

**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 CUMBERLAND 2 GP  
INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC.,  
EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL  
INC. AND WESTSIDE GALLERY LOFTS INC.**

(the "Applicants")

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**MOTION RECORD OF THE FULLER LANDAU GROUP INC.  
AS MONITOR OF THE APPLICANTS**

**(On motion for Approval of Fees and Activities, and Stay Extension)**

---

**DATE:** January 17, 2024

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Urbancorp Cumberland 2 L.P., Bosvest Inc., Edge  
Residential Inc., Edge on Triangle Park Inc., and Westside  
Gallery Lofts Inc.

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# TAB 1

Court File No. CV-16-11541-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF URBANCORP CUMBERLAND 2 GP  
INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC.,  
EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL  
INC. AND WESTSIDE GALLERY LOFTS INC.**

(the “Applicants”)

**NOTICE OF MOTION**

**(On motion for Settlement Approval, Approval of Fees and Activities, and Stay Extension)**

The Fuller Landau Group Inc. (“FL”), in its capacity as the Court-appointed Monitor (the “**Monitor**”) of the Applicants pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “CCAA”), will make a motion to a Judge of the Commercial List on Monday, January 29, 2023 at 9:00 a.m. by judicial videoconference.

**THE PROPOSED METHOD OF HEARING:** The motion is to be heard:

- \_\_\_ in writing under subrule 37.12.1(1) because it is made without notice;
- \_\_\_ in writing as an opposed motion under subrule 37.12.1(4); or
- X  orally.

**THE MOTION IS FOR:**

- a. an order in the form attached as **Schedule “A”**, providing for, amongst other things, abridging the time for service of the Monitor’s notice of motion, motion record, and forty-eighth report of the Monitor dated January 18, 2024 (the “**Forty-Eighth Report**”) and validating the service of such motion materials;



- b. extending the Stay Period (as that term is defined in paragraph 16 of the Initial Order) from January 31, 2024 to May 31, 2024;
  - c. approving the Monitor's activities as described in the Monitor's Forty-Eighth Report;
  - d. approving the Monitor's and its legal counsel's fees and disbursements for the period of September 1, 2023, to December 31, 2023; and
2. such further and other relief as this Court may deem just.

### **THE GROUNDS FOR THE MOTION ARE:**

#### **Extension of Stay Period**

- 1. pursuant to the most recent stay extension order dated September 29, 2023, the court extended the Stay Period (as defined in paragraph 16 of the Initial Order) until and including January 31, 2024;
- 2. the purpose for this last stay extension was to allow the Monitor to complete the claims process, including the bringing of a motion before this court directing the Monitor to reject the amended claims brought by certain Plazacorp-related entities;
- 3. the court has rendered its decision rejecting the claims of the Plazacorp-related entities; accordingly, the Monitor has effected a further interim distribution to the unsecured creditors;
- 4. the cash-flow statements prepared by the Monitor indicate that the Applicants will have sufficient cash to operate for the proposed extended Stay Period;
- 5. at all material times the Applicants have been acting, and continue to act, in good faith and with due diligence in the Proposal Proceedings and in these CCAA proceedings;

6. it is just and convenient and in the interests of the Applicants and their respective stakeholders that the requested order be granted and the Stay Period be extended;
7. the Monitor is not aware of any creditor of the Applicants that would be prejudiced by the extension of the Stay Period;
8. the extension of the Stay Period is supported by the Monitor;

### **Approval of Reports and Activities**

9. in its Forty-Eighth Report, the Monitor has reported on its activities since the approval of the Forty-Seventh report dated September 23, 2023, and the Monitor seeks the approval of this Court for those activities;

### **Fee Approval**

10. the Monitor and its counsel have provided the usual form of affidavit material, including accounts and summaries, for the fees that they have incurred for the periods of September 1, 2023 to December 31, 2023;
11. taking into account the overall value of the services to date provided by the Monitor and its counsel, the fees and disbursements of the Monitor and its counsel are fair and reasonable in the circumstances;

### **Additional Grounds**

12. section 11.2 of the CCAA;
13. rules 3 and 37 of the *Rules of Civil Procedure*;
14. the provisions of the BIA and the inherent and equitable jurisdiction of this court; and

15. such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Forty-Eighth Report and the appendices attached thereto;
2. the Initial Order; and
3. Such further and other documentary evidence as counsel may advise and this Court may accept.

**DATE:** January 17, 2024

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Lawyers for The Fuller Landau Group Inc. in its capacity as the Monitor for Urbancorp Cumberland 2 GP Inc., Urbancorp Cumberland 2 L.P., Bosvest Inc., Edge Residential Inc., Edge on Triangle Park Inc., and Westside Gallery Lofts Inc.

**TO: THE SERVICE LIST**

**IN THE MATTER OF *THE COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C.1985, c.  
C-36, AS AMENDED  
URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST  
INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC., and WESTSIDE  
GALLERY LOFTS INC. (COLLECTIVELY, THE "APPLICANTS") PURSUANT TO THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT***

Court File No. CV-16-11541-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(On motion for Approval of Fees and Activities,  
and Stay Extension)**

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GP Inc., Urbancorp Cumberland 2 L.P., Bosvest Inc.,  
Edge Residential Inc., and Edge on Triangle Park Inc.

Court File No. CV-16-11541-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 29 <sup>TH</sup>
CHIEF JUSTICE MORAWETZ	)	DAY OF JANUARY, 2024

**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 CUMBERLAND 2 GP  
INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC.,  
EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL  
INC., and WESTSIDE GALLERY LOFTS INC.**

(the “Applicants”)

**ORDER  
(On motion for Approval of Fees and Activities, and Stay Extension)**

**THIS MOTION**, made by The Fuller Landau Group Inc., in its capacity as Court-appointed Monitor (the “**Monitor**”) of the Applicants, pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for, amongst other things: an order in the form attached as **Schedule “A”**, an order in the form attached as **Schedule “A”**, providing for, amongst other things, abridging the time for service of the Monitor’s notice of motion, motion record, and forty-eighth report of the Monitor dated January 18, 2024 (the “**Forty-Eighth Report**”) and validating the service of such motion materials;

- a. extending the Stay Period (as that term is defined in paragraph 16 of the Initial Order) from January 31, 2024 to May 31, 2024;

- b. approving the Monitor's activities as described in the Monitor's Forty-Eighth Report;
- c. approving the Monitor's and its legal counsel's fees and disbursements for the period of September 1, 2023 to December 31, 2023; and
- d. such further and other relief as may be granted;

was heard this day by judicial videoconference via Zoom.

**ON READING** the Notice of Motion of the Monitor and the Forty-Eighth Report, and on hearing the submissions of counsel for the Monitor and other counsel listed on the counsel slip:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record (including the Forty-Eighth Report) herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms not otherwise defined in this order shall have the meaning ascribed to such term in the Initial Order.

#### **EXTENSION OF STAY PERIOD**

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 16 of the Initial Order) is hereby extended until and including May 31, 2024.

#### **APPROVAL OF THE MONITOR'S ACTIVITIES**

3. **THIS COURT ORDERS** that the Monitor's activities as in the Forty-Eighth Report are hereby approved, provided, however, that only the Monitor, in its personal capacity and only

with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

## **FEE APPROVAL**

4. **THIS COURT ORDERS** that that the fees and disbursements of the Monitor and its counsel for the periods of September 1, 2023 to December 31, 2023 as set out in the Forty-Eighth Report and the filed fee affidavits, be and hereby are approved.

## **GENERAL**

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative by having jurisdiction in Canada, the United States or Israel to give effect to this order and to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and provide such assistance to the Applicants and the Monitor, as an officer of this court, as may be necessary or desirable to give effect to this order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this order.

6. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this order, and for assistance in carrying out the terms of this order and any other order issued in these proceedings.

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

Court File No. CV-16-11541-00CL

URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC., and WESTSIDE GALLERY LOFTS INC. (COLLECTIVELY, THE "APPLICANTS") PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

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

Proceeding commenced at Toronto

**ORDER  
(On motion for Approval of Fees and Activities,  
and Stay Extension)**

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TAB 2

Court File No. CV-16-11541-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
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URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P.,  
BOSVEST INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC. AND  
WESTSIDE GALLERY LOFTS INC.**

**(the "Applicants")**

**FORTY-EIGHTH REPORT TO COURT OF THE FULLER LANDAU GROUP INC.  
AS MONITOR OF THE APPLICANTS**

**JANUARY 18, 2024**

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**Appendices:**

- A - CCAA Initial Order dated October 6, 2016**
- B - Westside CCAA Order dated October 25, 2018**
- C - Stay Extension Order dated September 29, 2023**
- D - Decision of the Honourable Justice Osborne dated November 29, 2023**
- E - Revised Cash Flows from September 24, 2023, to February 4, 2024**
- F - Affidavit of Mr. Adam Erlich**
- G - Affidavit of Mr. Mario Forte**

## I. INTRODUCTION AND BACKGROUND

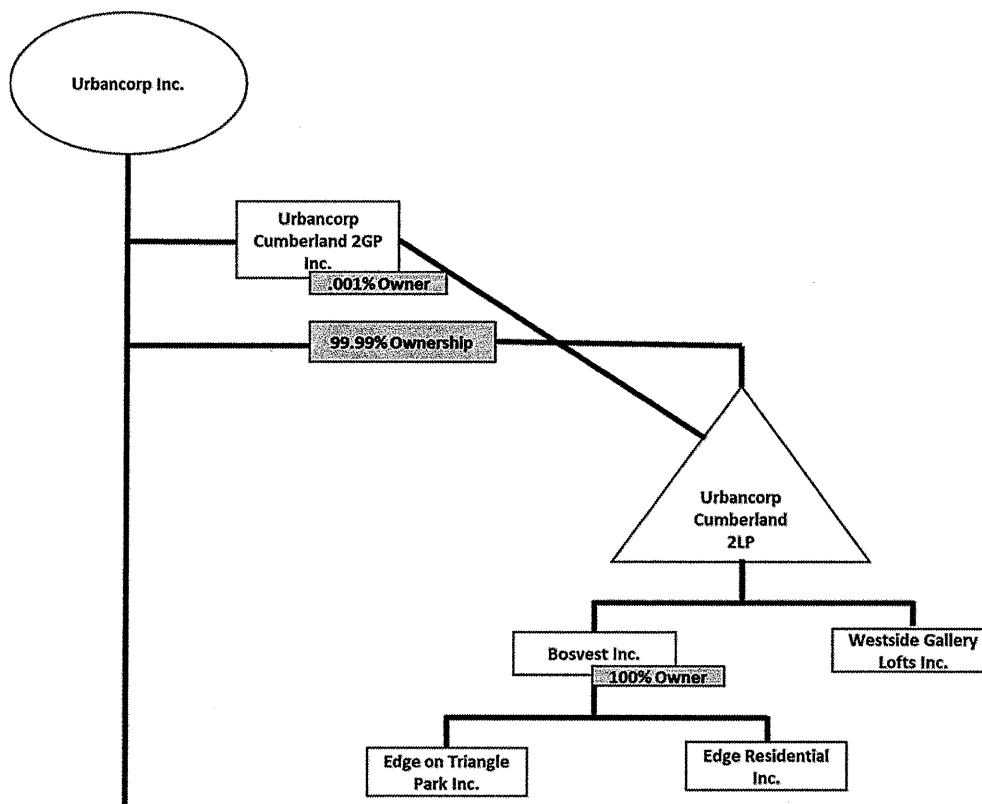
1. On April 29, 2016, Bosvest Inc. (“**Bosvest**”), Edge Residential Inc. (“**Residential**”) and Edge on Triangle Park Inc. (“**Triangle**”), (together, the “**Edge Companies**”) each filed with the Official Receiver a Notice of Intention to Make a Proposal (“**NOI**”), pursuant to subsection 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). The Fuller Landau Group Inc. was named as proposal trustee (“**FL**” or the “**Proposal Trustee**”) under the NOIs.
2. On May 20, 2016, Urbancorp Cumberland 2 GP Inc. (“**Cumberland 2 GP**”) and Urbancorp Cumberland 2 L.P. (“**Cumberland 2 LP**”, and together with Cumberland 2 GP, the “**Cumberland 2 Companies**”) each filed an NOI with the Official Receiver. FL was named as Proposal Trustee under the NOIs.
3. On October 6, 2016, the Court granted an order (the “**Initial Order**”), approving, amongst other things, the:
  - a. continuation of the NOI proceedings of the Edge Companies and Cumberland 2 Companies under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) with an initial stay of proceedings until November 4, 2016;
  - b. appointment of the Proposal Trustee as the Monitor of the Edge Companies and Cumberland Companies (the “**Monitor**”) with the enhanced powers previously given to the Proposal Trustee under previous orders of the Court;
  - c. continuation of the Co-Operation protocol with the Monitor in place of the Proposal Trustee; and
  - d. granting the Administration Charge, the DIP Charge and the Directors' Charge.

Attached as **Appendix “A”** is a copy of the Initial Order.

4. On October 25, 2018, the Court granted an Order (the “**Westside CCAA Order**”) adding Westside Gallery Lofts Inc. (“**Westside**”) as an Applicant to these proceedings with all terms of the of the Initial Order applying to Westside. Attached as **Appendix “B”** is a copy of the Westside CCAA Order.

### Corporate Structure

5. The corporate structure of the relevant entities to these proceedings (the “**Cumberland 2 Group**”) is as follows:



6. Pursuant to declarations of trust, Cumberland 2 LP is the beneficial owner of the assets of each of Triangle, Residential, and Westside.
7. Bosvest, a wholly owned subsidiary of Cumberland 2 LP, is a holding company which owns 100% of the shares of Triangle and Residential. Triangle, pursuant to a co-tenancy agreement with an arm's length entity, which was terminated in June 2015, constructed the Edge Triangle Project. Residential held condominium assets transferred from Triangle.
8. Westside developed the Westside Gallery Lofts and Curve projects and is a wholly owned subsidiary of Cumberland 2 LP.
9. On September 23, 2023, the Monitor issued its forty-seventh report (the "**Forty-Seventh Report**") and on September 29, 2023, the Court granted an Order (the "**Sept 29<sup>th</sup> Order**") extending the Stay Period from September 29, 2023, to January 31, 2024. Attached as **Appendix "C"** is a copy of the Sept 29<sup>th</sup> Order.
10. Copies of the Monitor's reports 1 – 47 and Court Orders issued can be found at the Monitor's website at [www.fullerllp.com/active\\_engagements/edge-triangle-park-inc/](http://www.fullerllp.com/active_engagements/edge-triangle-park-inc/)

## II. PURPOSE OF THIS REPORT

11. The purpose of this forty-eighth report of the Monitor (the "**Forty-Eighth Report**") is to update the Court with respect to:

- a. the status of the Monitor's motion for advice and directions;
  - b. the status of a distribution to the unsecured creditors;
  - c. the remaining assets of the Edge Companies and Westside;
  - d. the Cumberland 2 Group's actual cash flow results for the period September 24, 2024, to January 13, 2024;
  - e. the Cumberland 2 Group's revised cash flow forecasts for the period January 14, 2024, to June 2, 2024;
  - f. the Monitor's request for an extension of the stay of proceedings from January 31, 2024, to May 31, 2024;
  - g. the activities of the Monitor since the Forty-Seventh Report;
  - h. the Monitor's fees and disbursements for the period September 1, 2023, to December 31, 2023;
  - i. the Monitor's legal counsel's fees and disbursements for the period September 1, 2023, to December 31, 2023; and
  - j. recommend that the Court issue an Order:
    - i. abridging the time for service of the Monitor's notice of motion, motion record, and the Monitor's Forty-Eighth Report and validating service of such motion materials;
    - ii. approving the Monitor's activities as described in the Forty-Eighth Report;
    - iii. approving the Monitor's fees and disbursements for the period of September 1, 2023, to December 31, 2023;
    - iv. approving the Monitor's legal counsel's fees and disbursements for the period of September 1, 2023, to December 31, 2023; and
    - v. extending the Stay Period (as that term is defined in paragraph 16 of the Initial Order) from January 31, 2024, to May 31, 2024.
12. In preparing this Forty-Eighth Report, the Monitor has relied upon unaudited financial information of the Cumberland 2 Group, the Cumberland 2 Group's records, financial statements and discussions with the Cumberland 2 Group's management and employees. While the Monitor has reviewed various documents provided by the Cumberland 2 Group and believes that the information therein provides a fair summary of the transactions as reflected in the documents, such work does not constitute an audit or verification of such information for accuracy, completeness, or compliance with Accounting Standards for Private Enterprises ("ASPE") or International Financial Reporting Standards ("IFRS").



Accordingly, the Monitor expresses no opinion or other form of assurance pursuant to ASPE or IFRS with respect to such information.

13. Some of the information used in preparing the Monitor's Forty-Eighth Report consists of financial forecasts. The Monitor cautions that these forecasts are based upon assumptions about future events and conditions that are not ascertainable. The Cumberland 2 Group's actual results may vary from these forecasts, even if the hypothetical and probable assumptions contained therein materialize, and the variations could be significant.
14. For reference purposes, any capitalized terms not otherwise defined in the Forty-Eighth Report shall have the meanings ascribed to them in the Initial Order and previous reports to the Court.

### III. RESOLUTION OF THE MOTION FOR ADVICE AND DIRECTIONS FOR PLAZACORP

15. In the Monitor's Forty-Seventh Report, it reported on the status of the Monitor's motion for advice and directions with respect to a claim filed on December 5, 2022 by the "Plazacorp Entities" for \$12.5 million. A summary of the claims and related timelines is below:
  - a. On January 25, 2017, the Monitor received five interconnected claims filed by Epic on Triangle Park Inc., Wellesley Residences (2104) Corp., KJ Equity Inc., 994697 Ontario Inc. and Yonge-Abell Limited Partnership (collectively the "**Plazacorp Entities**") on a contingent basis with no value attributed to the claim amount (the "**Placeholder Claim**");
  - b. At the time of the Monitor's Thirty-Ninth report, the Monitor wrote to the Plazacorp Entities advising of an upcoming distribution and that the Placeholder Claims would be valued at zero for distribution purposes as they had not revised their claims to include a value;
  - c. The Plazacorp Entities responded on March 9, 2022, advising the Monitor that its claim totaled approximately \$4 million and provided preliminary information and documents to support the claim amount (the "**March 9, 2022 Claim**");
  - d. Pursuant to the Claims Process Order, the Monitor referred these claims to The Honourable Mr. Frank Newbould K.C. for adjudication as a Court-appointed claims officer. After several case conferences with Mr. Newbould, the Plazacorp Entities advised they were obtaining legal counsel and subsequently advised the Monitor that the Plazacorp Entities were restating their claim and would be preparing and filing an amended proof of claim;
  - e. On December 5, 2022, the Plazacorp Entities filed an amended proof of claim in the amount of \$12.5 million (the "**Amended Claim**");
  - f. The Monitor and its counsel undertook a review of the Amended Claim which is materially different than the March 9, 2022 Claim;

- g. For a number of reasons including when the Amended Claim was filed in light of the Claims Process Order bar date, and, in the Monitor's view, the merits of claim, the Monitor determined that the Amended Claim could no longer proceed to be adjudicated by Mr. Newbould and the disallowance of the Amended Claim should be heard by a commercial list judge; and
  - h. On April 6, 2023, a hearing was held whereby the Monitor sought an order directing the Monitor to reject the Amended Claim. The court reserved its decision.
16. On November 29, 2023, the Honorable Justice Osborne released his decision which directed the Monitor to reject the Amended Claim (the "**Plazacorp Decision**"). A copy of the Plazacorp Decision is attached as **Appendix "D"**.
  17. In the Plazacorp Decision, Justice Osborne also determined that the March 9, 2022 Claim could not continue on its own merit. His Honor noted that Mr. Anthony Heller, the main principal of Plazacorp, admitted that the Placeholder Claim, and the March 9, 2022 Claim, "had no merit with the result, in my view, that a further particularization of the claim cannot resurrect or continue it." Further, in paragraph 95 of the decision, His Honour wrote that "this submission is made notwithstanding the admission from Heller on this motion that the original Placeholder Claims do not now, and never did, have any merit and ought not to have been asserted." Accordingly, the Monitor is of the view that the March 9, 2022 Claim is also no longer valid and can be valued at nil for distribution purposes.
  18. As leave to appeal Justice Osborne's decision has not been sought, the adjudication of claims asserted by the Plazacorp Entities is finally determined. The Monitor will make, and has made, distributions on the basis that the Plazacorp Entities have no valid claims in these estates.

#### **IV. HOLDBACK AND DISTRIBUTION TO THE UNSECURED CREDITORS**

19. In July 2023, prior to the issuance of the Forty-Seventh Report, the Monitor issued distributions totaling \$3,264,743 to the unsecured creditors which represented a pro-rata distribution of 14.4% against proven claims.
20. From that distribution the Monitor held back approximately \$2.6 million (detailed in the Forty-Seventh Report) for administration holdbacks and reserves and a full reserve for the \$12.5 million Plazacorp Entities claims.
21. As a result of the release of the Plazacorp Decision, the Monitor is in the process of issuing a second interim distribution to the unsecured creditors in the amount of \$1.6 million which represents a pro-rata distribution of 7.0% against proven claims (the "**Second Distribution**"). The Monitor expects this interim distribution to be effected before the return date of this motion.
22. Prior to issuing the Second Distribution to the unsecured creditors, the Monitor held \$3,606,017.69 in its trust account (the "**Estate Funds**").

23. The Monitor reserved from the Estate Funds, \$1,949,604.39 representing the following:

<b>Holdbacks and Reserves</b>		
Ted Saskin/TS Sports Consulting Inc. - Fees		\$ (431,637.40)
Aviva - outstanding bond, premiums and legal fees		\$ (340,000.00)
Disputed Trust Claims		\$ (127,966.99)
Administration costs (Affinity)		\$ (750,000.00)
Holdback for BMO and property taxes		\$ (50,000.00)
Reserve for costs including professional fees to completion		\$ (250,000.00)
<b>Total Holdbacks/Reserves</b>		<b>\$ (1,949,604.39)</b>

24. Notably, included in the Monitor's holdback is an amount related to the Monitor's settlement in November 2022 with the Toronto Standard Condominium Corporation 2448 ("TSCC 2448") and Affinity Aluminum Systems Ltd. ("Affinity") (the "Settlement").

25. The Monitor reported on and obtained court approval to enter into the Settlement in December 2022, but by way of reminder, the terms of the Settlement are:

- a. payment of \$2.1 million in settlement of TSCC 2448's claims, including, but not limited to: (a) the Taron performance audit claims estimated by TSCC 2448 to be approximately \$1.3 million, (b) the new secured claim of \$1.9 million (c) the shared facility claim of \$1.3 million, and (d) TSCC 2448's unsecured claim of approximately \$600,000;
  - b. Affinity, the railing manufacturer and installer, will undertake to repair all, except one, identified deficiencies with their balcony installation noted in EXP's March 2020 balcony deficiency report upon payment of \$33,000 by the Monitor;
  - c. the Monitor will engage Affinity on a time and materials basis to perform balcony repair work that does not fall under Affinity's warranty coverage. TSCC 2448 will supervise and manage this work; and
  - d. payment of the settlement amount shall be made within five business days of Taron's confirmation that it has received the necessary documents to satisfy itself about the cancellation or reduction of the Aviva Bond.
26. The Monitor has issued the payment to TSCC 2448 and the Aviva Bond was reduced from \$13.3 million to an amount of \$300,000. The reduction of the Aviva Bond allowed the Monitor to distributions to the unsecured creditors referenced above.
27. The final remaining obligation of the Monitor with respect to the Settlement is to pay Affinity for the repair work that did not fall under Affinity's warranty coverage (paragraph 24c above). The payment to Affinity is not a fixed amount and will be on a time and materials basis.
28. The repair work to be done by Affinity is meant to be coordinated and scheduled between Affinity and TSCC 2448. The Monitor is only responsible for issuing the payment once the work is complete.

29. However, there is currently a dispute between Affinity and TSCC 2448 with respect to which party should be responsible for certain costs required to be incurred in order for Affinity to commence the repair work. As a result of the dispute, the repair work has not commenced, and the Monitor has not been able to quantify or make the payment to Affinity.
30. The Monitor has reserved \$750,000 for this work and the Monitor believes this is more than sufficient based on discussions with Affinity in mid-2022. The Monitor is also in the process of trying to firm up this uncrystallized obligation, either by changing the contract to a fixed-price obligation, or by having the condominium corporation assume the obligation on commercially reasonable terms.
31. If the Monitor cannot come to terms with Affinity or TSCC 2448 or capping its obligation, it will likely seek this court's direction about establishing, and capping, a specific fund for this repair work as part of the Monitor's discharge.

## **V. REMAINING ASSETS IN THE EDGE COMPANIES AND WESTSIDE**

32. The material remaining assets of the Edge Companies to be realized on by the Monitor comprise mortgage receivables from TSCC 2448 that are being collected by the Monitor on a monthly basis, a statement of claim with respect to water damage that occurred in the condominium during its construction, and certain funds held by BMO to support letters of credit.
33. The material remaining assets of Westside are funds held by the Israeli Functionary and proceeds from an upcoming distribution from KSV as the bankruptcy trustee of Urbancorp Management Inc.

## **VI. CASH FLOW RESULTS**

34. In the Monitor's Forty-Seventh Report, in support of the Cumberland Group's request for an extension of the stay of proceedings, the Monitor filed cash flow forecasts with the Court for the period September 24, 2023, to February 4, 2024 (the "**Period**").
35. As previously reported in the Monitor's prior reports to Court, Triangle and Residential were the only two Edge Companies and Cumberland Companies that have ongoing cash receipts and disbursements. Bosvest is a holding company which owns 100% of the shares of Triangle and Residential and has no operations or employees and accordingly no cash flow activity.
36. Cumberland 2 GP and Cumberland 2 LP are subsidiaries of Urbancorp Inc. and Cumberland 2 LP is the beneficial owner of the assets held by Triangle and Residential. The Cumberland Companies do not have any operations or employees.

37. Westside developed the Westside and Curve projects, has no operations or employees and limited ongoing receipts and disbursements which are detailed in the cash flow forecast section below.
38. The Edge Companies did not operate their own bank accounts and pursuant to the Edge Companies First Extension Order, FL has opened trust accounts on behalf of Triangle and Residential and has made deposits and issued disbursements as detailed in the paragraphs below. As well, FL has opened trust accounts on behalf of Bosvest, Cumberland 2 GP and Cumberland 2 LP for the purpose of receiving funds from Triangle for professional fees incurred by the entities and issuing professional fee payments.
39. Set out below are the cash flow results for Bosvest, Cumberland 2 GP, Cumberland 2 LP and Westside. The Monitor has not reported on the cash flow activity in its consolidated bankruptcy trust account, however, disbursements were limited to the Court approved distributions to Trust Claimants.
40. Bosvest's actual cash flow results are summarized below:

Description	September 24, 2023 to January 13, 2024		Variance
	Forecast Results	Actual Results	
	\$	\$	
Receipts	-	-	-
Less: Disbursements	-	-	-
Excess of Receipts over Disbursements	-	-	-
Opening Bank Position	2,430	2,430	-
Closing Bank Position	2,430	2,430	-

41. Bosvest had no receipts, or disbursements.
42. Cumberland 2 GP's actual cash flow results are summarized below:

Description	September 24, 2023 to January 13, 2024		Variance
	Forecast Results	Actual Results	
	\$	\$	
Receipts	-	-	-
Less: Disbursements	-	-	-
Excess of Receipts over Disbursements	-	-	-
Opening Bank Position	201	201	-
Closing Bank Position	201	201	-

43. Cumberland 2 GP had no receipts or disbursements.

44. Cumberland 2 LP's actual cash flow results are summarized below:

Description	September 24, 2023 to January 13, 2024		Variance
	Forecast Results	Actual Results	
	\$	\$	
Receipts	21,189	107,567	86,378
Less: Disbursements	80,000	1,021,859	(941,859)
Excess of Disbursements and Distributions over Receipts	(58,811)	(914,292)	(855,481)
Opening Bank Position	4,537,117	4,537,117	-
Closing Bank Position	4,478,306	3,622,825	(855,481)

45. Cumberland 2 LP's net receipts were higher than forecast due to interest earned of approximately \$40,000 and collection of an HST refund of approximately \$40,000.

46. Cumberland 2 LP's disbursements included professional fees of approximately \$45,000, a payment for post-filing bond premiums of \$970,030 and payments for corporate tax return preparation of \$4,700.

47. Westside's actual cash flow results are summarized below:

Description	September 24, 2023 to January 13, 2024		Variance
	Forecast Results	Actual Results	
	\$	\$	
Receipts	-	-	-
Less: Disbursements	4,500	2,915	1,582
Excess of Receipts over Disbursements and Distributions	(4,500)	(2,918)	1,582
Opening Bank Position	193,760	193,760	-
Closing Bank Position	189,260	190,842	1,582

48. Westside's disbursements included the payment of common element and maintenance fees on the final parking spot and professional fees.

## VII. REVISED CASH FLOW FORECASTS

49. The Monitor has prepared Revised Cash Flow Forecasts for each of Bosvest, Cumberland 2 GP, Cumberland 2 LP and Westside in support of the request for an extension of the stay of proceedings to May 31, 2024. Copies of the Revised Cash Flow Forecasts are attached as **Appendix “E”**. The Revised Cash Flow Forecasts cover the period January 14, 2024, to June 2, 2024 (the “**Extension Period**”).
50. As described above, bankruptcies have been filed for Triangle and Residential and the Non-Cash and Cash Assets (less holdbacks as described above) owned by Triangle and Residential have been transferred to Cumberland 2 LP. Therefore, the projected receipts and disbursements for Triangle and Residential occur in Cumberland 2 LP and revised cash flow forecasts have not been prepared for Triangle and Residential. Bosvest and Cumberland 2 GP have no operations or employees.
51. The Revised Cash Flow Projection includes the collection of mortgage payments on the guest suite and superintendent suite from TSCC 2448, a distribution to the unsecured creditors and the ongoing payment of professional fees.
52. Westside’s Revised Cash Flow Projection includes utilizing cash on hand to fund professional fees.

## VIII. MONITOR’S AND LEGAL COUNSEL PROFESSIONAL FEES AND DISBURSEMENTS

53. The fees and disbursements of the Monitor for the period August 22, 2023 to October 31, 2023 in respect of Westside and for September 1, 2023 to December 31, 2023 for Cumberland 2 LP total \$16,572.30 (comprising fees of \$14,630.50, disbursements of \$35.25 plus HST of \$1,906.55).
54. Attached as **Appendix “F”** is the Affidavit of Mr. Adam Erlich, in connection with the Monitor’s Fees and Disbursements and includes a copy of the Monitor’s statements of account and supporting time dockets for the period mentioned above.
55. The legal fees and disbursements of the Monitor’s independent legal counsel, GSNH for the period September 1, 2023, to December 31, 2023, total \$9,002.15 (comprising fees of \$7,662.50, disbursements of \$343.00 plus HST of \$996.65).
56. Attached as **Appendix “G”** is the Affidavit of Mr. Mario Forte, in connection with the Monitor’s legal fees and disbursements and includes a copy of the GSNH’s detailed statements of account for the period mentioned above.
57. The Monitor has reviewed the detailed statements of account provided by counsel and confirms that the services detailed in those documents were in fact provided to the Monitor. The Monitor is of the view that the time and disbursements incurred, and hourly rates charged by counsel are fair and reasonable and typical of processes of this nature.

58. The Monitor respectfully requests that the Court approve its fees and disbursements and those of GSNH, as set out in this Monitor's Forty-Eighth Report.

## **IX. ACTIVITIES OF THE MONITOR**

59. The activities of the Monitor since the Monitor's Forty-Seventh Report principally comprised the following:
- a. corresponding with various creditors with respect to the interim distribution to the unsecured creditors of Triangle and Residential;
  - b. various calls with counsel regarding the status of the proceedings;
  - c. reviewing the Plazacorp Decision and discussions with counsel regarding the same;
  - d. reviewing and filing of tax forms and returns as well as corresponding with the Canada Revenue Agency regarding tax matters;
  - e. attending to various matters with respect to the sale of Westside's final parking spot;
  - f. attending to a distribution to the unsecured creditors and attending on various calls with counsel regarding same;
  - g. preparing a summary of actual receipts and disbursements compared to forecast and revised cash flow forecasts;
  - h. attending to all banking matters;
  - i. posting Court materials on the Receiver's website; and
  - j. preparing this Forty-Eighth Report.

## **X. EXTENSION OF CCAA STAY OF PROCEEDINGS**

60. The Court-ordered stay of proceedings granted to the Edge Companies, the Cumberland 2 Companies, and Westside expires on January 31, 2024.
61. The Monitor recommends the extension and based on its involvement in this matter to date is of the opinion that:
- a. the Cumberland 2 Group have acted, and are acting in good faith and with due diligence;
  - b. the extension will allow additional time for the Monitor to obtain finalize the remaining issues in the estate in order to make additional interim distributions to the unsecured creditors; and



- c. no creditor will be materially prejudiced if the extension is granted.

## **XI. RECOMMENDATION**

- 62. Based on the foregoing, the Monitor recommends that the Court issue an Order granting the relief as requested in paragraph 11(j) of this Forty-Eighth Report.

All of which is respectfully submitted on this 18<sup>th</sup> day of January 2024.

A handwritten signature in black ink that reads "The Fuller Landau Group Inc." in a cursive, slightly stylized font.

**THE FULLER LANDAU GROUP INC.**  
**in its capacity as CCAA Monitor of**  
**the Cumberland Group and**  
**not in its personal capacity**

TAB A

Court File No.: CV-16-11541-00CL

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


**THE HONOURABLE MR.  
JUSTICE NEWBOULD**

)  
)  
)

**THURSDAY, THE 6<sup>TH</sup>  
DAY OF OCTOBER, 2016**

**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 CUMBERLAND 2 GP  
INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC.,  
EDGE ON TRIANGLE PARK INC., AND EDGE  
RESIDENTIAL INC.**

(the "**Applicants**")

**INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Alan Saskin sworn September 29, 2016 and the Exhibits thereto (the "**Saskin Affidavit**"), the Fourth Report of The Fuller Landau Group Inc. in its capacity as proposal trustee (the "**Proposal Trustee**") dated September 30, 2016 (the "**Fourth Report**") and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for the Proposal Trustee, and those other parties listed on the counsel slip, no one appearing for any other person although duly served as appears from the affidavit of service, filed, and on reading the consent of The Fuller Landau Group Inc. ("**Fuller Landau**") to act as the Monitor (in such capacity, the "**Monitor**"),

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.
3. **THIS COURT ORDERS AND DECLARES** that the proposal proceedings ("**Proposal Proceedings**") of each of Urbancorp Cumberland 2 GP Inc. (Estate No. 31-2125908), Urbancorp Cumberland 2 L.P. (Estate No. 31-458142), Bosvest Inc. (Estate No. 31-2117551), Edge Residential Inc. (Estate No. 31-2117564), and Edge on Triangle Park Inc. (Estate No. 31-2117584) (collectively, the "**Cumberland Group**") commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), are hereby taken up and continued under the CCAA and that the provisions of Part III of the BIA shall have no further application to the Cumberland Group, save that any and all steps, agreements and procedures validly taken, done or entered into by the Cumberland Group or Fuller Landau during the Proposal Proceedings shall remain valid and binding notwithstanding the termination of the Proposal Proceedings and the commencements of the within CCAA proceedings.

## PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that subject to the provisions of this Order, the Cumberland Group shall have the authority to file, and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "**Plan**" or "**Plans**").

## POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Cumberland Group shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Cumberland Group shall continue to carry on business in a manner

consistent with the preservation of their business (the "**Business**") and Property. The Cumberland Group are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Cumberland Group shall be entitled to continue to utilize the central cash management system currently in place, which is operated and managed by the Proposal Trustee and will be continued to be operated and managed by the Monitor, or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Cumberland Group of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Cumberland Group, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that the Cumberland Group shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Cumberland Group in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Cumberland Group shall be entitled but not required to pay all reasonable expenses incurred by the Cumberland Group in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Cumberland Group following the date of this Order.

9. **THIS COURT ORDERS** that the Cumberland Group shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Cumberland Group in connection with the sale of goods and services by the Cumberland Group, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Cumberland Group.

10. **THIS COURT ORDERS** that, except where any of the entities in the Cumberland Group are a landlord, until a real property lease is disclaimed in accordance with the CCAA, the Cumberland Group shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Cumberland Group and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein or by further order of this Court, the Cumberland Group are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Cumberland Group to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

12. **THIS COURT ORDERS** that the Applicants shall not, without further Order of this Court: (a) make any disbursement out of the ordinary course of its Business exceeding in the aggregate \$100,000 in any calendar month; or (b) engage in any material activity or transaction not otherwise in the ordinary course of its Business.

## **RESTRUCTURING**

13. **THIS COURT ORDERS** that subject to paragraph 30 herein, the Cumberland Group shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$1,000,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) pursue a sale or development of some or all of the Cumberland Group's Business and Property,

all of the foregoing to permit the Cumberland Group to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. **THIS COURT ORDERS** that the Cumberland Group shall provide each of the relevant landlords with notice of the Cumberland Group's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Cumberland Group's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Cumberland Group, or by further Order of this Court upon application by the Cumberland Group on at least two (2) days' notice to such landlord and any such secured creditors. If the Cumberland Group disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Cumberland Group's claim to the fixtures in dispute.

15. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Cumberland Group and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Cumberland Group in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.



## **NO PROCEEDINGS AGAINST THE CUMBERLAND GROUP OR THE PROPERTY**

16. **THIS COURT ORDERS** that until and including November 4, 2016, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Cumberland Group or the Monitor, or affecting the Business or the Property, except with the written consent of the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Cumberland Group or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Cumberland Group or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Cumberland Group to carry on any business which the Cumberland Group is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Cumberland Group, except with the written consent of the Cumberland Group and the Monitor, or leave of this Court.

## **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Cumberland Group or statutory or regulatory mandates for the supply of goods

and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Cumberland Group, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Cumberland Group, and that the Cumberland Group shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Cumberland Group in accordance with normal payment practices of the Cumberland Group or such other practices as may be agreed upon by the supplier or service provider and each of the Cumberland Group and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Cumberland Group. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Cumberland Group with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Cumberland Group whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Cumberland Group, if one is filed, is sanctioned by this Court or is refused by the creditors of the Cumberland Group or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

22. **THIS COURT ORDERS** that the Cumberland Group shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Cumberland Group after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. **THIS COURT ORDERS** that the directors and officers of the Cumberland Group shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for the indemnity provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Cumberland Group's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

## **DIP FINANCING**

25. **THIS COURT ORDERS** that the debtor-in-possession facility (the "**DIP Facility**") from Davad Investments Inc. (the "**DIP Lender**"), on the terms and subject to the conditions set forth in the commitment letter (the "**Commitment Letter**") dated July 15, 2016, substantially in the form attached as Appendix "G" of the Third Report of Fuller Landau, and approved by Order of Honourable Mr. Justice Hainey dated August 24, 2016 in the Proposal Proceedings, shall be taken up and continued in the within CCAA proceedings with full priority afforded to the DIP Facility pursuant to such Order.

26. **THIS COURT ORDERS** that the Cumberland Group, at the direction of the Monitor, is authorized and empowered to borrow under the DIP Facility from the DIP Lender on the terms and

subject to the conditions set forth in the Commitment Letter and the Order of Honourable Mr. Justice Hailey dated August 24, 2016.

### **PROTOCOL FOR CO-OPERATION**

27. **THIS COURT ORDERS AND DIRECTS** that the Protocol For Cooperation Among Canadian Court Officer and Israeli Functionary (the "**Co-operation Protocol**"), between Fuller Landau in its capacity as Proposal Trustee and Guy Gissin, in his capacity as Functionary Officer ("**Israeli Functionary**") appointed by the Israel District Court in Tel Aviv-Yafo in respect of Urbancorp Inc., and approved by Order of Honourable Mr. Justice Newbould dated June 15, 2016 in the Proposal Proceedings, shall be taken up and continued in the within CCAA proceedings, and shall continue to apply as between Fuller Landau in its capacity as the Monitor and the Israeli Functionary. In the event of a conflict between the terms of this Order and the Co-operation Protocol, the terms of this Order shall prevail.

### **CONTINUATION OF SALES PROCESS**

28. **THIS COURT ORDERS** that the sales process (the "**Sales Process**") as described in the Third Report of Fuller Landau, and approved by Order of Honourable Mr. Justice Hailey dated August 24, 2016 in the Proposal Proceedings, shall be taken up and continued in the within CCAA proceedings, provided that in addition thereto, Fuller Landau in its capacity as Monitor shall be entitled to extend such bid deadlines in the Sales Process as it deems advisable or necessary for the effective administration of the Sales Process. Any such changes to the Sales Process may be communicated by e-mail blast and recorded on the Fuller Landau website dedicated to the restructuring. Further, and without limiting the generality of the foregoing, Fuller Landau shall be entitled to continue to execute and deliver the vesting certificates contemplated in the Vesting Order of Mr. Justice Hailey made August 24, 2016 as Proposal Trustee, notwithstanding the commencement of these CCAA proceedings.

### **APPOINTMENT OF MONITOR**

29. **THIS COURT ORDERS** that Fuller Landau is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Cumberland Group with the powers and obligations set out in the CCAA or set forth herein and that the

Cumberland Group and their shareholders, officers, directors, and Assistants shall not take any steps with respect to the Cumberland Group, the Business or the Property, save and except under the direction of the Monitor, pursuant to paragraph 30 of this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, and without altering in any way the powers, abilities, limitations and obligations of the Cumberland Group within, or as a result of these proceedings, be and is hereby authorized, directed and empowered to:

- (a) cause the Cumberland Group, or any one or more of them, to exercise rights under and observe its obligations under paragraphs 7, 8, 9, 10, 11 and 12 above;
- (b) cause the Cumberland Group to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Cumberland Group in dealing with the Property;
- (c) conduct, supervise and direct the Sales Process, or conduct, supervise and direct one or more Court-approved sales and investor solicitation processes (with prior Court approval if deemed appropriate by the Monitor) for portions of the Property or the Business, including the solicitation of development proposals, and any procedures regarding the allocation and/or distribution of proceeds of any transactions;
- (d) cause the Cumberland Group to administer the Property and operations of the Cumberland Group, including the control of receipts and disbursements, as the Monitor considers necessary or desirable for the purposes of completing any transaction, or for purposes of facilitating a Plan or Plans for some or all entities part of the Cumberland Group, or parts of the Business;
- (e) propose or cause the Cumberland Group or any one or more of the entities in the Cumberland Group to propose one or more Plans in respect of the Cumberland Group or any one or more of the entities in the Cumberland Group;

- (f) engage advisors or consultants or cause the Cumberland Group to engage advisors or consultants as the Monitor deems necessary or desirable to carry out the terms of this Order or any other Order made in these proceedings or for the purposes of the Plan and such persons shall be deemed to be "**Assistants**" under this Order;
- (g) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter;
- (h) meet and consult with the directors of the Cumberland Group as the Monitor deems necessary or appropriate;
- (i) meet with and direct management of the Cumberland Group with respect to any of the foregoing including, without limitation, operational and restructuring matters;
- (j) monitor the Cumberland Group's receipts and disbursements;
- (k) approve Advance Requests under the DIP Facility;
- (l) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (m) assist the Cumberland Group in its preparation of the Cumberland Group's cash flow statements and reporting required by the Commitment Letter or the Court;
- (n) hold and administer creditors' or shareholders' meetings for voting on the Plan or Plans;
- (o) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Cumberland Group, to the extent that is necessary to adequately assess the Cumberland Group's business and financial affairs or to perform its duties arising under this Order;

- (p) be at liberty to engage legal counsel, real estate experts, or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (q) perform such other duties as are required by this Order or by this Court from time to time, provided, however, that the Monitor shall comply with all applicable law and shall not have any authority or power to elect or to cause the election or removal of directors of any of the entities in the Cumberland Group or any of their subsidiaries.

31. **THIS COURT ORDERS** that the Cumberland Group and their advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide the Monitor with such assistance as the Monitor may request from time to time to enable the Monitor to carry out its duties and powers as set out in this Order or any other Order of this Court under the CCAA or applicable law generally.

32. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof and that nothing in this Order, or anything done in pursuance of the Monitor's duties and powers under this Order, shall deem the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation.

33. **THIS COURT ORDERS** that, without limiting the provisions herein, all employees of the Cumberland Group shall remain employees of the Cumberland Group until such time as the Cumberland Group may terminate the employment of such employees. Nothing in this Order shall,

in and of itself, cause the Monitor to be liable for any employee-related liabilities or duties, including, without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts, as applicable.

34. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Cumberland Group with information provided by the Cumberland Group in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Cumberland Group is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Cumberland Group may agree.

35. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Cumberland Group shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Cumberland Group as part of the costs of these proceedings. The Cumberland Group is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Cumberland Group and any Assistants retained by the Monitor on a weekly basis and, in addition, the Cumberland Group is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Cumberland Group and any Assistants retained by the Monitor, such reasonable retainers as may be requested to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. The Cumberland Group is also authorized and directed to pay the fees and disbursements of Fuller Landau as Proposal Trustee, the fees and disbursements of the Proposal Trustee's counsel and the fees and disbursements of counsel to Cumberland Group up to the date of this Order in respect of the Proposal Proceedings of the Cumberland Group.



37. **THIS COURT ORDERS** that Fuller Landau in its capacity as Monitor, and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Cumberland Group's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and the Proposal Proceedings. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

#### **DIP LENDER'S CHARGE**

39. **THIS COURT ORDERS** that the DIP Lender's Charge granted by Order of Honourable Mr. Justice Hailey dated August 24, 2016 shall continue in this proceeding with the priority set out in paragraphs 41 and 43 hereof.

40. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by any entity in the Cumberland Group under the CCAA, with respect to any advances made under the DIP Facility.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

41. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Lender's Charge, and the Directors' Charge as among them, shall be as follows:

First – Administration Charge to the maximum amount of \$250,000;

Second – DIP Lender's Charge to the maximum amount of \$2,000,000; and

Third – Directors' Charge to the maximum amount of \$150,000.

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the DIP Lender's Charge, or the Directors' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, provided however that, for the purposes of each of the Charges, the Property shall not include cash collateral posted with the Bank of Montreal in respect of letters of credit.

44. **THIS COURT ORDERS** that except as otherwise expressly provided herein, or as may be approved by this Court, the Cumberland Group shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Cumberland Group also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

45. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Cumberland Group, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, or performance of the Commitment Letter shall create or be deemed to constitute a breach by the Cumberland Group of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Cumberland Group entering into the Commitment Letter or the creation of the Charges; and
- (c) the payments made by the Cumberland Group pursuant to this Order, the Commitment Letter, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Cumberland Group's interest in such real property leases.

#### **SERVICE AND NOTICE**

47. **THIS COURT ORDERS** that the Monitor shall without delay, publish in the Globe & Mail – Toronto Edition, a notice containing the information prescribed under the CCAA, and within five days after the date of this Order, make this Order publicly available in the manner prescribed under the CCAA, and that the actions of the Monitor pursuant to paragraph 47 hereof together with the notices that Fuller Landau has already sent to known creditors in the Proposal Proceedings shall satisfy the requirements under Section 23(1)(a) of the CCAA and the regulations made thereunder.

48. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case

Website shall be established in accordance with the Protocol with the following URL:  
[http://fullerllp.com/active\\_engagements/edge-triangle-park-inc/](http://fullerllp.com/active_engagements/edge-triangle-park-inc/)

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Cumberland Group and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Cumberland Group's creditors or other interested parties at their respective addresses as last shown on the records of the Cumberland Group and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

50. **THIS COURT ORDERS** that the Cumberland Group or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

51. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Cumberland Group, the Business or the Property.

52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in Israel or elsewhere, to give effect to this Order and to assist the Cumberland Group, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Cumberland Group and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Cumberland Group and the Monitor and their respective agents in carrying out the terms of this Order.

53. **THIS COURT ORDERS** that each of the Cumberland Group and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

54. **THIS COURT ORDERS** that any interested party (including the Cumberland Group and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

55. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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LE / DANS LE REGISTRE NO:

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PER / PAR:





TAB B

Court File No. CV-16-11541-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



THE HONOURABLE MR.  
JUSTICE MYERS

)  
)

THURSDAY, THE 25<sup>TH</sup>  
DAY OF OCTOBER, 2018

**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 CUMBERLAND 2 GP  
INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC.,  
EDGE ON TRIANGLE PARK INC., AND EDGE  
RESIDENTIAL INC.**

(the "**Applicants**")

**ORDER**

**(Transfer of Assets, Bankruptcy of Triangle and Residential, and CCAA Protection of  
Westside Galley Lofts Inc.)**

**THIS MOTION**, made by The Fuller Landau Group Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for, amongst other things:

- a. abridging the time for service of the Monitor's notice of motion, motion record, and seventeenth report of the Monitor dated October 15, 2018 and the supplement to the seventeenth report dated October 24, 2018 (collectively, the "**Seventeenth Report**") and validating the service of such motion materials;
- b. an order transferring all non-cash assets, being the remaining condominium units



to be sold, the Arts and Culture Space, and all other personal and/or real property (including, without limitation, any crystallized, inchoate, or after-acquired property, rights, choses in action, or interests) owned by Edge on Triangle Park Inc. (“**Triangle**”) and Edge Residential Inc. (“**Residential**”) (the “**Non-Cash Assets**”), to Urbancorp Cumberland 2 L.P. with the exclusive direction of the Monitor to facilitate the continuation of the liquidation of such assets, and such other actions as may be required to maximize recoveries therefrom for the benefit of creditors;

- c. an order permitting the Monitor to file assignments in bankruptcy for Triangle and Residential, and to substantively consolidate the estates of each for the purpose of recognizing the proven claims of creditors and facilitating distributions to such creditors from the consolidated proceeds of liquidation of the assets of each estate;
- d. an order continuing the existing cash funding mechanism to facilitate the continuation of the CCAA proceedings for the non-bankrupt Cumberland Group companies;
- e. an order permitting the Monitor to distribute proceeds of realization realized from time to time for the Non-Cash Assets to the trustee in bankruptcy for the consolidated bankrupt estates of Triangle and Residential for future distribution to creditors with proven claims in such consolidated estates;
- f. a declaration that the transfer of the Non-Cash Assets to Urbancorp Cumberland 2 L.P. is not a transfer of beneficial interest which would attract land transfer tax in

accordance with the *Land Transfer Tax Act (Ontario)*;

- g. an order permitting the Monitor to cause Westside Gallery Lofts Inc. (“**Westside**”) to file for protection under the CCAA as an affiliate company to the Cumberland Group with a view to determining the nature of remaining assets in Westside and whether after some investigations, a bankruptcy is an appropriate proceeding to commence in respect thereof; and
- h. such further and other relief as may be granted;

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Monitor and the Seventeenth Report, and on hearing the submissions of respective counsel for the Monitor, the Applicants and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service as filed:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, and Seventeenth Report herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms not otherwise defined in this Order shall have the meaning ascribed to such term in the Initial Order or the Seventeenth Report.

**WESTSIDE GALLERY LOFTS INC.**

2. **THIS COURT ORDERS** that Westside Gallery Lofts Inc. ("**Westside**") is a company to which the CCAA applies.

3. **THIS COURT FURTHER ORDERS** that Westside shall be added as an Applicant to these proceedings with all terms of the Initial Order applying, *mutatis mutandis*, to Westside as if it applied for relief under the CCAA as of the date of this order. For clarity, the Stay Period (as defined in paragraph 16 of the Initial Order) for Westside shall run until and including November 26, 2018.

4. **THIS COURT ORDERS** that the title of proceedings in this application shall be amended to include Westside as an applicant.

**ADJOURNMENT OF BALANCE OF THE MOTION**

5. **THIS COURT ORDERS** that the balance of this motion be, and is hereby, adjourned

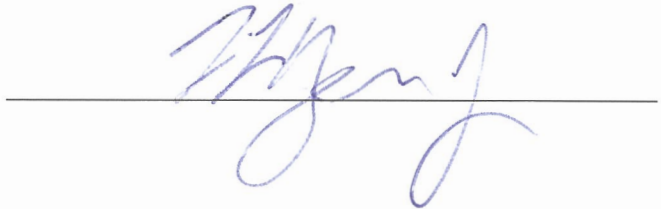
until Nov. 27/18 AT 2:00 P.M. BEFORE THIS COURT.

**GENERAL**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative by having jurisdiction in Canada, the United States or Israel to give effect to this order and to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and provide such assistance to the Applicants and the Monitor, as an officer of this court, as may be necessary or desirable to give

effect to this order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this order.

7. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this order, and for assistance in carrying out the terms of this order and any other order issued in these proceedings.



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OCT 25 2018

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

Court File No. CV-16-11541-00CL

URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC., EDGE  
ON TRIANGLE PARK INC., AND EDGE RESIDENTIAL INC. (COLLECTIVELY, THE "APPLICANTS")  
PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

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

Proceeding commenced at Toronto

**ORDER**  
**(TRANSFER OF ASSETS, BANKRUPTCY OF**  
**TRIANGLE AND RESIDENTIAL, AND CCAA**  
**PROTECTION OF WESTSIDE GALLEY**  
**LOFTS INC.)**

**GOLDMAN SLOAN NASH & HABER LLP**

Barristers and Solicitors  
Suite 1600, 480 University Avenue  
Toronto, Ontario, M5G 1V2  
Fax: 416-597-3370

**Mario Forte [LSUC No. 27293F]**  
Tel: 416-597-6477

**Robert J. Drake [LSUC No. 57083G]**  
Tel: 416-597-5014

Lawyers for The Fuller Landau Group Inc. in its  
capacity as the Monitor for Urbancorp Cumberland 2  
GP Inc., Urbancorp Cumberland 2 L.P., Bosvest Inc.,  
Edge Residential Inc., and Edge on Triangle Park Inc.

TAB C



Court File No. CV-16-11541-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 29<sup>TH</sup>  
CHIEF JUSTICE MORAWETZ ) DAY OF SEPTEMBER, 2023

**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 CUMBERLAND 2 GP  
INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC.,  
EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL  
INC., and WESTSIDE GALLERY LOFTS INC.**

(the "Applicants")

**ORDER  
(On motion for Approval of Fees and Activities, and Stay Extension)**

**THIS MOTION**, made by The Fuller Landau Group Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") of the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for, amongst other things: an order in the form attached as **Schedule "A"**, an order in the form attached as **Schedule "A"**, providing for, amongst other things, abridging the time for service of the Monitor's notice of motion, motion record, and forty-seventh report of the Monitor dated September 23, 2023 (the "**Forty-Seventh Report**") and validating the service of such motion materials;

- a. extending the Stay Period (as that term is defined in paragraph 16 of the Initial Order) from September 29, 2023 to January 31, 2024;



- b. approving the Monitor's activities as described in the Monitor's Forty-Seventh Report;
- c. approving the Monitor's and its legal counsel's fees and disbursements for the period of May 1, 2023 to August 31, 2023; and
- d. such further and other relief as may be granted;

was heard this day by judicial videoconference via Zoom.

**ON READING** the Notice of Motion of the Monitor and the Forty-Seventh Report, and on hearing the submissions of counsel for the Monitor and other counsel listed on the counsel slip:

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record (including the Forty-Seventh Report) herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof. All capitalized terms not otherwise defined in this order shall have the meaning ascribed to such term in the Initial Order.

#### **EXTENSION OF STAY PERIOD**

2. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 16 of the Initial Order) is hereby extended until and including January 31, 2024.

#### **APPROVAL OF THE MONITOR'S ACTIVITIES**

3. **THIS COURT ORDERS** that the Monitor's activities as in the Forty-Seventh Report are hereby approved, provided, however, that only the Monitor, in its personal capacity and only



with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **FEE APPROVAL**

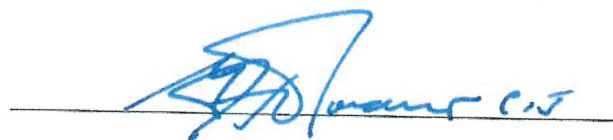
4. **THIS COURT ORDERS** that that the fees and disbursements of the Monitor and its counsel for the periods of May 1, 2023 to August 31, 2023 as set out in the Forty-Seventh Report and the filed fee affidavits, be and hereby are approved.

#### **GENERAL**

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative by having jurisdiction in Canada, the United States or Israel to give effect to this order and to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and provide such assistance to the Applicants and the Monitor, as an officer of this court, as may be necessary or desirable to give effect to this order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Monitor, and their respective agents in carrying out the terms of this order.

6. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative

body, wherever located, for the recognition of this order, and for assistance in carrying out the terms of this order and any other order issued in these proceedings.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "J. D. Jones C.J.".

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C.1985, c. C-36, AS AMENDED  
 URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC., and WESTSIDE GALLERY LOFTS INC. (COLLECTIVELY, THE "APPLICANTS") PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT

Court File No. CV-16-11541-00CL

ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 (COMMERCIAL LIST)

Proceeding commenced at Toronto

ORDER  
 (On motion for Approval of Fees and Activities,  
 and Stay Extension)

GOLDMAN SLOAN NASH & HABER LLP  
 Barristers and Solicitors  
 Suite 1600, 480 University Avenue  
 Toronto, Ontario, M5G 1V2  
 Fax: 416-597-3370

Mario Forte [LSUC No. 27293F]  
 Tel: 416-597-6477

Robert J. Drake [LSUC No. 57083G]  
 Tel: 416-597-5014

Lawyers for The Fuller Landau Group Inc. in its capacity as the Monitor for Urbancorp Cumberland 2 GP Inc., Urbancorp Cumberland 2 L.P., Bosvest Inc., Edge Residential Inc., and Edge on Triangle Park Inc.

TAB D

**CITATION:** *Urbancorp Cumberland 2 GP Inc. et al.*, 2023 ONSC 6747  
**COURT FILE NO.:** CV-16-0011541-00CL  
**DATE:** 20231129

**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 CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P., BOSVEST INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC. AND WESTSIDE GALLERY LOFTS INC. (the “Applicants”)**

**BETWEEN:**

URBANCORP CUMBERLAND 2 GP INC.,	)	
URBANCORP CUMBERLAND 2 L.P.,	)	
BOSVEST INC., EDGE ON TRIANGLE	)	<i>Mario Forte and Robert J. Drake,</i>
PARK INC., EDGE RESIDENTIAL INC.	)	Lawyers for The Fuller Landau Group Inc.
AND WESTSIDE GALLERY LOFTS INC.	)	in its capacity as the Monitor for Urbancorp
	)	Cumberland 2 GP Inc., Urbancorp
	)	Cumberland 2 L.P., Bosvest Inc., Edge
	)	Residential Inc., Edge on Triangle Park Inc.,
Applicants	)	and Westside Gallery Lofts Inc., Applicants
	)	
	)	<i>Chris Reed, Lawyers for Wellesley Residents</i>
	)	(2014) Corp., KJ Equity Inc. and Yonge-
	)	Abell Ltd. Partnership
	)	
	)	<i>Neil Rabinovitch, Lawyers for Israeli</i>
	)	Functionary of Urbancorp Inc.
	)	
	)	
	)	<b>HEARD: April 6, 2023</b>

**REASONS FOR DECISION**

**OSBORNE J.:**

1. The Fuller Landau Group, in its capacity as the court-appointed Monitor of these CCAA Applicants, seeks an order directing the Monitor to reject the Amended Claim of Wellesley Residences (2014) Corp. (“Wellesley”), KJ Equity Inc. (“KJ Equity”) and Yonge-Abell Partnership (“Yonge-Abell”) (collectively, the “Claimants”) delivered on

December 5, 2022. That Amended Claim was submitted by an amended proof of claim filed on behalf of all three Claimants.

2. This motion engages the issue of when and on what terms a CCAA Monitor should accept late claims.
3. The Monitor relies principally on the 45<sup>th</sup> Report dated March 7, 2023, together with the Appendices thereto, as well as the terms of the Initial Order and the Claims Procedure Order made in this CCAA proceeding.
4. The Claimants rely on the Affidavit of Anthony Heller (“Heller”) affirmed March 30, 2023, together with Exhibits thereto, and the Affidavit of Matthew Gordon (“Gordon”) affirmed March 30, 2023, together with the one Exhibit thereto. Defined terms in this Endorsement have the meaning given to them in the motion materials of the parties and/or the 45<sup>th</sup> Report, unless otherwise stated.
5. For the reasons that follow, the motion is granted, and the Monitor is directed to reject the Amended Claim of the Claimants in this CCAA proceeding.

### **The Test and the Positions of the Parties**

6. The parties are in agreement that the test relevant to the issue of whether a claim should be accepted after the claims bar date is that set out by the Alberta Court of Appeal in *Blue Range Resource Corp., Re.*, 2000 ABCA 285, 271 A.R. 138 (“*Blue Range*”) at para. 41, as expressly considered and adopted by Morawetz R.S.J. (now Chief Justice) of this court in *Target Canada Co. (Re)*, 2017 ONSC 327 (“*Target*”) <sup>1</sup> at paras. 24 – 27:
  - a. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
  - b. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
  - c. If relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing?
  - d. If relevant prejudice is found which cannot be alleviated, are there other considerations which may nonetheless warrant an order permitting late filing?
7. The discussion of the relevant test in *Target*, quoting from *Blue Range*, is instructive on the present motion:

[25] The question put before the court in *Blue Range* (para. 5) was as follows:

<sup>1</sup> This court further considered the *Blue Range* test in the *Target* CCAA proceeding at 2017 ONSC 6413, 55 C.B.R. (6th) 244 (“*Target 2*”), at paras. 29 and 42.

“What criteria in the circumstances of these cases should the court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?”

[26] The judgment of the court in *Blue Range* was delivered by Wittmann J.A. (as he then was). The relevant portions read as follows:

[14] I accept that some guidance can be gained from the *BIA* approach to these types of cases but I find that some concerns remain. An inadvertence standard by itself might imply that there need be almost no explanation whatever for the failure to file a claim in time. In my view, inadvertence could be an appropriate element of the standard if parties are able to show, in addition, that they acted in good faith and were not simply trying to delay or avoid participation in *CCAA* proceedings. But I also take some guidance from the *US Bankruptcy Rules* Standard because I agree that the length of delay and the potential prejudice to other parties must be considered. To this extent, I accept a blended approach, taking into consideration both the *BIA* and the *US Bankruptcy Rules* approaches, bolstered by the application of some of the concepts included into other areas, such as late reporting in insurance claims, and delay in the prosecution of a civil action.

...

[27] in the context of the criteria, “inadvertent” includes carelessness, negligence, accident, and is unintentional. ...”

[27] On the subject of prejudice, the *Blue Range* decision is also instructive. At [40] the court stated:

“In a *CCAA* context, as in a *BIA* context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the *CCAA* involves compromise. Allowing all legitimate creditors to share in the available process is an integral part of the process. A reduction in that share cannot be characterized as prejudice: *Cohen, Re* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in *312630 British Columbia Ltd*. It is: did the creditor(s) by reason of the late

filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

8. I observe that in *Target*, two interim distributions to creditors had been made, but the Monitor reported to the court that current reserves were “sufficient to satisfy distributions to the known late claimants, should they be permitted to file their claims, and such claims were ultimately accepted as proven, ... without materially disturbing the estimated range of the coverage to affected creditors”.<sup>2</sup> The issue before the court was whether the Monitor should be directed to accept late claims.
9. In *Target 2*, the court considered a situation where, as here, certain claims had been filed before the applicable claims bar date, but they were subsequently amended. The issue was whether the amended claims, which increased the quantum sought in the original claims by approximately \$4.1 million, should be accepted. The court stated that the test set out in *Blue Range* was applicable since *Blue Range* addressed the issues relating to both late claims and amended claims filed after a claims bar date: see *Blue Range* at paras. 3, 5 and 41.<sup>3</sup>
10. I agree that the *Blue Range* test is applicable to the issue on this motion.
11. The Amended Claim is in the amount of \$12,500,000, said to be payable as liquidated damages to the Claimants pursuant to a co-tenancy termination agreement in the event that certain geothermal power units were not transferred in accordance with the Termination Agreement.
12. The Amended Claim is material in this CCAA proceeding, both as to the quantum of the Amended Claim itself, and as a proportion of the total claims pool. Accepted unsecured claims total \$22.1 million, an amount that would be increased by 56.6% to \$34.6 million if the Amended Claim is allowed.
13. The Monitor submits that the Claimants cannot meet the *Blue Range* test, beginning with the first of the four factors: the delay was not inadvertent and the Claimants have not acted in good faith. They also submit that the delay has caused prejudice to the other unsecured creditors. Specifically, the Monitor seeks the direction of this court to reject the Amended Claim for a number of threshold reasons:
  - a. it is not a particularized version of the placeholder claim originally filed, but rather is an entirely new claim;
  - b. the claims bar date should be enforced, and the failure to comply is not a technical defect; the claims bar was six years ago, and moreover, the limitation period under

<sup>2</sup> *Target*, at para. 22.

<sup>3</sup> *Target 2* at para. 29.



which any claim could have been made previously expired, with the result that the Amended Claim is statute-barred;

- c. the Claimants have not proven that they are the correct claimants, and they have no standing to bring the Amended Claim;
  - d. the objective evidence available to the Monitor is to the effect that the grounds for the underlying claim have already been satisfied by way of the discharge of the KJ Equity mortgage, which is fully dispositive of the Amended Claims; and
  - e. the Amended Claim is unconscionable and ought not to be permitted to proceed.
14. The Claimants submit that the original claim was appropriate in the circumstances since it made all parties aware of a potential claim, the nature and quantum of which would be determined later. It was only some four years later, in 2021, that the Monitor had funds to distribute to creditors and it therefore became important then to particularize the amount of the unknown claim.
  15. The Claimants submit that they meet the *Blue Range* test. They submit that the delay was inadvertent, that they have acted in good faith throughout, and that there is no prejudice to other creditors.
  16. As the Claimants put it in their factum, “unfortunately, a mistake was made about the nature of the claim.” They submit that the delay from 2017 to 2021 was a result of inadvertence and there was no pressing reason to particularize the claim, nor was there any request that it be particularized. So too, they submit, was the delay from 2021 to 2022 the result of inadvertence, it stemmed from the error of one employee of the Claimants (Gordon).
  17. Substantively, they submit that liquidated damages of \$12,500,000 are owed because the geothermal units were not transferred as agreed. The Termination Agreement required that that transfer take place and, if it did not, liquidated damages in the amount claimed were due and owing.

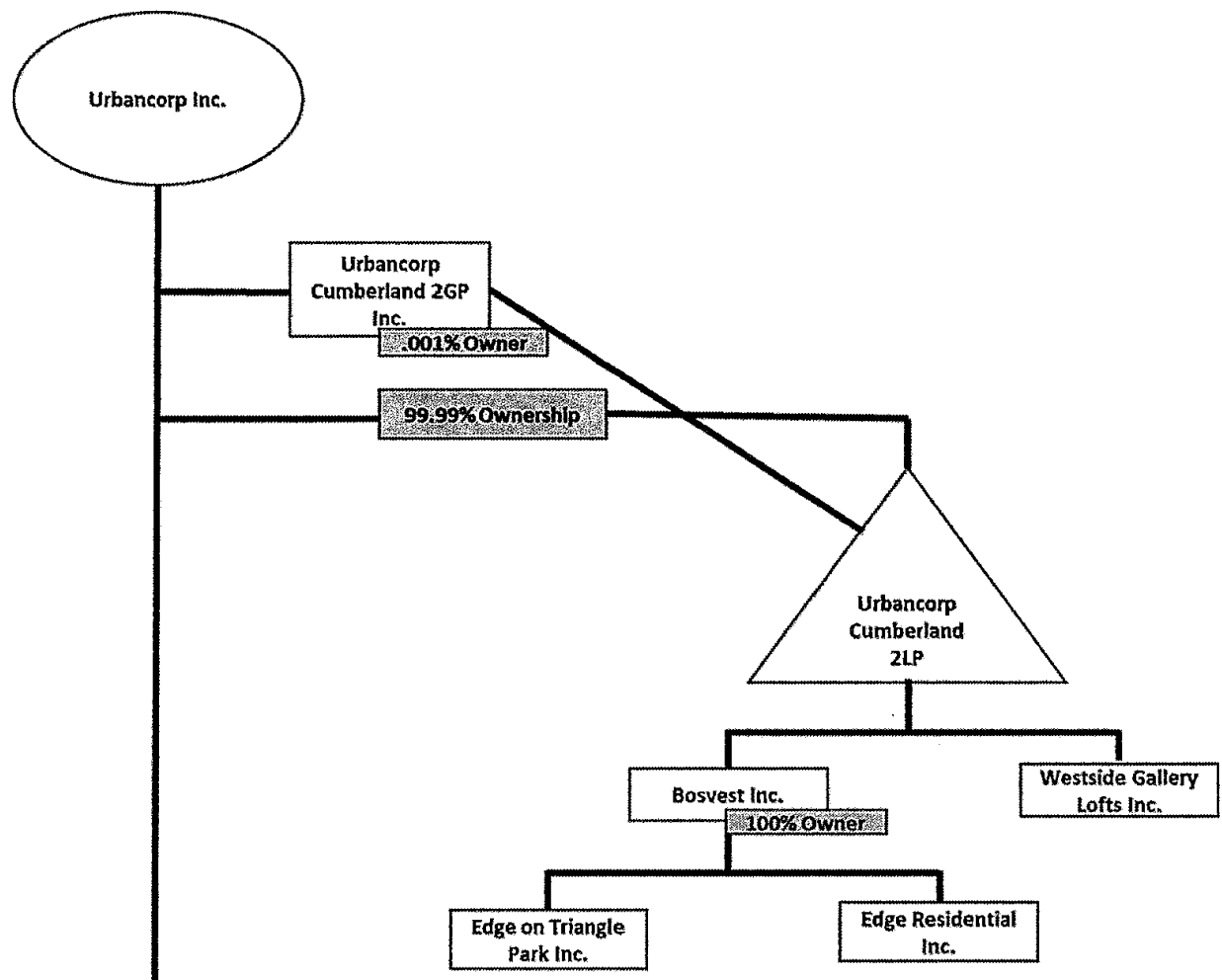
### **Analysis and Relevant Facts**

18. The factual matrix surrounding the Amended Claim is complex, but it is relevant to the disposition of this motion. It is set out in the 45<sup>th</sup> Report.

### **The Epic Development and the Edge Development**

19. The Epic Development, located at 48 Abell Street, Toronto, was a 475 unit condominium development. It was one of two co-tenancy condominium development projects undertaken by Urbancorp and Plazacorp. The other project was the Edge Development, a 665 unit condominium development across the street at 2-6 Lisgar Street, which is at the centre of this CCAA proceeding.
20. As discussed further below, Plazacorp and Urbancorp are related: they are brand names for a portfolio of single-purpose real estate development entities controlled by Heller and Alan

Saskin (“Saskin”) respectively. The relevant corporate structure of the Cumberland 2 Group is set out in the 45<sup>th</sup> Report as follows:



21. Each development had, as a term of the co-tenancy, a registered owner as trustee for the Urbancorp/Plazacorp owners respectively.
22. For the Edge Development, the trustee was Edge on Triangle Park Inc. (“Triangle”). Triangle held title for both Urbancorp and Plazacorp: it held a 66.6% interest for the Urbancorp owner, Bosvest Inc., and the remaining 33.3% interest for the Plazacorp owner, 994697 Ontario Inc. (“994”). Bosvest, a wholly-owned subsidiary of Cumberland 2 LP, is a holding company that in turn owns 100% of the shares of each of Triangle and Edge Residential Inc. (“Residential”).
23. Accordingly, Triangle was the registered owner and developer of the Edge Development and as such, entered into various agreements with trades, professional advisors and others. Triangle was also the entity that entered into agreements of purchase and sale for the condominium units (the sales of the majority of which have already closed).

24. At the time of its Notice of Intention (“NOI”) filing, its primary assets included five residential condominium units, five retail condominium units, 11 storage units, an arts and cultural space, and certain choses in action.
25. At the time of the NOI filing of Residential, Triangle’s primary assets included 32 residential condominium units, 16 parking spots and 11 storage units, together with a rental income stream produced by the tenancy of its residential condominium units.
26. The Epic Development was organized in a similar manner. Epic on Triangle Park Inc. (“Epic”) was a trustee holding title for both Urbancorp and Plazacorp: it held a 50% interest for King West Village South Limited, the Urbancorp owner, and the other 50% interest for Wellesley, the Plazacorp owner (and one of the Claimants).

### **The Termination of the Co-Tenancies and the Termination Agreements**

27. Both co-tenancies were terminated on June 22, 2015. Co-tenancy termination agreements (the “Termination Agreements”) were entered into to resolve conflicts and disputes between the Urbancorp entities on the one hand and the Plazacorp entities on the other.
28. Pursuant to those Termination Agreements, in relevant part, Urbancorp was to buy out the interest of Plazacorp in both development projects, satisfied principally by the transfer of condominium units once the development was completed.
29. The Epic Co-tenancy Termination Agreement (the “Epic Termination Agreement”) provided, in relevant part, that:
  - a. KJ Equity (one of the Claimants) was granted a \$12.5 million mortgage to securitize the equity interest of Wellesley (another one of the Claimants);
  - b. this mortgage would be satisfied by the transfer of 35 Epic condominium units, 24 parking spaces, 21 locker units and seven geothermal room units (collectively, the “Epic Transferred Units”), to a nominee of the “Plazacorp Entity (Wellesley) as the Plazacorp Entity shall direct in writing”;
  - c. there was a stipulated \$12.5 million liquidated damages clause for “the damages incurred by [Wellesley] if the Epic Transferred Units [were] not conveyed to the nominee”;
  - d. Wellesley would transfer its 50% interest in Epic to King West Village upon the transfer of the condominium units; and
  - e. the Urbancorp Entities (which specifically included Triangle, among others) agreed to indemnify the “Plazacorp Entity or KJ [Equity]” for any monies that the Plazacorp-related entities had to pay to finish the Epic Development.
30. Pursuant to the Epic Termination Agreement, Epic then granted KJ Equity a mortgage in the amount of \$13 million on April 21, 2016, as continuing security for “the payment of the sums secured herein” and the satisfaction of other obligations.

31. Accordingly, the structure of the Epic Termination Agreement contemplated that Urbancorp would fully own both the Edge and Epic Developments.
32. At that time, however, Urbancorp was already in effective control. When the Termination Agreements were signed in 2015, Saskin was both the principal of Urbancorp and the sole officer and director of Epic. However, the BIA/CCAA filings in April, 2016 of most of the Urbancorp real estate group resulted in Saskin and Urbancorp being unable to complete the Epic Development.
33. That is when Plazacorp became involved. As of the date of the initial NOI commencing this proceeding, April 29, 2016, Mr. Pincus Kaufman (“Kaufman”) was the sole officer and director of Epic, having replaced Saskin.
34. Kaufman is the son-in-law of Heller. He is also the CEO of Plaza Partners and was, previously, the Vice President of Acquisitions for Plazacorp at the relevant time.
35. Importantly, since 2016, Plazacorp has remained in control of Epic, and Urbancorp has not exercised any control over Epic.
36. I pause in this chronology of relevant corporate events for a reminder of the relevant chronology of the CCAA proceedings at this same point in time. Subsequent to the events referred to above, but before the events referred to immediately below, the Claims Procedure Order was granted on December 16, 2016, fixing the claims bar date of January 27, 2017, and the original claims were filed. This is discussed further below. But first, I return to complete the relevant corporate chronology.
37. When the Epic condominium corporation (TSCC No. 2583) was registered on April 7, 2017, approximately one year after Plazacorp effectively stepped into the shoes of Urbancorp, the condominium declaration was signed by Kaufman. That registration allowed the transfer of the Epic Transferred Units (including, for greater certainty, the seven geothermal room units), all as contemplated in the Epic Termination Agreement referred to above.
38. Those seven geothermal units were transferred from Epic to an entity called Frankfleet Investments Limited (“Frankfleet”) on June 27, 2017 for total consideration of \$44,247.79. Immediately thereafter, Frankfleet transferred the same seven geothermal units back to the Epic condominium corporation (TSCC No. 2583) for the same consideration.
39. Frankfleet is a Plazacorp-related company, the officers and directors of which are also Heller and Kaufman. The head office of Frankfleet and Plazacorp is one and the same. The transfer documents relating to the seven geothermal units were authorized by Kaufman on behalf of Epic, and Heller signed the land transfer tax affidavit as secretary-treasurer of Frankfleet.
40. The remaining units were transferred to Regency (Bay) Holdings Inc. (“Regency”) two months later, on August 17, 2017, in 33 separate transactions. The Monitor states in its 45<sup>th</sup> Report that all transactions were below market rates (para. 39). (By way of representative example, residential suite 845, one parking spot and two locker units were

transferred from Epic to Regency for the aggregate sum of \$35,427.79). These transfers, too, were authorized by Kaufman on behalf of Epic, and his father-in-law Heller again signed the land transfer tax affidavit as the officer of Regency.

41. Regency (like Frankfleet) is also a related company to Plazacorp, the officers and directors of which are Heller and Kaufman, and the head office of which is the same location as that referred to above for Frankfleet and Plazacorp.
42. As soon as the transfer of the remaining units to Regency was completed, all units contemplated under the Epic Termination Agreement had been transferred to Plazacorp-related entities, and KJ Equity then discharged its mortgage securing those co-tenancy termination obligations.

### **The Claims Bar Date and the Original Claims**

43. As noted above, the court had granted the Claims Procedure Order on December 16, 2016, fixing a claims bar date of January 27, 2017.
44. Two days before that claims bar date, on January 25, 2017, the Monitor received identical unsecured placeholder claims from five Plazacorp-related companies (the “Placeholder Claims”). These five claimant companies included the three Claimants who now assert the Amended Claim: Wellesley, KJ Equity and Yonge-Abell, together with Epic on Triangle Park Inc. and 994, referred to above.
45. Those Placeholder Claims did not articulate specific claims against the Applicants. Nor did they specify any quantum, but rather stated: “unknown at this time”, and by way of supporting documentation, simply referred to the Termination Agreements (together with an amendment to the Edge Termination Agreement, all referred to as “settlement agreements”). No other materials or particulars were provided.
46. Each of the five original Placeholder Claims was signed by Robert Jacobs (“Jacobs”) as authorized representative of each respective claimant. Each Placeholder Claim listed Heller as the name of the contact in respect of that claim and specified his Plazacorp.com email address.
47. The Monitor carried out corporate searches in respect of these five original claimants. Of those five Plazacorp-related companies, the respective proofs of claim for all five list the same physical address for each original claimant, which is the same as the registered head office of Plazacorp. That address is also the registered head office for three of the five entities (those three being the three Claimants that now assert the Amended Claim).
48. Three of the five also have directors and officers in common with Plazacorp, Frankfleet and Regency (Kaufman and/or Heller). The other two list Jacobs, who had signed all five original claims submitted to the Monitor, as their director and officer (or one of their directors and officers together with Heller and Kaufman).
49. As set out in the 45<sup>th</sup> Report, the principals of those five original claimants are further tied together through the Central Condominium Real Estate Investment Trust, formed on

January 20, 2016 to indirectly acquire and hold a portfolio of condominium units, including up to 45 condominium units in Epic.

50. The limited partnership for that REIT was controlled by the general partner, which in turn was 80% owned by Jacobs. Heller was a trustee of the REIT. The offering memorandum for that REIT describes Heller and Jacobs as “partners and investors in connection with the Epic condominium project”, states that “Heller, one of the Trustees, is related to Robert Jacobs”, and further states that “the REIT expects to capitalize on its relationship with Plazacorp Investments Limited, a significant developer of residential condominiums ...”.
51. I pause here to emphasize what I stated above. The original Placeholder Claims submitted by the claims bar date on January 25, 2017 made no reference whatsoever to the liquidated damages clause in the Epic Termination Agreement, nor to any claim for \$12,500,000 (an amount that was known then to the original claimants since it is the amount of liquidated damages expressly set out in the Epic Termination Agreement).
52. That the Placeholder Claims made no reference to the liquidated damages clause is perhaps not surprising, since the events described above beginning at paragraph 37, and particularly the registration of the Epic condominium corporation and the subsequent transfer of the seven geothermal room units, had not yet occurred – the transfer of the geothermal room units would happen months later on June 27, 2017. It is that transfer that triggered the liquidated damages clause, so there would have been no reason to make reference to that clause at the time the original Placeholder Claims were filed (and nor would there be any basis for a claim based on the liquidated damages clause).
53. The evaluation of the original Placeholder Claims with the Monitor, however, continued.
54. The original claimants provided, albeit only following recourse to the Claims Officer at the request of the Monitor, particulars of the Placeholder Claims on March 9, 2022, some five years after they had been submitted and the claims bar date had passed. The claimants particularized the quantum of their claims in the aggregate amount of \$3,987,496.40. They particularized the basis for the claims as amounts due pursuant to loans made to Epic by the principal of Plazacorp, Heller.
55. The particulars were supported by materials delivered to the Monitor by Mr. Israel Jacobs, an assistant controller with Plazacorp, including what Israel Jacobs described as an “Epic Loan Document”, setting out the basis for the exact quantum claimed, based on outstanding the principal and a calculation of accrued interest.
56. The preamble to that Epic Loan Document particularized the Placeholder Claims with precision. It described in considerable detail how Heller advanced funds to the Epic project through his companies, resulting in the outstanding loan that the Epic Loan Document described as the Gerrard loan. It was supported, both in the Document itself and by way of subsequent electronic mail exchanges between Israel Jacobs and the Monitor, by a detailed schedule showing disbursements and advances by way of cheque and wire transfer.
57. In that electronic mail exchange, the address footer for Israel Jacobs at Plazacorp is the physical address referred to above as the registered head office for Plazacorp and the contact address for all five entities who submitted the Placeholder Claims.

58. What was still not clear, however, was what proportion of the aggregate amount claimed of \$3,987,496.40 was claimed as against which debtor entity, and what proportion of the aggregate amount related to principal as opposed to accrued interest.
59. On May 13, 2022, the Monitor sought, again through the Claims Officer, further particulars of the Placeholder Claims, including particulars as to which Claimant had advanced funds and in what quantum. The Monitor also requested proof of such advances in an effort to evaluate and verify the particular advances as claimed.
60. After another delay of approximately two months, when no such further particulars were received, the Monitor sought a further case conference on July 4, 2022.
61. Some two weeks later still on July 19, 2022, the original claimants retained counsel in respect of the Placeholder Claims already filed and particularized. The Monitor was advised that an amended proof of claim would be forthcoming.

### **The Amended Claim and the Test in *Blue Range***

62. Several more months passed. Finally, on December 5, 2022, the Amended Claim was filed. Epic on Triangle Park Inc. and 994 were (and are) no longer claimants at all. Only KJ Equity, Wellesley, and Yonge-Abell now assert claims. Whether that is because neither of the former claimants was ever owed any proportion of the loan principal plus accrued interest is unknown, because the claimants have never provided that information.
63. Nor is any claim relating to those loans advanced by the other three claimants who now advance the Amended Claim either. Indeed, such a claim is expressly disavowed by Heller in his affidavit, as discussed below.
64. The Amended Claim is no longer a claim relating to a loan or loans advanced by Heller to Epic through his companies in the aggregate amount of \$3,987,496.40 inclusive of interest. It is now a claim for \$12.5 million in liquidated damages based upon the claim that the seven transferred Epic geothermal units “were never delivered” to Wellesley.
65. The attached “Details of Claim” appended to the Amended Claim describes in detail the alleged breach of paragraph 6 of the Epic Termination Agreement, the liquidated damages sum of \$12,500,000, how the obligation to deliver the Epic Transferred Units (including the geothermal units) is an Urbancorp Charge Obligation as defined in the Epic Termination Agreement, and that it is an obligation owed to all three Claimants.
66. The Claimants assert on this motion that a mistake was made about the nature of the claims when the Placeholder Claims were originally filed, and when that mistake was realized (i.e., some six years later), they filed an Amended Claim which corrected the mistake, particularized the quantum of the “unknown” amount set out in the original claim, and advanced the Amended Claim to seek liquidated damages of \$12,500,000 owed because geothermal units were not transferred to Wellesley as required under the Epic Termination Agreement.
67. They submit that the Epic Termination Agreement is straightforward and that the liquidated damages clause was triggered, with the result that, as the Claimants state in

their factum, “the uncontradicted (and unchallenged by cross-examination) evidence on this motion is that the geothermal units were not transferred to Wellesley as called for by the contract ...”. The Claimants submit that the delay from 2017 to 2021, and separately the delay from 2021 to 2022, were both “the result of inadvertence” and not the result of bad faith. They submit that the delay from 2021 to 2022 “stemmed from an error made by Matthew Gordon.”

68. As noted above, the Claimants filed on this motion an affidavit from each of Heller and Gordon. In his affidavit, Heller makes various statements that, as indicated opposite each italicized quote below, do not in my view assist the arguments advanced by the Claimants:

- a. *[At the time the original claims were filed, it was not known] whether the Urbancorp entities in the Epic Termination Agreement and the Edge Termination Agreement would be able to fulfil their obligations contained in those agreements.*

As noted above, the Placeholder Claims could not have referred to any claim owing pursuant to the \$12,500,000 liquidated damages clause because the events triggering that clause - brought about by the related entities as described above - had not yet occurred;

- b. *[The original claims] were intended to preserve the right to claim compensation if there was a breach of either [Termination Agreement]. They were filed for an “unknown” amount because the amount owing for any potential breach of the agreements, and the identity of the parties to whom it might eventually be owed, were at that time unknown.*

As stated above, this is completely incongruent with the entire electronic-mail exchange between the Monitor and Israel Jacobs, the assistant controller of Plazacorp, who over the course of several continuing exchanges with the Monitor, set out in detail the exact amount of the original claim asserted and provided a schedule purporting to show advances and interest calculations and other particulars. There is no mention whatsoever in Heller’s affidavit of this entire exchange notwithstanding that Israel Jacobs was his assistant controller for Plazacorp. It is simply unexplained.

There is no affidavit whatsoever from (Robert) Jacobs, the individual who filed the original five claims. At paragraph 24 of his affidavit, Heller states, on information and belief from Jacobs, the facts referred to in subparagraphs “a” and “b” above. Again, there is no reference to the subsequent particulars provided by Israel Jacobs;

- c. *When the Amended Claim was prepared, I was not aware that Matthew Gordon had made a mistake in 2021 regarding the basis for the claim. I did not know that both he and the Monitor had been under the mistaken impression that the [original claim] related to the balance due on the Plazacorp Obligation. I only became aware of that mistake when I received*



*the Monitor's motion record and asked to review the correspondence between the Monitor and Plazacorp representatives.*

This statement, also, ignores the fact that Israel Jacobs must, according to Heller, also have been mistaken during his entire exchange with the Monitor and his repeated and continuing delivery of particulars of the loan and accrued interest. There is no affidavit from Israel Jacobs either.

- d. *It should never have been suggested that the original proofs of claim related to a breach of the Plazacorp Obligation. The Plazacorp Lenders do not have a claim against Edge - their only claim is against Epic. ... The Epic Termination Agreement provides only that Edge is responsible for the Wellesley Obligation ....*

There are two problems with this for the Claimants.

First, the original Placeholder Claim is admitted by Heller to have had no merit with the result, in my view, that a further particularization of the claim cannot resurrect or continue it.

Second, in my view the Amended Claim is (ironically as Heller himself states) a completely new and different claim. The assertion that liquidated damages are owing as a result of the failure to deliver the geothermal floor units resulting in an automatic liquidated damages claim for \$12,500,000 is qualitatively and quantitatively completely different and distinct from a claim for loans said to be owing in respect of advances made by Heller to the Epic Project as particularized in the Epic Loan Document in the aggregate amount, inclusive of interest, of \$3,987,496.40.

69. In my view, the Gordon affidavit does not assist the Claimants either. Gordon states that he is Director of Operations for the Plazacorp Group of Companies. He began working for Plazacorp in February 2017. It follows, in my view, that he cannot have any direct knowledge whatsoever of the original claims nor of any of the events that preceded them. Indeed, he admits in candour at paragraph 3 of his affidavit that when the original proofs of claim were filed in January 2017, he was not involved in that process and had no knowledge about it.
70. Gordon goes on to state that correspondence he delivered to the Monitor in July, 2021, which was clearly to the effect that the original proofs of claim were not withdrawn and that the unpaid balance due from the Applicant to the Plazacorp Lenders was a responsibility of Edge, (which I observe, was the basis for the original claims), "was a mistake" and that he:

misunderstood what [Heller] told me. ... I thought that ... the original proof of claim was for the same amount as the balance subsequently owing to the Plazacorp Lenders. I now understand that [Heller] was telling me that the claim of the Wellesley investors against Edge resulted from the fact that Plazacorp Lenders sold the

geothermal unit to reduce the debt owing to them. [Emphasis in original.]

71. Nor can it be said that the claimants simply did not advert to the status of, or recall, the then outstanding original Placeholder Claims until six years later when the Amended Claim was filed. On the contrary, there were repeated exchanges with the Monitor.
72. As reflected in the correspondence attached as Exhibits to the Gordon Affidavit, the Monitor wrote to the Claimants (Heller specifically) on May 11, 2021, advised that the Monitor was in the process of preparing an interim distribution and that “the Plazacorp [Entities’] claims are being valued at zero for distribution purposes.” The Claimants were asked to contact the Monitor with any questions or additional information. There was no response.
73. The Monitor followed up by correspondence to Heller on June 25, 2021, confirming the earlier letter and stating that: “to effect the distribution to the unsecured creditors the Monitor requires your acknowledgement in writing that you agree that the Plazacorp Entities’ claims will be valued at zero for distribution purposes or alternatively please advise that you are withdrawing these claims.”
74. On July 2, 2021, Gordon replied on behalf of the original claimants to advise that they were not withdrawing the Placeholder Claims, and he stated that: “most recently we sent you information showing a \$5 million deficit owed by Epic to us, and Edge is responsible for Epic’s deficits. That number is now at approx. \$2.5 million, following the sale of a retail unit.” That was four years after the date on which the Claimants now assert that the liquidated damages clause was triggered.
75. In his Affidavit, Gordon makes no reference to Israel Jacobs or this lengthy exchange he had with the Monitor by which he provided particulars of the Placeholder Claims as originally asserted.
76. In my view, and having considered all of the evidence, the Claimants fail the first element of the *Blue Range* test.
77. Further in my view, the Placeholder Claims were not submitted in error or through inadvertence. They were submitted intentionally. Then, over the succeeding six-year period, they were repeated, affirmed and particularized, including with the delivery of the Epic Loan Document and schedules setting out the dates of advances and other particulars.
78. The Placeholder Claims were particularized as a claim for principal and interest on unpaid loans, with supporting documentation. This was confirmed repeatedly in electronic mail correspondence and at case conferences with the Claims Officer by and on behalf of the Claimants multiple times over multiple years.
79. I do not accept that all of that was simply inadvertent. There was nothing in the evidence to the effect that it was inadvertent at all until the responding materials were filed in response to this motion. For the reasons set out above, neither the Heller Affidavit nor the Gordon Affidavit changes my view.

80. Moreover, even if the Placeholder Claims were based on a completely erroneous foundation, and further if the repeated failures to correct the fundamental basis asserted for them, were all inadvertent, the Claimants would still fail to meet the first element of the *Blue Range* test in my view because I am not persuaded that they have acted in good faith. The events triggering the contractual obligation to pay the liquidated damages in the first place were brought about by the Claimants and/or related parties with whom the Claimants are under common control, such that the parties seeking to benefit from the allowance of the Amended Claim effectively brought it about in the first place. That is not consistent with the obligation to act in good faith.
81. Simply put, Heller was directly or indirectly on both sides of all relevant transactions at the relevant time. This is not consistent with the first element of the *Blue Range* test. Heller was not a stranger to the transactions on which the Amended Claims depend. In his own Affidavit, he asserts that he does not consider Wellesley to be a Plazacorp company “because it is not, using the Monitor’s description, part of “a portfolio of single-purpose real estate development entities controlled by [me]””. Yet in the same paragraph he goes on to admit that he is a director of Wellesley and that he holds that office at the request of his extended family and friends.
82. In my view, and notwithstanding the evidence of Heller to the effect that he alone did not control Wellesley, it was controlled by his own extended family and friends and he himself was a director. He cannot credibly assert that he is a stranger to that entity or to the transactions to which it is a party. To repeat the obvious, it was the counterparty to the relevant transaction with entities that he clearly controlled.
83. In effect, the position of the Claimants distills to the submission that they themselves did not bring about the transaction that triggered the \$12.5 million obligation because, although one side of the bargain was Plazacorp Entities, the other side was not, even though it was controlled by family and friends of Heller and he was a director.
84. Further, the Claimants assert that they had no obligation to seek the consent of the Monitor even though the transaction was undertaken during this CCAA proceeding, and they further assert that they had no obligation to advise the Monitor that the transaction triggered a material liability of one of the debtor companies. They stood by and let the Monitor proceed to implement an interim distribution, reached following a negotiated consent of all affected parties, still without disclosing the transaction, let alone filing the Amended Claim until years later.
85. Finally, they now assert that notwithstanding all of this, it was not necessary to even disclose the transaction or to file the Amended Claim until 2022, when a final distribution was being planned.
86. The true facts underlying the Amended Claim were discovered only by significant investigative work by the Monitor. They were not disclosed by the Claimants, let alone on a timely basis.

87. Moreover, the Claimants are claiming liquidated damages of \$12,500,000. But these damages arise as the result of a transaction where the Claimants' own principals transferred the geothermal units from one entity to another for stated consideration of only \$44,247.89.
88. I also pause to observe that, as stated above, this transaction occurred during the CCAA proceeding. Even though all of the parties to that transaction were not subject to the terms of the stay, one would have expected the Claimants and their principals (particularly Heller) to have advised the court-appointed Monitor that they were implementing a transaction that, in their view, was about to trigger a \$12.5 million liability in one of the Debtor entities.
89. The Claimants submit that consent of the Monitor was not required for the transaction, and that a creditor is entitled to arrange their affairs to best advantage themselves, even if their actions trigger a monetary obligation of a debtor in creditor protection. I accept that this may generally be accurate, but that is not dispositive of the issue given the good faith requirement. In my view, however, the manner in which the transaction was carried out, without even notice to the Monitor (whether or not consent was required) is relevant to an evaluation of good faith as part of the *Blue Range* analysis.
90. None of what occurred here is consistent with the obligation to act in good faith.
91. For all of the above reasons, I find that the Claimants cannot meet the first element of the *Blue Range* test. For that reason alone, the Monitor is directed to reject the Amended Claims.
92. However, even if the first element of the test had been satisfied, in my view there has been relevant prejudice.
93. On May 27, 2021, R.S.J. Morawetz (as he then was) made an order authorizing various interim distributions of approximately \$11 million to the stakeholders in the two related estates. That order was made on the consent of the parties, following a negotiated settlement among affected stakeholders. The Monitor submits that it is impossible to retroactively deconstruct that settlement to determine the extent to which the affected stakeholders may have asserted different positions if the additional \$12,500,000 of exposure had been part of the factual matrix.
94. The Claimants submit that there can have been no prejudice arising out of the consent order and the settlements that order implemented since at that time, the original claims were still extent with the result that all affected parties went into the negotiations leading to the consent interim distributions on the basis that there were five placeholder claims outstanding for unknown amounts.
95. However, this submission is made notwithstanding the admission from Heller on this motion that the original Placeholder Claims do not now, and never did, have any merit and ought not to have been asserted.
96. The Claimants could have, but did not, provide the particulars of the Amended Claims such that the Monitor and the other affected stakeholders could have considered their respective positions, including but not limited to with respect to the consent interim distribution. From

the very moment the transaction that is said to give rise to the liquidated damages claim was completed - back in 2017, and forward through to the date of the claims bar and the consent interim distribution in May 2022, the Claimants or those controlling them knew all of the facts to particularize the Amended Claims.

97. This is not a case where, for example, they were awaiting information or documents from a third party. They of course had all relevant documents (largely because they themselves created them) and were aware of all relevant facts. Yet they did not disclose them.
98. I accept and agree with the proposition advanced by the Claimants that it is not enough, in order for the court to reject a late or amended claim, that the other creditors will be prejudiced if it is allowed by the simple fact that their own recovery will be diluted. To conclude otherwise would be to conclude that every claim, whether submitted before or after a claims bar, should be disallowed because it would dilute recoveries of other creditors, and that is obviously incorrect.
99. Here, however, I am satisfied that Heller and the relevant corporate entities were all aware by 2017 of the events the Claimants asserted for the first time in 2021 by filing the Amended Claim.
100. To be clear, not only was Heller aware of whether the geothermal units had been delivered or not years before the Amended Claim was filed, but he controlled the entities on both sides of the transaction. He controlled whether the units were delivered or not. None of this was disclosed to the Monitor, which discovered the relevant relationships between and among the parties only during the course of its investigation as to who controls the relevant parties and what units were in fact delivered when.
101. In such circumstances, in my view it is not sufficient for the Claimants to essentially submit, as they do here, that since the Monitor had not made a full distribution to creditors, there is no prejudice to any stakeholder if the Amended Claim is allowed.
102. In my view, the prejudice arises, at least in large part, from the fact that the very basis for the Amended Claim was brought about intentionally during the CCAA proceeding involving certain of the debtors against which the Amended Claim is asserted.
103. Nor is this a case where there was a technical failure to comply with the claims bar date, but the delay was relatively short. Extraordinarily here, the period of delay was just short of six years. During those six years, the stakeholders in this CCAA proceeding negotiated a consent distribution. A final distribution to creditors has been held up specifically because of the Amended Claim.
104. Further, in my view, the extraordinary delay here is not adequately explained, and an explanation is required: *Re: SemCanada Crude Company (Celtic Exploration Ltd. #2)*, 2012 ABQB 489, 546 A.R. 203 ("*SemCanada*"), at para. 62. I cannot accept the explanation offered by Heller, in the face of the clearly articulated and particularized loan repayment basis for the original Placeholder Claims, confirmed and further particularized repeatedly by officers of the relevant entities that he controlled. He simply stated that he did not realize the error until he asked to see the correspondence with the Monitor years

after it had been sent. Again, the error was not typographical, or technical or temporal; the entire basis for, and quantum of, the claim was completely new and different.

105. As observed by this court in *Timminco Limited (Re)*, 2014 ONSC 3393, 14 C.B.R. (6th) 113, at paras. 41 – 44, claims bar dates matter in CCAA proceedings: “it is of fundamental importance to determine the quantum of liabilities to which the debtor ... [is] subject. ... By establishing a claims bar date, the debtor can determine the universe of claims and the potential distribution to creditors, and creditors are in a position to make an informed choice as to the alternatives presented to them.”
106. This policy objective was reinforced by the court in *SemCanada* at para. 53 and at para. 62, where it stated:

the objective of a claims procedure order is to attempt to ensure that all legitimate creditors come forward on a timely basis. ... The fact that accurate information relating to the amount and nature of claims is essential for the formulation of a successful plan requires that the specifics of a claims procedure order should generally be observed and enforced, and that the acceptance of a later claim should not be an automatic outcome.
107. I am satisfied that to allow the Amended Claims now would result in prejudice that in the circumstances cannot be remedied by the imposition of any conditions or terms.
108. Considered together, all of the facts and circumstances surrounding the Amended Claim make this case distinguishable from both *Blue Range* and *Target*. The courts in those cases were faced with claims filed late or amended late as a result of missed invoices, a mistaken classification of claim (secured vs. unsecured) or errors in naming the correct debtor party.
109. Considering all of the evidence here, the situation is materially distinguishable from those cases for all of the reasons set out above. The Claimants, or at least the principals controlling them, knew of with precision, and indeed were participants in causing, the very events and transactions that now underlie their Amended Claim. Yet they did not disclose the fact of the transactions nor assert the Amended Claim literally for years.
110. The present circumstances are not analogous to those other cases where the court applied the *Blue Range* test and allowed the claims. Nor are they consistent with the general principles applied in those cases. CCAA proceedings, and the insolvency regime generally, have the policy objective of identifying and evaluating claims, often on a summary basis but virtually always on an expeditious basis.
111. That is why claims bar dates are imposed in the first place. That is also why exceptions to the claims bar (i.e., accepting a late claim or a claim that was amended late) are granted sparingly and only in those cases where the *Blue Range* test is met.
112. Effectively, and consistent with the objective of the court in insolvency proceedings to balance the interests of all stakeholders but to do so in the context of “real-time litigation”, claimants who seek relief from a claims bar are required to move swiftly, in good faith and with full disclosure. In my view, the thrust of the *Blue Range* analysis, as articulated and

reaffirmed in *Target*, is that where a claimant has made an honest mistake, has moved swiftly to correct that mistake, and the prejudice to other creditors can be managed, that claimant is usually entitled to assistance from the court.

113. None of that describes the circumstances before me.
114. Finally, and even if I were in error with respect to the analysis above, I accept the position of the Monitor that the discharge of the KJ Equity Mortgage is, on the basis of the record filed on this motion, determinative of the Amended Claim in any event.
115. Article 3 of the Epic Termination Agreement provides, in relevant part, that “[t]he Charge to secure the Jane-Abell Investment and the Urbancorp Charge Obligations will be given by Epic ... to KJ in the principal sum of \$12,500,000 ... Upon fulfilment and satisfaction of the Urbancorp Charge Obligations the Charge shall be discharged.”
116. The “Urbancorp Charge Obligations” are defined to include the “transfer [of] the Epic Transferred Units”, which, as described above, include the geothermal units in the Epic Development.
117. The evidence is clear that the KJ Equity mortgage was discharged on August 17, 2017 (two months after the transfer of the geothermal room units to Frankfleet and then to the Epic condominium Corporation and immediately following the transfer of the remaining condominium units.
118. The Monitor submits that the discharge of that mortgage is sufficient evidence that the parties at that time understood that the obligations of Epic under the Termination Agreement were fulfilled. The Monitor also submits that the current Amended Claim is completely inconsistent with the actions of the Claimants taken in 2017 (i.e., the discharge of the mortgage).
119. All of this is set out in the 45<sup>th</sup> Report, which the Claimants had prior to filing their responding materials on this motion, and yet those materials are silent on this issue. There is no explanation offered for why the Amended Claim should survive notwithstanding the discharge of the mortgage in 2017. There is no explanation for why the mortgage was discharged in the first place if the obligations of Epic under the Termination Agreement were not fulfilled and, as is now alleged, \$12,500,000 was still owing.
120. Even today, the disclosure is lacking. As of the date of the 45<sup>th</sup> Report, the Monitor has still not been provided with the direction in writing evidencing the identity of the Plazacorp nominee, and the direction is missing from the amended proof of claim.
121. As a result, the Monitor is still unable to determine which Claimant - if any - has standing to assert the Amended Claim (45<sup>th</sup> Report, para. 33). This is required since Article 6 of the Epic Termination Agreement expressly provides that the units “shall be transferred to a nominee of [Wellesley] as [Wellesley] shall direct in writing ...”
122. To this I would add that even on this motion, the direction has not been provided by the Claimants as part of their Record filed. It follows that the Claimants have still not demonstrated what is in the circumstances a condition precedent to Wellesley being in a

position to assert a claim at all. This alone is sufficient to reject the Amended Claim, and that is all the more so in the context of the circumstances I have described above. By that I mean that the absence of the direction is both substantively fatal to the Claimants being able to establish that they are entitled to assert the Amended Claim and also represents a continuing failure by the Claimants to disclose all relevant facts and documents.

123. Notwithstanding the absence of evidence, the Claimants assert in their factum that the discharge of security is not a release of any underlying debt and that the discharge of the KJ Mortgage in particular does not provide any legal justification for the failure of Epic to deliver the geothermal units to Wellesley.
124. I accept the general proposition that there could be good and valid reasons why a secured creditor, whose outstanding debt obligation was secured by a mortgage against title to real property, might consent to the discharge of that security even though the debt had not been repaid. However, in my view and in the particular circumstances of this case, the failure to offer any explanation for the discharge of the mortgage here that is different from the obvious one (i.e., that the debt had been satisfied) further increases my concerns about the absence of good faith on the part of the Claimants. If there is an explanation for this, they have elected not to provide it.

### **Result and Disposition**

125. The Monitor is directed to reject the Amended Claim.
126. No party sought costs, as is clear from the Notice of Motion of the Monitor and the factum of the Claimants, and none are awarded.
127. Order to go to give effect to these reasons.



Osborne J.



# T A B L E

Urbancorp Cumberland 2 L.P. ("Cumberland LP") (Assumption 1)  
Cash Flow Forecast  
January 14, 2024 to June 2, 2024

		W/E 1	W/E 2	W/E 3	W/E 4	W/E 5	W/E 6	W/E 7	W/E 8	W/E 9	W/E 10	W/E 11	W/E 12	W/E 13	W/E 14	W/E 15	W/E 16	W/E 17	W/E 18	W/E 19	W/E 20	
	Assumptions	21/Jan/2024	28/Jan/2024	4/Feb/2024	11/Feb/2024	18/Feb/2024	25/Feb/2024	3/Mar/2024	10/Mar/2024	17/Mar/2024	24/Mar/2024	31/Mar/2024	7/Apr/2024	14/Apr/2024	21/Apr/2024	28/Apr/2024	5/May/2024	12/May/2024	19/May/2024	26/May/2024	2/Jun/2024	Total
<b>Cash Receipts</b>																						
Mortgage Receivable Payments		-	7,063	-	-	-	-	7,063	-	-	-	7,063	-	-	-	7,063	-	-	-	-	7,063	35,315
<b>Total Cash Receipts</b>		-	<b>7,063</b>	-	-	-	-	<b>7,063</b>	-	-	-	<b>7,063</b>	-	-	-	<b>7,063</b>	-	-	-	-	<b>7,063</b>	<b>35,315</b>
<b>Cash Disbursements</b>																						
Unsecured creditor distribution	2	1,600,000																				
Professional Fees	3		15,000				15,000		15,000							15,000				15,000		75,000
<b>Total Cash Disbursements</b>		<b>1,600,000</b>	<b>15,000</b>	-	-	-	<b>15,000</b>	-	-	-	<b>15,000</b>	-	-	-	-	<b>15,000</b>	-	-	-	<b>15,000</b>	-	<b>(75,000)</b>
<b>Net Change in Cash</b>		(1,600,000)	(7,937)	-	-	-	(15,000)	7,063	-	-	(15,000)	7,063	-	-	-	(7,937)	-	-	-	(15,000)	7,063	
Opening Balance - Cash Balance		3,622,825	2,022,825	2,014,888	2,014,888	2,014,888	2,014,888	1,999,888	2,006,951	2,006,951	2,006,951	1,991,951	1,999,014	1,999,014	1,999,014	1,999,014	1,991,077	1,991,077	1,991,077	1,991,077	1,976,077	
<b>Closing Balance - Cash Balance</b>		<b>2,022,825</b>	<b>2,014,888</b>	<b>2,014,888</b>	<b>2,014,888</b>	<b>2,014,888</b>	<b>1,999,888</b>	<b>2,006,951</b>	<b>2,006,951</b>	<b>2,006,951</b>	<b>1,991,951</b>	<b>1,999,014</b>	<b>1,999,014</b>	<b>1,999,014</b>	<b>1,999,014</b>	<b>1,991,077</b>	<b>1,991,077</b>	<b>1,991,077</b>	<b>1,991,077</b>	<b>1,976,077</b>	<b>1,983,140</b>	

- Assumptions**
- 1. Cumberland LP is the beneficial owner of the assets of Edge on Triangle Park Inc. ("Triangle") and Edge Residential Inc. ("Residential") pursuant to declarations of trust, and has no current operations.
  - 2. This amount represents a distribution to the unsecured creditors
  - 3. This amount reflects professional fees expected to be incurred by the Monitor and the Monitor's counsel.

		W/E 1	W/E 2	W/E 3	W/E 4	W/E 5	W/E 6	W/E 7	W/E 8	W/E 9	W/E 10	W/E 11	W/E 12	W/E 13	W/E 14	W/E 15	W/E 16	W/E 17	W/E 18	W/E 19	W/E 20	
	Assumptions 2	21/Jan/2024	28/Jan/2024	4/Feb/2024	11/Feb/2024	18/Feb/2024	25/Feb/2024	3/Mar/2024	10/Mar/2024	17/Mar/2024	24/Mar/2024	31/Mar/2024	7/Apr/2024	14/Apr/2024	21/Apr/2024	28/Apr/2024	5/May/2024	12/May/2024	19/May/2024	26/May/2024	2/Jun/2024	Total
Cash Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Disbursements																						
Professional Fees	3	-	-	-	1,500	-	-	-	-	1,500	-	-	-	1,500	-	-	-	-	1,500	-	-	6,000
Total Cash Disbursements		-	-	-	1,500	-	-	-	-	1,500	-	-	-	1,500	-	-	-	-	1,500	-	-	6,000
Net Change in Cash		-	-	-	(1,500)	-	-	-	-	(1,500)	-	-	-	(1,500)	-	-	-	-	(1,500)	-	-	-
Opening Balance - Cash Balance		190,842	190,842	190,842	190,842	189,342	189,342	189,342	189,342	189,342	187,842	187,842	187,842	187,842	186,342	186,342	186,342	186,342	186,342	184,842	184,842	184,842
Closing Balance - Cash Balance		190,842	190,842	190,842	189,342	189,342	189,342	189,342	189,342	187,842	187,842	187,842	187,842	186,342	186,342	186,342	186,342	186,342	184,842	184,842	184,842	184,842

Assumptions

1. Westside is a wholly-owned subsidiary of Urbancorp Cumberland 2 L.P. and constructed the Westside Gallery Lofts and Curve developments. It has no ongoing operations.

2. Given the uncertainty of the timing of proceeds for the cash flow does not include any projected receipts.

3. This amount reflects professional fees incurred by the Monitor and its counsel.

Bosvest Inc. ("Bosvest") (Assumption 1)  
Cash Flow Forecast  
January 14, 2024 to June 2, 2024

		WE 1	WE 2	WE 3	WE 4	WE 5	WE 6	WE 7	WE 8	WE 9	WE 10	WE 11	WE 12	WE 13	WE 14	WE 15	WE 16	WE 17	WE 18	WE 19	WE 20	Total
	Assumptions	21/Jan/2024	28/Jan/2024	4/Feb/2024	11/Feb/2024	18/Feb/2024	25/Feb/2024	3/Mar/2024	10/Mar/2024	17/Mar/2024	24/Mar/2024	31/Mar/2024	7/Apr/2024	14/Apr/2024	21/Apr/2024	28/Apr/2024	5/May/2024	12/May/2024	19/May/2024	26/May/2024	2/Jun/2024	
Cash Receipts																						
Total Cash Receipts		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Disbursements	2																					
Professional Fees		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Disbursements		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Change in Cash		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Opening Balance - Cash Balance		2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430
Closing Balance - Cash Balance		2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430	2,430

Assumptions  
1. Bosvest is a holding company that owns the shares of Edge on Triangle Park Inc. and Edge Residential Inc. and has no current operations.  
2. The Monitor does not anticipates incurring professional fees with respect to Bosvest.

Urbancorp Cumberland 2 GP Inc. ("Cumberland GP") (Assumption 1)  
Cash Flow Forecast  
January 21, 2024 to June 2, 2024

	W/E 1	W/E 2	W/E 3	W/E 4	W/E 5	W/E 6	W/E 7	W/E 8	W/E 9	W/E 10	W/E 11	W/E 12	W/E 13	W/E 14	W/E 15	W/E 16	W/E 17	W/E 18	W/E 19	W/E 20	
Assumptions	21/Jan/2024	28/Jan/2024	4/Feb/2024	11/Feb/2024	18/Feb/2024	25/Feb/2024	3/Mar/2024	10/Mar/2024	17/Mar/2024	24/Mar/2024	31/Mar/2024	7/Apr/2024	14/Apr/2024	21/Apr/2024	28/Apr/2024	5/May/2024	12/May/2024	19/May/2024	26/May/2024	2/Jun/2024	Total
<u>Cash Receipts</u>																					
Transfer from Urbancorp Cumberland 2 LP	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<u>Cash Disbursements</u>																					
Professional Fees	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Change in Cash	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Opening Balance - Cash Balance	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201
Closing Balance - Cash Balance	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201	201

Assumptions  
1 Cumberland GP is the general partner for Urbancorp Cumberland 2 L.P. who is the beneficial owner of the assets of Edge on Triangle Park Inc. and Edge Residential Inc. pursuant to declarations of trust and has no current operations.  
2 The Monitor does not anticipates incurring professional fees with respect to Cumberland GP.

TAB F

Court File No: CV-16-11541-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P.,  
BOSVEST INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC., AND  
WESTSIDE GALLERY LOFTS INC.

**AFFIDAVIT OF ADAM ERLICH**

I, **ADAM ERLICH**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**, as follows:

1. I am a Vice President of The Fuller Landau Group Inc. ("**Fuller**"), which was appointed as the proposal trustee (the "**Proposal Trustee**") without security, of all the assets, undertakings and properties of Urbancorp Cumberland 2 GP Inc., Urbancorp Cumberland 2 L.P., Bosvest Inc., Edge on Triangle Park Inc., and Edge Residential Inc. (collectively, the "**Initial Companies**"). On October 6, 2016 an Order was granted to allow the proposal proceedings to continue under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Fuller was appointed as monitor (the "**Monitor**"). On October 25, 2018 an Order was granted adding Westside Gallery Lofts Inc. (collectively with the Initial Companies, the "**Companies**") as applicant to the CCAA Proceedings. As such, I have knowledge of the matters to which I hereinafter deposed to, except where stated to be on information and belief and whereas stated I verily believe such to be true.
2. Attached and marked **Exhibit "A"** to my affidavit is a true copy of the detailed billing setting out the fees and disbursements of Fuller incurred in its role as Monitor of the Companies (the "**Accounts**"), in the amount of 16,572.30 comprising fees of \$14,630.50,

disbursements of \$35.25 and HST of \$1,906.55. This sum includes an invoice for Westside Gallery Lofts Inc. amounting to \$1,520.47 for the period between August 22, 2023, to October 31, 2023, with all other invoices covering the period from September 1, 2023, to December 31, 2023.

- 3. The Accounts include a summary providing the names of the personnel providing the services reflected in the Accounts, the number of hours spent by such personnel and their hourly rate. Total fees are \$14,630.50 and total hours are 42.60, resulting in an average hourly rate of \$343.44.
- 4. Given the complexity of this insolvency matter, I believe the hourly rates and the total amount of fees are reasonable and comparable for insolvency services of this nature rendered by other firms in the City of Toronto.
- 5. This affidavit is sworn in connection with the approval of the fees and disbursements of Fuller and for no improper purpose.

**SWORN BEFORE ME** at the  
City of Toronto, this 17<sup>th</sup>  
day of January 2024

\_\_\_\_\_  
A Commissioner for Taking Affidavits, etc.

Gary Frank Abrahamson, a  
Commissioner, etc., Province of Ontario,  
for The Fuller Landau Group Inc., and its  
associates and affiliates.  
Expires February 23, 2025.

)  
)  
)  
)  
)



\_\_\_\_\_  
**ADAM ERLICH**



Attached is Exhibit "A"

Referred to in the

**AFFIDAVIT OF ADAM ERLICH**

Sworn before me

This 17<sup>th</sup> day of January 2024

\_\_\_\_\_  
Commissioner for taking Affidavits, etc.

Gary Frank Abrahamson, a  
Commissioner, etc., Province of Ontario,  
for The Fuller Landau Group Inc., and its  
associates and affiliates.  
Expires February 23, 2025.

# INVOICE

Fuller  
Landau

**Urbancorp Cumberland 2 L.P.**  
c/o The Fuller Landau Group Inc., CCAA Monitor  
151 Bloor Street West, 12th Floor  
Toronto, ON M5S 1S4

**Invoice No.** 167626  
**Client No.** 1307088:01-GFA

September 30, 2023

---

## FOR PROFESSIONAL SERVICES RENDERED:

With respect to our appointment as Monitor under the Companies' Creditors Arrangement Act of Urbancorp 2 L.P. for the period of September 1, 2023 to September 30, 2023 as set out in the attached time dockets.

## OUR STANDARD FEE

A. Erlich - 9.50 hrs. @ \$500.00 /hr.  
M. Niva - 8.95 hrs. @ \$265.00 /hr.

<b>Our fee</b> .....	\$	7,121.75
<b>HST</b> .....		925.83
<b>BALANCE DUE</b> .....	\$	<b>8,047.58</b>

---

HST Registration No. R130795669

*Payment is due on receipt of account. Amount outstanding in excess of thirty days will be charged interest at 12% per annum until paid in full.*

---

Please visit the Client Resources section on our website at [www.fullerllp.com](http://www.fullerllp.com) if you wish to pay your account by Visa or MasterCard

Please remit to:

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Toronto, Ontario M5S 1S4  
**T** 416-645-6500  
**F** 416-645-6501

[fullerllp.com](http://fullerllp.com)

## Billing Worksheet

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 9/30/2023
- Engagement ID: 1307088:01 to 1307088:01

Primary Partner: **Abrahamson G, Gary (GFA)**

Master Client: 1307088 - Urbancorp Cumberland 2 L.P.

1307088:01 - Urbancorp Cumberland 2 L.P. - **GFA**

Retainer Balance

0.00

WIP

7,121.75

Progress

0.00

Net WIP

7,121.75

AR Balance

7,384.55

WIP						Memo	Rate	Hours	Amount
CRI	CBA	CBA80	General	MLN	25/09/2023	file RT0001 return for 2022	\$265.00	0.60	159.00
CRI	CBA	CBA80	General	MLN	26/09/2023	f/up creditor re missing distribution; confirm payment has not cleared monitor's account	\$265.00	0.55	145.75
CRI	CBA	CBA80	General	MLN	28/09/2023	request stop payment Sunstate; review information request MNP	\$265.00	1.10	291.50
CRI	CBA	CBA80	General	MLN	29/09/2023	reissue payment to Sunstate; prepare tax information for MNP	\$265.00	1.40	371.00
						<b>CBA Totals:</b>		<b>3.65</b>	<b>967.25</b>
CRI	CNS	CNS80	General/Consulting	MLN	05/09/2023	call/email The Condo Store re: distribution details; pay outstanding disbursement	\$265.00	1.30	344.50
CRI	CNS	CNS80	General/Consulting	MLN	06/09/2023	deposit September mortgage payment; term deposit reinvestment; call with Tarion re distribution; pay outstanding disbursement	\$265.00	1.10	291.50
CRI	CNS	CNS80	General/Consulting	MLN	14/09/2023	pay outstanding disbursement	\$265.00	0.40	106.00
CRI	CNS	CNS80	General/Consulting	MLN	19/09/2023	contact IHMG re distribution; various banking	\$265.00	0.60	159.00
CRI	CNS	CNS80	General/Consulting	MLN	20/09/2023	update term deposit interest and actuals for court report	\$265.00	0.90	238.50
CRI	CNS	CNS80	General/Consulting	MLN	21/09/2023	August banking reconciliation	\$265.00	0.70	185.50
CRI	CNS	CNS80	General/Consulting	MLN	22/09/2023	creditor query re distribution	\$265.00	0.30	79.50
						<b>CNS Totals:</b>		<b>5.30</b>	<b>1,404.50</b>
CRI	CPR	CPR80	General	AME	19/09/2023	drafting 47th report to court	\$500.00	3.00	1,500.00
CRI	CPR	CPR80	General	AME	20/09/2023	reviewing tax returns, drafting 47 report, call with Robert on tarion cash collateral order, preparing cash flow forecast, actual reporting	\$500.00	4.00	2,000.00
CRI	CPR	CPR80	General	AME	21/09/2023	drafting 47th report to court	\$500.00	1.50	750.00
CRI	CPR	CPR80	General	AME	28/09/2023	signing 2021 tax returns for filing	\$500.00	0.50	250.00
CRI	CPR	CPR80	General	AME	29/09/2023	attending in court for stay extension hearing	\$500.00	0.50	250.00
						<b>CPR Totals:</b>		<b>9.50</b>	<b>4,750.00</b>
						<b>Urbancorp Cumberland 2 L.P.</b>		<b>18.45</b>	<b>7,121.75</b>
<b>Employee Summary</b>									
						Erlich, Adam (AME)		9.50	4,750.00
						Niva, Minna (MLN)		8.95	2,371.75
						<b>Total Net Wip</b>		<b>18.45</b>	<b>7,121.75</b>

WIP

Progress

Net WIP

Primary Partner **Abrahamson G, Gary Totals:****\$7,121.75****\$0.00****\$7,121.75**

Billing Worksheet

Primary Partner - Client Code

Filters Used:  
- Time Expense Date: 1/1/1970 to 9/30/2023  
- Engagement ID: 1307088:01 to 1307088:01

	WIP	Progress	Net WIP
Grand Totals:	\$7,121.75	\$0.00	\$7,121.75

# INVOICE

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Landau

**Urbancorp Cumberland 2 L.P.**  
c/o The Fuller Landau Group Inc., CCAA Monitor  
151 Bloor Street West, 12th Floor  
Toronto, ON M5S 1S4

**Invoice No.** 168027  
**Client No.** 1307088:01-GFA

October 31, 2023

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## FOR PROFESSIONAL SERVICES RENDERED:

With respect to our appointment as Monitor under the Companies' Creditors Arrangement Act of Urbancorp 2 L.P. for the period of October 1, 2023 to October 31, 2023 as set out in the attached time dockets.

## OUR STANDARD FEE

M. Niva - 9.05 hrs. @ \$275.00 /hr.  
K. Pandhre - 0.09 hrs. @ \$170.00 /hr.

<b>Our fee</b> .....	\$	2,504.05
<b>HST</b> .....		325.53
<b>BALANCE DUE</b> .....	<b>\$</b>	<b>2,829.58</b>

---

HST Registration No. R130795669

*Payment is due on receipt of account. Amount outstanding in excess of thirty days will be charged interest at 12% per annum until paid in full.*

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Toronto, Ontario M5S 1S4  
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**F** 416-645-6501

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02 Nov, 2023

Fuller Landau LLP

Page 1 of 1

**Billing Worksheet**

Primary Partner - Client Code

Filters Used:

- Time Expense Date: 1/1/1970 to 10/31/2023
- Engagement ID: 1307088:01 to 1307088:01

Primary Partner: **Abrahamson G, Gary (GFA)**

Master Client: 1307088 - Urbancorp Cumberland 2 L.P.

**1307088:01 - Urbancorp Cumberland 2 L.P. - GFA**

Master Client: 1307088 - Urbancorp Cumberland 2 L.P. 1307088:01 - Urbancorp Cumberland 2 L.P. - GFA						Retainer Balance	WIP	Progress	Net WIP	AR Balance
						0.00	2,504.05	0.00	2,504.05	0.00
WIP						Memo	Rate	Hours	Amount	
CRI	CBA	CBA53	Banking	KPP	04/10/2023	Bank Reconciliation Aug 2023	\$170.00	0.09	15.30	
						CBA Totals:		0.09	15.30	
CRI	CNS	CNS80	General/Consulting	MLN	02/10/2023	call to Sunstate on reissued payment; email MNP to clarify specifics on invoice issued; prepare tax information for MNP	\$275.00	1.25	343.75	
CRI	CNS	CNS80	General/Consulting	MLN	03/10/2023	finalize and send requested 2022 tax information to MNP; various emails MNP	\$275.00	1.70	467.50	
CRI	CNS	CNS80	General/Consulting	MLN	10/10/2023	term deposit renewal	\$275.00	0.10	27.50	
CRI	CNS	CNS80	General/Consulting	MLN	11/10/2023	HST refund deposit	\$275.00	0.40	110.00	
CRI	CNS	CNS80	General/Consulting	MLN	12/10/2023	pay outstanding disbursements	\$275.00	0.90	247.50	
CRI	CNS	CNS80	General/Consulting	MLN	18/10/2023	September term deposit and banking reconciliations; review outstanding distribution payments	\$275.00	1.40	385.00	
CRI	CNS	CNS80	General/Consulting	MLN	24/10/2023	call to CRA re distribution query; pay outstanding disbursements	\$275.00	1.10	302.50	
CRI	CNS	CNS80	General/Consulting	MLN	27/10/2023	call to Homelife/Miracle re distribution payment query; review Westmount payment	\$275.00	1.25	343.75	
CRI	CNS	CNS80	General/Consulting	MLN	30/10/2023	issue Tarion bond payment to Westmount	\$275.00	0.55	151.25	
CRI	CNS	CNS80	General/Consulting	MLN	31/10/2023	emails re Westmount payment	\$275.00	0.40	110.00	
						CNS Totals:		9.05	2,488.75	
						Urbancorp Cumberland 2 L.P.		9.14	2,504.05	
Employee Summary						Niva, Minna (MLN)		9.05	2,488.75	
						Pandhre, Kirti (KPP)		0.09	15.30	
						Total Net Wip		9.14	2,504.05	

Primary Partner **Abrahamson G, Gary Totals:**

WIP	Progress	Net WIP
<b>\$2,504.05</b>	<b>\$0.00</b>	<b>\$2,504.05</b>

WIP	Progress	Net WIP
<b>\$2,504.05</b>	<b>\$0.00</b>	<b>\$2,504.05</b>

**Grand Totals:**

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**Urbancorp Cumberland 2 L.P.**  
c/o The Fuller Landau Group Inc., CCAA Monitor  
151 Bloor Street West, 12th Floor  
Toronto, ON M5S 1S4

**Invoice No.** 169509  
**Client No.** 1307088:01-GFA

December 31, 2023

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## FOR PROFESSIONAL SERVICES RENDERED:

With respect to our appointment as Monitor under the Companies' Creditors Arrangement Act of Urbancorp 2 L.P. for the period of November 1, 2023 to December 31, 2023 as set out in the attached time dockets.

## OUR STANDARD FEE

A. Erlich - 3.50 hrs. @ \$525.00 /hr.  
M. Niva - 6.55 hrs. @ \$275.00 /hr.  
K. Pandhre - 0.12 hrs. @ \$170.00 /hr.

<b>Our fee</b> .....	\$	3,659.15
<b>Disbursements</b> .....		35.25
<b>Subtotal</b> .....		3,694.40
<b>HST</b> .....		480.27
<b>BALANCE DUE</b> .....	\$	<b>4,174.67</b>

**Note:** Disbursements = Courier Fee

HST Registration No. R130795669

*Payment is due on receipt of account. Amount outstanding in excess of thirty days will be charged interest at 12% per annum until paid in full.*

Please remit to:

**The Fuller Landau Group Inc.**  
151 Bloor Street West, 12th floor  
Toronto, Ontario M5S 1S4  
**T** 416-645-6500  
**F** 416-645-6501

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Urbancorp Cumberland 2 L.P.  
December 31, 2023

Page 2

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**T** 416-645-6500  
**F** 416-645-6501

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Billing Worksheet

Primary Partner - Client Code

Filters Used:  
- Time Expense Date: 1/1/1970 to 12/31/2023  
- Engagement ID: 1307088:01 to 1307088:01

Primary Partner: Abrahamson G, Gary (GFA)

Master Client: 1307088 - Urbancorp Cumberland 2 L.P. 1307088:01 - Urbancorp Cumberland 2 L.P. - GFA	Retainer Balance 0.00	WIP 3,694.40	Progress 0.00	Net WIP 3,694.40	AR Balance 0.00
--	--------------------------	-----------------	------------------	---------------------	--------------------

WIP				Memo		Rate	Hours	Amount
---	Client	---	Couriers	BLIZZARD COURIER	02/11/2023	Ship Date: October 31		
						\$0.00		35.25
								<b>35.25</b>
CRI	CBA	CBA53	Banking	KPP	05/12/2023	Bank reconciliation for Oct 2023	\$170.00	0.12
							<b>0.12</b>	<b>20.40</b>
CRI	CNS	CNS80	General/Consulting	MLN	06/11/2023	deposit November mortgage payment	\$275.00	0.40
CRI	CNS	CNS80	General/Consulting	MLN	09/11/2023	term deposit renewal	\$275.00	0.10
CRI	CNS	CNS80	General/Consulting	MLN	28/11/2023	October term deposit and banking reconciliation	\$275.00	0.60
CRI	CNS	CNS80	General/Consulting	MLN	01/12/2023	review o/s distribution cheques	\$275.00	0.70
CRI	CNS	CNS80	General/Consulting	MLN	04/12/2023	pay outstanding disbursement	\$275.00	0.40
CRI	CNS	CNS80	General/Consulting	MLN	05/12/2023	review Affinity payment; email lawyer; review MNP f/up questions	\$275.00	1.40
CRI	CNS	CNS80	General/Consulting	MLN	11/12/2023	deposit December mortgage payment; term deposit renewal	\$275.00	0.55
CRI	CNS	CNS80	General/Consulting	MLN	13/12/2023	respond to enquiry re: distribution cheque; update funds available for 2nd distribution	\$275.00	1.30
CRI	CNS	CNS80	General/Consulting	MLN	15/12/2023	pay outstanding disbursement	\$275.00	0.40
CRI	CNS	CNS80	General/Consulting	MLN	19/12/2023	pay outstanding disbursement	\$275.00	0.40
CRI	CNS	CNS80	General/Consulting	MLN	21/12/2023	review 2nd distribution with AE	\$275.00	0.30
							<b>6.55</b>	<b>1,801.25</b>
CRI	CPR	CPR80	General	AME	30/11/2023	calls regarding plazacorp decision, reviewing decision re; Plazacorp hearing	\$525.00	1.50
CRI	CPR	CPR80	General	AME	13/12/2023	call with Neil and Robert on distribution scenarios	\$525.00	1.00
CRI	CPR	CPR80	General	AME	21/12/2023	preparing updated ERV for Israel	\$525.00	1.00
							<b>3.50</b>	<b>1,837.50</b>
							<b>10.17</b>	<b>3,694.40</b>
Employee Summary								
						Erlich, Adam (AME)	3.50	1,837.50
						Niva, Minna (MLN)	6.55	1,801.25
						Pandhre, Kirti (KPP)	0.12	20.40
						<b>Total Net Wip</b>	<b>10.17</b>	<b>3,659.15</b>

Primary Partner Abrahamson G, Gary Totals:	WIP \$3,694.40	Progress \$0.00	Net WIP \$3,694.40
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Grand Totals:	WIP \$3,694.40	Progress \$0.00	Net WIP \$3,694.40
---------------	-------------------	--------------------	-----------------------

# INVOICE

Fuller  
Landau

**Westside Gallery Lofts Inc.**  
c/o The Fuller Landau Group Inc., CCAA Monitor  
151 Bloor Street West, 12th Floor  
Toronto, ON M5S 1S4

**Invoice No.** 168028  
**Client No.** 1308103:01-GFA

October 31, 2023

---

## FOR PROFESSIONAL SERVICES RENDERED:

With respect to our appointment as Monitor under the Companies' Creditors Arrangement Act of Westside Gallery Lofts Inc. for the period of August 22, 2023 to October 31, 2023 as set out in the attached time dockets.

## OUR STANDARD FEE

A. Erlich - 0.30 hrs. @ \$525.00 /hr.  
M. Niva - 4.25 hrs. @ \$275.00 /hr.  
K. Pandhre - 0.29 hrs. @ \$165.00 /hr.\*

\*average rate rounded

<b>Our fee</b> .....	\$	1,345.55
<b>HST</b> .....		174.92
<b>BALANCE DUE</b> .....	<b>\$</b>	<b>1,520.47</b>

---

HST Registration No. R130795669

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---

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Please remit to:

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Toronto, Ontario M5S 1S4  
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**F** 416-645-6501

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## Filters Used:

- Time Expense Date: 1/1/1970 to 10/31/2023
- Engagement ID: 1308103:01 to 1308103:01

**Primary Partner: Abrahamson G, Gary (GFA)****Master Client:** 1308103 - Westside Gallery Lofts Inc.**1308103:01 - Westside Gallery Lofts Inc. - GFA**

						Retainer Balance	WIP	Progress	Net WIP	AR Balance
						0.00	1,345.55	0.00	1,345.55	0.00
WIP						Memo	Rate	Hours	Amount	
CRI	CBA	CBA53	Banking	KPP	22/08/2023	July Bank reconciliation	\$160.00	0.20	32.00	
CRI	CBA	CBA53	Banking	KPP	04/10/2023	Bank Reconciliation Aug 2023	\$170.00	0.09	15.30	
						<b>CBA Totals:</b>		<b>0.29</b>	<b>47.30</b>	
CRI	CNS	CNS80	General/Consulting	MLN	28/08/2023	emails TSCC 2355, GSNH re closing documents	\$265.00	0.45	119.25	
CRI	CNS	CNS80	General/Consulting	MLN	06/09/2023	pay outstanding disbursement	\$265.00	0.40	106.00	
CRI	CNS	CNS80	General/Consulting	MLN	12/09/2023	emails TSCC 2355; f/up GSNH re PB-010 closing documents	\$265.00	0.55	145.75	
CRI	CNS	CNS80	General/Consulting	MLN	19/09/2023	record distribution from UC for Edge	\$265.00	0.30	79.50	
CRI	CNS	CNS80	General/Consulting	MLN	20/09/2023	update actuals for court report	\$265.00	0.40	106.00	
CRI	CNS	CNS80	General/Consulting	MLN	25/09/2023	file RT0001 to July31; confirm direct deposit status with CRA	\$265.00	0.70	185.50	
CRI	CNS	CNS80	General/Consulting	MLN	10/10/2023	review property tax owing PB-010	\$275.00	0.30	82.50	
CRI	CNS	CNS80	General/Consulting	MLN	11/10/2023	emails GSNH re property tax arrears	\$275.00	0.45	123.75	
CRI	CNS	CNS80	General/Consulting	MLN	12/10/2023	pay outstanding disbursements	\$275.00	0.70	192.50	
						<b>CNS Totals:</b>		<b>4.25</b>	<b>1,140.75</b>	
CRI	CPR	CPR80	General	AME	10/10/2023	reviewing emails regarding property taxes on parking unit sold in June 2023	\$525.00	0.30	157.50	
						<b>CPR Totals:</b>		<b>0.30</b>	<b>157.50</b>	
						<b>Westside Gallery Lofts Inc.</b>		<b>4.84</b>	<b>1,345.55</b>	
<b>Employee Summary</b>						Erlich, Adam (AME)		0.30	157.50	
						Niva, Minna (MLN)		4.25	1,140.75	
						Pandhre, Kirti (KPP)		0.29	47.30	
						<b>Total Net Wip</b>		<b>4.84</b>	<b>1,345.55</b>	

						WIP	Progress	Net WIP
<b>Primary Partner Abrahamson G, Gary Totals:</b>						<b>\$1,345.55</b>	<b>\$0.00</b>	<b>\$1,345.55</b>
						WIP	Progress	Net WIP
<b>Grand Totals:</b>						<b>\$1,345.55</b>	<b>\$0.00</b>	<b>\$1,345.55</b>

**Exhibit "A"**

Edge on Triangle Park Inc., Edge Residential Inc., Bosvest Inc., Urbancorp Cumberland 2 GP Inc., Urbancorp Cumberland 2 L.P., and Westside Gallery Lofts Inc.

**Summary of Fees of the Monitor**

For the period from September 1 to December 31, 2023

<b>Period</b>	<b>Company</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Total</b>
		<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
September 1 to September 30, 2023	Urbancorp Cumberland 2 L.P.	7,121.75	-	925.83	8,047.58
October 1 to October 31, 2023	Urbancorp Cumberland 2 L.P.	2,504.05	-	325.53	2,829.58
December 1 to December 31, 2023	Urbancorp Cumberland 2 L.P.	3,659.15	35.25	480.27	4,174.67
August 22, 2023 to October 31, 2023	Westside Gallery Lofts Inc.	1,345.55	-	174.92	1,520.47
		<b>14,630.50</b>	<b>35.25</b>	<b>1,906.55</b>	<b>16,572.30</b>

# TAB G

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

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
URBANCORP CUMBERLAND 2 GP INC., URBANCORP CUMBERLAND 2 L.P.,  
BOSVEST INC., EDGE ON TRIANGLE PARK INC., EDGE RESIDENTIAL INC. AND  
WESTSIDE GALLERY LOFTS INC.**

**(the "Applicants")**

---

**AFFIDAVIT OF MARIO J. FORTE**

**(Sworn January 16, 2024) JSr**

---

I, Mario J. Forte, of the City of Toronto, hereby MAKE OATH AND SAY:

1. I am a barrister and solicitor qualified to practice in the Province of Ontario and am counsel to the law firm of Goldman Sloan Nash & Haber LLP ("GSNH") and therefore have knowledge of the matters in this affidavit. Where this affidavit is based on information and belief, I have stated the source of that information and believe it to be true.
2. GSNH are lawyers of record for The Fuller Landau Group Inc. in its capacity as the Monitor (the "Monitor") of Bosvest Inc., Edge Residential Inc., and Edge on Triangle Park Inc. Urbancorp

Cumberland 2 GP Inc., and UrbanCorp Cumberland 2 L.P. (collectively, the “**Cumberland 2 Group**”) in these proceedings.

3. Attached as **Exhibit “A”** to this affidavit is a copy of an account of GSNH for the Monitor for fees and disbursements incurred by GSNH with respect to Cumberland 2 L.P. in the course of this proceeding for the period from September 5, 2023 to December 21, 2023. The total fees charged by GSNH during this Period were \$7,522.50 plus total disbursements of \$339.00, plus total Harmonized Sales Tax (HST) in the amount of \$977.93 for a total of \$8,839.43.

4. Attached as **Exhibit “B”** to this affidavit is a copy of an account of GSNH for the Monitor for fees and disbursements incurred by GSNH with respect to Westside Property Sales in the course of this proceeding for the period ending October 6, 2023. The total fees charged by GSNH during the Period were \$140.00 plus total disbursements of \$4.00, plus total Harmonized Sales Tax (HST) in the amount of \$18.72 for a total of \$162.72.

5. Attached as **Exhibit “C”** to this Affidavit is a schedule summarizing the total billable hours charged and the total fees charged for the invoices in Exhibit “A” and “B”.

6. The average hourly rate charged for the invoice set out in Exhibits “A” and “B” is \$432.91. That is comprised of hours docketed by the following timekeepers at GSNH with the corresponding hourly rates:

	PROFESSIONAL	HOURS	HOURLY RATE	AMOUNT	INVOICE
<b>Cumberland 2 L.P.</b>	Robert Drake	17.00	425.00	7,225.00	197377
	Mario Forte	0.50	595.00	297.50	
<b>Westside Property Sales</b>	Rodney Ikeda	0.20	700.00	140.00	197378
	<b>TOTAL</b>	<b>17.70</b>		<b>7,662.50</b>	

7. To the best of my knowledge the rates charged by GSNH throughout the course of this proceeding are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

8. The hourly billing rates outlined above are comparable to the hourly rates charged by GSNH for services rendered in relation to similar proceedings.

9. I make this affidavit in support of a motion by the Monitor for, among other things, approval of the fees and disbursements of GSNH as its counsel for the fees and disbursements of GSNH as its counsel for the period from September 5, 2023 to December 21, 2023.

SWORN before me at the City of Toronto,  
in the Province of Ontario  
this 16<sup>th</sup> day of January, 2024

\_\_\_\_\_  
A Commissioner for taking oaths, etc.

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)  
)  
)

\_\_\_\_\_  
**MARIO J. FORTE**



*This is **Exhibit "A"** referred to  
in the Affidavit of Mario Forte  
sworn before me this 16<sup>th</sup> day of January, 2024*

---

A Commissioner for taking oaths, etc.



Suite 1600  
480 University Avenue  
Toronto, Ontario  
M5G1V2

Telephone: (416) 597-9922  
Facsimile: (416) 597-3370

The Fuller Landau Group Inc.  
151 Bloor Street West  
12th Floor  
Toronto, ON M5S 1S4  
Canada

Billing Lawyer Mario Forte  
Invoice No. 197377  
HST # 12233 6290 RT0001  
Invoice Date January 12, 2024

Attention: Gary Abrahamson

Client ID: 009916 Matter ID: 0005

RE: Cumberland 2 L.P

**FOR PROFESSIONAL SERVICES RENDERED for the period September 5, 2023 to December 21, 2023**

Date	Professional	Narrative	Hours	Rate	Amount
09/05/23	RJD	Correspondence with the Monitor and the Israeli Functionary re Plazacorp issues;	0.70	425.00	297.50
09/06/23	RJD	Phone call with the Monitor re Aviva issues; phone call with the Monitor re CCAA issues;	0.80	425.00	340.00
09/15/23	RJD	Drafting email to counsel for creditor re interim payment;	0.20	425.00	85.00
09/19/23	RJD	Correspondence with the Monitor re CCAA issues;	0.40	425.00	170.00
09/20/23	RJD	Preparation of fee affidavit; drafting motion materials for upcoming stay extension motion; correspondence with the Monitor re same;	2.70	425.00	1,147.50
09/23/23	RJD	Reviewing and revising draft report for upcoming stay extension motion;	0.50	425.00	212.50
09/24/23	RJD	Finalizing motion record for upcoming stay extension motion; correspondence with the Monitor re same; serving same;	2.00	425.00	850.00
09/25/23	RJD	Preparation of affidavit of service; uploading materials to Caselines;	0.40	425.00	170.00



**ACCOUNTS ARE DUE WHEN RENDERED**

Pursuant to the Solicitor's Act interest at a rate of 3.00% per annum will be charged on amounts due, calculated commencing one month after the date of delivery of this account. Any disbursements recorded after preparation of this account will be billed at a later date.

Date	Professional	Narrative	Hours	Rate	Amount
09/28/23	RJD	Preparation for upcoming motion for stay extension and other matters; phone call with counsel for Israeli Functionary re CCAA issues;	1.40	425.00	595.00
09/29/23	RJD	Attendance on motion for stay extension; correspondence with the court re having draft order entered;	0.50	425.00	212.50
10/03/23	RJD	Receipt and review of offer to settle from balcony contractor; correspondence with the Monitor re same; receipt and review of the court's endorsement; sending same to the service list;	1.10	425.00	467.50
10/10/23	RJD	Email correspondence with stakeholders re CCAA issues;	0.20	425.00	85.00
10/16/23	RJD	Phone call with M. Forte re update on CCAA issues;	0.20	425.00	85.00
10/23/23	RJD	Phone call with the Monitor re update on CCAA issues;	0.30	425.00	127.50
10/23/23	MJF	Discussions re update on CCAA issues;	0.20	595.00	119.00
10/25/23	RJD	Email correspondence with the Monitor re bond issues;	0.10	425.00	42.50
10/30/23	RJD	Phone call with the Monitor to discuss CCAA issues and summary of current issues;	0.70	425.00	297.50
11/13/23	RJD	Email correspondence with the Monitor re Tarion issues;	0.20	425.00	85.00
11/15/23	RJD	Receipt and review of email from counsel to balcony contractor; drafting reply re same;	0.20	425.00	85.00
11/23/23	MJF	Receipt and review of decision of Osborne J re Plazacorp claims;	0.30	595.00	178.50
11/30/23	RJD	Receipt and review of decision of Osborne J. re Plazacorp claims; correspondence with the Monitor re same; correspondence with the Israeli Functionary re same;	2.90	425.00	1,232.50
12/13/23	RJD	Phone calls and correspondence with the Monitor re CCAA issues; conference call with counsel to the Israeli Functionary re CCAA issues;	1.00	425.00	425.00
12/21/23	RJD	Receipt and review of draft distribution worksheet; phone call with the Monitor re same;	0.50	425.00	212.50
<b>Sub-Total Fees:</b>					7,522.50
<b>HST on Fees:</b>					977.93

**SUMMARY OF PROFESSIONAL SERVICES**

PROFESSIONAL	HOURS	HOURLY RATE	AMOUNT
Robert Drake	17.00	425.00	7,225.00
Mario Forte	0.50	595.00	297.50
	<u>17.50</u>		<u>7,522.50</u>

**DISBURSEMENTS**

09/25/2023                      MAG-CIVIL - File Motion Record \*                      339.00

**Sub-Total Disbursements:**                      339.00  
Disbursements marked with \* indicate exempt

**on Disbursements:**                      0.00

**TOTAL LEGAL FEES AND DISBURSEMENTS (includes \$977.93 HST):                      \$                      8,839.43**

**THIS IS OUR ACCOUNT HEREIN**

**GOLDMAN SLOAN NASH & HABER LLP**



Per: Mario Forte

E. & O. E.

*This is **Exhibit "B"** referred to  
in the Affidavit of Mario Forte  
sworn before me this 16<sup>th</sup> day of January, 2024*



A Commissioner for taking oaths, etc.



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Facsimile: (416) 597-3370

The Fuller Landau Group Inc.  
151 Bloor Street West  
12th Floor  
Toronto, ON M5S 1S4  
Canada

Billing Lawyer Rodney Ikeda  
Invoice No. 197378  
HST # 12233 6290 RT0001  
Invoice Date January 12, 2024

Attention: Gary Abrahamson

Client ID: 009916 Matter ID: 0011

RE: Westside Property Sales

#### FOR PROFESSIONAL SERVICES RENDERED

Date	Professional	Narrative
10/06/23	RAI	Email from Purchaser (PB-010) re parking ticket and outstanding taxes; email to A erlich

**Sub-Total Fees:** 140.00

**HST on Fees:** 18.20

#### DISBURSEMENTS

Laser Copies	4.00
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**Sub-Total Disbursements:** 4.00

Disbursements marked with \* indicate exempt

**HST on Disbursements:** 0.52

**TOTAL LEGAL FEES AND DISBURSEMENTS (includes \$18.72 HST):** \$ **162.72**



#### ACCOUNTS ARE DUE WHEN RENDERED

Pursuant to the Solicitor's Act interest at a rate of 3.00% per annum will be charged on amounts due, calculated commencing one month after the date of delivery of this account. Any disbursements recorded after preparation of this account will be billed at a later date.

**THIS IS OUR ACCOUNT HEREIN**

**GOLDMAN SLOAN NASH & HABER LLP**

*for*

Per: Rodney Ikeda

E. & O. E.

*This is Exhibit "C" referred to  
in the Affidavit of Mario Forte  
sworn before me this \_\_\_\_ day of January, 2024*

\_\_\_\_\_  
A Commissioner for taking oaths, etc.

### SUMMARY OF PROFESSIONAL SERVICES

	PROFESSIONAL	HOURS	HOURLY RATE	AMOUNT	INVOICE
<b>Cumberland 2 L.P.</b>	Robert Drake	17.00	425.00	7,225.00	197377
	Mario Forte	0.50	595.00	297.50	
<b>Westside Property Sales</b>	Rodney Ikeda	0.20	700.00	140.00	197378
	<b>TOTAL</b>	<b>17.70</b>		<b>7,662.50</b>	



AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF URBANCORP CUMBERLAND 2 GP INC.,  
URBANCORP CUMBERLAND 2 L.P., BOSVEST INC., EDGE ON  
TRIANGLE PARK INC., EDGE RESIDENTIAL INC. AND  
WESTSIDE GALLERY LOFTS INC.

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

Proceeding commenced at Toronto

**FEE AFFIDAVIT MARIO J. FORTE  
(Sworn January \_\_, 2024)**

**GOLDMAN SLOAN NASH & HABER LLP**  
Barristers & Solicitors  
480 University Avenue, Suite 1600  
Toronto, Ontario  
M5G 1V2

**Mario Forte (LSO No. 27293F)**  
**Robert J. Drake (LSO No. 57083G)**  
Tel: (416) 597-9922  
Fax: (416) 597-3370

Lawyers for the Fuller Landau Group, in its capacity  
as the Monitor of Bosvest Inc., Edge Residential Inc.,  
Edge on Triangle Park Inc., Urbancorp Cumberland 2  
GP Inc. and Urbancorp Cumberland 2 LP

# TAB 3

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<p><b>TERRA FIRMA CAPITAL CORPORATION</b> 22 St. Clair Avenue East, Suite 200 Toronto, ON M4T 2S5</p> <p><b>Glenn Watchorn</b> President Email: <a href="mailto:gwatchorn@tfcc.ca">gwatchorn@tfcc.ca</a></p>	<p><b>TERRA FIRMA CAPITAL CORPORATION</b> 5000 Yonge Street, Suite 1502 Toronto, ON M2N 7E9</p> <p><b>Glenn Watchorn</b> President Email: <a href="mailto:gwatchorn@tfcc.ca">gwatchorn@tfcc.ca</a></p>



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

Proceeding commenced at Toronto

**MOTION RECORD  
OF THE FULLER LANDAU GROUP INC. AS  
MONITOR OF THE APPLICANTS**

**(On motion for Approval of Fees and Activities,  
and Stay Extension)**

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