



**Thirteenth Report to Court of KSV  
Kofman Inc. as CCAA Monitor of  
Urbancorp (Woodbine) Inc., Urbancorp  
(Bridlepath) Inc., The Townhouses of  
Hogg's Hollow Inc., King Towns Inc.,  
Newtowns at Kingtowns Inc., Deaja  
Partner (Bay) Inc., and TCC/Urbancorp  
(Bay) Limited Partnership**

February 20, 2018

## Contents

Page

1.0	Introduction .....	1
1.1	Purposes of this Report .....	3
1.2	Currency .....	3
1.3	Restrictions .....	4
2.0	Background .....	4
2.1	General .....	4
2.2	Bay LP .....	4
2.2.1	Bay CCAA Entities – Distributions and Disputed Claims .....	5
2.3	UCI .....	5
2.4	TFCC .....	6
2.5	DS (Bay) .....	7
3.0	The Settlement .....	7
4.0	Effect of the Settlement on Stakeholders and Potential Stakeholders .....	9

## Appendices

### Appendix

Tab

Corporate chart of the Bay CCAA Entities .....	A
Corporate chart of the Cumberland CCAA Entities .....	B
Endorsement of Justice Newbould .....	C
Tenth Report dated July 25, 2017 .....	D
Vestaco - Declaration of Trust .....	E
DS (Bay) - Declaration of Trust .....	F
Memorandum of Understanding .....	G
Priority Agreement .....	H
Bay LP Income Allocation .....	I

COURT FILE NO.: CV-16-11549-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

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

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

THIRTEENTH REPORT OF KSV KOFMAN INC. AS CCAA MONITOR

FEBRUARY 20, 2018

## 1.0 Introduction

1. On April 25, 2016, Urbancorp (Woodbine) Inc. ("Woodbine") and Urbancorp (Bridlepath) Inc. ("Bridlepath") each filed a Notice of Intention to Make a Proposal (the "NOI Proceedings") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Jointly, Woodbine and Bridlepath are referred to as the "Companies". KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee in the NOI Proceedings.
2. Pursuant to an order (the "Initial Order") made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated October 18, 2016, Woodbine, Bridlepath, The Townhouses of Hogg's Hollow Inc., King Towns Inc., Newtowns at Kingtowns Inc. Deaja Partner (Bay) Inc. ("Deaja") and TCC/Urbancorp (Bay) Limited Partnership ("Bay LP") (the "Bay CCAA Entities") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") (the "Bay LP CCAA Proceedings") and KSV was appointed monitor in those proceedings (the "Monitor").
3. Deaja is the general partner of Bay LP. Each of the Bay LP subsidiaries is a nominee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP.

4. The entities below are the known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP (“Cumberland”):

- Urbancorp (St. Clair Village) Inc.
- Urbancorp (Patricia) Inc.
- Urbancorp (Mallow) Inc.
- Urbancorp (Lawrence) Inc.
- High Res Inc.
- King Residential Inc.
- Urbancorp (952 Queen West) Inc.
- Urbancorp 60 St. Clair Inc.
- Urbancorp New Kings Inc. (“UNKI”)
- Bridge on King Inc. Urbancorp (North Side) Inc.
- Urbancorp Partner (King South) Inc.

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.

5. On or around December 15, 2015, Urbancorp undertook a reorganization (the “Reorganization”). Prior to the Reorganization, each of the Cumberland subsidiaries listed above was a subsidiary of Bay LP.

6. Each of the Cumberland Entities, and several additional entities<sup>1</sup> (collectively, the “Cumberland CCAA Entities”), except UNKI, is subject to a CCAA proceeding separate from the Bay LP CCAA Proceedings (the “Cumberland CCAA Proceedings”). KSV is the monitor in the Cumberland CCAA Proceedings.

7. The Cumberland CCAA Entities<sup>2</sup> are direct or indirect wholly-owned subsidiaries of Urbancorp Inc. (“UCI”).

8. 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”).

9. 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.

---

<sup>1</sup> Urbancorp Toronto Management Inc., Urbancorp Downsview Park Development Inc., Urbancorp Power Holdings Inc., Vestaco Homes Inc., Vestaco Investments Inc., 228 Queens Quay West Limited, Urbancorp Residential Inc., Urbancorp Realtyco Inc. and Urbancorp Cumberland 1 GP

<sup>2</sup> Except Urbancorp Toronto Management Inc., which is believed to be wholly owned by Alan Saskin.

10. Corporate charts for each of the Bay CCAA Entities and the Cumberland CCAA Entities are attached as Appendices “A” and “B”, respectively. For the purposes of this Report, the Bay CCAA Entities, the Cumberland CCAA Entities and their respective affiliates comprise the Urbancorp Group (the “Urbancorp Group”).
11. On the date of the Initial Order issued in the Bay LP CCAA Proceedings, an order (the “Claims Procedure Order”) was made by the Court establishing a procedure for the identification and quantification of claims against the Bay CCAA Entities and against the current and former officers and directors of the Bay CCAA Entities (the “Claims Process”). The Claims Procedure Order set November 23, 2016 as the date by which claims were required to be filed (the “Claims Bar Date”).
12. The Monitor has disallowed several claims filed in the Claims Process. The Monitor has reserved funds for all disputed claims in the event that they are ultimately admitted, including in respect of: (i) approximately \$10 million<sup>3</sup> in secured claims filed by TFCC; and (ii) an \$8 million claim which the Foreign Representative, on behalf of UCI and on behalf of the holders of bonds issued by UCI, has brought a motion to late file on the basis of misrepresentation and negligent misrepresentation in connection with promissory notes that were issued by Bay LP and assigned to UCI and Urbancorp Realtyco Inc. (“Realtyco”), a subsidiary of UCI.
13. On June 27, 2017, the Court made an order authorizing and directing the Monitor to pay a 33% dividend to creditors with admitted claims against the Bay CCAA Entities. At the time, the Monitor was unable to recommend any further distributions as a result of the disputed TFCC and UCI claims.
14. As a result of an arrangement reached among the Monitor, TFCC and UCI, the Court made an order on November 30, 2017 authorizing and directing the Monitor to pay in full all admitted claims, other than intercompany claims.

## 1.1 Purposes of this Report

1. The purposes of this report (the “Report”) are to:
  - a) provide information concerning the Claims Process; and
  - b) summarize a settlement between UCI and TFCC regarding their potential claims against the Bay CCAA Entities (the “Settlement”) and its effect on other stakeholders of Bay LP. The Settlement is subject to Court approval.

## 1.2 Currency

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

---

<sup>3</sup> This is comprised of approximately \$6 million for the principal portion of the claim and \$4 million for potential interest and costs.

### 1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial statements of the Bay CCAA Entities and Cumberland CCAA Entities, the books and records of the Bay CCAA Entities and Cumberland CCAA Entities and discussions with their management, their legal counsel and their external accountants.
2. The Monitor has not performed an audit or independent verification of the information discussed herein. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

## 2.0 Background

### 2.1 General

1. The Urbancorp Group was founded in 1991 by Alan Saskin. The Urbancorp Group is principally involved in the development of residential real estate projects in the Greater Toronto Area. The Monitor understands that Mr. Saskin, his family members and family trusts are, directly or indirectly, the ultimate owners of the entities in the Urbancorp Group.

### 2.2 Bay LP

1. Bay LP is a limited partnership that the Monitor understands was started in 1999. Bay LP owned, through nominee corporations, various real estate projects that included Woodbine and Bayview. For the purpose of this Report, Woodbine's real property is referred to as the "Woodbine Property" and Bayview's real property is referred to as the "Bayview Property".
2. The Woodbine Property and the Bayview Property were sold during the NOI Proceedings. The proceeds generated from the sales of the Woodbine Property and the Bayview Property were used to fund distributions to creditors in the Bay LP CCAA Proceedings and to fund the costs of the Bay LP CCAA Proceedings.
3. The current ownership of Bay LP is believed to be as follows:
  - a) Deaja – General Partner - .01%
  - b) Alan Saskin – Limited Partner – 79.99%
  - c) DS (Bay) Holdings Inc. ("DS (Bay)") – Limited Partner – 20.00%
4. Notwithstanding the above partnership interests, it appears that, pursuant to a Second Amending Agreement dated May 15, 2008, DS (Bay) is entitled to a priority return of the earnings and partners' distributions of Bay LP (the "Priority Agreement").

## 2.2.1 Bay CCAA Entities – Distributions and Disputed Claims

- As of February 15, 2018, Bay LP's assets consist of cash of approximately \$11.5 million, related party receivables of approximately \$4.3 million<sup>4</sup> and Class D shares of Urbancorp Holdings Inc. ("UHI"), the parent company of UCI. No recoveries are expected to be generated from the related party receivables or the UHI Class D shares.
- The table below summarizes the admitted, paid and disputed claims in the Claims Process.

(\$000s; unaudited)	Total Admitted Claims	Distribution	Unpaid Admitted Claims	Total Disputed claims
TFCC	716	716	-	10,014
Other third-party creditors	7,445	7,445	-	3,172
Intercompany creditors	1,154	381	772	-
	9,315	8,542	772	13,186

- The table below summarizes the disputed claims in the Claims Process.

(unaudited; \$000)	Amount
Secured Claim	
TFCC (principal, interest and cost reserve)	10,014
Unsecured Claims	
Employee claims	2,456
Tarion Warranty Corporation	716
	3,172
Total Disputed Claims	13,186

- In addition to the disputed claims in the table above, the Foreign Representative, on behalf of UCI, has filed a motion to late file an \$8 million claim. This claim is discussed further in Section 2.3 below.

## 2.3 UCI

- UCI filed claims totaling approximately \$8 million (the "\$8 Million Claims") in the Bay LP CCAA Proceedings. The \$8 Million Claims were based on promissory notes issued by Bay LP in favour of Urbancorp Toronto Management Inc. ("UTMI") (the "Promissory Notes"), which assigned the Promissory Notes to UCI (in the amount of \$6 million) and to Realtyco (in the amount of \$2 million).

<sup>4</sup> Mainly consists of approximately \$3.4 million owing by Urbancorp (Bay/Stadium) LP ("Bay/Stadium") and approximately \$500,000 owing by Urbancorp Toronto Management Inc. Bay/Stadium is the parent company of, *inter alia*, Urbancorp (Leslieville) Developments Inc. ("Leslieville"). Leslieville is subject to receivership proceedings in which Alvarez & Marsal Canada Inc is the Court appointed Receiver. Urbancorp Toronto Management Inc. provides management services to the Urbancorp Group. No realizations are expected in Urbancorp Toronto Management Inc.

2. The Monitor disallowed the \$8 Million Claims on the basis that Bay LP was not indebted to UTMI at the time the Promissory Notes were issued (the “UCI Disallowance”).
3. UCI, by its Foreign Representative, brought a motion to set aside the UCI Disallowance. On May 11, 2017, Mr. Justice Newbould dismissed UCI’s motion (the “Decision”). A copy of Mr. Justice Newbould’s endorsement is attached as Appendix “C”.
4. On June 23, 2017, subsequent to the Decision, the Foreign Representative filed a motion to allow it to late file an \$8 million claim in the Claims Process (the “UCI Motion”). UCI sought to late file on the basis of misrepresentations in connection with the Promissory Notes. As the Decision was rendered subsequent to the Claims Bar Date, the Foreign Representative was not able to file its claims against Bay LP by the date required. On June 27, 2017, the UCI Motion was adjourned *sine die*. Further details regarding the UCI Motion are provided in the Foreign Representative’s motion record dated February 16, 2018.

## 2.4 TFCC

1. TFCC filed claims in the Claims Process in respect of guarantees granted to TFCC (the “TFCC Guarantee Claims”) by Woodbine, Bayview and Bay LP (the “Guarantees”). The Guarantees relate to a balance outstanding of approximately \$6 million on a \$10 million loan made by TFCC to UHI (the “UHI Loan”).
2. The Monitor disallowed the TFCC Guarantee Claims (the “TFCC Disallowance”) on the basis that:
  - a) Bay LP was insolvent at the date of the UHI Loan;
  - b) Bay LP received no benefit or consideration in granting the Guarantee;
  - c) TFCC was aware both before and at the time the UHI Loan was made of the Urbancorp Group’s financial circumstances generally and Bay LP’s specifically;
  - d) The effect of the Guarantees was to defeat or hinder recoveries to other creditors of Bay LP; and
  - e) The granting of the Guarantees was oppressive, unfairly prejudicial to or unfairly disregarded the interests of Bay LP’s other creditors.
3. Full details of the Monitor’s analysis with respect to the TFCC Guarantee Claims is provided in the Monitor’s Tenth Report dated July 25, 2017 (the “Tenth Report”). A copy of the Tenth Report is attached as Appendix “D”, without appendices.
4. On May 8, 2017, TFCC brought a motion to set aside the TFCC Disallowance (the “TFCC Motion”). The TFCC Motion was adjourned *sine die* at the request of TFCC to allow TFCC and UCI to negotiate a settlement of their respective claims in the Bay LP CCAA Proceedings.

## 2.5 DS (Bay)

1. DS (Bay) was incorporated on December 9, 2016. The Monitor understands that DS (Bay) was incorporated for the purpose of acquiring Doreen Saskin's 20% partnership interest in Bay LP (the "Doreen LP Interest").
2. Prior to the incorporation of DS (Bay), Vestaco Investments Inc. ("Vestaco"), a Cumberland CCAA Entity, was the registered owner of the Doreen LP Interest. The Monitor understands that Vestaco held the Doreen LP Interest as nominee on behalf of and for the benefit of Doreen Saskin, pursuant to a trust declaration dated April 13, 1999 (the "Trust Declaration"). A copy of the Trust Declaration is attached as Appendix "E".
3. On December 9, 2016, the following changes in the registered and beneficial ownership of the Doreen LP Interest appear to have taken place:
  - a) Vestaco transferred the registered ownership of its Bay LP interest to DS (Bay) by way of a declaration of trust (the "Declaration of Trust"). A copy of the Declaration of Trust is attached as Appendix "F"; and
  - b) Doreen Saskin sold her beneficial interest in the Doreen LP Interest to DS (Bay) in a non-cash transaction. The sale was documented by Memorandum of Understanding, a copy of which is attached as Appendix "G".
4. Pursuant to the Priority Agreement, the Bay LP partners agreed to provide the Doreen LP Interest with a priority return of \$7 million, increasing at 7% compounded annually (the "Priority Return"). A copy of the Priority Agreement is attached as Appendix "H".
5. As a result of the sales of the Woodbine Property and the Bayview Property, Bay LP generated taxable income of approximately \$12.9 million for the year ended December 31, 2016, of which approximately \$12.6 million was allocated to DS (Bay). The disproportionate allocation of the taxable income to DS (Bay), which holds a 20% partnership interest in Bay LP, was the result of the Priority Return to which DS (Bay) was entitled. As a result of the foregoing, for 2016 DS (Bay) has an estimated tax liability of approximately \$3.2 million, assuming it has no other income or expenses.
6. A schedule summarizing the income allocation among the partners of Bay LP for the period 2008 to 2016 is attached as Appendix "I". It appears that prior to 2016, Bay LP's income was not allocated according to the terms of the Priority Agreement.
7. MNP LLP ("MNP"), the external accounting firm for DS (Bay), has advised the Monitor that DS (Bay) has no assets or source of income other than its partnership interest in Bay LP. MNP has also advised the Monitor that no financial statements have ever been prepared for DS (Bay).

## 3.0 The Settlement

1. TFCC and UCI have been attempting to resolve between them their claims against the Bay CCAA Entities.

2. Pursuant to an agreement dated February 13, 2018, TFCC and UCI entered into the Settlement, which is evidenced by minutes of settlement (the “Minutes of Settlement”). A copy of the Minutes of Settlement is provided in the Foreign Representatives’ motion record.
3. The Foreign Representative and TFCC have filed motions with this Court to approve the Settlement. The salient terms of the Settlement are as follows:
  - a) all remaining third-party claims would either be fully reserved in the Bay LP CCAA Proceedings or, in the case of the employee claims, fully reserved, and paid from, the Cumberland CCAA Proceedings;
  - b) TFCC would receive \$3 million in full and final satisfaction of the TFCC Guarantee Claims;
  - c) UCI’s Late File Claim would be admitted and UCI would receive an initial distribution of at least \$5.5 million at the same time the \$3 million is paid to TFCC; and
  - d) The Settlement is conditional on approvals from this Court and the Israeli Court.
4. The employee claims were filed by two former employees of UTMI., a Cumberland CCAA Entity, each of whom filed identical claims against both the Cumberland CCAA Entities and Bay CAA Entities. The Monitor has fully reserved for these claims in the Cumberland CCAA Proceedings. The Foreign Representative, on behalf of UCI, has agreed that these claims may be paid from distributions it would otherwise receive to the extent these claims are admitted against the Bay CCAA Entities and not admitted and paid for in full in the Cumberland CCAA Proceedings in their admitted or otherwise settled amounts.
5. The table below reflects that there are sufficient funds in the Bay CCAA Proceedings to make the distributions required under the terms of the Settlement.

(C\$000s; unaudited)	Amount
Cash available for Bay Distribution	
Current bank balance	11,509
Cash holdback for costs in administration	(750)
Net cash available	<u>10,759</u>
 Reserves	
Intercompany claims	(772)
Tarion Warranty Corporation	(716)
	<u>(1,488)</u>
 Funds Required for Settlement Agreement	
TFCC	(3,000)
UCI Claims	(5,500)
	<u>(8,500)</u>
 Residual Amount Remaining	<u><u>771</u></u>

6. The Settlement provides UCI with an \$8 million claim. Accordingly, provided the Settlement is approved, any residual funds would be distributed to UCI until it receives \$8 million. Upon completing this Settlement, the Bay CCAA Proceedings will be substantially complete and the Monitor will be able to seek its discharge and release the holdback to the Foreign Representative (\$750,000, less future costs and expenses).

#### **4.0 Effect of the Settlement on Stakeholders and Potential Stakeholders**

1. The Settlement provides TFCC with \$3 million distribution and UCI with a minimum initial distribution of \$5.5 million;
2. in the event that the Court determined that the TFCC Guarantee Claim and the UCI Late File Claim should not be admitted, neither TFCC nor UCI would receive any distributions. In that case, all residual funds after the payment of admitted claims and the costs of administration would be paid to DS (Bay);
3. DS (Bay) is not an applicant in any of the Urbancorp insolvency proceedings. Based on the Monitor's understanding of DS (Bay)'s financial position and the financial information made available to the Monitor, DS Bay should have a significant tax obligation with respect to the 2016 taxable income that was allocated to it by Bay LP;
4. the Settlement does not affect the other stakeholders in the Bay CCAA Proceedings, as the Monitor intends to reserve for all disputed and/or unpaid claims, as discussed above; and
5. the Monitor required that TFCC and the Foreign Representative provide notice of their motions to approve the Settlement to DS (Bay), Canada Revenue Agency, Doreen Saskin and Alan Saskin.

\* \* \*

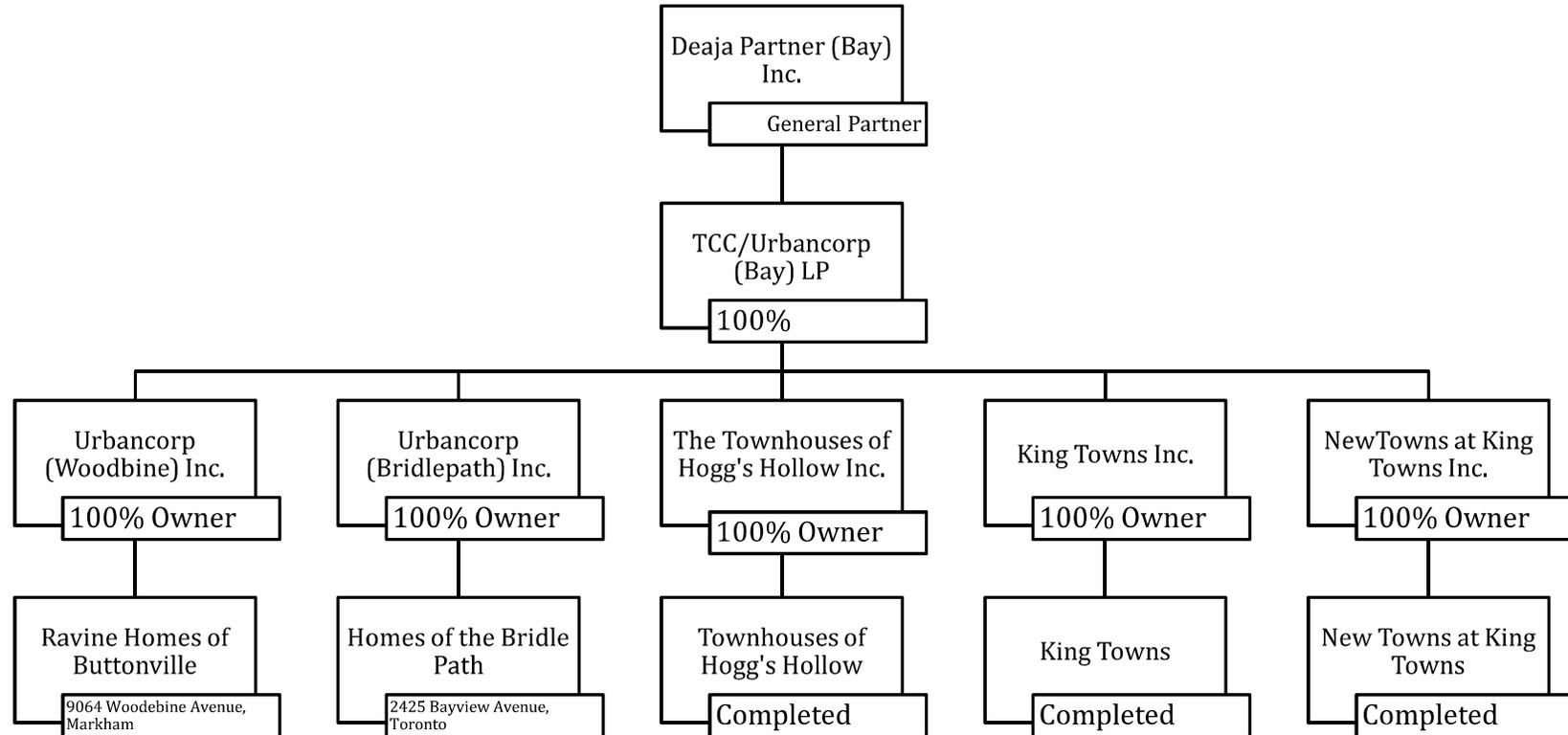
All of which is respectfully submitted,



**KSV KOFMAN INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
URBANCORP (WOODBINE) INC., URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES  
OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC.,  
DEAJA PARTNER (BAY) INC. AND TCC/URBANCORP (BAY) LIMITED PARTNERSHIP  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**

TCC/URBANCORP (BAY)



## **Appendix “B”**



## **Appendix “C”**

**CITATION:** Re Urbancorp, 2017 ONSC 2900  
**COURT FILE NO.:** CV-16-11549-00CL  
**DATE:** 20170511

**SUPERIOR COURT OF JUSTICE – ONTARIO  
COMMERCIAL LIST**

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

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

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

**BEFORE:** Newbould J.

**COUNSEL:** *Neil S. Rabinovitch and Kenneth Kraft*, for Guy Gissin, the Israeli Functionary of Urbancorp Inc.

*Robin B. Schwill*, for the Monitor

*David Preger*, for Downing Street Financial

*Adam M. Slavens*, for Tarion Warranty Corporation

*Lori Goldberg*, for Fuller Landau, the Receiver of Alan Saskin

**HEARD:** May 2, 2017

**ENDORSEMENT**

[1] Guy Gissin, the Israeli Functionary of Urbancorp Inc. ("UCI") and recognized in this proceeding as the Foreign Representative, moves to set aside the disallowance of a claim made by UCI in the claims process on a promissory note of \$6 million issue by Bay LP, an Urbancorp entity, to Urbancorp Toronto Management Inc. ("UTMI") and assigned by UTMI to UCI. Mr.

Gissin also moves for a declaration confirming the validity of a companion \$2 million note issued by Bay LP to UTMI and assigned to Urbancorp Realtyco Inc. (“Realtyco”), a subsidiary of UCI.

[2] These notes were issued in connection with management fees to be paid by Bay LP to UTMI and they replaced an earlier \$8 million note of Bay LP to UTMI. The relevant events are contained in the Monitor's sixth report, as follows.

[3] The management fee relates to a fee charged by UTMI to Bay LP in respect of the sale of Bay LP's 49% interest (the “Sale”) in Downsview Homes Inc. (“Downsview Homes”) to Mattamy Homes. A history of Downsview Homes, the Sale, the management fee and the promissory notes, is as follows:

- June 28, 2011 – Downsview Homes, a nominee for Downsview Park, which was the nominee for Bay LP, entered into agreements (the “Purchase Agreements”) for the purchase of lands (the “Lands”) from Parc Downsview Park Inc. (“PDP”). The Purchase Agreements were to close upon the rezoning of the Lands. The date for the closing was unknown at the time of entering into the Purchase Agreements.
- June 10, 2013 – A consulting agreement (the “Original Fee Agreement”) was entered into among Bay LP, Downsview Park and UTMI. The Original Fee Agreement provided, inter alia, that Bay LP would pay UTMI a \$9.8 million fee if Bay LP successfully completed the Sale for an amount in excess of \$18 million. The fee would become payable upon an invoice being rendered by UTMI to Bay LP, which UTMI agreed would not be rendered prior to the closing of the Purchase Agreements with PDP. At the date of the Original Fee Agreement, the date of the final closings for the Purchase Agreements was unknown. The final closings, as it turned out, occurred on June 4, 2015.
- July 30, 2013 – Bay LP completed the Sale of its 49% interest to Mattamy Homes for an amount in excess of \$21 million. From the proceeds of the sale price, UTMI received approximately \$14.5 million in two separate payments (\$6.8 million and \$7.7 million).
- December 15, 2014 – An \$8 million promissory note (the “Original Promissory Note”), dated December 15, 2014 was issued by Bay LP in favour of UTMI. The debt supporting the Original Promissory Note was the unbilled balance of the fee relating to the Original Fee Agreement (i.e. \$9.8 million less \$1.8 million fee accrued in 2013). The payment terms of the Original Promissory Note differ from the payment terms of the Original Fee Agreement; the Original Promissory Note was “Due on Demand”, whereas the Original Fee Agreement specifies the fee

would be due upon the rendering of an invoice by UTMI to Bay LP, which would not be rendered prior to the final closing of the Purchase Agreements.

- June 1, 2015 – An amending agreement (the “Amended Fee Agreement”) was entered into among Bay LP, Downsview Park and UTMI. The Amended Fee Agreement reduced the fee earned on the Sale by \$3.0 million to \$6.8 million. The Amended Fee Agreement also changed the date on which the fee is to be due and payable to the date of the first advance from bcIMC Mortgage Fund (“bcIMC”) of the construction financing for the Downsview Park project. The first funding from bcIMC, although not known at the time of the Amended Fee Agreement, occurred in 2016. The financing facility provided by bcIMC closed on July 21, 2016.
- December 11, 2015 – The \$8 million Original Promissory Note was replaced by a \$6 million promissory note (the “\$6 Million Promissory Note”) and a \$2 million promissory note (the “\$2 Million Promissory Note”) (collectively the “Substituted Promissory Notes”). The Substituted Promissory Notes make reference to the Original Promissory Note (although the Substituted Promissory Notes state the Original Promissory Note had been issued on December 11, 2015 rather than December 15, 2014). The terms of the Substituted Promissory Notes appear to be the same as the Original Promissory Note except that the Substituted Promissory Notes bear interest (at 1%), whereas the Original Promissory Note stated there is no interest. The \$6 Million Promissory Note and the \$2 Million Promissory Note were assigned by UTMI on December 11, 2015 to UCI and Urbancorp Management Inc. (“UMI”), respectively; on the same day, UMI assigned the \$2 Million Promissory Note to Realtyco.

[4] UCI was incorporated to raise money in the Israeli bond market which it did in December 2015 by raising \$64 million through a public bond issuance on the Tel Aviv Stock Exchange. UCI was required as a condition of the bonds to transfer assets from Urbancorp to UCI to support UCI’s ability to pay the bonds. A number of Urbancorp entities were transferred into UCI. As well, Mr. Saskin, the owner of the various Urbancorp entities, agreed to assign to UCI \$8 million of obligations described as loan obligations. The prospectus reflected this condition as follows:

“The Rights Holders [Mr. Saskin and his family] have committed that, prior to the listing for trading [of the bonds]...they would transfer to [UCI] their rights ... in the transferred entities which indirectly hold rights to rental investment property....and would assign [UCI] their right to the repayment of loans held be [sic] them, which amounts to CAD 8,000 thousand (hereinafter together “the Transferred Rights”)...

[5] As part of the Bond Issuance, interim pro forma consolidated financial statements of UCI as of June 30, 2015 were prepared by Brightman Almagor Zohar & Co. (“Deloitte Israel”). These unaudited interim pro forma consolidated financial statements as at June 30, 2015 and as at September 30, 2015 indicated that UCI had a current asset of \$8 million in respect of “related parties”. The notes to the financial statement referred to an assignment to UCI of the right to receive loans from entities owned by Mr. Saskin and his family.

[6] Mr. Saskin was examined by counsel for the Foreign Representative. In answers to very leading questions he said that the reference in the prospectus to the right to repayment of \$8 million in loans and the reference in the pro forma unaudited statements to the current asset in respect of related parties were to the \$8 million promissory note. I find it difficult to understand why a promissory note issued in respect of obligations under the Original Fee Agreement for management fees, as acknowledged by the Foreign Representative in its factum, would be referred to as a right to repayment of loans. There is no evidence the promissory note had anything to do with loans. I do not put any reliance on the assertions of Mr. Saskin who has no real recollection of the \$8 million note or its purpose.

[7] The Foreign Representative takes the position that UCI, as an assignee from UTMI, is a good faith holder in due course of the \$6 million note free of any defect of title and personal defences between the prior parties to the note. It also says that UCI gave value for the assignment of the note to it by issuing special shares of UCI to Urbancorp Holdco, wholly owned by Mr. Saskin.

[8] The position of the Monitor and its reason for disallowing the claim of UCI on the \$6 million promissory note is that the original \$8 million note was issued by Bay LP in favour of UTMI as evidence of the principal payment obligation under the Original Fee Agreement and was not an obligation of Bay LP independent of the obligation under the Original Fee Agreement. By the time the substituted \$6 million note was issued, Bay LP did not owe UTMI anything and UTMI owed Bay LP \$527,655. This argument is based on the accounting records of Bay LP and UTMI. The Monitor also says that that UTMI provided no new consideration to Bay LP in exchange for the issuance of the \$6 million note.

## Analysis

[9] A promissory note is not always a promise separate from an underlying transaction. In Benjamin Geva, *Vol II, Negotiable Instruments and Banking* Toronto: Emond Montgomery Publications Ltd, 1995 it is stated at page 90:

Sometimes, an instrument is taken by a creditor from his debtor merely to evidence the debtor's undertaking under the basic transaction (e.g., sale of goods, loan of money). In such a case, as between the debtor and creditor, the instrument itself does not give rise to any liability on the debtor's part. The basic transaction remains the only effective source of the debtor's liability. The debt is neither discharged nor suspended by the giving of the instrument. The instrument is only intended to serve as evidence of the indebtedness.

Normally, however, an instrument is given by a debtor to his creditor either as collateral security to, or by way of payment of, the indebtedness arising from the basic transaction. There is moreover a presumption in favour of payment.

[10] What was the purpose of the original \$8 million promissory note? It was signed by Mr. Saskin. On his cross-examination, he said he did not know what the purpose of the note was. He said it was likely made on accounting and legal advice, but even on that he was guessing. There is no evidence from any accountant or legal advisor about the purpose of the note.

[11] Mr. Cole of MNP, the accountant for Urbancorp, was asked what the reason was for the original \$8 million note being split into two notes, one for \$6 million and one for \$2 million. He said that the original note was split into two for tax purposes to avoid a capital gain on the transfer of certain assets to UCI subsidiaries. What those certain assets were was not said. He was asked why the replacement notes provided for 1% interest when the original provided for no interest, and his response was that he did not know. This information was not sworn but contained in answer to questions posed by counsel for the Foreign Representative.

[12] I cannot find that the \$6 million note or the \$2 million note were independent obligations regardless of whether the management fees were paid. The best that can be made on the record before me is that they were issued for tax purposes.

[13] So far as the original \$8 million note dated December 15, 2014 is concerned, it represented the balance at that time of the management fees of \$9.8 million to be paid under the Original Fee Agreement which had been reduced by the payment of \$1.8 million which was paid not by cash but by off-setting entries in the Bay LP and UTMI intercompany accounts. It had nothing to do with any outstanding loans owed by Bay LP to UTMI.

[14] The form of the \$8 million promissory note bears all of the hallmarks of a note given by a debtor to an independent holder. For example, it provides that if the note is put in the hands of a solicitor for collection the borrower shall pay all costs as between a solicitor and his own client. The note was signed by Mr. Saskin. It was in favour of UTMI. Mr. Saskin controlled both companies and the notion that he would retain a lawyer for his company UTMI to go after his company Bay LP is fanciful. There is no evidence of any intent at the time for UTMI to assign the note to any independent party who might wish to rely on such clauses.

[15] Moreover, Bay LP was not a borrower at all but had a potential liability for management fees in the future if Bay LP was successful in selling its 49% interest in two agreements to acquire property. The amount of management fees depended on the amount received by Bay LP and could be only \$3 million if the sale was for an amount up to \$10 million, or \$7 million if the sale was between \$10 million and \$18 million, or \$9.8 million if the sale was for more than \$18 million. The note was said to be a demand note, which if truly was the case meant that UTMI could demand payment of \$8 million at any time even though management fees were not yet payable or in that amount<sup>1</sup>. Under the Original Fee Agreement no management fees could be invoiced or paid until after the purchase of the underlying properties were completed, which as it turned out did not occur until June 4, 2015.

[16] I cannot find that the original \$8 million note was an obligation of Bay LP independent of the obligation of Bay LP to pay management fees to UTMI. There is simply no evidence that it was intended to be an obligation separate from the obligation to pay management fees. Like the

---

<sup>1</sup> When the first payment of management fees was made in 2013, they were not yet owing as the purchase of the lands in question did not close until June 4, 2015 and no invoice for management fees was or could be rendered at the time that payment was made. It is apparent that all of the documentation was not intended to be closely followed.

later \$6 million and \$2 million replacement notes, it is likely that the \$8 million note was made for some tax purpose of Urbancorp. The explicit terms of the \$8 million note, like the terms of the replacement \$6 million and \$2 million notes, were not intended to be binding on Bay LP or UTMI.

[17] An issue therefore is whether the balance owing by Bay LP to UTMI in management fees was paid, or paid by the time of the issuance of the replacement notes on December 11, 2015. The balance owing under the Original Fee Agreement as it turned out was \$8 million. The total management fees were amended in the Amended Fee Agreement dated June 1, 2015 which reduced the management fees to be paid by Bay LP to UTMI to \$6.8 million in total, which would leave only \$5 million outstanding.

[18] It seems clear that as between Bay LP and UTMI, the accounting treatment was the method by which accounts were settled. The first payment of \$1.8 million owing by Bay LP to UTMI was taken care of by the intercompany offsets.

[19] The 2013 Bay LP financial statements reflect a "Management fees" expense of \$1.8 million in the statement of earnings. These management fees were included in the 2013 Bay LP's balance sheet item "Accounts payable and accruals" of \$1,817,030. On December 31, 2014, the \$1.8 million accrued management fee (plus HST for a total of \$2,034,000) was entered in the intercompany account between Bay LP and UTMI as being "capitalized". It is acknowledged by the Foreign Representative that this was treated as a payment of the \$1.8 million payable for management fees.

[20] The December 31, 2014 Bay LP financial statements reflected a "Management fees" expense of \$8 million in the statement of earnings. The management fees were included in the 2014 Bay LP's balance sheet item "Accounts payable and accruals" item of \$8,150,738. As at December 31, 2014, the intercompany accounts between Bay LP and UTMI reflected \$3,537,135 owing by UTMI to Bay LP, exclusive of the \$8 million management fee accrual. If the \$8 million note was issued as an independent liability, it would be expected that the amount remaining owing for management fees would be recorded in the intercompany accounts as being paid by the note. That is not what happened.

[21] On June 30, 2015 the intercompany account of Bay LP with UTMI recorded an accrued liability for management fees of \$8 million. On December 31, 2015 that intercompany account recorded a reduction of \$3 million that was stated to be a NMP year-end adjustment to the management fee accrued liabilities to UTMI. That is, NMP, the accountant for the Urbancorp entities, including Bay LP and UTMI, directed that year-end adjustment. At the year-end, the intercompany balance showed \$527, 654.20 owing from UTMI to Bay LP. This was net of i.e. took into account, the remaining management fee liability.

[22] The accountants for Bay LP provided the Monitor with the 2015 and 2016 Bay LP trial balances and year end adjusting entries. The December 31, 2016 Bay LP trial balance reflects a balance of \$727,655 owing by UTMI to Bay LP. The December 31, 2015 Bay LP trial balance reflects a balance of \$527,655 owing by UTMI to Bay LP. Neither the 2016 Bay LP trial balance nor the 2015 Bay LP trial balance reflects amounts owing to either UCI or Realtyco in connection with the substituted \$6 million and \$2 million promissory notes.

[23] As well, the 2015 Bay LP trial balance was the basis for Bay LP's 2015 T5013 tax information that Bay LP filed with the Canada Revenue Agency. The date of the certification of the 2015 Bay LP T5013 is "2016-03-30". Included in the 2015 Bay LP T5013 is Schedule 100, which summarizes Bay LP's assets, liabilities and partners' capital. The Monitor points out that in the Schedule 100, there is no liability listed that would support an indebtedness in respect of the \$6 million and \$2 million promissory notes. That is, the tax return of Bay LP was a statement that liability on the two notes did not exist.

[24] The Foreign Representative says the intercompany balances should not govern as year-end adjusting entries were not made and had that occurred, they would have reflected a balance owing on the \$6 million and \$2 million promissory notes. Reliance is placed on some answers provided by Mr. Cole of MNP to questions posed by the Foreign Representative's counsel. In those answers, which have not been sworn by Mr. Cole, he stated that it was his opinion that the intercompany balances were not completely accurate. In answer to a question "As the accountant to UTMI and [Bay LP], would MNP have posted year-end adjusting entries for these companies if the intent had been to keep the \$8 million debt outstanding?" Mr. Cole answered "Yes". In answer to a further

question “If yes, can you please advise what entries you would have posted in regards to this \$8 million liability owed by [Bay LP]?” Mr. Cole stated “Unsure as did not prepare the financials”.

[25] I do not take much from these unsworn answers as assisting the Foreign Representative. First, I have noted that in the 2015 intercompany Bay LP accounts, a year-end adjustment to the \$8 million management fee accrual was made by MNP to reduce it by \$3 million. Presumably it did so after discussion with management. Second, the question put to Mr. Cole was whether he would have made a year-end adjusting entry “if the intent had been to keep the \$8 million debt outstanding”. The question did not provide any particular year-end. Mr. Cole did not say, nor presumably could he say, that there was an intent to keep the \$8 million debt outstanding.

[26] In yet a further question as to whether Mr. Cole would have made any adjustment to recognize the \$8 million liability in relation to the notes, he responded that he would have inquired of management whether the note remained outstanding and if management said yes, the liability would have been booked. Apart from the fact that the information was unsworn and untested, it is not any evidence that the adjustment would in fact have been made. It would require a statement from management that the note was outstanding and presumably some questions from Mr. Cole to test the reasonableness of the statement.

[27] Mr. Cole did say that MNP was engaged to prepare the tax returns and the related adjusting year-end tax entries. The tax return of Bay LP for 2016 is direct evidence that the \$8 million debt was not outstanding.

[28] Moreover, there was no question of \$8 million being outstanding at the time of the replacement notes dated December 11, 2015. On June 1, 2015 the original management fee of \$9.8 million was reduced by agreement by \$3 million to \$6.8 million, and \$1.8 million of that had already been paid. There was only \$5 million left for a management fee under the Amended Fee Agreement.

[29] The Foreign Representative relies on a provision in both the original \$8 million promissory note and the replacement \$6 million and \$2 million notes that state that all payments to be made by Bay LP pursuant to the promissory note are to be made in freely transferrable and immediately

available funds and without set-off. Therefore it says there is no basis to contend that the notes were paid by the management fees being set-off in the Bay LP and UTMI intercompany accounts by amounts owing by UTMI to Bay LP. The problem with this argument is that this provision is part of promissory notes that as previously stated were never intended to be binding on Bay LP or UTMI. It makes no sense for two companies controlled by Mr. Saskin to act on the basis of such a set-off provision and there is no evidence at all that Mr. Saskin at the time of the notes wanted to prevent set-off of payments owing between Bay LP and UCI. The whole history of the affairs of the Urbancorp companies is that accounts were set-off each year.

[30] Moreover, the notes were not independent obligations but reflective and given in connection with the management fee agreement, and the payments made were not made pursuant to the notes but by way of entries in the intercompany accounts.

[31] I find that the management fees owing by Bay LP to UTMI have been paid and were paid by the time the replacement notes of the \$6 million and \$2 million were issued.

[32] The \$6 million note was assigned by UTMI to UCI. The Foreign Representative says UCI is a holder of that note "in due course" and that under section 73 of the *Bills of Exchange Act* ("BEA") a holder of a note in due course is entitled to enforce it in accordance with its terms free from any defect of title and personal defences that UTMI might have had on the note. Section 57(2) of the BEA provides that every holder of a bill, in the absence of evidence to the contrary, is deemed to be a holder in due course. The same argument is made with respect to the \$2 million note that was assigned by UTMI to Urbancorp Management Inc. and then to Urbancorp Realtyco Inc.

[33] A holder in due course is defined in section 55 of the BEA as follows

**55(1) Holder in due course**

A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely,

(a) that he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact; and

(b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

[34] I do not see this defence assisting the Foreign Representative. The assignments of the notes were all signed by Mr. Saskin on behalf of companies he controlled and to companies he controlled. The notes were not intended to be acted on by the parties to them and the assignee companies are not able to suggest they were independent of the assignor and not aware of that. In any event, by the time of the assignments of the notes, the underlying obligation to pay management fees had been fulfilled and nothing was owing under the notes. The assignees did not take the assignments before the notes were overdue, which is a requirement of being a holder in due course.

[35] Real (or absolute) defences do not constitute a defect of title and are available against a holder in due course. One such absolute defence is the discharge of the instrument by payment in due course. See Benjamin Geva, *supra*, at p. 133 and Crawford, B., *Law of Banking and Payment in Canada* (loose-leaf), Toronto: Carswell, which states at §26:30.30(1):

It is fundamental to any law of negotiable instruments that there be a distinction between the substance of real, or absolute, defences on the one hand, and defects of title and personal defences on the other. The former are the defences that apply against all persons, no matter whether the holder has or has not had notice of them, whether or not he took for value, whether before or after maturity, and whether or not the instrument is complete and regular in form.

[36] The Foreign Representative acknowledges that Mr. Saskin is the principal and controlling mind of Bay LP, UTMI and UCI. He argues, however, that Mr. Saskin's involvement with the three entities does not disqualify UCI from having obtained the \$6 million promissory note in good faith because at all material times, he believed, and continues to believe, that the \$6 million and \$2 million notes are valid and enforceable. Reliance for this argument is placed on evidence Mr. Saskin gave on his examination by counsel for the Foreign Representative. I have a great deal of difficulty with this argument. Mr. Saskin made representations in the prospectus for the Israeli

bond offering and it is in his interest to say the notes are good and outstanding. As well, virtually all of his evidence was given to leading questions by counsel for a party in interest with Mr. Saskin.

[37] Mr. Saskin asserted that the replacement \$6 million and \$2 million notes dated December 11, 2015 were good and that the \$8 million was owed then and continues to be owed. That however could not be the case. Apart from the fact that Mr. Saskin did not know what the purpose of the original \$8 million note was, and could not know what the purpose of the two replacement notes were, it is clear and admitted that the \$8 million note was given in respect of the \$8 million balance owing for management fees and that before the replacement notes were issued for tax purposes, the management fee had been reduced on June 1, 2015 to reduce the total management fee to \$6.8 million, \$1.8 million of which had already been paid. Mr. Saskin signed the Amended Fee Agreement on behalf of all of the parties, being UTMI, Urban Downsview Park Development Inc. and Bay LP and had to know that \$8 million could not have been owing. I do not put any store in Mr. Saskin's assertions of a present day belief that the notes are valid and enforceable or were at the time he signed them.

[38] The Foreign Representative argues that even if it is determined that Mr. Saskin was aware of a risk to the enforceability and validity of the 2015 \$6 million and \$2 million promissory notes, this knowledge should not be imputed to UCI because while Mr. Saskin was the controlling mind of UCI, the circumstances do not warrant discounting the lack of knowledge of other UCI stakeholders, namely, the bondholders. I do not accept this. The bondholders have an interest in seeing the claim on the notes succeed, but it is UCI and not its creditors that is relevant to whether UCI can be considered to have taken the notes with or without knowledge of their validity. The bondholders did not take any assignment of the notes.

[39] I agree with the Monitor that given that UCI and Realtyco were controlled completely by Mr. Saskin, as were UTMI and Bay LP, and all relevant documents were signed by him, it cannot be reasonably held that UCI or Realtyco were unaware of this state of affairs between UTMI and Bay LP. I agree with the Monitor that neither UCI nor Realtyco can be said to be holders in due course. They cannot be said to have not had actual notice of the state of their own intercompany affairs and the fact that the management fee pursuant to the Original Fee Agreement, as amended, had been fully booked as an expense against reported taxable income and "settled" or "paid" via

postings to the intercompany account, especially given that UTMI administered the internal affairs of all of them.

[40] The Foreign Representative argues that if UCI was not a holder in due course when the \$6 million note was assigned to it by UTMI, UCI was a holder for value of the note and that under section 73 of the BEA, UCI can enforce the note subject to any defects in title and mere personal defences. In effect, it argues that the rights of a holder for value are greater than the rights of a holder in due course, as a holder in due course is subject to real, or absolute, defences. Assuming without deciding that UCI gave value for the assignment of the note to it, I cannot agree with the Foreign Representative. Section 73 of the BEA does not provide that a holder in value can sue subject only to any defects in title or mere personal defences. It simply says that a holder of a bill may sue on the bill in his own name and says nothing of what defences are available to a holder that is not a holder in due course. It provides:

### **73. Rights and powers of holder**

The rights and powers of the holder of a bill are as follows:

- (a) he may sue on the bill in his own name;
- (b) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
- (d) where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

[41] A holder for value that is not a holder in due course is subject to real, or absolute, defences.

### **Conclusion**

[42] The motion of the Foreign Representative to dismiss the Monitor's disallowance of UCI's claim against Bay LP on the basis of the \$6 million promissory note is dismissed. The motion of

the Foreign Representative to confirm the validity and enforceability of the \$2 million promissory note is also dismissed.

[43] The Monitor has not claimed costs in its material. There will be no order as to costs.

[44] The assets of Bay LP have been sold. The Monitor reports that after admitted claims and a reserve for expenses, \$7,844,500 remains. There are disputed claims that if successful would eat up those remains. It is possible that the disputed claims would ultimately be dismissed, leaving equity available for the partners of Bay LP. One partner with a 20% interest is Vestaco Investment Inc. as a nominee of Doreen Saskin, the wife of Alan Saskin<sup>2</sup>. Mr. Saskin himself is a 79.99% partner in Bay LP. An agreement among all partners on May 15, 2008 provided Vestaco with a priority return of \$7 million plus interest at 7% compounded annually.

[45] The Foreign representative has contended in its factum that if the disallowance of the claim on the \$6 million note is upheld, any equity in Bay LP after payment of all debts should not go to Doreen Saskin. That argument was by agreement adjourned as other parties are interested in the issue and it will come on for hearing when fully briefed. I would note that until all claims against Bay LP are determined, the issue may be academic.



\_\_\_\_\_  
Newbould J.

**Date:** May 11, 2017

---

<sup>2</sup> On December 9, 2016 Doreen Saskin transferred her beneficial partnership interest to DS (BAY) Holdings Inc. whose sole officer and director is Doreen Saskin.

## **Appendix “D”**



**Tenth Report to Court of KSV Kofman Inc. as CCAA Monitor of Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc., The Townhouses of Hogg's Hollow Inc., King Towns Inc., Newtowns at Kingtowns Inc., Deaja Partner (Bay) Inc., and TCC/Urbancorp (Bay) Limited Partnership**

July 25, 2017

<b>Contents</b>	<b>Page</b>
1.0 Introduction .....	1
1.1 Purposes of this Report .....	4
1.2 Currency .....	4
1.3 Restrictions .....	4
2.0 Background .....	4
2.1 General .....	4
2.2 Bay LP .....	4
2.3 UCI .....	7
2.4 UHI .....	8
3.0 TFCC Claims .....	10
4.0 Effects on New UHI Loan .....	11
5.0 Solvency of Bay LP .....	11
5.1 Definition of Insolvent Person .....	11
5.2 Balance Sheet .....	12
5.3 Cash Flow Test Analysis .....	13
5.3.1 Summary of Liabilities .....	13
5.3.1.1 Mortgages - \$15,811,243 .....	13
5.3.1.2 Purchasers' Deposits - \$7,113,000 .....	14
5.3.1.3 Accounts Payable and Accrued Liabilities - \$1,013,519 .....	14
5.3.1.4 Related Parties - \$1,152,000 .....	15
5.4 Payments by Other Parties .....	15
5.5 Conclusion .....	15
6.0 TFCC'S Knowledge of Urbancorp Group's Financial Circumstances .....	15
6.1 Relationship with Urbancorp Group .....	15
6.2 First Mortgages .....	16
6.3 Mezzanine Financing .....	16
6.4 Israel Bond Offering .....	17
7.0 Conclusions .....	18
8.0 Recommendations .....	18

# Appendices

Appendix	Tab
Corporate chart of the Bay CCAA Entities .....	A
Corporate chart of the Cumberland CCAA Entities.....	B
TFCC Claims .....	C-1 to C-3
Davies Ward Phillips Review .....	D
Notices of Revision or Disallowance .....	E-1 to E-3
Disputes to Disallowances.....	F-1 to F-3
Monitor's Second Report .....	G
TFCC Discharge Statements .....	H-1 to H-7
UHI Articles of Incorporation .....	I
UCI Articles of Incorporation .....	J
Original UHI Loan Term Sheet.....	K
UCI Confirmation .....	L
TFCC Guarantee .....	M
TFCC E-mail .....	N
New UHI Loan Term Sheet.....	O
Edge HST Account from CRA.....	P
UCI and Valermo Acknowledgement .....	Q
LBC Section 244 Notice .....	R
LBC Notices of Sale.....	S
TFCC/AMIC Notices of Sale .....	T
Estimated Accounts Payable and Accruals Analysis .....	U
LBC Letter to Woodbine.....	V
Additional Payment Agreement – Woodbine .....	W
Additional Payment Agreement – Bridlepath .....	X
Loan Renewal – Lawrence .....	Y
Loan Renewal – St. Clair Village .....	Z
Loan Amendment – Leslieville, Bovest and Westside .....	AA
E-mail Requesting Interest Deferral Increase .....	BB
E-mails for Funding in Israel .....	CC
<b>Exhibit</b>	
Explanation of Adjustments to Financial Position .....	1

COURT FILE NO.: CV-16-11549-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

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

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

TENTH REPORT OF KSV KOFMAN INC. AS CCAA MONITOR

JULY 25, 2017

## 1.0 Introduction

1. On April 25, 2016, Urbancorp (Woodbine) Inc. ("Woodbine") and Urbancorp (Bridlepath) Inc. ("Bridlepath") each filed a Notice of Intention to Make a Proposal (the "NOI Proceedings") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). Jointly, Woodbine and Bridlepath are referred to as the "Companies". KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee in the NOI Proceedings.
2. Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated October 18, 2016 (the "Initial Order Date"), Woodbine, Bridlepath, The Townhouses of Hogg's Hollow Inc., King Towns Inc., Newtowns at Kingtowns Inc. Deaja Partner (Bay) Inc. ("Deaja") and TCC/Urbancorp (Bay) Limited Partnership ("Bay LP") (the "Bay CCAA Entities") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") (the "Bay LP CCAA Proceedings") and KSV was appointed monitor in those proceedings (the "Monitor").
3. Deaja is the general partner of Bay LP. Each of the Bay LP subsidiaries is a nominee for Bay LP and, as such, their assets and liabilities are assets and liabilities of Bay LP.
4. The entities below are the known direct or indirect wholly-owned subsidiaries of Urbancorp Cumberland 1 LP ("Cumberland"):
  - Urbancorp (St. Clair Village) Inc. ("St. Clair")
  - Urbancorp (Patricia) Inc. ("Patricia")
  - Urbancorp (Mallow) Inc. ("Mallow")

- Urbancorp (Lawrence) Inc. (“Lawrence”)
- High Res Inc.
- King Residential Inc.
- Urbancorp (952 Queen West) Inc.
- Urbancorp 60 St. Clair Inc.
- Urbancorp New Kings Inc. (“UNKI”)
- Bridge on King Inc. Urbancorp (North Side) Inc.
- Urbancorp Partner (King South) Inc. (“1071 King”)

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.

On or around December 15, 2015, Urbancorp undertook a reorganization (the “Reorganization”). Prior to the Reorganization, each of the Cumberland subsidiaries listed above was a subsidiary of Bay LP. The Reorganization, as it relates to Bay LP, is set out in Section 2.2.4.

5. Each of the Cumberland Entities, except UNKI, is subject to a CCAA proceeding (the “Cumberland CCAA Proceedings”) separate from the Bay LP CCAA Proceedings. The entities listed below are the remaining entities in the Cumberland CCAA Proceedings:

- Urbancorp Toronto Management Inc. (“UTMI”)
- Urbancorp Downsview Park Development Inc. (“Downsview Park”)
- Urbancorp Power Holdings Inc.
- Vestaco Homes Inc.
- Vestaco Investments Inc. (“Vestaco”)
- 228 Queens Quay West Limited
- Urbancorp Residential Inc.
- Urbancorp Realtyco Inc.
- Urbancorp Cumberland 1 GP

The entities above, together with the Cumberland Entities, excluding UNKI, are the “Cumberland CCAA Entities”. Except for UTMI, the above entities are direct or indirect wholly-owned subsidiaries of Urbancorp Inc. (“UCI”). UTMI is believed to be wholly owned by Alan Saskin.

6. KSV has filed various reports to Court. The reports filed by KSV can be found on its website at <http://www.ksvadvisory.com/insolvency-cases/urbancorp-group/>.
7. Corporate charts for each of the Bay CCAA Entities and the Cumberland CCAA Entities are attached as Appendices “A” and “B”, respectively. For the purposes of this Report, the Bay CCAA Entities, the Cumberland CCAA Entities and their affiliates comprise the Urbancorp Group (the “Urbancorp Group”).
8. On the date of the Initial Order in the Bay LP CCAA Proceedings, an order (the “Claim Procedure Order”) was made by the Court establishing a procedure for the identification and quantification of claims against the Bay CCAA Entities and against the current and former officers and directors of the Bay CCAA Entities.

9. Pursuant to the Claims Procedure Order, Terra Firma Capital Corporation (“TFCC”) submitted secured claims of \$6,512,875, \$6,230,764 and \$6,013,865, dated November 22, 2016 (the “Claims”) against Woodbine, Bridlepath and Bay LP, respectively. The Claims are in respect of a \$10 million loan provided by TFCC to Urbancorp Holdco Inc. (“UHI”) that was guaranteed by Bay LP and others (the “Guarantee”). As security for the Guarantee, Woodbine and Bridlepath granted mortgages to TFCC (the “TFCC Mortgages”) on real property registered to Woodbine (“Woodbine Property”) and to Bridlepath (“Bridlepath Property”); Bay LP granted security to TFCC in the form of a general security agreement in respect of the Guarantee. Copies of the Claims are attached as Appendices “C-1”, “C-2” and “C-3”, respectively.
10. On December 14, 2016, the Monitor issued Notices of Revision or Disallowance to TFCC (the “Disallowance”) disallowing the Claims as set out in the table below:

Entity	Amount Claimed (Secured)	Amount Admitted (Unsecured)
Woodbine	\$6,512,874	\$499,009
Bridlepath	\$6,230,764	\$216,898
Bay LP	\$6,013,865	\$NIL

11. The Disallowances were based on an opinion dated October 5, 2016 (“Opinion”) by the Monitor’s legal counsel, Davies Ward Phillips & Vineberg LLP, concerning the validity of the Claims. The Opinion states, among other things, that the granting of the TFCC Mortgages could be held to be void “as transfers at undervalue under the *Bankruptcy and Insolvency Act* (the “BIA”), fraudulent conveyances under the *Fraudulent Conveyances Act* (Ontario) or fraudulent preferences under the *Assignment and Preferences Act* (Ontario). A copy of the Opinion is attached as Appendix “D”. Copies of the Disallowances are attached as Appendices “E-1”, “E-2” and “E-3”, respectively.
12. The Monitor also notes that the granting of the Guarantee and the TFCC Mortgages could be considered to have been oppressive or unfairly prejudicial to or to have unfairly disregarded the interest of Bay LP’s other creditors at the time they were granted.
13. On December 16, 2016, TFCC, through its counsel, issued Notices of Disputes of Notice of Revision or Disallowance (“Disputes”) in respect of the Disallowances. Copies of the Disputes for Woodbine, Bridlepath and Bay LP are attached as Appendices “F-1”, “F-2” and “F-3”, respectively.
14. On May 8, 2017, TFCC filed a motion with the Court (“TFCC Motion”) seeking the following relief:
  - setting aside the Disallowances;
  - confirming the validity and enforceability of the TFCC Mortgages; and
  - directing the Monitor to make an immediate distribution of all amounts owed to TFCC by Woodbine, Bridlepath and Bay LP.

## **1.1 Purposes of this Report**

1. The purposes of this report (the “Report”) are to:
  - a) Detail the Monitor’s review of information pertaining to the Claims and the basis for the Disallowance; and
  - b) Recommend the Court make an order:
    - (i) approving this Report;
    - (ii) confirming the Monitor’s Disallowances;
    - (iii) setting aside the Guarantees as void as against the Monitor; and
    - (iv) declaring the TFCC Mortgages as unenforceable.

## **1.2 Currency**

1. All dollar amounts in this Report are in Canadian dollars.

## **1.3 Restrictions**

1. In preparing this Report, the Monitor has relied upon unaudited financial statements of the Bay CCAA Entities and Cumberland CCAA Entities, the books and records of the Bay CCAA Entities and Cumberland CCAA Entities (the “Books and Records”) and discussions with their management (“Management”), their legal counsel (“Legal Counsel”) and their external accountants (“Accountants”) (collectively, Management, Legal Counsel and the Accountants are referred to as the “Representatives”). The Monitor has considered the explanations by the Representatives concerning the transactions discussed herein.
2. The Monitor has not performed an audit or independent verification of the information discussed herein. The Monitor expresses no opinion or other form of assurance with respect to the financial information presented in this Report.

## **2.0 Background**

### **2.1 General**

1. The Urbancorp Group was founded in 1991 by Alan Saskin. The Urbancorp Group is principally involved in the development of residential real estate projects in the Greater Toronto Area. The Monitor understands that Mr. Saskin, his family members and family trusts are, directly or indirectly, the ultimate owners of the entities in the Urbancorp Group.

### **2.2 Bay LP**

1. Bay LP is a limited partnership that the Monitor understands was started in 1999. Bay LP owned, through nominee corporations, various real estate projects, including Woodbine and Bridlepath. The Woodbine Property and the Bridlepath Property were sold by KSV on September 30, 2016 and October 14, 2016, respectively.

2. The ownership of Bay LP is believed to be as follows:
  - Deaja – General Partner - .01%
  - Alan Saskin – Limited Partner – 79.99%
  - Vestaco, as nominee for Doreen Saskin<sup>1</sup> – Limited Partner – 20.00%<sup>2</sup>

Collectively Deaja, Alan Saskin and Vestaco are referred to as the “Partners”.

3. During 2015, in contemplation of and in conjunction with a bond offering in Israel (the “Israel Bond Offering”), Bay LP transferred Downsview Park to UCI and various other Bay LP nominees to Cumberland, as referenced in Section 1.0.4 of this Report (the “Transfers”). A more detailed description of the Transfers is provided in the Monitor’s Second Report, dated December 6, 2016 (the “Second Report”). A copy of the Second Report is attached as Appendix “G”, without appendices.

4. The Transfer by Bay LP to Cumberland contained the following sequential steps:
  - (i) Urbancorp Cumberland 1 GP Inc. (“Cumberland GP”) was incorporated;
  - (ii) Cumberland is formed as a limited partnership, with Bay LP contributing \$1 in exchange for one (1) limited partnership unit of Cumberland; Cumberland GP contributed \$10 in exchange for ten (10) general partnership units in Cumberland;
  - (iii) Bay LP transferred its ownership interest in various entities/nominees to Cumberland in exchange for ninety-nine (99) limited partnership units in Cumberland;
  - (iv) Bay LP sold its one hundred (100) limited partnership units in Cumberland to UCI and, in exchange, received one (100) Class D Special Shares of UCI, being all the issued UCI Class D Special Shares; and
  - (v) Bay LP sold its one hundred (100) UCI Class D Special Shares to UHI and, in exchange, received one hundred (100) Class D Special Shares of UHI, being all the UHI Class D Special Shares.

5. The result of the foregoing transactions is:
  - UCI, directly and indirectly, owns 100% of Cumberland;
  - UHI owns all of the UCI Class D Special Shares; and
  - Bay LP owns all of the UHI Class D Special Shares.

---

<sup>1</sup> The Monitor has recently received documentation evidencing that Doreen Saskin is the beneficial owner of the Vestaco limited partnership interest in Bay LP. The sole shareholder of Vestaco is Urbancorp Power Holdings Inc. whose sole shareholder is UCI.

<sup>2</sup> Pursuant to a 2008 agreement, Vestaco is to receive a preferred return.

6. Subsequent to the Reorganization, Bay LP's major assets consisted of the Woodbine Property and the Bridlepath Property. Its other projects had been largely completed by the time of the Reorganization. Currently, the main asset of Bay LP is cash generated from the sale of the Woodbine Property and the Bridlepath Property<sup>3</sup>.
7. Pursuant to the Claims Procedure Order, the Monitor has received various claims in the Bay CCAA Entities proceedings. Set out below is a summary of the admitted and disputed claims:

	(\$000's)
Admitted	
Homeowners' deposits	7,113
Third party creditors (including a portion of the TFCC Claims)	1,661
Intercompany	540
Total	<u>9,314</u>
Disallowed: <sup>4</sup>	
TFCC	6,014
Employees	2,400
Tarion Warranty Corporation ("Tarion") <sup>5</sup>	716
Total	<u>9,130</u>
Total admitted and disputed claims	<u>18,444</u>

8. In addition to the above, at the commencement NOI Proceedings, Bay LP had the following indebtedness, which was secured by mortgages on the Woodbine Property and Bridlepath Property:

Re Woodbine:	
Laurentian Bank ("LBC") and TFCC <sup>6</sup>	\$4.725 million <sup>7</sup>
Re Bridlepath	
Atrium Mortgage Investment Corporation ("AMIC") and TFCC	\$10.35 million <sup>6</sup>

The above mortgages were repaid by KSV after the sales of the Woodbine Property and the Bridlepath Property. The Court Order dated September 30, 2016 authorized KSV to repay these mortgages.

<sup>3</sup> The cash balance as at June 30, 2017 was approximately \$19.893 million.

<sup>4</sup> The Disallowed claims do not include a potential \$8 million claim that may be asserted by UCI. Counsel for UCI has advised that it may be seeking to bring a claim against Bay LP, and others, in respect of promissory notes issued by Bay LP that were determined to be invalid by the Court.

<sup>5</sup> Tarion originally filed claims totaling \$349 million. Tarion has reduced its claim to \$716,000.

<sup>6</sup> TFCC had a \$2.1 million subordinated participation in the mortgage registered on title to the Woodbine Property by LBC.

<sup>7</sup> The amounts set out were the principal amounts of the loans as at April 25, 2016. The amounts paid by the Monitor to the mortgagees were \$5,476,860 and \$11,594,927 for Woodbine and Bridlepath, respectively.

## 2.3 UCI

1. UCI is a wholly-owned subsidiary of UHI. The original capital structure of UCI is believed to have consisted of Common, Special Class "A", Special Class "B", Special Class "C", Special Class "D" and Special Class "E" shares. On May 13, 2016, additional classes of UCI special shares were created. UHI is the holder of all the shares of all the classes of UCI shares.
2. UCI is a holding company which the Monitor understands was established for the purpose of raising funds through the Israel Bond Offering. The Israel Bond Offering, which closed in December, 2015, raised approximately \$64.2 million before costs and reserves for future interest and expenses totalling approximately \$6.2 million. The net proceeds received by UCI from the Israel Bond Offering totaled approximately \$58 million (the "Proceeds").
3. The Proceeds were utilized to repay existing secured debt owing by various entities in the Urbancorp Group and for general working capital purposes
4. As reflected in the table below, all but \$6.4 million<sup>8</sup> of the Proceeds were used to repay existing obligations, including the "participation fees" to TFCC totalling \$2,239,390. Except for the Downsview Park loan from Mattamy, TFCC administered all the loans listed below on its own behalf and on behalf of the other lenders. A copy of the TFCC discharge statements for each of the loans listed below, except for Downsview Park, is attached as appendices "H-1" to "H-7". These discharge statements set out the participation fee, as applicable, and that TFCC administered the loans for MCAN, Laurentian Bank of Canada ("LBC") and Atrium Mortgage Investment Corporation ("AMIC").

Secured Creditor	Property	Amount (\$000's)
TFCC	St. Clair Village	2,251
	Lawrence	2,727
	Mallow	2,874
	Patricia	2,420
	1071 King	2,113
	Edge	3,110
	Miscellaneous	723
		<u>16,218</u>
MCAN	St. Clair Village	5,421
	Lawrence	<u>5,832</u>
		<u>11,253</u>
Mattamy	Downsview Park	10,095
LBC	Patricia	7,200
AMIC	Mallow	<u>6,856</u>
		<u><u>51,622</u></u>

<sup>8</sup> The \$6.4 million was used for general working capital purposes.

## 2.4 UHI

1. UHI is a holding company established to hold all the issued shares of UCI. Alan Saskin is believed to be the owner of all the UHI common shares. UHI, similar to UCI, is believed to have originally had Common, Special Class "A", Special Class "B", Special Class "C", Special Class "D" and Special Class "E" shares. On May 13, 2016, additional classes of UHI special shares were created. It does not appear that any of the new classes of shares were issued. The owners of the various Special Class shares are entities/parties which transferred assets or entities to UCI in a series of apparently tax driven transactions. Bay LP received all the UHI Special Class "D" shares.
2. The UHI Class D Special Shares have various attributes and are non-voting. The most significant attribute is that these shares entitle Bay LP to only receive, as a dividend, the net proceeds paid by UCI on its Class D Special Shares. The UCI Class D Special Shares, which are also non-voting, entitle the shareholder, UHI, to receive a dividend equal to the "Class D Available Funds". The holder of the UCI Class D Special Shares shall not be entitled to any dividends other than or in excess of the Class D Available Funds. The Class D Available Funds is equal to:
  - a) The proceeds received by UCI in respect of the assets that were transferred by Bay LP to Cumberland, including proceeds from disposition, rental income and dividends,  
  
less:
  - b) any direct costs associated with the particular proceeds; and  
  
less:
  - c) any direct or indirect taxes or the like assessed against UCI in respect of the particular proceeds.
3. A copy of UHI's Articles of Incorporation setting out its share terms is attached as Appendix "I". A copy of UCI's Articles of Incorporation setting out its share terms is attached as Appendix "J".
4. On December 22, 2015, UHI and TFCC entered into a \$12 million loan agreement ("Original UHI Loan"). The purpose of the Original UHI Loan was to have UHI advance the proceeds to UCI to enhance UCI's equity capital. A copy of the term sheet for the Original UHI Loan is attached as Appendix "K". On the same day, UCI confirmed, among other things, that it would contribute the \$12 million proceeds from the Original UHI Loan to Urbancorp Investco Inc. ("Investco"). Investco would utilize the \$12 million to co-invest with TFCC in syndicated loans or loans secured by properties located in the Greater Toronto Area. A copy of the UCI confirmation of this loan is attached as Appendix "L".
5. In connection with the Original UHI Loan, TFCC received the Guarantee dated December \_\_, 2015<sup>9</sup> from each of the shareholders of UHI and Urbancorp (Valermo)

---

<sup>9</sup> The Guarantee is blank as to the date in December.

Inc. (“Valermo”) and were granted security by the guarantors, including the TFCC Mortgages granted on the Woodbine Property and the Bridlepath Property. A copy of the Guarantee is attached as Appendix “M”.

6. On February 5, 2016, TFCC confirmed by e-mail that certain escrow conditions under the Original UHI Loan had not been fulfilled. TFCC also confirmed that it had received a return of the funds held in escrow. A copy of the TFCC February 5, 2016 e-mail is attached as Appendix “N”.
7. On March 6, 2016, a new term sheet was provided by TFCC to UHI for a \$10 million loan (the “New UHI Loan”). A copy of the term sheet for the New UHI Loan is attached as Appendix “O”. The purpose of the New UHI Loan was to make an advance to enhance UCI’s equity capital; it is uncertain whether the advance was a shareholder’s loan or whether there was a subsequent new share capital subscription. UCI used the proceeds of the New UHI Loan to pay a significant portion of an outstanding Harmonized Sales Taxes (“HST”) obligation owing by Edge on Triangle Park Inc. (“Edge”). Edge is a nominee for Urbancorp Cumberland 2 LP (“Cumberland 2”), which was formed as part of the Reorganization and is wholly-owned by UCI.<sup>10</sup>
8. Conditions precedent for the New UHI Loan included:
  - Guarantees from Alan Saskin, TCC/Urbancorp (Bay/Stadium) LP (“Bay/Stadium”), Bay LP, UTMI, Woodbine, Bridlepath, TCC/Urbancorp (Stadium Road) LP, Valermo and The Webster Family Trust;
  - Mortgages were to be provided by various guarantors, including on the Woodbine Property and the Bridlepath Property. The mortgage security provided under the Original UHI Loan would be used for the New UHI Loan;
  - Alan Saskin or an Urbancorp Group entity, other than UCI or any of UCI’s direct or indirect subsidiaries, was to advance \$2.25 million so that UCI could pay \$12 million towards Edge’s HST liability.
9. The advances under the New UHI Loan were made on March 9, 2017 (“Advance Date”) by TFCC to Harris Sheaffer LP (“HS”), legal counsel to the Urbancorp Group. HS received \$9.75<sup>11</sup> million from TFCC and received \$2.25 million from Urbancorp Group entities. HS remitted \$12 million to Canada Revenue Agency (“CRA”) in respect of the Edge HST liability. The Urbancorp Group entities that funded the \$2.25 million were UCI (\$1.15 million) and Urbancorp Management Inc. (\$1.1 million). After the \$12 million remittance to CRA, Edge continued to be indebted to CRA in the amount of approximately \$2.5 million. A copy of the Edge HST account from CRA is attached as Appendix “P”.
10. At or about the same time of the New UHI Loan, both UHI and Valermo acknowledged that they requested that, in the event that TFCC or Terra Firma (Valermo) Corporation purchased Valermo’s 50% interest in the Valermo Co-Tenancy with Mattamy Homes, the purchase price should be applied against the

---

<sup>10</sup> These assets, among others, were transferred by TCC/Urbancorp (Bay/Stadium) LP in return for non-voting Class E Special Shares.

<sup>11</sup> The amount advanced to HS by TFCC was \$9.75 million, being \$10 million, less \$250,000 for fees/costs.

New UHI Loan (the “Acknowledgement”). The purchase price for Valermo’s 50% interest, depending on future events, ranges between \$5 million and \$7 million. A copy of the Acknowledgement is attached as Appendix “Q”. TFCC purchased Valermo’s 50% interest in the Valermo Co-Tenancy in May, 2016.

### 3.0 TFCC Claims

1. As noted, TFCC filed separate secured claims against Woodbine, Bridlepath and Bay LP, as follows:

- Woodbine, \$6,512,875;
- Bridlepath, \$6,230,764; and
- Bay LP \$6,013,865.

The majority of each claim (\$6,013,865) represents the balance of the New UHI Loan, after applying a \$5 million purchase price for Valermo’s interest in the Valermo Co-Tenancy by TFCC against the New UHI Loan. Summaries of the TFCC claims are set out in the paragraphs that follow. The amount in excess of \$5 million represents interest and costs to November 22, 2016.

2. A copy of the TFCC claim filed against Woodbine (\$6,512,875) is attached as Appendix “C-1”. A summary of the claim is:

- Balance owing on the New UHI Loan \$ 6,013,865
- Additional fees, interest and expenses regarding the Woodbine project \$ 499,010

3. A copy of the TFCC claim filed against Bridlepath (\$6,230,764) is attached as Appendix “C-2”. A summary of the claim is:

- Balance owing on the New UHI Loan \$ 6,013,865
- Additional fees, interest and expenses regarding the Bridlepath project \$ 216,899

4. A copy of the TFCC claim filed against Bay LP (\$6,013,865) is attached as Appendix “C-3”. This claim is solely in respect of the balance owing on the New UHI Loan.<sup>12</sup>

5. In the event that the TFCC Motion is successful, the amount owing to TFCC by the Bay LP CCAA Entities would be \$6,729,773, as estimated below. This is prior to additional costs and interest since the date the Claims were filed, as well as the issue of the purchase price adjustment on Valermo’s interest in the Valermo Co-Tenancy.

- Balance owing on New UHI Loan, including interest and expenses \$6,013,865

---

<sup>12</sup> The security related to this claim is limited to any and all personal property situated on or in any way relating to the Bridlepath Property and the Woodbine Property.

• Fees, interest and expenses regarding the Woodbine project	499,010
• Fees, interest and expenses regarding the Bridlepath project	216,899
Total	<u>\$6,729,774</u>

## 4.0 Effects on New UHI Loan

1. As set out in Section 2.4.7, the proceeds of the New UHI Loan were used to make an advance to UCI, which utilized the funds to reduce the Edge liability to CRA. The effect of the New UHI Loan at the Advance Date, as it applies to UCI, was to create a new liability (to UHI) and increase UCI's investment in Edge, which was likely an insolvent entity at the Advance Date. The combined UCI/UHI financial position was not enhanced by the New UHI Loan.
2. The Books and Records disclose that none of the proceeds of the New UHI Loan was, directly or indirectly, provided to Bay LP.
3. The proceeds of the New UHI Loan did not and could not increase the Class D Available Funds.
4. The result of the New UHI Loan is that Bay LP provided the Guarantee and the related security without receiving any economic benefit, directly or indirectly.

## 5.0 Solvency of Bay LP

### 5.1 Definition of Insolvent Person

1. As Woodbine and Bridlepath are nominee entities for Bay LP, a solvency analysis for Bay LP has been prepared by the Monitor. The solvency analysis and the Monitor's conclusions thereon are provided in the paragraphs that follow in this section.
2. Section 2 of the BIA defines an insolvent person to mean "a person who is not bankrupt and who resides, carries on a business or has property in Canada, whose liabilities to creditors payable as claims under this Act amount to one thousand dollars and:
  - (a) who is, for any reason, unable to meet his obligations as they generally become due, or
  - (b) who has ceased paying his current obligations in the ordinary course of business generally as they become due, or
  - (c) the aggregate of whose property is not, at fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due."

Items (a) and (b) are colloquially referred to as the "cash flow" test and item (c) is colloquially known as the "balance sheet" test.

## 5.2 Balance Sheet

- The Monitor has reviewed the Books and Records of Bay LP (including Woodbine and Bridlepath) as at March 31, 2016. The March 31, 2016 date was used as the Books and Records generally reflect balances at month end (adjustments were made, where necessary, to reflect balances as at the Advance Date). The Bay LP balance sheet has been adjusted to estimate the fair valuation of Bay LP's assets, as well as to correct certain liability amounts. Set out below is the Bay LP estimated balance sheet at the Advance Date, both at book value and at the estimated fair valuation:

Bay LP Estimated Balance Sheet March 31, 2016 (\$000's)			
	Book Value	Fair Value Adjustments/ Corrections	Fair Valuation
<b>Assets</b>			
Bank and sundry	212		212
Investments and advances			
– UCI	12,143	(12,143)	-
– Bay/Stadium	3,383	(3,383)	-
– UTMI	425	(425)	-
Land	22,779	13,432	36,211
	<u>38,942</u>	<u>(2,519)</u>	<u>36,423</u>
<b>Liabilities</b>			
Accounts payable and sundry	1,053	(39)	1,014
Intercompany – Cumberland 1LP	220	320	540
– Downsview	4,186	(4,186)	-
– Other	-	95	95
Loans – Saskin	517		517
– First Capital Realty	2,651	(2,651)	-
Mortgages	15,368	443	15,811
Purchasers' deposits	7,114		7,114
	<u>31,109</u>	<u>(6,018)</u>	<u>25,091</u>
Contingencies <sup>13</sup>	-	10,000	10,000
Partners' Equity	7,833	(2,519)	1,332
	<u>38,942</u>	<u>(1,463)</u>	<u>36,423</u>

Based on the above, it appears that Bay LP had equity of approximately \$1.3 million, after giving effect to the \$10 million Guarantee.

<sup>13</sup> Contingencies include the \$10 million Guarantee to TFCC but does not include the potential \$8 million UCI claim made by the Foreign Representative.

2. Explanations of the Fair Value Adjustments and Corrections are provided on Exhibit "1".

### 5.3 Cash Flow Test Analysis

#### 5.3.1 Summary of Liabilities

##### 5.3.1.1 Mortgages - \$15,811,243

1. Excluding the TFCC Mortgages (which are subject to the Disallowances), the Woodbine Property and the Bridlepath Property each had a mortgage at the Advance Date. A description of each mortgage is described below.
  - a) Woodbine Property
    - (i) The Woodbine Property had a mortgage ("Woodbine Mortgage") with the principal amount owing of \$4,725,000 at the Advance Date. The Woodbine Mortgage was granted in favour of LBC pursuant to a loan made by LBC in January, 2014 ("LBC Loan"). TFCC is a participant in the LBC Loan, with LBC having contributed \$2,625,000 and TFCC having contributed \$2,100,000.
    - (ii) The LBC Loan matured on February 1, 2016 and LBC did not extend the maturity date on the loan. On February 4, 2016, LBC made demand for repayment and issued a Notice of Intention to Enforce Security under Section 244 of the BIA (the "Section 244 Notice"). A copy of the Section 244 Notice, together with demand for repayment, is attached as Appendix "R".
    - (iii) LBC was also part of a banking syndicate, led by Canadian Imperial Bank of Commerce ("CIBC"), that provided a loan to finance the Urbancorp (Leslieville) Developments Inc. ("Leslieville") project. Leslieville is a nominee and subsidiary of Bay/Stadium. By mid-2015, Leslieville was in default on the loan from the CIBC-led syndicate. As a result of this default, LBC advised the Urbancorp Group that it would not be renewing or extending any loans to any Urbancorp Group entity upon maturity, including the LBC Loan.
    - (iv) On March 4, 2016, LBC issued a Notice of Sale under Mortgage in respect of Woodbine, a copy of which is attached as Appendix "S".
    - (v) At the Advance Date, the amount owing under the LBC Loan was \$5,075,428.
    - (vi) The LBC Loan was repaid in October, 2016 from the proceeds of the sale of the Woodbine Property in the sale process conducted in these insolvency proceedings.

b) Bridlepath Property

- (i) The Bridlepath Property had a mortgage (“Bridlepath Mortgage”) with a principal amount owing of \$10,350,000. The Bridlepath Mortgage, dated March 20, 2014, was granted in favour of AMIC and TFCC.
- (ii) The Bridlepath Mortgage, which required monthly interest payments only, ceased being serviced after January, 2016. As at the Advance Date, the arrears on the Bridlepath Mortgage were in excess of \$350,000, including interest arrears and a default interest bonus. At the Advance Date, the amount owing on the Bridlepath Mortgage was \$10,735,815.
- (iii) AMIC and TFCC issued a Notice of Sale under Mortgage on April 11, 2016, a copy of which is attached as Appendix “T”.
- (iv) The Bridlepath Mortgage was repaid in October, 2016 from the proceeds of sale of the Bridlepath Property in the sale process conducted by KSV.

**5.3.1.2 Purchasers’ Deposits - \$7,113,000**

- (i) In the normal course, individuals who purchased homes (“Purchasers”) paid deposits to the builder (“Purchasers’ Deposits”). The Purchasers’ Deposits would be applied against the purchase price of the homes upon closing of the sale of home. As such, at the Advance Date and in the period preceding the Advance Date, no amounts would have been due to be paid to the Purchasers as there was an expectation that each development would be completed. Bay LP did not complete the homes purchased on the Woodbine or the Bridlepath projects, as the Woodbine Property and the Bridlepath Property were sold as vacant land. In each instance, the purchasers of the land, pursuant to the sale process conducted in the Bay CCAA Proceedings, did not assume the obligations under the agreements of purchase and sale with the Purchasers.
- (ii) The Purchasers have admitted claims for the amounts of the Purchasers’ Deposits and will likely receive full repayment of the Purchasers’ Deposits, provided the TFCC Motion is unsuccessful.

**5.3.1.3 Accounts Payable and Accrued Liabilities - \$1,013,519**

1. Attached as Appendix “U” is a summary of the estimated accounts payable and accrued liabilities. As set out in Appendix “U”, the Monitor reviewed substantially all of the accounts (98% by value). As set out in Appendix “U”, virtually all of the obligations were past due as at the Advance Date.

#### **5.3.1.4 Related Parties - \$1,152,000**

1. The related party liabilities consist of Cumberland (\$540,000), Alan Saskin (\$517,000), Edge (\$85,919) and TCC/Urbancorp (Stadium Road) LP ("Stadium Road") (\$8,869). The related parties' liabilities have no specific terms of payment. All related parties, except Stadium Road, are in insolvency proceedings. Any recoveries by these parties will be paid to their creditors (except Stadium Road). Stadium Road is owned by Alan Saskin, who filed a Proposal under the BIA.

#### **5.4 Payments by Other Parties**

1. In the normal course, other entities, notably UTMI, would make payments on behalf of Woodbine and Bridlepath. The Books and Records indicate that UTMI paid \$1,064 on behalf of Woodbine and Bridlepath during the period from January 1, 2016 to the Advance Date. The Books and Records do not indicate that any other Urbancorp Group entity made any payments on behalf of Bay LP during this period. This indicates that the liabilities of Bay LP were not being paid during this period by other Urbancorp Group entities.

#### **5.5 Conclusion**

1. At the Advance Date, it appears that:
  - (a) The assets of Bay LP, at fair valuation, appear to have been sufficient to enable the payment of all Bay LP's obligations; and
  - (b) Bay LP's liabilities, excluding liabilities to related parties (which had no fixed terms of repayment) and to Purchasers, consisted of the Woodbine Mortgage (\$5,075,428), the Bridlepath Mortgage (\$10,735,815) and the accounts payable and accrued liabilities (\$1,013,519). Bay LP had ceased paying all such liabilities as they generally became due and/or was unable to meet its obligations generally as they became due.

### **6.0 TFCC'S Knowledge of Urbancorp Group's Financial Circumstances**

#### **6.1 Relationship with Urbancorp Group**

1. TFCC was deeply involved with the Urbancorp Group at and prior to the Advance Date. The relationships between TFCC, including Dov Meyer (formerly TFCC's Chief Executive Officer) and the Urbancorp Group included:
  - assisting in arranging first mortgage financing at various projects;
  - participating in first mortgage financing on various projects;
  - providing mezzanine financing on various projects; and
  - assisting in the debt financing in the Israel Bond Offering.
2. Set out below is information that reflects TFCC's knowledge of Urbancorp Group's financial situation at and prior to the Advance Date.

## 6.2 First Mortgages

1. As set out in Section 2.2 of this Report, TFCC arranged and participated in both the Woodbine Mortgage and the Bridlepath Mortgage.
  - (i) As a result of the default on the CIBC led syndicate loan on the Leslieville project during 2015, LBC advised the Urbancorp Group that it would not be renewing or extending loans to any Urbancorp Group entity. Specifically, by letter dated December 18, 2015, LBC advised Woodbine that it would not be renewing the Woodbine Mortgage; the December 18, 2015 LBC letter was copied to TFCC, which is a participant in the Woodbine mortgage. A copy of the December 18, 2015 LBC letter is attached as Appendix “V”. On February 4, 2016, the Woodbine Mortgage matured and LBC made demand for repayment and issued a Section 244 Notice (see Appendix “R”). LBC included TFCC in its notices on the Woodbine Mortgage. The Woodbine Mortgage was not repaid and LBC commenced enforcement actions prior to the Advance Date. TFCC was kept informed of LBC’s actions. According to Management, TFCC had previously advised that it was concerned that obligations on the Woodbine Property (Mortgage, Purchasers’ Deposits and other claims) exceeded the value of the Woodbine Property.
  - (ii) TFCC, together with AMIC, were the mortgage lenders on the Bridlepath Property and commenced enforcement proceedings on April 11, 2016. At that time and prior to the Advance Date, the Bridlepath Mortgage was in arrears. According to Management, prior to the advance date, TFCC introduced a potential buyer for the Bridlepath Property. Mr. Meyer advised Management that the potential buyer’s offer would be less than the sum of the amount owing on the Bridlepath Mortgage and the Purchasers’ Deposits. Mr. Meyer advised Mr. Saskin that TFCC’s view was that the Woodbine Property and the Bridlepath Property would not generate proceeds to satisfy any portion of the \$10 million note (New UHI Loan).
  - (iii) TFCC arranged both the Woodbine Mortgage and the Bridlepath Mortgage. For arranging these mortgages, Bay LP was required to make additional payments to TFCC. For arranging the Woodbine Mortgage, TFCC was to receive an additional payment of no less than \$452,000. For arranging the Bridlepath Mortgage, TFCC was to receive \$200,000. A copy of the agreement for the Woodbine Mortgage additional payment is attached as Appendix “W” and a copy of the agreement for the Bridlepath Mortgage additional payment is attached as Appendix “X”.

## 6.3 Mezzanine Financing

1. TFCC provided mezzanine financing to numerous Urbancorp Group entities. During the latter part of 2014 and throughout 2015, the Urbancorp Group required liquidity and was having difficulty servicing its various loans, including its loans from TFCC. In order to keep the TFCC loans from going into arrears, TFCC extended or renewed loans at higher loan amounts, the effect of which was to keep the TFCC loans current.

2. Examples of TFCC extending or renewing loans at higher loan levels include:
  - Loan renewal for Lawrence dated October 5, 2015. The loan was increased to \$7,953,495 to include accrued interest of \$483,496 from the initial advance date. The loan renewal for Lawrence is attached as Appendix “Y”.
  - Loan renewal for St. Clair Village dated November 24, 2015. The loan was increased to \$7,380,000 to include accrued interest of \$450,000 from the initial advance date. The loan renewal for St. Clair Village is attached as Appendix “Z”.
  - Loan amendment for Leslieville, Bovest Inc. and Westside Gallery Lofts Inc. dated September 28, 2015. The loan amendment included the deferral of payments of outstanding amendment fees payable of \$21,000 and \$74,000, which had been due by September 1, 2015. A copy of the loan amendment letter is attached as Appendix “AA”.
3. In addition to the items mentioned in (2) above, the Urbancorp Group had requested TFCC to relax the interest payment terms by deferring interest that was due. Attached as Appendix “BB” is an e-mail chain between TFCC and Urbancorp Group from July 29, 2015 through August 17, 2015. On July 29, 2015, Urbancorp Group requested the accrual portion of the interest on the Lawrence loan be increased from 3% to 5%.

#### **6.4 Israel Bond Offering**

1. Management has advised that in the latter part of 2014, Mr. Meyer initiated the idea of the Urbancorp Group raising debt in the Israeli public financial markets. Attached as Appendix “CC” is an e-mail chain initiated by Mr. Meyer on December 11, 2014. Alan Saskin forwards the e-mail to Urbancorp Group’s CFO and Urbancorp Group’s Accountant, indicating that Mr. Meyer “will explore raising \$100 million for us in Israel” and attaching a form of spreadsheet that is preferred by Mr. Meyer. One purpose of raising debt in Israel was to reduce or replace a portion of Urbancorp Group’s then existing loans, including those owing to TFCC. Mr. Meyer arranged for and travelled with Mr. Saskin in spring 2015 to meet with underwriters and professionals to commence the Israel Bond Offering discussions. Mr. Meyer travelled with Mr. Saskin on subsequent trips to Israel to advance and finalize the Israel Bond Offering during 2015.
2. As reflected in Section 2.3.3 above, a substantial portion of the Proceeds were used to reduce obligations owing to TFCC.
3. TFCC also provided the New UHI Loan to enable UCI to obtain the additional equity infusion required under the Israel Bond Offering. The proceeds of the New UHI Loan were used to reduce Edge HST arrears. For his involvement in the Israel Bond Issue, Management has advised that Mr. Meyer requested a fee of \$500,000.

## 7.0 Conclusions

1. Based on the Monitor's review, the following conclusions can be made:
  - (i) Bay LP was insolvent at the Advance Date;
  - (ii) Bay LP received no benefit or consideration in granting the Guarantee and the related security;
  - (iii) TFCC was aware, both before and at the Advance Date, of the Urbancorp Group's financial circumstances generally and Bay LP's specifically;
  - (iv) that the effect of the Guarantee and related security will be to defeat or hinder the recoveries of the other creditors of Bay LP, namely the Purchasers; and
  - (v) the granting of the Guarantee and related security was oppressive, unfairly prejudicial to or unfairly disregarded the interests of Bay LP's other creditors, particularly the Purchasers.

## 8.0 Recommendations

1. Based on the foregoing, the Monitor recommends the Court make an order as set out in Section 1.1.1(b).

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF  
URBANCORP (WOODBINE) INC., URBANCORP (BRIDLEPATH) INC., THE TOWNHOUSES  
OF HOGG'S HOLLOW INC., KING TOWNS INC., NEWTOWNS AT KINGTOWNS INC.,  
DEAJA PARTNER (BAY) INC. AND TCC/URBANCORP (BAY) LIMITED PARTNERSHIP  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “E”**

DECLARATION OF TRUST

**WHEREAS** VESTACO INVESTMENTS INC. ("Vestaco") is about to become a Limited Partner in a Limited Partnership known as TCC/Urbancorp (Bay) Limited Partnership (the "Limited Partnership");

**AND WHEREAS** Vestaco will own its interest in the Limited Partnership, including any Limited Partnership Units issued to them by the Limited Partnership for and on behalf of Doreen Saskin;

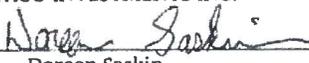
**NOW THEREFORE WITNESSETH** that in consideration of the payment of TWO (\$2.00) DOLLARS now paid to Vestaco by the Beneficiary, Vestaco does hereby declare for itself, its successors and assigns that from and after the date hereof:

1. all obligations, including contracts, agreements, responsibilities, acts or omissions, pertaining to the Limited Partnership from this date and thereafter during the time it will be vested in the name of Vestaco, will be performed or omitted to be performed by the Beneficiary;
2. the capital account of Vestaco in the Limited Partnership, the Limited Partnership Units and all monies which may be payable in respect of the Limited Partnership whether by way of capital distributions or otherwise howsoever and all the benefits pertaining to the Limited Partnership are or will be held by the undersigned, Vestaco, in trust for the Beneficiary;
3. Vestaco for itself, its successors and assigns, will convey, transfer and deal with or dispose of its interest in the Limited Partnership and any income or capital paid in respect thereof, and any other benefits howsoever appertaining thereto in accordance with the direction of the Beneficiary.

**IN WITNESS WHEREOF** Vestaco has hereto set its seal under is proper officer duly authorized in that behalf.

**DATED** at Toronto, this 13<sup>th</sup> day of April, 1999.

VESTACO INVESTMENTS INC.

Per:   
Doreen Saskin  
ASO

I have the authority to bind the Corporation

THE Beneficiary hereby agrees to the terms of the above-noted trust.

**IN WITNESS WHEREOF** the Beneficiary has hereto set her hand and seal.

**DATED** at Toronto, this 13<sup>th</sup> day of April, 1999.

Witness: \_\_\_\_\_

  
Doreen Saskin

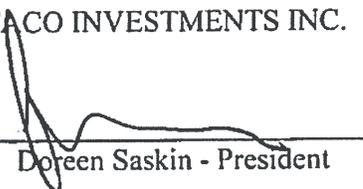
## **Appendix “F”**

**DECLARATION OF TRUST**

**KNOW ALL PERSONS BY THESE PRESENTS** that in consideration of the sum of One Dollar (\$1.00) now paid to the undersigned (the receipt and sufficiency of which is hereby acknowledged) and for other good and valuable consideration, the undersigned hereby declares that effective the date hereof the partnership interest in TCC/Urbancorp (Bay) Limited Partnership more particularly described in Schedule "A" hereto and all beneficial rights, title and interest thereto are held by the undersigned as the bare trustee or nominee for DS (BAY) Holdings Inc. (the "Beneficial Owner") and that the undersigned will convey, transfer and deal with all rights, title and interests in the said partnership interest in such manner as the Beneficial Owner may from time to time direct.

**DATED** this 9<sup>th</sup> day of December, 2016.

VESTACO INVESTMENTS INC.

Per:   
Doreen Saskin - President

**ACKNOWLEDGEMENT**

The undersigned hereby acknowledges the foregoing declaration of trust and agrees to indemnify and save harmless VESTACO INVESTMENTS INC. from and against all costs, liabilities or damages which it may incur on account of being the nominee/trustee of the said partnership interest as noted above.

**DATED** this 9<sup>th</sup> day of December, 2016.

DS (BAY) HOLDINGS INC.

Per:   
Doreen Saskin - President

## **Appendix “G”**

THIS MEMORANDUM OF AGREEMENT made the 9<sup>th</sup> day of December, 2016.

**B E T W E E N:**

**DOREEN SASKIN**, of the Province of Ontario

(hereinafter called the "Vendor")

- and -

**DS (BAY) HOLDINGS INC.**, a corporation incorporated under the laws of the Province of Ontario

(hereinafter called the "Purchaser")

**WHEREAS** the Vendor is the beneficial owner of a partnership interest (the "Subject Interest") in TCC/Urbancorp (Bay) Limited Partnership (the "Partnership");

**AND WHEREAS** legal title to the Subject Interest is held by Vestaco Investments Inc. ("Vestaco") as nominee for the Vendor;

**AND WHEREAS** the Vendor desires to sell and the Purchaser desires to purchase the Subject Interest upon the terms and conditions herein set forth;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby covenant and agree as follows:

**ARTICLE 1.00 - PURCHASE AND SALE**

1.01 Subject to the terms and conditions hereof, the Vendor hereby sells, assigns and transfers to the Purchaser and the Purchaser hereby purchases from the Vendor, the Subject Interest effective at the commencement of business on the date first above written (the "Closing Date"). The Subject Interest shall continue to be registered in the name of Vestaco.

**ARTICLE 2.00 - CALCULATION OF THE PURCHASE PRICE**

2.01 Subject to Article 6.00 hereof, the purchase price for the Subject Interest is equal to the amount set out in Schedule "A", being the fair market value thereof (the "Purchase Price"), as determined in accordance with Section 2.02 hereof.

2.02 The fair market value of the Subject Interest has been determined by applying generally accepted accounting and valuation principles, with a view to determining the highest price available in an open and unrestricted market between prudent parties acting at arm's length and under no compulsion to act and expressed in terms of money or money's worth, which statement shall be final and binding on the parties hereto for the purposes of this agreement, save as to clerical errors and adjustment in accordance with Article 6.00 hereof.

2.03 The parties hereto covenant and agree that notwithstanding Section 2.01 hereof, for income and corporation tax purposes, the Vendor's proceeds of disposition with respect to the Subject Interest and the amount for which the Purchaser shall be deemed to have acquired the Subject Interest shall be an amount equal to the cost amount of the Subject Interest to the Vendor, as determined in accordance with the provisions of the Income Tax Act (Canada) (the "Cost Amount"). The parties hereto agree jointly to make, execute and file with the appropriate bodies the election required under Subsection 85(1) of the Income Tax Act (Canada) in the prescribed form and within the prescribed time and manner to give effect to the provisions of this Section 2.03.

#### **ARTICLE 3.00 - PAYMENT OF THE PURCHASE PRICE**

3.01 The Purchase Price for the Subject Interest shall be paid and satisfied by the Purchaser issuing and allotting to the Vendor as fully paid and non-assessable 100 Common Shares in its capital.

3.02 The Purchaser shall, in respect of the Common Shares issued pursuant to Section 3.01 hereof, add to the stated capital account maintained by it for its Common Shares the amount equal to the Cost Amount to the Vendor of the Subject Interest.

#### **ARTICLE 4.00 - REPRESENTATIONS AND WARRANTIES**

The Vendor hereby represents and warrants to the Purchaser as follows and hereby acknowledges and confirms that the Purchaser is relying on such representations and warranties:

4.01 The Vendor beneficially owns the Subject Interest free and clear of any and all liens, encumbrances, actions and/or demands whatsoever.

4.02 No person, firm or corporation has any written or oral agreement, option, undertaking or commitment or any right or privilege capable of becoming an agreement or option for the purchase from the Vendor of the Subject Interest, or any part thereof.

4.03 The Vendor is not a "non-resident" within the meaning of the Income Tax Act (Canada).

**ARTICLE 5.00 - CLOSING DATE**

5.01 This agreement shall, upon execution, but subject to compliance with the terms and conditions hereof, operate without further act or formality as an actual transfer of the Subject Interest from the Vendor to the Purchaser as at the commencement of business on the Closing Date.

**ARTICLE 6.00 - PRICE ADJUSTMENT**

6.01 Notwithstanding anything hereinbefore contained, in the event that at any time in the future the Canada Revenue Agency or any duly authorized official thereof, any provincial taxing authority or any competent court shall make a determination at any time after the Closing Date to which the parties acquiesce or from which there is no further right to object or appeal or if the parties hereto shall at any time in good faith determine that the actual fair market value of the Subject Interest as at the Closing Date is greater or less than the fair market value so determined for the purposes of this Agreement (the "Revised Fair Market Value"), the Revised Fair Market Value shall automatically be substituted for the fair market value hereunder retroactive to the Closing Date to conform with the said adjustment.

**ARTICLE 7.00 - GENERAL PROVISIONS**

7.01 The parties hereto covenant and agree to do, execute, acknowledge, deliver and cause to be done, executed, acknowledged and delivered, such further acts, transfers and assurances for the better accomplishing and effectuating of the intention of this agreement. Without limiting the foregoing, the parties will notify the Partnership of the change in beneficial ownership of the Subject Interest.

7.02 Time shall be of the essence of this agreement and of every part hereof.

7.03 This agreement shall be made and construed in accordance with the laws of the Province of Ontario.

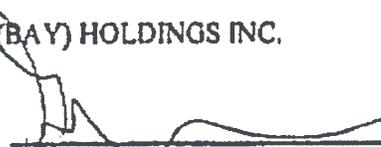
7.04 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties have duly executed these presents.

SIGNED, SEALED AND DELIVERED )  
IN THE PRESENCE OF )  
)  
)  
)  
)

  
\_\_\_\_\_  
DOREEN SASKIN

DS (BAY) HOLDINGS INC.

Per:   
\_\_\_\_\_  
Authorized Signing Officer

SCHEDULE "A"

Fair Market Value/Cost Amount

\$

## **Appendix “H”**

THIS SECOND AMENDING AGREEMENT made as of the 15th day of May, 2008.

BETWEEN:

**DEAJA PARTNER (BAY) INC.**

(hereinafter called the "General Partner")

OF THE FIRST PART,

- and -

**VESTACO INVESTMENTS INC.**

(hereinafter called "Vestaco") and

**ALAN SASKIN**

(hereinafter called "Saskin")

(Vestaco and Saskin hereinafter collectively called the "Limited Partners")

**WHEREAS** Vestaco and the General Partner entered into a Limited Partnership Agreement dated the 13<sup>th</sup> day of April, 1999 (the "Limited Partnership Agreement");

**AND WHEREAS** the Limited Partnership Agreement was amended by Amending Agreement dated the 1st day of January, 2003 pursuant to which Saskin became a Limited Partner;

**AND WHEREAS** the General Partner has suggested to the Limited Partners that the Limited Partnership or a Trustee on their behalf enter into an Agreement with First Capital Acquisition Corp., a party related to First Capital Realty with respect to the sale of a one-half (1/2) interest to First Capital Acquisitions of the Limited Partnership's option to acquire the option lands from CP Rail of the lands municipally known as 1100 King Street West, Toronto (and sometimes referred to as the "East Lot Lands") and the entering into a Co-Ownership Agreement with First Capital to acquire and develop the East Lot Lands;

**AND WHEREAS** the General Partner, as a result of an abundance of caution, wishes to obtain the approval of the Limited Partners to such sale and the proposed Co-Ownership Agreement;

AND WHEREAS the Vestaco is not in agreement with respect to this proposal with respect to First Capital Acquisitions and prefers the Kilmer proposal with respect to the East Lot Lands as this would provide an earlier return of its capital;

AND WHEREAS the Vestaco Limited Partner has agreed to consent to the proposed transaction with First Capital Acquisitions subject to the terms of this Amending Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other good and valuable consideration and the sum of TWO (\$2.00) DOLLARS now paid by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

- 1. Section 9.2 of the Limited Partnership Agreement is amended by adding the following thereto effective the date hereof:

“Notwithstanding the allocations in the Agreement, the first \$7,000,000 of distributable cash flow and distributable capital, (which sum of \$7,000,000 shall, after the date hereof, be increased at the rate of seven (7%) per cent per annum compounded annually) shall be paid to Vestaco. To the extent that the Capital Account of Vestaco is less than the amount paid to Vestaco, any income of the Limited Partnership, both taxable and accounting, will be allocated to Vestaco until such time as Vestaco’s capital is zero (0). Any future Net Income, Net Loss and/or distributable cash flow shall be allocated and paid in accordance with this Agreement.

After the payments provided for above, no further payment shall be paid to Vestaco until such time as the amount received by Vestaco is equal to the amount payable to Vestaco prior to this amendment.”

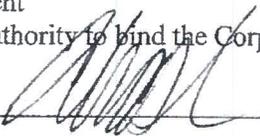
- 2. Section 9.3 of the Limited Partnership Agreement shall be deleted effective the 15th day of May, 2008.

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement.

SIGNED, SEALED AND DELIVERED

in the presence of:

) DEAJA PARTNER (BAY) INC.  
 )  
 ) Per:   
 ) Alan Saskin  
 ) President  
 ) I have the authority to bind the Corporation  
 )  
 ) VESTACO INVESTMENTS INC.  
 )

) Per:   
) Alan Saskin  
) President  
) I have the authority to bind the Corporation  
)  
)   
) Alan Saskin  
)

\_\_\_\_\_  
Witness:

## **Appendix “I”**

TCC/Bay Bancorp Limited Partnership  
**Allocation of Income from 2008 to 2016**  
(unaudited; \$)

Description	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Bay LP income	1,370,510	(2,124,947)	(158,617)	(47,075)	(158,851)	22,235,572	(7,692,530)	(4,257,239)	12,865,489	22,032,312
Allocation to Vestaco Investments Inc. (\$)	-	-	-	-	-	7,727,477	(1,538,506)	-	309,670	6,498,641
Allocation to Vestaco Investments Inc. (%)	0%	0%	0%	0%	0%	35%	20%	0%	2%	29%
Allocation to Alan Saskin (\$)	1,370,510	(2,124,947)	(158,617)	(47,075)	(158,851)	14,508,095	(6,154,024)	(4,257,239)	12,555,820	15,533,671
Allocation to Alan Saskin (%)	100%	100%	100%	100%	100%	65%	80%	100%	98%	71%

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

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

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

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

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

Proceeding commenced at Toronto

**THIRTEENTH REPORT OF THE  
MONITOR**

**DAVIES WARD PHILLIPS &  
VINEBERG LLP**  
155 WELLINGTON STREET WEST  
TORONTO, ON M5V 3J7

**Robin B. Schwill** (LSUC #384521)  
Tel: 416.863.5502  
Fax: 416.863.0871

Lawyers for the Monitor