

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:

Secured Party
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
	\$ 61,567,461.16	\$ 12,254,525.20

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