

*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

APPLICATION UNDER s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3;  
s. 101, *Courts of Justice Act*, R.S.O. 1990, c. C.43; Rules 1.04, 2.03, 3.02(1), 14.05 (g),  
14.05 (3)(g), 16.04 (1) and 38 of the *Rules of Civil Procedure*

**APPLICATION RECORD  
Volume 1 of 5  
(returnable August 11, 2021)**

DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario  
M3C 3E9

LARWRENCE HANSEN  
LSO #41098W

Tel.: (416) 449-1400/(249) 888-6626  
lawrence.hansen@devrylaw.ca

Lawyers for the applicant  
Duca Financial Services Credit Union Ltd.

ONTARIO

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BETWEEN:

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14.05 (3)(g), 16.04 (1) and 38 of the *Rules of Civil Procedure*

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TAB 1



CV-21-00665128-00CL

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Respondents



APPLICATION UNDER s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3;  
s. 101, *Courts of Justice Act*, R.S.O. 1990, c. C.43; Rules 1.04, 2.03, 3.02(1), 14.05 (g),  
14.05 (3)(g), 16.04 (1) and 38 of the *Rules of Civil Procedure*

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant(s). The claim made by the applicant(s) appears on the following page.

THIS APPLICATION will be made to the Honourable Mr. Justice Cavanagh (*choose one of the following*)

- ☐ In person  
☐ By telephone conference  
☒ By video conference

at the following location:

- Video conference details to be provided by court

on Wednesday, August 11, 2021 at 10:00 am or as soon as after that time as the application can be heard.

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IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s) and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but no later than four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: July <sup>6</sup>~~8~~, 2021

Issued by \_\_\_\_\_

Local registrar

330 University Avenue, 9<sup>th</sup> Floor  
Toronto, Ontario M5G 1R7

TO: SERVICE LIST ATTACHED

**APPLICATION**

1. The applicant makes an application for orders for the following:
  - (a) abridging the time for or validating service, if necessary;
  - (b) an order substantially in the form of Model Receivership Order attached, with trackchanged modifications, as Schedule "A", appointing msi Spergel Inc. ("Spergel"), a licensed trustee, as receiver ("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."), including the following:
 

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");
  - (c) that the appointment in (b), above, be pursuant to s. 243 of the *Bankruptcy and Insolvency Act* ("Bankruptcy and Insolvency Act") R.S.C. 1985, c B-3; s. 101, *Courts of Justice Act* ("Courts of Justice Act"), R.S.O. 1990, c. C.43; Rule 14.05 (g) and Rule 14.05 (3)(g) of the *Rules of Civil Procedure*;
  - (d) an order, if necessary, lifting the *Mareva* injunction issued by the Honourable Justice Schabas on September 18, 2020, to the extent necessary to permit the Receiver to be appointed and to perform its functions;
  - (e) an order, if necessary, giving directions to the trustees and to various stakeholders about the progress of the matter;
  - (f) an order, if necessary, discharging RSM Canada Limited, a private receiver appointed by Bryton Capital Corp. GP Ltd. ("Bryton Capital") for its benefit;
  - (g) any other necessary and/or ancillary orders, including for leave, to give effect to the foregoing;
  - (h) costs on a full-indemnity basis or to be dealt with on the terms of the form of order attached as Schedule "A"; and
  - (i) such further and other relief as counsel may request and to this Honourable Court seems just.

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2. The grounds for the application are:
- (a) the applicant wishes and is entitled to enforce its security;
  - (b) Bayview Inc. along with Bayview LP and CIM Invests are jointly and severally indebted to the applicant in the principal amount of \$20,720,000.00 plus interest and legal fees (the “Loan”);
  - (c) repayment of the Loan is secured by a first mortgage on the Property (the “DUCA Charge”);
  - (d) the Property consists of vacant land;
  - (e) Bayview Inc. is the registered owner and bare trustee of the Property;
  - (f) Bayview LP is the beneficial owner of the Property;
  - (g) in addition to the DUCA Charge, the applicant has registered a general security agreement against Bayview Creek LP (the “DUCA GSA”);
  - (h) Bayview Inc. and CIM Invests have agreed to be bound by the terms of the DUCA GSA;
  - (i) Bayview Inc., Bayview LP and CIM Invests have been in default under the terms of the DUCA Charge since at least June 10, 2020;
  - (j) on June 10, 2020, the applicant demanded payment of the Loan which is secured by the DUCA Charge;
  - (k) the applicant also gave notice under s. 244 of the *Bankruptcy and Insolvency Act*;
  - (l) the applicant entered into forbearance agreements, the latest of which expired on September 30, 2020 (the “Forbearance Period”);
  - (m) the DUCA Charge remains in default and the mortgage has matured;
  - (n) as a result of the defaults both before and during the Forbearance Period, the applicant is entitled to enforce its security;
  - (o) searches show the following registered on title to the Property subsequent to the DUCA Charge:
    - (i) an option to purchase in favour of Bryton Creek Residences Inc.;
    - (ii) a mortgage in favour of Bryton Capital Corp.;

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- (iii) a mortgage in favour of GR (Can) Investment Co. Ltd. and Monest Financial Inc.; and
- (iv) a certificate of pending litigation in favour of Tracy Hui and Jojo Hui;
- (p) the terms of the DUCA Charge and the DUCA GSA entitle the applicant to appoint a receiver;
- (q) as part of the forbearance arrangements described above, Bayview LP, Bayview Inc. and CIM Invests, consented to an order substantially in the form of the Commercial List Model Receivership Order;
- (r) it is just, convenient, and in the general interest of creditors and stakeholders that a receiver be appointed;
- (a) the various legal proceedings arising from the respondents' insolvency have not progressed in a cooperative, common-sensical or orderly manner;
- (b) there is some doubt as to which of the various entities involved in the matter has been vested with the Property;
- (c) the Property appears to have been abandoned for some time and was left in state that has been described as a "dump";
- (d) in that respect, it appears that the Property, the security for DUCA's mortgage, was not protected or secured;
- (e) the state of the Property has attracted negative news coverage;
- (f) a work order was issued in respect of it;
- (g) Bryton Capital appointed a private receiver over the Property;
- (h) it appears that in spite of its appointment, the private receiver took no steps to protect and to preserve the Property, Bryton Capital advising that its private receiver had not taken "possession";
- (i) Bryton Capital claims now to have taken "possession" of the Property and to be dealing with the work order, etc;
- (j) a court-appointed receiver will provide a mechanism to preserve, protect and to realize on the Property;
- (s) this is particularly the case in light of the complexity of the matter, the various commercial interests at issue, including the claims of the debenture holders and the third mortgagees, and the multiplicity of proceedings relating to

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the Property, Bayview LP, Bayview Inc. and CIM Invests, which has included a proposal, the appointment of a proposal trustee as well as two trustees in bankruptcy, a private receiver, and an investigative receiver;

- (t) Spergel has consented to be Receiver;
- (u) sections 69(2)(b), 69(2)(c) and 243 of the *Bankruptcy and Insolvency Act*, s. 101, *Courts of Justice Act*, R.S.O. 1990, c. C.43; Rules 1.04, 2.03, 3.02(1), 14.05 (g), 14.05 (3)(g), 16.04 (1) and 38 of the *Rules of Civil Procedure*; and the order of the Honourable Mr. Justice Schabas made on September 28, 2020; and
- (v) such further and other relief as counsel may advise and this Honourable Court permit.

3. The following documentary evidence will be used at the hearing of the motion:

- (a) the affidavit of Riz Ahmad, including its exhibits, one of which is the consent of Spergel to act as receiver; and
- (b) such further and other evidence as counsel may advise and this Honourable Court permit.

Date of issue: July <sup>6</sup>~~2~~, 2021

DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario  
M3C 3E9

LAWRENCE HANSEN  
LSO #41098W

Tel.: (416) 449-1400  
Fax: (416) 449-7071  
*lawrence.hansen@devrylaw.ca*

Lawyers for the applicant

**SERVICE LIST**

**TO: DICKINSON WRIGHT LLP**  
 199 Bay Street, Suite 2200 Commerce Court West  
 Toronto, Ontario M5L 1G4

Lisa Corne  
 Tel: 416.646.4608  
 lcorne@dickinsonwright.com

Jack Tannerya  
 Tel: 416.777.4042  
 tannerya@dickinsonwright.com

Lawyers for Bayview Creek (CIM) LP, CIM Invests  
 Development Inc., 10502715 Canada Inc. and Jiubin  
 (Jerry) Feng

**AND TO: HIMELFARB PROSZANSKI**  
 480 University Avenue, Suite 1401  
 Toronto, ON M5G 1V2

Ronald Lachmansingh  
 Tel: 416.599.8080  
 rlachmansingh@himprolaw.com

Lawyers for Bayview Creek (CIM) LP

**AND TO: MILLER THOMSON LLP**  
 40 King Street West Suite 5800, P.O. Box 101  
 Toronto ON M5H 3S1

David Ward LSO #33541W Tel:  
 416.595.8625  
 dward@millerthomson.com

Larry Ellis LSO #49313K Tel:  
 416.595.8639  
 lellis@millerthomson.com

Tamie Dolny LSO #77958U Tel:  
 416.597.6076  
 tdolny@millerthomson.com

Lawyers for CIM Bayview Creek Inc.

AND TO: **HUMMINGBIRD LAWYERS LLP**  
80 Bloor Street West, Suite 1401  
Toronto, ON M5S 2V1

Jonathan Barr  
Tel: 905.731.1911  
jonathan@hummingbirdlaw.com

Lawyers for the debenture holders Tracy Hui and Jojo Hui

AND TO: **TORYS LLP**  
79 Wellington St. W, 33<sup>rd</sup> Floor Box 270, TD South  
Tower Toronto, ON M5K 1N2

Adam Slavens  
Tel: 416.865.7333  
aslavens@torys.com

Lawyers for the debenture holders Tracy Hui and Jojo Hui

AND TO: **OWENS WRIGHT LLP**  
300 20 Holly Street  
Toronto, ON M4S 3B1

Robert S. Choi  
Tel: 416.848.4722  
rchoi@owenswright.com

Jonathan Careen  
Tel: 416.484.8672  
jcareen@owenswright.com

Randy H. Lebow  
Tel: 416.848.4707  
rlebow@owenswright.com

Lawyers for Bryton Capital Corp. GP Ltd. and Bayview  
Creek Residences Inc.



**AND TO: GOWLING WLG (CANADA) LLP**

1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto, ON M5X 1G5

E. Patrick Shea LSO #39655K  
Tel: 416.369.7399  
patrick.shea@gowlingwlg.com

Lawyers for GR (CAN) Investment Co. Ltd. & Monest Financial  
Inc.

**AND TO: PALLETT VALO LLP**

77 City Centre Drive  
West Tower, Suite 300  
Mississauga, ON L5B 1M5

Alex Ilchenko  
Tel. 905.273.3022 ext. 203  
ailchenko@pallettvalo.com

Lawyers for RSM Canada Limited, private receiver appointed by  
Bryton Capital Corp. GP Ltd.

**AND TO: GRANT THORNTON LIMITED**

11<sup>th</sup> Floor, 200 King Street West  
Toronto, ON M5H 3T4

Dan Wootton, CIRP, LIT  
Tel: 416.360.3063  
dan.wootton@ca.gt.com

Trustee in bankruptcy for CIM Bayview Creek Inc.

**AND TO: CASSELS BROCK & BLACKWELL LLP**

Scotia Plaza  
40 King Street West, Suite 2100  
Toronto, ON M5H 3C2

John Birch  
Tel: 416.860.5225  
jbirch@cassels.com

Jeremy Bornstein  
Tel: 416.869.5386  
jbornstein@cassels.com

Lawyers for the trustee in bankruptcy - Grant Thornton Limited

AND TO: **MONEST FINANCIAL INC.**  
198 Lord Seaton Road Toronto, ON M2P 1K9

Susan Wang  
susancanada@gmail.com

AND TO: **TAN & ASSOCIATES**  
1315 Lawrence Avenue East Suite 506  
Toronto, ON M3A 3R3

Ping Tan  
Tel: 416.443.8600  
pingt.tan@gmail.com

Counsel for GR (Can) Investment Co. Ltd. and Monest Financial Inc.

AND TO: **CARDINAL ADVISORY LTD.**  
30A Hazelton Avenue, Suite 200  
Toronto, ON M5R 2E2

Felice R. Ferri  
Barrister & Solicitor  
805 – 4789 Yonge Street  
Toronto, ON M2N 0G3  
Tel: 416.366.9303  
felicejdllb@gmail.com

AND TO: **1598535 ONTARIO INC.**  
20 Linwood Avenue Toronto, ON M1S 1H1

Vivian Zheng  
rongrongz@hotmail.com

AND TO: **COLLIERS INTERNATIONAL**  
181 Bay Street, Suite 1400  
Toronto, ON M5J 2V1

Steve Keyzer  
Senior Vice President  
Tel: 416.777.2200  
steve.keyzer@colliers.com

AND TO: **MINISTRY OF FINANCE**  
Legal Services Branch  
33 King Street West, 6th Floor PO Box 627, Stn. A  
Oshawa, ON L1H 8H5

Insolvency Unit insolvency.unit@ontario.ca

AND TO: **DEPARTMENT OF JUSTICE**  
 3400-130 King Street West  
 Tax Section, PO Box 36, Exchange Tower  
 Toronto, ON M5X 1K6

Diane H. A. Winters  
 Tel: 416.973.3172  
 diane.winters@justice.gc.ca

AND TO: **MNP LTD.**  
 111 Richmond Street West Toronto, ON,  
 M5H 2G4

Jerry Henenchowicz  
 Tel. 416.515.3924  
 jerry.henenchowicz@mnp.ca

Bankruptcy Trustee of Bayview Creek (CIM) LP

AND TO: **THE CORPORATION OF RICHMOND HILL**  
 225 East Beaver Creek Road  
 Richmond Hill, ON, L4B 3P4

Andreea Adari  
 Tel: 905-771-2504  
 andreea.adari@richmondhill.ca

### EMAIL SERVICE LIST

dward@millerthomson.com; lellis@millerthomson.com; tdolny@millerthomson.com;  
 patrick.shea@gowlingwlg.com; ailchenko@pallettvalo.com; dan.wootton@ca.gt.com;  
 jbirch@cassels.com; jbornstein@cassels.com; jonathan@hummingbirdlaw.com;  
 aslavens@torys.com; rlachmansingh@himplolaw.com; lcorne@dickinsonwright.com;  
 jtannerya@dickinsonwright.com; rlebow@owenswright.com; rchoi@owenswright.com;  
 jcareen@owenswright.com; helen.chang@gr-gp.com; susancanada@gmail.com;  
 pingt.tan@gmail.com; felicejdllb@gmail.com; rongrongz@hotmail.com;  
 steve.keyzer@colliers.com; insolvency.unit@ontario.ca; diane.winters@justice.gc.ca;  
 jerry.henenchowicz@mnp.ca; andreea.adari@richmondhill.ca

SCHEDULE "A"

Revised: January 21, 2014  
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

Court File No. \_\_\_\_\_

ONTARIO

**SUPERIOR COURT OF JUSTICE  
 COMMERCIAL LIST**

THE HONOURABLE ) WEDNESDAY~~WEEKDAY~~, THE #11<sup>th</sup>  
 )  
 JUSTICE CAVANAGH ) DAY OF AUGUST MONTH, 2021YR

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**~~PLAINTIFF~~<sup>1</sup>

Applicant~~Plaintiff~~

- and -

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

Respondents~~Defendants~~

**ORDER  
 (appointing Receiver)**

THIS APPLICATION ~~MOTION~~ made by the DUCA Financial Services Credit Union Ltd. ("DUCA") ~~Plaintiff~~<sup>2</sup>—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*

<sup>1</sup> The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

<sup>2</sup> Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

*Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel Inc. ~~[RECEIVER'S NAME]~~ as receiver ~~[and manager]~~ (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.") ~~[DEBTOR'S NAME]~~ (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day, remotely, at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Riz Ahmad ~~[NAME]~~ sworn June, 2021 ~~[DATE]~~ and the Exhibits thereto and on hearing the submissions of counsel for DUCA ~~[NAMES]~~ and the Debtor, no one appearing for ~~[NAME]~~ although duly served as appears from the affidavit of service of Carmen Yuen, ~~[NAME]~~ sworn [DATE] and on reading the consent of msi Spergel Inc. ~~[RECEIVER'S NAME]~~ to act as the Receiver,

#### SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>3</sup> 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. ~~[RECEIVER'S NAME]~~ 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").

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<sup>3</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

**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.<sup>4</sup> 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 \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; and

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<sup>4</sup> This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

- (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,]<sup>5</sup> shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (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;

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<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.



- (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.

~~7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

8. NO PROCEEDINGS AGAINST THE RECEIVER

9.7. 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**

10.8. 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**

~~11.9.~~ 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**

~~12.10.~~ 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**

~~13.11.~~ 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**

~~14.12.~~ 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**

~~15.13.~~ 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**

~~16.14.~~ 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**

~~17.15.~~ 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**

~~18.16.~~ 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

~~19.17.~~ 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.<sup>6</sup>

~~20.18.~~ 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.

~~21.19.~~ 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

~~22.20.~~ 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 \$ \_\_\_\_\_ (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

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~~<sup>6</sup> Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

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.

~~23-21.~~ 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.

~~24-22.~~ 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.

~~25-23.~~ 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**

~~26-24.~~ 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 '[@](#)'.

~~27-25.~~ 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**

~~28-26.~~ 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.

~~29-27.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

~~30-28.~~ 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.

~~31-29.~~ 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.



32.30. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33.31. 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.

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**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc. [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] 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 (~~collectively,~~ the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the — day of —, 20— (the "Order") made in an action having Court file number —CL—, 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 \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

TAB 2

Court File. No. CV-21-00665128-00CL

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

APPLICATION UNDER s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3;  
s. 101, *Courts of Justice Act*, R.S.O. 1990, c. C.43; Rules 1.04, 2.03, 3.02(1), 14.05 (g),  
14.05 (3)(g), 16.04 (1) and 38 of the *Rules of Civil Procedure*

**AFFIDAVIT OF RIZ AHMAD**

I, RIZ AHMAD, of the City of Toronto, Province of Ontario, MAKE OATH AND SAY:

1. I am Chief Risk Officer at DUCA Financial Services Credit Union Ltd. (“DUCA”), am responsible for the present matter with the assistance of Sergiu Cosmin (who has recently left DUCA) and Ivan Bogdanovich, and have personal knowledge of what is set out in this affidavit. To the extent that anything below is not within my personal knowledge, it constitutes information derived from discussions with Messrs. Cosmin, Bogdanovich, Lawrence Hansen, and the sources identified. I believe such information to be true.

*Overview*

2. I swear this affidavit in support of a application for the following principal relief:

- (a) an order appointing msi Spergel Inc. (“Spergel”), a licensed trustee, as receiver (“Receiver”), without security, of all of the assets, undertakings and properties of Bayview Creek (CIM) LP (“Bayview LP”), CIM Invests (“CIM Invests”) and CIM Bayview Creek Inc. (“Bayview Inc.”), including the following:

10747 Bayview Avenue, Richmond Hill,  
described as PT LT 25, CON 2, (MKM), PTS

1 & 2, PL 65R31680. S/T EASEMENT  
OVER PART 2, 65R13270 AS IN R510790,  
being the lands in PIN 03186-4757 (LT)

(the “Property”);

- (b) the appointment in (a), above, be pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (“*Bankruptcy and Insolvency Act*”) R.S.C. 1985, c B-3; s. 101, *Courts of Justice Act* (“*Courts of Justice Act*”), R.S.O. 1990, c. C.43; Rule 14.05 (g) and Rule 14.05 (3)(g) of the *Rules of Civil Procedure*;
- (c) an order, if necessary, lifting the *Mareva* injunction issued by the Honourable Justice Schabas on September 18, 2020, to the extent necessary to permit the Receiver to be appointed and to perform its functions;
- (d) an order, if necessary, giving directions to the trustees and to various stakeholders about the progress of the matter;
- (e) an order, if necessary, discharging RSM Canada Limited, a private receiver appointed by Bryton Capital Corp. GP Ltd. (“Bryton Capital”); and
- (f) any other necessary and/or ancillary orders, including for leave, to give effect to the foregoing.

3. The present application arises out the following circumstances, set out in more detail in the body of the present affidavit:

- (a) two of the respondents are bankrupt;
- (b) DUCA has a first-ranking \$20,720,000 mortgage charge on the Property;
- (c) the respondents have consented to an order in the form of the Model Receivership Order;
- (d) DUCA’s mortgage is in default, has matured, and the forbearance period to which the parties had agreed expired at the end of September of last year;
- (e) the various legal proceedings arising from the respondents’ insolvency have not progressed in a cooperative or common-sensical manner nor in a way which is orderly or fairly considers the interests of the various stakeholders, including DUCA;
- (f) there is some doubt as to where the Property has vested;
- (g) it appears that for some period the Property, the security for

DUCA's mortgage, has not been protected or secured;

- (h) the state of the Property has attracted negative news coverage;
- (i) in that respect, it appears that it had been abandoned and left in state described as a "dump";
- (j) a work order was issued in respect of it;
- (k) Bryton Capital appointed, for its own benefit, a private receiver over the Property;
- (l) it appears that in spite of its appointment, the private receiver took no steps to protect and to preserve the Property, Bryton advising that its private receiver had not taken "possession" of it; and
- (m) Bryton Capital claims now to have taken "possession" of the Property.

4. DUCA's position is that a court-appointed receiver will be in a much better position to take possession and to protect the Property, to transfer it in accordance with an option to purchase or to sell it on the open market, and to assist the court with the orderly process of the various proceedings relating to the Property.

5. Bryton Capital is not as well-suited as the Receiver to protect and to preserve the Property and to act in a fair, transparent manner which takes the interests of the various stakeholders, including DUCA, into consideration.

*The parties and the Property*

6. DUCA is a credit union with its head office at 5255 Yonge Street, 4th Floor, Toronto, Ontario.

7. CIM Invests and Bayview Inc. are federal corporations with registered offices in Markham. True copies of the relevant corporation reports which show this are attached to this my affidavit and marked Exhibits "A" and "B".

8. Bayview Inc. is bankrupt. A true copy of the relevant notice is attached to this my affidavit and marked Exhibit "C".

9. Bayview LP is a limited partnership with addresses in Markham and Richmond Hill. A true copy of a limited partnerships report which shows this is attached to this my affidavit and marked Exhibit "D".
10. Bayview LP is bankrupt. A true copy of the notice to creditors is attached to this my affidavit and marked Exhibit "E".
11. CIM Invests was at one point the registered owner of the Property. A true copy of a parcel register (with deleted instruments) which shows this is attached to this my affidavit and marked Exhibit "F".
12. 10502715 Canada Inc. ("Bayview GP") is a federal corporation which appears to be the general partner of Bayview LP. A true copy of the relevant corporation profile report is attached to this my affidavit and marked Exhibit "G".
13. Bryton Capital is an Ontario corporation which, as more fully described below, holds a second mortgage on the Property. A true copy of the relevant corporation profile report is attached to this my affidavit and marked Exhibit "H".
14. Bayview Creek Residences Inc. formerly known as Bryton Creek ("Bryton Creek") is an Ontario corporation which entered into an option agreement in respect of the Property. A true copy of the relevant corporation profile report for it is attached to this my affidavit and marked Exhibit "I".
15. On June 21, 2018, Bayview Inc. became the registered owner of the Property. A true copy of the relevant instrument is attached to this my affidavit and marked Exhibit "J".
16. Bayview LP is the beneficial owner of the Property. A true copy of the agreement which shows this is attached to this my affidavit and marked Exhibit "K".
17. It does not appear that Bayview Inc. and Bayview LP are carrying on active business operations.
18. The Property is currently vacant land.



*DUCA's security*

19. As more fully described below, DUCA has a first-ranking mortgage charge on the Property, securing repayment of \$20,720,000 and other amounts as defined in the commitment and the related charge.

20. The amount owing to DUCA has not been paid. A true copy of a discharge statement showing that \$22,161,944.87 owing as at June 29, 2021, with a per diem rate of \$4,796.82, is attached to this my affidavit and marked Exhibit "L".

21. DUCA had provided a mortgage loan in accordance with a mortgage commitment dated April 15, 2016. A true copy of it is attached to this my affidavit and marked Exhibit "M".

22. The commitment sets out the following:

. . . DUCA . . . has approved a credit facility in favour of Bayview Creek (CIM) LP for a project comprised of two, 6-storey apartment buildings and 81, 4-storey town house dwelling units consisting of a total of 306 dwelling units, 691 parking spaces and approximately 3,003 square metres of commercial space . . . to be constructed on 9.23 acres of vacant land fronting Bayview Avenue and located in Richmond Hill, Ontario . . . upon the terms and conditions described in this commitment letter . . . .

23. The commitment also sets out the purpose of the loan and establishes an interest reserve:

The Loan made and the Interest Reserved established under the Credit Facility will only be used for the following respective purposes:

- (a) Land loan – to finance the repayment of the Private Mortgage in the approximate amount of \$14,000,000. Excess proceeds, if any, shall be funded to the Borrower;
- (b) Servicing loan – to finance the Servicing costs and other costs related to the Bayview Project in the approximate amount of \$5,538,000; and
- (c) Interest reserve . . . – to establish an Interest Reserve in the amount of \$1,182,000 which shall be deducted from the first Advance and held in a GIC account with DUCA for the purpose of serving as cash collateral for the interest obligations of the Borrower herein . . . .

24. Funds were advanced by DUCA in accordance with the foregoing.

25. The mortgage charge to secure repayment was registered as a first charge on May 18, 2016 (the "DUCA Charge"). A true copy of the relevant instrument is attached to this my

affidavit and marked Exhibit “N”. A true copy of the applicable standard charge terms is attached to this my affidavit and marked Exhibit “O”.

26. A notice of assignment of rents in favour of DUCA was registered. A true copy of the relevant instrument is attached to this my affidavit and marked Exhibit “P”.

27. A general security agreement in favour of DUCA was registered. A true copy of it is attached to this my affidavit and marked Exhibit “Q”. A true copy of the *Personal Property Security Act* (“PPSA”) report which confirms its registration is attached to this my affidavit and marked Exhibit “R”.

28. Jiubin Feng, Dianyuan Zhang and Xiaoxin Zhang provided a personal guarantee in respect of all amounts owed to DUCA by the respondents; it is unconditional, irrevocable, joint and several. A true copy of it is attached to this my affidavit and marked Exhibit “S”.

29. The term of the mortgage loan was the earlier of 12 months or the date on which DUCA, in its sole discretion, demanded payment; in effect, the mortgage loan would have matured in May, 2017.

30. On April 12, 2017, the mortgage term was extended to May 1, 2018. A true copy of the agreement by which this was done is attached to this my affidavit and marked Exhibit “T”.

31. On April 26, 2018, the term was extended to May 1, 2019. A true copy of the agreement by which this was done is attached to this my affidavit and marked Exhibit “U”.

32. The commitment was amended on June 14, 2018. A true copy of the relevant agreement is attached to this my affidavit and marked as Exhibit “V”.

33. Among other things, the June 2018 agreement included the following:

- (a) Bayview LP and Bayview Inc. agreed to become parties to the commitment and to be bound jointly and severally with CIM Invests; and
- (b) Bayview Inc. specifically became the borrower under the relevant mortgage charge and agreed to be bound by its terms, including the standard charge terms.

34. On March 12, 2019, the parties registered an agreement on title. A true copy of it is attached to this my affidavit and marked Exhibit “W”.

35. Among other things, the agreement modified the interest rate set out in the original mortgage charge.

*Maturity, breaches, demands and notices*

36. As set out below, Bayview Inc., Bayview LP and CIM Invests are in breach of the commitment, the DUCA Charge is in default, the mortgage has matured, demands and notices have been delivered, and the forbearance period to which the parties had agreed expired on September 30 of last year.

37. Under the terms of the commitment and standard charge terms, subsequent encumbrances are not permitted without DUCA’s prior written consent.

38. In this respect, the standard charge terms set out the following:

In the event of the Chargor further encumbering the Charged Lands without the prior written consent of the Chargee, in its sole and absolute discretion, such further encumbering shall constitute an event of default, and in such event, at the sole option of the Chargee, all money owing under the herein Mortgage, shall become due and payable.

39. With DUCA’s knowledge and approval, a \$12,000,000 charge was registered on the Property in favour of ADJ Holdings Inc. (the “ADJ Charge”). True copies of the relevant instrument and notice of assignment of rents are attached to this my affidavit and marked Exhibits “X” and “Y”.

40. In December, 2018, DUCA learned that the \$12,000,000 ADJ Charge had been discharged and replaced by a \$15,000,000 charge in favour of Romspen Investment Corporation (the “Romspen Charge”). A true copy of the relevant instrument registering the Romspen Charge is attached to this my affidavit and marked Exhibit “Z”. A true copy of the instrument discharging the ADJ Mortgage Charge is attached to this my affidavit and marked Exhibit “AA”.

41. DUCA had not been aware nor had it approved the Romspen Charge.

42. The registration of the Romspen Charge constituted a breach of the terms of the

mortgage commitment as well as of the standard charge terms.

43. On February 4, 2019, DUCA issued demand letters on Bayview Inc., Bayview LP, CIM Invests and the individuals who had provided personal guarantees. True copies of the demands are attached to this my affidavit and marked Exhibit “BB”.

44. On February 26, 2019, DUCA issued a notice of sale in respect of the Property. A true copy of it is attached to this my affidavit and marked Exhibit “CC”.

45. On or about March 7, 2019, DUCA entered a forbearance agreement with Bayview Inc., Bayview LP, CIM Invests and with the guarantors. A true copy of it is attached to this my affidavit and marked Exhibit “DD”.

46. On or about April 26, 2019, DUCA entered into a further forbearance agreement with Bayview Inc., Bayview LP, CIM Invests and with the guarantors. A true copy of it is attached to this my affidavit and marked Exhibit “EE”.

47. On May 23, 2019, DUCA entered into another forbearance agreement with Bayview Inc., Bayview LP, CIM Invests and the guarantors. A true copy of it is attached to this my affidavit and marked Exhibit “FF”.

48. As part of the forbearance arrangements of May, 2019, Bryton Capital was authorized to register a mortgage (the “Bryton Mortgage”). A true copy of it is attached to this my affidavit and marked Exhibit “GG”.

49. The term of the DUCA Charge was extended to May 21, 2020.

50. It matured on May 21, 2020.

51. The amount owing under it was not paid.

52. DUCA served demand letters which included a Notice of Intention to Enforce Security under s. 244(1) of the *Bankruptcy and Insolvency Act*. True copies of the foregoing are attached to this my affidavit and marked Exhibit “HH”. A true copy of a notice of sale under which DUCA did not proceed is also attached to this my affidavit and marked Exhibit “II”.

53. On or about July 24, 2020, the parties entered into a further forbearance agreement, A true copy of the agreement is attached to this my affidavit and marked Exhibit “JJ”.

54. As part of the forbearance arrangements, DUCA consented to an increase of the amount of the Bryton Mortgage.

55. It also agreed as follows:

. . . to forbear from enforcing the security and Charge until the earlier of (i) the occurrence of a further event of Default . . . ; and (ii) September 30, 2020 . . .

56. The forbearance agreement provides as follows:

. . . By signing below, [Bayview Inc., Bayview LP and CIM Invests] acknowledge and agree that:

- a. events of Default have occurred and are continuing and we have demanded repayment of your indebtedness to the Lender and issued a Notice of Sale under the Charge.
- b. you have received the demand letters (the “**Demands**”) and the Notice of Intention to Enforce Security (the “**Notice**”) issued by Devry Smith Frank LLP dated June 10, 2020 and the Notice of Sale under Mortgage (the “**Notice of Sale**”) dated June 23, 2020. You agree that the issuance of Demands, the Notice and the Notice of Sale and their delivery were proper in all respects, the Indebtedness as set out therein is correct and that the Demands and the Notice have not been withdrawn but remain and will continue to remain in full force and effect. [. . .]

*Further default*

57. On September 18, 2020, the court granted orders for the following:

- (a) appointing an investigative receiver;
- (b) granting leave to issue and to register a certificate of pending litigation against the Property; and
- (c) granting what is in effect a *Mareva* injunction.

True copies of the relevant orders are attached and marked Exhibits “KK” and “LL”. A true copy of the related endorsement is attached to this my affidavit and marked Exhibit “MM”. A true copy of the certificate of pending litigation is attached to this my affidavit and marked

Exhibit “NN”. A true copy of the notice of motion is attached to this my affidavit and marked Exhibit “OO”.

58. On September 28, 2020, the orders were continued. True copies of the relevant order and related endorsement are attached to this my affidavit and marked Exhibits “PP” and “QQ”.

59. The investigative receiver appointed on September 18, 2020, issued a report. A true copy of it is attached to this my affidavit and marked Exhibit “RR”.

60. The orders were continued again on October 13, 2020, by way of an order by the Honourable Justice Koehnen. A true copy of the relevant order is attached to this my affidavit and marked Exhibit “SS”. A true copy of the relevant email string is attached to this my affidavit and marked Exhibit “TT”.

61. DUCA is not a party to the proceeding in which the *Mareva* order was made, has not been served with any recent materials relating to it, and is seeking an update as to its status, including in respect of what orders remain in force.

62. After being provided with the orders of September 18 which are described above, our lawyers obtained a parcel register for the Property. A true copy of it is attached to this my affidavit and marked Exhibit “UU”.

63. It shows a third mortgage had been registered on the Property. A true copy of it is attached to this my affidavit and marked Exhibit “VV”.

64. The third mortgage is for the benefit of GR (CAN) Investment Co. Ltd and Monest Financial Inc. (the “GR Charge”).

65. DUCA did not provide written consent for the third mortgage and had not known about it.

66. The registration of the GR Charge constitutes a further breach of the terms of the mortgage commitment as well as of the standard charge terms.

*Overview of other proceedings*

67. Bayview Inc. filed a Notice of Intention to Make a Proposal. A true copy of it is attached to this my affidavit and marked Exhibit “WW”.

68. It also brought a motion on very short notice to extend the time for making a proposal and to order a sales process for the Property. A true copy of the record is attached to this my affidavit and marked Exhibit “XX”. A true copy of the proposal trustee’s report is attached to this my affidavit and marked Exhibit “YY”.

69. The notice and supporting affidavit made no mention of the option to purchase the Property, the validity of which was identified by the court as a “threshold issue”. A true copy of the court’s endorsement about this is attached to this my affidavit and marked Exhibit “ZZ”.

70. On December 21, 2020, the court heard a motion on the validity of option.

71. On January 12, 2021, the court released its decision, finding, among other things, that the option was valid and could not be disclaimed. A true copy of the relevant endorsement is attached to this my affidavit and marked Exhibit “AAA”.

72. The court made orders in respect of costs. A true copy of the court’s endorsement about this is attached this my affidavit and marked Exhibit “BBB”.

73. Bayview Inc. commenced an appeal of the decision. A true copy of the notice of appeal is attached to this my affidavit and marked Exhibit “CCC”.

74. Bayview Inc. then failed to make a proposal and became bankrupt. A true copy of the notice of its bankruptcy is attached at Exhibit “C”.

75. Its trustee brought a motion to extend the time to appeal.

76. The motion was dismissed. A true copy of the relevant endorsement is attached to this my affidavit and marked Exhibit “DDD”.

77. The appeal itself was then subsequently dismissed for delay. A true copy of the relevant order is attached to this my affidavit and marked Exhibit “EEE”.

78. Bayview Inc.’s trustee sought to pass its accounts.

79. Bryton Capital opposed approval of these accounts, taking the position that nothing should be paid.

80. A hearing took place on May 25, 2021.

81. No decision has yet been released.

82. A group of creditors brought an application for a bankruptcy order in respect of Bayview LP and Bayview GP. True copies of the relevant notices are attached to this my affidavit and marked Exhibits “FFF” and “GGG”.

83. The applications did not proceed because, during their pendency, Bayview LP and Bayview GP made voluntary assignments in bankruptcy.

84. Bryton Capital has served materials for a vesting order in respect of the Property. A true copy of the amended notice is attached to this my affidavit and marked Exhibit “HHH”.

85. The third mortgagee, through its lawyer Patrick Shea, has indicated that it, for itself and on behalf of certain other creditors, is bringing a “s 38” application in order to take an assignment of the trustees’ potential claims under ss. 94-95 of the *Bankruptcy and Insolvency Act*.

86. Mr. Shea has also indicated that his client is in the process of issuing a notice of application for claims against Bryton Creek which sound in oppression, fraudulent conveyance, as well as assignments and preferences. A true draft of a copy of the draft which he has provided to our lawyers is attached to this my affidavit and marked Exhibit “III”.

*DUCA’s position on December 21*

87. In the fall of last year, DUCA had indicated that it was going to enforce its security by bringing an application for a receivership order.

88. It did so during 9:30 appointments with Justice Schabas and Justice Koehnen.

89. Bryton then agreed, subject to approval of the court, to take an assignment of DUCA’s Charge such that DUCA would have no further involvement with the present matter.

90. Bryton then changed its position.

91. It indicated that it would not take an assignment.



92. As set out above, the court had ordered on November 27 that a motion about the validity of the option would be heard on December 21, 2021.

93. DUCA was in the process of bringing an application for a receivership order but chose not to proceed at that time, indicating that it would be prepared to work with Bryton Capital on the exercise of its option or in a sales process if that were to be approved by court. True copies of the relevant email message are attached to this my affidavit and marked Exhibit “JJJ” and “KKK”.

94. DUCA did not waive any of its rights under the DUCA Charge, including those relating to the enforcement of its security.

95. Over the last several months, DUCA has been concerned about the continuing default and the integrity of its security, that it appears that the Property had been abandoned for some time, delay, the general conduct of the various proceedings and that there is doubt as to which of the various parties, trustees and receiver is vested with the Property,

*The Property, the appointment of the private receiver, etc.*

96. On April 12, 2021, Bryton Capital purported to appoint a private receiver, RSM Canada Limited (“RSM”). A true copy of the letter by which it claims to have done this is attached to this my affidavit and marked Exhibit “LLL”. True copies of email messages requesting the foregoing are attached to this my affidavit and marked Exhibit “MMM”.

97. RSM’s appointment is defined solely to be for the benefit of Bryton Capital.

98. In that respect, the letter which purports to appoint RSM sets out, among other things, the following:

[Bryton Capital] appoints RSM Canada Limited to be the Receiver of the Property with all and every power and authority specified by the Security in this regard, ***and instructs the Receiver to seize, protect and realize on the Property for the benefit of the [Bryton Capital].***

[emphasis added]

99. As far as I am aware, RSM has provided no notice or other advice to creditors or to other stakeholders about the Property.

100. There is no evidence that it has taken steps to “seize, protect, and realize on the Property for the benefit of [Bryton Capital]”.

101. In that respect, I understand that Bryton Capital has indicated that RSM had not “taken possession” of the Property.

102. It did so at the first meeting of creditors for Bayview LP and Bayview GP which was held on May 21, 2021.

103. Bayview Inc. held the Property as a bare trustee, and Bayview LP is the beneficial owner of the Property.

104. As set out earlier in this affidavit, both Bayview Inc. and Bayview LP are bankrupt.

105. I understand that the Property is likely excluded as trust property from the estate of Bayview Inc.

106. The trustee of Bayview LP has delivered a report in which it has indicated that it had disclaimed any interest in the Property. A true copy of the report is attached to this my affidavit and marked Exhibit “NNN”.

107. In that respect, the report includes the following:

Given concerns regarding clean up and other environmental orders that may registered again [sic] the Property, the Trustee instructed the Estate Solicitor to issue a notice of disclaimer . . . .

108. Our lawyers made inquiries about the disclaimer. True copies of the requests are attached to this my affidavit and collectively marked Exhibit “OOO”.

109. Neither the trustee nor its lawyers have provided any response to the inquiries.

110. The local news has reported that the Property had been left in state which is described as “a dump”, something about which neighbours are upset. A true copy of a story from YorkRegion.com about this is attached to this my affidavit and marked Exhibit “PPP”.

111. The relevant news story is dated April 27, 2021, which is:
- (a) about two weeks after the appointment of RSM as private receiver to “seize, protect and realize” on the Property; and
  - (b) more than two months since Bayview Inc. had become bankrupt and its trustee in bankruptcy had been appointed.
112. The Corporation of the City of Richmond Hill registered an order on title..
113. On May 31, 2021, Bryton Capital provided notice that it was taking “possession” of the Property. A true copy of the notice to that effect is attached to this my affidavit and marked Exhibit “QQQ”.
114. At around the same time, it appears that in the context of the motion for a vesting order, Bryton Capital tried to reach an agreement with other parties on the terms of a draft order.
115. On June 10, 2021, our lawyers wrote to Bryton Capital’s lawyer about that and other matters. A true copy of the relevant letter is attached to this my affidavit and marked Exhibit “RRR”.
116. The letter reads as follows:
- Thank you for your recent voicemail message.
- I understand from it that there appears to be no reasonable prospect of an agreement on the terms of a vesting order.
- Please provide the following:
- (a) copies of the competing forms of draft order;
  - (b) the timeframe by which all of the Borrower’s indebtedness to DUCA will be paid as well as the timetable for the hearing for the vesting order and any other motions;
  - (c) the date of the 9:30 appointment to schedule the motions referred to in (b), above.
- Please provide the foregoing as soon as possible and, in any event, no later than June 17, failing which DUCA will be bringing a motion for the appointment of a receiver over the secured property.
117. Bryton Capital responded on June 17, 2021. A true copy of the response is attached to this my affidavit and marked Exhibit “SSS”.

118. Among other things, Bryton Capital states the following:

If the mortgagees are now to take adversarial positions against each other, Bryton will be forced to commence an action against DUCA for all damages including all costs thrown away resulting from DUCA's misrepresentation. Bryton will also reserve the right to assess all mounts claimed by DUCA under its mortgage including its legal fees, pursuant to s. 9(1) of the *Solicitors Act*, RSO 1990, c. S.15. As well, the validity and enforceability of DUCA's security documentation will be challenged.

119. There was a subsequent exchange of correspondence, including a letter from our lawyers setting out the history of the matter and an email from Bryton Capital's lawyers about what it has done on the Property. True copies of the foregoing are attached to this my affidavit and marked Exhibit "TTT" and "UUU". A true copy of further correspondence with Bryton's lawyer threatening to commence a legal proceeding if the present application were to be brought is attached this my affidavit and marked Exhibit "VVV".

*The appointment of a court-appointed receiver*

120. Under section 35 of the standard charge terms as well as the DUCA GSA, DUCA has the right to appoint a receiver.

121. In addition, Bayview Inc., Bayview LP, and CIM Invests have provided a consent to an order which appoints a receiver in the form of the Model Receivership Order. A true copy of the consent is attached to this my affidavit and marked Exhibit "WWW".

122. The mortgage loan has matured, the forbearance period expired on September 30, 2020, and the appropriate notices have been delivered (including under s. 244 of the *Bankruptcy and Insolvency Act*).

123. Spergel, a licensed trustee, has consented to act as receiver. A true copy of its consent is attached to this my affidavit and marked Exhibit "XXX".

124. Bayview Inc., Bayview LP and CIM Invests have failed to pay what is owed under the DUCA Charge despite demands having been made.

125. Their default has been ongoing and further events of default, as described above, have occurred.

126. A court-appointed receiver would be best placed to realize on the Property that is subject to DUCA's security and/or to transfer it in accordance with the option to purchase it.

127. DUCA wishes to take any and all steps necessary to protect the security granted to it by Bayview Inc., Bayview LP as well as CIM Invests and to realize on it.

128. It is reasonable and prudent for DUCA to enforce its security in an effort to recover its outstanding mortgage loan to Bayview Inc., Bayview LP as well as CIM Invests and it is within DUCA's right to do so.

129. The appointment of a receiver will enhance the prospect of recovery by DUCA, protect the interest of all stakeholders and, as a court officer, assist the court in the orderly progress of the matter.

130. In all of the circumstances, it would be just and convenient and in the best interests of all creditors of Bayview Inc., Bayview LP and CIM Invests that a receiver be appointed by this Honourable Court because, among other things:

- (a) Bayview Inc., Bayview LP and CIM Invests have been unable or unwilling to make payment of the mortgage loan or satisfy their obligations under the DUCA Charge, despite demands having been made;
- (b) the various legal proceedings arising from the respondents' insolvency have not progressed in a cooperative, common-sensical or orderly manner;
- (c) the Property appears to have been abandoned for some time and left in state that has been described as a "dump";
- (d) in that respect, it appears that the Property, the security for DUCA's mortgage, has not been protected or secured in a manner which is transparent;
- (e) there is some doubt as to which of the various entities involved in the matter has been vested with the Property;
- (f) the state of the Property has attracted negative news coverage;

- (g) a work order has been issued in respect of it;
- (h) Bryton Capital appointed a private receiver over the Property;
- (i) it appears that in spite of its appointment, the private receiver took no steps to protect and to preserve the Property, Bryton Capital advising that its private receiver had not taken “possession”;
- (j) Bryton Capital claims now to have taken “possession” of the Property; and
- (k) a receivership will provide a mechanism to preserve, protect and realize upon the Property.

*Encumbrances and other security*

131. The following encumbrances are registered on title to the Property:

- (a) the DUCA Charge (Exhibit “N”);
- (b) DUCA’s notice of assignment of rents (Exhibit “P”);
- (c) the Bryton Mortgage (Exhibit “GG”);
- (d) DUCA’s notice increasing the interest rate on the DUCA Charge (Exhibit “V”);
- (e) an option to purchase in favour of Bryton Creek;
- (f) the GR Mortgage (Exhibit “VV”);
- (g) a certificate of pending litigation registered in accordance with one of the orders made on September 18, 2020 (Exhibit “NN”); and
- (h) a work order registered by The Corporation of the Township of Richmond Hill .

A true copy of the instrument registering the option agreement is attached to this my affidavit and marked Exhibit “YYY”. A true copy of an amendment to the option agreement is attached to this my affidavit and marked Exhibit “ZZZ”.

132. PPSA search reports shows the following claimants in respect of Bayview Inc., Bayview LP and CIM Invests:

*For Bayview LP and Bayview Inc.*

- (a) DUCA’s GSA (Exhibit “Q”);
- (b) Romspen Investment Corporation (with no description);

- (c) Bryton Capital Corp. GP Ltd. (with no description); and
- (d) GR CAN Invests Co. Ltd (loan agreements, security pledge agreement and general security agreement).

*For CIM Invests*

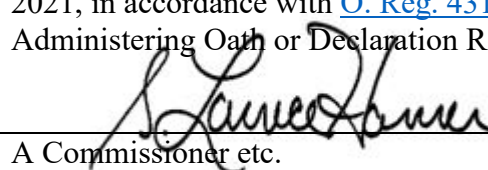
- (a) DUCA's GSA (Exhibit "Q");
- (b) Bank of Nova Scotia (with no description); and
- (c) Mercedes-Benz Financial Services Canada Corporation (with no description).

True copies of the *PPSA* search report for each of Bayview Inc., Bayview LP, and CIM Invests are collectively attached to this my affidavit and marked Exhibit "AAAA".

133. An execution search was completed by our lawyers. A true copy of a clear writ certificate is attached to this my affidavit and marked Exhibit "BBBB".

134. By swearing this affidavit, no right or privilege, including solicitor-client privilege is waived. All rights and privileges are expressly reserved.

Sworn, by video conference, by Riz Ahmad at the City of Toronto, in the Province of Ontario, before me at the City of Barrie, in the Province of Ontario, on this 2nd day of July, 2021, in accordance with [O. Reg. 431/20](#) Administering Oath or Declaration Remotely

  
A Commissioner etc.

Lawrence Hansen, Lawyer



RIZ AHMAD

TAB A



## EXHIBIT "A"

**Government  
of Canada****Gouvernement  
du Canada**[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#)→ [Corporations Canada](#) → [Search for a Federal Corporation](#)**Federal Corporation Information - 837388-4**[Order copies of corporate documents](#)**Note**

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

**Corporation Number**

837388-4

**Business Number (BN)**

832452247RC0001

**Corporate Name**

CIM INVESTS DEVELOPMENT INC.

**Status**

Active

**Governing Legislation***Canada Business Corporations Act - 2012-12-07*[Order a Corporate Profile](#) [\[View PDF Sample\]](#) [\[View HTML Sample\]](#).[PDF Readers](#)**Registered Office Address**

Unit 502, 55 Commerce Valley Drive West  
Markham ON L3T 7V9  
Canada

**i Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Directors****Minimum** 1**Maximum** 10

Jiubin Feng  
168 Greenfield Ave.  
Toronto ON M2N 3C9  
Canada

**i Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Annual Filings****Anniversary Date (MM-DD)**

12-07

**Date of Last Annual Meeting**

2018-12-06

**Annual Filing Period (MM-DD)**

12-07 to 02-05

**Type of Corporation**

Non-distributing corporation with 50 or fewer shareholders

**Status of Annual Filings**

2020 - Not due

2019 - Filed

2018 - Filed

## Corporate History

**Corporate Name History**

2012-12-07 to Present

CIM INVESTS DEVELOPMENT INC.

**Certificates and Filings****Certificate of Incorporation**

2012-12-07

Order copies of corporate documents

Start New Search

[Return to Search Results](#)

**Date Modified:**

2020-09-17

xyyy

TAB B

## EXHIBIT "B"

**Government  
of Canada****Gouvernement  
du Canada**[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#)→ [Corporations Canada](#) → [Search for a Federal Corporation](#)**Federal Corporation Information - 1050264-2**[Order copies of corporate documents](#)**Note**

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

**Corporation Number**

1050264-2

**Business Number (BN)**

784429888RC0001

**Corporate Name**

CIM Bayview Creek Inc.

**Status**

Active

**Governing Legislation***Canada Business Corporations Act - 2017-11-20*[Order a Corporate Profile](#) [\[View PDF Sample\]](#) [\[View HTML Sample\]](#).[PDF Readers](#)**Registered Office Address**

55 Commerce Valley Drive West  
Markham ON L3T 7V9  
Canada

**i Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Directors****Minimum** 1**Maximum** 10

Jiubin Feng  
Suite 502, 55 Commerce Valley Drive W  
Markham ON L3T 7V9  
Canada

Mohammad Mehdi Haj-Shafiei  
55 Commerce Valley Dr. W  
Markham ON L3T 7V9  
Canada

Ali Haj-Shafiei  
55 Commerce Valley Dr. W  
Markham ON L3T 7V9  
Canada

**i Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Annual Filings**

**Anniversary Date (MM-DD)**

11-20

**Date of Last Annual Meeting**

2019-12-23

**Annual Filing Period (MM-DD)**

11-20 to 01-19

**Type of Corporation**

Non-distributing corporation with 50 or fewer shareholders

**Status of Annual Filings**

2020 - Not due

2019 - Filed

2018 - Filed

## Corporate History

**Corporate Name History**

2017-11-20 to 2018-05-07	10502642 Canada Inc.
2018-05-07 to Present	CIM Bayview Creek Inc.

**Certificates and Filings****Certificate of Incorporation**

2017-11-20

**Certificate of Amendment \***

2018-05-07

Amendment details: Corporate name

\* Amendment details are only available for amendments effected after 2010-03-20. Some certificates issued prior to 2000 may not be listed. For more information, [contact Corporations Canada](#).

[Order copies of corporate documents](#)

[Start New Search](#)

[Return to Search Results](#)

**Date Modified:**

2020-09-17

xyyy



TAB C

## EXHIBIT "C"

District of: Ontario  
Division No. 09 - Toronto  
Court No. 31-2684629  
Estate No. 31-2684629

FORM 68  
Notice of Bankruptcy, First Meeting of Creditors  
(Subsection 102(1) of the Act)

☒ Original ☐ Amended

In the matter of the bankruptcy of  
CIM Bayview Creek Inc.  
of the City of Thornhill, in the Province of Ontario

## Take notice that:

1. CIM Bayview Creek Inc. filed (or was deemed to have filed) an assignment (or a bankruptcy order was made against CIM Bayview Creek Inc.) on the 8th day of February 2021 and the undersigned, Daniel Woolton, was appointed as trustee of the estate of the bankrupt by the official receiver (or the Court); subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.

2. The first meeting of creditors of the bankrupt will be held on the 26th day of February 2021 at 10:00 AM at Dial in #416 360 7375, ID#1027894#.

3. To be entitled to vote at the meeting, a creditor must file with the trustee, before the meeting, a proof of claim and, where necessary, a proxy.

4. Enclosed with this notice are a proof of claim form, proxy form and list of creditors with claims amounting to \$25 or more showing the amounts of their claims.

5. Creditors must prove their claims against the estate of the bankrupt to share in any distribution of the proceeds realized from the estate.

Dated at the City of Toronto in the Province of Ontario, this 10th day of February 2021.

Grant Thornton Limited - Licensed Insolvency Trustee

Per:



Daniel Woolton - Licensed Insolvency Trustee

11 th Floor, 200 King Street West, Box 11

Toronto ON M5H 3T4

Phone: (416) 366-0100 Fax: (416) 360-4948

TAB D

EXHIBIT "D"

LIMITED PARTNERSHIPS REPORT

<b>Firm name registered under the <i>Limited Partnerships Act</i></b> BAYVIEW CREEK (CIM) LP	<b>Business Identification Number</b> 240691634
	<b>Business Type</b> LIMITED PARTNERSHIP

---

<b>Mailing Address</b>  55 COMMERCE VALLEY DRIVE WEST  No. 502 MARKHAM ONTARIO CANADA, L3T 7V9	<b>Address of Principal Place of Business in Ontario</b>  10747 BAYVIEW AVENUE  RICHMOND HILL ONTARIO CANADA, L4C 0K9
<b>General Nature of Business</b> REAL ESTATE DEVELOPMENT	<b>Jurisdiction of Formation</b> ONTARIO
<b>Declaration Date</b> 2014/07/14	<b>Expiry Date</b> 2024/07/12
<b>Renewal Date</b> 2014/07/18	<b>Change Date(s)</b> 2018/11/15 2016/08/09
<b>Last Document Filed</b> CHANGE	<b>Dissolution/Withdrawal Date</b> NOT APPLICABLE
<b>Last Document Filed Date</b> 2018/11/15	<b>Current Partnership Business Names Exist:</b> NO
	<b>Expired Partnership Business Names Exist:</b> NO

# LIMITED PARTNERSHIPS REPORT

<b>Firm name registered under the <i>Limited Partnerships Act</i></b>	<b>Business Identification Number</b>
BAYVIEW CREEK (CIM) LP	240691634
	<b>Business Type</b>
	LIMITED PARTNERSHIP

---

<b>Former Names</b>	<b>Date of Name Change</b>
BAYVIEW CREEK LIMITED PARTNERSHIP	2014/07/18

# LIMITED PARTNERSHIPS REPORT

**Firm name registered under the *Limited Partnerships Act***  
BAYVIEW CREEK (CIM) LP

**Business Identification Number**  
240691634

**Business Type**  
LIMITED PARTNERSHIP

## Information Regarding General Partner(s)

**Name (Individual/Corporation/Other)**  
10502715 CANADA INC.  
  
Corporate Number: 3166516

**Address**  
  
55 COMMERCE VALLEY DRIVE WEST  
  
No. 502  
MARKHAM  
ONTARIO  
CANADA, L3T 7V9

**Name of Signatory**  
FENG, JIUBIN

**Power of Attorney**  
NO

Former Limited Partnership Names will only be displayed for Declarations registered on or after April 1, 1994.

This Report sets out the most recent information registered on or after April 1, 1994 and recorded in the Ontario Business Information System as of the last business day.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

TAB E

District of: Ontario  
 Division No. 09 - Toronto  
 Court No. 31-2734803  
 Estate No. 31-2734803

## EXHIBIT "E"

FORM 68  
 Notice of Bankruptcy, First Meeting of Creditors  
 (Subsection 102(1) of the Act)

☒ Original ☐ Amended

In the Matter of the Bankruptcy of  
 Bayview Creek (CIM) LP  
 of the City of Markham  
 in the Province of Ontario

Take notice that:

1. 10502715 Canada Inc (the "GP") and Bayview Creek (CIM) Inc. (the "LP" and together with the GP, the "Partnership") operated a land development business. The GP and LP each filed an assignment on the 4th day of May 2021 and the undersigned, MNP Ltd., was appointed as trustee of the estate of the Partnership by the official receiver, subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.

2. The first meeting of creditors of the LP and GP will be held concurrently on the 21st day of May 2021 at 10:00 AM at By Video Conference or Zoom Meeting:

<https://us02web.zoom.us/j/885174786907?pwd=Rmo3aEVkZEc1dINCZ3hsWm10RjR0Zz09>


3. To be entitled to vote at the meeting, a creditor must file with the trustee, before the meeting, a proof of claim for each of the LP and GP, as applicable, and, where necessary, a proxy.

4. Enclosed with this notice are a proof of claim form, proxy form and list of creditors with claims amounting to \$25 or more showing the amounts of their claims.

5. Creditors must prove their claims against the estate of the bankrupt to share in any distribution of the proceeds realized from the estate.

Dated at the City of Toronto in the Province of Ontario, this 7th day of May 2021.

MNP Ltd. - Licensed Insolvency Trustee

  
 300 - 141 Richmond Street West  
 Toronto ON M5H 2G4  
 Phone: (416) 598-1711 Fax: (416) 323-5242



TAB F



ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
REGISTRY  
OFFICE #65

03186-4757 (LT)

PAGE 1 OF 5  
PREPARED FOR Cynen001  
ON 2021/06/30 AT 16:22:16

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

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

PROPERTY REMARKS: FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2009/06/01. CORRECTION: DOCUMENT R510790 ADDED TO PIN ON 2020/03/04 AT 11:34 BY HARINGA, KELLY.

RECENTLY:  
RE-ENTRY FROM 03186-3378

PIN CREATION DATE:  
2009/06/01

CAPACITY SHARE

OWNERS' NAMES  
CIM BAYVIEW CREEK INC.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2009/06/01 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
R271654	1981/05/19	AGREEMENT		*** DELETED AGAINST THIS PROPERTY ***	THE CORPORATION OF THE TOWN OF RICHMOND HILL	C
R280995	1981/09/29	TRANSFER			SALFAS HOLDINGS LTD.	
CORRECTIONS: 'TRANSFEREE' CHANGED FROM 'SALFAS HOLDINGS LTD' TO 'SALFAS HOLDINGS LTD.' ON 1999/07/20 BY LAND REGISTRAR #34.						
R510790	1989/06/09	TRANSFER EASEMENT	\$300,000	SALFAS HOLDINGS LTD.	THE CORPORATION OF THE TOWN OF RICHMOND HILL	C
R651846	1994/12/08	AGREEMENT			TOWN OF RICHMOND HILL	C
YR632487	2005/05/02	NOTICE		THE CORPORATION OF THE TOWN OF RICHMOND HILL	SALFAS HOLDINGS LTD.	C
REMARKS: AGREEMENT						
YR1222930	2008/09/11	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** SALFAS HOLDINGS LTD.	SALFAS HOLDINGS LTD.	
REMARKS: COMMITTEE OF ADJUSTMENT CONSENT-TOWN OF RICHMOND HILL						
65R31680	2009/06/01	PLAN REFERENCE				
YR1324035	2009/06/01	APL ABSOLUTE TITLE		*** DELETED AGAINST THIS PROPERTY *** OWNER	SALFAS HOLDINGS LTD.	
REMARKS: YR1304722						
YR1475892	2010/05/06	CHARGE		*** COMPLETELY DELETED *** SALFAS HOLDINGS LTD.	THE TORONTO-DOMINION BANK	
YR1475893	2010/05/06	NO ASSIGN RENT GEN		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 5

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ON 2021/06/30 AT 16:22:16

03186-4757 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
REMARKS: YR1475892						
YR1477922	2010/05/12	NOTICE		SALFAS HOLDINGS LTD.	THE TORONTO-DOMINION BANK	
REMARKS: RE: CHARGE YR1475892				*** COMPLETELY DELETED *** SALFAS HOLDINGS LTD.	THE TORONTO-DOMINION BANK	
YR1751535	2011/12/01	TRANSFER		*** COMPLETELY DELETED *** SALFAS HOLDINGS LTD.	PHOENIX POLLI LUXUL DEVELOPMENT INC.	
REMARKS: PLANNING ACT STATEMENTS						
YR1751536	2011/12/01	CHARGE		*** COMPLETELY DELETED *** PHOENIX POLLI LUXUL DEVELOPMENT INC.	PHOENIX POLLI LUXUL DEVELOPMENT INC.	
YR1751537	2011/12/01	CHARGE		*** COMPLETELY DELETED *** PHOENIX POLLI LUXUL DEVELOPMENT INC.	SALFAS HOLDINGS LTD.	
YR1794427	2012/03/13	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO-DOMINION BANK	SALFAS HOLDINGS LTD.	
REMARKS: YR1475892.						
YR1832348	2012/06/01	APL CH NAME OWNER		*** COMPLETELY DELETED *** PHOENIX POLLI LUXUL DEVELOPMENT INC.	BAYVIEW VILLAS ON THE GREEN HOLDING INC.	
YR1901412	2012/10/22	TRANSFER		*** COMPLETELY DELETED *** BAYVIEW VILLAS ON THE GREEN HOLDING INC.	8291047 CANADA CORP.	
REMARKS: PLANNING ACT STATEMENTS						
YR1901413	2012/10/22	CHARGE		*** COMPLETELY DELETED *** 8291047 CANADA CORP.	1048815 ONTARIO LIMITED LECCE, REMO LECCE, ROSA LECCE, FRANK EUGENE BOCCIA HOLDINGS LIMITED	
YR1901519	2012/10/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** SALFAS HOLDINGS LTD.		
REMARKS: YR1751537.						
YR1901520	2012/10/23	DISCH OF CHARGE		*** COMPLETELY DELETED *** SALFAS HOLDINGS LTD.		
REMARKS: YR1751536.						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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03186-4757 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR1918738	2012/11/30	APL CH NAME OWNER		*** COMPLETELY DELETED *** 8291047 CANADA CORP.	CIM DEVELOPMENTS INC.	
YR2155093	2014/07/14	NOTICE		*** COMPLETELY DELETED *** CIM DEVELOPMENTS INC.	1048815 ONTARIO LIMITED LECCE, REMO LECCE, ROSA LECCE, FRANK EUGENE BOCCIA HOLDINGS LIMITED	
REMARKS: YR1901413						
YR2157080	2014/07/16	TRANSFER		*** COMPLETELY DELETED *** CIM DEVELOPMENTS INC.	CIM INVESTS DEVELOPMENT INC.	
YR2396320	2015/11/30	NOTICE		*** COMPLETELY DELETED *** CIM INVESTS DEVELOPMENT INC.	1048815 ONTARIO LIMITED LECCE, REMO LECCE, ROSA LECCE, FRANK EUGENE BOCCIA HOLDINGS LIMITED	
REMARKS: AMENDING YR1901413						
YR2473036	2016/05/18	CHARGE	\$20,720,000	CIM INVESTS DEVELOPMENT INC.	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
YR2473037	2016/05/18	NO ASSGN RENT GEN		CIM INVESTS DEVELOPMENT INC.	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
REMARKS: YR2473036						
YR2473514	2016/05/18	DISCH OF CHARGE		*** COMPLETELY DELETED *** 1048815 ONTARIO LIMITED LECCE, REMO LECCE, ROSA LECCE, FRANK EUGENE BOCCIA HOLDINGS LIMITED		
REMARKS: YR1901413.						
YR2760955	2017/11/17	CHARGE		*** COMPLETELY DELETED *** CIM INVESTS DEVELOPMENT INC.	ADJ HOLDINGS INC.	
YR2760956	2017/11/17	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CIM INVESTS DEVELOPMENT INC.	ADJ HOLDINGS INC.	
REMARKS: YR2760955.						
YR2782126	2018/01/10	CHARGE		*** COMPLETELY DELETED ***		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND  
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PAGE 4 OF 5  
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03186-4757 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
YR2782414 REMARKS: YR2782126.	2018/01/11	DISCH OF CHARGE		CIM INVESTS DEVELOPMENT INC.	CIM INTERNATIONAL GROUP INC.	
YR2840443 REMARKS: PLANNING ACT STATEMENTS.	2018/06/21	TRANSFER		*** COMPLETELY DELETED *** CIM INTERNATIONAL GROUP INC.		
YR2898574	2018/11/16	CHARGE		CIM INVESTS DEVELOPMENT INC.	CIM BAYVIEW CREEK INC.	C
YR2898575 REMARKS: YR2898574.	2018/11/16	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** CIM BAYVIEW CREEK INC.	ROMSPEN INVESTMENT CORPORATION	
YR2898773 REMARKS: YR2760955.	2018/11/16	DISCH OF CHARGE		*** COMPLETELY DELETED *** ADJ HOLDINGS INC.	ROMSPEN INVESTMENT CORPORATION	
YR2937903 REMARKS: YR2473036	2019/03/12	NOTICE	\$2	CIM BAYVIEW CREEK INC.	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
YR2956071	2019/05/01	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** STANTEC CONSULTING LTD./ STANTEC EXPERTS-CONSEILS LTÉE		
YR2969702	2019/06/07	APL (GENERAL)		*** COMPLETELY DELETED *** TANG, ZHENGXI WU, JIYUAN LI, WEI JIA WANG, LIANHUA		
REMARKS: CERTIFICATE PENDING LITIGATION						
YR2970851 REMARKS: YR2956071	2019/06/12	CERTIFICATE		*** COMPLETELY DELETED *** STANTEC CONSULTING LTD./ STANTEC EXPERT-CONSEILS LTÉE.		
YR2972216 REMARKS: YR2898574.	2019/06/14	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROMSPEN INVESTMENT CORPORATION		
YR2972263	2019/06/17	APL DEL CONST LIEN		*** COMPLETELY DELETED *** STANTEC CONSULTING LTD./ STANTEC EXPERTS-CONSEILS LTÉE		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 5 OF 5

PREPARED FOR Cynen001

ON 2021/06/30 AT 16:22:16

03186-4757 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
REMARKS: YR2956071.						
YR2972264	2019/06/17	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	BAYVIEW CREEK (CIM) LP CIM BAYVIEW CREEK INC. 10502715 CANADA INC. FENG, JIUBIN	
REMARKS: DELETE YR2969702						
YR2972265	2019/06/17	NO OPTION PURCHASE	\$10	CIM BAYVIEW CREEK INC.	BRYTON CREEK RESIDENCES INC.	C
YR2972266	2019/06/17	CHARGE	\$20,000,000	CIM BAYVIEW CREEK INC.	BRYTON CAPITAL CORP. GP LTD.	C
YR2972267	2019/06/17	NO ASSGN RENT GEN		CIM BAYVIEW CREEK INC.	BRYTON CAPITAL CORP. GP LTD.	C
REMARKS: YR2972266.						
YR3062146	2020/01/30	LR'S CAUTION		*** COMPLETELY DELETED *** LAND REGISTRAR, YORK REGION LAND REGISTRY OFFICE		
YR3075061	2020/03/04	LR'S ORDER		LAND REGISTRAR, YORK REGION LAND REGISTRY OFFICE		C
REMARKS: ADD EASEMENT						
YR3124735	2020/07/31	NOTICE		CIM BAYVIEW CREEK INC.	BRYTON CAPITAL CORP. GP LTD.	C
REMARKS: RE: YR2972266 AND YR2972267						
YR3124736	2020/07/31	NOTICE	\$2	CIM BAYVIEW CREEK INC.	BRYTON CREEK RESIDENCES INC.	C
REMARKS: RE: YR2972265						
YR3137585	2020/09/04	CHARGE	\$2,207,405	CIM BAYVIEW CREEK INC.	GR (CAN) INVESTMENT CO. LTD. MONEST FINANCIAL INC.	C
YR3142721	2020/09/18	APL (GENERAL)		HUI, TRACY HUI, JOJO		C
REMARKS: PENDING LITIGATION.						
YR3194139	2021/01/15	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE	CIM BAYVIEW CREEK INC.	C
YR3194886	2021/01/15	NOTICE		CIM BAYVIEW CREEK INC.	BRYTON CREEK RESIDENCES INC.	C
REMARKS: YR2972265; EXTENSION						

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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TAB G

## EXHIBIT "G"

**Government  
of Canada****Gouvernement  
du Canada**[Canada.ca](#) → [Innovation, Science and Economic Development Canada](#)→ [Corporations Canada](#) → [Search for a Federal Corporation](#)**Federal Corporation Information - 1050271-5**[Order copies of corporate documents](#)**Note**

This information is available to the public in accordance with legislation (see [Public disclosure of corporate information](#)).

**Corporation Number**

1050271-5

**Business Number (BN)**

784429284RC0001

**Corporate Name**

10502715 Canada Inc.

**Status**

Active

**Governing Legislation***Canada Business Corporations Act - 2017-11-20*[Order a Corporate Profile](#) [\[View PDF Sample\]](#) [\[View HTML Sample\]](#).[PDF Readers](#)**Registered Office Address**

55 Commerce Valley Drive West  
Markham ON L3T 7V9  
Canada



**i Note**

Active CBCA corporations are required to update this information within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Directors****Minimum** 1**Maximum** 10

Jiubin Feng  
55 Commerce Valley Dr. W  
Markham ON L3T 7V9  
Canada

**i Note**

Active CBCA corporations are required to update director information (names, addresses, etc.) within 15 days of any change. A corporation key is required. If you are not authorized to update this information, you can either contact the corporation or contact Corporations Canada. We will inform the corporation of its reporting obligations.

**Annual Filings****Anniversary Date (MM-DD)**

11-20

**Date of Last Annual Meeting**

2019-11-11

**Annual Filing Period (MM-DD)**

11-20 to 01-19

**Type of Corporation**

Non-distributing corporation with 50 or fewer shareholders

**Status of Annual Filings**

2021 - Not due

2020 - Overdue

2019 - Filed

## Corporate History

**Corporate Name History**

2017-11-20 to Present

10502715 Canada Inc.

**Certificates and Filings****Certificate of Incorporation**

2017-11-20

Order copies of corporate documents

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**Date Modified:**

2021-06-04

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TAB H

Request ID: 026365305  
 Transaction ID: 79774391  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2021/06/28  
 Time Report Produced: 08:39:03  
 Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2423066	BRYTON CAPITAL CORP. GP LTD.	2014/06/17
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>	<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>
65 QUEEN STREET WEST	NOT APPLICABLE	NOT APPLICABLE
<b>Suite # 210</b> TORONTO ONTARIO CANADA M5H 2M5	<b>New Amal. Number</b>	<b>Notice Date</b>
	NOT APPLICABLE	NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
65 QUEEN STREET WEST		NOT APPLICABLE
<b>Suite # 210</b> TORONTO ONTARIO CANADA M5H 2M5	<b>Revival Date</b>	<b>Continuation Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>EP Licence Eff.Date</b>	<b>EP Licence Term.Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Number of Directors</b> <b>Minimum</b> <b>Maximum</b>	<b>Date Ceased</b> <b>in Ontario</b>
<b>Activity Classification</b>	00001 00010	NOT APPLICABLE
NOT AVAILABLE		

Request ID: 026365305  
Transaction ID: 79774391  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2021/06/28  
Time Report Produced: 08:39:03  
Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2423066

**Corporation Name**

BRYTON CAPITAL CORP. GP LTD.

**Corporate Name History**

BRYTON CAPITAL CORP. GP LTD.

**Effective Date**

2014/06/17

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:  
Name (Individual / Corporation)**

BRYAN  
MCWATT

**Address**

65 QUEEN STREET WEST  
  
Suite # 210  
TORONTO  
ONTARIO  
CANADA M5H 2M5

**Date Began**

2014/06/17

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type****Resident Canadian**

Y

Request ID: 026365305  
Transaction ID: 79774391  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2021/06/28  
Time Report Produced: 08:39:03  
Page: 3

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2423066

**Corporation Name**

BRYTON CAPITAL CORP. GP LTD.

**Administrator:****Name (Individual / Corporation)**

BRYAN  
MCWATT

**Address**

65 QUEEN STREET WEST

Suite # 210  
TORONTO  
ONTARIO  
CANADA M5H 2M5

**Date Began**

2014/06/17

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian**

Y

Request ID: 026365305  
Transaction ID: 79774391  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2021/06/28  
Time Report Produced: 08:39:03  
Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

2423066

Corporation Name

BRYTON CAPITAL CORP. GP LTD.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2019/11/13 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

TAB I



Request ID: 026365653  
 Transaction ID: 79774877  
 Category ID: UN/E

Province of Ontario  
 Ministry of Government Services

Date Report Produced: 2021/06/28  
 Time Report Produced: 08:51:46  
 Page: 1

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2696789	BAYVIEW CREEK RESIDENCES INC.	2019/05/16
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>	<b>Date Amalgamated</b>	<b>Amalgamation Ind.</b>
65 QUEEN STREET WEST	NOT APPLICABLE	NOT APPLICABLE
<b>Suite # 210</b> TORONTO ONTARIO CANADA M5H 2M5	<b>New Amal. Number</b>	<b>Notice Date</b>
	NOT APPLICABLE	NOT APPLICABLE
<b>Mailing Address</b>		<b>Letter Date</b>
65 QUEEN STREET WEST		NOT APPLICABLE
<b>Suite # 210</b> TORONTO ONTARIO CANADA M5H 2M5	<b>Revival Date</b>	<b>Continuation Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Transferred Out Date</b>	<b>Cancel/Inactive Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>EP Licence Eff.Date</b>	<b>EP Licence Term.Date</b>
	NOT APPLICABLE	NOT APPLICABLE
	<b>Number of Directors</b> <b>Minimum</b> <b>Maximum</b>	<b>Date Ceased</b> <b>in Ontario</b>
<b>Activity Classification</b>	00001 00010	NOT APPLICABLE
NOT AVAILABLE		

Request ID: 026365653  
Transaction ID: 79774877  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2021/06/28  
Time Report Produced: 08:51:46  
Page: 2

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2696789

**Corporation Name**

BAYVIEW CREEK RESIDENCES INC.

**Corporate Name History**

BAYVIEW CREEK RESIDENCES INC.

**Effective Date**

2020/01/21

BRYTON CREEK RESIDENCES INC.

2019/05/16

**Current Business Name(s) Exist:**

NO

**Expired Business Name(s) Exist:**

NO

**Administrator:****Name (Individual / Corporation)**

BRYAN

MCWATT

**Address**

65 QUEEN STREET WEST

Suite # 210  
TORONTO  
ONTARIO  
CANADA M5H 2M5

**Date Began**

2019/05/16

**First Director**

NOT APPLICABLE

**Designation**

DIRECTOR

**Officer Type****Resident Canadian**

Y

Request ID: 026365653  
Transaction ID: 79774877  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2021/06/28  
Time Report Produced: 08:51:46  
Page: 3

## CORPORATION PROFILE REPORT

**Ontario Corp Number**

2696789

**Corporation Name**

BAYVIEW CREEK RESIDENCES INC.

**Administrator:****Name (Individual / Corporation)**

BRYAN  
MCWATT

**Address**

65 QUEEN STREET WEST

Suite # 210  
TORONTO  
ONTARIO  
CANADA M5H 2M5

**Date Began**

2019/05/16

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

PRESIDENT

**Resident Canadian****Administrator:****Name (Individual / Corporation)**

BRYAN  
MCWATT

**Address**

65 QUEEN STREET WEST

Suite # 210  
TORONTO  
ONTARIO  
CANADA M5H 2M5

**Date Began**

2019/05/16

**First Director**

NOT APPLICABLE

**Designation**

OFFICER

**Officer Type**

SECRETARY

**Resident Canadian**

Request ID: 026365653  
Transaction ID: 79774877  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2021/06/28  
Time Report Produced: 08:51:46  
Page: 4

## CORPORATION PROFILE REPORT

Ontario Corp Number

2696789

Corporation Name

BAYVIEW CREEK RESIDENCES INC.

Last Document Recorded

Act/Code	Description	Form	Date
BCA	ARTICLES OF AMENDMENT	3	2020/01/21

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

TAB J

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

**Properties**

**PIN** 03186 - 4757 LT **Interest/Estate** Fee Simple  
**Description** PT LT 25, CON 2, (MKM),PTS 1 & 2, PL 65R31680;; TOWN OF RICHMOND HILL  
**Address** 10747 BAYVIEW AVENUE  
RICHMOND HILL

**Consideration**

**Consideration** \$0.00

**Transferor(s)**

The transferor(s) hereby transfers the land to the transferee(s).

**Name** CIM INVESTS DEVELOPMENT INC.  
**Address for Service** #502-55 Commerce Valley Dr. W.,  
Markham, ON L3T 7V9

I, Jiubin Feng, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Transferee(s)****Capacity****Share**

**Name** CIM BAYVIEW CREEK INC.  
**Address for Service** #502-55 Commerce Valley Dr. W., Markham, ON L3T 7V9

**Statements**

STATEMENT OF THE TRANSFEROR (S): The transferor(s) verifies that to the best of the transferor's knowledge and belief, this transfer does not contravene the Planning Act.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEROR (S): I have explained the effect of the Planning Act to the transferor(s) and I have made inquiries of the transferor(s) to determine that this transfer does not contravene that Act and based on the information supplied by the transferor(s), to the best of my knowledge and belief, this transfer does not contravene that Act. I am an Ontario solicitor in good standing.

STATEMENT OF THE SOLICITOR FOR THE TRANSFEE (S): I have investigated the title to this land and to abutting land where relevant and I am satisfied that the title records reveal no contravention as set out in the Planning Act, and to the best of my knowledge and belief this transfer does not contravene the Planning Act. I act independently of the solicitor for the transferor(s) and I am an Ontario solicitor in good standing.

**Signed By**

Lisa Rossi 1401-480 University Ave acting for Signed 2018 06 21  
Toronto Transferor(s)  
M5G 1V2

Tel 416-599-8080

Fax 416-599-3131

I am the solicitor for the transferor(s) and the transferee(s) and this transfer is being completed in accordance with my professional standards.

I have the authority to sign and register the document on behalf of all parties to the document.

Lisa Rossi 1401-480 University Ave acting for Signed 2018 06 21  
Toronto Transferee(s)  
M5G 1V2

Tel 416-599-8080

Fax 416-599-3131

I am the solicitor for the transferor(s) and the transferee(s) and this transfer is being completed in accordance with my professional standards.

I have the authority to sign and register the document on behalf of all parties to the document.

**Submitted By**

HIMELFARB, PROSZANSKI LLP 1401-480 University Ave 2018 06 21  
Toronto  
M5G 1V2

Tel 416-599-8080

Fax 416-599-3131

**Fees/Taxes/Payment**

Statutory Registration Fee	\$63.65
Provincial Land Transfer Tax	\$0.00
Total Paid	\$63.65

**File Number**

Transferor Client File Number :	180268
Transferee Client File Number :	180268

**LAND TRANSFER TAX STATEMENTS**

In the matter of the conveyance of: 03186 - 4757 PT LT 25, CON 2, (MKM),PTS 1 &amp; 2, PL 65R31680;; TOWN OF RICHMOND HILL

BY: CIM INVESTS DEVELOPMENT INC.

TO: CIM BAYVIEW CREEK INC.

## 1. JIUBIN FENG

I am

- ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- ☐ (c) A transferee named in the above-described conveyance;
- ☐ (d) The authorized agent or solicitor acting in this transaction for \_\_\_\_\_ described in paragraph(s) ( ) above.
- ☒ (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for CIM BAYVIEW CREEK INC. described in paragraph(s) (c) above.
- ☐ (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposed to.

## 3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	\$0.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	\$0.00
(ii) Given Back to Vendor	\$0.00
(c) Property transferred in exchange (detail below)	\$0.00
(d) Fair market value of the land(s)	\$0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	\$0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	\$0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	\$0.00
(h) VALUE OF ALL CHATTELS -items of tangible personal property	\$0.00
(i) Other considerations for transaction not included in (g) or (h) above	\$0.00
(j) Total consideration	\$0.00

## 4.

Explanation for nominal considerations:

b) trustee to trustee (evidence required to be submitted)

## 5. The land is subject to encumbrance

## 6. Other remarks and explanations, if necessary.

- The information prescribed for purposes of section 5.0.1 of the Land Transfer Tax Act is not required to be provided for this conveyance.
- The transferee(s) has read and considered the definitions of "designated land", "foreign corporation", "foreign entity", "foreign national", "specified region" and "taxable trustee" as set out in subsection 1(1) of the Land Transfer Tax Act. The transferee(s) declare that this conveyance is not subject to additional tax as set out in subsection 2(2.1) of the Act because:
- (c) The transferee(s) is not a "foreign entity" or a "taxable trustee".
- The transferee(s) declare that they will keep at their place of residence in Ontario (or at their principal place of business in Ontario) such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act for a period of at least seven years.
- The transferee(s) agree that they or the designated custodian will provide such documents, records and accounts in such form and containing such information as will enable an accurate determination of the taxes payable under the Land Transfer Tax Act, to the Ministry of Finance upon request.

**PROPERTY Information Record**

A. Nature of Instrument: Transfer  
LRO 65 Registration No. YR2840443 Date: 2018/06/21

B. Property(s): PIN 03186 - 4757 Address 10747 BAYVIEW AVENUE Assessment 1938050 - 05119000  
RICHMOND HILL Roll No

C. Address for Service: #502-55 Commerce Valley Dr. W., Markham, ON L3T 7V9

D. (i) Last Conveyance(s): PIN 03186 - 4757 Registration No. YR2157080  
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes ☒ No ☐ Not known ☐

E. Tax Statements Prepared By: Lisa Rossi  
1401-480 University Ave  
Toronto M5G 1V2



TAB K

**EXHIBIT "K"****TRUSTEE AND BENEFICIAL OWNER AGREEMENT**

This Agreement is made as of <sup>13<sup>th</sup></sup> day of May, 2016

BETWEEN:

**CIM INVESTS DEVELOPMENT INC.**

(the "Trustee")

and

**BAYVIEW CREEK (CIM) LP**

(the "Beneficial Owner")

and

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

(the "DUCA")

WHEREAS:

- A. The Trustee is the registered legal owner of the lands and premises legally described as Part of Lot 25, Concession 2 (MKM) designated as Parts 1 and 2, Plan 65R31680, in the Town of Richmond Hill and municipally known as 10747 Bayview Avenue, Richmond Hill ON (the "Property").
- B. The Trustee holds the Property and all personal property relating thereto in trust as nominee and bare trustee for the sole use, benefit and advantage of the Beneficial Owner.
- C. The Trustee is or will be indebted to DUCA (the "Indebtedness").
- D. It has been agreed that as security for the Indebtedness DUCA will be granted a mortgage in respect of the Property.

For the sum of Ten Dollars (\$10.00) and other good and valuable consideration, now paid and delivered by each party to the others, the receipt and sufficiency of which is hereby acknowledged by each party, the parties agree as follows:

#### SECTION 1- AGREEMENT

1.1 The Trustee and the Beneficial Owner jointly and severally represent and warrant to DUCA that the Trustee holds the Property as nominee and bare trustee for the sole use, benefit and advantage of the Beneficial Owner and for no other person or entity and that the Beneficial Owner is the only beneficial owner of the Property.

1.2 The Beneficial Owner hereby consents to and irrevocably authorizes and directs the Trustee to grant and to execute the following security documents:

- (a) a credit agreement dated April 15, 2016, between DUCA and the Trustee (the "Credit Agreement");
- (b) a mortgage and charge of the Property in the amount of \$20,720,000.00 (the "Mortgage");
- (c) a general assignment of rents and leases relating to the Property (the "General Assignment");
- (d) a general security agreement relating to the Property (the "GSA"); and
- (e) such other security or documents as may be required by DUCA or its solicitors (the "Additional Security")

1.3 The Mortgage, General Assignment, GSA and Additional Security are hereinafter collectively referred to as the "Security".

1.4 The Beneficial Owner hereby ratifies, confirms and authorizes the entering into by the Trustee of all documents related to the Indebtedness, the Property and the Security which may heretofore have been, or hereafter will be, executed or entered into by the Trustee, including, without limitation, the Credit

Agreement.

1.5 The Beneficial Owner hereby agrees that its beneficial interest in the Property and all personal property relating thereto shall be bound by and subject to all terms and conditions of the Security and further represents and warrants that it has authority to ratify, confirm and authorize the execution and delivery by the Trustee of the Security and that there is no agreement, written or oral, whereby it is prohibited or restricted from so doing.

1.6 The Beneficial Owner covenants, promises and agrees as principal debtor and not as surety, to and with DUCA, that it will pay or cause to be paid to DUCA, the principal sum under the Credit Agreement plus interest at the rate set out in the Credit Agreement (as same may be amended, extended, renewed, or replaced from time to time) and all other monies secured by the Security, on the days and times and in the manner provided in the Credit Agreement and the Security and will observe and keep all the covenants, provisos, conditions, agreements and stipulations set out in the Credit Agreement and the Security applicable to it according to the true intent and meaning thereof and these covenants shall be binding upon the Beneficial Owner notwithstanding the giving of time for payment of amounts owing under the Credit Agreement or the Security or the varying of terms of payment thereof or the rate of interest thereon.

1.7 The Beneficial Owner hereby confirms that all its right, title and interest in and to the Property and all personal property relating thereto will be charged by the Security, but by way of confirmation of and in supplement to the Security, and for the better assuring, granting, conveying, assigning, transferring, mortgaging, pledging and charging the Property and all personal property relating thereto unto DUCA, the Beneficial Owner does hereby grant, convey, assign, transfer, mortgage, pledge, grant a security interest in and charge as and by way of a fixed and specific mortgage and charge to and in favour of DUCA, all the right, title, estate and interest which the Beneficial Owner may have or may hereafter acquire in and to the Property and all personal property relating thereto subject to the terms of the Security and proviso for defeasance contained in the Mortgage.

1.8 The Trustee and Beneficial Owner shall, from time to time, promptly take such action and execute and deliver such further documents as may be reasonably necessary or appropriate to give effect to the provisions and the intent of this agreement.

1.9 To the extent that DUCA may be prejudiced by the fact that the Beneficial Owner is not the registered owner of the Property, the Beneficial Owner and the Trustee hereby irrevocably appoint DUCA to be their attorney in their name and on their behalf to execute any deeds, conveyances, assignments and assurances and take any action which should or needs to be taken in connection with granting of further assurances as provided in this agreement.

1.10 The Beneficial Owner hereby postpones and subordinates any and all rights, claims and security which each or any of them may have as against the Property in favour of DUCA.

1.11 All right, title and interest in and to the Property and the rents and income to be derived therefrom and the chattels, fixtures and equipment situate in, on or about the Property and used in connection therewith will be charged to DUCA under the Security to be executed and delivered by the Trustee in favour of DUCA.

1.12 In this agreement words importing the singular include the plural and vice versa and words importing gender include all genders.

1.13 This agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

1.14 No amendment of this agreement shall be binding unless in writing and signed by the parties.

1.15 This agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns, including without limitation, all persons who from time to time hereafter acquire the Beneficial Owner, portions of the beneficial ownership interest in the Property or any personal property relating thereto.

The Parties have executed this Agreement as of the date first written above.

**CIM INVESTS DEVELOPMENT INC.**

Per: 

Name: Jiubin Feng

Title: President

I have authority to bind the corporation.

**CIM INVESTS DEVELOPMENT INC., as general  
partner for and on behalf of BAYVIEW CREEK  
(CIM) LP**

Per: 

Name: Jiubin Feng

Title: President

I have authority to bind the corporation.

TAB L

**DISCHARGE STATEMENT**

DATE: June 29, 2021

RE: **BORROWER:** Bayview Creek (CIM) LP  
**ACCOUNT NUMBER:** 492229373010  
**PROPERTY ADDRESS:** 10747 Bayview Ave,  
Richmond Hill,  
ON L4C 0K9

---

Principal Balance as of <b>June 29, 2021</b>	\$	20,720,000.00
Accrued Interest to June 29, 2021	\$	1,299,938.74
Interest Reserve	\$	(4,523.28)
Legal Fees Paid	\$	146,529.41
<b>TOTAL</b>	<b>\$</b>	<b>22,161,944.87</b>
<hr/>		
<b>Per Diem Rate</b>	<b>\$</b>	<b>4,796.82</b>

Funds must be made payable to **DUCA FINANCIAL SERVICES CREDIT UNION LTD.** and delivered to the attention of the **Commercial Mortgage Department** at our offices at **5255 Yonge Street, 4th Floor, Toronto, ON M2N 6P4.**

**Please be advised that any monies received in our offices after 2:00 p.m. will be processed on the next business day and will be subject to the applicable per diem rate.**

Upon receipt of the "TOTAL" amount indicated on this statement, we will execute a Discharge of Charge. If a registration fee for E-Registration has been charged above, a registered document will be forwarded instead along with discharges of any PPSA registrations, within a reasonable period of time.

We assume all payments due on or before the Payout Date will be made and honoured.

This statement is only valid for 30 days from the date of this letter. If payout figures are required after this time period, please request another statement.

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Ivan Bogdanovich  
Director, Special Assets  
E.&O.E.

Nov-06

TAB M

April 15, 2016

Bayview Creek (CIM) LP by its  
General Partner, CIM Invests Development Inc.  
9140 Leslie Street, Unit 310  
Richmond Hill, ON

Attention: Mr. Jiubin Feng

Dear Mr. Feng:

We are pleased to advise you that DUCA Financial Services Credit Union Ltd. (the "**Lender**") has approved a credit facility in favour of Bayview Creek (CIM) LP (the "**Borrower**") for a project comprised of two, 6-storey apartment buildings and 81, 4-storey townhouse dwelling units consisting of a total of 306 dwelling units, 691 parking spaces and approximately 3,000 square metres of commercial space (collectively, the "**Project**") to be constructed on 9.23 acres of vacant land fronting Bayview Avenue and located in Richmond Hill, Ontario (the "**Property**") upon the terms and conditions described in this commitment letter (the "**Commitment**") which upon execution by the Lender, the Borrower, and Jiubin Feng, Dianyu Zhang and Xiaoxin Zhang (collectively, the "**Guarantors**") will constitute an agreement which shall bind the Borrower, the Guarantors and the Lender.

## 1. CREDIT FACILITY

The Lender establishes a demand non-revolving facility in the amount of \$20,720,000 in favour of the Borrower (the "**Credit Facility**").

Notwithstanding compliance with the covenants and all the terms and conditions of this Commitment, the Credit Facility is repayable **ON DEMAND**.

## 2. PURPOSE

The Loan made and Interest Reserve established under the Credit Facility will only be used for the following respective purposes:

- (a) Land loan - to finance repayment of the Private Mortgage in the approximate amount of \$14,000,000. Excess proceeds, if any, shall be funded to the Borrower; *and other costs related to the Bayview*
- (b) Servicing loan - to finance the Servicing costs ~~of the~~ Project in the approximate amount of \$5,538,000; and *△*
- (c) Interest reserve (the "**Interest Reserve**") - to establish an Interest Reserve in the amount of \$1,182,000 which shall be deducted from the first Advance and held in a GIC account with DUCA for the purposes of serving as cash collateral for the *⑤ ③ ④*



083

~~and shall be released fully upon successful~~  
interest obligations of the Borrower herein. The Credit Facility shall be serviced by ~~the Borrower~~ <sup>the Borrower</sup> from resources outside of the Project and the Interest Reserve shall be held by DUCA as cash collateral. ~~Project~~

### 3. SOURCES AND USES OF FUNDS

Sources of Funds	\$	%	Use of Funds	\$	%
Loan	20,720,000	100	Refinance Private Mortgage	14,000,000	68
			Site Servicing costs <sup>and other Bayview Project Related</sup>	5,538,000	27
			Interest Reserve (GIC)	1,182,000	6
<b>TOTAL</b>	<b>20,720,000</b>	<b>100%</b>	<b>TOTAL</b>	<b>20,720,000</b>	<b>100%</b>

### 4. CLOSING DATE

The date of the first Advance which shall be no later than May 1, 2016.

### 5. MATURITY DATE

The Credit Facility shall mature and any outstanding balance shall become due and payable in full on the earlier of: (a) 12 months from the Closing Date; and (b) the date on which the Lender demands repayment of the Credit Facility in its sole discretion.

### 6. BORROWING OPTIONS

Prime Rate Loan.

### 7. INTEREST RATE AND PAYMENTS

#### (a) Credit Facility

The Borrower will pay interest at a rate per annum equal to the Prime Rate plus 3.00% for the Credit Facility calculated and payable monthly on the first day of each month not in advance both before and after maturity, default and judgment. Interest will accrue from the date of disbursement of Advance monies to the Lender's solicitors.

#### (b) Interest Reserve

The Interest Reserve shall be held in a GIC for a one year term with DUCA.

### 8. PREPAYMENT

The Borrower may prepay the whole of the Credit Facility at any time upon 5 Business Days prior written notice to the Lender and upon payment of an amount equivalent to three (3) months interest on the principal amount of the Loan outstanding on the prepayment date.

## 9. ADVANCES/AVAILABILITY

- (a) **Credit Facility:** Funding under the Credit Facility shall be advanced in one lump sum.
- (b) **Interest Reserve:** The Interest Reserve shall be deducted from the first Advance to be deposited into a GIC held by the Lender in an amount equal to \$1,182,000 to be used as cash collateral with respect to the obligations of the Borrower herein. The Interest Reserve shall be maintained at all times and in the event the Interest Reserve is utilized by the Lender, it shall be replenished by way of equity injection by the Borrower and/or the Guarantors, as determined by the Lender.

## 10. CONDITIONS PRECEDENT TO FIRST ADVANCE

The obligation of the Lender to make the first Advance are subject to and conditional upon delivery and/or the prior satisfaction of the following Conditions Precedent:

- (a) The Lender will have received a request for the Advance at least five Business Days prior to the proposed Advance date;
- (b) The Borrower shall be fully in compliance with all the terms and conditions of the Loan Documents and all representations and warranties contained herein remain true as of the date of the date of Advance;
- (c) A Material Adverse Change will not have occurred and be existing or, in the reasonable opinion of the Lender, is not threatened or pending;
- (d) The Lender will have received a policy of title insurance satisfactory to the Lender for the Property as required herein;
- (e) All Security shall be in place satisfactory to Lender's solicitor;
- (f) A satisfactory appraisal from and/or a peer review of an existing appraisal of the Property performed by a certified AACI appraiser approved by the Lender confirming a minimum land value of \$34,534,000 on an "as is" basis with no hypothetical assumptions;
- (g) Reliance letter(s) for above referenced appraisal;
- (h) Phase 1 Environmental Site Assessment for the Property and approved by the Lender (the "ESA"); [RECEIVED]
- (i) A reliance letter for the ESA;
- (j) A copy of the organizational chart outlining beneficial ownership of the Project confirming individual direct/indirect control;
- (k) Satisfactory credit bureau report for Borrower and Guarantors; [RECEIVED]

- (l) Notice to Reader and Review engagement financial statements prepared by acceptable independent chartered accountants and tax returns with notices of assessment for the Borrower and CIM Developments Inc. approved by the Lender;
- (m) Current net worth statement of Xiaoxin Zhang with personal tax returns and notice of assessments for the past 2 years indicating all taxes paid and approved by the Lender;
- (n) Most recent realty tax bill and evidence of current payments;
- (o) Evidence of appropriate insurance is required herein and as approved by the insurance consultant selected by the Lender;
- (p) A satisfactory sub-search must be obtained by Lender's solicitor;
- (q) Delivery of corporate documents for the Borrower and the Articles of incorporation with Form 1 indicating officers and directors of CIM Invests Development Inc.;
- (r) Payment of all fees to the Lender or its consultants herein;
- (s) the Lender shall have received a title opinion from its solicitors dated the date of the first Advance or a title insurance policy confirming: (a) the Borrower has good and marketable title to the Project, subject only to Permitted Encumbrances, and (b) the Charge constitutes a good and valid first charge on the Property, subject only to Permitted Encumbrances;
- (t) the Borrower shall have opened an account with the Lender and deposited the sum of \$1.00 into a membership share account and a one-time commercial account opening fee of \$30.00 shall have been paid, into which the Advance will be deposited;
- (u) the Lender will have received identity certificates with respect to the Borrower and Guarantors in the form required by the Lender;
- (v) the Lender will have received all required identification and other due diligence materials required with respect to the Borrower to allow the Lender to comply with its obligations under the AMLA;
- (w) such first Advance must have occurred no later than May 1, 2016; and
- (x) Such further documents/information as may be requested from time to time by the Lender.

## 11. SECURITY

As general and continuing security for the payment and performance of the Obligations, the following security will be granted to the Lender in form and with content satisfactory to the Lender and its solicitors:



- (1) the Charge;
- (2) a general security agreement given by the Borrower to the Lender providing a first priority security interest over all the present and future assets, property and undertaking of the Borrower including plans, contracts, drawings, agreements, permits, approvals, equipment, receivables, inventory and intellectual property;
- (3) an assignment of the Borrower's insurance policies;
- (4) a general assignment of the Leases and rents, revenues and profits payable thereunder made by the Borrower in favour of the Lender;
- (5) the unconditional guarantee and postponement of claim by the Guarantors of all Obligations owing by the Borrower to the Lender; this guarantee and postponement of claim is in addition to the Guarantors' obligations under the environmental indemnity and debt service;
- (6) standstill, subordination, postponement agreements and assignments of claim from any shareholder or stakeholder of the Borrower who are not Guarantors and any other Person the Lender may designate, acting reasonably;
- (7) a joint and several environmental indemnity to be provided by the Borrower and Guarantors in favour of the Lender;
- (8) Certificate of Independent Legal Advice for Shurong Zhu with respect to her joint ownership in Jiubin Feng's residence and for Jing Wang with respect to her joint ownership in Dianyan Zhang's residence;
- (9) Cash Collateral Agreement with respect to Interest Reserve;
- (10) Right of First Refusal re construction financing;
- (11) If the Borrower holds the Property as nominee and bare trustee for the sole use, benefit and advantage of another person (the "**Beneficial Owner**"), the Borrower and Beneficial Owner shall grant to the Lender a trustee and beneficial owner agreement (in form and content satisfactory to the Lender and its solicitors) prior to the initial Advance, and all the covenants, agreements, rights, obligations, representations, warranties and other provisions set out in this Commitment relating to the Borrower shall apply, *mutatis mutandis*, to the Beneficial Owner;
- (12) letters of opinion of the Borrower's and the Guarantor's solicitors as to such matters and in such form as the Lender's solicitors may reasonably require, including with respect to usual corporate matters and enforceability and the enforceability of the Loan Documents, addressed to the Lender and its solicitors; and
- (13) such other security as the Lender or its solicitors require, which is contemplated by this Commitment or which security more fully gives effect to the security contemplated by this Commitment.

*to the extent that they are enforceable  
against borrowers generally*

## 12. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender as follows, and acknowledges and confirms that the Lender is relying upon such representations and warranties:

- (1) Judgments The Borrower is not subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation that has not been stayed or of which enforcement has not been suspended which in the aggregate exceed \$50,000.
- (2) Absence of Litigation There are no actions, suits or proceedings pending or, to the best of the Borrower's knowledge and belief, threatened against or affecting the Borrower claims which in the aggregate exceed \$100,000 that are reasonably likely to cause, either separately or in the aggregate, a Material Adverse Change. The Borrower is not in default with respect to any Applicable Law in a manner or to an extent that could reasonably be expected to cause a Material Adverse Change.
- (3) Title to Property The Borrower is the registered owner of the Property with good and marketable title thereto, and any other real and personal property of any nature which is part of the Project, in each case free and clear of all Encumbrances except Permitted Encumbrances, and no Person has any agreement or right to acquire an interest in the Project.
- (4) Compliance with Laws To the best of the knowledge of the Borrower, it is not in default under any Applicable Law where such default could reasonably be expected to cause a Material Adverse Change. To the best of the knowledge of the Borrower, the Property is in compliance in all material respects with all Applicable Laws. Further, there are no facts known or which ought reasonably to be known, which could give rise to a notice of non-compliance to such extent with any Applicable Law.
- (5) Environmental Matters
  - (a) The Property is in full compliance in all material respects with all Environmental Law; the Borrower is not aware of, nor has it received notice of any past, present or future condition, event, activity, practice or incident that may interfere with or prevent the compliance or continued compliance of the Project or the Borrower in all respects with all Environmental Law; and the Borrower has obtained all licences, permits and approvals in connection with the Project that are currently required under all Environmental Law and is in full compliance with the provisions of such licences, permits and approvals.
  - (b) Other than as disclosed in the environmental reports delivered by the Borrower to the Lender pursuant hereto, the Borrower is not aware that any Hazardous Substances exist on, about or within or have been used, generated, stored, transported, disposed of on, or Released from the Property other than in accordance and compliance with all Environmental Law.
- (6) Zoning, Uses and Expropriation Borrower shall proceed with Official Plan and

Zoning By-law Amendment, Site Plan and draft plan for subdivision applications required to permit construction and development of the Project, as disclosed to the Lender.

- (7) Insolvency The Borrower (a) has not committed any act of bankruptcy; (b) is not insolvent, or has not proposed or given notice of its intention to propose a compromise or arrangement to its creditors generally; (c) has not made any petition for a receiving order in bankruptcy, made a voluntary assignment in bankruptcy.
- (8) Full Disclosure All information provided or to be provided to the Lender in connection with the Credit Facility is true and correct in all material respects and none of the documentation furnished to the Lender by the Borrower, omits or will omit as of such time, a material fact necessary to make the statements contained therein not misleading in any material way.

The representations and warranties set out above survive the execution and delivery of the Loan Documents and will be deemed to be repeated by the Borrower as of each Advance date.

### 13. POSITIVE COVENANTS

So long as this Commitment is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will:

- (1) Access to Information Promptly provide the Lender with all information reasonably requested by any of them from time to time at reasonable intervals in connection with this Commitment concerning its financial condition and the Project.
- (2) Obligations and Taxes Pay or discharge, or cause to be paid or discharged, before the same will become delinquent (a) all Taxes imposed upon it or upon its income or profits or in respect of its business or the Project and file all tax returns in respect thereof; (b) all lawful claims for labour, materials and supplies; (c) all required payments under any of its debt; and (d) all other obligations as well as complying with all Applicable Laws.
- (3) Use of Credit Facility Use the proceeds of the Credit Facility only for the purposes specified herein and not for the benefit of or on behalf of any Person other than the Borrower.
- (4) Insurance Prior to any disbursement of the Loan and throughout the term of the Loan, the Borrower shall place and maintain insurance required by the Lender, including, without limitation, the following insurance coverage, in respect of the Property, and all such insurance coverage shall be placed and kept in force with a company or companies, and with deductible amounts, satisfactory to the Lender. Where under the insurance policies described below, loss is payable to the Lender, such insurance policies shall show loss payable to the Lender as first mortgagee under the Property.
  - (a) Comprehensive general liability insurance for bodily injury and/or death and damage to property of others for a minimum amount of \$10,000,000 per



occurrence, written on an inclusive basis.

Evidence of appropriate insurance policies as required herein shall be reviewed and approved by the Lender and its insurance consultant.

- (5) Material Project Agreements and Permitted Encumbrances Advise the Lender in writing of all new Material Project Agreements and Permitted Encumbrances (or any material amendments of existing Material Project Agreements or Permitted Encumbrances) entered into forthwith following the entering into thereof and shall deliver forthwith copies thereof to the Lender.
- (6) Access Permit the Lender (through its agents, officers or employees), for the purpose of monitoring compliance with the covenants and obligations of the Borrower hereunder, at its risk, to visit and inspect the Property to conduct tests, measurements and surveys in relation to the Project, provided that such tests, measurements and surveys are conducted in accordance with prudent industry practice and Applicable Law.
- (7) Construction Lien Act Comply with the provisions of the Construction Lien Act, including retaining the Holdbacks required thereby. In the event that any lien is registered under the Construction Lien Act against the Property (or notice of such lien is provided to the Lender), the Borrower shall cause such lien to be vacated or discharged within 10 Business Days.
- (8) HST Refunds File on a monthly basis all returns and other documents necessary to obtain the refund of HST in respect of the Project.
- (9) Signage Upon the request of the Lender, cause any sign to be provided by the Lender erected in respect of the Project to contain an acknowledgement of the financing provided by the Lender.
- (10) Location of Operation Accounts Maintain an account with the Lender during the term of this Commitment.
- (11) Right of First Refusal The Lender shall have a right of first refusal on any construction loan for the Project which shall be incorporated in a form of Right of First Refusal satisfactory to the Lender.

#### 14. **NEGATIVE COVENANTS**

So long as this Commitment is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will not:

- (1) No Sale of Property The Borrower shall not Dispose of the Property or any part thereof or interest therein except as contemplated herein, unless approved by the Lender in writing.
- (2) No Transfer of Interest in Borrower Permit any Disposition of any interest in the Borrower without giving 30 days' prior written notice to the Lender and obtaining

the Lender's prior written consent.

- (3) No Consolidation, Amalgamation Consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution without the consent of the Lender in its sole and absolute discretion.
- (4) No Change of Name Change its name without providing the Lender with 30 days' prior written notice thereof.
- (5) No Distributions Make any Distribution including, without limitation, any management fees until all Obligations under the Credit Facility has been repaid in full.
- (6) Equity Borrower and Guarantors not to withdraw equity from the Project until the Credit Facility has been repaid in full.

## 15. COSTS AND FEES

Whether or not the transactions contemplated hereby are completed, the Borrower shall pay the legal fees and disbursements of the Lender's solicitors, and the costs incurred by the Lender and its consultants referred herein including, without limitation, its insurance consultant. Such fees, disbursements and costs may be deducted from any Advance.

## 16. APPLICATION FEE

A fee of \$137,500.00 has been received. This fee is non-refundable and is earned by the Lender as compensation for costs incurred, including time expended in processing, approving and providing this Commitment, but excluding the Costs and Fees referred to above.

## 17. COMMITMENT FEE

A fee of \$70,500 is payable from the first Advance.

## 18. ANNUAL REVIEW FEE

The Lender shall conduct a review of the Credit Facility and Project each year during continuation of the Credit Facility. A minimum annual review fee of \$2500 will be charged by the Lender to the Borrower.

## 19. APPRAISALS AND ASSESSMENTS



All appraisals, inspections, assessments and information with respect to the Property provided to the Lender are provided only for the purpose of assisting it in determining whether to approve the Credit Facility, and no acceptance, use of or adoption of such appraisals, inspections, assessments or information by the Lender shall be construed as any agreement by it as to the value or condition of the Property or Project. The Borrower is responsible for all appraisal and assessment fees.

## **20. REPORTING REQUIREMENTS**

For the purposes of the Lender's annual review of the Credit Facility and Project, the Borrower and Guarantors shall provide the following statements and information (collectively the "Statements") to the Lender:

- (1) notice to reader financial statements and corporate tax returns along with the notice of assessment prepared by accountants acceptable to the Lender for the Borrower within five months of each fiscal year end;
- (2) updated net worth statement and personal tax returns along with the notice of assessment for the Guarantors together with supporting information as requested by the Lender within five months of each fiscal year end of the Borrower;
- (3) current realty Taxes bill on an annual basis by December 31<sup>st</sup> of each year with confirmation that all required Taxes have been paid;
- (4) such other information pertinent to the Property and Project as the Lender may request.

## **21. ASSIGNMENT AND SYNDICATION**

Neither the Borrower nor the Guarantors shall have the right to assign any of its respective rights or obligations under this Commitment or in respect of the Credit Facility to any Person. The Borrower and Guarantors agree that the Lender may transfer and assign or syndicated in whole or in part, without their consent and without notice to them, the Lender's rights and obligations under the Credit Facility and Loan Documents to any Person. The Borrower and Guarantors agree that the Lender may disclose confidential information relating to the Credit Facility and Loan Documents to any Person in connection with any of the transactions contemplated in this paragraph.

## **22. CONSENT TO DISCLOSURE**

The Borrower hereby consents (such consent to remain in force as long as the Credit Facility is outstanding) to any Governmental Authority or other Person having information relating to HST or any other amount required to be paid by the Borrower, where the failure to pay such other amount could give rise to a claim ranking or capable of ranking in priority to the Security, releasing such information to the Lender at any time upon its request. The Borrower shall provide signed third party authorizations in support of the foregoing at any time upon the Lender's request.

## **23. AMENDMENT**

This Commitment shall only be amended by agreement in writing executed by all the parties hereto.

**24. WAIVER**

Any failure by the Lender to exercise any rights or remedies under the Loan Documents shall not constitute a waiver thereof.

**25. GOVERNING LAW**

This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

**26. NOTICES**

Any notice or demand or other written communication hereunder shall be given by facsimile, letter or by electronic means of communication. A facsimile communication shall be deemed received on the Business Day following its transmission. A letter shall be deemed received when delivered to the receiving party at the address shown on page 1 hereof. An electronic communication shall be deemed received on the day of transmittal if a Business Day and before 5:00 p.m. or, if not, on the next Business Day. Each party shall be bound by any notice given as provided hereunder and entitled to act in accordance therewith.

**27. ADDITIONAL LOAN TERMS**

The definitions attached as Schedule "A" to this Commitment shall form a part hereof as if incorporated herein.

**28. LENDER APPROVED SOLICITORS**

Robins Appleby LLP  
120 Adelaide Street West  
Suite 2600  
Toronto, Ontario M5H 1T1

Attention: Leor Margulies / Tara Welat  
Fax: (416) 868-0306  
Email: [lmargulies@robapp.com](mailto:lmargulies@robapp.com) / [twelat@robapp.com](mailto:twelat@robapp.com)

**29. ACCEPTANCE**

The terms of this Commitment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender's head office at 5290 Yonge Street, Toronto, Ontario, M2N 5P9, on or before 5:00 p.m. on April 25<sup>th</sup>, 2016, after which date and time this Commitment shall lapse and become null

and void.

Yours truly,

**DUCA FINANCIAL SERVICES  
CREDIT UNION LTD.**

Per: 

Name: Andrew Ramdeholl

Title: VP, Commercial Banking Group

**BAYVIEW CREEK (CIM) LP by its  
General Partner, CIM Invests  
Development Inc.**

Per: 

Name: Jiubin Feng

Title: President

cc: Francis F. Sajed

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTED** on: April \_\_, 2016

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

**Witness:**

Name: \_\_\_\_\_

  
Jiubin Feng

**Witness:**

Name: \_\_\_\_\_

  
Dianyuan Zhang

**Witness:**

Name: \_\_\_\_\_

  
Xiaoxin Zhang

**SCHEDULE "A"**  
**ADDITIONAL LOAN TERMS**

Attached to and forming part of a commitment letter dated April 15, 2016 between DUCA Financial Services Credit Union Ltd. (the "**Lender**"), as Lender, Bayview Creek (CIM) LP (the "**Borrower**"), and Jiubin Feng, Dianyuan Zhang and Xiaoxin Zhang (collectively, the "**Guarantors**").

**DEFINITIONS**

For the purpose of this Commitment, the following terms and phrases shall have the following meanings:

"**Advance**" means any advance hereunder by way of a Loan or the issuance of a Letter of Credit.

"**AMLA**" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

"**Applicable Law**" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person, in each case whether or not having the force of law.

"**Arm's Length**" has the meaning ascribed to such term as set out in section 251 of the *Income Tax Act* (Canada).

"**Borrower**" means Bayview Creek (CIM) LP and includes any beneficial owner of the Property.

"**Business Day**" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.

"**Charge**" means a charge in the principal amount of \$20,720,000 to be granted by the Borrower in favour of the Lender constituting a first charge on the Property.

"**Conditions Precedent**" means those conditions to funding Advances as per Section 11.

"**Construction Lien Act**" means the *Construction Lien Act* (Ontario).

"**Credit Facility**" means the demand non-revolving facility in the amount of \$20,720,000 in favour of the Borrower pursuant to this Commitment.

"**Default**" means any non-compliance by the Borrower or Guarantors with the covenants, agreements, terms and conditions set out in the Loan Documents.

"**Disposition**" means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, license or other disposition of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, and the verb "**Dispose**" has a corresponding meaning.



**"Distribution"** means:

- (1) any payment, management fee, declaration of dividend or other distribution, whether in cash or property to any holder of shares, limited partnership units or other equity interests of any class of such Person; or
- (2) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares of such Person, or of any options, warrants or other rights to acquire any of such shares,

and the verb **"Distribute"** has a corresponding meaning.

**"Encumbrance"** means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person's property, or any consignment by way of security or capital lease (or a lease that should be treated as such) of property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **"Encumbrances"**, **"Encumbrancer"**, **"Encumber"** and **"Encumbered"** have corresponding meanings.

**"Environmental Law"** means any Applicable Law relating to the environment, including those pertaining to:

- (1) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same of Hazardous Substances; and
- (2) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

**"Governmental Authority"** means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, any body or authority exercising any functions of government, and any court;

**"Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to any Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

**"Holdback"** means any amount required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Property in accordance with the Construction Lien Act.

**"HST"** means the harmonized sales tax under the *Excise Tax Act* (Canada).

**"Interest Reserve"** shall have the meaning ascribed thereto in Section 2(c).

**"Lease"** means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Project.

**"Loan"** means any extension of credit by the Lender under this Commitment.

**"Loan Documents"** means (1) this Commitment; (2) the Security; and (3) all present and future agreements, documents, certificates and instruments delivered by the Borrower or Guarantors to the Lender pursuant to or in respect of this Commitment or the Security, in each case as the same may from time to time be amended, and **"Loan Document"** means any one of the Loan Documents.

**"Material Adverse Change"** means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (1) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of the Borrower, taken as a whole; or (2) the ability of the Borrower to perform its Obligations under the Loan Documents in all material respects.

**"Obligations"** means all obligations of the Borrower to the Lender under or in connection with his Commitment including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender.

**"Permitted Encumbrances"** means, with respect to the Property means those Encumbrances affecting the Project which the Lender and its counsel have approved.

**"Person"** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**"Prime Rate"** means the annual rate of interest announced from time to time by the Lender as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Lender as its prime rate.

**"Prime Rate Loan"** means a Loan in Canadian dollars made by the Lender to the Borrower with respect to which interest is to be calculated by reference to the Prime Rate.

**"Private Mortgage"** means the Charge registered as Instrument No. YR1901413 on October 22, 2012 in favour of 1048815 Ontario Limited, Remo Lecce, Rosa Lecce, Frank Lecce and Eugene Boccia Holdings Limited and Notices registered as Instrument Nos. YR2155093 and YR2396320, securing the principal amount of \$14,000,000.00.

**"Project"** means the development of two, 6-storey apartment buildings and 81, 4-storey townhouse dwelling units consisting of a total of 306 dwelling units, 691 parking spaces and approximately 3,0003 square metres of commercial space to be constructed on the Property.

**"Property"** shall mean the 9.23 acres of vacant land located in Richmond Hill, Ontario and legally described in Schedule "B".

**"Release"** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission,

emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal, and the word **"Released"** has a corresponding meaning.

**"Security"** means the Security referenced in Section 11 and any other security documents granted by the Lender herein.

**"Servicing"** means the design and construction of the public works requires for the Project in accordance with the Governmental Authorities including, without limitation, sanitary sewers, drainage works, storm sewers, water mains, streets, pavements, curbs, gutters, rights-of-way etc.

**"Taxes"** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

TAB N



LRO # 65 Charge/Mortgage

Received as YR2473034 on 2018 05 18 at 10:11

The applicant(s) hereby applies to the Land Registrar:

yyyy/mm/dd Page 1 of 5

**Properties**

**FIN** 03108 > 4757 LT Interest/Estate Fee Simple  
**Description** PT LT 25, CON 2, (MGM), PTS 1 & 2, PL 88R31880; TOWN OF RICHMOND HILL  
**Address** 10747 BAYVIEW AVENUE  
 RICHMOND HILL

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

**Name** CIM INVESTS DEVELOPMENT INC.  
**Address for Service** 9140 Leslie Street, Unit 310  
 Richmond Hill ON L4B 0A9

I, Jiubin Feng, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

Capacity

Share

**Name** DUCA FINANCIAL SERVICES CREDIT UNION LTD.  
**Address for Service** 5290 Yonge Street  
 Toronto ON M2N 5P9

**Statements**

Schedule: See Schedules

**Provisions**

<b>Principal</b>	\$ 20,720,000.00	<b>Currency</b>	CDN
<b>Calculation Period</b>	monthly, not in advance		
<b>Balance Due Date</b>	See Schedule		
<b>Interest Rate</b>	Prime + 3% per annum		
<b>Payments</b>			
<b>Interest Adjustment Date</b>			
<b>Payment Date</b>	See Schedule		
<b>First Payment Date</b>			
<b>Last Payment Date</b>			
<b>Standard Charge Terms</b>	201418		
<b>Insurance Amount</b>	full insurable value		
<b>Guarantor</b>			

**Signed By**

<b>Cindy Marie Applegath</b>	2600-120 Adelaide St. West	acting for	<b>Signed</b>	2018 05 18
	Toronto	<b>Chargor(s)</b>		
	MSH 1T1			
<b>Tel</b>	416-588-1080			
<b>Fax</b>	416-588-0366			

I have the authority to sign and register the document on behalf of the Chargor(s).

LRO # 66 Charge/Mortgage

Received as YR2473036 on 2018 05 18 at 10:11

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 5

**Submitted By**

ROBINS APPLEBY LLP

2600-120 Adelaide St. West  
Toronto  
M5H 1T1

2018 05 18

Tel 416-868-1080

Fax 416-868-0306

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.65

Total Paid \$62.65

## SCHEDULE TO CHARGE/MORTGAGE OF LAND LAND REGISTRATION REFORM ACT, 1990

This Schedule forms part of a Charge under the Land Registration Reform Act, R.S.O., 1990, C.L.4 as amended made by **CIM Invests Development Inc.**, as Chargor in favour of **DUCA Financial Services Credit Union Ltd.**, as Chargee and provided by the Chargor pursuant to the terms of the Commitment Letter, defined below.

### 1. **Commitment to Prevail:**

IT IS UNDERSTOOD AND AGREED that notwithstanding the registration of the Charge and the advance of any moneys, the terms and conditions of the letter of commitment dated April 15, 2016 (the "**Commitment Letter**") and as may be further amended from time to time extended by the Chargee to Bayview Creek (CIM) LP (who together with the Chargor are herein referred to as the "**Borrowers**") shall remain binding and effective on the parties hereto and thereto and shall not merge in this Charge nor in any document executed and/or delivered on closing of this transaction and the terms thereof are incorporated herein by reference. A breach of the Commitment Letter or any other document giving contractual relationship as between the Chargor and the Chargee shall constitute a breach and event of default hereunder, and in the event of a conflict or inconsistency between the terms of this Charge and the Commitment Letter, the Lender shall decide which documents prevail in the event of such inconsistency or conflict.

### 2. **Definitions:**

In this Charge and in the Loan Documents, something in the subject matter or context is inconsistent therewith or defined otherwise:

"**Applicable Laws**" means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations and approvals.

"**Borrower Entity**" means each of the Borrowers, each Guarantor, each Indemnitor, and any Person having a beneficial ownership interest in all or any part of the Charged Property from time to time.

"**Control**" means the legal and beneficial ownership of shares of a corporation entitling the holder or holders thereof to 50% or more of the votes and shall include shares, warrants, options or other rights to purchase such securities or obligations convertible into or exchangeable for such securities, or any shareholders and shall include any agreement by which one or more persons may control or veto decisions made the board of directors or shareholders of a corporation.

"**Change in Control**" means the issuance of additional shares, the sale, transfer, assignment or other disposition of outstanding shares, the redemption or cancellation of outstanding shares, the amalgamation or merger of a corporation with another corporation or an agreement entered into or amended or terminated which results in a change in the person or persons who Control a corporation.

"**Costs**" means all reasonable fees, costs, charges and expenses of any Lender Entity for or incidental to (i) preparing, executing and registering the Loan Documents and making each advance of the Loan; (ii) collecting, enforcing and realizing on or under the Loan or the Loan Documents; (iii) inspecting, protecting, securing, completing, insuring, repairing, equipping, taking and keeping possession of, managing, selling or leasing the Property, including curing any defaults under or renewing any leasehold interest; (iv) appointing a receiver (under this Charge or otherwise) and such receiver's fees and expenses (including all agents' and legal fees and disbursements); (v) obtaining any environmental audits or other inspections, tests or reports with respect to the Property; (vi) complying with any notices, orders, judgments, directives, permits, licences, authorizations or approvals with respect to the

Property; (vii) performing the obligations of any Borrower Entity under the Loan Documents; (viii) all reasonable legal fees and disbursements in connection with the Loan, on a full indemnity basis, and (ix) any other fees, costs, charges or expenses payable to any Lender Entity under any of the Loan Documents or Applicable Laws. Costs include interest at the interest rate applicable to the Loan on all such fees, costs, charges and expenses.

**"Governmental Authority"** means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, any body or authority exercising any functions of government, and any court.

**"Lender Entity"** means the Lender and each Person having an ownership interest in the Loan from time to time, any receiver and their respective employees, officers and directors.

**"Loan"** means the Credit Facility, as defined in the Commitment Letter, provided by the Chargee to the Borrowers in the Principal Amount pursuant to the Loan Documents.

**"Loan Documents"** means, collectively, all documents, instruments, agreements and opinions now or hereafter evidencing, securing, guaranteeing and/or relating to the Loan and the Loan Indebtedness or any part thereof, including the Commitment Letter.

**"Loan Indebtedness"** means the aggregate of (i) the Principal Amount, (ii) all interest and compound interest at the Interest Rate, (iii) Costs, (iv) any amount, cost, charge, expense or interest added to the Loan Indebtedness under the Loan Documents or Applicable Laws or which is otherwise due and payable thereunder or secured thereby from time to time, and (v) the payment, performance, discharge and satisfaction of all other obligations of any Borrower Entity under or in respect of the Loan and Loan Documents.

**"Person"** means any individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, estate trustee, legal representative or Governmental Authority.

**"Prime Rate"** means the annual rate of interest announced from time to time by the Chargee as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Lender as its prime rate.

**"Project"** means the two, 6-storey apartment buildings and 81, 4-storey townhouse dwelling units consisting of a total of 306 dwelling units, 691 parking spaces and approximately 3,000 square metres of commercial space to be constructed on the Charged Property.

### 3. **Interest Rate:**

The interest rate and payments applicable to the Loan are as follows:

#### (a) The Credit Facility

The Chargee will pay interest on the Credit Facility at a rate per annum equal to the Prime Rate plus 3.00% per annum (the **"Interest Rate"**) calculated and payable monthly on the first day of each month not in advance both before and after maturity, default and judgment. Interest will accrue from the date of disbursement of advance monies to the Chargee's solicitors. Interest shall be payable on all past due interest from the due date of such interest at the Interest Rate both before and after maturity, default and judgment.

(b) The whole of the said principal sum indicated of this Charge shall become due and be payable on DEMAND at the Interest Rate calculated as aforesaid as well after as before maturity and both before and after default on such portion of the principal as remains from time to time unpaid as indicated on this Charge.

- (c) In the event that any payment permitted or required to be made under this Charge, is made after 2:00 pm on any particular day, that payment date is deemed to have been made on the Banking Day next following. A "Banking Day" shall be a day when the head office of DUCA in the City of Toronto is open for normal business.

4. **Term:**

The Loan shall mature and any outstanding balance shall become due and payable in full on the earlier of: (a) twelve (12) months from the date of the first advance; and (b) the date on which the Chargee demands repayment of the Credit Facility.

5. **Prepayment Provision:**

The Chargor shall have the privilege of prepaying the whole of the principal sum hereby secured at any time upon five (5) Business Days prior written notice to the Chargee and upon payment of an amount equivalent to three (3) months interest on the principal amount of the Loan outstanding on the prepayment date.

6. **Purpose and Sources and Uses of Funds:**

It is understood and agreed that the Credit Facility is comprised, in part, of the servicing loan to finance Servicing costs, as defined in the Commitment Letter, as well as other costs related to the Project.

7. **Due on Sale:**

If the Chargor at any time shall directly or indirectly sell, convey, transfer, further encumber (other than as agreed to pursuant to the Commitment Letter) or dispose of the Charged Property, or any part thereof, or any interest therein, or agree so to do, without the written consent of the Chargee being first obtained, in its absolute discretion, then the Charge, at the option of the Chargee herein, shall immediately become due and payable in full with accrued interest and unpaid interest due hereon. The decision to accelerate the Loan shall be at the sole option of the Chargee. The consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. For the purposes hereof, the expression "indirectly" shall include a "Change in Control" of the Chargor or any of their beneficiaries.

8. **Realty Taxes:**

Notwithstanding Section 9 of the Standard Charge Terms, as long as the Chargor remains the registered owner of the Charged Property and there has been no default under the Charge, the Chargor will be allowed to pay realty taxes in respect of the Charged Property directly to the taxing authority, provided the Chargor gives the Chargee, within 30 days from the date on which each tax instalment is due, a receipt or such other verification as the Chargee may require as evidence that all realty taxes have been paid in full by their due date. If at any time there is a default under the Charge or the Chargor fails to make payments and provide evidence thereof in accordance with this paragraph, the provisions of this paragraph shall cease to apply. A preauthorized withdrawal as shown on a bank statement shall be satisfactory evidence.

In consideration of the foregoing, the Chargor agrees that it shall not make any arrangement or agreement with the taxing authority to defer payment of any realty taxes assessed in respect of the Charged Property.

TAB O

**EXHIBIT "O"****ACKNOWLEDGMENT**

This Set of Standard Charge Terms No. 201418 is included in a Charge between the Chargor and the Chargee.

**CIM INVESTS DEVELOPMENT INC.**

as Chargor

- and -

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

as Chargee

and the Chargor hereby acknowledges receiving a copy of this Set of Standard Charge Terms No. 201418 before signing the Charge.

DATED at Toronto, this 13 day of May, 2016.

**CIM INVESTS DEVELOPMENT INC.**

Per: \_\_\_\_\_

Name: Jiubin Feng

Title: President

*I have the authority to bind the Corporation*

CLAUSES TYPES DE CHARGE			
Filing No.	2014-18	Date	
Filing Date	August 28, 2014	Date of Discharge	
Page 1 of 18	18	Page	

*Deputy Director of Title*

### SET OF STANDARD CHARGE TERMS

**FILED BY: ATRIUM MORTGAGE INVESTMENT CORPORATION and  
CANADIAN MORTGAGE SERVICING CORPORATION**

The following set of Standard Charge Terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act, R.S.O. 1990, C. L.4:

#### 1. NON-MERGER

NOTWITHSTANDING the registration of this Charge and the advance of funds pursuant hereto the terms and/or conditions of the letter of commitment issued by the Chargee pertaining to the loan transaction evidenced by this Charge (the "Commitment Letter") shall remain binding and effective on the parties hereto, and shall not merge in this Charge nor in any document executed and/or delivered on the closing of this transaction, and the terms thereof are incorporated herein by reference. In the event of any inconsistency between the terms of the Commitment Letter and this Charge, the Commitment Letter shall prevail.

#### 2. STATUTORY COVENANTS

THE IMPLIED COVENANTS deemed to be included in a Charge pursuant to Section 7(1) of the Land Registration Reform Act, 1984 (as varied herein) shall be in addition to, and not in substitution for, the covenants and other provisions set forth in the Charge. In the event of any conflict between any such implied covenants (as varied herein) and any other covenant or provision of the Charge, such covenant or provision as herein contained shall prevail.

#### 3. PROVISIO FOR REDEMPTION

PROVIDED this Charge shall be void upon payment of the principal sum herein, in lawful money of Canada with interest as herein provided and taxes and performance of statute labour and performance of all covenants in this Charge. The principal sum secured hereunder together with interest thereon and all other sums payable by the Chargor or any other party under the Commitment Letter hereunder shall collectively be referred to as the "Indebtedness".

#### 4. CHARGE

IN CONSIDERATION of the amounts advanced or to be advanced by the Chargee to the Chargor or to third parties whose indebtedness is referenced in the Commitment Letter, the receipt of which is acknowledged, the Chargor grants, mortgages and charges unto the Chargee forever the lands and all of each parcel of land and premises described in the Charge (the "Charged Lands") as security for the repayment to the Chargee of the Indebtedness with interest at the Interest Rate set out herein.

TO HAVE AND TO HOLD the same with the appurtenances unto and to the use of the Chargee forever, subject to the proviso for redemption thereof hereafter contained.

#### 5. ADVANCE OF FUNDS

THE CHARGOR agrees that neither the preparation, execution nor registration of this Charge shall bind the Chargee to advance the monies hereby secured, nor shall the advance of a part of the principal sum herein bind the Chargee to advance any unadvanced portion thereof, but nevertheless the estate hereby charged shall take effect forthwith upon the execution of this Charge by the Chargor.

#### 6. PAYMENT PROVISIONS

UNLESS otherwise specified in a schedule to this Charge, the following payment provisions shall apply.

Interest at the interest rate stipulated in the Commitment Letter on the amount advanced from time to time shall be computed monthly from the date of such advances and shall become due and be paid on the first day of each and every month.



PROVIDED that the Chargee may require the aforesaid interest on the principal advances from time to time, computed and calculated monthly from the date of such advance, to become due and payable in monthly instalments on the first day of the month following the first advance and on the first day of each and every month thereafter and the balance, if any, of the aforesaid interest on advances shall become due and be paid on the date for adjustment of interest. At the option of the Chargee, interest so due and payable may be deducted from any or all of such advances.

EACH payment when received is to be applied firstly to interest calculated as aforesaid on the principal sum from time to time unpaid and the balance if any of the said monthly instalments shall be applied on account of and in reduction of the principal.

NOTWITHSTANDING the foregoing, in the case of default by the Chargor, the Chargee may then apply any payments received in whatever order it may elect as between taxes, interest, repairs, insurance premiums, any other advance or payments made by the Chargee on behalf of the Chargor hereunder and the unpaid balance of the principal.

AND it is hereby agreed that in the case default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time as well after as before maturity shall bear interest at the rate aforesaid and in case the interest and compound interest are not paid within one (1) month from the time of default, a rest shall be made, and compound interest at the rate aforesaid shall be payable on the aggregate amount then due, as well after as before maturity and so on from time to time and all such interest and compound interest shall be a charge upon the Charged Lands.

#### 7. CHARGOR'S COVENANTS

- (a) THE CHARGOR covenants with the Chargee that the Chargor will pay the Indebtedness herein and interest and observe the proviso for redemption herein, will pay as they fall due all taxes, rates and assessments, whether municipal, local, parliamentary or otherwise which now are or may hereafter be imposed, charged or levied upon the Charged Lands and when required by the Chargee, shall transmit the receipts therefor to the Chargee, subject to Section 9 hereof.
- (b) THE CHARGOR further covenants with the Chargee that the Chargor will pay all amounts which are payable hereunder or which are capable of being added to the principal sum herein pursuant to the provisions of this Charge including, without limiting the generality of the foregoing, all servicing or other fees, costs or charges provided for herein; all insurance premiums; the amount paid for the supply of any fuel or utilities to the Charged Lands; all costs, commissions, fees and disbursements incurred by the Chargee in constructing, inspecting, appraising, selling, managing, repairing or maintaining the Charged Lands when permitted herein; all costs incurred by the Chargee, including legal costs on a solicitor and his own client basis, with respect to the Charge or the enforcement thereof or incurred by the Chargee arising out of or in any way related to this Charge; any amounts paid by the Chargee on account of any encumbrance, lien or charge against the Charged Lands and any and all costs incurred by the Chargee arising out of, or in any way related to, the Chargee realizing on its security by sale or lease or otherwise;
- (c) AND THAT THE CHARGOR has a good title in fee simple to the Charged Lands and has good right, full power and lawful and absolute authority to charge the Charged Lands and to give his Charge to the Chargee upon the covenants contained in this Charge;
- (d) AND THAT THE CHARGOR has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Charged Lands, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the appropriate land registry office disclose;

- (e) AND THAT THE CHARGOR will execute such further assurances of the Charged Lands as may be requisite.

## 8. UTILITIES

THE CHARGOR covenants that he will pay all utility and fuel charges related to the Charged Lands as and when they are due and that he will not allow or cause the supply of utilities or fuel to the Charged Lands to be interrupted or discontinued and that, if the supply of fuel oil or utilities is interrupted or discontinued, he will take all steps that are necessary to ensure that the supply of utilities or fuel is restored forthwith. It is specifically agreed that the failure to pay all fuel and utility charges as and when they are due or the interruption or discontinuing of the supply of fuel or utilities to the Charged Lands shall constitute a default by the Chargor within the meaning of this Charge and in addition to all other remedies provided for herein, the Charge shall, at the sole option of the Chargee, forthwith become due and payable in full.

## 9. TAXES

Unless otherwise waived by the Chargee, with respect to municipal taxes, school taxes and local improvement rates and charges (herein referred to as "taxes") chargeable against the Charged Lands, the Chargor covenants and agrees with the Chargee that:

- (a) The Chargee may deduct from any advance of the monies secured by this Charge an amount sufficient to pay the taxes which have become due and payable during any calendar year.
- (b) The Chargee may at its sole option estimate the amount of taxes chargeable against the Charged Lands and payable in each year and the Chargor shall forthwith upon the demand of the Chargee pay to the Chargee one-twelfth (1/12) of the estimated annual amount of such taxes on each monthly payment date during the term of this Charge. The Chargee shall apply such payments to the taxes so long as the Chargor is not in default, but nothing herein contained shall obligate the Chargee to apply such payments on account of taxes more often than yearly. Provided, however, that if the Chargor shall pay any sum or sums to the Chargee to apply on account of taxes, and if before such payments have been so applied by the Chargee there shall be default by the Chargor hereunder, the Chargee may at its option apply such sum or sums in or towards curing the default. In no event shall the Chargee be liable for any interest on any amount paid to it and the monies so received may be held with its own funds pending payment or application thereof.
- (c) In the event that the taxes actually charged in a calendar year, together with any interest and penalties thereon, exceed the amount estimated by the Chargee as aforesaid, the Chargor shall pay to the Chargee, on demand, the amount required to make up the deficiency.
- (d) The Chargor shall transmit to the Chargee the assessment notices, tax bills and other notices affecting the imposition of taxes upon the Charged Lands forthwith after receipt, together with such receipts or evidence of payment of taxes as the Chargor may require in the event the Chargor pays taxes directly to the taxing authority.
- (e) The Chargor shall pay to the Chargee, in addition to any other amounts required to be paid hereunder, the amount required by the Chargee in its sole discretion for a reserve on account of future tax liabilities.
- (f) The Chargor shall in all instances be responsible for the payment of any and all penalties resulting from any late payment of current tax instalments or any arrears of taxes, and at no time shall such penalty be the responsibility of the Chargee.

## 10. INSURANCE

THE CHARGOR shall insure the Charged Lands and all buildings and structures thereon, in accordance with the terms of the Commitment Letter, as may be approved by the insurance consultant engaged on behalf of the Chargee at the cost of the Chargor.

## 11. COMPLIANCE WITH LAWS AND REGULATIONS

THE CHARGOR covenants and agrees that it will promptly observe, perform, execute and comply with all laws, rules, requirements, orders, directions, ordinances and regulations of every governmental authority or agency concerning the Charged Lands and further covenants and agrees at its cost and expense to take any and all steps or make any improvements or alterations thereto, structural or otherwise, ordinary or extraordinary, which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances or regulations.

## 12. REPAIR

SUBJECT TO the redevelopment of the lands as disclosed to and approved by the Chargee which is being performed by the Chargor (the "Redevelopment") the Chargor covenants and agrees that it will keep the Charged Lands, including the buildings, erections and improvements thereon, in good condition and repair according to the nature and description thereof, and the Chargee may, whenever it deems necessary, enter upon and inspect the Charged Lands, and the cost of such inspection shall be added to the indebtedness secured hereunder, and if the Chargor neglects to keep the Charged Lands in good condition and repair, or commits or permits any act of waste on the Charged Lands (as to which the Chargee shall be sole judge) or makes default as to any of the covenants or provisos herein contained, the Charge shall, at the option of the Chargee, forthwith become due and payable in full, and the powers of entering upon and leasing or selling hereby given may be exercised forthwith and the Chargee may make such repairs as it deems necessary, and the costs, charges and expenses including servicing fees for the time and services of any employee of the Chargee with interest at the rate aforesaid shall be added to the monies hereby secured and shall be payable forthwith and be a charge upon the lands prior to all claims thereon subsequent to this Charge.

## 13. LANDS INCLUDE ALL ADDITIONS

THE CHARGED LANDS shall include all structures and installations brought or placed on the Charged Lands for the particular use and enjoyment thereof or as an integral part of or especially adapted for the buildings thereon whether or not affixed (in law) to the Charged Lands, including, without limiting the generality of the foregoing, piping, plumbing, electrical equipment or systems, aerials, refrigerators, stoves, clothes washers and dryers, dishwashers, incinerators, radiators and covers, fixed mirrors, fitted blinds, window screens and screen doors, storm windows and storm doors, shutters and awnings, floor coverings, fences, air conditioning, ventilating, heating, lighting, and water heating equipment, cooking and refrigeration equipment and all component parts of any of the foregoing and it is understood and agreed that the same shall become fixtures and an accession to the freehold and a part of the realty.

## 14. CHANGE OF USE

THE CHARGOR covenants and agrees that it will not change or permit to be changed the use of the Charged Lands without the prior written consent of the Chargee and, further, at no time shall the Charged Lands be used in a manner that would contravene the legislation, laws, rules, requirements, orders, directions, ordinances and regulations of any applicable governmental authority in force from time to time.

## 15. SALE OR CHANGE OF CONTROL

THE CHARGOR covenants and agrees with the Chargee that in the event of any change of ownership or de facto control (beneficial or otherwise) of the Chargor or any beneficial owner of the Charged Lands including change of partners or change of control of an incorporated Chargor, transfer or sale of the Charged Lands, or part thereof ("Transfer") without the Chargee's prior written consent which may be withheld in its sole and absolute discretion, at the Chargee's option, all or part of the monies secured with accrued interest thereon together with a bonus

equal to three (3) months interest shall forthwith become due and payable at the sole discretion of the Chargee.

#### 16. SUBSEQUENT ENCUMBRANCES

In the event of the Chargor further encumbering the Charged Lands without the prior written consent of the Chargee, in its sole and absolute discretion, such further encumbering shall constitute a default under this Mortgage and in such event, at the sole option of the Chargee, all money owing under the herein Mortgage shall immediately become due and payable.

#### 17. EVENTS OF DEFAULT

Without limiting any of the provisions of this Charge, each of the following events shall be considered events of default hereunder upon the happening of which the whole of the principal sum outstanding and all interest accruing thereon shall, at the Chargee's option, immediately become due and payable without notice or demand:

- (a) Failure of the Chargor or Guarantors or any of them to pay any instalment of principal, interest and/or taxes under this Charge or under any charge or other encumbrance on the Charged Lands, on the date upon which any of the payments for same become due;
- (b) Failure of the Chargor or Guarantors to strictly and fully observe or perform any condition, agreement, covenant or term set out in the application for this Charge or the letter of commitment for the loan secured by this Charge, the provisions of this Charge, or any other document giving contractual relationship as between the Chargor and Chargee herein, or if it is found at any time that any representation to the Chargee with respect to the loan secured by this Charge or in any way related thereto is incorrect or misleading;
- (c) Default by the Chargor in the observance or performance of any of the covenants, provisos, agreements or conditions contained in any charge or other encumbrance affecting the Charged Lands, whether or not it has priority over this Charge;
- (d) The registration of any construction lien against the Charged Lands which is not discharged within a period of ten (10) days after the date of registration thereof, or the filing of a writ of execution in the hands of the sheriff in the judicial district where the lands are situate;
- (e) In the event that it is discovered that the building(s) on the Charged Lands contain Urea Formaldehyde Foam Insulation or that the Chargor has insulated the Charged Lands with Urea Formaldehyde Foam Insulation;
- (f) The Charged Lands is abandoned, any act of waste is committed as to all or any part of the Charged Lands, or any building or other structure now or later being erected on the Charged Lands remains unfinished and without any work being done on it for a period of fifteen (15) business days;
- (g) Any order is made or resolution passed for the winding up, liquidation or other dissolution of the Chargor (if the charged is a corporation), or there is a change in the membership or a dissolution of the Chargor (if the Chargor is a partnership);
- (h) The Chargor or any guarantor of the Indebtedness ("Guarantor") makes an assignment for the benefit of creditors or any proceedings shall be instituted by or against the Chargor or Guarantor seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, dissolution, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or other similar law or seeking the appointment of a receiver, receiver and manager, trustee, custodian or other similar official for it or for any of its Charged Lands (excluding proceedings which are being contested by the Chargor in good faith, which have been outstanding for fewer than 30 days and in respect of which any enforcement proceedings are stayed), or the Chargor or Guarantor is declared

bankrupt or a receiver, receiver and manager, trustee, custodian or other similar official is appointed of it or in respect of all or any part of the Charged Lands, or power of sale or foreclosure proceedings are commenced against all or any part of the Charged Lands;

- (i) Another encumbrancer takes possession of all or any part of the Charged Lands or a distress or execution or other similar process is brought against the Charged Lands or any such part;
- (j) The use, storage or discharge onto the Charged Lands of any material or contaminant or the discovery of any of such material or contaminant whether caused by the Chargor or not, that violates the Environmental Protection Act or any other municipal, provincial or federal environmental health law or regulation;
- (k) If there is any default under any term or condition contained in any other agreement concerning the Indebtedness;
- (l) If a Receiver is appointed over any of the Chargor's assets or undertaking of any judgment or order or any process of any court becomes enforceable against the Chargor or any of its assets or any credit takes possession of any of its assets.

#### 18. DEFAULT AND REMEDIES

PROVIDED that the Chargee may, on default of payment or default in the performance of any covenant in this Charge contained or implied by law or statute for fifteen (15) days, on thirty-five (35) days' notice, enter on and lease the Charged Lands or in default of payment or in default in performance of any covenant in this Charge contained or implied by law or statute for at least fifteen (15) days may, on at least thirty-five (35) days' notice sell the Charged Lands. Such notice shall be given to such persons and in such manner and form and within such time as provided under the Mortgages Act, as amended from time to time. In the event that the giving of such notice shall not be required by law, or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown up person on the Charged Lands, if occupied, or by placing it on the Charged Lands, if unoccupied or, at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in the newspaper published in the county or district in which the lands are situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person who may be affected thereby may be unknown, unascertained, or under disability. If there be legal personal representatives of the Chargor on the death of the Chargor, such notice may, at the option of the Chargee, be given in any of the above modes or by personal service upon such representatives.

AND it is hereby agreed between the parties hereto that the Chargee may pay all premiums of insurance and all taxes and rates which shall from time to time fall due and be unpaid in respect of the Charged Lands, and that such payments together with all costs, charges and legal fees (between a solicitor and his own client), and expenses which may be incurred in taking, recovering and keeping possession of the Charged Lands, and of negotiating this loan, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize this security (including legal fees, real estate commissions, appraisal costs and other costs incurred in leasing or selling the Charged Lands or in exercising the power of entering, leasing and selling herein contained) shall be with interest at the rate aforesaid, a charge upon the Charged Lands in favour of the Chargee and it is hereby agreed that the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the Charged Lands, and that any amount paid by the Chargee shall be added to the monies hereby secured and shall be payable forthwith with interest at the rate herein, and in default this Charge shall immediately become due and payable at the option of the Chargee, and all powers in this Charge conferred shall become exercisable. In the event of the Chargee paying the amount of any such encumbrance, lien or charge, taxes or rates, either out of the money advanced on the security of this Charge or otherwise, the Chargee shall be entitled to all the rights, equities and securities of the person or persons, company, corporation or government so paid and is hereby authorized to obtain an assignment or discharge thereof, and to retain same, for whatever period the Chargee shall deem it proper to do so.



PROVIDED that wherever a power of sale is hereby conferred upon the Chargee, all provisions hereof relating to exercising such power, including, without in any way limiting the generality of the foregoing, the persons to whom notice of exercising such power shall be given and the manner of giving such notice shall be deemed to have been amended so as to comply with the requirements of law from time to time in force with respect to exercising such power of sale, and wherever there shall be a conflict between the provisions of this Charge relating to exercising such power of sale and the requirements of such law, the provisions of such law shall govern. Insofar as there is no conflict, the provisions of this Charge shall remain unchanged.

PROVIDED that the Chargee may lease or sell as aforesaid without entering into possession of the Charged Lands.

PROVIDED that in default of payment of the Indebtedness, the Chargee may distrain for payment of same upon the Charged Lands any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the lands so much moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Chargee with respect to or in connection therewith as in like cases of distress for rent. The Chargor waives the right to claim exceptions and agrees that the Chargee shall not be limited in the amount for which it may distrain.

PROVIDED that upon default of any payment when due herein or under the Commitment, the balance of the principal and interest and other sums payable hereunder shall immediately become due and payable at the option of the Chargee.

PROVIDED that, until default hereunder, the Chargor shall have quiet possession of the Charged Lands.

PROVIDED that the Chargee may in writing at any time or times after default waive such default and upon such waiver the time or times for payment of the principal secured herein shall be as set out in the proviso for redemption herein. Any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default. No waiver shall be effective or binding on the Chargee unless made in writing.

AND it is further agreed by and between the parties that the Chargee may at its discretion at any time release any part or parts of the Charged Lands or any other security or any surety for the money hereby secured either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the Charged Lands or any person from this Charge or from any of the covenants herein contained, it being especially agreed that every part or lot into which the Charged Lands are or may hereafter be divided does and shall stand charged with all of the monies hereby secured and no person shall have the right to require the principal secured hereunder to be apportioned; further, the Chargee shall not be accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. No sale or other dealing by the Chargor with the equity of redemption in the Charged Lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of the monies hereby secured.

IT IS FURTHER agreed that the Chargee may exercise all remedies provided for in this Charge concurrently or at law or in such order and at such times as it may see fit and shall not be obligated to exhaust any remedy or remedies before exercising its right under any other provisions contained in this Charge.

#### 19. ENFORCEMENT OF ADDITIONAL SECURITY

IN THE EVENT that, in addition to the Lands charged hereby, the Chargee holds further security on account of the monies secured hereby, it is agreed that no single or partial exercise of any of the Chargor's powers hereunder or under any of such security, shall preclude other and further exercise of any other right, power or remedy pursuant to any of such security. The Chargee shall at all times have the right to proceed against all, any, or any portion of such security in such order and in such manner as it shall in its sole discretion deem fit, without waiving any rights which the Chargee may have with respect to any and all of such security, and the exercise of any such powers or remedies from time to time shall in no way affect the

liability of the Chargor under the remaining security, provided however, that upon payment of the full indebtedness secured hereunder the rights of the Chargee with respect to any and all such security shall be at an end.

## 20. INSPECTION

THE CHARGEe shall have access to and the right to inspect the Charged Lands at all reasonable times.

## 21. TAKING OF JUDGMENT NOT A MERGER

THE taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Chargee's right to interest at the rate and times herein provided; and, further, the said judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as herein provided until the said judgment shall have been fully paid and satisfied.

## 22. BANKRUPTCY AND INSOLVENCY

THE CHARGOR acknowledges and agrees that any and all costs as may be incurred from time to time by the Chargee in order to effect compliance or avoid any adverse ramifications of the Bankruptcy and Insolvency Act (Canada) shall be entirely for the account of the Chargor. The Chargee shall be entitled to incur any such costs, including any costs of its personnel in administering any requirements of the said Act and to add the same to the indebtedness owing pursuant hereto and the same shall be secured hereunder and under any and all security held by the Chargee for the indebtedness owing to the Chargee in the same manner and in the same priority as the principal secured hereunder.

## 23. AUTOMATIC RENEWAL AND EXTENSION OF TIME

In the event that the Mortgagor fails to repay the principal and interest outstanding on the maturity date or fails to accept a renewal offer tendered by the Mortgagee (for any reason not attributable to the Mortgagee) within 10 business days of the maturity, then the Mortgagee may at its sole option, automatically renew this mortgage for a period of two (2) months from the maturity date, at an interest rate equal to the greater of Twelve (12%) per cent per annum or TD Canada Trust prime rate of interest plus Five (5%) per cent per annum, calculated daily and payable monthly. In the event that the renewal has not been finalized within this two (2) month period, then there will be no further extensions, and the Mortgagee may exercise its remedies under this Charge or at law. The Mortgagee shall not be obligated to offer any renewal. All other terms and covenants under the existing Charge shall continue to apply. The Charge may be paid in full at any time during the two (2) month renewal period. A Processing Fee which is the greater of \$1,000.00 or 1/10 of 1.00% of the outstanding balance shall be added to the principal balance if this extension is utilized and shall be deemed secured hereunder.

PROVIDED that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.

PROVIDED further that the terms of this Charge may be amended or extended from time to time by mutual agreement between the Chargor and the Chargee and the Chargor hereby further covenants and agrees that, notwithstanding that the Chargor may have disposed of his interest in the lands hereby secured, the Chargor and Guarantors will remain liable as a principal debtor and not as a surety for the observance of all of the terms and provisions herein and will in all matters pertaining to this Charge well and truly do, observe, fulfill and keep all and singular the covenants, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof, notwithstanding the giving of time for the payment of the Charge or the varying of the terms of the payment thereof or the rate of interest thereon or any other indulgence by the Chargee to the Chargor.

THE CHARGOR covenants and agrees with the Chargee that no agreement for renewal hereof or for extension of the time for payment of any monies payable hereunder shall result from or be implied from any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the original term of this Charge or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no renewal hereof or extension of the time for payment of any monies hereunder shall result from, or be implied from, any other act, matter or thing, save only by express agreement in writing between the Chargor and the Chargee.

#### 24. CONSTRUCTION LOAN PROVISIONS (If Applicable)

IN THE EVENT that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Lands, the parties hereto covenant and agree that the following conditions shall apply:

- a) The Chargor will commence, carry out and complete the Project, substantially in accordance with the plans, specifications and other material approved by the Chargee, all with due diligence, in a good and workmanlike manner and in accordance with all agreements made with, undertakings given to and all statutory and regulatory requirements of all Governmental Bodies having jurisdiction;
- b) All construction on the Lands shall be carried out by reputable contractors having experience which is commensurate to nature and size of the Project to be constructed, which contractors must be prior approved by the Chargee in writing, such approval not to be unreasonably withheld;
- c) The renovations to the building and structures located on the Lands having been commenced shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Chargee and to the satisfaction of all Governmental Bodies having jurisdiction;
- d) Provided that should construction of the Project cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Chargor excepted), for a period of fifteen (15) consecutive days (Saturdays, Sundays and statutory holidays excepted), then, at the option of the Chargee, this Charge shall immediately become due and payable. In the event that construction does cease, then the Chargee shall have the right, at its sole option, to assume complete control of the construction of the Project in such manner and on such terms as it deems advisable. The cost of completion of the Project by the Chargee and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Chargee. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Chargee shall have the same rights and remedies with respect to collection of same as it would have with respect to collection of principal and interest hereunder or at law;
- e) At all times there shall be sufficient funds unadvanced under this Charge and retained by the Chargee to complete the construction and/or renovation of the Project and as may be necessary to retain the Chargee's priority with respect to any deficiency in the holdbacks required to be retained by the Chargor under the *Construction Lien Act* (Ontario);



- f) This Charge will be advanced in stages as construction upon the Project proceeds or as the conditions as enumerated by the Commitment are complied with;
- g) All advances for construction purposes which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Chargee with respect to the Project and the progress thereof, whose fees and costs shall be for the account of the Chargor regardless of by whom such Person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other requirements of all Governmental Bodies having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Lands. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the Project; and
- h) The Chargor shall pay to the Chargee on each occasion when an inspection of the Lands is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee and/or an administration fee in such reasonable amount as the Chargee may charge from time to time for each such inspection and the Chargee's solicitors shall be paid their fees and disbursements for each subssearch and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Chargee shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.

## 25. CONDOMINIUM CLAUSES (if applicable)

The Chargor and Chargee covenant and agree that in the event that the security for the within Charge shall be a condominium unit the following provisions shall apply.

The Chargor does hereby assign to the Chargee all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the Charged Lands and the Chargee, may at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised.

The Chargor shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation.

The Chargor shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the Condominium Act of Ontario, all amendments thereto, and any legislation passed in substitution thereof, and the declaration and by-laws of the Condominium Corporation and any amendments thereto.

Where the Chargor defaults in the Chargor's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other

action or proceeding taken, or to be taken by the Condominium Corporation, the Chargee, at its option and without notice to the Chargor, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Chargee shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the Indebtedness.

## 26. EXPROPRIATION

IF the Charged Lands or any part thereof shall be expropriated by any government, authority, body or corporation clothed with the powers of expropriation, the principal sum herein remaining unpaid shall, at the option of the Chargee, forthwith become due and payable together with interest thereon at the rate provided for herein to the date of payment together with a bonus to be determined by the Chargee which shall not be limited to but may, at the option of the Chargee, be equal to the aggregate of (a) three months interest at the said rate calculated on the amount of the principal remaining unpaid AND (b) one month's interest at the rate provided for herein calculated on the principal remaining unpaid, for each full year of the term of this Charge or any part of such year from the said date of payment to the date the said principal sum or balance thereof remaining unpaid would otherwise under the provisions of this Charge become due and payable and in any event all the proceeds of any expropriation shall be paid to the Chargee at its option in priority to the claims of any other party.

## 27. PRE-AUTHORIZED CHEQUING PLAN

PROVIDED that all payments made under this Charge by the Chargor shall, at the option of the Chargee, be made by preauthorized cheque payment plan as approved by the Chargee. The Chargee shall not be obligated to accept any payment excepting payment made by preauthorized cheque. Failure to make all payments in the manner required by the Chargee shall be an act of default and the Chargee shall be entitled to pursue any and all of its remedies herein and/or at law as it may deem necessary at its option.

## 28. PAYMENT

ALL payments of principal, interest and other monies payable hereunder to the Chargee shall be payable at par in lawful money of Canada at such place as the Chargee shall designate in writing from time to time. In the event that any of the monies secured by this Charge are forwarded to the Chargee by mail or any other means of delivery, payment will not be deemed to have been made until the Chargee has actually received such monies and the Chargor shall assume and be responsible for all risk of loss or delay.

ANY payment received after 1:00 p.m. on any date shall be deemed, for the purpose of calculation of interest, to have been made and received on the next bank business day and the Chargee shall be entitled to interest on the amount due it to and including the date on which the payment is deemed by this provision to have been received.

## 29. NO DEEMED REINVESTMENT

THE PARTIES hereto agree that the Chargee shall not be deemed to reinvest any monthly or other payments received by it hereunder.

## 30. DISCHARGE

THE CHARGE shall have a reasonable period of time after payment in full of the monies hereby secured within which to prepare and execute a discharge of this Charge; and interest on aforesaid shall continue to run and accrue until actual payment in full has been received by the Chargee; and all legal and other expenses for the preparation and execution of such discharge shall, together with the Chargee's fee for providing same, be borne by the Chargor. The discharge shall be prepared and executed by such persons as are specifically authorized by the Chargee and the Chargee shall not be obligated to execute any discharge other than a discharge which has been so authorized.

### 31. DISHONoured CHEQUES

IN THE EVENT that any of the Chargor's cheques are not honoured when presented for payment to the drawee, the Chargor shall pay to the Chargee for each such returned cheque a servicing fee to cover the Chargee's administration costs with respect to same. In the event that the said cheque which has not been honoured by the drawee is not forthwith replaced by the Chargor, the Chargee shall be entitled to a further servicing fee for each written request therefor which may be necessitated by the Chargor not forthwith replacing such dishonoured cheque.

### 32. STATEMENTS OF ACCOUNT

THE CHARGOR shall be entitled to receive, upon written request, a statement of account with respect to this Charge as of any payment date under this Charge and the Chargee shall be entitled to a servicing fee for each such statement.

### 33. INDEPENDENT LEGAL ADVICE

THE CHARGOR and Guarantor(s) acknowledge that they have full knowledge of the purpose and essence of this transaction and that, if required, they have been appropriately and independently legally advised in that regard or have been advised of their right to independent legal advice and have declined same. Such parties agree to provide to the Chargee a Certificate of Independent Legal Advice as and when same may be required regarding their knowledge and understanding of this transaction.

### 34. CONSENT OF CHARGE

WHEREVER the Chargor is required by this Charge to obtain the consent or approval of the Chargee, it is agreed that subject to any other specific provision contained in this Charge to the contrary, the Chargee may give or withhold its consent or approval for any reason that it may see fit in its sole and absolute discretion and the Chargor shall not be liable to the Chargee in damages or otherwise for its failure or refusal to give or withhold such consent or approval, and all costs of obtaining such approval shall be for the account of the Chargor.

### 35. APPOINTMENT OF A RECEIVER

IT IS DECLARED and agreed that at any time and from time to time when there shall be default under the provisions of this Charge, the Chargee may at such time and from time to time and with or without entering into possession of the Charged Lands appoint in writing a Receiver, or a Receiver and Manager, or a Receiver-Manager, or a Trustee (the "Receiver") of the Charged Lands, or any part thereof, and of the rents and profits thereof, if any, and with or without security and may from time to time by similar writing remove any such Receiver and appoint another in its place and stead, and in making any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby irrevocably agrees and consents to the appointment of such Receiver of the Chargee's choice and without limitation whether pursuant to this Charge, the Mortgages Act, the Construction Lien Act, or pursuant to the Trustees Act (as the Chargee may at its sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Charged Lands or any part thereof and the Chargor hereby consents to a Court Order for the appointment of such Receiver, if the Chargee in its discretion chooses to obtain such order, and on such terms and for such purposes as the Chargee in its sole discretion may require, including, without limitation, the power to manage, charge, pledge, lease and/or sell the Charged Lands and/or complete or partially complete any construction thereon and to receive advances of monies pursuant to any charges, pledges and/or loans entered into by the Receiver or the Chargor, and if required by the Chargee, in priority to any existing encumbrances affecting the Charged Lands, including without limitation, charges and construction lien claims.

UPON the appointment of any such Receiver from time to time the following provisions shall apply:

- (a) A Statutory Declaration of the Chargee or an Officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;

- (b) Every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due in respect to the Charged Lands, or any part thereof, whether in respect of any tenancies created in priority to this Charge or subsequent thereto and with respect to all responsibility and liability for its acts and omissions;
- (c) The Chargee may from time to time fix the remuneration of every such Receiver which shall be a charge on the Charged Lands, and may be paid out of the income therefrom or the proceeds of sale thereof;
- (d) The appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a chargee in possession in respect of the Charged Lands or any part thereof;
- (e) The Receiver shall have the power to rent any portion of the Charged Lands for such term and subject to such provisions as it may deem advisable or expedient and shall have the authority to execute any lease of the Charged Lands or any part thereof in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm, and hereby ratifies and confirms whatever acts such Receiver may do on the Charged Lands;
- (f) In all instances, the Receiver shall be acting as the attorney or agent of the Chargor;
- (g) Every such Receiver shall have full power to complete any unfinished construction upon the Charged Lands;
- (h) Such Receiver shall have full power to manage, operate, amend, repair, or alter the Charged Lands or any part thereof in the name of the Chargor;
- (i) The Receiver shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the lands including, without limiting the generality of the foregoing, increasing, extending, renewing or amending all charges which may be registered against the lands from time to time, whether or not such charges are prior to the interest of the Chargee in the Charged Lands; sale of the Charged Lands; borrowing money on the security of the Charged Lands; applying for and executing all documents in any way related to any re-zoning applications, severance of lands pursuant to the provisions of the Planning Act, as amended, subdivision agreements and development agreements and agreements for the supply or maintenance of utilities or services to the lands, including grants of lands or easements or rights of way necessary or incidental to any such agreements; executing all grants, documents, instruments and agreements related to compliance with the requirements of any competent governmental authority, whether pursuant to a written agreement or otherwise and applying for and executing all documents in any way related to registration of the lands as a condominium; completing any application for first registration pursuant to the provisions of the Land Titles Act of Ontario or pursuant to the Certification of Titles Act of Ontario; and for all and every of the purposes aforesaid the Chargor does hereby give and grant unto the Receiver full and absolute power and authority to do and execute all acts, deeds, matters and things necessary to be done as aforesaid in and about the Charged Lands, and to commence, institute and prosecute all actions, suits and other proceedings which may be necessary or expedient in and about the Charged Lands, as fully and effectually to all intents and purposes as the Chargor could do if personally present and acting therein; and
- (j) The Receiver shall not be liable for any loss howsoever arising and the Receiver shall not be liable to the Chargor to account for monies received other than cash received by it in respect to the Charged Lands or any part thereof and out of such



cash so received, every such Receiver shall pay in the following order: its remuneration; all payments made or incurred by it in the exercise of its powers hereunder; any payment of interest, principal and other money which may from time to time be or become charged upon the Charged Lands in priority to the monies owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it in respect to the Charged Lands or any part thereof.

THE CHARGOR hereby irrevocably appoints the Chargee as his attorney to execute such consent or consents and all such documents as may be required in the sole discretion of the Chargee and/or its solicitors so as to give effect to the foregoing provisions and the signature of such attorney shall be valid and binding on the Chargor and all parties dealing with the Chargor, the Chargee and/or the Receiver and/or with respect to the Charged Lands in the same manner as if such documentation was duly executed by the Chargor himself.

### 36. APPOINTMENT OF PROPERTY MANAGER

As an alternative to the appointment of a receiver provided in the immediately preceding paragraph, the parties agree that the Chargee shall be entitled at any time and from time to time to appoint in writing a property manager (the "Property Manager") and representative of the Chargee for the purposes of management, leasing and operation for the Chargee's account of the Charged Property.

Upon the appointment of the Property Manager, the following provisions shall apply:

- (a) A Statutory Declaration of the Chargee or an officer of the Chargee as to default under the provisions of this Charge shall be conclusive evidence thereof;
- (b) The Chargee may from time to time fix the remuneration of the Property Manager which shall be a charge on the said lands and may be paid, together with interest thereon, out of the income from the said lands or the proceeds of sale thereof;
- (c) The Property Manager shall have full power to do all acts and execute all documents which may be considered necessary or advisable in order to protect the Chargee's interest in the lands, and The Chargor acknowledges and agrees that the appointment of the Property Manager shall constitute the Chargee a mortgagee in possession.

In addition to the management fee to the Property Manager, the Chargee shall also be entitled to an administration fee equal to no less than 2% of the gross receipts for the Charged Lands and shall also be entitled to a commission for all leases entered into at a rate to be established by the Chargee in its discretion and the administration fee and commission shall be added to the principal amounts secured hereunder and bear interest at the rate provided for herein.

### 37. COSTS AND EXPENSES

The Chargor covenants and agrees that it will immediately pay to the Chargee all amounts the Chargee is permitted to pay under the Charge and all costs, expenses and damages of, relating to or resulting from inspecting, protecting, repairing, completing, insuring, taking and keeping possession of and managing all or any part of the Charged Lands, preparing it for sale or lease, selling or leasing it, renewing any leasehold interest, collecting any part of the Indebtedness, the exercise of any of the rights of a Receiver appointed pursuant to the Charge, such Receiver's fees and expenses, agents' costs and expenses, legal fees and expenses on a solicitor and his own client basis, the use, occupation or operation of the Charged Lands, the breach of any of the Chargor's representations, warranties or agreements herein, and any other costs and expenses of exercising or protecting the Chargee's rights (hereunder or otherwise) or all or any part of the Charged Lands all when permitted to be done herein or at law by the Chargee. Without limiting the Chargee's right to interest provided for herein, it is expressly agreed that the Chargor shall pay interest at the interest rate provided for herein on such amounts, costs and expenses (and on all other costs and expenses payable by the Chargor pursuant to the charge) from the date they are paid by the Chargee until they have been repaid by the Chargor, which interest shall be paid, calculated and compounded as provided for herein.

IN THIS CHARGE the word "cost" shall be extended to and include legal costs incurred by the Chargee as between a solicitor and his own client.

### 38. NOTICE

WHENEVER a party to this Charge desires to give any notice to another, it shall be sufficient for all purposes if such notice is personally delivered or sent by registered or certified mail, postage prepaid, addressed to the intended recipient at the address noted on page 1 of the Charge document to which these standard charge terms form a part or such other address communicated in writing by the addressee in a written notice to the sender.

### 39. ENVIRONMENTAL AUDIT

The Chargor and Guarantors covenant and agree that, if requested by the Chargee and if there are reasonable grounds to believe the Chargor is in breach of its environmental covenants herein or in the Commitment Letter, or any other security documents, or if the Chargor is in breach of this Charge, the Chargor and Guarantors shall forthwith commission a Phase I and/or Phase II Environmental Audit for the Charged Lands and have same addressed to the Chargee as well as the Chargor, and the Chargor and Guarantors shall be solely responsible for the costs of same and the Chargee shall be entitled to a copy of the Audits as and when they are prepared. In the event that the Chargor does not commission the Phase I and/or Phase II Environmental Audits within thirty (30) days of being requested to do so by the Chargee, the Chargee shall have the right to commission such Audits in the name of the Chargor and add the costs thereof to the Indebtedness.

### 40. CONTINUING SECURITY

The Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Chargee for payment of the Indebtedness and performance of the Chargor's other obligations under the Charge notwithstanding any change or fluctuation in the amount, nature or form of the Indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Chargee representing all or part of the Indebtedness or in the names of the parties to such bills, notes and/or other obligations or that there is no Indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.

### 41. DELAY, RELEASES, PARTIAL DISCHARGES, WAIVERS AND AMENDMENTS

The Chargee may release others from any liability to pay all or any part of the Indebtedness without releasing the Chargor. The Chargee may release its interest under the Charge in all or any part of the Property or any lease (or any other collateral) whether or not the Chargee receives any value and shall be accountable to the Chargor only for monies which the Chargee actually receives. If the Chargee releases its interest in part of the Property or any lease, the remainder of the Property and each other lease shall continue to secure the Indebtedness and the Chargor's obligations under the Charge will continue unchanged. The Chargee may grant extensions of time or other indulgences, take and give up securities, accept compositions and proposals, grant releases and discharges and otherwise deal with the Chargor and other persons (including, without limitation, any person to whom all or any part of the Property is transferred) and with any securities as the Chargee may see fit without affecting any of the Chargee's rights or remedies (herein or otherwise) or the Chargor's liability under the Charge (including without limitation the Chargor's liability to pay the Indebtedness). The Chargee may delay enforcing any of its rights under the Charge or any other document under the Charge or any such document without affecting the Chargee's rights in respect of any other existing breach or any subsequent breach of the same or a different nature. No such waiver shall be effective unless made in writing and signed by an officer of the Chargee. No sale or other dealing with all or any part of the Property or any lease, and no amendment of the Charge or any other security, agreement or other instrument or relating to the Indebtedness, will in any way affect the obligation of the Chargor or any other person to pay the Indebtedness.

**42. IMPROVEMENTS; DEMOLITION**

- (a) In these standard charge terms, the term "Improvement" has the meaning given to it in the Construction Lien Act (Ontario), as amended or replaced from time to time, and includes any alteration, addition or repair to, and any construction, erection, remodelling, rebuilding or installation on or of, any part of the Charged Lands and the demolition or removal of any building or part of any building on the Charged Lands.
- (b) Other than for a Construction Loan, the Chargor covenants and agrees that no improvement to or on the Charged Lands will be commenced or made by the Chargor or any other person unless the Chargor first provides a copy of all proposed plans, blueprints, contracts and specifications to the Chargee and obtains the Chargee's written consent thereto. The Improvement shall form part of the Charged Lands but, nevertheless, it is expressly agreed that the Charge is not and shall not be a building mortgage as defined under the Construction Lien Act.

**43. INVALIDITY**

IF ANY of the covenants or conditions in this Charge inclusive of all schedules forming a part hereof shall be void for any reason it shall be severed from the remainder of the provisions hereof and the remaining provisions shall remain in full force and effect notwithstanding such severance.

**44. HEADINGS**

THE headings with respect to the various paragraphs of this Charge are intended to be for identification of the various provisions of this Charge only, and the wording of such headings is not intended to have any legal effect.

**45. CHARGING OF ADJACENT LANDS**

INTENTIONALLY DELETED

**46. INTERPRETATION**

PROVIDED and it is hereby agreed that in construing this Charge, everything herein contained shall extend to and bind and may be enforced or applied by the respective heirs, executors, administrators, successors in office, successors and assigns, as the case may be, of each and every of the parties hereto, and where there is more than one Chargor or Chargee or more than one Guarantor, or there is a female party or a corporation or there is one Guarantor or no guarantor, the provisions hereof shall be read with all grammatical changes thereby rendered necessary, and all covenants shall be deemed to be joint and several.

All references herein to the "Chargor", the "Guarantor", or the "Chargee" shall be deemed to mean the Chargor, its successors and assigns, the Guarantor, its successors and assigns, and the Chargee, its successors and assigns, as the case may be, and all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor, the Guarantor, and the Chargee shall be equally binding upon their successors and assigns, as the case may be. It is understood and agreed that in construing this clause, the words "Chargor", "Guarantor", and "Chargee", and the personal pronoun "he" or "his", relating thereto and used therewith, shall be read and construed as "Chargor or Chargors", "Guarantor or Guarantors", "Chargee or Chargees", and "his", "her", "it", "its", or "their" respectively as the number and gender of the party or parties referred to in each case require, and the verb used in relation therewith shall be construed as agreeing with the said word or pronoun so substituted.

**47. BONUS ON DEFAULT**

UPON DEFAULT of payment of any of the monies secured and payable hereunder, the Chargee shall be entitled to require payment, in addition to all monies hereby secured or payable hereunder, of a bonus equal to three (3) months interest in advance at the rate aforesaid upon the principal money hereby secured or at the Chargee's sole option, a bonus equal to the damages

sustained by the Chargee and made up of the differential between the rate provided for herein and the current interest rate of the Chargee for the balance of the mortgage term.

#### 48. AMENDING THE CHARGE

The Chargee may, from time to time, enter into one or more written agreements with the Chargor (or with any one to whom the Real Property is transferred) to amend the Charge by extending the time for payment, changing the interest rate payable under the Charge or otherwise altering the provisions of the Charge. Whether or not there are any encumbrances on the Real Property in addition to the Charge at the time the agreement is entered into, it will not be necessary to register the agreement on title.

#### 49. ELECTRONIC REGISTRATION

The Chargor and all Guarantors have duly executed an Acknowledgement and Direction and by such execution agree to be bound by this charge and authorize the electronic registration of this Schedule and the document to which it is annexed.

#### 50. INTEREST RATE

If the interest rate is declared by any competent authority to be in breach of the criminal interest rate provisions as set out in the Criminal Code (Canada) the interest rate applicable herein shall be reduced to and shall be deemed to have been since the first advance the highest rate which would be legal.

#### 51. FARM DEBT MEDIATION ACT

The Chargor represents and warrants that it is not a "farmer" within the meaning of the Farm Debt Mediation Act, S.C. 1997, c.21 (the "Act") and covenants and agrees with the Chargee that, in the event that at any time during the term of this Charge the Chargor shall become a "farmer" within the meaning of the Act, it shall forthwith provide written notice of this fact to the Chargee.

#### 52. PAYMENT OF AMOUNTS OWING TO GOVERNMENTAL AUTHORITIES

During the term of the Charge and any renewal or extension thereof, the Chargor and/or the Guarantors will pay when due all amounts owing to any governmental authority which, if unpaid, would give such governmental authority recourse for such amounts ranking in priority to the within Charge or any other documents and agreements given by the Chargee to the Chargor in connection with the advance of funds hereunder and the failure to pay any such amount when due will constitute, at the option of the Chargee, a default hereunder.

#### 53. PRIVACY PROVISIONS

- a) The Chargor hereby irrevocably consents to the Chargee releasing and disclosing to any other parties, their authorized agents and solicitors requesting the same, any and all information, whether confidential or not, in its possession regarding the Charged Lands or the within mortgage loan including, without limitation, details of the mortgage loan balance, the terms of this mortgage loan, defaults hereunder (existing or prior) and like matters.
- b) The Chargor hereby confirms and agrees that the release and disclosure of any such information by the Chargee constitutes the release and disclosure of such information with the full knowledge and consent of the Chargor within the meaning of the Personal Information Protection and Electronic Documentation Act (Canada), as amended.
- c) The Chargor hereby authorizes the Chargee to make such inquiries that the Chargee may require in its sole discretion relating to the Chargor or the Charged Lands including, inter alia, inquiries with respect to any existing charges of the Charged Lands.



- d) The Chargor hereby releases the Chargee from any and all liabilities, damages, suits, actions, claims, monies and costs arising from (i) the release and disclosure of any such information by the Chargee, and (ii) any breach of the provisions of any applicable laws, including the Personal Information Protection and Electronic Documentation Act (Canada), as amended, provided that the Chargee has acted in accordance with the consent and direction received from the Chargor.

ATRIUM MORTGAGE INVESTMENT  
CORPORATION

Per: 

Name: Robert Goodall

Title: President

I have authority to bind the Corporation.

CANADIAN MORTGAGE SERVICING  
CORPORATION

Per: 

Name: Robert Goodall

Title: President

I have authority to bind the Corporation.

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DUCA FINANCIAL SERVICES CREDIT UNION LTD.  
Applicant

-and-

BAYVIEW CREEK (CIM) LP ET AL  
Respondents

Court File No. CV-21-00665128-00CL

*ONTARIO*

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding Commenced at  
TORONTO

**APPLICATION RECORD  
Volume 1 of 5  
(returnable August 11, 2021)**

DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
95 Barber Greene Road, Suite 100  
Toronto, Ontario M3C 3E9

LAWRENCE HANSEN  
LSO #41098W

Tel.: 416-449-1400/249-888-6626  
lawrence.hansen@devrylaw.ca

Lawyers for the applicant Duca Financial  
Services Credit Union Ltd.