

Court File No: CV-21-0066512800CL

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**MOTION RECORD
(Returnable November 28, 2023)**

November 17, 2023

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Tab 1

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**NOTICE OF MOTION
(Returnable November 28, 2023)**

msi Spergel Inc. (“**Spergel**”), in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”) of all the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on November, 28, 2023 at 10:30 a.m. or as soon after that time as the motion can be heard by Judicial Video Conference via Zoom, Toronto, Ontario.

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

THIS MOTION IS FOR:

1. An Order substantially in the form attached at Tab 3 of the Motion Record:
 - (a) abridging the time for service of the Notice of Motion and the Motion Record and validating service so that the motion is properly returnable on November 28, 2023 and dispensing with the requirement for any further service thereof;
 - (b) approving the third report of the Receiver dated November 17, 2023 and the appendices thereto (the “**Third Report**”) and the activities of the Receiver

described therein;

- (c) approving the Receiver's Statement of Receipts and Disbursements as at November 13, 2023;
- (d) approving the fees and disbursements of the Receiver for the period from July 1, 2023 to November 10, 2023 and approving the estimated fees and disbursements of the Receiver up to its date of discharge, as described in the affidavit of Trevor Pringle, sworn November 13, 2023 (the "**Pringle Affidavit**");
- (e) approving the fees and disbursements of Borden Ladner Gervais LLP ("**BLG**"), legal counsel to the Receiver for the period from July 1, 2023 to November 15, 2023 and approving the estimated fees and disbursements of BLG for services to be provided to the Receiver, up to the date of discharge, as described in the affidavit of Christine Mason, sworn November 16, 2023 (the "**Mason Affidavit**");
- (f) authorizing the Receiver to pay any professional fees or disbursements of the Receiver and BLG which exceed the estimates set-out in the Pringle Affidavit and the Mason Affidavit, with either; (i) the consent of Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund ("**Fengate**"), or (ii) pursuant to a further order of the Court;
- (g) authorizing and directing BLG to pay to the Receiver the amount of \$2,000,000, plus any interest earned thereon (the "**Retained Deposit**") currently held by BLG in trust for the Receiver on account of the forfeiture of the Deposit (as defined in the Agreement of Purchase and Sale dated as of June 2, 2023 (the "**Sale Agreement**") between the Receiver, as vendor and Sunny Communities (Bayview Creek) Inc., as purchaser (the "**Purchaser**") and appended to the Second Report of the Receiver dated July 14, 2023), in connection with the incomplete closing of the sale transaction contemplated by the Sale Agreement in respect of the Property (as defined in the Sale Agreement, the "**Property**");

- (h) setting aside paragraphs 4, 5, 6, 7 and 8 of the Order of Mr. Justice Penny dated August 1, 2023 (the “**Administration and Interim Distribution Order**”) in their entirety;
- (i) authorizing and directing the Receiver to make a distribution, from the proceeds of the Retained Deposit, to Rory McGovern PC, In Trust, for the benefit of Cardinal Advisory Limited (“**Cardinal**”) in the amount of \$200,000 (the “**DIP Lender Distribution**”), in full and final satisfaction of all amounts secured by the DIP lender’s charge (the “**DIP Lender’s Charge**”), established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020;
- (j) terminating, discharging and releasing the DIP Lender’s Charge upon the completion of the DIP Lender Distribution;
- (k) authorizing and directing the Receiver to make a distribution, from the proceeds of the Retained Deposit, to The Corporation of the Town of Richmond Hill (“**Richmond Hill**”) in the amount of \$546,083.57, plus any other amounts accrued thereon, as agreed to by the Receiver, for the outstanding realty taxes (the “**Richmond Hill Distribution**”);
- (l) authorizing and directing the Receiver to make a distribution, from the proceeds of the Retained Deposit, to Fengate in the amount of \$50,000, plus accrued interest, on account of the repayment in full of the amounts owing to Fengate pursuant to Receiver Certificate No. 1 dated March 28, 2022 (the “**Receiver Certificate No. 1 Repayment**”);
- (m) terminating, discharging and releasing the Receiver’s borrowings charge (the “**Receiver’s Borrowing Charge**”), as defined in and created by the Order of Mr. Justice Cavanagh dated March 2, 2022 (the “**Appointment Order**”), upon the completion of the Receiver Certificate No. 1 Repayment;

- (n) approving the reimbursement and funding agreement between the Receiver and Fengate dated November 16, 2023 in the form attached as Appendix 10 to the Third Report (the “**Reimbursement and Funding Agreement**”);
- (o) authorizing the Receiver to make a distribution from the proceeds of the Retained Deposit, should there be any surplus funds (the “**Surplus Funds**”) remaining from the Retained Deposit, to Fengate, immediately prior to the completion of the Foreclosure (as hereinafter defined), in an amount up to the outstanding balance of the secured debt owed to Fengate by the Debtors, from any Surplus Funds that may be remaining from the Retained Deposit (the “**Fengate Distribution**”);
- (p) authorizing the Receiver to consent to a lifting of the stay of proceedings (the “**Stay of Proceedings**”) imposed pursuant to the Appointment Order, to permit Fengate to serve a Statement of Claim in connection with a foreclosure action in respect of the Property (the “**Foreclosure**”) and pursue the Foreclosure in respect of, among other things, the subsequent ranking registered encumbrances set out in Schedule “B” to the Discharge Order;
- (q) authorizing the Receiver to accept service of the Statement of Claim in respect of the Foreclosure and to not serve a Statement of Defence, Notice of Intent to Defend, or any other objection to the Foreclosure action;
- (r) authorizing the Receiver to immediately terminate and disclaim the Listing Agreement dated July 28, 2022 with Colliers Macaulay Nicolls Inc.;
- (s) sealing certain Confidential Appendices to the Third Report;
- (t) notwithstanding the timing of the Foreclosure, terminating, discharging and releasing the Receiver’s charge (the “**Receiver’s Charge**”), as defined in and created by the Appointment Order, upon the Receiver filing a discharge certificate with the Court, substantially in the form attached to the draft Discharge Order as Schedule “A” (the “**Discharge Certificate**”);

- (u) discharging Spergel as the Receiver of the Debtors and releasing and discharging Spergel from any and all liability Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver in these proceedings, subject to the filing of the Discharge Certificate with the Court certifying that the Receiver has attended to certain remaining matters, as described in the Receiver's Third Report; and
2. Such other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) On March 2, 2022, Spergel was appointed Receiver by this Court pursuant to the Appointment Order;
- (b) paragraph 3(j) of the Appointment Order authorized the Receiver to market any or all the Property, including advertising and soliciting offers in respect of the Property, or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) paragraph 3(k) the Appointment Order authorized the Receiver to sell the Property, subject to Court approval, having regard to the monetary limits set out therein;
- (d) paragraph 3(l) of the Appointment Order authorized the Receiver to apply for a vesting order, or other orders necessary to convey the Property, or any part or parts thereof to a purchaser, or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (e) on July 21, 2022 Mr. Justice Cavanagh made an order (the "**Sale Process Order**") authorizing and directing the Receiver to carry out a sale process (the "**Sale Process**") in respect of the Property;
- (f) after carrying out the Sale Process, the Receiver obtained an Approval and Vesting Order dated August 1, 2023 from Justice Penny, approving a sale transaction

between the Receiver and the Purchaser (the “**Transaction**”);

- (g) the Purchaser was unable to complete the closing of the Transaction and, as a result, the Agreement was terminated by reason of the sole default by the Purchaser, and the Retained Deposit was forfeited in accordance with the Sale Agreement and retained by BLG in trust for the Receiver;
- (h) as the closing of the Transaction was not completed, the distributions and payments authorized by the Court pursuant to the Administration and Interim Distribution Order upon the closing of the Transaction are no longer applicable, and it is now appropriate for the Receiver to seek an Order of the Court to set aside the provisions of the Administration and Interim Distribution Order that provide for such distributions and payments to be made by the Receiver upon the closing of the Transaction, as set forth in paragraphs 4, 5, 6, 7 and 8 of the Administration and Interim Distribution Order;
- (i) the Sale Agreement provides that in the event of the termination of the Sale Agreement by reason of the sole default by the Purchaser, the Deposit shall be paid to the Receiver as liquidated damages, and it is therefore now appropriate for BLG to seek Court approval to pay to the Receiver the Retained Deposit that is currently held by BLG in trust for the Receiver, in accordance with the Sale Agreement;
- (j) as the Retained Deposit is proposed to be paid by BLG to the Receiver, subject to the approval of this Court, it is now appropriate for the Receiver to seek Court approval to make the DIP Lender Distribution, the Richmond Hill Distribution, the Receiver Certificate No. 1 Repayment and, subject to Fengate entering into the Reimbursement and Funding Agreement, Fengate Distribution, in the event that there are Surplus Funds remaining from the Retained Deposit;
- (k) the Receiver also proposes to pay the fees and disbursements of the Receiver and BLG that were previously approved pursuant to the Administration and Interim

Distribution Order from the Retained Deposit;

- (l) The payments and distributions provided for herein, including the DIP Lender Distribution, the Richmond Hill Distribution, Receiver Certificate No. 1 Repayment and the payment of the fees of the Receiver and its counsel, will satisfy all charges and other encumbrances ranking in priority to the Fengate security;
- (m) The Receiver obtained opinions from its counsel that, subject to the customary assumptions and qualifications for opinions of this nature, the security interests in favour of Fengate are valid and enforceable in the Province of Ontario;
- (n) The Receiver has conducted an extensive sales process for the Property pursuant to the Sales Process Order and thereafter; however, despite extensive marketing and discussions, it has been unable to complete a sale of the Property for an amount that would satisfy the amounts due and payable to Fengate and the prior-ranking amounts;
- (o) Fengate is entitled to seek to exercise the remedy of foreclosure in respect of the Property upon the default of the Debtors and it is appropriate for the Receiver to accept service of the Statement of Claim in respect of the Foreclosure, without providing a defence to same;
- (p) it is appropriate for the Receiver to consent to a lift of the Stay of Proceedings, to the extent necessary to allow Fengate to pursue the Foreclosure;
- (q) it is appropriate for the Receiver to seek Court approval for the termination of the existing Court-ordered charges, the approval of the fees and disbursements of the Receiver and BLG to completion, and the discharge of the Receiver, upon the filing of the Discharge Certificate;
- (r) the provisions of the *Bankruptcy and Insolvency Act* and the inherent and equitable jurisdiction of this Court;

- (s) rules 1.04, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (t) section 249 of the *Bankruptcy and Insolvency Act*; and
- (u) 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:

- (a) the Receiver's Third Report to the Court dated November 17, 2023;
- (b) the Affidavit of Trevor Pringle, sworn November 13, 2023;
- (c) the Affidavit of Christine Mason, sworn November 16, 2023; and
- (d) such further and other material as counsel may advise and this Court may permit.

November 17, 2023

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Court File No: CV-21-0066512800CL

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PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION
(Returnable November 28, 2023)

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Tab 2

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**THIRD REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

November 17, 2023

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16. Updated Payout Statement of Fengate dated October 31, 2023

CONFIDENTIAL APPENDICES

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- C. Antec Appraisal Group Inc. - Appraisal Report with Memorandum Update for 10747 Bayview Avenue, Richmond Hill, Ontario

I. APPOINTMENT AND BACKGROUND

1. This Third Report is filed by msi Spergel Inc. ("**Spergel**") in its capacity as the Court-Appointed Receiver (in such capacity, the "**Receiver**") of the following entities (collectively, the "**Debtors**"):
 - i. Bayview Creek (CIM) LP. ("**LP**");
 - ii. CIM Invests Development Inc. ("**Invests**"); and
 - iii. CIM Bayview Creek Inc. ("**Bayview**").
2. Spergel was appointed as the Receiver of all of the assets, undertakings and property of the Debtors by the Order of Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 2, 2022 (the "**Receivership Order**"). A Copy of the Receivership Order is attached to this Second Report as **Appendix "1"**. A copy of the Endorsement of Mr. Justice Cavanagh dated March 2, 2022 (the "**Endorsement**") is attached to this Third Report as **Appendix "2"**.
3. Bayview Creek (CIM) LP is a limited partnership with addresses in Markham and Richmond Hill, Ontario.
4. CIM Invests Development Inc. is a federal corporation with a registered office in Markham, Ontario.
5. CIM Bayview Creek Inc. is a federal corporation with a registered office in Markham, Ontario.
6. Bayview is the registered owner of the real property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Property**"), more particularly described as Part of Lot 25, Concession 2, E.Y.S. (Markham), Parts 1 and 2 on Plan 65R-31680, Town of Richmond Hill, Regional Municipality of York.
7. The Receiver has retained Borden Ladner Gervais LLP (the "**Receiver's Counsel**" or "**BLG**") as its independent legal counsel.

8. On July 21, 2022 the Receiver brought a motion to seek the following relief from the Court:
 - i. approving the First Report of the Receiver dated June 17, 2022 (the “**First Report**”) and the activities of the Receiver described therein;
 - ii. approving the Receiver’s Interim Statement of Receipts and Disbursements as at June 14, 2022;
 - iii. authorizing and directing the Receiver to execute a listing agreement (the “**Listing Agreement**”) between the Receiver and Colliers Macaulay Nicolls Inc. (“**Colliers**”) and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
 - iv. authorizing and directing the Receiver, with Colliers as its real estate consultant, to carry out the sale process (the “**Sale Process**”), as described in the First Report and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction under the Sale Process; and
 - v. sealing certain Confidential Appendices to the First Report, including, the Colliers Listing Proposal and the appraisals obtained by the Receiver from each of Antec Appraisal Group Inc. and Colliers International Realty Advisors Inc. (collectively, the “**Appraisals**”), pending further Order of the Court.
9. Attached to this Third Report as **Appendices “3”, “4” and “5”** is a copy of the Receiver’s First Report to Court dated June 17, 2022, the Order of Mr. Justice Cavanagh dated July 21, 2022 (“**Sales Process Order**”) and the Endorsement of Mr. Justice Cavanagh dated July 21, 2022.
10. On August 1, 2023 the Receiver brought a motion to seek the following relief from the Court:
 - (a) approving the second report of the Receiver dated July 14, 2023 and the appendices thereto (the “**Second Report**”) and the activities of the Receiver

described therein;

- (b) approving the Receiver's Statement of Receipts and Disbursements as at July 12, 2023;
- (c) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale dated June 2, 2023 (the "**Sale Agreement**") between Sunny Communities (Bayview Creek) Inc. (the "**Purchaser**") and the Receiver for the purchase and sale of the Property located at 10747 Bayview Avenue, Richmond Hill, Ontario and attached as **Confidential Appendix "A"** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (d) vesting in the Purchaser all of the Debtors right, title and interest in and to the Property, free and clear of all encumbrances, except certain permitted encumbrances;
- (e) sealing certain Confidential Appendices to the Second Report;
- (f) authorizing and directing the Receiver to make an interim distribution to Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund ("**Fengate**"), or such other party, as directed by Fengate, in the amount of \$45,000,000.00, upon the closing of the Transaction;
- (g) authorizing and directing the Receiver to make a distribution to Rory McGovern PC, In Trust, for the benefit of Cardinal Advisory Limited ("**Cardinal**") in the amount of \$200,000, (the "**DIP Lender Distribution**"), in full and final satisfaction of all amounts secured by the DIP lender's charge (the "**DIP Lender's Charge**") established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020, upon the closing of the Transaction.

- (h) authorizing and directing the Receiver to make a distribution to The Corporation of the Town of Richmond Hill ("**Richmond Hill**") in the amount of \$453,045.63, plus any other amounts accrued at the closing of the Transaction, for the outstanding realty taxes;
 - (i) authorizing and directing the Receiver to pay Colliers the amount of \$400,000, plus HST, on account of the commission payable pursuant to the Listing Agreement dated July 28, 2022, upon the closing of the Transaction;
 - (j) approving the fees and disbursements of the Receiver for the period from February 28, 2022 to June 30, 2023, as described in the affidavit of Trevor Pringle, sworn July 12, 2023 (the "**First Pringle Fee Affidavit**"); and
 - (k) approving the fees and disbursements of BLG, legal counsel to the Receiver, for the period from July 5, 2021 to June 30, 2023, as described in the affidavit of Christine Mason, sworn July 7, 2023 (the "**First Mason Fee Affidavit**").
11. Attached to this Third Report as **Appendices "6", "7", "8" and "9"** are copies of the Receiver's Second Report to Court dated July 14, 2023, the Orders of Mr. Justice Penny dated August 1, 2023 ("**Approval and Vesting Order**" and "**Administration and Interim Distribution Order**") and the Endorsement of Mr. Justice Penny dated August 1, 2023.

II. PURPOSE OF THIS THIRD REPORT AND DISCLAIMER

12. The purpose of this Third Report is to report to the Court regarding the Receiver's activities and conduct since the Receiver's Second Report and to seek a Discharge Order from the Court for the following:
- a) approving the third report of the Receiver dated November 17, 2023 and the appendices thereto (the "**Third Report**") and the activities of the Receiver described therein;
 - b) approving the Receiver's Statement of Receipts and Disbursements as at

November 13, 2023;

- c) approving the fees and disbursements of the Receiver for the period from July 1, 2023 to November 10, 2023 and approving the estimated fees and disbursements of the Receiver up to its date of discharge, as described in the affidavit of Trevor Pringle, sworn November 13, 2023 (the “**Second Pringle Fee Affidavit**”);
- d) approving the fees and disbursements of BLG, legal counsel to the Receiver, for the period from July 1, 2023 to November 15, 2023, and approving the estimated fees and disbursements of BLG for services to be provided to the Receiver, up to the date of discharge, as described in the affidavit of Christine Mason, sworn November 16, 2023 (the “**Second Mason Fee Affidavit**”);
- e) authorizing the Receiver to pay any professionals fees or disbursements of the Receiver and BLG which exceed the estimates set-out in the Second Pringle Fee Affidavit and the Second Mason Fee Affidavit, with either; (i) the consent of Fengate, or (ii) pursuant to a further order of the Court;
- f) authorizing and directing BLG to pay to the Receiver the amount of \$2,000,000, plus any interest earned thereon (the “**Retained Deposit**”) currently held by BLG in trust for the Receiver on account of the forfeiture of the Deposit (as defined in the Sale Agreement between the Receiver and the Purchaser and appended to the Second Report of the Receiver dated July 14, 2023), in connection with the incomplete closing of the sale transaction contemplated by the Sale Agreement in respect of the Property;
- g) setting aside paragraphs 4, 5, 6, 7 and 8 of the Administration and Interim Distribution Order in their entirety;
- h) authorizing and directing the Receiver to make a distribution from the proceeds of the Retained Deposit, to Rory McGovern PC, In Trust, for the benefit of Cardinal in the amount of \$200,000, which is noted above as the DIP Lender Distribution, in full and final satisfaction of all amounts secured by the DIP

Lender's Charge, established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020;

- i) terminating, discharging and releasing the DIP Lender's Charge upon the completion of the DIP Lender Distribution;
- j) authorizing and directing the Receiver to make a distribution, from the proceeds of the Retained Deposit to Richmond Hill in the amount of \$546,083.57, plus any other amounts accrued thereon, as agreed to by the Receiver, for the outstanding realty taxes (the "**Richmond Hill Distribution**");
- k) authorizing and directing the Receiver to make a distribution, from the proceeds of the Retained Deposit, to Fengate in the amount of \$50,000, plus accrued interest, on account of the repayment in full of the amounts owing to Fengate pursuant to Receiver Certificate No. 1 dated March 28, 2022 (the "**Receiver Certificate No. 1 Repayment**");
- l) terminating, discharging and releasing the Receiver's borrowings charge (the "**Receiver's Borrowing Charge**"), as defined in and created by the Receivership Order, upon the completion of the Receiver Certificate No. 1 Repayment;
- m) approving the reimbursement and funding agreement between the Receiver and Fengate dated November 16th, 2023 in the form attached as **Appendix "10"** to the Third Report (the "**Reimbursement and Funding Agreement**");
- n) authorizing the Receiver to make a distribution from the proceeds of the Retained Deposit, should there be any surplus funds (the "**Surplus Funds**") remaining from the Retained Deposit, to Fengate, immediately prior to the completion of the Foreclosure (as hereinafter defined), in an amount up to the outstanding balance of the secured debt owed to Fengate by the Debtors, from any Surplus Funds that may be remaining from the Retained Deposit (the "**Fengate Distribution**");

- o) authorizing the Receiver to consent to a lifting of the stay of proceedings (the “**Stay of Proceedings**”) imposed pursuant to the Receivership Order, to permit Fengate to serve a Statement of Claim in connection with a foreclosure action in respect of the Property (the “**Foreclosure**”);
 - p) authorizing the Receiver to accept service of the Statement of Claim in respect of the Foreclosure and to not serve a Statement of Defence, Notice of Intent to Defend, or any other objection to the Foreclosure action;
 - q) authorizing the Receiver to immediately terminate and disclaim the Listing Agreement dated July 28, 2022 with Colliers Macaulay Nicolls Inc.;
 - r) sealing the Confidential Appendices to this Third Report;
 - s) notwithstanding the timing of the Foreclosure, terminating, discharging and releasing the Receiver’s charge (the “**Receiver’s Charge**”), as defined in and created by the Receivership Order, upon the Receiver filing a discharge certificate with the Court, substantially in the form attached to the draft Discharge Order as Schedule “A” (the “**Discharge Certificate**”); and
 - t) discharging Spergel as the Receiver of the Debtors and releasing and discharging Spergel from any and all liability Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver in these proceedings, subject to the filing of the Discharge Certificate with the Court certifying that the Receiver has attended to certain remaining duties, as described in the Receiver’s Third Report.
13. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction or use of this Third Report for any other purpose.
14. In preparing this Third Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed

an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.

15. Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in Canadian dollars.

III. ACTIVITIES OF THE RECEIVER

16. The Receiver has continued, whether directly, or through the Receiver's Counsel, to attend to the following matters since the Receiver's Second Report:
 - i. continued twice weekly security inspections of the Property;
 - ii. attended to various maintenance items for the Property;
 - iii. attempted to complete the Transaction between the Receiver and the Purchaser;
 - iv. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act*; and
 - v. held numerous discussions and communications with stakeholders pertaining to the continued marketing for sale of the Property.

IV. TERMINATION OF SALE AGREEMENT

17. The Sale Agreement, attached as **Confidential Appendix "A"** to this Third Report, which received Court approval on August 1, 2023, between the Receiver and the Purchaser was scheduled to close on August 31, 2023.
18. Prior to the closing date, the Purchaser's lawyer advised the Receiver that they were seeking an extension to complete the Transaction. The Receiver, through BLG granted a short extension to the Purchaser on the condition that a further non-refundable deposit of \$2,000,000 was to be provided. The Purchaser failed to provide the further deposit and was not able to complete the Transaction, when BLG tendered at the new closing date of the Transaction on behalf of the Receiver.
19. Attached to this Third Report as **Appendix "11"** is the email chain evidencing the

Purchaser's failure to complete the Transaction and the tendering of the closing documentation by BLG.

20. The Sale Agreement was terminated due to the sole default of the Purchaser. As a result, the Retained Deposit was forfeited in accordance with the Sale Agreement and retained by BLG in trust for the Receiver.
21. The Sale Agreement provides that in the event of the termination of the Sale Agreement by reason of the sole default of the Purchaser, the Deposit shall be paid to the Receiver as liquidated damages.

V. FORECLOSURE

22. Considering that the Sale Process, first initiated more than 16 months ago, and related negotiations did not result in a completed sale transaction, as well as other factors complicating a sale transaction and in light of the market value of the Property relative to its debt, Fengate has decided to commence foreclosure proceedings in respect of the Property. In connection therewith, Fengate has approached the Receiver to request that the Receiver consent to a lifting of the stay of proceedings provided for in the Receivership Order, so that Fengate can pursue the issuance of a Statement of Claim in respect of the Foreclosure.
23. Fengate holds the first and second mortgages on the Property, in its capacity as general partner of LPF Conversion Fund. The mortgage indebtedness is well in excess of the market value of the Property, based upon the Appraisals that Receiver has previously filed with the Court, and which are the subject of sealing Orders issued by the Court, as well as the purchase price in the Sale Agreement. Attached to this Third Report as **Confidential Appendices "B" and "C"** respectively, are copies of the Colliers Realty Advisors Updated Appraisal Report and the Antec Memorandum to Update the Appraisal for the Real Property (together with the original Antec appraisal);
24. As a result, Fengate will experience a significant shortfall with respect to their security.

25. The Receiver is not aware of any amounts secured by the property of the Debtors that ranks in priority to Fengate that will not be satisfied by the Priority Distributions, as defined below, or the payment of the fees and disbursements provided for herein.
26. Attached to this Third Report as **Appendix “12”** is the draft Statement of Claim that was provided to the Receiver and BLG by counsel to Fengate, in respect of the proposed Foreclosure.
27. Subject to the granting of the relief sought by the Receiver, as set out at paragraph 12 above, the Receiver proposes to consent to the lifting of the Stay of Proceedings under the Receivership Order, so that Fengate can pursue the Foreclosure.

VI. FEES AND DISBURSEMENTS OF THE RECEIVER AND COUNSEL

28. Attached to this Third Report as **Appendix “13”** is the Second Pringle Fee Affidavit, which incorporates, by reference a copy of the time dockets pertaining to the period from July 1, 2023 to November 10, 2023 (the “**Receiver Fee Period**”).
29. The fees and disbursements of the Receiver in respect of the Receiver Fee Period amount to \$35,852.64 (inclusive of HST and disbursements), as detailed in the Second Pringle Fee Affidavit.
30. Attached to this Third Report as **Appendix “14”** is the Second Mason Fee Affidavit, which incorporates, by reference a copy of the time dockets pertaining to the period from July 1, 2023 to November 15, 2023 (the “**BLG Fee Period**”).
31. The fees and disbursements of BLG in respect of the BLG Fee Period amount to \$170,205.97 (inclusive of HST and disbursements), as detailed in the Second Mason Fee Affidavit.
32. The Receiver has reviewed BLG’s accounts and given the numerous issues that both the Receiver and BLG were required to deal with in this matter, the Receiver is of the view that the work carried out by BLG was necessary and the fees charges by BLG are reasonable. The hourly rates of the lawyers who worked on this matter were reasonable, in light of the services required, and the services were carried out by lawyers with the appropriate level of experience. Further, a rate cap was

provided by BLG, which resulted in a significant saving on costs, as compared to the rates charged by other large law firms.

VII. RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

33. Attached to this Third Report as **Appendix "15"** is the Receiver's Interim Statement of Receipts and Disbursements as of November 13, 2023.

VIII. FEE ACCRUAL

34. Provided that there is no opposition to the relief sought in this Third Report and that such relief is granted, the Receiver estimates that the additional fees (not including HST and disbursements) for itself and the Receiver's Counsel necessary to complete these proceedings will be \$25,000.00 for the Receiver and \$25,000.00 for the Receiver's Counsel, BLG.

IX. RECEIVER'S PROPOSED DISTRIBUTION

35. Subject to the granting by the Court of the relief sought by the Receiver, as detailed at paragraph 12 above, the Receiver proposes to make the DIP Lender Distribution, the Richmond Hill Distribution, the Receiver Certificate No. 1 Repayment (collectively, the "**Priority Distributions**") and, subject to Fengate entering into the Reimbursement and Funding Agreement, the Fengate Distribution, in the event that there are Surplus Funds remaining from the Retained Deposit.
36. Fengate has provided the Receiver with an updated payout statement, which is attached to this Third Report as **Appendix "16"**.

X. DISCHARGE OF RECEIVER

37. Subsequent to the date of this Third Report, and prior to the Receiver's discharge, the Receiver proposes to attend to the payment of distributions as identified above, as well as other residual and/or administrative matters ("**Remaining Duties**") in connection with Spergel's appointment as Receiver. Once the Remaining Duties

are completed, the Receiver will proceed to file the Discharge Certificate with the Court.

XI. RECOMMENDATION

38. For the reasons outlined in this Third Report, the Receiver respectfully requests that the Court grant the relief specified at paragraph 12 of this Third Report.

Dated at Hamilton, Ontario this 17th day of November 2023.

msi Spergel Inc.

solely in its capacity as the Court-Appointed Receiver of the Debtors and not in its personal or corporate capacity.

Per:



Trevor B. Pringle, CFE, CIRP, LIT
Partner

Appendix 1



Electronically issued : 08-Mar-2022
Délivré par voie électronique : 08-Mar-2022
Toronto

Court File No. CV-21-0066512800CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
JUSTICE CAVANAGH) **WEDNESDAY, THE 2nd**
) **DAY OF MARCH, 2022**

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the DUCA Financial Services Credit Union Ltd. (“**DUCA**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing msi Spergel Inc. as receiver (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Bayview Creek (CIM) LP (“**Bayview LP**”), CIM Invests Development Inc. (“**CIM Invests**”) and CIM Bayview Creek Inc. (“**Bayview Inc.**”) (collectively, the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard on August 11, 2021, by Zoom videoconference due to the COVID-19 pandemic, was taken under reserve at the conclusion of the hearing with the Court’s Endorsement being released today.

ON READING the affidavits of Riz Ahmad sworn July 2 and 15, 2021, and of Bryan McWatt, sworn July 12, 2021, including the Exhibits thereto and on hearing the submissions of

counsel for DUCA and the Debtor, no one else appearing although duly served as appears from the affidavits of service of Carmen Yuen, and on reading the consent of msi Spergel Inc. to act as the Receiver,

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 motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof as well as PT LT 25, CON 2, (MKM), PTS 1 & 2, PL65R31680; TOWN OF RICHMOND HILL, municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in

that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER

10. THIS COURT ORDERS that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA as well as the DIP Lender's Charge as defined in this Court's order of November 27, 2020 ("DIP Lender's Charge"), which, for greater certainty, shall have priority over the Receiver's Charge.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the

charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA BIA as well as the DIP Lender's Charge which, for greater certainty, shall have priority over the Receiver's Borrowings Charge.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. 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://www.spergelcorporate.ca/cimbayviewcreekinc>.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. 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.

29. THIS COURT ORDERS that the Receiver 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 Receiver 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.

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

31. THIS COURT ORDERS that the order of Schabas J. dated September 18, 2020, is varied to the extent necessary to permit the Receiver to exercise its powers under this Order.



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. (collectively, the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and the PT LT 25, CON 2, (MKM), PTS 1 & 2, PL65R31680; TOWN OF RICHMOND HILL, municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 2nd day of March, 2022 (the "**Order**") made in an action having Court file number , has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2022.

msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

Appendix 2

Court File Number: CV-21-00662099-00CL
CV-21-00665128-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

BRYTON CAPITAL CORP. GP LTD. and BAYVIEW CREEK RESIDENCES INC.
(formerly known as BRYTON CREEK RESIDENCES INC.)

Applicants

AND

**CIM BAYVIEW CREEK INC., GRANT THORNTON LIMITED IN ITS CAPACITY AS
THE BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC., BAYVIEW CREEK
(CIM) LP, 10502715 CANADA INC., MNP LTD. IN ITS CAPACITY AS THE
BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP AND 10502715
CANADA INC., GR (CAN) INVESTMENT CO., LTD., MONEST FINANCIAL INC.,
TRACY HUI, JOJO HUI, CARDINAL ADVISORY LTD., and THE CORPORATION
OF THE CITY OF RICHMOND HILL**

Respondents

-and-

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

AND

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

Respondents

Case Management Yes No by Judge:

Counsel	Telephone No:	Email/Facsimile No:
Robert Choi, Adam Beyhum and Aram Keyvani for Bryton Capital Corp. GP Ltd.		
John Russo for RSM Canada Inc. in its capacity as privately appointed receiver of CIM Bayview Creek Inc., Bayview Creek (CIM) LP and 10502715 Canada Inc.		
Adam Slavens, Jonathan Silver and Mike Noel for The Enforcement Committee of the Debenture Holders		
E. Patrick Shea for GR (Can) Investments Co. Ltd. and Monest Financial inc.		
John N. Birch for Grant Thornton Limited in its former capacity as proposal trustee and current capacity as trustee in bankruptcy of CIM Bayview Creek Inc.		
Rory McGovern for Cardinal Advisory Limited		

Order Direction for Registrar **(No formal order need be taken out)**
 Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

Adjourned to: _____
 Time Table approved (as follows): _____

DATE OF HEARING: August 11, 2021

ENDORSEMENT

Introduction

[1] Two applications were heard together.

[2] In the first application, the Applicants Bryton Capital Corp. GP Ltd. (“Bryton Capital”) and Bayview Creek Residences Inc. (formerly known as Bryton Creek Residences Inc.) (“Bryton Creek”) (together, “Bryton”) apply for an order:

- a. directing and approving the sale of a property in Richmond Hill (the “Property”) by RSM Canada Limited, in its capacity as the privately appointed receiver over the property of CIM Bayview Creek Inc. (“CIM Bayview”), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, the “Debtors”) as contemplated by the terms of Bryton Capital Corp. GP Ltd.’s mortgage registered on title to the Property and the agreement of purchase and sale between the Debtors and Bayview Creek Residences Inc.;
- b. vesting title to the Property free and clear of all encumbrances;
- c. declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option (as defined herein) are barred by the principles of *res judicata* and abuse of process;
- d. in the alternative to the relief sought in c., above, declaring that no relief may be granted to, among other things, set aside the Option pursuant to the *Fraudulent Conveyances Act*, RSO 1990, c. A.33, *Assignments and Preferences Act*, RSO 1990, c. A.33, or the oppression remedy pursuant to section 241 of the *Canada Business Corporations Act*, RSC, 1985, c. C-44;
- e. an order declaring that any claims brought under, among other things, ss. 95 and 96 of the *Bankruptcy and Insolvency Act* relating to the Option shall have no effect on the validity or enforceability of the Option, together with an order dismissing those claims.

[3] The second application is brought by DUCA Financial Services Credit Union Limited (“DUCA”), the first ranking mortgagee of the property, seeking appointment of msi Spergel Inc., a licensed trustee, as receiver of the assets, properties and undertakings of the Debtors, including the Property.

[4] For the following reasons, the application by Bryton is dismissed and the application by DUCA is granted.

Factual Background

[5] This application concerns the Property which is a residential development property located in Richmond Hill, Ontario.

Parties

[6] Bryton Capital is a real estate developer and holds a second ranking mortgage on the Property. Bryton Creek is the optionee under an option to purchase the Property (the “Option”).

[7] The Option was assigned by Bryton Creek to itself and 10747 Bayview Mortgage Corp. on June 16, 2021, as permitted by the terms of the Option.

[8] CIM Bayview, as bare trustee for Bayview LP, holds title to the Property. The general partner for Bayview LP is 10502715 Canada Inc. (“105 Canada”).

[9] CIM Bayview, Bayview LP and 105 Canada (“Vendors”) were the Vendors under the Option and the related agreement of purchase and sale (“APS”). All of the Vendors are now bankrupt. Jiubin Feng is the director of the Vendors.

[10] Grant Thornton Limited is the Trustee in Bankruptcy for CIM Bayview.

[11] MNP Ltd. is the Trustee in Bankruptcy for Bayview LP and 105 Canada.

[12] DUCA holds a first-ranking mortgage registered on title to the Property securing repayment of \$20,720,000.

[13] GR (Can) Investment Co. Ltd., together with Monest Financial Inc. (the “Third Mortgagees”) registered a third mortgage against the Property.

[14] Jojo Hui and Tracy Hui are members of the Enforcement Committee of the Debenture Holders (the “Debentureholders”) who, in 2018, enter into a Subscription Agreement and received three year term secured redeemable debentures under which they advanced \$7,630,000 to CIM International Group Inc. (“CIM International”) to develop the Property. In a separate action, they obtained leave to issue a Certificate of Pending Litigation which was registered against the Property.

[15] RSM Canada Limited is the private receiver appointed by Bryton Capital pursuant to the terms of Bryton Capital’s Mortgage and General Security Agreement.

Factual background

[16] Some of the factual background to these applications is set out in my earlier decision in these proceedings reported at 2021 ONSC 220, at paras. 12-33.

[17] The applications relate to an Option Agreement dated June 3, 2019 under which the CIM Group granted to Bryton Creek in an irrevocable option to purchase the Property pursuant to an agreement of purchase and sale dated as of June 3, 2019. The Option was amended on July 1, 2020.

[18] On October 29, 2020, CIM Bayview filed a Notice of Intention to make a Proposal (“NOI”) under the *Bankruptcy and Insolvency Act*. Grant Thornton Limited was appointed as the proposal trustee for CIM Bayview.

[19] In the NOI proceeding, CIM Bayview sought an order approving a sales process for the sale of the property. Bryton opposed this order on the ground that it had a valid and enforceable option to purchase the Property. On November 27, 2020, I made an order extending the date for filing a proposal under the BIA and extending the dates for the exercise of the Option and for completion of a purchase of the Property under the Option.

[20] I ordered that the motion brought by Bryton in relation to the Option be scheduled for hearing on December 21, 2020.

[21] CIM Bayview brought a motion for an order (i) declaring that its notice to disclaim in the Option is valid and effective; (ii) declaring that the Option be vested out in furtherance of a sales process in the NOI insolvency proceeding; (iii) declaring that the Option violated federal law because it constitutes a criminal rate of interest and provided for an increase charge on amounts in arrears under a mortgage loan made by CIM Bayview to Bryton Capital.

[22] Bryton Capital and Bryton Creek brought a motion for an order (i) that the Option is not to be disclaimed or resiliated, (ii) declaring that Bryton Creek not be restrained from exercising the Option or, alternatively, permitting it to exercise the Option; and (iii) directing the Debtors to comply with the terms of the Option and complete the sale of the Property to Bryton Creek.

[23] Grant Thornton, as NOI trustee, did not bring a motion on December 21, 2020 but, in its factum, requested an order declaring that (a) the Option was void as against it as a transfer at undervalue; and (b) payments made by CIM Bayview to Bryton Capital as a break fee when the Option was amended were void as a preference.

[24] I released my decision on this motion on January 12, 2021. The motion by CIM Bayview was dismissed. The motion by Bryton Capital and Bryton Creek was substantially successful, and a declaration was made that Bryton Creek is at liberty to exercise its rights under the Option.

[25] Bryton Creek exercised the Option on January 14, 2021 and requested that the Debtors complete the APS. The Debtors declined to close, citing an appeal from the January 12, 2021 decision.

[26] Cim Bayview filed a Notice of Appeal of the January 12, 2021 decision. The appeal was dismissed for delay on April 14, 2021.

[27] Bryton Creek exercised the Option on January 14, 2021.

[28] On February 8, 2021, CIM Bayview was deemed to have made an assignment for the benefit of creditors and Grant Thornton became trustee of the bankrupt estate.

[29] On May 4, 2021, Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefit of creditors pursuant to the BIA naming MNP Limited ("MNP") as trustee of their bankrupt estates.

[30] Bryton Capital appointed RSM Capital Limited as receiver pursuant to its mortgage and general security agreement.

[31] On May 20, 2021, the trustees in bankruptcy for the Vendors announced that they were disclaiming their interest in the Property.

[32] On June 1, 2021, Bryton Capital took possession of the Property.

[33] On June 2, 2021, GR (Can) Investment Co. Ltd. on its own behalf and on behalf of other creditors of CIM Bayview Creek Inc., 10502715 Canada Inc. and Bayview Creek (CIM) LP issued a Notice of Application against Bryton Creek as respondent.

[34] In its application, GR seeks remedies under s. 241 of the *Canada Business Corporations Act*, the *Assignments and Preferences Act* (“APA”) and the *Fraudulent Conveyances Act* (“FCA”).

[35] The Subordinate Secured Creditors have also brought motions pursuant to s. 38 of the BIA seeking to have the rights of Grant Thornton in its capacity as trustee of the bankrupt estates of CIM Bayview to pursue remedies against Bryton and/or the purchasers of the Property under, among other things, ss. 95 and 96 of the BIA assigned to the participating creditors.

Analysis

A. Application by Bryton Applicants

[36] The following issues arise on Bryton’s application:

- a. Should a vesting order be granted so that title to the Property can be conveyed free and clear of all creditors’ claims pursuant to the Option?
- b. Are the Bryton Applicants entitled to a declaratory order that proceedings relating to the validity of the Option are barred?
- c. Is the Creditors’ application to challenge the Option barred by the December 3, 2020 Order and the principles of *res judicata*?

Should a vesting order be granted?

[37] Bryton brings the application for a vesting order pursuant to s. 100 of the *Courts of Justice Act* (“CJA”). Section 100 of the CJA provides that a court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[38] Bryton submits that although RSM as privately appointed receiver has the power to convey title to the Property under its security documentation, it requires the assistance of the Court to discharge certain encumbrances and, therefore, a vesting order is necessary in the circumstances.

[39] Under the proposed vesting order, the first and second mortgages would be discharged, and the third mortgage and Certificate of Pending Litigation would also be discharged. The DIP Charge made pursuant to my November 27, 2020 order would also be discharged if the requested vesting order were to be made.

[40] Bryton’s application is opposed by the Third Mortgagees and by the Debentureholders.

[41] Bryton cites *Third Eye Capital Corporation v. Dianor Resources Inc.*, 2019 ONCA 508 in support of their application for a vesting order by which title to the Property would vest in the purchaser, Bryton Residences, on a “free and clear” basis. Bryton submits that there is a proper basis to grant such an order both conveying title and extinguishing claims against the Property pursuant to principles of equity, as explained in *Third Eye*.

[42] In *Third Eye*, the Court of Appeal considered the jurisdiction of the Court to extinguish an interest in land, using a vesting order, under s. 100 of the CJA and s. 243 of the BIA. The Court, at para. 25, described the effect of a vesting order as one that effects the transfer of purchased assets to a purchaser

on a free and clear basis, while preserving the relative priority of competing claims against the debtor / vendor with respect to the proceeds generated by the sale transaction.

[43] Bryton does not seek a vesting order under both s. 100 of the *CJA* and s. 243 of the *BIA*. Bryton seeks this order only under s. 100 of the *CJA*. In *Third Eye*, the Court of Appeal addressed whether, absent an independent basis for jurisdiction, s. 100 of the *CJA* may be the sole basis on which to grant a vesting order. The Court of Appeal cited the statement by Lang J.A. in *Trick v. Trick* (2006), 81 O.R. (3d) 241 (C.A.), at para. 19, in *obiter*, that s. 100 of the *CJA* “does not provide a free standing right to property simply because the court considers that result equitable” and described this statement as supporting the conclusion that “absent an independent basis for jurisdiction, the *CJA* could not be the sole basis on which to grant a vesting order”.

[44] The Court of Appeal then cited a passage from an academic paper on vesting orders addressing whether s. 100 of the *CJA* confers jurisdiction to vest title to property on a free and clear basis and held:

This would suggest that provided there is a basis on which to grant an order vesting property in a purchaser, there is a power to vest out interests on a free and clear basis so long as the terms of the order are appropriate and accord with the principles of equity.

[45] The Court of Appeal went on to consider whether jurisdiction exists under s. 243 of the *BIA* to grant a vesting order and concluded, at para. 81, that a receiver has jurisdiction under s. 243 of the *BIA* to convey property “free and clear of any liens or encumbrances”, noting that the use of vesting orders is in essence incidental and ancillary to the power to sell.

[46] The Court of Appeal cautioned, at para. 82, that, while jurisdiction for this aspect of vesting orders stems from s. 243 of the *BIA*, the exercise of that jurisdiction is not unbounded. The Court noted that its conclusion facilitates the maximization of proceeds and realization of the debtor’s assets but “at the same time operates to ensure that third party interests are not inappropriately violated”.

[47] In *Clarkson Co Ltd. v. Credit Franco Canadien*, 1985 CanLII 2651 (SK CA), the Saskatchewan Court of Appeal held, at para. 6, that a vesting order should not be made unless or until the rights of all interested parties have either been relinquished or have been extinguished by due process.

[48] The Option is a private contract and does not provide for extinguishment of claims upon exercise of the Option and completion of the sale provided for thereby. The rights of RSM as a private receiver do not extend beyond the contractual rights of Bryton. These rights do not include the right to convey the Property “free and clear” of third party interests.

[49] In my January 12, 2021 Order, I made an order that Bayview Creek Residences is at liberty to exercise its rights under the Option. I addressed the request made by Grant Thornton as Proposal Trustee for relief under ss. 95 and 96 of the *BIA* and made the following order:

THIS COURT DECLARES that the Proposal Trustee lacks statutory authority to seek orders under s. 95 and 96 of the *BIA* prior to the filing of a proposal or a bankruptcy and that the Proposal Trustee Request may not be pursued until the Debtor makes a proposal or becomes bankrupt and, accordingly, this order does not preclude the bankruptcy trustee or any other person from pursuing relief under s. 95 or 96 of the *BIA*.

[50] Bryton, through RSM as receiver, is able to complete the APS and convey title to the Property to Bayview Residences as purchaser. A vesting order is not needed for this purpose. The vesting order is requested by Bryton to vest out third party claims.

[51] At this stage of the bankruptcy proceedings, the Debentureholders and the Third Mortgagees have not been given a fair opportunity to pursue claims for oppression, under the APA and the FCA, and based on an alleged transfer at undervalue. In these circumstances, it would not be equitable to vest out these claims without adjudication of their merits.

[52] To extinguish the claims for relief under s. 95 or 96 of the *BIA* without adjudication would conflict with the January 12, 2021 Order. To grant the requested vesting order without adjudication of the claims of third parties under s. 241 of the *CBCA*, the *APA* and the *FCA*, and s. 95 or 96 of the *BIA*, would also conflict with the principles set out by the Court of Appeal in *Third Eye* with respect to vesting orders under s. 100 of the *CJA* and would not be appropriate or in accord with the principles of equity.

[53] The motion by Bryton for a vesting order is dismissed.

Is Bryton entitled to a declaratory order that proceedings relating to the validity of the Option are barred?

[54] Bryton seeks an order declaring that any proceedings commenced after December 21, 2020 relating to the validity of the Option are barred by the principles of *res judicata* and abuse of process under s. 97 of the *Courts of Justice Act*. Bryton submits that courts may grant declaratory relief in these circumstances to provide commercial certainty and define the parties' respective rights.

[55] Bryton relies on the decision of the Supreme Court of Canada in *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4 in which the Court held that declaratory relief is granted by the courts on a discretionary basis, and may be appropriate where (a) the court has jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine interest in its resolution, and (d) the responding party has an interest in opposing the declaration being sought.

[56] Bryton submits that they meet these requirements because (a) rule 14.05(3)(e) authorizes a proceeding by application where the relief claimed is the settling of the priority of interests or charges; (b) the dispute is real because the Third Mortgagees have issued a Notice of Application to challenge the validity of the Option which will be supported by the Debentureholders; (c) the declaratory relief is necessary to provide commercial certainty to permit financing and development of the Property; and (d) the Third Mortgagees and any creditors aligned with their position have been given notice of this application and are able to make submissions in opposition to the relief sought.

[57] Bryton submits that the Third Mortgagees and the Debentureholders were required to tender any evidence upon which they rely in response to the application for declaratory relief and, like on a motion for summary judgment, put their best foot forward. They submit that in the absence of evidence on the issues involving alleged transfers at undervalue the application for declaratory relief should be granted.

[58] In *S.A.*, the application for declaratory relief was made pursuant to the British Columbia Supreme Court Rules which authorized an application where the sole or principal question at issue is one of construction of an oral or written contract or other document.

[59] The Third Mortgagees and the Debentureholders have not yet commenced proceedings under s. 95 or s. 96 of the BIA. There are no pleadings or evidence before me with respect to the merits of such claims.

[60] The jurisdiction conferred on the court by s. 97 of the *CJA* to make binding declarations of right is not a free-standing provision that allows a judge to do whatever seems fair. It allows the court to confirm legal rights that already exist: *T.T.K.O., S.P.O. G.D.K.* 2011 ONSC 6601, at para. 43.

[61] Bryton seeks an order barring claims that have not been made from being adjudicated on their merits. It is not open to them to do so, simply because they seek declaratory relief in this application. The attempt by Bryton to pre-emptively bar creditors' claims that have not yet been made is, in my view, misconceived.

[62] Bryton's claim for declaratory relief is denied.

Are the claims by creditors to challenge the validity of the Option barred by the doctrine of *res judicata*?

[63] Bryton, in addition to its claim for declaratory relief, seeks, in the alternative, an order that creditors' challenges to the validity of the Option should be barred by operation of the doctrine of *res judicata*.

[64] Bryton relies on an Order dated December 3, 2020 made at a scheduling conference in which the following Order was made:

THIS COURT FURTHER ORDERS that any motions or cross-motions relating to whether the Bryton Option is valid and whether the stay of proceedings in respect of CIM Bayview ("CIM Bayview") should be lifted to allow for the Bryton Option to be enforced at this time shall be heard at the time of hearing the Bryton Option Motion (the "Bryton Option Validity and Enforcement Motions").

[65] All creditors on the service list for the proposal proceeding, including the Third Mortgagees and Debentureholders, were given notice of this Order.

[66] Bryton submits that the creditors' claims to challenge the validity of the Option, including the Third Mortgagees' claims under the *FCA*, *APA*, oppression remedy and as assignees under s. 38 of the BIA are precluded by the doctrine of cause of action estoppel. Bryton submits that the doctrine of cause of action estoppel applies to all causes of action that a party had the opportunity to raise in the prior proceedings and, in all of the circumstances, should have raised. Bryton submits that the January 12, 2021 Order is a final order and that the Third Mortgagees and the Debentureholders were privy to the proposal proceedings in which that Order was made and, as such, they were required to make any claims challenging the Option as part of the motion heard on December 21, 2020.

[67] Bryton submits that the Third Mortgagees, the Debentureholders, and any other creditor with notice of the proposal proceedings were required to file materials and advance their claims in that proceeding. Bryton submits that the causes of action that the Third Mortgagees wish to litigate were already argued in December 2021 and, although the Third Mortgagees now advance claims under different legal theories, any claims seeking to challenge the validity of the Option should have been made and adjudicated at the prior hearing.

[68] At the time that the motions were heard in the proposal proceeding on December 21, 2020, CIM Bayview, Bayview Creek LP, and 10502715 Canada Inc. were not bankrupt. CIM Bayview made an assignment for the benefit of its creditors on February 8, 2021, and Grant Thornton was appointed as trustee of the bankruptcy estate. Bayview Creek LP and 10502715 Canada Inc. made assignments for the benefits of their creditors on May 4, 2021 and MNP was named as trustee of their bankruptcy estates. The causes of action that the Third Mortgagees and other supporting creditors seek to acquire under s. 38 of the BIA could not have been asserted in the proposal proceedings in December 2020. The causes of action that became vested in the trustees in bankruptcy could not have been acquired by creditors until the debtors were bankrupt.

[69] In my January 21, 2021 endorsement, at para. 105, I wrote that “if CIM Bayview is deemed to have made an assignment of all its property for the general benefit of its creditors, ... the trustee in bankruptcy would then have statutory authority to seek orders under s. 95 and s. 96 of the BIA”. Any other causes of action to be acquired from Grant Thornton and MMP under s. 38 of the BIA could not have been pursued until after the debtors became bankrupt. With respect to direct claims by the Third Mortgagees, these claims involve inter-creditor matters that relate to the claims to be obtained by assignment under s. 38 of the BIA. These claims are properly brought by way of an application or action. In the circumstances, I do not agree that it was incumbent on the Third Mortgagees to seek relief by way of a motion in December 2020, particularly in circumstances where the debtors were not bankrupt.

[70] Although Bryton made separate submissions in their factum in relation to their claim for declaratory relief and their submission that creditors’ claims to challenge the validity of the Option are barred by *res judicata*, I regard these submissions to be related. For the reasons I have given, Bryton’s claim for declaratory relief is misconceived and opposition to claims made by the Third Mortgagees or the Debentureholders should be made in proceedings they commence and not by seeking declaratory relief.

[71] I conclude that the Third Mortgagees and the Debentureholders are not precluded by operation of the doctrine of cause of action estoppel from asserting claims under the FCA, APA, oppression remedy, or as assignees under s. 38 of the BIA.

[72] Bryton submits that the Third Mortgagees and the Debentureholders are bound by findings made in my January 21, 2021 endorsement and that such findings give rise to issue estoppel which has the effect of precluding them from relitigating such findings in a subsequent proceeding.

[73] Bryton, in substance, seeks a declaration that the doctrine of issue estoppel applies to claims by the Third Mortgagees and the Debentureholders that have not yet been made. Until such claims are made, it would not be proper to determine whether the doctrine of issue estoppel applies to preclude relitigation of any issues decided in my January 21, 2021 decision.

[74] The doctrine of issue estoppel is not applicable.

B. DUCA’s application for appointment of a receiver

[75] DUCA brings an application for the appointment of msi Spergel inc. as receiver of the assets, undertakings and properties of Bayview Creek (CIM) LP and CIM Bayview Creek Inc. and CIM Invests Development Inc. including the property at 10747 Bayview Avenue, Richmond Hill, Ontario (the “Property”) pursuant to s. 243 of the BIA and s. 101 of the CJA. The Third Mortgagee supports DUCA’s application.

[76] DUCA has a first ranking \$20,720,000 mortgage charge on the Property. DUCA's mortgage is in default and has matured. There is no forbearance period in effect. DUCA's security provides for the appointment of a receiver.

[77] Spergel is a licenced trustee and qualifies to be appointed as a receiver under s. 243(1) of the *BIA*. See *Colour Box Ltd. (Re)*, 1995 CanLII 7143, at para. 17 *et seq.*

[78] Bryton Capital and Bryton Creek oppose DUCA's application. They submit that there is no need for such an appointment and that the appointment of a receiver by the court would only lead to increased delay and costs.

[79] DUCA's decision not to seek the appointment of a receiver earlier does not weigh against the appointment of a receiver, as Bryton submits. The circumstances have changed, and DUCA is entitled to take the changed circumstances into account in deciding whether to seek the appointment of a receiver.

[80] I am satisfied that, in the circumstances, it would be just and convenient to appoint Spergel as receiver. A court appointed receiver will be able to take possession of the Property, ensure that it is secure and protected, address issues relating to property taxes and, generally, act having regard to the interests of all of the stakeholders. A court appointed receiver will be in a position to deal with any issues relating to disposition of the Property, or any distribution issues. The structure and discipline that will be provided by the appointment of a receiver will assist the parties and the Court in dealing with the contentious issues before the court. Under the proposed receivership order, Spergel will be able to seek advice and directions from the court when appropriate. Notwithstanding the opposition from Bryton, I do not see prejudice to Bryton that will arise from the appointment by the court of a receiver.

[81] I grant DUCA's application.

Disposition

[82] For these reasons,

- a. The application by Bryton Capital and Bryton Creek is dismissed.
 - b. The Application by DUCA is granted, and an order is made appointing Spergel as receiver in the form of order requested by DUCA and posted on CaseLines. The Order of Schabas J. dated September 18, 2020 is varies to the extent necessary to permit the Receiver to exercise its powers under the appointment order. I ask counsel for DUCA to provide me with an approved form of order to be issued.
- [83] If the parties are unable to resolve costs, I ask that they agree on a timetable for written submissions and provide it to me for approval.

Cavanagh J.

March 2, 2022

Appendix 3

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

June 17, 2022

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APPENDICES

1. Receivership Order of Mr. Justice Cavanagh dated March 2, 2022
2. Endorsement of Mr. Justice Cavanagh dated March 2, 2022
3. City of Richmond Hill - Statement of Taxes dated March 11, 2022
4. DUCA Financial Services Credit Union Ltd. - Mortgage Discharge Statement
5. Bryton Capital Corp. GP Ltd. - Mortgage Discharge Statement
6. Summary of Listing Proposals
7. Receiver's Interim Statement of Receipts and Disbursements at June 14, 2022

CONFIDENTIAL APPENDICES

- A. Colliers International Realty Advisors Inc. - Appraisal Report for 10747 Bayview Avenue, Richmond Hill, Ontario
- B. Antec Appraisal Group Inc. - Appraisal Report for 10747 Bayview Avenue, Richmond Hill, Ontario
- C. Colliers International Listing Proposal with market valuation

I. APPOINTMENT AND BACKGROUND

1. This first report ("**First Report**") is filed by msi Spergel Inc. ("**Spergel**") in its capacity as the Court-Appointed Receiver (in such capacity, the "**Receiver**") of the following entities (collectively, the "**Debtors**"):
 - i. Bayview Creek (CIM) LP. ("**LP**");
 - ii. CIM Invests Development Inc. ("**Invests**"); and
 - iii. CIM Bayview Creek Inc. ("**Bayview**").
2. Spergel was appointed as the Receiver of all of the assets, undertakings and property of the Debtors by the Order of the Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on March 2, 2022 (the "**Receivership Order**"). A Copy of the Receivership Order is attached to this First Report as **Appendix "1"**. A copy of the Endorsement of the Honourable Mr. Justice Cavanagh dated March 2, 2022 (the "**Endorsement**") is attached to this First Report as **Appendix "2"**.
3. Bayview Creek (CIM) LP is a limited partnership with addresses in Markham and Richmond Hill, Ontario.
4. CIM Invests Development Inc. is a federal corporation with a registered office in Markham, Ontario.
5. CIM Bayview Creek Inc. is a federal corporation with a registered office in Markham, Ontario.
6. Bayview is the registered owner of the real property municipality known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Real Property**"), more particularly described as Part of Lot 25, Concession 2, E.Y.S. (Markham), Parts 1 and 2 on Plan 65R-31680, Town of Richmond Hill, Regional Municipality of York.
7. The Receiver has retained Borden Ladner Gervais LLP (the "**Receiver's Counsel**" or "**BLG**") as its independent legal counsel.

II. PURPOSE OF THIS FIRST REPORT AND DISCLAIMER

8. The purpose of this First Report is to report to the Court regarding the Receiver's activities and conduct since the Receiver's appointment dated March 2, 2022, and to seek an Order from this Court for the following:
 - (a) approving the First Report of the Receiver and the activities of the Receiver described therein;
 - (b) approving the Receiver's Interim Statement of Receipts and Disbursements as at June 14, 2022;
 - (c) authorizing and directing the Receiver to execute a listing agreement (the "**Listing Agreement**") between the Receiver and Colliers International ("**Colliers**") and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
 - (d) authorizing and directing the Receiver, with Colliers as its real estate consultant, to carry out the sale process (the "**Sale Process**"), as described in the First Report and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process; and
 - (e) sealing certain Confidential Appendices to the First Report, including, the Colliers Listing Proposal and the appraisals obtained by the Receiver from each of Antec Appraisal Group Inc. and Colliers International Realty Advisors Inc. (collectively, the "**Appraisals**"), pending further Order of the Court.
9. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction or use of this First Report for any other purpose.
10. In preparing this First Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
11. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

III. ACTIVITIES OF THE RECEIVER

12. Immediately upon its appointment, the Receiver directly, or through the Receiver's Counsel, attended to the following:
 - i. secured possession of the Real Property and attended to all necessary repairs and maintenance, where applicable;
 - ii. arranged for twice weekly security inspections of the Real Property;
 - iii. arranged for funding and the issuance of a Receiver Certificate No 1 (the "**Certificate**") in the amount of \$50,000, which Certificate was funded by DUCA Financial Services Credit Union Ltd. ("**DUCA**");
 - iv. opened a dedicated trust account for the receivership entities;
 - v. arranged for two Appraisals to be completed on the Real Property;
 - vi. arranged for the registration of the Receiver's interest on the title to the Real Property;
 - vii. arranged for liability insurance in the name of the Receiver;
 - viii. notified the office of the Superintendent of Bankruptcy of its appointment as Receiver;
 - ix. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act*;
 - x. held various discussions and communications with stakeholders pertaining to the marketing and sale of the Real Property; and
 - xi. communicated with the Canada Revenue Agency ("**CRA**") with respect to each of the Debtors.

13. The Receiver contacted the City of Richmond Hill with respect to the property tax arrears and was provided with a Statement of Taxes dated March 11, 2022, which is attached as **Appendix "3"**, which shows a current account balance of \$270,959.93.

14. The Receiver has asked BLG to review the security held by each of DUCA and Bryton Capital Corp. GP Ltd. ("**Bryton**") and to issue security opinions with respect to such security. BLG has delivered its opinions to the Receiver with respect to the security held by each of DUCA and Bryton. The Receiver will report on the review of the DUCA security and the Bryton security in a future report to the Court.
15. The Receiver has been provided with a DUCA mortgage statement dated June 1, 2022, which shows a balance outstanding of \$23,947,782.91. The DUCA mortgage statement is attached as **Appendix "4"**.
16. The Receiver has been provided with a Bryton mortgage statement as at June 3, 2022, which shows a balance outstanding of \$29,179,939.08. The Bryton mortgage statement is attached as **Appendix "5"**.
17. The Receiver has not taken any steps at this time to verify the amounts claimed by each of DUCA and Bryton. Any diligence on the amounts claimed by each of DUCA and Bryton will be undertaken prior to any motion brought by the Receiver to the Court for an Order authorizing a distribution of any realizations in these proceedings.

IV. PROPOSED SALE PROCESS

18. Pursuant to the terms of the Receivership Order, the Receiver is authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
19. The sole asset of the Debtors is the Real Property.
20. The Receiver engaged the services of Colliers International Realty Advisors Inc. ("**Colliers Realty Advisors**") and Antec Appraisal Group Inc. ("**Antec**") to attend at and conduct a full narrative appraisal of the Real Property. The Receiver obtained the Appraisals in relation to the Real Property from Colliers Realty Advisors on March 30, 2022 and from Antec on April 29, 2022. Copies of the

Appraisals are attached to this First Report as **Confidential Appendices “A”** and **“B”**.

21. The Receiver requested listing proposals from CBRE Limited (“**CBRE**”) and Colliers. A summary of their listing proposals is attached at **Appendix “6”**. A copy of the Colliers listing proposal is attached as **Confidential Appendix “C”**. The Colliers listing proposal includes a market valuation.
22. The Receiver recommends proceeding with the Colliers listing proposal for the following reasons:
 - The commission structure is lower;
 - The market valuation exceeds the appraised values; and
 - Colliers is well acquainted with the Real Property.
23. In order to provide third parties with an opportunity to consider an acquisition of the Real Property, the Receiver is proposing to market the Real Property for sale for a period of approximately five weeks (the “**Sale Process**”). The Receiver has developed the Sale Process only after it had extensive discussions with various stakeholders about a path forward to market and sell the Real Property.
24. The Receiver and Receiver’s Counsel had various discussions with counsel for Bryton about a possible motion to approve a stalking horse sale process (the “**Stalking Horse Sale Process**”), whereby Bryton would act as a stalking horse purchaser, on the economic terms that was largely similar to the transaction that the Bryton sought Court approval of on August 11, 2021, which was dismissed by the Court pursuant to the Endorsement dated March 2, 2022 (the “**Proposed Bryton Transaction**”).
25. As part of these discussions, the Receiver and the Receiver’s Counsel also had discussions with the other key stakeholders in these proceedings about the proposed Stalking Horse Sale Process, with a view to finding a consensual path forward on a sale process.
26. As part of the proposed Stalking Horse Sale Process, the Receiver proposed to Bryton that a break fee in the amount of 2 percent (the “**Break Fee**”) would be paid

to Bryton, in the event that the Stalking Horse Sale Process yielded a superior bid to the Proposed Bryton Transaction, but that Bryton would agree that in exchange for the payment of the Break Fee, the Receiver would be at liberty to seek an Approval and Vesting Order (“**AVO**”) in respect of the sale of the Real Property to a third party with a superior bid on an unopposed basis, which AVO would vest out the option that Bryton holds in respect of the Real Property.

27. Unfortunately, the Receiver could not come to an agreement with Bryton on terms that the Receiver could move forward with a motion to approve the Stalking Horse Sale Process. As a result, the Receiver did not pursue these discussions any further with counsel for Bryton and the Receiver’s Counsel advised counsel for Bryton and counsel for the other stakeholders, that the Receiver would be bringing a motion to approve a sale process in respect of the Real Property.
28. The Sale Process proposed herein is designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Real Property.
29. The principal elements of the Sale Process are as follows:
 - a. A transparent unpriced tender process with a bid deadline date;
 - b. As soon as is reasonably possible, Colliers will distribute marketing material notifying prospective purchasers of the existence of the Sale Process and list the property on the Multiple Listing Service (“**MLS**”) inviting prospective purchasers to express their interest in making an offer in respect of the Real Property, pursuant to the terms of the Sale Process;
 - c. Potential Bidders that wish to commence due diligence will be required to execute a non-disclosure agreement (“**NDA**”);
 - d. Upon execution of the NDA, the Receiver, in conjunction with Colliers, will determine if the potential bidder has a bona fide interest in pursuing a transaction and thus deem them a “**Qualified Bidder**”;

- e. Colliers in conjunction with the Receiver will prepare, a confidential information memorandum (“**CIM**”), which will provide, among other things, information considered relevant to the Sale Process. The CIM will be sent to each Qualified Bidder;
- f. The Receiver and Colliers will give each Qualified Bidder access to due diligence materials and information relating to the Real Property;
- g. Due diligence access may include access to an electronic data room (“**Data Room**”), on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Receiver may agree;
- h. A binding Agreement of Purchase and Sale (“**APS**”), based on a form of APS provided by the Receiver, must be submitted in writing to the Receiver by no later than 5:00 p.m. (EST) on September 29, 2022 (“**Bid Deadline**”);
- i. The Receiver, in consultation with the Colliers, may extend the Bid Deadline, once, but is not obligated to do so. If the Bid Deadline is extended, the Receiver will promptly notify all Qualified Bidders;
- j. A Binding APS must comply with all of the following:
 - i. The bid is an offer to purchase the Real Property on terms and conditions acceptable to the Receiver and delivered to the Receiver prior to the Bid Deadline;
 - ii. It is duly authorized and executed and includes a purchase price for the Real Property expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits, schedules, and all applicable ancillary agreements thereto;
 - iii. Includes a letter of acknowledgement stating that the Qualified

bidder's offer is irrevocable and open for acceptance until a successful bidder is selected by the Receiver;

- iv. Is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, at its sole discretion, of the ability of the Qualified Bidder to consummate the proposed transaction and pay the Purchase Price;
- v. It fully discloses the identity of each entity that will be bidding for the Real Property, or otherwise sponsoring, financing, participating, or benefiting from such bid;
- vi. It includes an acknowledgement and representation from the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Real Property and the Receiver prior to making its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, regarding the Real Property, the Debtors, or the completeness of any information provided in connection therewith;
- vii. It includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the binding APS submitted by the Qualified Bidder;
- viii. Provides a deposit in the amount of not less than 5% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**");

- ix. It is received by the Receiver by the Bid Deadline; and
 - x. The bid contemplates closing the transaction set out within 20 Business Days (the “**Closing Date**”) of the granting of an AVO by the Court.
- k. A binding APS will be considered if, among other criteria set out in the Sale Process, it meets the following minimum criteria:
- i. It must be a superior offer, defined as a credible, reasonably certain and financially viable offer made by a Qualified Bidder, the terms of which offer a material recovery to the stakeholders in excess of the obligations owing to DUCA and Bryton on account of their mortgages, property tax arrears and the existing Court-Ordered charges, set-out in the Receivership Order and the Order of the Honourable Mr. Justice Cavanagh dated November 27, 2020.
 - l. The Receiver will review and evaluate each binding APS and: (i) the Receiver may identify the highest bidder/superior offer for the Real Property (the “**Successful Bid**”), or (ii) if no Binding APS emerges from the Sale Process, that the Receiver is prepared to recommend to the Court for approval, the Receiver will report on the outcome of the Sale Process and provide its recommendation on next steps.
30. The Receiver notes that the proposed timeframe set out above is condensed, but the Receiver believes that the deadlines proposed in the Sale Process are reasonable in the circumstances.
31. The Receiver is of the view that, in the circumstances, the proposed Sales Process represents the best opportunity to identify a potential sale for the Real Property and to maximize value for the benefit of its stakeholders.

V. REQUEST FOR A SEALING ORDER

32. The Receiver is seeking a sealing order in respect of the Confidential Appendices to this First Report as they each contain commercially sensitive information, the release of which prior to the completion of a transaction would be prejudicial to the stakeholders of the Debtors' estate.

VI. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

33. Attached to this First Report as **Appendix "7"** is the Receiver's Interim Statement of Receipts and Disbursements as of June 14, 2022.

VII. RECOMMENDATION

34. For the reasons outlined in this First Report, the Receiver respectfully requests that the Court grant the relief specified at paragraph 8 of this First Report.

Dated at Hamilton, Ontario this 17th day of June, 2022.

msi Spergel Inc.

solely in its capacity as the Court-Appointed Receiver of the Debtors and not in its personal or corporate capacity.

Per:



Trevor B. Pringle, CFE, CIRP, LIT
Partner

Court File No: CV-21-0066512800CL

**DUCA FINANCIAL SERVICES CREDIT UNION
LTD.**

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**FIRST REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS
DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

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Lawyers for msi Spergel inc., the Receiver

Appendix 4

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

THE HONOURABLE) THURSDAY, THE 21ST
MR. JUSTICE CAVANAGH) DAY OF JULY, 2022

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**ORDER
(Sale Process)**

THIS MOTION, made by msi Spergel Inc., in its capacity as the Court-appointed receiver (the “**Receiver**”) of all the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the “**Debtors**”), for an order, among other things, approving a sale process, was heard this day by Zoom videoconference due to the COVID-19 pandemic.

ON READING the Receiver’s Motion Record and the first report of the Receiver dated June 17, 2022 and the appendices thereto (the “**First Report**”), and on hearing the submissions of counsel for the Receiver and counsel for such other parties in attendance at the hearing, as noted in the Participant Sheet, and upon reading the Affidavit of Service of Mariela Adriana Gasparini sworn June 17, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

CAPITALIZED TERMS

2. **THIS COURT ORDERS** that capitalized terms not defined herein, shall have the meanings ascribed thereto in the First Report.

REPORT AND ACTIVITIES OF THE RECEIVER

3. **THIS COURT ORDERS** that the First Report and the activities of the Receiver, as set out in the First Report, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

4. **THIS COURT ORDERS** that the Interim Statement of Receipts and Disbursements as at June 14, 2022 be and is hereby approved.

SALE PROCESS

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to execute a listing agreement (the "**Listing Agreement**") between the Receiver and Colliers International ("**Colliers**") and to take such steps as it deems necessary or advisable to carry out the terms of the Listing Agreement.

6. **THIS COURT ORDERS** that the Receiver, with Colliers as its' real estate consultant, is authorized and directed to carry out the Sale Process, as described in the First Report, and is hereby authorized and directed to take such steps and to execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process.

7. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisers, agents, counsel and controlling persons (collectively, the “**Assistants**”) shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing their duties under the Sale Process, except to the extent of such losses, claims, damages or liabilities arising or resulting from the gross negligence or willful misconduct of the Receiver, as determined by this Court.

8. **THIS COURT ORDERS** that the Receiver may apply to this Court to amend, vary or supplement this Order, or for advice and directions with respect to the discharge of its powers and duties under this Order, or under the Sale Process, at any time during the term of the Sale Process.

9. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Sale Process shall be without prejudice to any and all rights that Bayview Creek Residences Inc. (formerly known as Bryton Creek Residences Inc.) has pursuant to an option granted to Bayview Creek Residences Inc., or otherwise available at law.

SEALING

10. **THIS COURT ORDERS** that Confidential Appendices “**A**”, “**B**” and “**C**” to the First Report be and are hereby sealed, pending further order of the Court.

PIPEDA

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the Receiver and its Assistants are hereby authorized and permitted to disclose and deliver for review personal information of identifiable individuals to prospective purchasers or bidders for the Property and their advisors, but only to the extent desirable or required to carry out the Sale Process and to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each prospective purchaser or bidder (and their respective advisors) to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and if it does not

complete a Transaction, shall return all such information to the Receiver, or in the alternative destroy all such information and provide confirmation of its destruction if required by the Receiver. The purchaser(s) of any of the Property shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) to which any such purchaser is a party, shall be entitled to use the personal information provided to it that is related to the Property acquired pursuant to the Sale Process in a manner that is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Receiver.

GENERAL

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order, and this Order is enforceable without the need for entry and filing.

**DUCA FINANCIAL SERVICES CREDIT UNION
LTD.**

- and -

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

ORDER
(Sale Process)

BORDEN LADNER GERVAIS LLP
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Lawyers for msi Spergel inc., the Receiver

Appendix 5



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-21-00665128-00CL DATE: JULY 21ST, 2022

NO. ON LIST: 6

TITLE OF PROCEEDING: **DUCA V BAYVIEW CREEK**

BEFORE JUSTICE: **CAVANAGH,**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Lawrence Hansen	DUCA Financial Services Credit Union	Lawrence.hansen@devrylaw.ca

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Patrick Shea	GR (CAN) Investment Co. Ltd & Monest Financial Inc.	Patrick.shea@gowlingwlg.com
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Roger Jaipargas	Msi Spergel Inc – Court Appointed Receiver	rjaipargas@blg.com
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Trevor Pringle	Msi Spergel Inc – Court Appointed Receiver	tpringle@spergel.ca
Jonathan Barr	Co-Counsel for Debentureholders – Tracy Hui and Jojo Hui	jbarr@hummingbirdlaw.com
Robert S. Choi	Bryton Capital Corp. GP Ltd, and Bayview Creek Residences Inc.	Rchoi@owenswright.com
Fay Sulley	MNP Ltd	fsulley@torkinmanes.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Carlton Thorne	Assistant City Solicitor (City of Richmond Hill) – Monitoring Proceedings	Carlton.thorne@richmondhill.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

The Receiver moves in this receivership proceeding for, among other things, an order approving a sales process. The requested form of Order is not opposed.

I am satisfied that a limited sealing Order is justified because disclosure of the redacted information could potentially impair the value maximizing purpose of the sales process. I am satisfied that the test in *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, is satisfied.

Order to issue in form of Order signed by me today.

The hearing scheduled for August 11, 2022 is vacated.

Appendix 6

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

July 14, 2023

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APPENDICES

1. Receivership Order of Mr. Justice Cavanagh dated March 2, 2022
2. Endorsement of Mr. Justice Cavanagh dated March 2, 2022
3. Receiver's First Report to Court dated June 17, 2022
4. Sale Process Order of Mr. Justice Cavanagh dated July 21, 2022
5. Endorsement of Mr. Justice Cavanagh dated July 21, 2022
6. City of Richmond Hill By-Law Order (Standards) dated September 8, 2022
7. City of Richmond Hill By-Law Order (Grass) dated September 8, 2022
8. LPF Conversion Trust LP Organizational Chart
9. Fengate – Assignment and Assumption Agreement dated September 9, 2022
10. Listing Agreement with Colliers Macaulay Nicholls Inc.
11. Transfer of DUCA Charges to Fengate dated May 15, 2023
12. Redacted Sunny Communities (Bayview Creek) Inc. Agreement of Purchase and Sale dated June 2, 2023
13. Fee Affidavit of Trevor Pringle, sworn July 12, 2023
14. Fee Affidavit of Christine Mason, sworn July 7, 2023
15. Receiver's Interim Statement of Receipts and Disbursements at July 12, 2023
16. Order of Mr. Justice Cavanagh, dated November 27, 2020
17. Receiver Certificate dated March 28, 2022
18. Fengate - Mortgage Discharge Statement dated May 31, 2023
19. Title Search dated June 14, 2023
20. City of Richmond Hill Statement of Taxes dated June 14, 2023

CONFIDENTIAL APPENDICES

- A. Sunny Communities (Bayview Creek) Inc. Agreement of Purchase and Sale for 10747 Bayview Avenue, dated June 2, 2023
- B. Colliers Macaulay Nicholls Inc. – Bid Summary Matrix dated September 29, 2022
- C. Colliers International Realty Advisors Inc. – Updated Appraisal Report for 10747 Bayview Avenue, Richmond Hill, Ontario
- D. Antec Appraisal Group Inc. - Appraisal Report with Memorandum Update for 10747 Bayview Avenue, Richmond Hill, Ontario

I. APPOINTMENT AND BACKGROUND

1. This Second Report (“**Second Report**”) is filed by msi Spergel Inc. (“**Spergel**”) in its capacity as the Court-Appointed Receiver (in such capacity, the “**Receiver**”) of the following entities (collectively, the “**Debtors**”):
 - i. Bayview Creek (CIM) LP. (“**LP**”);
 - ii. CIM Invests Development Inc. (“**Invests**”); and
 - iii. CIM Bayview Creek Inc. (“**Bayview**”).
2. Spergel was appointed as the Receiver of all of the assets, undertakings and property of the Debtors by the Order of Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on March 2, 2022 (the “**Receivership Order**”). A Copy of the Receivership Order is attached to this Second Report as **Appendix “1”**. A copy of the Endorsement of Mr. Justice Cavanagh dated March 2, 2022 (the “**Endorsement**”) is attached to this Second Report as **Appendix “2”**.
3. Bayview Creek (CIM) LP is a limited partnership with addresses in Markham and Richmond Hill, Ontario.
4. CIM Invests Development Inc. is a federal corporation with a registered office in Markham, Ontario.
5. CIM Bayview Creek Inc. is a federal corporation with a registered office in Markham, Ontario.
6. Bayview is the registered owner of the real property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the “**Real Property**”), more particularly described as Part of Lot 25, Concession 2, E.Y.S. (Markham), Parts 1 and 2 on Plan 65R-31680, Town of Richmond Hill, Regional Municipality of York.
7. The Receiver has retained Borden Ladner Gervais LLP (the “**Receiver’s Counsel**” or “**BLG**”) as its independent legal counsel.

8. On July 21, 2022 the Receiver brought a motion to seek the following relief from the Court:
 - i. approving the First Report of the Receiver dated June 17, 2022 (the “**First Report**”) and the activities of the Receiver described therein;
 - ii. approving the Receiver’s Interim Statement of Receipts and Disbursements as at June 14, 2022;
 - iii. authorizing and directing the Receiver to execute a listing agreement (the “**Listing Agreement**”) between the Receiver and Colliers Macaulay Nicolls Inc. (“**Colliers**”) and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
 - iv. authorizing and directing the Receiver, with Colliers as its real estate consultant, to carry out the sale process (the “**Sale Process**”), as described in the First Report and to take such steps and execute such documentation as the Receiver considers necessary or desirable in carrying out its obligations thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process; and
 - v. sealing certain Confidential Appendices to the First Report, including, the Colliers Listing Proposal and the appraisals obtained by the Receiver from each of Antec Appraisal Group Inc. and Colliers International Realty Advisors Inc. (collectively, the “**Appraisals**”), pending further Order of the Court.
9. Attached to this Second Report as **Appendices “3”, “4” and “5”** is a copy of the Receiver’s First Report to Court dated June 17, 2022, the Order of Mr. Justice Cavanagh dated July 21, 2022 (“**Sales Process Order**”) and the Endorsement of Mr. Justice Cavanagh dated July 21, 2022.

II. PURPOSE OF THIS SECOND REPORT AND DISCLAIMER

10. The purpose of this Second Report is to report to the Court regarding the Receiver’s activities and conduct since the Receiver’s First Report and to seek two Orders from the Court for the following:

- (a) approving the second report of the Receiver dated July 14, 2023 and the appendices thereto (the “**Second Report**”) and the activities of the Receiver described therein;
- (b) approving the Receiver’s Statement of Receipts and Disbursements as at July 12, 2023;
- (c) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated June 2, 2023 (the “**Sale Agreement**”) between Sunny Communities (Bayview Creek) Inc. (the “**Purchaser**”) and the Receiver for the purchase and sale of a property located at 10747 Bayview Avenue, Richmond Hill, Ontario (the “**Purchased Property**”) and attached as **Confidential Appendix “A”** to the Second Report and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction;
- (d) vesting in the Purchaser all of the Debtors right, title and interest in and to the Purchased Property, free and clear of all encumbrances, except certain permitted encumbrances;
- (e) sealing certain Confidential Appendices to the Second Report;
- (f) authorizing and directing the Receiver to make an interim distribution to Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund (“**Fengate**”), or such other party, as directed by Fengate, in the amount of \$45,000,000.00, upon the closing of the Transaction;
- (g) authorizing and directing the Receiver to make a distribution to The Corporation of the Town of Richmond Hill (“**Richmond Hill**”) in the amount of \$453,045.63, plus any other amounts accrued at the closing of the Transaction, for the outstanding realty taxes;

- (h) authorizing and directing the Receiver to pay Colliers the amount of \$400,000, plus HST, on account of the commission payable pursuant to the Listing Agreement dated July 28, 2022, upon the closing of the Transaction;
 - (i) approving the fees and disbursements of the Receiver for the period from February 28, 2022 to June 30, 2023, as described in the affidavit of Trevor Pringle, sworn July 12, 2023 (the “**Pringle Affidavit**”); and
 - (j) approving the fees and disbursements of Borden Ladner Gervais (“**BLG**”), legal counsel to the Receiver for the period from July 5, 2021 to June 30, 2023, as described in the affidavit of Christine Mason, sworn July 7, 2023 (the “**Mason Affidavit**”);
 - (k) such further and other relief as counsel may advise and this Court may permit.
11. The Receiver will not assume responsibility or liability for losses incurred by the reader due to the circulation, publication, reproduction or use of this Second Report for any other purpose.
12. In preparing this Second Report, the Receiver has relied upon certain information provided to it by the Debtors and or its principals. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
13. Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in Canadian dollars.

III. ACTIVITIES OF THE RECEIVER

14. The Receiver has continued, whether directly, or through the Receiver’s Counsel, attended to the following matters since the Receiver’s First Report:
- i. continued twice weekly security inspections of the Real Property;
 - ii. attended to various maintenance items for the property;

- iii. discussions and communications with the City of Richmond Hill concerning, insurance, site plan status and maintenance of the Real Property;
 - iv. entered into a listing agreement with Collier's dated July 28, 2022;
 - v. assisted Colliers with the compilation of information for the data room for the sales process;
 - vi. ran the sales process in accordance with the Sales Process Order dated July 21, 2022;
 - vii. prepared and filed all documents mandated by the *Bankruptcy and Insolvency Act*;
 - viii. held numerous discussions and communications with stakeholders pertaining to the marketing and sale of the Real Property; and
 - ix. communicated with the Canada Revenue Agency ("**CRA**") with respect to each of the Debtors.
15. On September 8, 2022 Richmond Hill issued a Property Standards Order to Comply with respect to items located on the property, as well as an Order with respect to the grass and weed growth on the Real Property. Attached hereto as **Appendices "6" and "7"** are copies of these Orders. The Receiver reached out to Richmond Hill through its counsel. The Receiver's counsel outlined to Richmond Hill what work the Receiver has completed since its appointment to rectify the grass and weed growth on the property. The Receiver's counsel also outlined to Richmond Hill that the Orders were issued incorrectly to the Receiver and in contravention of the stay of proceedings provided under the Receivership Order.
16. The Receiver was advised in late September 2022 that on September 9, 2022 Fengate Redevelopment Fund GP Inc. ("**Fengate**") had replaced Bryton Capital Corp. GP Ltd. ("**Bryton**") as general partner of the LPF Conversion Trust LP ("**LPF**"). Attached hereto as Appendix "**8**" is a copy of the LPF organization chart. Bryton held legal title to the second mortgage registered against the Real Property as nominee and bare trustee for LPF. Attached hereto as Appendix "**9**" is a copy

of the Assignment and Assumption Agreement evidencing the assignment of the second mortgage to Fengate.

IV. THE SALES PROCESS WITH RESPECT TO THE REAL PROPERTY

17. Pursuant to the terms of the Sales Process Order, the Receiver was authorized to enter into a listing agreement with Colliers to market and sell the real property, including advertising and soliciting offers in respect of the Property, or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. Attached hereto as **Appendix “10”** is the fully executed listing agreement between Colliers and the Receiver.
18. The Sale Process was designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Real Property.
19. The principal elements of the Sale Process were as follows:
 - a. A transparent unpriced tender process with a bid deadline date;
 - b. As soon as is reasonably possible, Colliers would distribute marketing material notifying prospective purchasers of the existence of the Sale Process and list the property on the Multiple Listing Service (“**MLS**”), inviting prospective purchasers to express their interest in making an offer in respect of the Real Property, pursuant to the terms of the Sale Process;
 - c. Potential Bidders that wish to commence due diligence would be required to execute a non-disclosure agreement (“**NDA**”);
 - d. Upon execution of the NDA, the Receiver, in conjunction with Colliers, would determine if the potential bidder has a bona fide interest in pursuing a transaction and thus deem them a “**Qualified Bidder**”;
 - e. Colliers in conjunction with the Receiver would prepare a confidential information memorandum (“**CIM**”), which would provide, among other

things, information considered relevant to the Sale Process. The CIM was to be sent to each Qualified Bidder;

- f. The Receiver and Colliers would give each Qualified Bidder access to the due diligence materials and information relating to the Real Property;
- g. Due diligence access may include access to an electronic data room (“**Data Room**”), on-site inspections, and other matters which a Qualified Bidder may reasonably request and which the Receiver may agree;
- h. A binding Agreement of Purchase and Sale (“**APS**”), based on a form of APS provided by the Receiver, was required to be submitted in writing to the Receiver by no later than 5:00 p.m. (EST) on September 29, 2022 (“**Bid Deadline**”);
- i. The Receiver, in consultation with the Colliers, was permitted to extend the Bid Deadline, once, but was not obligated to do so. If the Bid Deadline was extended, the Receiver would promptly notify all Qualified Bidders;
- j. A Binding APS was required to comply with all of the following:
 - i. The bid is an offer to purchase the Real Property on terms and conditions acceptable to the Receiver and delivered to the Receiver prior to the Bid Deadline;
 - ii. It is duly authorized and executed and includes a purchase price for the Real Property expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits, schedules, and all applicable ancillary agreements thereto;
 - iii. Includes a letter of acknowledgement stating that the Qualified bidder’s offer is irrevocable and open for acceptance until a

successful bidder is selected by the Receiver;

- iv. Is accompanied by written evidence of a firm, irrevocable commitment for financing or other evidence satisfactory to the Receiver, at its sole discretion, of the ability of the Qualified Bidder to consummate the proposed transaction and pay the Purchase Price;
- v. It fully discloses the identity of each entity that will be bidding for the Real Property, or otherwise sponsoring, financing, participating, or benefiting from such bid;
- vi. It includes an acknowledgement and representation from the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Real Property and the Receiver prior to making its bid, (ii) it has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its bid, and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, regarding the Real Property, the Debtors, or the completeness of any information provided in connection therewith;
- vii. It includes evidence, in form and substance reasonably satisfactory to the Receiver, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the binding APS submitted by the Qualified Bidder;
- viii. Provides a deposit in the amount of not less than 5% of the Purchase Price offered by the Qualified Bidder (the "**Deposit**");
- ix. It is received by the Receiver by the Bid Deadline; and

- x. The bid contemplates closing the transaction within 20 Business Days (the “**Closing Date**”) of the granting of an Approval and Vesting Order by the Court.

 - k. A binding APS would be considered if, among other criteria set out in the Sale Process, it meets the following minimum criteria:
 - i. It must be a superior offer, defined as a credible, reasonably certain and financially viable offer made by a Qualified Bidder, the terms of which offer a material recovery to the stakeholders in excess of the obligations owing to DUCA Financial Services Credit Union Ltd. (“**DUCA**”) and Bryton on account of their mortgages, property tax arrears and the existing Court-Ordered charges, set-out in the Receivership Order and the Order of Mr. Justice Cavanagh dated November 27, 2020.

 - l. The Receiver would review and evaluate each binding APS and: (i) the Receiver may identify the highest bidder/superior offer for the Real Property (the “**Successful Bid**”), or (ii) if no Binding APS emerges from the Sale Process, that the Receiver is prepared to recommend to the Court for approval, the Receiver will report on the outcome of the Sale Process and provide its recommendation on next steps.
20. Colliers ran a seven-week marketing campaign utilizing a customized confidential information memorandum. They prepared sales and marketing materials that were accessible online to prospective purchasers via Colliers’ virtual data room. Colliers also targeted prospective purchasers that might have an interest in the Property and emailed sales and marketing materials to a comprehensive list of potential buyers. Colliers provided marketing reports to the Receiver on a weekly basis. There were seven weeks of active marketing, including advertising nationally in the Globe and Mail. Colliers marketed the property on its website and sent out weekly marketing emails to 1,510 known residential/commercial investors,

developers, lawyers, architects, planners and financiers. In total there were 291 data room views/downloads and 59 confidentiality agreements executed.

21. On the bid deadline of September 29, 2022, the Receiver received two bids. Attached hereto as **Confidential Appendix “B”** is the bid summary dated September 29, 2022. The Receiver determined that these bids did not meet the definition of a qualified bidder as they had conditions attached to their offer of purchase. At the Receiver’s direction, Colliers re-engaged with the two bidders during the month of October 2022, in an effort to obtain their best unconditional offer, however the bidders were not prepared to waive their due diligence conditions.
22. During the month of November 2022, the Receiver continued discussions regarding the sales process with the various stakeholders, including DUCA, Fengate and Colliers.
23. On December 9, 2022, Fengate provided Colliers with a letter of intent with respect to formalizing an agreement of purchase and sale for the Real Property. Over the next two and half months the Receiver and Fengate had protracted negotiations over the terms of an agreement of purchase and sale.
24. On March 1, 2023, the Receiver and Fengate executed an agreement of purchase and sale, which contained a 60 day due diligence condition.
25. Fengate did not waive their due diligence condition during the 60 days and the agreement of purchase and sale was automatically terminated on May 1, 2023.
26. On May 15, 2023, the Receiver was advised that Fengate had paid out DUCA’s first mortgage and assumed DUCA’s first charge on the Real Property. As a result, Fengate now holds the first and second mortgages on the property. Attached hereto as **Appendix “11”** are copies of the registered Transfers of the DUCA Charges.

27. Prior to the termination of the Fengate APS, Colliers received two new offers for the purchase of the Real Property. The offers were from Sunny Communities (Bayview Creek) Inc. ("**Sunny**") and Green City Communities Inc. ("**Green City**"). Once the Fengate APS was terminated, with direction from the Receiver, Colliers engaged with the two interested parties and gave them the opportunity to submit their best unconditional offer by May 24, 2023. Green City was not prepared to waive their due diligence condition. Sunny increased the quantum of their offer and it was the only unconditional offer received.
28. Accordingly, the Receiver entered into negotiations with Sunny and executed an agreement of purchase and sale dated June 2, 2023 ("**Sunny APS**"). A redacted copy of the Sunny APS is attached to this Second Report as **Appendix "12"** and the un-redacted copy is attached as **Confidential Appendix "A"**, as noted above.
29. In light of changing market conditions and the amount of time that had passed, the Receiver engaged the services of Colliers International Realty Advisors Inc. ("**Colliers Realty Advisors**") and Antec Appraisal Group Inc. ("**Antec**") to update their full narrative appraisals of the Real Property. The Receiver obtained an updated Appraisal in relation to the Real Property from Colliers Realty Advisors on May 25, 2023 and a Memorandum letter updating the appraisal from Antec on June 12, 2022. Copies of the original Appraisals were attached to the First Report that was previously filed with the Court. Attached hereto as **Confidential Appendices "C"** and **"D"** respectively, are copies of the Colliers Realty Advisors Updated Appraisal Report (together with the original Colliers Realty Advisors appraisal) and the Antec Memorandum to Update the Appraisal for the Real Property (together with the original Antec appraisal).
30. The Receiver is of the view that the sale process was conducted in a commercially reasonable manner and that the market was extensively canvassed pursuant to Colliers' marketing efforts, as detailed above. Further, the Receiver is of the opinion that the efforts of Colliers through the listing of the Real Property on MLS

and their internal and external network have provided sufficient exposure of the Real Property to the market.

31. It is the opinion of the Receiver that the terms and conditions contained in the Sunny APS are commercially reasonable in all respects and that the purchase price in the Sunny APS is above market value for the Real Property, as evidenced by the updated appraisal values and is the best outcome in the circumstances. The Real Property is being sold on an “as is, where is” basis.
32. The Receiver has consulted with Fengate with respect to the Transaction and Fengate supports the completion of the same. As reported above, Fengate now holds the first and second mortgages on the property, in its capacity as general partner of LPF and the mortgage indebtedness is well in excess of the market value of the property. As a result, Fengate will experience a significant shortfall with respect to their security.
33. In addition, Fengate has agreed in writing to the Bryton option to purchase, as set out in the Option Agreement registered on title of the property, being expunged as part of the closing of the Transaction.
34. Therefore, the Receiver recommends that the Court approve the Transaction. If the Transaction is approved, it will close in accordance with the terms of the Sunny APS.
35. Accordingly, the Receiver is seeking, among other things, an Approval and Vesting Order in respect of the Transaction contemplated by the Sunny APS.

V. REQUEST FOR A SEALING ORDER

36. The Receiver is seeking a sealing Order in respect of the Confidential Appendices to this Second Report, as they each contain commercially sensitive information, the release of which prior to the completion of the Transaction would be prejudicial to the stakeholders of the Debtors’ estate. The Receiver is of the view that no party would be prejudiced by the request for a sealing Order until the Transaction closes.

VI. FEE’S AND DISBURSMENT OF THE RECEIVER AND COUNSEL

37. Attached to this Second Report as **Appendix “13”** is the Affidavit of Trevor Pringle, sworn July 12, 2023, (the “**Pringle Affidavit**”) which incorporates, by reference a copy of the time dockets pertaining to the period from February 28, 2022 to June 30, 2023 (the “**Receiver Fee Period**”).
38. The fees and disbursements of the Receiver in respect of the Receiver Fee Period amount to \$153,772.93 (inclusive of HST and disbursements), as detailed in the Pringle Affidavit.
39. Attached to this Second Report as **Appendix “14”** is the Affidavit of Christine Mason, sworn July 7, 2023, (the “**Mason Affidavit**”) which incorporates, by reference a copy of the time dockets pertaining to the period from July 5, 2021 to June 30, 2023 (the “**BLG Fee Period**”).
40. The fees and disbursements of BLG in respect of the BLG Fee Period amount to \$583,634.14 (inclusive of HST and disbursements), as detailed in the Mason Affidavit.
41. The Receiver has reviewed BLG’s accounts and given the numerous issues that both the Receiver and BLG were required to deal with in this matter, the Receiver is of the view that the work carried out by BLG was necessary and the fees charges by BLG are reasonable. The hourly rates of the lawyers who worked on this matter were reasonable, in light of the services required, and the services were carried out by lawyers with the appropriate level of experience. Further, a rate cap was provided by BLG, which resulted in a significant saving on costs, as compared to the rates charged by other large law firms.

VII. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

42. Attached to this Second Report as **Appendix “15”** is the Receiver’s Interim Statement of Receipts and Disbursements as of July 12, 2023.

VIII. PROPOSED DISTRIBUTION

43. Pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020, Cardinal Advisory Limited holds a first priority debtor in possession charge (“**DIP Charge**”) in the aggregate maximum amount of \$200,000. Attached hereto as **Appendix**

“16” is a copy of Mr. Justice Cavanagh’s Order dated November 27, 2020. The Receiver, through its counsel, has engaged in discussions with the beneficiaries of the DIP Charge. Further discussions and information will be required on this issue with the beneficiaries of the DIP Charge for the Receiver to report back to the Court with a recommendation for a distribution of the amounts secured by the DIP Charge, as well as for a termination of the DIP Charge. The Receiver proposes to deal with this issue at the next and final Court attendance, after it is in funds, as a result of the closing of the Transaction contemplated by the Sunny APS. As a result, the Receiver will hold back sufficient funds to deal with the amounts secured by the DIP Charge.

44. Pursuant to the Appointment Order, the Receiver borrowed monies from DUCA in the principal amount of \$50,000.00 (the “**Borrowings**”) to fund certain expenses in these proceedings, which funding is secured by the Receiver’s Borrowings Charge, as provided for in the Receivership Order. Attached hereto as **Appendix “17”** to this Second Report is a copy of Receiver’s Certificate No. 1 representing the Borrowings to date. Since DUCA has been paid out by Fengate, the Borrowings under the one Receiver’s Certificate that has been issued to date, is now payable to Fengate.
45. A title search conducted with respect to the Real Property on June 14, 2023 has indicated the following registrations on title in order of priority:
 - i. A first mortgage in the principal amount of \$20,720,000.00 held by Fengate after paying out DUCA, which was initially charged and registered on May 18, 2016. The Receiver has been provided with a payout statement from Fengate for the first mortgage dated May 31, 2023, which shows a balance outstanding of \$26,357,220.00. The Fengate payout statement (the “**Fengate Payout Statement**”) is attached as **Appendix “18”**;
 - ii. A second mortgage in the principal amount of \$20,000,000.00 held by Fengate, which comprises an initial charge, registered on June 17, 2019. The Fengate Payout Statement shows a balance for the second mortgage as at May 31, 2023, of \$30,286,850.00 plus legal fees and costs;

- iii. A third mortgage in the principal amount of \$2,207,405.00 held by GR (CAN) Investment Co. Ltd. and Monest Financial Inc., which comprises an initial charge registered on September 4, 2020; and
 - iv. Registration of Pending Litigation with respect to the Mareva Order, previously issued on September 18, 2020.
46. Attached hereto as **Appendix “19”** is a copy of the title search conducted on June 14, 2023.
47. As noted at paragraph 14 of the First Report, the Receiver requested that BLG review the security held by each of DUCA and Bryton and that the Receiver would report on the review of the DUCA security and the Bryton security in a future report to the Court. The Receiver has received opinions from BLG that, subject to customary assumptions and qualifications for opinions of this nature, the security interests in favour of each of DUCA and Bryton are valid and enforceable in the Province of Ontario. As discussed in this Second Report, Fengate now holds the debt and security previously held by each of DUCA and Bryton.
48. Richmond Hill has a priority charge to the existing mortgages in respect of property tax arrears that have accrued in respect of the Real Property. Attached hereto as **Appendix “20”** is a copy of the tax arrears statement issued by Richmond Hill on June 14, 2023, which indicates that the property taxes outstanding is in the amount of \$453,045.63.
49. Accordingly, the Receiver is proposing to make an interim distribution (after payment of the fees and disbursements of both the Receiver and the Receiver’s Counsel, as outlined in this Second Report) as follows:
- i. To Richmond Hill in the amount of \$453,045.63, plus any other amounts accrued at the closing of the Transaction, for the outstanding realty taxes;
 - ii. To Fengate, or such other party as Fengate might direct, for the repayment of the Borrowings, pursuant to Receiver Certificate No. 1 in the amount of \$50,000, plus interest thereon, in accordance with Receiver’s Certificate No. 1 that was issued to DUCA, which debt is now held by Fengate;

- iii. To Fengate, or such other party as Fengate might direct, with respect to the First and Second Mortgages in the amount of \$45,000,000.00.
50. Fengate will suffer a shortfall in respect of the second mortgage. The Receiver proposes to maintain a reserve to fund the future fees and disbursements of the Receiver and its counsel up to the date of discharge of the Receiver, as well as the amounts secured by the DIP Charge, after further information is obtained with respect to same. After the closing of the Transaction contemplated by the Sunny APS, the Receiver will bring a further and final motion to the Court seek relief in connection with the amounts secured by the DIP Lender's Charge, approval and the fees and disbursements of the Receiver and its counsel, up to the date of discharge of the Receiver, the termination and extinguishment of the various Court-ordered Charges and for a discharge of the Receiver.

IX. RECOMMENDATION

51. For the reasons outlined in this Second Report, the Receiver respectfully requests that the Court grant the relief specified at paragraph 10 of this Second Report.

Dated at Hamilton, Ontario this 14th day of July 2023.

msi Spergel Inc.

solely in its capacity as the Court-Appointed Receiver of the Debtors and not in its personal or corporate capacity.

Per:

Trevor B. Pringle, CFE, CIRP, LIT
Partner

**DUCA FINANCIAL SERVICES CREDIT UNION
LTD.**

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**SECOND REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS
DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower
22 Adelaide St W
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Roger Jaipargas – LSO No. 43275C

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Lawyers for msi Spergel Inc., the Receiver

Appendix 7



Court File No: CV-21-0066512800CL

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

THE HONOURABLE) TUESDAY, THE 1st
)
MR. JUSTICE PENNY) 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 above a horizontal line.

Schedule A – Form of Receiver’s Certificate

Court File No: CV-21-0066512800CL

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-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.

Court File No: CV-21-00666512800CL

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

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

- and-

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

BORDEN LADNER GERVAIS LLP

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Email: rjaipargas@blg.com

Lawyers for msi Spergel inc., the Receiver

137111471:v8

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Appendix 8



Court File No: CV-21-0066512800CL

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

THE HONOURABLE) TUESDAY, THE 1ST
MR. JUSTICE PENNY) 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

**ORDER
(Administration and Interim Distribution)**

THIS MOTION, made by msi Spergel Inc (“**Spergel**”), in its capacity as court-appointed receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc., and CIM Bayview Creek Inc. (collectively, the “**Debtors**”), for an order, among other things, approving the second report of the Receiver dated July 14, 2023 (the “**Second Report**”), approving the fees and disbursements of the Receiver and counsel to the Receiver, Borden Ladner Gervais LLP (“**BLG**”), for the fee periods referred to in the Second Report and authorizing an interim distribution to Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund, or such other party, as directed by Fengate and for certain other ancillary relief, was heard this day by Zoom videoconference.

ON READING the Receiver’s Motion Record, 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 such other parties in attendance at the hearing and upon reading the Affidavit of Service of Mariela Adriana Gasparini sworn July 14, 2023, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

ACTIVITIES OF THE RECEIVER

2. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver, as set out in the Second Report, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the Receiver’s Statement of Receipts and Disbursements as at July 12, 2023 be and is hereby approved.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make an interim distribution to Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund (“**Fengate**”), or such other party, as directed by Fengate, in the amount of \$45,000,000, upon the closing of the transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale dated June 2, 2023 (the “**Sale Agreement**”) between Sunny Communities (Bayview Creek) Inc. and the Receiver.

5. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution to The Corporation of the Town of Richmond Hill (“**Richmond Hill**”) in the amount of \$459,148.71, plus any other amounts accrued at the closing of the Transaction, as agreed to by the Receiver, for the outstanding realty taxes upon the closing of the Transaction.

6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution to Rory McGovern PC, In Trust, for the benefit of Cardinal Advisory Limited (“**Cardinal**”) in the amount of \$200,000, (the “**DIP Lender Distribution**”), in full and final satisfaction of all amounts secured by the DIP lender’s charge (the “**DIP Lender’s Charge**”) established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020, upon the closing of the Transaction.

7. **THIS COURT ORDERS** that upon completion of the DIP Lender Distribution, the DIP Lender’s Charge, be and is hereby terminated and extinguished.

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to pay Colliers Macaulay Nicolls Inc. the amount of \$400,000, plus HST, on account of the commission payable pursuant to the Listing Agreement dated July 28, 2022, upon the closing of the Transaction.

APPROVAL OF FEES

9. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, as described in the Second Report and as set out in the Pringle Affidavit, be and are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, BLG, as described in the Second Report and as set out in the Mason Affidavit, be and are hereby approved.



A handwritten signature in blue ink, appearing to read "Paul J. Pringle", is written above a horizontal line.

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

- and -

Court File No: CV-21-0066512800CL
BAYVIEW CREEK (CIM) LP, CIM INVESTS DEVELOPMENT
INC., and CIM BAYVIEW CREEK INC.

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Administration and Interim Distribution)**

BORDEN LADNER GERVAIS LLP

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Fax: 416-367-6749

Roger Jaipargas – LSO No. 43275C

Tel: (416) 367-6266
Email: rjaipargas@blg.com

Lawyers for msi Spergel Inc., the Receiver

Appendix 9



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-21-00665128-00CL DATE: August 1, 2023

NO. ON LIST: 10

TITLE OF PROCEEDING: DUCA FINANCIAL SERVICES CREDIT UNION LTD , BAYVIEW CREEK (CIM) LP, CIM INVESTMENTS DEVELOPMENT INC, CIM BAYVIEW CREEK INC

BEFORE: **Mr. Justice Penny**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Roger Jaipargas, Borden Ladner Gervais LLP	Counsel for msi Spergel Inc.	rjaipargas@blg.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Sanea Tanvir, McCarthy Tetrault LLP	Counsel for Fengate Capital Management Ltd	stanvir@mccarthy.ca
Rory McGovern, Rory McGovern PC	Counsel to Cardinal Advisory Limited	rory@rorymccgovernpc.com
Tim Dunn, Minden Gross LLP	Counsel to Sunny Communities (Bayview Creek Inc.)	tdunn@mindengross.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
John Birch,	Counsel for Grant Thornton Limited (Proposal Trustee)	jbirch@cassels.com

Ping Tan	for the Third Mortgagee	
Carlton Thorne Observer	Town of Richmond Hill	Carlton.thorne@richmondhill.ca

ENDORSEMENT

[1] This is a motion for a sale approval and AVO together with certain collateral relief.

[2] The Receiver was appointed receiver over all the assets and property of the debtor by order of this court. The mandate of the Receiver is to preserve and realize on the assets for the benefit of all stakeholders. Significant efforts were made to market the assets and to realize the best value available.

[3] I am satisfied the *Sound Air* criteria have been met. The process was fair and reasonable and the transaction sought to be approved represents the best available recovery for stakeholders. The Receiver and the principal secured creditor, Fengate, both support the sale. There is no opposition.

[4] Certain priorities from prior insolvency proceedings had to be accommodated. This accommodation is appropriate in the circumstances.

[5] The sealing order relates to the value of the property and the transaction. It is necessary, in the public interest, to preserve the ability of the Receiver to maximize value in future in the event this deal does not close. The sealing order requested is suitably tailored to the requirements of the situation, in accordance with *Sherman Estate v. Donovan*.

[6] I also find that the ancillary relief sought, including the proposed distributions, is appropriate in the circumstances.

[7] Orders to issue in the form signed by me this day.



Penny J.

Appendix 10

REIMBURSEMENT AND FUNDING AGREEMENT

THIS REIMBURSEMENT AND FUNDING AGREEMENT (this “**Agreement**”) is made as of November 16, 2023, among

FENGATE REDEVELOPMENT FUND GP INC., as general partner of
and on behalf of **LPF CONVERSION FUND**
(the “**Lender**”)

and

msi SPERGEL INC. in its capacity as Court-appointed Receiver
(the “**Receiver**”) of the assets, property and undertaking of
Bayview Creek (CIM) LP, CIM Invests Development Inc. and
CIM Bayview Creek Inc. (collectively, the “**Debtors**”)

WHEREAS:

- A. The Lender holds first and second-ranking mortgages and related general security agreements (the “**Security**”) on the real property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the “**Property**”) and other personal property of the Debtors as set out in the Security.
- B. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 2, 2022 (the “**Appointment Order**”), msi Spergel Inc. was appointed as the Receiver over the assets, properties and undertaking, including the Property, of the Debtors.
- C. The Receiver entered into an agreement of purchase and sale dated June 2, 2023 (the “**Purchase Agreement**”) between the Receiver, as vendor, and Sunny Communities (Bayview Creek) Inc., as purchaser (the “**Purchaser**”), pursuant to which the Receiver agreed to sell, and the Purchaser agreed to purchase, the Property.
- D. The Purchaser failed to complete the transaction contemplated by the Purchase Agreement and, as a result, the Purchaser forfeited a deposit of \$2,000,000, plus any interest earned thereon (the “**Retained Deposit**”) to the Receiver, in accordance with the terms of the Purchase Agreement.
- E. The Lender has requested, and the Receiver has agreed, to bring a motion, presently scheduled to be heard by the Court on November 28, 2023, to approve an order (the “**Distribution and Discharge Order**”), among other things: (i) authorizing and directing the Receiver to make certain distributions from the Retained Deposit to creditors with secured and priority claims, including the Lender; and (ii) discharging the Receiver effective upon filing a discharge certificate (the “**Discharge Certificate**”).
- F. The Lender has advised that Receiver that it intends to bring a foreclosure claim to foreclose on the property of the Debtors, including the Property (the “**Foreclosure**”). A copy of

the draft Statement of Claim in respect of the Foreclosure will be included in the motion record in respect of the motion for the Distribution and Discharge Order.

G. The Lender and the Receiver have agreed that this Agreement is subject to obtaining the Distribution and Discharge Order.

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Agreement:

- (1) **Business Day** means any day of the year, other than a Saturday, Sunday or any day on which Canadian chartered banks are closed in Toronto, Ontario;
- (2) **Distribution** means any amounts distributed by the Receiver to the Lender pursuant to the Distribution and Discharge Order in partial satisfaction of the Lender’s claims against the Debtors pursuant to the Security;
- (3) **Finally Determined** means the validity, quantum and priority of a claim against the Debtor has been finally determined by the Court in an order pursuant to which all timeframes and rights to seek leave to appeal or rights to appeal are either expired or exhausted, as applicable; and
- (4) **Unpaid Priority Claim** means the following: (i) the fees and disbursements of the Receiver and its counsel that are or would have been secured by the Receiver’s Charge (as created in and defined in the Appointment Order) (the “**Receiver Fees**”); and (ii) any claim that has been Finally Determined to be a claim against the Retained Deposit that ranks in priority to the Lender’s claim pursuant to the Security; in each case that are not satisfied pursuant to the Distribution and Discharge Order or otherwise, and which the Receiver has insufficient funds to satisfy.

SECTION 2 – DISTRIBUTION AND REIMBURSEMENT

2.1 Distributions and Discharge

Subject to Section 2.2 of this Agreement and obtaining of the Distribution and Discharge Order, the Receiver shall: pay the distribution(s) ordered by the Court, as provided in the Distribution and Discharge Order, including a distribution to the Lender in partial satisfaction of its claims against the Debtors that are secured by the Security (the “**Lender Security Distribution**”); complete its remaining duties as set out in the Receiver’s Third Report to the Court dated November 17, 2023; and, after coordinating with the Lender regarding timing, file the Discharge Certificate with the Court simultaneous with or promptly after the effective time of the Foreclosure or at such other time as the Lender and Receiver may agree.

2.2 Lender's Undertaking and Limitation of Liability

Subject to the terms hereof, the Lender hereby undertakes and agrees to (i) reimburse to the Receiver such portion of the Lender Security Distribution as may be necessary to satisfy any Unpaid Priority Claim, within five (5) Business Days after receiving a written demand from the Receiver establishing an Unpaid Priority Claim pursuant to section 1.1(4) hereof; and (ii) fund to the Receiver any amount for Receiver Fees that are Unpaid Priority Claims not otherwise satisfied pursuant to section 2.2(i) hereof within five (5) Business Days after a written demand from the Receiver establishing same.

Term

This Agreement, and the liability of the Lender to the Receiver with respect to any Priority Claim, shall terminate upon the Receiver filing the Discharge Certificate with the Court, pursuant to the Distribution and Discharge Order at which time the obligations of the Lender under this Agreement are extinguished.

SECTION 3– MISCELLANEOUS

3.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, provisions, covenants, agreements, understandings and representations on that subject.

3.2 Governing Law and Attornment to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereby irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

3.3 Counterparts

This Agreement may be executed and delivered by facsimile or other electronic format and in counterparts, each of which when executed and delivered is an original, but all of which taken together constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

DATED this 16th day of November 2023.

**FENGATE REDEVELOPMENT FUND GP
INC., as general partner of and on behalf of LPF
CONVERSION FUND**

DocuSigned by:
Colin Catherwood
B789EF353D974FC...

By: _____
Name: Colin Catherwood
Title: A.S.O.

msi SPERGEL INC. in its capacity as Court-appointed Receiver of the assets, property and undertaking of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc.

By: _____
Name:
Title:

DATED this 16th day of November 2023.

**FENGATE REDEVELOPMENT FUND GP
INC., as general partner of and on behalf of LPF
CONVERSION FUND**

By: _____

Name:

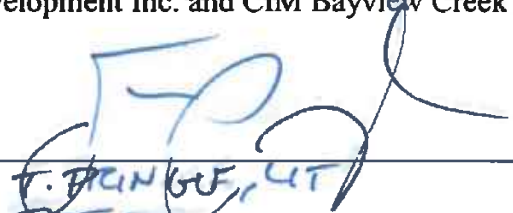
Title:

**msi SPERGEL INC. in its capacity as Court-
appointed Receiver of the assets, property and
undertaking of Bayview Creek (CIM) LP, CIM
Invests Development Inc. and CIM Bayview Creek
Inc.**

By: _____

Name:

Title:


F. BRINKLEY, LTD
PARTNER

Appendix 11

Evan McCullagh

From: Manias, Richard <RManias@blg.com>
Sent: Wednesday, September 6, 2023 1:25 PM
To: Janet Lee; Steven I. Pearlstein; Timothy Dunn
Cc: Edmond Wong; Ghaemi, Peyman; Trevor Pringle; Jaipargas, Roger; Wang, Grace
Subject: Bayview Creek - Vendor's Tender Package - Sunny Communities (Bayview Creek) Inc.
Attachments: Bayview Creek - BLG Tender Letter re Sunny Communities - Sept. 6, 2023.pdf

Importance: High

Hi Janet, Tim and Steven,

Further to the below, please find attached the Vendor's tender package.

Kindly confirm receipt of the attached (including all enclosures). Thank you.

Regards,



Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Janet Lee <janetlee@mbb.ca>

Sent: September 6, 2023 11:50 AM

To: Manias, Richard <RManias@blg.com>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

[External / Externe]

Hi Richard,

We have been instructed by our client to inform you that our client would not complete its obligations under the Agreement of Purchase and Sale, as amended by our emails.

Thank you.

Janet

Regards,

Janet Lee
Managing Partner

MBB Law
Metcalf, Blainey & Burns LLP
Unit 202, 18 Crown Steel Drive
Markham, Ontario
L3R 9X8

Email: janetlee@mbb.ca
Office: 905-475-7676 Ext. 338
Cell: 1-416-617-6183
Wechat: janet882288
<http://www.mbb.ca>

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From: Manias, Richard <RManias@blg.com>
Sent: Wednesday, September 6, 2023 9:47 AM
To: Janet Lee <janetlee@mbb.ca>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date
Importance: High

Hi Janet,

Please provide us with an update in regards to the Additional Deposit and Sunny's executed copy of the Amendment (circulated by Peyman last night at 11:07PM). Thank you.

I remind you that time is of the essence in all respects relating to the Agreement of Purchase and Sale.

Regards,



Richard Manias
Partner
T 416.367.6668 | RManias@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Ghaemi, Peyman <PGhaemi@blg.com>

Sent: September 5, 2023 11:07 PM

To: Janet Lee <janetlee@mbb.ca>

Cc: Edmond Wong <edmondwong@mbb.ca>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>; Manias, Richard <RManias@blg.com>; Ghaemi, Peyman <PGhaemi@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Hi Janet,

Further to the below, please find attached the updated Amendment.

Thank you,

Peyman Ghaemi

Associate

T 416.367.6163 | PGhaemi@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Manias, Richard <RManias@blg.com>

Sent: September 5, 2023 1:56 PM

To: Janet Lee <janetlee@mbb.ca>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Importance: High

WITHOUT PREJUDICE

Hi Janet,

We have received instructions from the Receiver in regards to your request below. Subject to Sunny agreeing to the terms set out in this email, the Receiver is prepared to extend the Date of Closing by one (1) day until Wednesday, September 6, 2023 (the "New Short Extension"). Accordingly, all references to "September 5, 2023" in my email from August 30, 2023 at 3:15 PM (the "Extension Email") shall be deleted and replaced with "September 6, 2023".

In light of the above, we will update the Amendment to reflect the New Short Extension (i.e. update the recitals and Schedule "A" to reference this email extension and change reference to September 5, 2023 to September 6, 2023). We will circulate the updated Amendment once we receive your confirmation, on behalf of Sunny, in regards to this email. That said, if your client has already signed the Amendment (or attends your office to sign same prior to the updated Amendment being circulated by us), we can simply slip sheet their signature page.

For clarity, as a condition to the Receiver granting the New Short Extension, in the event the Amendment is not entered into (in a form acceptable to the Receiver) and the Additional Deposit is not received prior to 12:00 PM on September 6, 2023, Sunny acknowledges that the Initial Deposit currently held by BLG will be immediately released by BLG to the Receiver, and Sunny shall release any and all claims against the Receiver or BLG in relation to the Initial Deposit and any and all claims relating to the transaction and pursuant to the Agreement of Purchase and Sale.

On behalf of your client, please confirm that Sunny is in agreement with the terms of this email, including the foregoing condition relating to the New Short Extension and the updates to the Amendment.

All other terms and conditions of the Extension Email shall remain unamended, and time is of the essence in all respects relating to the Agreement of Purchase and Sale.

Regards,



Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Bayview Creek Closing, LLP

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From: Manias, Richard <RManias@blg.com>

Sent: September 5, 2023 11:00 AM

To: Janet Lee <janetlee@mbb.ca>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Importance: High

Janet,

I will seek instructions; but, if your client has the funds, why has the wire not been initialized yet/not being initialized now?

Also, when can we expect to receive the signed Amendment?

My client may wish to know the answers to the above questions before responding to your below request.

I remind you that time remains of the essence.

Regards,



Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

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From: Janet Lee <janetlee@mbb.ca>

Sent: September 5, 2023 10:43 AM

To: Manias, Richard <RManias@blg.com>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle

<tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn

<TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

[External / Externe]

Hi Richard,

Our client has asked that an indulgence be granted to allow for the payment of the additional deposit of \$2 million by EST 5pm today. He has assured me that he has \$2 million in his bank account and will administer the wire soon.

Please let us know if you will agree to grant the indulgence.

Thanks.

Janet

Regards,

Janet Lee

Managing Partner



Metcalf, Blainey & Burns LLP
Unit 202, 18 Crown Steel Drive
Markham, Ontario
L3R 9X8

Email: janetlee@mbb.ca
Office: 905-475-7676 Ext. 338
Cell: 1-416-617-6183
Wechat: janet882288
<http://www.mbb.ca>

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From: Manias, Richard <RManias@blg.com>
Sent: Tuesday, September 5, 2023 10:07 AM
To: Janet Lee <janetlee@mbb.ca>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date

Hi Janet,

Can you please provide us with an update on the Amendment and the Additional Deposit? Thank you.

Regards,



Richard Manias
Partner
T 416.367.6668 | RManias@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Manias, Richard <RManias@blg.com>
Sent: September 1, 2023 4:41 PM
To: Janet Lee <janetlee@mbb.ca>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>
Subject: Re: 30703 - Bayview Creek - Closing Date

Noted. We look forward to future updates from you.

Regards,

Richard Manias

Partner

T 416.357.6668 | RManias@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W. Toronto, ON, Canada M5H 4E3

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From: Janet Lee <janetlee@mbb.ca>

Sent: Friday, September 1, 2023 4:23:43 PM

To: Manias, Richard <RManias@blg.com>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: Re: 30703 - Bayview Creek - Closing Date

[External / Externe]

We have forwarded our trust account information to our client and are waiting for the funds to arrive.

Regards,

Janet Lee

Managing Partner

Metcalfe, Blainey & Burns LLP

Unit 202, 18 Crown Steel Drive

Markham, Ontario

L3R 9X8

Email: janetlee@mbb.ca

Office: 1-905-475-7676 Ext. 338

Cell: 1-416-617-6183

Wechat: janet882288

Zoom: janetlee@mbb.ca

Whatsapp: 1 416 617 6183

Skype: leejanet7

<http://www.mbb.ca>

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On Sep 1, 2023, at 2:23 PM, Manias, Richard <RManias@blg.com> wrote:

Janet, as you will note, the Amendment is consistent with the terms of the below Short Extension email. Accordingly, for clarity, I am hoping to hear back from you on the Amendment and the Additional Deposit this afternoon. Please advise on your timing. Thank you.

Regards,

<image001.jpg>

Richard Manias
Partner
T 416.367.6668 | RManias@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Manias, Richard
Sent: September 1, 2023 10:58 AM
To: Janet Lee <janetlee@mbb.ca>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date

Thank you, Janet. We look forward to hearing back from you on this as soon as possible.

Regards,

<image001.jpg>

Richard Manias
Partner
T 416.367.6668 | RManias@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Janet Lee <janetlee@mbb.ca>
Sent: September 1, 2023 9:47 AM
To: Manias, Richard <RManias@blg.com>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date

[External / Externe]

Hi Richard,

Thank you for your email. We will update you of the funding status as soon as we have instructions from our client.

Thanks.

Janet

Regards,

Janet Lee
Managing Partner

<**image002.png**>

Unit 202, 18 Crown Steel Drive
Markham, Ontario
L3R 9X8

Email: janetlee@mbb.ca
Office: 905-475-7676 Ext. 338
Cell: 1-416-617-6183
Wechat: janet882288
<http://www.mbb.ca>

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From: Manias, Richard <RManias@blg.com>
Sent: Friday, September 1, 2023 9:35 AM
To: Janet Lee <janetlee@mbb.ca>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date
Importance: High

Hi Janet,

See attached the Amending Agreement for Sunny's execution.

We remind you that this Amendment must be executed by Sunny and the Additional Deposit must be received by BLG prior to 12PM on Tuesday, September 5th at 12PM. For clarity, the Receiver will not be executing this Amendment until the signed Amendment and the Additional Deposit have been received. As per my below email, we highly recommend that Sunny initiate the wire transfer for the Additional Deposit today given that Monday is a holiday. Please advise when we can expect the funds.

Lastly, again, we remind you that time is of the essence.

Regards,

<image001.jpg>

Richard Manias
Partner
T 416.367.6668 | RManias@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Manias, Richard <RManias@blg.com>

Sent: August 31, 2023 9:47 AM

To: Janet Lee <janetlee@mbb.ca>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Hi Janet,

I confirm on behalf of the Receiver that the Date of Closing has been extended to September 5, 2023 (as per the terms of my below email); but, please note that time remains of the essence (as per the terms of the Agreement of Purchase and Sale).

We are taking steps to draft the amendment today, and will forward same to you as soon as it is ready. That said, given that Monday is a holiday, I highly recommend that you have Sunny forthwith forward the Additional Deposit to BLG as soon as possible. For your convenience, I have reattached BLG's wire details. Please advise today when BLG can expect to receive the Additional Deposit.

Regards,

<image001.jpg>

Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

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From: Janet Lee <janetlee@mbb.ca>

Sent: August 31, 2023 12:00 AM

To: Manias, Richard <RManias@blg.com>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle

<tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn

<TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

[External / Externe]

Dear Richard,

We confirm on behalf of our client that Sunny is in agreement with the terms of your email of 3:15pm August 30, 2023.

Would you be preparing the Amendment?

Thanks.

Janet

Regards,

Janet Lee
Managing Partner

<image003.png>

Unit 202, 18 Crown Steel Drive

Markham, Ontario

L3R 9X8

Email: janetlee@mbb.ca

Office: 905-475-7676 Ext. 338

Cell: 1-416-617-6183

Wechat: janet882288

<http://www.mbb.ca>

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From: Manias, Richard <RManias@blg.com>

Sent: Wednesday, August 30, 2023 3:15 PM

To: Janet Lee <janetlee@mbb.ca>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Importance: High

WITHOUT PREJUDICE

Hi Janet,

We have received instructions from our client, Insi Spergel Inc. (the "Receiver"), in regards to Sunny Communities (Bayview Creek) Inc.'s ("Sunny" or "Purchaser") request for a 30-day extension.

The Receiver is not agreeable to your below request. That said, subject to Sunny agreeing to the terms set out in this email, the Receiver is prepared to grant a short extension to the Date of Closing until Tuesday, September 5, 2023 ("Short Extension"), in order to allow for the parties to enter into a formal amendment to the Agreement of Purchase and Sale in form and content satisfactory to the Vendor ("Amendment"), which must be concluded by 12PM on September 5, 2023, on terms acceptable to the Receiver, in its sole and absolute discretion, including, but, not limited to the following terms:

- Purchaser to deliver prior to 12PM on September 5, 2023 to BLG an additional non-refundable deposit of \$2M ("Additional Deposit"), such that the total non-refundable deposit will be \$4M (the "New Deposit").
- The Date of Closing will be extended to be Friday, September 29, 2023.
- The Purchaser shall provide regular updates to the Receiver with respect to its financing and other matters relating to the Purchaser's ability to close on the extended Date of Closing.
- In the event the Agreement of Purchase and Sale is terminated or the transaction does not close (on or before September 29, 2023) due to the default of the Purchaser, the Purchaser acknowledges that the New Deposit (totaling \$4,000,000.00, being inclusive of the existing Deposit of \$2M (the "Initial Deposit") and the Additional Deposit) will be immediately released by BLG to the Receiver, and Sunny shall release any and all claims against the Initial Deposit, the Additional Deposit, the New Deposit and any claims against the Receiver and BLG arising from the Initial Deposit, the Additional Deposit, the New Deposit and the existing Agreement of Purchase and Sale (notwithstanding anything set out in the Agreement of Purchase and Sale to the contrary).
- There shall be no further extension to the Date of Closing past September 29, 2023.

As a condition to the Receiver granting the Short Extension, in the event the Amendment is not entered into (in a form acceptable to the Receiver) and the Additional Deposit is not received prior to 12PM on September 5, 2023, Sunny acknowledges that the Initial Deposit currently held by BLG will be immediately released by BLG to the Receiver, and Sunny shall release any and all claims against the

Receiver or BLG in relation to the Initial Deposit and any and all claims relating to the transaction and pursuant to the Agreement of Purchase and Sale.

On behalf of your client, please confirm that Sunny is in agreement with the terms of this email, including the foregoing condition relating to the Short Extension.

For clarity, in the event Sunny agrees to the terms of this email, if the Amendment is not entered into and the Additional Deposit is not received before 12PM on September 5, 2023, there will be no further extension to the Date of Closing.

I remind you that time is of the essence in all respects relating to the Agreement of Purchase and Sale.

Regards,

<image001.jpg>

Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Ghaemi, Peyman <PGhaemi@blg.com>

Sent: August 29, 2023 8:21 PM

To: Janet Lee <janetlee@mbb.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>

Cc: Edmond Wong <edmondwong@mbb.ca>; Trevor Pringle <tpringle@spergel.ca>; Jaipargas, Roger <RJaipargas@blg.com>; Manias, Richard <RManias@blg.com>; Wang, Grace <gwang@blg.com>; Ghaemi, Peyman <PGhaemi@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Hi Janet,

We will seek instructions from the Receiver on the request below and get back to you. In the meantime, could you please respond to our original questions below regarding the financing situation? The Receiver would still need to understand how exactly Sunny will be able to close this transaction and pay the balance of the Purchase Price if a 30-day extension is granted.

Thank you,

Peyman Ghaemi

Associate

T 416.367.6163 | PGhaemi@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Janet Lee <janetlee@mbb.ca>
Sent: August 29, 2023 7:01 PM
To: Ghaemi, Peyman <PGhaemi@blg.com>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>
Cc: Edmond Wong <edmondwong@mbb.ca>; Trevor Pringle <tpringle@spergel.ca>; Jaipargas, Roger <RJaipargas@blg.com>; Manias, Richard <RManias@blg.com>; Wang, Grace <gwang@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date

[External / Externe]

Hello Richard and Peyman,

The draft transfer and statement of adjustment is well received.

Please be advised that the proposed assignment arrangement of the APS between our client Sunny Communities (Bayview Creek) Inc. and 2833105 Ontario Inc. has been terminated.

As the closing is approaching, our client is seeking an extension of the closing date for thirty (30) days. As consideration for the extension, our client will authorize the immediate release of the entire \$2,000,000.00 deposit to the Receiver, for the Receiver's immediate use to satisfy costs and pay down the existing mortgages.

Please kindly let us know the Receiver's position on our request.

Many thanks.

Regards,

Janet Lee
Managing Partner

<004.png>

Unit 202, 18 Crown Steel Drive
Markham, Ontario
L3R 9X8

Email: janetlee@mbb.ca
Office: 905-475-7676 Ext. 338
Cell: 1-416-617-6183
Wechat: janet882288
<http://www.mbb.ca>

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From: Ghaemi, Peyman <PGhaemi@blg.com>
Sent: Monday, August 28, 2023 9:23 PM
To: Janet Lee <janetlee@mbb.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>
Cc: Edmond Wong <edmondwong@mbb.ca>; Trevor Pringle <tpringle@spergel.ca>; Jaipargas, Roger <RJaipargas@blg.com>; Manias, Richard <RManias@blg.com>; Wang, Grace <gwang@blg.com>; Ghaemi, Peyman <PGhaemi@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date

Hi Janet,

Following up on the below to see if you have any comments on the closing documents or the SOA. Please let us know.

Thank you,

Peyman Ghaemi

Associate

T 416.367.6163 | PGhaemi@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W. Toronto, ON, Canada M5H 4E3

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From: Wang, Grace <gwang@blg.com>
Sent: August 25, 2023 2:46 PM
To: Janet Lee <janetlee@mbb.ca>
Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Manias, Richard <RManias@blg.com>
Subject: RE: 30703 - Bayview Creek - Closing Date

Good afternoon,

Further to Richard's e-mail below, please see attached the statement of adjustment.

Best,

Grace

<image005.jpg>

Grace Wang

Law Clerk

T 416.367.6640 | gwang@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Manias, Richard <RManias@blg.com>

Sent: August 24, 2023 12:16 PM

To: Janet Lee <janetlee@mbb.ca>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Steven I. Pearlstein <spearlstein@mindengross.com>; Timothy Dunn <TDunn@mindengross.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Hi Janet,

Further to the below, for your information, please see the attached email circulated by Peyman yesterday in regards to the closing documents for this transaction. We look forward to hearing-back from you/Minden Gross in regards to the matters therein.

The SOA will follow.

Regards,

<image001.jpg>

Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Manias, Richard <RManias@blg.com>

Sent: August 24, 2023 10:26 AM

To: Janet Lee <janetlee@mbb.ca>; Timothy Dunn <TDunn@mindengross.com>; Steven I. Pearlstein <spearlstein@mindengross.com>

Cc: Edmond Wong <edmondwong@mbb.ca>; Ghaemi, Peyman <PGhaemi@blg.com>; Trevor Pringle <tpringle@spergel.ca>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: RE: 30703 - Bayview Creek - Closing Date

Importance: High

Hi Janet,

Our client, msi Spergel, will not be in a position to consider granting an extension until you address each of the questions set out below in Peyman's email. We ask that you kindly get back to us on same as soon as possible, and we remind you that time is of the essence (as per Section 29 of the APS).

Regards,

<image001.jpg>

Richard Manias

Partner

T 416.367.6668 | RManias@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Janet Lee <janetlee@mbb.ca>

Sent: August 24, 2023 10:03 AM

To: Ghaemi, Peyman <PGhaemi@blg.com>; Timothy Dunn <TDunn@mindengross.com>

Cc: Steven I. Pearlstein <spearstein@mindengross.com>; Edmond Wong <edmondwong@mbb.ca>;

Trevor Pringle <tpringle@spergel.ca>; Manias, Richard <RManias@blg.com>; Jaipargas, Roger

<RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>

Subject: 30703 - Bayview Creek - Closing Date

[External / Externe]

Hi Peyman,

Thank you for your email below. As you know, we are co-counsel with Minden Gross representing the Buyer, Sunny Communities (Bayview Creek) Inc.

The Buyer is requesting the receiver to grant an extension of the closing date to November 15, 2023.

Thank you.

Janet

Regards,

Janet Lee
Managing Partner

<image006.png>

Unit 202, 18 Crown Steel Drive
Markham, Ontario
L3R 9X8

Email: janetlee@mbb.ca
Office: 905-475-7676 Ext. 338
Cell: 1-416-617-6183
Wechat: janet882288
<http://www.mbb.ca>

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From: Ghaemi, Peyman <PGhaemi@blg.com>
Sent: Wednesday, August 23, 2023 8:53 PM
To: Timothy Dunn <TDunn@mindengross.com>
Cc: Steven I. Pearlstein <spearlstein@mindengross.com>; Janet Lee <janetlee@mbb.ca>; Edmond Wong <edmondwong@mbb.ca>; Trevor Pringle <tpringle@spergel.ca>; Manias, Richard <RManias@blg.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wang, Grace <gwang@blg.com>
Subject: Bayview Creek - Closing Date
Importance: High

Hi Tim,

We have been advised by Colliers, who we understand was contacted by your client, that the Purchaser may not be in a position to close the transaction on August 31, 2023 as required pursuant to the APS due to issues with its financing. Could you please confirm if this is in fact the case? If so, before the Vendor can consider the possibility of an extension to the Date of Closing, the Vendor would require more information from the Purchaser regarding the current situation. In particular, please kindly advise in regards to the following:

1. We are advised that the Purchaser was seeking to finance a portion of the Purchase Price at a 65% LTV. Has it been able to confirm this financing?
2. Assuming the 65% LTV financing noted above, we would expect that the Purchaser was going to fund the remaining 35% of the Purchase Price with equity. What is the amount of equity shortfall that the Purchaser is unable to come up with for closing on August 31?
3. Colliers referenced that a sale deal fell through, giving rise to the current situation. Please confirm who the seller is in that case? Is it the Purchaser entity directly, or is it a sale by one of the Purchaser's investors?
4. If the Vendor is to consider a short extension, (i) how long would such extension be requested for; and (ii) what would be the purpose of such extension? For example, is the Purchaser looking to: (1) obtain mezzanine financing to make up for the equity shortfall; (2) complete a sale with another party; or (3) replace the investor in question?
5. Is there any evidence that the Purchaser can now, or will shortly be able, to give additional comfort to the Vendor that it will be able to close if closing was extended per above? i.e. a binding commitment letter, purchase agreement, etc.

For clarity, our client has not given us the authority to extend the Date of Closing, and we are simply reaching out to try to troubleshoot a possible issue on a without prejudice basis.

We look forward to hearing from you as soon as possible. Please let us know if you'd like to discuss this further.

Thank you,

Peyman Ghaemi

Associate

T 416.367.6163 | PGhaemi@blg.com

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Appendix 12

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

FENGATE REDEVELOPMENT FUND GP INC., as general partner for and on behalf
of LPF CONVERSION FUND

Plaintiff

- and -

CIM BAYVIEW CREEK INC., BAYVIEW CREEK (CIM) LP, GR (CAN)
INVESTMENT CO. LTD, MONEST FINANCIAL INC., MNP LTD IN ITS
CAPACITY AS BANKRUPTCY TRUSTEE OF BAYVIEW CREEK (CIM) LP,
GRANT THORNTON LIMITED IN ITS CAPACITY AS BANKRUPTCY TRUSTEE
OF CIM BAYVIEW CREEK INC., TRACY HUI and JOJO HUI (PERSONALLY
AND REPRESENTING THE INTERESTS OF THE ENFORCEMENT COMMITTEE
OF THE DEBENTURE HOLDERS)

Defendants

**STATEMENT OF CLAIM
(MORTGAGE ACTION – FORECLOSURE)**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to 10 more days within which to serve and file your statement of defence.

REQUEST TO REDEEM

Whether or not you serve and file a statement of defence, you may request the right to redeem the mortgaged property by serving a request to redeem (Form 64A) on the plaintiff and filing it in this court office within the time for serving and filing your statement of defence or at any time before being noted in default. If you do so, you will be entitled to seven days notice of the taking of the account of the amount due to the plaintiff, and to 60 days from the taking of the account within which to redeem the mortgaged property.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question, you may file a request to redeem, which must contain particulars of your claim verified by an affidavit, and you will be entitled to redeem only if your claim is not disputed or, if disputed, is proved on a reference.

REQUEST FOR SALE

If you do not serve and file a statement of defence, you may request a sale of the mortgaged property by serving a request for sale (Form 64F) on the plaintiff and filing it in this court office within the time for serving and filing your statement of defence, or at any time before being noted in default. If you do so, the plaintiff will be entitled to obtain a judgment for a sale with a reference and you will be entitled to notice of the reference.

If you hold a lien, charge or encumbrance on the mortgaged property subsequent to the mortgage in question and you do not serve and file a request to redeem, you may file a request for sale which must contain particulars of your claim verified by an affidavit, and must be accompanied by a receipt showing that \$250 has been paid into court as security for the costs of the plaintiff(s) and of any other party having carriage of the sale.

DEFAULT JUDGMENT

IF YOU FAIL TO SERVE AND FILE A STATEMENT OF DEFENCE, JUDGMENT MAY BE GIVEN AGAINST YOU WITHOUT FURTHER NOTICE. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November ●, 2023

Issued by _____
Local registrar

Address of «court office address»
court office

TO: **CIM BAYVIEW CREEK INC., c/o msi Spergel Inc. as Receiver**
21 King Street West, Suite 1602
Hamilton, ON L8P 4W7

Trevor Pringle
Tel: 905-527-2227
Email: TPringle@spergel.ca

Roger Jaipargus, Counsel for the Receiver
Tel: 416-367-6266
Email: rjaipargus@blg.com

AND
TO: **BAYVIEW CREEK (CIM) LP, c/o msi Spergel Inc. as Receiver**
21 King Street West, Suite 1602
Hamilton, ON L8P 4W7

Trevor Pringle
Tel: 905-527-2227
Email: TPringle@spergel.ca

Roger Jaipargus, Counsel for the Receiver
Tel: 416-367-6266
Email: rjaipargus@blg.com

AND
TO: **GR (CAN) INVESTMENT CO. LTD**
& MONEST FINANCIAL INC. c/o Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

E. Patrick Shea
Tel: 416-369-7399
Email: Patrick.shea@gowlingwlg.com

Tan & Associates, Counsel for GR (Can) Investment Co. Ltd. and
Monest Financial Inc.
1315 Lawrence Avenue, East Suite 506

**Toronto, ON M3A 3R3
Ping Tan
Tel: 416-443-8600
Email: pingt.tan@gmail.com**

**Monest Financial Inc.
198 Lord Seaton Road
Toronto, ON M2P 1K9**

**Susan Wang
Email: susancanada@gmail.com**

**AND TO: MNP LTD IN ITS CAPACITY AS BANKRUPTCY TRUSTEE OF
BAYVIEW CREEK (CIM) LP
1 Adelaide St E
Toronto, ON M5C 2V9**

**Jerry Henechowicz
Tel: 416-515-3924
Email: Jerry.Henechowicz@mnp.ca**

**AND TO: GRANT THORNTON LIMITED IN ITS CAPACITY AS
BANKRUPTCY TRUSTEE OF CIM BAYVIEW CREEK INC.
11th Floor, 200 King Street West
Toronto, ON M5H 3T4**

**Dan Wootton
Tel: 416-360-3063
Email: dan.wootton@ca.gt.com**

**John Birch, Counsel for the Trustee
Tel: 416-860-5225
Email: jbirch@cassels.com**

**AND TO: TRACY HUI and JOJO HUI (PERSONALLY AND
REPRESENTING THE INTERESTS OF THE ENFORCEMENT
COMMITTEE OF THE DEBENTURE HOLDERS) c/o Torys LLP
79 Wellington St. W, 33rd Floor, Box 270
TD South Tower
Toronto, ON M5K 1N2**

**Adam Slavens
Tel: 416-865-7333
Email: aslavens@torys.com**

CLAIM

1. The Plaintiff claims:
 - (a) that the equity of redemption in the property secured by the mortgages and general security agreements mentioned below be foreclosed;
 - (b) possession of the mortgaged property;
 - (c) the costs of this action on a substantial indemnity basis; and
 - (d) such further and other relief as this Honourable Court may deem just.

2. The Plaintiff's claim is on the following (collectively, the "**Plaintiff Security**"):ol style="list-style-type: none;">- (a) The First Mortgage: A mortgage dated May 18, 2016 made between CIM Invests Development Inc. ("**CIM Invests**"), as original mortgagor, and DUCA Financial Services Credit Union Ltd. ("**DUCA**"), as mortgagee, and registered as Instrument Number YR2473036, as amended, securing the principal sum of \$20,720,000 and interest at the rate of the Prime Rate (as defined therein) plus 3%, which rate of interest was increased to Prime Rate plus 5.50% on March 12, 2019, which mortgage matured on May 21, 2020 (the "**First Mortgage**"). CIM Bayview Creek Inc. (the "**Mortgagor**") assumed the obligations of CIM Invests to DUCA on a joint and several basis on June 14, 2018, with the Mortgagor and DUCA entering into a Charge Amending and Confirming Agreement on March 8, 2019. The First Mortgage was assigned by DUCA to the Plaintiff on May 15, 2023 pursuant to a Mortgage Purchase and Sale Agreement and a Transfer of Charge registered against the mortgaged property as Instrument No. YR351181 on May 15, 2023;

- (b) The Second Mortgage: A mortgage dated June 17, 2019 made between the Mortgagor, as mortgagor, and Bryton Capital Corp. GP Ltd., in its capacity as then general partner of LPF Conversion Fund (“**Bryton**”), as mortgagee, and registered as Instrument No. YR2972266, as amended on July 1, 2020, securing the sum of \$22,300,000 with interest at a rate equal to the greater of 8% per annum or 4% per annum above the prime rate, which mortgage matured on November 1, 2020 (the “**Second Mortgage**”). Interest was to be calculated daily and compounded and payable monthly, before and after maturity and before and after default. The Second Mortgage was assigned by Bryton to the Plaintiff on September 9, 2022. The Second Mortgage was assigned by Bryton to the Plaintiff pursuant to an Assignment and Assumption Agreement dated September 9, 2022 and a Transfer of Charge registered as Instrument No. YR3551183 against title to the mortgaged property on May 15, 2023.
- (c) The DUCA GSA: A general security agreement dated May 13, 2016 under which Bayview Creek (CIM) LP (“**Bayview Creek LP**”), by its general partner, CIM Invests (together with Bayview Creek LP, the “**Original Borrower**”) granted to DUCA a security interest in the present and future undertaking and property, both real and personal, of Bayview Creek LP as security for the payment and performance of the indebtedness and liability of the Original Borrower to DUCA (the “**DUCA GSA**”). Such indebtedness and obligations of the Original Borrower were assumed by the Mortgagor, together with the Original Borrower and CIM Invests, on a joint and several basis on June 14, 2018; and the security and indebtedness, including the DUCA GSA, were assigned by DUCA to the Plaintiff on May 15, 2023; and,

(d) The Bryton GSA: A general security agreement dated June 3, 2019 under which the Mortgagor granted to Bryton a continuing security interest in and pledges, mortgages and charges to and in favour of Bryton in the present and future undertaking and property, both real and personal, tangible and intangible, of the Mortgagor as security for the indebtedness and obligations of the Mortgagor to Bryton (the “**Bryton GSA**”). The security and indebtedness, including the Bryton GSA, were assigned by Bryton to the Plaintiff on September 9, 2022.

Insolvency Proceedings and Lift Stay

3. On October 29, 2020, the Mortgagor filed a Notice of Intention to Make a Proposal and later, on February 8, 2021, was deemed to make an assignment in bankruptcy.

4. On May 4, 2021, Bayview Creek LP made an assignment in bankruptcy (together with the bankruptcy of the Mortgagor, the “**Bankruptcy Proceedings**”). MNP Ltd., as bankruptcy trustee of Bayview Creek LP and 10502715 Canada Inc. reported on May 20, 2021 that “[g]iven concerns regarding clean up and other environmental orders that may be registered [sic] the [Real Property], the Trustee instructed the Estate Solicitor to issue a notice of disclaimer in respect of the [Real Property] pursuant [sic] Section 71 of the *Land Titles Act* (Ontario) and Section 20 of the BIA.”

5. On March 2, 2022 msi Spergel Inc. was appointed as receiver (the “**Receiver**” and the related proceedings, the “**Receivership Proceedings**”) over all of the assets, undertakings and properties of CIM Invests, Bayview Creek LP and the Mortgagor (collectively, the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof as well as the Real Property.

6. On ●, 2023, the Receiver obtained an order among other things, a) providing for a distribution of amounts held by the Receiver (the “**Distribution**”) that will satisfy all prior-ranking encumbrances in relation to the Real Property; b) providing for the discharge of certain charges and encumbrances as set out therein; and c) authorizing the Receiver to consent to a lifting of the stay in the Receivership Proceedings to permit the Plaintiff to serve this Statement of Claim and pursue the foreclosure process set out herein including in respect of the registered encumbrances filed by certain defendants as described in paragraphs 25 and 27 hereof, which consent has been provided by the Receiver.

7. No separate lift stay was required in respect of the Bankruptcy Proceedings since section 69.3(2) of the *Bankruptcy and Insolvency Act* (Canada) provides that, subject to subsections that do not apply here, a bankruptcy does not prevent a secured creditor from realizing or otherwise dealing with its security.

8. To the extent there are any funds remaining in the possession of the Receiver after the Distribution, the Plaintiff seeks to foreclose on such personal property hereunder pursuant to the DUCA GSA and Bryton GSA, in addition to the foreclosure sought in respect of the Real Property under the First and Second Mortgage hereunder.

DUCA Indebtedness, First Mortgage and DUCA GSA

9. DUCA agreed to provide a mortgage loan to the Original Borrower under the terms of a Commitment Letter dated April 15, 2016 between the Original Borrower and DUCA, as amended on April 12, 2017, April 26, 2018 and June 14, 2018 and as amended by forbearance letters dated March 6, 2019, April 18, 2019 as replaced by a letter agreement

dated May 22, 2019 and June 24, 2020 (collectively, the “**DUCA Loan Agreement**”), on the terms set out in the DUCA Loan Agreement (the “**DUCA Loan**”).

10. The obligations under the DUCA Loan Agreement are secured by the First Mortgage and the DUCA GSA, among other things.

11. In June 2018 the Mortgagor became the registered owner of the Real Property and assumed liability under the DUCA Loan Agreement and the security, including the First Mortgage and the DUCA GSA:

(a) the Mortgagor, together with the Original Borrower and CIM Invests became, collectively and on a joint and several basis, the borrower under the DUCA Loan Agreement and the security, including the First Mortgage and DUCA GSA, on June 14, 2018; and

(b) CIM Invests, which held the Real Property in trust as nominee and bare trustee for Bayview Creek LP, conveyed the Real Property to the Mortgagor on June 21, 2018.

12. On May 15, 2023, DUCA assigned to the Plaintiff the DUCA Loan and its rights as lender and/or mortgagee under the DUCA Loan Agreement, the First Mortgage and additional security, including the DUCA GSA.

13. The First Mortgage and the DUCA GSA provide that, on default, the DUCA Indebtedness can be accelerated, demand for payment may be made and the security for the DUCA Indebtedness may be enforced. Under the First Mortgage and upon default, the balance of the principal and interest and other sums payable under the First Mortgage immediately become due and payable at the option of the Plaintiff, as assignee of the

DUCA Loan and First Mortgage, and the Plaintiff is entitled to exercise its remedies which includes possession of the Real Property.

14. The DUCA Loan Agreement, the DUCA GSA and the First Mortgage were and continue to be in default and the necessary notices have been provided. Among other things, a mortgage was registered in favour of Romspen Investment Corporation in December 2018, in the amount of \$15,000,000 without DUCA's prior written consent. This constituted a breach of the terms of the First Mortgage.

15. The following amounts are currently owing in respect of the DUCA Loan:

Principal Balance - \$20,720,000

Interest on Loan to September 30, 2023 - \$6,122,453.68

Legal Costs - \$337,373.63

(collectively, the "**DUCA Indebtedness**").

16. The DUCA GSA and First Mortgage secure the DUCA Indebtedness, which is now due and remains unpaid.

Bryton Indebtedness, Second Mortgage and Bryton GSA

17. Bryton agreed to provide a mortgage loan to the Mortgagor under the terms of a Commitment Letter dated May 29, 2019 as amended on July 1, 2020 between the Mortgagor and Bryton (collectively, the "**Bryton Loan Agreement**"), on the terms set out in the Bryton Loan Agreement (the "**Bryton Loan**").

18. The obligations under the Bryton Loan Agreement are secured by the Second Mortgage and the Bryton GSA, among other things.

19. On September 9, 2022, Bryton assigned to the Plaintiff the Bryton Loan and its rights as lender and/or mortgagee under the Bryton Loan Agreement, the Second Mortgage and additional security, including the Bryton GSA.

20. The Second Mortgage and the Bryton GSA provide that, upon default, the Bryton Indebtedness can be accelerated, demand for payment may be made and the security for the Bryton Indebtedness may be enforced. Under the Second Mortgage and upon default, the Plaintiff is entitled to exercise its remedies which include possession of the Real Property or the appointment of a receiver over the Real Property.

21. The Bryton Loan Agreement, the Bryton GSA and the Second Mortgage were and continue to be in default and the necessary notices have been provided. Among other things, default in payment of principal and interest occurred on July 1, 2020 and still continues.

22. The following amounts are currently owing in respect of the Bryton Loan:

Principal Balance - \$22,300,000

Interest on Loan to September 30, 2023 - \$9,106,246

Legal Costs - \$1,641,363

Litigation Cost Awards - \$249,020

(collectively, the “**Bryton Indebtedness**”).

23. The Bryton GSA and the Second Mortgage secure the Bryton Indebtedness, which is now due and remains unpaid.

Real Property

24. The following is a description of the real property mortgaged under the First Mortgage and the Second Mortgage (the “**Real Property**”):

PT LT 25, CON 2, (MKM), PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER
PART 2, 65R13270 AS IN R510790

PIN: 03186-4757 (LT)

Municipal Address: 10747 Bayview Avenue, Richmond Hill, Ontario

Other Encumbrances

i. Third Mortgagee

25. The defendants, GR (CAN) Investment Co. Ltd. (“**GR Investment**”) and Monest Financial Inc. (together with GR Investment, the “**Third Mortgagee**”), have each been made a party to this action as a subsequent encumbrancer. They hold a mortgage on the Real Property in the registered amount of \$2,207,405 pursuant to Instrument No. YR3137585 on September 4, 2020. In addition, GR Investment has registered a security interest against the Mortgagor and Bayview Creek LP under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) on February 14, 2020.

26. The Third Mortgage was registered without DUCA’s consent subsequent to the registration of the First Mortgage and the Second Mortgage. The GR Investment PPSA registration against the Mortgagor was registered after the Bryton GSA. The GR

Investment PPSA registration against Bayview Creek LP was registered after the DUCA GSA and the Bryton GSA.

ii. Certificate of Pending Litigation

27. The defendants, Tracy Hui and Jojo Hui, have each been made a party to this action (personally and representing the interests of the Enforcement Committee of the Debenture holders) as a possible subsequent encumbrancer since they obtained a Certificate of Pending Litigation on September 18, 2020 under Court File No. CV-20-00647366-0000 and registered via an Application-General against the Real Property as Instrument No. YR3142721.

28. The Plaintiff does not accept that these defendants have any interest in the Real Property and in any event such an interest would be subsequent in priority to the Plaintiff Security.

November ●, 2023

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

Heather Meredith LS#: 48354R
hmeredith@mccarthy.ca
Tel: 416-601-8342

Sanee Tanvir LS#: 77838T
stanvir@mccarthy.ca
Tel: 416-601-8181

Lawyers for the Plaintiffs

Fengate Redevelopment Fund GP Inc.
Plaintiff

and

CIM Bayview Creek Inc. et. al.
Defendants

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
Toronto ON M5K 1E6

Heather Meredith LS#: 48354R
hmeredith@mccarthy.ca
Tel: 416-601-8342

Sanea Tanvir LS#: 77838T
stanvir@mccarthy.ca
Tel: 416-601-8181

Lawyers for the Plaintiffs

Appendix 13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents


**AFFIDAVIT OF TREVOR PRINGLE
(sworn November 13, 2023)**

I, **TREVOR PRINGLE**, of the City of Hamilton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Licensed Insolvency Trustee with msi Spergel Inc. ("**MSI**"), the court-appointed Receiver (the "**Receiver**") of all the assets, undertakings and properties of the Respondents. As such I have knowledge of the matters hereinafter deposed to.
2. MSI was appointed Receiver pursuant to the Order made by the Honourable Justice Cavanagh of the Ontario Superior Court of Justice on March 2, 2022.
3. Attached hereto as **Exhibit "A"** are true copies of the Receiver's accounts with respect to professional fees incurred in respect of the receivership of CIM Bayview Creek Inc. et al for the period of July 1, 2023 to November 10, 2023 is in the amount of \$35,852.64, inclusive of HST and disbursements. This represents a total of 75.20 hours at an average rate of \$421.91 per hour. The accounts and supporting time dockets disclose in detail:

the nature of the services rendered, the time expended by each person and their hourly rates, disbursements charged and the total charges for the services rendered.

4. The hourly billing rates detailed in this Affidavit are the standard billing and charge out rates of MSI for services rendered in relation to similar proceedings.
5. To the best of my knowledge the rates charged by MSI in connection with acting as Receiver are comparable to the rates charged by other firms in the Hamilton market for the provision of similar services.
6. I make this affidavit in support of the Receiver's motion for; *inter alia*, approval of its fees and disbursements and not for an improper purpose.

SWORN BEFORE ME at the City)
of Hamilton, in the Province of)
Ontario, this 13th day of November, 2023.)
)
_____)
A Commissioner, etc.)

**Evan Scott McCullagh,
a Commissioner etc, Province of
Ontario, for msi Spengel inc. Expires
October 6, 2026**



TREVOR PRINGLE

**This is Exhibit “A”
To the Affidavit of Trevor Pringle**

dated November 13, 2023



**Evan Scott McCullagh,
a Commissioner etc, Province of
Ontario, for msi Spergel inc. Expires
October 6, 2026**



November 13, 2023

Invoice #: 12619

CIM Bayview Creek Inc.
55 Commerce Valley Drive West, Unit 502
Markham, ON L3T 7V9

Invoice

RE: CM Bayview Creek Inc.

	Hours	Hourly Rate	Total
Trevor Pringle, CFE, CIRP, LIT	62.30	\$450.00	\$28,035.00
Evan McCullagh	11.70	290.00	3,393.00
Others	1.20	250.00	300.00
Total Professional fees	75.20	\$421.91	\$31,728.00
HST			4,124.64
Total			<u>\$35,852.64</u>

HST Registration #R103478103

(AACIMB-R)

Filters Used:

- Time Entry Date: 1/1/1970 to 11/10/2023
- File ID: AACIMB-R: to AACIMB-R:
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Evan McCullagh (EMC)					
Tues	07/04/2023	review security photos and correspondence; colliers correspondence;	0.10	\$290.00	\$29.00
Tues	07/11/2023	Discussion re appendices for report; correspondence re invoice; review lock it invoice and prep CHQ REQ;	0.30	\$290.00	\$87.00
Wed	07/12/2023	Review GL; update SRD; review WIP and Invoice, draft affidavit of fees; review appendices; review 2nd report to court	1.50	\$290.00	\$435.00
Fri	07/14/2023	review final version of 2nd report and appendices, correspondence re same; review photos and security correspondence;	0.30	\$290.00	\$87.00
Mon	07/17/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Thur	07/20/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Mon	07/31/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Tues	08/01/2023	review lockit invoice; discussion with Rocco re invoice and grass cutting; review AVO, endorsement, Cardinal Affidavit;	0.30	\$290.00	\$87.00
Wed	08/09/2023	review photos and security correspondence; review draft motion materials, review 2nd report appendices; begin draft 3rd report to court; correspondence re insurance coverage;	3.50	\$290.00	\$1,015.00
Thur	08/10/2023	Continue drafting of 3rd report to court; review photos and security correspondence;	0.50	\$290.00	\$145.00
Mon	08/14/2023	review property tax statement;	0.10	\$290.00	\$29.00
Thur	08/17/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Wed	08/23/2023	finalize interim report and srd for OSB; discussion with TP re insurance, closing; review city of richmond hill correspondence;	0.50	\$290.00	\$145.00
Mon	08/28/2023	review security photos and correspondence; review GL; review Lawrie insurance invoice, review lock it invoice, prep fall 2023 budget, discuss same with TP;	0.50	\$290.00	\$145.00
Tues	08/29/2023	Review COI; correspondence with Richmond Hill re COI;	0.10	\$290.00	\$29.00
Thur	08/31/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Tues	09/05/2023	review lock it invoice; review photos and security correspondence;	0.10	\$290.00	\$29.00
Wed	09/06/2023	discussion with CRA, update on file;	0.10	\$290.00	\$29.00
Thur	09/07/2023	review interested parties list; correspondence with Colliers re same; review photos and security correspondence; review insurance invoice and prep CHQ REQ; review GL	0.30	\$290.00	\$87.00
Mon	09/11/2023	review photos and security correspondence; discussion with COOP equipment re Bobcat on site in error;	0.20	\$290.00	\$58.00
Mon	09/18/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Fri	09/22/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Mon	09/25/2023	review Colliers disposition report;	0.10	\$290.00	\$29.00
Fri	09/29/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Mon	10/02/2023	review photos and security correspondence	0.10	\$290.00	\$29.00
Wed	10/04/2023	review property tax statement;	0.10	\$290.00	\$29.00
Thur	10/05/2023	review photos and security correspondence	0.10	\$290.00	\$29.00
Tues	10/10/2023	review photos and security correspondence	0.10	\$290.00	\$29.00
Fri	10/13/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Mon	10/16/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Thur	10/19/2023	review photos and security correspondence	0.10	\$290.00	\$29.00
Fri	10/20/2023	discussion with City of Richmond Hill re water bill; discuss with TP;	0.20	\$290.00	\$58.00
Mon	10/23/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Thur	10/26/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Mon	10/30/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Tues	10/31/2023	review Lockit invoice; review and update appendices and confidential appendices for 3rd report; discussion with TP re 3rd report;	0.50	\$290.00	\$145.00
Thur	11/02/2023	review photos and security correspondence; review 3rd report to court, appendices and confidential appendices;	0.50	\$290.00	\$145.00
Mon	11/06/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00
Thur	11/09/2023	review photos and security correspondence;	0.10	\$290.00	\$29.00

Filters Used:

- Time Entry Date: 1/1/1970 to 11/10/2023
- File ID: AACIMB-R: to AACIMB-R:
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
		Evan McCullagh (EMC)	11.70		\$3,393.00
Gillian Goldblatt (GGO)					
Thur	07/06/2023	Receipt and review of bank reconciliation.	0.10	\$375.00	\$37.50
Fri	08/04/2023	Receipt and review of the bank statement.	0.10	\$375.00	\$37.50
Mon	09/11/2023	review and approve disbursement.	0.10	\$375.00	\$37.50
Wed	10/11/2023	Receipt and review of bank reconciliation.	0.10	\$375.00	\$37.50
Wed	11/01/2023	Receipt and review of bank reconciliation.	0.10	\$375.00	\$37.50
		Gillian Goldblatt (GGO)	0.50		\$187.50
Haran Sivanathan (HSI)					
Mon	09/11/2023	General	0.30	\$175.00	\$52.50
		Haran Sivanathan (HSI)	0.30		\$52.50
Inga Friptuleac (IFR)					
Tues	07/25/2023	Issue chq	0.10	\$150.00	\$15.00
Mon	09/18/2023	Issue chq; Deposit	0.20	\$150.00	\$30.00
Tues	10/17/2023	Issue chq	0.10	\$150.00	\$15.00
		Inga Friptuleac (IFR)	0.40		\$60.00
Trevor Pringle (TPR)					
Mon	07/10/2023	review legal correspondence; review site inspection photos; correspond with Ian Gragtmans et al, Colliers; review Colliers commission; correspond with Roger Jaipargas, lawyer; review draft second report to Court with BLG proposed amendments; review draft approval and vesting order; review general ledger; conference call with Roger Jaipargas, lawyer re Colliers commission, draft second report, DIP, cost awards; review DIP correspondence; review draft notice of motion; review administration and interim distribution order; review and make changes to draft second report to court; review BLG invoice	2.50	\$450.00	\$1,125.00
Tues	07/11/2023	review appendices to second report including court orders, endorsements, by-law orders, LPF org chart, Bryton assignment to Fengate, Colliers listing agreement, transfer of DUCA charges, redacted Sunny APS, interim SRD, receiver certificate, Fengate pay-out statement, title search, property tax statement; correspond with Catherine Price et al, Fengate; correspond/tdw's Roger Jaipargas et al, BLG lawyers; review draft administration and interim distribution order; review draft notice of motion; review draft second report to court; review BLG fee affidavit; review legal correspondence; review and approve cheque req	2.40	\$450.00	\$1,080.00
Wed	07/12/2023	review and approve interim invoice; review confidential appendices to second report including Sunny Communities unredacted agreement of purchase and sale, Colliers bid matrix, Antec appraisal with update memorandum, Colliers appraisals; review and sign fee affidavit; review interim statement of receipts and disbursements; review and update second report to court; review Colliers memorandum re sales process	1.40	\$450.00	\$630.00
Thur	07/13/2023	correspond with Catherine Price, Fengate re updating pay-out statement; review G/L; correspond with Roger Jaipargas, lawyer; review Fengate pay-out statement; review and make changes to draft second report to court; review appendices including title search	0.90	\$450.00	\$405.00

Filters Used:

- Time Entry Date: 1/1/1970 to 11/10/2023
- File ID: AACIMB-R: to AACIMB-R:
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Trevor Pringle (TPR)					
Fri	07/14/2023	tdw Colin Catherwood, Fengate; review and finalize second report to court; review appendices to second report including various orders, various endorsements, Fengate documents, Colliers listing agreement, redacted Sunny Communities agreement of purchase and sale; fee affidavits, interim statement of receipts and disbursements, receiver certificate, title search, property tax statement; review confidential appendices to second report including Sunny APS, Colliers bid matrix and property appraisals; review Globe and Mail ad; review confidential information memorandum; review first report to court; correspond/tdw Roger Jaipargas, BLG lawyer re motion material; review Fengate mortgage pay-out statement; review site inspection photos; review motion record; review BLG statement of law	3.20	\$450.00	\$1,440.00
Mon	07/17/2023	correspond with Larry Ellis, Miller Thomson LLP; review CaseLines change; review notice of motion; review general ledger; review site inspection photos	0.50	\$450.00	\$225.00
Tues	07/18/2023	correspond with Roger Jaipargas, lawyer; review confidential appendices to second report to court; review legal correspondence	0.30	\$450.00	\$135.00
Wed	07/19/2023	review books and records	0.10	\$450.00	\$45.00
Thur	07/20/2023	tdw Roger Jaipargas, lawyer; review site inspection photos	0.20	\$450.00	\$90.00
Mon	07/24/2023	review site inspection photos; correspond/tdw Roger Jaipargas, lawyer; review legal correspondence; review Appendices #8 & #9 to second report; review amended administration and interim distribution order; correspond/tdw Catherine Price, Fengate re interim distribution amount; correspond with Dana Shen, lawyer for Fengate	0.90	\$450.00	\$405.00
Tues	07/25/2023	review legal correspondence; tdw Colin Catherwood, Fengate; correspond/tdw Roger Jaipargas, lawyer; correspond/tdw Ian Gragtmans, Colliers; review property tax bill; review updated LPF Conversion Fund organizational chart; review Fengate documents; review title search	0.90	\$450.00	\$405.00
Wed	07/26/2023	review legal correspondence; correspond/tdw Roger Jaipargas, lawyer; review G/L; review updated property tax statement	0.40	\$450.00	\$180.00
Thur	07/27/2023	review legal correspondence; review site inspection photos; review draft order	0.30	\$450.00	\$135.00
Fri	07/28/2023	review legal correspondence; correspond with Roger Jaipargas, lawyer	0.10	\$450.00	\$45.00
Mon	07/31/2023	review legal correspondence; correspond/tdw's Roger Jaipargas, lawyer re debtor-in-possession financing; review site inspection photos; conference call with Roger Jaipargas, BLG lawyer and Rory McGovern, lawyer for Cardinal Advisory Limited and Larry Ellis, Miller Thomson lawyer re DIP pay-out statement; review Cardinal Advisory DIP pay-out statement; review Cardinal affidavit with exhibits; review second report to court; review and approve amended administration and interim distribution order	2.20	\$450.00	\$990.00
Tues	08/01/2023	review legal correspondence; correspond/tdw's Roger Jaipargas, lawyer; review Cardinal Advisory motion record; review updated administration and interim distribution order; review updated approval and vesting order; review Lockit invoice; review updated property tax statement; review participant sheet for hearing; tdw's Colin Catherwood, Fengate; review second report to court; review CRA trust claims for RT & RP accounts; attend property sale approval motion in court before Justice Penny (via Zoom); BLG correspondence re property closing; review Justice Penny endorsement; review AVO	2.90	\$450.00	\$1,305.00

Filters Used:

- Time Entry Date: 1/1/1970 to 11/10/2023
- File ID: AACIMB-R: to AACIMB-R:
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Trevor Pringle (TPR)					
Wed	08/02/2023	review approval and vesting order; review administration and interim distribution order; review endorsement of Justice Penny; correspond with Roger Jaipargas, lawyer	0.40	\$450.00	\$180.00
Thur	08/03/2023	discussions/correspondence re property sale closing; review insurance coverage	0.20	\$450.00	\$90.00
Mon	08/21/2023	review legal correspondence re property closing; correspond with Roger Jaipargas, lawyer; review site inspection photos; review City of Richmond Hill updated property tax statement; review draft notice of motion; review draft discharge order; review draft third report to court; review interim distribution order	0.90	\$450.00	\$405.00
Tues	08/22/2023	tdw Mike Czestochowski, CBRE; review general ledger; correspond/tdw Roger Jaipargas, lawyer; review legal correspondence re property closing	0.40	\$450.00	\$180.00
Wed	08/23/2023	review legal correspondence re property closing; correspond/tdw's Roger Jaipargas, lawyer re Sunny APS; correspond with Steve Keyzer et al, Colliers re Sunny APS; review Sunny Communities correspondence; correspond with Chad Brownlee, Lawrie Insurance Group re property insurance coverage extension; correspond with Yun Cheao (Michael) Lin, Sunny Communities; correspond with Mike Czestochowski et al, CBRE; review Sunny Communities agreement of purchase and sale; review Colliers sales process memorandum; conference call with Roger Jaipargas & Richard Manias, BLG lawyers; conference call with Roger Jaipargas/Richard Manias/Peyman Ghaemi, BLG lawyers and Dana Shen et al, McCarthy's lawyers for Fengate re Sunny Communities APS; tdw's Steve Keyzer, Colliers re Sunny Communities APS; review and sign 246(2) report	2.90	\$450.00	\$1,305.00
Thur	08/24/2023	review legal correspondence re property closing; correspond with Roger Jaipargas, lawyer; review closing documents including acknowledgement and direction, omnibus agreement, receivers certificate, document registration agreement, e-registration application; review property tax statement; review site inspection photos; review Sunny Communities APS extension request to November 15, 2023; correspond with Richard Manias et al, BLG lawyers; review Sunny Communities APS terms; review Gardiner Roberts LLP correspondence; review 2833105 Ontario Inc. corporate profile report; conference call with Roger Jaipargas/Richard Manias/Peyman Ghaemi, BLG lawyers re Sunny Communities APS	2.20	\$450.00	\$990.00
Fri	08/25/2023	review legal correspondence re property closing; correspond with Roger Jaipargas, lawyer; correspondence/discussions re insurance coverage extension; review City of Richmond Hill correspondence, bylaws, property tax statement; review draft statement of adjustments; review G/L	0.90	\$450.00	\$405.00
Mon	08/28/2023	review legal correspondence re property closing; correspond with Taryn Gentle, Lawrie Group re 6 month insurance coverage extension; review site inspection photos; review Lawrie Insurance Group invoice; review projected operating budget; review general ledger; review and approve cheque requisition	0.90	\$450.00	\$405.00
Tues	08/29/2023	review legal correspondence re property closing; review Sunny Communities corporate profile report; review certificate of insurance for City of Richmond Hill; correspond with Richard Manias et al, BLG lawyers re tendering	0.60	\$450.00	\$270.00

Filters Used:

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- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Trevor Pringle (TPR)					
Wed	08/30/2023	review legal correspondence re property closing and 30 day extension request; review Metcalfe, Blainey & Burns LLP correspondence re 30 day extension request; correspond with Roger Jaipargas et al, BLG lawyers; review wire instructions; review and execute closing documents for tendering purposes including acknowledgement and direction, omnibus agreement, receivers certificate; review statement of adjustments; conference call with Roger Jaipargas & Richard Manias - BLG lawyers re Sunny Communities APS extension request; review McCarthy's correspondence; discussions/correspondence re insurance coverage extension	2.20	\$450.00	\$990.00
Thur	08/31/2023	review legal correspondence re property closing extension; correspond with Roger Jaipargas et al, BLG lawyers; review Sunny Communities APS short extension and amendment terms; tdw Ian Gragtmans & Steve Keyzer, Colliers re short extension for Sunny Communities APS closing; review wire details; review McCarthy's correspondence; review site inspection photos; review Sunny Communities APS amending agreement	1.40	\$450.00	\$630.00
Fri	09/01/2023	review amending agreement to Sunny Communities APS; review McCarthy's/Fengate correspondence; correspond with Roger Jaipargas et al, BLG lawyers; review Metcalfe, Blainey & Burns LLP correspondence; review Colliers listing agreement extension; correspond with Steve Keyzer et al, Colliers	0.90	\$450.00	\$405.00
Tues	09/05/2023	review legal correspondence re property closing extension; review site inspection photos; correspond with Richard Manias et al, BLG lawyers; make amendments to Colliers listing extension; review McCarthy's/Fengate correspondence; conference calls with Richard Manias & Peyman Ghaemi, BLG lawyers re property closing extension; review Metcalfe, Blainey & Burns LLP correspondence	1.00	\$450.00	\$450.00
Wed	09/06/2023	review updated amending agreement to Sunny Communities APS; review legal correspondence re property closing extension; correspond with Richard Manias et al, BLG lawyers re tendering property sale; review Metcalfe, Blainey & Burns LLP correspondence; review McCarthy's correspondence; tdw Colin Catherwood, Fengate; review and approve vendor's tender package for closing including Teraview application for vesting order, acknowledgement & direction, statement of adjustments and omnibus agreement; tdw Steve Keyzer, Colliers; correspond/tdw Roger Jaipargas, lawyer	2.20	\$450.00	\$990.00
Thur	09/07/2023	review and execute Colliers listing agreement extension; correspond with Steve Keyzer et al, Colliers re property marketing re-launch; review Colliers listing agreement; correspond with Richard Manias et al, BLG lawyers re termination of Sunny Communities agreement of purchase and sale; review legal correspondence; tdw Colin Catherwood, Fengate; review site inspection photos; review prospective purchasers list; review and approve payment of insurance premium invoice; review general ledger	1.50	\$450.00	\$675.00
Fri	09/08/2023	review and approve Colliers email marketing blast; correspond with Colin Catherwood, Fengate; review and approve cheque requisition; review and approve payment of Lockit invoices	0.50	\$450.00	\$225.00
Mon	09/11/2023	review general ledger; review site inspection photos; tdw Steve Keyzer, Colliers	0.30	\$450.00	\$135.00
Tues	09/12/2023	correspond with Steve Keyzer, Colliers; review legal correspondence	0.20	\$450.00	\$90.00

Filters Used:

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- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Trevor Pringle (TPR)					
Wed	09/13/2023	review legal correspondence; correspond with Roger Jaipargas, lawyer; review and approve Colliers draft confidential information memorandum; correspond/tdw Steve Keyer, Colliers; tdw Colin Catherwood, Fengate; review and approve Colliers marketing email blast	0.90	\$450.00	\$405.00
Thur	09/14/2023	correspond with Roger Jaipargas, lawyer	0.10	\$450.00	\$45.00
Mon	09/18/2023	review Colliers marketing email blast; tdw Roger Jaipargas, lawyer; review G/L; review site inspection photos	0.40	\$450.00	\$180.00
Mon	09/25/2023	review legal correspondence; correspond/tdw Roger Jaipargas, lawyer; review site inspection photos; review Colliers marketing update report; correspond with Colin Catherwood, Fengate; review Colliers marketing email blast; correspond with Steve Keyzer, Colliers	0.90	\$450.00	\$405.00
Tues	09/26/2023	review legal correspondence; correspond with Roger Jaipargas, lawyer; conference call with Steve Keyzer & Ian Gragtmans et al, Colliers re MLS; correspond with Steve Keyzer, Colliers re MLS	0.50	\$450.00	\$225.00
Thur	09/28/2023	correspond with Colin Catherwood, Fengate; correspond/tdw Roger Jaipargas, lawyer re Fengate's foreclosure process; review City of Richmond Hill property statement; review legal correspondence; review books and records	0.90	\$450.00	\$405.00
Fri	09/29/2023	review legal correspondence; review site inspection photos	0.20	\$450.00	\$90.00
Mon	10/02/2023	review Colliers weekly marketing report; correspond with Colin Catherwood, Fengate; review Colliers marketing email blast; review general ledger; review site inspection photos; conference call with Dana Shen, Heather Meredith et al, McCarthy's lawyers/Colin Catherwood et al, Fengate and Roger Jaipargas, BLG lawyer re Fengate's foreclosure process; review legal correspondence; review City of Richmond Hill property tax statement; tdw Roger Jaipargas, lawyer re Fengate's foreclosure process	1.70	\$450.00	\$765.00
Wed	10/04/2023	review and approve payment of Lockit security invoice; review G/L; review 1000670636 Ontario Inc. (Michael Lin) agreement of purchase and sale; correspond with Steve Keyzer et al, Colliers re Lin offer; review City of Richmond Hill property tax statement	0.70	\$450.00	\$315.00
Thur	10/05/2023	correspond with Roger Jaipargas, lawyer; review 1000670636 Ontario Inc. (Michael Lin) agreement of purchase and sale/offer; review general ledger	0.40	\$450.00	\$180.00
Fri	10/06/2023	review site inspection photos	0.10	\$450.00	\$45.00
Tues	10/10/2023	review Colliers disposition progress report; correspond with Colin Catherwood, Fengate; review Collier marketing email blast; review legal correspondence; review site inspection photos; correspond with Steve Keyzer, Colliers; correspond with Roger Jaipargas, lawyer	0.90	\$450.00	\$405.00
Wed	10/11/2023	review legal correspondence; correspond with Roger Jaipargas, lawyer	0.20	\$450.00	\$90.00
Mon	10/16/2023	review legal correspondence; correspond with Roger Jaipargas, lawyer; review site inspection photos; correspond with Colin Catherwood, Fengate; review Colliers disposition progress report; review Colliers email marketing blast; review liability insurance policy	0.80	\$450.00	\$360.00
Tues	10/17/2023	correspond/tdw Roger Jaipargas, lawyer re draft notice of motion	0.20	\$450.00	\$90.00

Filters Used:

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- File ID: AACIMB-R: to AACIMB-R:
- Time Entry Bill Status: Un-Billed to Un-Billed

File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Trevor Pringle (TPR)					
Thur	10/19/2023	correspond with Roger Jaipargas, lawyer; review general ledger; review draft notice of motion; prepare draft third report to court; review receivership order; review site inspection photos; review City of Richmond Hill property tax statement; review second report to court; review appendices to draft report; review legal correspondence; conference call with Roger Jaipargas and Charlotte Chien, BLG lawyers re draft notice of motion & draft discharge order; review receiver certificate no. 1; tdw Colin Catherwood, Fengate	2.90	\$450.00	\$1,305.00
Fri	10/20/2023	review draft notice of motion; review draft third report to court; discussions/correspondence re City of Richmond Hill water bill; correspond with Roger Jaipargas, lawyer	0.40	\$450.00	\$180.00
Mon	10/23/2023	review draft notice of motion; review draft discharge order; correspond with Roger Jaipargas et al, BLG lawyers; review legal correspondence; review Colliers weekly marketing email blast; review Colliers disposition progress report; correspond with Colin Catherwood, Fengate; review BLG draft fee affidavit; review site inspection photos; prepare draft third report to court; review and prepare appendices to draft third report; review general ledger	2.20	\$450.00	\$990.00
Tues	10/24/2023	prepare draft third report to court; review appendices to third report to court; review legal correspondence; review draft notice of motion; review Antec appraisal memorandum update; review Fengate pay-out statement; correspond with Roger Jaipargas, lawyer	1.40	\$450.00	\$630.00
Wed	10/25/2023	review legal correspondence; review Fengate PPSA amendment registrations; review draft notice of motion with McCarthy's comments; review draft Fengate statement of claim	0.50	\$450.00	\$225.00
Thur	10/26/2023	review Fengate draft statement of claim; review G/L; review site inspection photos; review legal correspondence	0.40	\$450.00	\$180.00
Mon	10/30/2023	review legal correspondence; correspond with Roger Jaipargas, lawyer; review Colliers disposition progress report; correspond with Colin Catherwood, Fengate; review draft notice of motion; review draft discharge order; review site inspection photos	0.90	\$450.00	\$405.00
Tues	10/31/2023	review legal correspondence; correspond/tdw Roger Jaipargas, lawyer; review draft Fengate foreclosure statement; review draft third report to court with BLG comments; review confidential appendices from second report to court; discussions/correspondence re drafting third report to court, inclusion of property appraisals, scheduling court date; review updated draft notice of motion; review updated draft discharge order; review and update draft third report to court; review appendices to third report to court; review G/L; correspond with Saneea Tanvir et al, McCarthy's lawyers re draft third report to court	2.20	\$450.00	\$990.00
Wed	11/01/2023	correspond with Roger Jaipargas, lawyer; review legal correspondence; review and make changes to draft third report to court; review confidential appendices to report; review commercial list request form continuing matter	0.80	\$450.00	\$360.00
Thur	11/02/2023	review legal correspondence; correspond/tdw Roger Jaipargas, lawyer; review draft third report to court with McCarthy's revisions; review and make changes to draft third report to court; correspond with Colin Catherwood, Fengate; review site inspection photos; review appendices to draft third report	1.30	\$450.00	\$585.00
Fri	11/03/2023	correspond with Roger Jaipargas, lawyer; review City of Richmond Hill property tax statement	0.20	\$450.00	\$90.00

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File Name (ID): CM Bayview Creek Inc. (AACIMB-R:)

Day	Date	Memo	B-Hrs	B-Rate	Amount
Trevor Pringle (TPR)					
Mon	11/06/2023	review legal correspondence; correspond/tdw Roger Jaipargas, lawyer; review draft reimbursement and funding agreement; review Colliers disposition progress report; correspond with Colin Catherwood et al, Fengate; review CRA DAS & HST unsecured claims; review site inspection photos	1.00	\$450.00	\$450.00
Wed	11/08/2023	review Fengate mortgage pay-out statement; correspond with Roger Jaipargas, lawyer; review legal correspondence	0.30	\$450.00	\$135.00
Thur	11/09/2023	review site inspection photos; review G/L	0.10	\$450.00	\$45.00
Trevor Pringle (TPR)			62.30		\$28,035.00
Total for File ID AACIMB-R:			75.20		\$31,728.00
Grand Total:			75.20		\$31,728.00

Appendix 14

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

**AFFIDAVIT OF CHRISTINE MASON
(Sworn November 16, 2023)**

I, **CHRISTINE MASON**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a partner at the law firm of Borden Ladner Gervais LLP (“**BLG**”), lawyers for msi Spergel Inc. (“**Spergel**”), in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”) of all the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the “**Debtors**”), and as such have knowledge of the matters hereinafter deposed to.

2. This affidavit is made in support of a motion for, among other things, the approval of the fees and disbursements of BLG for the period from July 1, 2023 to November 15, 2023 (the “**Fees Period**”). Attached hereto and marked as **Exhibit “A”** is a true copy of the account of BLG for the Fee Period, in the total amount of **\$170,205.97**.

EXHIBIT A

This is the Exhibit marked "A" referred to
in the Affidavit of Christine Mason,
sworn before me this 16th day of November 2023.

A handwritten signature in blue ink, appearing to read "Adrian Gopine", is written above a horizontal line.

A Commissioner for Taking Affidavits

LSO Licence No.: P14458



Borden Ladner Gervais LLP
Lawyers | Patent & Trade-mark Agents
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Toronto, ON, Canada M5H 4E3
T 416.367.6000 F 416.367.6749
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msi Spergel Inc.
21 King Street West
Suite 1602, Box 54
Hamilton, ON L8P 4W7

November 16, 2023

Attention: Trevor B. Pringle

Invoice # 698317283

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Re: Bayview Creek

File No: 064016/000003

PROFESSIONAL SERVICES rendered to November 16, 2023 in connection with the above matter as described in the attached.

Fees	\$ 182,059.00
Less Discount	(32,389.50)
Fee Balance	<u>149,669.50</u>
Disbursements and Other Charges	994.25
HST on Fees and Taxable Disbursements and Other Charges	<u>19,542.22</u>
Total this Invoice	<u><u>\$ 170,205.97</u></u>

THIS IS OUR ACCOUNT - E. & O.E.

BORDEN LADNER GERVAIS LLP

Borden Ladner Gervais LLP

For: Roger Jaipargas

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
Invoice # 698317283
File No: 064016/000003
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PROFESSIONAL SERVICES RENDERED to November 16, 2023

Jul 4, 2023	R. Jaipargas	1.40	Engaged on revisions to the notice of motion for the August 4 court date; engaged on drafting the administration and discharge order for the August 1 motion.
Jul 5, 2023	R. Jaipargas	3.80	Emails from and to R. McGovern re: timing of the payment of the DIP charge; call with P. Ghaemi re: latest version of the AVO and timing for the closing; engaged on revisions to the AVO in connection with the Sunny Communities transaction; emails to and from T. Dunn re: same; engaged on working on the Administration and Interim Distribution Order; engaged on review and revisions to the second report of the receiver for the August 2 motion to approve the Sunny Communities transaction and for other relief.
Jul 5, 2023	R. Manias	0.10	Emails relating to AVO.
Jul 6, 2023	A. Gasparini	0.50	Revise affidavit of fees, compile and send PDF to C. Mason.
Jul 6, 2023	R. Jaipargas	3.70	Engaged on further review and revisions to the second report of the receiver re: motion to be heard on August 1 for a sale of the property; further review of background materials including the first report of the Receiver re: issues canvassed in the first report; engaged on further changes to the draft notice of motion and draft distribution order; preparing reporting email to T. Pringle re: drafts of the notice of motion, revised second report, the distribution order and the AVO and conference call required to discuss same; emails to and from T. Pringle re: same.
Jul 7, 2023	A. Gasparini	0.20	Commission affidavit of fees with C. Mason.
Jul 7, 2023	R. Jaipargas	1.70	Engaged on preparing a statement of law for the August 1 hearing; conference call with R. McGovern re: timing for payment of the DIP charge and next steps re: same.
Jul 7, 2023	C. Mason	0.20	Reviewing and swearing fees affidavit.
Jul 10, 2023	A. Gasparini	0.70	Draft motion record shell and locate and organize appendices for the motion record.

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
Invoice # 698317283
File No: 064016/000003
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Jul 10, 2023	R. Jaipargas	1.80	Attend at conference call with T. Pringle re: draft motion materials and second report of the receiver re: motion on August 1, 2023 to approve the proposed sale transaction and positions of R. McGovern and J. Birch re: distribution of funds for DIP charge; emails to and from T. Pringle re: same; review revised report from T. Pringle; engaged on further revisions to the draft notice of motion and the draft administration and distribution order; email to R. McGovern re: information required in connection with DIP advances.
Jul 11, 2023	A. Gasparini	0.20	Revise fee affidavit and send to T. Pringle.
Jul 11, 2023	R. Jaipargas	1.80	Engaged on revisions to the Second Report of the receiver in connection with the motion on August 1 to approve the Sunny Communities transaction; email to T. Pringle re: same; engaged on further changes to the draft Notice of Motion and Administration Order in connection with same; email to T. Pringle re: same; telephone attendance with T. Pringle re: same; email to and from R. McGovern re: timing for information from Cardinal on DIP loan and advances.
Jul 13, 2023	R. Jaipargas	0.10	Emails from and to T. Pringle re: status of the final second report and timing for the service of the motion materials for August 1 motion.
Jul 14, 2023	A. Gasparini	1.30	Review motion record index and compile motion record and bookmark; draft confidential appendices cover, index and back page, compile and bookmark; revise motion record; draft affidavit of fees; serve court documents upon service list; swear affidavit of service with T. McNaughton.
Jul 14, 2023	R. Jaipargas	2.90	Emails to and from T. Pringle in connection with Fengate payout statement; review same; further emails to and from T. Pringle, A. Gasparini re: signed second report; engaged on finalizing motion materials for August 1 motion for the approval of a sale transaction and an interim distribution to Fengate; instructions to A. Gasparini re: same and final review of the materials.

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
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Jul 17, 2023	A. Gasparini	0.70	Review Caselines for August 1 bundle and email J. Earl regarding same; send Confidential Appendices to Second Report of the Receiver to Penny J; send court documents to e-filing clerks for submission to Commercial List; send court documents to C. Thorne and P. Castellano.
Jul 17, 2023	R. Jaipargas	0.10	Emails to and from T. Pringle and L. Ellis re: call required to discuss the motion on April 1 and the issue of the DIP charge.
Jul 18, 2023	R. Jaipargas	0.20	Emails to and from T. Pringle re: confidential brief and possible call with L. Ellis re: DIP loan and DIP charge issues.
Jul 20, 2023	R. Jaipargas	0.20	Telephone attendance with T. Pringle re: issues with the DIP repayment and status of the motion for August 1.
Jul 24, 2023	R. Jaipargas	1.70	Telephone attendance with C. Thorne re: position of the City of Richmond Hill in connection with the motion on August 1 for an Approval and Vesting Order; email to T. Pringle in connection with same; emails to and from S. Tanvir re: position of Fengate on motion on August 1 and issue of LPF Conversion Fund; review Second Report and draft Order re: same; engaged on review and revisions to draft Order; numerous emails to and from D. Shen re: same including issue of repayment of receiver's borrowing certificate; emails to and from T. Pringle re: same.
Jul 25, 2023	R. Jaipargas	0.30	Telephone attendance with T. Pringle re: outcome of call with Fengate in connection with August 1 motion; emails to and from S. Tanvir re: update on position of Fengate on August 1 motion and org chart for LTF; review same.
Jul 26, 2023	R. Jaipargas	1.30	Emails from and to S. Tanvir re: draft order of hearing on August 1 and position of Fengate on same; conference call with S. Tanvir re: proposed distributions to Fengate and funding of Receiver's certificate and approach to take re: same; review updated tax bill from the City of Richmond Hill; emails to and from T. Pringle re: changes required to the draft order re: same.

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
Invoice # 698317283
File No: 064016/000003
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Jul 27, 2023	A. Gasparini	0.30	Send clean and blackline of Administration and Interim Distribution Order to the service list and upload documents to CaseLines.
Jul 27, 2023	R. Jaipargas	0.70	Emails from and to S. Tanvir on motion for August 1 and position of Fengate re: same; engaged on revisions to the draft Administration and Distribution Order to be served; emails to and from A. Gasparini re: instructions on service of revised Order and materials to be uploaded to Caselines.
Jul 28, 2023	R. Jaipargas	0.40	Emails to and from R. McGovern and T. Pringle re: position of Cardinal for August 1 hearing for AVO and Distribution Hearing; emails to and from T. Pringle re: same.
Jul 30, 2023	R. Jaipargas	0.10	Emails to and from T. Pringle and R. McGovern re: Cardinal DIP issues.

msi Spergel Inc.
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Jul 31, 2023	R. Jaipargas	8.90	Attend at conference call with T. Pringle, L. Ellis and R. McGovern in connection with position of Cardinal on repayment of DIP Lender Charge for motion on August 1; various calls with each of S. Tanvir, R. McGovern and T. Pringle in connection with position of the DIP Lender re: repayment of DIP on August 1; emails to and from R. McGovern re: draft affidavit from Cardinal to be served and filed; engaged on review of same; telephone attendance with T. Pringle re: same; emails to S. Tanvir re: Cardinal affidavit and position of Cardinal re: same; emails from S. Tanvir re: same; further call with R. McGovern re: changes required to the draft affidavit regarding the amounts owing under the DIP; engaged on changes to the draft Orders in connection with the hearing on August 1 with respect to the repayment of the DIP and the termination of the DIP Charge; email to service list re: same; engaged on review of motion record of the receiver, the confidential brief and the statement of law in connection with the motion on August 1 for the AVO and the Administration and Distribution Order; engaged on preparing submission re: same; further emails to and from R. McGovern re: confirming position of Cardinal on motion in light of language in order to repay DIP.
Aug 1, 2023	A. Gasparini	0.30	Draft requisition form and send orders to e-filing clerks for court filing.
Aug 1, 2023	P. Ghaemi	0.40	Correspondence with R. Jaipargas and R. Manias re closing date

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Aug 1, 2023	R. Jaipargas	5.00	Engaged on further preparation for motion before Justice Penny to approve the Sunny transition and for a distribution order; attend at hearing before Justice Penny in connection with same; review motion record served by Cardinal re: payment on DIP; numerous emails to and from T. Pringle, S. Tanveer in connection with next steps on hearing; call with R. McGovern re: position of parties on payment of DIP; emails to and from Registrar re: participant form for hearing; emails to and from P. Castello re: statement of taxes update; review same; emails to P. Castello re: same; emails to and from C. Thorne re: same; emails to and from P. Ghaemi and R. Manias in connection with closing date for transaction and AVO granted by the Court; telephone attendance with S. Tanveer re: position of Fengate in connection with the motion for the VAO and distribution order and issues of the hold back; further call with C. Thorne re: distribution to the City of Richmond Hill; emails to and from A. Gasparini re: obtaining the issued and entered orders from Justice Penny; emails to and from the commercial list office re: same; review the endorsement of Justice Penny.
Aug 1, 2023	R. Manias	1.00	Email from R. Jaipargas re Justice granting AVO; re APS re analysis re next steps re Closing; sent analysis to R. Jaipargas with questions; email to P. Ghaemi; further emails Roger Jaipargas and Trevor Pringle; emails with P. Ghaemi.
Aug 1, 2023	L. White	0.30	Reviewed 2 signed orders or Justice Penny for Compliance and submit via the court's on-line portal for acceptance in the court file.
Aug 2, 2023	A. Gasparini	0.30	Send issued and entered orders and endorsement of Penny J. to the service list.
Aug 2, 2023	P. Ghaemi	0.60	Review APS and Critical Dates List; Call with R. Manias re closing date and the preparations

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Aug 2, 2023	R. Jaipargas	0.40	Email from A. Gasparini re: issued and entered Orders of Justice Penny dated August 1, 2023; emails to and from T. Pringle re: posting orders to the Spergel website; email to R. Manias in connection with issued and entered AVO and Distribution Order and next steps on closing of Sunny Communities transaction.
Aug 2, 2023	R. Manias	0.70	Call with P. Ghaemi re next steps on transaction; receipt of AVO and Administration and Distribution Order from Roger Jaipargas, email to R. Jaipargas; brief review of same.
Aug 3, 2023	R. Manias	1.50	Review if final AVO, Administration and Distribution Order and Endorsement from Justice Penny and drafted notes on same; sent email to P. Ghaemi.
Aug 4, 2023	P. Ghaemi	0.60	Correspondence with Purchaser's counsel re closing date
Aug 4, 2023	R. Jaipargas	0.30	Emails to and from P. Ghaemi re: closing date for the Sunny Communities transaction; emails to and from T. Pringle re: instructions on preparing draft notice of motion and order for a discharge of the receiver and to wind-up the proceedings.
Aug 4, 2023	R. Manias	0.40	Emails with P. Ghaemi re APS transaction and next steps.
Aug 5, 2023	R. Manias	0.10	Review of email from P. Ghaemi to S. Pearlstein re advancing closing.
Aug 8, 2023	R. Jaipargas	3.20	Emails to and from P. Ghaemi to counsel to the purchaser re: proposed closing date for Sunny COMMunities transaction; engaged on preparing notice of motion and draft discharge order for the final motion on Bayview Creek; reporting email to T. Pringle re: draft motion materials for final motion and contents for third report of the receiver; emails to A. Gasparini re: same.
Aug 8, 2023	R. Manias	0.20	Review of emails from P. Ghaemi and S. Pearlstein re advancing closing.
Aug 10, 2023	R. Jaipargas	0.20	Emails from and to C. Thorne re: amounts owing to the City of Richmond Hill; review bylaw re: city name change and timing for the closing date of the Sunny Communities transaction.

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Aug 11, 2023	R. Jaipargas	0.10	Emails from and to P. Ghaemi and S. Pearlstein re: closing date for APS.
Aug 11, 2023	R. Manias	0.10	Receipt of email from P. Ghaemi re possible Closing Date change.
Aug 11, 2023	R. Manias	0.10	Email from S. Pearlstein.
Aug 13, 2023	P. Ghaemi	0.80	Prepare draft notice to Purchaser re Approval Condition; correspondence with R. Jaipargas and R. Manias re same
Aug 13, 2023	R. Jaipargas	0.20	Emails from and to P. Ghaemi re: draft email to counsel for the purchaser re: satisfaction of the approval conditions; email to P. Ghaemi re: instructions on same.
Aug 13, 2023	R. Manias	0.30	Various emails and matters relating to Vendor waiving the AVO condition and advancing closing potentially.
Aug 14, 2023	P. Ghaemi	0.30	Correspondence with Purchaser's counsel re re Approval Condition and closing date
Aug 14, 2023	R. Jaipargas	0.20	Emails from and to R. Manias re: confirmation that there have been no appeals of the AVO; email from and to the City of Richmond Hill re: updated statement of taxers; review same.
Aug 14, 2023	R. Manias	0.50	Various emails and matters relating to Vendor waiving the AVO condition and advancing closing potentially.
Aug 17, 2023	P. Ghaemi	2.00	Review template form of closing documents; review Administration and Interim Distribution Order; correspondence/meeting with G. Wang re preparation of closing documents and payment of realty taxes
Aug 18, 2023	G. Wang	0.70	Email from P. Ghaemi re closing and closing documents; discuss with P. Ghaemi re same and next steps.
Aug 21, 2023	P. Ghaemi	4.10	Call with R. Jaipargas re Fengate loan transfer; correspondence with G. Wang and R. Manias re same; correspondence with G. Wang re real property taxes; review/revise draft closing documents
Aug 21, 2023	R. Jaipargas	1.00	Emails to and from D. Shen re: possible transfer of the LPF debt to another entity and timing of the closing in connection with same; emails to and from R. Manias and P. Ghaemi re: same; call with P. Ghaemi re: same.

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Aug 21, 2023	R. Manias	0.90	Various emails and matters with R. Jaipargas and P. Ghaemi relating to Fengate transferring charge on title just before closing with Sunnyside Communities on Closing Date.
Aug 21, 2023	G. Wang	2.40	Review purchase agreement; discuss with P. Ghaemi re closing documents; prepare closing documents; provide drafts to P. Ghaemi.
Aug 22, 2023	P. Ghaemi	5.00	Calls/meeting with G. Wang re draft closing documents; correspondence with Purchaser's counsel re closing date; correspondence with R. Manias re closing documents, the SOA and real property taxes; review APS and prepare email summary re Vendor's remedies and Purchaser's assignment rights
Aug 22, 2023	R. Jaipargas	0.50	Emails from and to T. Pringle re: status of Sunny Communities transaction; call with T. Pringle re: same; telephone attendance with P. Ghaemi re: same; discussion with G. Wang re: property taxes; email to P. Ghaemi re: analysis under APS with Sunny.
Aug 22, 2023	R. Manias	0.40	Emails relating to closing and closing documents from P. Ghaemi and R. Jaipargas.
Aug 22, 2023	G. Wang	1.30	Attend to matters re realty tax arrears; amend closing documents.
Aug 23, 2023	P. Ghaemi	4.30	Call with D. Shen re Fengate loan transfer; call with R. Manias re closing date; meeting with R. Manias re closing documents and extension of closing date; correspondence with Purchaser's counsel re closing documents; detailed correspondence with Purchaser's counsel re extension of closing

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Aug 23, 2023	R. Jaipargas	2.00	Attend at conference call with D. Shen, T. Pringle and P. Ghaemi and R. Manias re: Fengate request for distribution issues and development for possible extension by Sunny Communities to close the transaction; various emails to and from T. Pringle re: request by Sunny for more time to close the transaction; emails to and from D. Shen re: same; conference call with R. Manias and T. Pringle re: same; telephone attendance with S. Brunswick re: representation of S. Lefeld on Sunny Communities transaction; reporting email to T. Pringle re: same; emails to and from C. Thorne at the City of Richmond Hill; emails to and from D. Shen re: questions to be raised with Sunny regarding a possible extension of the closing dates; emails from T. Dunn and P. Ghaemi re: same.
Aug 23, 2023	R. Manias	4.70	Various emails relating to Sunny Communities not having funds to close on Purchase; call with T. Pringle and R. Jaipargas re same; review of documentation relating to same call with P. Ghaemi; call with Dana Shen and others relating to Sunny not in funds and relating to Fengate transfer of mortgage on day of Sunny closing; meeting with P. Ghaemi re closing documents; meeting with G. Wang re outstanding realty taxes and communications with City of Richmond Hill; further emails; meeting with P. Ghaemi; review of questions from Dana Shen received; meeting with P. Ghaemi re email to Minden Gross with questions; further emails re file
Aug 23, 2023	G. Wang	0.40	Emails re transaction status; follow up with City of Richmond Hill re outstanding realty taxes.
Aug 24, 2023	G. Di Girolamo	0.30	Re 2833105 Ontario Inc. - conducted corporate information search.
Aug 24, 2023	P. Ghaemi	3.30	Calls with BLG team/Spergel re extension of closing date; prepare detailed email response to J. Lee and Z. Zlotnick re closing date and potential new buyer; correspondence with R. Manias re same

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Aug 24, 2023	R. Jaipargas	2.00	Numerous emails to and from J. Lee and T. Pringle and R. Manias re: requested extension for the closing date under the Sunny APS; review email from Z. Zlotnick re: position of 283 re: same; review corporate search on 283; email to T. Pringle re: same; conference call with R. Manias, P. Ghaemi and T. Pringle re: approach to take on Sunny Communities request for an extension of the closing date; conference call with C. Thorne re: amounts owing to the City of Richmond Hill; emails to and from C. Thorne re: same; emails to and from R. Manias re: draft email to J. Lee re: closing date issue; email to D. Shen re: update on discussions with Sunny Communities regarding a possible extension of the closing date.
Aug 24, 2023	R. Manias	6.90	Various emails relating to Sunny Communities not having funds to close and questions relating to extension being sought and why; review of tender materials; call with P. Ghaemi; drafted and sent email re tendering to T. Pringle; various calls and emails relating to Sunny Communities desire to assign APS to 2833105 Ontario Inc.; email to G. Wang re corporate profile report; email from Zev Zlotnick re assignment to 2833105 Ontario Inc.; calls with P. Ghaemi; emails with and call with T. Pringle, R. Jaipargas and P. Ghaemi; psot-call notes; post-call call with P. Ghaemi; review of draft email from P. Ghaemi andb sent comments; various emails with T. Pringle and R. Jaipargas; email to Janet Lee.
Aug 24, 2023	G. Wang	0.30	Telephone call with the City of Richmond Hill re tax arrears; emails with BLG team re same.
Aug 25, 2023	P. Ghaemi	1.60	Call with R. Jaipargas and G. Wang re real property taxes; correspondence with G. Wang re the SOA; correspondence with D. Shen re profile reports

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Aug 25, 2023	R. Jaipargas	1.30	Emails to and from T. Pringle and D. Shen re: status of the Sunny transaction; emails to and from C. Thorne re: property taxes; conference call with P. Ghaemi and G. Wang re: position of City of Richmond Hill re: property taxes and next steps on same; emails to and from T. Pringle re: approach to take regrading Sunny APS; conference call with D. Shen re: status of the Sunny APS and position of Fengate re: same.
Aug 25, 2023	R. Manias	0.90	Various emails relating to transaction issues from R. Jaipargas, D. Shen and P. Ghaemi.
Aug 25, 2023	G. Wang	0.90	Telephone call with BLG team re next steps; Telephone call with P. Ghaemi re closing documents; prepare statement of adjustments.
Aug 28, 2023	G. Di Girolamo	0.30	Re Sunny Communities (Bayview Creek) Inc. - conducted corporate information search.
Aug 28, 2023	P. Ghaemi	1.50	Meeting/correspondence with G. Wang re closing matters and real property taxes; call with R. Manias re status of closing; correspondence with D. Shen re profile reports; correspondence with J. Lee re status of closing
Aug 28, 2023	R. Jaipargas	0.10	Email from G. Wang to C. Thorne on property taxes and position of Receiver re: same.
Aug 28, 2023	R. Manias	2.00	Email to P. Ghaemi; call with P. Ghaemi to touch base on next steps; review of tender materials; emails from P. Ghaemi.
Aug 28, 2023	G. Wang	2.00	Attend to matters re tax arrears; review statement of taxes; call and emails with City of Richmond Hill re same; discuss with P. Ghaemi re same; order corporate profile report; message E-reg Application for Vesting Order to buyer's counsel; emails re transaction matters.
Aug 29, 2023	P. Ghaemi	3.10	Meeting/correspondence with G. Wang and R. Manias re closing matters, closing documents, and tendering process; review tendering guidelines/letters; correspondence with J. Lee, D. Shen and R. Manias re extension of closing

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Aug 29, 2023	R. Jaipargas	1.00	Review emails to and from T. Pringle, R. Manias and D. Shen re: Sunny Communities transaction and timing of closing; emails to and from J. Birch re: status of the closing of the Sunny Communities transaction; conference call with J. Birch re: same; emails to and from R. McGovern re: same; email from J. Lee re: request for an extension of the closing date for the Sunny Communities transaction; emails to and from T. Pringle and R. Manias re: same; emails to and from D. Shen re: same.
Aug 29, 2023	R. Manias	4.50	Review of tax information sent by P. Ghaemi and requested meeting; meeting with G. Wang re tax arrears; emails with Dana Shen re no response from Janet Lee; further meeting with G. Wang and emails with T. Pringle and R. Jaipargas re tendering; emails with Dana Shen; instructions to P. Ghaemi; meetings with G. Ghaemi re tendering and next steps.; emails with P. Ghaemi and R. Jaipargas re recent email from Janet Lee; call with P. Ghaemi; email to Roger Jaipargas; additional emails re file.
Aug 29, 2023	G. Wang	1.50	Discuss with R. Manias re tax and water arrears; discuss with P. Ghaemi re same and execution of documents; assemble and circulate execution copies of closing documents to client; emails re potential tender.
Aug 30, 2023	P. Ghaemi	3.50	Call with R. Manias re extension of closing and review of email response re extension request from Purchaser; review tendering guidelines/letters; prepare tender letter; prepare APS amending agreement
Aug 30, 2023	R. Jaipargas	1.20	Attend at conference call with T. Pringle and R. Manias re: request by Sunny Communities for an extension of the closing date and approach to take re: same; emails to and from R. Manias re: draft proposal to Sunny re: extension of closing date; engaged on review and revisions to same; emails to and from T. Pringle, D. Shen and R. Manias re: same; further calls with R. Manias re: same.

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Aug 30, 2023	R. Manias	6.30	Various emails and drafted various notes relating to Purchaser's inability to close and seeking extension; prep for clal with Roger Jaipargas and Trevor Pringle; attended to post-call calls with Roger Jaipargas; drafted email to Purchaser's lawyer for R. Jaipargas' review; calls with P. Ghaemi; email to R. Jaipargas; further call with Roger Jaipargas relatig to draft short extension email; sending extension email to T. Pringle and D. Shen; various emails and matters relating to extension email to Janet Lee; sent email; further emails with BLG team.
Aug 30, 2023	G. Wang	0.50	Emails re transaction and extension of closing; review Vendor's signed documents.
Aug 31, 2023	P. Ghaemi	4.40	Prepare/revise APS amending agreement; meeting with R. Manias re same and correspondence with R.Jaipargas and D. Shen re same.
Aug 31, 2023	R. Jaipargas	1.30	Email from J. Lee re: agreeing to the terms of the extension of the Sunny closing date; numerous emails to and from R. Manias, T. Pringle and D. Shen re: amendment required to the APS; engaged on review and revisions to the draft amendment; emails to and from P. Ghaemi re: blackline version of the amendment and next steps re: same.
Aug 31, 2023	R. Manias	4.80	Email form Janet Lee with acceptance by Purchaser of extension on terms proposed by Spergel; emails with Roger Jaipargas and other on BLG team; brief meeting with G. Wang; emails and matters relating to drafting Release and Additional Deposit and next steps; meetings with G. Wang re preparing to tender, as needed, on Spet 5th; matters re Additional Deposit; meeting with P. Ghaemi re Amendment drafting; emails with McCarthys, Fengate, Spergel and BLG team re Amendment; review of draft Amendment and gave comments to P. Ghaemi; further emails and matters re draft Amendment.

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Aug 31, 2023	G. Wang	0.70	Attend to matters re 2nd deposit; emails re extension of closing and amendment to purchase agreement; emails and telephone call with City of Richmond Hills re extension of closing.
Sep 1, 2023	P. Ghaemi	1.40	Review Fengate comments on APS amending agreement; call/correspondence with R. Manias re same; review updated tax statement; call/correspondence with G. Wang re property taxes and closing next steps
Sep 1, 2023	R. Jaipargas	0.70	Emails to and from J. Birch re: status of the Sunny closing; telephone attendance with J. Birch re: same; numerous emails to and from T. Pringle, R. Manias and D. Chen re: the amendment to the Sunny APS; telephone attendance with R. Manias re: status of amendment; emails from and to R. Manias and J. Lee re amendment to the APS; email from J. Lee confirming same.
Sep 1, 2023	R. Manias	2.30	Attended yo various emails (relating to Amendment sent across to Janet Lee) with Fengate, McCarthys, Spergel and BLG team; call with P. Ghaemi and G. Wang.
Sep 1, 2023	G. Wang	0.20	Emails re additional deposit and extension of closing.
Sep 4, 2023	P. Ghaemi	1.00	Update/compile Vendor's signed documents; correspondence with G. Wang re same
Sep 5, 2023	P. Ghaemi	6.90	Calls/correspondence with MBB law re status of closing funds; prepare draft email re terms of 1-day extension to closing; update/revise APS amending agreement; prepare Vendor's tender letter and package; call/correspondence with G. Wang and R. Manias re same and tender matters
Sep 5, 2023	R. Jaipargas	0.80	Emails to and from R. Manias, T. Pringle, J. Lee in connection with amendment to APS with Sunny and extension of closing date re: same; email to D. Shen re: same and next steps regarding same.
Sep 5, 2023	R. Manias	6.00	Various emails and matters with T. Pringle, Fengate and Sunny/Janet Lee and BLG team relating to Sunny wanting a further extension.
Sep 5, 2023	G. Wang	0.70	Emails and discussions with deposit and tender matters.

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Sep 6, 2023	P. Ghaemi	4.30	Calls/correspondence with R. Manias re tender process and letter; call with R. Jaipargas and G. Wang; review process requirements for terminating the APS; prepare draft email re Vendor's election to terminate the APS
Sep 6, 2023	R. Jaipargas	1.60	Numerous emails to and from P. Ghaemi, T. Pringle, D. Shen, R. Manias and J. Lee re: tendering on Sunny for the transaction; review amendment to the Sunny APS; telephone attendances with each of P. Ghaemi and T. Pringle re: same and next steps re: same.
Sep 6, 2023	R. Manias	5.70	Receipt of draft tender package from P. Ghaemi; revising package; various emails with Fengate, Spergel, Janet Lee and BLG Team; prepared tender package; tender package sent and further emails re same and next steps.
Sep 6, 2023	G. Wang	0.70	Emails re tender; assemble package of tender documents.
Sep 7, 2023	R. Jaipargas	0.30	Emails from and to R. Manias and T. Pringle re: Sunny APS and issue of tendering and status of same.
Sep 7, 2023	R. Manias	1.20	Review of draft termination of APS letter to be sent to Sunny's lawyers drafted by P. Ghaemi, made edits and sent same to T. Pringle seeking instructions; sent email to Janet Lee et al re termination of APS; email to Fengate and Dana Shen re same; emails with T. Pringle re lack of responses from MBB and Minden Gross.
Sep 7, 2023	G. Wang	0.20	Emails re termination of purchase agreement.
Sep 11, 2023	R. Manias	0.20	Voicemail and emails with Roger Jaipargas re call needed on file.
Sep 12, 2023	R. Jaipargas	0.30	Telephone attendance with R. Manias re: status of Sunny APS and next steps on dealing with deposit that has been forfeited; emails from P. Ghaemi to Richmond Hill re: status of Sunny transaction; emails to and from J. Birch re: same.
Sep 12, 2023	R. Manias	0.60	Call with Roger Jaipargas with update on matter; post-call notes drafted; email from P. Ghaemi re email to City of Richmond Hill re transaction not closing with Sunny.

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Sep 14, 2023	R. Jaipargas	0.10	Email from and to T. Pringle re: status of call with J. Birch re: payment of DIP charge amounts.
Sep 15, 2023	R. Jaipargas	0.20	Telephone attendance with J. Birch re: status of Sunny transaction and timing for payment of the amount secured by the DIP lender charge.
Sep 18, 2023	R. Jaipargas	0.20	Telephone attendance with T. Pringle re: outcome of call with J. Birch re: timing or payment of amounts secured by the DIP lender's charge and next steps on forfeited deposit re: same.
Sep 21, 2023	R. Jaipargas	0.10	Emails from and to H. Meredith re: call required to discuss next steps on Bayview Creek.
Sep 25, 2023	R. Jaipargas	0.50	Conference call with H. Meredith re: status of the Sunny APS and efforts to remarket the property in connection with same and next steps re: same; call with T. Pringle re: update on outcome of call with H. Meredith and possible options re: same.
Sep 26, 2023	R. Jaipargas	0.10	Email from H. Meredith re: possible foreclosure on property; email to T. Pringle re: same.
Sep 27, 2023	R. Jaipargas	0.30	Engaged on consideration of email from H. Meredith re: next steps for Fengate to foreclose on the property; email to T. Pringle re: same.
Sep 28, 2023	R. Jaipargas	1.30	Conference call with T. Pringle re: proposal by Fengate to foreclose on the property; review and consider proposal from Fengate re: same; emails to and from T. Pringle and McCarthys and C. Catherwood re: same; further emails to and from D. Shen and H. Meredith re: same and call required to discuss same.
Sep 29, 2023	R. Jaipargas	0.10	Emails to and from C. Catherwood and T. Pringle re: call on October 2 to discuss possible foreclosure.
Oct 2, 2023	R. Jaipargas	0.80	Attend at webex meeting with T. Pringle, McCarthys and Fengate re: possible foreclosure by Fengate re: real property and next steps re: same; subsequent call with T. Pringle re: same.
Oct 4, 2023	R. Jaipargas	0.10	Email from C. Castilano re: updated tax certificate for Bayview Creek; review same.
Oct 4, 2023	R. Manias	0.10	Email from City of Richmond Hill re overdue property taxes updated.

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Oct 10, 2023	R. Jaipargas	0.40	Emails from and to D. Shen and T. Pringle re: court dates for a hearing of the final motion; emails to and from T. Pringle re: communications from Colliers; email from T. Pringle re: APS from 636 Ontario Inc.; email to T. Pringle re: same.
Oct 12, 2023	R. Jaipargas	0.40	Telephone attendance with R. McGovern re: status of possible payout of DIP lenders charge; emails to and from H. Meredith and T. Pringle re: information required for foreclosure and issue of possibly booking court time re: same.
Oct 13, 2023	R. Jaipargas	0.30	Emails to and from H. Meredith re: responses to various issues pertaining to the proposed foreclosure; email to H. Meredith re: same.
Oct 17, 2023	C. Chien	2.40	In connection with the motion for an order of the court authorizing certain distributions of proceeds and discharge of receiver, call with R. Jaipargas to discuss required motion materials, reviewed relevant documents filed with the Court and prepared drafts of the notice of motion and proposed discharge order.
Oct 17, 2023	R. Jaipargas	0.70	Call with T. Pringle re: next steps in connection with motion materials for a wind-up of the receivership and issue of Fengate foreclosure; call with C. Chien re: background on same and changes required to draft motion materials re: same; emails with D. Shen re: status of matter.
Oct 19, 2023	A. Gasparini	0.30	Draft fee affidavit shell and send to R. Jaipargas.
Oct 19, 2023	R. Jaipargas	2.20	Engaged on review and revisions to the draft notice of motion and distribution order for the final motion on Bayview Creek and possible foreclosure by Fengate; email to T. Pringle re: same; conference call with T. Pringle and C. Chien re: approach to take for final motion and changes for materials; call with C. Thorne re: monthly statements from the City of Richmond Hill for outstanding taxes.

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Oct 22, 2023	R. Jaipargas	3.30	Engaged on review and revisions to the draft notice of motion and the draft discharge order for the motion on Bayview Creek to lift the stay on the proposed foreclosure and for a discharge of the receiver and for certain other relief; emails to and from T. Pringle re: same; emails to and from T. Pringle re: issue of water charges added to the City of Richmond Hill Itax bill; emails to and from C. Chien re: draft motion materials; emails to H. Meredith re: draft notice of motion and draft discharge order for the motion to discharge the receiver.
Oct 23, 2023	A. Gasparini	0.30	Read email from R. Jaipargas re next steps; draft motion record shell and affidavit of service.
Oct 23, 2023	R. Jaipargas	0.30	Telephone attendance with C. Chien re: instructions in connection with preparing a statement of law for the final motion to discharge the receiver and for Fengate to pursue the foreclosure on the real property.
Oct 24, 2023	R. Jaipargas	0.20	Emails from and to T. Pringle in connection with the draft third report of the Receiver; emails to and from S. Tanvir re: comments on the draft notice of motion and draft discharge order from counsel to Fengate.
Oct 26, 2023	R. Jaipargas	0.50	Emails to and from D. Shen re: status of review of the Receiver's report and issues in connection with preparing reimbursement and funding agreement and outstanding matters including booking court time.
Oct 29, 2023	R. Jaipargas	2.00	Engaged on review and consideration of draft Statement of Claim on Fengate foreclosure action and email to S. Tanvir re: changes required to same and emails to and from T. Pringle re: same, and review changes from S. Tanvir to the Notice of Motion and engaged on changes to the Notice of Motion and Discharge Order on same and reporting email to T. Pringle re: same.
Oct 30, 2023	R. Jaipargas	0.20	Email from and to S. Tanvir re : revised Foreclosure action and review same and revised Notice of Motion and Discharge Order.

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
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Oct 31, 2023	R. Jaipargas	4.60	Engaged on review and revisions to the draft Third Report of the Receiver and email to T. Pringle re: comments on same, conference call with T. McNaughton re: Staterment of Law and Reimbursement Agreement required and engaged on revisions to the Notice of Motion and Discharge Order and emails to and from T. Pringle and S. Tanvir re: same and Court dates and email from and to the Commercial List on Court dates for a hearing of the next motion.
Oct 31, 2023	T. McNaughton	0.50	Discussing receivership and foreclosure action with R. Jaipargas.
Nov 1, 2023	R. Jaipargas	1.50	Prepare request form for hearing on November 28th and emails to and from various counsel on permission to sign same, and telephone attendance with J. Barr re: same, emails from and to J. Barr re: same, emails from and to Court re: same, reporting email to T. Pringle re: status of matter and timing of service of materials.
Nov 1, 2023	T. McNaughton	0.70	Reviewing and considering correspondence with R. Jaipargas and McCarthys re notice of motion, draft order and third report of receiver; reviewing third report of receiver.
Nov 2, 2023	R. Jaipargas	0.50	Emails from and to S. Tanveer re: revised third report engaged on review of revisions by McCarthys re: same; email to and from T. Pringle re: same; call with T. Pringle re: same; email from T. Pringle re: revised third report.
Nov 2, 2023	T. McNaughton	3.50	Reviewing motion materials; drafting reimbursement and funding agreement.
Nov 3, 2023	R. Jaipargas	0.20	Emails to and from T. McNaughton re: draft reimbursement agreement; email from D. Castilano re: City of Richmond Hill statement of taxes; review same; email to T. Pringle re: same.
Nov 3, 2023	T. McNaughton	0.20	Corresponding with R. Jaipargas re reimbursement and funding agreement.
Nov 5, 2023	R. Jaipargas	1.40	Engaged on review and revisions to the draft reimbursement and funding agreement; email to T. Pringle re: same.

msi Spergel Inc.
Re: Bayview Creek

Nov 5, 2023	T. McNaughton	0.10	Reviewing and considering correspondence with R. Jaipargas re reimbursement and funding agreement.
Nov 6, 2023	R. Jaipargas	0.60	Emails to and from T. Pringle re: reimbursement agreement; call with T. Pringle re: provisions of the reimbursement agreement and seeking instructions on forwarding same to McCarthys; emails to and from S. Tanveer re: draft reimbursement agreement; conference call with A. Gasparini re: instructions on finalizing and serving the motion materials for November 28 motion for a discharge of the Receiver and other relief.
Nov 8, 2023	R. Jaipargas	0.10	Emails to and from T. Pringle re: Fengate payout statement; review same.
Nov 10, 2023	R. Jaipargas	0.40	Emails to and from S. Tanvir re: status of the review of the reimbursement agreement by Fengate; emails to and from T. McNaughton re: statement of law for November 28 motion; email from S. Tanvir re: reimbursement agreement.
Nov 10, 2023	T. McNaughton	0.90	Reviewing draft statement of law; revising same; corresponding with R. Jaipargas re same.
Nov 11, 2023	R. Jaipargas	0.40	Call with T. McNaughton re: statement of law for motion on November 28 and approach to take re: same and law required on same.
Nov 11, 2023	T. McNaughton	1.70	Drafting statement of law; discussing same with R. Jaipargas; corresponding with K. Dimitrakoudis re same.
Nov 12, 2023	T. McNaughton	1.30	Drafting statement of law.
Nov 13, 2023	K. Dimitrakoudis	7.00	Draft research memorandum on widely accepted statements on credit bids and case law where a court has lifted a stay of proceedings to permit a secured creditor to foreclose for T.McNaughton.
Nov 13, 2023	A. Viswanathan	0.40	Call with assigning lawyer T. McNaughton to receive instructions and background information regarding the statement of law assignment for receivership.
Nov 14, 2023	A. Gasparini	0.20	Receive instructions from R. Jaipargas regarding next steps regarding motion materials for Nov. 28 hearing date.

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
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Nov 14, 2023	R. Jaipargas	2.30	Engaged on review and revisions to the Notice of Motion and Discharge Order and the Third Report of the Receiver and emails from and to T. Pringle re: same and telephone attendance with T. Pringle re: same, emails from and to S, Tanvir on status of the Reimbursement Agreement, meeting with A. Gasparini re: instructions of motion materials and service of same,
Nov 14, 2023	A. Viswanathan	4.20	Drafted law and argument section of law in connection to the notice of motion to lift the stay of proceedings; conducted case law and secondary source research regarding certain elements of the statement of law, including Canadian court treatment of foreclosure and credit bids in the context of receiverships.
Nov 15, 2023	A. Gasparini	0.80	Draft motion record shell and compile appendices; draft confidential brief shell and compile confidential brief and bookmark and send to R. Jaipargas for review; review statement of claim and email R. Jaipargas regarding bullet points.
Nov 15, 2023	R. Jaipargas	5.00	Engaged on review and revisions to the Notice of Motion, Discharge Order and numerous emails from and to S. Tanvir and T. Pringle re: same, consider additional comments from S. Tanvir on Notice of Motion and Order and review comments from S. Tanvir on Reimbursement Agreement and telephone attendances with each of S. Tanvir and T. Pringle re: same and engaged on changes to the Reimbursement Agreement and email to S. Tanvir re: same, review the Statement of Law and revisions to same.
Nov 15, 2023	T. McNaughton	1.00	Reviewing and considering memorandum re foreclosure actions in insolvency proceedings; reviewing and revising draft statement of law; corresponding with K. Dimitrakoudis, A. Viswanathan and R. Jaipargas re same; discussing same with K. Dimitrakoudis.
Nov 15, 2023	A. Viswanathan	1.20	Drafted law and argument section of law in connection to the notice of motion to lift the stay of proceedings.

msi Spergel Inc.
Re: Bayview Creek

November 16, 2023
Invoice # 698317283
File No: 064016/000003
Page 24

TO OUR FEES	\$ 182,059.00
Less Discount	(32,389.50)
FEE BALANCE	<u>149,669.50</u>

DISBURSEMENTS AND OTHER CHARGES:

Non-Taxable

Notice of Motion	<u>\$339.00</u>
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Total Non-Taxable Disbursements and Other Charges	<u>339.00</u>
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Taxable

G=GST; Q=QST; H=HST; P=PST

Binding Charges	250.45	H
Copies	361.50	H
Ecore Searches (Fees)	27.30	H
Ecore Searches (Govt. Disb.)	<u>16.00</u>	H

Total Taxable Disbursements and Other Charges	<u>655.25</u>
---	---------------

Total Disbursements and Other Charges	994.25
---------------------------------------	--------

Total Fees and Disbursements and Other Charges	<u>150,663.75</u>
--	-------------------

HST on Fees and Taxable Disbursements and Other Charges	<u>19,542.22</u>
---	------------------

TOTAL THIS INVOICE	<u><u>\$ 170,205.97</u></u>
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Borden Ladner Gervais LLP
Lawyers | Patent & Trade-mark Agents
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000 F 416.367.6749
blg.com

msi Spergel Inc.
21 King Street West
Suite 1602, Box 54
Hamilton, ON L8P 4W7

November 16, 2023
Invoice # 698317283
RJ/RJ

Re: Bayview Creek

File No: 064016/000003

REMITTANCE COPY

Fees	\$ 182,059.00
Less Discount	(32,389.50)
Fee Balance	<u>149,669.50</u>
Disbursements and Other Charges	994.25
HST on Fees and Taxable Disbursements and Other Charges	<u>19,542.22</u>
Total this Invoice	<u>\$ 170,205.97</u>

PLEASE REFER TO PAYMENT OPTIONS PAGE FOR REMITTANCE INFORMATION.

EXHIBIT B

This is the Exhibit marked "B" referred to
in the Affidavit of Christine Mason,
sworn before me this 16th day of November 2023



A Commissioner for Taking Affidavits

LSO Licence No.: P14458

EXHIBIT "B"

**Summary of Fees and Disbursements of Borden Ladner Gervais LLP
for the period from July 1, 2023 to November 15, 2023**

Name of Professional	Total Hours Billed	Avg. Hourly Rate (\$/Hr)	Total Amount Billed
L. White	0.30	\$330.00	\$99.00
G. Di Girolamo	0.60	\$445.00	\$267.00
R. Jaipargas	86.10	\$725.00	\$62,422.50
G. Wang	12.50	\$365.00	\$ 4,562.50
R. Manias	52.50	\$725.00	\$38,062.50
T. McNaughton	9.90	\$655.00	\$ 6,484.50
C. Mason	0.20	\$725.00	\$145.00
A. Gasparini	6.30	\$315.00	\$1,984.50
P. Ghaemi	49.10	\$ 620.00	\$30,442.00
C. Chien	2.40	\$620.00	\$1,488.00
K. Dimitrakoudis	7.00	\$ 290.00	\$2,030.00
A. Viswanathan	5.80	\$ 290.00	\$1,682.00
Total Hours/Average Rate/Total Fees	232.70		\$149,669.50
Total Disbursements			\$994.25
Total Fees and Disbursements excluding Tax			\$150,663.75
Taxes (GST/HST)			\$19,542.22
Total Fees and Disbursements including Tax			\$170,205.97

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

-and-

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF CHRISTINE MASON

BORDEN LADNER GERVAIS LLP

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Lawyers for msi Spergel Inc., the Receiver

Appendix 15

District of Ontario
Division No. 09 - Toronto
Estate No. 31-459342

Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc.

Receiver's Interim Statement of Receipts and Disbursements

As at November 13, 2023

RECEIPTS

Advance from secured creditor	\$ 50,000.00
Advance from Receiver	\$ 5,000.00
Interest	<u>2,588.81</u>

TOTAL RECEIPTS

\$ 57,588.81

DISBURSEMENTS

Appraisal fees	\$ 17,554.20
Security	13,430.00
Insurance	10,692.00
Repairs and Maintenance	8,575.80
HST paid	5,186.92
Travel	1,439.97
License, filing fees, postage and bank charges	<u>457.37</u>

TOTAL DISBURSEMENTS

57,336.26

Net Receipts over Disbursements

\$ 252.55 E&OE

Appendix 16

Bayview Creek - Pay Out Statement
As of October 31, 2023

First Mortgage (Purchased from Duca)	\$	26,248,496
Accrued Interest on First Mortgage from May 16, 2023-Oct 31, 2023 ¹	\$	1,210,964
Second Mortgage Principal	\$	22,300,000
Accrued Interest on Second Mortgage from Nov 1, 2019 - Oct 31, 2023 ²	\$	9,392,828
Legal fees from Bryton Capital Corp. (Pre Sept 9, 2022)	\$	970,177
Litigation Cost Awards	\$	249,020
Fengate costs directly and indirectly related to Bayview Sept 9, 2022- Oct 31, 2023 ³	\$	648,939
Total Payout	\$	61,020,424

1. The per diem interest rate is \$7,264
2. The per diem interest rate is \$9,245

Confidential Appendix A

(Subject to the request for a sealing order)

Confidential Appendix B

(Subject to the request for a sealing order)

Confidential Appendix C

(Subject to the request for a sealing order)

**DUCA FINANCIAL SERVICES CREDIT UNION
LTD.**

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**THIRD REPORT OF MSI SPERGEL INC.
IN ITS CAPACITY AS THE RECEIVER OF
BAYVIEW CREEK (CIM) LP, CIM INVESTS
DEVELOPMENT INC., and
CIM BAYVIEW CREEK INC.**

BORDEN LADNER GERVAIS LLP
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Roger Jaipargas – LSO No. 43275C
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Email: rjaipargas@blg.com

Lawyers for msi Spergel Inc., the Receiver

Tab 3

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

THE HONOURABLE)
MADAM JUSTICE KIMMEL)
TUESDAY, THE 28th DAY
OF NOVEMBER, 2023

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

DISCHARGE 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**"), was heard this day by Zoom video conference.

ON READING the third report of the Receiver dated November 17, 2023 (the "**Third Report**"), the affidavit of the Trevor Pringle sworn November 13, 2023 (the "**Pringle Affidavit**"), the affidavit of Christine Mason sworn November 16, 2023 (the "**Mason Affidavit**"), and on hearing the submissions of counsel for the Receiver and such other counsel as were present, and on reading the affidavit of service of Mariela Adriana Gasparini sworn November 17, 2023, filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms not defined herein, shall have the meanings ascribed thereto in the Third Report.
3. **THIS COURT ORDERS** that the Third Report and the activities of the Receiver as set-out in the Third Report be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize such approval.
4. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements as at November 13, 2023, be and is hereby approved.
5. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period from July 1, 2023 to November 10, 2023, including the estimated fees and disbursements of the Receiver up to its date of discharge, as described in the Pringle Affidavit, be and are hereby approved.
6. **THIS COURT ORDERS** that the fees and disbursements of Borden Ladner Gervais LLP ("**BLG**"), legal counsel to the Receiver, for the period from July 1, 2023 to November 15, 2023, including the estimated fees and disbursements of BLG for services to be provided to the Receiver, up to the date of discharge of the Receiver, as described in the Mason Affidavit, be and are hereby approved.
7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay any of its fees and disbursements, including any fees and disbursements of the Receiver and BLG, which exceed the estimates set-out in the Pringle Affidavit and the Mason Affidavit, with either: (i) the consent of Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund ("**Fengate**"), or (ii) pursuant to a further Order of the Court.

8. **THIS COURT ORDERS** that BLG be and is hereby authorized and directed to pay to the Receiver the amount of \$2,000,000, plus any interest earned thereon (the “**Retained Deposit**”) currently held by BLG in trust for the Receiver on account of the forfeiture of the Deposit (as defined in the Agreement of Purchase and Sale dated as of June 2, 2023 (the “**Sale Agreement**”) between the Receiver, as vendor and Sunny Communities (Bayview Creek) Inc., as purchaser (the “**Purchaser**”) and appended to the Second Report of the Receiver dated July 14, 2023) in connection with the incomplete closing of the Transaction (as defined in the Sale Agreement) in respect of the Property.

9. **THIS COURT ORDERS** that paragraphs 4, 5, 6, 7 and 8 of the Order of Mr. Justice Penny dated August 1, 2023 (the “**Administration and Interim Distribution Order**”) be and are hereby set aside in their entirety.

10. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to Rory McGovern PC, In Trust, for the benefit of Cardinal Advisory Limited (“**Cardinal**”) in the amount of \$200,000 (the “**DIP Lender Distribution**”), in full and final satisfaction of all amounts secured by the DIP lender’s charge (the “**DIP Lender’s Charge**”) established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020.

11. **THIS COURT ORDERS** that upon completion of the DIP Lender Distribution, the DIP Lender’s Charge, be and is hereby fully and finally terminated, discharged and extinguished.

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to The Corporation of the Town of Richmond Hill (“**Richmond Hill**”) in the amount of \$546,083.57, plus any other amounts accrued thereon, as agreed to by the Receiver, for the outstanding realty taxes.

13. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to Fengate in the amount of \$50,000, plus accrued interest, on account of the repayment in full of the amounts owing to Fengate pursuant to Receiver Certificate No. 1 dated March 28, 2022 (the “**Receiver Certificate No. 1 Repayment**”).

14. **THIS COURT ORDERS** that the Receiver's borrowings charge (the "**Receiver's Borrowing Charge**"), as defined in and created by the Order of Justice Cavanagh dated March 2, 2022 (the "**Appointment Order**"), be and is hereby fully and finally terminated, discharged and extinguished, upon the completion of the Receiver Certificate No. 1 Repayment.

15. **THIS COURT ORDERS AND DECLARES** that the reimbursement and funding agreement between the Receiver and Fengate dated November 16, 2023 in the form attached as Appendix 10 to the Third Report (the "**Reimbursement and Funding Agreement**") be and is hereby approved.

16. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to make a distribution from the proceeds of the Retained Deposit, should there be any surplus funds (the "**Surplus Funds**") remaining from the Retained Deposit, to Fengate, immediately prior to the completion of the Foreclosure (as hereinafter defined), in an amount up to the outstanding balance of the secured debt owed to Fengate by the Debtors, from any Surplus Funds that may be remaining from the Retained Deposit (the "**Fengate Distribution**").

17. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to consent to a lifting of the stay of proceedings imposed pursuant to the Appointment Order, to permit Fengate to serve a Statement of Claim in connection with a foreclosure action in respect of the Property (the "**Foreclosure**") and pursue the Foreclosure in respect of, among other things, the subsequent ranking registered encumbrances set out in Schedule "B" hereto.

18. **THIS COURT ORDERS** that the Receiver is authorized to accept service of the Statement of Claim in respect of the Foreclosure and that it is not required to serve a Statement of Defence, Notice of Intent to Defend, or any other objection to the Foreclosure action.

19. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to immediately terminate and disclaim the Listing Agreement dated July 28, 2022 with Colliers Macaulay Nicolls Inc.

20. **THIS COURT ORDERS** that Confidential Appendices "A", "B" and "C" to the Third Report are hereby sealed until the filing of Discharge Certificate (as defined below).

21. **THIS COURT ORDERS** that, notwithstanding the timing of the Foreclosure, the Receiver's charge (the "**Receiver's Charge**"), as defined in and created by the Appointment Order, be and is hereby fully and finally terminated, discharged and extinguished, upon the Receiver filing a discharge certificate with the Court, substantially in the form attached hereto as Schedule "A" (the "**Discharge Certificate**").

22. **THIS COURT ORDERS** that upon the Receiver's filing of the Discharge Certificate, in the form attached as Schedule "A", with the Court certifying that it has completed the Remaining Duties, as defined and described in the Third Report, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Spergel in its capacity as Receiver.

23. **THIS COURT ORDERS AND DECLARES** that Spergel is hereby released and discharged from any and all liability that Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, Spergel is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.

SCHEDULE “A”: FORM OF RECEIVER’S DISCHARGE CERTIFICATE

Court File No: CV-21-0066512800CL

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

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

RECEIVER’S DISCHARGE CERTIFICATE

- A. Pursuant to an Order of Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 2, 2022, msi Spergel Inc. was appointed receiver (the “**Receiver**”) of all the assets, undertakings and property of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (the “**Debtors**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- B. Pursuant to an Order of the Court dated November 28, 2023 (the “**Discharge Order**”) the Court ordered, *inter alia*, that the Receiver be discharged, effective upon the filing by the Receiver of a certificate certifying the matters set out herein.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Receiver is satisfied, in its discretion, that it has completed its remaining duties, as set out in the Receiver's Third Report to the Court dated November 17, 2023.
2. This Certificate was delivered by the Receiver at _____ (*time*) on _____ (*date*).

msi Spergel Inc., in its capacity as court-appointed receiver of assets, undertakings and property of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc.

Per: _____

Name:

Title:

SCHEDULE “B”

Details of subsequent-ranking registered interests on the property known municipally as 10747 Bayview Avenue, Richmond Hill, Ontario and legally described as PT LT 25, CON 2, (MKM), PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER PART 2, 65R13270 AS IN R510790; PIN: 03186-4757 (LT) to be foreclosed:

1. The Charge/Mortgage registered on September 4, 2020, made between CIM Bayview Creek Inc. and GR (CAN) Investment Co. Ltd. and Monest Financial Inc. and registered as Instrument No. YR3137585.
2. Application (General) – Pending Litigation registered on September 18, 2020 in favour of Tracy Hui and Jojo Hui as Instrument No. YR3142721.

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

- and -

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

RECEIVER'S DISCHARGE CERTIFICATE

BORDEN LADNER GERVAIS LLP

Bay Adelaide Centre, East Tower

22 Adelaide St W

Toronto, Ontario M5H 4E3

Tel: 416-367-6000

Fax: 416-367-6749

Roger Jaipargas – LSO No. 43275C

Tel: (416) 367-6266

Email: rjaipargas@blg.com

Lawyers for msi Spergel Inc., the Receiver

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

DISCHARGE ORDER

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Email: rjaipargas@blg.com

Lawyers for msi Spergel Inc., the Receiver

Tab 4

1. ~~approving the activities of the Receiver as set out in the report of the Receiver dated [DATE] (the "Report");~~

2. ~~approving the fees and disbursements of the Receiver and its counsel;~~

3. ~~approving the distribution of the remaining proceeds available in the estate of the Debtor;~~
~~**{and}**~~

4. ~~discharging [RECEIVER'S NAME] as Receiver of the undertaking, property and assets of the Debtor;~~ ~~**and**~~

5. ~~releasing [RECEIVER'S NAME] from any and all liability, as set out in paragraph 5 of this Order~~¹, was heard this day at 330 University Avenue, Toronto, Ontario by [Zoom video conference](#).

ON READING the [third report of the Receiver dated November 17, 2023 \(the "Third Report"\)](#), the ~~affidavits~~[affidavit](#) of the ~~Receiver and its counsel as to fees (the "Fee Affidavits"~~[Trevor Pringle sworn November 13, 2023 \(the "Pringle Affidavit"\)](#), the [affidavit of Christine Mason sworn November 16, 2023 \(the "Mason Affidavit"\)](#), and on hearing the submissions of counsel for the Receiver, ~~no one else appearing although served as evidenced by~~ and such other counsel as were present, and on reading the ~~Affidavit~~[affidavit](#) of [\[NAME\]](#)[service of Mariela Adriana Gasparini](#) sworn ~~[DATE]~~[November 17, 2023](#), filed²;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms not defined herein, shall have the meanings ascribed thereto in the Third Report.

¹ ~~If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.~~

² ~~This model order assumes that the time for service does not need to be abridged.~~

3. ~~1.~~ **THIS COURT ORDERS** that the Third Report and the activities of the Receiver, as set out in the Third Report, be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize such approval.

4. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements as at November 13, 2023, be and is hereby approved.

5. ~~2.~~ **THIS COURT ORDERS** that the fees and disbursements of the Receiver ~~and its counsel~~ for the period from July 1, 2023 to November 10, 2023, including the estimated fees and disbursements of the Receiver up to its date of discharge, as described in the Pringle Affidavit, be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of Borden Ladner Gervais LLP ("**BLG**"), legal counsel to the Receiver, for the period from July 1, 2023 to November 15, 2023, including the estimated fees and disbursements of BLG for services to be provided to the Receiver, up to the date of discharge of the Receiver, as ~~set out~~ described in the ~~Report and the Fee Affidavits~~, Mason Affidavit, be and are hereby approved.

~~3. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³.~~

7. **THIS COURT ORDERS** that the Receiver be and is hereby authorized to pay any of its fees and disbursements, including any fees and disbursements of the Receiver and BLG, which exceed the estimates set-out in the Pringle Affidavit and the Mason Affidavit, with either: (i) the consent of Fengate Redevelopment Fund GP Inc., as general partner of and on behalf of LPF Conversion Fund ("**Fengate**"), or (ii) pursuant to a further Order of the Court.

8. **THIS COURT ORDERS** that BLG be and is hereby authorized and directed to pay to the Receiver the amount of \$2,000,000, plus any interest earned thereon (the "**Retained**

~~³ This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.~~

Deposit) currently held by BLG in trust for the Receiver on account of the forfeiture of the Deposit (as defined in the Agreement of Purchase and Sale dated as of June 2, 2023 (the “Sale Agreement”) between the Receiver, as vendor and Sunny Communities (Bayview Creek) Inc., as purchaser (the “Purchaser”) and appended to the Second Report of the Receiver dated July 14, 2023) in connection with the incomplete closing of the Transaction (as defined in the Sale Agreement) in respect of the Property.

9. THIS COURT ORDERS that paragraphs 4, 5, 6, 7 and 8 of the Order of Mr. Justice Penny dated August 1, 2023 (the “Administration and Interim Distribution Order”) be and are hereby set aside in their entirety.

10. THIS COURT ORDERS that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to Rory McGovern PC, In Trust, for the benefit of Cardinal Advisory Limited (“Cardinal”) in the amount of \$200,000 (the “DIP Lender Distribution”), in full and final satisfaction of all amounts secured by the DIP lender’s charge (the “DIP Lender’s Charge”) established and created pursuant to the Order of Mr. Justice Cavanagh dated November 27, 2020.

11. THIS COURT ORDERS that upon completion of the DIP Lender Distribution, the DIP Lender’s Charge, be and is hereby fully and finally terminated, discharged and extinguished.

12. THIS COURT ORDERS that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to The Corporation of the Town of Richmond Hill (“Richmond Hill”) in the amount of \$546,083.57, plus any other amounts accrued thereon, as agreed to by the Receiver, for the outstanding realty taxes.

13. THIS COURT ORDERS that the Receiver be and is hereby authorized and directed to make a distribution, from the proceeds of the Retained Deposit, to Fengate in the amount of \$50,000, plus accrued interest, on account of the repayment in full of the amounts owing to Fengate pursuant to Receiver Certificate No. 1 dated March 28, 2022 (the “Receiver Certificate No. 1 Repayment”).

14. THIS COURT ORDERS that the Receiver’s borrowings charge (the “Receiver’s Borrowing Charge”), as defined in and created by the Order of Justice Cavanagh dated March

2, 2022 (the “Appointment Order”), be and is hereby fully and finally terminated, discharged and extinguished, upon the completion of the Receiver Certificate No. 1 Repayment.

15. THIS COURT ORDERS AND DECLARES that the reimbursement and funding agreement between the Receiver and Fengate dated November 16, 2023 in the form attached as Appendix 10 to the Third Report (the “Reimbursement and Funding Agreement”) be and is hereby approved.

16. THIS COURT ORDERS that the Receiver be and is hereby authorized to make a distribution from the proceeds of the Retained Deposit, should there be any surplus funds (the “Surplus Funds”) remaining from the Retained Deposit, to Fengate, immediately prior to the completion of the Foreclosure (as hereinafter defined), in an amount up to the outstanding balance of the secured debt owed to Fengate by the Debtors, from any Surplus Funds that may be remaining from the Retained Deposit (the “Fengate Distribution”).

17. THIS COURT ORDERS that the Receiver be and is hereby authorized to consent to a lifting of the stay of proceedings imposed pursuant to the Appointment Order, to permit Fengate to serve a Statement of Claim in connection with a foreclosure action in respect of the Property (the “Foreclosure”) and pursue the Foreclosure in respect of, among other things, the subsequent ranking registered encumbrances set out in Schedule “B” hereto.

18. THIS COURT ORDERS that the Receiver is authorized to accept service of the Statement of Claim in respect of the Foreclosure and that it is not required to serve a Statement of Defence, Notice of Intent to Defend, or any other objection to the Foreclosure action.

19. THIS COURT ORDERS that the Receiver be and is hereby authorized to immediately terminate and disclaim the Listing Agreement dated July 28, 2022 with Colliers Macaulay Nicolls Inc.

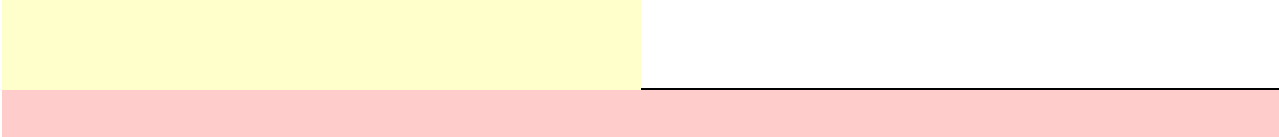
20. THIS COURT ORDERS that Confidential Appendices “A”, “B” and “C” to the Third Report are hereby sealed until the filing of Discharge Certificate (as defined below).

21. THIS COURT ORDERS that, notwithstanding the timing of the Foreclosure, the Receiver's charge (the "**Receiver's Charge**"), as defined in and created by the Appointment Order, be and is hereby fully and finally terminated, discharged and extinguished, upon the Receiver filing a discharge certificate with the Court, substantially in the form attached hereto as Schedule "A" (the "**Discharge Certificate**").

22. ~~4.~~ **THIS COURT ORDERS** that upon ~~payment of the amounts set out in paragraph 3 hereof [and upon~~ the Receiver's filing ~~a certificate~~ of the Discharge Certificate, in the form attached as Schedule "A", with the Court certifying that it has completed the ~~other activities~~ Remaining Duties, as defined and described in the Third Report], the Receiver shall be discharged as Receiver of the undertaking, property and assets of the ~~Debtor~~ Debtors, provided however that notwithstanding its discharge herein: (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ~~[RECEIVER'S NAME]~~ Spergel in its capacity as Receiver.

23. ~~5.~~ **THIS COURT ORDERS AND DECLARES** that ~~[RECEIVER'S NAME]~~ Spergel is hereby released and discharged from any and all liability that ~~[RECEIVER'S NAME]~~ Spergel now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~[RECEIVER'S NAME]~~ Spergel while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, ~~[RECEIVER'S NAME]~~ Spergel is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings.⁴

⁴ ~~The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~



SCHEDULE "A": FORM OF RECEIVER'S DISCHARGE CERTIFICATE

Court File No: CV-21-0066512800CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

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

Respondents

RECEIVER'S DISCHARGE CERTIFICATE

- A. Pursuant to an Order of Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated March 2, 2022, msi Spergel Inc. was appointed receiver (the "**Receiver**") of all the assets, undertakings and property of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (the "**Debtors**") pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- B. Pursuant to an Order of the Court dated November 28, 2023 (the "**Discharge Order**") the Court ordered, *inter alia*, that the Receiver be discharged, effective upon the filing by the Receiver of a certificate certifying the matters set out herein.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Discharge Order.

THE RECEIVER HEREBY CERTIFIES the following:

1. The Receiver is satisfied, in its discretion, that it has completed its remaining duties, as set out in the Receiver's Third Report to the Court dated November 17, 2023.
2. This Certificate was delivered by the Receiver at _____ (time) on _____ (date).

msi Spergel Inc., in its capacity as court-appointed receiver of assets, undertakings and property of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc.

Per: _____
Name:
Title:

SCHEDULE "B"

Details of subsequent-ranking registered interests on the property known municipally as 10747 Bayview Avenue, Richmond Hill, Ontario and legally described as PT LT 25, CON 2, (MKM), PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER PART 2, 65R13270 AS IN R510790; PIN: 03186-4757 (LT) to be foreclosed:

1. The Charge/Mortgage registered on September 4, 2020, made between CIM Bayview Creek Inc. and GR (CAN) Investment Co. Ltd. and Monest Financial Inc. and registered as Instrument No. YR3137585.
2. Application (General) – Pending Litigation registered on September 18, 2020 in favour of Tracy Hui and Jojo Hui as Instrument No. YR3142721.

Court File No: CV-21-0066512800CL

Court File No: CV-21-0066512800CL

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

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

- and -

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

RECEIVER'S DISCHARGE CERTIFICATE

BORDEN LADNER GERVAIS LLP

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22 Adelaide St W

Toronto, Ontario M5H 4E3

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Tel: (416) 367-6266

Email: rjaipargas@blg.com

Lawyers for msi Spergel Inc., the Receiver

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

- and -

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

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

DISCHARGE ORDER

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Lawyers for msi Spergel Inc., the Receiver

Document comparison by Workshare Compare on November 17, 2023 9:18:02 AM

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Rendering set	Standard

Legend:	
Insertion	
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Padding cell	

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	Count
Insertions	167
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Moved from	1
Moved to	1
Style changes	0
Format changes	0
Total changes	240

DUCA FINANCIAL SERVICES CREDIT UNION
LTD.

- and -

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

Court File No: CV-21-0066512800CL

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(Returnable November 28, 2023)

140479619:v1

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