021.

B E T W E E N:

MATTAMY (DOWNSVIEW) LIMITED
(hereinafter referred to as the "**Purchaser**")

AND:

URBANCORP DOWNSVIEW PARK DEVELOPMENT INC. by KSV Restructuring Inc., in its capacity as the Court-appointed monitor of and not in its personal capacity

(hereinafter referred to as the "**Seller**")

WHEREAS pursuant to an order of the Ontario Superior Court of Justice – Commercial List (the "**Court**") dated May 18, 2016, in proceedings bearing Court file number CV-16-11389-00CL, KSV Restructuring Inc. was appointed the monitor (the "**Monitor**") of Urbancorp Downsview Park Development Inc. ("**UDPDI**");

AND WHEREAS pursuant to an order of the Court dated June 30, 2021 (the "**Sale Process Order**") the sale process as defined and set out in the Monitor's Forty-Fourth Report to Court dated February 11, 2021 (the "**Sale Process**") was approved;

AND WHERAS the Sale Process provided that if no letters of intent were submitted at the phase 1 bid deadline, that the Monitor was entitled to bring a motion to terminate the Sale Process and to convey the Downsview Interest (as defined in the Sale Process) to Mattamy in full satisfaction of all obligations of UDPDI owing to Mattamy;

AND WHEREAS the Sale Process was commenced and no letters of intent were received by the phase 1 bid deadline;

AND WHEREAS the Seller is prepared to sell to the Purchaser, and the Purchaser is prepared to purchase from the Seller, the Purchased Assets (as defined herein) on the terms and subject to the conditions set out herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and the Purchaser agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

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

"**Assumed Contracts**" means all contracts to which UDPDI is a party which relate in any way to the Downsview Project including without limitation those contracts listed on **Schedule "A"** hereto;

"**Business Day**" means any day, other than a Saturday or a Sunday, on which commercial banks in Toronto, Ontario, are open for business during normal banking hours;

"**Closing**" means the closing of the transaction contemplated by this Agreement, including the satisfaction of the Purchase Price and the delivery of the Closing Documents on the Closing Date;

"**Closing Date**" means the day that is 5 days after the date on which the Court grants the Sale Approval and Vesting Order (or such earlier day after the Court grants the Sale Approval and Vesting Order that is agreed to by the parties), provided that if such day is not a Business Day, then the Closing Date shall be the next following Business Day;

"**Closing Date Payment**" has the meaning set out in Section 2.4(a);

"**Closing Deliveries**" means the agreements, instruments and other documents to be delivered by the Seller to the Purchaser pursuant to Section 3.2 and the agreements, instruments, money and other documents to be delivered by the Purchaser to the Seller pursuant to Section 3.3;

"**Court**" has the meaning set out in the Recitals to this Agreement;

"**Encumbrance**" means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

"**Excluded Assets**" has the meaning set out in Section 2.2;

"**Evidence of Release**" has the meaning set out in Section 2.4;

"**Governmental Authority**" means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other

authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

"**HST**" means all taxes payable under the *Excise Tax Act* (Canada), including goods and services taxes and any harmonized sales taxes in applicable provinces, or under any provincial legislation similar to the *Excise Tax Act* (Canada), and any reference to a specific provision of the *Excise Tax Act* (Canada)or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

"**HST Undertaking and Indemnity**" has the meaning set out in Section 2.6;

"**Monitor**" has the meaning set out in the Recitals hereto;

"**Outside Date**" means the day that is 30 days after the date of this Agreement or such other date as agreed to by the Parties;

"**Permitted Encumbrances**" means all Encumbrances specifically listed in Schedule B hereto;

"**Proceeds**" means all proceeds received by or owing to UDPDI or the Seller on account of the Assumed Contracts or Share Certificates, and all funds in all UDPDI bank accounts on Closing;

"**Purchase Price**" has the meaning set out in Section 2.2;

"**Purchased Assets**" means all of the right, title and interest of UDPDI in and to: (i) the common shares in Downsview Homes Inc.; (ii) the Assumed Contracts; and (iii) all Proceeds;

"**Sale Approval and Vesting Order**" means an order of the Court, in form and substance satisfactory to the Seller and the Purchaser, acting reasonably, approving this Agreement and vesting in and to the Purchaser the Purchased Assets, free and clear of and from any and all Encumbrances other than Permitted Encumbrances;

"**Sale Process**" has the meaning set out in the Recitals hereto;

"Sale Process Costs" has the meaning set out in section 4.2(f);

"**Share Certificates**" means certificate CBC-1 representing 1020 Class B Common Shares of Downsview Homes Inc.;

"**UDPDI**" has the meaning set out in the Recitals hereto; and

"**UTMI**" has the meaning set out in section 2.7.

1.2 Currency

Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian funds.

1.3 Sections and Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified Article, Section or Schedule of or to this Agreement.

1.4 Number, Gender and Persons

In this Agreement, words importing the singular number only shall include the plural and *vice versa*, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

1.5 Interpretation of Certain Non-Capitalized Terms

The word "**including**" means including without limitation.

1.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

1.7 Time of Essence

Time shall be of the essence of this Agreement.

1.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

1.9 Applicable Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

1.10 Schedules

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

Schedule A	-	Assumed Contracts
Schedule B	-	Permitted Encumbrances

ARTICLE 2
PURCHASE AND SALE

2.1 Purchase and Sale

The Seller hereby agrees to sell the Purchased Assets to the Purchaser and the Purchaser hereby agrees to purchase the Purchased Assets from the Seller in consideration of the payment of the Purchase Price on the Closing Date, on the terms and subject to the conditions set out in this Agreement.

2.2 Excluded Assets

The Seller shall not sell to the Purchaser and the Purchaser shall not purchase from the Seller any assets other than the specifically enumerated Purchased Assets (collectively, the "**Excluded Assets**").

2.3 Purchase Price.

The purchase price (the "**Purchase Price**") payable by the Purchaser to the Seller for the Purchased Assets shall be the amount of all obligations owing by UDPDI to the Purchaser on Closing plus the Sale Process Costs plus applicable taxes.

2.4 Satisfaction of Purchase Price

The Purchase Price shall be satisfied on Closing as follows:

(a) the Purchaser providing evidence to the Seller of the release of all obligations owing by UDPDI to Mattamy ("**Evidence of Release**");

(b) the Purchaser paying the Sale Process Costs to the Monitor; and

(c) the assumption of the Assumed Contracts.

2.5 Allocation of Purchase Price

The Seller and the Purchaser, each acting reasonably, shall attempt to agree on a mutually acceptable allocation of the Purchase Price among the Purchased Assets. If the Seller and the Purchaser fail to agree upon such allocation prior to Closing, the Seller and the Purchaser shall each make their own allocations.

2.6 Registration and Transfer Taxes

(a) The Seller and the Purchaser shall each be responsible for the costs of their respective solicitors. The Purchaser shall be responsible if applicable, for all sales taxes and HST payable in connection with the sale and transfer of the Purchased Assets pursuant to this Agreement. The Seller shall be responsible for registration fees payable, if any, in connection with the discharges of any Encumbrances that are not Permitted Encumbrances.

(b) With respect to HST, the parties agree that the Seller shall not collect HST from the Purchaser in connection with transfer of the Purchased Assets if, on the Closing Date, the Purchaser delivers to the Seller (i) a certificate of the Purchaser setting out the registration number of the Purchaser for HST purposes, and (ii) an undertaking by the Purchaser to pay all applicable HST in connection with the transaction contemplated by this Agreement and an indemnity by the Purchaser whereby the Purchaser agrees to indemnify and hold the Seller harmless from and against any and all Losses that may be suffered or incurred, directly or indirectly, by the Seller or may become payable by the Seller arising from or in respect of any failure by the Purchaser to register for the purposes of the HST imposed under the *Excise Tax Act* (Canada) or to perform its obligations under such Act in connection with the transaction contemplated by this Agreement (collectively, the "**HST Undertaking and Indemnity**").

2.7 Urbancorp Consulting Fee Claim

The Seller takes the position that Urbancorp Toronto Management Inc. ("**UTMI**") is entitled to receive amounts in respect of the Urbancorp Consulting Fee as defined in and pursuant to the terms of the Amended and Restated Co-Ownership Agreement dated July 30, 2013 entered into between, among others, the Purchaser and Seller. Without prejudice to the Purchaser's position that neither the Seller nor UTMI are entitled to the payment of any amounts in respect of the Urbancorp Consulting Fee, the Purchaser acknowledges that no consideration is being paid to UTMI in respect of the Urbancorp Consulting Fee and as such UTMI retains whatever rights it may have, if any, to recover such amounts.

ARTICLE 3
CLOSING AND CLOSING CONDITIONS

3.1 Transfer

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect, and Closing shall be deemed to have occurred, upon the delivery of the Monitor's Certificate pursuant to the Sale Approval and Vesting Order (and as defined therein).

3.2 Closing Deliveries by Seller

On or before the Closing Date, subject to the provisions of this Agreement, the Seller shall execute (as applicable) and deliver to the Purchaser:

(a) a receipt for the satisfaction of the Purchase Price;

(b) the Proceeds, if any;

(c) a copy of the issued and entered Sale Approval and Vesting Order, together with the Monitor's Certificate, as referenced therein;

(d) the original Share Certificates endorsed in favour of the Purchaser;

(e) a certified copy of the resolution of the board of directors of Downsview Homes Inc. authorizing the Purchaser as a registered shareholder of Downsview Homes Inc. and directing the recording thereof in the shareholder register of Downsview Homes Inc. upon delivery of the Monitor's Certificate to the Purchaser; and

(f) any other documents required pursuant to this Agreement in form and substance satisfactory to the Purchaser and the Seller, each acting reasonably.

3.3 Closing Deliveries by the Purchaser

On or before the Closing Date, subject to the provisions of this Agreement, the Purchaser shall execute (as applicable) and deliver to the Seller:

(a) the Evidence of Release;

(b) an assumption of the liabilities arising under the Assumed Contracts;

(c) the HST Undertaking and Indemnity;

(d) a certificate of the Purchaser certifying that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as if made as of the Closing Date; and

(e) any other documents required pursuant to this Agreement in form and substance satisfactory to the Purchaser and the Seller, each acting reasonably.

3.4 Further Assurances

Each party to this Agreement covenants and agrees that it will at all times after the Closing Date, at the expense of the requesting party, promptly execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed

pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

ARTICLE 4
CONDITIONS

4.1 Conditions of Closing in Favour of the Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Purchaser, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

(a) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Seller on or before the Closing shall have been complied with or performed in all material respects;

(b) Sale Approval and Vesting Order. (i) on or before the Outside Date, the Seller shall have obtained the Sale Approval and Vesting Order; and (ii) on Closing, the Sale Approval and Vesting Order shall not have been stayed, varied in any material respect or set aside;

(c) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;

(d) Injunctions. There shall be in effect no injunction against closing the transactions contemplated by this Agreement entered by a court of competent jurisdiction;

(e) No Material Damage. No material damage by fire or other hazard to the whole or any material part of the Property shall have occurred prior to Closing; and

(f) Documents. The Seller shall have delivered the documents referred to in Section 3.2.

If any of the conditions contained in this Section 4.1 shall not be performed or fulfilled on or prior to the Closing (or such other time specified in this Section 4.1) to the satisfaction of the Purchaser, acting reasonably, or otherwise waived by the Purchaser, the Purchaser may, by notice to the Seller, terminate this Agreement and the obligations of the Seller and the Purchaser under this Agreement shall be terminated. Any condition contained in this Section 4.1 may be waived in whole or in part by the Purchaser.

4.2 Conditions of Closing in Favour of the Seller

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Seller, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

(a) Representations and Warranties. On Closing, the representations and warranties of the Purchaser contained in this Agreement shall be true and correct as if made as of the Closing Date;

(b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing shall have been complied with or performed in all material respects;

(c) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;

(d) Injunctions. There shall be in effect no injunction against closing the transactions contemplated by this Agreement entered by a court of competent jurisdiction;

(e) Sale Approval and Vesting Order. (i) on or before the Outside Date, the Seller shall have obtained the Sale Approval and Vesting Order; and (ii) on Closing, the Sale Approval and Vesting Order shall not have been stayed, varied in any material respect or set aside); and

(f) Sale Process Costs. The Purchaser shall have delivered to the Seller a payment in the amount of $381,000, being an amount necessary to fund the Monitor's fees and costs to conduct the Sale Process, including the cost of its legal counsel, together with an additional amount to fund the costs of seeking the Sale Approval and Vesting Order plus any applicable taxes (the "**Sale Process Costs**");

(g) Documents. The Purchaser shall have made the payments and delivered the documents referred to in Section 3.3.

If any of the conditions contained in Sections 4.2(a), 4.2(b), 4.2(f) or 4.2(g) shall not be performed or fulfilled on or prior to the Closing to the satisfaction of the Seller, acting reasonably, the Seller may, by notice to the Purchaser, terminate this Agreement and the obligations of the Seller and the Purchaser under this Agreement shall be terminated, without prejudice to any rights or remedies that the Seller may have in connection with such failure to perform or fulfill. If any of the conditions contained in this Section 4.2, other than the conditions contained in Sections 4.2(a), 4.2(b) 4.2(f) or 4.2(g), shall not be performed or fulfilled on or prior to the Closing (or such other time specified in this Section 4.2) to the satisfaction of the Seller, acting reasonably, the Seller may, by notice to the Purchaser, terminate this Agreement and the obligations of the Seller and the Purchaser under this Agreement shall be terminated. Any condition contained in this Section 4.2 may be waived in whole or in part by the Seller.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Seller

The Seller represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement:

(a) the Seller is not a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada); and

(b) subject to the satisfaction of the conditions in Section 4.2(e), it will on Closing have the necessary corporate power, authority and capacity to enter into this Agreement and to carry out the transaction contemplated by this Agreement on the terms and subject to the conditions set out in this Agreement.

5.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to and in favour of the Seller that, as of the date of this Agreement:

(a) the Purchaser is validly existing under the laws of the Canada and has the necessary corporate power, authority and capacity to enter into this Agreement and to carry out the transaction contemplated by this Agreement on the terms and subject to the conditions set out in this Agreement;

(b) this Agreement has been duly authorized, executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser by the Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;

(c) the execution and delivery of this Agreement by the Purchaser and the consummation of the transactions herein provided for will not result in the violation of, or constitute a default under, or conflict with or cause the acceleration of any obligation of the Purchaser under: (a) any contract to which the Purchaser is a party or by which it is bound; (b) any provision of the constating documents or by-laws or resolutions of the board of directors (or any committee thereof) or shareholders of the Purchaser; (c) any judgment, decree, order or award of any court, governmental body or arbitrator having jurisdiction over the Purchaser; or (d) any applicable law, statute, ordinance, regulation or rule;

(d) there is no requirement for the Purchaser to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the transactions contemplated by this Agreement;

(e) the proposed transaction is not subject to review under the *Investment Canada Act*; and

(f) the Purchaser is a registrant for purposes of Part IX of the *Excise Tax Act* (Canada) whose registration number is 89975 4055 RT 0282.

5.3 Survival

The representations, warranties and certifications of the Seller and the Purchaser contained in this Agreement and in any Closing Deliveries shall merge on Closing and not survive following Closing.

ARTICLE 6
AS IS, WHERE IS SALE

6.1 "As is, Where is"

The Purchaser acknowledges that the Seller is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date and that, as of the date of this Agreement, the Purchaser has completed all of its due diligence in respect of the transaction contemplated by this Agreement and has satisfied itself in all respects as to the Purchased Assets. Any information provided by the Seller to the Purchaser describing the Purchased Assets has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete, accurate or correct. Unless specifically stated in this Agreement, no representation, warranty, covenant or condition, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise is being given in this Agreement or in any instrument furnished in connection with this Agreement as to title, outstanding liens, Encumbrances, description, merchantability, value, suitability or marketability thereof or in respect of any other matter or thing whatsoever including, without limitation, the respective rights, titles and interests of the Seller, if any, therein. The Purchaser shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the transactions contemplated hereunder.

ARTICLE 7
MISCELLANEOUS

7.1 Notices

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

(i) if to the Seller:

KSV Restructuring Inc.
150 King Street, Suite 2308
Toronto, Ontario M5H 1J9

Attention:	Bobby Kofman/Noah Goldstein
Telecopier No.:	416.932.6266
E-Mail:	bkofman@ksvadvisory.com, and ngoldstein@ksvadvirory.com

with a copy to, which copy shall not constitute notice:

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

Attention:	Robin B. Schwill
Telecopier No.:	416.863.0871
E-Mail:	rschwill@dwpv.com

(ii) if to the Purchaser:

Mattamy (Downsview) Limited
66 Wellington Street West,
TD Bank Tower, suite 5500
P.O. Box 97
Toronto, ON M5K 1G8

Attention:	David George
E-Mail:	David.George@mattamycorp.com

with a copy to, which copy shall not constitute notice:

Cassels Brock & Blackwell LLP
Suite 2100, Scotia Plaza, 40 King Street West
Toronto, ON M5H 3C2

Attention:	Jane Dietrich
E-Mail:	jdietrich@cassels.com

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

communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 7.1.

7.2 Enurement and Assignment

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective successors and permitted assigns. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld or delayed. No assignment by the Purchaser shall relieve the Purchaser from any of its obligations hereunder.

7.3 Amendment and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented by such party in a writing specifically referencing the provision waived.

7.4 Counterparts

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

IN WITNESS WHEREOF this Agreement has been executed by the parties on the date first written above.

MATTAMY (DOWNSVIEW) LIMITED

by _____

Name: David George
Title: Vice-President and Secretary

KSV RESTRUCTURING INC., IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF URBANCORP DOWNSVIEW PARK DEVELOPMENT INC., AND NOT IN ITS PERSONAL CAPACITY

by _____

Name: Noah Goldstein
Title: Managing Director

SCHEDULE A

ASSUMED CONTRACTS

1. Purchase Agreement, dated July 30, 2013
2. Assignment and Assumption of PDP Agreement of Purchase and Sale (Lots) with PDP consent, dated July 30, 2013
3. Assignment and Assumption of PDP Agreement of Purchase and Sale (Blocks) with PDP consent, dated July 30, 2013
4. Co-Ownership Agreement, dated July 30, 2013, as amended including by Amending Agreement dated April 23, 2014
5. Security Agreement dated July 30, 2013
6. Payment and Profit Distribution Agreement dated July 30, 2013, as amended by Amending Agreement dated April 23, 2014
7. Minutes of Settlement dated April 23, 2014
8. Co-Owner Rearrangement Agreement dated November 14, 2014
9. Promissory Note in favour of Mattamy ($4,500,000) dated November 14, 2014
10. Shareholders Agreement dated June 3, 2015, as amended including by amending agreements dated June 29, 2015, July 13, 2015, July 22, 2015, and November 15, 2015
11. Share Pledge Agreement dated June 3, 2015
12. Promissory Note from DHI ($4,500,000) dated June 3, 2015, as assigned to Mattamy

SCHEDULE B

PERMITTED ENCUMBRANCES

NIL