

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

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

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

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

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**RESPONDING MOTION RECORD**  
**OF CERTAIN HOME BUYERS**

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(UPDATED OCTOBER 25, 2016)**

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

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

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

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

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

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

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**AFFIDAVIT OF DYLAN AUGRUSO**

I, **DYLAN AUGRUSO**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Student-at-Law with the law firm of Dickinson Wright LLP (“**Dickinson Wright**”), counsel for certain purchasers of pre-construction homes from Urbancorp (St. Clair Village) Inc., Urbancorp (Mallow) Inc., Urbancorp (Lawrence) Inc., and companies related to them) and Urbancorp (Woodbine) Inc., and Urbancorp (Bridlepath) Inc. (collectively, the “**UC Vendors**”). 55 of these purchasers (the “**Home Buyers**”) instructed Dickinson Wright to file Home Buyer Objection Notices on their behalf in accordance with the Claims Procedure Orders dated September 15, 2016 and October 18, 2016. Accordingly, I have knowledge of the matters to which I hereinafter depose, except those matters expressly stated to be based upon information provided to me by others, in which case I believe such information to be true.
2. I have reviewed the Reports to Court dated March 10, 2017 filed by KSV Kofman Inc., in its capacity as monitor of the UC Vendors (collectively, the “**Monitor’s Report**”), and swear this Affidavit in response thereto.
3. The Monitor’s Report purports to summarize the responses received from 64 home buyers who each submitted a Home Buyer Objection Notice claiming damages arising from a termination of the agreements of purchase and sale entered into between such home buyers and the UC Vendors (the “**Home Buyer Agreement**”). I have reviewed the responses to the questionnaires submitted by the Home Buyers. All 55 Home Buyers have submitted responses to the Monitor’s questionnaire.
4. The Home Buyers’ responses to the questionnaires reflect the following:

- (a) 12 out of 54 or 22% do not have a college or university degree or equivalent, at least 2 of whom have only completed elementary or middle school;
- (b) 7 out of 53 or 13% cannot read and understand English;
- (c) 4 out of 55 or 7% are not employed, self-employed, or employed part-time;
- (d) 15 out of 55 or 27% have never previously entered into an agreement of purchase and sale to purchase a home and 27 out of 55 or 49% have only once previously entered into an agreement of purchase and sale to purchase a home;
- (e) 22 out of 55 or 40% stated they were not represented by a real estate agent;
- (f) 41 out of 55 or 75% did not have a lawyer review the Home Buyer Agreement during the 10 day rescission period; and
- (g) 15 out of 55 or 27% requested an amendment to the Home Buyer Agreement, and those amendments which were granted were limited to the following:
  - (i) Adding a right of assignment (8 Home Buyers);
  - (ii) Selecting finishes (3 Home Buyers);
  - (iii) Upgrading appliances (2 Home Buyers); and
  - (iv) Purchaser's financing condition, for example, changing the deposit payment structure from two smaller payments to one payment (4 Home Buyers).

5. The standard “Additional Terms” attached as Schedule “A” to the Home Buyer Agreement were not amended in the case of any of the Home Buyers.

6. On or about January 30, 2017, Dickinson Wright provided a questionnaire in the form attached as **Exhibit “A”** hereto to each of the Home Buyers. Of the 55 Home Buyers, Dickinson Wright received 51 responses were received. Copies of the completed questionnaires received by Dickinson Wright are attached hereto and marked as **Confidential Exhibit “1”**. Given the personal nature of the Home Buyers’ responses, we respectfully request that the same be filed on a confidential basis and sealed. The responses reflect the following information regarding the Home Buyers:

- (a) At the time of signing the Home Buyer Agreement, none of the Home Buyers contemplated the possibility that Urbancorp would become insolvent;
- (b) 23 Home Buyers stated that the UC Vendors or their agents exerted pressure upon them to sign the purchase agreement;
- (c) In no instance did the UC Vendors or anyone acting on behalf of the UC Vendors explain or draw to the attention of the Home Buyers the exclusion clause contained in section 45 of the “Additional Terms” attached as Schedule “A” to the Home Buyer Agreement;
- (d) 36 Home Buyers stated that the Home Buyer Agreement was presented to them as a “take it or leave it” standard form contract.

7. I swear this Affidavit in response to the Monitor's Report and for no other or improper purpose.

**SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario this day of March, 2017.



Commissioner for Taking Affidavits  
*(or as may be)*



**DYLAN AUGRUSO**

Melissa Beth Tayar, a Commissioner, etc.,  
Province of Ontario, while a **Student-at-Law**.  
Expires September 1, 2019.

This is Exhibit "A" referred to in the Affidavit of DYLAN AUGRUSO sworn March 23, 2017



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*Commissioner for Taking Affidavits (or as may be)*

Melissa Beth Tayar, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires September 1, 2019.

### **Urbancorp – List of Questions to Purchasers**

1. How did you learn about the opportunity to purchase a home from Urbancorp? If you have any advertising materials, please send them to us.
  
2. Did Urbancorp or anyone acting on its behalf (including real estate and sales agents) make any representations to you regarding Urbancorp's reputation, or track record as a builder, or Urbancorp's financial position, or solvency?
  
3. On what date was your Purchase Agreement signed and accepted by Urbancorp? Please send a copy of the signed Purchase Agreement to us (in PDF). If you cannot provide your Purchase Agreement by Friday, February 3, 2017, please also provide in your response the First Tentative Closing Date in your Purchase Agreement (which can be found in the Tarion – Statement of Critical Dates (Delayed Closing Warranty) Schedule).
  
4. Please provide details and describe the environment in which you signed the Purchase Agreement. For example, was there a line-up to sign the Purchase Agreement?
  
5. Did Urbancorp or anyone acting on its behalf (such as real estate or sales agents) exert any pressure upon you to sign the Purchase Agreement? If so, please provide details.
  
6. Was the Purchase Agreement presented to you as a “now or never” transaction?
  
7. Was the Purchase Agreement presented to you as a “take it or leave it” standard form contract?



8. Did you read and understand the exclusion clause in the Purchase Agreement, which is reproduced below (the "Exclusion Clause")?

"45. Notwithstanding anything contained in this Agreement it is understood and agreed by the parties hereto that in the event that construction of the Dwelling is not completed on or before the Closing Date for any reason or in the event the Vendor cannot complete the subject transaction on the Closing Date, other than as a result of the Purchaser's default, the Vendor shall not be responsible or liable to the Purchaser in any way for any damages or costs whatsoever including without limitation loss of bargain, relocation costs, loss of income, professional fees and disbursements and any amount paid to third parties on account of decoration, construction or fixturing costs other than those costs set out in the Tarion Addendum."

9. Did Urbancorp or anyone acting on behalf of Urbancorp (including any real estate or sales agent) explain the Exclusion Clause to you, or point it out or draw it to your attention?
10. Do you have any difficulty understanding the Exclusion Clause?
11. Do you or did you at the time of signing the Purchase Agreement suffer from any physical or mental illness, learning or cognitive deficiencies, or other disability as a result of which it was difficult for you to understand the Exclusion Clause, or other provisions in the Purchase Agreement?
12. Did you contemplate the possibility that Urbancorp would become insolvent before signing the Purchase Agreement?

13. What is your age?
  
14. Is English your first language?
  
15. Are you able to read, write and speak English fluently?
  
16. What is your educational background and level of education completed?
  
17. Have you purchased real estate prior to entering into the Purchase Agreement? If so, provide details.
  
18. Did you attempt or try to negotiate the terms of the Purchase Agreement with Urbancorp? If so, what was the response from Urbancorp?
  
19. Were you directed or advised by Urbancorp to consult with a lawyer before signing the Purchase Agreement?

20. Did you consult and obtain advice from a lawyer before or within ten (10) days after signing the Purchase Agreement? If so, did your lawyer explain the Exclusion Clause to you?

21. Did Urbancorp or anyone acting on behalf of Urbancorp (including any real estate or sales agent) point out or explain the clause reproduced below?

“4. This Agreement is conditional upon the approval of the terms hereof by the Purchaser’s solicitor for a period of ten (10) days from the date of acceptance of this Agreement by the Vendor below (the “Acceptance Date”). Unless the Purchaser provides notice to the Vendor, in writing delivered to the Vendor by no later than 11:59 pm on the Acceptance Date, then the Purchaser shall be deemed to have waived this condition and the Agreement shall become firm and binding. Should the Purchaser notify the Vendor in the time aforesaid that this Agreement is unacceptable, this Agreement shall become null and void and the Purchaser’s deposit shall be returned in full, without interest. This condition is included for the benefit of Purchaser and may be waived at the Purchaser’s sole option.”

22. Did you know and understand at the time of signing the Purchase Agreement that the Purchase Agreement was conditional upon the approval of the terms of the Purchase Agreement by the Purchaser’s lawyer for a period of 10 days?

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (WOODBINE) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO  
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (BRIDLEPATH) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: 31-2114843  
Court File No.: 31-2114850

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 IN SCHEDULE "A" HERETO

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

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

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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (WOODBINE) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO  
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF URBANCORP (BRIDLEPATH) INC. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Court File No.: 31-2114843  
Court File No.: 31-2114850

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

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

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

PROCEEDING COMMENCED AT  
TORONTO

**RESPONDING MOTION RECORD**  
**OF CERTAIN HOME BUYERS**

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