



**Eighth Report to Court of KSV Kofman  
Inc. as Proposal  
Trustee of Urbancorp (Woodbine) Inc.  
and Urbancorp (Bridlepath) Inc.**

October 6, 2016

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ESTATE NO.: 31-2114850  
COURT FILE NO.: 31-2114850

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
URBANCORP (WOODBINE) INC. AND  
URBANCORP (BRIDLEPATH) INC.

EIGHTH REPORT OF KSV KOFMAN INC. AS PROPOSAL TRUSTEE

OCTOBER 6, 2016

## 1.0 Introduction

1. On April 21, 2016, Urbancorp (St. Clair Village) Inc. ("St. Clair"), Urbancorp (Patricia) Inc. ("Patricia"), Urbancorp (Mallow) Inc. ("Mallow"), Urbancorp Downsview Park Development Inc. ("Downsview"), Urbancorp (Lawrence) Inc. ("Lawrence") and Urbancorp Toronto Management Inc. ("UTMI") each filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (collectively, St. Clair, Patricia, Mallow, Downsview, Lawrence are referred to as the "Companies"). KSV Kofman Inc. ("KSV") was appointed as the Proposal Trustee of each of the Companies.
2. Pursuant to an Order made by the Ontario Superior Court of Justice (Commercial List) (the "Court") dated May 18, 2016 (the "Initial Order"), the Applicants (which include the Companies) together with the entities listed on Schedule "A" attached (collectively, the "Urbancorp CCAA Entities") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and KSV was appointed the monitor in those proceedings (the "Monitor").
3. On April 25, 2016, Urbancorp (Bridlepath) Inc. ("Bridlepath") and Urbancorp (Woodbine) Inc. ("Woodbine" and together with Bridlepath, the "NOI Entities") each filed NOIs. KSV is the Proposal Trustee of the NOI Entities.
4. On April 25, 2016, the District Court in Tel Aviv-Yafo (the "Israeli Court") issued a decision (the "April 25<sup>th</sup> Decision") appointing Guy Gissin as the functionary officer and foreign representative (the "Foreign Representative") of Urbancorp Inc. ("UC Inc.") and granted him certain powers, authorities and responsibilities over UC Inc., the ultimate parent of a number of the Urbancorp CCAA Entities.

5. On May 18, 2016, the Court also 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 UC Inc.; and (c) appointed KSV as the Information Officer.
6. On June 30, 2016, the Court issued orders approving sale processes to be carried out for the real property owned by St. Clair, Patricia, Lawrence, Mallow, Woodbine and Bridlepath (collectively, the “Properties” and each a “Property”). On September 15, 2016, the Court made orders, *inter alia*, approving the sale of the Properties (the “Transactions”).
7. The sale of the Woodbine Property closed on September 30, 2016 and the sale of the Bridlepath Property is scheduled to close on October 14, 2016.
8. On September 30, 2016, this Court issued an order authorizing and empowering the Proposal Trustee on behalf of the NOI Entities to repay forthwith after closing, or as part of closing, the first mortgage obligations of the NOI Entities.
9. In its Seventh Report to Court dated September 29, 2016, and in certain of its previous reports to this Court, the Proposal Trustee has noted that a second mortgage owing to Terra Firma Capital Corporation (“TFCC”) on both the Woodbine and Bridlepath Properties remained subject to further review by the Proposal Trustee.

## 1.1 Purposes of this Report

1. The purpose of this report (“Report”) is to provide the details of the Proposal Trustee’s review of the second mortgage granted to TFCC on both the Woodbine and Bridlepath Properties (the “TFCC Second Mortgage”).

## 2.0 Security Opinion

1. Davies Ward Phillips & Vineberg LLP (“Davies”), KSV’s legal counsel in these proceedings, provided KSV with an opinion on the validity and enforceability of the TFCC Second Mortgage. A copy of this opinion is attached as Appendix “A” hereto.
2. In summary, the opinion provides that, subject to the assumptions and qualifications contained therein:
  - a) Subject to (c) below, the Charge/Mortgage made by Woodbine, the registered owner of the Woodbine Property, in favour of TFCC registered on December 31, 2015 as Instrument No. YR2411107 constituted a valid registered mortgage over the Woodbine Property in favour of TFCC; and
  - b) Subject to (c) below, the Charge/Mortgage made by Bridlepath, the registered owner of the Bridlepath Property, in favour of TFCC registered on December 31, 2015 as Instrument No. AT4107508 constituted a valid registered mortgage over the Bridlepath Property in favour of TFCC; however,

- c) the above Charges/Mortgages could be held to be void (i.e., not enforceable as against the Proposal Trustee or other creditors) as transfers at undervalue under the *Bankruptcy and Insolvency Act* (the "BIA"), fraudulent conveyances under the *Fraudulent Conveyances Act* (Ontario) (the "FCA") or fraudulent preferences under the *Assignment and Preferences Act* (Ontario) (the "APA").
3. In preparing its opinion, Davies made enquiries of counsel to TFCC and responses were provided. A copy of these communications is provided in Appendix "B" attached hereto:
  - a) letter dated July 14, 2016 from Robin Schwill of Davies to Dominique Michaud of Robins Appleby LLP, counsel to TFCC;
  - b) e-mails dated July 21, 2016 from Leor Margulies of Robins Appleby LLP to Robin Schwill;
  - c) reply e-mail dated July 25, 2016 from Robin Schwill to Leor Margulies;
  - d) letter dated August 5, 2016 from Jay Swartz of Davies to Leor Margulies; and
  - e) letter dated August 10, 2016 from Leor Margulies to Robin Schwill.

### **3.0 Economic Interests in Outcome**

1. TFCC has informed the Proposal Trustee that it wishes to have the issues regarding the enforceability of the TFCC Second Mortgage resolved as soon as possible and that it is not prepared to wait until the completion of a claims process for Woodbine and Bridlepath. TFCC is also not prepared to wait until it is certain that it cannot be fully repaid from its direct borrower, which appears to be Urbancorp Holdco Inc. In this regard, TFCC requested that the Proposal Trustee provide this Report so that it would have a context for bringing a motion to compel a payout on the TFCC Second Mortgage.
2. It is anticipated that the proceeds of realization from the sale of the Woodbine and Bridlepath Properties will be sufficient to pay out all of the creditors (secured and unsecured) of Woodbine and Bridlepath, respectively, including the TFCC Second Mortgage, subject to completing the claims process for these companies.
3. Accordingly, if the TFCC Second Mortgage together with the underlying guarantees are held to be void, the direct benefactors will be the limited and general partners of TCC Urbancorp/(Bay) Limited Partnership ("Bay LP") as the beneficial owner of the Woodbine and Bridlepath Properties and sole shareholder of Woodbine and Bridlepath. To date, the Proposal Trustee has not determined the limited and general partners with certainty. However, to the extent that distributions from Bay LP would be payable to Alan Saskin or to entities in which he has an interest, then Alan Saskin and his proposal trustee would have an interest in this matter as would the Foreign Representative to the extent that it or Urbancorp Inc. have claims against Mr. Saskin or Bay LP.

\* \* \*

All of which is respectfully submitted,

*KSV Kofman Inc*

**KSV KOFMAN INC. IN ITS CAPACITIES  
AS PROPOSAL TRUSTEE  
AND NOT IN ITS PERSONAL CAPACITY**

## Schedule "A"

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

## **Appendix “A”**

October 5, 2016

File No. 256201

KSV Kofman Inc.  
Suite 2308  
150 King Street West  
Toronto, ON M5H 1J9

Attention: Bobby Kofman/Robert Harlang/Noah Goldstein

Dear Sirs:

### **Urbancorp – Bridlepath and Woodbine Charges**

As the proposal trustee of Urbancorp (Bridlepath) Inc. ("**Urbancorp Bridlepath**") and Urbancorp (Woodbine) Inc. ("**Urbancorp Woodbine**", and together with Urbancorp Bridlepath, the "**Urbancorp Owners**"), you have asked us for our opinion as to whether Terra Firma Capital Corporation (the "**Lender**") has valid charges over the Urbancorp Owners' interests in the Properties (as defined below) as security for the Subject Loan (as defined below).

#### **I. Scope of Review**

For the purposes of the opinions expressed below, we have only reviewed copies of the following documents (collectively, the "**Documents**"):

1. a letter of intent dated March 6, 2016 among the Lender, Urbancorp Holdco Inc. (the "**Borrower**"), TCC/Urbancorp (Bay) Limited Partnership (the "**Beneficial Owner**"), the Urbancorp Owners and others (the "**Letter of Intent**");
2. a Charge/Mortgage registered on December 31, 2015 as instrument no. AT4107508 (the "**Bridlepath Charge**") made by Urbancorp Bridlepath, as chargor, in favour of the Lender, as chargee, securing the principal amount of \$12,000,000, charging the lands and premises municipally known as 2425-2427 Bayview Avenue and more particularly described therein (the "**Bridlepath Property**");
3. a Charge/Mortgage registered on December 31, 2015 as instrument no. YR2411107 (the "**Woodbine Charge**" and together with the Bridlepath Charge, the "**Charges**") made by Urbancorp Woodbine, as chargor, in favour of the Lender, as chargee,

securing the principal amount of \$12,000,000, charging the lands and premises municipally known as 9064-9100 Woodbine Avenue, Markham and more particularly described therein (the "**Woodbine Property**" and together with the Bridlepath Property, the "**Properties**");

4. a Beneficial Owner Direction, Charge of Beneficial Interest and Acknowledgement Agreement dated December 31, 2015 between the Lender, as lender, Urbancorp Bridlepath, as trustee, and the Beneficial Owner, as beneficial owner (the "**Bridlepath Direction**");
5. a Beneficial Owner Direction, Charge of Beneficial Interest and Acknowledgement Agreement dated December 31, 2015 between the Lender, as lender, Urbancorp Woodbine, as trustee, and the Beneficial Owner, as beneficial owner (the "**Woodbine Direction**" and, together with the Bridlepath Direction, the "**Beneficial Directions**");
6. a Guarantee and Postponement of Claim dated December 31, 2015 between, among others, the Lender, the Borrower and the Beneficial Owner (the "**Beneficial Owner Guarantee**"); and
7. an Acknowledgement re Existing Security dated March 8, 2016 addressed to the Lender from, among others, the Borrower, the Beneficial Owner and the Urbancorp Owners (the "**Acknowledgement re Existing Security**").

## **II. Assumptions**

For the purposes of the opinions expressed below, we have assumed, without any independent verification or inquiry:

- (a) the genuineness of all signatures, the legal capacity of all individuals, the authenticity of all Documents submitted to us as originals and the conformity to authentic originals of all documents submitted to us as certified or photostatic copies or as facsimiles;
- (b) that, subject to our analysis below, each of the Documents has been duly authorized, executed and delivered by, and constitutes a legal, valid, binding and enforceable obligation of, each party thereto in accordance with its terms;
- (c) that none of the Documents has been amended, terminated or otherwise modified since its date of execution;

- (d) that none of the security granted under any of the Documents has been assigned, released, discharged or otherwise impaired, either in whole or in part;
- (e) that the Initial Loan (defined below) was never advanced to the Borrower, in whole or in part;
- (f) that the Subject Loan (defined below) was advanced to the Borrower and has not been repaid in full;
- (g) that the Beneficial Owner holds, and has since prior to the granting of the Charges held, an undivided 100% beneficial interest in each of the Properties;
- (h) that each of the Urbancorp Owners holds, and has since prior to the granting of the Charges held, an undivided 100% registered interest in their respective Property as nominee and bare trustee for and on behalf of the Beneficial Owner;
- (i) that the Urbancorp Owners and Beneficial Owner did not receive any direct benefit or compensation in return for the granting of the Charges or from or pursuant to the Subject Loan;
- (j) that there are no other documents, agreements or instruments which are relevant to, or would have a material impact on, the transactions described in or contemplated by the Documents;
- (k) that the granting of the Charges did not contravene the subdivision control provisions of the *Planning Act*, R.S.O. 1990, c. P.13;
- (l) Urbancorp Woodbine and Urbancorp Bridlepath are each 100% owned by the Beneficial Owner and the sole general partner of the Beneficial Owner is Alan Saskin, with the sole limited partner being Doreen Saskin;<sup>1</sup>
- (m) Alan Saskin is the sole shareholder of the Borrower and the Borrower is the sole shareholder of Urbancorp Inc.;<sup>2</sup> and

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<sup>1</sup> Lender's counsel has informed us that their information at the time was that Alan Saskin was a limited partner (in addition to being the general partner or sole shareholder of the general partner) of the Beneficial Owner. A search conducted under the *Limited Partnerships Act* (Ontario) dated 2016/09/06 discloses the sole general partner of the Beneficial Owner as being DEAJA Partner (Bay) Inc.

- (n) the Borrower, Urbancorp Owners and Beneficial Owner were dealing at arm's length with the Lender.

The opinions expressed below are limited to the laws of the Province of Ontario and the federal laws of Canada applicable in that province ("**Applicable Laws**").

### **III. Summary of Loans**

#### ***Initial Loan***

It is our understanding that pursuant to a commitment letter dated December 22, 2015 (the "**Initial Commitment Letter**"),<sup>3</sup> the Lender agreed to make a loan (the "**Initial Loan**") to the Borrower. Based on our review of the Documents, we understand that the security documents for the Initial Loan included, *inter alia*:

- (a) the Bridlepath Charge, pursuant to which Urbancorp Bridlepath guaranteed the Initial Loan and granted a charge of the Bridlepath Property in favour of the Lender as security for such guarantee and the Initial Loan;
- (b) the Woodbine Charge, pursuant to which Urbancorp Woodbine guaranteed the Initial Loan and granted a charge of the Woodbine Property in favour of the Lender as security for such guarantee and the Initial Loan;
- (c) the Beneficial Owner Guarantee, pursuant to which the Beneficial Owner (and others) guaranteed the Borrower's obligations under the Initial Loan;<sup>4</sup>
- (d) the Bridlepath Direction, pursuant to which the Beneficial Owner authorized and directed Urbancorp Bridlepath to grant the Bridlepath Charge and granted a mortgage of its beneficial interest in the Bridlepath Property in favour of the Lender as security for the Initial Loan and the indebtedness under all security documents relating thereto; and
- (e) the Woodbine Direction, pursuant to which the Beneficial Owner authorized and directed Urbancorp Woodbine to grant the Woodbine Charge and granted a mortgage of its beneficial interest in the Woodbine Property in favour of the Lender as security for the Initial Loan and the indebtedness under all security documents relating thereto.

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<sup>2</sup> Lender's counsel has informed us that their information at the time was that the Beneficial Owner was also a shareholder of the Borrower.

<sup>3</sup> We have not been provided with a copy of the Initial Commitment Letter.

<sup>4</sup> The Urbancorp Owners were not parties to the Beneficial Owner Guarantee.

The security that was granted in respect of the Initial Loan is hereinafter referred to as the "**Initial Security**".

We have been advised that the conditions to advancing the Initial Loan were not satisfied and that, as a result, the Initial Loan was never advanced.

### ***Subject Loan***

On March 6, 2016, pursuant to the Letter of Intent, the Lender agreed to make another loan (the "**Subject Loan**") to the Borrower in the principal amount of \$10,000,000, which Subject Loan was to be secured by, *inter alia*, a mortgage of each of the Properties. It is our understanding that approximately \$4,750,000 of the Subject Loan remains outstanding.

However, rather than registering new mortgages of the Properties in respect of the Subject Loan, the parties agreed that, subject to Lender's counsel advice, the Initial Security (other than certain inapplicable security) would be used to satisfy certain of the security requirements under the Letter of Intent (including the requirement for a mortgage of each of the Properties).<sup>5</sup> Accordingly,<sup>6</sup> the Borrower, the Beneficial Owner, the Urbancorp Owners and others (excluding the Lender) executed the Acknowledgement re Existing Security pursuant to which such parties acknowledged and agreed that certain of the Initial Security (including the Charges and the Directions) "shall also stand as security with respect to the [Subject Loan]." The Acknowledgement re Existing Security also provided that "The [applicable Initial Security] shall also be deemed to be amended such that references to the [Initial Commitment Letter] shall be deemed to be the [Letter of Intent]."

## **IV. Qualifications, Limitations and Restrictions**

The opinions expressed below are also subject to the following qualifications, limitations and restrictions:

- (a) no opinion is given as to the ranking or priority of the security interests granted pursuant to the Documents, including with respect to any subsequent charges or encumbrances registered on title to the Properties; and
- (b) no opinion is given with respect to any security interest in personal property, including any personal property security interests created pursuant to the Documents.

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<sup>5</sup> See page 2 of the Letter of Intent.

<sup>6</sup> We are not aware of the Lender's counsel having advised against the proposed approach and have therefore assumed that they did not.

We note that certain of the Documents present potential issues and we have identified in the analysis below those issues which we consider to be relevant to our conclusions, together with our views thereon.

## V. Opinions

Subject to the assumptions, qualifications and limitations contained herein and our analysis set out below, we are of the opinion that:

1. Subject to our opinion set out in paragraph 2 below, the Charges create valid registered mortgages over the Properties in favour of the Lender as security for the Subject Loan.

2. However, we note that the Charges could be held to be void (i.e., not enforceable as against the proposal trustee or other creditors) as transfers at undervalue under the *Bankruptcy and Insolvency Act* (the "BIA"), fraudulent conveyances under the *Fraudulent Conveyances Act* (Ontario) (the "FCA") or fraudulent preferences under the *Assignment and Preferences Act* (Ontario) (the "APA").

## VI. Analysis

### (a) Voidable Transactions

The fact that there may be sufficient consideration to support the enforceability of a contract as against the parties to the contract may not be sufficient to ensure the enforceability of the underlying transactions (here, the granting of security by the Urbancorp Owners and Beneficial Owner to the Lender) as against third parties, including a proposal trustee.<sup>7</sup>

#### (i) Preferences under the BIA

Pursuant to section 95 of the BIA, a charge on property made by an insolvent person in favour of a creditor who is dealing at arm's length with the insolvent person, with a view to giving that creditor a preference over another creditor is void as against the trustee if it is made during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy. Furthermore, if the charge has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made with a view to giving the creditor the preference, even if it was made under pressure, and evidence of pressure is not admissible to support the transaction.

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<sup>7</sup> Section 66(1) of the BIA states that all of the provisions of the BIA, except the consumer proposal provisions, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under Division I of the BIA.

The date of the initial bankrupt event for the Urbancorp Owners is the date on which they filed their respective notices of intention to make a proposal pursuant to the BIA, being April 25, 2016. We believe that the better view is that the security granted with respect to the guarantees of the Subject Loan was effected on March 8, 2016 being the date of the Acknowledgement re Existing Security (and not December 31, 2015 being the date of the Charges registered in respect of the Initial Loan which was never advanced). Accordingly, the grant of the security was within the relevant three month period for the Urbancorp Owners.<sup>8</sup>

However, a person must be a creditor at the time that the impugned charge was granted for there to be an actionable preference under section 95 of the BIA. The information we have suggests that the security was granted in respect of guarantees related to a new loan (the Subject Loan). Therefore, on these facts, a preference action pursuant to section 95 of the BIA is unlikely to be successful.

(ii) Transfers at Undervalue

Section 96(1) of the BIA provides that, on application by the trustee, a court may declare that a transfer at undervalue is void as against the trustee if the party was dealing at arm's length with the debtor and: (a) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy; (b) the debtor was insolvent at the time of the transfer or was rendered insolvent by it; and (c) the debtor intended to defraud, defeat or delay a creditor. Section 96(2) of the BIA states that in making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

The BIA defines a "transfer at undervalue" as a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor. There is case law which supports that the granting of a charge on one's property is a "disposition" for the purposes of the definition of transfer at undervalue.<sup>9</sup> Based on our understanding and the assumptions stated herein, it appears that

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<sup>8</sup> While the Beneficial Owner, being a limited partnership, is not currently itself the subject of any proceeding under the BIA, in the overall context of these proceeding we are of the view that this is unlikely to be on any substantive consequence if such matters are litigated. This is especially the case given that the Urbancorp Owners and the Properties have to date been effectively treated and dealt with by the court as subject to the BIA proposal proceedings throughout.

<sup>9</sup> See paragraphs 129 and 162 of the *City Peel Taxi v. Hanna* 2012 CarswellOnt 5416, 91 C.B.R. (5th) 1. While Justice D. M. Brown cast some doubt about this holding in his decision in *Montor Business Corp. (Trustee of) v. Goldfinger*, 2013 ONSC 6635, 2013 CarswellOnt 14983 (see

no consideration was "received by" either the Urbancorp Owners or Beneficial Owner in return for providing the guarantees and related security. As discussed above, the granting of the security occurred well within a year of the date of the initial bankruptcy event for the Urbancorp Owners.

Given the foregoing, if it can be shown that the Urbancorp Owners were insolvent at the time such security was granted, or were rendered insolvent by granting it, and that in granting such security they intended to defraud, defeat or delay a creditor, then the granting of such security may be declared void by the court. Fraudulent intent has been held to be a matter of fact to be determined in the circumstances of each case on the basis of the evidence as a whole.

Given the similarities of the facts in this case, as we understand them, to those in *XDG Ltd. v. 1099606 Ontario Ltd.*,<sup>10</sup> we are of the view that a court could declare that the granting of the security by the Urbancorp Owners in favour of the Lender constituted transfers at undervalue which are void as against the proposal trustee. Those facts include the following: the Urbancorp Owners and Beneficial Owner made no independent income at the time and had existing and substantial debt in the form of likely claims from existing home buyers and other trade creditors; the security granted was in support of a related party; the grantors of the security received no consideration;<sup>11</sup> and the property charged was all of the property of the Urbancorp Owners.

(iii) Fraudulent Conveyance

For the purposes of the FCA, the term "conveyance" includes a charge or encumbrance by writing or otherwise. Section 2 of the FCA provides that every conveyance of real property or personal property made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns. Section 3 of the FCA states that Section 2 of the FCA does not apply to an estate or interest in real property or personal

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paragraph 318 therein), he did not overturn it given that the parties in that case were not challenging this point.

<sup>10</sup> 2002 CarswellOnt 4535, 41 C.B.R. (4th) 294 (Ont. S.C.J.), upheld in all relevant parts by the Ontario Court of Appeal at 2004 CarswellOnt 1581, 1 C.B.R. (5th) 159. While this case dealt with fraudulent conveyances and preferences under the FCA and APA and did not deal with anything under the BIA, we are of the view that a very similar approach would be undertaken by the court in determining such similar issues under sections 95 and 96 of the BIA.

<sup>11</sup> In *XDG Ltd.*, Sam Rehani was the sole director, officer and shareholder of the guarantor and was also the controlling shareholder and president of the borrower. The Court found that no advance was made to the guarantor and that there was no evidence to suggest any advance to the borrower would enable the guarantor to continue its business and pay its debts in full. In the facts in that case, the Court simply stated that the guarantor received no consideration for the conveyance, let alone "good consideration".

property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance notice or knowledge of the intent set forth in that section.

For the same reasons as outlined in Transfers at Undervalue, above, and in particular the holding in *XDG Ltd.*, we are of the view that a court could declare that the granting of the security by the Urbancorp Owners and Beneficial Owner in favour of the Lender is void as fraudulent conveyances under the FCA.

(iv) Assignment and Preferences Act

Section 4(1) of the APA provides that, subject to section 5 of the APA, every conveyance, assignment or transfer of any other property, real or personal, made by a person when insolvent or unable to pay the person's debts in full or when the person knows that he, she or it is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice creditors, or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced. Section 5(1) of the APA, in relevant part, provides that nothing in section 4 of the APA applies to any conveyance, assignment, transfer of any goods or property of any kind, that is made in good faith in consideration of a present actual payment in money, or by way of security for a present actual advance of money, or that is made in consideration of a present actual sale or delivery of goods or other property where the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

Again, for the same reasons as outlined in Transfers at Undervalue, above, and in particular the holding in *XDG Ltd.*, we are of the view that a court could declare that the granting of the security by the Urbancorp Owners and Beneficial Owner in favour of the Lender is void as fraudulent preferences under the APA.

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The opinions and analysis expressed above are provided solely for the benefit of the addressee and may not be used or relied on by any other person or for any other purpose.

Yours very truly,

*Davies Ward Phillips & Vineberg LLP*

## **Appendix “B”**

July 14, 2016

Robin B. Schwill  
T 416.863.5502  
F 416.863.0871  
rschwill@dwpv.com

File No. 256201

**BY E-MAIL**Robins Appleby LLP  
120 Adelaide Street West  
Suite 2600  
Toronto, ON M5H 1T1**Attention: Mr. Dominique Michaud**

Dear Mr. Michaud:

**Mortgages/Charges by Urbancorp (Woodbine) Inc. ("Woodbine") and Urbancorp (Bridlepath) Inc. ("Bridlepath") in favour of Terra Firma Capital Corporation ("Terra Firma")**

As you know, we are counsel to KSV Kofman Inc. in its capacity as proposal trustee of Woodbine and Bridlepath (the "**Proposal Trustee**"). In this regard, the Proposal Trustee is required to obtain from us an independent legal opinion regarding the validity and enforceability of the above-noted charges. We are writing to you as we are now preparing our opinion.

In conducting this review, we note that Terra Firma provided the relevant loan to Urbancorp Holdco Inc. ("**UHI**") (the "**Initial Loan**") and that Woodbine and Bridlepath granted their charges in respect of guarantees to Terra Firma of the Initial Loan. We also note that the beneficial owner of the Woodbine and Bridlepath properties is TCC/Urbancorp (Bay) Limited Partnership (the "**Beneficial Owner**") who also granted a mortgage/charge of its beneficial interest in these properties in favour of Terra Firma as security for its guarantee of the Initial Loan pursuant to a Guarantee and Postpone of Claim agreement.

Our information is that Woodbine and Bridlepath are each 100% owned by the Beneficial Owner and that the general partner of the Beneficial Owner is Alan Saskin, with the sole limited partner being Doreen Saskin. We also understand that UHI is the sole shareholder of Urbancorp Inc. Given this corporate structure, we have not been provided with any information which indicates what, if any, consideration was provided to Woodbine, Bridlepath or the Beneficial Owner in exchange for their guarantees of the Initial Loan and related charges.

Given the foregoing, we would be grateful for any information that you could provide to us which would evidence any such consideration.

Yours very truly,

A handwritten signature in black ink, appearing to be 'RS', written over a horizontal line.

Robin Schwill

RS/ae

cc: Bobby Kofman, *KSV Kofman Inc.*  
Noah Goldstein, *KSV Kofman Inc.*

Jay Swartz

## Schwill, Robin

---

**From:** Leor Margulies <lmargulies@robapp.com>  
**Sent:** July 21, 2016 7:33 PM  
**To:** Leor Margulies; Schwill, Robin  
**Cc:** 'Norman Winter (nw@nwinlaw.com)'; 'Jackie Storms'; 'Esther Berglas (eb@nwinlaw.com)'; Dominique Michaud  
**Subject:** RE: Letter dated July 14, 2016 two Dominique Michaud to

Dear Robin,

Further to my email below, Norman Winter, counsel for Terra Firma who acted on the loan transaction, advises that he was advised by counsel for the borrower at the time the loan transaction was completed, that Alan Saskin was a limited partner (in addition to being the general partner or sole shareholder of the general partner) of the limited partnership comprising the beneficial owner of Woodbine and Bridlepath, and that the limited partnership itself was a shareholder of UHI .

We await receipt of your information you were going to provide to us.



**Leor Margulies**  
T. 416.360.3372  
E. lmargulies@robapp.com  
**ROBINS APPLEBY**  
BARRISTERS + SOLICITORS

Follow Me On:  

---

**From:** Leor Margulies [<mailto:lmargulies@robapp.com>]  
**Sent:** Thursday, July 21, 2016 12:44 PM  
**To:** 'rschwill@dwpv.com'  
**Cc:** 'Norman Winter ([nw@nwinlaw.com](mailto:nw@nwinlaw.com))'; 'Jackie Storms'; 'Esther Berglas ([eb@nwinlaw.com](mailto:eb@nwinlaw.com))'; Dominique Michaud  
**Subject:** Letter dated July 14, 2016 two Dominique Michaud to

Dear Robin,

Further to our telephone conversation regarding the above noted request, I understand you be providing me with some statutory references in case law to enlighten me as to the basis of your question. Fresh consideration was advanced to the borrower by way of a \$10 million loan, in reliance upon the security provided by Woodbine and Bridlepath. Please provide me with case law that supports any proposition that in such an event, the subsequent insolvency or bankruptcy of the party providing the security can be attacked under circumstances where there is insufficient nexus between the borrower and the party providing the collateral security, such that the loan would be unsecured. If this is the case, it will certainly dramatically affect mortgage lending in Ontario and I am keen to learn of it.

In the interim, I am advised that Alan Saskin and Doreen Saskin, being the general partner and the limited partner of the beneficial owner of Woodbine and Bridlepath respectively, are also shareholders of UHI. I would suggest that this provides a very close nexus between all the parties, if consideration is material to your review.

Best regards.



**Leor Margulies**  
T. 416.360.3372  
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## Schwill, Robin

---

**From:** Schwill, Robin  
**Sent:** July 25, 2016 5:36 PM  
**To:** 'Leor Margulies'  
**Cc:** 'Norman Winter (nw@nwinlaw.com)'; 'Jackie Storms'; 'Esther Berglas (eb@nwinlaw.com)'; Dominique Michaud  
**Subject:** RE: Letter dated July 14, 2016 two Dominique Michaud to  
**Attachments:** XDG Limited v 1099606 Ontario Limited.PDF; City Peel Taxi v Hanna.pdf

Leor,

Further to our telephone conversations and your e-mails below, what follows is the information that I said I would provide to you.

On the related party consideration point, for the purposes of the *Fraudulent Conveyances Act* (Ontario) and the *Assignment and Preferences Act* (Ontario), please see the *XDG Ltd. v. 1099606 Ontario Ltd.* case cited at 2002 CarswellOnt 4535, 41 C.B.R (4<sup>th</sup>) 294 (Ont. S.C.J.), upheld in all relevant parts by the Ontario Court of Appeal at 2004 CarswellOnt 1581, 1 C.B.R. (5<sup>th</sup>) 159. A copy of the trial level decision is attached. Where the grantor of the charge received no funds from the lender and no benefit from the borrower, the granting of the charge is not made for good consideration. Our view is that this case would be applied in similar fashion when considering sections 95 and 96 of the *Bankruptcy and Insolvency Act* (the "BIA"). These sections of the BIA apply in proposal proceedings pursuant to section 66(1) of the BIA.

As discussed, for the purposes of section 96 of the BIA, the BIA defines "transfer at undervalue" as "a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor". Please see paragraphs 129 and 162 of the *City Peel Taxi v. Hanna* case cited at 212 CarswellOnt 5416, 91 C.B.R. (5<sup>th</sup>) 1 for confirmation of the holding that the granting of a charge would be considered a "disposition of property" for the purposes of section 96 of the BIA. A copy of this decision is also attached for your convenience. Please also refer to section 96(2) of the BIA and the definition of "adequate valuable consideration" defined in section 97(2) of the BIA, which in relevant part means "consideration of fair and reasonable money value with relation to the known or reasonably to be anticipated benefits of the contract, dealing or transaction."

In light of the foregoing, we also note that the original charges in question were registered on December 31, 2015 in connection with an initial loan made pursuant to a commitment letter dated December 22, 2015 between Terra Firma Capital Corporation (the "Lender") and Urbancorp Holdco Inc. (the "Borrower") (the "Initial Loan"). We understand that the Initial Loan was repaid in January 2016 and that the current indebtedness is owing pursuant to a "binding letter of intent" dated March 6, 2016 between the Lender and Borrower, among others (the "Subject Loan"). Rather than registering new charges in connection with the guarantees of the Subject Loan, on March 8, 2016 the parties entered into an Acknowledgment re Existing Security agreement pursuant to which the parties acknowledged and agreed that the existing charges relating to the Initial Loan would stand as security for the Subject Loan. These facts raise two additional issues for us. First, it raises the issue of the ability of the Lender to rely on the existing charges to secure the guarantee obligations pertaining to the Subject Loan given section 6(2) of the *Land Registration Reform Act* and the fact that the Initial Loan was repaid. Having already been repaid, the existing charges were no longer effective and once a charge ceases to have effect, it cannot be reinstated. Second, even if one could say that the Acknowledgment re Existing Security agreement gives rise to an equitable mortgage over the subject lands, then the granting of such an equitable mortgage would have taken place on or after March 8, 2016 which is well within three months of the date of the initial bankruptcy event of April 25, 2016, being the date on which the BIA proposal proceedings were

commenced. This would clearly invoke the fraudulent preference provisions of the BIA and, in particular, the presumed preference and reverse onus provisions of section 95(2) of the BIA.

As you can see, given the foregoing I believe that we will have some difficulty providing a "clean" opinion to the proposal trustee as to the enforceability of the Lender's security against Woodbine and Bridlepath. Of course, if you have any additional information that you believe would be of assistance to us in addressing these issues please feel free to let me know.

---

**From:** Leor Margulies [mailto:lmargulies@robapp.com]  
**Sent:** July 21, 2016 7:33 PM  
**To:** Leor Margulies; Schwill, Robin  
**Cc:** 'Norman Winter (nw@nwinlaw.com)'; 'Jackie Storms'; 'Esther Berglas (eb@nwinlaw.com)'; Dominique Michaud  
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your question. Fresh consideration was advanced to the borrower by way of a \$10 million loan, in reliance upon the security provided by Woodbine and Bridlepath. Please provide me with case law that supports any proposition that in such an event, the subsequent insolvency or bankruptcy of the party providing the security can be attacked under circumstances where there is insufficient nexus between the borrower and the party providing the collateral security, such that the loan would be unsecured. If this is the case, it will certainly dramatically affect mortgage lending in Ontario and I am keen to learn of it.

In the interim, I am advised that Alan Saskin and Doreen Saskin, being the general partner and the limited partner of the beneficial owner of Woodbine and Bridlepath respectively, are also shareholders of UHI. I would suggest that this provides a very close nexus between all the parties, if consideration is material to your review.

Best regards.



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DAVIES

155 Wellington Street West  
Toronto ON M5V 3J7  
dwpv.com

August 5, 2016

Jay A. Swartz  
T 416.863.5520  
jswartz@dwpv.com

File No. 256201

**BY EMAIL**

Mr. Leor Margulies  
Robins Appleby LLP  
Suite 2600, 120 Adelaide Street West  
Toronto, ON M5H 1T1

Dear Mr. Margulies:

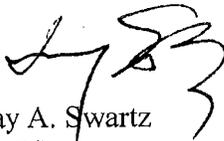
**Terra Firma Collateral Mortgage on Woodbine and Bridlepath Properties**

On July 25, 2016, Robin Schwill responded to your request for information relating to our concerns about the collateral mortgage held by Terra Firma on the Woodbine and Bridlepath Properties. To my knowledge, you have not responded to this email.

As you can see, we and the Proposal Trustee have substantive concerns regarding the validity and enforceability of the Terra Firma second mortgage in the context of an insolvency proceeding. This is a matter which must be resolved prior to any distribution of funds to creditors (other than the holders of the first mortgage) of the entities which own these properties. In the absence of an appropriate response resolving our concerns, we will feel it necessary to bring this matter before the Court. We would like to discuss the scheduling of such a proceeding with you.

Once you have consulted with your client, please give me a call and we can discuss an appropriate process.

Yours very truly,



Jay A. Swartz  
JAS/kcc

cc Dominique Michaud (*Robins Appleby LLP*)  
Robert Kofman (*KSV Kofman Inc.*)  
Noah Goldstein (*KSV Kofman Inc.*)  
Robin Schwill (*Davies Ward Phillips & Vineberg LLP*)



**ROBINS APPLEBY**  
BARRISTERS + SOLICITORS

Delivered by: Email  
File No.: 1600105

August 10, 2016

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

**Attention: Robin B. Schwill**

Dear Mr. Schwill:

**Re: Mortgages/Charges by Urbancorp (Woodbine) Inc. (“Woodbine”) and  
Urbancorp (Bridlepath) Inc. in favour of Terra Firma Capital Corporation  
 (“Terra Firma”)**

We refer to your letter of July 14, 2016 to Dominique Michaud and to your discussions with the undersigned.

You have asked what consideration was provided to Woodbine, Bridlepath or TCC/Urbancorp (Bay) Limited Partnership (“**Urbancorp LLP**”) in exchange for the guarantees and security that they granted to Terra Firma in support of the loan to Urbancorp Holdco Inc. (“**UHI**”).

Without acknowledging that we need to establish consideration to these parties (as distinct from a benefit to the borrower, UHI), we note that Woodbine and Bridlepath were bare trustees of these lands, and held them in trust for Urbancorp LLP pursuant to Declaration of Trust for Urbancorp (Woodbine) Inc. dated January 30, 2014 and Declaration of Trust for Urbancorp (Bridlepath) Inc. dated March 20, 2014, copies of which are enclosed.

As confirmed by counsel to Urbancorp [see letter attached] the general partner of Urbancorp LLP is Deaja Partner (Bay) Inc., which is in turn owned by Alan Saskin. The limited partners of Urbancorp LLP are Alan Saskin and Vestaco Investments Inc., which is in turn owned by Doreen Saskin, Alan Saskin’s spouse. Alan Saskin is the owner of all the common shares of UHI. Urbancorp LLP is also the owner of Class D Special Shares of UHI.

In summary, Urbancorp LLP received a benefit from this loan, as a corporation of which it was a shareholder was the recipient of the funds. Moreover, the loan constituted an obvious benefit to the owner of the common shares of UHI, Alan Saskin, who as noted was also one of the two limited partners of the Urbancorp LLP.



The case *XDG Ltd. v. General Electric Caoutak Canada Inc.* to which you referred in our discussions is not applicable as it was determined with reference to statutory provisions of the *Ontario Business Corporations Act* that were repealed in 2006.

The circumstances in which the loan was advanced are as follows.

In response to a request from Mr. Saskin, Terra Firma offered to provide mezzanine financing to UHI on the terms of a letter of intent dated December 22, 2015 ("**Original Commitment**"), a copy of which we understand that you have. The security for the financing included the guarantees and mortgages/charges referred to in your letter. The security and other transaction documents contemplated by the Original Commitment were executed and registered and, as noted in the attached letter dated February 5, 2016 from Terra Firma to UHI, funding of the loan, net of the loan fee, was advanced in escrow pending satisfaction of the terms and conditions set out therein.

Mr. Saskin indicated that the financing as structured in the Original Commitment did not meet the requirements of UHI. As the conditions to advancing the loan under the Original Commitment were not satisfied, that transaction did not close. As a result Terra Firma cancelled the Original Commitment and the escrowed funds were returned to Terra Firma without payment of the loan fee or interest.

As the loan was cancelled (as evidenced by the contemporaneous documents), the funds were never in the exclusive control of the borrower, and therefore the return of the funds to Terra Firma did not, as you have characterized it, constitute a repayment. Even if a repayment was involved (a conclusion we dispute) we stress the fact that the amount actually returned, whether as repayment or as a result of the cancellation of the loan, did not include the full principal or any accrued interest. As such, Section 6(2) of the *Land Registration Reform Act* (Ontario) would not apply.

Discussions continued throughout between Terra Firma and Mr. Saskin with respect to obtaining financing on amended terms and conditions. As a result, the security that had been registered with respect to the Original Commitment was not discharged. These discussions concluded in an offer of financing by Terra Firma to UHI on the terms of a letter of intent dated March 6, 2016 ("**New Commitment**"), a copy of which is enclosed.

The second paragraph of the New Commitment states:

*"You have advised that the terms of a loan ("**Original Loan**") referenced in a term sheet from Terra Firma MA Ltd. dated December 22, 2015, as amended and supplemented (collectively, the "**Term Sheet**") did not satisfy your and your wholly owned subsidiary Urbancorp Inc.'s ("**Inc.**") requirements. You have therefore requested new terms for a loan that will satisfy the requirements of Inc. to its bond lenders that will allow Inc. to pay HST owing to the Canada Revenue Agency. Based on the foregoing, we are prepared to extend the loan of \$10,000,000.00 to replace the original loan on the amended terms set out below (which terms and conditions replace the terms and conditions of the term sheet), as follows:"*



The New Commitment contemplated that the financing would be secured by the security delivered in connection with the financing as originally structured. The New Commitment states in the second bullet under the heading Security on page 2:

*"Subject to Lenders counsel's advice, the existing security held by the Lender pursuant to the Term Sheet (excluding any security that may have been provided by Inc. or its subsidiary, including any pledge of shares in the Borrower, Inc. or Epic) will be used to satisfy the above-noted security requirements. In such event, the Borrower and all parties providing the above-noted security, and if required by the Lender, any required third parties, shall execute an acknowledgement confirmation that the aforesaid existing security shall stand as security for the loan to be made pursuant to this term sheet;"*

The acknowledgement re existing security contemplated above was executed and delivered. A copy is attached. The operative provision of the acknowledgement states:

*"The undersigned hereby acknowledge and agree that all security, save as expressly excluded as set out below (the "**Excluded Security**") given in connection with a letter of intent dated December 22, 2015 between the Lender and the Borrower (the "**Existing Commitment**") including, without the condition security listed below shall also stand a security with respect to the indebtedness of the Borrower with respect to a commitment letter dated March 6, 2016 between the Lender, the Borrower and the Guarantors (the "**New Commitment**").*

Terra Firma advanced \$10,000,000 to UHI under the New Commitment.

Please do not hesitate to contact me if you have any further questions or concerns.

Yours very truly,

ROBINS APPLEBY LLP

Per:

Leor Margulies

LM:mk

Encls.

DECLARATION OF TRUST

WHEREAS URBANCORP (BRIDLEPATH) INC. ("Bridlepath") is about to become the registered owner of the property known municipally as 2425 and 2477 Bayview Avenue, Toronto and legally described as Part Lot 8, Concession 2 EYS, designated as Parts 1 and 3, Plan 66R-24078, City of Toronto (the "Lands");

AND WHEREAS Bridlepath will become the owner of the Lands for and on behalf of TCC/UrbanCorp (Bay) Limited Partnership (the "Beneficiary");

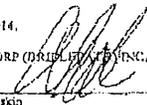
NOW THEREFORE WITNESSETH that in consideration of the payment of TWO (\$2.00) DOLLARS now paid to Bridlepath by the Beneficiary, Bridlepath does hereby declare for itself, its successors and assigns that from and after the date hereof:

1. all obligations, including mortgage obligations, contracts, agreements, responsibilities, acts or omissions pertaining to the Lands during the time it will be vested in the name of Bridlepath, will be performed or omitted to be performed by the Beneficiary;
2. the Lands and all monies which may be payable in respect of the Lands, whether by way of rents, dividends or capital distributions or otherwise howsoever and all the benefits pertaining to the Lands are or will be held by the undersigned, Bridlepath, in trust for the Beneficiary;
3. Bridlepath for itself, its successors and assigns, will convey, transfer and deal with or dispose of the Lands 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 Bridlepath has hereto set its seal under its proper officer duly authorized in that behalf.

DATED at Toronto, this 20th day of March, 2014.

URBANCORP (BRIDLEPATH) INC.

Per:   
Alan Sarkin  
President

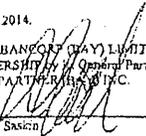
I have the authority to bind the Corporation

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

IN WITNESS WHEREOF the Beneficiary has hereunto set its hand and seal.

DATED at Toronto, this 20th day of March, 2014.

TCC/URBANCORP (BAY) LIMITED  
PARTNERSHIP by its General Partner  
DEAJA PARTNERSHIP INC.

Per:   
Alan Sarkin  
President

I have the authority to bind the Corporation

DECLARATION OF TRUST

WHEREAS URBANCORP (WOODBINE) INC. ("Woodbine") is about to become the registered owner of the property known municipally as 9064, 9074, 9084, 9100 and 9110 Woodbine Avenue, Markham and legally described as Part Lot 1, Plan 3604 Markham and Part Lot 14, Concession 3, Markham designated as Part 4, Plan 65R-31684, Part Lot 1, Plan 3604 Markham, designated as Part 3, Plan 65R-31684; Part Lot 14, Concession 3 Markham, designated as Part 2, Plan 65R-31684 and Part Lots 14 and 15, Concession 3 Markham, designated as Part 1, Plan 65R-31684, City of Markham (the "Lands");

AND WHEREAS Woodbine will become the owner of the Lands for and on behalf of TCC/UrbanCorp (Bay) Limited Partnership (the "Beneficiary");

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

1. all obligations, including mortgage obligations, contracts, agreements, responsibilities, acts or omissions pertaining to the Lands during the time it will be vested in the name of Woodbine, will be performed or omitted to be performed by the Beneficiary;
2. the Lands and all monies which may be payable in respect of the Lands, whether by way of rents, dividends or capital distributions or otherwise howsoever and all the benefits pertaining to the Lands are or will be held by the undersigned, Woodbine, in trust for the Beneficiary;
3. Woodbine for itself, its successors and assigns, will convey, transfer and deal with or dispose of the Lands 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 Woodbine has hereunto set its seal under its proper officer duly authorized in that behalf.

DATED at Toronto, this 30th day of January, 2014.

URBANCORP (WOODBINE) INC.

Per:

Alan Siskin  
President

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 hereunto set its hand and seal.

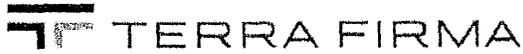
DATED at Toronto, this 30th day of January, 2014.

TCC/URBANCORP (BAY) LIMITED  
PARTNERSHIP by its General Partner  
DEALIA PARTNERSHIP INC.

Per:

Alan Siskin  
President

I have the authority to bind the Corporation



March 6, 2016

Urbancorp Holdco Inc.  
120 Lynn Williams Street Suite 2A,  
Toronto, ON M6K 3N6

Attention: Mr. Alan Saskin

RE: Proposed Financing of 9064-9100 Woodbine Avenue, Markham, Ontario,  
2425-2427 Bayview Avenue, Toronto, a 50% Interest in 300 Valermo Drive,  
Toronto (collectively the "Secured Projects") and Pledge of Shares

Dear Mr. Saskin;

The following are the terms and conditions under which Terra Firma Capital Corporation ("TFCC" or the "Lender") will provide Urbancorp Holdco Inc. ("Holdco" or the "Borrower") a portfolio loan. This Letter of Intent is intended to be binding on the parties, subject to its terms, however the Borrower and the parties signing below acknowledge that the terms and conditions set out herein will be broadened in the security and other documentation process to include typical lending terms, further assurances to give full legal and proper effect to the terms herein and otherwise to satisfy the requirements of our legal counsel, including the Lender's Israeli legal counsel.

You have advised that the terms of a loan ("Original Loan") referenced in a term sheet from Terra Firma MA Ltd. dated December 22, 2015, as amended and supplemented (collectively, the "Term Sheet") did not satisfy your and your wholly owned subsidiary Urbancorp Inc.'s ("Inc.") requirements. You have therefore requested new terms for a loan that will satisfy the requirements of Inc. to its bond lender and that will allow Inc. to pay HST owing to the Canada Revenue Agency. Based on the foregoing, we are prepared to extend a loan of \$10,000,000.00 to you to replace the Original Loan on the amended terms set out below (which terms and conditions replace the terms and conditions of the Term Sheet), as follows:

<b>Borrower</b>	Urbancorp Holdco Inc., a private entity of which 100% of the voting shares are owned by Alan Saskin. At closing, Borrower will own 100% of all issued and outstanding shares of Urbancorp Inc.
<b>Loan Amount</b>	\$10 million
<b>Rate</b>	16% p.a.

1 | Page

Terra Firma MA Ltd., #200-22 St Clair East, Toronto, ON  
Tel: 416-792-4700 Broker Licence #12425 / Administrator Licence #12346

**Term** 24 months with one 12-month extension

**Fee** 2% for Initial term (plus 1% if extension exercised) to be paid as follows:

- a. \$100,000 upon signing of this term sheet by the Borrower; and
- b. The balance to be paid at Closing or deducted from the Loan Amount

**Use of Funds** To provide Borrower with funds to enhance the equity capital of Inc., a wholly owned subsidiary of the Borrower that has completed a \$64 million bond offering in Tel Aviv which funds are to be paid by Inc. on Closing by multiple directions to the Canada Revenue Agency ("CRA") to pay outstanding HST in respect of certain assets owned by a wholly owned subsidiary of Inc.

**Security** **Security to Include:**

- Mortgage registration on Bridle Path and Woodbine properties, assignment of proceeds and transfer with respect to the Valermo property and interest and related security with respect to the Secured Projects to be granted by the Borrower's affiliates having registered and beneficial ownership of the Secured Projects, which security will and is deemed to include cross collateralization;
- Subject to Lender's counsel advice, the existing security held by the Lender pursuant to the Term Sheet (excluding any security that may have been provided by Inc. or its subsidiary, including any pledge of shares in the Borrower or Inc. or Epic) will be used to satisfy the above-noted security requirements. In such event, the Borrower and all parties providing the above-noted security, and, if required by the Lender, any required third parties, shall execute an acknowledgement and confirmation that the aforesaid existing security shall stand as security for the loan to be made pursuant to this term sheet;
- The outstanding security documents from the "Term Sheet" loan transaction, including, corporate and trust certificates and legal opinions, all in form required by the Lender's legal counsel, acting reasonably, but not security of Inc. or its subsidiaries or shares of the Borrower or Inc.; and
- Joint and several guarantees Alan SaskIn personally, TCC/Urbancorp (Bay/Stadium) LP, TCC/Urbancorp (Bay) LP, Urbancorp Management Inc. Webster Family Trust, Urbancorp Toronto Management Inc., Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc.,

TCC/Urbancorp (Stadium Road) LP and Urbancorp (Valermo) Inc. (collectively the "Guarantors");

- Negative pledge of the shareholders of the Borrower and the Borrower as sole shareholder of Inc., which will include a covenant not to transfer or pledge any of the shares of the Borrower or Inc.
- Acknowledgement, consent and/or Re-acknowledgement and estoppel from Mattamy (Valermo) Limited and Valermo Homes Inc. regarding the assignment of Urbancorp (Valermo) Inc.'s proceeds and Valermo Interest (as hereinafter defined) in the Valermo project, an option to purchase and a purchase transaction;
- Execution and delivery of an Agreement of Purchase and Sale, Transfer of the Valermo Interest (as hereinafter defined) and related transfer documents (including transfer of shares and resignations of the trustee corporation holding title to the Valermo property), to be held by the Lender to be utilized when and if it exercises its option to purchase the Valermo Interest.
- Certification and Acknowledgement re corporate structure; and
- Such other and further security as deemed reasonable by the Lender's legal counsel, provided that such additional security shall not include any assets of Inc., Inc.'s guarantee, anything that will cause Inc. to violate its obligations to its bond lender, or any assets of Leslieville or Epic.

**Interest Payments**

All interest on the within Loan will accrue for the first 3 months of the Loan; thereafter 8% p.a. to be paid monthly. The balance 8% p.a. shall accrue, and shall be capitalized on a monthly basis, and such accrued interest shall be paid from all proceeds from any portion or all of the Secured Projects and from 100% of all monies received in or by or otherwise payable to or from the Borrower and/or from any of the Secured Projects or the sale of any of the Secured Projects (collectively or individually the "Proceeds"), to be credited against interest owing and thereafter against principal owing when received by the Lender, but in all events no later than on maturity.

**Principal Payments**

100% of the Proceeds following payment of accrued interest as set out above, will be used to repay 100% of the Loan Amount.

**Prepayment**

The Loan may be prepaid at any time without notice.

**Valermo Drive**

Mattamy (Valermo) Limited ("Mattamy") will be given a one-time option, which may be exercised within 15 days after the within loan advance, to acquire Borrower's 50% interest in 300 Valermo Drive (the "Valermo



Interest") for no less than \$7mm net to the Lender (upon completion of said purchase transaction, the interest payable on said amount, if any, at the rate set out herein, for the period from March 15, 2016 to purchase closing shall be forgiven) (the "Option"), with closing to be no later than 15 days after exercise of such option. 100% of the proceeds of such sale will be paid to TFCC on account of outstanding interest or Principal under this Loan or for repayment of its purchase price of the Valermo Interest.

TFCC will have the right and option to be exercised from after closing of the within loan transaction until April 15, 2016 to acquire the Valermo Interest from Urbancorp (Valermo) Inc. (so long as Mattamy has not purchased the Valermo Interest as aforesaid) for \$7mm. 100% of the proceeds of such purchase by TFCC will be paid to TFCC on account of outstanding interest and/or Principal under this Loan.

**TFCC Expenses**

The Borrower will be responsible for all TFCC's costs and expenses in connection with this Loan, to a maximum amount of \$50,000.00. Said costs and expenses will be paid by Borrower upon closing or deducted from the Loan.

**Acknowledgement  
Regarding Term Sheet**

The Borrower will provide such Acknowledgements, releases and assurances regarding the non-completion and cancellation of the Term Sheet transaction, and the resulting return of funds to the Lender, in such form as required by the Lender, acting reasonably. The Lender acknowledges that the mortgages on Bridle Path and Woodbine may require the consent of the prior lenders, and registration of same without such consent may be a breach of the terms of such prior mortgages.

**Prefunding Conditions**

As a pre-condition to the funding of this Loan:

1. All security required by the Lender shall be in place to the full and complete satisfaction of Lender and its counsel acting reasonably; and
2. Receipt by the Lender of such other information and documentation that the Lender or its legal counsel may reasonably require.

**Legal Representation**

Borrower will obtain legal advice (including from its Israeli legal counsel, the Law Firm of Shimonov) that the transaction described herein is permitted under the terms of all other loans in its portfolio, including loans to Inc.

**Legal Opinions**

As a precondition to funding of this Loan, the Borrower will provide an opinion given by the solicitors for each of the Borrower and the Guarantors as to the enforceability and any other matter reasonably requested, all of the foregoing in form and content reasonably satisfactory to TFCC and its solicitors.



**General Conditions**

1. Concurrently with and it is a condition of this transaction that the Borrower is to obtain, either from Alan Saskin or other non-Inc. sources, \$2,250,000, which shall be advanced to Inc. concurrently with the Lender's advance of this loan, (to pay HST) to make up Inc.'s \$12mm equity requirement (the Saskin Contribution").
2. The Proceeds of this Loan and the Saskin Contribution will be directed by the Borrower, Inc. and other required parties to the CRA to pay part of Inc.'s HST obligation on the Edge condominium project.
3. Alan Saskin will cooperate and use reasonable commercial efforts to: (i) restructure the Lesleville Loan with CIBC and Craft; (ii) cause Plazacorp to repay TFCC its \$1.2 mm loan (plus accrued interest) on Urbancorp's share of the Epic project or register a security against the retail area of said project; and (iii) to provides such further assurances regarding the within loan transaction, its security and any future transactions arising therefrom, including, without limitation, the purchase of the Valermo Interest, as may be required by the Lender. This provision, as well as the entire Term Sheet, shall survive the closing of the Loan advance.
4. TFCC will have the right to assign some or all of its rights under this Loan, including its right to purchase the Valermo Interest (provided that the purchaser of the Valermo Interest must be approved by Mattamy).
5. The terms and provisions of this Term Sheet shall remain in full force and effect for the benefit of the Lender notwithstanding the completion of the loan advance, and shall not merge on completion of any of the transactions herein set out.

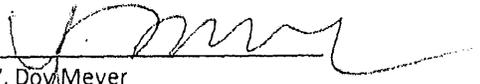
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5 | Page

If you wish to proceed with the foregoing loan transaction, kindly acknowledge so by executing and returning a copy of this Letter, along with a cheque in the amount of \$100,000 by March 8, 2016 failing which, this letter shall be deemed null and void. Yours truly,

TERRA FIRMA CAPITAL CORPORATION

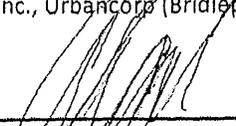
  
\_\_\_\_\_  
Y. Dov Meyer  
C.E.O.

WE HEREBY AGREE to the above terms and conditions. We also authorize the Lender to obtain credit information on the borrower and guarantors from sources they deem necessary.

**ACCEPTANCE**

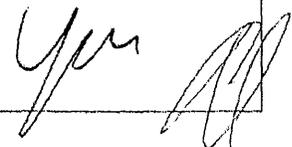
Accepted on the terms and conditions herein provided this \_\_\_\_ day of March 2016

Urbancorp Holdco Inc., Alan Saskin personally, TCC/Urbancorp (Bay/Stadium) LP, TCC/Urbancorp (Bay) LP, Urbancorp Management Inc. Webster Family Trust, Urbancorp Toronto Management Inc., Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc., TCC/Urbancorp (Stadium Road) LP and Urbancorp (Valermo) Inc.

  
PER: \_\_\_\_\_  
Alan Saskin, I have authority to bind each  
of the corporations, limited partnerships and trust

Witness; L. Rejzewska  
Leana Rejzewska  
Print Name:

  
\_\_\_\_\_  
Alan Saskin



**ACKNOWLEDGEMENT RE EXISTING SECURITY**

**TO:** TERRA FIRMA CAPITAL CORPORATION

**AND TO:** The Law Firm of Norman H. Winter, its solicitors herein

**RE:** TERRA FIRMA CAPITAL CORPORATION (the "Lender") – loan (the "Loan") to Urbancorp Holdco Inc. (the "Borrower"), pursuant to a Letter of Intent dated March 3, 2016, as amended or supplemented from time to time, secured by: (a) Mortgage on PIN Nos. 03046-0219 (LT), 03046-0217 (LT), 03046-0215 (LT) and 03046-0213 (LT), Markham (collectively the "Woodbine Property"), from Urbancorp (Woodbine) Inc. (the "Woodbine Borrower"); (b) a Mortgage on PIN No. 10126-1010 (LT) (the "Bayview Property"), from Urbancorp (Bridlepath) Inc. (the "Bayview Borrower"); (c) Assignment of Proceeds from or in respect of PIN 07586-0258 (LT), Toronto (the "Valermo Property") by way of Irrevocable Direction re Payment from Urbancorp (Valermo) Inc. and TCC/Urbancorp (Stadium Road) Limited Partnership (collectively the "Valermo Borrower"), Guaranteed by Alan Saskin, TCC/Urbancorp (Bay) Limited Partnership, TCC/Urbancorp (Bay/Stadium) Limited Partnership, TCC/Urbancorp (Stadium Road) Limited Partnership, Urbancorp (Woodbine) Inc., Urbancorp (Bridlepath) Inc., Urbancorp (Valermo) Inc., Urbancorp Management Inc., Urbancorp Toronto Management Inc. and The Webster Family Trust (collectively the "Guarantors")

(the Woodbine Property, Bayview Property and Valermo Property are collectively referred to as the "Properties")

Loan

The undersigned hereby acknowledge and agree that all security, save as expressly excluded as set out below (the "Excluded Security") given in connection with a letter of intent dated December 22, 2015, between the Lender and the Borrower (the "Existing Commitment") including, without limitation, the security listed below, shall also stand as security with respect to the indebtedness of the Borrower with respect to a commitment letter dated March 6, 2016 between the Lender, the Borrower and the Guarantors (the "New Commitment").

1. Charge granted by Urbancorp (Bridlepath) Inc. to Terra Firma Capital Corporation with respect to the Bayview Property registered on December 31, 2015 as Instrument No. AT4107508 in the Land Titles Division for the City of Toronto, Land Registry Office #80;
2. Beneficial Owner Direction and Charge with respect to the Bayview Property;
3. Notice of Assignment of Rents- General granted by Urbancorp (Bridlepath) Inc. in favour of Terra Firma Capital Corporations with respect to the Bayview Property registered on December 31, 2015 as Instrument No. AT4107509 in the Land Titles Division for the City of Toronto, Land Registry Office #80;
4. Financing Statement Registration No. 20151231133318626574, being File No. 713015649 registered on December 31, 2015 against Urbancorp (Bridlepath) Inc. and TCC/Urbancorp (Bay) Limited Partnership as Debtors and Terra Firma Capital Corporation as Secured Party;
5. Charge granted by Urbancorp (Woodbine) Inc. to Terra Firma Capital Corporation with respect to the Woodbine Property registered on December 31, 2015 as Instrument No. YR2411107 in the Land Titles Division for the Region of York, Land Registry Office #65;
6. Beneficial Owner Direction and Charge with respect to the Woodbine Property;
7. Notice of Assignment of Rents- General granted by Urbancorp (Woodbine) Inc. in favour of Terra Firma Capital Corporations with respect to the Woodbine Property registered on December 31, 2015 as Instrument No. YR2411108 in the Land Titles Division for the Region of York, Land Registry Office #65;
8. Financing Statement Registration No. 20151231133318626573, being File No. 713015613 registered on December 31, 2015 against Urbancorp (Woodbine) Inc. and TCC/Urbancorp (Bay) Limited Partnership as Debtors and Terra Firma Capital Corporation as Secured Party;
9. Financing Statement Registration No. 20151231133318626572, being File No. 713015586 registered on December 31, 2015 against Urbancorp Holdco Inc. as Debtor and Terra Firma Capital Corporation as Secured Party;

10. Assignment of interest in the Valermo Property and in conjunction therewith, Financing Statement Registration No. 20151231133318626576, being File No. 713015667 registered on December 31, 2016 against Urbancorp (Valermo) Inc. and TCC/Urbancorp (Stadium Road) Limited Partnership as Debtors in favour of Terra Firma Capital Corporation as Secured Party;
11. Guarantee and Postponement of Claims granted by Alan Saskin, and a Limited Recourse Guarantee and Postponement of Claims granted by Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership, TCC/Urbancorp (Stadium Road) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership, and in conjunction therewith, Financing Statement Registration No. 20151231133318626575, being File No. 713015658 registered on December 31, 2015 against Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership as Debtors and Terra Firma Capital Corporation as Secured Party;
12. Assignment and Postponement of Shareholder Loans with respect to Urbancorp Holdco Inc. granted by Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership in favour of Terra Firma Capital Corporation; and
13. General Security Agreements granted by Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership, TCC/Urbancorp (Stadium Road) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership in favour of Terra Firma Capital Corporation, excluding any shares held by any such party in Urbancorp Holdco Inc.;

(collectively, the "Existing Security").

The Existing Security shall also be deemed to be amended such that all references to the Existing Commitment shall be deemed to be the New Commitment.

Notwithstanding the foregoing, the following Excluded Security shall be deemed to be excluded from the security given with respect to the New Commitment:

1. A Share Pledge Agreement granted by Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership, and in conjunction therewith, Financing Statement Registration No. 20151231133318626575, being File No. 713015658 registered on December 31, 2015 against Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership as Debtors and Terra Firma Capital Corporation as Secured Party;
2. A Share Pledge Agreement granted by Urbancorp Holdco Inc. in favour of Terra Firma Capital Corporation;
3. A Co-Investment Loan Agreement by and between Urbancorp Investco Inc. and Terra Firma Capital Corporation;
4. A Blocked Account Agreement by and among Urbancorp Investco Inc., Terra Firma Capital Corporation and the Bank of Montreal;
5. A Guarantee and Postponement of Claim granted by Urbancorp Investco Inc. in favour of Terra Firma Capital Corporation;
6. Undertaking re: shortage granted by Urbancorp Holdco Inc., Urbancorp Inc. and Urbancorp Investco Inc. in favour of Terra Firma Capital Corporation;
7. General Security Agreement granted by Urbancorp Investco Inc. in favour of Terra Firma Capital Corporation;
8. Assignment and Postponement of Shareholder Loans granted by Urbancorp Holdco Inc. in favour of Terra Firma Capital Corporation;

9. Any shares in Urbancorp Holdco Inc. that may be charged by a General Security Agreements granted by Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership, TCC/Urbancorp (Stadium Road) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership in favour of Terra Firma Capital Corporation; and

9. all other security granted by Urbancorp Inc. and/or Urbancorp Investco Inc.

10. This Acknowledgement may be executed in counterparts and will be effective whether executed in original ink, by facsimile or in electronic PDF format.

DATED at Toronto this 8<sup>th</sup> day of March, 2016.

**BORROWER:**

URBANCORP HOLDCO INC.

Per: [Signature]  
Alan Saskin – President  
I have authority to bind the Corporation

**GUARANTORS:**

TCC/URBANCORP (BAY/STADIUM)  
LIMITED PARTNERSHIP  
By its General Partner,  
Deaja Partner (Stadium) Inc.

Per: [Signature]  
Alan Saskin –  
I have authority to bind the Corporation

TCC/URBANCORP (BAY) LIMITED  
PARTNERSHIP  
By its General Partner,  
Deaja Partner (Bay) Inc.

Per: [Signature]  
Alan Saskin –  
I have authority to bind the Corporation

WEBSTER FAMILY TRUST

By: [Signature]  
Name:  
Title: Trustee

By: [Signature]  
Name:  
Title: Trustee

We have authority to bind the Trust

URBANCORP MANAGEMENT INC.

Per: [Signature]  
Alan Saskin – President  
I have authority to bind the Corporation

URBANCORP TORONTO MANAGEMENT  
INC.

Per: [Signature]  
Alan Saskin – President

9. Any shares in Urbancorp Holdco Inc. that may be charged by a General Security Agreements granted by Alan Saskin, Urbancorp Management Inc., Urbancorp Toronto Management Inc., The Webster Family Trust, TCC/Urbancorp (Bay/Stadium) Limited Partnership, TCC/Urbancorp (Stadium Road) Limited Partnership and TCC/Urbancorp (Bay) Limited Partnership in favour of Terra Firma Capital Corporation; and

9. all other security granted by Urbancorp Inc. and/or Urbancorp Investco Inc.

10. This Acknowledgement may be executed in counterparts and will be effective whether executed in original ink, by facsimile or in electronic PDF format.

DATED at Toronto this 8<sup>th</sup> day of March, 2016.

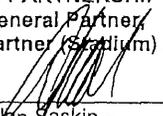
**BORROWER:**

URBANCORP HOLDCO INC.

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

**GUARANTORS:**

TCC/URBANCORP (BAY/STADIUM)  
LIMITED PARTNERSHIP  
By its General Partner,  
Deaja Partner (Stadium) Inc.

Per:   
Alan Saskin –  
I have authority to bind the Corporation

TCC/URBANCORP (BAY) LIMITED  
PARTNERSHIP  
By its General Partner,  
Deaja Partner (Bay) Inc.

Per:   
Alan Saskin –  
I have authority to bind the Corporation

WEBSTER FAMILY TRUST

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

By:   
Name:  
Title: Trustee  
We have authority to bind the Trust

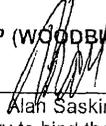
URBANCORP MANAGEMENT INC.

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

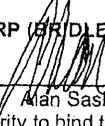
URBANCORP TORONTO MANAGEMENT  
INC.

Per:   
Alan Saskin – President

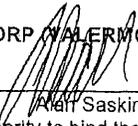
URBANCORP (WOODBINE) INC.

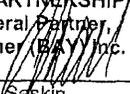
Per:   
Alan Saskin - President  
I have authority to bind the Corporation

URBANCORP (BRIDLEPATH) INC.

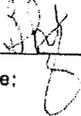
Per:   
Alan Saskin - President  
I have authority to bind the Corporation

URBANCORP (VALERMO) INC.

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

TCC/URBANCORP (STADIUM ROAD)  
LIMITED PARTNERSHIP  
By its General Partner,  
Deaja Partner (BAY) Inc.  
Per:   
Alan Saskin -  
I have authority to bind the Corporation

WITNESS:

  
Print Name:

  
Alan Saskin