



Court File No: CV-21-0066512800CL

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

THE HONOURABLE )  
MR. JUSTICE PENNY ) TUESDAY, THE 1<sup>st</sup>  
DAY OF AUGUST, 2023

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

**Applicant**

-and-

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and CIM  
BAYVIEW CREEK INC.**

**Respondents**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by msi Spergel Inc., in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. (the "**Debtors**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and Sunny Communities (Bayview Creek) Inc. ("**Sunny Communities**") dated June 2, 2023 and appended to the Second Report of the Receiver dated July 14, 2023 (the "**Second Report**"), and vesting in Sunny Communities or its assignee as permitted by section 37 of the Sale Agreement (the "**Purchaser**"), including the Debtors' right, title and interest in and to the Property, as defined in the Sale Agreement (the "**Property**"), was heard this day by Zoom videoconference.

**ON READING** the Second Report of the Receiver and the appendices thereto, the

Affidavit of Trevor Pringle sworn July 12, 2023 (the “**Pringle Affidavit**”), the Affidavit of Christine Mason sworn July 7, 2023 (the “**Mason Affidavit**”), the Affidavit of Vasilios Panagiotakopoulos sworn July 31, 2023 (the “**Panagiotakopoulos Affidavit**”) and on hearing the submissions of counsel for the Receiver, and counsel for such other parties in attendance at the hearing, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Mariela Adriana Gasparini sworn July 14, 2023, filed:

1. **THIS COURT ORDERS** that capitalized terms not defined herein, shall have the meanings ascribed thereto in the Second Report.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may agree upon pursuant to the terms of the Sale Agreement. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Property to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver's Certificate**”), all of the Debtors' right, title and interest in and to the Property shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of the Honourable Justice Cavanagh dated November 27, 2020 and March 2, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) any relevant writs of executions that may have been filed with the Sheriff as against each and every registered owner of the Property, either before or after the date of this Order, and (iv)

those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (LRO #65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the Purchase Price, as defined in the Sale Agreement, from the sale of the Property shall stand in the place and stead of the Property, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the Purchase Price, as defined in the Sale Agreement, from the sale of the Property with the same priority as they had with respect to the Property immediately prior to the sale, as if the Property had not been sold and remained in the possession or control of the Person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtors and any

bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Debtors;

the vesting of the Property in the Purchaser pursuant to this Order and the other terms and provisions of this Order shall be binding on any trustee in bankruptcy that has or may be appointed in respect of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that Confidential Appendices “A”, “B”, “C” and “D” to the Second Report are hereby sealed until the closing of the Transaction.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



A handwritten signature in blue ink, appearing to read "Perry J.", is written over a horizontal line.

**Schedule A – Form of Receiver’s Certificate**

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-and-

**BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and CIM  
BAYVIEW CREEK INC.**

**Respondents**

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 2, 2022, msi Spergel Inc. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. (the "**Debtors**").

B. Pursuant to an Order of the Court dated August 1, 2023, the Court approved the agreement of purchase and sale made as of June 2, 2023 (the "**Sale Agreement**") between the Receiver and Sunny Communities (Bayview Creek) Inc. or its assignee as permitted by section 37 of the Sale Agreement (the "**Purchaser**") and provided for the vesting of the Debtors' right, title and interest in and to the Property, as defined in the Sale Agreement, which vesting is to be effective with respect to the Property upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the satisfaction by the Purchaser of the Purchase Price, as defined in the Sale Agreement and as provided thereby, for the Property; (ii) that the

condition to Closing as set out in Section 10 of the Sale Agreement has been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price as provided for in the Sale Agreement and the Receiver has received the balance of the Purchase Price payable on the Date of Closing pursuant to the Sale Agreement;
2. The condition to Closing as set out in Section 10 of the Sale Agreement has been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_[DATE].

**msi SPERGEL INC. in its capacity as  
Receiver of the undertaking, property and  
assets of Bayview Creek (CIM) LP, CIM  
Invests Development Inc., and CIM  
Bayview Creek Inc., and not in its personal  
capacity**

Per: \_\_\_\_\_  
Name:  
Title:

## Schedule B – Property

"**Property**" means the Real Property, and the Buildings and the Chattels, if any.

1. Real Property

PT LT 25, CON 2, (MKM), PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER PART 2, 65R13270 AS IN R510790, being all of PIN 03186 – 4757 (LT).

2. Buildings

Any buildings or structures of every nature and kind situate in, on and/or over the Real Property, and all improvements and fixtures therein or thereon.

3. Chattels

Any chattels physically located on or at the Real Property or Buildings as at the date of closing of the Sale Agreement.

**Schedule C – Claims to be deleted and expunged from title to Real Property**

1. Charge in the original principal amount of \$20,720,000.00 registered on May 18, 2016 as Instrument Number YR2473036 in favour of DUCA Financial Services Credit Union Ltd.;
2. Notice of Assignment of Rents – General registered on May 18, 2016 as Instrument Number YR2473037 in favour of DUCA Financial Services Credit Union Ltd.;
3. Notice registered on March 12, 2019 as Instrument Number YR2937903 in favour of DUCA Financial Services Credit Union LTD.;
4. Notice of Option to Purchase registered on June 17, 2019 as Instrument Number YR2972265 in favour of Bryton Creek Residences Inc.;
5. Charge in the original principal amount of \$20,000,000.00 registered on June 17, 2019 as Instrument Number YR2972266 in favour of Bryton Capital Corp. GP Ltd.;
6. Notice of Assignment of Rents – General registered on June 17, 2019 as Instrument Number YR2972267 in favour of Bryton Capital Corp. GP Ltd.;
7. Notice registered on July 31, 2020 as Instrument Number YR3124735 in favour of Bryton Capital Corp. GP Ltd.;
8. Notice registered on July 31, 2020 as Instrument Number YR3124736 in favour of Bryton Creek Residences Inc.;
9. Charge in the original principal amount of \$2,207,405.13 registered on September 4, 2020 as Instrument Number YR3137585 in favour of GR (CAN) Investment Co. Ltd. and Monest Financial Inc.;
10. Application (General) registered on September 18, 2020 as Instrument Number YR3142721 by Tracy Hui and Jojo Hui;
11. Application to Register a Court Order registered on January 15, 2021 as Instrument Number YR3194139;
12. Notice registered on January 15, 2021 as Instrument Number YR3194886 in favour of Bryton Creek Residences Inc.;



13. Application to Register a Court Order registered on March 8, 2022 as Instrument Number YR3391914;
14. Application to Register Government Order registered on October 12, 2022 as Instrument No. YR3486251 in connection with an Order to Comply dated September 8, 2022 issued by the Corporation of The City of Richmond Hill;
15. Transfer of Charge registered on May 15, 2023 as Instrument Number YR3551181 from DUCA Financial Services Credit Union Ltd. to Fengate Redevelopment Fund GP Inc.;
16. Notice of Assignment of Rents – General registered on May 15, 2023 as Instrument Number YR3551182 in favour of Fengate Redevelopment Fund GP Inc.;
17. Transfer of Charge registered on May 15, 2023 as Instrument Number YR3551183 from Bryton Capital Corp. GP Ltd. to Fengate Redevelopment Fund GP Inc.; and
18. Notice of Assignment of Rents – General registered on May 15, 2023 as Instrument Number YR3551184 in favour of Fengate Redevelopment Fund GP Inc.

## **Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property**

**(unaffected by the Vesting Order)**

### **General Encumbrances:**

1. liens for municipal property taxes, local improvement charges or other taxes, assessments or recoveries relating to the Property which are not at the time due;
2. any reservations, restrictions, rights of way, easements or covenants that run with the land provided that any of the foregoing which are known to the Receiver and not registered on title have been disclosed to the Purchaser prior to the Acceptance Date (as defined in the Sale Agreement);
3. any registered or unregistered licences, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto which relate to the provision of utilities to the Real Property or adjacent properties (except those such licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto relating to adjacent properties that may be registered on title to the Real Property following the Acceptance Date (as defined in the Sale Agreement), which such exceptions shall be dealt with in accordance with Section 8(b) of the Sale Agreement) in favour of any Government Authority (as defined in the Sale Agreement) or any private or public utility (including, without limitation, agreements, easements, licences, rights-of-way and interests in the nature of easements for sewers, drains, gas, steam, water mains, electric light and power, or telephone and telegraphic conduits, poles, wires and cables);
4. minor title defects or irregularities which do not materially and adversely affect the marketability of the Property;
5. the provisions of all applicable laws, including by-laws, regulations, ordinances and similar instruments relating to development and zoning;
6. any minor easement for the supply of utility services (except those such minor easements for the supply of utility services to adjacent properties that may be registered on title to the Real Property following the Acceptance Date (as defined in the Sale Agreement), which such exceptions shall be dealt with in accordance with Section 8(b) of the Sale agreement) to the Real Property or adjacent properties;
7. minor encroachments by the Real Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Real Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners which do not materially and adversely affect the marketability of the Property;
8. the reservations contained in the original grant from the Crown;
9. any watercourses or right of water in, over, along, and under the Real Property;

10. any exceptions, reservations, limitations and qualifications referenced or included in the parcel register as of the date hereof (including, without limitation, those relating to Section 44 of the *Land Titles Act* (Ontario), other than paragraphs 1-6, inclusive, 11, and 14 thereof and escheats or forfeitures to the Crown);
11. any orders, applications, notices, demands, or encumbrances of any kind in connection with or in any way relating to municipal or other governmental authority requirements, standards, or guidelines with respect to the removal or rectification (as applicable) of any:  
(i) rubbish, brush or other debris or objects or conditions that might create a fire, health or accident hazard; or (ii) unusable, wrecked, dismantled, discarded or partially dismantled or abandoned machinery, boats, vehicles, trailers or parts thereof, in each case, including, without limitation, standards prescribed in the City of Richmond Hill Property Standards By-law No. 79-99 (Municipal Code Chapter 1010); and
12. any registered or unregistered orders, applications, notices, demands, or encumbrances of any kind in connection with or in any way relating to the City of Richmond Hill by-law 31-19 (the "**Grass and Weeds By-law**"), including, without limitation, the letter dated September 8, 2022 issued by the City of Richmond Hill respecting the Grass and Weeds By-law relating to the Real Property.

**Specific Encumbrances:**

1. Agreement registered on May 19, 1981 as Instrument Number R271654;
2. Transfer of Easement registered on June 9, 1989 as Instrument Number R510790 in favour of The Corporation of the Town of Richmond Hill;
3. Agreement registered on December 8, 1994 as Instrument Number R651846;
4. Notice – Agreement registered on May 2, 2005 as Instrument Number YR632487; and
5. Land Registrar's Order registered on March 4, 2020 as Instrument Number YR3075061.

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- and -

**Applicant**

**Respondents**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT TORONTO

**APPROVAL AND VESTING ORDER**

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