

*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 5 of 5**

**(returnable August 11, 2021)**

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ONTARIO

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

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

Respondents

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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*

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

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CIM BAYVIEW CREEK INC.**

**TRUSTEE'S FIRST REPORT  
Pursuant to Section 50.4(7)(b)(ii) of the *Bankruptcy and Insolvency Act (Canada)***

**November 23, 2020**



**Grant Thornton Limited,  
200 King Street West, 11<sup>th</sup> Floor  
Toronto, Ontario  
M4H 3T4**

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

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CIM BAYVIEW CREEK INC.**

**TRUSTEE'S FIRST REPORT  
Pursuant to Section 50.4(7)(b)(ii) of the *Bankruptcy and Insolvency Act (Canada)***

**November 23, 2020**

**INTRODUCTION AND BACKGROUND**

1. Grant Thornton Limited ("**GTL**" or "**Trustee**") is the designated Trustee with respect to the Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), and as filed by CIM Bayview Creek Inc. ("**Bayview Creek**", or the "**Company**") on October 29, 2020. A copy of the Certificate of Filing is attached hereto as **Appendix A**.
2. Bayview Creek is a holding company which owns a real estate property in Richmond Hill, Ontario, which is municipally known as 10747 Bayview Ave. (the "**Property**"). Bayview Creek is the trustee for Bayview Creek (CIM) LP, as beneficial owner of Property. Bayview Creek and its related limited partnership are a part of a broader group of entities controlled by the CIM Group. The CIM Group is in the business of acquiring real estate for the purposes of residential development projects.
3. Bayview Creek has obtained various permits and approvals for the development of a residential townhouse complex on the approximately 10 acres of land comprising the Property. Bayview Creek experienced financial challenges and delays relating to the development permitting and approvals process. The land currently remains vacant but ready for development. The Trustee is aware of related legal proceedings and court

orders affecting Bayview Creek, the CIM Group, and certain principals. As a result of such legal proceedings and financial challenges, the principal of Bayview Creek has elected to commence a formal process to market and sell the Property in order to maintain stability and maximize the recovery to the various creditors of the Company.

4. The Company has commissioned appraisals on the Property to assist in estimating the value of the Property. The results of the appraisals suggest that the Property has a value that is in excess of the amounts owing to secured creditors holding mortgages registered against the Property.
5. During the NOI proceedings, the Company intends to offer full transparency about the sale process to its creditors, including DUCA Financial Services Credit Union Ltd., Bryton Capital Corp. GP Ltd., GR (CAN) Investment Co. Ltd., and Monest Financial Inc.

#### **PURPOSE OF THIS REPORT**

6. The purpose of this report (the **"Report"**) is to provide the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) with information and the Trustee's views related to the following relief being sought by the Company:
  - a) approval of the Company's sales procedures developed in conjunction with the Trustee, the Company's counsel, and Colliers Macaulay Nicolls Inc. (**"Colliers"**);
  - b) approval of a 45-day extension to the current stay of proceedings pursuant to the NOI to January 12, 2021 to allow for the sale process to take place;
  - c) approval of a debtor in possession (**"DIP"**) interim financing loan and a related DIP charge to provide funding for out of pocket costs of the Company to assist with the sale process and to assist with interim professional fees;
  - d) approval of an administrative charge to support certain professional fees that would be deferred until a sale transaction is completed; and
  - e) sealing the Confidential Exhibits "A" and "B" to the Affidavit of Mr. Jiubin (Jerry) Feng sworn November 23, 2020 (the **"Feng Affidavit"**).



## QUALIFICATIONS AND RESTRICTIONS OF THIS REPORT

7. In preparing this Report, the Trustee has relied upon unaudited financial information, the Company's records, financial information, projections and discussions with the Company's management and counsel. While the Trustee reviewed various documents provided by the Company, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting Standards ("IFRS"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.
8. Some of the information used in preparing this Report consists of financial projections. The Trustee cautions that these projections are based upon assumptions about future events and conditions that are not ascertainable. The Company's actual results may vary from its projections. The Trustee's review of the future oriented information used to prepare this Report did not constitute an audit of such information under GAAP or IFRS.
9. This Report has been prepared for the use of this Court and the Company's stakeholders as general information relating to the Company. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. The Trustee will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Report contrary to the provisions of this paragraph.
10. All references to dollars are in Canadian currency unless otherwise noted.

## SALE PROCESS AND SALES PROCEDURES

11. As of the date of this Report, the Company has commenced its sales process. The Company has engaged Colliers as its sales process agent. Colliers is a multinational brokerage firm focused on real estate and related transactions. The specific team at Colliers that has been engaged specializes in the marketing and sale of real estate development properties in the Greater Toronto Area. Furthermore, the Colliers team has significant experience in selling real estate development projects that have experienced financial distress and that are subject to formal restructuring proceedings. A list of Colliers' engagements related to similar properties is attached hereto as **Appendix B**.

12. Based on Colliers' presence and experience, and in reviewing the terms of Colliers' engagement with the Company, the Trustee supports the Company's engagement of Colliers to assist with the sale of the Property. The terms of the Colliers' engagement include a commission rate of 1.5%, and a reduced rate of 0.75% if the successful purchaser is one of the two current offerors that provided offers to the Company directly. The Trustee also notes that the Trustee will have direct access to Colliers for updates on the sale process.
13. In addition to engaging Colliers, the Company has identified two potential purchasers of the Property who have submitted offers which are currently being negotiated. The Company has advised Colliers of these two potential buyers and recognizes that such buyers may not be the successful purchasers of the Property through the sale process.
14. Colliers has developed a target list of potential buyers and has prepared a marketing brochure for the Property. Colliers has commenced the process of providing information related to the Property to its target list of buyers. In addition, Colliers has obtained specific information on the Property to assist potential buyers with their due diligence and for inclusion into a secure data room for buyers to access.
15. As mentioned earlier in this Report, the Company has commenced a formal NOI process to allow for stability and a sale of its Property. In order to provide further stability to the sale process and to ensure transparency regarding the disposition of the Property, the Company is seeking to have its sales procedures approved by the Court.
16. The following is a summary of the Company's sales procedures:
  - a) Engagement of Colliers as a sales process agent;
  - b) Colliers to develop a list of and solicit potential bidders for the Property;
  - c) Colliers to prepare a confidential information memorandum describing the opportunity to purchase the Property;
  - d) Colliers to outline of terms that it expects to see in an expression of interest submitted by a potential bidder and circulate same to potential bidders;

- e) Creation of a secure data room for potential purchasers to review property specific information for the purpose of conducting due diligence in anticipation of providing offers on the Property;
- f) The use of confidentiality agreements for potential purchasers to sign in order to gain access to the secure data room;
- g) The target deadline for offers has been set for January 20, 2021, which would provide for approximately 9 weeks for potential purchasers to conduct their due diligence and formulate offers;
- h) The sale of the Property will be on an "as is, where is" basis;
- i) Any sale will be subject to the approval of the Court;
- j) The sale of the Property would be by way of a vesting order with would be requested from the Court which would provide for clear title to the successful purchaser; and,
- k) Any offers received would be provided to the Company, as well as its counsel, and the Trustee. All deposits will be received and held in trust by Colliers. The Company will work cooperatively with the Trustee and its creditors to provide updates on the sale process when available and upon request.

17. The Trustee supports the Company's sales procedures for the following reasons:

- a) based on the nature of the Company's asset, being a real estate property, the engagement of a real estate brokerage firm is appropriate;
- b) the terms of Colliers' engagement are reasonable in the circumstances and is reflective of the estimated value of the Property;
- c) the appraised values for the Property appear to be in excess of the registered mortgages on the Property;
- d) the sale process timeline is reasonable to allow for purchasers to conduct due diligence and is not prejudicial to the interests of the mortgage holders who the Trustee understands wishes to be repaid as soon as possible;

- e) in recognizing that the mortgage holders wish to exit their position with the Company, the commencement of a sale process and the approval of the sales procedures will increase the likelihood of a successful transaction; and,
- f) a debtor-in-possession sale process whereby the Company can assist with its knowledge and experience of the Property, and presumably at a lower cost than professional intervention, is viewed as an efficient means to maximize the value of the Property.

### **SALE PROCESS CASH FLOW FORECAST**

18. The Company's initial cash flow forecast did not include any operating revenue or expenses as the Company is effectively not conducting any current operations. However, to assist with the administration of the sale process, the Company will incur certain expenses including payroll expenses related to the salaries of employees with knowledge of the Property and development plans, property taxes, administration costs, and professional fees. The Company, in conjunction with the Proposal Trustee, prepared a cash flow forecast for the sale process which covers the period from November 2020 to the end of March 2021 (the "**Sale Process Cash Flow**"). A copy of the Cash Flow Forecast is attached hereto as **Appendix C**.
19. The Proposal Trustee is of the view that the forecasted expenses are reasonable in the circumstances and recognizing the efforts required to promote a successful sale process. The Proposal Trustee also takes comfort in that any approved interim DIP financing would be controlled by the Proposal Trustee, in trust, to mitigate the use of funds throughout the sale process.

### **COMPANY'S REQUEST FOR AN EXTENSION**

20. The Company filed its NOI on October 29, 2020, which provided for a 30-day stay of proceedings to allow for the Company to either make a proposal to its creditors, become bankrupt, or to seek an extension of time. As the Company has commenced a sale process with respect to the Property and since sufficient time is required for potential purchasers to conduct due diligence and prepare offers, the Company is requesting a 45-day extension to its NOI process. The Company's intention is to seek extensions of its

NOI process until such time as offers are made on the Property and the results of the sale process can be reviewed.

21. Based on the NOI filing date of October 29, 2020, the Company's stay of proceedings will expire on November 28, 2020. The Company's request for a 45-day extension would extend the Company's NOI proceedings to January 12, 2021.
22. The Trustee supports the Company's request for the following reasons:
  - a) The Company has complied with the requirements of the BIA;
  - b) The Company has been acting in good faith and with due diligence;
  - c) The extension will increase the likelihood of a successful sale process; and,
  - d) In the Trustee's view, no creditor would be materially prejudiced if the extension is granted.

#### **REQUEST FOR INTERIM FINANCING**

23. While the Company itself does not have any active operations, certain parties will be required to assist with the sale process, including employees of the CIM Group and the Company's counsel. In addition, while the Company had intended to allow for any accrued property taxes to be paid upon the successful sale of the Property, interim DIP financing can be used to keep property taxes current and at a lower borrowing rate.
24. In considering the Company's NOI proceedings, the prior financial and legal challenges faced by the CIM Group and the Company, the ability to obtain interim DIP financing may be limited unless a charge can be granted to secure such DIP financing.
25. In considering the interests of the Company's creditors, the Company has agreed to allow the Trustee to receive any interim DIP financing, which would be held in trust, and released to the Company based on the need for funding pre-approved expenses.
26. The Company's request for DIP financing is in the amount of \$400,000, which is estimated to provide for sufficient funding of pre-approved expenses and related fees to the end of March 2021, if required.

27. The Trustee is supportive of the Company's request for DIP financing and a related DIP charge for the following reasons:
- a) the Company does not generate any revenue from the Property;
  - b) DIP financing will be used to support the sale of the Property;
  - c) property taxes may remain current at a lower rate than that charged by municipalities; and,
  - d) the current sale process, supported by the Company, is viewed as the best manner for the Property to be sold for proper value and to allow for a formal process to manage the distribution of sale proceeds in a timely manner.

#### **ADMINISTRATION CHARGE**

28. The Company is seeking a charge against the Property to support the professional fees that will be incurred during the NOI process and the sale process. The amount of the administration charge requested is \$250,000. The Trustee will seek approval from the Court with respect to its fees and that of its counsel. The Trustee is of the view that the administration charge would only be used in the event that DIP financing is not sufficient to cover all fees and where the realizations from the sale of the Property are not sufficient to cover the amounts due to secured creditors. The Trustee notes that the appraisals obtained for the Property provide estimates of value that exceed the amounts due to mortgagees. As a result, the Trustee is supportive of the Company's request for an administration charge against the Property.

#### **SEALING THE CONFIDENTIAL EXHIBITS TO THE FENG AFFIDAVIT**

29. The Company is also seeking an order sealing Confidential Exhibits "A" through "D" to the Feng Affidavit, which are the two offers received from potential purchasers and the two appraisals of the Property commissioned by the Company.
30. The Trustee is of the view that disclosure of the offers and the appraisals could result in reduced recoveries through the sale process. The Trustee is also of the view that no

stakeholders will be prejudiced by sealing the information contained in Confidential Exhibits "A" through "D" of the Feng Affidavit.

## CONCLUSION

31. For the reasons described in this Report, the Trustee is supportive of the relief being sought by the Company.

All of which is respectfully submitted,

Dated at Toronto this 23<sup>rd</sup> day of November 2020

### GRANT THORNTON LIMITED

In its capacity as Proposal Trustee and not in its  
personal or corporate capacity

Per:



Dan Wootton, CIRP, LIT  
Senior Vice President

Encl.

APPENDIX A





Industry Canada

Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant  
des faillites Canada

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

In the Matter of the Notice of Intention to make a  
proposal of:

**CIM Bayview Creek Inc.**  
Insolvent Person

**GRANT THORNTON LIMITED**  
Licensed Insolvency Trustee

---

Date of the Notice of Intention:                      October 29, 2020

---

**CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL**  
**Subsection 50.4 (1)**

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

---

Date: October 30, 2020, 08:21

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**

APPENDIX B



# FRONT URBAN DEVELOPMENT ADVISORY

MAXIMIZE VALUE

Colliers  
INTERNATIONAL

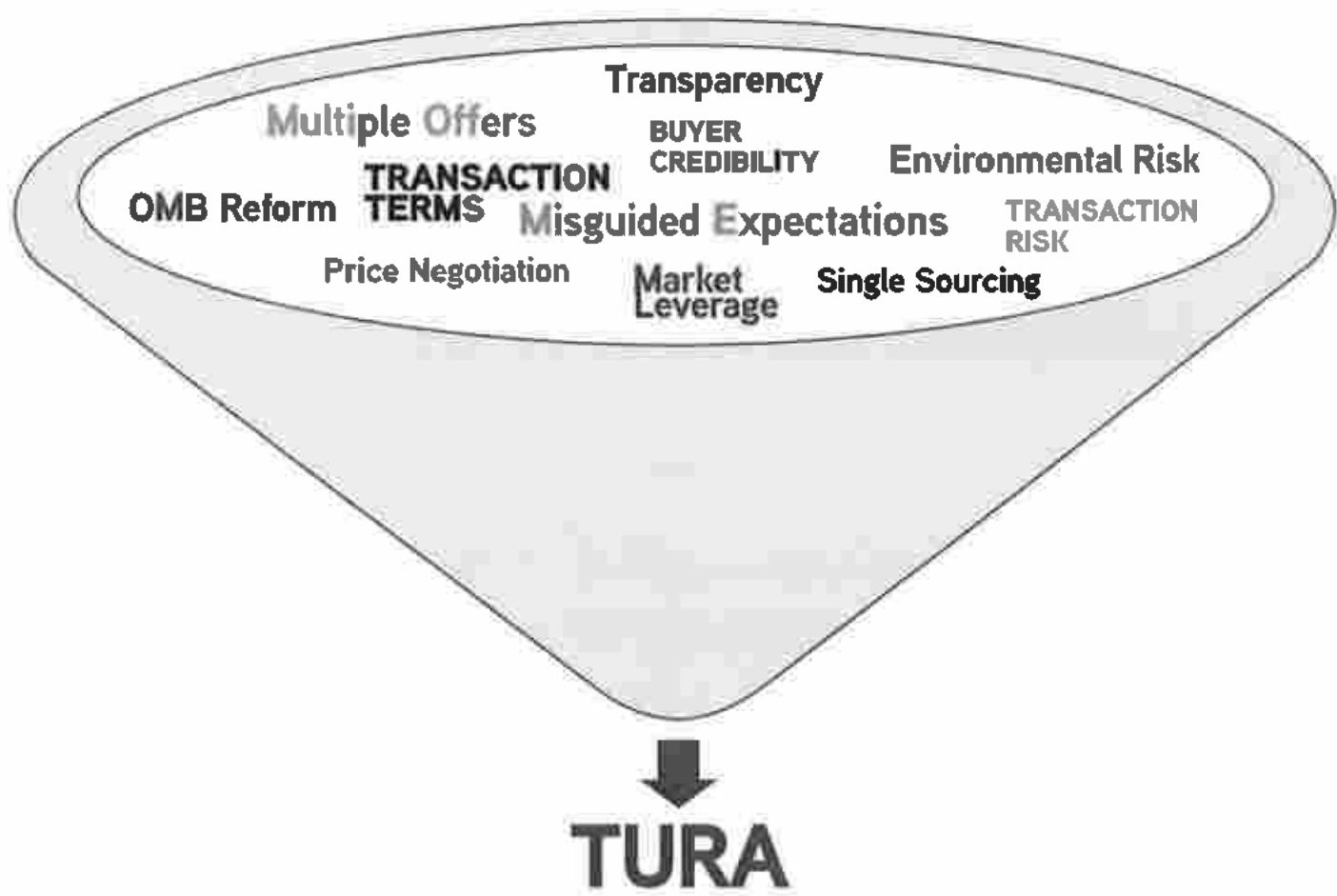
# ABOUT TURA

Toronto continues to experience unprecedented growth through redevelopment and intensification. TURA's intellectual experience in executing on processes to maximize value of under-utilized real estate assets are well known throughout Toronto and across Canada. Our expansive relationships and reputation of integrity are the cornerstones of our advisory practice.

**OUR MISSION:** To maximize value and transaction terms for owners of real estate by leveling the playing field between vendor and purchaser.

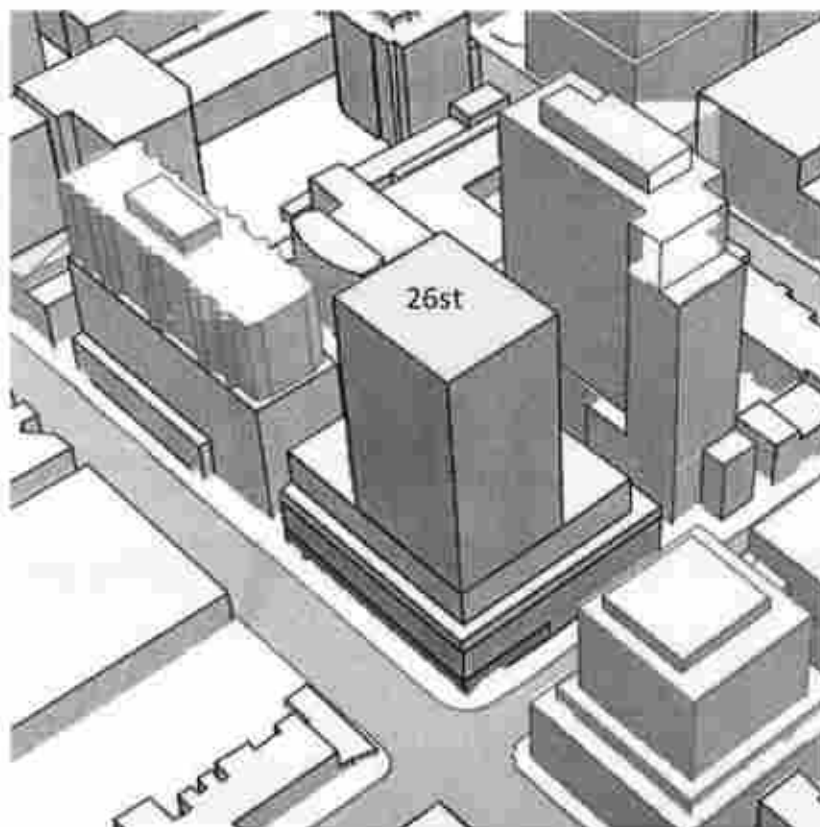
## REQUIRED INTELLIGENCE TO MAXIMIZE VALUE

- Preparing for an Orderly, Thorough and Transparent Sale
- Valuing the Real Estate
- Determining Highest & Best Use
- Comparable Transaction Analysis
- Land Assembly (of multiple owners)
- Alternative Transaction Structures (i.e. Joint Ventures)
- Archaeological studies
- Development Pro-Formas
- Environmental Assessments & Remediation
- Building Condition Assessments
- Zoning Studies
- Planning Rationale
- Built Form Constraints
- Demographic Studies
- Traffic Impact Studies
- Capital Gains
- Estate Planning
- United Nations Advisory
- Heritage/Historical Building Considerations
- Architectural Guidance
- Survey Analysis
- Shadow Impact Studies



# FEASIBILITY STUDIES

TURA recommends engagement of a qualified planner to understand the extent of redevelopment potential. Taking planning principles, guidelines and built form into account, we work in conjunction with a planner to potential density or gross floor area(s) for low, medium and high density scenarios, coupled with degrees of probability for success.



- Residential
- Office
- Commercial

# TRANSACTION STRUCTURING

**OUTRIGHT SALE:** Maximizing sale price based on full asset and/or redevelopment value.

**BONUS DENSITY :** A base price paid to owner upon the agreed closing date for the agreed minimum achievable density plus a bonus density payment upon municipal or provincial approval of achieved additional density beyond the minimum agreed density.

## JOINT VENTURE :

- Traditional: Realize partial value of the property on closing while investing alongside the developer
- Carried interest: Ongoing ownership in an income producing development alongside the selected proponent
- Strata title ownership: Retaining a portion of the new development on a freehold basis such as retail or residential condo units

## FINANCING ALTERNATIVES :

- Vendor take back mortgages
- Delayed Closing
- Traditional lending

# TRANSACTION PROCESS

TURA provides a full service advisory team to guide you throughout the transaction process.

## PRE-MARKETING PERIOD

- Formulate initial development scheme showing the possible redevelopment options
- Identify easements and/or site specific development restrictions
- Create ideal transaction structure to favour owner
- Environmental assessment(s) and remediation
- Recommendations for the preparation of the asset and lands for marketing
- Crafting of disposition strategy
- Finalize public relations and marketing strategies
- Create owner approved documentation
- Customize data room information on secure electronic platform for due diligence items

## MARKETING PERIOD

A transparent tender/bid process including the following:

- Marketing period followed by a defined bid date
- Confidential tender bid process with contact directly to development and investment community
- Educate purchaser to level the playing field
- Maximized leverage to obtain favourable terms
- Target ideal purchaser to:
  - Maximize value
  - Ensure transaction certainty
  - Mitigate risk and false starts

## BID PERIOD

Round One Bid Date

- Collect all bids on either custom LOI or owner approved standardized documentation. All bids to be summarized in bid matrix for the ease of review and understanding
- Select short list of proponents based on ability to deliver on the project
- Create a final bid resubmission environment to allow short listed proponents the opportunity to improve their offer(s)

Round Two Bid Date

- Select proponent
- Finalize transaction

## TRANSACTION TIMELINE

Pre-Due Diligence	2 Weeks
Pre-Marketing	2 Weeks
Active Marketing	5 Weeks
Bid Date	End of Marketing Period
Second Round Offers	1 Week
APS Execution	2 Weeks
Due Diligence	30-60 Days
Closing	30 Days

# THE TEAM

## IAN GRAGTMANS



Ian has 30 years of experience maximizing value creation and maintaining certainty for vendors, purchasers, and agents. He is well known for assembling and leading highly effective teams that are grounded by integrity, strategy, transparency, and execution at every stage. He utilizes his capital markets expertise and strong connections throughout the industry to make himself a valuable asset for clients. Ian contributes regularly as an on-air television guest and commentator with Bloomberg News, the Canadian Broadcasting Corporation (CBC), and the Business News Network (BNN). He shares his knowledge to increase awareness in the business community about current market conditions and future trends in the commercial real estate industry.

## STEVE KEYZER



Steve is a key leader within the redevelopment and intensification vertical in the downtown Toronto market. Acting on behalf of an ever increasing number of private and corporate urban real estate owners to maximize the value of their property(s), he brings certainty and a focused and diligent approach to process while establishing highest & best use for a given asset. He is able to guide property owners through the redevelopment process to align value expectations for sale as well as Joint Venture projects. He graduated from the University of Guelph with a Bachelor of Commerce.

## TINA TENG



As Brokerage Project Specialist, Tina is responsible for managing overall marketing campaigns including market research, producing marketing collateral, pitches, proposals, surveys, agreements and listings. With several years of experience as an accomplished administrative assistant, she possesses strong time management, organizational and multitasking capabilities to ensure meeting the demands in a fast-paced work environment. Tina is a team player, courteous and a professional ready to tackle any new projects. With a diploma in Multimedia Design, she demonstrates expertise knowledge of Adobe Creative Suite, MTB, CRM+ and Microsoft Office.

## SILVIA LABAN



Silvia specializes in the field of Urban Planning, Design and Development to create the highly efficient, well designed developments using contemporary trends and traditional practices to maximize the value of assets. Her role includes but is not limited to researching up-to-date planning policies, tracking new development applications and market inventory, identifying new development opportunities, advising on potential risks and preparing feasibility analysis. She possesses a multitude of skills to deliver, manage, and work with team members to create well integrated projects. She graduated from the University of Toronto with an H.B.A in Architecture and Fine Arts and Ryerson University with M.P.L Urban Planning Development.

# RECENT RECEIVERSHIPS



**110-116 Avenue Road,**  
Toronto, ON - Annex/Yorkville

- › 0.354 acres
- › 53,334 Sf of potential GFA
- › Mixed-Use Development



**22216 Bloomfield Road,**  
Chatham, ON - Truck Stop

- › 11.249 acres
- › 5,600 SF building
- › Rural Industrial



**58-62 Shepherd Road,**  
Oakville, ON - Kerr Village

- › 1.37 acres
- › Two 10-storey buildings
- › Mixed-Use Development



**51-75 Bradford St & 20 Checkley St,**  
Barrie, ON - Downtown Waterfront

- › 8.66 acres
- › 1.7M SF of potential GFA
- › Mixed-Use Development





# RECENT RECEIVERSHIPS



**16 Lock Street & 12 Lakeport Road,  
St. Catharines, ON - Port Dalhousie**

- › 1.112 acres
- › 23,000 SF of commercial floor space
- › Community Commercial



**SPERGEL**



**6 Lloyd Ave,  
Toronto, ON - Junction**

- › 2.62 acres
- › 564,298 SF of GFA
- › Mixed-Use Development

**CARLYLE**



**Vector Financial  
SERVICES LIMITED**



**7, 15 & 30 Fraser Avenue,  
Toronto, ON - Liberty Village**

- › 3.8 acres
- › 103,000 SF
- › Office



# RECENT DISPOSITIONS



**1613 St Clair Avenue West,**  
Toronto, ON - Junction

- 0.79 acres
- 134,312 SF of potential GFA
- Mixed-Use Development



**1153 Queen Street West,**  
Toronto, ON - Queen West

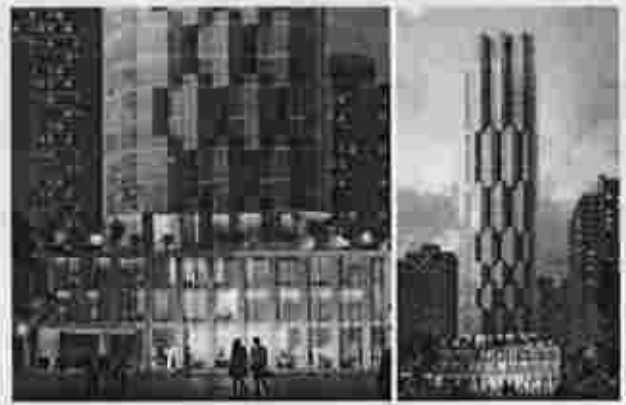
- 0.64 acres
- 181,264 SF of potential GFA
- Commercial Residential

**Ben Woolfitt**



**4750-4754 Dundas Street West,**  
Toronto, ON - Humber Valley

- 0.97 acres
- 230,000 SF of potential GFA
- Mixed-Use Development



**Olive Lands @ 31 Finch Ave East,**  
Toronto, ON - Yonge & Finch

- 0.55 acres
- 259,000 SF of potential GFA
- Mixed-Use Development

**Bell**

# RECENT DISPOSITIONS



**165 Tapscott Road,**  
Toronto, ON - Scarborough Malvern

- 4.09 acres
- 235,662 SF of approved GFA
- Mixed-Use Development



**insoho**  
DEVELOPMENTS



**675 Progress Avenue,**  
Toronto, ON - Scarborough Centre

- 6.28 acres
- 1.6M SF of zoned density
- Mixed-Use Development



**212-218 Dundas St E & 279 1/2 George St,**  
Toronto, ON - Garden District

- 0.62 acres
- 391,036 SF of potential GFA
- Mixed-Use Development

**core** Development  
Group

**menkes**



**315-325 Spadina Avenue,**  
Toronto, ON - Central Downtown

- 0.502 acres
- 171,060 SF of proposed GFA
- Mixed-Use Development

**podium**  
DEVELOPMENTS



# RECENT DISPOSITIONS



**6 Dawes Road,**  
Toronto, ON - Danforth & Main Street

- 3.2 acres
- 1,330,980 of proposed GFA
- Mixed-Use Development

**CARLYLE** **CENTRON**  
SELF STORAGE  
YOUR WORKSAPACED STORAGE CENTER



**502 Adelaide Street West,**  
Toronto, ON - Central Downtown

- 0.23 acres
- 102,084 SF of approved GFA
- Mixed-Use Development

 **minto**  **PRIVATE FAMILY**



**2256 Lake Shore Boulevard West,**  
Etobicoke, ON

- 1.56 acres
- 88,451 SF building size
- Mixed-Use Development

 **ALL CANADIAN**  
**Self-Storage**



**149 College Street,**  
Toronto, ON - College and University

- 0.62 acres
- 43,118 SF rentable area
- Historical Building

 **NORTHWEST**  
HEALTHCARE PROPERTIES

# RECENT DISPOSITIONS



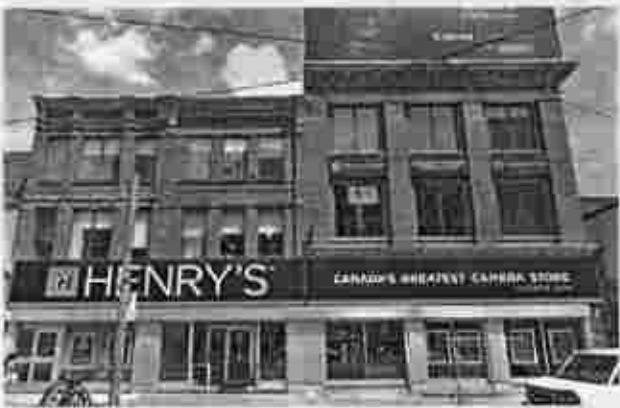
**193-195 McCaul Street,**  
Toronto, ON - Baldwin Village

- 0.4 acres
- 209,918 SF of proposed GFA
- Mixed-Use Development



**457 Richmond Street West,**  
Toronto, ON - King West

- 0.1 acres
- 105,809 SF of GFA
- High Rise Residential



**119 Church Street,**  
Toronto, ON - Downtown

- 0.08 acres
- 3,442 SF site area
- Office Building



**471 Richmond Street West,**  
Toronto, ON - King West

- 0.21 acres
- 152,600 SF of GFA
- Mixed-Use Development



# RECENT DISPOSITIONS



**642 King Street West,**  
Toronto, ON - King West

- 0.32 acres
- 32,000 SF building size
- Mixed Use Redevelopment



**Church & Wellesley,**  
North West Corner - Downtown East

- 0.45 acres
- 476,820 SF of GFA
- Mixed-Use Development



# RECENT DISPOSITIONS



**64-86 Bathurst Street,**  
Toronto, ON - King West

- 0.8 acres
- 311,841 SF of GFA
- Mixed-Use Development

**Hines**



**505 Richmond Street West,**  
Toronto, ON - King West

- 1.3 acres
- 339,368 SF of GFA
- Mixed-Use Development

**WOODCLIFFE**  
LANDMARK PROPERTIES



**BUILD  
TORONTO**

GROWTH  
VALUE  
RESULTS

# CONTACT

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INTERNATIONAL



APPENDIX C

**In the Matter of the Proposal of CIM Bayview Creek Inc.  
Sale Process Cash Flow Forecast  
As of November 23, 2020**

	November	December	January	February	March
Rent	\$ 1,130	\$ 1,130	\$ 1,130	\$ 1,130	\$ 1,131
Payroll					
Kelly	12,557	5,000	5,000	5,000	5,000
David	3,390	3,390	3,390	3,390	3,390
Mehdi	3,390	3,390	3,390	3,390	3,390
Property Tax	47,000	12,000	12,000	12,000	12,000
Office Expenses	450	450	450	450	450
CRA (Payroll)	1,600	1,600	1,600	1,600	1,600
Debtor's Counsel	17,500	17,500	17,500	17,500	17,500
Proposal Trustee	12,500	12,500	12,500	12,500	12,500
Proposal Trustee's Counsel	7,500	7,500	7,500	7,500	7,500
Total	\$107,017	\$ 64,460	\$ 64,460	\$ 64,460	\$ 64,461
Grand Total	<u><u>\$364,858</u></u>				

TAB ZZ

**EXHIBIT "ZZ"**


---

**From:** Cavanagh, Justice Peter (SCJ) [mailto:Peter.Cavanagh@scj-csj.ca]  
**Sent:** December 22, 2020 11:22 AM  
**To:** Robert S. Choi <RChoi@owenswright.com>; 'Ward, David' <dward@millerthomson.com>; Craddock, Erin <ecraddock@millerthomson.com>; jonathan@hummingbirdlaw.com; Lawrence Hansen <Lawrence.Hansen@devrylaw.ca>; Dolny, Tamie <tdolny@millerthomson.com>; 'Birch, John' <jbirch@cassels.com>; Bornstein, Jeremy <jbornstein@cassels.com>; Jonathan Careen <JCareen@owenswright.com>; lcorne@dickinsonwright.com  
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>  
**Subject:** Court File no. 31-2684629 Re Notice of Intention to Make a Proposal of CIM Bayview Creek Inc.

**Counsel:**

See attached counsel slip.

**Endorsement:**

On December 21, 2020 I heard motions by (i) Bryton Capital Group and Bayview Creek Residences Inc. to enforce an option agreement to purchase a property in Richmond Hill, and (ii) CIM Bayview Creek Inc. for declaratory and other relief in respect of the option agreement.

CIM Bayview also moves for an order extending the time to file a proposal from December 22, 2020 to February 5, 2021.

On October 29, 2020, Cim Bayview filed a Notice of Intention to Make a Proposal pursuant to s. 50.4(1) of the *BIA*. On November 27, 2020, I made an order extending the date for CIM Bayview to file a proposal to December 22, 2020. In my endorsement making this order, I identified a threshold question in relation to these proceedings as whether the option agreement is legally valid and binding. I noted that if the extension requested was not granted, there will be a deemed bankruptcy, and CIM Bayview will have lost its opportunity to pursue a sales process under the NOI. I extended the date for CIM Bayview to file a proposal in order to allow it to have an adjudication of the motions in relation to the option agreement.

In these circumstances, I am satisfied that the statutory requirements in s. 50.4(9) for an extension have been met to the extent that a further extension should be granted up to and including February 5, 2021.

I order that the date for filing a proposal under the *BIA* is extended up to and including February 5, 2021. This order is effective today, December 22, 2020. Entry and filing of the formal order is dispensed with.

A handwritten signature in blue ink, appearing to read "Cavanagh J.", is written over a light blue rectangular background.

Cavanagh J.

TAB AAA

**EXHIBIT "AAA"**

**CITATION:** In the Matter of the Notice of Intention to make a Proposal of CIM Bayview Creek Inc., 2021 ONSC 220  
**COURT FILE NO.:** 31-2684629  
**DATE:** 20210112

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
 PROPOSAL OF CIM BAYVIEW CREEK

**BEFORE:** Mr. Justice Cavanagh

**COUNSEL:** *David Ward, Erin Craddock, and Tamie Dolny* for CIM Bayview Creek Inc.

*John Birch and Jeremy Bornstein*, for Grant Thornton Limited, in its capacity as trustee named in the notice of intention to make a proposal of CIM Bayview Creek Inc.

*Jonathan Barr*, for Debenture Holders

*Lawrence Hansen*, for DUCA Financial Services Credit Union Ltd.

*Robert Choi*, for Bryton Capital Corp. GP Ltd. and Bayview Creek Residence Inc.

*Lisa S. Corne* for Jiubin Feng

**HEARD:** December 21, 2020

**ENDORSEMENT****Introduction**

- [1] On October 29, 2020, CIM Bayview Creek Inc. (“CIM Bayview”) filed a Notice of Intention to Make a Proposal (“NOI”) under the *Bankruptcy and Insolvency Act* (“BIA”). In the NOI, CIM Bayview stated its intention to make a proposal and named Grant Thornton Ltd. as the licensed trustee who has consented to act as the trustee under the proposal (“NOI Trustee”).
- [2] Prior to the NOI filing, CIM Bayview’s business was the development of real property in Richmond Hill, Ontario for the benefit of Bayview Creek (CIM) LP (“Bayview LP”). The general partner of Bayview LP is 10502715 Canada Inc. I sometimes refer to CIM Bayview, Bayview LP and 1050217 together as the “CIM Group”.
- [3] Within the NOI proceedings, CIM Bayview seeks to create a forum for a court supervised sales process to monetize the value of the Property.

- [4] Bayview Creek Residences Inc., formerly named Bryton Creek Residences Inc. (“Bryton Creek”)<sup>1</sup>, entered into an Option Agreement with CIM Bayview and Bayview LP (by its general partner, 10502715 Canada Inc.). The Option Agreement was amended by an agreement called Amendment to Option Agreement dated July 1, 2020. The Option Agreement, as amended (the “Amended Option Agreement”) provides that Bayview LP (by its general partner) as beneficial owner of the Property and CIM Bayview, as trustee and registered owner of the Property, grants to Bryton Capital an irrevocable option to purchase the Property for a purchase price of \$41,720,000.
- [5] I sometimes refer to Bryton Creek and Bryton Capital together as the “Bryton Group”.
- [6] There are two motions before me. Both address the validity and enforceability of the Amended Option Agreement
- [7] CIM Bayview moves for an order (i) declaring that its notice to disclaim the option in the Amended Option Agreement is valid and effective such that the option is disclaimed, and (ii) in addition or in the alternative, declaring that the option may be vested out in furtherance of a sales process in the NOI insolvency proceeding and that the court do so. CIM Bayview also seeks an order declaring that the Amended Option Agreement violates federal law because it constitutes a criminal rate of interest and because it provides for an increased charge on amounts in arrears under a mortgage loan. CIM Bayview seeks an order removing the Amended Option Agreement as a bar to a sales process through the NOI proceedings under the BIA.
- [8] Bryton Capital and Bryton Creek move for relief including (i) an order that the option to purchase under the Amended Option Agreement is not to be disclaimed or resiliated, (ii) a declaration that Bryton Creek not be restrained from exercising the option in the Amended Option Agreement or , in the alternative, an order permitting it to exercise the option to purchase the Property in the Amended Option Agreement; and (iii) an order directing CIM Bayview, Bayview LP and 10502715 to comply with the terms of the Amended Option Agreement and complete the sale of the Property to Bryton Creek.
- [9] The NOI Trustee did not bring a motion. In its factum, the NOI Trustee asks for declaratory orders that (i) the Amended Option Agreement (and related agreement of purchase and sale for the Property) be declared void as against the NOI Trustee as a transfer at undervalue, and (ii) payments made by CIM Bayview as a break fee when the Amended Option Agreement was made be declared void as against the NOI Trustee as a preference.
- [10] For the following reasons, the much of the relief sought by Bryton Capital and Bryton Creek is granted and, except as otherwise ordered, the motion by CIM Bayview is dismissed.

---

<sup>1</sup> For ease of reference and to avoid confusion, I refer to this entity as “Bryton Creek”.



### **Background Facts**

[11] The following is a summary of the relevant background facts.

#### ***Ownership of the Property***

[12] Pursuant to a Declaration of Trust made the 21<sup>st</sup> day of June 2018 by CIM Bayview, CIM Bayview holds the Property as bare trustee and nominee solely for Bayview LP.

[13] Prior to the NOI filing, CIM Bayview's business was the development of the Property into a residential subdivision. The common principal of CIM Bayview, Bayview LP, and 10502715 is Jiubin Feng.

[14] The Property is a 9.21 acre medium density residential development site located on the southeast corner of Bayview Avenue and Elgin Mills Road East in Richmond Hill, Ontario.

#### ***Bryton Capital Mortgage and Bryton Creek Option to Purchase***

[15] Bryton Capital is a real estate developer that acquires and develops real property. Bryton Creek is a separate legal entity. Bryton Capital and Bryton Creek do not have common shareholdings, but Bryan McWatt is an officer and director of both entities.

[16] In 2019, Mr. Feng approached the Bryton Group to inquire whether it would be interested in any of his development projects. It was interested in the development on the Property. At that time, there was a first mortgage on the property securing \$20,700,000 in favour of DUCA Financial Services Credit Union Ltd. ("DUCA") and a second mortgage securing \$15 million held by Romspen Investment Corporation ("Romspen").

[17] The Bayview Creek project involved the development of western and eastern parcels of land which are separated by a natural creek. The parcels could be conveyed separately from one another only after the registration of a plan of subdivision. The CIM Group was responsible for the registration.

[18] The Bryton Group wished to purchase the western parcel of the Property. Bryton Capital also agreed to provide mortgage financing as part of this transaction. The Bryton Group's intention was to develop the western parcel of land.

[19] The parties agreed to terms and conditions for a loan which were set out in a commitment letter dated May 29, 2019. The purchaser under the First APS and the Second APS, and the optionee, was to be Bryton Creek.

[20] As part of this transaction, pursuant to the terms of the commitment letter, Bryton Capital agreed to provide a mortgage loan to CIM Bayview as bare trustee for Bayview LP, in the principal amount of \$20 million for a term of 12 months. The commitment and completion of the loan transaction were subject to conditions that required the borrowers to (i) execute and deliver an agreement of purchase and sale for the western parcel of the Property for a purchase price of \$27,650,000 with closing to occur 30 days following

registration of the plan of subdivision for the Property (the “First APS”), and (ii) execute and deliver an agreement of purchase and sale giving Bryton Creek the right at its sole option (exercisable between July 31, 2020 and August 14, 2020) to acquire ownership of the entire Property on or before September 1, 2020 where the borrowers (vendors under the First APS) have not successfully completed the First APS for the western parcel and transferred title to the purchaser to the western parcel by July 30, 2020 (the “Second APS”). The purchase price under the Second APS was \$40,720,000.

- [21] A representative of the Bryton Group, Bryan McWatt, provided evidence that in light of Mr. Feng’s past failed ventures and the CIM Group’s inability to successfully complete other projects, the parties agreed that Bryton Creek would be granted an option to purchase the Property if CIM Bayview failed to close the First APS. The purchase price was negotiated by the parties who were represented by lawyers. CIM Bayview proposed a purchase price of \$48 million. Bayview Creek’s solicitor insisted that the purchase price be \$40,720,000, an amount equal to the outstanding principal amounts of the DUCA mortgage and the Bryton Capital mortgage. The parties agreed on this price.
- [22] The parties entered into an Option Agreement dated June 3, 2019 under which the CIM Group granted to Bryton Creek an irrevocable option to purchase the Property upon the terms of the Second APS. Bryton Creek had the right to exercise the option at any time from the date of termination of the First APS up until August 14, 2020. The purchase option was registered on title to the Property.

#### *Amendments to the agreements*

- [23] The Bryton Group spent more than \$378,777.96 on the site plan application process and also dedicated a project manager for the project in anticipation of the registration of the subdivision agreement and completion of the First APS.
- [24] The CIM Group ceased to make interest payments on Bryton Capital’s mortgage after three months and failed to make meaningful progress on the registered plan of subdivision.
- [25] On June 10, 2020, DUCA demanded payment of the DUCA Mortgage and issued a notice of intention to enforce security and a notice of sale under the DUCA mortgage.
- [26] In late June 2020, the CIM Group sought a mortgage extension and amendment agreement from Bryton Capital. The CIM Group inquired whether the Bryton Group would be prepared to consent to the termination of the First APS so that the CIM Group could attempt to sell the entire Property. By this time, Bryton Capital’s second mortgage was significantly in arrears and the Bryton Group had spent significant time and resources on the site plan application.
- [27] On July 1, 2020, the Bryton mortgage was amended to, among other things, increase the principal amount to \$22.3 million and extend the maturity date to November 1, 2020. The mortgage amendment required as prefunding conditions that the CIM Group pay \$1 million plus HST as a fee in respect of termination of the First APS for the Western Parcel and the amendment to the June Option Agreement and to the Second APS as well

as additional legal and real estate broker fees. The parties entered into amending agreements dated July 1, 2020 including the Amended Option Agreement.

- [28] The Amended Option Agreement provides that in the event that the second mortgage in favour of Bryton Capital is not repaid in full by October 31, 2020, then Bryton Creek shall have the right to exercise the option between November 1, 2020 and December 31, 2020. The form of the Second APS was amended to increase the purchase price to \$41,720,000 and provide for a closing date on the 15<sup>th</sup> day following the date of exercise of the option. There were other changes.
- [29] As part of the package of amending agreements, the CIM Group executed a Full and Final Release and Acknowledgment in favour of Bryton Creek and Bryton Capital dated July 1, 2020 (“Release”). The Release provides that the CIM Group and Mr. Feng and Dian Yuan Zhang as releasors release the Bryton Group from any claims that have in the past existed or exist up to the date of the Release in consequence of or in any way arising from, incidental to, or in connection with the mortgage loan made pursuant to the commitment letter dated May 29, 2019. The CIM Group and Mr. Feng agreed that the break fee of \$1,000,000 plus HST constitutes fair and reasonable compensation to Bayview Creek for (i) its agreement to terminate the First APS and to relinquish its rights and claims thereunder, (ii) its reimbursement in respect to various costs and expenses incurred by Bayview Creek in respect thereof, and (iii) the agreement of Bayview Creek to amend the terms of the Option Agreement for the Property. The CIM Group and Mr. Feng released Bayview Creek from any claims in respect of the break fee.

### ***Mareva Injunction***

- [30] On September 18, 2020, individuals representing the interests of various debenture holders made an application without notice for injunctive relief against the CIM Group. By order dated September 18, 2020, Schabas J. granted an interim injunction preventing the sale of the Property and preventing anyone with notice of the order from dealing with the assets of the CIM Group or instructing or encouraging any other person to do so or facilitating or participating in any acts the effect of which is to do so (the “*Mareva Injunction*”). The *Mareva Injunction* was extended by Schabas J. on September 28, 2020 and further extended by Koehnen J. on October 13, 2020.

### ***Notice of Intention to Make a Proposal***

- [31] CIM Bayview filed the NOI on October 29, 2020. Mr. Feng has sworn an affidavit for this motion in which he states that the proximate cause and catalyst for the NOI filing was the *ex parte* motion brought by the individuals representing the debenture holders which resulted in the *Mareva Injunction*.

### ***Disclaimer of Amended Option Agreement***

- [32] CIM Bayview issued a BIA s. 65.11 notice to disclaim the Amended Option Agreement on December 7, 2020 (the “Disclaimer”). The NOI Trustee approved the Disclaimer.

***Bryton Creek notice to exercise option in Amended Option Agreement***

[33] On December 11, 2020, Bryton Creek delivered a Notice that Bryton Creek elects to exercise its option to purchase the Property pursuant to Article 3 of the Amended Option Agreement.

**Analysis**

[34] CIM Bayview raises the following issues on its motion:

- a. Is the Disclaimer valid and effective, such that CIM Bayview is not subject to the option to purchase the Property?
- b. If the option cannot be disclaimed, can this Court vest the option off title and extinguish it by way of a vesting order in furtherance of the NOI proceedings through an insolvency sales process and, if so, should this be done?
- c. Is the option unenforceable because it operates so as to constitute a criminal rate of interest in contravention of the *Criminal Code*?
- d. Does the Amended Option Agreement violate s. 8(1) of the *Interest Act*?

[35] Bryton Creek raises the following issues on its motion:

- a. Did CIM Bayview engage in an abuse of process by filing the NOI in circumstances where (i) the *Mareva* Injunction was in effect, and (ii) CIM Bayview has no property to distribute given that trust property is exempt from distribution under s. 67(1)(a) of the BIA? Should the NOI proceeding be terminated?
- b. What is the legal effect of Bryton Creek's exercise of the option to purchase the Property on December 11, 2020?
- c. If leave of the court was needed for Bryton Creek to exercise the option, should leave be granted to be effective, *nunc pro tunc*, as at December 11, 2020 or, in the alternative, as at December 21, 2020?

[36] NOI Trustee did not bring a motion but raises the following issues in its factum:

- a. Is the break fee a preference under s. 95 of the BIA which is void as against the NOI Trustee?
- b. Is the Amended Option Agreement a transfer at undervalue under section 96 of the BIA which is void as against the NOI Trustee?
- c. Is Bryton Creek stayed from exercising the option under the Amended Option Agreement pursuant to section 69 (1) of the BIA?

[37] I first address the issues raised by CIM Bayview.

***Is the disclaimer valid and effective, such that CIM Bayview is not subject to the option to purchase the Property?***

- [38] Section 65.11(1) of the BIA provides that a debtor in respect of whom a notice of intention was filed may - on notice to the other parties to the agreement and the trustee - disclaim or resiliate any agreement to which the debtor is a party on the day on which the notice of intention was filed. A party to the agreement may apply for an order that the agreement is not to be disclaimed or resiliated. In deciding whether to make an order, the court is to consider, among other things,
- a. whether the trustee approved the proposed disclaimer or resiliation;
  - b. whether the disclaimer or resiliation would enhance the prospects of a viable proposal being made in respect of the debtor; and
  - c. whether the disclaimer or resiliation would likely cause significant hardship to a party to the agreement.
- [39] CIM Bayview submits that the Amended Option Agreement is an executory contract which does not create an interest in land and may be disclaimed. In support of this submission, CIM Bayview relies on a decision in the U.S. Bankruptcy Court for the District of North Carolina, *In Re Hardie*, 892 F. 2d 469 (Bankr. D.N.C. 1989), that held that an unexercised option to purchase land does not give the optionee an interest in the land but only an *in rem* right to exercise the option. CIM Bayview submits that as at October 29, 2020, Bryton Creek had contractual rights but not specifically enforceable proprietary rights such as would be immune from the Disclaimer.
- [40] In *2123201 Ontario Inc. v. Israel Estate*, 2016 ONCA 409, the Court of Appeal for Ontario addressed the question of whether a contract providing for an option to purchase land provided for an interest in the land or only a personal contractual right. In *Israel Estate*, the owner of land sold it to two individuals who bought the land to obtain the gravel, sand, and stone on it. Contemporaneously with the conveyance, the parties signed an agreement giving the original seller the “first option to purchase” the land for \$1 once the gravel had been removed from it. The agreement gave the purchasers discretion to state when all the gravel had been removed. The owner at the time of the litigation (not the two individuals) continued to extract gravel from the land. The estate of the original owner registered notices of a claim against the land and demanded that the land be conveyed to it for \$1. The then current owner brought an application for an order declaring the option agreement void and deleting it from title on the ground that the agreement gave the original owner an immediate interest in the land and, because the interest had not vested, the agreement was void and unenforceable under the rule against perpetuities. The estate of the original owner contended that the agreement gave a right of first refusal which did not offend the rule against perpetuities.
- [41] The application judge in *Israel Estate* held that the agreement was not an option agreement that created an interest in land. On appeal, Laskin J.A. held, at para. 24, that “the jurisprudence establishes that options to purchase create immediate interests in land”

and are specifically enforceable. Laskin J.A. concluded that the purpose of the agreement showed an intention to give the original owner of the land an option to purchase the land, which gave rise to an immediate, equitable interest in the land.

- [42] In *Re 1565397 Ontario Inc.*, [2009] O.J. No. 2596, Wilton-Siegel J. held that an undertaking was an agreement that created an enforceable interest in land, and he reviewed the authorities and addressed whether the agreement could be disclaimed under the BIA:

The applicant says it can disclaim the Undertaking even if it creates an interest in land. I understand disclaimer in this sense to be limited to repudiation of the Undertaking leaving the respondents with the right to claim damages for breach of contract against 156 for failure to perform the Undertaking.

I do not think the applicant's position is correct. I know of no law that permits the court to authorize the receiver to terminate a proprietary interest in land in such manner. The effect of any such extinguishment of an interest in the Property would be the transfer of such interest to 156. Such action amounts to expropriation of the respondents' assets in favour of subordinate or unsecured creditors of 156.

- [43] In *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2018 ONCA 253, the Court of Appeal, at paras. 113-114, cited this passage with approval.
- [44] On the authority of *Israel Estate, 1565397* and *Third Eye*, I conclude that the Amended Option Agreement created an immediate interest in the Property. The Disclaimer by CIM Bayview, if effective, would amount to an expropriation of Bryton Creek's proprietary interest in the Property. I am satisfied that the court is not able to authorize CIM Bayview to disclaim and thereby terminate the interest of Bryton Creek in the Property under the Amended Option Agreement pursuant to s. 65.11 of the BIA.
- [45] The Disclaimer of the Amended Option Agreement should not be declared valid and effective.

***If the Option cannot be disclaimed, can this Court vest the Amended Option Agreement off title and extinguish it by way of a vesting order in furtherance of the NOI proceedings through an insolvency sales process and, if so, should this be done?***

- [46] CIM Bayview submits that the Amended Option Agreement may still be vested off title and extinguished by way of a vesting order in furtherance of these proceedings and an insolvency sales process.
- [47] CIM Bayview relies on *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508. In *Third Eye*, the Court of Appeal considered whether a vesting order could be used to extinguish rights under an agreement providing an interest in land in the nature of a gross overriding royalty ("GOR"). The GORs in question were interests in 20% of royalties of diamonds and 1.5% of royalties of other metals and

minerals derived from another party's mining rights. The GORs depended on the development of the mining claims by the holder of those claims. The issues considered by the Court of Appeal included whether the jurisdiction under s. 243 of the BIA to approve a sale proposed by a receiver extends to the implementation of the sale through the use of a vesting order and held that it does.

- [48] The Court of Appeal then addressed the appropriateness of the exercise of this jurisdiction held that the framework for analysis to determine if a third party interest should be extinguished requires the court to adopt a "rigorous cascade analysis". The Court of Appeal explained, at paras. 109-110:

Thus, in considering whether an interest in land should be extinguished, a court should consider: (1) the nature of the interest in land; and (2) whether the interest holder has consented to the vesting out of their interest either in the insolvency process itself or in the agreements reached prior to the insolvency.

If these factors proved to be ambiguous or inconclusive, the court may then engage in a consideration of the equities to determine if a vesting order is appropriate in the particular circumstances of the case. This would include: consideration of the prejudice, if any to the third party interest holder; whether the third party may be adequately compensated for its interests from the proceeds of disposition or sale; whether, based on the evidence of value, there is any equity in the property; and whether the parties acted in good faith. This is not an exhaustive list and there may be other factors that are relevant to the analysis.

- [49] The Court of Appeal resolved the issue before it by considering the nature of the interest in land in question. The Court of Appeal regarded the GORs as, in substance, an interest in an inherent feature of the property itself. The Court of Appeal held that the GOR carves out an overriding entitlement to an amount of the property interest held by the owner of the mining claims. The Court of Appeal held that given the nature of the interest and the absence of any agreement that allows for a competing priority, there was no need to resort to the equities and ordered that the application judge erred in extinguishing the interest in the land in the nature of the GORs.

- [50] In *1565397*, Wilton-Siegel J., after deciding that the receiver could not disclaim the undertaking which created an interest in the land, addressed whether the receiver could "vest out" the undertaking and sell the property free of the interest of the beneficiary of the undertaking. Wilton-Siegel J. regarded this position as no different than the concept of disclaimer, and he did not accept that the court or the receiver has the power to vest out such an interest except, perhaps, in exceptional circumstances in which it is clear that there is no equity in the interest being "vested out". See *1565397*, at para. 64. Wilton-Siegel J. went on to consider whether the court has authority to vest out the interests in the property with a subsequent hearing to be held to value these interests and concluded that the court did not have the power to vest out the respondents' interests in the property.

- [51] As I have held, the nature of the interest of Bryton Creek under the Amended Option Agreement is an interest in the Property. This interest is as strong as, or stronger than, the

interest in the land through the GORs in *Third Eye*. Bryton Creek has not consented to the vesting out of its interest in the insolvency proceeding or in prior agreements. I am satisfied based on the nature of Bryton Creek's interest in the Property that it would not be appropriate for a court to vest out this interest. This would have the same effect as allowing the Disclaimer to extinguish the Amended Option Agreement, which would amount to expropriation of the Bryton Creek proprietary interest in the Property. The factors at the first stage of the *Third Eye* framework are not inconclusive or ambiguous. It is not necessary for me to go further and address the equities at the next stage of the analysis.

***Is the Option unenforceable because it operates so as to constitute a criminal rate of interest in contravention of s. 347 of the Criminal Code?***

- [52] CIM Bayview submits that the Amended Option Agreement, a prefunding condition to the grant of credit by Bryton Capital, provides for a purchase price for the Property below market value and thereby provides a collateral benefit to Bryton Capital which is interest within the meaning of that term in the *Criminal Code*. CIM Bayview submits that if the Amended Option Agreement is permitted to be exercised, Bryton Capital will receive a criminal rate of interest in contravention of s. 347 of the *Criminal Code*.
- [53] In *William E. Thomson Associates v. Carpenter*, 1989 CanLII 185 (ON CA), the Court of Appeal, citing S. Waddams, *The Law of Contracts*, 2<sup>nd</sup> ed. (1984), at p. 421, noted that an agreement to receive interest at a criminal rate is prohibited by statute and courts have consistently held that such agreements are void and unenforceable.
- [54] CIM Bayview submits that the Amended Option Agreement which, it contends, provides for illegal interest, may be severed from the loan agreement and mortgage which, following severance, would no longer contravene s. 347 of the *Criminal Code* and would be enforceable.
- [55] CIM Bayview submits that the proper period over which interest should be calculated for purposes of s. 347 of the *Criminal Code* is July 31, 2020 to October 31, 2020 because funds were not advanced to CIM Bayview until July 31, 2020 and were due on October 31, 2020.
- [56] The NOI Trustee did calculations of the effective annual rate of interest under three scenarios. Under the first scenario, the NOI Trustee calculated the total principal including the initial advance of \$20 million (less legal fees and commitment fees) and the advances on July 31 and September 3, 2020. The total principal as calculated by the NOI Trustee under the first scenario is \$20,759,050. Under the first scenario, the NOI Trustee used its estimate of the fair market value of the Property, less the option price, and added this difference as interest. The NOI Trustee calculated total interest during the three month period from July 31, 2020 to October 31, 2020, including interest on the initial advance, and calculated the effective annual rate of interest to be several times higher than the criminal rate of interest under the *Criminal Code*. CIM Bayview relies on the calculations done by the NOI Trustee under the first scenario.



- [57] Under the NOI Trustee's second scenario, no amount is added for interest based on the difference between the NOI Trustee's estimate of the fair market value of the Property and the option price. The other amounts are the same as in scenario one. Both scenarios include the break fee of \$1 million and HST thereon as interest. The NOI Trustee calculates the effective annual rate of interest under the second scenario to be 41%, lower than the criminal rate.
- [58] I first address the assumption implicit in the NOI Trustee's calculation under the first scenario that the difference between the NOI Trustee's estimate of fair market value of the Property and the option price is interest within the meaning of s. 347 of the *Criminal Code*.
- [59] The meaning of the term "interest" in s. 347 of the *Criminal Code* is found in s. 347(2):
- "interest" means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes;
- [60] In *Thomson*, the Court of Appeal addressed the meaning of interest in s. 347:
- The definition of "interest" in s. 347 is even more comprehensive than that of the "cost of a loan" in the Small Loans Act. In my opinion, it is all-inclusive and covers charges of any kind or in any form paid or payable under an agreement or arrangement for the advancing of credit. The definition covers the "aggregate" of all charges and, in this case, includes not only the interest specified in the agreement but also the facility fee and the lawyers' fees.
- ...
- The definition of "interest" includes fees and charges of every kind, however they may be described or disguised. Courts cannot permit any erosion of the protection of the public from usurious charges which Parliament manifestly intended to provide.
- [61] In *Garland v. Consumers Gas Co.*, [1993] 3 S.C.R. 112, at paras. 24 and 27, the Supreme Court of Canada observed that the scope of the language in s. 347 is "extremely broad" and that "interest" for the purposes of s. 347 is "an extremely comprehensive term, encompassing many types of fixed payments which would not be considered interest proper at common law or under general accounting principles". The Supreme Court of Canada in *Garland* held, at para. 27, that it is the substance, and not merely the form, of a charge or expenses which determines whether it is governed by s. 347. In order to

constitute “interest” under s. 347, a charge must be paid or payable for the advancing of credit under an agreement or arrangement.

- [62] The difference in the value of the Property used to calculate interest is an estimate. Any estimated difference in value, based upon appraisals or other market information, cannot be precisely calculated, and the difference would likely vary over time because the value of the Property would vary over time. The estimated difference in value cannot be said to be a “fixed” payment, a term used in *Garland*.
- [63] I accept that the term “interest” as used in s. 347 of the *Criminal Code* is extremely comprehensive. However, the term “interest” does not encompass all valuable benefits of any kind that a party may receive under a contract that is a condition of funding a loan. “Interest” is defined to mean “the aggregate of all *charges and expenses* ... paid or payable for the advancing of credit under an agreement or arrangement”. Under the Amended Option Agreement, Bryton Creek has a contractual right to purchase the Property for an agreed upon price. The Amended Option Agreement does not provide for any payment to be made by CIM Bayview. The estimated difference in the value of the Property between the fair market value and the option price as determined by the NOI Trustee, to the extent that the value difference operates to confer a contractual benefit to Bryton Creek under the Amended Option Agreement, is not a charge or expense paid or payable by CIM Bayview to Bryton Capital. It is not interest within the meaning of s. 347 of the *Criminal Code*.
- [64] The NOI Trustee also did a calculation of the effective annual rate of interest under a third scenario. Under this scenario, the effective rate of interest is calculated over a three month period from July 31, 2020 to October 31, 2020, and the calculation of interest is based only on advances made during this three month period on July 31, 2020 and on September 3, 2020. This calculation also assumes that the \$1 million break fee and the additional fee paid on September 3, 2020 of \$130,000 (for HST on the break fee) qualify as interest for the purpose of s. 347 of the *Criminal Code*. Under this calculation, the total principal advanced is a net advance of \$1,084,050, as opposed to \$20,759,050 under scenarios one and two. The total interest over this three month period is \$1,307,367 which includes the break fee, HST thereon, and legal fees (but excludes interest of \$400,000 charged on the \$20 million initial advance). Under these assumptions, the NOI Trustee calculates the effective annual rate of interest to be 482%.
- [65] The Bryton Group provided its own calculation of the effective rate on interest. The Bryton Group assumed that the calculation of interest should be over the sixteen month term of the mortgage. The Bryton Group made its calculations based on principal advances of \$20,000,000 on June 11, 2019, \$1,950,138.77 on July 31, 2020, and \$350,316.22 on August 19, 2020, a total of \$22,300,454.99. The Bryton Group calculated interest over the sixteen month term and included the legal fees, commitment fee, and property appraisal fee as additional interest. Total interest (excluding the break fee as interest) was calculated in the amount of \$2,633,838.80. The Bryton Group calculated the effective annual interest rate on this basis to be 8.86%. The Bryton Group also provided a separate calculation using the same assumptions but treating the break fee and HST thereon as interest. This calculation produced total interest over the sixteen month term of

the mortgage of \$3,763,838.80. This produced an effective annual interest rate of 12.66%.

- [66] A key difference between the parties in respect of s. 347 of the *Criminal Code* under the NOI Trustee's third scenario is whether or not the effective annual rate of interest should be calculated based on inclusion of the initial \$20,000,000 advance as part of the principal.
- [67] In the *Criminal Code*, the term "criminal rate" means "an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 60% on the credit advanced under an agreement or arrangement".
- [68] The July 1, 2020 agreements are amendments to what were then existing agreements and arrangements. They are not stand-alone agreements. During the period after the amending agreements were made, CIM Bayview had the benefit of the almost \$20 million initially advanced under the loan and mortgage and it was charged interest on this outstanding principal balance during this three month period. The extension of the term of the mortgage to November 1, 2020 was an essential part of the amending agreements. Although the agreements provide for an amendment of the loan and charge effective from July 1, 2020, the amendments are expressly made "subject to and preserving the priorities established on the date of registration of the charge".
- [69] I conclude that the assumption implicit in the NOI Trustee's second scenario, that the principal amount used to calculate the effective annual rate of interest for purposes of s. 347 of the *Criminal Code* should include the initial principal advance, is proper. This assumption was accepted by CIM Bayview when it supported the NOI Trustee's calculations under the first scenario. I do not need to decide whether the calculation should be done over the sixteen month term of the loan, as Bryton contends, or over the three month term from July 31, 2020 to October 31, 2020, as CIM Bayview contends. Under either calculation, the effective annual rate of interest is less than the criminal rate.

***Does the Option Agreement violate s. 8(1) of the Interest Act?***

- [70] CIM Bayview submits that the Amended Option Agreement, a prefunding condition to the grant of credit by Bryton Capital, is a penalty which violates s. 8 of the *Interest Act*.
- [71] Section 8(1) of the *Interest Act* provides:  
  
No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property ... that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.
- [72] In *P.A.R.C.E.L. Inc. v. Acquaviva*, 2015 ONCA 331, the Court of Appeal for Ontario cited *Reliant Capital Ltd. v. Silverdale Development Corp.*, 2006 BCCA 226, leave to appeal to S.C.C. refused, [2006] S.C.C.A. No. 265 in which the British Columbia Court of Appeal explained that s. 8 is intended to "protect property owners against abusive lending practices, while recognizing that generally speaking parties are entitled to

freedom of contract”. The Court of Appeal for Ontario went on to explain the purpose of s. 8, at paras. 51-52:

Thus, s. 8 creates an exception to the general rule that lenders and borrowers are free to negotiate and agree on any rate of interest on a loan. Section 8 prohibits lenders from levying “fine[s], penalt[ies] or rate[s] of interest” on “any arrears of principal or interest” that are “secured by mortgage on real property”. The *Reliant Capital* court elaborated, at paras. 51-52:

It is not uncommon now in the commercial world for loan contracts, other than mortgage loans, to require a substantially higher interest rate if the loan becomes in arrears. Common sense suggests that this is recognized as a legitimate and effective way to ensure the prompt or timely repayment of the loan.

*The prohibition against extra charges on arrears remains in place for loan secured by a mortgage. Moreover, the additional charge on arrears is prohibited in mortgage loans whether that charge is expressed as such, or whether the interest provision simply has “the effect” of increasing the charge in respect of arrears.*

*Parliament has singled out mortgages on real estate for special treatment, or at least treatment that differs from loans that are not secured on real property. I infer that at least one legislative purpose was to protect the owners of real estate from interest or other charges that would make it impossible for owners to redeem, or to protect their equity. If an owner were already in default of payment under the interest rate charged on monies not in arrears, a still higher rate, or greater charge on the arrears, would render foreclosure all but inevitable. [Emphasis added]*

- [73] The argument advanced by CIM Bayview does not depend on its assertion that the option price is below the fair market value of the Property. CIM Bayview contends that regardless of the option exercise price, and even if the price was equal to or exceeded fair market value, the Amended Option Agreement would be a penalty because (i) the option is only exercisable after the due date for payment of principal and interest under the Bryton Capital mortgage passes without payment in full and, as such, it is only effective upon default, and (ii) the effect of the Amended Option Agreement is to foreclose the possibility of the mortgagor redeeming the mortgage.
- [74] The first question to be addressed is whether the Amended Option Agreement imposes a “fine” or “penalty” or “rate of interest”. If it does not, then s. 8 of the *Interest Act* is not engaged: *P.A.R.C.E.L.*, at para. 53.
- [75] In *1482241 Ontario Limited (Re)*, 2018 ONSC 5925, Hainey J. held that an overholding fee of \$63,900 equivalent to three months interest that was payable if the mortgage was not renewed on or before the maturity date was a penalty that is contrary to s. 8 of the

*Interest Act*. Hainey J., at para. 16, considered the principles that determine what constitutes a penalty and cited the decision of the House of Lords in *Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co.*, [1915] A.C. 79 at para. 3 which held that the essence of a penalty is “a payment of money stipulated interrorem of the offending party”.

- [76] The Amended Option Agreement does not impose a monetary payment for breach of the obligations of the CIM Group under the Bryton Capital mortgage. For this reason, the Amended Option Agreement does not impose a fine or penalty. Section 8 of the *Interest Act* is not engaged.
- [77] I also do not agree that the Amended Option Agreement should be regarded as a penalty because it foreclosed the possibility of CIM Bayview redeeming the Bryton Capital mortgage. In *Niagara Resorts Inc. v. 1086868 Ontario Ltd.* (1999), 24 R.P.R. (3d) 138 (Ont. Ct. Gen. Div.), Greer J. summarized the law when a mortgagee makes a separate contract as a term of a mortgage advance (from the headnote of *G. & C. Kreglinger v. New Patagonia Meat & Cold Storage Co.*, [1914] 3 All E.R. 970 (U.K.H.L.):

There is now no rule in equity which precludes a mortgagee, whether the mortgage be made upon the occasion of a loan or otherwise, from stipulating for any collateral advantage at the time and as a term of the advance, and in the same document as constitutes the security, provided that such collateral advantage is independent of the mortgage, that the mortgagee has not acted unfairly, oppressively, or unconscionably, that the bargain does not restrict or clog the equity of redemption, and that it is not inconsistent with or repugnant to the contractual and equitable right to redeem.

- [78] I consider both the Option Agreement before it was amended, and the Amended Option Agreement, to determine whether they provide for a collateral advantage to the Bryton Group which is impermissible.
- [79] The evidence of Mr. McWatt on behalf of the Bryton Group is that the Bryton Group wished to purchase and develop the Western parcel of the property, and the purchase could only be completed when the CIM Group was successful in registering a plan of subdivision. The second mortgage in favour of Bryton Capital and the original Option Agreement in favour of Bryton Creek as purchaser were, in my view, ancillary agreements to the First APS because the primary objective of the Bryton Group was to purchase for development the Western parcel. Mr. McWatt’s evidence is that Bryton Capital provided favourable financial terms to assist with the financing of the project and, given Mr. Feng’s troubled history and his group’s inability to complete projects, the Bryton Group required, and the parties agreed, that Bryton Creek shall have an option to purchase the entire Property, exercisable only if the CIM Group failed to complete the sale of the Western parcel under the First APS.
- [80] It is true that the effect of the Option Agreement, if the CIM Group failed to complete the sale of the Western parcel under the first APS by July 30, 2020 (which was also the due date for payment of principal and interest under the Bryton Capital mortgage) and the

option were exercised, would be that Bryton Creek would have the contractual right to purchase the Property. But the Option Agreement was freely negotiated as part of the package of agreements. It was open to CIM Bayview to reject the conditions required by Bryton Group and to seek another purchaser for the Western parcel or to seek other mortgage financing. The Option Agreement only becomes effective if the CIM Group fails to complete the sale of the Western Parcel under the First APS. The Option Agreement does not impose any monetary payment for breach of the repayment terms of the Bryton Capital mortgage.

- [81] The Amended Option Agreement was made on July 1, 2020, when the last date for closing of the First APS was approaching on July 30, 2020. The CIM Group had been unable to register a plan of subdivision which was a condition of closing under the First APS. Under the Option Agreement, if the First APS did not close by July 30, 2020 (and it was not terminated solely by reason of a default by Bryton Creek), Bryton Creek would have the contractual right to exercise the option and, if it did so, the Second APS would be released from escrow and become a firm and binding agreement. In these circumstances, the Amended Option Agreement was made as part of the package of amending agreements which provided for a break fee, extended the term of the second mortgage, and extended the date for the exercise of the option to purchase the Property. These were accommodations made to Cim Bayview at its request and with its agreement.
- [82] In this case, the Amending Option Agreement, although a prefunding condition of the mortgage lender, was a separate contract which provided contractual rights to another company, Bryton Creek. Bryton Capital and Bryton Creek did not act unfairly, oppressively, or unconscionably in negotiating the Option Agreement, or the Amended Option Agreement. The Amended Option Agreement is not inconsistent with or repugnant to the contractual and equitable right on the part of CIM Bayview to redeem the Bryton Capital mortgage.

***Does the NOI Trustee have statutory authority to apply for orders under s. 95 and s. 96 of the BIA?***

- [83] On November 27, 2020, following a hearing on November 26, 2020, I made an order that the motion by the Bryton Group in relation to the Amended Option Agreement be heard on December 21, 2020 and I extended the date for a proposal to be filed to December 22, 2020. I wrote in my endorsement that I regarded as a threshold question whether Bryton Creek has a legally valid option to purchase the Property and I explained that if I did not extend the date for CIM Bayview to file a proposal under the BIA, there would be a deemed bankruptcy and CIM Bayview would lose its opportunity to pursue a sales process under the NOI. I also extended the date for Bryton Creek to exercise the option under the Amended Option Agreement and the date for closing of the purchase of the Property pursuant to the Amended Option Agreement.
- [84] As part of this Order, I authorized and empowered CIM Bayview to borrow up to \$200,000 from the DIP lender to fund the reasonable fees and disbursements of CIM Bayview's counsel until the return of the motions on December 21, 2020 and of the NOI Trustee and its counsel for activities which are necessary for the NOI Trustee to fulfill its

statutory obligations, bearing in mind that the sales process which CIM Bayview had requested be approved at the hearing on November 26, 2020 had not been approved.

- [85] On December 3, 2020, I made an order that any motions or cross-motions relating to whether the Amended Option Agreement is valid and whether the stay of proceedings in respect of CIM Bayview should be lifted to allow for the Amended Option Agreement to be enforced shall also be heard on December 21, 2020.
- [86] As I have noted, separate motions were brought by CIM Bayview and by the Bryton Group. No motion was brought by the NOI Trustee.
- [87] In the NOI Trustee's Second Report, the NOI Trustee reported that it intended to investigate whether certain transactions carried out by CIM Bayview constitute preferences or transfers at undervalue. No orders were made determining in advance of the hearing on December 21, 2020 what activities the NOI Trustee needed to engage in to fulfill its statutory obligations. This was left to the judgment of the NOI Trustee as an officer of the court.
- [88] The NOI Trustee delivered its Third Report pursuant to s. 50.4(7)(b)(ii) of the BIA on December 17, 2020. The stated purpose of the Third Report is to:
- a. report to the Court on the outcome of the Trustee's investigations to date and make recommendations to the Court on whether certain transactions carried out by CIM Bayview constitute preferences and/or transfers at undervalue under sections 95-101 of the BIA, particularly as it relates to (i) the sale or transfer of the Property pursuant to the Amended Option Agreement; and (ii) the payment of the break fee to Bryton Creek; and
  - b. report to the Court and provide the Trustee's views on (i) CIM Bayview's notice to disclaim the Amended Option Agreement under section 65.11 of the BIA, (ii) Bryton Creek's attempt to exercise the Amended Option Agreement by delivering a notice on December 11, 2020 in light of the stay of proceedings under section 69(1) of the BIA, (iii) the interest rate charged by Bryton Capital on its mortgage, and (iv) other matters.
- [89] The NOI Trustee reported on these matters in its Third Report.
- [90] In its factum filed on December 18, 2020, the Friday before the motions were to be heard before me on December 21, 2020, the NOI Trustee asks for a declaration that the following transactions are void as against the NOI Trustee: (a) the Amended Option Agreement, as a transfer at undervalue; and (b) the payment by CIM Bayview of the break fee to Bryton Creek on July 31, 2020 and September 3, 2020 as a preference.
- [91] Bryton Capital and Bryton Creek oppose the NOI Trustee's requested relief on the grounds that (i) the Third Report goes well beyond discharge of the NOI Trustee's statutory obligations for which funding was authorized in my November 27, 2020 order, and (ii) there is no statutory right for the NOI Trustee to bring an application for remedies under s. 95 or s. 96 of the BIA. The Bryton Group also objects to the requests made by

the NOI Trustee in its factum at the late stage at which it was served and without a motion having been brought to which the Bryton Group could properly respond.

- [92] CIM Bayview filed its notice of intention to make a proposal under s. 50.4 of the BIA and named the NOI Trustee as the trustee who has consented to act as the trustee under the proposal. A trustee named by an insolvent person who files a notice of intention under s. 50.4 has certain statutory obligations under the BIA including reviewing and reporting on the insolvent person's projected cash-flow statement and sending to creditors a copy of the notice of intention. Under s. 50.4(7)(a) of the BIA, a trustee shall, for the purpose of monitoring the insolvent person's business and affairs, have access to and examine the insolvent person's property, including his premises, books and records and financial documents, to the extent necessary to adequately assess the insolvent person's business and affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt. Section 50.5 provides that a trustee under a notice of intention shall advise on and participate in the preparation of the proposal, including negotiations thereon.
- [93] Section 50.7(b)(ii) provides that a trustee shall file a report with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order. The hearing before me on December 21, 2020 included an application by CIM Bayview under s. 50.7(9) for an extension of the time for the filing of a proposal. The NOI Trustee's Third Report is filed pursuant to s. 50.4(7)(b)(ii) of the BIA.
- [94] No proposal has been filed with the official receiver in respect of CIM Bayview. CIM Bayview is not bankrupt and its property has not vested in a trustee named in a bankruptcy order or assignment under s. 71 of the BIA. CIM Bayview, as trustee, remains the legal owner of the Property.
- [95] Section 95(1) of the BIA provides that a transfer of property (i) made by an insolvent person in favour of a creditor who is dealing at arm's length with the insolvent person (ii) with a view to giving that creditor a preference over another creditor is void as against the trustee (iii) if it is made, incurred, taken or suffered during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.
- [96] The NOI Trustee relies on s. 95(1) of the BIA in support of its request for an order declaring that the break fee is a preference which is void as against the NOI Trustee.
- [97] Section 96(1) of the BIA provides that on application by the trustee, a court may declare that a transfer at undervalue is void as against the trustee if (a) the transfer was for no consideration to the debtor or the consideration received by the debtor was conspicuously less than the fair market value given by the debtor; (b) the transfer occurred within one year before the date of the initial bankruptcy event; (c) the debtor was insolvent at the time of the transfer or was rendered insolvent by it; and (d) the debtor intended to defraud, defeat or delay a creditor. Section 96(2) provides that in making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property and what, in the trustee's opinion, was the value of the



actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

- [98] The NOI Trustee relies on s. 96(1) of the BIA in support of its request for an order declaring that the Amended Option Agreement and the amended APS providing for an increased purchase price of \$41.72 million (and which removed any obligation of Bryton Creek to reimburse CIM Bayview for development costs) are void as against the NOI Trustee as a transfer at undervalue.
- [99] The NOI Trustee submits that even though no proposal has been made under Division I of Part III of the BIA, I should find that here, where CIM Bayview has filed its NOI under s. 50.4 of the BIA, sections 95 and 96 statutorily authorize the NOI Trustee to seek remedies thereunder. I disagree.
- [100] The statutory powers and obligations of a trustee under the BIA differ depending on whether the trustee is named by the insolvent person in a notice of intention filed under s. 50.4, the trustee is one with whom a proposal is filed under s. 50(2) or a trustee named in a notice of intention who files a proposal with the official receiver, or the trustee is the trustee of the estate of a bankrupt in whom the property of the bankrupt vests under s. 71.
- [101] Section 101.1(1) of the BIA provides that sections 95 to 101 apply, with any modifications that the circumstances require, to a proposal made under Division I of Part III unless the proposal provides otherwise. It does not provide that sections 95 to 101 apply before a proposal is made.
- [102] The NOI Trustee submits that notwithstanding the language of s. 101.1(1), I should read s. 101.1, where it provides that sections 95 to 101 apply (with modifications that the circumstances require) to a proposal, as including within the meaning of “proposal” a notice of intention to make a proposal.
- [103] Parliament differentiated in the BIA between an insolvent person who files a notice of intention to make a proposal under s. 50.4(1) and a person (who may be an insolvent person) who makes a proposal under s. 50(1). This is clear from s. 101.1(2) which provides that for the purposes of subsection (1), a reference in sections 95 to 101 to “insolvent person” or “debtor” is to be read as a reference to “debtor in respect of whom the proposal is filed”. Section 50.4 of the BIA provides that an insolvent person may file a notice of intention to make a proposal, but the reference to “insolvent person” in s. 95 must be read as a reference to “debtor in respect of whom the proposal is filed”. CIM Bayview is not such a debtor.
- [104] Given the provisions of the BIA to which I have referred, and the fact that no proposal has been filed in respect of CIM Bayview, the NOI Trustee does not have statutory authority to commence an application under s. 96 for a declaration that the Amended Option Agreement is a transfer at undervalue which is void as against the NOI Trustee or to bring a motion or commence an application to seek an order that the payment of the break fee was made with a view to giving Bryton Creek a preference and is void as

against the NOI Trustee. In any event, the NOI Trustee did not do so and only asked for this relief in its factum at a time when the Bryton Group was not able to effectively respond.

- [105] If a proposal is filed in respect of CIM Bayview, or if CIM Bayview is deemed to have made an assignment of all its property for the general benefit of its creditors, the trustee under the proposal or the trustee in bankruptcy would then have statutory authority to seek orders under s. 95 and s. 96 of the BIA.
- [106] Because of my conclusions that the NOI Trustee lacks statutory authority to seek orders under s. 95 and s. 96 of the BIA that the break fee and the Amended Option Agreement are void as against the NOI Trustee as a preference and a transfer at undervalue, respectively, and that no motion or application seeking such relief was properly brought, it is neither necessary nor appropriate for me to address the NOI Trustee's substantive submissions.

***Is Bryton Creek stayed from exercising the Amended Option Agreement?***

- [107] Pursuant to section 69(1) of the BIA, upon filing the NOI on October 29, 2020, CIM Bayview became automatically subject to a stay of proceedings. Under the terms of section 69(1), all actions against CIM Bayview or its property by any creditor are stayed until the filing of a proposal or the bankruptcy of CIM Bayview. The time for CIM Bayview to file a proposal was extended to February 5, 2021 and, as a result, any actions taken by a creditor against it or its property are stayed.
- [108] The delivery by Bryton Creek on December 11, 2020 of an option exercise notice was done while CIM Bayview was subject to a stay of proceedings. This notice was not effective for Bryton Creek to exercise the option to purchase the Property in the Amended Option Agreement.

***Is it equitable for an order to be made lifting the stay under s. 69(1)?***

- [109] Section 69.4 of the BIA provides that a creditor who is affected by the operation of sections 69 to 69.31 may apply to the court for a declaration that the sections no longer operate in respect of that creditor, and the court may make such a declaration subject to any qualifications the court considers proper, if it is satisfied (a) that the creditor is likely to be materially prejudiced by the continued operation of those sections; or (b) that it is equitable on other grounds to make such a declaration.
- [110] I have decided that the challenges by CIM Bayview and by the NOI Trustee to the validity and enforceability of the Amended Option Agreement fail. I am satisfied that the nature of the interest of Bryton Creek under the Amended Option Agreement is such that it is equitable for a declaration to be granted that s. 69(1) of the BIA no longer operates in in respect of Bryton Creek and its contractual rights under the Amended Option Agreement.

***Other issues raised by Bryton Capital and Bryton Creek***

[111] In support of their motion, Bryton Capital and Bryton Creek rely on a number of other grounds. These included its assertions that (i) CIM Bayview, as a bare trustee, lacks status to bring its motion; (ii) the NOI proceeding is an abuse of process because it was prohibited by the *Mareva* Injunction, and (iii) the NOI Trustee is not impartial and is aligned with CIM Bayview. Because of the decisions I have reached on the issues addressed in this endorsement, it is not necessary for me to decide the questions raised by the other grounds upon which Bryton Capital and Bryton Creek rely.

***Sealing of Confidential Information***

[112] The NOI Trustee requests that Confidential Appendix A to the Third Report which contains the NOI Trustee's opinion on the fair market value of the Property be sealed because it contains commercially sensitive confidential information that would interfere with a sale process or future sale process and harm stakeholders if made public.

[113] CIM Bayview requests an order that the confidential value information containing sensitive commercial information, including appraisals of and offers to purchase the Property should be subject to a sealing order. The NOI Trustee supports this request.

[114] I am satisfied that the test for a sealing order in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII) is satisfied, and I grant the requested order which remains in effect until after the Property has been sold.

**Disposition**

[115] I make the following orders:

- a. An order under s. 65.11 of the BIA that the Amended Option Agreement is not to be disclaimed or resiliated.
- b. An order that s. 69(1) of the BIA no longer operates in respect of Bryton Creek and its contractual rights under the Amended Option Agreement.
- c. A declaration that Bryton Creek is at liberty to exercise its rights under the Amended Option Agreement and varying the Order of Koehnen J. dated October 13, 2020 to the extent necessary for this purpose.
- d. An order sealing the documents described as "Confidential Value Information" provided in CIM Bayview's supplementary brief of confidential exhibits and Confidential Appendix A to the Third Report of the NOI Trustee until the Property has been sold.
- e. Other than as otherwise ordered, the motion of CIM Bayview is dismissed.

[116] If the parties are unable to resolve costs, Bryton Capital and Bryton Creek may make written submissions not exceeding 5 pages (excluding costs outline) within 15 days. Any

parties against whom costs are sought may make responding submission, (also not exceeding to 5 pages, excluding costs outline) within 15 days thereafter. Bryton Capital and Bryton Creek may make brief reply submissions (not exceeding 3 pages) within 5 days thereafter.

[117] If the parties are unable to settle the formal order, I may be spoken to.

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Cavanagh J.

**Date:** January 12, 2021

TAB BBB

**EXHIBIT "BBB"**Court File Number: 31-2684629

**Superior Court of Justice**  
Commercial List

**FILE/DIRECTION/ORDER**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
CIM BAYVIEW CREEK INC.**

Applicants

AND

Respondent

Case Management ☐ Yes ☐ No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Email/Facsimile No:
Robert Choi for Bryton		
David Ward for CIM Bayview		
John Birch and Jeremy Bornstein for Grant Thornton in its capacity as proposal trustee		

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

☐ Adjourned to: \_\_\_\_\_☐ Time Table approved (as follows): \_\_\_\_\_**Date Heard: In Writing**

- [1] On October 29, 2020, CIM Bayview Creek Inc. ("CIM Bayview") filed a Notice of Intention to Make a Proposal ("NOI") under the *B/A* and named Grant Thornton Ltd. as the licensed trustee to act as the trustee under the proposal ("NOI Trustee"). Prior to the NOI filing,

CIM Bayview's business was the development of real property in Richmond Hill, Ontario (the "Property"). Within the NOI proceedings, CIM Bayview sought to create a forum for a court supervised sales process to monetize the value of the Property.

- [2] On November 26, 2020 I heard a motion by CIM Bayview to extend the time for a proposal to be filed and for other relief. On November 27, 2020, I made an order extending the date for a proposal to be filed. In my endorsement, I wrote that I regarded as a threshold question whether Bayview Creek Residences Inc. (together with Bryton Capital Corp. GP Ltd., "Bryton") has a legally valid option to purchase the Property owned by CIM Bayview as trustee. CIM Bayview's position was that the option was not valid. I scheduled December 21, 2020 for the hearing of motions related to the validity of the Bryton option.
- [3] As part of this order, I authorized and empowered CIM Bayview to borrow up to \$200,000 from the DIP lender to fund the reasonable fees and disbursements of CIM Bayview's counsel until the return of the motions on December 21, 2020 and of the NOI Trustee and its counsel for activities which are necessary for the NOI Trustee to fulfil its statutory obligations, bearing in mind that the sales process which CIM Bayview had requested be approved at the hearing on November 26, 2020 had not been approved.
- [4] The NOI Trustee delivered its Third Report pursuant to section 50.4(7)(b)(ii) of the *BIA* on December 17, 2020 in which the NOI Trustee reported on its investigations including whether the option to purchase the Property constitutes a transfer at undervalue under the *BIA*. In its factum filed on December 18, 2020, the NOI Trustee asked for a declaration that the option to purchase the Property is a transfer at undervalue which is void as against the NOI Trustee.
- [5] On January 12, 2021, I released a decision on the motions heard on December 21, 2020 and held that Bryton was at liberty to exercise its rights under the option to purchase the Property and the motion by CIM Bayview for an order that the option is invalid was dismissed. I decided that the NOI Trustee does not have statutory authority to commence an application under s. 96 of the *BIA* for a declaration that the option agreement is a transfer at undervalue and void as against the NOI trustee. I held that, in any event, the NOI Trustee did not bring a motion or commence an application for remedies under ss. 95 or 96 of the *BIA* and only asked for this relief in its factum at a time when Bryton was not able to effectively respond.
- [6] Bryton seeks costs of the motions heard on November 26, 2020 and December 21, 2020 on a substantial indemnity scale in the amount of \$250,000 against CIM Bayview and the NOI Trustee, jointly and severally or, alternatively, \$170,000 on a partial indemnity scale.

#### **Costs claimed against CIM Bayview**

- [7] Bryton submits that costs should be awarded against CIM Bayview on a substantial indemnity scale for two reasons:
  - a. CIM Bayview alleged but failed to prove that the difference between the purchase price under the option and the value of the Property is interest within the meaning of s. 347 of the *Criminal Code* and, if the option were allowed to be exercised, Bryton would receive interest at a criminal rate in contravention of s. 347 of the *Criminal Code*. Bryton submits that this allegation is akin to alleging fraud or other

dishonest conduct against Bryton and justifies an award of costs on a substantial indemnity scale.

- b. Under the terms of a release executed when the amended option agreement was executed, the releasors, including CIM Bayview, agreed to indemnify Bryton on a substantial indemnity basis in respect of any legal fees incurred in relation to claims arising from or incidental to the option to purchase. Bryton submits that, by contract, it is entitled to substantial indemnity costs.

[8] Bryton was successful in opposing the motion by CIM Bayview and, as a result, it is entitled to an award of costs against CIM Bayview.

[9] Although the usual costs award is on a partial indemnity scale, substantial indemnity costs may be awarded where this level of costs is specified in a contract: *Platinum Equity Funding v. Reingold, Newman*, 2010 ONSC 5407, at para. 36. I am satisfied that Bryton is entitled to costs against CIM Bayview on a substantial indemnity scale because the terms of the release executed by CIM Bayview so provide. It is not necessary for me to decide whether costs on a substantial indemnity scale should be awarded on other grounds.

[10] Bryton has calculated the substantial indemnity costs it claims based on hours spent by senior counsel (187.9 hours at \$569.24 per hour), second counsel (386.20 hours at \$247.50 per hour), and an articling student (232.60 hours at \$183.15 per hour). This totals \$245,147.26. In addition, Bryton claims a counsel fee of \$4,600 for the appearance on December 21, 2020. The fees claimed, together with HST on fees and disbursements (including HST) of \$4,531.74 total \$254,279.

[11] CIM Bayview adopts the submissions made by the NOI Trustee that the costs claimed by Bryton are excessive. The NOI Trustee submits that the costs claimed are excessive for the following reasons:

- a. The overall amount of time claimed is excessive.
- b. Bryton claims fees for services in relation to the motion heard on November 21, 2020 and Bryton was unsuccessful in opposing the extension of time to file a proposal and the DIP loan and charge.
- c. Bryton provided dockets that show that 451 hours were spent beginning November 27, 2020. Time before this date was spent before the court scheduled the date for the hearing of the Bryton motion and should not be allowed or should be reduced.
- d. Bryton's dockets show 83.25 hours spent from October 12 to October 29 (before the CIM Bayview filed its notice of intention and before the NIO Trustee was appointed). Much of this time relates to the debenture holders' separate civil proceeding.
- e. The amount that an unsuccessful party could reasonably expect to pay in relation to the motions for which costs are claimed is substantially less than the amount claimed.



- [12] In my order dated November 27, 2020, I ordered that costs submissions relating to the motion heard on November 26, 2020 be reserved to December 21, 2020. In my view, Bryton is entitled to costs of this motion at which Bryton's motion in relation to the option agreement by notices of motion dated November 24 and 25, 2020 was scheduled. The extension of time for CIM Bayview to file a proposal and the approval of a DIP loan were necessary to ensure that CIM Bayview was not precluded from seeking an order that the option to purchase was invalid. I agree that costs for services incurred in relation to the debenture holders' motion should not be awarded to Bryton.
- [13] In my review of the dockets of Bryton's counsel, there are some entries that appear to relate only to the proceedings by the debenture holders. The effect of the *Mareva* injunction was an issue on the motions before me, and most of the entries that relate to the *Mareva* injunction for which costs are claimed appear to principally relate to the effect of this injunction on the relief sought by CIM Bayview and by Bryton. I regard 6.3 hours of time claimed for Mr. Choi and 21 hours claimed for Mr. Careen during the period before November 26, 2020 to be for services for which costs should not be awarded. I reduce the claim for fees by \$8,700 to account for these fees.
- [14] This motion involved a number of complex issues in relation to a multi-million property that were very important to the parties. Although counsel for Bryton spent a considerable amount of time on these motions, except as I have noted, I do not find that the time was unnecessary or unreasonably spent.
- [15] Bryton claim for fees (as reduced) is \$236,447 plus counsel fee for the appearance on December 21, 2020 of \$4,600. Disbursements are \$4,531.74. I fix costs against CIM Bayview, which is now bankrupt, in the total amount of \$245,000.

#### **Costs claimed against the NOI Trustee**

- [16] Bryton claims costs against the NOI Trustee, jointly and severally with CIM Bayview, in the amount of \$250,000 on a substantial indemnity scale or, alternatively, \$172,000 on a partial indemnity scale.
- [17] Under s. 197(3) of the *BIA*, where an action is brought by or against the trustee, or where a trustee is made a party to an action or proceeding on his application or on the application of any other party thereto, the trustee is not personally liable for costs unless the court otherwise directs.
- [18] Bryton submits that costs should be awarded against the NOI Trustee because it acted contrary to its statutory duty or jurisdiction. In particular, Bryton submits:
- a. The NOI Trustee did not limit its activities to those which were necessary for it to fulfil its statutory obligations and, instead, it made the tactical decision to take contrary positions against Bryton.
  - b. The NOI Trustee adopted an adversarial, non-neutral position and, as a result, costs should be awarded against it.
  - c. The NOI Trustee sought declaratory relief against Bryton under ss. 95-96 of the *BIA* and it did not succeed in obtaining this relief on the motion.

- d. The entire *BIA* proceeding could have been avoided if the NOI Trustee had concluded that CIM Bayview, as a bare trustee, had no property to distribute under the *BIA*.
- [19] The NOI Trustee submits that it should not be held jointly liable for Bryton's costs because this would be manifestly unfair since it would result in the NOI Trustee becoming solely liable. The NOI Trustee rejects the submission that it acted inappropriately. The NOI Trustee also submits that Bryton should be denied any costs to which it may otherwise be entitled because it made unsubstantiated allegations of wrongdoing against the NOI Trustee.
- [20] I do not accept the submission that costs should be awarded against the NOI Trustee because it adopted an adversarial and non-neutral position. In *PricewaterhouseCoopers Inc. v. Perpetual Energy Inc.*, 2021 ABCA 16, the Alberta Court of Appeal held, at paras. 202-203, that although trustees in bankruptcy under the *BIA*, as officers of the court, owe duties to the court and the legal system, the trustee's primary duty is to creditors of the estate, and the trustee's obligation to be honest and impartial does not displace this primary duty. I do not find that the NOI Trustee took positions that were in contravention of duties owed to the court and its obligation to act honestly and impartially. I also do not find that Bryton should be denied costs to which it is otherwise entitled because of submissions it made, which I did not accept, in relation to positions taken by the NOI Trustee.
- [21] The NOI Trustee was required under s. 50.4(7)(b)(ii) of the *BIA* to file a report regarding the extension of time to file a proposal. The NOI Trustee provided the Court with the interest rate calculations relating to the issue of whether Bryton charged interest at a criminal rate, and the alternative calculations took into account the positions of CIM Bayview and of Bryton. The NOI Trustee took no position on the motion on the legal arguments made by CIM Bayview about why the option to purchase the Property is invalid and unenforceable, and this was confirmed in its Third Report. The issues raised by CIM Bayview were the most significant issues on the motions.
- [22] In its Second Report, the NOI Trustee advised the Court that it may investigate whether certain transactions carried out by CIM Bayview in the relevant look back periods constitute preferences or transfers at undervalue. The NOI Trustee held the view that such investigations fell within the scope of its powers to review transactions under sections 95 to 101 of the *BIA*. In its Third Report, the NOI Trustee expressed the view that certain transactions carried out by CIM Bayview satisfy the criteria under the *BIA* for preferences and/or transfers at undervalue and thus are void as against the NOI Trustee. In the Third Report, the NOI Trustee asked the Court to declare that the option to purchase is void as against the NOI Trustee such that Bryton would not have the ability to exercise the option and acquire the Property for the option price. This relief was requested by the NOI Trustee in its factum delivered on December 18, 2020.
- [23] In *Re Greenstreet Management Inc.*, 2008 CarswellOnt 2043, the trustee in bankruptcy brought an unsuccessful motion for directions in which it requested a declaration that certain deposit proceeds which had been paid into court were no longer held in trust and constituted property of the bankrupt's estate. The successful party sought costs against the trustee on grounds including that as the successful party, costs should follow the event, and there are no assets in the estate. The motion judge addressed the question of the trustee's liability for costs and held, at paras. 10-15, that the question whether or not

to award costs personally against the trustee is one of discretion. In that case, the motion judge accepted that the trustee knew there were no other assets in the estate and the trustee did not have a statutory duty to bring the motion for directions. The motion judge held that the trustee took the risk of litigating this issue and in view of the lack of assets in the estate, it was up to the trustee to seek an appropriate source of indemnity. The motion judge held that this was an appropriate case in which to award costs personally against the trustee, but on a partial indemnity basis.

- [24] The NOI Trustee did not have a statutory duty to seek declaratory relief against Bryton in relation to the option to purchase the Property. The NOI Trustee knew that CIM Bayview was a bare trustee of the Property and, if the option to purchase were held to be valid, CIM Bayview did not have other assets to pay costs. The NOI Trustee knew that upon a bankruptcy, the bankrupt estate would be unable to satisfy an award of costs. I do not agree that the NOI Trustee did not “lose” on the issue it brought before the Court. I decided that the NOI Trustee did not have statutory authority to seek remedies under ss. 95 and 96 of the BIA. In these circumstances, it is appropriate for the NOI Trustee to pay costs of the motion on a partial indemnity scale, but only in relation to costs incurred by Bryton to respond to the request by the NOI Trustee for relief under ss. 95 and 96 of the BIA.
  
- [25] In its Costs Outline, Bryton does not break down the time spent responding to the NOI Trustee’s request for declaratory relief under ss. 95 and 96 of the BIA. The NOI Trustee’s Second Report is dated December 2, 2020 and, in this Second Report, the NOI Trustee reported that it may consider whether the option agreement was a transfer at undervalue. There are some time entries in the dockets of Bryton’s counsel referring to this issue after this date. There are also a number of docket entries from December 17, 2020 to December 21, 2020 describing time spent reviewing the factums filed on the motions and preparing generally for the motions. Some of these entries specifically describe time spent in relation to the transfer at undervalue/preference issues, including researching and drafting a memo, and drafting arguments. Bryton’s factum includes submissions in relation to these issues, and counsel for Bryton and counsel for the NOI Trustee made oral submissions in relation to these issues at the hearing.
  
- [26] When I consider the amounts to be fixed for costs, including costs to be paid by the NOI Trustee, I take into account the principles set forth in *Boucher v. Public Accountants council (Ontario)* (2004), 71 O.R. (3d) 291 in which the Court of Appeal held that the overall objective of fixing costs is to fix an amount that is fair and reasonable for an unsuccessful party to pay in the particular circumstances, rather than an amount fixed by actual costs incurred by the successful litigant.

- [27] In my view the amount of partial indemnity costs that would be fair and reasonable for the NOI Trustee to pay to Bryton in relation to the NOI Trustee's request for relief under ss. 95 and 96 of the *BIA* is \$12,000. I fix costs in this amount to be paid by the NOI Trustee to Bryton.

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Cavanagh J.

February 15, 2021

TAB CCC

## EXHIBIT "CCC"

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE  
A PROPOSAL OF CIM BAYVIEW CREEK INC.

## NOTICE OF APPEAL

THE APPLICANT (APPELLANT IN APPEAL), CIM Bayview Creek Inc. ("**Appellant**") APPEALS to the Court of Appeal for Ontario from the Order of the Honourable Mr. Justice Cavanagh, dated January 12, 2021, made at Toronto ("**Order**").

THE APPELLANT ASKS that the Order be set aside, and that judgment be granted as follows:

- (a) Declaring that any claim the respondent may have had to exercise an option to purchase real property (which option was not yet triggered or exercisable in any event) was first stayed by the Appellant's filing of a Notice of Intention to Make a Proposal on October 29, 2020 ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), and then validly disclaimed by notice to disclaim dated December 4, 2020 ("**Disclaimer**");
- (b) In addition, or in the alternative, declaring that the option to purchase at issue is of an interest, nature and quality that it may be vested out in furtherance of a BIA sales process and, further, that it is fair and appropriate to extinguish the option based on the criteria set out by the

Court of Appeal for Ontario in *Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 (“**Third Eye Capital**”);

- (c) In addition, or in the alternative, declaring that the option to purchase violates federal law because it constitutes a criminal rate of interest and provides for an increased charge on amounts in arrears under a loan;
- (d) Awarding the Appellant costs of the motion and the appeal on a full indemnity basis, fixed and payable within 30 days; and
- (e) Such further and other relief as counsel may request and this court permits.

THE GROUNDS OF APPEAL are as follows:

1. The question before the court is whether an option to purchase real estate that has not yet arisen (in the sense that the earliest date upon which the option could be called upon has not arrived) constitutes a proprietary interest in land that is immune from the disclaimer and vesting out provisions of the BIA. The respondent option holder submits that it has a proprietary interest that cannot be disclaimed. The Appellant submits that at the time the insolvency proceedings intervened, and statutory rights and collective creditor interests were engaged, the option was at best a future, contingent and contractual right. The optionee did not have immediate and specifically enforceable proprietary rights such as would defeat a disclaimer.
2. The Appellant and its creditors that are subordinate to the option holder want to defeat the option to purchase because it is grossly improvident. The option was required to be given as a pre-funding condition to a mortgage loan. The mortgage loan

will be fully repaid whatever happens. But if the option is upheld and determined to be exercisable then the respondent mortgage lender receives a multi-million dollar windfall, and the Appellant's unsecured creditors receive nothing.

### **Background**

3. The Appellant is a Canadian corporation that is trustee of 9.21 acre parcel of real property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario ("**Property**") for the benefit of Bayview Creek (CIM) LP ("**Bayview LP**", and together with its general partner, 10502715 Canada Inc., and the Appellant, collectively the "**CIM Group**").

4. Prior to the NOI filing, the Appellant's business was the development of the Property into a residential subdivision.

5. The Property has achieved a broad range of development approvals such that it is for all intents and purposes "shovel ready" for the construction of 226 townhomes: (i) 75 three-storey townhomes on the eastern parcel of the Property; and (ii) 151 townhomes on the western parcel ("**Western Parcel**").

6. Bryton Capital Corp. GP Ltd. ("**Bryton Capital**") granted \$20 million in second mortgage financing to the Appellant pursuant to a commitment letter dated May 29, 2019 ("**Bryton Mortgage**").

7. The Bryton Mortgage was conditional upon, among other things, the execution and delivery of two agreements of purchase and sale: one for the Western Parcel dated June 3, 2019 ("**First APS**"), and the other for the entire Property dated June 3, 2019 ("**Second APS**").



8. Bryton Capital's nominee affiliate Bryton Creek Residences Inc. ("**Bryton Creek**") was the purchaser under both agreements of purchase and sale.

9. The purchase price for the Western Parcel was \$27.65 million. The First APS was conditional upon the registration of a plan of subdivision on title to the lands ("**Plan Registration Condition**") on or before June 30, 2020. The First APS provides for automatic termination if the Plan Registration Condition is not satisfied by June 30, 2020.

10. The Second APS granted Bryton Creek the right to purchase the entire Property for \$40.72 million if CIM Group had not completed the First APS and transferred title to the Western Parcel to Bryton Creek by July 30, 2020. The purchase price was to be satisfied by a \$100 deposit from Bryton Creek and the assumption of both a \$20.72 million first mortgage ("**First Mortgage**") and the Bryton Mortgage.

11. Closing of the Second APS was to occur fifteen days after Bryton Creek exercised its option to purchase the Property, as set out in a certain option to purchase agreement made between Bryton Creek, the Appellant and Bayview LP, and dated June 3, 2019 ("**June Option Agreement**").

12. The June Option Agreement granted Bryton Creek the option to purchase the Property "at any time from the date of termination of the [First APS] up until August 14, 2020". The June Option Agreement operated such that if the option was not exercised by August 14, 2020, then Bryton Creek would have no further right to exercise the option.

13. On June 10, 2020, the First Mortgage lender demanded payment of its mortgage, issued a notice of intention to enforce security, and issued a notice of sale requiring payment of \$20,865,194 on or before July 30, 2020.

### **November Option**

14. In the last week of June, 2020, faced with the prospect of losing the Property to the First Mortgage lender in just a few days, CIM Group sought a mortgage extension and amendment agreement from Bryton Capital.

15. Bryton Capital and the CIM Group entities entered into an amendment to commitment letter on July 1, 2020 (“**Bryton Mortgage Amendment**”). The terms of the grant of \$2.3 million in additional financing for just four months were exceptionally preferential to Bryton Capital. Among other *prefunding conditions* to the Bryton Mortgage Amendment, Bryton Capital demanded releases and the payment of a \$1 million fee, and required that the June Option Agreement be amended to provide that if the Bryton Mortgage was not repaid by October 31, 2020, then Bryton Creek could exercise its option to purchase the entire Property “at any time between November 1, 2020 and December 31, 2020” for \$41.72 million (“**Purchase Price**”), a price that was and remains far below the fair market value of the Property (“**November Option**”).

### **NOI Filing**

16. The Appellant commenced proposal proceedings pursuant to the BIA by NOI filed on October 29 2020.

17. As at the date of the NOI filing:

- (a) the Bryton Mortgage, as amended, was not yet due;
- (b) the Second APS was in escrow; and

(c) the November Option was not yet exercisable.

18. Subsequent to the commencement of these proceedings and in violation of the stay of proceedings effected by section 69 of the BIA, Bryton Capital issued demand and a notice of intention to enforce security on November 5, 2020. Notably, Bryton Capital's post-filing notices made no reference to the November Option.

### **Disclaimer of November Option**

19. Pursuant to section 65.11 of the BIA, the Appellant issued the Disclaimer on December 7, 2020.

20. On December 11, 2020, Bryton Creek purported to exercise the November Option by delivering a notice to exercise option.

### **Errors in the Motion Judge's Reasons**

#### **November Option was an Executory Contract and Could be Vested Off**

21. The Motion Judge ruled that the November Option created an "immediate interest in the Property" that was proprietary and could not be terminated by means of a section 65.11 disclaimer.

22. The Motion Judge erred in concluding that the November Option created an "immediate" and "proprietary" interest in land. Importantly, the November Option was only exercisable if Bryton Capital's loans were not repaid by a certain date *that had not yet arrived*. At the time that the NOI proceedings commenced, the option was at best a future, contingent and contractual right. It was not a vested, immediate and proprietary right. The Bryton Mortgage was not due, no demand for repayment had been made

(nor could one be made), the option was not exercisable, the Purchase Price had not been tendered, title had not been conveyed, and possession had not been transferred.

23. At the time of the NOI filing, Bryton Creek was a prospective purchaser with a contingent option to purchase the Property in the following month. However one characterizes the option right, it is clear it had not vested in the sense that the exercise date had not arrived and the option holder did not have the right to compel a conveyance of the Property. To permit the November Option to be exercised in the context of the intervening insolvency places the interests of a prospective purchaser with a contingent contractual right above those of all other stakeholders. It effectively reorders creditor priorities and defeats recourse to the federal insolvency regime.

24. Additionally, and for the same reason, the Motion Judge erred in finding that the agreement created an “immediate [proprietary] interest” of a nature and quality that ought not to be vested off title based on the analysis as set out by the Court of Appeal for Ontario in *Third Eye Capital*. Again, the November Option was not a vested option exercisable within the sole control of the optionee—it was at best a future option, the exercise of which was contingent upon a loan (not yet due) going unpaid at maturity.

25. Moreover, the November Option is demonstrably below market value and improvident. Should it be found to be enforceable in the face of the earlier NOI filing, it would be open to any secured creditor to effectively negate recourse to insolvency proceedings by obtaining a contingent right to purchase its collateral at a discount upon default of a loan, thereby denying its borrower, and the borrower’s subordinate creditors, an opportunity to realize fair value on their security.

### **November Option is Unenforceable Because it Constitutes a Criminal Rate of Interest**

26. The Motion Judge erred in holding that the November Option did not constitute a criminal rate of interest. The Supreme Court of Canada held in *Garland v. Consumers Gas Co.*, [1998] 3 SCR 112 (“**Garland**”) that the scope of section 347 of the *Criminal Code*, R.S.C. 1985, c. C-46, as amended (“**Criminal Code**”) is “extremely broad”. Interest is defined as the aggregate of all charges and expenses that are paid or payable for the advancing of credit under an agreement. In determining whether a charge is interest, courts are to look to the substance of the charge, not its form.

27. The Motion Judge erred in finding that the difference between the fair market value of the Property and the option price is not in substance a loan cost or charge falling within the broad definition of Criminal Code “interest”. The judge’s reliance on the fact that the delta in value “cannot be precisely calculated” is misplaced. Pursuant to section 347 of the Criminal Code, the interest rate is calculated either when the agreement is entered into or when the charge is paid by the debtor. The Motion Judge ignored the second part of the section. Because the value of the Property can be professionally appraised with some accuracy at the time the November Option is proposed to be exercised, the value pick-up to Bryton is a readily calculable cost. The fact that the prospective windfall is not also “fixed” at the time the loan is advanced does not matter.

28. Further, the Motion Judge erred in holding that because the Appellant did not literally transfer any funds to Bryton Creek or Bryton Capital, the Appellant’s forfeiture of the difference between the appraised value of the Property and the November Option price cannot be viewed as a “payment” received. This analysis ignores the reality of

commercial lending transactions and the Supreme Court of Canada's interpretation of interest under the Criminal Code in *Garland*. The option was sought as a prefunding condition of the loan and was part of the overall cost or price of obtaining the additional credit.

### **November Option Violates the Interest Act**

29. The Motion Judge erred in holding that the November Option did not violate section 8 of the *Interest Act*, R.S.C. 1985, c. I-15, as amended ("**Interest Act**") because it did not impose a monetary penalty for breach of the Bryton Mortgage Amendment.

30. The exercise of the November Option imposes two substantial monetary penalties on the Appellant. First, it deprives the Appellant of the right to redeem its equity interest in the Property by permitting Bryton Capital to effectively foreclose on the Property at a discount. Second, and at the same time, it operates so as to require the Appellant to pay Bryton Capital the difference between the Purchase Price and the total amount outstanding under the Bryton Mortgage and the First Mortgage—a fact not considered by the Motion Judge.

31. These penalties are imposed if the Appellant does not repay the Bryton Mortgage by October 31, 2020, in breach of the mortgage. The prohibited effect is to increase the charge on mortgage arrears well beyond the rate of interest payable on principal money not in arrears.

32. The Motion Judge further erred in finding that the November Option was a separate contract from the Bryton Mortgage, and that the November Option conferred a legitimate collateral advantage that did not clog the equity of redemption. The

November Option was not independent from the mortgage loan: it was insisted upon as a “prefunding condition”. It operates as a penalty because it makes post-default redemption of the loan impossible.

33. The errors of law and errors of mixed fact and law committed by the Motion Judge constitute palpable and overriding errors.

34. The appeal involves the future legal rights of the Appellant to exercise control over its property and affairs.

35. The property involved in the appeal exceeds \$10,000 in value. The appraised value of the Property exceeds the Purchase Price by millions of dollars.

36. This appeal raises issues of importance to the practice of bankruptcy and insolvency law. The issue of the ability to disclaim an option to purchase real property (that is not exercisable as at the insolvency filing date) has never been considered in a reported Canadian decision.

37. The appeal sought will not delay the progress of the proceedings. The Appellant will suffer serious and irreparable harm if the November Option is exercised.

38. Such further and other grounds as counsel may advise.

THE BASIS OF THE APPELLATE COURT’S JURISDICTION IS AS FOLLOWS:

(a) This court has jurisdiction in respect of the appeal from the order under (i) BIA sections 183(2) and 193(a) and (c); and (ii) *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rule 61.

(b) The Order appealed from is final.

- (c) The appeal is as of right to the Court of Appeal for Ontario pursuant to subsections 193(a) and (c) of the BIA.
- (d) Leave to appeal is not required. However, if leave to appeal is found to be required, the Appellant seeks leave to appeal under subsection 193(e) of the BIA.

January 22, 2020

**MILLER THOMSON LLP**

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Toronto, ON Canada M5H 3S1

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ecraddock@millerthomson.com

Lawyers for CIM Bayview Creek Inc.

TO: SERVICE LIST



**In the Matter of the Notice of Intention to Make a Proposal of CIM Bayview Creek Inc.**  
Applicant

Court of Appeal File No.  
Court File No. 31-2684629

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPEAL**

**MILLER THOMSON LLP**  
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ecraddock@millerthomson.com

Lawyers for CIM Bayview Creek Inc.

TAB DDD

## EXHIBIT "DDD"

## COURT OF APPEAL FOR ONTARIO

DATE: 20210319  
DOCKET: M52286 (C69041)

Juriansz J.A. (Motion Judge)

In the Matter of the Notice of Intention to Make a Proposal of CIM Bayview Creek  
Inc.

BETWEEN

Grant Thornton Limited, in its capacity as Trustee in Bankruptcy of CIM Bayview  
Creek Inc.

Moving Party (Appellant)

and

Debenture Holders

Respondent

John N. Birch, for the moving party

Jonathan Barr and Adam Slavens, for Debenture Holders

Lisa Come, for Jiubin Feng

Robert S. Choi, for Bryton Capital Corp. GP Ltd. and Bayview Creek Residences  
Inc.

Heard: March 18, 2021 by videoconference

ENDORSEMENT

[1] This is a motion to extend the time to perfect the appeal from March 23, 2021 to May 31, 2021. The appeal was filed on January 22, 2021 by CIM Bayview, which was then in the midst of proposal proceedings. On February 8, 2021 CIM Bayview was deemed bankrupt and the right to pursue the appeal vested in the Trustee in Bankruptcy. The Trustee says it “has not yet taken steps to perfect the appeal because the decision of whether to pursue the appeal and, if so, by what means, lies with the creditors of the estate of CIM Bayview, as represented by the inspectors appointed under the *Bankruptcy and Insolvency Act*”. The Trustee frankly concedes that at the present time there is no settled intention to proceed with the appeal but submits that more time is needed to work out if and by whom the appeal will be pursued.

[2] I am not persuaded that matters cannot proceed more quickly. Parties should be prepared to conduct bankruptcy litigation in real time. The Trustee has been involved during the proposal period and must be taken to be well aware of the arguments advanced before the application judge and the issues decided. After CIM Bayview was deemed bankrupt the Trustee could have advised creditors about the prospects of the appeal at the meeting of the creditors held on February 26, 2021 and can do so at the emergency meeting of creditors I am advised is being scheduled for early next week. The arguments to be included in the appeal factum would largely be a repetition of the arguments made before the application judge.

[3] I see no good reason why perfection of the appeal must be delayed. Even after the appeal is perfected, carriage of the appeal can be transferred, depending on what the creditors decide. Whatever formalities may be required to effect the transfer, should there be one, can be attended to after the appeal is perfected.

[4] I am persuaded that the unpaid costs of the application and the accumulation of interest constitutes prejudice to the respondents. The Trustee identified the importance of the issues on appeal but did not address the merits to any extent. In my view, the justice of the case does not require the extension sought.

[5] The motion to extend perfection to May 31, 2021 is dismissed. Failing perfection by March 31, 2021, the Registrar may dismiss the appeal for delay. This motion was brought by the Trustee and I have amended the style of cause to reflect that.

[6] If the parties are unable to agree on costs of the motion, they may file written submissions of not more than three pages with the court.



TAB EEE



EXHIBIT "EEE"

File No.: C69041

## COURT OF APPEAL FOR ONTARIO

In the matter of the Notice of Intention to make  
A Proposal of CIM Bayview Creek Inc.

B E T W E E N :

Grant Thornton Limited, in its capacity as Trustee in Bankruptcy of  
CIM Bayview Creek Inc.

Moving Party (Appellant)

- and -

Debenture Holders

Respondent

ORDER DISMISSING APPEAL FOR DELAY

The appellant has not perfected this appeal in accordance with Rule 61.09 and has not cured the default, although given notice under Rule 61.13 to do so.

IT IS ORDERED that this appeal be dismissed for delay, with costs fixed at \$750.00.

THIS ORDER BEARS interest at the rate of 2% per year commencing on Wednesday April 14, 2021.

Date: Wednesday April 14, 2021

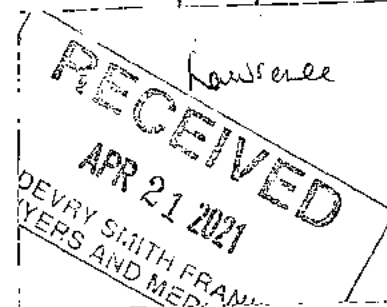
*Sandra Stenhouse*  
Office of The Registrar  
Court of Appeal for Ontario  
130 Queen Street West  
Toronto, Ontario

M5H 2N5

ENTERED AT / INSCRIPT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 14 2021

PER / PAR:



TAB FFF



## EXHIBIT "FFF"

Court File No.: BK-21-208483-OT31

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF BAYVIEW CREEK  
(CIM) LP**, a limited partnership formed under the laws of Ontario, carrying  
on business in the City of Thornhill, in the Province of Ontario

**APPLICATION FOR BANKRUPTCY ORDER**

**THE ENFORCEMENT COMMITTEE OF THE DEBENTURE HOLDERS**, (the "Applicant"), an unincorporated association acting on behalf of itself and its constituent members (the "Members"),<sup>1</sup> hereby applies to this Court that Bayview Creek (CIM) LP (the "Debtor"), residing and carrying on business in the City of Thornhill, in the Province of Ontario, be adjudged bankrupt and that a Bankruptcy Order be made in respect of the property of the Debtor, and says that:

1. The Debtor is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has at times during the six months next preceding the filing of this Application, resided or carried on business within the jurisdiction of this Court.
2. Because the Debtor is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act*, the Debtor's General Partner, 10502715 Canada Inc., is also bankrupt by operation of law.

---

<sup>1</sup> The Members are (a) Jojo Kaki Hui, the lead representative and chairperson of the Debenture Holders who has authority to speak on their behalf; (b) Wai Ling Alice Mok; (c) Hui Investments Corporation c/o Tracy Hui; (d) Alex Tong; (e) Xia Xin Wong; (f) Jessica Chloe Chen; (g) Siu Ying Tang; (h) Lili Qiu; (i) Aardarsh Natteri Mangadu; (j) Ka Ling Fok; (k) Chun Kau Yu; (l) Pak Lam Choi; (m) Siu Yeung Chun; (n) Sai Man Simon Ng; (o) Yiu Kwong Chan; (p) Howe Yen Joanna Wong; (q) Keyan Miao; and (r) Gang Zheng.

3. As of April 19, 2021, the Debtor is justly and truly indebted to the Applicant and the Members:

- (a) in the liquidated amount of CDN\$5,448.38 in respect of issued and unpaid invoices for services rendered, of which the Applicants took an assignment pursuant to an agreement of purchase and sale; and
- (b) in the amount of CDN\$10,074,643.89 in respect of liability arising from events described in the Statement of Claim issued against the Debtor in Court File No. CV-20-00648875-CL and the Proof of Claim filed on February 25, 2021 by the Applicant in the bankruptcy proceedings of CIM Bayview Creek Inc.<sup>2</sup>

4. The Applicant, which includes the Members and all persons acting on the Applicant's behalf, is an unsecured creditor that does not, at this time, hold any registered security interest on the property of the Debtor, or any part thereof, for the payment of the said sum.

5. The Debtor has, within the six months preceding the date of filing of this Application, committed the following acts of bankruptcy:

- (a) the Debtor has ceased to meet its liabilities generally as they become due, including without limitation, the indebtedness owing to the Applicant and to other creditors.

---

<sup>2</sup> The Statement of Claim also seeks punitive, aggravated and exemplary damages in the amount of \$20,000,000.00 against the Debtor.

6. Grant Thornton Limited, of the City of Toronto, is a person qualified to act as a trustee of the property of the Debtor and has agreed to act as such and is acceptable to the below mentioned creditor:

CREDITOR	ADDRESS	AMOUNT OF DEBT
The Enforcement Committee of the Debenture Holders, acting on behalf of itself and its Members (the Applicant herein)	The Enforcement Committee of the Debenture Holders, acting on behalf of itself and its Members c/o Jonathan J. Barr 80 Bloor St. West, Suite 1401, Toronto, ON M5S 2V1	\$10,080,092.27 (which includes the liquidated amount of \$5,448.38 and \$10,074,643.89 in respect of other liability), being the aggregate sum of the individual debts owed by the Debtor to the Applicant and its Members

**DATED** at Toronto, this 19<sup>th</sup> day of April, 2021.

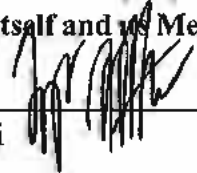
**SIGNED BY THE** Applicant in my presence:

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

**Matteo Morello**

**ISSUED** at the City of Toronto, in the Province of Ontario the 23 day of April, 2021.

**THE ENFORCEMENT COMMITTEE OF THE DEBENTURE HOLDERS,** acting on behalf of itself and its Members

  
Name: Jojo Kaki Hui  
Title: Representative

  
Master M. Jean

Date: 23 / APRIL / 2021

TAB GGG

## EXHIBIT "GGG"

Court File No.: Bk-21-208484-OT31

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY OF 10502715 CANADA INC.**, a corporation incorporated under the laws of Canada, carrying on business in the City of Thornhill, in the Province of Ontario

**APPLICATION FOR BANKRUPTCY ORDER**

**THE ENFORCEMENT COMMITTEE OF THE DEBENTURE HOLDERS**, (the "Applicant"), an unincorporated association acting on behalf of itself and its constituent members (the "Members"),<sup>1</sup> hereby applies to this Court that 10502715 Canada Inc. (the "Debtor"), residing and carrying on business in the City of Thornhill, in the Province of Ontario, be adjudged bankrupt and that a Bankruptcy Order be made in respect of the property of the Debtor, and says that:

1. The Debtor is an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has at times during the six months next preceding the filing of this Application, resided or carried on business within the jurisdiction of this Court.
2. The Debtor is the General Partner of Bayview Creek (CTM) LP (the "LP Debtor"), a Limited Partnership formed under the laws of Ontario. The Applicant, in a separate, but concurrent, Application (the "LP Application"), also seeks that this Court adjudge the LP Debtor bankrupt and make a Bankruptcy Order in respect of the property of that entity.

---

<sup>1</sup> The Members are (a) Jojo Kaki Hui, the lead representative and chairperson of the Debenture Holders who has authority to speak on their behalf; (b) Wai Ling Alice Mok; (c) Hui Investments Corporation c/o Tracy Hui; (d) Alex Tong; (e) Xia Xin Wong; (f) Jessica Chloe Chen; (g) Siu Ying Tang; (h) Lili Qiu; (i) Aardarsh Natteri Mangadu; (j) Ka Ling Fok; (k) Chun Kau Yu; (l) Pak Lam Choi; (m) Siu Yeung Chun; (n) Sai Man Simon Ng; (o) Yiu Kwong Chan; (p) Howe Yen Joanna Wong; (q) Keyan Miao; and (r) Gang Zheng.

3. As of April 19, 2021, the Debtor, as the General Partner of the LP Debtor, is justly and truly indebted to the Applicant and the Members:

- (a) in the liquidated amount of CDN\$5,448.38 in respect of issued and unpaid invoices for services rendered, of which the Applicants took an assignment pursuant to an agreement of purchase and sale; and
- (b) in the amount of CDN\$10,074,643.89 in respect of liability arising from events described in the Statement of Claim issued against the Debtor in Court File No. CV-20-00648875-CL and the Proof of Claim filed on February 25, 2021 by the Applicant in the bankruptcy proceedings of CIM Bayview Creek Inc.<sup>2</sup>

4. The Applicant, which includes the Members and all persons acting on the Applicant's behalf, is an unsecured creditor that does not, at this time, hold any registered security interest on the property of the Debtor, or any part thereof, for the payment of the said sum.

5. The Debtor, as the General Partner of the LP Debtor, has, within the six months preceding the date of filing of this Application, committed the following acts of bankruptcy:

- (a) the Debtor has ceased to meet its liabilities generally as they become due, including without limitation, the indebtedness owing to the Applicant and to other creditors.

---

<sup>2</sup> The Statement of Claim also seeks punitive, aggravated and exemplary damages in the amount of \$20,000,000.00 against the Debtor.

6. Grant Thornton Limited, of the City of Toronto, is a person qualified to act as a trustee of the property of the Debtor and has agreed to act as such and is acceptable to the below mentioned creditor:

CREDITOR	ADDRESS	AMOUNT OF DEBT
The Enforcement Committee of the Debenture Holders, acting on behalf of itself and its Members (the Applicant herein)	The Enforcement Committee of the Debenture Holders, acting on behalf of itself and its Members c/o Jonathan J. Barr 80 Bloor St. West, Suite 1401, Toronto, ON M5S 2V1	\$10,080,092.27 (which includes the liquidated amount of \$5,448.38 and \$10,074,643.89 in respect of other liability), being the aggregate sum of the individual debts owed by the Debtor to the Applicant and its Members

**DATED** at Toronto, this 19<sup>th</sup> day of April, 2021.

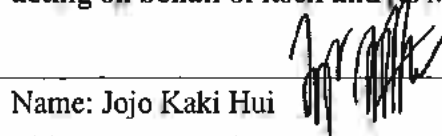
**SIGNED BY THE** Applicant in my presence:



Name:

**Matteo Morello**

**THE ENFORCEMENT COMMITTEE OF THE DEBENTURE HOLDERS, acting on behalf of itself and its Members**



Name: Jojo Kaki Hui

Title: Representative

**ISSUED** at the City of Toronto, in the Province of Ontario this 23 day of April, 2021.



Master M. Jean  
Date: 23/APRIL/2021

TAB HHH



## EXHIBIT "HHH"

Court File No. CV-21-00662099-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

Between:

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

Applicants

and

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

Respondents

**AMENDED NOTICE OF APPLICATION**

**(APPROVAL AND VESTING ORDER)**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on **May 12, 2021, or on a date to be scheduled by the Court:**

[ ] In person

- [ ] By telephone conference
- [X] By Zoom videoconference.

At the following location:

<https://us02web.zoom.us/j/88070534632?pwd=aVlKRmFuazlYNENLd29zcVpYRHZjQT09>

Meeting ID: 880 7053 4632

Passcode: 264560

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 does not have a lawyer, serve it on the applicant, 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 does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least 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

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

Local registrar

Address of court office \_\_\_\_\_

\_\_\_\_\_

**TO: THE ATTACHED SERVICE LIST**

## APPLICATION

1. The Applicants make an application for:
  - a) an order directing and approving the sale of a property legally described as Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757 ("**Property**"), by RSM Canada Limited, in its capacity as the privately appointed receiver (the "**Receiver**") over the property of CIM Bayview Creek Inc. ("**CIM Bayview**"), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, "**Vendors**"), as contemplated by the terms of Bryton Capital Corp. GP LTD.'s ("**Bryton Capital**") mortgage registered on title to the Property and the agreement of purchase and sale (the "**APS**") between the Vendors and Bayview Creek Residences Inc. ("**Bayview Residences**");
  - b) an order vesting title to the Property free and clear of all encumbrances;
  - c) an order declaring that any proceeding(s) commenced after December 21, 2020 relating to the validity of the Option (as defined below) are barred by the principles of *res judicata* and abuse of process;
  - d) in the alternative to the relief sought at para. 1(c), an order declaring that no reliefs may be granted to, *inter alia*, set aside the Option pursuant to the *Fraudulent Conveyances Act*, RSO 1990, c. A.33, *Assignments and Preferences Act*, RSO 1990, c. A.33, or the oppression remedy pursuant to s. 241 of the *Canada Business Corporations Act*, RSC, 1985, c. C-44;

- e) an order declaring that any claims being brought under, *inter alia*, ss. 95 and 96 of the *Bankruptcy and Insolvency Act* relating to the Option shall have no effect on the validity or enforceability of the Option, together with an order dismissing those claims;
  - f) costs of this application on a substantial indemnity basis; and
  - g) such further and other relief as counsel may advise and this Honourable Court may deem just.
2. The grounds for the Application are:
- a) Bryton Capital holds a second-ranking mortgage ("**Security**") over the Property;
  - b) Bayview Residences has exercised the registered option ("**Option**") to purchase the Property, and it has the right to acquire the Property pursuant to the APS;
  - c) The Receiver was duly appointed pursuant to the Security;
  - d) The Vendors have defaulted and remain in default of the Security and the APS;
  - e) Bryton Capital and Bayview Residences seek to enforce their rights pursuant to the Security and the APS;
  - f) The Vendors, through their nominee CIM Bayview, unsuccessfully challenged the validity and enforceability of the Option by attempting to

have it disclaimed, vested out, and declared in violation of the *Criminal Code*, RSC 1985, c C-46 and the *Interest Act*, RSC 1985, c I-15, by way of a motion on December 21, 2020;

- g) On January 12, 2021, the Honourable Court dismissed the CIM Bayview's motion ("**Cavanagh J.'s Decision**") and awarded substantial indemnity costs against it in the amount of \$245,000.00. The costs remain unpaid;
- h) The appeal of Cavanagh J.'s Decision was subsequently dismissed for delay by the Ontario Court of Appeal on April 14, 2021.
- i) The Vendors have refused to carry out their obligations pursuant to the Security and the APS;
- j) Accordingly, the Receiver was appointed to enforce the Security and the APS;
- k) As a part of the vesting order, the Applicants intend to satisfy:
  - i. The first charge registered on title to the Property held by DUCA Financial Services Credit Union Ltd.;
  - ii. Cardinal Advisory Ltd.'s court-ordered charge on the Property (which charge is subject to an appeal) by way of a satisfactory escrow arrangement;
  - iii. Order registered by the Corporation of the City of Richmond Hill;

- l) All other subsequent encumbrancers, including GR (Can) Investment Co. Ltd. and Monest Financial Inc., Tracy Hui and Jojo Hui, are subordinate to the Security, the registered Option and the APS, and accordingly their interests, if any, should be vested out pursuant to the Security and the APS;
- m) By an Order dated December 3, 2020, Cavanagh J. ordered that “any motions or cross-motions relating to whether the Bryton Option is valid [...] shall be heard [on December 21, 2020]”;
- n) All interested parties, including GR (Can) Investment Co. Ltd. and Monest Financial Inc., Tracy Hui and Jojo Hui, and the Enforcement Committee of the Debenture Holders, were served with, and had notice of, Cavanagh J.’s Order dated December 3, 2020, and of the hearing on December 21, 2020, pursuant to Cavanagh J.’s order dated November 27, 2020;
- o) Counsel for Tracy Hui and Jojo Hui, and the Enforcement Committee of the Debenture Holders, in fact, filed a “Statement of Position” before the hearing on December 21, 2020, to make submissions relating to the validity Option, which position was rejected by the Court;
- p) Section 100 of the *Courts of Justice Act*, RSO 1990, c C.43; and
- q) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:
- a) The Affidavit of Bryan McWatt;
  - b) Supplementary affidavit(s) of Bryan McWatt;
  - c) The Report of the Receiver; and
  - d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

**May 11, 2021 (Amended on June 22, 2021)**

**OWENS WRIGHT LLP**

300 - 20 Holly Street  
Toronto, ON M4S 3B1

**ROBERT S. CHOI**

LSO No. 55185M  
Tel: (416) 868-4722  
Email: rchoi@owenswright.com

**JONATHAN CAREEN**

LSO No. 78676L  
Tel: (416) 484-8672  
Email: jcareen@owenswright.com

Lawyers for Bryton Capital Corp. GP Ltd.



TAB III

**EXHIBIT "III"**

Court File No:

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

B E T W E E N:

**GR (CAN) INVESTMENT CO. LTD. ON ITS OWN BEHALF AND ON BEHALF OF  
THE OTHER CREDITORS OF CIM BAYVIEW CREEK INC., 10502715 CANADA INC.  
AND BAYVIEW CREEK (CIM) LP**

**Applicant**

- and -

**BRYTON CREEK RESIDENCES INC.**

**Respondent**

**AND IN THE MATTER OF THE *ASSIGNMENTS AND PREFERENCES ACT*, RSO 1990,  
C. A.33, THE *FRAUDULENT CONVEYANCES ACT*, RSO, 1990, C. F.29, AND S. 241 OF  
THE *CANADA BUSINESS CORPORATIONS ACT*, RSC 1985, C. C-44**

**NOTICE OF APPLICATION****TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the applicants. The claim made by the applicants is set out on the following pages.

**THIS APPLICATION** will come on for a hearing (*choose one of the following*):

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

at the following location

To be determined.

on a day to be set by the Registrar.

**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 38C prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, 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 applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day 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: \_\_\_\_\_ May 2021

Issued by \_\_\_\_\_  
Local Registrar

Address of Court Office:  
330 University Avenue  
Toronto ON M5G 1R7

**TO: OWENS WIGHT LLP**  
300-20 Holly St  
Toronto ON M4S 3B1

Robert S. Choi  
Tel: 416-848-4722  
Fax: 416-486-3309  
Email: rchoi@owenswright.com

Solicitors for the Respondent

## APPLICATION

1. The Applicant makes an application for:
  - (a) *Nunc pro tunc* leave to commence the Application, if required;
  - (b) An Order declaring the option granted to the Respondent on or about 3 June 2019 (the “**First Option**”) to purchase the property identified on Schedule A (the “**Property**”) void and of no force or effect;
  - (c) An Order requiring that the Respondent pay to the Debtors or the Applicants for the benefit of themselves and the other creditors of CIM Bayview Creek Inc., 10502715 Canada Inc. and Bayview Creek (CIM) LP (together and individually, the “**Debtors**”) an amount equal to the equity in the Property;
  - (d) An Order declaring that the Applicants are complainants for the purposes of s. 241 of the *Canada Business Corporations Act*, RSC, 1985, c. C-44 (the “**CBCA**”)
  - (e) An Order declaring that
    - (A) the grant of the First Option effects or threatens to effects a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the creditors of the Debtors;
    - (B) the business or affairs of the Debtors in granting the First Option have been carried on or conducted in a manner effects a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the creditors of the Debtors; and/or
    - (C) the powers of the directors of the Debtors in causing the grant of the First Option have been exercised in a manner effects a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the creditors of the Debtors;
  - (f) An Order varying the First Option to require that the Respondent pay to Debtors or the Applicants for the benefit of themselves and the other creditors of the

Debtors the fair market value of the Property and/or compensating the creditors of the Debtors by requiring that the Respondent pay to the Debtors or Applicants for the benefit of themselves and the other creditors of the Debtors an amount equal to the fair market value of the Property; and

- (g) Such further relief as may be required in the circumstances and this Honourable Court deems just and equitable.

2. The grounds for the Application are:

- (a) The Applicants are creditors of the Debtors.
- (b) On or about 3 June 2019 the Respondent was granted the First Option.
- (c) The First Option was registered against the Property on or about 17 June 2019.
- (d) There was no good or valuable consideration provided by Respondent in return for the First Option and permitted the Respondents to acquire the Property for far less than its fair market value thereby stripped the Debtors of their only valuable asset.
- (e) At the time the First Option was granted, the Debtors were insolvent or unable to pay their debts in full and/or the Debtors knew that they were on the eve of insolvency.
- (f) The First Option was granted with intent to defeat, hinder, delay, defraud or prejudice the Debtors' creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures.
- (g) The grant of the First Option effected a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the creditors of the Debtors.
- (h) The business or affairs of the Debtors in granting the First Option have been carried on or conducted in a manner that has effected a result that is oppressive or

unfairly prejudicial to or that unfairly disregards the interests of the creditors of the Debtors.

- (i) The powers of the directors of the Debtors in authorizing, permitting causing or acquiescing to the grant of the First Option have been exercised in a manner that has effected a result that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the creditors of the Debtors.
  - (j) The Debtors are all now bankrupt.
  - (k) The Applicant has brought, or will bring Motions, seeking to have the rights of the trustees of the Debtors' bankruptcy estates to pursue proceedings against the Respondent in connection with, inter alia, the First Option, including proceedings under the *Fraudulent Conveyances Act*, RSO, 1990, c. F.29 (the "FCA"), the *Assignments and Preferences Act*, RSO 1990, c. A.33 (the "APA") and the CBCA, assigned to the Applicant and any other of the creditors of the Debtors who wish to participate in such proceedings for their own benefit and at their own expense.
  - (l) This Application is being commenced to preserve the interests of the Applicant and the other creditors of the Debtors as a result of the pending expiry of the limitation period applicable to certain proceedings to attack the First Option.
  - (m) The FCA, the APA and the CBCA.
  - (n) Section 69.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
  - (o) The *Rules of Civil Procedure*, RRO 1990, Reg 194.
  - (p) Such further and other grounds as counsel may advise and this Honourable Court may accept.
3. The following documentary evidence will be used at the hearing of the application:
- (a) Such material as counsel may advise and this Honourable Court permit.

Date: **[Date]** May 2021

**GOWLING WLG (CANADA) LLP**

Barristers and Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto, ON M5X 1G5

**E. Patrick Shea (LSO No. 39655K)**

Tel: (416) 369-7399

Fax: (416) 862-7661

Email: [patrick.shea@gowlingwlg.com](mailto:patrick.shea@gowlingwlg.com)

Solicitors for the Applicant

**SCHEDULE A**

DRAFT



<p style="text-align: center;">Court File No.:</p>	
<p><b>BETWEEN:</b></p> <p><b>GR (CAN) INVESTMENT CO. LTD. ET AL</b> Applicant</p>	<p><b>v.</b></p> <p><b>BRYTON CREEK RESIDENCES INC.</b> Respondent</p>
<p style="text-align: center;"><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> (Commercial List)</p> <p style="text-align: center;">(PROCEEDING COMMENCED AT TORONTO)</p>	
<p style="text-align: center;"><b>NOTICE OF APPLICATION</b></p>	
<p><b>GOWLING WLG (CANADA) LLP</b> Barristers and Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5</p> <p><b>E. Patrick Shea (LSO No. 39655K)</b> Tel: (416) 369-7399 Fax: (416) 862-7661 Email: patrick.shea@gowlingwlg.com</p> <p>Solicitors for the Applicant</p>	

TAB JJJ

**EXHIBIT "JJJ"**

Subject: DUCA re CIM

Date: 2020-12-05 8:27 PM

From: "Lawrence Hansen" <Lawrence.Hansen@devrylaw.ca>

To: "Bornstein, Jeremy" <jbornstein@cassels.com>, "Robert S. Choi" <RChoi@owenswright.com>, "Ward, David" <dward@millerthomson.com>, "jonathan@hummingbirdlaw.com" <jonathan@hummingbirdlaw.com>

"Carmen Yuen" <Carmen.Yuen@devrylaw.ca>, "Oren Chaimovitch (Devry)" <Oren.Chaimovitch@devrylaw.ca>, "Tracey Mason" <Tracey.Mason@devrylaw.ca>, "Ellis, Larry" <lellis@millerthomson.com>, "Dolny, Tamie" <tdolny@millerthomson.com>, "Massie, Sam" <smassie@millerthomson.com>, "Daniel Wootton CIRP" <dan.wootton@ca.gt.com>, "Jonathan Careen" <JCareen@owenswright.com>, "Michael Fallone" <mfallone@owenswright.com>, "Carmen Yuen" <Carmen.Yuen@devrylaw.ca>, "Tracey Mason" <Tracey.Mason@devrylaw.ca>, "Craddock, Erin" <ecraddock@millerthomson.com>, "Birch, John" <jbirch@cassels.com>, "Steven Huryn" <Steven.Huryn@devrylaw.ca>

---

As some of you know, DUCA has decided today that it will not be proceeding with its request for a receiver, something which should nicely streamline the December 21 hearing. On Monday, we will advise the court, accordingly.

At the hearing on December 21, DUCA will advise the court that it will be content to work with the party whose argument prevails: with Bryton to complete the sales process in accordance with the option if it is found to be valid or the proposal trustee/CIM on a sales process if the option is found not to be valid.

DUCA anticipates that other than as set out above, it will essentially be sitting on the sidelines. If anyone thinks differently, please let me know.

Thanks.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

**COVID-19:** DSF is open and is ready, willing and able to help you. We are living through an extraordinary period, and we are committed to doing what we can to stop the spread of COVID-19. To that end, we are working remotely, using video as well as telephone conferencing as much as possible, and doing as much as we can to conduct business electronically. Please send us correspondence and documentation by email so that we can deal with it in as timely a way as possible, and do not hesitate to give us a call.

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TAB KKK

**EXHIBIT "KKK"**

Subject: Re: DUCA re CIM

Date: 2020-12-05 10:13 PM

From: "Lawrence Hansen" <Lawrence.Hansen@devrylaw.ca>

To: "Bornstein, Jeremy" <jbornstein@cassels.com>, "Robert S. Choi" <RChoi@owenswright.com>, "Ward, David" <dward@millerthomson.com>, "jonathan@hummingbirdlaw.com" <jonathan@hummingbirdlaw.com>  
 "Carmen Yuen" <Carmen.Yuen@devrylaw.ca>, "Oren Chaimovitch (Devry)" <Oren.Chaimovitch@devrylaw.ca>, "Tracey Mason" <Tracey.Mason@devrylaw.ca>, "Ellis, Larry" <lellis@millerthomson.com>, "Dolny, Tamie" <tdolny@millerthomson.com>, "Massie, Sam" <smassie@millerthomson.com>, "Daniel Wootton CIRP" <dan.wootton@ca.gt.com>, "Jonathan Careen" <JCareen@owenswright.com>, "Michael Fallone" <mfallone@owenswright.com>, "Craddock, Erin" <ecraddock@millerthomson.com>, "Birch, John" <jbirch@cassels.com>, "Steven Huryn" <Steven.Huryn@devrylaw.ca>

---

Just to be clear about my last email message, DUCA may be prepared to work with Bryton if it prevails subject, of course, to whether it is permitted to do so. I had understood that the parties in the option motion were dealing with what steps Bryton can take if its option is a valid one. DUCA will comply with its obligations however they flow from the hearing. There is no need to involve it in the dispute about this. As Indicated, DUCA intends to sit on the sidelines.

If there is any question about this, please let me know.

Thanks.

Lawrence Hansen  
 DEVRY SMITH FRANK LLP  
 249.888.6626/416.446.5097

On Dec 5, 2020, at 8:27 PM, Lawrence Hansen <Lawrence.Hansen@devrylaw.ca> wrote:

As some of you know, DUCA has decided today that it will not be proceeding with its request for a receiver, something which should nicely streamline the December 21 hearing. On Monday, we will advise the court, accordingly.

At the hearing on December 21, DUCA will advise the court that it will be content to work with the party whose argument prevails: with Bryton to complete the sales process in accordance with the option if it is found to be valid or the proposal trustee/CIM on a sales process if the option is found not to be valid.

DUCA anticipates that other than as set out above, it will essentially be sitting on the sidelines. If anyone thinks differently, please let me know.

Thanks.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

**COVID-19:** DSF is open and is ready, willing and able to help you. We are living through an extraordinary period, and we are committed to doing what we can to stop the spread of COVID-19. To that end, we are working remotely, using video as well as telephone conferencing as much as possible, and doing as much as we can to conduct business electronically. Please send us correspondence and documentation by email so that we can deal with it in as timely a way as possible, and do not hesitate to give us a call.

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TAB LLL



## EXHIBIT "LLL"



# BRYTON CAPITAL CORP. GP LTD.

65 Queen Street West  
Suite 210  
Toronto, ON  
M5H 2M5  
Tel: 416-363-5050  
Fax: 416-363-5505

April 12, 2021

**Private and Confidential**

RSM Canada Limited  
11 King Street West, Suite 700  
Toronto, Ontario  
M5H 4C7

**Attention: Bryan A. Tannenbaum**

Dear Sirs:

**CIM Bayview Creek Inc.**

Bryton Capital Corp. GP Ltd. (the "**Secured Creditor**") holds a second-ranking mortgage (the "**Security**") in the principal sum of approximately \$22,300,000 over the property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "**Property**") owned by Bayview Creek (CIM) LP, 10502715 Canada Inc., and CIM Bayview Creek Inc. (collectively, the "**Debtor**"), which Security was given by the Debtor to the Secured Creditor, as part of the security for the payment and satisfaction of the obligations, indebtedness and liabilities of the Debtor to the Secured Creditor. The Security was duly registered on June 17, 2019 in the York Region Land Registry Office (No. 65) as Instrument No. YR2972266, and amended on July 31, 2020 as Instrument No. YR3124735. In the Security, the Debtor granted to the Secured Creditor a security interest in the Property.

One or more events of default have occurred or have been committed by the Debtor and as a result the Security has become enforceable pursuant to its provisions. The Secured Creditor has issued a Notice of Intention to Enforce its Security pursuant to the *Bankruptcy and Insolvency Act* ("**Notice**"). The Secured Creditor has reviewed the Security and is satisfied that it is entitled to appoint a Receiver at this time.

The Secured Creditor advises that, to the best of its knowledge and belief, the only person having claims in priority to its security, apart from those claims given priority by statute is:

- DUCA Financial Services Credit Union Ltd. (the "**First Mortgagee**") holds a first ranking mortgage in the principal sum of approximately \$20,720,000 over the Property. The First Mortgagee's security was duly registered on May 18, 2016 in the York Region Land Registry Office (No. 65) as Instrument No. YR2473036.
- Bryton Creek Residences Inc. (now known as Bayview Creek Residences Inc.) (the "**Optionee**"). The Optionee's interest was duly registered on June 17, 2019 in the York Region Land Registry Office (No. 65) as Instrument No. YR2972265.

The Secured Creditor hereby appoints RSM Canada Limited to be the Receiver of the Property pursuant to the Security (the "**Receiver**") with all and every power and authority specified by the Security in this regard, and instructs the Receiver to seize, protect and realize upon the Property for the benefit of the Secured Creditor.

All monies received by the Receiver after providing for (i) all costs, charges and expenses of, or incidental to, the exercise of any of its powers, including legal fees, and (ii) liabilities which may have priority over the Security, shall be applied in and towards the satisfaction of any and all obligations, debts and liabilities of the Debtor to the Secured Creditor.

The rights and powers conferred hereby are in supplement to, and not in substitution of, any rights of the Secured Creditor from time to time.

Yours very truly,

**Bryton Capital Corp. GP Ltd.**

Per: 

Authorized Signature

Name: Bryan McWatt

Title: President

**RSM Canada Limited hereby consents to act as Receiver of the Property in accordance with the terms and conditions of the foregoing.**

Dated at Toronto, this 21 day of April, 2021

**RSM Canada Limited**

Per: 

Signature

Bryan A. Tannenbaum

April 21, 2021

Date

TAB MMM

---

**From:** Lawrence Hansen  
**Sent:** May 25, 2021 10:07 AM  
**To:** Robert S. Choi; Daniel Kim; ailchenko@pallettvalo.com  
**Cc:** Oren Chaimovitch (Devry); Carmen Yuen; Tracey Mason  
**Subject:** RE: Application Record - Bryton Capital Corp. GP Ltd. et al. v. CIM Bayview Creek Inc. et al. - CV-21-00662099-00CL

Thank you.

Please provide the document appointing the receiver.

Thank you.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

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---

**From:** Robert S. Choi [mailto:RChoi@owenswright.com]  
**Sent:** May 25, 2021 10:00 AM  
**To:** Lawrence Hansen <Lawrence.Hansen@devrylaw.ca>; Daniel Kim <DKim@owenswright.com>; ailchenko@pallettvalo.com  
**Cc:** Oren Chaimovitch (Devry) <Oren.Chaimovitch@devrylaw.ca>; Carmen Yuen <Carmen.Yuen@devrylaw.ca>; Tracey Mason <Tracey.Mason@devrylaw.ca>  
**Subject:** RE: Application Record - Bryton Capital Corp. GP Ltd. et al. v. CIM Bayview Creek Inc. et al. - CV-21-00662099-00CL

Hi Lawrence, the receiver's report will be prepared in due course. With respect to the work order, we are waiting for the response from MNP.

**Robert S. Choi** B.A., J.D., LL.M.

Partner | Litigation | Owens Wright LLP

**Direct:** 416.848.4722 | **Fax:** 416.486.3309 | **Email:** RChoi@owenswright.com

**From:** Lawrence Hansen <[Lawrence.Hansen@devrylaw.ca](mailto:Lawrence.Hansen@devrylaw.ca)>

**Sent:** Tuesday, May 25, 2021 9:49 AM

**To:** Daniel Kim <[DKim@owenswright.com](mailto:DKim@owenswright.com)>; Robert S. Choi <[RChoi@owenswright.com](mailto:RChoi@owenswright.com)>; [ailchenko@pallettvalo.com](mailto:ailchenko@pallettvalo.com)

**Cc:** Oren Chaimovitch (Devry) <[Oren.Chaimovitch@devrylaw.ca](mailto:Oren.Chaimovitch@devrylaw.ca)>; Carmen Yuen <[Carmen.Yuen@devrylaw.ca](mailto:Carmen.Yuen@devrylaw.ca)>; Tracey Mason <[Tracey.Mason@devrylaw.ca](mailto:Tracey.Mason@devrylaw.ca)>

**Subject:** Application Record - Bryton Capital Corp. GP Ltd. et al. v. CIM Bayview Creek Inc. et al. - CV-21-00662099-00CL

Thank you.

Please send us:

- (a) the receiver's report which is referenced in the notice; and
- (b) the document evidencing the appointment of the receiver.

Please also let us know asap what steps are being taken in respect of any environmental concerns and the work order raised by Mr. McWatt on Friday.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

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**From:** Daniel Kim [<mailto:DKim@owenswright.com>]

**Sent:** May 24, 2021 11:13 PM

**To:** [dward@millerthomson.com](mailto:dward@millerthomson.com); [lellis@millerthomson.com](mailto:lellis@millerthomson.com); [tdolny@millerthomson.com](mailto:tdolny@millerthomson.com); [dan.wootton@ca.gt.com](mailto:dan.wootton@ca.gt.com); [jbirch@cassels.com](mailto:jbirch@cassels.com); [jbornstein@cassels.com](mailto:jbornstein@cassels.com); [jonathan@hummingbirdlaw.com](mailto:jonathan@hummingbirdlaw.com); [aslavens@torys.com](mailto:aslavens@torys.com); [rlachmansingh@himprolaw.com](mailto:rlachmansingh@himprolaw.com); [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com); [jtannerya@dickinsonwright.com](mailto:jtannerya@dickinsonwright.com); Oren Chaimovitch (Devry) <[Oren.Chaimovitch@devrylaw.ca](mailto:Oren.Chaimovitch@devrylaw.ca)>; Lawrence Hansen <[Lawrence.Hansen@devrylaw.ca](mailto:Lawrence.Hansen@devrylaw.ca)>; [scosmin@duca.com](mailto:scosmin@duca.com); Randy Lebow <[RLebow@owenswright.com](mailto:RLebow@owenswright.com)>; Robert S. Choi <[RChoi@owenswright.com](mailto:RChoi@owenswright.com)>; Jonathan Careen <[JCareen@owenswright.com](mailto:JCareen@owenswright.com)>; [helen.chang@gr-gp.com](mailto:helen.chang@gr-gp.com); [susancanada@gmail.com](mailto:susancanada@gmail.com); [pingt.tan@gmail.com](mailto:pingt.tan@gmail.com); [felicejdllb@gmail.com](mailto:felicejdllb@gmail.com); [rongrongz@hotmail.com](mailto:rongrongz@hotmail.com); [steve.keyzer@colliers.com](mailto:steve.keyzer@colliers.com); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [ailchenko@pallettvalo.com](mailto:ailchenko@pallettvalo.com); [bryan.tannenbaum@rsmcanada.com](mailto:bryan.tannenbaum@rsmcanada.com); [Jerry.Henechowicz@mnp.ca](mailto:Jerry.Henechowicz@mnp.ca);

[Diane.Winters@justice.gc.ca](mailto:Diane.Winters@justice.gc.ca); [andreea.adari@richmondhill.ca](mailto:andreea.adari@richmondhill.ca)

**Subject:** Application Record - Bryton Capital Corp. GP Ltd. et al. v. CIM Bayview Creek Inc. et al. - CV-21-00662099-00CL

Dear Service List:

Please find attached the Application Record of the Applicants, Bryton Capital Corp. GP Ltd. and Bayview Creek Residences Inc. hereby served upon you pursuant to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Best Regards,

**Daniel Kim**

Litigation Law Clerk | Owens Wright LLP

**Direct:** 416.848.4712 | **Fax:** 416.486.3309 | **Email:** [DKim@owenswright.com](mailto:DKim@owenswright.com)

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CANADA  
 District of Ontario  
 Division No.: 09 - Toronto  
 Court No. & Estate No.'s: 31-2734610 & 31-2734603

### TRUSTEE'S PRELIMINARY REPORT

#### IN THE MATTER OF THE BANKRUPTCIES OF 10502715 CANADA INC. and BAYVIEW CREEK (CIM) LP OF THE CITY OF MARKAM IN THE PROVINCE OF ONTARIO

Licensed Insolvency Trustee ("Trustee"): MNP Ltd.

*The information contained in this Preliminary Report has been prepared from the available books and records of the Partnership (as such term is later defined) as well as information contained in various Court and related filings in connection with the Proposal and subsequent Bankruptcy proceedings of CIM Bayview Creek Inc.. These books and records have not been reviewed or otherwise audited by the Trustee and, consequently, the Trustee expresses no opinion whatsoever with respect to the validity, the exactness or the reliability of the information taken from those records contained herein.*

#### **SECTION A – BACKGROUND**

On May 4, 2021, 10502715 Canada Inc (the "GP") and Bayview Creek (CIM) LP (the "LP" and together with the GP hereafter referred to as the "Partnership") each filed an assignment in bankruptcy in which MNP Ltd. ("MNP" or "Trustee") was named as Trustee subject to affirmation at the First Meeting of Creditors.

On May 07, 2021, the Notice to Creditors advising of the bankruptcies and the First Meetings of Creditors, a list of creditors and a proof of claim form, along with a proxy, were sent to all known creditors of the Company. Pursuant to *subsection 102(4)* of the BIA, the Notice of Bankruptcy was published in the *National Post* newspaper on May 12, 2021.

The Partnership operated a real estate development business pursuant to a "Limited Partnership of Bayview Creek Limited Partnership" dated July 14, 2014 as amended from time to time. The primary asset of the Partnership is the real estate property municipally known as 10747 Bayview Ave in Richmond Hill, Ontario (the "Property"). CIM Bayview Creek Inc. ("CIM Bayview") in trust for the Partnership is the registered owner of the Property.

The Property consists of 9.21 acres of vacant land that was intended for the development of 226 residential units and where certain approvals and permits had been obtained to allow for such development.

On October 29, 2020, CIM Bayview filed a Notice of Intention to Make a Proposal ("NOI") pursuant to Section 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended ("BIA"). Grant Thornton Limited was appointed as the Trustee in CIM Bayview's NOI proceeding (the "Proposal Trustee"). The purpose of the NOI proceedings was to allow CIM Bayview to make a proposal to its creditors and to sell the Property whereby the proceeds would be used to repay certain mortgage debt and any residual balance would be used to provide a recovery to unsecured creditors.

On February 5, 2021, the Proposal Trustee advised the Court that CIM Bayview would be unable to make a viable proposal to its creditors. In addition, since no proposal was filed by CIM Bayview by February 5, 2021, the last day in which CIM Bayview could file a proposal, CIM Bayview was adjudged bankrupt effective February 8, 2021. The Proposal Trustee was then appointed as the Trustee in Bankruptcy for CIM Bayview.



## **SECTION B – PRELIMINARY EVALUATION OF ASSETS AND SECURITY INTERESTS**

### **Assets**

#### *The Property*

The Partnership is the beneficial owner of the Property. As set out in the Partnership's Statement of Affairs (the "**SOA**"), the potential gross sale value of the Property is estimated to result in \$55,000,000 of proceeds, which net of estimated secured charges, would produce a surplus of approximately \$7.4 million.

Bryton Capital Corp. GP Ltd. ("**Bryton**"), holds a second ranking mortgage in the principal sum of \$22,300,000 (the "**Bryton Security**") over the Property. Bryton Creek Residences Inc. (now known as Bayview Creek Residences Inc.) (the "**Optionee**") was granted an option by the Partnership to acquire the Property for \$45,000,000. On April 12, 2021 Bryton appointed RSM Canada Limited as receiver (the "**Receiver**") of the Property to, among other things, seize, protect and realize upon the Property for the benefit of Bryton.

#### **HST Refund**

On May 17, 2021, the Trustee received the LP's pre-bankruptcy HST refund in the amount of \$228,629.29 (the "**HST Refund**"), which was deposited in the Trustee's Estate bank account. At the date of bankruptcy, May 4, 2021, this refund was the LP's receivable from the Federal Government of Canada and pursuant to the Financial Administration Act, this asset and any proceeds therefrom are not subject to any secured creditors security. Accordingly, it is the Trustee's position that the HST Refund is property of the Partnership Estate and is not secured by any of the mortgages or secured charges.

### **Security Interests**

A search of the *Personal Property Security Act* conducted on May 15, 2021 (the "**PPSA**") revealed security registrations against the Partnership, as follows:

<b>Secured Party</b>
DUCA Financial Services Credit Union Ltd.
Bryton Capital Corp. GP Ltd.
GR (CAN) Investment Co. Ltd.
Monest Financial Inc.

The Trustee understands that the Proposal Trustee obtained a legal opinion on the validity and enforceability of the secured party's security interests. The Trustee intends to obtain a copy of those opinions from the Proposal Trustee and report to the Inspector(s) in due course.

## **SECTION C – BOOKS AND RECORDS**

MNP is in the process of taking possession of the available books and records of the Partnership necessary for the administration of these proceedings.

## **SECTION D – CONSERVATORY AND PROTECTIVE MEASURES**

Other than the HST Refund set out above, the Trustee has not taken possession of any assets of the Partnership, or taken any proceedings in respect of the Partnership.

## **SECTION E – PROVABLE CLAIMS**

The claims of creditors as per the Partnership's Statement of Affairs ("**SOA**") and the claims filed as at 5:00 PM on May 20, 2021 are summarized below:

	Partnership Combined Statement of Affairs		Claims as Filed
Secured/Deemed Trust	\$ 47,580,308.97	\$	Nil
Preferred	Nil	\$	Nil
Unsecured	\$ 13,987,152.19	\$	\$ 12,254,525.20
	<b>\$ 61,567,461.16</b>		<b>\$ 12,254,525.20</b>

## **SECTION F- LEGAL PROCEEDINGS, TRANSFERS AT UNDER-VALUE AND PREFERENCE PAYMENTS**

### *Legal Proceedings*

The Trustee, subject to approval by the creditors, retained Torkin Manes LLP ("**Torkin Manes**") as Estate Solicitor. Given concerns regarding clean up and other environmental orders that may be registered against the Property, the Trustee instructed the Estate Solicitor to issue a notice of disclaimer in respect of the Property pursuant Section 71 of the *Land Titles Act* (Ontario) and Section 20 of the BIA.

### *Transfers at Under-Value and Preference Payments*

In the NOI proceedings, the Proposal Trustee filed its Third Report Dated 17 December 2020 identifying certain transactions involving Bryton and/or the Optionee (together "**Bryton Capital**") (the "**Attackable Transactions**") that might be subject to attack under sections 95 and 96 of the BIA or Provincial Legislation such as the *Assignment and Preferences Act* and/or the *Fraudulent Conveyances Act*.

The Attackable Transactions consist of:

- the grant and/or exercise by CIM Bayview and the Partnership of an option in favour of Bryton Capital to purchase the Property for a fixed price that is not connected to the fair market value of the Property;
- the surrender of a \$5,000,000 benefit to be paid by Bryton Capital; and
- the payment of \$1,000,000 by CIM Bayview and the Partnership to Bryton Capital.

Gowlings WLG LLP ("**Gowlings**") as counsel to GR (CAN) Investments CO. Ltd. and Monest Financial Inc., as creditors of CIM Bayview, has advised that they intend to bring a Motion pursuant to s. 38 of the BIA to commence proceedings in respect of the Attackable Transactions. In correspondence from Gowlings to the Trustee dated May 20, 2021, Gowlings is requesting the Trustee in the Partnership Estate also take proceedings in respect of the Attackable Transactions. The Trustee will seek instructions regarding the above with the creditors at the First Meeting of Creditors and Inspector(s) if MNP is affirmed as the Trustee of the Partnership Estate at the First Meeting of Creditors.

Upon receipt of the necessary books and records of the Partnership Estate, the Trustee will review the books and records generally in order to identify any other potential transfers at undervalue or preference payments. The scope of the review will be limited to a review of disbursements made in the 12 months preceding bankruptcy and inquiries with management.

## **SECTION G - ANTICIPATED REALIZATIONS AND PROJECTED DISTRIBUTION**

Other than the HST Refund, the only potential realizations are limited to recoveries from the proceedings that may be commenced in respect of the Attackable Transactions.

**SECTION H - OTHER MATTERS**

The Trustee received a \$22,260.00 deposit in respect of the Trustee's expected fees, disbursements and applicable HST from Mr. Jiubin Feng.

Dated at Toronto, Ontario this 20th day of May 2021.

***MNP LTD.  
Trustee of the Estates of  
10502715 Canada Inc. & Bayview Creek (CIM) LP  
and not in its personal or corporate capacity***

Per:



Jerry Henechowicz, CPA, CA, CIRP, LIT  
Senior Vice President

TAB 000

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**From:** Lawrence Hansen  
**Sent:** May 31, 2021 1:30 PM  
**To:** Jerry Henechowitz; S. Fay Sulley - Torkin Manes LLP (fsulley@torkinmanes.com)  
**Cc:** Carmen Yuen; Oren Chaimovitch (Devry); Tracey Mason  
**Subject:** DUCA re CIM/DUCA027

As requested on May 21 and 25, please send us a copy of the notice of disclaimer.

Thank you.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

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**From:** Lawrence Hansen  
**Sent:** May 25, 2021 8:47 AM  
**To:** Jerry Henechowicz; Daniel Kim; dward@millerthomson.com; lellis@millerthomson.com; tdolny@millerthomson.com; dan.wootton@ca.gt.com; jburch@cassels.com; jbornstein@cassels.com; jonathan@hummingbirdlaw.com; aslavens@torys.com; rlachmansingh@himplolaw.com; lcorne@dickinsonwright.com; jtannerya@dickinsonwright.com; Oren Chaimovitch (Devry); scosmin@duca.com; Randy Lebow; Robert S. Choi; Jonathan Careen; 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; ailchenko@pallettvalo.com; bryan.tannenbaum@rsmcanada.com; Diane.Winters@justice.gc.ca; andreea.adari@richmondhill.ca  
**Cc:** S. Fay Sulley - Torkin Manes LLP (fsulley@torkinmanes.com); Jeffrey Simpson  
**Subject:** RE: Application Record - Bryton Capital Corp. GP Ltd. et al. v. CIM Bayview Creek Inc. et al. - CV-21-00662099-00CL

Thank you.

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Thank you.

Lawrence Hansen  
 DEVRY SMITH FRANK *LLP*  
 Lawyers & Mediators  
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Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

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**From:** Jerry Henechowicz [mailto:Jerry.Henechowicz@mnp.ca]  
**Sent:** May 25, 2021 8:01 AM  
**To:** Daniel Kim <DKim@owenswright.com>; dward@millerthomson.com; lellis@millerthomson.com; tdolny@millerthomson.com; dan.wootton@ca.gt.com; jburch@cassels.com; jbornstein@cassels.com; jonathan@hummingbirdlaw.com; aslavens@torys.com; rlachmansingh@himplolaw.com; lcorne@dickinsonwright.com; jtannerya@dickinsonwright.com; Oren Chaimovitch (Devry) <Oren.Chaimovitch@devrylaw.ca>; Lawrence Hansen <Lawrence.Hansen@devrylaw.ca>; scosmin@duca.com; Randy Lebow <RLebow@owenswright.com>; Robert S. Choi <RChoi@owenswright.com>; Jonathan Careen <JCareen@owenswright.com>; helen.chang@gr-gp.com;

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**Cc:** S. Fay Sulley - Torkin Manes LLP (fsulley@torkinmanes.com) <fsulley@torkinmanes.com>; Jeffrey Simpson  
 <jsimpson@torkinmanes.com>

**Subject:** RE: Application Record - Bryton Capital Corp. GP Ltd. et al. v. CIM Bayview Creek Inc. et al. - CV-21-00662099-00CL

Counsel et al.

Please copy our counsel on all email chains Fay Sulley and Jeffrey Simpson of Torkin Manes LLP copied on this email.

Thank you,

**Jerry Henechowicz, CIRP, LIT, CPA, CA**  
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**To:** [dward@millerthomson.com](mailto:dward@millerthomson.com); [lellis@millerthomson.com](mailto:lellis@millerthomson.com); [tdolny@millerthomson.com](mailto:tdolny@millerthomson.com); [dan.wootton@ca.gt.com](mailto:dan.wootton@ca.gt.com); [jbirch@cassels.com](mailto:jbirch@cassels.com); [jbornstein@cassels.com](mailto:jbornstein@cassels.com); [jonathan@hummingbirdlaw.com](mailto:jonathan@hummingbirdlaw.com); [aslavens@torys.com](mailto:aslavens@torys.com); [rlachmansingh@himprolaw.com](mailto:rlachmansingh@himprolaw.com); [lcorne@dickinsonwright.com](mailto:lcorne@dickinsonwright.com); [jtannerya@dickinsonwright.com](mailto:jtannerya@dickinsonwright.com); [oren.chaimovitch@devrylaw.ca](mailto:oren.chaimovitch@devrylaw.ca); [lawrence.hansen@devrylaw.ca](mailto:lawrence.hansen@devrylaw.ca); [scosmin@duca.com](mailto:scosmin@duca.com); Randy Lebow <[RLebow@owenswright.com](mailto:RLebow@owenswright.com)>; Robert S. Choi <[RChoi@owenswright.com](mailto:RChoi@owenswright.com)>; Jonathan Careen <[JCareen@owenswright.com](mailto:JCareen@owenswright.com)>; [helen.chang@gr-gp.com](mailto:helen.chang@gr-gp.com); [susancanada@gmail.com](mailto:susancanada@gmail.com); [pingt.tan@gmail.com](mailto:pingt.tan@gmail.com); [felicejdllb@gmail.com](mailto:felicejdllb@gmail.com); [rongrongz@hotmail.com](mailto:rongrongz@hotmail.com); [steve.keyzer@colliers.com](mailto:steve.keyzer@colliers.com); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [ailchenko@pallettvalo.com](mailto:ailchenko@pallettvalo.com); [bryan.tannenbaum@rsmcanada.com](mailto:bryan.tannenbaum@rsmcanada.com); Jerry Henechowicz <[Jerry.Henechowicz@mnp.ca](mailto:Jerry.Henechowicz@mnp.ca)>; [Diane.Winters@justice.gc.ca](mailto:Diane.Winters@justice.gc.ca); [andreea.adari@richmondhill.ca](mailto:andreea.adari@richmondhill.ca)

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Please find attached the Application Record of the Applicants, Bryton Capital Corp. GP Ltd. and Bayview Creek Residences Inc. hereby served upon you pursuant to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Best Regards,

**Daniel Kim**

Litigation Law Clerk | Owens Wright LLP

**Direct:** 416.848.4712 | **Fax:** 416.486.3309 | **Email:** DKim@owenswright.com  
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**From:** Lawrence Hansen  
**Sent:** May 21, 2021 10:30 AM  
**To:** fsulley@torkinmanes.com  
**Cc:** Carmen Yuen; Oren Chaimovitch (Devry)  
**Subject:** DUCA027/ DUCA re CIM

Fay,

We act for DUCA.

Please send us the notice of disclaimer referenced by Jerry a few minutes ago.

Thanks.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
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## NEWS

## 'It's literally a dump': Richmond Hill residents frustrated by garbage piling up at vacant lot

Property partially owned by CIM development firm has been left vacant after development plan failed

By [Jeremy Grimaldi](#)  Richmond Hill Liberal

Tuesday, April 27, 2021



A propane tank, pallets, bricks and broken glass.

These are just some of the items that can be found at the growing garbage pile on the southeast corner of Elgin Mills Road and Bayview Avenue in Richmond Hill.

Residents are growing increasingly frustrated with the site that has been sitting vacant for more than a year and has become an eyesore for all to see.

Carol Davidson, a co-founder of the Richmond Hill council accountability group, said she sees a bit of a double standard when it comes to large plots of land becoming garbage dumps and private citizens' properties when it comes to enforcement.

"It's a dump, it's literally a dump," she said. "It's an eyesore and whoever owns it is not being held to the same standards as residents. Something tells me if I left my front lawn looking like this I'd be getting a visit quick telling me to clean it up."

She said the rules clearly state that all yards including vacant lots must be kept tidy and that vacant lots should be protected from fire or dangerous conditions.

Ward 3 Coun. Castro Liu said he feels bad for residents who have to look at this site from their windows and admitted this is not the only site in his ward facing this sort of problem.

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"It's been a problem, especially during the pandemic when lots of developers can't build," he said, explaining that while the councillor did approve townhouses for this site, nothing was ever

completed.

He said the problem here is that the company associated to the site, named CIM, has gone into receivership and now bylaw is looking for the new owners so they can engage in a site cleanup.

In an email Tracey Steele, director of community standards, wrote that she knows about the issue and is taking action to try to solve it.

## Related content

Who should clean up trash on vacant Yonge Street lot in Richmond Hill?

"Property owners and tenants in Richmond Hill must do their part to meet minimum property standards," she wrote.

Coun. Tom Muench said at least a portion of the land, which has 'water table issues', has been sold.

Liu added there is another site in his ward going through similar problems, namely an abandoned medical building near Leslie North and 16th Avenue.

The phone number associated to CIM, located in Thornhill, has been disconnected.

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**Jeremy Grimaldi** is the crime and justice reporter for [yorkregion.com](#) and its sister papers. He is the award-winning author of *A Daughter's Deadly Deception: The Jennifer Pan Story*. 905 265 4143 Insta: @YorkCrime

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Direct: 416.848.4722  
rchoi@owenswright.com

May 31, 2021

**TO: THE ATTACHED SERVICE LIST**

**Re: 10747 Bayview Avenue, Richmond Hill**  
**Our File No. 12265002**

TAKE NOTICE that on June 1, 2021, Bryton Capital Corp. GP Ltd. will enter and take possession of the property legally described as Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757, and municipally known as 10747 Bayview Avenue, Richmond Hill, pursuant to the security interest registered on June 17, 2019 in the York Region Land Registry Office (No. 65) as Instrument No. YR2972266, and amended on July 31, 2020 as Instrument No. YR3124735.

Yours very truly,

**OWENS WRIGHT LLP**

A handwritten signature in black ink, appearing to read "R. S. Choi".

**Robert S. Choi**  
/rc

## SERVICE LIST

*TO:* **MILLER THOMSON LLP**  
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Proposal Trustee

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John Birch  
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Counsel for the Proposal Trustee

Jeremy Bornstein  
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Counsel for the Debenture Holders

*AND* **DEPARTMENT OF JUSTICE**  
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- AND* **DUCA FINANCIAL SERVICES CREDIT UNION LTD.**  
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 Jack Tannerya  
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- AND* **OWENS WRIGHT LLP**  
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- AND* **TAN & ASSOCIATES** Ping Tan  
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 Monest Financial Inc.
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- AND* **COLLIERS INTERNATIONAL** Steve Keyzer  
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- AND* **MINISTRY OF FINANCE** Insolvency Unit  
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## SERVICE LIST

<p><i>AND</i> <b>MNP LLP</b>  <i>TO:</i> 111 Richmond Street West          Toronto, ON M5H 2G4</p> <p>Bankruptcy Trustee of Bayview Creek (CIM)          LP</p>	<p>Jerry Henechowicz          Tel: 416.263.6945          Fax: 416.323.5240  <a href="mailto:jerry.henechowicz@mnpc.ca">jerry.henechowicz@mnpc.ca</a></p>
<p><i>AND</i> <b>THE CORPORATION OF RICHMOND HILL</b>  <i>TO:</i> 225 East Beaver Creek Road          Richmond Hill, ON L4B 3P4</p>	<p>Andreea Adari          Tel: 905.771.2504          Fax: 905.771.2408  <a href="mailto:andreea.adari@richmondhill.ca">andreea.adari@richmondhill.ca</a></p> <p>Antonio Dimilta          Tel: 905 771 2513          Fax: 905-771-2408  <a href="mailto:antonio.dimilta@richmondhill.ca">antonio.dimilta@richmondhill.ca</a></p>
<p><i>AND</i> <b>PALLET VALO LLP</b>  <i>TO:</i> 77 City Centre Drive          West Tower, Suite 300          Mississauga, Ontario L5B 1M5</p> <p>Counsel for RSM Canada LLP</p>	<p>Alex Ilchenko          Tel: 905.273.3022x203          Fax: 905.273.6920  <a href="mailto:ailchenko@pallettvalo.com">ailchenko@pallettvalo.com</a></p>
<p><i>AND</i> <b>RSM CANADA LLP</b>  <i>TO:</i> 77 King Street West, Suite 700          Toronto, ON          M5H 4C7</p>	<p>Bryan Tannenbaum  <a href="mailto:bryan.tannenbaum@rsmcanada.com">bryan.tannenbaum@rsmcanada.com</a></p>
<p><i>AND</i> <b>GOWLING WLG</b>  <i>TO:</i> 100 King St W, Suite 1600,          1 First Cdn Pl, Toronto, ON</p> <p>Counsel for the Third Mortgagees</p>	<p>Patrick Shea          Tel: 416.369.7399          Fax: 416.369.7661  <a href="mailto:patrick.shea@gowlingwlg.com">patrick.shea@gowlingwlg.com</a></p>
<p><i>AND</i> <b>TORKIN MANES LLP</b>  <i>TO:</i> 151 Yonge Street, #1500          Toronto, ON M4C 2W7</p> <p>Counsel for MNP LLP</p>	<p>Fay Sulley          Tel: 416.777.5419          Fax: 1.888.587.5769  <a href="mailto:fsulley@torkinmanes.com">fsulley@torkinmanes.com</a></p> <p>Jeffrey Simpson          Tel: 416.777.5413          Fax: 1.888.587.9143  <a href="mailto:jsimpson@torkinmanes.com">jsimpson@torkinmanes.com</a></p>

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TAB RRR



## EXHIBIT "RRR"

DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators

lawrence.hansen@devrylaw.ca  
249.888.6626  
416.446.5097

June 10, 2021

BY EMAIL

Robert Choi  
Owens Wright LLP  
20 Holly Street  
Suite 300  
Toronto, Ontario  
M4S 3B1

Email address: RChoi@owenswright.com

Dear Mr. Choi:

Re: DUCA Financial Services Credit Union Ltd. (the "Lender" or "DUCA"), credit facility in favour of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the "Borrower") secured, *inter alia*, by a Charge/Mortgage of Land registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) on May 18, 2016, as Instrument No. YR2473036 (the "Charge") on the property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "Property")  
Our Matter No. DUCA0027

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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.

Thank you.

Yours very truly,

DEVRY SMITH FRANK *LLP*

A handwritten signature in black ink, appearing to read "L. Hansen". The signature is fluid and cursive, with a large initial "L" and a stylized "H".

Lawrence Hansen

TAB SSS



**Robert S. Choi**  
Direct: 416.848.4722  
rchoi@owenswright.com

June 17, 2021

**Lawrence Hansen**  
Devry Smith Frank LLP  
Suite 100 - 95 Barber Greene Rd.  
Toronto, ON M3C 3E9

**Re: 10747 Bayview Avenue, Richmond Hill**  
**Our File No. 12265002**

Mr. Hansen:

In answer to your recent queries:

- Please find enclosed copies of the competing forms of the draft order.
- Please be advised that June 24, 2021, has been scheduled for a case conference pertaining to the vesting order.
- With respect to the timeline in satisfying DUCA's mortgage, that will depend on the court date to have the vesting order issues adjudicated.

Your letter references an application for a receiver by DUCA. Please be advised that DUCA is not in a position to bring such an application, and Bryton will vehemently oppose any attempt by DUCA to seek the appointment of a receiver.

Our office notes that DUCA voluntarily withdrew its application for the appointment of the court-appointed receiver returnable in December 2020, and in so doing, specifically communicated to all litigants: DUCA will "work with the party whose argument prevails: with Bryton to complete the sales process in accordance with the option if it is found to be valid". Your office communicated that "other than as set out above, [DUCA] will essentially be sitting on the sidelines". A copy of your e-mail dated December 5, 2020, is enclosed for your reference.

In reliance on such communications, Bryton incurred, and continues to incur, significant time and legal costs to enforce its option rights. Bryton prevailed not only at the December 2020 motion, but it also prevailed in having the subsequent appeal dismissed. Bryton will litigate against certain creditors' present desire to challenge Bryton's option rights, notwithstanding *res judicata* and critical substantive failings in their position.



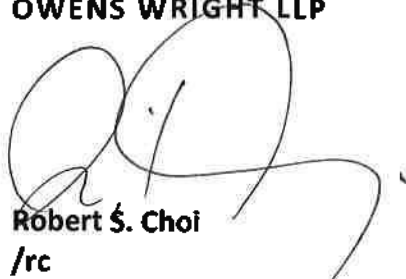
Prior to your reference to the receivership application, our office had been under the impression that the two mortgagees will work cooperatively for the just resolution of the above-noted issues. If the mortgagees are now to take adversarial positions against each other, Bryton will be forced to commence 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 amounts claimed by DUCA under its mortgage including its legal fees, pursuant to s. 9(1) of the *Solicitors Act*, RSO 1990, c 5.15. As well, the validity and enforceability of DUCA's security documentation will be challenged.

We trust that it will not be necessary for such litigation steps to be undertaken as between the two mortgagees. It is Bryton's desire and intent that the cooperative relationship will continue.

Bryton's intends to enforce its option, obtain the vesting order, and satisfy DUCA's mortgage in an orderly manner. We remind you that the true culprits in this litigation are those creditors who now wish to challenge the validity of the option, though the issue was litigated already in December 2020; their BIA claims wholly lack substance.

Yours very truly,

OWENS WRIGHT LLP



Robert S. Choi  
/rc

**Robert S. Choi**

---

**From:** Lawrence Hansen <Lawrence.Hansen@devrylaw.ca>  
**Sent:** Saturday, December 5, 2020 8:28 PM  
**To:** Bornstein, Jeremy; Robert S. Choi; Ward, David; jonathan@hummingbirdlaw.com  
**Cc:** Carmen Yuen; Oren Chaimovitch (Devry); Tracey Mason; Ellis, Larry; Dolny, Tamie; Massie, Sam; Daniel Wootton CIRP; Jonathan Careen; Michael Fallone; Carmen Yuen; Tracey Mason; Craddock, Erin; Birch, John; Steven Huryn  
**Subject:** DUCA re CIM

As some of you know, DUCA has decided today that it will not be proceeding with its request for a receiver, something which should nicely streamline the December 21 hearing. On Monday, we will advise the court, accordingly.

At the hearing on December 21, DUCA will advise the court that it will be content to work with the party whose argument prevails: with Bryton to complete the sales process in accordance with the option if it is found to be valid or the proposal trustee/CIM on a sales process if the option is found not to be valid.

DUCA anticipates that other than as set out above, it will essentially be sitting on the sidelines. If anyone thinks differently, please let me know.

Thanks.

Lawrence Hansen  
 DEVRY SMITH FRANK *LLP*  
 Lawyers & Mediators  
 Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

**COVID-19:** DSF is open and is ready, willing and able to help you. We are living through an extraordinary period, and we are committed to doing what we can to stop the spread of COVID-19. To that end, we are working remotely, using video as well as telephone conferencing as much as possible, and doing as much as we can to conduct business electronically. Please send us correspondence and documentation by email so that we can deal with it in as timely a way as possible, and do not hesitate to give us a call.

**NOTICE:** The use of email is considered by the sender and recipient(s) as an appropriate means of communication, equivalent to ordinary lettermail unless there is notice to the contrary or the circumstances indicate otherwise. This e-mail message and any attachment to it is intended only for the identified recipient(s). Its contents are confidential and privileged, and any review or reproduction of this message, including attachments, is prohibited, as is the disclosure of its contents. If you have received this message in error, please notify us as soon as possible and do not review, copy, print or distribute it. Please destroy any copies or print-outs of this message as soon as possible. Thank you.

Court File No. CV-21-00662099-00CL

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

THE HONOURABLE MR.	)	WEEKDAY, THE #
	)	
JUSTICE CAVANAGH	)	DAY OF MONTH, 2021

**B E T W E E N:**

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

Applicants

- and -

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

Respondents

**APPROVAL, VESTING AND INTERIM DISTRIBUTION ORDER**

THIS APPLICATION, made by Bryton Capital Corp. GP Ltd. ("**Bryton Capital**") and Bayview Creek Residences Inc. ("**Bayview Residences**") (collectively, "**Applicants**") for an order approving the sale ("**Sale**") of a property legally described as Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757 ("**Property**"), by RSM Canada Limited, in its capacity as the privately appointed receiver (the "**Receiver**") appointed by the Applicants over the property of CIM Bayview Creek Inc. ("**CIM Bayview**"), Bayview Creek

(CIM) LP, 10502715 Canada Inc. (collectively, “Vendors”), under the terms of and as contemplated by the terms of Bryton Capital’s mortgage registered on title to the Property and the agreement of purchase and sale between the Vendors and the Purchaser dated June 3, 2019, as amended, (“APS”) and vesting in Bayview Residences, or its assignee, the Vendors’ right, title, and interest in and to the Property described in the APS, was heard this day by Zoom videoconference at Toronto, Ontario.

ON READING the, Application Record of the Applicants, the Notice of Application, the Affidavits of Bryan McWatt sworn in support of the Application and Exhibits thereto, the Report of the Receiver dated [DATE] and appendices thereto (the “Report”), and on hearing the submissions of counsel for the Bryton Capital and Bayview Residences, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed,

**UPON BEING SATISFIED THAT (i) the charge/mortgage of land granted by the Vendors to Bryton Capital over the Property registered on June 17, 2019, as Instrument No. YR297226 (“Bryton Mortgage”) has matured and has not been repaid, (ii) Bryton Capital has issued a demand for payment and a Notice of Intention to Enforce Security pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) (“BIA Notice”), (iii) the Order of Cavanagh J. dated January 12, 2021 (the “January 12 Order”) declared that Bayview Residences may exercise its option to purchase (“Option”) pertaining to the APS, (iv) Bayview Residences has duly exercised the Option, (v) the Receiver was duly appointed pursuant to the terms of the Bryton Mortgage, (iv) all Vendors have been assigned or deemed assigned into bankruptcies,**

1. THIS COURT ORDERS AND DECLARES that the Sale is hereby approved, and the implementation of the APS by the Receiver, in the name and stead of the Vendors is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents on behalf of the Vendors as may be necessary or desirable for the completion of the Sale and for the conveyance of the Property pursuant to the terms of the APS.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver’s certificate to the purchaser substantially in the form attached as Schedule A hereto (the “Receiver’s

**Certificate**"), all of the Vendors' right, title and interest in and to the Property as described in the APS shall vest absolutely in the purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), lease or sublease, pledge, liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including claims by any party to set aside, make void, or nullify this transaction, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated November 27, 2020 (the "**November 27, 2020 Order**"), including the DIP Lenders Charge and any encumbrances permitted for the Administration Professionals secured by any advance on the DIP Lenders Charge, as each term is defined in the November 27, 2020 Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto, (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed in the APS and at Schedule "D" to this Order) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

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

4. THIS COURT ORDERS that the Receiver is authorized and directed to make the following distributions from the Net Proceeds of the Sale (the "**Approved Distributions**"):

- a) to DUCA Financial Services Credit Union Ltd. ("**DUCA**") the amount of \$ \_\_\_\_\_, representing the amount, inclusive of interest, fees and costs as at \_\_\_\_\_, owing to DUCA under the terms of the DUCA loan and security documentation and the DUCA Mortgage (plus accrued interest, fees, and expenses between \_\_\_\_\_ and the date of making such distribution or distributions to DUCA);

- b) to Bryton Capital the amount of \$ \_\_\_\_\_, representing the amount, inclusive of interest, fees and costs to \_\_\_\_\_, 2021, owing to Bryton Capital under its loan and security documentation and the Bryton Mortgage (plus accrued interest, fees, and expenses between \_\_\_\_\_ and the date of making such distribution or distributions to Bryton Capital); and
- c) to the Corporation of the City of Richmond Hill (the "City") of the amount of \$ \_\_\_\_\_, representing the amount, inclusive of interest, fees and costs to the City in respect of the Municipal Taxes and work orders,

in each case as set out in the Report of the Receiver, and subject to any necessary or desirable reserves, as determined by the Receiver, and other known amounts to be paid by the Receiver (the "Contingency Reserves") which distribution or distributions shall be made in order of priority and occur as soon as practicable following the date of the issuance of the Receiver's Certificate, and such payments are hereby approved.

5. THIS COURT ORDERS AND DIRECTS that the Receiver shall reserve and hold in trust the amount of \$200,000.00, representing the DIP Lenders Charge in favour of Cardinal Advisory Ltd. ("Cardinal"), inclusive of interest, fees and costs, as granted under the November 27, 2021 Order, pending any appeal of same or further Order of the Court directing the Receiver to make a distribution to Cardinal (the "Cardinal Reserve").

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

7. THIS COURT ORDERS that, notwithstanding:

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

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

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT ORDERS AND DECLARES that the Applicant, the Receiver, the Purchaser and all persons acting in good faith in accordance with the terms of this Order shall have all of the protections available for so doing, in accordance with section 142 of the *Courts of Justice Act* (Ontario).

10. 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.

11. 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.

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**Schedule A - Form of Receiver's Certificate**

Court File No. CV-21-00662099-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**B E T W E E N:**

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

Applicants

- and -

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

Respondents

**RECITALS**

A. Pursuant to an Order of the Court dated [REDACTED] (the "**Vesting Order**"), the Court provided for the vesting in Bayview Residences or its assignee (collectively, "**Purchaser**") of the right, title and interest of CIM Bayview Creek Inc. ("**CIM Bayview**"), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, "**Vendors**") in and to the assets purchased pursuant to the APS between the Vendors and the Purchaser dated June 3, 2019, as amended, (collectively, "**Sale Agreement**") between the Vendors as implemented by RSM Canada Limited, in its capacity as the privately appointed receiver ("**Receiver**") of the Vendors, and the Purchaser ("**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the satisfaction by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale



Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price for the Purchased Assets deliverable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**RSM Canada Limited, in its capacity as  
Receiver of CIM Bayview Creek Inc.,  
Bayview Creek (CIM) LP, 10502715 Canada  
Inc., and not in its personal capacity**

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

**Schedule B – Purchased Assets**

Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757

**Schedule C – Claims to be deleted and expunged from title to Real Property****[Legal Descriptions of Registrations for:****DUCA Mortgage****Bryton Mortgage****3rd Mortgage****CPL****Work Order]**

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property  
(unaffected by the Vesting Order)**

Creditors' proposed form of the  
vesting order.

Hummingbird/Torys/Gowlings Comments 06/01/21  
Without Prejudice  
For discussion purposes only

Court File No. CV-21-00662099-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR.

)

WEEKDAY, THE #

JUSTICE CAVANAGH

)

DAY OF MONTH, 2021

B E T W E E N:

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

Applicants

- and -

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

Respondents

**APPROVAL, VESTING AND INTERIM DISTRIBUTION ORDER**

THIS APPLICATION, made by Bryton Capital Corp. GP Ltd. ("**Bryton Capital**") and Bayview Creek Residences Inc. ("**Bayview Residences**") (collectively, "**Applicants**") for an order approving the sale ("**Sale**") of a property legally described as Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757 ("**Property**"), by RSM Canada Limited, in its capacity as the privately appointed receiver (the "**Receiver**") appointed by the Applicants over the property of CIM Bayview Creek Inc. ("**CIM Bayview**"), Bayview Creek

12263002-00593189.DOCX:

32639347.1 32639347.3

(CIM) LP, 10502715 Canada Inc. (collectively, “Vendors”), under the terms of and as contemplated by the terms of Bryton Capital’s mortgage registered on title to the Property and the agreement of purchase and sale between the Vendors and the Purchaser dated June 3, 2019, as amended, (“APS”) and vesting in Bayview Residences (the “Purchaser”), ~~or its assignee,~~ the Vendors’ right, title, and interest in and to the Property described in the APS, was heard this day by Zoom videoconference at Toronto, Ontario.

ON READING the, Application Record of the Applicants, the Notice of Application, the Affidavits of Bryan McWatt sworn in support of the Application and Exhibits thereto, the Report of the Receiver dated [DATE] and appendices thereto (the “Report”) [NAMES OF OTHER FILED DOCUMENTS], and on hearing the submissions of counsel for the Bryton Capital and Bayview Residences, [NAMES OF OTHER PARTIES APPEARING], no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed,

~~UPON BEING SATISFIED THAT (i) the charge/mortgage of land granted by the Vendors to Bryton Capital over the Property registered on June 17, 2019, as Instrument No. YR297226 (“Bryton Mortgage”) has matured and has not been repaid, (ii) Bryton Capital has issued a demand for payment and a Notice of Intention to Enforce Security pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) (“BIA Notice”), (iii) the Order of Cavanagh J. dated January 12, 2021 (the “January 12 Order”) declared that Bayview Residences may exercise its option to purchase (“Option”) pertaining to the APS, (iv) Bayview Residences has duly exercised the Option, (v) the Receiver was duly appointed pursuant to the terms of the Bryton Mortgage, (iv) all Vendors have been assigned or deemed assigned into bankruptcies,~~

1. THIS COURT ORDERS AND DECLARES that the Sale is hereby approved, and the implementation of the APS by the Receiver, in the name and stead of the Vendors is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents on behalf of the Vendors as may be necessary or desirable for the completion of the Sale and for the conveyance of the Property pursuant to the terms of the APS.

2. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Vendors' right, title and interest in and to the Property as described in the APS shall vest absolutely in the purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), lease or sublease, pledge, liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including ~~claims by any party to set aside, make void, or nullify this transaction,~~ without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated November 27, 2020 (the "**November 27, 2020 Order**"), including the DIP Lenders Charge and any encumbrances permitted for the Administration Professionals secured by any advance on the DIP Lenders Charge, as each term is defined in the November 27, 2020 Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto, (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the Statutory Claims (as defined below), permitted encumbrances, easements and restrictive covenants listed in the APS and/or at Schedule "D" to this Order) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property.

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

4. THIS COURT ORDERS that the Receiver is authorized and directed to make the following distributions from the Net Proceeds of the Sale (the "**Approved Distributions**"):

- a) to DUCA Financial Services Credit Union Ltd. ("DUCA") the amount of \$ [REDACTED], representing the amount, inclusive of interest, fees and costs as at [REDACTED], owing to DUCA under the terms of the DUCA loan and security documentation and the DUCA Mortgage (plus accrued interest, fees, and expenses between [REDACTED] and the date of making such distribution or distributions to DUCA);
- b) to Bryton Capital the amount of \$ [REDACTED], representing the amount, inclusive of interest, fees and costs to [REDACTED], 2021, owing to Bryton Capital under its loan and security documentation and the Bryton Mortgage (plus accrued interest, fees, and expenses between [REDACTED] and the date of making such distribution or distributions to Bryton Capital); and
- c) to the Corporation of the City of Richmond Hill (the "City") of the amount of \$ [REDACTED], representing the amount, inclusive of interest, fees and costs to the City in respect of the Municipal Taxes and work orders,

in each case as set out in the Report of the Receiver, and subject to any necessary or desirable reserves, as determined by the Receiver, and other known amounts to be paid by the Receiver (the "Contingency Reserves") which distribution or distributions shall be made in order of priority and occur as soon as practicable following the date of the issuance of the Receiver's Certificate, and such payments are hereby approved.

5. THIS COURT ORDERS AND DIRECTS that the Receiver shall reserve and hold in trust the amount of \$200,000.00, representing the DIP Lenders Charge in favour of Cardinal Advisory Ltd. ("Cardinal"), inclusive of interest, fees and costs, as granted under the November 27, 2021 Order, pending any appeal of same or further Order of the Court directing the Receiver to make a distribution to Cardinal (the "Cardinal Reserve").

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

7. THIS COURT ORDERS that, notwithstanding:

~~(a) — the pendency of these proceedings;~~



~~(b) — any applications for a bankruptcy order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (Canada) in respect of the Vendors” and any bankruptcy order issued pursuant to any such applications; and~~

~~(c) — any assignment in bankruptcy made in respect of the Vendors; any other provision of this Order,~~ the vesting of the Property in the Purchaser pursuant to this Order shall be ~~binding on any trustee in bankruptcy that has been, or may be appointed in respect of the Vendors and shall not be void or voidable by creditors of the Vendors, nor shall it constitute nor be deemed to be a~~ subject, and without prejudice, to the determination(s) by the Court (and any remedies available to the Court) in respect of any fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, oppression remedy or other reviewable transaction claims under the *Bankruptcy and Insolvency Act* (Canada) ~~or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any~~ (the “BIA”) or any other applicable federal or provincial legislation, including, without limitation, the Assignment and Preferences Act (Ontario), the Fraudulent Conveyances Act (Ontario), the Canada Business Corporations Act and/or similar provincial legislation and any related applications, actions, proceedings of any kind of or by any trustee in bankruptcy that has been, or may be, appointed in respect of the Vendors and/or any creditor(s) of the Vendors, including, without limitation, any such claims that are authorized and prosecuted pursuant to section 38 of the BIA by any such creditors, in respect of the Property and the transactions and agreements related thereto, including without limitation the

option granted to Bayview Residences in respect of the Property (all such claims and any related applications, actions and proceedings, the "Statutory Claims").

8. THIS COURT ORDERS ~~AND DECLARES that the Transaction is exempt from the application of the Bulk Sales Act (Ontario);~~ that from and after the delivery of the Receiver's Certificate and until such time as the Statutory Claims have been finally determined, the Purchaser shall be prohibited from encumbering, pledging, assigning, selling, conveying or otherwise transferring rights in the Property without further Order of the Court.

9. THIS COURT ORDERS AND DECLARES that the Applicant, the Receiver, the Purchaser and all persons acting in good faith in accordance with the terms of this Order shall have all of the protections available for so doing, in accordance with section 142 of the *Courts of Justice Act* (Ontario).

10. 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.

11. 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.

Hummingbird/Torys/Gowlings Comments 06/01/21Without PrejudiceFor discussion purposes only**Schedule A – Form of Receiver's Certificate**

Court File No. CV-21-00662099-00CL

**ONTARIO****SUPERIOR COURT OF JUSTICE****COMMERCIAL LIST****B E T W E E N:****BRYTON CAPITAL CORP. GP LTD. and And BAYVIEW CREEK RESIDENCES INC.  
(formerly known as BRYTON CREEK RESIDENCES INC.)**

Applicants

- and -

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

Respondents

**RECITALS**

A. Pursuant to an Order of the Court dated [REDACTED] (the "**Vesting Order**"), the Court provided for the vesting in Bayview Residences or its assignee (collectively, "**Purchaser**") of the right, title and interest of CIM Bayview Creek Inc. ("**CIM Bayview**"), Bayview Creek (CIM) LP, 10502715 Canada Inc. (collectively, "**Vendors**") in and to the assets purchased pursuant to the APS between the Vendors and the Purchaser dated June 3, 2019, as amended, (collectively, "**Sale Agreement**") between the Vendors as implemented by RSM Canada Limited, in its capacity as the privately appointed receiver ("**Receiver**") of the Vendors, and the Purchaser ("**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the satisfaction by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to

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- 2 -

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

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price for the Purchased Assets deliverable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**RSM Canada Limited, in its capacity as  
Receiver of CIM Bayview Creek Inc.,  
Bayview Creek (CIM) LP, 10502715 Canada  
Inc., and not in its personal capacity**

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

Name:

Title:

*Hummingbird/Torys/Gowlings Comments 06/01/21*

*Without Prejudice*

*For discussion purposes only*

**Schedule B – Purchased Assets**

Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757

*Hummingbird/Torys/Gowlings Comments 06/01/21*  
*Without Prejudice*  
*For discussion purposes only*

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

**[Legal Descriptions of Registrations for:**

**DUCA Mortgage**

**Bryton Mortgage**

**3<sup>rd</sup> Mortgage**

**CPL**

**Work Order]**

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

**(unaffected by the Vesting Order)**

**1. Statutory Claims**

Document comparison by Workshare 9.5 on Tuesday, June 1, 2021 1:30:56 PM

Input:	
Document 1 ID	interwovenSite:///INVENTORYS1/TorysAtWork/32639347/1
Description	#32639347v1<TorysAtWork> - Bayview Creek - Draft Vesting Order - (TORYS COMMENTS 05/31/21)
Document 2 ID	interwovenSite:///INVENTORYS1/TorysAtWork/32639347/3
Description	#32639347v3<TorysAtWork> - Bayview Creek - Draft Vesting Order - (HUMMINGBIRD/TORYS/GOWLINGS COMMENTS 05/31/21)
Rendering set	Firm_Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<u>Moved from</u>	
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Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	36
Deletions	31
Moved from	1
Moved to	1
Style change	0
Format changed	0



Total changes	69
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TAB TTT



## EXHIBIT "TTT"

DEVRY SMITH FRANK *LLP*

Lawyers &amp; Mediators

lawrence.hansen@devrylaw.ca

249.888.6626

416.446.5097

June 22, 2021

BY EMAIL

Robert Choi  
Owens Wright LLP  
20 Holly Street  
Suite 300  
Toronto, Ontario  
M4S 3B1

Email address: RChoi@owenswright.com

Dear Mr. Choi:

Re: DUCA Financial Services Credit Union Ltd. (the "Lender" or "DUCA"), credit facility in favour of Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc. (collectively, the "Borrower") secured, *inter alia*, by a Charge/Mortgage of Land registered in the Land Registry Office for the Land Titles Division of York Region (No. 65) on May 18, 2016, as Instrument No. YR2473036 (the "Charge") on the property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario (the "Property"), and Bryton Capital Corp. GP Ltd. ("Bryton")  
Our Matter No. DUCA0027

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Thank you for your recent letter. I would point out the following:

- (a) the Charge has been in default since October of last year;
- (b) last fall, Bryton proposed and agreed to take an assignment of DUCA's security, including the Charge, such that DUCA's involvement in the matter would come to an end in early December;
- (c) in reliance on Bryton's assurances, DUCA spent considerable time and money working towards the completion of the assignment;
- (d) at the end of November, Bryton changed its position, indicating that it would not be taking an assignment;
- (e) as a result of the change in its position, Bryton entered discussions with DUCA to assume the Charge, indicating that it had no issue with the fees and disbursements which DUCA had incurred in respect of the matter;

- (f) DUCA had intended to proceed with the hearing of a receivership application, something which it still may do, but stepped to the side to permit the December hearing to focus on the validity of the option, something characterized by the court as the threshold issue;
- (g) DUCA did not waive any of its rights nor did it agree or reasonably could be seen to have agreed never to bring a receivership application in the future, particularly in light of how the matter has developed since December;
- (h) further, it is difficult to see how Bryton has relied to its detriment on anything in its dealings with DUCA, and, in fact, DUCA has a far greater and more compelling claim that it has relied on Bryton's representations, including in respect of the assumption of the Charge;
- (i) Bryton had indicated as early as February that it had been planning to bring an application for a vesting order;
- (j) it did not, however, proceed with such an application as soon as the appeal of Justice Cavanagh's order was dismissed, DUCA's entreaties to move in a timely manner seemingly having no effect;
- (k) Bryton appointed a private receiver over the debtor's property, something which includes the Property;
- (l) there has been a lack of transparency in respect of the private receiver;
- (m) in that respect, our requests to be provided with the document evidencing the receiver's appointment have been ignored;
- (n) further, the private receiver has not provided a report, something which Bryton had indicated it would do;
- (o) at the same time, MNP, the trustee for the beneficial owner of the Property, has indicated that it had disclaimed any interest in the Property;
- (p) at the creditors meeting conducted by MNP, Bryton indicated that there may be dumping and environmental issues with the Property;
- (q) alarmingly, Bryton also stated at the same meeting that its private receiver did not "possess" the Property;
- (r) without consultation with DUCA, Bryton has recently indicated that it has taken possession of the Property and will be dealing with a work order issued by the municipality;
- (s) although there appear to have been discussions about a potential consent order, no proposed timetable has been circulated with respect to bringing the matter to a hearing, something which risks further delay; and
- (t) there has been no transparency in respect of the appeal of the DIP financing.

All of the foregoing has, as you know, taken place in the context of a *Mareva* injunction, a failed proposal, three bankruptcies, an investigative receiver (in addition to the private receiver), the appointment of proposal trustee and then three trustees in bankruptcy, an inordinate number of lawyers and huge expense.

Please immediately provide copies of the following before this week's 9:30 appointment:

- (a) the document by which the private receiver was appointed;
- (b) its report and, in any event, details of what it has done to date and what it plans to do;
- (c) the details of what Bryton is currently doing with the Property arising from its "possession" of it;
- (d) the details of what is happening in respect of the appeal of the DIP financing; and
- (e) a draft timetable for the hearing of the matter, including the claims being advanced by the other parties, which we would ask be circulated by the other parties.

DUCA has been patient in finding a solution to settle the indebtedness with Bryton for over ten months, however all efforts have come to end and currently we do not believe that the appointment of a private receiver by Bryton will fairly represent the interests of the most senior secured creditor. Moreover, DUCA's security position has deteriorated due to the Property's possession by MNP/Bryton and the environmental issues undisclosed to us.

Please treat this letter as a final warning. If we do not obtain the above-mentioned information and a concrete plan with milestones on DUCA's payout, we will be seeking Court approval to appoint *msi* Spergel as a regular receiver and thus secure our rights.

Thank you.

Yours very truly,

DEVRY SMITH FRANK *LLP*

A handwritten signature in black ink, appearing to read "L. Hansen", written in a cursive style.

Lawrence Hansen

TAB UUU

## EXHIBIT "UUU"

**From:** Robert S. Choi <RChoi@owenswright.com>  
**Sent:** June 22, 2021 8:52 PM  
**To:** Carmen Yuen  
**Cc:** Lawrence Hansen  
**Subject:** RE: Duca Financial Services Credit Union Ltd. re. Bayview Creek - DUCA0027  
**Attachments:** Bryton - Letter Appointing Receiver (00621879xEEFE9).PDF

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Mr. Hansen:

With respect to whether DUCA is in a position to seek the appointment of the receiver, we can agree to disagree. If we are to litigate over the issue, then I suppose we will take our respective positions. Given our past working relationship, it would be my preference to not litigate as between the mortgagees.

1. Attached is the appointment letter of RSM as the receiver.
2. I believe the receiver will be completing the report after evidence has been exchanged by the parties.
3. Here is the summary of Bryton's activities, after taking possession:
  - A property management company has been retained to secure the site.
  - The north gates have been closed off, locked and two (2) concrete pilons have been erected to prevent entrance onto the East parcel.
  - Sterling Bailiffs have been retained to evict the 'trespasser' using the West parcel for their landscaping business
  - The gates to the West parcel have been repaired and locked.
  - Security has been placed on the site, after which, a vehicle will be parked on the inside of the West gates for the next month.
  - Both the PM and I have contacted the Richmond Hill Bylaw Officer to keep them informed progress.
  - The PM has been on site every day.
  - At this point in time the environment issues involve scrap metal, used tires and asphalt which will be disposed of in accordance of regulations.
  - Estimates for site clean up are in progress.
  - Bryton's principal has been on site at least 3 times.
4. The motion re: leave to appeal is being held in abeyance, as Bryton has made the submission to Justice Cavanagh that no fees should be awarded to the Proposal Trustee. If in fact, no fees are awarded, the appeal may be a moot issue (to date, CIM Bayview's counsel has not sought to have its accounts passed).
5. The Commercial List advised that bookings are taking as long as in the fall/winter months, given the case backlog. We intend to seek an expedited return date before Justice Cavanagh. The Notice of Application issued by the Third Mortgagees et al. seek to re-litigate the same issues as the ones litigated in Dec. 2020, so we have taken the position that this is an abuse of process. With respect to transfer for undervalue issue, case law is clear that bona fide transactions are safe from attack, and given Cavanagh J.'s decision on the validity of the option and fair dealing on the part of Bryton, we are of the view that there is absolutely no merit to the Third Mortgagees' position.

Best regards,

**Robert S. Choi** B.A., J.D., LL.M.

Partner | Litigation | Owens Wright LLP

**Direct:** 416.848.4722 | **Fax:** 416.486.3309 | **Email:** RChoi@owenswright.com  
300-20 Holly St., Toronto, ON M4S 3B1 [owenswright.com](http://owenswright.com)

This e-mail message is privileged, confidential and subject to copyright. Any unauthorized use or disclosure is prohibited.

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**From:** Carmen Yuen <Carmen.Yuen@devrylaw.ca>**Sent:** Tuesday, June 22, 2021 12:59 PM**To:** Robert S. Choi <RChoi@owenswright.com>**Cc:** Lawrence Hansen <Lawrence.Hansen@devrylaw.ca>**Subject:** Duca Financial Services Credit Union Ltd. re. Bayview Creek - DUCA0027

Dear Mr. Choi:

Please find attached a letter of today's date addressed to you.

Yours truly,

Carmen Yuen  
Legal Assistant**DEVRY SMITH FRANK LLP**

Lawyers &amp; Mediators

| [Whitby](#) | [Barrie](#)**Direct:** (416) 446-5861**Fax:** (416) 449-7071**Email:** [carmen.yuen@devrylaw.ca](mailto:carmen.yuen@devrylaw.ca)

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TAB VVV

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**From:** Robert S. Choi <RChoi@owenswright.com>  
**Sent:** June 28, 2021 4:05 PM  
**To:** Lawrence Hansen  
**Cc:** Oren Chaimovitch (Devry); Carmen Yuen; Tracey Mason  
**Subject:** RE: DUCA re CIM /DUCA027

Thank you. Bryton is going to be claiming damages in a separate proceeding if DUCA proceeds as you have referenced. I suppose we will have to litigate the relevant issues.

**Robert S. Choi** B.A., J.D., LL.M.

Partner | Litigation | Owens Wright LLP  
**Direct:** 416.848.4722 | **Fax:** 416.486.3309 | **Email:** RChoi@owenswright.com  
300-20 Holly St., Toronto, ON M4S 3B1 [owenswright.com](http://owenswright.com)

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**From:** Lawrence Hansen <Lawrence.Hansen@devrylaw.ca>  
**Sent:** Monday, June 28, 2021 3:34 PM  
**To:** Robert S. Choi <RChoi@owenswright.com>  
**Cc:** Oren Chaimovitch (Devry) <Oren.Chaimovitch@devrylaw.ca>; Carmen Yuen <Carmen.Yuen@devrylaw.ca>; Tracey Mason <Tracey.Mason@devrylaw.ca>  
**Subject:** RE: DUCA re CIM /DUCA027

Thanks for the message.

DUCA does not agree with your characterization of things.

Thanks.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

**COVID-19:** DSF is open and is ready, willing and able to help you. We are living through an extraordinary period, and we are committed to doing what we can to stop the spread of COVID-19. To that end, we are working remotely, using video as well as telephone conferencing as much as possible, and doing as much as we can to conduct business electronically. Please send us correspondence and documentation by email so that we can deal with it in as timely a way as possible, and do not hesitate to give us a call.

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**From:** Robert S. Choi [<mailto:RChoi@owenswright.com>]

**Sent:** June 28, 2021 11:27 AM

**To:** Lawrence Hansen <[Lawrence.Hansen@devrylaw.ca](mailto:Lawrence.Hansen@devrylaw.ca)>

**Cc:** Oren Chaimovitch (Devry) <[Oren.Chaimovitch@devrylaw.ca](mailto:Oren.Chaimovitch@devrylaw.ca)>; Carmen Yuen <[Carmen.Yuen@devrylaw.ca](mailto:Carmen.Yuen@devrylaw.ca)>; Tracey Mason <[Tracey.Mason@devrylaw.ca](mailto:Tracey.Mason@devrylaw.ca)>

**Subject:** RE: DUCA re CIM /DUCA027

Hi Lawrence, this is contrary to your and DUCA's representations to the court. I am generally in the office today.

**Robert S. Choi** B.A., J.D., LL.M.

Partner | Litigation | Owens Wright LLP

**Direct:** 416.848.4722 | **Fax:** 416.486.3309 | **Email:** [RChoi@owenswright.com](mailto:RChoi@owenswright.com)  
300-20 Holly St., Toronto, ON M4S 3B1 [owenswright.com](http://owenswright.com)

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**From:** Lawrence Hansen <[Lawrence.Hansen@devrylaw.ca](mailto:Lawrence.Hansen@devrylaw.ca)>

**Sent:** Monday, June 28, 2021 9:21 AM

**To:** Robert S. Choi <[RChoi@owenswright.com](mailto:RChoi@owenswright.com)>

**Cc:** Oren Chaimovitch (Devry) <[Oren.Chaimovitch@devrylaw.ca](mailto:Oren.Chaimovitch@devrylaw.ca)>; Carmen Yuen <[Carmen.Yuen@devrylaw.ca](mailto:Carmen.Yuen@devrylaw.ca)>; Tracey Mason <[Tracey.Mason@devrylaw.ca](mailto:Tracey.Mason@devrylaw.ca)>

**Subject:** DUCA re CIM /DUCA027

Robert,

We have instructions to bring an application for a receivership order. I am going to raise that at tomorrow's appointment. I would hope that we can work out the terms of this on consent with Bryton (I do not expect that the other principal parties will object to it) and will try to contact you by phone about it. I have a brutal day – am just going into a pretrial conference, then have examinations (which are expected to go all day) and a Zoom meeting at the end of the afternoon. I will try to call you at breaks. Please let me know the best number at which to reach you.

Thanks.

Lawrence Hansen  
DEVRY SMITH FRANK *LLP*  
Lawyers & Mediators  
Barrie | Toronto | Whitby

Tel.: 249.888.6626 (Barrie) / 416.446.5097 (Toronto)

**COVID-19:** DSF is open and is ready, willing and able to help you. We are living through an extraordinary period, and we are committed to doing what we can to stop the spread of COVID-19. To that end, we are working remotely, using video as well as telephone conferencing as much as possible, and doing as much as we can to conduct business electronically. Please send us correspondence and documentation by email so that we can deal with it in as timely a way as possible, and do not hesitate to give us a call.

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TAB WWW

**EXHIBIT "WWW"**

Schedule A

Court File. No.

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

**BETWEEN:**

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

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

Respondents

**CONSENT TO RECEIVERSHIP ORDER**

**THE RESPONDENTS**, Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc., and the Applicant, DUCA Financial Services Credit Union Ltd., hereby consent to an Order for the appointment of a Receiver against them and of all of their assets, undertakings and properties of in the form of the Model Receivership Order of the Ontario Superior court of Justice Commercial List as amended from time to time, with such revisions as may be necessary and appropriate.

**THE RESPONDENTS**, Bayview Creek (CIM) LP, CIM Invests Development Inc. and CIM Bayview Creek Inc., and the Applicant, DUCA Financial Services Credit Union Ltd., certify that this Order does not affect the rights of any party under a disability.

Date: July , 2020

BAYVIEW CREEK (CIM) LP

Per: 

Name:

(I have the authority to bind the company)

Date: July , 2020

CIM INVESTS DEVELOPMENT INC.

Per: 

Name:  
(I have the authority to bind the company)

Date: July , 2020

CIM BAYVIEW CREEK INC.

Per: 

Name:  
(I have the authority to bind the company)

Date: July , 2020

DUCA FINANCIAL SERVICES CREDIT  
UNION LTD.

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

Name:  
(I have the authority to bind the company)

TAB XXX



**EXHIBIT "XXX"**

Court File. No.

ONTARIO

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

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

Respondents

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*

**CONSENT TO ACT**

The undersigned, msi Spergel Inc. ("Spergel"), hereby consents to the appointment of Spergel as receiver, without security, of all of the assets, undertakings and properties of Bayview Creek (CIM) LP, CIM Investments Development Inc. and CIM Bayview Creek Inc., including property municipally known as 10747 Bayview Avenue, Richmond Hill, Ontario and more particularly described as:

PIN	03186-4757
DESCRIPTION	PT LT 25, CON2, (MKM), PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER PART 2, 65R13270 AS IN R510790

(the "Property") pursuant to the provisions of subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.O. 1990, c. C.43, s. 101, *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the terms of an order substantially in the form of the Model Receivership Order filed in the above proceeding.

DATED at Hamilton, Ontario, this 25<sup>th</sup> day of June, 2021

msi Spergel Inc.

Per:

Name: Trevor Bringle, LIT

Title: Partner

I have authority to bind the corporation

TAB YYY

**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 \$10.00

**Party From(s)**

Name CIM BAYVIEW CREEK INC.  
 Address for Service 55 Commerce Court Valley Drive West,  
 Unit 502  
 Markham, Ontario L3T 7V9  
 I, Jiubin Feng, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Party To(s)**

Capacity

Share

Name BRYTON CREEK RESIDENCES INC.  
 Address for Service 65 Queen Street West, Suite 210  
 Toronto, Ontario M5H 2M5

**Statements**

The agreement is dated 2019/06/10 and the option expires August 14, 2020, as further set out in the Option Agreement

This notice may be deleted by the Land Registrar after 2020/08/14

The applicant is prepared to produce the document for inspection within fourteen (14) days of the request and the applicant consents to the cancellation of the document on presentation of proof satisfactory to the Land Registrar that the document was not produced upon request.

Provision for renewal or extension, none

The following is the complete option to purchase See Schedules

**Signed By**

Andrea Shui-Lam Wong 20 Holly St. Ste 300 acting for Signed 2019 06 14  
 Toronto Party From(s)  
 M4S 3B1

Tel 416-486-9800

Fax 416-486-3309

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

**Submitted By**

OWENS, WRIGHT LLP 20 Holly St. Ste 300 2019 06 17  
 Toronto  
 M4S 3B1

Tel 416-486-9800

Fax 416-486-3309

**Fees/Taxes/Payment**

Statutory Registration Fee \$64.40  
 Provincial Land Transfer Tax \$0.00  
 Total Paid \$64.40

**File Number**

Party From Client File Number : CIM BAYVIEW CREEK INC./OPTION TO PURCH.  
 Party To Client File Number : 10250-011 BRYTON CREEK RESIDENCES INC.

**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 BAYVIEW CREEK INC.

TO: BRYTON CREEK RESIDENCES INC.

## 1. BRYAN MCWATT

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 BRYTON CREEK RESIDENCES 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	\$10.00
(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))	\$10.00
(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	\$10.00

## 4.

Explanation for nominal considerations:

s) other: purchase price for the option is \$10.00 and therefore land transfer tax is not payable.

## 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:
- (b) This is not a conveyance of "designated land".
- 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: Notice Of Option To Purchase  
LRO 65 Registration No. YR2972265 Date: 2019/06/17

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

C. Address for Service: 65 Queen Street West, Suite 210  
Toronto, Ontario M5H 2M5

D. (i) Last Conveyance(s): PIN 03186 - 4757 Registration No. YR2840443  
(ii) Legal Description for Property Conveyed: Same as in last conveyance? Yes ☒ No ☐ Not known ☐

E. Tax Statements Prepared By: Andrea Shui-Lam Wong  
20 Holly St. Ste 300  
Toronto M4S 3B1

## OPTION AGREEMENT

THIS AGREEMENT made the 3<sup>rd</sup> day of June, 2019.

BETWEEN:

**CIM BAYVIEW CREEK INC.**  
(the "Trustee")

OF THE FIRST PART

- and -

**BAYVIEW CREEK (CIM) LP, by its general partner, 10502715 CANADA INC.**  
(the "Beneficial Owner", and together with the Trustee, collectively, the "Grantor")

OF THE SECOND PART

- and -

**BRYTON CREEK RESIDENCES INC.**  
(the "Grantee")

OF THE THIRD PART

### WHEREAS:

- A. The Trustee is the registered owner and the Beneficial Owner is the beneficial owner of the certain lands and premises located in the City of Richmond Hill and legally described in PIN 03186-4757 (LT) (the "Property");
- B. The Grantor, as vendor, entered into an agreement of purchase and sale dated June 3, 2019 (the "First Agreement of Purchase and Sale") with the Grantee, as purchaser, to purchase certain lands and premises comprising part of the Property, comprising the western parcel designated as Block 1 on the Plan of Subdivision and a fifty (50%) percent interest in the Bridge Blocks (as defined in the First Agreement of Purchase and Sale); and
- C. The Grantor has agreed to grant the Grantee an option to purchase the entire Property subject to the terms and conditions set out herein.

WITNESSETH THAT in consideration of the sum of Ten (\$10.00) Dollars now paid by the Grantee to the Grantor and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby covenant and agree as follows:

## ARTICLE 1 – DEFINITIONS

### 1.1 Defined Terms.

- a. "Business Day" shall mean any day of the week except Saturday, Sunday or statutory holidays.
- b. "Closing" or "Closing Date" shall mean the fifteenth (15) day following the date that the Purchaser exercises the Option in accordance with this Agreement and which date shall in no event be later than September 1, 2020.
- c. "Eastern Parcel" shall mean Block 2 on the Plan of Subdivision.
- d. "First Agreement of Purchase and Sale" shall have the meaning ascribed thereto in Recital B above.
- e. "Municipality" shall mean the City of Richmond Hill.
- f. "Notice" shall have the meaning ascribed thereto in Section 3.1.

- g. **"Option"** shall have the meaning ascribed thereto in Section 2.1.
- h. **"Person"** shall mean an individual, limited partnership, partnership, corporation, trust or unincorporated organization, a government or agency or political subdivision thereof or any combination of the foregoing.
- i. **"Plan of Subdivision"** shall mean the draft plan of subdivision attached to the Second Agreement of Purchase and Sale as Schedule "A".
- j. **"Property"** shall have the meaning ascribed thereto in Recital A above.
- k. **"Property Documents"** shall have the meaning ascribed thereto in Section 5.1.
- l. **"Proposed Development"** shall mean the proposed condominium development on the Lands, consisting of 11 townhouse blocks on Block 2 of the Plan of Subdivision, totally 24 4-storey and 51 3-storey townhouses, and 151 units on Block 1 of the Plan of Subdivision, consisting of 63 4-storey townhouses in 11 blocks and 88 apartments in 3 6-storey blocks.
- m. **"Region"** shall mean the Regional Municipality of York.
- n. **"Second Agreement of Purchase and Sale"** shall have the meaning ascribed thereto in Section 2.1.
- o. **"Second Mortgage"** shall mean the second mortgage in favour of Bryton Capital GP Corp. in the principal amount of Twenty Million (\$20,000,000.00) Dollars, which mortgage is to be registered against title to the Property.
- p. **"Sole Discretion"** shall mean the sole, subjective, absolute and unfettered discretion of the relevant person which may be arbitrarily exercised and without the requirement to provide any rationale or explanation for, of, or with respect to the exercise of such discretion.
- q. **"Term"** shall have the meaning ascribed thereto in Section 2.2.
- r. **"Unit Agreement of Purchase and Sale"** shall have the meaning ascribed thereto in Section 5.5.

## ARTICLE 2 - GRANT OF OPTION AND TERM

- 2.1 The Grantor hereby grants to the Grantee an irrevocable option (the **"Option"**) to purchase the Property from the Grantor upon and subject to the terms and conditions set out in the agreement of purchase and sale attached hereto as Schedule "A" (the **"Second Agreement of Purchase and Sale"**).
- 2.2 The Grantee shall have the right to exercise the Option in the manner hereinafter set out in this Agreement at any time from the date of termination of the First Agreement of Purchase and Sale (where the First Agreement of Purchase and Sale was not terminated solely by reason of a default of the Grantee) up until August 14, 2020 (the **"Term"**). Following the last date of the Term, being August 14, 2020, the Grantee shall have no further rights to exercise the Option.
- 2.3 For greater certainty and notwithstanding anything contained herein to the contrary, the parties hereto also acknowledge and agree that in the event the First Agreement of Purchase and Sale is successfully completed and registered title to that portion of the Property set out in the First Agreement of Purchase and Sale is transferred to the Grantee in accordance with the terms thereof on or before July 30, 2020, the within Option shall automatically terminate and be of no further force or effect.
- 2.4 In conjunction with the execution of this Agreement, the Grantor shall execute and deliver the Second Agreement of Purchase and Sale to the Grantee, which Second Agreement of Purchase and Sale shall be held in escrow by the Grantee until such time as

shall be completed in accordance with its terms). The escrow release date of the Second Agreement of Purchase and Sale shall be deemed to be the acceptance date thereunder.

### ARTICLE 3 – EXERCISE OF OPTION

- 3.1 At any time during the Term, the Grantee may exercise the Option by delivering notice in writing to the Grantor that the Grantee has elected to exercise its Option (the “**Notice**”). Such Notice shall be delivered in accordance with the notice provisions contained in Section 3.4 of this Agreement.
- 3.2 Upon the Grantee exercising its Option pursuant to Section 2.1 hereof, the Second Agreement of Purchase and Sale shall be immediately released from escrow to the Grantee and shall constitute a firm and binding agreement of purchase and sale between the Grantor and the Grantee for the Property in accordance with its terms. Thereafter, the Grantor and the Grantee shall be obliged to complete the Second Agreement of Purchase and Sale in the manner set out therein.

### ARTICLE 4 – REPRESENTATIONS AND WARRANTIES

- 4.1 The Grantor covenants, represents and warrants to and in favour of the Grantee that, as of the date of this Agreement of the within transaction and as of the Closing Date:
  - a. Corporate Status – Corporation. CIM Bayview Creek Inc. and 10502715 Canada Inc. are corporations duly incorporated and subsisting under the laws of the jurisdiction in which they were incorporated and have the corporate power, authority, right and capacity to own its property and assets and to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement.
  - b. Corporate Status – Limited Partnership. Bayview Creek (CIM) LP is a limited partnership and the sole beneficial owner of the Lands validly established and subsisting under the laws of Ontario and Bayview Creek (CIM) LP has the power, authority, right and capacity to own its property and assets and has authorized 10502715 Canada Inc. as general partner on its behalf and CIM Bayview Creek Inc. as its nominee to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement (and which Agreement is binding and enforceable against all parties named herein as Vendor in accordance with its terms);
  - c. Due Authorization. The transactions contemplated by this Agreement will have been duly and validly authorized by all requisite corporate and partnership proceedings and will constitute legal, valid and binding obligations of the Grantor;
  - d. No Default under Other Agreements. Neither the execution of this Agreement nor its performance by the Grantor will result in a breach of any term or provision or constitute a default under the documents or by laws of the Grantor or any indenture, mortgage, deed of trust or any other agreement to which the Grantor is a party or by which it is bound;
  - e. No Litigation. There are and will be no actions, suits or proceedings pending or, to the knowledge of the Grantor, threatened against or affecting the Grantor or the Property in law or in equity, which could affect the validity of this Agreement or the ability of the Grantor to comply with the provisions of this Agreement;
  - f. No Indebtedness Constituting a Lien. Other than the Second Mortgage that may be assumed on Closing, the Grantor does not have any indebtedness to any person that might by operation of law or otherwise constitute a lien, charge or encumbrance on the Property or any part thereof or which could affect the right of the Grantee, from and after the Closing Date, to own, occupy and obtain the revenue from the Property;

- g. Construction Lien. Save and except for the construction lien in favour of Stantec Consulting Ltd., which is to be discharged prior to the funding of the Second Mortgage, all amounts for labour and materials relating to the supply of services and materials in respect to the Property have been fully paid for and no other Person has a right to file a lien under the *Construction Act* (Ontario) in respect of such supply;
- h. Vacant Possession. There are no tenancies, licenses or other form of occupation rights in respect to the Property and the Grantee shall receive vacant possession of the Property on the Closing Date;
- i. No Unregistered Agreements. There are no unregistered agreements or purchase options in respect of the Property to which the Grantee will be bound to assume on Closing.
- j. Taxes and Assessments. All municipal taxes, local improvement charges, rates and assessments for the Property have paid in full;
- k. Access. The Property has full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the Proposed Development;
- l. No Work Orders or Expropriation. The Grantor has not received nor is the Grantor aware of any work order, deficiency notice, notice of violation, notice of expropriation, or other similar communication or directive from any municipal, governmental authority or utility commission having jurisdiction over the Property, nor has any portion of the Property been expropriated or provided to any governmental authority during the Grantor's ownership of the same;
- m. Environmental Matters. The operation or occupation of the Property does not contravene any law, regulation, order, by law or directive relating to the environment or any regulation, order, by law or directive regulating the import, manufacture, storage, distribution, labelling, sale, use, handling, transport or disposal of contaminants (as that term is defined under any applicable environmental laws or statutes) or dangerous or hazardous substances, including wastes (nor is the Grantor aware of any contraventions thereof) and neither the Grantor nor any of its predecessors in title have emitted, discharged or deposited or caused or permitted to be emitted, discharged or deposited any contaminants (as that term is defined under any applicable environmental laws or statutes) into the natural environment, including without limitation, the air, soil, subsoil or surface or ground water in, on, over, under or at the Property, nor have the Property been used at any time by any person as a landfill or waste disposal site;
- n. Subdivision Agreements. That all matters arising from any agreements in favour of the Municipality and the Region (including all subdivision, development and site plan agreements) or pursuant to any other agreements with any utility supplier or other authority having jurisdiction over the Property have been fully complied with and all of the financial requirements therein have been paid for in full (or sufficient security has been posted thereunder to ensure completion of any outstanding matters); and
- o. Full Disclosure. So far as the Grantor is aware, the Grantor has disclosed to the Grantee all material information pertaining to the Property and the Proposed Development, whether solicited by the Grantee or not. Neither this Agreement nor any other document referred to in this Agreement or any Schedule to this Agreement nor any statement, schedule or certificate furnished or to be furnished to the Grantee pursuant to this Agreement contains or will contain any untrue statement or omits or will omit to state a material fact.

The Grantor agrees to protect, indemnify and save the Grantee harmless from and against any and all losses, costs, expenses, damages, liabilities, claims and demands whatsoever arising or suffered as a result of any misrepresentation or breach of covenant,



representation or warranty given by it under this Agreement or any document, certificate or other instrument delivered by it pursuant to this Agreement.

No investigations, inspections, tests or enquiries made by or on behalf of the Grantee at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any covenant, representation or warranty made by the Grantor in or pursuant to this Agreement.

## ARTICLE 5 – COVENANTS

- 5.1 **Property Documents.** Upon the Grantee's exercise of the Option, the Grantor shall forthwith deliver to the Grantee at no cost or expense any and all of the plans, surveys, drawings, applications, reports, studies, tests, licences, permits and all other material documents relating to the Proposed Development (collectively, the "**Property Documents**") for the Grantee's use, including without limitation any plans and drawings in the Grantor's possession or control showing the elevations, contours and engineering grades and drainage patterns and the plans and drawings showing the locations of the hydrants, utility services, all lateral connections and elevations of sewer inverts at each lot line and the final sidewalk elevations.
- 5.2 **Authorizations.** At the request of the Grantee, the Grantor shall promptly deliver to the Grantee letters addressed to such governmental and other authorities as may be requested by the Grantee or its solicitors from time to time, authorizing each such authority to release to the Grantee such information on compliance matters that the authority may have with respect to the Property.
- 5.3 **Access by Grantee.** Following the execution of this Agreement, the Grantee, its representatives and advisors shall have full access to the Property and to all information relating to the Property that is within the possession or control of the Grantor. The Grantor authorizes the Grantee to hereinafter carry out such tests (including soil tests and any other invasive testing), environmental audits, surveys and inspections of the Property as the Grantee, its representatives or advisors may deem necessary, in their Sole Discretion.
- 5.4 **Modification of Agreements and Approvals.** Following the execution of this Agreement, the Grantor shall not enter into any contract or agreement affecting the Property or agree to amend, modify, vary, terminate, surrender or cancel any existing agreements affecting the Property or the Proposed Development (including any subdivision, development or site plan agreements) or any approvals obtained in respect thereof, or alter any of the submissions/applications made to the Municipality or the Region or utility suppliers and other authorities in such regard, without the prior written approval of the Grantee. The Grantor shall provide to the Grantee all information that the Grantee reasonably determines to be necessary in order to decide whether or not to grant its approval.
- 5.5 **Disclosure of Purchaser's Option**

Prior to the commencement of its sales and marketing of dwelling units for the Eastern Parcel, the Grantor covenants and agrees to amend the condominium disclosure materials and any agreements of purchase and sale for the purchase of dwelling units (the "**Unit Agreement of Purchase and Sale**") to include specific and full disclosure of the Grantee's rights to purchase the Property in accordance with the terms of this Agreement. Further, the Grantor covenants and agrees that any Unit Agreement of Purchase and Sale shall (i) include a provision making any Unit Agreement of Purchase and Sale subordinate to this Agreement and the Grantee's option herein; (ii) include a provision making it conditional upon the Grantee not exercising its Option hereunder and completing the purchase of the Property as contemplated in the Second Agreement of Purchase and Sale; and (iii) include an acknowledgment by the proposed purchaser that in the event the Grantee has exercised its Option to purchase the Lands as contemplated herein, the Unit Agreement of Purchase and Sale shall be terminated and of no further force and effect. The Grantor shall deliver to the Grantee evidence of the Grantor's compliance with the provisions of this Section 5.5 in a form satisfactory to the Grantee within sixty (60) days following the execution of this Agreement. The Grantor further

covenants and agrees to include the amended condominium disclosure materials as contemplated above in all Unit Agreements of Purchase and Sale.

#### ARTICLE 6 - GENERAL

- 6.1 The Grantee shall have the right, at any time, to assign, convey, sell, transfer all of its right, title and interest in this Agreement and/or the Option and/or all of its right, title and interest in the Second Agreement of Purchase and Sale without the prior consent of the Grantor.
- 6.2 The Grantee shall be entitled, at its cost and expense, to register notice of this Agreement in the applicable Land Registry Office having jurisdiction over the Property without the prior consent of the Grantor, and the Grantor covenants and agrees to execute, at no cost to the Grantee, all necessary documentation required for such purpose.
- 6.3 This Agreement, together with any schedules attached hereto, shall constitute the entire agreement between the Grantee and the Grantor. The parties agree that there are no covenants, representations, warranties, collateral agreements or conditions, whether direct or collateral, express or implied which induced any party to enter into this Agreement or on which reliance is placed by any such party, or which affects this Agreement other than as expressed herein.
- 6.4 The Grantee's exercise of the Option shall be deemed effective and binding upon the parties upon the Grantee delivering written notice of the same to the Grantor by either personal delivery, facsimile or email transmission at the applicable address set forth below:

CIM Bayview Creek Inc., Bayview Creek (CIM) LP and 10502715 Canada Inc.  
55 Commerce Valley Drive West, Unit 502  
Markham, Ontario L3T 7V9

Attention: Jiubin Feng  
Email: jiubinfeng@yahoo.ca

Or by delivering a copy of such notice to the Grantor c/o its solicitors:

Himelfarb Proszanski  
480 University Avenue, Suite 401  
Toronto, Ontario M5G 1V2

Attention: Peter Proszanski  
Email: peter@himprolaw.com  
Fax No.: 416-599-3131

The Notice, if delivered, shall be deemed to have been validly and effectively given and received on the date of delivery. The Notice, if sent by facsimile or email communication, shall be deemed to have been validly and effectively given and received on the date of transmission unless such date is not a Business Day or if transmitted after 5:00 p.m. on a business day, in which case such Notice shall be deemed to have been validly and effectively given and received on the next following business day.

- 6.5 The insertion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation hereof.
- 6.6 This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 6.7 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof and any such invalid or unenforceable provision shall be deemed to be severable.

- 6.8 Time shall be of the essence of this Agreement and the Second Agreement of Purchase and Sale.
- 6.9 Each of the Grantor and the Grantee agrees that it shall and will from time-to-time and at all times do all such further acts and execute all such further documents and provide all such assurances as shall be reasonably required by the other to fully perform and carry out the terms of this Agreement and the Second Agreement of Purchase and Sale. This Section shall survive any termination of this Agreement.
- 6.10 This Agreement and all of the covenants, agreements and other obligations under or pursuant to this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
- 6.11 This Agreement is made pursuant to and subject to compliance with the provisions of the *Planning Act* (Ontario), as may be amended from time to time.
- 6.12 This Agreement may be executed in any number of counterparts and transmitted by telegraphic or electronic transmission, each of which when executed and delivered shall be deemed to be an original hereof and fully binding upon the signatory thereto, and all such counterparts shall together constitute one and the same instrument.

*[signature page follows]*


IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first written above.

**CIM BAYVIEW CREEK INC.**

Per:   
 Name: JIUBIN FENG  
 Title: PRESIDENT


I have authority to bind the Corporation

**BAYVIEW CREEK (CIM) LP,  
 by its general partner,  
 10502715 CANADA INC.**

Per:   
 Name: JIUBIN FENG  
 Title: DIRECTOR

I have authority to bind the Limited Partnership

**10502715 CANADA INC.**

Per:   
 Name: JIUBIN FENG  
 Title: DIRECTOR

I have authority to bind the Corporation

**BRYTON CREEK RESIDENCES INC.**

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

I have authority to bind the Corporation

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date first written above.

**CIM BAYVIEW CREEK INC.**

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

Name:

Title:

I have authority to bind the Corporation

**BAYVIEW CREEK (CIM) LP,  
by its general partner,  
10502715 CANADA INC.**

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

Name:

Title:

I have authority to bind the Limited Partnership

**10502715 CANADA INC.**

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

Name:

Title:

I have authority to bind the Corporation

**BRYTON CREEK RESIDENCES INC.**

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

Name: **BRYAN MCWAIL**

Title: **PRESIDENT**

I have authority to bind the Corporation

- 1 -

**AGREEMENT OF PURCHASE AND SALE**

THIS AGREEMENT is dated as of the 3<sup>rd</sup> day of June, 2019.

The undersigned, Bryton Creek Residences Inc. (the "**Purchaser**"), hereby agrees to purchase from CIM Bayview Creek Inc. and Bayview Creek (CIM) LP, by its general partner, 10502715 Canada Inc. (collectively, the "**Vendor**") and the Vendor agrees to sell to the Purchaser the property in the City of Richmond Hill legally described in PIN 03186-4757 (LT) and outlined on the draft plan of subdivision attached hereto as Schedule "A" (the "**Lands**" or the "**Property**").

**ARTICLE 1.00 - DEFINITIONS****1.1 Definitions**

Defined Terms:

- (a) "**Agreement**" shall mean this agreement arising out of the acceptance of the within offer.
- (b) "**Business Day**" shall mean any day of the week except Saturday, Sunday or statutory holidays.
- (c) "**Closing**" or "**Closing Date**" shall mean the fifteenth (15<sup>th</sup>) day following the date that the Purchaser exercises the Option and which date shall in no event be later than September 1, 2020.
- (d) "**Easements**" shall have the meaning ascribed thereto in subsection 3.2(c).
- (e) "**ERS**" shall have the meaning ascribed thereto in Section 7.18.
- (f) "**Escrow Document Registration Agreement**" shall have the meaning ascribed thereto in Section 7.18(a).
- (g) "**First Mortgage**" shall have the meaning ascribed thereto in subsection 2.2(b).
- (h) "**Governmental Authorities**" means any municipal, provincial or federal department, commission, board, bureau, branch, agency, regulating authority or other authority whatsoever having or purporting to have jurisdiction over the Lands and "**Governmental Authority**" has a corresponding meaning.
- (i) "**Hard Costs Repayment**" shall have the meaning ascribed thereto in Section 2.3.
- (j) "**HST**" shall have the meaning ascribed thereto in Section 2.6.
- (k) "**Mortgages**" shall mean, collectively, the First Mortgage and the Second Mortgage.
- (l) "**Municipality**" shall mean the City of Richmond Hill.
- (m) "**Option**" shall mean the irrevocable option granted by the Vendor to the Purchaser to purchase the Lands as set out in an Option Agreement.
- (n) "**Option Agreement**" shall mean the Option Agreement between the Vendor, as grantor, and the Purchaser, as grantee, dated the 3<sup>rd</sup> day of June, 2019 wherein the Vendor grants the Purchaser an irrevocable offer to purchase the Lands.
- (o) "**Permitted Encumbrances**" shall have the meaning ascribed thereto in Section 3.2.
- (p) "**Person**" shall mean an individual, limited partnership, partnership, corporation, trust or unincorporated organization, a government or agency or political subdivision thereof or any combination of the foregoing.
- (q) "**Plan of Subdivision**" shall mean the draft plan of subdivision attached hereto as Schedule "A".
- (r) "**Property Documents**" shall have the meaning ascribed thereto in Section 4.1.
- (s) "**Proposed Development**" shall mean the condominium development on the Lands, consisting of 11 townhouse blocks on Block 2 of the Plan of Subdivision, totally 24 4-storey and 51 3-storey townhouses, and 151 units on Block 1 of the Plan of Subdivision, consisting of 63 4-storey townhouses in 11 blocks and 88 apartments in 3 6-storey blocks.
- (t) "**Purchase Price**" shall have the meaning ascribed thereto in Section 2.1.

- (u) **"Region"** shall mean the Regional Municipality of York.
- (v) **"Second Mortgage"** shall have the meaning ascribed thereto in subsection 2.2(b).
- (w) **"Sole Discretion"** shall mean the sole, subjective, absolute and unfettered discretion of the relevant person which may be arbitrarily exercised and without the requirement to provide any rationale or explanation for, of, or with respect to the exercise of such discretion.

## ARTICLE 2.00 - FINANCIAL AND CLOSING

### 2.1 Purchase Price

The purchase price for the Lands shall be the sum of Forty Million Seven Hundred and Twenty Thousand (\$40,720,000.00) Dollars (the **"Purchase Price"**).

### 2.2. Payment of Purchase Price

The Purchaser and the Vendor acknowledge and agree that the Purchase Price shall be satisfied as follows:

- (a) the payment by the Purchaser to the Purchaser's solicitors of a deposit in the amount of One Hundred (\$100.00) Dollars, which the Vendor hereby confirms having received prior to the acceptance of this Agreement, which deposit shall be credit to the purchase price on Closing; and
- (b) the balance of the purchase price shall be satisfied by the assumption by the Purchaser on Closing of (i) the first mortgage in favour of DUCA Financial Services Credit Union Ltd. with a principal amount of not greater than Twenty Million Seven Hundred Twenty Thousand (\$20,720,000.00) Dollars and an interest rate not greater than prime rate plus five and one half (5.50%) percent (the **"First Mortgage"**) and (ii) second mortgage in favour of Bryton Capital GP Corp. with a principal amount of not greater than Twenty Million (\$20,000,000.00) Dollars and an interest rate equal to the greater of eight (8.00%) percent and the prime rate of The Toronto-Dominion Bank plus four (4.00%) percent (the **"Second Mortgage"**), subject to the adjustments provided for herein. To the extent that the aggregate amount outstanding on Closing under the Mortgages exceed the Purchase Price, then the Purchaser shall be entitled to the assume the Mortgages notwithstanding and the Vendor shall remain liable for any amounts owing under the Mortgages in excess of the Purchase Price and hereby indemnifies the Purchaser in respect to the same. The aforementioned indemnity shall survive Closing.

### 2.3 Repayment of Hard Costs

The parties hereby acknowledge and agree that the hard costs incurred by the Vendor after June 1, 2019 in the construction and installation of the bridge connecting Blocks 1 and 2 on the Plan of Subdivision, the construction of all internal roads and the pumping station within Block 2 on the Plan of Subdivision shall be paid by the Purchaser to the Vendor on Closing, in addition to the Purchase Price, (collectively, the **"Hard Costs Repayment"**), provided that (i) the Hard Costs Repayment shall be limited to a maximum amount of Five Million (\$5,000,000.00) Dollars plus HST; and (ii) the Vendor shall, prior to any payment herein, provide evidence satisfactory to the Purchaser, in its Sole Discretion, of work completion and payment thereof by the Vendor.

### 2.4 Closing Costs

The parties hereby acknowledge and agree that each shall be responsible for its respective legal fees, disbursements and other costs associated with the transaction contemplated herein.

### 2.5 Condition Relating to Planning Act Compliance

This Agreement is made pursuant to and subject to compliance with the provisions of the *Planning Act* (Ontario), as may be amended from time to time.

### 2.6 Harmonized Sales Taxes

The Purchaser acknowledges that the purchase price for the Lands does not include any harmonized sales tax ("HST"). The Purchaser hereby represents, covenants and warrants that it or any other entity acquiring beneficial ownership of the Lands on Closing (the **"Qualifying Entity"**) is now or will be by the Closing Date registered for the purposes of the HST in accordance with the provisions of the *Excise Tax Act* (Canada). The Purchaser shall deliver a statutory declaration on Closing attesting to the Qualifying Entity's HST registration including its HST registration number, if available. If the Qualifying Entity is not registered for purposes of HST on Closing, then the Purchaser shall pay the HST exigible on the Lands to the Vendor as an adjustment on Closing. The Purchaser shall provide to the Vendor on Closing with an indemnity indemnifying the Vendor and saving it harmless from all

penalties, interest and liability whatsoever that relates to or arises from the Purchaser not paying the HST exigible on the subject transaction.

### **ARTICLE 3.00 - TITLE**

#### **3.1 Requisitions**

Title to the Lands shall be good and free from all mortgages, charges, liens and encumbrances, save and except for Permitted Encumbrances. The Purchaser shall be allowed ten (10) days prior to the Closing Date to investigate the title to the Lands, at its own expense. If, within that time, the Purchaser shall furnish the Vendor in writing with any valid title objection thereto which the Vendor shall be unable to remove by the Closing Date and which the Purchaser will not waive, then this Agreement shall, at the Purchaser's option, be terminated and any deposits in respect thereof shall be returned by the Vendor to the Purchaser forthwith without interest or deduction and the parties hereto shall be released from any further obligation to one another under the Agreement (except where to the extent any such obligations are expressly stated in this Agreement to survive Closing). Save as to any valid objection so made within such time, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Lands.

#### **3.2 Permitted Encumbrances**

The Vendor agrees to convey the Lands to the Purchaser free from all mortgages, charges, liens or other encumbrances, save and except for the following, and the Purchaser agrees to accept title to the Lands subject to the following permitted encumbrances (collectively, the "**Permitted Encumbrances**"):

- (a) the First Mortgage, which First Mortgage shall be in good standing;
- (b) the Second Mortgage, which Second Mortgage shall be in good standing;
- (c) any easements which may now or hereafter be required by the Municipality, the Region or any utility supplier for the installation and maintenance of utility services to the Lands (collectively, the "**Easements**"), provided the Easements are in good standing and do not impair the Purchaser's ability to complete the Proposed Development; and
- (d) any subdivision, development or site plan agreements with the Municipality or the Region registered on title to the Lands, provided that the same are in good standing and do not impair the Purchaser's ability to complete the Proposed Development.

### **ARTICLE 4.00 – VENDOR'S OBLIGATIONS**

#### **4.1 Property Documents**

Upon acceptance of this Agreement, the Vendor shall forthwith deliver to the Purchaser at no cost or expense any and all of the plans, surveys, drawings, applications, reports, studies, tests, licences, permits and all other material documents relating to the Proposed Development (collectively, the "**Property Documents**") for the Purchaser's use, including without limitation any plans and drawings in the Vendor's possession or control showing the elevations, contours and engineering grades and drainage patterns and the plans and drawings showing the locations of the hydrants, utility services, all lateral connections and elevations of sewer inverts at each lot line and the final sidewalk elevations.

#### **4.2 Authorizations**

At the request of the Purchaser, the Vendor shall promptly deliver to the Purchaser letters addressed to such governmental authorities as may be requested by the Purchaser or its solicitors from time to time, authorizing each such authority to release to the Purchaser such information on compliance matters that the authority may have with respect to the Lands.

#### **4.3 Assignment of Property Documents**

On Closing, the Vendor shall execute and deliver to the Purchaser a transfer and assignment of all of its right, title and interest in and to the Property Documents, including, without limitation, any and all documentation, plans, reports, studies, applications, appeals, objections and all other materials and proceedings initiated prior to the Closing in respect of the Lands and the Proposed Development. The Vendor shall obtain at its own cost and expense prior to Closing such consents as may be necessary to enable the Purchaser to (i) utilize and rely upon the Property Documents for its own account following Closing; and (ii) enforce all rights and remedies arising therefrom, and the Vendor shall deliver to the Purchaser on or before Closing, at the Vendor's sole cost and expense, any letters of transmittal relating thereto as may be required by the Purchaser.



#### 4.4 Assignment of Warranties

On Closing, the Vendor shall execute and deliver to the Purchaser a transfer and assignment of a right, title and interest in and to any and all warranties associated with the Lands.

#### 4.5 Access by Purchaser

Following final acceptance of this Agreement, the Purchaser, its representatives and advisors shall have full access to the Lands and to all information relating to the Lands that is within the possession or control of the Vendor. The Vendor authorizes the Purchaser to carry out such tests (including soil tests and any other invasive testing), environmental audits, surveys and inspections of the Lands as the Purchaser, its representatives or advisors may deem necessary, in their Sole Discretion.

#### 4.5 Modification of Agreements and Approvals

Prior to Closing, the Vendor shall not enter into any contract or agreement affecting the Lands or agree to amend, modify, vary, terminate, surrender or cancel any existing agreement affecting the Lands or the Proposed Development (including any subdivision, development or site plan agreement) or to any approvals obtained in respect thereof, or to alter any of the submissions/applications made to the Municipality or the Region in such regard, without the prior written approval of the Purchaser. The Vendor shall provide to the Purchaser all information that the Purchaser reasonably determines to be necessary in order to decide whether or not to grant its approval.

### ARTICLE 5.00 – DEVELOPMENT

#### 5.1 No Contest

The Vendor hereby covenants and agrees (and shall deliver its covenant and agreement in respect to the same on Closing in acceptable form to the Purchaser) that neither the Vendor or any corporation or other Person related to or associated with the Vendor (or its shareholders, officers or directors) shall object to or oppose at any time (including the period following Closing) the Proposed Development (or object to or oppose the development of any other Lands owned by the Purchaser or its related or associated entities in the vicinity of the Lands) or any subsequent amendments thereto initiated by the Purchaser and the Vendor covenants and agrees to ensure that all of the aforementioned parties forthwith execute any documentation hereinafter required by the Purchaser in respect to the foregoing (including without limitation the execution of any consents or letters of support required by the Purchaser in such regard). The Vendor acknowledges and agrees that the aforementioned covenant may also be pleaded by the Purchaser as an estoppel to any such opposition by the Vendor or any application or in aid of any injunction restraining such opposition. All matters contained in this Section shall survive and not merge on Closing.

### ARTICLE 6.00 - COVENANTS, REPRESENTATIONS AND WARRANTIES

#### 6.1 Covenants, representations and warranties of the Vendor

The Vendor covenants, represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement of the within transaction and as of the Closing Date:

- (a) Corporate Status – Corporation. CIM Bayview Creek Inc. and 10502715 Canada Inc. are corporations duly incorporated and subsisting under the laws of the jurisdiction in which they were incorporated and have the corporate power, authority, right and capacity to own its property and assets and to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement;
- (b) Corporate Status – Limited Partnership. Bayview Creek (CIM) LP is a limited partnership and the sole beneficial owner of the Lands validly established and subsisting under the laws of Ontario and Bayview Creek (CIM) LP has the power, authority, right and capacity to own its property and assets and has authorized 10502715 Canada Inc. as general partner on its behalf and CIM Bayview Creek Inc. as its nominee to enter into, execute and deliver this Agreement and to carry out the transactions contemplated by this Agreement in the manner contemplated by this Agreement (and which Agreement is binding and enforceable against all parties named herein as Vendor in accordance with its terms);
- (c) Due Authorization. The transactions contemplated by this Agreement will have been duly and validly authorized by all requisite corporate and partnership proceedings and will constitute legal, valid and binding obligations of the Vendor;

*As whole  
power*

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- (d) No Default under Other Agreements. Neither the execution of this Agreement nor its performance by the Vendor will result in a breach of any term or provision or constitute a default under the documents or by-laws of the Vendor or any indenture, mortgage, deed of trust or any other agreement to which the Vendor is a party or by which it is bound;
- (e) No Litigation. There are and will be no actions, suits or proceedings pending or, to the knowledge of the Vendor, threatened against or affecting the Vendor or the Lands in law or in equity, which could affect the validity of this Agreement or the ability of the Vendor to comply with the provisions of this Agreement;
- (f) No Indebtedness Constituting a Lien. Other than the Mortgages to be assumed on Closing, the Vendor does not have any indebtedness to any person that might by operation of law or otherwise constitute a lien, charge or encumbrance on the Lands or any part thereof or which could affect the right of the Purchaser, from and after the Closing Date, to own, occupy and obtain the revenue from the Lands;
- (g) Construction Lien. All amounts for labour and materials relating to the supply of services and materials in respect to the Lands have been fully paid for and no Person has a right to file a lien under the *Construction Act* (Ontario) in respect of such supply;
- (h) Vacant Possession. There are no tenancies, licenses or other form of occupation rights in respect to the Lands and the Purchaser shall receive vacant possession of the Lands on the Closing Date
- (i) No Unregistered Agreements. There are no unregistered agreements or purchase options in respect of the Lands to which the Purchaser will be bound to assume on Closing;
- (j) Taxes and Assessments. All municipal taxes, local improvement charges, rates and assessments for the Lands have paid in full;
- (k) Access. The Lands has full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the Proposed Development;
- (l) No Work Orders or Expropriation. The Vendor has not received nor is the Vendor aware of any work order, deficiency notice, notice of violation, notice of expropriation, or other similar communication or directive from any municipal, governmental authority or utility commission having jurisdiction over the Lands, nor has any portion of the Lands been expropriated or provided to any governmental authority during the Vendor's ownership of the same;
- (m) Environmental Matters. The operation or occupation of the Lands does not contravene any law, regulation, order, by-law or directive relating to the environment or any regulation, order, by-law or directive regulating the import, manufacture, storage, distribution, labelling, sale, use, handling, transport or disposal of contaminants (as that term is defined under any applicable environmental laws or statutes) or dangerous or hazardous substances, including wastes (nor is the Vendor aware of any contraventions thereof) and neither the Vendor nor any of its predecessors in title have emitted, discharged or deposited or caused or permitted to be emitted, discharged or deposited any contaminants (as that term is defined under any applicable environmental laws or statutes) into the natural environment, including without limitation, the air, soil, subsoil or surface or ground water in, on, over, under or at the Lands, nor have the Lands been used at any time by any person as a landfill or waste disposal site;
- (n) Subdivision Agreements. That all matters arising from any agreements in favour of the Municipality and the Region (including all subdivision, development and site plan agreements) or pursuant to any other agreements with any utility supplier or other authority having been fully complied with and all of the financial requirements therein have been paid for in full (or sufficient security has been posted to ensure such compliance); and
- (o) Full Disclosure. So far as the Vendor is aware, the Vendor has disclosed to the Purchaser all material information pertaining to the Lands and the Proposed Development, whether solicited by the Purchaser or not. Neither this Agreement nor any other document referred to in this Agreement or any Schedule to this Agreement nor any statement, schedule or certificate furnished or to be furnished to the Purchaser pursuant to this Agreement contains or will contain any untrue statement or omits or will omit to state a material fact.

On Closing, the Vendor shall provide a statutory declaration from a senior officer of the Vendor confirming that all of the above covenants, representations and warranties are true and accurate as of the closing date. The Vendor agrees to protect, indemnify and save the Purchaser harmless from and against any and all losses, costs, expenses, damages, liabilities, claims and demands whatsoever arising or suffered as a result of any misrepresentation or breach of covenant, representation or warranty given by it under this Agreement or any document, certificate or other instrument delivered by it pursuant to this Agreement.

No investigations, inspections, tests or enquiries made by or on behalf of the Purchaser at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any covenant, representation or warranty made by the Vendor in or pursuant to this Agreement.

#### ARTICLE 7.00 - MISCELLANEOUS

##### 7.1 Closing Deliverables

On Closing, the Vendor shall deliver the following to the Purchaser, or its solicitors, (i) statement of adjustments; (ii) an undertaking to re-adjust; and (iii) a Deed/Transfer of the Lands with the *Planning Act* (Ontario) statements completed.

##### 7.2 Good Faith

The Vendor and the Purchaser shall act in good faith and with all reasonable diligence to complete the transaction contemplated herein.

##### 7.3 Adjustments

Adjustments shall be made as of the Closing Date for realty taxes, local improvement rates and charges, water and assessment rates, utilities, fuel, licenses necessary for the operation of the Lands and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Lands.

##### 7.4 Registration

The Purchaser shall have the right to register Notice of this Agreement against title to the Lands at any time, without the consent of the Vendor.

##### 7.5 No Collateral Agreements

It is agreed that there is no representation, promise, warranty, collateral agreement or condition of any kind made by or on behalf of the Vendor affecting this Agreement or the Lands or supported hereby other than expressed herein in writing. The Purchaser acknowledges that this Agreement contains all the terms, conditions, and provisions agreed upon between the parties hereto, and is not subject to any oral agreement or undertaking of any kind.

##### 7.6 Assignment

The Purchaser shall have the right to assign this Agreement to any person or persons, corporation or corporations as may be designated by the Purchaser in its discretion, or to cause title to the subject lands to be taken in a name other than the Purchaser herein (any party so designated by the Purchaser being hereinafter referred to as the "assignee"). Provided that upon the Purchaser delivering to the Vendor, a written covenant of such assignee to be bound by the provisions of this Agreement, the Purchaser hereinbefore originally named shall be relieved of all obligation and liability whatsoever pursuant to the provisions of this Agreement, and, such assignee shall be deemed to be the party hereinbefore originally named as the Purchaser.

##### 7.7 Non-Merge

All of covenants, representations, warranties and agreements herein contained in this Agreement on the part of the Purchaser and Vendor shall not merge upon delivery of any Deed/Transfer, but shall continue in full force and effect notwithstanding the delivery and registration of the same.

##### 7.8 Section 116 of Income Tax Act (Canada)

The Vendor covenants, represents and warrants that the Vendor is not now and shall not be at the time of Closing a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada) and the Vendor shall deliver on Closing a Statutory Declaration sworn by an officer of the Vendor verifying the representation and warranty contained in this Section is true and correct or alternatively, the Vendor will deliver a certificate from the Canada Revenue Agency addressed to the Purchaser giving clearance under Section 116 of the *Income Tax Act* (Canada).

#### 7.9 Waiver of Default

No omission by the Vendor or Purchaser to exercise the right to void this Agreement shall create or operate as a waiver of such right, nor shall a waiver of such right in the case of one or more instances of default create or operate as a waiver of such right in the case of any future or further default. Notwithstanding anything contained herein, any conditions in favour of the Vendor or Purchaser in this Agreement may be waived by the party benefitting therefrom and this Agreement proceeded with as if they had not been conditions.

#### 7.10 Notices

Any notice herein provided, permitted or required to be given by a party to the other, shall be sufficiently given if delivered to:

(a) the Purchaser:

Bryton Creek Residences Inc.  
65 Queen Street West, Suite 201  
Toronto, Ontario M5H 2M5  
Attention: Bryan McWatt  
Email: bmcwatt@bryton.ca  
Fax No.: 416-363-5505

Or by delivering a copy to its solicitors:

Owens Wright LLP  
20 Holly Street, Suite 300  
Toronto, Ontario M4S 3B1  
Attention: Randy H. Lebow  
Email: rlebow@owenswright.com  
Fax No: 416-484-3309

(b) the Vendor:

CIM Bayview Creek Inc., Bayview Creek (CIM) LP and 10502715 Canada Inc.  
55 Commercial Valley Drive West, Unit 502  
Markham, Ontario L3T 7V9  
Attention: Jiubin Feng  
Email: jiubinfeng@yahoo.ca

Or by delivering a copy to its solicitors:

Himelfarb Proszanski  
480 University Avenue, Suite 401  
Toronto, Ontario M5G 1V2

Attention: Peter Proszanski  
Email: peter@himprolaw.com  
Fax No.: 416-599-3131

or at such changed address as the parties may from time to time advise each other in writing and shall be deemed to be received on the date of delivery.

#### 7.11 Unenforceability of Covenants

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

#### 7.12 Conflict

If at any time there is uncertainty or ambiguity as to the timing of the performance of any obligations of the Vendor pursuant this Agreement, then such obligations shall be performed by the Vendor on or before the Closing Date.

#### 7.13 Time of Essence

It is expressly understood that time is to be considered of the essence of this Agreement.

#### 7.14 Grammar

- 8 -

Grammatical variations of any terms defined herein have similar meanings; words importing the singular number shall include the plural and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

7.15 Binding Effect

This Agreement and all of the covenants, agreements and other obligations under or pursuant to this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.

7.16 Further Assurances

Each of the parties hereto agrees that it shall and will from time-to-time and at all times do all such further acts and execute all such further documents and provide all such assurances as shall be reasonably required by the other to fully perform and carry out the terms of this Agreement. This Section shall survive any termination of this Agreement.

7.17 Headings

The headings of any article, section or part thereof are inserted for the purposes of convenience only and do not form a part of this Agreement.

7.18 Electronic Registration

The Vendor and Purchaser acknowledge and agree that the following provisions shall apply in respect to Teraview Electronic Registration System (the "ERS"):

- (a) the parties shall instruct their respective solicitors to enter into an escrow closing agreement utilizing the form currently prescribed by the Law Society of Ontario (the "**Escrow Document Registration Agreement**"), establishing the procedures for completion of this transaction by means of the ERS;
- (b) the delivery and exchange of documents, monies and possession to the Lands and the release thereof to the Vendor and the Purchaser, as the case may be, may not occur contemporaneously with the registration of the transfer/deed of land and other registrable documentation, and shall be governed by the Escrow Document Registration Agreement pursuant to which the Vendor's Solicitors and the Purchaser's Solicitors will hold in escrow all documents and monies received by them and will not release same to their respective clients except in strict accordance with the Escrow Document Registration Agreement; and
- (c) each of the parties hereto agrees that any documents not intended for registration on title to the Lands may be delivered to the other party hereto in properly executed form by facsimile transmission or other similar system reproducing the original, provided the party transmitting any such document shall also deliver the original thereof to the recipient party by overnight courier sent on the Closing Date or by such other means and/or within such other time as may be agreed to by the parties respective solicitors.

7.19 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties adopt any signatures received by a receiving fax machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner shall promptly forward to the other Party an original of the signed copy of this Agreement which was so faxed.

7.20 Acceptance

This offer shall be deemed to be accepted on the date upon which the Purchaser has exercised its Option in accordance with the Option Agreement.

**BRYTON CREEK RESIDENCES INC.**

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

I have authority to bind the Corporation

- 9 -

The Vendor hereby accepts the within offer to purchase and agrees to be bound by the provisions of this Agreement.

**DATED** this \_\_\_\_\_ day of June, 2019.

**CIM BAYVIEW CREEK INC.**

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

I have authority to bind the Corporation

**BAYVIEW CREEK (CIM) LP,  
by its general partner,  
10502715 CANADA INC.**

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

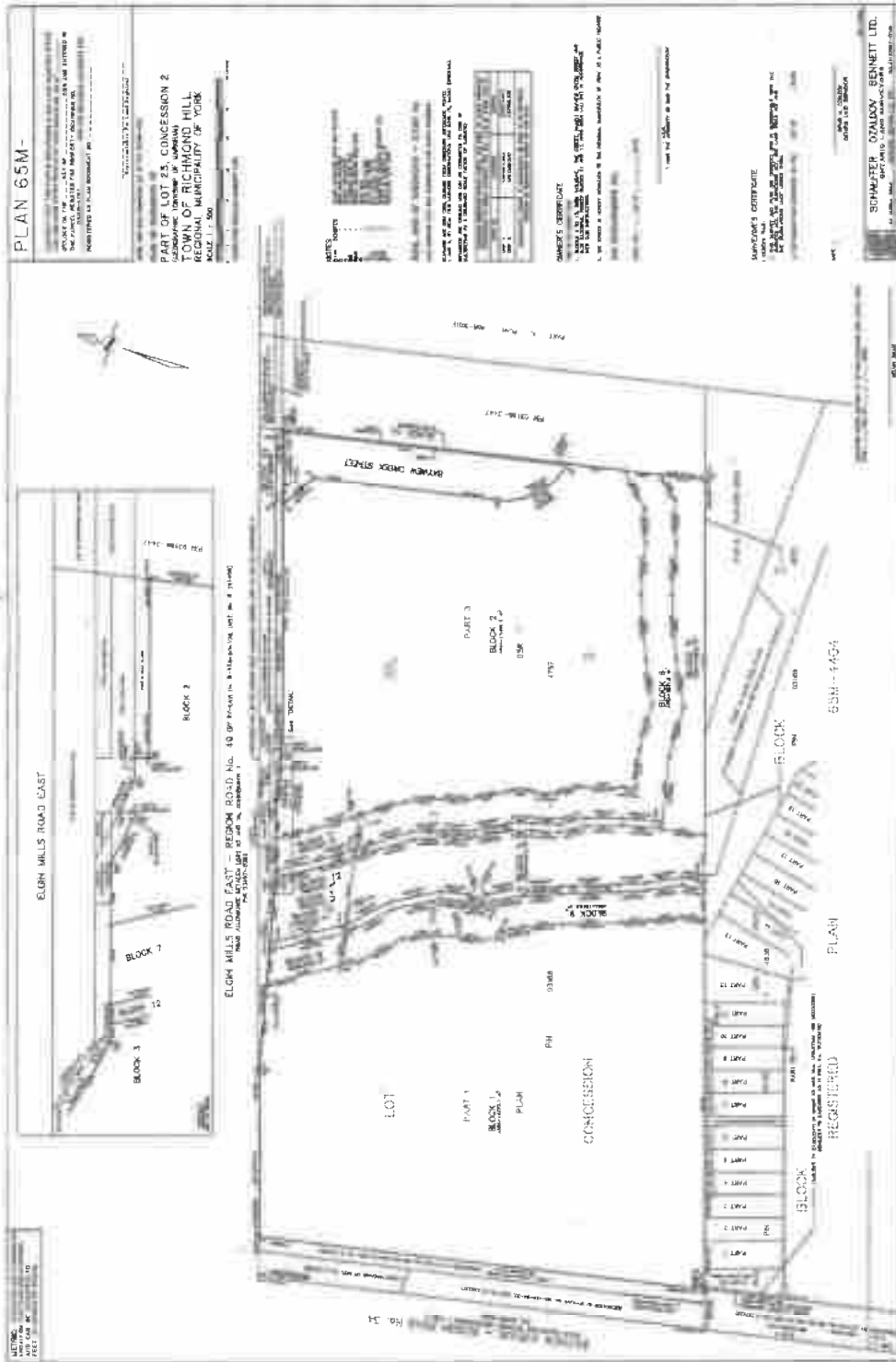
I have authority to bind the Limited Partnership

**10502715 CANADA INC.**

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

I have authority to bind the Corporation

SCHEDULE "A" - PROPOSED PLAN OF SUBDIVISION



TAB ZZZ



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

yyyy mm dd Page 1 of 7

**Properties**

PIN 03186 - 4757 LT  
 Description PT LT 25, CON 2, (MKM),PTS 1 & 2, PL 65R31680. S/T EASEMENT OVER PART 2, 65R13270 AS IN R510790  
 Address 10747 BAYVIEW AVENUE  
 RICHMOND HILL

**Consideration**

Consideration \$2.00

**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name CIM BAYVIEW CREEK INC.  
 Address for Service 55 Commerce Court Valley Drive West  
 Unit 502  
 Markham, Ontario L3T 7V9

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

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

**Party To(s)****Capacity****Share**

Name BRYTON CREEK RESIDENCES INC.  
 Address for Service 65 Queen Street West, Suite 210  
 Toronto, Ontario M5H 2M5

I, Bryan McWatt, President, have the authority to bind the corporation

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

**Statements**

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, YR2972265 registered on 2019/06/17 to which this notice relates is deleted

Schedule: See Schedules

This document relates to registration number(s)YR2972265

**Signed By**

Janet Alvarado 20 Holly St. Ste 300 acting for Signed 2020 07 31  
 Toronto Applicant(s)  
 M4S 3B1

Tel 416-486-9800

Fax 416-486-3309

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

**Submitted By**

OWENS, WRIGHT LLP 20 Holly St. Ste 300 2020 07 31  
 Toronto  
 M4S 3B1

Tel 416-486-9800

Fax 416-486-3309

**Fees/Taxes/Payment**

Statutory Registration Fee \$65.05

Total Paid \$65.05

**File Number**

Applicant Client File Number : CIM BAYVIEW CREEK INC./YR2972265 AMEND

Party To Client File Number : 10250011 BRYTON CREEK RESIDENCES INC.

# AMENDMENT TO OPTION AGREEMENT

THIS AMENDMENT is dated as of the 1<sup>st</sup> day of July, 2020.

AMONG:

**CIM BAYVIEW CREEK INC.**  
(the "Trustee")

- and -

**BAYVIEW CREEK (CIM) LP**, by its general partner, **10502715 CANADA INC.**  
(the "Beneficial Owner", and together with the Trustee, collectively, the "Grantor")

- and -

**BRYTON CREEK RESIDENCES INC.**  
(the "Grantee")

WHEREAS:

- A. The Grantor and the Grantee entered into an Option Agreement dated the 3<sup>rd</sup> day of June, 2019 (the "Option Agreement") wherein the Grantor granted the Grantee an option to purchase the lands and premises legally described as Part Lot 25, Concession 2 (Markham), designated as Parts 1 and 2 on Plan 65R31680, Town of Richmond Hill, being all of PIN 03186-4757 (LT) (the "Property");
- B. The Option Agreement was registered against title to the Property on June 17, 2019 as Instrument No. YR2972265;
- C. The Grantor and the Grantee wish to amend the terms of the Option Agreement as more particularly set out in this Amendment; and
- D. All capitalized terms, unless otherwise defined herein, shall have the meanings ascribed thereto in the Option Agreement.


**NOW THEREFORE IN CONSIDERATION OF** the sum of Two (\$2.00) Dollars now paid by the Grantee to the Grantor and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby covenant and agree as follows:

1. Section 2.2 of the Option Agreement is hereby deleted in its entirety and replaced with the following:  
  
"In the event the second mortgage granted by the Trustee in favour of Bryton Capital Corp. GP Ltd. (the "Mortgagee") registered against title to the Property as Instrument No. YR2972266, as amended by Notice registered as Instrument No. [NTD: insert], is not repaid in full by October 31, 2020, then the Grantee shall have the right to exercise the Option in the manner hereinafter set out in this Agreement at any time between the November 1, 2020 and December 31, 2020 (the "Term"). Following the last date of the Term, the Grantee shall have no further rights to exercise the Option."
2. Section 2.3 of the Option Agreement is hereby deleted in its entirety.
3. The form of Second Agreement of Purchase and Sale attached to the Option Agreement as Schedule "A" shall be amended by appending the Amendment to Agreement of Purchase and Sale attached hereto as Appendix "A", which amendment shall thereafter form a part of the Second Agreement of Purchase and Sale.
4. To the extent that there is a conflict or ambiguity between any of the provisions of this Amendment and the provisions of the Option Agreement, the provisions of this Amendment shall be deemed to be the true intention of the parties hereto and shall prevail.

5. This Amendment and all of the covenants, agreements and other obligations under or ~~pursuant to this Amendment shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.~~
6. ~~Each of the parties hereto agrees that it shall and will from time-to-time and at all times do all such further acts and execute all such further documents and provide all such~~ assurances as shall be reasonably required by the other to fully perform and carry out the terms of this Amendment. This Section shall survive any termination of this Amendment.
7. This Amendment may be executed in counterpart and transmitted by facsimile or other form of electronic transmission, each of which, when so executed, shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have duly executed this Amendment as of the date first above written.

**CIM BAYVIEW CREEK INC.**

Per:   
 Name: Jiubin Feng  
 Title: President

I have authority to bind the Corporation.

**BAYVIEW CREEK (CIM) LP,  
 by its general partner,  
 10502715 CANADA INC.**

Per:   
 Name: Jiubin Feng  
 Title: Director


I have authority to bind the Corporation.

**10502715 CANADA INC.**

Per:   
 Name: Jiubin Feng  
 Title: Director

I have authority to bind the Corporation.

**BRYTON CREEK RESIDENCES INC.**

Per:   
 Name: Bryan McWatt  
 Title: President

I have authority to bind the Corporation.

5. This Amendment and all of the covenants, agreements and other obligations under or pursuant to this Amendment shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
6. Each of the parties hereto agrees that it shall and will from time-to-time and at all times do all such further acts and execute all such further documents and provide all such assurances as shall be reasonably required by the other to fully perform and carry out the terms of this Amendment. This Section shall survive any termination of this Amendment.
7. This Amendment may be executed in counterpart and transmitted by facsimile or other form of electronic transmission, each of which, when so executed, shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties hereto have duly executed this Amendment as of the date first above written.

**CIM BAYVIEW CREEK INC.**

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

I have authority to bind the Corporation.

**BAYVIEW CREEK (CIM) LP,  
 by its general partner,  
 10502715 CANADA INC.**

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

I have authority to bind the Corporation.

**10502715 CANADA INC.**

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

I have authority to bind the Corporation.

**BRYTON CREEK RESIDENCES INC.**

Per: Bryan McWatt  
 Name: Bryan McWatt  
 Title: President

I have authority to bind the Corporation.

# APPENDIX "A" – AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT is made as of the 1<sup>st</sup> day of July, 2020.

AMONG:

**CIM BAYVIEW CREE INC.**  
(the "Trustee")

- and -

**BAYVIEW CREEK (CIM) LP, by its general partner, 10502715 CANADA INC.**  
(the "Beneficial Owner", and together with the Trustee, collectively, the "Vendors")

- and -

**BRYTON CREEK RESIDENCES INC.**  
(the "Purchaser")

WHEREAS:


- A. The Vendors have agreed to sell and the Purchaser has agreed to purchase the lands and premises legally described as Parts 1 and 2 on Plan 05R31680, Town of Richmond Hill, being all of PIN 03186-4757 (the "Property"), pursuant to an agreement of purchase and sale dated the 3<sup>rd</sup> day of June, 2019 between the Vendors, as vendors, and the Purchaser, as purchaser (the "Agreement of Purchase and Sale");
- B. The Vendors and the Purchaser wish to amend the terms of the Agreement of Purchase and Sale as more particularly set out in this Amendment; and
- C. All capitalized terms, unless otherwise defined herein, shall have the meanings ascribed thereto in the Agreement of Purchase and Sale.

NOW THEREFORE IN CONSIDERATION OF the sum of Two (\$2.00) Dollars now paid by the Purchaser to the Vendor and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby covenant and agree as follows:

1. Subsection 1.1(c) shall be deleted in its entirety and replaced with the following:  
  
"Closing" or "Closing Date" shall mean the fifteenth (15<sup>th</sup>) day following the date that the Purchaser exercises the Option. Notwithstanding the foregoing, if the Option is exercised on or after December 1, 2020, then the Closing Date shall be January 15, 2021.
2. Subsection 1.1(i) shall be deleted in its entirety.
3. Subsection 1.1(n) shall be deleted in its entirety and replaced with the following:  
  
"Option Agreement" shall mean the Option Agreement between the Vendor, as grantor, and the Purchaser, as grantee, dated the 3<sup>rd</sup> day of June, 2019, as subsequently amended by an Amendment to Option Agreement dated the 1<sup>st</sup> day of July, 2020, as may be further amended from time to time, wherein the Vendor grants the Purchaser an irrevocable offer to purchase the Lands.
4. Section 2.1 shall be deleted in its entirety and replaced with the following:  
  
The purchase price for the Lands shall be the sum of Forty-One Million, Seven Hundred and Twenty Thousand (\$41,720,000.00) Dollars (the "Purchase Price").
5. The reference to Twenty Million (\$20,000,000.00) Dollars in subsection 2.2(b)(ii) shall be amended to Twenty-One Million (\$21,000,000.00) Dollars.
6. Section 2.3 shall be deleted in its entirety.

7. To the extent that there is a conflict or ambiguity between any of the provisions of this Amendment and the provisions of the Option Agreement, the provisions of this Amendment shall be deemed to be the true intention of the parties hereto and shall prevail.
8. This Amendment and all of the covenants, agreements and other obligations under or pursuant to this Amendment shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
9. Each of the parties hereto agrees that it shall and will from time-to-time and at all times do all such further acts and execute all such further documents and provide all such assurances as shall be reasonably required by the other to fully perform and carry out the terms of this Amendment. This Section shall survive any termination of this Amendment.
10. This Amendment may be executed in counterpart and transmitted by facsimile or other form of electronic transmission, each of which, when so executed, shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

**CIM BAYVIEW CREEK INC.**

Per:   
 Name: Jiubin Feng  
 Title: President


I have authority to bind the Corporation.

**BAYVIEW CREEK (CIM) LP,  
 by its general partner,  
 10502715 CANADA INC.**

Per:   
 Name: Jiubin Feng  
 Title: Director


I have authority to bind the Corporation.

**10502715 CANADA INC.**

Per:   
 Name: Jiubin Feng  
 Title: Director

I have authority to bind the Corporation.

**BRYTON CREEK RESIDENCES INC.**

Per:   
 Name: Bryan McWatt  
 Title: President

I have authority to bind the Corporation.

7. To the extent that there is a conflict or ambiguity between any of the provisions of this Amendment and the provisions of the Option Agreement, the provisions of this Amendment shall be deemed to be the true intention of the parties hereto and shall prevail.
8. This Amendment and all of the covenants, agreements and other obligations under or pursuant to this Amendment shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and assigns.
9. Each of the parties hereto agrees that it shall and will from time-to-time and at all times do all such further acts and execute all such further documents and provide all such assurances as shall be reasonably required by the other to fully perform and carry out the terms of this Amendment. This Section shall survive any termination of this Amendment.
10. This Amendment may be executed in counterpart and transmitted by facsimile or other form of electronic transmission, each of which, when so executed, shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

**CIM BAYVIEW CREEK INC.**

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

I have authority to bind the Corporation.

**BAYVIEW CREEK (CIM) LP,  
 by its general partner,  
 10502715 CANADA INC.**

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


I have authority to bind the Corporation.

**10502715 CANADA INC.**

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

I have authority to bind the Corporation.

**BRYTON CREEK RESIDENCES INC.**

Per:   
 Name: Bryan McWatt  
 Title: President

I have authority to bind the Corporation.

TAB AAAA



**EXHIBIT "AAAA"**

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE  
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT  
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

RESPONSE CONTAINS: APPROXIMATELY 4 FAMILIES and 9 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS  
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME  
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE  
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT  
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY  
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER  
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS  
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE  
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 4 ENQUIRY PAGE : 1 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 716295312 EXPIRY DATE : 04MAY 2022 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20160504 0904 1793 3587 REG TYP: P PPSA REG PERIOD: 6  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 9140 LESLIE STREET, UNIT 310  
 CITY : RICHMOND HIL PROV: ON POSTAL CODE: L4B0A9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: CIM INVESTS DEVELOPMENT INC.  
 OCN :  
 07 ADDRESS : 9140 LESLIE STREET, UNIT 310  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4B0A9

08 SECURED PARTY/LIEN CLAIMANT :  
 DUCA FINANCIAL SERVICES CREDIT UNION LTD.  
 09 ADDRESS : 5290 YONGE STREET  
 CITY : TORONTO PROV: ON POSTAL CODE: M2N5P9  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X  
 YEAR MAKE MODEL V.I.N.  
 11  
 12

GENERAL COLLATERAL DESCRIPTION

13 ALL PRESENT AND FUTURE SECURITY INTERESTS WITH RESPECT TO 10747  
 14 BAYVIEW AVENUE, RICHMOND HILL ONTARIO, INCLUDING, BUT NOT LIMITED  
 15 TO, A GENERAL SECURITY AGREEMENT AND GENERAL ASSIGNMENT OF RENTS  
 16 AGENT: ROBINS APPLEBY LLP (CINDY APPELGATH)  
 17 ADDRESS : 120 ADELAIDE ST. WEST SUITE 2600  
 CITY : TORONTO PROV: ON POSTAL CODE: M5H1T1

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 4 ENQUIRY PAGE : 2 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 716295312 EXPIRY DATE : 04MAY 2022 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20160504 0904 1793 3587 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM DEVELOPMENTS INC.  
 OCN :  
 04 ADDRESS : 9140 LESLIE STREET, UNIT 310  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4B0A9  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
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 12  
 GENERAL COLLATERAL DESCRIPTION  
 13 RELATED THERETO.  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 3 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 745934094 EXPIRY DATE : 16NOV 2021 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 003 MV SCHEDULE ATTACHED :  
 REG NUM : 20181116 1209 1862 6706 REG TYP: P PPSA REG PERIOD: 3  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN :  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: 10502715 CANADA INC.  
 OCN :  
 07 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9

08 SECURED PARTY/LIEN CLAIMANT :  
 ROMSPEN INVESTMENT CORPORATION  
 09 ADDRESS : 162 CUMBERLAND STREET, SUITE 300  
 CITY : TORONTO PROV: ON POSTAL CODE: M5R 3N5  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15  
 16 AGENT: BLANEY MCMURTRY LLP (J. FILIPPONE)  
 17 ADDRESS : 2 QUEEN STREET EAST, SUITE 1500  
 CITY : TORONTO PROV: ON POSTAL CODE: M5C 3G5

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 4 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 745934094 EXPIRY DATE : 16NOV 2021 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 003 MV SCHEDULE ATTACHED :  
 REG NUM : 20181116 1209 1862 6706 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : 26APR1989 IND NAME: XIAOXIN ZHANG  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS : 5 FAIRFIELD PLACE  
 CITY : THORNHILL PROV: ON POSTAL CODE: L3T 7M7

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 5 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 745934094 EXPIRY DATE : 16NOV 2021 STATUS :  
 01 CAUTION FILING : PAGE : 003 OF 003 MV SCHEDULE ATTACHED :  
 REG NUM : 20181116 1209 1862 6706 REG TYP: REG PERIOD:  
 02 IND DOB : 12AUG1968 IND NAME: DIAN Y ZHANG  
 03 BUS NAME:  
 OCN :  
 04 ADDRESS : 5 FAIRFIED PLACE  
 CITY : THORNHILL PROV: ON POSTAL CODE: L3T 7M7  
 05 IND DOB : 07MAY1966 IND NAME: JIUBIN FENG  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS : 35 PENWOOD CRESCENT  
 CITY : TORONTO PROV: ON POSTAL CODE: M3B 3B1

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 6 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 752098491 EXPIRY DATE : 07JUN 2024 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190607 1418 1590 8501 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN : 10502642  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: 10502715 CANADA INC.  
 OCN : 10502715  
 07 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9

08 SECURED PARTY/LIEN CLAIMANT :  
 BRYTON CAPITAL CORP. GP LTD.  
 09 ADDRESS : 65 QUEEN STREET WEST, SUITE 210  
 CITY : TORONTO PROV: ON POSTAL CODE: M5H 2M5  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X X X  
 YEAR MAKE MODEL V.I.N.  
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 GENERAL COLLATERAL DESCRIPTION  
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 16 AGENT: OWENS WRIGHT LLP (RL/ZCL)  
 17 ADDRESS : 20 HOLLY STREET, SUITE 300  
 CITY : TORONTO PROV: ON POSTAL CODE: M4S 3B1

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 7 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 752098491 EXPIRY DATE : 07JUN 2024 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190607 1418 1590 8501 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: M5H 2M5  
 05 IND DOB : IND NAME:  
 06 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 07 ADDRESS : 10747 BAYVIEW AVENUE  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4C 0K9

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*



MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 4 ENQUIRY PAGE : 8 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 760145193 EXPIRY DATE : 14FEB 2025 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20200214 1727 6083 9050 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN : 10502642  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: 10502715 CANADA INC.  
 OCN : 10502715  
 07 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9

08 SECURED PARTY/LIEN CLAIMANT :  
 GR (CAN) INVESTMENT CO. LTD.  
 09 ADDRESS : 4342 QUEEN STREET, SUITE 203  
 CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2E 7J7  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X 1200000 X  
 YEAR MAKE MODEL V.I.N.  
 11  
 12

GENERAL COLLATERAL DESCRIPTION

13 AS PER THE RESTATEMENT OF AND AMENDMENT TO THE LOAN AGREEMENTS DATED  
 14 FEBRUARY 26, 2019 AND MAY 14, 2019, THE SECURITIES PLEDGE AGREEMENT  
 15 DATED FEBRUARY 12, 2020 AND THE GENERAL SECURITIES AGREEMENT DATED  
 16 AGENT: TAN AND ASSOCIATES  
 17 ADDRESS : 506-1315 LAWRENCE AVENUE EAST  
 CITY : TORONTO PROV: ON POSTAL CODE: M3A 3R3

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: Bayview Creek (CIM) LP

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 4 ENQUIRY PAGE : 9 OF 9

SEARCH : BD : BAYVIEW CREEK (CIM) LP

00 FILE NUMBER : 760145193 EXPIRY DATE : 14FEB 2025 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20200214 1727 6083 9050 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 10747 BAYVIEW AVENUE  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4C 0K9  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13 FEBRUARY 12, 2020  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 LAST SCREEN

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE  
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT  
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Invests Development Inc.

FILE CURRENCY: July 1, 2021

RESPONSE CONTAINS: APPROXIMATELY 2 FAMILIES and 4 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS  
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME  
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE  
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT  
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY  
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER  
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS  
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE  
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Invests Development Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 1 OF 4

SEARCH : BD : CIM INVESTS DEVELOPMENT INC.

00 FILE NUMBER : 716295312 EXPIRY DATE : 04MAY 2022 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20160504 0904 1793 3587 REG TYP: P PPSA REG PERIOD: 6  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 9140 LESLIE STREET, UNIT 310  
 CITY : RICHMOND HIL PROV: ON POSTAL CODE: L4B0A9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: CIM INVESTS DEVELOPMENT INC.  
 OCN :  
 07 ADDRESS : 9140 LESLIE STREET, UNIT 310  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4B0A9

08 SECURED PARTY/LIEN CLAIMANT :  
 DUCA FINANCIAL SERVICES CREDIT UNION LTD.  
 09 ADDRESS : 5290 YONGE STREET  
 CITY : TORONTO PROV: ON POSTAL CODE: M2N5P9  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X  
 YEAR MAKE MODEL V.I.N.  
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 12

GENERAL COLLATERAL DESCRIPTION

13 ALL PRESENT AND FUTURE SECURITY INTERESTS WITH RESPECT TO 10747  
 14 BAYVIEW AVENUE, RICHMOND HILL ONTARIO, INCLUDING, BUT NOT LIMITED  
 15 TO, A GENERAL SECURITY AGREEMENT AND GENERAL ASSIGNMENT OF RENTS  
 16 AGENT: ROBINS APPLEBY LLP (CINDY APPELGATH)  
 17 ADDRESS : 120 ADELAIDE ST. WEST SUITE 2600  
 CITY : TORONTO PROV: ON POSTAL CODE: M5H1T1

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Invests Development Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 2 OF 4

SEARCH : BD : CIM INVESTS DEVELOPMENT INC.

00 FILE NUMBER : 716295312 EXPIRY DATE : 04MAY 2022 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20160504 0904 1793 3587 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM DEVELOPMENTS INC.  
 OCN :  
 04 ADDRESS : 9140 LESLIE STREET, UNIT 310  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4B0A9  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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 YEAR MAKE MODEL V.I.N.  
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 GENERAL COLLATERAL DESCRIPTION  
 13 RELATED THERETO.  
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 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Invests Development Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 2 ENQUIRY PAGE : 3 OF 4

SEARCH : BD : CIM INVESTS DEVELOPMENT INC.

00 FILE NUMBER : 755493192 EXPIRY DATE : 16SEP 2022 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190916 1243 1532 9446 REG TYP: P PPSA REG PERIOD: 03  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM INVESTS DEVELOPMENT INC.  
 OCN :  
 04 ADDRESS : 35 PENWOOD CRESCENT  
 CITY : NORTH YORK PROV: ON POSTAL CODE: M3B3B1  
 05 IND DOB : 07MAY1966 IND NAME: JIN B FENG  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS : 35 PENWOOD CRESCENT  
 CITY : NORTH YORK PROV: ON POSTAL CODE: M3B3B1

08 SECURED PARTY/LIEN CLAIMANT :  
 MERCEDES-BENZ FINANCIAL SERVICES CANADA CORPORATION  
 09 ADDRESS : 2680 MATHESON BLVD. E. STE 500  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4W0A5  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X  
 YEAR MAKE MODEL V.I.N.  
 11 2020 MERCEDES-BENZ GLE350 4M 4JGFB4KBXLA097115  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13 THE FULL DEBTOR NAME IS - JIN BIN FENG  
 14  
 15  
 16 AGENT: D + H LIMITED PARTNERSHIP  
 17 ADDRESS : 2 ROBERT SPECK PARKWAY, 15TH FLOOR  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4Z 1H8

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Invests Development Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 2 ENQUIRY PAGE : 4 OF 4

SEARCH : BD : CIM INVESTS DEVELOPMENT INC.

00 FILE NUMBER : 755493192 EXPIRY DATE : 16SEP 2022 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190916 1243 1532 9446 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME:  
 OCN :  
 04 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 MERCEDES-BENZ FINANCIAL  
 09 ADDRESS : 2680 MATHESON BLVD. E. STE 500  
 CITY : MISSISSAUGA PROV: ON POSTAL CODE: L4W0A5  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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 YEAR MAKE MODEL V.I.N.  
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 GENERAL COLLATERAL DESCRIPTION  
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 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 LAST SCREEN

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE  
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT  
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

RESPONSE CONTAINS: APPROXIMATELY 4 FAMILIES and 8 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS  
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME  
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AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS  
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INTERPRETATION AND USE THAT ARE MADE OF IT.



MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 4 ENQUIRY PAGE : 1 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 740688345 EXPIRY DATE : 19JUN 2023 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
 REG NUM : 20180619 1525 1590 2752 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN :  
 04 ADDRESS : 502-55 COMMERCE VALLEY DRIVE WEST  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 DUCA FINANCIAL SERVICES CREDIT UNION LTD.  
 09 ADDRESS : 5290 YONGE STREET  
 CITY : TORONTO PROV: ON POSTAL CODE: M2N 5P9  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X  
 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: CHAITONS LLP (DB/42372)

17 ADDRESS : 5000 YONGE STREET, 10TH FLOOR

CITY : TORONTO PROV: ON POSTAL CODE: M2N 7E9

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 2 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 745934094 EXPIRY DATE : 16NOV 2021 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 003 MV SCHEDULE ATTACHED :  
 REG NUM : 20181116 1209 1862 6706 REG TYP: P PPSA REG PERIOD: 3  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN :  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: 10502715 CANADA INC.  
 OCN :  
 07 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9

08 SECURED PARTY/LIEN CLAIMANT :  
 ROMSPEN INVESTMENT CORPORATION  
 09 ADDRESS : 162 CUMBERLAND STREET, SUITE 300  
 CITY : TORONTO PROV: ON POSTAL CODE: M5R 3N5  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X  
 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: BLANEY MCMURTRY LLP (J. FILIPPONE)

17 ADDRESS : 2 QUEEN STREET EAST, SUITE 1500

CITY : TORONTO PROV: ON POSTAL CODE: M5C 3G5

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 3 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 745934094 EXPIRY DATE : 16NOV 2021 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 003 MV SCHEDULE ATTACHED :  
 REG NUM : 20181116 1209 1862 6706 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : 26APR1989 IND NAME: XIAOXIN ZHANG  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS : 5 FAIRFIELD PLACE  
 CITY : THORNHILL PROV: ON POSTAL CODE: L3T 7M7

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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 YEAR MAKE MODEL V.I.N.  
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 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

CONTINUED

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MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 4 ENQUIRY PAGE : 4 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 745934094 EXPIRY DATE : 16NOV 2021 STATUS :  
 01 CAUTION FILING : PAGE : 003 OF 003 MV SCHEDULE ATTACHED :  
 REG NUM : 20181116 1209 1862 6706 REG TYP: REG PERIOD:  
 02 IND DOB : 12AUG1968 IND NAME: DIAN Y ZHANG  
 03 BUS NAME:  
 OCN :  
 04 ADDRESS : 5 FAIRFIED PLACE  
 CITY : THORNHILL PROV: ON POSTAL CODE: L3T 7M7  
 05 IND DOB : 07MAY1966 IND NAME: JIUBIN FENG  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS : 35 PENWOOD CRESCENT  
 CITY : TORONTO PROV: ON POSTAL CODE: M3B 3B1

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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 YEAR MAKE MODEL V.I.N.  
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 GENERAL COLLATERAL DESCRIPTION  
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 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 5 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 752098491 EXPIRY DATE : 07JUN 2024 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190607 1418 1590 8501 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN : 10502642  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: 10502715 CANADA INC.  
 OCN : 10502715  
 07 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9

08 SECURED PARTY/LIEN CLAIMANT :  
 BRYTON CAPITAL CORP. GP LTD.  
 09 ADDRESS : 65 QUEEN STREET WEST, SUITE 210  
 CITY : TORONTO PROV: ON POSTAL CODE: M5H 2M5  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X X  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15  
 16 AGENT: OWENS WRIGHT LLP (RL/ZCL)  
 17 ADDRESS : 20 HOLLY STREET, SUITE 300  
 CITY : TORONTO PROV: ON POSTAL CODE: M4S 3B1

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 4 ENQUIRY PAGE : 6 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 752098491 EXPIRY DATE : 07JUN 2024 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20190607 1418 1590 8501 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST, UNIT 502  
 CITY : MARKHAM PROV: ON POSTAL CODE: M5H 2M5  
 05 IND DOB : IND NAME:  
 06 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 07 ADDRESS : 10747 BAYVIEW AVENUE  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4C 0K9

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:

END OF FAMILY

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 4 ENQUIRY PAGE : 7 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 760145193 EXPIRY DATE : 14FEB 2025 STATUS :  
 01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20200214 1727 6083 9050 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: CIM BAYVIEW CREEK INC.  
 OCN : 10502642  
 04 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9  
 05 IND DOB : IND NAME:  
 06 BUS NAME: 10502715 CANADA INC.  
 OCN : 10502715  
 07 ADDRESS : 55 COMMERCE VALLEY DRIVE WEST  
 CITY : MARKHAM PROV: ON POSTAL CODE: L3T 7V9

08 SECURED PARTY/LIEN CLAIMANT :  
 GR (CAN) INVESTMENT CO. LTD.  
 09 ADDRESS : 4342 QUEEN STREET, SUITE 203  
 CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2E 7J7  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 X X X X X 1200000 X  
 YEAR MAKE MODEL V.I.N.  
 11  
 12

GENERAL COLLATERAL DESCRIPTION

13 AS PER THE RESTATEMENT OF AND AMENDMENT TO THE LOAN AGREEMENTS DATED  
 14 FEBRUARY 26, 2019 AND MAY 14, 2019, THE SECURITIES PLEDGE AGREEMENT  
 15 DATED FEBRUARY 12, 2020 AND THE GENERAL SECURITIES AGREEMENT DATED  
 16 AGENT: TAN AND ASSOCIATES  
 17 ADDRESS : 506-1315 LAWRENCE AVENUE EAST  
 CITY : TORONTO PROV: ON POSTAL CODE: M3A 3R3

CONTINUED

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

MINISTRY OF CONSUMER AND BUSINESS SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: CIM Bayview Creek Inc.

FILE CURRENCY: July 1, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 4 ENQUIRY PAGE : 8 OF 8

SEARCH : BD : CIM BAYVIEW CREEK INC.

00 FILE NUMBER : 760145193 EXPIRY DATE : 14FEB 2025 STATUS :  
 01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :  
 REG NUM : 20200214 1727 6083 9050 REG TYP: REG PERIOD:  
 02 IND DOB : IND NAME:  
 03 BUS NAME: BAYVIEW CREEK (CIM) LP  
 OCN :  
 04 ADDRESS : 10747 BAYVIEW AVENUE  
 CITY : RICHMOND HILL PROV: ON POSTAL CODE: L4C 0K9  
 05 IND DOB : IND NAME:  
 06 BUS NAME:  
 OCN :  
 07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10  
 YEAR MAKE MODEL V.I.N.  
 11  
 12  
 GENERAL COLLATERAL DESCRIPTION  
 13 FEBRUARY 12, 2020  
 14  
 15  
 16 AGENT:  
 17 ADDRESS :  
 CITY : PROV: POSTAL CODE:  
 LAST SCREEN

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*



TAB BBBB

## CLEAR CERTIFICATE / CERTIFICAT LIBRE

**SHERIFF OF / SHÉRIF DE :** REGIONAL MUNICIPALITY OF YORK (NEWMARKET)

**CERTIFICATE # /** 42602228-4093300B

**N° DE CERTIFICAT :**

**DATE OF CERTIFICATE /** 2021-JUL-02

**DATE DU CERTIFICAT :**

### SHERIFF'S STATEMENT

THIS CERTIFIES THAT THERE ARE NO ACTIVE WRITS OF EXECUTION, ORDERS OR CERTIFICATES OF LIEN FILED WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE *EXECUTION ACT* AT THE TIME OF SEARCHING AGAINST THE REAL AND PERSONAL PROPERTY OF:

### DÉCLARATION DU SHÉRIF

CE CERTIFICAT ATTESTE QU'IL N'Y A AUCUNE ORDONNANCE ACTIVE OU AUCUN BREF D'EXÉCUTION FORCÉE OU CERTIFICAT DE PRIVILÈGE ACTIF DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA *LOI SUR L'EXÉCUTION FORCÉE* AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES ET IMMEUBLES DE :

### NAME SEARCHED / NOM RECHERCHÉ

#	PERSON OR COMPANY / PERSONNE OU SOCIÉTÉ	NAME OR SURNAME, GIVEN NAME(S) / NOM OU NOM DE FAMILLE, PRÉNOM(S)
1.	COMPANY / SOCIÉTÉ	CIM BAYVIEW CREEK INC.
2.	COMPANY / SOCIÉTÉ	CIM INVESTS DEVELOPMENT INC.
3.	COMPANY / SOCIÉTÉ	BAYVIEW CREEK (CIM) LP

### CAUTION TO PARTY REQUESTING SEARCH:

1. IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO ENSURE THAT THE NAME SEARCHED IS CORRECT.
2. BY VIRTUE OF THIS CERTIFICATE, THE SHERIFF IS ASSURING THAT THIS NAME WILL REMAIN CLEAR UNTIL THE END OF CLOSE OF THIS BUSINESS DATE, UNLESS THE SHERIFF IS DIRECTED OTHERWISE UNDER AN ORDER OF THE COURT.

### AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :

1. IL INCOMBE À LA PARTIE QUI DEMANDE LA RECHERCHE DE S'ASSURER QUE LE NOM RECHERCHÉ EST EXACT.
2. EN VERTU DU PRÉSENT CERTIFICAT, LE SHÉRIF ASSURE QUE CE NOM DEMEURE LIBRE JUSQU'À LA FIN DE CETTE JOURNÉE DE TRAVAIL, À MOINS DE RECEVOIR DES DIRECTIVES CONTRAIRES AUX TERMES D'UNE ORDONNANCE DU TRIBUNAL.

**CHARGE FOR THIS CERTIFICATE**    CDN 35.85  
**/ FRAIS POUR CE CERTIFICAT :**

**SEARCHER REFERENCE /**            DUCA0027  
**REFERENCE CONCERNANT**  
**L'AUTEUR DE LA DEMANDE :**

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 5 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.