

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

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

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

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

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

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

AGREED STATEMENT OF FACTS

(April 7, 2017)

Home Buyer Representation

1. Pursuant to the Order of the Honourable Mr. Justice Newbould dated August 29, 2016, 15 purchasers of homes from Urbancorp (St. Clair Village) Inc. (“UC St. Clair”), 17 purchasers of homes from Urbancorp (Lawrence) Inc. (“UC Lawrence”), 1 purchaser of a home from Urbancorp (Mallow) Inc. (“UC Mallow”), 12 purchasers of homes from Urbancorp (Woodbine) Inc. (“UC Woodbine”), and 20 purchasers of homes from Urbancorp (Bridlepath) Inc. (“UC Bridlepath”) opted in to being represented by Dickinson Wright LLP (“Dickinson Wright”) as their counsel in these proceedings. 55 of these purchasers (the “Home Buyers”) filed Home Buyer Objection Notices pursuant to the Claims Procedure Orders issued on September 15, 2016 and October 18, 2016 (the “Claims Procedure Orders”).

Background

2. UC St. Clair, UC Lawrence, UC Mallow, UC Woodbine, and UC Bridlepath, (collectively, the “UC Vendors”), respectively, marketed the following residential developments projects (collectively, the “Projects” and each respectively a “Project”):

- (a) Homes of St. Clair – 41 semi-detached residential town homes located at 177 Caledonia Road/19 Innes Avenue, Toronto, Ontario (the “St. Clair Project”);
- (b) Ravines on Lawrence – 88 low-rise residential townhouses and semi-detached homes located at 1780 Lawrence Avenue West, Toronto, Ontario (the “Lawrence Project”);
- (c) Homes of Mallow – 39 low-rise residential townhouses and semi-detached homes located at 15 Mallow Road, Toronto, Ontario (the “Mallow Project”);

- (d) Ravine Homes of Buttonville – 28 low-rise residential units located at 9064 Woodbine Avenue, Markham, Ontario (the “Woodbine Project”); and
 - (e) Homes of the Bridle Path – 37 low-rise residential units located at 2425 Bayview Avenue, Toronto, Ontario (the “Bridlepath Project”);
3. Each of the UC Vendors is a single-purpose, project specific corporation, incorporated for the sole purpose of acquiring, developing and selling a specific Project.
 4. As at the date that the Purchase Agreements (as defined below) were executed, each of the UC Vendors was owned and controlled directly or indirectly by Alan Saskin or his family.
 5. Alan Saskin is the sole director and officer of the UC Vendors, and personally has over 30 years’ experience in the real estate development industry in Toronto. The Urbancorp group of companies, under Mr. Saskin’s control, has developed thousands of homes and in 2013, had a proven track record of success in the development industry in Toronto.

Acquisition of the Development Lands

6. UC St. Clair purchased the real property for the St. Clair Project from the Toronto District School Board (the “TDSB”) on August 1, 2013 for a purchase price of \$7.7 million. Since the date of purchase, in addition to the demolition of the school building located on the site, the St. Clair Project had been through a lengthy rezoning process, architectural drawings had been completed, a building permit had been applied for and paid for by UC St. Clair and removal and remediation of soil located on the site was scheduled to commence.

7. UC Lawrence purchased the real property for the Lawrence Project from the TDSB on August 29, 2013 for a purchase price of \$8.3 million. Since the date of purchase, in addition to substantially demolishing the school building located on the site, a lengthy rezoning process and plan of subdivision had been commenced by UC Lawrence, including public meetings in the community and seeking planning and city council support for the Lawrence Project.

8. UC Mallow purchased the real property for the Mallow Project from the TDSB on August 28, 2014 for \$15 million. Since the date of purchase, in addition to demolishing the school building located on the site, remediation work had been ongoing at the site, and soil remediation work continued after the commencement of proposal proceedings by the UC Vendors, including UC Mallow, under the *Bankruptcy and Insolvency Act* (“BIA”), and an expected lengthy rezoning process was underway. Public meetings had been held and negotiations were underway with the City of Toronto in respect of a plan of subdivision.

9. UC Woodbine purchased the real property for the Woodbine Project on January 30, 2014, for a purchase price of \$5,250,000. Since the date of purchase, a lengthy rezoning process and plan of subdivision had been commenced by UC Woodbine, including various meetings with the City of Markham. An appeal to the Ontario Municipal Board (“OMB”) was filed in January 2016 by UC Woodbine and settlement discussions with the City were underway.

10. UC Bridlepath purchased the real property for the Bridlepath Project on March 20, 2014 for a purchase price of \$11,500,000. Since the date of purchase, a rezoning application had been filed by UC Bridlepath in August 2014, including a planning report, transportation study and municipal servicing report, among other things. After lengthy negotiations with the City of Toronto, a settlement was reached and ratified by the OMB in January 2016.

11. As at the commencement of the UC Vendors' BIA proposal proceedings, none of the UC Vendors had:

- (a) commenced any actual construction;
- (b) commenced a tendering process in connection with the construction contracts required for their respective Project; or
- (c) submitted a formal application for construction financing in respect of any of the Projects.

Project Development Timelines

12. Alan Saskin, on behalf of the UC Vendors, provided the following time estimates for obtaining the necessary development approvals from the City of Toronto and completing construction of the Projects:

- (a) Official Plan Amendment ("OPA") and Zoning By-law Amendment – 2 years
- (b) OMB Appeal process if rezoning applications are initially rejected – 1 year
- (c) Building Permit and Site Plan Approval – 6 to 9 months, if concurrent
- (d) Plan of Subdivision – 1 year
- (e) Servicing Plan – 6 months
- (f) construction contract tendering process – approximately 2 months
- (g) completion of construction:

- (i) St. Clair Project – 8 months for first deliveries and 12 months to complete.
- (ii) Lawrence Project – 7 months for first deliveries and 14 months to complete.
- (iii) Mallow Project – 6 months for first deliveries and 13 months to complete.
- (iv) Woodbine Project – 7 months for first deliveries and 12 months to complete.
- (v) Bridlepath Project – 14 months for first deliveries and 20 months to complete.

13. UC St. Clair obtained approval for its zoning by-law amendment on June 10, 2015.

14. UC Lawrence made application for development approval in respect of the Lawrence Project in January, 2014.

15. UC Mallow made application for development approval in respect of the Mallow Project in January, 2015.

16. UC Woodbine made application for development approval in respect of the Woodbine Project in September, 2014.

17. UC Bridlepath made application for development approval in respect of the Bridlepath Project in December, 2014.

18. On March 4, 2016, Tarion Warranty Corporation (“Tarion”) issued to each of the UC Vendors a Notice of Proposal to Refuse to Renew Registration pursuant to the *Ontario New*

Home Warranty Plan Act. Attached hereto as Schedule "A" is a copy of the Tarion notice issued to UC Mallow which is substantially similar in form and content to the notices issued to the other UC Vendors.

19. On June 1, 2016, each of the UC Vendors formally withdrew their respective registration renewal applications with Tarion.

Circumstances Surrounding Execution of Purchase Agreements

20. On January 18, 2014, UC St. Clair opened its sales office to the public for the first availability of homes in the St. Clair Project.

21. On April 18, 2015, UC Lawrence opened its sales office to the public for the first availability of homes in the Lawrence Project.

22. On October 18, 2014, UC Mallow opened its sales office to the public for the first availability of homes in the Mallow Project.

23. The first availability of homes in the Woodbine Project and Bridlepath Project took place on May 24, 2014 when UC Woodbine and UC Bridlepath hosted a sales event at the Westin Prince Hotel.

24. The homes in each Project were available for purchase through sales offices staffed by third party real estate brokers. The brokers were paid a sales management and marketing fee by the UC Vendors for each unit sold pursuant to a firm and binding purchase agreement. A portion of the aforementioned fee would be paid 120 days after the purchase agreement became firm and

binding with the remainder paid within 30 days of title to the unit being transferred to the purchaser.

25. The sales offices or events operated by the UC Vendors were each staffed with sales agents employed by International Home Marketing Group Limited (“IHM”) (the “IHM Sales Agents”). IHM is a fully integrated sales management and marketing company that works with various developers in the Greater Toronto Area and, among other things, assists them with marketing projects to the public and staffing sales offices when the projects are first made available to the public for purchase. IHM provided the aforementioned marketing and staffing services, as agent, to each of the UC Vendors in connection with their respective projects.

26. Recognizing that the Projects were marketed in varying ethnic communities and to varying potential purchasers, particularly real estate investors with a Chinese background, IHM staffed the sales offices and events with IHM Sales Agents who would be able to communicate with potential purchasers in their native language, including several dialects of Mandarin.

27. The sales offices or events for the Projects were all very well attended by potential purchasers who lined up on the first day that homes were made available to them. 33 out of 55 Home Buyers represented by Dickinson Wright stated in the questionnaire prepared by Dickson Wright and sent to the Home Buyers on or about January 30, 2017 (the “DW Questionnaire”), that they were not represented by agents.

28. The IHM Sales Agents would provide information to the purchasers and the purchasers’ sales agents, if they were represented, about the Projects. If a potential purchaser was interested in purchasing a home, they completed a one page summary of pertinent information (the “Purchaser Summary”). Once completed, the Purchaser Summary was provided to an IHM

Sales Agent. The Purchaser Summary was then provided by the IHM Sales Agent to the IHM staff working in the back office who would prepare the relevant standard form purchase agreements and in certain cases, amending schedules thereto (collectively, the "Purchase Agreements") for execution by the purchaser. Sample Purchase Agreements with each of the UC Vendors are attached hereto as Schedule "B". Attached hereto as Schedule "C" are the redacted unique signing pages for the Purchase Agreements executed by the Home Buyers.

29. Each of the Home Buyers completed the Purchaser Summary prior to receiving a Purchase Agreement for execution.

30. Once the Purchase Agreement was prepared, it would be provided to the purchaser for execution. Once executed, the Purchase Agreement and a deposit cheque of 10% or more would be provided to the back office staff and a copy of the executed Purchase Agreement would be provided to the purchaser. All Purchase Agreements, once executed by the purchasers, were also executed by IHM on behalf of the UC Vendors. When purchasers, including the Home Buyers, left the sales office or event on the date in question, they left with a copy of the Purchase Agreement that they had executed.

31. Many prospective purchasers, including the Home Buyers, had seen signs, flyers, online advertising and/or had been apprised by their own sales agent of the opportunity to purchase a home in one of the Projects. Many of the potential purchasers did not have information about the contractual terms of the Purchase Agreements until they entered the sales offices or events and a Purchase Agreement had been prepared for them to execute.

32. The majority of the Home Buyers from UC St. Clair signed their Purchase Agreements on January 18, 2014.

33. Approximately half of the Home Buyers from UC Lawrence signed their Purchase Agreements on April 18, 2015.

34. The Home Buyer from UC Mallow signed his Purchase Agreement on October 18, 2014.

35. With the exception of one Home Buyer, all of the Home Buyers from UC Woodbine signed their Purchase Agreements on May 24, 2014.

36. A substantial majority of Home Buyers from UC Bridlepath signed their Purchase Agreements on May 24, 2014.

37. Each of the Home Buyers paid a deposit to the UC Vendors in an amount approximately equal to 10% of the purchase price. The UC Vendors collected deposits of \$15.6 million in the aggregate.

The Purchase Agreement's 10 Day Period and Exclusion Clause

38. Paragraph 4 of the Purchase Agreements reads as follows (the "10 Day Period"):

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

39. Due to the condominium components in each of the Projects, the Purchase Agreements had to include the 10 Day Period. 29 of 55 Home Buyers stated in the DW Questionnaire that

they were not aware of the 10 Day Period and 2 of those Home Buyers stated that they believed that the relevant period was only 4 days.

40. 35 of the 55 Home Buyers stated in the DW Questionnaire that they did not consult with a lawyer or any legal representative before or during the 10 Day Period.

41. Section 45 of Schedule "A" to the Purchase Agreements reads as follows (the "Exclusion Clause"):

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

42. The Exclusion Clause was not amended in any of the Home Buyers' Purchase Agreements.

43. A number of the potential purchasers, including the majority of the Home Buyers, had previously purchased homes.

Home Buyer Damage Claims

44. Pursuant to the Claims Procedure Orders, KSV Kofman Inc., in its capacity as Monitor (the "Monitor"), sent Home Buyer Claim Notices to all purchasers of homes from the UC Vendors notifying them that they had claims in the CCAA proceedings in respect of the "termination, disclaimer, resiliation, repudiation, rescinding or fundamental breach" of their

corresponding Purchase Agreements in an amount equal to their respective deposits, and, unless they objected to the Monitor's valuation of their claim within the prescribed time period by filing a Home Buyer Objection Notice, the Home Buyer Claims Notice would be binding on them.

45. The Home Buyers chose to make claims in excess of the return of their deposits and instructed Dickinson Wright to file Home Buyer Objection Notices on their behalf claiming damages on account of, *inter alia*, the difference between the purchase price of their individual home and the market value of the home as at the closing date set out in the Purchase Agreements professional fees.

April 7, 2017

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

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

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

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PROCEEDING COMMENCED AT
TORONTO

AGREED STATEMENT OF FACTS

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