

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

**MOTION RECORD OF FAAN MORTGAGE ADMINISTRATORS INC., IN
ITS CAPACITY AS COURT-APPOINTED TRUSTEE**

(Motion Returnable September 20, 2022)

VOLUME 2 OF 2

March 21, 2022

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

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Tel: (416) 362-2111
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Lawyers for FAAN Mortgage Administrators Inc., in its
capacity as Court-appointed Trustee of Building &
Development Mortgages Canada Inc.

TO: ROBINS APPLEBY LLP

2600 120 Adelaide St. W
Toronto, ON M5H 1T1

Dominique Michaud

Tel: 416.360.3795

Email: dmichaud@rohapp.com

Fax: 416.868.0306

Lawyer for Diversified Capital Inc.

AND CHAITONS LLP

TO: 5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit

Tel. 416.218.1141

Email: george@chaitons.com

Fax: 416.218.1853

Court-Appointed Representative Counsel for Investors

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Appendix 15:**November 13, 2020, Letter from Robbins Appleby to Osler**



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Dominique Michaud
T. 416.360.3795
E. dmichaud@robapp.com
F. 416.868.0306

Delivered by: E-mail
File No.: 2000769

November 13, 2020

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Attention: Michael De Lellis

Dear Mr. De Lellis:

Re: Notice of Sale under Mortgage dated January 24, 2019 (the “Notice”) issued by Diversified Capital Inc. (“Diversified”) to 2221563 Ontario Inc. and certain other parties with respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property”)

We have been retained by Diversified. We are writing in response to your letter dated November 9, 2020 (the “**November 9 Letter**”). Respectfully, the November 9 Letter is overreaching and inaccurate.

Diversified is a mortgagee who is exercising its enforcement rights to sell the Property by way of power of sale. At all material times, Diversified has conducted itself in good faith, diligently and in a commercially reasonable manner. Diversified has engaged in a sales process aimed to maximize the realization for all of the stakeholders of 2221563 Ontario Inc.

To date, Diversified has voluntarily shared information with FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) of Building & Development Mortgages Canada Inc. (“**BDMC**”) in respect of the sale of the Property. Diversified has provided this information notwithstanding that it had no obligation to do so while engaged in the power of sale process. The allegations that Diversified has breached the Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018 (the “**Appointment Order**”) by failing to comply with the Trustee’s information requests are false.

The information requested by the Trustee does not pertain to the business or affairs of BDMC. Rather, the information requested relates to the manner in which Diversified is exercising its rights under its mortgage and its rights under the *Mortgages Act*. This is clearly outside the



scope of sections 4, 6 and 7 of the Appointment Order. To that end, we have answered your request for information set out at pages 3 and 4 of the November 9 Letter sequentially below:

1. The appraisals obtained by Diversified in respect of the power of sale of the Property are confidential. The Trustee is not entitled to this information.
2. The Trustee's rights in respect of this information are the same as those of BDMC as a subsequent mortgagee. There is no obligation for Diversified to consult with a subsequent mortgagee when exercising its right under its mortgage to sell the property by way of power of sale. The Trustee is not entitled to this information as this information is not related to the business or affairs of BDMC. That being said, Diversified can advise that it has retained Colliers Macaulay Nicolls Inc. ("**Colliers**") to conduct a robust sales process with a goal of maximizing the sale price for the Property.
3. The Trustee's rights in respect of this information are the same as those of BDMC as a subsequent mortgagee. There is no obligation for Diversified to consult with a subsequent mortgagee when exercising its right under its mortgage to sell the property by way of power of sale.
4. The Trustee, as any other interested party, is able to access the data room established by Colliers in respect of the sale of the Property upon executing the requisite confidentiality agreement. The Trustee is able to make the necessary minimal amendments to reflect the Trustee's role as opposed to that of a potential purchaser. The revised confidentiality agreement proposed by the Trustee far exceeds the scope of information that Diversified is obligated to share with the Trustee.
5. As you are aware, Diversified is unable to purchase the Property from itself in a power of sale process. The objective of the power of sale process is to sell the Property at the best possible value. At this stage, Diversified has no intention to purchase the property. If circumstances change and the sale process does not generate an acceptable sale result, Diversified reserves its rights to convert the sale process into a court supervised receivership where it could submit a credit bid for the Property.

Diversified is entitled to carry on with the power of sale process without interference from the Trustee. Once the sale of the Property is complete, Diversified will account to the Trustee as it would any other subsequent encumbrancer. Alternatively, we note that should the Trustee wish to control of the sale of the Property it is able to redeem the Diversified Mortgage at any time and take steps to enforce the BDMC mortgages. Diversified continues to act correctly in a commercially reasonable manner and will not tolerate the Trustee interfering with its power of sale process.



If you have any questions, please contact me at the above coordinates.

Yours very truly,

ROBINS APPLEBY LLP

Per:

Dom Michaud

Dominique Michaud

DM:wI

cc: Jeremy Dacks – jdacks@osler.com
Naveed Manzoor – naveed@faanadvisors.com
Jeremiah Shamess – jeremiah.shamess@colliers.com
Myles Kenny – myles.kenny@colliers.com

[robapp\6184026.2](#)

Appendix 16:
December 23rd and 24th emails to Colliers and Diversified



Lana Bezner <lane@faanmortgageadmin.com>

Re: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

1 message

Naveed Manzoor <naveed@faanmortgageadmin.com>

Thu, Dec 24, 2020 at 12:01 PM

To: "russ@divcapinc.com" <russ@divcapinc.com>, "jeremiah.shamess@colliers.com" <jeremiah.shamess@colliers.com>

Cc: Lana Bezner <lane@faanmortgageadmin.com>

As a Court Officer and secured creditor, we are very disappointed that you have not shown us the professional courtesy to respond or acknowledge our correspondence below. In any event, in order for the Trustee to consider all options with respect to this matter, including redeeming Diversified's mortgage, we request that Diversified provide us with a payout statement with respect to its mortgage as soon as possible.

Regards,

Naveed
(416)258-6145

From: Naveed Manzoor <naveed@faanmortgageadmin.com>

Sent: Wednesday, December 23, 2020 2:58:04 PM

To: russ@divcapinc.com <russ@divcapinc.com>; jeremiah.shamess@colliers.com <jeremiah.shamess@colliers.com>

Cc: Lana Bezner <lane@faanmortgageadmin.com>

Subject: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

Jeremiah and Russ,

We are writing in respect of the Southshore Property and the email we just received. We have significant concerns regarding the lack of information and communication from Diversified and Colliers considering that we all should have the same goal of maximizing the value of the Southshore Property. To be clear and as we have advised previously, we are not aligned with any prospective purchaser and describing the offer from 2794080 as "your offer" in a communication to the Trustee is incorrect. As you know, we are a **Court-Officer** and are working to maximize the recoveries for all stakeholders, including the BDMC investors. We have attempted to work together with Colliers and Diversified since the beginning of the power of sale process and our attempts have been stalled and/or blocked every step of the way. This is even more shocking since in this circumstance we are aware of at least one offer that will result in significant funds being available to satisfy a portion of the BDMC mortgage.

We are also very surprised that a bidder with an offer that was submitted on December 16, 2020 and would see BDMC in the money was not contacted until just earlier this afternoon (just to be advised you are not moving forward with their offer), despite multiple attempts by their legal counsel to reach Jeremiah. In light of the fact that the offer from 2794080 Ontario Inc. was rejected, we can only assume that the offer you are working with is higher than the amount offered by 2794080 Ontario Inc. We also have reason to believe that the offer from 2794080 Ontario Inc. could have been improved and are surprised and disappointed that this prospective purchaser wasn't contacted at all to attempt to improve and/or revise their offer or that a second round of bidding has not been conducted. Given the decision by you to completely shut out the second mortgagee in circumstances where offers exist that contribute to its recovery, we cannot help to have concerns regarding the sales process being conducted. Accordingly, we have no choice but to consider all of our options to have more meaningful input into a process that significantly affects our underlying investors.

We require an update from you by 5pm today regarding the status of the process, the quantum of each offer received (including the one you have advised you are currently working with), the communications had with the bidders and the anticipated timing for acceptance of an offer.

Regards,

Naveed
(416) 258-6145

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FAAN Mortgage Administrators Inc.

Appendix 17:**December 29th and December 31st email exchange with Robbins Appleby**

From: De Lellis, Michael
Sent: Thursday, December 31, 2020 1:32 PM
To: Dominique Michaud
Cc: Dacks, Jeremy
Subject: RE: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

Thanks Dom.

We note that Diversified has entered into a conditional agreement with a prospective purchaser. We presume that this agreement is for an amount in excess of the consideration offered by [2794040](#) Ontario Inc. who your client chose not to engage with as part of the sale process. We look forward to receiving the payout statement from Diversified next week.

Regards,
Michael

OSLER

Michael De Lellis
Partner
Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Thursday, December 31, 2020 10:20 AM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Dacks, Jeremy <JDacks@osler.com>
Subject: RE: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

Michael:

You are correct. Diversified has engaged in a sale process that is designed to maximize the realization on the sale of the property. To that end, Diversified has entered into an agreement with a prospective purchaser that is currently in a conditional period. As I explained in my earlier letter, once this sale is complete, we will provide an accounting to FAAN as it stands in the place of a subsequent mortgagee. We will not be providing any information in respect of the sales process before this point.

In terms of a payout statement, I will speak to my client when I return from holidays and aim to get this to you next week.

Regards,

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com



ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: December 29, 2020 6:45 PM
To: Dominique Michaud <dmichaud@robapp.com>
Cc: Dacks, Jeremy <JDacks@osler.com>
Subject: FW: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

CAUTION: External e-mail.

Hi Dominique.

As you know, we act for FAAN Mortgage Administrators Inc., in its capacity as Court-Appointed Trustee of Building & Development Mortgages Canada Inc.

We understand from your November 13th letter that you have been retained by Diversified Capital Inc. with respect to matters relating to the South Shore Property located in Keswick, Ontario.

Please see below correspondence sent by the Trustee to Diversified and Colliers with respect to the South Shore Property. To date, the Trustee has not received a response to this correspondence.

The Trustee remains very concerned about the status of the sale process for the South Shore Property. We do not feel the need to repeat the long history of attempts by the Trustee to work co-operatively with Diversified to maximize the value of the South Shore Property. We trust that Diversified is engaging in a sale process that is designed to maximize the realization for all of the stakeholders of 2221563 Ontario Inc. As such, the lack of engagement with the Trustee, as a Court Officer and in its capacity as the fulcrum secured creditor with respect to the South Shore Property, is difficult to understand.

We ask that you please speak to your client and forthwith provide the Trustee with the information requested below regarding the sale process and separately a payout statement for Diversified as soon as possible. As indicated in the correspondence below and as referred to in your November 13th letter, the Trustee requires a payout statement to be able to consider all of its options in respect of the ongoing sale process, including potentially redeeming Diversified's mortgage.

We look forward to hearing back from you. Regards,

Michael

OSLER

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Naveed Manzoor <naveed@faanmortgageadmin.com>
Sent: Thursday, December 24, 2020 12:01:55 PM
To: russ@divcapinc.com <russ@divcapinc.com>; jeremiah.shamess@colliers.com <jeremiah.shamess@colliers.com>
Cc: Lana Bezner <lane@faanmortgageadmin.com>
Subject: Re: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

As a Court Officer and secured creditor, we are very disappointed that you have not shown us the professional courtesy to respond or acknowledge our correspondence below. In any event, in order for the Trustee to consider all options with respect to this matter, including redeeming Diversified's mortgage, we request that Diversified provide us with a payout statement with respect to its mortgage as soon as possible.

Regards,

Naveed
 (416)258-6145

From: Naveed Manzoor <naveed@faanmortgageadmin.com>
Sent: Wednesday, December 23, 2020 2:58:04 PM
To: russ@divcapinc.com <russ@divcapinc.com>; jeremiah.shamess@colliers.com <jeremiah.shamess@colliers.com>
Cc: Lana Bezner <lane@faanmortgageadmin.com>
Subject: Offers for 230-240 Cameron Crescent, Keswick ("Southshore Property")

Jeremiah and Russ,

We are writing in respect of the Southshore Property and the email we just received. We have significant concerns regarding the lack of information and communication from Diversified and Colliers considering that we all should have the same goal of maximizing the value of the Southshore Property. To be clear and as we have advised previously, we are not aligned with any prospective purchaser and describing the offer from 2794080 as "your offer" in a communication to the Trustee is incorrect. As you know, we are a **Court-Officer** and are working to maximize the recoveries for all stakeholders, including the BDMC investors. We have attempted to work together with Colliers and Diversified since the beginning of the power of sale process and our attempts have been stalled and/or blocked every step of the way. This is even more shocking since in this circumstance we are aware of at least one offer that will result in significant funds being available to satisfy a portion of the BDMC mortgage.

We are also very surprised that a bidder with an offer that was submitted on December 16, 2020 and would see BDMC in the money was not contacted until just earlier this afternoon (just to be advised you are not moving forward with their offer), despite multiple attempts by their legal counsel to reach Jeremiah. In light of the fact that the offer from 2794080 Ontario Inc. was rejected, we can only assume that the offer you are working with is higher than the amount offered by 2794080 Ontario Inc. We also have reason to believe that the offer from 2794080 Ontario Inc. could have been improved and are surprised and disappointed that this prospective purchaser wasn't contacted at all to attempt to improve and/or revise their offer or that a second round of bidding has not been conducted. Given the decision by you to completely shut out the second mortgagee in circumstances where offers exist that contribute to its recovery, we cannot help to have concerns regarding the sales process being conducted. Accordingly, we have no choice but to consider all of our options to have more meaningful input into a process that significantly affects our underlying investors.

We require an update from you by 5pm today regarding the status of the process, the quantum of each offer received (including the one you have advised you are currently working with), the communications had with the bidders and the anticipated timing for acceptance of an offer.

Regards,

Naveed
(416) 258-6145

FAAN Mortgage Administrators Inc.

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****Please note that Robins Appleby LLP is working remotely due to the COVID-19 pandemic. We continue to be available by email and by phone. Our secure electronic file management system enables us to be fully operational during this time.****

Robins Appleby LLP | 2600-120 Adelaide St.W., Toronto, ON M5H 1T1 | <http://www.robapp.com>

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Appendix 18:
January 6, 2021, Osler Letter to Robbins Appleby

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

January 6, 2021

Montréal

Michael De Lellis
 Direct Dial: 416.862.5997
 MDeLellis@osler.com
 Our Matter Number: 1189997

Calgary

SENT BY ELECTRONIC MAIL

Ottawa

Vancouver

Dominique Michaud
 Robins Appleby LLP
 2600 120 Adelaide St. W
 Toronto, ON M5H 1T1
 Email: dmichaud@robapp.com

New York

(File #40818)

Dear Sir:

Re: Notice of Sale under Mortgage dated January 24, 2019 (the “Notice”) issued by Diversified Capital Inc. (“Diversified”) to 2221563 Ontario Inc. and certain other parties with respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property” or the “South Shore Project”)

We are writing in our capacity as legal counsel to FAAN Mortgage Administrators Inc., in its capacity as Court-Appointed Trustee (the “**Trustee**”) of Building & Development Mortgages Canada Inc. (“**BDMC**”), which appointment was made pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018 (the “**Appointment Order**”) in proceedings commenced under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended (the “**BDMC Proceeding**”). A copy of the Appointment Order is attached hereto as Appendix “A”.

In addition to the multiple letters and correspondence exchanged between the Trustee, Diversified and its counsel, we are writing specifically in response to your email dated December 31, 2020 (copy attached hereto as Appendix “B”). Your client’s continued lack of transparency and cooperation with the Trustee, even as it relates to providing basic information regarding the sale process for the Property, is extremely concerning and is impeding the Trustee in its efforts to fulfil its Court-ordered mandate, as further discussed below. Moreover, your client’s actions and lack of engagement with the Trustee, who is an Officer of the Court, is difficult to understand considering that your client, Diversified, and the Trustee have precisely the same goal – to maximize the value of the Property for the benefit of all stakeholders. You have confirmed this in your letter dated November 13, 2020 whereby you indicated, among other things, that (a) “*Diversified has engaged in a sales process aimed to maximize the realization of all of the stakeholders of 2221563*

Ontario Inc.”; and (b) Diversified has “retained Colliers Macaulay Nicolls Inc. (“Colliers”) to conduct a robust sales process with a goal of maximizing the sale price for the Property”.

As your firm is well aware given that it also acts for Fortress Real Developments Inc. (“**Fortress**”) in the BDMC Proceeding, BDMC was the principal mortgage broker and administrator used by Fortress and certain related entities to raise financing from the investing public for early-stage real estate developments. BDMC (in trust for members of the investing public) advanced loans to borrowers through syndicated mortgage loan agreements where BDMC acted as lender to the borrower and as administrator of such loans for the individual investors. At the time of the Trustee’s appointment, there was approximately \$560 million invested in syndicated mortgage loans administered by BDMC by over 11,000 individual investors. These funds were advanced in connection with 44 different projects that were in various stages of development.

Due to multiple issues and concerns regarding the conduct of BDMC, including its connection with Fortress (which is detailed extensively in documents filed with the Court in connection with the Trustee’s appointment), the Trustee was appointed by the Court following an application made by the Superintendent of Financial Services in order to protect the interests of the over 11,000 members of the investing public.

Three of the loans that the Trustee is administering on behalf of BDMC were made in connection with the South Shore Project. Based on BDMC’s records, there are 639 individual South Shore Project investors who are collectively owed over \$40 million as at December 31, 2020. This is many times more than what your client is owed in respect of its first priority mortgage on the South Shore Property¹. As such, the outcome of the sale and marketing process being conducted by your client pursuant to the Notice (“**Sale Process**”) will greatly impact these investors who are already facing staggering losses as a result of their investment in the South Shore Project.

It should be noted that Diversified issued the Notice almost *two years ago*. Despite repeated requests from the Trustee, Diversified did not act with any sense of urgency or dispatch with respect to commencing the Sale Process. Moreover, now that it has finally undertaken a process, it has refused and is continuing to refuse to answer even basic questions regarding the Sale Process and the interest received with respect to the Property. The Trustee is simply trying to better understand the Sale Process being conducted given its Court-ordered mandate, which is clear through our client’s many attempts to reach out to Diversified (and its sales agent, Colliers) on an amicable and co-operative basis to discuss the Sale Process. In addition to our client’s attempts to obtain more information from

¹ We note that, despite the Trustee’s request, Diversified has still not provided a payout statement.



Diversified and Colliers, we, as legal counsel to the Trustee, wrote to counsel to Diversified on June 5, 2020, November 9, 2020 and on December 29, 2020 and have received no meaningful cooperation or information to date.

We reiterate that it is deeply concerning that Diversified has repeatedly failed to engage with the Trustee regarding the Sale Process, especially given that the parties' interests should be fully aligned. Diversified is aware that BDMC is the fulcrum creditor in this matter and that the Sale Process should result in significant funds being available to satisfy a portion of the BDMC mortgages. Furthermore, this lack of cooperation and unwillingness to provide any information related to the Sale Process is uncharacteristic of other lenders the Trustee has dealt with in similar situations on other projects administered by BDMC.

Notwithstanding the Trustee's request to have a meaningful opportunity to engage with Diversified to ensure that recoveries are maximized from the sale of the Property, you have advised that Diversified has entered into an agreement with a prospective purchaser that is currently in a conditional period without any prior consultation with the Trustee. Furthermore, we are concerned with Diversified's refusal to even confirm whether or not the sale price is in excess of the one offer that the Trustee is aware of (which would result in recoveries to BDMC) and the fact that the party that provided such offer was not even contacted by Colliers or Diversified to discuss the offer after it was received.

Your client has put the Trustee in an untenable position. There may be a simple answer to the Trustee's questions, and it may be that Diversified has run a prudent Sales Process. We simply do not know. The Trustee's concerns may be alleviated through a simple exchange of information on a confidential basis. However, as things currently stand, the Trustee does not know: (i) the price represented by the accepted conditional offer and whether it exceeds the consideration represented by the one offer the Trustee is aware of; (ii) the nature of the conditions of the accepted offer and the time period to satisfy such conditions; and (iii) what Diversified and/or Colliers did to ensure that any offer accepted was the best possible offer in the circumstances (all the Trustee knows is that there was no second round of bidding and one offeror was not given the opportunity to even discuss its bid with Colliers).

The Trustee is still of the view it is entitled to all of the information requested in our letter dated November 9, 2020. However, in an effort to streamline matters, the Trustee requests that it be immediately provided with the following information (the "**Required Information**"):

1. Copies of all of the offers received in connection with the Sale Process including date and timing of receipt;

2. Copy of the agreement of purchase and sale entered into by Diversified, including the current status of the conditional period, the expected closing date and details of the deposit provided; and
3. Information concerning the assessment and selection process undertaken to determine the successful bidder and select the winning bid.

The Trustee, as a Court Officer, also reiterates that it understands that the protection of confidential and commercially sensitive information is important in conducting a sale process and is prepared to treat the Required Information as confidential (other than sharing such information with Chaitons LLP in its capacity as Court-Appointed Representative Counsel for the investors and who will also agree to keep the information confidential). If necessary, the Trustee is also prepared to execute an appropriate confidentiality agreement with respect to the Required Information on terms acceptable to each of the parties, acting reasonably. We have previously provided a form of confidentiality agreement the Trustee is prepared to execute which reflects that the Trustee is a Court Officer with an interest in the Sale Process. The Trustee also confirms that to the extent any of the Required Information is required for a Court process that it will file such information under seal.

This letter is being provided under an express reservation of all of the Trustee's rights, remedies, and recourses available at law, in equity or otherwise, including with respect to any amounts that may be claimed by Diversified under its mortgage, the conduct of the Sale Process and any failure to provide the Required Information to the Trustee (including in respect of the repeated requests made prior to this letter), and nothing contained herein should be interpreted as a waiver of any right or an admission of any kind whatsoever.

Should Diversified fail to provide the Required Information by 5:00 pm on January 8, 2021, the Trustee will be seeking the earliest available Chambers appointment before the Court to schedule an urgent motion in the BDMC Proceedings to compel Diversified to provide any and all information that has been requested. The Trustee views such Court proceedings as entirely unnecessary in the circumstances and can easily be prevented by the provision of the Required Information and co-operative engagement with the Trustee by Diversified. Should Court proceedings be necessary, the Trustee will be filing a detailed report with the Court setting out Diversified's obstructionist conduct since the commencement of the Notice and its repeated refusal to engage with the Court's Officer on a reasonable and co-operative basis in order to allow the Trustee to properly assess all of BDMC's options in furtherance of its Court-ordered mandate to protect the interests of the investors.

OSLER

Page 5

We continue to remain available to discuss these matters and look forward to hearing from you.

Yours very truly,



Michael De Lellis

- c. Naveed Manzoor, *FAAN Mortgage Administrators Inc.*
Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
George Benchetrit, *Chaitons LLP*
Jeremiah Shames & Myles Kenny, *Colliers Macaulay Nicolls Inc.*

APPENDIX “A”**Appointment Order**

(See attached)

APPENDIX “B”**Email Dated December 31, 2020**

(See attached)

Appendix 19:
January 11, 2021, Robbins Appleby Letter to Osler



Delivered by: E-mail
File No.: 2000769

January 11, 2021

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Attention: Michael De Lellis

Dear Mr. De Lellis:

Re: Information Request by FAAN Mortgage Administrators Inc. ("FAAN") in its capacity as Court-appointed trustee (in such capacity, the "Trustee") of Building & Development Mortgages Canada Inc. ("BDMC") regarding of the Power of Sale Proceedings conducted by Diversified Capital Inc. ("Diversified") in respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the "Property")

We are writing in response to your letter dated January 6, 2021 (the "**January 6 Letter**"). Respectfully, the January 6 Letter, consistent with other positions taken by the Trustee in respect of this matter, is overreaching.

The information requested by the Trustee does not pertain to the business or affairs of BDMC. Rather, the information requested relates to the manner in which Diversified is exercising its rights under its mortgage and its rights under the *Mortgages Act*. This is clearly outside the scope of sections 4, 6 and 7 of the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 20, 2018 (the "**Appointment Order**").

Notwithstanding the Trustee's claims otherwise, Diversified was cooperative in discussing the sales process with the Trustee, until such time that the Trustee advised it had a client interested in the Property. The Trustee's requests for more sensitive information in respect of the ongoing sales process is complicated by the fact that the Trustee has submitted an offer to purchase the Property through a recently registered numbered company with whom FAAN has some type of business relationship. Based on earlier discussions with FAAN, Diversified understands this purchaser to be a client of FAAN. While Diversified is not aware of any wrongdoing on behalf of the Trustee, Diversified will not disclose the requested information as it may potentially still need to negotiate with others, including FAAN and/or its client should the current Agreement of Purchase and Sale that is in its conditional period (the "**Sale Agreement**") not proceed to close.



In that scenario, Diversified may need to engage in sale negotiations with FAAN as part of the negotiations with the purchaser related to FAAN.

Notwithstanding that the Trustee is not entitled to this information, as a sign of good faith and on the basis that the Trustee will keep this information confidential, we have answered your request for information set out at pages 3 and 4 of the January 6 Letter sequentially below:

1. As the sale of the Property is subject to the conditional period, Diversified will not provide this information as it may potentially still need to return to market to sell the Property. At this stage, Diversified can confirm that the offer in respect of the Sale Agreement was received prior to the deadline to receive bids and was for an amount that significantly exceeded any other bid received in respect of the sale of the Property. The purchaser in the Sale Agreement is an arm's length purchaser with an established and highly regarded reputation in the building industry. Upon the conditional period expiring and the deal going firm, Diversified will provide the Trustee a copy of the accepted Sale Agreement on a confidential basis.
2. The Sale Agreement has conditional period to allow the purchaser to complete its due diligence that extends 30 days after January 4, 2021. This conditional period can be extended upon agreement of the parties. The anticipated closing date is 30 days from expiry of the conditional period. To date, the conditional period has not been waived.
3. The Property was marketed as part of a robust sales process by Colliers Macaulay Nicolls Inc. ("**Colliers**") from October 21, 2020 to December 16, 2020 (the '**Sales Process**'). As part of the Sales Process:
 - a. Colliers marketed the Property through its internal proprietary database to over 4200 prospective purchasers;
 - b. the Property was listed on MLS;
 - c. it used various social media platforms and the Colliers website to market the sale of the Property;
 - d. it established a process that required bids to be submitted on a sealed basis by December 16, 2020 and to remain open until December 23, 2020 for review and acceptance; and
 - e. upon receipt of bids to purchase the Property, each bid was analyzed and on the advice of Colliers, the Sale Agreement was selected as the best bid which would maximize the recovery on the sale of the Property.

We trust that the above information is sufficient to avoid having to bring an unnecessary motion. That said, if the Trustee wishes to go down this road, Diversified will vigorously oppose this motion.

Here, the Trustee's rights in respect of the requested information are the same as those of BDMC as a subsequent mortgagee. There is no obligation for Diversified to consult with a subsequent mortgagee when exercising its right under its mortgage to sell the property by way



of power of sale. Diversified is entitled to carry on with the power of sale process without incurring unnecessary costs and interference from the Trustee. As set out in my previous letter, once the sale of the Property is complete, Diversified will account to the Trustee as it would any other subsequent encumbrancer.

If you have any questions, please contact me at the above coordinates.

Yours very truly,

ROBINS APPLEBY LLP

Per:

Dom Michaud

Dominique Michaud

DM:wI

cc: Jeremy Dacks – jdacks@osler.com
Naveed Manzoor – naveed@faanadvisors.com
Jeremiah Shames – jeremiah.shames@colliers.com
Myles Kenny – myles.kenny@colliers.com
George Benchetrit – george@chaitons.com

[robapp\6336813.3](#)

Appendix 20:
January 14, 2021, Osler Letter to Robbins Appleby



January 14, 2021

Michael De Lellis
Direct Dial: 416.862.5997
MDeLellis@osler.com
Our Matter Number: 1189997

Toronto

Montréal

Calgary

Ottawa

Vancouver

New York

SENT BY ELECTRONIC MAIL

Dominique Michaud
Robins Appleby LLP
2600 120 Adelaide St. W
Toronto, ON M5H 1T1
Email: dmichaud@robapp.com

(File #40818)

Dear Sir:

Re: Notice of Sale under Mortgage dated January 24, 2019 (the “Notice”) issued by Diversified Capital Inc. (“Diversified”) to 2221563 Ontario Inc. and certain other parties with respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property” or the “South Shore Project”)

We are writing in response to your letter dated January 11, 2021 which contains numerous inaccuracies and incorrect statements.

We are disappointed with your client’s continued refusal to engage with a Court-ordered Trustee on a common sense and commercial basis in circumstances where decisions your client is making have a direct impact on a vulnerable group of stakeholders that the Trustee was appointed by the Court to protect.

Moreover, to be clear, and as advised by the Trustee in writing to your client on December 23, 2020 and by myself to you orally on January 7, 2021, the Trustee is not aligned with any prospective purchaser of the Property, including 2794080 Ontario Inc. (“**2794080**”) which is not a client of the Trustee. The Trustee never advised Diversified or Colliers that it had a “client” interested in the Property. It does not have a “business relationship” with 2794080 nor is 2794080 “related” to the Trustee. The Trustee does not represent 2794080 and will not be negotiating on behalf of that potential purchaser who is represented by its own counsel (who we understand your client and Colliers decided not to engage with as part of the sale process despite submitting an offer in respect of the Property for \$13 million that was not subject to any due diligence condition). The fact that your letter chose to repeat these continued misstatements is unfortunate when you have been advised of the opposite orally and in writing. Further, the insinuation that the Trustee would use its court appointment to further the interests of another “client” is offensive and should be immediately retracted.



We are also concerned with the comments in your letter that further negotiations with other prospective purchasers may be required in the circumstances and that Diversified “may potentially still need to return to market to sell the Property”. As such, we assume that Colliers, as agent for Diversified, is taking appropriate steps with the other potential purchasers who submitted an offer in respect of the Property to ensure that a value maximizing transaction for the Property will be completed on a timely basis should the conditional agreement not close.

The Trustee disagrees with your conclusion that it is not entitled to and should not be provided with all of the Required Information (as defined in the January 11th letter) in the circumstances. The Trustee does acknowledge that your January 11th letter provided certain limited information regarding the proposed sale of the Property and the sale process. However, in many ways your letter creates more questions than answers.

Based on the limited information provided in your January 11th letter, the Trustee assumes that (a) the purchase price for the offer that is currently in the conditional period is significantly greater than \$13 million, which is the purchase price of the one offer that the Trustee is aware of; (b) a meaningful deposit has been received by Colliers; and (c) the closing date can be extended one time by a further 30 day period upon the mutual agreement of both the purchaser and the vendor. Unless the Trustee hears otherwise from Diversified or Colliers, it will assume that the above assumptions are correct. In an effort to work co-operatively with Diversified and Colliers, the Trustee requests that you simply provide us with a copy of the Sale Agreement (with the name of the purchasing party redacted along with any related identifying information) which the Trustee agrees to keep confidential in the manner set out in my January 6, 2021 letter. Given the further clarifications set out above with respect to the Trustee’s relationship with 2794080, and the Trustee’s stated agreement to keep such information confidential and to not share it with any party participating, directly or indirectly, in the sale process, we trust that this will not be a problem.


Finally, we also look forward to receiving a payout statement from Diversified, which the Trustee previously requested.

This letter is being provided under an express reservation of all of the Trustee’s rights, remedies, and recourses available at law, in equity or otherwise, including with respect to any amounts that may be claimed by Diversified under its mortgage, the conduct of the Sale Process and any failure to provide all of the Required Information to the Trustee (including in respect of the repeated requests made prior to this letter), and nothing contained herein should be interpreted as a waiver of any right or an admission of any kind whatsoever.

OSLER

We continue to remain available to discuss these matters and look forward to hearing from you.

Yours very truly,



Michael De Lellis

- c. Naveed Manzoor, *FAAN Mortgage Administrators Inc.*
Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
George Benchetrit, *Chaitons LLP*
Jeremiah Shames & Myles Kenny, *Colliers Macaulay Nicolls Inc.*

Appendix 21:**January 18, 2021, Email from Robbins Appleby to Osler**

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, January 18, 2021 12:14 PM
To: De Lellis, Michael
Cc: Naveed Manzoor; Dacks, Jeremy; George Benchetrit; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick ("Southshore Property")

Michael:

As discussed, at this stage I don't think it is productive to engage in discussions about how Diversified has characterized FAAN or whether Diversified is acting improperly. You understand our position and I understand your position. We simply don't agree.

That said, I am writing to respond to the questions put to Diversified in the third paragraph of page 2 of your letter dated January 13, 2021. The answers are below:

1. Yes. The offer submitted by email dated December 16, 2020 from Lana Bezner of FAAN on behalf of 2794080 Ontario Inc. was considered notwithstanding it was submitted after bid deadline.
2. The APA provided for meaningful deposit that was received. The deposit is refundable if the purchaser does not waive its conditions and the APA is terminated. The deposit is to be increased once the deal goes firm.
3. The purchaser does not have an option to extend the conditional period and this period is to expire 30 days from January 4th. That said, Diversified reserves its right to agree to an extension of the conditional period with the purchaser if it deems appropriate.
4. As previously advised, we will provide you a copy of the APA once the deal goes firm.

As discussed last week, in terms of the delivery of the payout statement, to complete this step requires my client to attend at its office to pull hard copies of documents and invoices in order to prepare the discharge statement. In compliance with the current Covid 19 Stay at Home Order, my client does not intend to attend at its office unless it is absolutely necessary. In the interim, your client can refer to the Notice of Sale delivered by Diversified in January 2019 and run a interest calculation on those numbers as an indicator of Diversified's debt. As I mentioned previously, once the property is sold, Diversified will provide an accounting to the Trustee.

Regards,

Dom



Dominique Michaud | Bio

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: January 14, 2021 4:40 PM
To: Dominique Michaud <dmichaud@robapp.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Thanks for your letter Dom. Please find attached a response letter. We remain available to discuss if you like. Regards,
 Michael

OSLER

Michael De Lellis
 Partner
 Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
 Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, January 11, 2021 5:16 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

Please see the attached letter. Please let me know if you would like to discuss.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
 BARRISTERS + SOLICITORS

From: Dominique Michaud <dmichaud@robapp.com>
Sent: January 7, 2021 2:14 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

Thank you for your letter. I am unable to respond by your deadline and will aim to get you a substantive response early next week.

If you wish to discuss in the interim, please call me.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>

Sent: January 6, 2021 4:40 PM

To: Dominique Michaud <dmichaud@robapp.com>

Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com

Subject: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Please find attached correspondence dated January 6, 2021 in respect of the above noted matter.

OSLER

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

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Appendix 22:**March 5, 8, and 9, 2021, Email chain between Robbins Appleby to Osler**

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Tuesday, March 09, 2021 10:50 AM
To: De Lellis, Michael
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick ("Southshore Property")

Michael:

My client did not agree to terms with the purchaser in the conditional period. Accordingly, we have instructed our agents to go back to the market and have everyone, including the purchaser who made the conditional offer, to submit their best and final offers to buy the property. We expect that there will continue to be strong interest from the parties who previously submitted offers to purchase the property. Going forward, the agents will be communicating to the market.

If you wish to discuss, please call me.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
 BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: March 8, 2021 3:41 PM
To: Dominique Michaud <dmichaud@robapp.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom – I fail to understand the delay in providing an update given that the due diligence period expired last week. Can you please provide me with an update so that the Trustee can consider its position and its next steps. Regards,

Michael

OSLER

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Friday, March 05, 2021 1:20 PM

To: De Lellis, Michael <MDeLellis@osler.com>

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

I have call into the client. I will let you know after I speak with him.



Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>

Sent: March 5, 2021 1:01 PM

To: Dominique Michaud <dmichaud@robapp.com>

Subject: Re: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom - can you please provide us with an update?

Michael De Lellis

Osler, Hoskin & Harcourt LLP

On Mar 4, 2021, at 9:57 AM, De Lellis, Michael <MDeLellis@osler.com> wrote:

We are fine with your suggestion to pay the lien funds into court. We would appreciate knowing by the end of the day the status of the due diligence condition so that the Trustee can consider and proceed with next steps. Thanks,

Michael

<image001.gif>

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>

Sent: Wednesday, March 03, 2021 10:43 AM

To: De Lellis, Michael <MDeLellis@osler.com>

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael- sorry for the delay. I am not ignoring you. My client is still working towards completing the deal with the purchaser. I will provide an update at the end of the week.

Have you given any thought as to the lien claims we discussed a couple of weeks ago?

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: March 1, 2021 10:32 AM
To: Dominique Michaud <dmichaud@robapp.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom,

Given that the due diligence period expires this week, can you please provide us with a status update regarding the closing of the transaction so that the Trustee can consider its position?

<image001.gif>

Michael De Lellis
Partner
Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, February 01, 2021 11:01 AM
To: De Lellis, Michael <MDeLellis@osler.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

As discussed, see below:

Extension

Diversified Capital Inc. has agreed to extend the Due Diligence date to March 5, 2021. The extension was granted as the purchaser was delayed in completing their due diligence as a result of Covid.

Liens

There are two liens currently registered against the property. These will need to be dealt with on closing. I have attached the relevant documents for your review.

Dom

Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: February 1, 2021 8:18 AM
To: Dominique Michaud <dmichaud@robapp.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom,

Given that the due diligence period will expire this week, can you please provide me with an update regarding the status of the transaction being pursued by Diversified?
 <image001.gif>

Michael De Lellis
 Partner
 Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
 Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, January 18, 2021 12:14 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

As discussed, at this stage I don't think it is productive to engage in discussions about how Diversified has characterized FAAN or whether Diversified is acting improperly. You understand our position and I understand your position. We simply don't agree.

That said, I am writing to respond to the questions put to Diversified in the third paragraph of page 2 of your letter dated January 13, 2021. The answers are below:

1. Yes. The offer submitted by email dated December 16, 2020 from Lana Bezner of FAAN on behalf of 2794080 Ontario Inc. was considered notwithstanding it was submitted after bid deadline.
2. The APA provided for meaningful deposit that was received. The deposit is refundable if the purchaser does not waive its conditions and the APA is terminated. The deposit is to be increased once the deal goes firm.
3. The purchaser does not have an option to extend the conditional period and this period is to expire 30 days from January 4th. That said, Diversified reserves its right to agree to an extension of the conditional period with the purchaser if it deems appropriate.
4. As previously advised, we will provide you a copy of the APA once the deal goes firm.

As discussed last week, in terms of the delivery of the payout statement, to complete this step requires my client to attend at its office to pull hard copies of documents and invoices in order to prepare the discharge statement. In compliance with the current Covid 19 Stay at Home Order, my client does not intend to attend at its office unless it is absolutely necessary. In the interim, your client can refer to the Notice of Sale delivered by Diversified in January 2019 and run a

interest calculation on those numbers as an indicator of Diversified's debt. As I mentioned previously, once the property is sold, Diversified will provide an accounting to the Trustee.

Regards,

Dom



From: De Lellis, Michael <MDeLellis@osler.com>
Sent: January 14, 2021 4:40 PM
To: Dominique Michaud <dmichaud@robapp.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Thanks for your letter Dom. Please find attached a response letter. We remain available to discuss if you like. Regards,

Michael

<image001.gif>

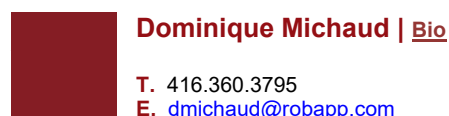
Michael De Lellis
 Partner
 Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
 Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, January 11, 2021 5:16 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

Please see the attached letter. Please let me know if you would like to discuss.

Dom





From: Dominique Michaud <dmichaud@robapp.com>
Sent: January 7, 2021 2:14 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

Thank you for your letter. I am unable to respond by your deadline and will aim to get you a substantive response early next week.

If you wish to discuss in the interim, please call me.

Dom



From: De Lellis, Michael <MDeLellis@osler.com>
Sent: January 6, 2021 4:40 PM
To: Dominique Michaud <dmichaud@robapp.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com
Subject: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Please find attached correspondence dated January 6, 2021 in respect of the above noted matter.
 <image001.gif>

Michael De Lellis
 Partner
 Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
 Osler, Hoskin & Harcourt LLP | osler.com

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Appendix 23:**March 13, 2021, Email from Osler to Robbins Appleby**

From: De Lellis, Michael
Sent: Saturday, March 13, 2021 11:43 AM
To: Dominique Michaud
Cc: Dacks, Jeremy; Roberts, Nancy
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick ("Southshore Property")

Dom,

Given that the new offer deadline for this second round was yesterday, please arrange to immediately provide the Trustee with copies of all offers submitted.

Given the length of time that has passed since your client first initiated power of sale proceedings, the failure of your client to close a transaction that it accepted without consulting the Trustee, on behalf of BDMC, who is clearly the fulcrum creditor, combined with interest that your client is purporting to continue to accrue, the Trustee now requires an ability to review the offers submitted. As a court-appointed trustee, the Trustee reiterates that all information provided to the Trustee will be held in strict confidence. In addition, given the circumstances, no offer should be accepted by your client without the Trustee's express consent.

We assume that this information will be forthcoming this weekend. Should this not occur, we will be in contact with you regarding next steps on Monday morning. Please also advise as to your availability for a 9:30 attendance should that be required and please copy both Jeremy Dacks and Nancy Roberts on future correspondence.

We continue to remain available to discuss this with you. Regards,

Michael

OSLER

Michael De Lellis
 Partner
 Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
 Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Thursday, March 11, 2021 11:54 AM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Dacks, Jeremy <JDacks@osler.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

We were disappointed that the deal did not go firm as well. Please see that attached email that was sent to Bill Friedman from the broker. This email was sent to the other parties who submitted offers as well. The email is self explanatory.

Please let me know if you want to discuss.

Dom

**Dominique Michaud | [Bio](#)****T.** 416.360.3795**E.** dmichaud@robapp.com**ROBINS APPLEBY**

BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>**Sent:** March 11, 2021 10:59 AM**To:** Dominique Michaud <dmichaud@robapp.com>**Cc:** Dacks, Jeremy <JDacks@osler.com>**Subject:** RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)**CAUTION:** External e-mail.

Dom,

We acknowledge receipt of your email. This result is disappointing given what was represented to us regarding the due diligence condition. Please advise immediately regarding the specific next steps in the marketing process along with the related milestone dates.

Michael

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.comOsler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>**Sent:** Tuesday, March 09, 2021 10:50 AM**To:** De Lellis, Michael <MDeLellis@osler.com>**Subject:** RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

My client did not agree to terms with the purchaser in the conditional period. Accordingly, we have instructed our agents to go back to the market and have everyone, including the purchaser who made the conditional offer, to submit their best and final offers to buy the property. We expect that there will continue to be strong interest from the parties who previously submitted offers to purchase the property. Going forward, the agents will be communicating to the market.

If you wish to discuss, please call me.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: March 8, 2021 3:41 PM
To: Dominique Michaud <dmichaud@robapp.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom – I fail to understand the delay in providing an update given that the due diligence period expired last week. Can you please provide me with an update so that the Trustee can consider its position and its next steps. Regards,

Michael

OSLER

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Friday, March 05, 2021 1:20 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

I have call into the client. I will let you know after I speak with him.



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: March 5, 2021 1:01 PM
To: Dominique Michaud <dmichaud@robapp.com>
Subject: Re: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom - can you please provide us with an update?

Michael De Lellis
Osler, Hoskin & Harcourt LLP

On Mar 4, 2021, at 9:57 AM, De Lellis, Michael <MDeLellis@osler.com> wrote:

We are fine with your suggestion to pay the lien funds into court. We would appreciate knowing by the end of the day the status of the due diligence condition so that the Trustee can consider and proceed with next steps. Thanks,

Michael

<image001.gif>

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>

Sent: Wednesday, March 03, 2021 10:43 AM

To: De Lellis, Michael <MDeLellis@osler.com>

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael- sorry for the delay. I am not ignoring you. My client is still working towards completing the deal with the purchaser. I will provide an update at the end of the week.

Have you given any thought as to the lien claims we discussed a couple of weeks ago?

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>

Sent: March 1, 2021 10:32 AM

To: Dominique Michaud <dmichaud@robapp.com>

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom,

Given that the due diligence period expires this week, can you please provide us with a status update regarding the closing of the transaction so that the Trustee can consider its position?

<image001.gif>

Michael De Lellis

Partner
Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, February 01, 2021 11:01 AM
To: De Lellis, Michael <MDeLellis@osler.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

As discussed, see below:

Extension

Diversified Capital Inc. has agreed to extend the Due Diligence date to March 5, 2021. The extension was granted as the purchaser was delayed in completing their due diligence as a result of Covid.

Liens

There are two liens currently registered against the property. These will need to be dealt with on closing. I have attached the relevant documents for your review.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: February 1, 2021 8:18 AM
To: Dominique Michaud <dmichaud@robapp.com>
Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Dom,

Given that the due diligence period will expire this week, can you please provide me with an update regarding the status of the transaction being pursued by Diversified?

<image001.gif>

Michael De Lellis
Partner
Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, January 18, 2021 12:14 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George

Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

As discussed, at this stage I don't think it is productive to engage in discussions about how Diversified has characterized FAAN or whether Diversified is acting improperly. You understand our position and I understand your position. We simply don't agree.


That said, I am writing to respond to the questions put to Diversified in the third paragraph of page 2 of your letter dated January 13, 2021. The answers are below:

1. Yes. The offer submitted by email dated December 16, 2020 from Lana Bezner of FAAN on behalf of 2794080 Ontario Inc. was considered notwithstanding it was submitted after bid deadline.
2. The APA provided for meaningful deposit that was received. The deposit is refundable if the purchaser does not waive its conditions and the APA is terminated. The deposit is to be increased once the deal goes firm.
3. The purchaser does not have an option to extend the conditional period and this period is to expire 30 days from January 4th. That said, Diversified reserves its right to agree to an extension of the conditional period with the purchaser if it deems appropriate.
4. As previously advised, we will provide you a copy of the APA once the deal goes firm.

As discussed last week, in terms of the delivery of the payout statement, to complete this step requires my client to attend at its office to pull hard copies of documents and invoices in order to prepare the discharge statement. In compliance with the current Covid 19 Stay at Home Order, my client does not intend to attend at its office unless it is absolutely necessary. In the interim, your client can refer to the Notice of Sale delivered by Diversified in January 2019 and run a interest calculation on those numbers as an indicator of Diversified's debt. As I mentioned previously, once the property is sold, Diversified will provide an accounting to the Trustee.

Regards,

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>

Sent: January 14, 2021 4:40 PM

To: Dominique Michaud <dmichaud@robapp.com>

Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shamess@colliers.com; Myles.Kenny@colliers.com

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Thanks for your letter Dom. Please find attached a response letter. We remain available to discuss if you like. Regards,

Michael

<image001.gif>

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

From: Dominique Michaud <dmichaud@robapp.com>

Sent: Monday, January 11, 2021 5:16 PM

To: De Lellis, Michael <MDeLellis@osler.com>

Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shameess@colliers.com; Myles.Kenny@colliers.com

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

Please see the attached letter. Please let me know if you would like to discuss.

Dom

 **Dominique Michaud** | [Bio](#)
T. 416.360.3795
E. dmichaud@robapp.com
ROBINS APPLEBY
 BARRISTERS + SOLICITORS

From: Dominique Michaud <dmichaud@robapp.com>

Sent: January 7, 2021 2:14 PM

To: De Lellis, Michael <MDeLellis@osler.com>

Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shameess@colliers.com; Myles.Kenny@colliers.com

Subject: RE: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

Michael:

Thank you for your letter. I am unable to respond by your deadline and will aim to get you a substantive response early next week.

If you wish to discuss in the interim, please call me.

Dom

 **Dominique Michaud** | [Bio](#)



T. 416.360.3795
E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>
Sent: January 6, 2021 4:40 PM
To: Dominique Michaud <dmichaud@robapp.com>
Cc: Naveed Manzoor <naveed@faanmortgageadmin.com>; Dacks, Jeremy <JDacks@osler.com>; George Benchetrit <George@chaitons.com>; jeremiah.shameess@colliers.com; Myles.Kenny@colliers.com
Subject: BDMC: 230-240 Cameron Crescent, Keswick (quot;Southshore Propertyquot;)

CAUTION: External e-mail.

Please find attached correspondence dated January 6, 2021 in respect of the above noted matter.
 <image001.gif>

Michael De Lellis

Partner

Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com

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Appendix 24:**March 16, 2021, Email from Osler to Robbins Appleby**

From: De Lellis, Michael
Sent: Tuesday, March 16, 2021 10:14 PM
To: Dominique Michaud
Cc: Dacks, Jeremy; Roberts, Nancy
Subject: RE: Keswick Offers

Dom,

Thank you for this information. Based on the limited information that the Trustee has been provided with respect to the sales process as a whole, the amount of time that has passed since the power of sale proceedings were commenced, the failure of the last bidder to close a conditional transaction following an extended due diligence period, and Colliers concerns regarding the amount of time that VHL has spent in forming its current offer, the Trustee is of the view that it is prudent to proceed with the unconditional offer. Please let us know what your client's decision is and how it intends to proceed in the circumstances by no later than 9 a.m. tomorrow so that we have time to consider how to address the Court given today's developments. Thank you,

Michael

OSLER

Michael De Lellis
 Partner
 Office: 416.862.5997 | Mobile: 416.722.7969 | MDeLellis@osler.com
 Osler, Hoskin & Harcourt LLP | [osler.com](https://www.osler.com)

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Tuesday, March 16, 2021 6:20 PM
To: De Lellis, Michael <MDeLellis@osler.com>
Subject: Keswick Offers

CONFIDENTIAL

Michael:

Further to our recent discussions, on a confidential basis we have attached the two offers received to purchase the Keswick property. Both are open to tomorrow at 6:00 pm. As you can see one is unconditional at \$13 million. The other is conditional at \$14.6 million. The conditional period goes to April 30th with a closing of May 28th.

Please advise if the Trustee has a preference as to which agreement of purchase and sale it would prefer Diversified Capital Inc. to pursue at this stage. We have gone back to each bidder and asked them to put forward their best unconditional offer forward. These are the latest offers (the conditional offer did not remove the conditions). There were no other credible bids submitted at last week's bid deadline.

Please note that while we welcome the Trustee's feedback, my client reserves the right to exercise its judgment and make the decision that it determines to be most appropriate in the circumstances.

Please let me know your position asap.

Dom



Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

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Appendix 25:**May 13, 2021, Letter from Osler to Robbins Appleby**



May 13, 2021

Michael De Lellis
Direct Dial: 416.862.5997
MDeLellis@osler.com
Our Matter Number: 1189997

Toronto

Montréal

Calgary

Ottawa

Vancouver

New York

SENT BY ELECTRONIC MAIL

Dominique Michaud
Robins Appleby LLP
2600 120 Adelaide St. W.
Toronto, ON M5H 1T1
Email: dmichaud@robapp.com

Dear Sir:

Re: Notice of Sale under Mortgage dated January 24, 2019 (the “Notice”) issued by Diversified Capital Inc. (“Diversified”) to 2221563 Ontario Inc. and certain other parties with respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property” or the “South Shore Project”)

We are writing further to our recent exchanges and conversations regarding the Notice and a potential sale of the Property (the “Sale”).

We understand that the Sale is currently scheduled to close today. In advance of closing, Osler, Hoskin & Harcourt LLP (“**Osler**”) and/or FAAN Mortgage Administrators Inc., in its capacity as court appointed trustee of Building & Development Mortgages Canada Inc. (in such capacity, the “**Trustee**”) have, on numerous occasions, requested a payout statement from Diversified, both verbally and in writing, including as recently as during your telephone conversation with Osler on May 10, 2021.

Notwithstanding these requests and that closing of the Sale is scheduled for today, no payout statement has been provided. Accordingly, the Trustee has not been provided with a meaningful opportunity to review, assess, and verify the amounts that Diversified intends to claim from the proceeds of the Sale (“**Sale Proceeds**”), including the quantum of any interest it may be claiming on its loan and its costs of, and incidental to, the exercise of the power of sale.

In light of the foregoing, the Trustee requires that you hold all Sale Proceeds intended to be paid to Diversified in connection with amounts that Diversified claims it is owed pursuant to any payout letter produced by Diversified in trust until such time as the Trustee has received and has been provided with a meaningful opportunity to review the payout statement and give its consent to a release of any funds.

OSLER

This letter is being provided under an express reservation of all of the Trustee's rights, remedies, and recourses available at law, in equity or otherwise, including with respect to any amounts that may be claimed by Diversified under its mortgage, the conduct of the sale process in respect of the Property, and any failure to provide the information that the Trustee has requested, and nothing contained herein should be interpreted as a waiver of any right or an admission of any kind whatsoever.

Yours very truly,



Michael De Lellis

- c. Naveed Manzoor, *FAAN Mortgage Administrators Inc.*
Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
George Benchetrit, *Chaitons LLP*

Appendix 26:**May 17, 2021, Email from Robbins Appleby to Osler**

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, May 17, 2021 2:25 PM
To: De Lellis, Michael
Cc: Dacks, Jeremy; naveed@faanmortgageadmin.com; George@chaitons.com
Subject: RE: BDMC - Southshore
Attachments: Diversified Loan to 2221563 Ontario Inc. - Mortgage Statement as at May 14, 2021.pdf

Michael:

Further to our discussion last week I am responding to your letter dated May 13, 2014. Our position in respect to this letter and other related matters is set out below:

1. Please see the attached Payout Statement as at May 14, 2021. As a mortgagee having exercised its rights under power of sale, there is no obligation on Diversified to obtain the Trustee's consent prior to being paid the funds owing to it under its mortgage. Accordingly, Diversified has been paid the amounts set out in the attached payout statement. Please note that Diversified acknowledges its duty to account to the mortgagor and subsequent encumbrancers and is in the process of preparing a detailed accounting as to how the sale proceeds have been applied in accordance with section 27 of the *Mortgages Act*. We hope to have this accounting delivered on behalf of Diversified later this week. The accounting cannot be provided until various administrative matters are completed such as payments into court on behalf of liens etc....
2. We understand from the De Hodge Lien Claimant that there is no agreement with the Trustee in respect to this lien. Accordingly, Diversified will proceed to pay \$609,983.79 into Court to the credit of the De Hodge lien action as provided for in the Lien Payout Agreement with De Hodge.
3. Please advise as to the status and details of the agreement with the Sunbelt Lien Claimant. Diversified is currently holding \$103,641.48 that is to be paid into Court to the credit of the Sunbelt lien action. As discussed last week, we require a signed direction and a consent to an Order dismissing the Sunbelt lien claim against Diversified if Diversified is to deviate from its agreement with Sunbelt.
4. There will be a significant distribution to be made to Trustee on behalf of the subsequent mortgagee once the funds are paid in accordance with section 27 of the *Mortgages Act*. Please confirm the amount owing under this mortgage and provide a signed authorization and direction to Diversified Capital Inc. and Robins Appleby LLP to allow for the remaining sale proceeds to be paid to your client. We hope to make this distribution at the same time we complete the accounting.

If you wish to discuss please call me.

Dom

Dominique Michaud | Bio

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: De Lellis, Michael <MDeLellis@osler.com>

Sent: May 13, 2021 4:44 PM

To: Dominique Michaud <dmichaud@robapp.com>

Cc: Dacks, Jeremy <JDacks@osler.com>; Naveed Manzoor <naveed@faanmortgageadmin.com>; George Benchetrit <George@chaitons.com>

Subject: BDMC - Southshore

CAUTION: External e-mail.

Please see attached correspondence of today's date. Thank you,

Michael

OSLER

Michael De Lellis

Partner

Office: 416.862.5997 | Cell: 416-722-7969 | MDeLellis@osler.com

Osler, Hoskin & Harcourt LLP | osler.com

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Payout Statement - May 2021

Statement of Accrual: 230-240 Cameron Cres. Keswick On
 2221563 Ontario Inc.
 As at May 14, 2021

Year	Month	Date	Principal	Int Int	Int +Prin	Payments/ Costs	Total	Month O/s	Notes
2014									
2014	1	Nov	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	1	
	2	Dec	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	2	
2015									
2015	3	Jan	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	3	
	4	Feb	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	4	
	5	Mar	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	5	
	6	Apr	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	6	
	7	May	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	7	
	8	Jun	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	8	
	9	Jul	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	9	
	10	Aug	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	10	
	11	Sep	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,545,000.00	11	
	12	Oct	4,545,000.00	45,450.00	4,590,450.00		4,590,450.00	12	
2015									
2015	1	Nov	4,590,450.00	45,904.50	4,636,354.50	136,350.00	4,772,704.50	13	136,350.00 Renewal fee: 3% of principal
	2	Dec	4,772,704.50	47,727.05	4,820,431.55		4,820,431.55	14	
2016									
2016	3	Jan	4,820,431.55	48,204.32	4,868,635.86		4,868,635.86	15	
	4	Feb	4,868,635.86	48,686.36	4,917,322.22		4,917,322.22	16	
	5	Mar	4,917,322.22	49,173.22	4,966,495.44		4,966,495.44	17	
	6	Apr	4,966,495.44	49,664.95	5,016,160.40		5,016,160.40	18	
	7	May	5,016,160.40	50,161.60	5,066,322.00		5,066,322.00	19	
	8	Jun	5,066,322.00	50,663.22	5,116,985.22		5,116,985.22	20	
	9	Jul	5,116,985.22	51,169.85	5,168,155.07		5,168,155.07	21	
	10	Aug	5,168,155.07	51,681.55	5,219,836.62		5,219,836.62	22	
	11	Sep	5,219,836.62	52,198.37	5,272,034.99		5,272,034.99	23	
	12	Oct	5,272,034.99	52,720.35	5,324,755.34		5,324,755.34	24	
2016									
2016	1	Nov	5,324,755.34	53,247.55	5,378,002.89	79,080.52	5,457,083.42	25	79,080.52 Renewal fee: 1.5% of principal
	2	Dec	5,457,083.42	54,570.83	5,511,654.25		5,511,654.25	26	
2017									
2017	3	Jan	5,511,654.25	55,116.54	5,566,770.79		5,566,770.79	27	
	4	Feb	5,566,770.79	55,667.71	5,622,438.50		5,622,438.50	28	
	5	Mar	5,622,438.50	56,224.39	5,678,662.89		5,678,662.89	29	
	6	Apr	5,678,662.89	56,786.63	5,735,449.52		5,735,449.52	30	
	7	May	5,735,449.52	57,354.50	5,792,804.01		5,792,804.01	31	
	8	Jun	5,792,804.01	57,928.04	5,850,732.05		5,850,732.05	32	
	9	Jul	5,850,732.05	58,507.32	5,909,239.37		5,909,239.37	33	
	10	Aug	5,909,239.37	59,092.39	5,968,331.76		5,968,331.76	34	
	11	Sep	5,968,331.76	59,683.32	6,028,015.08		6,028,015.08	35	
	12	Oct	6,028,015.08	60,280.15	6,088,295.23		6,088,295.23	36	
2017									
2017	1	Nov	6,088,295.23	60,882.95	6,149,178.19	90,420.23	6,239,598.41	37	90,420.23 Renewal fee: 1.5% of principal
	2	Dec	6,239,598.41	62,395.98	6,301,994.40		6,301,994.40	38	
2018									
2018	3	Jan	6,301,994.40	63,019.94	6,365,014.34		6,365,014.34	39	
	4	Feb	6,365,014.34	63,650.14	6,428,664.48		6,428,664.48	40	
	5	Mar	6,428,664.48	64,286.64	6,492,951.13		6,492,951.13	41	
	6	Apr	6,492,951.13	64,929.51	6,557,880.64		6,557,880.64	42	
	7	May	6,557,880.64	65,578.81	6,623,459.45		6,623,459.45	43	
	8	Jun	6,623,459.45	66,234.59	6,689,694.04		6,689,694.04	44	
	9	Jul	6,689,694.04	66,896.94	6,756,590.98		6,756,590.98	45	
	10	Aug	6,756,590.98	67,565.91	6,824,156.89		6,824,156.89	46	
	11	Sep	6,824,156.89	68,241.57	6,892,398.46		6,892,398.46	47	
	12	Oct	6,892,398.46	68,923.98	6,961,322.44		6,961,322.44	48	
2018									
2018	1	Nov	6,961,322.44	69,613.22	7,030,935.67	103,385.98	7,134,321.65	49	103,385.98 Renewal fee: 1.5% of principal
	2	Dec	7,134,321.65	71,343.22	7,205,664.86		7,205,664.86	50	
2019									
2019	3	Jan	7,205,664.86	72,056.65	7,277,721.51		7,277,721.51	51	
	4	Feb	7,277,721.51	72,777.22	7,350,498.73		7,350,498.73	52	
	5	Mar	7,350,498.73	73,504.99	7,424,003.71		7,424,003.71	53	
	6	Apr	7,424,003.71	74,240.04	7,498,243.75		7,498,243.75	54	
	7	May	7,498,243.75	74,982.44	7,573,226.19		7,573,226.19	55	
	8	Jun	7,573,226.19	75,732.26	7,648,958.45		7,648,958.45	56	
	9	Jul	7,648,958.45	76,489.58	7,725,448.03		7,725,448.03	57	
	10	Aug	7,725,448.03	77,254.48	7,802,702.51		7,802,702.51	58	
	11	Sep	7,802,702.51	78,027.03	7,880,729.54		7,880,729.54	59	
	12	Oct	7,880,729.54	78,807.30	7,959,536.83		7,959,536.83	60	
2019									
2019	1	Nov	7,959,536.83	79,595.37	8,039,132.20		8,039,132.20	61	
	2	Dec	8,039,132.20	80,391.32	8,119,523.53	450.00	8,119,973.53	62	450.00 ESC Report (Erosion & Sedimentation Control Report)
2020									
2020	3	Jan	8,119,973.53	81,199.74	8,201,173.26	150,350.00	8,351,523.26	63	150,350.00 ESC Report + Realty Tx payment (\$150,000)
	4	Feb	8,351,523.26	83,515.23	8,435,038.49	350.00	8,435,388.49	64	350.00 ESC Report (Erosion & Sedimentation Control Report)
	5	Mar	8,435,388.49	84,353.88	8,519,742.38	350.00	8,520,092.38	65	350.00 ESC Report (Erosion & Sedimentation Control Report)
	6	Apr	8,520,092.38	85,200.92	8,605,293.30	3,200.00	8,608,493.30	66	3,200.00 ESC Report+ Costs re Recommended Repairs silt fence
	7	May	8,608,493.30	86,084.93	8,694,578.23	350.00	8,694,928.23	67	350.00 ESC Report (Erosion & Sedimentation Control Report)
	8	Jun	8,694,928.23	86,949.28	8,781,877.52	350.00	8,782,227.52	68	350.00 ESC Report (Erosion & Sedimentation Control Report)
	9	Jul	8,782,227.52	87,822.28	8,870,049.79	350.00	8,870,399.79	69	350.00 ESC Report (Erosion & Sedimentation Control Report)
	10	Aug	8,870,399.79	88,704.00	8,959,103.79	18,795.74	8,977,899.53	70	18,795.74 ESC Report+ Appraisal Reports
	11	Sep	8,977,899.53	89,779.00	9,067,678.53	350.00	9,068,028.53	71	350.00 ESC Report (Erosion & Sedimentation Control Report)
	12	Oct	9,068,028.53	90,680.29	9,158,708.81	350.00	9,159,058.81	72	350.00 ESC Report (Erosion & Sedimentation Control Report)
2020									
2020	1	Nov	9,159,058.81	91,590.59	9,250,649.40	7,401.50	9,258,050.90	73	7,401.50 ESC Report+ Costs re Recommended Repairs silt fence
	2	Dec	9,258,050.90	92,580.51	9,350,631.41	350.00	9,350,981.41	74	350.00 ESC Report (Erosion & Sedimentation Control Report)
2021									
2021	3	Jan	9,350,981.41	93,509.81	9,444,491.22	9,775.00	9,454,266.22	75	9,775.00 ESC Report+Costs re Project Due Dil gence Info
	4	Feb	9,454,266.22	94,542.66	9,548,808.88	350.00	9,549,158.88	76	350.00 ESC Report (Erosion & Sedimentation Control Report)
	5	Mar	9,549,158.88	95,491.59	9,644,650.47		9,644,650.47	77	
	6	Apr	9,644,650.47	96,446.50	9,741,096.98		9,741,096.98	78	
	7	May 14	9,741,096.98	44,835.73	9,785,932.71		9,785,932.71	79	

Add:

Protective Disbursements and Enforcement Administration Expenses		
Sale Administration and Property Management Expenses		58,413.45
Legals SR Law		13,254.05
Legals Robapp to April 30, 2021		46,359.43
Reserve For Estimated Robapp Legals from May 1, 2021 Onwards		30,000.00

Total Due and Payable as at May 14, 2021

9,933,959.64

Appendix 27:**May 25, 2021, Accounting Letter from Robbins Appleby**



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Dominique Michaud
T. 416.360.3795
E. dmichaud@robapp.com
F. 416.868.0306

Delivered by: E-mail and Regular Mail
File No.: 2000769

May 25, 2021

FAAN Mortgage Administrators Inc. (“FAAN”) in its capacity as Court-appointed trustee (in such capacity, the “Trustee”) of Building & Development Mortgages Canada Inc. (“BDMC”)

c/o Osler, Hoskin & Harcourt LLP
100 King Street West
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Attention: Michael De Lellis

2221563 Ontario Inc.

25 Brodie Drive, Unit 1
Richmond Hill, Ontario, L4B 3K7

Snoxons Holdings Inc.

2 Guthrie Court
Stouffville, Ontario, L4A 7X2

De Hodge Contracting Inc.

c/o Mauro Marchioni
Barrister and Solicitor
9100 Jane Street, 3rd Floor, Bldg A
Vaughan, ON L4K 0A4

Sunbelt Rentals of Canada Inc.

c/o Dooley Lucenti LLP
Barristers and Solicitors
10 Checkley Street
Barrie, Ontario, L4N 1W1

Re: Accounting in Respect of Power of Sale conducted by Diversified Capital Inc. (“Diversified”) in respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property”)



We are the lawyers for Diversified. As you may know, Diversified completed the power of sale transaction in respect of the Property on May 13, 2021. We are writing to provide an accounting of this transaction on behalf of Diversified.

The sale price for the Property was \$13,000,000. A copy of the Transfer: Power of Sale registered as instrument number YR3250337 and the Statement of Adjustments from this transaction are attached as Appendix 1 and Appendix 2 to this letter.

In accordance with Section 27 of the *Mortgages Act*, Diversified has applied the sale proceeds of \$13,008,416.35 in respect of the sale of the Property as follows:

Payment	Amount	Appendix Reference
Property tax arrears to Corporation of The Town of Georgina	\$210,559.30	See Appendix 3
Colliers Macaulay Nicolls Inc. Real Estate Commission	\$440,700.00 (inclusive of HST)	See Appendix 4
De Hodge Lien – Funds to Be Paid into Court to the Credit of Action Bearing Court File CV-18-134147	\$609,983.79	See Appendix 5
Sunbelt Lien- Paid to Sunbelt pursuant to settlement of priority claim with second mortgagee in the Action Bearing Court File CV-18-00135707-0000	\$35,000.00	See Appendix 6
Paid to Diversified Capital Inc. Pursuant to Amount Owing Under the Diversified First Mortgage	\$9,931,694.01	See Appendix 7
Reserve For Legal Fees for De Hodge Lien Claim Interpleader Motion	\$20,000.00	



Accordingly, after payment of the above amounts, there remains \$1,760,479.25 to be distributed to FAAN Mortgage Administrators Inc. ("**FAAN**") in its capacity as Court-appointed trustee (in such capacity, the "**Trustee**") of Building & Development Mortgages Canada Inc. ("**BDMC**") in its capacity as second mortgagee on the Property.

Please note, as set out above, Diversified is in the process of bringing a motion to pay \$609,983.79 into Court to the credit of the Construction Lien Action bearing Court File CV-18-134147 as required with its agreement with the De Hodge Lien Claimant. This motion has yet to be scheduled. Diversified has held back a reserve of \$20,000 for potential legal fees that may be incurred in respect of this motion. Should the cost of this motion be less than the legal fee reserve, Diversified will distribute the remainder of the legal fee reserve to FAAN as subsequent encumbrancer.

If you have any questions, please contact me at the above coordinates.

Yours very truly,

ROBINS APPLEBY LLP

Per:

D. Michaud

Dominique Michaud

DM:wl

[robapp\6579144.3](#)

Properties				
PIN	03475 - 2054	LT	Interest/Estate	Fee Simple
Description	PT LOT 8, PLAN 170, N GWILLIMBURY AS IN R533209; GEORGINA; LOTS 1,2, 3, 4, 5, 6, 7, AND 8, PLAN 447; N GWILLIMBURY; DOREDA DR, LAN 447, PT 2, 65R16653, GEORGINA AS STOPPED UP AND CLOSED BY BY-LAW REGISTERED AS YR45264; PT LOT 6, PLAN 170, N GWILLIMBURY AS IN B31794B; LOT 5, PLAN 170, N GWILLIMBURY, T/W R737440; LOTS 9, 10, 11, 12, 13, 14, AND 15, PLAN 447, N GWILLIMBURY; BLK A, PLAN 447, N GWILLIMBURY, PT LOT 8, PLAN 170, PT 1, 65R16553 LYING N/W OF LOTS 6 & 7, PLAN 447, PT LOT 8, PLAN 170, PT 1 65R16653, LYING S OF DOREDA DRIVE, LOTS 9, 10 & BLK A, PLAN 447; PT LOTS 6, 7, & 8, PLAN 170, N GWILLIMBURY, AS IN R649566;; TOWN OF GEORGINA			
Address	230 AND 240 CAMERON CRESCENT KESWICK			

Source Instruments		
Registration No.	Date	Type of Instrument
YR2209128	2014 10 30	Charge/Mortgage

Consideration	
Consideration	\$13,000,000.00

Transferor(s)	
The transferor(s) hereby transfers the land to the transferee(s).	
Name	DIVERSIFIED CAPITAL INC.
Address for Service	1000 - 120 Adelaide St. West Toronto Ontario M5H 3V1
I, Russ Giannotta have the authority to bind the corporation.	
This document is not authorized under Power of Attorney by this party.	

Transferee(s)		Capacity	Share
Name	2833367 ONTARIO LIMITED	Registered Owner	
Address for Service	8750 Jane Street, Suite 12 Concord, ON L4K 0E7		

Document(s) to be Deleted		
The encumbrance(s) listed in the related deletions field is/are subsequent in priority to the charge and is/are to be deleted		
Registration No.	Date	Type of Instrument
YR2209130	2014/10/30	Postponement Of Interest
YR2209131	2014/10/30	Postponement Of Interest
YR2242948	2015/01/14	Charge/Mortgage
YR2302493	2015/06/09	Notice
YR2359250	2015/09/22	Notice
YR2457912	2016/04/15	Notice
YR2626191	2017/02/15	Notice
YR2242978	2015/01/14	Transfer Of Charge
YR2249175	2015/01/29	Transfer Of Charge
YR2258713	2015/02/23	Transfer Of Charge
YR2276417	2015/04/09	Transfer Of Charge
YR2280706	2015/04/21	Transfer Of Charge
YR2302501	2015/06/09	Transfer Of Charge
YR2317841	2015/07/08	Transfer Of Charge
YR2349339	2015/09/01	Transfer Of Charge
YR2359252	2015/09/22	Transfer Of Charge
YR2383204	2015/11/03	Transfer Of Charge
YR2399061	2015/12/03	Transfer Of Charge
YR2408708	2015/12/22	Transfer Of Charge
YR2457913	2016/04/15	Transfer Of Charge
YR2460994	2016/04/22	Transfer Of Charge
YR2480017	2016/06/01	Transfer Of Charge
YR2516850	2016/08/02	Transfer Of Charge

Document(s) to be Deleted

Registration No.	Date	Type of Instrument
YR2561798	2016/10/18	Transfer Of Charge
YR2242949	2015/01/14	Postponement Of Interest
YR2242950	2015/01/14	Postponement Of Interest
YR2302500	2015/06/09	Postponement Of Interest
YR2510956	2016/07/22	Charge/Mortgage
YR2633539	2017/03/02	Notice
YR2650434	2017/04/06	Notice
YR2669351	2017/05/16	Notice
YR2703133	2017/07/17	Notice
YR2510962	2016/07/22	Transfer Of Charge
YR2523368	2016/08/12	Transfer Of Charge
YR2530787	2016/08/25	Transfer Of Charge
YR2541971	2016/09/13	Transfer Of Charge
YR2561795	2016/10/18	Transfer Of Charge
YR2571964	2016/11/02	Transfer Of Charge
YR2595214	2016/12/13	Transfer Of Charge
YR2607517	2017/01/11	Transfer Of Charge
YR2617719	2017/01/30	Transfer Of Charge
YR2633696	2017/03/02	Transfer Of Charge
YR2643520	2017/03/24	Transfer Of Charge
YR2657585	2017/04/25	Transfer Of Charge
YR2669306	2017/05/16	Transfer Of Charge
YR2683728	2017/06/12	Transfer Of Charge
YR2703134	2017/07/17	Transfer Of Charge
YR2712105	2017/08/02	Transfer Of Charge
YR2715536	2017/08/10	Transfer Of Charge
YR2510957	2016/07/22	Postponement Of Interest
YR2510958	2016/07/22	Postponement Of Interest
YR1416446	2009/12/09	Charge/Mortgage
YR1607456	2011/02/04	Charge/Mortgage
YR1607457	2011/02/04	Notice
YR1610149	2011/02/14	Notice
YR1614814	2011/02/25	Notice
YR1617921	2011/03/04	Notice
YR1626329	2011/03/25	Notice
YR1629086	2011/03/31	Notice
YR1629087	2011/03/31	Transfer Of Charge
YR1636123	2011/04/19	Notice
YR1637719	2011/04/26	Notice
YR1637720	2011/04/26	Transfer Of Charge
YR1642625	2011/05/04	Notice
YR1642626	2011/05/04	Transfer Of Charge
YR1645228	2011/05/10	Notice
YR1650665	2011/05/20	Notice
YR1650666	2011/05/20	Transfer Of Charge
YR1656127	2011/05/31	Notice
YR1656128	2011/05/31	Transfer Of Charge
YR1660699	2011/06/09	Notice
YR1660700	2011/06/09	Transfer Of Charge
YR1668421	2011/06/24	Notice
YR1668422	2011/06/24	Transfer Of Charge
YR1680843	2011/07/19	Notice
YR1680844	2011/07/19	Transfer Of Charge
YR1685793	2011/07/28	Notice
YR1685794	2011/07/28	Transfer Of Charge
YR1699568	2011/08/22	Notice
YR1699569	2011/08/22	Notice

Document(s) to be Deleted

Registration No.	Date	Type of Instrument
YR1699570	2011/08/22	Transfer Of Charge
YR1705464	2011/08/31	Notice
YR1705465	2011/08/31	Transfer Of Charge
YR1710126	2011/09/09	Transfer Of Charge
YR1711081	2011/09/13	Notice
YR1711082	2011/09/13	Transfer Of Charge
YR1716118	2011/09/22	Notice
YR1716119	2011/09/22	Transfer Of Charge
YR1726662	2011/10/13	Notice
YR1726663	2011/10/13	Transfer Of Charge
YR1737106	2011/11/02	Notice
YR1737107	2011/11/02	Transfer Of Charge
YR1746587	2011/11/22	Notice
YR1746588	2011/11/22	Transfer Of Charge
YR1757721	2011/12/14	Notice
YR1757722	2011/12/14	Transfer Of Charge
YR1768945	2012/01/10	Notice
YR1768946	2012/01/10	Transfer Of Charge
YR1778209	2012/01/31	Notice
YR1778210	2012/01/31	Transfer Of Charge
YR1791525	2012/03/05	Notice
YR1791526	2012/03/05	Transfer Of Charge
YR1812940	2012/04/25	Notice
YR1812941	2012/04/25	Transfer Of Charge
YR1827223	2012/05/25	Notice
YR1827224	2012/05/25	Transfer Of Charge
YR1848606	2012/07/04	Notice
YR1848607	2012/07/04	Transfer Of Charge
YR1876962	2012/08/28	Notice
YR1876963	2012/08/28	Transfer Of Charge
YR2192808	2014/09/26	Transfer Of Charge
YR2204014	2014/10/21	Transfer Of Charge
YR2257613	2015/02/19	Transfer Of Charge
YR2352237	2015/09/04	Transfer Of Charge
YR2373600	2015/10/19	Transfer Of Charge
YR2404312	2015/12/15	Transfer Of Charge
YR2404314	2015/12/15	Transfer Of Charge
YR2413640	2016/01/08	Transfer Of Charge
YR2434381	2016/02/23	Transfer Of Charge
YR2471252	2016/05/13	Transfer Of Charge
YR2505546	2016/07/13	Transfer Of Charge
YR2564016	2016/10/21	Transfer Of Charge

Statements

The document is authorized under the charge and the Mortgages Act.

The charge was in default at the time notice of sale was given and continues to be in default and the money has been advanced under the charge.

This transaction is not subject to any writs of execution

I, LADISLAV KOVAC, state the following writs of execution are to be deleted: 2221563 ONTARIO INC. 21-0000847 issued 2021-APR-20.

Title to the land is not subject to spousal rights under the Family Law Act

Schedule: Notice of Sale Under Mortgage was given on January 24, 2019. Instrument No.YR2209129, being a Notice of Assignment of Rents-General is to be deleted as it is subsequent to the priority of Charge YR2209128, and it relates to the Source Instrument No.YR2209128.

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

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

Statements

standing.

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

Signed By

Ladislav Kovac	2600-120 Adelaide St. West Toronto M5H 1T1	acting for Transferor(s)	Signed	2021 05 13
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Tel 416-868-1080

Fax 416-868-0306

I am the solicitor for the transferor(s) and I am not one and the same as the solicitor for the transferee(s).

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

Joseph Christopher Cortellucci	135 Queens Plate Drive Suite 600 Etobicoke M9W 6V7	acting for Transferee(s)	Signed	2021 05 13
--------------------------------	--	-----------------------------	--------	------------

Tel 416-746-4710

Fax 416-746-8319

I am the solicitor for the transferee(s) and I am not one and the same as the solicitor for the transferor(s).

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

Submitted By

Loopstra Nixon LLP	135 Queens Plate Drive Suite 600 Etobicoke M9W 6V7	2021 05 13
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Tel 416-746-4710

Fax 416-746-8319

Fees/Taxes/Payment

Statutory Registration Fee	\$65.30
Provincial Land Transfer Tax	\$256,475.00
Total Paid	\$256,540.30

File Number

Transferor Client File Number : 2000769

STATEMENT OF ADJUSTMENTS

VENDOR: DIVERSIFIED CAPITAL INC.

PURCHASER: 2833367 ONTARIO LIMITED

PROPERTY: 230-240 CAMERON CRESCENT, KESWICK, ONTARIO

ADJUSTED AS OF: MAY 13, 2021

		CREDIT PURCHASER	CREDIT VENDOR
SALE PRICE			\$13,000,000.00
DEPOSIT			
Received 19-MAR-2021	\$500,000.		
Received 22-MAR-2021	\$500,000.	\$1,000,000.00	
PROPERTY TAXES			
Roll No. 1970 00014600400.0000			
2021 annual taxes, based on			
2020 annual taxes of			
\$66,007.98 + 3% increase	\$67,988.22		
Paid Interim Bill	\$33,003.99		
Vendor's share 132 days			
(\$186.27/day)	\$24,587.64		
Credit Vendor			\$8,416.35
BALANCE DUE ON CLOSING			
payable as directed		\$12,008,416.35	
		\$13,008,416.35	\$13,008,416.35

RECEIPT RECORD



CORPORATION OF THE TOWN
OF GEORGINA
26557 CIVIC CENTRE ROAD R.R. #2
KESWICK, ON L4P 3G1
Phone No. : 9054764301 - 9057226516
Fax No. : 9054768100

--- Item ID #0001 ---

PT Property Taxes

Folio # : 000 14600400.0000

2221563 ONTARIO INC BRIGHTSTAR CORP

232 CAMERON CRES

CURRENT	33018.99
CURRENT Interest	660.15
YEAR 1	66032.98
YEAR 1 Interest	7575.31
YEAR 2	65167.78
YEAR 2 Interest	11404.40
YEAR 3+	22723.13
YEAR 3+ Interest	3976.56

Account Balance 210559.30

Payment -210559.30

New Balance 0.00

Payment Subtotal 210559.30

PST 0.00

GST/HST R122979347 0.00

Payment Total 210559.30

CHEQUE 210559.30

NAME: ROBINS APPLEBY LLP

Change 0.00

17-May-21
D:0000016560
CASHIER1

15:58:56
B:2021051703
R:0000752043

INVOICE

Date	Invoice #	Due Date
06 May 2021	1200-95387	13 May 2021

Bill To

Attn: Russ Giannotta

Diversified Capital Inc
65 Front Street West
Toronto ON M5J 1E6
Canada



Colliers Macaulay Nicolls Inc.
1400 - 181 Bay Street
Toronto ON M5J 2V1
Canada

Transaction Summary

230-240 Cameron Crescent Keswick ON L4P 10 Acres	Broker Deal Number Buyer Seller	Myles Kenny Jeremiah Shamess 363266 2794080 Ontario Inc. Diversified Capital Inc
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Commission Summary

Sales Price	13,000,000.00 CAD
Commission	390,000.00 CAD
Total Commission:	390,000.00 CAD

Invoice Detail

Total Fee	390,000.00 CAD
HST 13% (10105 2447)	50,700.00 CAD
Invoice Total	440,700.00 CAD

Amount Due	440,700.00 CAD
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Payment Instructions

Please Send All Cheques To	Wire or Electronic Payments	Bank
ATTN: Mendes, Andrew Colliers Macaulay Nicolls Inc. 1400 - 181 Bay Street Toronto ON M5J 2V1 Canada	Beneficiary Colliers Receivables Funding (CMN) 200 Granville Street Vancouver BC V6C 2R6 Canada	TD Canada Trust 700 West Georgia Street Vancouver BC V7Y 1A2 Canada Transit #: 94000 Bank Number: 004 Beneficiary Account: 0902-5537535 Reference: Invoice #1200-95387 Intermediary Bank (IB): Bank of America, New York, NY IB ABA Numbers: 026009593 Swift Code: TDOMCATTTOR

Payment of this invoice confirms that Colliers' fee has been legally earned and all performance obligations have been satisfied.

Transaction Detail				
230-240 Cameron Crescent Keswick ON L4P 10 Acres	Broker		Myles Kenny	322
			Jeremiah Shamess	
	Deal Number		363266	
	Buyer		2794080 Ontario Inc.	
	Seller		Diversified Capital Inc	

Sales Terms				
Sales Price				13,000,000.00 CAD
Commission				390,000.00 CAD
	3.00% of 13,000,000.00		390,000.00 CAD	
Total Commission:				390,000.00 CAD

Billing Schedule				
Invoice No.	Due Date	Invoice Amount	Amount Paid	Outstanding
1200-95387	13 May 2021	440,700.00	0.00 CAD	440,700.00 CAD
		440,700.00		

CONSTRUCTION LIEN PAYOUT AGREEMENT

BETWEEN

DIVERSIFIED CAPITAL INC.

(the "**Lender**")

and

DE HODGE CONTRACTING INC.

(the "**Lien Claimant**")

WHEREAS the Lender lent money to 2221563 Ontario Inc. (the "**Borrower**") on the security of a mortgage registered as Instrument No. YR2209128 on October 30, 2014 (the "**Mortgage**") against title to the property known municipally as 230-240 Cameron Crescent, Keswick, Ontario (the "**Property**");

AND WHEREAS the Mortgage is in default and the Lender has an agreement to sell the Property pursuant to its power of sale (the "**Purchase Agreement**");

AND WHEREAS the Property is subject to a Construction Lien as instrument number YR2777153 (the "**Lien**") and a Certificate of Action as instrument number YR2784028 (the "**Certificate of Action**") registered in favour of the Lien Claimant;

AND WHEREAS pursuant to the Purchase Agreement, the Lender is required to deliver title to the purchaser therein free and clear of the Lien and the Certificate of Action;

AND WHEREAS the Lien Claimant and the Lender have entered into this Agreement to arrange for the discharge of the Certificate of Action and Lien on closing of the Purchase Agreement.

NOW THEREFORE in consideration of the mutual covenants hereinafter set out, payment of \$2.00 from the Lender to the Lien Claimant, and other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, the Lender and the Lien Claimant agree as follows:

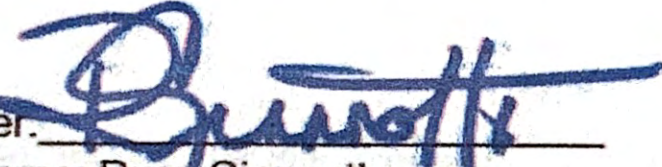
1. The Lien Claimant agrees that the Lender and its solicitors, Robins Appleby LLP, are authorized to register a discharge of the Lien and the Certificate of Action on closing of the Purchase Agreement, in accordance with the terms of the Acknowledgement and Direction attached to this Agreement as Schedule "A", and provided that the Lender is in receipt of sufficient funds to abide by the terms of this Agreement.
2. The Lender undertakes not to cause the Lien and Certificate of Action to be registered unless the Lender has received closing proceeds of at least \$609,983.79 (the "**Court Payment**"), which sum will be available to be paid into court following closing, representing the amount of the Lien plus \$50,000.
3. The Lien Claimant acknowledges that closing of the Purchase Agreement is currently scheduled for May 13, 2021 (the "**Closing**"). The Lender may, in its sole discretion, extend the Closing from time to time without notice to the Lien Claimant. The Lender agrees to notify the Lien Claimant upon successful completion of Closing.

4. Forthwith following successful completion of Closing, the Lender shall prepare motion materials for a consent order (at the Lender's cost) to pay the Court Payment into Court with respect to the Lien and the Certificate of Action (being Court File Number CV-18-134147). To the extent that the Lender is or becomes a defendant to said action, the consent order shall provide that the action is dismissed against the Lender on a without costs basis. The Lien Claimant agrees to consent to the said motion.
5. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and that such separate counterparts shall together constitute one and the same instrument.
6. This Agreement, any amendments thereto, and any notices given pursuant to this Agreement may be transmitted by electronic means (including, without limitation, e-mail and docusign) and shall be binding upon the parties hereto as if executed and delivered in the original.

signatures on following page

DATED this 29th day of April, 2021

DIVERSIFIED CAPITAL INC.

Per. 

Name: Russ Giannotta

Title: President

I have authority to bind the corporation.

DE HODGE CONTRACTING INC.

Per. 

Name: JAMES HODGES

Title: VICE PRESIDENT

Per. _____

Name:

Title:

I/We have authority to bind the corporation.

SCHEDULE "A"
Acknowledgement and Direction
re: Electronic Registration

TO: Robins Appleby LLP

This will confirm that:

1. The undersigned has reviewed the document listed below (the "**Document**"), a copy of which is attached hereto and the information contained therein is accurate.
2. You are authorized and directed to sign and register the Document on behalf of the undersigned.
3. You are authorized to insert any information that may be required in the Document that may not be available to you at the time of execution of this Acknowledgement and Direction.
4. You are authorized to make such minor clerical, technical and non-material changes to the Document as may be required in order to complete the registration of same, *Helia*, this sentence would remain if a corporation was signing.
5. The effect of the electronic Document has been fully explained to the undersigned by its legal counsel and the undersigned understands that they are parties to and bound by the terms and provisions of the Document to the same extent as if the undersigned had signed the Document.
6. The undersigned are in fact the parties named in the Document and have not misrepresented their identity to you.
7. In the event of any investigation by the Director of Land Registration appointed under subsection 6(1) of the Registry Act (the "**Director**") regarding suspected fraudulent or unlawful activity or registration in connection with the document attached to this Acknowledgment and Direction, we hereby irrevocably consent to your releasing to the Director a true copy of this Acknowledgment and Direction upon request by the Director.
8. This Acknowledgement and Direction may be signed via PDF transmission and in counterparts and all of such counterparts shall constitute an agreement binding on the parties hereto.

DESCRIPTION OF ELECTRONIC DOCUMENTS

The Document described in this acknowledgment and direction is the document selected below, a copy of which is attached hereto:

- **Application to Delete Construction Lien YR2777153**

DIRECTION

To: Diversified Capital Inc. ("Diversified") and Robins Appleby LLP
("Robins")

From: FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. (the "Trustee")

and

Sunbelt Rentals of Canada Inc. formerly known as CRS Contractors Rental Supply General Partner Inc. ("Sunbelt")

Re: **Payment of Certain Proceeds of the Sale of the Southshore Project, North Gwillimbury, Keswick, Town of Georgina, Ontario (the "Project")**

From the sum of \$103,641.48 that Robins is currently holding in its capacity as counsel to Diversified to the credit of the lien preserved through the registration of a Claim for Lien by Sunbelt on title to the Project lands as Instrument No: YR2795219, and the associated lien action, being Newmarket Court File No: CV-18-00135707-0000 (the "Action"), we hereby authorize and direct you to pay the sum of \$35,000.00 to Sunbelt, being the all-inclusive settlement amount, and the sum of \$68,641.48 to the Trustee, being the remainder, as agreed between Sunbelt and the Trustee, and this shall be your sufficient and irrevocable authority for doing so.

Dated this 19 day of May, 2021

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc.

Per:



Naveed Manzoor

"I have the authority to bind the corporation"

Sunbelt Rentals of Canada Inc. formerly
known as CRS Contractors Rental Supply
General Partner Inc.

Per:

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be 'C. Rehkopf'.

Connie Rehkopf

"I have the authority to bind the corporation"

Payout Statement - May 2021

Statement of Accrual: 230-240 Cameron Cres. Keswick On
 2221563 Ontario Inc.
 As at May 14, 2021

Year	Month	Date	Principal	Int Int	Int +Prin	Payments/ Costs	Total	Month O/s	Notes
2014	1	2014							
		Nov	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	1	
2015	2	Dec	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	2	
		Jan	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	3	
		Feb	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	4	
		Mar	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	5	
		Apr	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	6	
		May	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	7	
		Jun	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	8	
		Jul	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	9	
		Aug	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,500,000.00	10	
		Sep	4,500,000.00	45,000.00	4,545,000.00	- 45,000.00	4,545,000.00	11	
		Oct	4,545,000.00	45,450.00	4,590,450.00		4,590,450.00	12	
2016	1	Nov	4,590,450.00	45,904.50	4,636,354.50	136,350.00	4,772,704.50	13	136,350.00 Renewal fee: 3% of principal
		Dec	4,772,704.50	47,727.05	4,820,431.55		4,820,431.55	14	
		Jan	4,820,431.55	48,204.32	4,868,635.86		4,868,635.86	15	
		Feb	4,868,635.86	48,686.36	4,917,322.22		4,917,322.22	16	
		Mar	4,917,322.22	49,173.22	4,966,495.44		4,966,495.44	17	
		Apr	4,966,495.44	49,664.95	5,016,160.40		5,016,160.40	18	
		May	5,016,160.40	50,161.60	5,066,322.00		5,066,322.00	19	
		Jun	5,066,322.00	50,663.22	5,116,985.22		5,116,985.22	20	
		Jul	5,116,985.22	51,169.85	5,168,155.07		5,168,155.07	21	
		Aug	5,168,155.07	51,681.55	5,219,836.62		5,219,836.62	22	
		Sep	5,219,836.62	52,198.37	5,272,034.99		5,272,034.99	23	
		Oct	5,272,034.99	52,720.35	5,324,755.34		5,324,755.34	24	
2017	1	Nov	5,324,755.34	53,247.55	5,378,002.89	79,080.52	5,457,083.42	25	79,080.52 Renewal fee: 1.5% of principal
		Dec	5,457,083.42	54,570.83	5,511,654.25		5,511,654.25	26	
		Jan	5,511,654.25	55,116.54	5,566,770.79		5,566,770.79	27	
		Feb	5,566,770.79	55,667.71	5,622,438.50		5,622,438.50	28	
		Mar	5,622,438.50	56,224.39	5,678,662.89		5,678,662.89	29	
		Apr	5,678,662.89	56,786.63	5,735,449.52		5,735,449.52	30	
		May	5,735,449.52	57,354.50	5,792,804.01		5,792,804.01	31	
		Jun	5,792,804.01	57,928.04	5,850,732.05		5,850,732.05	32	
		Jul	5,850,732.05	58,507.32	5,909,239.37		5,909,239.37	33	
		Aug	5,909,239.37	59,092.39	5,968,331.76		5,968,331.76	34	
		Sep	5,968,331.76	59,683.32	6,028,015.08		6,028,015.08	35	
		Oct	6,028,015.08	60,280.15	6,088,295.23		6,088,295.23	36	
2018	1	Nov	6,088,295.23	60,882.95	6,149,178.19	90,420.23	6,239,598.41	37	90,420.23 Renewal fee: 1.5% of principal
		Dec	6,239,598.41	62,395.98	6,301,994.40		6,301,994.40	38	
		Jan	6,301,994.40	63,019.94	6,365,014.34		6,365,014.34	39	
		Feb	6,365,014.34	63,650.14	6,428,664.48		6,428,664.48	40	
		Mar	6,428,664.48	64,286.64	6,492,951.13		6,492,951.13	41	
		Apr	6,492,951.13	64,929.51	6,557,880.64		6,557,880.64	42	
		May	6,557,880.64	65,578.81	6,623,459.45		6,623,459.45	43	
		Jun	6,623,459.45	66,234.59	6,689,694.04		6,689,694.04	44	
		Jul	6,689,694.04	66,896.94	6,756,590.98		6,756,590.98	45	
		Aug	6,756,590.98	67,565.91	6,824,156.89		6,824,156.89	46	
		Sep	6,824,156.89	68,241.57	6,892,398.46		6,892,398.46	47	
		Oct	6,892,398.46	68,923.98	6,961,322.44		6,961,322.44	48	
2019	1	Nov	6,961,322.44	69,613.22	7,030,935.67	103,385.98	7,134,321.65	49	103,385.98 Renewal fee: 1.5% of principal
		Dec	7,134,321.65	71,343.22	7,205,664.86		7,205,664.86	50	
		Jan	7,205,664.86	72,056.65	7,277,721.51		7,277,721.51	51	
		Feb	7,277,721.51	72,777.22	7,350,498.73		7,350,498.73	52	
		Mar	7,350,498.73	73,504.99	7,424,003.71		7,424,003.71	53	
		Apr	7,424,003.71	74,240.04	7,498,243.75		7,498,243.75	54	
		May	7,498,243.75	74,982.44	7,573,226.19		7,573,226.19	55	
		Jun	7,573,226.19	75,732.26	7,648,958.45		7,648,958.45	56	
		Jul	7,648,958.45	76,489.58	7,725,448.03		7,725,448.03	57	
		Aug	7,725,448.03	77,254.48	7,802,702.51		7,802,702.51	58	
		Sep	7,802,702.51	78,027.03	7,880,729.54		7,880,729.54	59	
		Oct	7,880,729.54	78,807.30	7,959,536.83		7,959,536.83	60	
2020	1	Nov	7,959,536.83	79,595.37	8,039,132.20		8,039,132.20	61	
		Dec	8,039,132.20	80,391.32	8,119,523.53	450.00	8,119,973.53	62	450.00 ESC Report (Erosion & Sedimentation Control Report)
		Jan	8,119,973.53	81,199.74	8,201,173.26	150,350.00	8,351,523.26	63	150,350.00 ESC Report + Realty Tx payment (\$150,000)
		Feb	8,351,523.26	83,515.23	8,435,038.49	350.00	8,435,388.49	64	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Mar	8,435,388.49	84,353.88	8,519,742.38	350.00	8,520,092.38	65	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Apr	8,520,092.38	85,200.92	8,605,293.30	3,200.00	8,608,493.30	66	3,200.00 ESC Report+ Costs re Recommended Repairs silt fence
		May	8,608,493.30	86,084.93	8,694,578.23	350.00	8,694,928.23	67	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Jun	8,694,928.23	86,949.28	8,781,877.52	350.00	8,782,227.52	68	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Jul	8,782,227.52	87,822.28	8,870,049.79	350.00	8,870,399.79	69	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Aug	8,870,399.79	88,704.00	8,959,103.79	18,795.74	8,977,899.53	70	18,795.74 ESC Report+ Appraisal Reports
		Sep	8,977,899.53	89,779.00	9,067,678.53	350.00	9,068,028.53	71	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Oct	9,068,028.53	90,680.29	9,158,708.81	350.00	9,159,058.81	72	350.00 ESC Report (Erosion & Sedimentation Control Report)
2021	1	Nov	9,159,058.81	91,590.59	9,250,649.40	7,401.50	9,258,050.90	73	7,401.50 ESC Report+ Costs re Recommended Repairs silt fence
		Dec	9,258,050.90	92,580.51	9,350,631.41	350.00	9,350,981.41	74	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Jan	9,350,981.41	93,509.81	9,444,491.22	9,775.00	9,454,266.22	75	9,775.00 ESC Report+Costs re Project Due Dil gence Info
		Feb	9,454,266.22	94,542.66	9,548,808.88	350.00	9,549,158.88	76	350.00 ESC Report (Erosion & Sedimentation Control Report)
		Mar	9,549,158.88	95,491.59	9,644,650.47		9,644,650.47	77	
	6	Apr	9,644,650.47	96,446.50	9,741,096.98		9,741,096.98	78	
		May 14	9,741,096.98	44,835.73	9,785,932.71		9,785,932.71	79	

Add:

Protective Disbursements and Enforcement Administration Expenses		
Sale Administration and Property Management Expenses		58,413.45
Legals SR Law		13,254.05
Legals Robapp to May 25, 2021		74,093.80

Total Due and Payable as at May 14, 2021

9,931,694.01

Appendix 28:**July 13, 2021, Letter from Osler to Robbins Appleby**



July 13, 2021

Michael De Lellis
Direct Dial: 416.862.5997
MDeLellis@osler.com
Our Matter Number: 1189997

Toronto

Montréal

Calgary

Ottawa

Vancouver

New York

SENT BY ELECTRONIC MAIL

Dominique Michaud
Robins Appleby LLP
2600 120 Adelaide St. W.
Toronto, ON M5H 1T1
Email: dmichaud@robapp.com

Dear Sir:

Re: Notice of Sale under Mortgage dated January 24, 2019 (the “Notice”) issued by Diversified Capital Inc. (“Diversified”) to 2221563 Ontario Inc. (“Borrower”) and certain other parties with respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property” or “South Shore Project”)

As you are aware, we are counsel to FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018 in proceedings commenced under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended.

We are writing further to our previous correspondence to advise that the Trustee continues to have significant concerns with Diversified’s conduct in connection with the sale process and ultimate sale of the South Shore Project (the “**Sale**”), which was completed on May 13, 2021, at a sale price of \$13,000,000 (the “**Proceeds**”), as well as with various amounts claimed by Diversified from the Proceeds.

As you are also aware, the Trustee, on behalf of BDMC, administers three syndicated mortgage loans (collectively, the “**BDMC Loans**”) made to the Borrower that, prior to completion of the Sale, were secured by real property charges registered on title to the Property subordinate only to the Diversified Mortgage (as defined below). The aggregate amount owing under the BDMC Loans was \$41,073,368 as at the date of the Sale (comprised of \$29,242,025 of outstanding principal and \$11,831,343 of unpaid interest).

Prior to completion of the Sale, Diversified held a mortgage interest in the Property, which was registered on title on October 30, 2014 in the principal amount of \$4,500,000 as evidenced by the registration of instrument YR2209128 (the “**Diversified Mortgage**”).

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As set out in Diversified’s accounting letter dated May 25, 2021 (the “**Accounting Letter**”), Diversified claims an amount in excess of \$9.9 million from the Proceeds. Also as set out in the Accounting Letter, Diversified advised that, following the application of certain adjustments, the payment of certain property tax arrears and other costs related to the Sale, and payment of the amount claimed by Diversified, approximately \$2.4 million of the Proceeds would be available for distribution to subsequent encumbrancers, of which approximately \$610,000 is subject to a priority dispute between BDMC and a lien claimant. Accordingly, as at the date of this letter, only \$1,760,479.25 of the Proceeds has been distributed to the Trustee, on behalf of BDMC, which represents a return on the outstanding principal amount of the BDMC Loans of only approximately 6.0% (or approximately 4.3% of outstanding principal together with unpaid interest).

A priority mortgagee acting pursuant to a Notice of Sale under Mortgage is required to conduct a sale process honestly and in good faith and may not proceed “without caring whether or not the interests of the mortgagors [and any subsequent encumbrancers] are sacrificed”.¹ Further, where a priority mortgagee’s willful, reckless, negligent, careless, or other improper conduct is followed by a sacrifice of the interest of a subsequent encumbrancer and results in a loss, then the priority mortgagee “is answerable for the loss and must make it good.”²

Throughout the conduct of the sale process in respect of the Property and despite repeated requests by the Trustee to work collaboratively in furtherance of a sale, Diversified failed to act honestly and in good faith and breached the duty that it owed to BDMC by consistently willfully, recklessly, negligently, and/or carelessly disregarding the interests of BDMC (and the investors in the BDMC Loans), the fulcrum creditor in this matter, while interest continued to accrue under the Diversified Mortgage, including (without limitation) by:

- (a) ignoring numerous attempts by the Trustee to contact Diversified, including by phone, email, and text message, during the approximately 18-month period between January 24, 2019 (i.e., the date of the Notice) and July 2020;
- (b) refusing to provide pertinent and readily accessible information regarding the sale process to the Trustee notwithstanding the Trustee’s repeated requests for same and confirmation that it would sign a confidentiality agreement;
- (c) failing to select a real estate broker in a timely fashion;
- (d) failing to list the Property for sale for more than 22 months following issuance of the Notice;

¹ *Canadian Imperial Bank of Commerce v Haley* (1979), 100 DLR (3d) 470 (NBCA) at para 18. See also *Cuckmere Brick Co. Ltd. et al v Mutual Finance Ltd.*, [1971] 2 AER 633 (EWCA) (cited favourably in *Siskind v. Bank of Nova Scotia* (1984), 46 OR (2d) 575 (ONSC) [*Siskind*] at paras 20 and 23) and *Lay v. 1222055 Ontario Inc.* (2005), 142 ACWS (3d) 169 (ONSC) [*Lay*] at paras 30 to 32.

² *Lay*, *supra* note 1 at para 32; see also *Siskind*, *supra* note 1 at para 34.

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- (e) failing to consistently market the Property, including disregarding various inquiries received in December 2019 and January 2020 from parties that had expressed an interest in purchasing the Property;
- (f) accepting a highly conditional offer in December 2020 in respect of a transaction that was ultimately not completed, notwithstanding that at least one unconditional offer had also been submitted for the Property and that the Trustee had advised that no agreement(s) of purchase and sale with respect to the Property should be executed without first engaging with the Trustee;
- (g) failing to provide a payout statement prior to the completion of the Sale despite repeated verbal and written requests over several months, which further constitutes a breach of Diversified's obligations under the *Mortgages Act*;
- (h) failing to provide the Trustee with any opportunity to review, assess, and verify the amounts that Diversified intended to claim from the Proceeds despite the Trustee's request that no such amounts should be disbursed from Diversified's counsel's trust account to Diversified prior to such a review taking place; and
- (i) failing to act on the interest payment default under its mortgage for more than five years.

In the Trustee's view, and in particular given the high level of interest expressed in the Property, the total length of any process to sell the Property should have been approximately six months. A six-month process would have provided sufficient opportunity to obtain one or more appraisals, solicit listing proposals from multiple realtors, select and engage a realtor, list the property for sale, engage in negotiations with interested parties, execute an agreement of purchase and sale, and close a transaction. In contrast, Diversified failed to act for extended periods, culminating in a process that took approximately 28 months to complete, to the direct detriment of the investors in the BDMC Loans when at all times Diversified knew that it would be paid out in full. As set out in Appendix 7 to the Accounting Letter ("**Appendix 7**"), the Diversified Mortgage accrued (and Diversified ultimately paid to itself from the Proceeds) interest totaling approximately \$4.7 million, of which approximately \$1.87 million resulted from the undue delays and was accrued during the period commencing six months after the issuance of the Notice up to the completion of the Sale (the "**Interest due to Delay**").

Further, based upon the Trustee's review of Appendix 7 and the terms of the Diversified Mortgage, it remains unclear to the Trustee upon what basis Diversified believes that:

- (1) approximately \$410,000 of renewal fees, which are not referenced in the Diversified Mortgage or the standard charge terms incorporated by reference therein, is chargeable thereunder and secured thereby (together with all interest charged thereon, the "**Renewal Fees**"); and
- (2) interest accruing under the Diversified Mortgage was to be calculated using monthly compounding as (i) the interest rate specified in such mortgage is stated without any reference to monthly compounding, and (ii) the standard charge terms incorporated therein provide for compounding interest after default "at the rate provided for in the Charge" without any reference to monthly compounding

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(all additional interest charged by Diversified under its mortgage resulting from monthly compounding, the “**Interest due to Compounding**” and collectively with the Interest due to Delay and the Renewal Fees, the “**Disputed Amounts**”).

Based on the information currently in the Trustee’s possession, the Trustee claims a proprietary interest in at least, and among other things, the Disputed Amounts. We note that it is well established that a priority mortgagee owes a subsequent encumbrancer a fiduciary duty in respect of any surplus obtained following a sale,³ and Diversified must act accordingly with respect to the Disputed Amounts.

The Trustee requires the following documents and additional information to assess Diversified’s claim in respect of the Disputed Amounts and various other amounts that are set out in Appendix 7 (collectively, the “**Required Information**”):

- (a) a copy of any loan commitment(s) or similar agreement(s) between Diversified and the Borrower relating to the Diversified Mortgage;
- (b) a copy of any cost of borrowing and disclosure statement(s) provided to the Borrower relating to the Diversified Mortgage;
- (c) documentation supporting each of the expenses specified in Appendix 7, including:
 - (i) the \$150,000 payment on account of property taxes;
 - (ii) the \$58,413.45 payment in respect of “Sale Administration and Property Management Expenses” as well as a listing of the recipient(s) thereof and the specific activities undertaken;
 - (iii) expenses incurred in connection with the Erosion & Sedimentation Control Report;
 - (iv) appraisal fees;
 - (v) expenses incurred in connection with fence repairs; and
 - (vi) expenses described as “Project Due Diligence Info” costs;
- (d) the basis upon which Diversified believes that:
 - (i) the Renewal Fees are chargeable and recoverable under the Diversified Mortgage or otherwise; and
 - (ii) interest chargeable under and secured by the Diversified Mortgage was to be calculated using monthly compounding; and
- (e) copies of the invoices submitted by Schneider Ruggiero Spencer Milburn LLP and Robins Appleby LLP to Diversified that were paid out of the sale proceeds.

Receipt of the Required Information is necessary for the Trustee to discharge its Court-ordered mandate of protecting members of the investing public with an interest in the BDMC mortgages previously registered on title to the Property. Accordingly, please provide the Required Information as quickly as possible and in any event within ten days

³ *Lay, supra*, note 1, para 32

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of the date of this letter, failing which the Trustee will consider all options available to it in the circumstances, including taking affirmative steps to compel the disclosure of such information and documents and seeking costs in connection with same on a full indemnity basis.

This letter is being provided under an express reservation of all of the Trustee's rights, remedies, and recourses available at law, in equity or otherwise, including with respect to all amounts claimed by Diversified under its mortgage, including amounts in excess of the Disputed Amounts, the conduct of the sale process in respect of the Property, and any failures by Diversified to provide the information that the Trustee has requested to date, and nothing contained herein should be interpreted as a waiver of any right or an admission of any kind whatsoever.

Yours very truly,



Michael De Lellis

cc. Naveed Manzoor, *FAAN Mortgage Administrators Inc.*
Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
George Benchetrit, *Chaitons LLP*

Appendix 29:**August 26, 2021, Letter from Robbins Appleby to Osler**



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Dominique Michaud
T. 416.360.3795
E. dmichaud@robapp.com
F. 416.868.0306

Delivered by: E-mail
File No.: 2000769

August 26, 2021

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON M5X 1B8

Attention: Michael De Lellis

Dear Mr. De Lellis:

Re: Diversified Capital Inc. ("Diversified") Mortgage and Power of Sale of the property located at 230-240 Cameron Crescent, Keswick, Ontario (the "Property")

We are in receipt of your letter dated July 13, 2021 (the "**July 13 Letter**") where you write as counsel for FAAN Mortgage Administrators Inc. ("**FAAN**") in its capacity as Court-appointed trustee (in such capacity, the "**Trustee**") of Building & Development Mortgages Canada Inc. ("**BDMC**").

Allegations of Improvident Sale

You will not be surprised to learn that for the reasons previously addressed in telephone conversations and earlier written communications, we deny all of the allegations contained in the July 13 Letter. Diversified conducted a robust sale process which resulted in the sale of the Property at an amount that far exceeded the appraised fair market value of the Property. At all material times, Diversified acted in good faith and in accordance of its obligations as a mortgagee exercising its rights under power of sale.

Any allegation that Diversified acted improvidently is without merit. Specifically, FAAN has, *inter alia*, alleged that the timing of the sale of the Property was inappropriate because it did not occur for 28 months after Diversified first began to commence Power of Sale proceedings. This allegation is baseless.

The case law is clear that a mortgagee is entitled to enforce a default at the time of its own choosing. "The general rule is that mortgagees can act on a matured power of sale at their leisure, as long as the sale is reasonable at the time that it occurs. Timing itself is not indicative

of a lack of reasonableness."¹ This allowed for Diversified to provide the mortgagor the opportunity as requested to make other arrangements that would allow the project to be built to the benefit of all the stakeholders.

Diversified owes no special duties to FAAN beyond those owed to the mortgagor and subsequent mortgagees. In fact, the subsequent mortgagee "stands in the same position as the mortgagor" vis-à-vis the duties owed to it.²

In *Manufacturers Life Insurance Co. v. Huang & Danczkay Properties*, the Court held that a mortgagee was "entitled to exercise a power of sale whenever it so chose, even if that moment was unpropitious."³ In this case, the mortgagor alleged that the mortgagee sold the property too soon, instead of developing it and selling it at a later date. The Court held that the mortgagee was not under any duty to hold on to the property and to exercise its power of sale for its own purposes at the time of its choosing.

Diversified decided to enforce its security in or around September 2020 and took all reasonable precautions to obtain the true market value of the Property at the date on which Diversified decided to sell it.⁴

The case law on point emphasizes that perfection is not required on the part of the mortgagee, that a mortgagee will not be adjudged to be in default unless it is plainly on the wrong side of the law, and that FAAN would have to demonstrate that a higher price would have been obtained but for the breach of any duties.⁵ It is noteworthy that in this case, FAAN benefitted from the rising real property market in recent years which ultimately resulted in a greater recovery for the subsequent mortgagees than if the Property was sold earlier.

Further, FAAN was entitled to pay out Diversified for the amounts owing on the Diversified Mortgage and to assume the position of the first mortgagee at any time after Diversified issued its Notice of Sale. If FAAN was dissatisfied with the manner in which Diversified was exercising its power of sale, and if it felt that the sale was proceeding too slowly or too quickly, its "recourse was to pay the balance owing, assume Diversified's position, and then exercise the power of sale itself. This was made clear in *AGF Trust Co. v. Clark* where the Court stated:

*A mortgagee who causes unwarranted delay in effecting a sale in a declining market causes no harm to either the mortgagor or any guarantor because either of them, by honouring their respective legal obligations to the mortgagee, is entitled to assume the mortgagee's position and then exercise the power of sale himself. The consequences of any undue delay are, therefore, within his control, and are his direct responsibility.*⁶

¹ *Manufacturers Life Insurance Co. v. Huang & Danczkay Properties*, [2003] O.T.C. 717 (S.C.), at para. 39 [Huang]; [Manufacturers Life Insurance Co. v. Granada Investments Ltd.](#) (2001), 150 O.A.C. 253 (C.A.), at paras. 50-54.

² [Siskind v. Bank of Nova Scotia](#) (1983), 46 O.R. (2d) 575 (H.C.), at para. 11.

³ *Huang*, at para. 41.

⁴ *Oak Orchard Developments Ltd. v. Iseman*, 1987 CarswellOnt 2138 (H.C.).

⁵ *Ibid.*

⁶ *AGF Trust Co. v. Clark* (1993), 36 R.P.R. (2d) 129 (Ont. Gen. Div.), at paras. 10-11.



Lastly, any indulgences for time provided by Diversified to the Borrower to accommodate their attempts to restructure the Project and refinance the Diversified mortgage are specifically contemplated in the various mortgage documents and subordination and standstill agreements entered into with the subsequent mortgagees.

Response to Information Request

In response to FAAN's information request set out on page 4 of your July 13 Letter, we advise as follows:

- please see the enclosed Commitment Letter dated October 2, 2014 (the "**Commitment Letter**") for the Diversified Mortgage;
- please see the enclosed documentation supporting the expenses set out in Appendix 7 of the Accounting Letter;
- please see the enclosed letter dated July 27, 2015 which sets out the basis for which Diversified was entitled to the Renewal Fees;
- Section 6 of the Standard Charge Terms provides for interest to be calculated on a monthly compounding basis; and
- please see the enclosed redacted copies of the invoices submitted by Schneider Ruggiero Spencer Milburn LLP and Robins Appleby LLP in respect of the Mortgage.

The amounts charged under Diversified Mortgage were all properly incurred and added to the indebtedness. Please be advised that should FAAN decide to take steps to challenge these amounts or pursue the baseless allegations set out in the July 13 Letter, Diversified will strenuously defend its conduct and seek costs of defending these allegations against FAAN on a complete indemnity basis.

If you have any questions, please contact me at the above coordinates.

Yours very truly,

ROBINS APPLEBY LLP

Per:

Dominique Michaud

Dominique Michaud

DM:sem

Encl.

cc: Jeremy Dacks – jdacks@osler.com
Naveed Manzoor – naveed@faanadvisors.com
George Benchetrit – george@chaitons.com

Russ Giannotta, C.P.A. C.A.

DIVERSIFIED *

President, Asset Management
Capital Management Services
1243 Islington Ave Suite 701
Toronto, Ontario
Canada M8X1Y9
Tel: (416) 364-3396
Fax: (416) 364-9608

October 2, 2014

2221563 Ontario Limited
C/o Mr. Vince Petrozza
25 Brodie drive Unit 1
Richmond Hill
L4B3K7

Re: First Mortgage Financing - 230-240 Cameron Street, Keswick Ontario – The Crates Vacant Waterfront Properties at Cameron Crescent

Further to our discussion regarding our providing the above noted Loan funds we confirm that DIVERSIFIED CAPITAL INC. (hereinafter referred to as "Diversified") is pleased to provide a commitment to provide a first mortgage loan for the purposes of acquiring the above noted property based on the following terms and conditions:

BORROWER:	2221563 Ontario Limited
GUARANTORS:	Corporate and personal covenants and guarantees as the case may be of the following: Vince Petrozza, Jawad Rathore, shareholders of the Borrower The Guarantors jointly and severally unconditionally guarantee payment to the Lender of all monies hereby secured with no exceptions and no requirements for the Lender herein to pursue enforcement proceedings against the Borrower herein first, and do further agree to postpone to and in favour of the Lender all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time hereafter due or owing from the Borrower to the Guarantors.
LENDER:	Diversified Capital Inc.
SECURED / PROPERTY:	230-240 Cameron Crescent, Keswick Ontario – The Crates Development Lands, to be confirmed by the Lender's solicitor
TYPE OF LOAN:	Fixed term Loan, which can be extended as may be agreed upon between the Lender and the Borrower.
LOAN AMOUNT:	1 st Mortgage Loan of 4,500,000 (inclusive of an interest reserve for the term of the loan).
PURPOSE:	To refinance the existing mortgage on the property with the balance as operating capital towards hard costs of development
TERM:	One (1) year
INTEREST RATE:	@ 12.0 % per year

PAYMENTS: Monthly, interest only

INTEREST
RESERVE: TBD 450,000

SCHEDULED
FUNDING:

All funds to be funded through one advance or as may be further agreed to between the Lender and Borrower, upon on the execution of this Commitment Letter and upon the Lender receiving from the Borrower and Guarantors all of the documentation required by the Lender or the Lender's solicitor, pursuant to this Letter; the Lender, being satisfied with this documentation in its sole and unfettered discretion; the execution of all security documentation provided herein, including the Lender's standard loan terms and any other documentation that may be required by the Lender or by the Lender's solicitors along with the Borrower's corporate solicitor's opinion letter that all the security documentation required hereunder has been properly authorized and executed and all of the obligations of the Borrower and the Guarantors are valid and binding and enforceable and further that all documents were executed in the office of the Borrower's solicitor and all of the parties are who they purport to be.

The Lender shall not be obligated to make any loan advance unless all terms and conditions of this Commitment Letter have been complied with to the Lender's satisfaction.

PREPAYMENT
PRIVILEGE:

This is a closed mortgage. Notwithstanding the aforementioned the loan may be paid out in full at any time after six (6) months, one month's written notice and payment of one month interest bonus.

SECURITY:

The Lender shall be provided with the following as security for the Loan and all other obligations of the Borrower to the Lender.

- ✓ (a) First freehold mortgage and charge registered against title to the Property;
- ✓ (b) Security interest (by way of Chattel Mortgage, The Lender's form of General Security Agreement or other instrument required by the Lender or its solicitors) having first priority over any and all personal property now or hereafter owned by the Borrower, and any and all property used in connection with or arising out of the Property, including without limitation, all inventory, machinery, apparatus, plant, furniture, fixtures, permit/ construction drawings, plans, permits, and vehicles now or hereafter situate at or used in connection with the Property, owned by the Borrower or Guarantors, all book debts, cash deposits whether at a financial institution or otherwise, and accounts now or hereafter due, owing or accruing from the Property, all books, records, financial statements, and other documents of title, all contractual rights, insurance claims, goodwill and all income, monies, receipts and profits of any nature or kind whatsoever now or hereafter arising; such charge shall also include the Lender's standard Receivership clause, including the right of the Lender to appoint any person or company to be a Receiver of all or part of the charged Property and such Receiver shall have all the power of the Lender hereunder and shall have power to carry on the business of the Borrower;

✓ (c) The Lender's form of, unconditional and unlimited covenant and guarantee of all debts and liabilities on a joint and several basis as principal debtor and not as surety owing by the Borrower to the Lender signed by Mr. Vince Petrozza and Mr. Jawad Rathore;

(d) The Lender's form Postponement and Assignment to the Lender of all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time hereafter due or owing from of the Borrower to Mr. Vince Petrozza and Mr. Jawad Rathore and or any other shareholders or any related parties;

Assign Agts
~~Postponement~~

✓ (e) Assignment of Insurance Proceeds in accordance with the provisions set forth herein;

(f) Assignment of the Borrower's rights and interest (but not the Borrower's obligations) in all municipal approvals and agreements and documents, permits, construction and other contracts, project plans, specifications, working drawings, budget and schedules for the provision of materials, equipment and services to the Property in connection with the project and redevelopment of the Property;

(g) Such other documents, instruments, agreements or things required or contemplated by this Commitment or any other legal documentation reasonably considered necessary by the Lender's solicitor;

x 2 ✓ (h) Hypothecation and Pledge of all shares of the Borrower;

✓ (i) The Lender's solicitor shall obtain title insurance at the cost of the Borrower;

✓ (j) Assignment of Interest in Prepaid Levies and other deposits;

[(k) Assignment of any interest reserve contemplated herein;] ?

(l) Assignment of the Borrower's right, title and interest in the Letters of Credit filed with the Town/City of Georgina/ Keswick and other municipal, provincial authorities and agencies and any amounts on deposit with the Borrower's bank or other financial institution which provide security for the Letters of Credit. In this regard the Lender shall have a first priority security interest and the Borrower shall provide such further documentation that the Lender and its counsel require including an acknowledgment from the Borrower's bank that the Lender is entitled to delivery of these funds in accordance with the provisions herein and directions to all appropriate parties;

from time to time

not for
request of
the lender

(m) PPSA registrations;

✓ (n) Negative Pledge by the Borrower and Guarantors to not repay any shareholder loans, redeem shares, pay out dividends to the principals of the Borrower until the loan is paid in full;

(o) Such other documents, instruments, agreements or things required or contemplated by this Commitment or any other legal documentation reasonably considered necessary by the Lender's solicitor;

- ✓ (p) Assignment of the Borrower's rights and interest (but not the Borrower's obligations) under all Agreements of Purchase and Sale whereby the Borrower or persons on its behalf have sold the Property or any part thereof to *bona fide* arm's length purchasers thereof for value, executed true copies of such Agreements of Purchase and Sale shall be submitted to the Lender as set out above and shall be subject to the Lender's approval;
- ✓ (q) Covenant from the Borrower and Covenantors not to withdraw equity from the Project;
- (r) Such other documents, instruments, agreements, things or security required or contemplated by this Commitment or as counsel may advise is reasonable having regard to this type of transaction.

**ADDITIONAL
SECURITY:**

- ✓ 1. General assignment of rents and any income or profits arising from or in connection with the Property.
- ✓ 2. Assignment of all insurance policies relating to the Property.
- 3. Evidence of Commercial General Liability Insurance with the Lender noted as additional insured and loss payee satisfactory to the Lender.
- ✓ 4. Noxious Substances Warranty and Indemnity

**LOAN APPLICATION
FEE:**

Waived

**COMMITMENT
FEE:**

1.0% of the Principal amount of the Loan paid upon the execution of this Commitment.

**LOAN
SOURCING FEE:**

2.0% of the Principal amount of the Loan

The Borrower and Guarantors acknowledge and agree that forthwith upon acceptance of this Commitment, the Lender shall be deemed to have earned the Commitment Fee and Loan Sourcing Fee representing compensation to the Lender for its efforts and expenditures by its officers, agents and employees in the review and study of documentation pertaining to this transaction, review of appraisals, credit reports, financial statements and other data and physical inspections of the subject matter of the Security Documents. The Borrower and the Guarantors hereby irrevocably direct the Lender's solicitors to pay from the advance on closing.

If for any reason directly attributable to the Borrower's actions, the transaction contemplated herein is not completed, all fees, including, the Commitment Fee and Loan Sourcing Fee, legal fees, disbursements and all applicable taxes shall become due and payable, and the Lender may recover the same from the Borrower and the Guarantors as liquidated damages and not as a penalty.

**LEGAL & PROFESSIONAL
FEES:**

All legal and professional fees including applicable taxes for arranging and administering this Loan are to be to the account of the Borrower.

CLOSING DATE: As soon as may be agreed upon.

CONSTRUCTION: The loan will be in strict compliance with the Construction Lien Act of Ontario. The Charge shall contain provisions making the Borrower liable for all of the Lender's and Brokers fees, costs and expenses, of any kind whatsoever, arising from any claim under the Construction Lien Act of Ontario.

If any construction or other lien (hereinafter called the "Lien") is filed against or registered on title to the Charged Property, pursuant to the Construction Lien Act of Ontario or any legislation thereto, the Borrower shall be responsible for all costs and expenses incurred by the Lender by reason of filing or registration of the Lien (including legal costs and disbursements on a solicitor and client basis), which costs and expenses shall be added to and deemed to be part of the Lien, in the Lender's own and absolute discretion, all at the cost and expense of the Borrower, including the retention of solicitors by the Lender, the settlement of any claims made pursuant to the Lien and / or the defence against any actions, applications and / or other legal proceedings commenced by the claimant under the Lien. The Borrower acknowledges and agrees that no steps taken by the Lender to deal with the Lien as aforesaid shall constitute or be deemed to be a waiver or condoning by the Lender or the use of any monies secured by this Charge in contravention of this provisions contained herein.

(The Lender shall not be responsible or liable to the Borrower or to anyone else where either there has been insufficient work done or material supplied to the Charged Property, or that there have been insufficient funds held back to complete the contemplated construction.

The Lender shall have no liability whatsoever to the Borrower or to anyone else as a result of advances made by the Borrower relying in whole or in part upon such persons or entities providing services including, engineers, or architects, or similar professionals.)

**REPRESENTATIONS
& WARRANTIES:**

The Borrower represents that it is the registered and beneficial owner of the Charged Property as herein before described or will be so at the time of the advance of funds. It is understood the Lender has entered into this agreement based on representations made by the Borrower and, if at any time, there is or has been any material discrepancy or inaccuracy in any written or oral information, statements, or representations heretofore or hereafter made or furnished to the Lender by or on behalf of the Borrower or Guarantors concerning the security or the Borrower's or Guarantors' financial condition and responsibility, then the Lender shall be entitled in their sole discretion to withdraw or cancel any obligation hereunder and decline to advance funds, and in addition to forfeiture of all Lender's fees, the Borrower shall be liable to pay all brokerage fees, legal fees and disbursements as herein before recited.

The Borrower and Guarantors warrant and represent, upon which warranty and representation the Lender is relying, that the Borrower's obligation to complete the within transaction is not dependent upon any condition whatsoever, and that Lender assumes no obligation to assist the Borrower to complete the transaction in any way, except to make available the funds contemplated by this agreement or as is specifically elsewhere contained in this agreement.

The Borrower represents and warrants the following:

- (a) It is a corporation validly incorporated and subsisting under the laws of Ontario, and that it is duly registered or qualified to carry business in all jurisdictions where the character of the properties owned by it or the nature of its business transacted makes such registration or qualification necessary;
- (b) The execution and delivery of this agreement has been duly authorized by all necessary actions and does not violate any law or any provision of its constating documents or by-laws or any unanimous shareholders' agreement to which it is subject, or result in the creation of any encumbrance on its properties and assets except as contemplated hereunder; and
- (c) The Borrower and its subsidiaries (if applicable) have remitted or paid all Potential Prior Ranking Claims which are due and payable as of the date of this agreement, except for any claims that have been disclosed to and accepted by the Lender prior to closing.
- (d) That all information contained in the documentation provided to the Lender by or on behalf of the Borrower (including information provided by any of the Guarantors) is now, or if it relates to the future will be correct in all material respects.
- (e) That the Borrower has full power and capacity to enter into this commitment and to complete the mortgage Loan contemplated by this transaction contemplated herein.
- (f) That all contractors, subcontractor, service providers have been paid in full for work provided to date.
- (g) That there are no potential claims, outstanding work orders, or potential deficiencies or contravention of any building codes with the Project or work completed thereon.

COVENANTS:

The Borrower agrees:

- (a) To pay all sums of money when due under this agreement;
- (b) To give the Lender prompt notice of any breach of covenant or condition of the within agreement and or the Agreement of Purchase and Sale or any event which, with notice or lapse of time or both, would constitute breach;
- (c) To file material tax returns which are or will be required to be filed, to pay or make provision for payment of all material taxes (including interest and penalties) and other Potential Prior-Ranking Claims including the timely remittance of all employee source deductions and any other taxes which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (d) Not to dispose of shares of any of the Borrower company or any of its subsidiaries;

- (e) Not to grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest, including a purchase money security interest, or other encumbrance affecting any of its properties, assets or other rights;
- (f) Not to sell, transfer, convey, lease or otherwise dispose of any part of its property or assets, without the prior written consent of the Lender, which may be withheld at the Lender's sole and unfettered discretion;
- (g) Not to directly or indirectly, guarantee or otherwise provide for, on a direct or indirect or contingent basis, the payment of any monies or performance of any obligations by any third party except as provided herein;
- (h) To give the Lender immediate written notice of any intended change in the ownership of shares;
- (i) To place, keep and maintain insurance on the Property and all improvements thereon, in such amounts and with such deductibles as would be carried by prudent owners of similar projects. The types of coverage, form, and content of such insurance policies shall be subject to the approval of the Lender, acting reasonably;

The Borrower and Guarantors covenant with the Lender to pay all insurance premiums, for all insurance coverage when such premiums are due and payable, and to maintain such insurance from the execution date of this agreement until such time that the Borrower remains liable in its capacity as owner of the Property or project lands.

The Borrower and or the Guarantors shall notify the Lender in writing by registered mail at least thirty (30) days prior to the cancellation thereof of the above noted policies. The Borrower shall furnish to the Lender standard certificates of insurance and shall provide written evidence of the continuation of such policies, not less than ten (10) days prior to their respective expiry dates.

- (j) Not to change its name or merge, amalgamate or consolidate with any other corporation; and
- (k) To comply with all applicable environmental laws and regulations; to advise the Lender promptly of any Action Requests or Violation Notices (as such terms are defined under the Environmental Protection Act of Ontario) received concerning any of the Borrower's property; and to hold the Lender harmless for any costs or expenses which it incurs for any environmental-related liabilities existent now or in the future with respect to the Borrower's property.
- (l) To consent herein to such credit investigations as the Lender may deem necessary.
- (m) That the Borrower and Guarantors have not withheld any information relating to the Project, the Borrower and the Guarantors which may affect the Lender's decision to complete this transaction.
- (n) To provide an acknowledgement, covenant and authorization to the Lender to disclose all information relating to the Project in a timely manner as requested by the Lender and authorize herein disclosure by consultants, contractors, subcontractors, and City officials of any

information required or deemed necessary throughout the term of the Loan.

**FAILURE TO
PAY ON
MATURITY:**

In the event that the Borrower fails to repay the principal and any interest outstanding on the Loan Maturity Date or any renewal thereof agreed to by the Lender, the Lender may at its sole discretion, extend the mortgage for a period of one (1) month from the original Loan Maturity Date or any renewal thereof agreed to by the Lender, at an interest rate equal to 25% per year, calculated and payable monthly. In the event that the Loan has not been repaid or renewal has not been finalized within this one (1) month period, then there will be no further extensions, and the Lender may exercise its remedies under the Security. The interest rate will be applicable on the first (1st) day of the month in which the Loan matures. An Extension Fee of 3% of the outstanding principal shall be added to the principal balance if this extension provision is utilized.

All other terms and covenants under the existing mortgage and charge shall continue to apply. The mortgage and charge may be paid out in full on the Loan Maturity date or any renewal thereof agreed to by the Lender, or any time during the one (1) month extension period without notice bonus or penalty, other than payment of the Extension Fee and applicable discharge fees as hereafter set out.

NON-MERGER:

The provisions of this agreement shall not merge with any security given by the Borrower to the Lender, but shall continue in full force for the benefit of both of the parties hereto.

**CONDITIONS
PRECEDENT TO
FUNDING:**

The Lender shall not be required to advance funds until all of the following requirements have been met to the Lender's satisfaction:

1. Receipt by the Lender of a properly executed copy of this agreement; The Lender being satisfied that the Borrower has good and marketable title to the assets and real property contemplated as security under this agreement, subject only to permitted encumbrances; the Lender having received all the Security Documents provided for in this letter duly authorized, executed and delivered and registered or recorded wherever required by law; and no event having occurred which is an event of default under this letter or the Security Documents or which would be an event of default but for the giving of notice or lapse of time or both.
2. Receipt by the Lender of the within stipulated Security in form and substance acceptable to the Lender, together with such corporate authorizations and legal opinions and other security documentation as the Lender or its solicitors may require;
3. The Borrower having provided an up-to-date plan of survey by a professional land surveyor satisfactory to the Lender which indicates the boundaries and dimensions of the Property, the location of any buildings and other improvements, as well as encroachments, rights of way and easements.
4. Evidence satisfactory to the Lender that the Property, including existing improvements, complies with all zoning requirements, by-laws, restrictions and other legal and governmental requirements and that all the necessary building permits have been issued.

5. Title to the Charged Property must be satisfactory to the Lender and to its Solicitors. Also, the zoning and use of all buildings, structures, erections and proposed improvements on the Charged Property secured must be in strict conformity with all applicable laws, by-laws, codes and regulations of any government and other authority having jurisdiction.
6. Receipt from the Borrower of a soils test report (load bearing capacity), by an acceptable professional engineer acceptable to the Lender, demonstrating to the satisfaction of the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, accompanied by a reliance certificate acceptable to the Lender, in its sole and unfettered discretion.
7. Receipt from the Borrower of a Phase 1 environmental audit report, from a firm approved by the Lender confirming that there is no evidence of contamination, environmental hazards and recommending that no further action need be taken or will provide evidence of a remediation plan that will leave the site environmentally acceptable to the relevant Provincial and Federal Agencies with all costs of to be borne by the Borrower and Guarantors, acceptable to the Landlord in its sole and unfettered discretion. If accepted by the Lender, the work required to be done under any such remediation plan shall be commenced and completed within forty-five (45) days of the advance of funds under this loan, failing which the loan will be deemed to be in default.
8. Receipt and satisfactory review of a personal net worth statement and /or financial statement(s) from the Borrower and each of the Guarantors, duly signed and witnessed, acceptable to the Lender in its sole and unfettered and absolute discretion. The Lender may terminate this Agreement to Finance, by written notice to the Borrowers, if in its sole discretion it is not satisfied with the financial standing of the Developer and or the Guarantors. The Borrower and all Guarantors acknowledge receipt of notice that usual credit and personal enquiries may be made at any time in connection with the credit hereby applied for and consent to disclosure of any such information to the Lender and any other credit grantors or to any consumer reporting agency.
9. The Lender shall have the irrevocable right to erect a sign on the Property, at its own expense indicating it has provide the financing on the project during the period of financing.
10. In the event of the Borrower selling, transferring or conveying the Property to the or its rights therein to a purchaser, transferee, or grantee, not approved by the Lender, all monies outstanding, together with any accrued or unpaid interest there on and any other amounts then due under the Commitment or the Security, shall become due and payable.
11. Receipt of a copy of the detailed final development budget, along with construction schedule, accompanied by permit drawings, for review and acceptance by the Lender in its sole and unfettered discretion.



12. Receipt of a copy of a detailed Statement of Costs in place representing equity in the Project, and evidence of the same satisfactory to the Lender in its sole and unfettered discretion.
13. The Borrower shall provide the premium for Title Insurance for the Property.
14. Such other acts having been done (including executing documents, providing opinions or supplying evidence) as the Lender or its Solicitor requires.

CANCELLATION/
DEFAULT:

The Lender shall be entitled to terminate this commitment and to declare the unpaid principal and accrued interest and all other amounts payable by the Borrower, due and payable on the occurrence of any of the following events of default;

1. if any representation or warranty set forth in this letter is incorrect in any material respect;
2. if the Borrower fails to perform any of its obligations under this commitment or under any Security Document specified in this letter or under any other indebtedness or liability or any other credit or loan agreement to which the Borrower is a party or not;
3. if the Borrower and or Guarantors become bankrupt (voluntarily or involuntarily) or become subject to any proceeding seeking liquidation, rearrangement, relief of creditors;
4. if a receiver is appointed over any of the Borrower's or Guarantors' property or undertaking;
5. if encumbrancers shall take possession of any property of the Borrower and or the Guarantors; or
6. if any material adverse change occurs in the sole opinion of the Lender, in the financial condition of the Borrower and or of the Guarantors, the proposed redevelopment, or the risk associated with the loan; or
7. if the Borrower fails or is unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this Commitment Letter within the time indicated for such compliance; or
8. if the Borrower or Guarantors fail or refuse to execute any documentation requested by the Lender as it relates to this transaction or to deliver such documentation to the Lender;
9. if the Borrower fails to accept the funds when advanced.
10. The Borrower and Guarantors expressly agree that no additional financing or encumbrances shall be registered against the properties/security. Any additional encumbrances registered shall be deemed a default under the terms of the loan.
11. It is a condition of this financing that all existing mortgages payments are paid to date and that the mortgages are in good

standing on or before the date of funding and it is further agreed that the Borrower shall remain current at all times with any and all interest payments and that all the existing mortgages shall be kept in good standing throughout the term of loan, failure to do so shall be deemed a default on behalf of the Borrower under the terms of this Loan.

12. It is a condition of this financing that all realty taxes and other levies are paid to date, or to be paid in a manner acceptable to the Lender on or before the date of funding and or thereafter and it is further agreed that the Borrower shall remain current at all times with any and all realty tax payments throughout the term of loan failure to do so shall be deemed a default on behalf of the Borrower under the terms of this Loan. The Borrower shall provide evidence of payment as taxes fall due.

If there is a non monetary default with respect to any of the terms and conditions herein or on any other charge on the Security, that is not remedied within ten (10) business days, or monetary default, that is not remedied within five (5) business days from the date of default, then this Loan will be deemed to be in default. The Borrower and Guarantors irrevocably herein appoint the Lender with the Power of Attorney allowing the Lender to take all necessary steps to protect its interests in the Security as provided for in this Agreement, including its interest in the Agreement of Purchase and Sale and to pursue the actualization and entitlement to any and all unpaid, principal amounts and interest payable by the Borrower, deemed due and payable on the occurrence of any default; either by way of disposition of the Property or fulfillment of the Borrower's obligations under the Agreement of Purchase and Sale. With the exception of any default resulting from the failure to pay upon demand or upon expiry in which case default is deemed

ENVIRONMENTAL REPRESENTATION:

The Borrower warrants and represents, covenants and agrees with the Lender (which representations, warranties, covenants and agreements shall survive satisfaction or release of the security for the Loan or extinguishment of the Loan that in the event or its nominee becomes owner of the property upon default) that:

The Borrower and Guarantors will indemnify and hold harmless each of the Lender and their respective directors, officers, employees and agents in respect of any costs, losses, damages, expenses, judgements, suits, claims, awards, fines, sanctions and liabilities whatsoever (including costs of expenses of defending or denying the same and including the costs or expenses for preparing any necessary environmental assessment report or such other reports) arising out of, or in respect of (i) any release, deposit, discharge, or disposal of any Hazardous Substances in connection with the Borrower's property, and (ii) the remedial action (if any) taken by the Lender and/or the Lender in respect of such release, deposit, discharge or disposal. For greater clarity, this indemnity shall survive the repayment or cancellation of the subject Loan.

WAIVER:

Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatever to affect any subsequent default by the Borrower or the rights resulting from it. The

Lender may waive any condition precedent to funding but the waiver shall not prejudice any subsequent enforcement of the condition.

WHOLE AGREEMENT: This agreement, the security and any other written agreement delivered pursuant or referred to in this agreement constitute the entire agreement between the parties in respect of the Loan.

SEVERABILITY: If any portion of this agreement is or becomes prohibited or unenforceable in an jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions

CONSENT OF DISCLOSURE: The Borrower hereby grants permission to any entity having information in such entity's possession relating to any Potential Prior-Ranking Claim, to release such information to the Lender upon request, solely for the purpose of assisting the Lender to evaluate the financial condition of the Borrower. The foregoing permission shall remain in force as long as the Loan contemplated within this agreement remains outstanding.

CORPORATION: If the Borrower and or either of the Guarantors is a corporate entity, it shall provide Articles of Incorporation, Certificate of Non-Restriction, Certificate of Status, Directors Resolution and an Incumbency Certificate, all in a form satisfactory to the Lender.

TIME OF ESSENCE: Time shall be of the essence in all respects.

NOT ASSIGNABLE: This Commitment Letter is not assignable without the Lender's prior written consent, acting reasonably.

SURVIVAL: The terms and conditions of this Commitment Letter set forth the entire agreement between the parties. This Commitment shall survive the execution and registration of all security documentation. There shall be no merger of these provisions or conditions with those contained in the mortgage or other security provided that in case of a conflict between the provisions hereof and of any of the security documents, the Lender may elect which provision shall prevail.

GOVERNING LAW: The agreement constituted by the Borrower's acceptance of this Commitment Letter shall be governed by the Laws of Ontario.

LENDER'S SOLICITOR: The Lender shall use a solicitor of its choice.

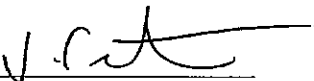
This Commitment shall be null and void unless a copy of this Commitment Letter is signed by the Borrower, under corporate seal where applicable, and returned to our offices by not later than 3:00 p.m. October 6, 2014.

Sincerely,

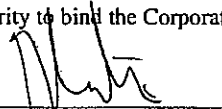
Russ Giannotta

I/WE HEREBY ACCEPT THE ABOVE NOTED TERMS AND CONDITIONS,
SIGNED AT TORONTO, THIS _____ DAY OF _____, 2014

2221563 Ontario Limited




Per:
I have the authority to bind the Corporation



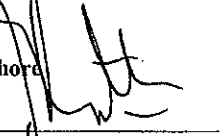
Per:
I have the authority to bind the Corporation

Mr. Vince Petrozza



Per:
In his personal capacity, as Guarantor

Mr. Jawad Rathore



Per:
In his personal capacity, as Guarantor



Schedule "A"

PROPERTY: 230-240 Cameron Crescent, Keswick, Ontario

BORROWER: 2221563 Ontario Limited

POST-DATED CHEQUES:

Provided that the Borrower do hereby covenant and agree to provide the Lender upon execution of this mortgage and annually thereafter on the anniversary date during the currency of this Mortgage, a series of twelve (12) post-dated cheques each in the monthly installment due hereunder.

SALE CLAUSE:

PROVIDED that if the Borrower, at any time, shall sell transfer, convey or otherwise dispose of the herein described Property without written consent of the Lender, at the Lender's option, the within mortgage shall immediately become due and payable in full including interest to maturity of the mortgage herein set forth..

BY-LAW CONFORMITY AND OCCUPANCY:

PROVIDED that if at any time the said property, and or the building(s) located on the property, do not comply with the municipal by-laws or the by-laws of any other level of government and/or the building becomes unoccupied, then in either of these events the balance of the principal monies hereby secured, together with any other sums due and owing to the Lender pursuant to the term of this mortgage together with interest as herein provided shall forthwith become due and payable upon demand. PROVIDED further that nothing herein shall be construed so as to permit the Borrower for the privilege of prepaying the said mortgage in whole or in part.

N.S.F. CHEQUES OR NON-PAYMENT:

IN THE EVENT that any of the Borrower's post-dated or pre-authorized cheques are not honoured when presented for payment to the Bank or Trust company on which they are drawn, the Borrower shall pay the Lender, for each such returned cheque the sum of \$500.00 as liquidated amount to cover the Lender's administration costs and as penalty and such sum shall be a charge upon the said lands and shall bear interest at the rate herein before stated.

IN THE EVENT that it is necessary for the Lender to have a letter sent by the Lender or the Lender's solicitor to the Borrower because of default, then the Borrower shall be charged the sum of \$500.00 in the case of a letter sent by the Lender or the cost of the Lender's solicitor in the event that the Lender's solicitor sends such a letter, and such sum shall be a charge upon the said lands and shall bear interest at the rate herein before stated.

RENT AND MANAGEMENT:

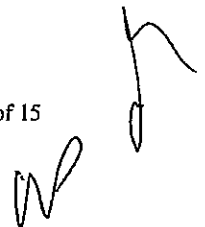
PROVIDED also, and it is hereby further agreed by and between the Borrower and Lender, that should default be made by the Borrower in the observance or performance of any of the covenants, provisos, agreements of conditions contained in this Mortgage the Lender reserves the right to enter into said lands and premises and to receive the rents and profits and to be entitled to receive in addition to all other fees, charges and disbursements to which the Lender is entitled, a management fee so as to reimburse the Lender for reasonable time and trouble in management of said lands and premises it being understood and agreed that in the circumstances a management fee equal to 15% of the principal amount of the Loan deemed not to be a penalty in addition to being repaid its out of pocket expenses which shall be added to the charge debt herein, in the management of the said lands and premises is a just and equitable fee, having regard to all the circumstances.

EXPROPRIATION:

PROVIDED that the said land shall be expropriated by any government, authority, or corporation clothed with the power of expropriation, the amount of the principal hereby secured remaining unpaid shall forthwith become due and payable together with interest at the said rate to the date of payment and together with bonus equal to the sum of two (2) months interest at the rate calculated on the remaining from the said date of payment to the date the said principal sum or balance thereof remaining unpaid would otherwise under the provisions of this mortgage become due and payable.

DISCHARGE STATEMENT:

THE BORROWER agrees to pay for the preparation of the mortgage statement for discharge, to the Lender's lawyer.

A handwritten signature in black ink, consisting of a stylized 'W' followed by a vertical line and a hook.

DIVERSIFIED

President, Asset Management
Capital Management Services
1243 Islington Ave Suite 701
Toronto, Ontario
Canada M9X1Y9
Tel: (416) 364-3396
Fax: (416) 364-9608

July 27, 2015

2221563 Ontario Limited
C/o Mr. Vince Petrozza
25 Brodie drive Unit 1
Richmond Hill
L4B3K7

Attn.: Mr. Petrozza

**Re: First Mortgage Financing - 230-240 Cameron Street, Keswick Ontario – The Crates
Vacant Waterfront Properties at Cameron Crescent – 2221563 Ontario Inc.**

We write, further to your enquiry and our discussion in respect of renewal of the above noted mortgage.

We confirm herein that notwithstanding anything to the contrary within the Commitment of October 2, 2014, the Loan pursuant to the Commitment shall automatically renew hereafter 30 days prior to the anniversary/maturity date of the initial term or any renewal term thereafter, on the same terms and conditions, contained within the above noted Commitment, provided the Borrower is then not in default any of the terms and conditions of the Loan. An extension fee of 3% of the principal amount of the Loan will be applicable for the first renewal term and 1.5% for each subsequent renewal term thereafter.

For greater clarity, the applicable extension fee will be calculated on the principal amount of the loan then outstanding on the anniversary date for any additional renewal term and shall be due and payable at that time, which if not paid shall be added to the Principal amount of the mortgage outstanding at that time and for any and all other successive renewal terms and payable upon the earlier of the expiry/maturity, non-renewal, pay out and or demand made under the loan. Such fee shall be secured by the security under the loan.

Sincerely,



Russ Giannotta

REPRINT OF
RECEIPT RECORD



CORPORATION OF THE TOWN
 OF GEORGINA
 26557 CIVIC CENTRE ROAD R.R. #2
 KESWICK, ON L4P 3G1
 Phone No. : 9054764301 - 9057226516
 Fax No. : 9054768100

--- Item ID #0001 ---

PT Property Taxes

Folio # : 000 14600400.0000

2221563 ONTARIO INC BRIGHTSTAR CORP

232 CAMERON CRES

CURRENT	32474.92
YEAR 1	65167.78
YEAR 1 Interest	6165.24
YEAR 2	63915.67
YEAR 2 Interest	15164.73
YEAR 3+	63321.82
YEAR 3+ Interest	24155.67

Account Balance 270365.83

Payment -150000.00

New Balance 120365.83

Payment Subtotal 150000.00

PST 0.00

GST/HST R122979347 0.00

Payment Total 150000.00

CHEQUE 150000.00

NAME: 2221563 ONTARIO INC BRIGHTSTAR
 CORP

Change 0.00

11-Feb-20
 D:0000014227
 CASHIER2

14:14:16
 B:2020021103
 R:0000612763

**GEORGINA**26557 Civic Centre Road, Keswick, Ontario L4P 3G1
905-476-4301**TAX BILL****INTERIM 2020**

357

150.000
Township of GeorginaBilling Date
Feb 07, 2020

Roll No.	1970 000 14600400.0000	Mortgage Co: COLLECTION ACCOUNTS	
		Mortgage No. COLLECTION	
2221563 ONTARIO INC, BRIGHTSTAR CORP 1 - 25 BRODIE DR RICHMOND HILL ON L4B 3K7		2221563 ONTARIO INC, BRIGHTSTAR CORP 232 CAMERON CRES PLAN 170 LOT 5 AND 6PT LOTS 7 AND 8 PLAN 447 LOTS 1 TO 15 BLK A DOREDA DR AND RP 65R16653 PARTS 1 AND 2	
2019 Annualized Taxes	Rate		2020 Interim Tax Amount
64,949.84	50% of 2019 Taxes		32,474.92
		Sub Total	32,474.92
Special Charges/Credits	Summary		
		Interim 2020 Taxes	32,474.92
		Past Due (Credit) (As of 02/07/2020)	237,890.91
Total		Total Amount Due	\$ 270,365.83

Please return this portion with your payment
INTERIM 2020**GEORGINA**26557 Civic Centre Road, Keswick, Ontario L4P 3G1
905-476-4301**Second Installment**

Roll #	1970 000 14600400.0000
Due Date:	Apr 27, 2020
Total Amount Due	\$ 16,237.00
Amount Paid	

2221563 ONTARIO INC, BRIGHTSTAR CORP
1 - 25 BRODIE DR
RICHMOND HILL ON L4B 3K7

0034730000

96

Please return this portion with your payment
INTERIM 2020**GEORGINA**26557 Civic Centre Road, Keswick, Ontario L4P 3G1
905-476-4301**First Installment**

Roll #	1970 000 14600400.0000
Due Date:	Feb 27, 2020
Current Amount Due	16,237.92
Past Due (Credit)	237,890.91
Total Amount Due	\$ 254,128.83
Amount Paid	

2221563 ONTARIO INC, BRIGHTSTAR CORP
1 - 25 BRODIE DR
RICHMOND HILL ON L4B 3K7

0034730000

96

230- 240 Cameron Cres. Keswick**Sale Administration and Property Management Expenses
To Period Ending May 25, 2021**

Sale Administration and Property Management Expenses		<u>58,413.45</u>	
Balance of Fee: Due diligence servicers by Nick Circosta		15,225.00	✓
Oustanding Invoice 2019-2021 Site Work and ESC			
Reports	Total Actual Costs	204,096.53	
	Captured : Accrual Stmt	<u>193,122.24</u>	
	Outstanding	<u>10,974.29</u>	10,974.29 ✓
Sale Administration and Property Management			
Diversified Capital Realty Advisors Inc.			
Biweekly Sit visits 2019/2020/2021			
18mths @1280+hst/3hr trip		<u>26,035.20</u>	
mileage recap(\$0.59/km 125km/trip)			
incl.			
All Property Management matters,			
liens, mortgage administration			
in connection with Property/Project			
Total hours 45@ \$125/hr+hst		<u>6,356.25</u>	
2019/2020/2021		<u>32,391.45</u>	32,391.45 ✓
Total		<u>58,590.74</u>	
Diferential /small pass		177.29	

Nick J Circosta

NJ Circosta
263 John Bowser Cres.
Newmarket, Ont
L3Y 7N7

Tel: 416-528-9071

To:
Diversified Capital

DATE: January 20, 2021

FOR: South Shore Service Due
Diligence

DESCRIPTION	AMOUNT
Assembly, Review & Compile Property/Project Information re : Appraisers / Brokerage Attend to Broker/ Prospective Purchaser Site Visits Arrange and Attend meetings as required with Township/Conservation Authority in respect of Prospective Purchasers Attend to Broker/ Prospective Purchaser Site Visits Provide any follow up information Property/ Project Queries Facilitate information and attend meeting to successful closing as required.	25,000.00
Amount this Invoice	\$9,775.00
Balance due on successful closing of sale of Property	15,225.00 ✓
TOTAL	\$25,000.00

Please Make payable to: Nick J. Circosta

**Costs Reconciliation : 230-240 Cameron Cres.
2221563 Ontario Inc.**

Mar 15 2021	350.00	spears
Feb 13 2021	400.00	Spears
Jan 15 2021	350.00	Spears
Dec 11 2020	350.00	Spears
Dec 15 2021	7,051.50	Circosta
Nove 16 2020	350.00	Spears
Oct 15 2020	350.00	Spears
Sep 15 2020	350.00	Spears
Aug 25 2020	8,475.00	Avison
Sep 2 2020	14,125.00	Bottero
Aug 15 2020	350.00	Spears
July 15 2020	350.00	Spears
Jun 15 2020	350.00	Spears
May 19 2020	350.00	Spears
May 20 2020	2,850.00	Circosta
Apr 15 2020	350.00	Spears
Mar 16 2020	350.00	Spears
Feb 10 2020	150,000.00	RT Taxes
Feb 15 2020	350.00	Spears
Jan 11 2020	450.00	Spears
Feb 27 2021	9,775.00	Circosta
Nov 13 2019	5,020.03	Georgina Sod
Nov 12 2019	900.00	Cirosta
Nov 4 2019	500.00	Spears
Actual Costs	<u>204,096.53</u>	
Per Accrual Stmt	<u>193,122.24</u>	
Recovered	<u>10,974.29</u> ✓	Included in Sale Admin & Prop Management Expenses



16 McAdam Ave Suite 902 Toronto Ontario M6A 0B9

P: 416.364.3396 F: 416.364.9608

Diversified Capital Inc.
16 McAdam Ave Suite 902
Toronto Ontario
M6A 0B9

May 13, 2021
Statement of Account
File: 2221562 Ont. Inc.
230-240 Cameron Cres.

Re: 230-240 Cameron Crescent Mortgage Administration- Power of Sale/Enforcement – Property Management.

For all management and administration services rendered in connection with the above-noted matter, including the following:

- Assemble, review demand and accompanying information with respect to issuing the Demand Notice; provide instructions to legal counsel in respect of same.
- Review Demand notice particulars, discuss amendments and instruct litigation counsel to issue the same.
- Biweekly attendance and inspections at property project construction site, ensure property remained secure; inspect gate and temporary hoarding remained intact, secure.
- Meet with and discuss the project and related matters with Mr. Nick Circosta requiring ongoing upkeep to maintain and enhance the value of the project, including and ongoing City/Township, requirements including but not limited to ongoing site supervision vis-à-vis ground erosion and sedimentation upkeep.
- Confirm instructions to A. Dean Spears for ongoing monthly reviews of the site and for the provision of monthly Erosion and Sedimentation Control Reports. (“ESC Reports”).
- Review ESC Reports monthly, discuss contents of same and initiate any appropriate corrective or any preventative actions as required to maintain the property and City/Township requirements accordingly.
- Attend conference calls with FAAN to provide updates with respect to the marketing process and ongoing matters relating to the property.
- Meet with prospective clients of the mortgagor (2221563 Ontario Inc.) to discuss the project being sold and entertaining refinancing with these prospects.
- Meet with other potential prospects that may be interested in pursuing the completion of the project on same basis that would see the project being

completed, with the participation of current stakeholders to maximize proceeds for all stakeholders.

- Interview, discuss and solicit appraisal proposal from various, qualified AACI appraisers to provide appraisal report proposals; discussion with same and short list two appraisal companies.
- Retain the services of Avison Young Valuation & Advisory Services Ontario Inc. and D. Bottero & Associates Limited, Property Valuation and Realty Consulting Services and provide instructions accordingly.
- Telephone conferences and additional communications with the Avison Young and D. Bottero in respect of documentation information relating to the project, work in place, approvals in place and current status of the property and project.
- Enquire and obtain information relating to outstanding realty taxes, assess the same and arrange for payment of certain arrears to prevent any possibility of a tax sale of the property in respect of the same.
- Contact Nick Circosta to, compile and provide information in as much detail as possible property and project related information to provide to the appraisers.
- Obtain, review and disseminate information as required in respect of the property and the project lands and provide the same to the appraisers.
- Conference meetings with the appraisers to discuss information provided and clarifications as required by each of the appraisers.
- Discuss the marketing of the property with realty brokerage companies and retain the services of Colliers International to market the property/project for sale.
- Meet with, conference and discuss on a number of occasions the marketing of the project with the Mr. Jeremiah Shamess, V.P. Private Investment Group and Myles Kenny, Associate V.P. Private Investment Group, (the "Brokerage Team")
- Review and discuss market email blast brochures, and content therein with the Brokerage Team; provide marketing material information as required in respect of the same
- Review and discuss in detail all information as requested by the brokerage team with respect to populating the online marketing data room.
- Assemble, review and provide marketing data room information and review the same once uploaded with the Brokerage Team.
- Discuss with legal counsel, the Agreement of Purchase and Sale (APS) and effective power of sale clauses to be included in Schedule "A" to the same.
- Finalize the APS with counsel to be utilized by the Brokerage Team in the marketing process.

- Discuss with counsel of the various liens registered against the property, owing in respect of unpaid accounts with the mortgagor, and plan resolution in respect of the same.
- Discuss the options available to deal with liens and provide counsel with instructions accordingly.
- Instruct counsel to provide the finalized APS to the Brokerage team to be provided with qualified purchasers.
- Arrange for access and representation with the Brokerage Team for various site visits to the property, of prospective purchasers, field any questions and provide or obtain additional information as requested by the Brokerage Team from the prospective purchasers.
- Ongoing discussions with the Brokerage Team throughout the marketing process, fielding and responding to any feedback and queries from prospective purchasers
- Review and execute documentation provided by counsel in respect of the liens and provide instructions accordingly.
- Discuss and evaluate the benefits of extending the deadline bid process to ensure maximum exposure of the property to the marketplace; provide instructions to extend dead line accordingly.
- Obtain and review and evaluate the Bid Summary as provided by the Brokerage team; discuss the same with the Brokerage team; including but not limited to the offers, the qualifications of the prospective purchasers and ability to close.
- Negotiate and finalize a conditional agreement with the winning bidder, the Kaitlin Group.
- Review and discuss with the Brokerage Team and counsel prior to executing the final APS. Instruct counsel to proceed with the same.
- Review various communications from FAAN's counsel in respect of the process and subordinate bid submitted by FAAN on behalf of a client of FAAN. Discuss these with counsel and instructed counsel to communicate accordingly.
- Field, review and respond to a number of communications from FAAN; discuss the same with counsel and provide instructions to respond accordingly.
- Facilitate meetings with the winning bidder and Nick Circosta with respect to providing additional information or clarifications during the due diligence process.
- Field and respond to requests from the Kaitlin Group to have information released from the City/Town and Conservation Authority representatives. Instruct counsel to provide comfort letters in respect of the same so that discussions, communications, and information with the town could flow freely in respect of due diligence.

- Review and discuss, with the Brokerage team, Kaitlin's request to extend due diligence period with the winning bidder.
- Instruct counsel to review the amendment and execute the same upon satisfactory review.
- Discuss remarketing of the property/ project upon being notified the Kaitlin Group was not going to proceed to close the deal in its due diligence period on the terms of the APS as executed.
- Conference with counsel in respect of reopening the bidding process.
- Instruct the Brokerage team to return to all the Summary List bidders and provide this group with the opportunity to confirm or resubmit a best and final offer for the property after strategy conference in respect of same.
- Field and discuss with counsel, insistence of FAAN to accept the offer presented by them on behalf of their client. Instructed counsel to do a corporate search of this purchaser. Review and discuss the same of this newly incorporated company, with only one principal, void of any development/ construction experience.
- Discussed FAAN's interference and coercion in respect of the sale process with counsel and various communications regarding the presented offers.
- Instructed counsel to address as appropriate FAAN's insistence and persistence that the offer presented by them be accepted.
- Proceeded with a detailed review, responses and negotiations with counsel vis-à-vis acceptable and unacceptable amendments to the APS by this unidentified prospective purchaser.
- Review requests by new purchaser to extend the closing date of the APS and provided counsel with related instructions.
- Review and attend to executing all closing documentation, final pay outs.
- Subsequent discussions with counsel in relation to agreements and discharge of the liens.

Total Billing	\$ 28,665.00
H.S.T.	<u>\$ 3,726.45</u>
Total Fees and H.S.T	<u>\$ 32,391.45</u> ✓

**Costs Reconciliation : 230-240 Cameron Cres.
2221563 Ontario Inc.**

Mar 15 2021	350.00	spears
Feb 13 2021	400.00	Spears
Jan 15 2021	350.00	Spears
Dec 11 2020	350.00	Spears
Dec 15 2021	7,051.50	Circosta
Nove 16 2020	350.00	Spears
Oct 15 2020	350.00	Spears
Sep 15 2020	350.00	Spears
Aug 25 2020	8,475.00	Avison
Sep 2 2020	14,125.00	Bottero
Aug 15 2020	350.00	Spears
July 15 2020	350.00	Spears
Jun 15 2020	350.00	Spears
May 19 2020	350.00	Spears
May 20 2020	2,850.00	Circosta
Apr 15 2020	350.00	Spears
Mar 16 2020	350.00	Spears
Feb 10 2020	150,000.00	RT Taxes
Feb 15 2020	350.00	Spears
Jan 11 2020	450.00	Spears
Feb 27 2021	9,775.00	Circosta
Nov 13 2019	5,020.03	Georgina Sod
Nov 12 2019	900.00	Cirosta
Nov 4 2019	500.00	Spears
Actual Costs	<u>204,096.53</u>	
Per Accrual Stmt	<u>193,122.24</u>	
Recovered	<u>10,974.29</u>	Included in Sale Admin & Prop Management Expenses

A. DEAN SPEARS
P.O. 512, Uxbridge, ON L9P 1M9
Tel: 647-880-2111 Email: bmellc@protonmail.com

INVOICE

CLIENT**INVOICE No: 2021-003**

Name: Diversified Capital, Inc.
 C/O Nick Circosta
 Address: 1243 Islington Ave., Suite 402
 City: Toronto Province: ON Postal: M8X 1Y9
 Phone: 416-528-9071

Pay Period Date:
 March 15, 2021

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For March 15, 2021.	\$ 350.00
Total Billing for this Period		\$ 350.00

45410

A. DEAN SPEARS
P.O. 512, Uxbridge, ON L9P 1M9
Tel: 647-880-2111 Email: bmellc@protonmail.com

INVOICE

CLIENT

INVOICE No: 2021-002

Name: Diversified Capital, Inc.
C/O Nick Circosta
Address: 1243 Islington Ave., Suite 402
City: Toronto Province: ON Postal: M8X 1Y9
Phone: 416-528-9071

Pay Period Date:
February 13, 2021

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For February 13, 2021.	\$ 400.00
Total Billing for this Period		\$ 400.00

A. DEAN SPEARS
P.O. 512, Uxbridge, ON L9P 1M9
Tel: 647-880-2111 Email: bmellic@protonmail.com

INVOICE

CLIENT**INVOICE No: 2021-001**

Name: Diversified Capital, Inc. C/O Nick Circosta Address: 1243 Islington Ave., Suite 402 City: Toronto Province: ON Postal: M8X 1Y9 Phone: 416-528-9071	Pay Period Date: January 15, 2021
--	--

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For January 15, 2021.	\$ 350.00
# 4536		
Total Billing for this Period		\$ 350.00

P.O. Box 512, Uxbridge, ON L9P 1M9
Tel: 647-880-2111 Email: bmellc@protonmail.com

CLIENT

INVOICE No: 2020-012

Name: Diversified Capital, Inc. C/O Nick Circosta Address: 1243 Islington Ave., Suite 402 City: Toronto Province: ON Postal: M8X 1Y9 Phone: 416-528-9071	Pay Period Date: December 11, 2020
--	---

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For December 11, 2020.	\$ 350.00
	4528 Dec 15 / 2020	
	Total Billing for this Period	\$ 350.00

Nick J Circosta

NJ Circosta
263 John Bowser Cres.
Newmarket, Ont
L3Y 7N7

Tel: 416-528-9071

To:
Diversified Capital

DATE: December 15, 2020

FOR: South Shore Service Period Nov
1/19 to Dec 15 20

DESCRIPTION	AMOUNT
26 Site Visits Including Travel Time, 3 Hours @\$60.00 per hr. - \$180.00x26	\$4,680.00
On Site Work and Supervision as per Municipal requirements Nov 4/19 to Nov 8/19, 15 hours @ \$30.00 -- \$450.00	\$450.00
May 12/20 to May 20/20 Labour for installation silt and wire fence, pumping etc 2 men 24 hrs. each 48 X \$30,00	\$1,440.00
May 20th Grafix Signs (No trespass keep out etc)	\$361.50
May 20th Grafix Signs instillation 2 hours @ \$60.00	120.00
June 17 Grass Cut Boulevard Pd. By Diversified	
June 17 Materials Pd by Diversified	
TOTAL	\$7,051.50

Please Make payable to: Nick J. Circosta

4527
PAID DEC 15/2020

A. DEAN SPEARS

P.O. Box 512, Uxbridge, ON L9P 1M9 (New Address)
Tel: 647-880-2111 Email: bmellc@protonmail.com

INVOICE**CLIENT****INVOICE No: 2020-011**

Name: Diversified Capital, Inc.
 C/O Nick Circosta
 Address: 1243 Islington Ave., Suite 402
 City: Toronto Province: ON Postal: M8X 1Y9
 Phone: 416-528-9071

Pay Period Date:
 November 16, 2020

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For November 16, 2020.	\$ 350.00 ✓
	<i># 4523</i>	
	Total Billing for this Period	\$ 350.00

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: bmellec@protonmail.com

INVOICE

CLIENT**INVOICE No: 2020-010**

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: October 15, 2020
---	--

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For October 15, 2020.	\$ 350.00 ✓
# 4515 Oct 15. 2020		
Total Billing for this Period		\$ 350.00

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: bmellc@protonmail.com

INVOICE

CLIENT**INVOICE No: 2020-009**

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: September 15, 2020
---	--

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For August 14, 2020.	\$ 350.00 ✓
4570		
	Total Billing for this Period	\$ 350.00



Avison Young Valuation &
Advisory Services Ontario Inc.
55 Commerce Valley Drive
West, Suite 501
Markham, ON, L3T 7V9
Canada

T 905.474.1155
F 905.886.5744

July 15, 2020

DIVERSIFIED CAPITAL INC.

65 Front St W Suite 416
Toronto, ON
M5J 1E6

Attention: Russ Giannotta, CPA, CA

Re: 230-240 Cameron Crescent, Keswick ON

As per your request, following is our quote to complete an appraisal report for the above noted real property. Our fee estimate and timing is outlined below:

PROPERTY TYPE: Development Land – Power of Sale Proceedings
TIMING: 4 Weeks from authorization to proceed
FEE: \$7,500 plus disbursements plus HST
(50% retainer due to commence work, balance due on receipt of draft report)

8.475⁰⁰

Disbursements include, but are not limited to; registry office costs, mileage, database subscription, appraiser insurance costs, dues, etc. The quoted fee includes a soft copy of the report only; if a hard copy is required, please note that in an effort to be more environmentally friendly there will be a fee of \$50.00 per hard copy report in addition to the herein quoted fee. All outstanding fees must be paid in full to produce a final PDF report. Any work required following the issuance of a draft report caused by new information provided by the client, will be charged at an hourly rate. Please be advised that any additional hours deemed necessary for court appearance shall be charged at \$450.00 per hour.

Should we proceed with the assignment, we will require access to the property for inspection purposes as well as copies of the following documents (Please note that the given timeframe is based on receiving the requested documents within TWO days of the execution of this contract):

Site Plan and Survey	X	Development Proposal	X
Development Budget	X	Project Construction Costs	
Planning Documents	X	Previous sales data	X

**AVISON
YOUNG**

Should you terminate our work while in progress the fee will reflect the time spent and percentage of the appraisal completed. We thank you for the opportunity to provide this quotation and hope it meets your expectations. Should you have any questions as to the above fee or our intended valuation methods, please do not hesitate to call.

Respectfully submitted,

Avison Young Valuation & Advisory Services



Paul W. Stewart, BA, AACI, P. App.
paul.stewart@avisonyoung.com

Acknowledged and Agreed



Authorized Signature

**D. BOTTERO
& ASSOCIATES
LIMITED**

PROPERTY VALUATION AND
REALTY CONSULTING SERVICES

4300 STEELES AVENUE WEST, UNIT 32
VAUGHAN, ONTARIO, L4L 4C2
TEL: (905)660-9288
E-MAIL: info@dbottero.com

Dino Bottero, AACI, MRICS, PLE
Rick Michalski, AACI P.App.
Oksana Vialykh, AACI
Giorgio Beghetto, CRA

July 29, 2019

Diversified Capital Inc.
65 Front Street West
Suite 416
Toronto, Ontario
M5J 1E6

Attention: Russ Giannotta, CPA, CA

Dear Sirs,

Re: Proposed High Density Residential, Hospitality and Ancillary Use Development
230-240 Cameron Crescent
Keswick, Ontario
Part of Lots 5-8, Registered Plan 170
Being Part 1, Plan of Reference 65R-16653 and
Lots 1-15 and Block A, Registered Plan 447
Being Part 2, Plan of Reference 65R-16653
Town of Georgina, Regional Municipality of York

14,125.00
total

Further to your request, please be advised that we would be prepared to complete a Full Narrative Appraisal Report of the above captioned property in accordance with the Canadian Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Institute of Canada. The purpose of the Appraisal would be to provide an estimate of the Market Value of the Subject Property as of the date of inspection. Its intended use is to assist in asset valuation.

The fee for completion of this assignment will be \$12,500 (TWELVE THOUSAND FIVE HUNDRED DOLLARS) plus the usual HST. It is customary that a retainer of 50% be required upon acceptance which equates to \$6,250 plus HST of \$813.00 for a total of \$7,063.00.

The Report could be completed in the order of 4-5 weeks after receipt of instruction to proceed. The timeframe, however, may be subject to circumstances beyond our control.

-2-

I trust that this adequately sets out the scope and parameters of our involvement for this instruction. Should the terms and conditions of this Proposal be satisfactory, kindly advise by email. Should you have any questions or desire additional information, please do not hesitate to contact me at extension 826 or Oksana Vialykh, AACI, at extension 829.

Thanking you for this opportunity, I remain,

Yours truly,

A handwritten signature in dark ink, appearing to read 'Dino Bottero', enclosed within a rectangular box.

Dino Bottero, BA, AACI
Professional Land Economist

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT
INVOICE No: 2020-008

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: August 15, 2020
---	---

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For August 5, 2020 and August 15, 2020.	\$ 350.00 ✓
# 4497		
Total Billing for this Period		\$ 350.00

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT
INVOICE No: 2020-007

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: July 15, 2020
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ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For July 15, 2020.	\$ 350.00
Total Billing for this Period		\$ 350.00

PD
4487

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2020-006**

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: June 15, 2020
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ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For June 15, 2020.	\$ 350.00 ✓
# 42477		
Total Billing for this Period		\$ 350.00

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2020-005**

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: May 19, 2020
---	--------------------------------------

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For May 18, 2020.	\$ 350.00
	<div style="text-align: right;">4668</div> <div style="text-align: center;"> <i>Due deposit +2850 - 416 cost 416 cost</i> <i>May #</i> </div>	
	Total Billing for this Period	\$ 350.00

2202980
1094 BIL-2007/10

Page 1 of 14

**Inquiry
Renseignements****Transaction Details Inquiry**

Inquiry Date: May 20, 2020 03:32 PM
 Account: 04952 ***0238
 Everyday Chq

030.JPG (328K), IMG_9032.JPG
 G (293K), IMG_9049.JPG (262K),
 (),
 Keswick Township of Georgina.pdf
 South Shore Project in Keswick.eml
 nl (7569K),
 report.pdf (5432K),

Deposit

Transaction Date: May 20, 2020 03:32 PM
 Posting Date: May 20, 2020
 Access Point: Branch (02712)
 Amount: \$2,850.00 ✓



Handwritten notes:
 ches # 4667
 Deposit
 St. P
 Alkden

arty.

Le logo CIBC est une marque déposée de la Banque CIBC.

perimeter of the site. With the Township of Keswick actively seeking a partnership or legitimate party to take over the project, and with assurances that regular maintenance would be carried out, we were able to avoid spending in excess of \$5,000 to replace about 60% of the silt fencing) by carrying out mending repairs by stapling sections and replacing of minor sections of silt control fencing, to last the winter.

See attached: FWD: South Shore Project Keswick email communications from Municipal Engineering, Council and Mayor

See attached : FWD:The South Shore- Erosion and Silt Control Measures, Nov.1, 2019.

As it stands now, it is imperative that action is taken to replace silt sections and carry out repairs, before the owner is put on notice to carry out the work repairs and/or replacement of silt fence required and attempt to avoid any other remedy the Municipality or Lake Simcoe Conservation Authority may elect to take.

25/05/2020

Fwd: South Shore Site Condition April 2020

Page 1 of 14

From: njcirstosta@gmail.com,

To: diversifiedcms@aol.com, russ@divcapinc.com,

Subject: Fwd: South Shore Site Condition April 2020

Date: Tue, May 12, 2020 3:50 pm

Attachments: South Shore ESC report.eml (7343K), IMG_9029.JPG (272K), IMG_9030.JPG (328K), IMG_9032.JPG (262K), IMG_9034.JPG (338K), IMG_9036.JPG (314K), IMG_9040.JPG (293K), IMG_9049.JPG (262K), IMG_9053.JPG (295K), IMG_9056.JPG (268K), IMG_9044.JPG (361K), Original Certificate of Insurance Intact for 230-240 Cameron Cres. Keswick Township of Georgina.pdf (830K), FW: Expired Insurance Requires Renewal.eml (7479K), FW: South Shore Project in Keswick.eml (7550K), FW: The South Shore - Erosion and Silt Control Measures.eml (7569K), Form - Insurance.docx.doc (86K), South Shore - ESC April 14, 2020 Report.pdf (5432K), Form - Insurance.docx.doc (86K),

Please let me know when you receive

----- Forwarded message -----

From: **Nick Cirstosta**

Date: Tue, May 12, 2020 at 3:33 PM

Subject: South Shore Site Condition April 2020

To: njcirstosta@gmail.com <njcirstosta@gmail.com>

There are 3 issues that require immediate attention/action on the Property.

1. The attached South Shore ESC report consists of Environmental requirements/deficiencies pertaining to the control of sedimentation. The project has approximately 4,500 feet of silt fence installed around the perimeter of the site to control sediment erosion, in front of the lowlands 3 tiers of silt fence are installed, these must be maintained until the project is complete. Last July the municipality had requested that the majority of silt fencing be installed/replaced around the entire perimeter of the site. With the Townships co-operation and understanding that the owners were still actively seeking a partnership or legitimate party to take over the project, and with assurances that regular maintenance would be carried out, we were able to avoid spending in excess of \$5,000 to replace about 60% of the silt fencing by carrying out mending repairs by stapling sections and replacing of minor sections of silt control fencing, to last the winter.

See attached: FWD: South Shore Project Keswick email communications from Municipal Engineering, Council and Mayor

See attached : FWD:The South Shore- Erosion and Silt Control Measures, Nov.1, 2019.

As it stands now, it is imperative that action is taken to replace silt sections and carry out repairs, before the owner is put on notice to carry out the work repairs and/or replacement of silt fence required and attempt to avoid any other remedy the Municipality or Lake Simcoe Conservation Authority may elect to take.

Handwritten notes:

- # 44667
- Deposited
- Sl. P. Affected
- Costs came in at \$2800
- to PAW

Those remedies could be as set out in November 1, 2019 email from Georgina Township Engineering Dept. or in addition be deemed incompliant in maintaining the Lead requirements by the other respective authorities, which could adversely affect sewer and water allocations, by Municipal and Regional Authorities. If sewer and water allocations are lifted, there will be no project.

2. In addition to the remediation of the Erosion Control Measures (silt fencing etc.), action should be taken regarding general safety on the site. Particularly pertaining to existing open excavation and pits. See some photos attached. Notwithstanding that the property is fenced off and marked with no trespassing signs, because the owner is taking the position and representing that the project is merely on hold, municipal and provincial safety procedures must still be followed and maintained, as it is still a construction project. The excavated pits must be pumped of water and pit areas must be fenced off and marked as dangerous etc. and additional no trespass/ keep out signed installed.

3. The municipality will be looking for renewal of expired insurance as required. See Attached Insurance Doc's as well the Insurance Form Doc. required to be filled out by the insurer and provided to the Municipality.

In Municipal correspondence (see the attachment The South Shore Project in Keswick) requests are made to keep the Municipality informed on project progress. Due to being uninformed with plans the owners have in that regard, it has been extremely difficult to maintain the Municipalities cooperation in assisting in keeping the project "alive" and no written reports have ever been provided. Although the Municipality has remained silent about nothing has happened with the property (no one has taken new ownership or responsibility), Also, it has been until the project issues are resolved, due to being uninformed by the owners. It would be prudent that in addition to another payment toward taxes, an update is prepared and be personally delivered or forwarded to the Municipality. In preparation of such bear in mind that many requests and statements have been made by unknown parties regarding the status or plans for project.

The following is an estimate of costs for work to be carried out.

MATERIALS:

5 - 100 ft. rolls silt fence with attached stakes @\$62.00	\$ 310.00
30 - T-Bar 7Ft. steel posts @\$9.00	\$ 270.00

Fwd: South Shore Site Condition April 2020

Page 3 of 14

1 - Post Driver Rental	\$ 36.00
2- 100 ft. Rolls Silt Material No Stakes	\$ 78.00
2 - Roll Steel Tie Wire	\$ 18.00
5- 24 Packs 2in.x2in. x4ft Stakes (<u>120@1.25</u>)	\$ 175.00
24 - No Trespass Signs (waterfront , Riverside and Road)	\$ 130.00
3- packages plastic ties	\$ 12.00
2inch trash pump with 50 ft. hose rental 3 days rental	\$ 145.00
Fuel	\$ 15.00
4 - rolls 50ft. 2x2 inch x4 ft. orange poly fencing	\$ 200.00
3 - rolls 2in.x4in. 4Ft. x 50 ft. 14 gauge wire fencing	\$ 220.00
1 - Industrial Stapler and staples Rental	<u>\$ 45.00</u>
Material:	\$1,554.00

Labour: 3 Men Total 72 Hours @ \$30.00 \$2,160.00

Total: \$3,714.00

Hello Michael, please find attached ESC for April 2020.

Regards,

Nick J. Circosta
Fortress Real Developments

25 Brodie Dr. Unit 1
Richmond Hill, On L4B 3K7
nick@fortressrdi.com
<http://www.fortressrealdevelopments.com>

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2020-004**

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: April 15, 2020
---	--

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report For April 14, 2020.	\$ 350.00 ✓
PAID cheque # 4461		
Total Billing for this Period		\$ 350.00

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2020-003**

Name: South Shore 2221536 Ontario, Inc.
 C/O: Diversified Capital, Inc.
 Address: 25 Bodie Drive, Unit 1
 City: Richmond Hill Province: ON Postal: L4B 3K7
 Phone: 416-528-9071

Pay Period Date:

March 16, 2020

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report & Summary Combination For March 13, 2020.	\$ 350.00 ✓
4451		
Total Billing for this Period		\$ 350.00

REPRINT OF
RECEIPT RECORD



CORPORATION OF THE TOWN
 OF GEORGINA
 26557 CIVIC CENTRE ROAD R.R. #2
 KESWICK, ON L4P 3G1
 Phone No. : 9054764301 - 9057226516
 Fax No. : 9054768100

--- Item ID #0001 ---

PT Property Taxes

Folio # : 000 14600400.0000

2221563 ONTARIO INC BRIGHTSTAR CORP

232 CAMERON CRES

CURRENT	32474.92
YEAR 1	65167.78
YEAR 1 Interest	6165.24
YEAR 2	63915.67
YEAR 2 Interest	15164.73
YEAR 3+	63321.82
YEAR 3+ Interest	24155.67

Account Balance 270365.83

Payment -150000.00

New Balance 120365.83

Payment Subtotal 150000.00

PST 0.00

GST/HST R122979347 0.00

Payment Total 150000.00

CHEQUE 150000.00

NAME: 2221563 ONTARIO INC BRIGHTSTAR
 CORP

Change 0.00

11-Feb-20
D:0000014227
CASHIER2

14:14:16
B:2020021103
R:0000612763

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2020-002**

Name: South Shore 2221536 Ontario, Inc.
 C/O: Diversified Capital, Inc.
 Address: 25 Bodie Drive, Unit 1
 City: Richmond Hill Province: ON Postal: L4B 3K7
 Phone: 416-528-9071

Pay Period Date:
 February 15, 2020

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report & Summary Combination For February 15, 2020.	\$ 350.00
Total Billing for this Period		\$ 350.00

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2020-001**

Name: South Shore 2221536 Ontario, Inc.
 C/O: Diversified Capital, Inc.
 Address: 25 Bodie Drive, Unit 1
 City: Richmond Hill Province: ON Postal: L4B 3K7
 Phone: 416-528-9071

Pay Period Date:
 January 11, 2020 to January 14,
 2020

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report & Summary Combination For January 11, 2020 to November 14, 2020	\$ 350.00
3.	Two Site Visitations	\$ 100.00
Total Billing for this Period		\$ 450.00

Nick J Circosta

NJ Circosta
263 John Bowser Cres.
Newmarket, Ont
L3Y 7N7

Tel: 416-528-9071

To:
Diversified Capital

DATE: January 20, 2021

FOR: South Shore Service Due
Diligence

DESCRIPTION	AMOUNT
Assembly, Review & Compile Property/Project Information re : Appraisers / Brokerage Attend to Broker/ Prospective Purchaser Site Visits Arrange and Attend meetings as required with Township/Conservation Authority in respect of Prospective Purchasers Attend to Broker/ Prospective Purchaser Site Visits Provide any follow up information Property/ Project Queries Facilitate information and attend meeting to successful closing as required.	25,000.00
Amount this Invoice	\$9,775.00
Balance due on successful closing of sale of Property	15,225.00
TOTAL	\$25,000.00

Please Make payable to: Nick J. Circosta



GEORGINA SOD & LANDSCAPE LIMITED

c/o 19878 Centre St.
MOUNT ALBERT, ON
L0G 1M0

INVOICE

Date	Invoice #
13/11/2019	14308

Phone #:	Fax #
(905) 473-7000	(905) 473-7003

EMAIL:
gsod@rogers.com

WEBSITE:
www.georginasod.ca

Invoice To

DIVERSIFIED CAPITAL INC.
Re: Crates Landing 2013 Inc.
Nick Circosta-Fortress Real Developments
25 Brodie Dr. Unit 1
Richmond Hill, ON L4B 3K7

EMAIL TRANSFERS CAN BE MADE TO: GSOD@ROGERS.COM. THE ACCOUNT IS SET FOR
AUTO-DEPOSIT. THANK YOU.

Project/Job	Fortress-Crates Landing 2013 Inc.	RE:			
Item	Description	Qty	Rate	Amount	
Cuts-Per	Roadside and Inside Gate	1.5	50.00	75.00	
Cuts-Per	Weeds & Inside Footprint of Building	8	50.00	400.00	
Cuts-Per	Tall grass in field where possible with Bush Hog	4.5	50.00	225.00	
Excavator-MiniX	Nov. 5,6,7,8, 2019-Silt Fence Repair				
Labour-Land/Maint.	Machine Hrs.(2 Minix, 1 at 6 hrs, 1 at 7.5hrs.)	13.5	90.00	1,215.00	
Landscaping	To Install Silt Fence Posts & Repair Existing	42.25	50.00	2,112.50	
Landscaping	Materials: 8 Rolls of Silt Fence	8	42.50	340.00	
Landscaping	Materials: 12, 1x2x8	12	1.25	15.00	
Landscaping	Materials: Screws		50.00	50.00	
Landscaping	Materials: Filter Cloth		10.00	10.00	
	HST on Sales		13.00%	577.53	
4410					
GST/HST #:	By Accepting Services from and making payments to Georgina Sod & Landscape Limited you accept all Terms and Conditions on Georgina Sod & Landscape Limited's Estimates, Contracts and Invoices.				
101998987					

WE THANK YOU FOR THE OPPORTUNITY TO PROVIDE SERVICES.

PAYMENT TERMS:

-Due upon receipt-at Invoice Date-Interest 24% Per Annum, 2% Interest monthly on balances over 30 days from Invoice Date
-All materials without Warranty. Any Guarantees specified are VOID if full payment not received within 30 days
-The Owner/Customer agree that Georgina Sod may halt/discontinue Services/Contracts and/or remove materials supplied at their discretion if invoices are not paid in full within 30 days and services will remain on hold until account is paid in full. Tennants may be notified. The Owner /Customer holds harmless and releases Georgina Sod from any problems that result. Restart charges at restart of Services.
-\$15.00 Charge for EACH occurrence of: Payment Pickups, Hand Deliveries, etc.-covers extra office time/mailling/gas.
-\$25.00 Admin. Charge Per Month for Managing Invoices over 30 days
-\$50.00 NSF Service Charge per NSF Cheque
-Uncollected Invoices at 45 days go to Equifax /Credit Agencies with fees

Subtotal	\$4,442.50
HST	\$577.53
TOTAL	\$5,020.03
Payments/Credits	\$0.00
AMOUNT DUE	\$5,020.03
UPON RECEIPT-SEE PAYMENT TERMS	

Nick J Circosta

29 Hollywood Cres.
Nobleton Ont.
L0G1N0

DATE: Novemeber 12, 2019

FOR: South Shore

To:
Diversified Capital Inc.
c/o Russ Giannotta
Diversifiedcms@aol.com

DESCRIPTION	AMOUNT
Re: 2221563 South Shore Site Work 232 Cameron Cres. Keswick Ontario Assistance to bring Erosion & Sedimintation Control measures to Municipal requirements Attend site for Site reviews and inspections, communicate with authorities having juristiction, Arrange and oversee contractor, arrange ESC report Nov. 4 to to Nov 8th 2019 - 15 hours at \$60.00	900.00
TOTAL	\$ 900.00

Make payment to: Nick J. Circosta

#4409

A. DEAN SPEARS
P.O. 53, Uxbridge, ON L9P 1M6
Tel: 647-880-2111 Email: ads_pilot@yahoo.com

INVOICE

CLIENT**INVOICE No: 2019-002**

Name: South Shore 2221536 Ontario, Inc. C/O: Diversified Capital, Inc. Address: 25 Bodie Drive, Unit 1 City: Richmond Hill Province: ON Postal: L4B 3K7 Phone: 416-528-9071	Pay Period Date: November 4, 2019 to November 8, 2019
---	---

ITEM No	BILLING DESCRIPTION	AMOUNT
1.	Project: The South Shore Keswick, Ontario	
2.	Monthly ESC Report & Summary Combination For November 4, 2019 to November 8, 2019	\$ 350.00
3.	Three Site Visitations	\$ 150.00
# 4408		
Total Billing for this Period		\$ 500.00

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

AND TO

2221563 Ontario Limited
c/o Robins Appleby & Taub LLP
2600 - 120 Adelaide St. W.
Toronto, ON M5H 1T1

Attention: John Fox

IN ACCOUNT WITH
SCHNEIDER RUGGIERO SPENCER MILBURN LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

May 07, 2021

NO:88556

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

24-Feb-21 To conduct file review and prepare draft discharge in response to questions from client's litigator with respect to what lands are encumbered by the charge; adjoining lands search and telephone discussion with litigator

TO OUR TOTAL FEE: \$750.00

HST

on 750.00 Fees \$97.50

DISBURSEMENTS

Disbursements Subject to HST

Teraview - Searches

\$127.65

Total Subject to HST

\$127.65

Total HST on Disbursements

16.59

Total Fee & Disbursements

\$991.74

To outstanding account #77888	✓\$2,269.49
To outstanding account #78837	✓\$1,009.09
To outstanding account #80483	✓\$6,333.59
To outstanding account #81294	✓\$1,150.62
To outstanding account #85024	✓\$642.18
To outstanding account #87227	✓\$857.34

Balance Due and Owing to Schneider Ruggiero Spencer Milburn LLP

\$13,254.05

THIS IS OUR STATEMENT OF ACCOUNT HEREIN
 SCHNEIDER RUGGIERO SPENCER MILBURN LLP

George Ruggiero
 Esq.

cc O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.



Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: November 30, 2020
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 168282
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

RE: Power of Sale Proceedings against 2221563 Ontario Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:
09-Nov-20	Review letter from Trustee;
10-Nov-20	Review letter from Osler regarding disclosure of information; telephone conference with client regarding ; review motion materials filed for application for vesting order; Email to Vince Petrozza and Jawad Rathore regarding consent to act for Diversified;
12-Nov-20	Telephone conference with client regarding ; telephone conference between Dominique Michaud and Bryan Tannenbaum; draft response to Faan;
13-Nov-20	Engage file regarding response to FAAN; telephone call from Dominique Michaud to Colliers; telephone conference with client; email correspondence with RSM regarding private receiver; Review letter from Oslers; review Court Order; telephone conference between Irving Marks and Dominique Michaud;
16-Nov-20	Review proposal from Bryan Tannenbaum; telephone conference with client regarding ;
19-Nov-20	Telephone conference with client regarding
30-Nov-20	Telephone conference between Dominique Michaud and Bryan Tannenbaum regarding
	OUR FEE
	\$5,332.50



<u>H.S.T. (13%)</u>	
on \$5,332.50 Fees	693.23
on \$0.00 Disbursements	0.00
Total H.S.T.	\$693.23
TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.	<u>\$6,025.73</u>
ROBINS APPLEBY LLP	
Per:	
<i>Dom Michaud</i>	
Dominique Michaud	
E. & O.E.	
/WL	

Online bill payment is now available through most major banks. Please use the "Client No." located on this invoice as your online bill payment Account No., save "Robins Appleby LLP" as a "Payee" and proceed to "Pay Bills". If you require assistance, please call our office at 416-868-1080 and a member of the Robins Appleby accounting team would be pleased to help.

Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

[robapp\6281672.1](#)



Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: December 31, 2020
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 168615
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

	RE: Power of Sale Proceedings against 2221563 Ontario Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:	
02-Dec-20	Engage file regarding mortgage enforcement; Telephone conference between Dominique Michaud and Ladislav Kovac regarding form of agreement; telephone conference with client and RSM regarding ;	
03-Dec-20	Review form of Agreement of Purchase and Sale; email to client; Prepare schedule with respect to orea form power of sale;	
04-Dec-20	Engage file regarding revisions to form of Agreement of Purchase and Sale;	
05-Dec-20	Review revisions to form of offer; email correspondence regarding	
07-Dec-20	Telephone conference with client regarding Telephone call between Ladislav Kovac and Dominique Michaud; obtain copies of construction liens registered against title; amend schedule to agreement of purchase and sale;	
15-Dec-20	Email correspondence and telephone conference with client regarding	



	Emails with Russ Giannotta	
16-Dec-20	Telephone conference with client regarding	
17-Dec-20	Telephone conference with client regarding	
21-Dec-20	Telephone conference with client regarding Agreement of Purchase and Sale;	review
	Review and amend agreement of purchase and sale; emails and telephone conferences with	
29-Dec-20	Review email from Faan lawyer	
31-Dec-20	Telephone conference with client; email to Michael de Ellis;	
	OUR FEE	\$4,510.00
	DISBURSEMENTS	
	<i>* Indicates not subject to G.S.T./H.S.T.</i>	
	Corporate Searches	*8.00
	Computer Search - Teraview	*33.00
	Computer Search - Teraview	80.05
	Agency Fees	15.27
	Total Disbursements	\$136.32
	<u>H.S.T. (13%)</u>	
	on \$4,510.00 Fees	586.30
	on \$95.32 Disbursements	12.39
	Total H.S.T.	\$598.69
	TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.	<u>\$5,245.01</u>
	Outstanding account dated: 30-Nov-20 Ref. No. 168282	6,025.73
	TOTAL OUTSTANDING	<u>\$11,270.74</u>
	ROBINS APPLEBY LLP	
	Per:	
	<i>Dom Michaud</i>	
	Dominique Michaud	
	E. & O.E.	
	/WL	



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Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

robapp\6345952.1



Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: January 29, 2021
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 169019
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

RE: Power of Sale Proceedings against 2221563 Ontario Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:
06-Jan-21	Review letter from FAAN counsel regarding injunction motion; report to client regarding
07-Jan-21	Telephone conference between Dominique Michaud and Michael De Lellis regarding injunction; draft response to letter regarding disclosure of information and injunction motion; various telephone conferences with client regarding
11-Jan-21	Review email correspondence regarding sales process; review and revise letter to Osler regarding sales process;
14-Jan-21	Telephone conference between Dominique Michaud and Osler regarding information request; review letter from the Trustee;
15-Jan-21	Draft letter to Michael De Lellis;
	Update calculations for Notice of Sale.
18-Jan-21	Various telephone calls to client regarding letter to Town of Georgina;
21-Jan-21	Telephone conference with client regarding
26-Jan-21	Review amendment to agreement of purchase and sale;
	Review proposed amendment; email from Dominique Michaud to Ladislav Kovac;



29-Jan-21	Emails with Russ Giannotta;	
	Email correspondence regarding extension of due diligence;	
	OUR FEE	\$6,016.00
	<u>H.S.T. (13%)</u>	
	on \$6,016.00 Fees	782.08
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$782.08
	TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.	<u>\$6,798.08</u>
	Outstanding account dated: 30-Nov-20	Ref. No. 168282 6,025.73
	Outstanding account dated: 31-Dec-20	Ref. No. 168615 5,245.01
	TOTAL OUTSTANDING	<u>\$18,068.82</u>
	ROBINS APPLEBY LLP	
	Per:	
	<i>Dom Michaud</i>	
	Dominique Michaud	
	E. & O.E.	
	/WL	

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Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.



Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: February 27, 2021
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 169330
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

RE: Power of Sale Proceedings against 2221563 Ontario Inc.		
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:	
01-Feb-21	Telephone conference between Dominique Michaud and Osler regarding due diligence and liens; email from Dominique Michaud to Osler;	
03-Feb-21	Email correspondence client regarding	
22-Feb-21	Various telephone conferences regarding due diligence;	
23-Feb-21	Telephone conference between Dominique Michaud and purchaser regarding completion of due diligence; various emails regarding documents and surveys;	
24-Feb-21	Review Bruce Milburn's email;	
27-Feb-21	Engage file regarding termination of Agreement of Purchase and Sale and non-waiver of conditions;	
	OUR FEE	\$1,860.00
	DISBURSEMENTS	
	<i>* Indicates not subject to G.S.T./H.S.T.</i>	
	Conference Calls	7.93
	Total Disbursements	\$7.93
	<u>H.S.T. (13%)</u>	
	on \$1,860.00 Fees	241.80
	on \$7.93 Disbursements	1.03
	Total H.S.T.	\$242.83
	TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.	<u>\$2,110.76</u>
	Outstanding account dated: 30-Nov-20 Ref. No. 168282	6,025.73



Outstanding account dated: 31-Dec-20	Ref. No. 168615	5,245.01
Outstanding account dated: 29-Jan-21	Ref. No. 169019	6,798.08
TOTAL OUTSTANDING		<u>\$20,179.58</u>
ROBINS APPLEBY LLP		
Per:		
<i>Dom Michaud</i>		
Dominique Michaud		
E. & O.E.		
/WL		

Online bill payment is now available through most major banks. Please use the "Client No." located on this invoice as your online bill payment Account No., save "Robins Appleby LLP" as a "Payee" and proceed to "Pay Bills". If you require assistance, please call our office at 416-868-1080 and a member of the Robins Appleby accounting team would be pleased to help.

Account Due When Rendered. In accordance with section 33 of the *Solicitors Act*, interest will be charged at the rate of **3.00%** per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this statement is delivered.

robapp\6451659.1



Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: March 31, 2021
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 169701
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

RE: Power of Sale Proceedings against 2221563 Ontario Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:
23-Feb-21	Telephone conference between Ladislav Kovac and Paul Przybylo;
02-Mar-21	Telephone conference with client regarding
03-Mar-21	Email from Dominique Michaud to Michael De Lellis;
05-Mar-21	Telephone conference with client;
08-Mar-21	Telephone conference with client;
09-Mar-21	Telephone conference with client; email from Dominique Michaud to Michael De Lellis;
11-Mar-21	Email from Dominique Michaud to Michael De Lellis;
13-Mar-21	Telephone conference regarding sales process; email correspondence between Dominique Michaud and Trustee regarding disclosure of offers;
15-Mar-21	Engage file to review and assess sale agreements; Review submitted agreement of purchase and sale;
16-Mar-21	Various telephone conferences regarding offers to purchase the property;



17-Mar-21	Various emails and telephone conferences regarding finalization of agreement of purchase and sale; Telephone conference regarding negotiations for sale of property;	
18-Mar-21	Engage file to complete Agreement of Purchase and Sale; various sale negotiations; Telephone conference with Russ Giannotta emails between Ladislav Kovac and Bill Friedman; conference and	
19-Mar-21	Email from Bill Friedman to Ladislav Kovac with respect to initial deposit; Engage file regarding completion of Agreement of Purchase and Sale;	
22-Mar-21	Email correspondence with Colliers; Emails between Ladislav Kovac and Jeremiah Shames with respect to executed agreement and deposits; emails between Ladislav Kovac and Bill Friedman;	
23-Mar-21	Emails between Ladislav Kovac and John Dare with respect to legal description;	
31-Mar-21	Telephone conference with client regarding discharge of lien and various other closing issues; Correspondence between Ladislav Kovac, Dominique Michaud and Kimberly Lexovsky with respect to construction liens on title;	
	OUR FEE	\$11,382.50
	<u>H.S.T. (13%)</u>	
	on \$11,382.50 Fees	1,479.73
	on \$0.00 Disbursements	0.00
	Total H.S.T.	\$1,479.73
	TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.	<u>\$12,862.23</u>
	Outstanding account dated: 30-Nov-20	Ref. No. 168282 6,025.73
	Outstanding account dated: 31-Dec-20	Ref. No. 168615 5,245.01
	Outstanding account dated: 29-Jan-21	Ref. No. 169019 6,798.08
	Outstanding account dated: 27-Feb-21	Ref. No. 169330 2,110.76



TOTAL OUTSTANDING

\$33,041.81

ROBINS APPLEBY LLP

Per:

Dom Michaud

Dominique Michaud

E. & O.E.

/WL

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[robapp\6509757.1](#)



Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: April 30, 2021
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 170111
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

RE: Power of Sale Proceedings against 2221563 Ontario Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:
01-Apr-21	Review of liens by De Hodge Contracting and Sunbelt rentals; telephone conference with land registry office to determine discharge thereof; draft discharge of lien documents; Engage file regarding lien issues;
07-Apr-21	Review memo regarding construction liens;
08-Apr-21	Engage file regarding signature of acknowledgment section of Agreement of Purchase and Sale;
09-Apr-21	Email correspondence regarding fully executed Agreement of Purchase and Sale;
16-Apr-21	Telephone conference with client regarding engage file regarding motion to discharge liens;
19-Apr-21	Prepare motion materials to declare Sunbelt lien expired; Telephone conference between Dominique Michaud and Samuel Mosonyi regarding lien removal motions;
20-Apr-21	Prepare motion materials to declare lien expired and to vacate lien for both matters, including notice of motion, affidavit, and draft orders; provide instructions to staff regarding same; Telephone conference between Dominique Michaud and Samuel Mosonyi regarding deletion of lien regarding expiry of period to set matter down for trial;



21-Apr-21	<p>Review and revise motion materials to have liens vacated; telephone conference with client regarding</p> <p>Emails to opposing counsel regarding motions; make various changes to materials; review fiats; call opposing counsel in both matters and leave voicemail;</p>
22-Apr-21	<p>Emails with counsel for Sunbelt Rental; review Trustee Appointment Order of Justice Hainey; telephone conference between counsel for Sunbelt and Samuel Mosonyi; make changes to motion materials regarding Sunbelt reflecting consent of counsel and circulate to Sunbelt; review compiled exhibits;</p> <p>Engage file regarding lien discharge;</p>
23-Apr-21	<p>Engage file regarding lien issues;</p>
23-Apr-21	<p>Emails with De Hodge lawyer regarding expired lien materials; prepare interpleader motion materials for De Hodge matter;</p>
26-Apr-21	<p>Review settlement documents and lien discharge documents;</p> <p>Prepare agreement with respect to the deletion and payment of the De Hodge lien;</p> <p>Prepare interpleader motion materials regarding Sunbelt lien;</p>
27-Apr-21	<p>Review and revise agreements to discharge liens;</p> <p>Review Application to delete construction lien and payout agreement and propose changes to same for both liens;</p>
28-Apr-21	<p>Review proposed suggestions of De Hodge to interpleader draft order; send revisions to proposed suggestions of same;</p> <p>Engage file regarding power of sale, lien issues and issues arising from assignment of Agreement of Purchase and Sale;</p>
29-Apr-21	<p>Draft closing documents including statement of adjustments, direction re funds, land registry office transfer, undertakings to readjust, acknowledgment and direction;</p> <p>Review changes proposed by Sunbelt and De Hodge, and process changes to consent interpleader order;</p>



30-Apr-21

Review emails from De Hodge and Sunbelt regarding consent;

Telephone conference between Dominique Michaud and Michael De Lellis regarding assignment of Agreement of Purchase and Sale; email correspondence regarding lien payout; review loan documents regarding interest calculation; telephone conference between Dominique Michaud and Joseph Cortellucci;

OUR FEE

\$11,785.50

H.S.T. (13%)

on \$11,785.50 Fees

1,532.12

on \$0.00 Disbursements

0.00

Total H.S.T.

\$1,532.12

TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.

\$13,317.62

Outstanding account dated: 30-Nov-20

Ref. No. 168282

6,025.73

Outstanding account dated: 31-Dec-20

Ref. No. 168615

5,245.01

Outstanding account dated: 29-Jan-21

Ref. No. 169019

6,798.08

Outstanding account dated: 27-Feb-21

Ref. No. 169330

2,110.76

Outstanding account dated: 31-Mar-21

Ref. No. 169701

12,862.23

TOTAL OUTSTANDING

\$46,359.43

ROBINS APPLEBY LLP

Per:

Dom Michaud

Dominique Michaud

E. & O.E.

/WL

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Diversified Capital Inc.
323 Deerhurst Drive
Brampton, ON L6T 5K3

DATE: May 25, 2021
CLIENT No.: 6453
FILE No.: 2000769
INVOICE No.: 170227
H.S.T. No.: 12139 1205 RT0001

Attention: Russ Giannotta

RE: Power of Sale Proceedings against 2221563 Ontario Inc.	
	FOR ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including the following:
27-Apr-21	Emails with amend draft construction lien discharge for De Hodge lien;
03-May-21	Review loan documents regarding payout statement; Review requisition letter; email from Shannon MacKinnon;
04-May-21	Review memorandum regarding automatic renewal clauses and administration fee, conduct further research regarding same and make amendments; research on enforcement of prepayment privilege clause and draft memorandum regarding same; Email with purchaser's counsel for information required to complete closing documents; receipt and review of tax certificate; finalizing closing documents; Review caselaw regarding section 8 of the Interest Act administrative charges; draft memo to client; email correspondence regarding extension; Emails with Shannon MacKinnon with respect to extension request and response to requisition letter;
05-May-21	Complete closing documents; email to Colliers for commission statement; preparing summary of closing funds; telephone conference with Town of Georgina for amount of taxes to be paid on closing; preparing cover letter to tax department to be remitted post closing; emails with purchaser's counsel regarding closing documents required of purchaser; Reporting email to client; telephone conference regarding various charges to be added to the mortgage;



07-May-21	<p>Receipt and review of commission invoice from Colliers and completing summary of closing funds; provide draft closing documents to purchaser's counsel;</p> <p>Telephone conference with client regarding email from Dominique Michaud to Osler regarding payout statement;</p> <p>Review draft documents; prepare response to requisition letter;</p>
10-May-21	<p>Review Lien Payout Agreements and current drafts of affidavits;</p> <p>Telephone conference between Dominique Michaud and Osler regarding various lien issues; email correspondence regarding lien issues; draft letter to account for sale proceeds; meeting between Dominique Michaud and Samuel Mosonyi regarding interpleader motion;</p>
11-May-21	<p>Review interpleader motion material; email correspondence regarding closing and PPSA discharges; meeting with client regarding</p> <p>Update affidavit of Russ Giannotta in both motions;</p> <p>Email following up with purchaser's counsel regarding comments to draft closing documents; preparing closing documents to Diversified; ; telephone conference with tax department to confirm amount of arrears a</p> <p>revisions to summary of closing funds and redirection; emails with purchaser's counsel regarding their draft documents including solicitor undertaking, document registration agreement and direction regardign title; revisions to documents and reply emails to purchaser's counsel;</p> <p>Review draft documents;</p>
12-May-21	<p>Telephone conference regarding status of closing of power of sale transaction;</p> <p>Confirm various matters regarding closing and finalize motion materials;</p> <p>Review tender situation with current purchaser and original purchaser;</p> <p>Receipt and review of signed closing documents emails with purchaser's lawyer regarding discharge of PPSA security; providing closing cover letter and executed closing documents to purchaser's counsel;</p>

	<p>Emails with Shannon MacKinnon with respect to outstanding financing statements; phone call with Joseph Cortellucci; emails and phone calls with Bill Friedman with respect to status of closing;</p>
13-May-21	<p>Various emails and telephone conferences regarding closing issues; telephone conference between Dominique Michaud and Colliers regarding status of closing and commission agreement; various telephone conferences and emails with lien claimants; telephone conference between Dominique Michaud and Michael De Lellis;</p> <p>Complete sale closing;</p> <p>Emails with Bill Friedman and Joseph Cortelluci; review signed documents; sign transfers and applications to delete lien for completeness;</p>
14-May-21	<p>Telephone conference with client between Dominique Michaud and Colliers regarding commission; engage file regarding various distributions; email correspondence regarding payout statement;</p>
16-May-21	<p>Review payout statement;</p>
17-May-21	<p>Report to</p> <p>Review procedure for submitting material as consent motion in writing to master;</p> <p>Engage file regarding accounting of power of sale and obligation to account;</p>
18-May-21	<p>Telephone conference between Irving Marks and Dominique Michaud regarding distribution of sale proceeds; review case; review email from Olser;</p> <p>Telephone conference between Wendy Lee and Samuel Mosonyi regarding submitting material; review reply from court, draft and send response to same;</p> <p>Email regarding payment of funds into court regarding De Hodge Lien; telephone conference with client regarding</p>
19-May-21	<p>Emails from Samuel Mosonyi requesting teraview instruments; obtain instruments in teraview; email to Samuel Mosonyi enclosing requested instruments;</p>



	Review correspondence with court; instruct Wendy Lee to withdraw motion for preparation of further materials; telephone conference between Wendy Lee and Samuel Mosonyi regarding instructions; telephone conference between Kystra Ryan and Samuel Mosonyi regarding procedure; draft affidavit of Samuel Mosonyi regarding dispute over funds paid into court by Trustee; amend Notice of Motion and draft order; review correspondence with lawyers for Trustee; request Natalie Caprara to pull further instruments on title;	
	Engage file regarding interpleader motion; email correspondence regarding status of second mortgagees; email to Osler regarding Interpleader Order and Sunbelt settlement; revise interpleader motion materials;	
	Draft and revise accounting letter; review parcel and determine mortgage priority; conduct execution search;	
20-May-21	Make various amendments to motion materials; communications with Newmarket court regarding available master's motion dates; telephone conference between Wendy Lee and Samuel Mosonyi regarding scheduling motions;	
	Engage file regarding lien payout; various telephone conferences between Dominique Michaud, Roger Gillott and lien claimant lawyer regarding interpleader motion;	
21-May-21	Review motion booking form prepared by Wendy Lee; various emails with court regarding motion dates; review email of Mauro Marchioni and Roger Gillott;	
	Engage file regarding lien payout agreement;	
23-May-21	Various email correspondence regarding lien payout agreement and interpleader motion;	
25-May-21	Complete accounting;	
	OUR FEE	\$24,438.50
	DISBURSEMENTS	
	<i>* Indicates not subject to G.S.T./H.S.T.</i>	
	Computer Search - Teraview	*42.60
	Corporate Searches	8.00
	Digital Signature	3.40
	Computer Search - Teraview	40.40
	Agency Fees – Corporate Searches	14.49
	Photocopies	1.20
	Total Disbursements	\$110.09
	<u>H.S.T. (13%)</u>	
	on \$24,438.50 Fees	3,177.01



on \$67.49 Disbursements	8.77
Total H.S.T.	\$3,185.78
TOTAL FEES, DISBURSEMENTS and G.S.T./H.S.T.	<u>\$27,734.37</u>
Less: Received from trust	<u>27,734.37</u>
BALANCE OWING	<u>\$0.00</u>
ROBINS APPLEBY LLP	
Per:	
<i>D. Michaud</i>	
Dominique Michaud	
E. & O.E.	
/JEB	

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[robapp\6588009.1](#)

Appendix 30:
October 18, 2021, Letter from Osler to Robbins Appleby



October 18, 2021

Michael De Lellis
Direct Dial: 416.862.5997
MDeLellis@osler.com
Our Matter Number: 1189997

Toronto

Montréal

Calgary

Ottawa

Vancouver

New York

SENT BY ELECTRONIC MAIL

Dominique Michaud
Robins Appleby LLP
2600 120 Adelaide St. W.
Toronto, ON M5H 1T1
Email: dmichaud@robapp.com

Dear Sir:

Re: Notice of Sale under Mortgage dated January 24, 2019 (the “Notice”) issued by Diversified Capital Inc. (“Diversified”) to 2221563 Ontario Inc. (“Borrower”) and certain other parties with respect to property located at 230-240 Cameron Crescent, Keswick, Ontario (the “Property” or “South Shore Project”)

We are writing further to our letter dated July 13, 2021 (the “**July 2021 Letter**”) regarding the Property in which we, among other things, (i) reiterated the Trustee’s significant concerns with various amounts claimed by Diversified from the Proceeds, and (ii) requested the Required Information. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the July 2021 Letter.

We are in receipt of your responding letter dated August 26, 2021 (the “**August 2021 Responding Letter**”) in which you provided certain information to the Trustee for review (the “**Delivered Information**”). As a preliminary matter, we note the following:

- (a) the invoices contained in the Delivered Information for Schneider Ruggiero Spencer Milburn LLP amount to \$991.74 whereas fees of \$13,254.05 were claimed from Proceeds in respect of amounts owed to Schneider Ruggiero Spencer Milburn LLP, as set out in the Accounting Letter; and
- (b) the Delivered Information did not include any cost of borrowing and disclosure statement provided by Diversified to the Borrower relating to the Diversified Mortgage or any explanation as to why no such statement was not provided.

Accordingly, please provide copies of the foregoing outstanding documents and information forthwith. Notwithstanding these deficiencies, the Trustee and its counsel have had an opportunity to review the Delivered Information. Based on its review of such information, as well as the facts relating to the Notice, the BDMC Loans, the Diversified



Mortgage, the South Shore Project and the sale process conducted by Diversified, the Trustee believes that Diversified did not have a basis upon which to charge an aggregate amount in excess of \$2.88 million from the Proceeds, as particularized below.

1. Improperly Charged Interest due to Unwarranted Delay

As set out more particularly in the July 2021 Letter, Diversified failed to act honestly and in good faith and breached the duty that it owed to BDMC by consistently willfully, recklessly, negligently, and/or carelessly disregarding the interests of BDMC (and the investors in the BDMC Loans (the “**BDMC Investors**”)), the fulcrum creditor with respect to the South Shore Project, while interest continued to accrue under the Diversified Mortgage and when Diversified knew that it was over-secured. Further, the total length of any process to sell the Property should have been approximately six months, whereas the process run by Diversified took approximately 28 months to complete.

Approximately \$1.87 million of additional interest accrued during the period commencing six months after the issuance of the Notice up to the completion of the Sale.

2. Improperly Charged Interest due to Monthly Compounding

In the August 2021 Responding Letter, you have asserted that Section 6 of the Standard Charge Terms 200033 provides for default interest to be calculated on a monthly compounding basis.

As stated in *Resolute Land Bank Ltd. v. Helmut J. Sieber*, the purpose of Section 6 of the Standard Charge Terms 200033 is to permit compounding at the same rate of interest set out in the mortgage using the calculation period set out in the Mortgage rather than calculating interest on a simple interest basis.¹

The Diversified Charge is deficient as it does not expressly state any interest calculation or compounding period that would apply in the circumstances, as is clearly seen in the following excerpt from the charge provisions:

Provisions			
<i>Principal</i>	\$4,500,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>			
<i>Balance Due Date</i>	2015/11/01		
<i>Interest Rate</i>	12% pr annum		

Accordingly, the correct interest calculation or compounding period to reference is the annual period referenced in the interest rate provision of the Diversified Charge. Notably, the commitment letter contained in the Delivered Information also fails to set out any

¹ 2011 ONSC 46 at para 51 [*Resolute*].

OSLER

interest calculation or compounding period that would be applicable in the circumstances other than the annual rate of interest.

The Trustee has calculated the incremental amount of interest charged by Diversified due to use of an improper compounding period (i.e., monthly) to be \$560,523.² The Trustee's detailed interest calculation is provided in Appendix "A" attached hereto.

3. Improperly Charged Renewal Fees

In response to the Trustee's query regarding the basis upon which Diversified believes that renewal fees are chargeable and recoverable under the Diversified Mortgage or otherwise, you provided us with a renewal letter dated July 27, 2015 (the "**Renewal Letter**").

The Renewal Letter, which was delivered by Diversified to the Borrower, confirms that an automatic renewal of the loan would occur on the maturity date of the initial term and any renewal term in exchange for fees equal to 3% of the principal amount of the loan for the first renewal term and 1.5% for each subsequent renewal term thereafter.

However, the Renewal Letter states unequivocally that the automatic renewals would only occur "provided the Borrower is then not in default [of] any of the terms and conditions of the Loan" (underline added).

Renewal fees were charged in each of November 2015, November 2016, November 2017, and November 2018 notwithstanding that the loan was in default several months prior to the first renewal when the first interest payment was missed by the Borrower in September 2015, as set out in Appendix 7 of the Accounting Letter, and notwithstanding the fact that Diversified was in fact charging compound interest following default.

The renewal fees listed in Appendix 7 of the Accounting Letter total \$409,237.

4. Improperly Charged Legal Fees and Administrative Expenses

As set out in Appendix 7 of the Accounting Letter, the following amounts were claimed by Diversified from the Proceeds:

- (i) \$13,254.05 on account of amounts owed to Schneider Ruggiero Spencer Milburn LLP; and
- (ii) \$58,413.45 on account of "Sale Administration and Property Management Expenses".

² The calculation also reflects the interest impact related to the exclusion of the improperly charged renewal fees.

OSLER

To be recoverable under a mortgage, costs, charges, fees and expenses must be with respect to the enforcement of the mortgage, must be reasonable in the context of commercially reasonable steps that were or needed to be taken, and the quantum must be reasonable.³

As noted above, the Trustee has not been provided with invoices for \$12,262.31 of the \$13,254.05 claimed in respect of amounts owed to Schneider Ruggiero Spencer Milburn LLP out of the Proceeds. Absent this information, a court would be unable to assess whether these fees were with respect to the enforcement of the mortgage based on the information provided to date, and they would therefore be disallowed.

Regarding the “Sale Administration and Property Management Expenses”, \$32,391 of this amount was claimed by Diversified in respect of fees paid to Diversified Realty Advisors Inc., an entity that we assume is related to Diversified, for “management and administration services” rendered in connection with the Property. We note the following with respect to these fees:

- (a) the invoice submitted by Diversified Realty Advisors Inc. contains inadequate and incomplete particulars regarding the identity of the timekeeper, their hourly rate, and the time spent on any particular task;
- (b) the invoice submitted by Diversified Realty Advisors Inc. includes, among other things, entries related directly to Diversified’s obstruction of the Trustee’s efforts to fulfill its Court-ordered mandate and/or to pursuing, against the Trustee’s advice, a highly conditional offer received by Diversified in December 2020 in respect of a transaction that was ultimately not completed; and
- (c) Diversified had engaged a Nick J. Costa to perform property management type services, which included, among other things, facilitating due diligence, visiting the site, and attending to repairs at the Property. Mr. Costa’s fees were also paid out of the Proceeds. Accordingly, the fees paid to Diversified’s affiliate were, at least in part, duplicative of amounts paid to Mr. Costa.

For the foregoing reasons, it is clear that a court would come to the conclusion that a significant portion of these amounts were not “commercially reasonable” or “needed” in the circumstances. These fees and expenses would therefore be disallowed.

By the Trustee’s calculation, the improperly charged legal fees and administrative expenses total at least \$44,653.21.

Required Action

As set out above, the Trustee is of the view that Diversified has no basis to claim an aggregate amount in excess of \$2.88 million from the Proceeds (the “**Disputed Amount**”), which is to the direct detriment of the BDMC Investors, who have realized a return on the

³ *Resolute* at para 57.

OSLER

outstanding principal amount of the BDMC Loans of only approximately 6.0% (or approximately 4.3% of outstanding principal together with unpaid interest) to date.

To the extent that Diversified disagrees with the Trustee's positions set out in this letter, please provide a substantive response by no later than November 1, 2021. In the event that no substantive response is received by that date or any response received is inadequate, the Trustee will proceed to schedule a 9:30 a.m. attendance before a Judge of the Commercial List to determine a timetable for bringing a claim against Diversified seeking recovery of the full Disputed Amount, the costs of pursuing such claim, and the costs of the Trustee incurred to date.

This letter is being provided under an express reservation of all of the Trustee's rights, remedies, and recourses available at law, in equity or otherwise, including with respect to all amounts claimed by Diversified under its mortgage, and nothing contained herein should be interpreted as a waiver of any right or an admission of any kind whatsoever.

Yours very truly,



Michael De Lellis

cc. Naveed Manzoor, *FAAN Mortgage Administrators Inc.*
Jeremy Dacks, *Osler, Hoskin & Harcourt LLP*
Nancy Roberts, *Osler, Hoskin & Harcourt LLP*
George Benchetrit, *Chaitons LLP*

APPENDIX “A”**Interest Calculation**

(see attached)

Building & Development Mortgages Canada Inc.

South Shore Project - Diversified Interest Calculation

Unaudited; \$C

Original Debt	4,500,000			
Interest Rate	12% per annum			
Interest Calculation Method	Compounded annually based on October ending balance from prior year end			
Date	Rate	Annual Compound Interest	Fees (excl. renewal)	Cumulative Debt
September, 2015	1.00%	45,000	-	4,545,000
October, 2015	1.00%	45,000	-	4,590,000
November, 2015	1.00%	45,900	-	4,635,900
December, 2015	1.00%	45,900	-	4,681,800
January, 2016	1.00%	45,900	-	4,727,700
February, 2016	1.00%	45,900	-	4,773,600
March, 2016	1.00%	45,900	-	4,819,500
April, 2016	1.00%	45,900	-	4,865,400
May, 2016	1.00%	45,900	-	4,911,300
June, 2016	1.00%	45,900	-	4,957,200
July, 2016	1.00%	45,900	-	5,003,100
August, 2016	1.00%	45,900	-	5,049,000
September, 2016	1.00%	45,900	-	5,094,900
October, 2016	1.00%	45,900	-	5,140,800
November, 2016	1.00%	51,408	-	5,192,208
December, 2016	1.00%	51,408	-	5,243,616
January, 2017	1.00%	51,408	-	5,295,024
February, 2017	1.00%	51,408	-	5,346,432
March, 2017	1.00%	51,408	-	5,397,840
April, 2017	1.00%	51,408	-	5,449,248
May, 2017	1.00%	51,408	-	5,500,656
June, 2017	1.00%	51,408	-	5,552,064
July, 2017	1.00%	51,408	-	5,603,472
August, 2017	1.00%	51,408	-	5,654,880
September, 2017	1.00%	51,408	-	5,706,288
October, 2017	1.00%	51,408	-	5,757,696
November, 2017	1.00%	57,577	-	5,815,273
December, 2017	1.00%	57,577	-	5,872,850
January, 2018	1.00%	57,577	-	5,930,427
February, 2018	1.00%	57,577	-	5,988,004
March, 2018	1.00%	57,577	-	6,045,581
April, 2018	1.00%	57,577	-	6,103,158
May, 2018	1.00%	57,577	-	6,160,735
June, 2018	1.00%	57,577	-	6,218,312
July, 2018	1.00%	57,577	-	6,275,889
August, 2018	1.00%	57,577	-	6,333,466
September, 2018	1.00%	57,577	-	6,391,043
October, 2018	1.00%	57,577	-	6,448,620

Date	Rate	Annual Compound Interest	Fees (excl. renewal)	Cumulative Debt
November, 2018	1.00%	64,486	-	6,513,106
December, 2018	1.00%	64,486	-	6,577,592
January, 2019	1.00%	64,486	-	6,642,078
February, 2019	1.00%	64,486	-	6,706,564
March, 2019	1.00%	64,486	-	6,771,050
April, 2019	1.00%	64,486	-	6,835,537
May, 2019	1.00%	64,486	-	6,900,023
June, 2019	1.00%	64,486	-	6,964,509
July, 2019	1.00%	64,486	-	7,028,995
August, 2019	1.00%	64,486	-	7,093,481
September, 2019	1.00%	64,486	-	7,157,968
October, 2019	1.00%	64,486	-	7,222,454
November, 2019	1.00%	72,225	-	7,294,678
December, 2019	1.00%	72,225	450	7,367,353
January, 2020	1.00%	72,225	150,350	7,589,927
February, 2020	1.00%	72,225	350	7,662,502
March, 2020	1.00%	72,225	350	7,735,077
April, 2020	1.00%	72,225	3,200	7,810,501
May, 2020	1.00%	72,225	350	7,883,076
June, 2020	1.00%	72,225	350	7,955,650
July, 2020	1.00%	72,225	350	8,028,225
August, 2020	1.00%	72,225	18,796	8,119,245
September, 2020	1.00%	72,225	350	8,191,820
October, 2020	1.00%	72,225	350	8,264,394
November, 2020	1.00%	82,644	7,402	8,354,440
December, 2020	1.00%	82,644	350	8,437,433
January, 2021	1.00%	82,644	9,775	8,529,852
February, 2021	1.00%	82,644	350	8,612,846
March, 2021	1.00%	82,644	-	8,695,490
April, 2021	1.00%	82,644	-	8,778,134
May 1 to 14, 2021	0.46%	38,039	-	8,816,173
Ending Balance		4,123,051	193,122	8,816,173
Balance Charged by Diversified		4,683,574	602,359	9,785,933
Improperly Charged Amounts		(560,523)	(409,237)	(969,760)

Appendix 31:**November 1, 2021, Email from Diversified to Osler**

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Monday, November 01, 2021 11:44 AM
To: De Lellis, Michael
Cc: Dacks, Jeremy; Roberts, Nancy; 'Naveed Manzoor'; George Benchetrit; Stidwill, Sean
Subject: RE: BDMC/Diversified - Letter regarding the South Shore project
Attachments: Legals SR Law Invoices.PDF

Michael:

We have kept our response brief as Diversified sees no merit in engaging in an unproductive exchange of lengthy letters with FAAN. In response to your letter dated October 18, 2021, we advise as follows:

1. Please see the attached invoices from SR Law;
2. Diversified was not required to and did not provide the Borrower a cost of borrowing disclosure statement. Please see the Mortgage Brokerages, Lenders and Administrators Act, 2006 ONTARIO REGULATION 191/08. This regulation specifically spells out that this requirement does not apply a mortgage entered into with a borrower who is not a natural person, or a mortgage that a borrower enters into for business purposes. Diversified made a loan to a company that entered into the loan for the business purpose of real estate development and therefore this regulation does not apply; and
3. Diversified denies each of the allegations made in your letter and will vigorously defend any claim brought by FAAN in respect of the alleged improper mortgage calculations and/or improvident sale. Please refer to my earlier letter of August 26, 2021. If forced to defend such a claim, Diversified will raise FAAN's improper attempted interference in the sales process.

In your letter you have advised that you intend to attend before a Judge on the commercial list to set a timetable in respect of this contemplated action. Such an attendance is premature at this stage. This is a dispute as between mortgagees. The proper forum to deal with this contemplated claim would be in an action commenced by FAAN on behalf of the second mortgagee on the regular civil list. Diversified will oppose any attempt by FAAN to bring this action on the commercial list as this contemplated claim is not appropriate or eligible for the Commercial List as set out in the Consolidated Practice Direction Concerning the Commercial List.

If you have any questions please call me.

Dom

Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY

BARRISTERS + SOLICITORS

From: Stidwill, Sean <SStidwill@osler.com>
Sent: October 18, 2021 5:16 PM
To: Dominique Michaud <dmichaud@robapp.com>

Cc: De Lellis, Michael <MDeLellis@osler.com>; Dacks, Jeremy <JDacks@osler.com>; Roberts, Nancy <NRoberts@osler.com>; 'Naveed Manzoor' <naveed@faanmortgageadmin.com>; George Benchetrit <George@chaitons.com>

Subject: BDMC/Diversified - Letter regarding the South Shore project

CAUTION: External e-mail.

Hi Dom,

Please see the attached correspondence of today's date regarding the South Shore project.

Best,
Sean

OSLER

Sean Stidwill

Associate | SStidwill@osler.com
416.862.4871 (Toronto) | 613.787.1100 (Ottawa)
Osler, Hoskin & Harcourt LLP | Osler.com

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****Please note that Robins Appleby LLP is working remotely due to the COVID-19 pandemic. We continue to be available by email and by phone. Our secure electronic file management system enables us to be fully operational during this time.****

Robins Appleby LLP | 2600-120 Adelaide St.W., Toronto, ON M5H 1T1 | <http://www.robapp.com>

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..--

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

AND TO

2221563 Ontario Limited
c/o Robins Appleby & Taub LLP
2600 - 120 Adelaide St. W.
Toronto, ON M5H 1T1
Attention: John Fox

IN ACCOUNT WITH
SCHNEIDER RUGGIERO SPENCER MILBURN LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

May 07, 2021

NO:88556

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

24-Feb-21	To conduct file review and prepare draft discharge in response to questions from client's litigator with respect to what lands are encumbered by the charge; adjoining lands search and telephone discussion with litigator	
TO OUR TOTAL FEE:		\$750.00
HST		
on 750.00 Fees		\$97.50
DISBURSEMENTS		
Disbursements Subject to HST		
Teraview - Searches		\$127.65
Total Subject to HST		\$127.65
Total HST on Disbursements		16.59
Total Fee & Disbursements		\$991.74

To outstanding account #77888	✓ \$2,269.49
To outstanding account #78837	✓ \$1,009.09
To outstanding account #80483	✓ \$6,333.59
To outstanding account #81294	✓ \$1,150.62
To outstanding account #85024	✓ \$642.18
To outstanding account #87227	✓ \$857.34

Balance Due and Owing to Schneider Ruggiero Spencer Milburn LLP

\$13,254.05

THIS IS OUR STATEMENT OF ACCOUNT HEREIN
 SCHNEIDER RUGGIERO SPENCER MILBURN LLP
 Per:

591.74
14,245.92

George Ruggiero
 GR:sp

E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

IN ACCOUNT WITH
SCHNEIDER RUGGIERO LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

May 29, 2017

NO:77888

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

06-Feb-17	Review request for increase in third mortgage and determine if existing subordination and standstill agreement is sufficient
07-Feb-17	Review of file for subordination agreement executed by Diversified; forward request to client to approve increase in
09-Feb-17	Attend to emails with respect to amending agreement and payment of invoices
21-Feb-17	Follow up with client for confirmation of his agreement to an increase in the subsequent mortgage amount
28-Feb-17	Obtain first mortgagee's consent to an increase in the principal of the third mortgage
09-Mar-17	Review request to increase the principal of the third mortgage and review existing documentation and provide advise to client re same
10-Mar-17	Obtain approval from client for an increase in the principal of the subsequent mortgage
27-Apr-17	Review of request for consent to increase subsequent mortgage principal and review file and instructions from client and advise lawyer of need for an agreement to amend the subordination and standstill agreement
09-May-17	Review of subordination and standstill amending agreement re change in principal of subsequent mortgage and forward to client for execution
11-May-17	Provide subordination amending agreement to borrower's counsel
15-May-17	To emails re new subordination agreement
17-May-17	Review of registered amendment to subsequent charge

TO OUR TOTAL FEE: \$2,000.00

HST

on 2,000.00 Fees \$260.00

DISBURSEMENTS

Disbursements Subject to HST

Photocopies

\$4.90

Corporate Search Connection

\$3.50

Total Subject to HST

\$8.40

Total HST on Disbursements

1.09

Total Fee & Disbursements

\$2,269.49

Balance Due and Owing to Schneider Ruggiero LLP**\$2,269.49**THIS IS OUR STATEMENT OF ACCOUNT HEREIN
SCHNEIDER RUGGIERO LLP

Per:

George Ruggiero

GR:sp

E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

IN ACCOUNT WITH
SCHNEIDER RUGGIERO LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

October 25, 2017

NO:78837

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

07-Jul-17	To attending to review of request by Subordinate Lender to increase amount of subordinate charge and to emails regarding same.	
13-Jul-17	To attending to draft amendment to Subordination and Standstill Agreement to all subsequent lender to increase its loan.	
14-Jul-17	To attending to forward agreement signed by client amending terms of Subordination Agreement to lawyer of subordinate lender for execution.	
16-Aug-17	Review of request by subordinate lender to increase amount of subordinate charge and to emails re same	
TO OUR TOTAL FEE:		\$893.00
HST		
on	893.00 Fees	\$116.09
Total Fee & Disbursements		<u>\$1,009.09</u>
To outstanding account #77888		\$2,269.49
Balance Due and Owing to Schneider Ruggiero LLP		<u>\$3,278.58</u>

THIS IS OUR STATEMENT OF ACCOUNT HEREIN
SCHNEIDER RUGGIERO LLP

Per:

George Ruggiero
GR:sp
E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FAX 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

IN ACCOUNT WITH
SCHNEIDER RUGGIERO LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

May 31, 2018

NO:80483

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

24-Nov-17	Review of file with respect to preparing to increase principal of loan
30-Nov-17	Reviewing title searches; Reviewing mortgage instruments; Drafting documents, postponements and subordination relating to future amending charge; Calls and correspondences with client; Drafting letters with enclosures to appropriate lenders' counsel
04-Dec-17	Reviewing request and forwarding materials; Call with client
05-Dec-17	Reviewing instructions and responding to same with information; Correspondences with client and mortgagees
14-Dec-17	Following up regarding amendments and postponement
20-Dec-17	Responding to borrower's query regarding documents and postponements
04-Jan-18	Updating client; Following up with borrower's counsel regarding status of documents and lender's ability to sign off on postponements
16-Jan-18	Following up with lender's counsel; Reviewing changes to documentation
17-Jan-18	Reviewing documents and amendments to same; Updating client
22-Jan-18	Following up with borrower's counsel on documents
25-Jan-18	Calls and correspondences with client; Reviewing title to property; Reviewing sent emails regarding postponements and acknowledgments; Completing searches; Summarizing review of documents
26-Jan-18	Responding to client's request
01-Feb-18	Calls and correspondences with client and borrower's counsel;
26-Mar-18	Prepare default notices
23-Apr-18	Prepare default demand letter and related documents
24-Apr-18	Finalize demand letters
	Receive and review instructions; prepare, issue and serve Demand letter; prepare, issue and serve BIA Notice; report to client;

TO OUR TOTAL FEE:

\$5,500.00

HST	
on 5,500.00 Fees	\$715.00

DISBURSEMENTS

Disbursements Subject to HST

Photocopies

\$42.70

Teraview - Searches

\$62.25

Total Subject to HST

\$104.95

Total HST on Disbursements

13.64

Total Fee & Disbursements

\$6,333.59

To outstanding invoice #77888

\$2,269.49

To outstanding invoice #78837

\$1,009.09

Balance Due and Owing to Schneider Ruggiero LLP**\$9,612.17**

THIS IS OUR STATEMENT OF ACCOUNT HEREIN

SCHNEIDER RUGGIERO LLP

Per:

George Ruggiero

GR:sp

E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

AND TO

2221563 Ontario Limited
c/o Robins Appleby & Taub LLP
2600 - 120 Adelaide St. W.
Toronto, ON M5H 1T1
Attention: John Fox

IN ACCOUNT WITH
SCHNEIDER RUGGIERO LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

September 25, 2018

NO:81294

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

07-Aug-18	Attend to preparation of renewed PPSA financing statement	
14-Aug-18	To registration of renewal of PPSA registration at request of client	
TO OUR TOTAL FEE:		\$980.00
HST		
on 980.00	Fees	\$127.40

DISBURSEMENTS

Disbursements Subject to HST	
Delivery	\$4.00
PPSA Registration Fee-Cyberbahn	\$31.25
Corporate Search Connection	\$3.00
Total Subject to HST	\$38.25
Total HST on Disbursements	4.97
Total Fee & Disbursements	\$1,150.62
To outstanding account #77888	\$2,269.49
To outstanding account #78837	\$1,009.09
To outstanding account #80483	\$6,333.59

Balance Due and Owing to Schneider Ruggiero LLP

\$10,762.79

**THIS IS OUR STATEMENT OF ACCOUNT HEREIN
SCHNEIDER RUGGIERO LLP**

Per:

George Ruggiero

GR:sp

E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

AND TO

2221563 Ontario Limited
c/o Robins Appleby & Taub LLP
2600 - 120 Adelaide St. W.
Toronto, ON M5H 1T1
Attention: John Fox

IN ACCOUNT WITH
SCHNEIDER RUGGIERO SPENCER MILBURN LLP
BARRISTERS & SOLICITORS

HST No.11942 6229RT

December 31, 2019

NO:85024

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

14-Nov-18	To conducting sub-search at request of client	
08-Jan-19	To obtaining updates on 13 pins of subject property, review of same and forward to client at his request	
07-Oct-19	To emails re interest from third party in purchasing the mortgages	
TO OUR TOTAL FEE:		\$441.00
HST		
on 441.00	Fees	\$57.33

DISBURSEMENTS

Disbursements Subject to HST
Teraview - Searches

\$127.30

Total Subject to HST	\$127.30
Total HST on Disbursements	16.55

Total Fee & Disbursements	\$642.18
---------------------------	-----------------

To outstanding account #77888	\$2,269.49
-------------------------------	-------------------

To outstanding account #78837	\$1,009.09
-------------------------------	-------------------

To outstanding account #80483	\$6,333.59
-------------------------------	-------------------

To outstanding account #81294

1,150.62

Balance Due and Owing to Schneider Ruggiero Spencer Milburn LLP

\$11,404.97

THIS IS OUR STATEMENT OF ACCOUNT HEREIN
SCHNEIDER RUGGIERO SPENCER MILBURN LLP
Per:

George Ruggiero
GR:sp

E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Diversified Capital Inc.
323 Deerhurst Dr.
Brampton, Ontario
L6T 5K3

Suite 1000
120 Adelaide Street West
Toronto, Ontario
M5H 3V1

TELEPHONE 416-363-2211
FACSIMILE 416-363-0645
REFER TO FILE NO.37390

Attention: Russ A. Giannotta

AND TO

2221563 Ontario Limited
c/o Robins Appleby & Taub LLP
2600 - 120 Adelaide St. W.
Toronto, ON M5H 1T1

Attention: John Fox

IN ACCOUNT WITH
SCHNEIDER RUGGIERO SPENCER MILBURN LLP
BARRISTERS & SOLICITORS
INTERIM ACCOUNT

HST No.11942 6229RT

October 30, 2020

NO:87227

Re: **Diversified Capital Inc. loan to
2221563 Ontario Limited
230-240 Cameron Street, Keswick**

TO PROFESSIONAL SERVICES RENDERED with respect to the above matter including the following:

10-Feb-20	To emails and phone discussions with client about a process to pay realty taxes while preserving the client's priority on title, to review of existing subordination and standstill agreements	
05-Jun-20	Review of letter from subsequent mortgagees requesting information on efforts to sell property and forward to client	
02-Oct-20	To review of listing agreement and make amendments to same	
TO OUR TOTAL FEE:		\$682.50
HST on 682.50 Fees		\$88.73

DISBURSEMENTS

Disbursements Subject to HST
Teraview - Searches

\$76.20

Total Subject to HST

\$76.20

Total HST on Disbursements

9.91

Total Fee & Disbursements

\$857.34

To outstanding account #77888	\$2,269.49
To outstanding account #78837	\$1,009.09
To outstanding account #80483	\$6,333.59
To outstanding account #81294	\$1,150.62
To outstanding account #85024	\$642.18

Balance Due and Owing to Schneider Ruggiero Spencer Milburn LLP

\$12,262.31

THIS IS OUR STATEMENT OF ACCOUNT HEREIN
SCHNEIDER RUGGIERO SPENCER MILBURN LLP

Per:

George Ruggiero
GR:sp

E. & O.E.

Accounts due when rendered. In accordance with Section 33 of the Solicitors Act, interest will be charged at the rate of 4.5% per annum on unpaid fees, charges or disbursements, calculated from a date that is one month after this statement is delivered.

Appendix 32:**January 21, 2022, 9:30 Request Form and Notice of Motion**


Commercial List File Number: CV-18-596204-00CL


Date: January 21, 2022

SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
9:30 A.M. HEARING REQUEST FORM

A	<p>PLEASE NOTE: The 9:30 hearing procedure is only for “ex parte, urgent, scheduling and consent matters which take no longer than 10 minutes” (Practice Direction, (2002), 57 O.R. (3rd) 97; paragraph 25). This restriction will be enforced. This matter is (tick one or more);</p> <p style="text-align: center;"> <input type="checkbox"/> ex parte <input type="checkbox"/> urgent <input checked="" type="checkbox"/> scheduling <input type="checkbox"/> consent <input type="checkbox"/> other (explain) </p>
B	<p>Short Title of Proceeding:</p> <p>The Superintendent of Financial Services v Building & Development Mortgages Canada Inc.</p>
C	<p>Date(s) Requested:</p> <p>March 7, 8 or 9, 2022, before the Honourable Justice McEwen, who is seized of this matter.</p>
D	<p>The following is a brief description of the matter to be considered at the 9:30 appointment:</p> <p>The Trustee (as defined below) has brought a motion in the ongoing Trusteeship proceedings involving BDMC (as defined below) for an order, <i>inter alia</i>, requiring the payment by Diversified Capital Inc. (“Diversified”) to the Trustee of certain disputed amounts (the “Disputed amounts”) arising from the sale by Diversified under power of sale of the lands located at 230-240 Cameron Crescent, Keswick, Ontario (the “Sound Shore Lands”).</p> <p>Pursuant to the Appointment Order of the Honourable Mr. Justice Hailey dated April 20, 2018 (the “Appointment Order”), FAAN Mortgage Administrators Inc. was appointed as trustee (in such capacity, the “Trustee”) of Building & Development Mortgages Canada Inc. (“BDMC”). The purpose of the Trustee’s appointment is to protect the interests of the members of the investing public who invested in syndicated mortgage loans made by BDMC in respect of certain real estate development projects associated with Fortress Real Developments Inc. and secured by mortgages registered on title to the applicable real property, including three loans (the “BDMC Loans”) made to 2221563 Ontario Inc. (the “Borrower”) in respect of a real estate development project located at the South Shore Lands.</p> <p>The BDMC Loans are included in the “Property” subject to the Appointment Order. In carrying out its mandate, pursuant to paragraph 3 of the Appointment Order, the Trustee is empowered to receive, preserve, protect and maintain control of the “Property” (as defined in the Appointment Order), including the holding of mortgage security on behalf of the Investors and to exercise all remedies of BDMC in collecting monies owed to BDMC. Such mortgage security includes the charges related to the South Shore Lands. Further, the Trustee may, pursuant to paragraphs 4, 6 and 7 of the Appointment Order, require that all persons provide the Trustee with information of any kind related to the business or affairs of BDMC.</p> <p>The aggregate principal amount advanced to the Borrower under the BDMC Loans was in excess of \$29 million and, prior to the completion of a power of sale transaction (the “Sale”) initiated by Diversified, the BDMC Loans were secured by mortgages on the South Shore Lands, with the aggregate amount owing under the BDMC Loans being in excess of \$41 million (inclusive of interest and principle). Diversified’s mortgage was the only mortgage registered on title to the South Shore Lands in priority to the charges securing the BDMC Loans.</p> <p>The Sale closed on May 13, 2021 at a sale price of \$13 million (“Proceeds”). Following closing of the Sale, Diversified advised the Trustee in an accounting letter (the “Accounting Letter”) that it claimed amounts in excess of \$9.9 million from the Proceeds on account of its \$4.5 million principal loan. However, the Accounting Letter contained insufficient information for the Trustee to review, assess, and verify the amounts that Diversified claimed.</p> <p>After repeated requests made by the Trustee verbally and in writing over several months for specific and</p>

	<p>targeted documents and information that must have been used by Diversified in calculating the amounts that it intended to claim from the Proceeds and in preparing the Accounting Letter, Diversified provided certain information.</p> <p>The Trustee has significant concerns regarding the validity, propriety and reasonableness of the amounts claimed by Diversified from the Proceeds, and in particular, related to the Disputed Amounts (which relate to the conduct and timing to complete a power of sale transaction, the calculation of interest, charged renewals fees and certain administrative expenses claimed by Diversified, all of which are more fully set out in the attached Notice of Motion).</p> <p>To facilitate an efficient resolution of this dispute, the Trustee included a proposed litigation schedule when it served its Notice of Motion on Diversified.</p> <p>Counsel for Diversified takes the position that the dispute should not be determined as a motion in this proceeding or before the Commercial List, but rather that the proper forum to deal with this dispute would be an action commenced by FAAN on the regular civil list.</p> <p>The Trustee's position is that this dispute is properly to be decided on motion brought in these proceedings and the Commercial List is clearly the proper forum for this dispute. As noted above, the Trustee's mandate specifically includes (i) the holding of mortgage security on behalf of the Investors; (ii) the exercise all remedies of BDMC in collecting monies owed to BDMC; and (iii) the empowerment to receive, preserve, protect and maintain control of the Property, including the holding of mortgage security on behalf of the Investors and to exercise all remedies of BDMC in collecting monies owed to BDMC. The BDMC Loans to the Borrower are included in the Property subject to the Appointment Order. A motion in these proceedings promotes the goals of simplicity, cost efficiency and expedition, thereby promoting the interests of members of the investing public who invested in syndicated mortgage loans made by BDMC and will not unfairly affect the interests of Diversified.</p>
E	<p>The following materials will be necessary for the matter to be considered. (it is the responsibility of counsel to confirm that the proper materials are available for the Court.)</p> <p>Email dated January 10, 2022, from Osler to counsel for Diversified, with Notice of Motion of the same date and proposed schedule; email from counsel for Diversified to Osler dated January 13, 2022 (attached as Schedule A).</p>
F	<p>Is any Judge seized of these matters or any judicial conflicts? <input type="checkbox"/> No</p> <p>[X] Yes – Justice McEwen is seized of the BDMC trusteeship proceedings.</p>

COUNSEL FOR APPLICANT/MOVING PARTY		COUNSEL FOR OTHER PARTY	
Party	FAAN Mortgage Administrators Inc., in its capacity as Court-Appointed Trustee of Building & Development Mortgages Canada Inc.	Party	Diversified Capital Inc.
Counsel	 _____ Nancy Roberts	Counsel	_____ Dominique Michaud
Address	Osler, Hoskin & Harcourt LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto ON M5X 1B8	Address	Robins Appleby LLP 2600 120 Adelaide St. W Toronto, ON M5H 1T1
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E-Mail	nroberts@osler.com	E-Mail	dmichaud@robapp.com

COUNSEL FOR OTHER PARTY	
Party	Representative Counsel
Counsel	by:  _____ George Benchetrit
Address	CHAITONS LLP 5000 Yonge Street, 10TH Floor Toronto, Ontario M2N 7E9
Phone	416.218.1129
Fax	416.218.1849
E-Mail	george@chaitons.com

To be submitted to: Commercial List Office, 330 University Avenue, 7th Floor, Toronto Ontario Fax to: (416) 327-6228

You may also convert to PDF and email to Toronto.Commerciallist@ius.gov.on.ca

Endorsement/Disposition ☐ See attached Yellow Endorsement Form.

Commercial Form A

SCHEDULE A

From: Roberts, Nancy <NRoberts@osler.com>
Sent: Monday, January 10, 2022 12:54 PM
To: Dominique Michaud
Cc: Naveed Manzoor; De Lellis, Michael; Dacks, Jeremy;
george@chaitons.com
Subject: Motion for Payment by Diversified to the Trustee of Disputed Amounts;
Court File No. CV-18-59604-00CL
Attachments: 1654_001.pdf

Please see the attached letter with Notice of Motion and timetable.

Regards,

The logo for Osler, Hoskin & Harcourt LLP, featuring the word "OSLER" in a stylized, serif font with a red-to-orange gradient.

Nancy Roberts
Partner
Office: 416.862.5867 | Cell: 647.588.5867
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Court File No. CV-18-596204-00CL

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE *COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43***

**NOTICE OF MOTION
(Motion for Payment by Diversified to the Trustee of the Disputed Amounts)**

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c. 29*, as amended (the “**MBLAA**”) and section 101 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*, as amended (the “**CJA**”) will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) at a date and time to be set by the Court, or as soon after that time as the motion can be heard, by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic.

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

THE MOTION IS FOR:

1. An Order, *inter alia*:
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) for the immediate payment by Diversified Capital Inc. (“**Diversified**”) to the Trustee of the Disputed Amounts (as defined in paragraph 39 below); and
 - (c) such other relief or Orders incidental to or related to the relief requested in paragraph 1(b) above.
2. The costs of this motion on a partial indemnity basis; and
3. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to the Order of the Court in respect of BDMC dated April 20, 2018 (the “**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as the Trustee, without security, of all of the assets, undertakings and properties of BDMC, including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, Investors (as defined in paragraph 2 below), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust.
2. The purpose of the Trustee’s appointment is to protect the interests of the members of the investing public (the “**Investors**”) who invested in syndicated mortgage loans made by BDMC in respect of certain real estate development projects related to Fortress Real Developments Inc., secured by mortgages registered on title to the applicable real property, and to continue to administer the syndicated mortgage loans, including the loan in respect of a real estate

development project located at 230-240 Cameron Crescent, Keswick, Ontario (the “**South Shore Project**”).

3. In carrying out its mandate, pursuant to paragraph 3 of the Appointment Order, the Trustee is empowered to receive, preserve, protect and maintain control of the “**Property**” (as defined in the Appointment Order), including the holding of mortgage security on behalf of the Investors and to exercise all remedies of BDMC in collecting monies owed to BDMC. Such mortgage security includes the charges related to the South Shore Project, referred to in paragraph 6 below. Further, the Trustee may, pursuant to paragraphs 4, 6 and 7 of the Appointment Order, require that all persons provide the Trustee with information of any kind related to the business or affairs of BDMC.

The South Shore Project and related Indebtedness

4. Prior to the completion of the Power of Sale Transaction (as defined in paragraph 11 below), the lands comprising the South Shore Project (the “**Lands**”) were owned by 2221563 Ontario Inc. (the “**Borrower**”).

5. Diversified held a first-ranking mortgage interest in the Lands, secured by a charge registered on title to the Lands on October 30, 2014, in the principal amount of \$4,500,000 (the “**Diversified Mortgage**”).

6. Prior to the appointment of the Trustee, BDMC administered three syndicated mortgage loans made to the Borrower in connection with the Lands and the South Shore Project:

- (a) a loan previously administered by Derek Sorrenti, in trust for various lenders (the “**Sorrenti Loan**”) which administration was transferred to BDMC in July 2016 and which was secured by a charge registered on title to the Lands on February 4, 2011, in the initial principal amount of \$4,800,000 and subsequently increased to \$8,600,000;
- (b) a non-revolving loan in an amount not exceeding \$20,000,000 under a loan agreement dated October 21, 2014 (the “**2014 BDMC Loan**”), which was secured

by a charge registered on title to the Lands on January 14, 2015 in the initial principal amount of \$3,200,000 and subsequently increased to \$10,700,000; and

- (c) a non-revolving loan in an amount not exceeding \$10,500,000 under a loan agreement dated April 21, 2016 (the “**2016 BDMC Loan**” and together with the Sorrenti Loan and the 2014 BDMC Loan, the “**BDMC Loans**”), which was secured by a charge registered on title to the Lands on July 22, 2016 in the initial principal amount of \$5,900,000 and subsequently increased to \$11,175,000.

7. The BDMC Loans, including the relevant charges set out in paragraph 6 above, constitute Property, as defined in the Appointment Order.

8. Certain Investors in the South Shore Project (the “**South Shore Investors**”) invested through Olympia Trust Company, B2B Trust and The Bank of Nova Scotia Trust Company (the “**RRSP Trustees**”) using registered savings vehicles under the *Income Tax Act*, and a portion of the charges administered by BDMC registered on title to the Lands was transferred into the name of one or more RRSP Trustees.

9. Prior to the completion of the Power of Sale Transaction, the aggregate amount owing under the BDMC Loans was \$41,073,368 (comprised of \$29,242,025 of outstanding principal and \$11,831,343 of unpaid interest), including the following principal amounts:

- (a) \$8,600,000 under the Sorrenti Loan;
- (b) \$10,113,068 under the 2014 BDMC Loan; and
- (c) \$10,528,957 under the 2016 BDMC Loan.

The Sale of the South Shore Project

10. On January 24, 2019, Diversified issued a Notice of Sale under Mortgage regarding the Lands in respect of a default under the Diversified Mortgage (the “**Notice**”), which stated that the amount then outstanding was approximately \$6.895 million.

11. Acting under its power of sale, on or about March 19, 2021, Diversified entered into a binding agreement of purchase and sale in respect of the Lands with 2794080 Ontario Inc. (the “**Power of Sale Transaction**”) at a purchase price of \$13 million (the “**Sale Proceeds**”).

12. The Power of Sale Transaction closed on or about May 13, 2021, approximately 28 months following the issuance of the Notice.

Breach of Duty owed to BDMC during Sale Process

13. A priority mortgagee acting pursuant to a Notice of Sale under Mortgage is required to conduct a sale process honestly and in good faith and may not proceed without caring whether or not the interests of the mortgagors and any subsequent encumbrancers are sacrificed.

14. Throughout the conduct of the sale process in respect of the Lands (the “**Sale Process**”) and despite repeated requests by the Trustee to work collaboratively in furtherance of a sale to benefit all stakeholders, Diversified failed to act honestly and in good faith and breached the duty that it owed to BDMC by consistently willfully, recklessly, negligently, and/or carelessly disregarding the interests of BDMC (and the South Shore Investors), the fulcrum creditor with respect to the Lands, while interest continued to accrue under the Diversified Mortgage, including (without limitation) by:

- (a) ignoring numerous attempts by the Trustee to contact Diversified, including by phone, email, and text message, during the approximately 18-month period between January 24, 2019 (i.e., the date of the Notice) and July 2020 (i.e. when Diversified finally agreed to arrange a formal call with the Trustee);
- (b) failing to select a real estate broker in a timely fashion;
- (c) failing to consistently market the Lands for sale;
- (d) failing to list the Lands for sale for more than 21 months following issuance of the Notice;
- (e) disregarding various inquiries, including in December 2019 and January 2020, from parties that had expressed an interest in purchasing the Lands;

- (f) refusing to provide the Trustee with pertinent and readily accessible information regarding the Sale Process, once it was commenced, notwithstanding the Trustee's repeated requests for same and confirmation by the Trustee that it would sign a confidentiality agreement;
- (g) accepting a highly conditional offer in December 2020 in respect of a transaction that was ultimately not completed (the "**Conditional Offer**"), notwithstanding that at least one unconditional offer had also been submitted for the Lands and that the Trustee had advised that no agreement(s) of purchase and sale with respect to the Lands should be executed without first engaging with the Trustee;
- (h) failing to provide a payout statement prior to the completion of the Power of Sale Transaction despite repeated verbal and written requests by the Trustee and its counsel over several months; and
- (i) failing to provide the Trustee with any opportunity to review, assess, and verify the amounts that Diversified intended to claim from the Sale Proceeds, despite the Trustee's request that no such amounts should be disbursed from Diversified's counsel's trust account to Diversified prior to such a review taking place.

15. The total length of Diversified's process to sell the Lands was unreasonably lengthy, and as a result, was unjustly detrimental to the interests of the South Shore Investors as detailed below.

16. By letter dated May 25, 2021, after the closing of the Power of Sale Transaction, Diversified delivered an accounting letter (the "**Accounting Letter**") to the Trustee, in which Diversified claimed amounts in excess of \$9.9 million from the Sale Proceeds in respect of its \$4.5 million principal loan to the Borrower.

17. Diversified has calculated interest accruing under the Diversified Mortgage using a rate of 12% per annum compounded on a monthly basis.

18. Following the application of certain adjustments, the payment of certain property tax arrears and other costs related to the Power of Sale Transaction, and payment of the amount

claimed by Diversified, approximately \$2.4 million of the Sale Proceeds would be available for distribution to subsequent encumbrancers, of which approximately \$610,000 is subject to a priority dispute between BDMC and a lien claimant.

19. As at the date hereof, only \$1,760,479.25 of the Sale Proceeds have been distributed to the Trustee, on behalf of BDMC, which represents a return on the outstanding principal amount of the aggregate amount of the BDMC Loans of only approximately 6.0% (or approximately 4.3% of outstanding principal together with unpaid interest).

20. Diversified has claimed (and ultimately paid to itself from the Sale Proceeds) interest totaling approximately \$4.7 million, of which at least approximately \$1.87 million resulted from undue delays which accrued over a 22 month period commencing six months after the issuance of the Notice and ending upon the completion of the Power of Sale Transaction (the “**Interest due to Delay**”).

21. Based on the Trustee’s experience in sale transactions for land similar to the South Shore Project, six months is a more than sufficient period of time to conduct and complete a sale process of this nature. Moreover, Diversified’s own process for the South Shore Project from the listing date through to the completion of the Power of Sale Transaction was approximately six months (inclusive of the additional delay resulting from the acceptance of the Conditional Offer).

Renewal Fees have been Improperly Deducted from the Sale Proceeds

22. Diversified has claimed and deducted from the Sale Proceeds \$409,237 in respect of renewal fees (the “**Renewal Fees**”).

23. Diversified claims the Renewal Fees based on a renewal letter dated July 27, 2015 (the “**Renewal Letter**”).

24. The Renewal Letter provides that an automatic renewal of the Diversified Mortgage would occur on the maturity date of the initial term and any renewal term, in exchange for fees equal to 3% of the principal amount of the loan for the first renewal term and 1.5% for each subsequent renewal term thereafter.

25. The Renewal Letter, however, stated that the automatic renewals would only occur “provided the Borrower is then not in default [of] any of the terms and conditions of the Loan” (emphasis added).

26. The Borrower was in default under the Diversified Mortgage as of September 2015. Notwithstanding such default, Diversified renewed the Diversified Mortgage in November 2015, November 2016, November 2017 and November 2018, charging the collective Renewal Fees.

27. The Renewal Fees, charged when the mortgage was in default, were a disguised penalty and a violation of section 8 of the *Interest Act*, R.S.C., 1985, c. I-15.

28. Further, the Renewal Letter was not registered on title to the Lands, nor is there reference to renewal fees in the mortgage documents registered on title to the Lands. Diversified cannot maintain a priority over a subsequent encumbrancer in connection with amendments to its mortgage where such amendments are not known to the subsequent encumbrancer when making its loan.

29. Accordingly, the Renewal Fees were improperly deducted by Diversified from the Sale Proceeds.

Improperly Charged Interest due to Monthly Compounding have been Improperly Taken by Diversified from the Sale Proceeds

30. The charge/mortgage registered as YR2209128 on October 30, 2014 (the “**Registered Diversified Mortgage Instrument**”) does not state any interest calculation or compounding period that would apply in the circumstances, as is clearly seen in the following excerpt from the charge provisions:

Provisions			
<i>Principal</i>	\$4,500,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>			
<i>Balance Due Date</i>	2015/11/01		
<i>Interest Rate</i>	12% pr annum		

31. The Registered Diversified Mortgage Instrument incorporates Standard Charge Terms 200033 (the “**Standard Charge Terms**”). Section 6 of the Standard Charge Terms reads:

In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, and both before and after default and judgement, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid within the interest calculation period provided in the Charge from the time of default a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the land.

32. A calculation period is not synonymous with a payment period.

33. Diversified asserts that section 6 of the Standard Charge Terms provides for default interest to be calculated on a monthly compounding basis.

34. The Trustee takes the position that the correct interest calculation or compounding period is the annual period referenced in the interest rate provision of the Registered Diversified Mortgage Instrument.

35. The Trustee has calculated the incremental amount of interest charged by Diversified and improperly deducted from the Sale Proceeds due to the use of an improper compounding period (i.e., monthly) to be \$560,523.

Improperly Charged Administrative Expenses

36. To be recoverable under a mortgage, costs, charges, fees and expenses must be reasonable in the context of commercially reasonable steps that were or needed to be taken, and the quantum must be reasonable.

37. Diversified has claimed and deducted from the Sale Proceeds \$32,391 in respect of certain unreasonable “Sale Administration and Property Management” charges (the “**Management Fees**”).

38. The Management Fees are in respect of fees paid to “Diversified Realty Advisors Inc.” for “management and administration services” rendered in connection with the Property. The

Trustee takes the position that the Management Fees are not commercially reasonable or needed in the circumstances. Among other things:

- (a) the invoice submitted by Diversified Realty Advisors Inc. and provided by Diversified to the Trustee contained inadequate and incomplete particulars regarding the identity of the timekeeper, their hourly rate, and the time spent on any particular task;
- (b) the invoice submitted by Diversified Realty Advisors Inc. includes, among other things, entries related directly to Diversified's obstruction of the Trustee's efforts to fulfill its Court-ordered mandate and/or to pursuing, against the Trustee's advice, the Conditional Offer received by Diversified in December 2020 in respect of a transaction that was ultimately not completed; and
- (c) Diversified engaged a "Nick J. Costa" to perform property management type services, which included, among other things, facilitating due diligence, visiting the site, and attending to repairs at the Property. Mr. Costa's fees were also paid out of the Sale Proceeds and the fees paid to Diversified Realty Advisors Inc. are duplicative of the fees paid to Mr. Costa.

39. A priority mortgagee owes a subsequent encumbrancer a fiduciary duty in respect of any surplus obtained following a sale. The surplus paid thus far to the Trustee has been wrongfully reduced as a result of the breach of duty Diversified owes to BDMC, the wrongfully claimed Renewal Fees, the improper compounding of interest and the improperly charged Management Fees (collectively, the "**Disputed Amounts**").

40. The following is a summary of the Disputed Amounts:

Sales Process Breach of Duty	\$1,870,000
Improperly Charged Renewal Fees	\$409,237
Improperly Charged Interest due to Monthly Compounding	\$560,523

Improperly Charged Management Fees	\$32,391
Total	\$2,872,151

41. Diversified owes BDMC a fiduciary duty in respect of the Disputed Amounts and has breached that duty by unilaterally paying itself these amounts.

General

42. The Appointment Order.

43. Section 37 of the MBLAA.

44. Sections 22, 27, and 43 of the *Mortgages Act*, R.S.O. 1990, c. M.40.

45. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 54.02(1)(c) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

46. The inherent and equitable jurisdiction of this Honourable Court; and

47. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Report of the Trustee, to be filed; and

2. Such further and other evidence as counsel may advise and this Court may permit.

January 10, 2022

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

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Michael De Lellis (LSO# 48038U)
Jeremy Dacks (LSO# 41851R)

Tel: 416.362.2111
Fax: 416.862.6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee of
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Court-Appointed Representative Counsel for Investors

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

Court File No. CV-18-596204-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(Payment by Diversified to the Trustee of the
Disputed Amounts)

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
 Toronto, ON M5X 1B8

Nancy Roberts (LSO# 37989Q)

Michael De Lellis (LSO# 48038U)

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Fax: 416.862.6666

Lawyers for FAAN Mortgage Administrators Inc., in its
 capacity as Court-appointed Trustee of Building &
 Development Mortgages Canada Inc.

MOTION FOR PAYMENT BY DIVERSIFIED TO THE TRUSTEE OF
THE DISPUTED AMOUNTS
SCHEDULE

STEP	DATE
Service of the Trustee's Report	February 4, 2022
Service of Diversified's Responding Materials	March 4, 2022
Reply Report of the Trustee, in any	April 1, 2022
Provision by Diversified of Questions on the Trustee's Report	April 8, 2022
Cross-examinations of Diversified Affiant(s)	To be conducted the week of April 18, 2022
Factum of the Trustee	May 13, 2022
Factum of Diversified	May 27, 2022
Reply Factum of the Trustee, if any	June 3, 2022
Half Day Court Hearing	TBD

From: Dominique Michaud <dmichaud@robapp.com>
Sent: Thursday, January 13, 2022 8:30 PM
To: Roberts, Nancy
Cc: Naveed Manzoor; De Lellis, Michael; Dacks, Jeremy; george@chaitons.com
Subject: RE: Motion for Payment by Diversified to the Trustee of Disputed Amounts; Court File No. CV-18-596204-00CL

Nancy:

As set out in my email to Michael on November 1, 2021, we do not agree that this dispute can be determined as a motion in proceeding where the Trustee is appointed. At its core, this is a dispute between mortgagees as to whether this was an improvident sale and the proper forum to deal with this claim would be an action commenced by FAAN on behalf of the second mortgagee on the regular civil list. If FAAN agrees, then please convert your Notice of Motion into a statement of claim and we will move forward with defending this claim.

In the event that you disagree, I propose we attend at a case conference before a judge and seek to have this issue determined. I have availability next week should a case conference be necessary.

If you wish to discuss please call me. Dom

Dominique Michaud | [Bio](#)

T. 416.360.3795

E. dmichaud@robapp.com

ROBINS APPLEBY
BARRISTERS + SOLICITORS

[LEGAL_1:72366132.1](#)

Appendix 33:
Diversified Commitment Letter

Russ Giannotta, C.P.A. C.A.

DIVERSIFIED *

President, Asset Management
Capital Management Services
1243 Islington Ave Suite 701
Toronto, Ontario
Canada M8X1Y9
Tel: (416) 364-3396
Fax: (416) 364-9608

October 2, 2014

2221563 Ontario Limited
C/o Mr. Vince Petrozza
25 Brodie drive Unit 1
Richmond Hill
L4B3K7

Re: First Mortgage Financing - 230-240 Cameron Street, Keswick Ontario – The Crates Vacant Waterfront Properties at Cameron Crescent

Further to our discussion regarding our providing the above noted Loan funds we confirm that DIVERSIFIED CAPITAL INC. (hereinafter referred to as "Diversified") is pleased to provide a commitment to provide a first mortgage loan for the purposes of acquiring the above noted property based on the following terms and conditions:

BORROWER:	2221563 Ontario Limited
GUARANTORS:	Corporate and personal covenants and guarantees as the case may be of the following: Vince Petrozza, Jawad Rathore, shareholders of the Borrower The Guarantors jointly and severally unconditionally guarantee payment to the Lender of all monies hereby secured with no exceptions and no requirements for the Lender herein to pursue enforcement proceedings against the Borrower herein first, and do further agree to postpone to and in favour of the Lender all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time hereafter due or owing from the Borrower to the Guarantors.
LENDER:	Diversified Capital Inc.
SECURED / PROPERTY:	230-240 Cameron Crescent, Keswick Ontario – The Crates Development Lands, to be confirmed by the Lender's solicitor
TYPE OF LOAN:	Fixed term Loan, which can be extended as may be agreed upon between the Lender and the Borrower.
LOAN AMOUNT:	1 st Mortgage Loan of 4,500,000 (inclusive of an interest reserve for the term of the loan).
PURPOSE:	To refinance the existing mortgage on the property with the balance as operating capital towards hard costs of development
TERM:	One (1) year
INTEREST RATE:	@ 12.0 % per year

PAYMENTS: Monthly, interest only

INTEREST
RESERVE: TBD 450,000

SCHEDULED
FUNDING:

All funds to be funded through one advance or as may be further agreed to between the Lender and Borrower, upon on the execution of this Commitment Letter and upon the Lender receiving from the Borrower and Guarantors all of the documentation required by the Lender or the Lender's solicitor, pursuant to this Letter; the Lender, being satisfied with this documentation in its sole and unfettered discretion; the execution of all security documentation provided herein, including the Lender's standard loan terms and any other documentation that may be required by the Lender or by the Lender's solicitors along with the Borrower's corporate solicitor's opinion letter that all the security documentation required hereunder has been properly authorized and executed and all of the obligations of the Borrower and the Guarantors are valid and binding and enforceable and further that all documents were executed in the office of the Borrower's solicitor and all of the parties are who they purport to be.

The Lender shall not be obligated to make any loan advance unless all terms and conditions of this Commitment Letter have been complied with to the Lender's satisfaction.

PREPAYMENT
PRIVILEGE:

This is a closed mortgage. Notwithstanding the aforementioned the loan may be paid out in full at any time after six (6) months, one month's written notice and payment of one month interest bonus.

SECURITY:

The Lender shall be provided with the following as security for the Loan and all other obligations of the Borrower to the Lender.

- ✓ (a) First freehold mortgage and charge registered against title to the Property;
- ✓ (b) Security interest (by way of Chattel Mortgage, The Lender's form of General Security Agreement or other instrument required by the Lender or its solicitors) having first priority over any and all personal property now or hereafter owned by the Borrower, and any and all property used in connection with or arising out of the Property, including without limitation, all inventory, machinery, apparatus, plant, furniture, fixtures, permit/ construction drawings, plans, permits, and vehicles now or hereafter situate at or used in connection with the Property, owned by the Borrower or Guarantors, all book debts, cash deposits whether at a financial institution or otherwise, and accounts now or hereafter due, owing or accruing from the Property, all books, records, financial statements, and other documents of title, all contractual rights, insurance claims, goodwill and all income, monies, receipts and profits of any nature or kind whatsoever now or hereafter arising; such charge shall also include the Lender's standard Receivership clause, including the right of the Lender to appoint any person or company to be a Receiver of all or part of the charged Property and such Receiver shall have all the power of the Lender hereunder and shall have power to carry on the business of the Borrower;

✓ (c) The Lender's form of, unconditional and unlimited covenant and guarantee of all debts and liabilities on a joint and several basis as principal debtor and not as surety owing by the Borrower to the Lender signed by Mr. Vince Petrozza and Mr. Jawad Rathore;

(d) The Lender's form Postponement and Assignment to the Lender of all present and future debts and liabilities direct or indirect, absolute or contingent, now or at any time hereafter due or owing from of the Borrower to Mr. Vince Petrozza and Mr. Jawad Rathore and or any other shareholders or any related parties;

Assign Agts
~~Postponement~~

✓ (e) Assignment of Insurance Proceeds in accordance with the provisions set forth herein;

(f) Assignment of the Borrower's rights and interest (but not the Borrower's obligations) in all municipal approvals and agreements and documents, permits, construction and other contracts, project plans, specifications, working drawings, budget and schedules for the provision of materials, equipment and services to the Property in connection with the project and redevelopment of the Property;

(g) Such other documents, instruments, agreements or things required or contemplated by this Commitment or any other legal documentation reasonably considered necessary by the Lender's solicitor;

x ✓ (h) Hypothecation and Pledge of all shares of the Borrower;

✓ (i) The Lender's solicitor shall obtain title insurance at the cost of the Borrower;

✓ (j) Assignment of Interest in Prepaid Levies and other deposits;

[(k) Assignment of any interest reserve contemplated herein;] ?

(l) Assignment of the Borrower's right, title and interest in the Letters of Credit filed with the Town/City of Georgina/ Keswick and other municipal, provincial authorities and agencies and any amounts on deposit with the Borrower's bank or other financial institution which provide security for the Letters of Credit. In this regard the Lender shall have a first priority security interest and the Borrower shall provide such further documentation that the Lender and its counsel require including an acknowledgment from the Borrower's bank that the Lender is entitled to delivery of these funds in accordance with the provisions herein and directions to all appropriate parties;

from time to time

not for
request of
the lender

(m) PPSA registrations;

✓ (n) Negative Pledge by the Borrower and Guarantors to not repay any shareholder loans, redeem shares, pay out dividends to the principals of the Borrower until the loan is paid in full;

(o) Such other documents, instruments, agreements or things required or contemplated by this Commitment or any other legal documentation reasonably considered necessary by the Lender's solicitor;

- ✓ (p) Assignment of the Borrower's rights and interest (but not the Borrower's obligations) under all Agreements of Purchase and Sale whereby the Borrower or persons on its behalf have sold the Property or any part thereof to *bona fide* arm's length purchasers thereof for value, executed true copies of such Agreements of Purchase and Sale shall be submitted to the Lender as set out above and shall be subject to the Lender's approval;
- ✓ (q) Covenant from the Borrower and Covenantors not to withdraw equity from the Project;
- (r) Such other documents, instruments, agreements, things or security required or contemplated by this Commitment or as counsel may advise is reasonable having regard to this type of transaction.

**ADDITIONAL
SECURITY:**

- ✓ 1. General assignment of rents and any income or profits arising from or in connection with the Property.
- ✓ 2. Assignment of all insurance policies relating to the Property.
- 3. Evidence of Commercial General Liability Insurance with the Lender noted as additional insured and loss payee satisfactory to the Lender.
- ✓ 4. Noxious Substances Warranty and Indemnity

**LOAN APPLICATION
FEE:**

Waived

**COMMITMENT
FEE:**

1.0% of the Principal amount of the Loan paid upon the execution of this Commitment.

**LOAN
SOURCING FEE:**

2.0% of the Principal amount of the Loan

The Borrower and Guarantors acknowledge and agree that forthwith upon acceptance of this Commitment, the Lender shall be deemed to have earned the Commitment Fee and Loan Sourcing Fee representing compensation to the Lender for its efforts and expenditures by its officers, agents and employees in the review and study of documentation pertaining to this transaction, review of appraisals, credit reports, financial statements and other data and physical inspections of the subject matter of the Security Documents. The Borrower and the Guarantors hereby irrevocably direct the Lender's solicitors to pay from the advance on closing.

If for any reason directly attributable to the Borrower's actions, the transaction contemplated herein is not completed, all fees, including, the Commitment Fee and Loan Sourcing Fee, legal fees, disbursements and all applicable taxes shall become due and payable, and the Lender may recover the same from the Borrower and the Guarantors as liquidated damages and not as a penalty.

**LEGAL & PROFESSIONAL
FEES:**

All legal and professional fees including applicable taxes for arranging and administering this Loan are to be to the account of the Borrower.

CLOSING DATE: As soon as may be agreed upon.

CONSTRUCTION: The loan will be in strict compliance with the Construction Lien Act of Ontario. The Charge shall contain provisions making the Borrower liable for all of the Lender's and Brokers fees, costs and expenses, of any kind whatsoever, arising from any claim under the Construction Lien Act of Ontario.

If any construction or other lien (hereinafter called the "Lien") is filed against or registered on title to the Charged Property, pursuant to the Construction Lien Act of Ontario or any legislation thereto, the Borrower shall be responsible for all costs and expenses incurred by the Lender by reason of filing or registration of the Lien (including legal costs and disbursements on a solicitor and client basis), which costs and expenses shall be added to and deemed to be part of the Lien, in the Lender's own and absolute discretion, all at the cost and expense of the Borrower, including the retention of solicitors by the Lender, the settlement of any claims made pursuant to the Lien and / or the defence against any actions, applications and / or other legal proceedings commenced by the claimant under the Lien. The Borrower acknowledges and agrees that no steps taken by the Lender to deal with the Lien as aforesaid shall constitute or be deemed to be a waiver or condoning by the Lender or the use of any monies secured by this Charge in contravention of this provisions contained herein.

(The Lender shall not be responsible or liable to the Borrower or to anyone else where either there has been insufficient work done or material supplied to the Charged Property, or that there have been insufficient funds held back to complete the contemplated construction.

The Lender shall have no liability whatsoever to the Borrower or to anyone else as a result of advances made by the Borrower relying in whole or in part upon such persons or entities providing services including, engineers, or architects, or similar professionals.)

REPRESENTATIONS & WARRANTIES:

The Borrower represents that it is the registered and beneficial owner of the Charged Property as herein before described or will be so at the time of the advance of funds. It is understood the Lender has entered into this agreement based on representations made by the Borrower and, if at any time, there is or has been any material discrepancy or inaccuracy in any written or oral information, statements, or representations heretofore or hereafter made or furnished to the Lender by or on behalf of the Borrower or Guarantors concerning the security or the Borrower's or Guarantors' financial condition and responsibility, then the Lender shall be entitled in their sole discretion to withdraw or cancel any obligation hereunder and decline to advance funds, and in addition to forfeiture of all Lender's fees, the Borrower shall be liable to pay all brokerage fees, legal fees and disbursements as herein before recited.

The Borrower and Guarantors warrant and represent, upon which warranty and representation the Lender is relying, that the Borrower's obligation to complete the within transaction is not dependent upon any condition whatsoever, and that Lender assumes no obligation to assist the Borrower to complete the transaction in any way, except to make available the funds contemplated by this agreement or as is specifically elsewhere contained in this agreement.

The Borrower represents and warrants the following:

- (a) It is a corporation validly incorporated and subsisting under the laws of Ontario, and that it is duly registered or qualified to carry business in all jurisdictions where the character of the properties owned by it or the nature of its business transacted makes such registration or qualification necessary;
- (b) The execution and delivery of this agreement has been duly authorized by all necessary actions and does not violate any law or any provision of its constating documents or by-laws or any unanimous shareholders' agreement to which it is subject, or result in the creation of any encumbrance on its properties and assets except as contemplated hereunder; and
- (c) The Borrower and its subsidiaries (if applicable) have remitted or paid all Potential Prior Ranking Claims which are due and payable as of the date of this agreement, except for any claims that have been disclosed to and accepted by the Lender prior to closing.
- (d) That all information contained in the documentation provided to the Lender by or on behalf of the Borrower (including information provided by any of the Guarantors) is now, or if it relates to the future will be correct in all material respects.
- (e) That the Borrower has full power and capacity to enter into this commitment and to complete the mortgage Loan contemplated by this transaction contemplated herein.
- (f) That all contractors, subcontractor, service providers have been paid in full for work provided to date.
- (g) That there are no potential claims, outstanding work orders, or potential deficiencies or contravention of any building codes with the Project or work completed thereon.

COVENANTS:

The Borrower agrees:

- (a) To pay all sums of money when due under this agreement;
- (b) To give the Lender prompt notice of any breach of covenant or condition of the within agreement and or the Agreement of Purchase and Sale or any event which, with notice or lapse of time or both, would constitute breach;
- (c) To file material tax returns which are or will be required to be filed, to pay or make provision for payment of all material taxes (including interest and penalties) and other Potential Prior-Ranking Claims including the timely remittance of all employee source deductions and any other taxes which are or will become due and payable and to provide adequate reserves for the payment of any tax, the payment of which is being contested;
- (d) Not to dispose of shares of any of the Borrower company or any of its subsidiaries;

- (e) Not to grant, create, assume or suffer to exist any mortgage, charge, lien, pledge, security interest, including a purchase money security interest, or other encumbrance affecting any of its properties, assets or other rights;
- (f) Not to sell, transfer, convey, lease or otherwise dispose of any part of its property or assets, without the prior written consent of the Lender, which may be withheld at the Lender's sole and unfettered discretion;
- (g) Not to directly or indirectly, guarantee or otherwise provide for, on a direct or indirect or contingent basis, the payment of any monies or performance of any obligations by any third party except as provided herein;
- (h) To give the Lender immediate written notice of any intended change in the ownership of shares;
- (i) To place, keep and maintain insurance on the Property and all improvements thereon, in such amounts and with such deductibles as would be carried by prudent owners of similar projects. The types of coverage, form, and content of such insurance policies shall be subject to the approval of the Lender, acting reasonably;

The Borrower and Guarantors covenant with the Lender to pay all insurance premiums, for all insurance coverage when such premiums are due and payable, and to maintain such insurance from the execution date of this agreement until such time that the Borrower remains liable in its capacity as owner of the Property or project lands.

The Borrower and or the Guarantors shall notify the Lender in writing by registered mail at least thirty (30) days prior to the cancellation thereof of the above noted policies. The Borrower shall furnish to the Lender standard certificates of insurance and shall provide written evidence of the continuation of such policies, not less than ten (10) days prior to their respective expiry dates.

- (j) Not to change its name or merge, amalgamate or consolidate with any other corporation; and
- (k) To comply with all applicable environmental laws and regulations; to advise the Lender promptly of any Action Requests or Violation Notices (as such terms are defined under the Environmental Protection Act of Ontario) received concerning any of the Borrower's property; and to hold the Lender harmless for any costs or expenses which it incurs for any environmental-related liabilities existent now or in the future with respect to the Borrower's property.
- (l) To consent herein to such credit investigations as the Lender may deem necessary.
- (m) That the Borrower and Guarantors have not withheld any information relating to the Project, the Borrower and the Guarantors which may affect the Lender's decision to complete this transaction.
- (n) To provide an acknowledgement, covenant and authorization to the Lender to disclose all information relating to the Project in a timely manner as requested by the Lender and authorize herein disclosure by consultants, contractors, subcontractors, and City officials of any

information required or deemed necessary throughout the term of the Loan.

**FAILURE TO
PAY ON
MATURITY:**

In the event that the Borrower fails to repay the principal and any interest outstanding on the Loan Maturity Date or any renewal thereof agreed to by the Lender, the Lender may at its sole discretion, extend the mortgage for a period of one (1) month from the original Loan Maturity Date or any renewal thereof agreed to by the Lender, at an interest rate equal to 25% per year, calculated and payable monthly. In the event that the Loan has not been repaid or renewal has not been finalized within this one (1) month period, then there will be no further extensions, and the Lender may exercise its remedies under the Security. The interest rate will be applicable on the first (1st) day of the month in which the Loan matures. An Extension Fee of 3% of the outstanding principal shall be added to the principal balance if this extension provision is utilized.

All other terms and covenants under the existing mortgage and charge shall continue to apply. The mortgage and charge may be paid out in full on the Loan Maturity date or any renewal thereof agreed to by the Lender, or any time during the one (1) month extension period without notice bonus or penalty, other than payment of the Extension Fee and applicable discharge fees as hereafter set out.

NON-MERGER:

The provisions of this agreement shall not merge with any security given by the Borrower to the Lender, but shall continue in full force for the benefit of both of the parties hereto.

**CONDITIONS
PRECEDENT TO
FUNDING:**

The Lender shall not be required to advance funds until all of the following requirements have been met to the Lender's satisfaction:

1. Receipt by the Lender of a properly executed copy of this agreement; The Lender being satisfied that the Borrower has good and marketable title to the assets and real property contemplated as security under this agreement, subject only to permitted encumbrances; the Lender having received all the Security Documents provided for in this letter duly authorized, executed and delivered and registered or recorded wherever required by law; and no event having occurred which is an event of default under this letter or the Security Documents or which would be an event of default but for the giving of notice or lapse of time or both.
2. Receipt by the Lender of the within stipulated Security in form and substance acceptable to the Lender, together with such corporate authorizations and legal opinions and other security documentation as the Lender or its solicitors may require;
3. The Borrower having provided an up-to-date plan of survey by a professional land surveyor satisfactory to the Lender which indicates the boundaries and dimensions of the Property, the location of any buildings and other improvements, as well as encroachments, rights of way and easements.
4. Evidence satisfactory to the Lender that the Property, including existing improvements, complies with all zoning requirements, by-laws, restrictions and other legal and governmental requirements and that all the necessary building permits have been issued.

5. Title to the Charged Property must be satisfactory to the Lender and to its Solicitors. Also, the zoning and use of all buildings, structures, erections and proposed improvements on the Charged Property secured must be in strict conformity with all applicable laws, by-laws, codes and regulations of any government and other authority having jurisdiction.
6. Receipt from the Borrower of a soils test report (load bearing capacity), by an acceptable professional engineer acceptable to the Lender, demonstrating to the satisfaction of the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, accompanied by a reliance certificate acceptable to the Lender, in its sole and unfettered discretion.
7. Receipt from the Borrower of a Phase 1 environmental audit report, from a firm approved by the Lender confirming that there is no evidence of contamination, environmental hazards and recommending that no further action need be taken or will provide evidence of a remediation plan that will leave the site environmentally acceptable to the relevant Provincial and Federal Agencies with all costs of to be borne by the Borrower and Guarantors, acceptable to the Landlord in its sole and unfettered discretion. If accepted by the Lender, the work required to be done under any such remediation plan shall be commenced and completed within forty-five (45) days of the advance of funds under this loan, failing which the loan will be deemed to be in default.
8. Receipt and satisfactory review of a personal net worth statement and /or financial statement(s) from the Borrower and each of the Guarantors, duly signed and witnessed, acceptable to the Lender in its sole and unfettered and absolute discretion. The Lender may terminate this Agreement to Finance, by written notice to the Borrowers, if in its sole discretion it is not satisfied with the financial standing of the Developer and or the Guarantors. The Borrower and all Guarantors acknowledge receipt of notice that usual credit and personal enquiries may be made at any time in connection with the credit hereby applied for and consent to disclosure of any such information to the Lender and any other credit grantors or to any consumer reporting agency.
9. The Lender shall have the irrevocable right to erect a sign on the Property, at its own expense indicating it has provide the financing on the project during the period of financing.
10. In the event of the Borrower selling, transferring or conveying the Property to the or its rights therein to a purchaser, transferee, or grantee, not approved by the Lender, all monies outstanding, together with any accrued or unpaid interest there on and any other amounts then due under the Commitment or the Security, shall become due and payable.
11. Receipt of a copy of the detailed final development budget, along with construction schedule, accompanied by permit drawings, for review and acceptance by the Lender in its sole and unfettered discretion.



12. Receipt of a copy of a detailed Statement of Costs in place representing equity in the Project, and evidence of the same satisfactory to the Lender in its sole and unfettered discretion.
13. The Borrower shall provide the premium for Title Insurance for the Property.
14. Such other acts having been done (including executing documents, providing opinions or supplying evidence) as the Lender or its Solicitor requires.

CANCELLATION/
DEFAULT:

The Lender shall be entitled to terminate this commitment and to declare the unpaid principal and accrued interest and all other amounts payable by the Borrower, due and payable on the occurrence of any of the following events of default;

1. if any representation or warranty set forth in this letter is incorrect in any material respect;
2. if the Borrower fails to perform any of its obligations under this commitment or under any Security Document specified in this letter or under any other indebtedness or liability or any other credit or loan agreement to which the Borrower is a party or not;
3. if the Borrower and or Guarantors become bankrupt (voluntarily or involuntarily) or become subject to any proceeding seeking liquidation, rearrangement, relief of creditors;
4. if a receiver is appointed over any of the Borrower's or Guarantors' property or undertaking;
5. if encumbrancers shall take possession of any property of the Borrower and or the Guarantors; or
6. if any material adverse change occurs in the sole opinion of the Lender, in the financial condition of the Borrower and or of the Guarantors, the proposed redevelopment, or the risk associated with the loan; or
7. if the Borrower fails or is unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this Commitment Letter within the time indicated for such compliance; or
8. if the Borrower or Guarantors fail or refuse to execute any documentation requested by the Lender as it relates to this transaction or to deliver such documentation to the Lender;
9. if the Borrower fails to accept the funds when advanced.
10. The Borrower and Guarantors expressly agree that no additional financing or encumbrances shall be registered against the properties/security. Any additional encumbrances registered shall be deemed a default under the terms of the loan.
11. It is a condition of this financing that all existing mortgages payments are paid to date and that the mortgages are in good

standing on or before the date of funding and it is further agreed that the Borrower shall remain current at all times with any and all interest payments and that all the existing mortgages shall be kept in good standing throughout the term of loan, failure to do so shall be deemed a default on behalf of the Borrower under the terms of this Loan.

12. It is a condition of this financing that all realty taxes and other levies are paid to date, or to be paid in a manner acceptable to the Lender on or before the date of funding and or thereafter and it is further agreed that the Borrower shall remain current at all times with any and all realty tax payments throughout the term of loan failure to do so shall be deemed a default on behalf of the Borrower under the terms of this Loan. The Borrower shall provide evidence of payment as taxes fall due.

If there is a non monetary default with respect to any of the terms and conditions herein or on any other charge on the Security, that is not remedied within ten (10) business days, or monetary default, that is not remedied within five (5) business days from the date of default, then this Loan will be deemed to be in default. The Borrower and Guarantors irrevocably herein appoint the Lender with the Power of Attorney allowing the Lender to take all necessary steps to protect its interests in the Security as provided for in this Agreement, including its interest in the Agreement of Purchase and Sale and to pursue the actualization and entitlement to any and all unpaid, principal amounts and interest payable by the Borrower, deemed due and payable on the occurrence of any default; either by way of disposition of the Property or fulfillment of the Borrower's obligations under the Agreement of Purchase and Sale. With the exception of any default resulting from the failure to pay upon demand or upon expiry in which case default is deemed

ENVIRONMENTAL REPRESENTATION:

The Borrower warrants and represents, covenants and agrees with the Lender (which representations, warranties, covenants and agreements shall survive satisfaction or release of the security for the Loan or extinguishment of the Loan that in the event or its nominee becomes owner of the property upon default) that:

The Borrower and Guarantors will indemnify and hold harmless each of the Lender and their respective directors, officers, employees and agents in respect of any costs, losses, damages, expenses, judgements, suits, claims, awards, fines, sanctions and liabilities whatsoever (including costs of expenses of defending or denying the same and including the costs or expenses for preparing any necessary environmental assessment report or such other reports) arising out of, or in respect of (i) any release, deposit, discharge, or disposal of any Hazardous Substances in connection with the Borrower's property, and (ii) the remedial action (if any) taken by the Lender and/or the Lender in respect of such release, deposit, discharge or disposal. For greater clarity, this indemnity shall survive the repayment or cancellation of the subject Loan.

WAIVER:

Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatever to affect any subsequent default by the Borrower or the rights resulting from it. The

Lender may waive any condition precedent to funding but the waiver shall not prejudice any subsequent enforcement of the condition.

WHOLE AGREEMENT: This agreement, the security and any other written agreement delivered pursuant or referred to in this agreement constitute the entire agreement between the parties in respect of the Loan.

SEVERABILITY: If any portion of this agreement is or becomes prohibited or unenforceable in an jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions

CONSENT OF DISCLOSURE: The Borrower hereby grants permission to any entity having information in such entity's possession relating to any Potential Prior-Ranking Claim, to release such information to the Lender upon request, solely for the purpose of assisting the Lender to evaluate the financial condition of the Borrower. The foregoing permission shall remain in force as long as the Loan contemplated within this agreement remains outstanding.

CORPORATION: If the Borrower and or either of the Guarantors is a corporate entity, it shall provide Articles of Incorporation, Certificate of Non-Restriction, Certificate of Status, Directors Resolution and an Incumbency Certificate, all in a form satisfactory to the Lender.

TIME OF ESSENCE: Time shall be of the essence in all respects.

NOT ASSIGNABLE: This Commitment Letter is not assignable without the Lender's prior written consent, acting reasonably.

SURVIVAL: The terms and conditions of this Commitment Letter set forth the entire agreement between the parties. This Commitment shall survive the execution and registration of all security documentation. There shall be no merger of these provisions or conditions with those contained in the mortgage or other security provided that in case of a conflict between the provisions hereof and of any of the security documents, the Lender may elect which provision shall prevail.

GOVERNING LAW: The agreement constituted by the Borrower's acceptance of this Commitment Letter shall be governed by the Laws of Ontario.

LENDER'S SOLICITOR: The Lender shall use a solicitor of its choice.

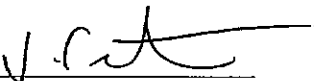
This Commitment shall be null and void unless a copy of this Commitment Letter is signed by the Borrower, under corporate seal where applicable, and returned to our offices by not later than 3:00 p.m. October 6, 2014.

Sincerely,

Russ Giannotta

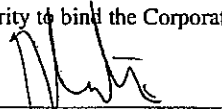
I/WE HEREBY ACCEPT THE ABOVE NOTED TERMS AND CONDITIONS,
SIGNED AT TORONTO, THIS _____ DAY OF _____, 2014

2221563 Ontario Limited



Per:

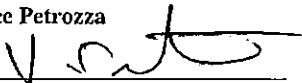
I have the authority to bind the Corporation



Per:

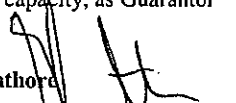
I have the authority to bind the Corporation

Mr. Vince Petrozza




Per:

In his personal capacity, as Guarantor



Mr. Jawad Rathore



Per:

In his personal capacity, as Guarantor



Schedule "A"

PROPERTY: 230-240 Cameron Crescent, Keswick, Ontario

BORROWER: 2221563 Ontario Limited

POST-DATED CHEQUES:

Provided that the Borrower do hereby covenant and agree to provide the Lender upon execution of this mortgage and annually thereafter on the anniversary date during the currency of this Mortgage, a series of twelve (12) post-dated cheques each in the monthly installment due hereunder.

SALE CLAUSE:

PROVIDED that if the Borrower, at any time, shall sell transfer, convey or otherwise dispose of the herein described Property without written consent of the Lender, at the Lender's option, the within mortgage shall immediately become due and payable in full including interest to maturity of the mortgage herein set forth..

BY-LAW CONFORMITY AND OCCUPANCY:

PROVIDED that if at any time the said property, and or the building(s) located on the property, do not comply with the municipal by-laws or the by-laws of any other level of government and/or the building becomes unoccupied, then in either of these events the balance of the principal monies hereby secured, together with any other sums due and owing to the Lender pursuant to the term of this mortgage together with interest as herein provided shall forthwith become due and payable upon demand. PROVIDED further that nothing herein shall be construed so as to permit the Borrower for the privilege of prepaying the said mortgage in whole or in part.

N.S.F. CHEQUES OR NON-PAYMENT:

IN THE EVENT that any of the Borrower's post-dated or pre-authorized cheques are not honoured when presented for payment to the Bank or Trust company on which they are drawn, the Borrower shall pay the Lender, for each such returned cheque the sum of \$500.00 as liquidated amount to cover the Lender's administration costs and as penalty and such sum shall be a charge upon the said lands and shall bear interest at the rate herein before stated.

IN THE EVENT that it is necessary for the Lender to have a letter sent by the Lender or the Lender's solicitor to the Borrower because of default, then the Borrower shall be charged the sum of \$500.00 in the case of a letter sent by the Lender or the cost of the Lender's solicitor in the event that the Lender's solicitor sends such a letter, and such sum shall be a charge upon the said lands and shall bear interest at the rate herein before stated.

RENT AND MANAGEMENT:

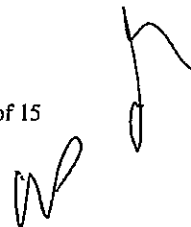
PROVIDED also, and it is hereby further agreed by and between the Borrower and Lender, that should default be made by the Borrower in the observance or performance of any of the covenants, provisos, agreements of conditions contained in this Mortgage the Lender reserves the right to enter into said lands and premises and to receive the rents and profits and to be entitled to receive in addition to all other fees, charges and disbursements to which the Lender is entitled, a management fee so as to reimburse the Lender for reasonable time and trouble in management of said lands and premises it being understood and agreed that in the circumstances a management fee equal to 15% of the principal amount of the Loan deemed not to be a penalty in addition to being repaid its out of pocket expenses which shall be added to the charge debt herein, in the management of the said lands and premises is a just and equitable fee, having regard to all the circumstances.

EXPROPRIATION:

PROVIDED that the said land shall be expropriated by any government, authority, or corporation clothed with the power of expropriation, the amount of the principal hereby secured remaining unpaid shall forthwith become due and payable together with interest at the said rate to the date of payment and together with bonus equal to the sum of two (2) months interest at the rate calculated on the remaining from the said date of payment to the date the said principal sum or balance thereof remaining unpaid would otherwise under the provisions of this mortgage become due and payable.

DISCHARGE STATEMENT:

THE BORROWER agrees to pay for the preparation of the mortgage statement for discharge, to the Lender's lawyer.

A handwritten signature in black ink, consisting of a stylized 'W' followed by a vertical line and a hook.

Appendix 34:
Registered Charge

Properties

PIN	03475 – 0123	LT	Interest/Estate	Fee Simple
Description	PT LT 8 PL 170 N GWILLIMBURY AS IN R533209 ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0124	LT	Interest/Estate	Fee Simple
Description	LT 1 PL 447 N GWILLIMBURY; LT 2 PL 447 N GWILLIMBURY; LT 3 PL 447 N GWILLIMBURY; LT 4 PL 447 N GWILLIMBURY; LT 5 PL 447 N GWILLIMBURY; LT 6 PL 447 N GWILLIMBURY; LT 7 PL 447 N GWILLIMBURY; LT 8 PL 447 N GWILLIMBURY ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0125	LT	Interest/Estate	Fee Simple
Description	DOREDA DR PL 447 PT 2 65R16653, GEORGINA AS STOPPED UP AND CLOSED BY BY-LAW REGISTERED AS YR45264			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0126	LT	Interest/Estate	Fee Simple
Description	PT LT 6 PL 170 N GWILLIMBURY AS IN B31794B ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0127	LT	Interest/Estate	Fee Simple
Description	LT 5 PL 170 N GWILLIMBURY T/W R737440 ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0868	LT	Interest/Estate	Fee Simple
Description	LT 9 PL 447 N GWILLIMBURY; LT 10 PL 447 N GWILLIMBURY; LT 11 PL 447 N GWILLIMBURY; LT 12 PL 447 N GWILLIMBURY; LT 13 PL 447 N GWILLIMBURY; LT 14 PL 447 N GWILLIMBURY; LT 15 PL 447 N GWILLIMBURY; BLK A PL 447 N GWILLIMBURY ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0869	LT	Interest/Estate	Fee Simple
Description	PT LT 8 PL 170 N GWILLIMBURY PT 1 65R16653 LYING NW OF LTS 6 & 7, PL 447; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0870	LT	Interest/Estate	Fee Simple
Description	PT LT 8 PL 170 N GWILLIMBURY PT 1 65R16653 LYING S OF DOREDA DR , LTS 9 10 & BLK A PL 447 ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			
PIN	03475 – 0927	LT	Interest/Estate	Fee Simple
Description	PT LT 6 PL 170 N GWILLIMBURY; PT LT 7 PL 170 N GWILLIMBURY; PT LT 8 PL 170 N GWILLIMBURY AS IN R649566 ; GEORGINA			
Address	CAMERON CRESCENT KESWICK			

Chargor(s)

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

Name

2221563 ONTARIO INC.

Address for Service

25 Brodie Drive
Unit 1
Richmond Hill ON L4B 3K7

I, Vincenzo Petrozza, Vice-President, have the authority to bind the corporation.
This document is not authorized under Power of Attorney by this party.

Chargee(s)		Capacity	Share
Name	DIVERSIFIED CAPITAL INC.		
Address for Service	1243 Islington Avenue Suite 701 Toronto ON M8X 1Y9		

Statements

Schedule: See Schedules

Provisions			
Principal	\$4,500,000.00	Currency	CDN
Calculation Period			
Balance Due Date	2015/11/01		
Interest Rate	12% pr annum		
Payments			
Interest Adjustment Date	2014 11 01		
Payment Date	interest only, the 1st day of each and every month		
First Payment Date	2014 12 01		
Last Payment Date	2015 11 01		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor	Vincenzo Petrozza & Jawad Shafique Rathore		

Signed By

Kevin Bruce Milburn

1000–120 Adelaide St. W.
Toronto
M5H 3V1

acting for Chargor (s)

Signed

2014 10 30

Tel

416–363–2211

Fax

416–363–0645

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

Submitted By

SCHNEIDER RUGGIERO LLP

1000–120 Adelaide St. W.
Toronto
M5H 3V1

2014 10 30

Tel

416–363–2211

Fax

416–363–0645

Fees/Taxes/Payment	
Statutory Registration Fee	\$60.00
Total Paid	\$60.00

File Number

Chargee Client File Number : 37390/BM

MORTGAGE SCHEDULE

<u>Facilities:</u>	This Charge secures one facility: Facility 1: \$4,500,000 term loan (the “ Loan ”);
<u>Term:</u>	12 months from the first day of the month following the date of the first advance (“ Maturity Date ”), subject to acceleration in the event of default, at which time all principal, interest and fees may become due and payable upon demand at the option of the Chargee.
<u>Repayment:</u>	The Chargor agrees to make interest only payments monthly based on an interest rate of 12%.
<u>Conflict:</u>	In the event of a conflict between the terms of this schedule and the Standard Charge Terms 200033, this schedule shall prevail.
<u>Prepayment:</u>	This is a closed mortgage. Notwithstanding the aforementioned the mortgage may be paid out in full at any time after six (6) months, with one month's written notice and payment of one month interest bonus.

Appendix 35:
Standard Charge Terms

Land Registration Reform Act
SET OF STANDARD CHARGE TERMS
 (Electronic Filing)

Filed by
Dye & Durham Co. Inc.

Filing Date: **November 3, 2000**

Filing number: **200033**

The following Set of Standard Charge Terms shall be applicable to documents registered in electronic format under Part III of the Land Registration Reform Act, R.S.O. 1990, c. L.4 as amended (the "Land Registration Reform Act") and shall be deemed to be included in every electronically registered charge in which this Set of Standard Charge Terms is referred to by its filing number, as provided in Section 9 of the Land Registration Reform Act, except to the extent that the provisions of this Set of Standard Charge Terms are modified by additions, amendments or deletions in the schedule. Any charge in an electronic format of which this Set of Standard Charge Terms forms a part by reference to the above-noted filing number in such charge shall hereinafter be referred to as the "Charge".

*Exclusion of
 Statutory
 Covenants*

1. The implied covenants deemed to be included in a charge under subsection 7(1) of the *Land Registration Reform Act* as amended or re-enacted are excluded from the Charge.

*Right to
 Charge the
 Land*

2. The Chargor now has good right, full power and lawful and absolute authority to charge the land and to give the Charge to the Chargee upon the covenants contained in the Charge.

*No Act to
 Encumber*

3. The Chargor has not done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the land, or any part or parcel thereof, is or shall or may be in any way impeached, charged, affected or encumbered in title, estate or otherwise, except as the records of the land registry office disclose.

*Good Title in
 Fee Simple*

4. The Chargor, at the time of the delivery for registration of the Charge, is, and stands solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple, of and in the land and the premises described in the Charge and in every part and parcel thereof without any manner of trusts, reservations, limitations, provisos, conditions or any other matter or thing to alter, charge, change, encumber or defeat the same, except those contained in the original grant thereof from the Crown.

*Promise to
 Pay and
 Perform*

5. The Chargor will pay or cause to be paid to the Chargee the full principal amount and interest secured by the Charge in the manner of payment provided by the Charge, without any deduction or abatement, and shall do, observe, perform, fulfill and keep all the provisions, covenants, agreements and stipulations contained in the Charge and shall pay as they fall due all taxes, rates, levies, charges, assessments, utility and heating charges, municipal, local, parliamentary and otherwise which now are or may hereafter be imposed, charged or levied upon the land and when required shall produce for the Chargee receipts evidencing payment of the same.

*Interest After
 Default*

6. In case default shall be made in payment of any sum to become due for interest at the time provided for payment in the Charge, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, and both before and after default and judgement, shall bear interest at the rate provided for in the Charge. In case the interest and compound interest are not paid within the interest calculation period provided in the Charge from the time of default a rest shall be made, and compound interest at the rate provided for in the Charge shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the land.

*No Obligation
 to Advance*

7. Neither the preparation, execution or registration of the Charge shall bind the Chargee to advance the principal amount secured, nor shall the advance of a part of the principal amount secured bind the Chargee to advance any unadvanced portion thereof, but nevertheless the security in the land shall take effect forthwith upon delivery for registration of the Charge by the Chargor. The expenses of the examination of the title and of the Charge and valuation are to be secured by the Charge in the event of the whole or any balance of the principal amount not being advanced, the same to be charged hereby upon the land, and shall be, without demand therefor, payable forthwith with interest at the rate provided for in the Charge, and in default the Chargee's power of sale hereby given, and all other remedies hereunder, shall be exercisable.

*Costs Added
 to Principal*

8. The Chargee may pay all premiums of insurance and all taxes, rates, levies, charges, assessments, utility and heating charges which shall from time to time fall due and be unpaid in respect of the land, and that such payments, together with all costs, charges, legal fees (as between solicitor and client) and expenses which may be incurred in taking, recovering and keeping possession of the land and of negotiating the Charge, investigating title, and registering the Charge and other necessary deeds, and generally in any other proceedings taken in connection with or to realize upon the security given in the Charge (including legal fees and real estate commissions and other costs incurred in leasing or selling the land or in exercising the power of entering, lease and sale contained in the Charge) shall be, with interest at the rate provided for in the Charge, a charge upon the land in favour of the Chargee pursuant to the terms of the Charge and the Chargee may pay or satisfy any lien, charge or encumbrance now existing or hereafter created or claimed upon the land, which payments with interest at the rate provided for in the Charge shall likewise be a charge upon the land in favour of the Chargee. Provided, and it is hereby further agreed, that all amounts paid by the Chargee as aforesaid shall be added to the principal amount secured by the Charge and shall be payable forthwith with interest at the rate provided for in the Charge, and on default all sums secured by the Charge shall immediately become due and payable at the option of the Chargee, and all powers in the Charge conferred shall become exercisable.

*Power of
 Sale*

9. The Chargee on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice in writing given to the Chargor, enter on and lease the land or sell the land. Such notice shall be given to such persons and in such manner and form and within such time as provided in the *Mortgages Act*. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the land, if occupied, or by placing it on the land if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in a newspaper published in the county or district in which the land is situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. Provided further, that in case default be made in the payment of the principal amount or interest or any part thereof and such default continues for two months after any payment of either falls due then the Chargee may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. It is hereby further agreed that the whole or any part or parts of the land may be sold by public auction or private contract, or partly

one or partly the other; and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the land or by reason of non-payment or procuring payment of monies, secured by the Charge or otherwise, and secondly in payment of all amounts of principal and interest owing under the Charge; and if any surplus shall remain after fully satisfying the claims of the Chargee as aforesaid same shall be paid as required by law. The Chargee may sell any of the land on such terms as to credit and otherwise as shall appear to him most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which he shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the land and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of said purposes may make and execute all agreements and assurances as he shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

Quiet Possession

10. Upon default in payment of principal and interest under the Charge or in performance of any of the terms or conditions hereof, the Chargee may enter into and take possession of the land hereby charged and where the Chargee so enters on and takes possession or enters on and takes possession of the land on default as described in paragraph 9 herein the Chargee shall enter into, have, hold, use, occupy, possess and enjoy the land without the let, suit, hindrance, interruption or denial of the Chargor or any other person or persons whomsoever.

Right to Distrain

11. If the Chargor shall make default in payment of any part of the interest payable under the Charge at any of the dates or times fixed for the payment thereof, it shall be lawful for the Chargee to distrain therefor upon the land or any part thereof, and by distress warrant, to recover by way of rent reserved, as in the case of a demise of the land, so much of such interest as shall, from time to time, be or remain in arrears and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent. Provided that the Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

Further Assurances

12. From and after default in the payment of the principal amount secured by the Charge or the interest thereon or any part of such principal or interest or in the doing, observing, performing, fulfilling or keeping of some one or more of the covenants set forth in the Charge then and in every such case the Chargor and all and every other person whosoever having, or lawfully claiming, or who shall have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the land shall, from time to time, and at all times thereafter, at the proper costs and charges of the Chargor make, do, suffer, execute, deliver, authorize and register, or cause or procure to be made, done, suffered, executed, delivered, authorized and registered, all and every such further and other reasonable act or acts, deed or deeds, devises, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the land unto the Chargee as by the Chargee or his solicitor shall or may be lawfully and reasonably devised, advised or required.

Acceleration of Principal and Interest

13. In default of the payment of the interest secured by the Charge the principal amount secured by the Charge shall, at the option of the Chargee, immediately become payable, and upon default of payment of instalments of principal promptly as the same mature, the balance of the principal and interest secured by the Charge shall, at the option of the Chargee, immediately become due and payable. The Chargee may in writing at any time or times after default waive such default and any such waiver shall apply only to the particular default waived and shall not operate as a waiver of any other or future default.

Unapproved Sale

14. If the Chargor sells, transfers, disposes of, leases or otherwise deals with the land, the principal amount secured by the Charge shall, at the option of the Chargee, immediately become due and payable.

Partial Releases

15. The Chargee may at his discretion at all times release any part or parts of the land or any other security or any surety for the money secured under the Charge either with or without any sufficient consideration therefor, without responsibility therefor, and without thereby releasing any other part of the land or any person from the Charge or from any of the covenants contained in the Charge and without being accountable to the Chargor for the value thereof, or for any monies except those actually received by the Chargee. It is agreed that every part or lot into which the land is or may hereafter be divided does and shall stand charged with the whole money secured under the Charge and no person shall have the right to require the mortgage monies to be apportioned.

Obligation to Insure

16. The Chargor will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Chargee, the buildings on the land to the amount of not less than their full insurable value on a replacement cost basis in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Chargee. Buildings shall include all buildings whether now or hereafter erected on the land, and such insurance shall include not only insurance against loss or damage by fire but also insurance against loss or damage by explosion, tempest, tornado, cyclone, lightning and all other extended perils customarily provided in insurance policies including "all risks" insurance. The covenant to insure shall also include where appropriate or if required by the Chargee, boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Chargee. Evidence of continuation of all such insurance having been effected shall be produced to the Chargee at least fifteen (15) days before the expiration thereof; otherwise the Chargee may provide therefor and charge the premium paid and interest thereon at the rate provided for in the Charge to the Chargor and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Chargee may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Chargee and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Chargee therefor shall be payable forthwith by the Chargor with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Chargee as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

Obligation to Repair

17. The Chargor will keep the land and the buildings, erections and improvements thereon, in good condition and repair according to the nature and description thereof respectively, and the Chargee may, whenever he deems necessary, by his agent enter upon and inspect the land and make such repairs as he deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate provided for in the Charge shall be added to the principal amount and be payable forthwith and be a charge upon the land prior to all claims thereon subsequent to the Charge. If the Chargor shall neglect to keep the buildings, erections and improvements in good condition and repair, or commits or permits any act of waste on the land (as to which the Chargee shall be sole judge) or makes default as to any of the covenants, provisos, agreements or conditions contained in the Charge or in any charge to which this Charge is subject, all monies secured by the Charge shall, at the option of the Chargee, forthwith become due and payable, and in default of payment of same with interest as in the case of payment

before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.

- Building Charge** 18. If any of the principal amount to be advanced under the Charge is to be used to finance an improvement on the land, the Chargor must so inform the Chargee in writing immediately and before any advances are made under the Charge. The Chargor must also provide the Chargee immediately with copies of all contracts and subcontracts relating to the improvement and any amendments to them. The Chargor agrees that any improvement shall be made only according to contracts, plans and specifications approved in writing by the Chargee. The Chargor shall complete all such improvements as quickly as possible and provide the Chargee with proof of payment of all contracts from time to time as the Chargee requires. The Chargee shall make advances (part payments of the principal amount) to the Chargor based on the progress of the improvement, until either completion and occupation or sale of the land. The Chargee shall determine whether or not any advances will be made and when they will be made. Whatever the purpose of the Charge may be, the Chargee may at its option hold back funds from advances until the Chargee is satisfied that the Chargor has complied with the holdback provisions of the *Construction Lien Act* as amended or re-enacted. The Chargor authorizes the Chargee to provide information about the Charge to any person claiming a construction lien on the land.
- Extensions not to Prejudice** 19. No extension of time given by the Chargee to the Chargor or anyone claiming under him, or any other dealing by the Chargee with the owner of the land or of any part thereof, shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person liable for the payment of the money secured by the Charge, and the Charge may be renewed by an agreement in writing at maturity for any term with or without an increased rate of interest notwithstanding that there may be subsequent encumbrances. It shall not be necessary to deliver for registration any such agreement in order to retain priority for the Charge so altered over any instrument delivered for registration subsequent to the Charge. Provided that nothing contained in this paragraph shall confer any right of renewal upon the Chargor.
- No Merger of Covenants** 20. The taking of a judgment or judgments on any of the covenants herein shall not operate as a merger of the covenants or affect the Chargee's right to interest at the rate and times provided for in the Charge; and further that any judgment shall provide that interest thereon shall be computed at the same rate and in the same manner as provided in the Charge until the judgment shall have been fully paid and satisfied.
- Change in Status** 21. Immediately after any change or happening affecting any of the following, namely: (a) the spousal status of the Chargor, (b) the qualification of the land as a family residence within the meaning of Part II of the *Family Law Act*, and (c) the legal title or beneficial ownership of the land, the Chargor will advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the Chargee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the land and of any spouse who is not an owner but who has a right of possession in the land by virtue of Section 19 of the *Family Law Act*. In furtherance of such intention, the Chargor covenants and agrees to furnish the Chargee with such evidence in connection with any of (a), (b) and (c) above as the Chargee may from time to time request.
- Condominium Provisions** 22. If the Charge is of land within a condominium registered pursuant to the *Condominium Act* (the "Act") the following provisions shall apply. The Chargor will comply with the Act, and with the declaration, by-laws and rules of the condominium corporation (the "corporation") relating to the Chargor's unit (the "unit") and provide the Chargee with proof of compliance from time to time as the Chargee may request. The Chargor will pay the common expenses for the unit to the corporation on the due dates. If the Chargee decides to collect the Chargor's contribution towards the common expenses from the Chargor, the Chargor will pay the same to the Chargee upon being so notified. The Chargee is authorized to accept a statement which appears to be issued by the corporation as conclusive evidence for the purpose of establishing the amounts of the common expenses and the dates those amounts are due. The Chargor, upon notice from the Chargee, will forward to the Chargee any notices, assessments, by-laws, rules and financial statements of the corporation that the Chargor receives or is entitled to receive from the corporation. The Chargor will maintain all improvements made to the unit and repair them after damage. In addition to the insurance which the corporation must obtain, the Chargor shall insure the unit against destruction or damage by fire and other perils usually covered in fire insurance policies and against such other perils as the Chargee requires for its full replacement cost (the maximum amount for which it can be insured). The insurance company and the terms of the policy shall be reasonably satisfactory to the Chargee. This provision supersedes the provisions of paragraph 16 herein. The Chargor irrevocably authorizes the Chargee to exercise the Chargor's rights under the Act to vote, consent and dissent.
- Discharge** 23. The Chargee shall have a reasonable time after payment in full of the amounts secured by the Charge to deliver for registration a discharge or if so requested and if required by law to do so, an assignment of the Charge and all legal and other expenses for preparation, execution and registration, as applicable to such discharge or assignment shall be paid by the Chargor.
- Guarantee** 24. Each party named in the Charge as a Guarantor hereby agrees with the Chargee as follows:
- In consideration of the Chargee advancing all or part of the Principal Amount to the Chargor, and in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the Chargee to the Guarantor (the receipt and sufficiency whereof are hereby acknowledged), the Guarantor does hereby absolutely and unconditionally guarantee to the Chargee, and its successors, the due and punctual payment of all principal moneys, interest and other moneys owing on the security of the Charge and observance and performance of the covenants, agreements, terms and conditions herein contained by the Chargor, and the Guarantor, for himself and his successors, covenants with the Chargee that, if the Chargor shall at any time make default in the due and punctual payment of any moneys payable hereunder, the Guarantor will pay all such moneys to the Chargee without any demand being required to be made.
 - Although as between the Guarantor and the Chargor, the Guarantor is only surety for the payment by the Chargor of the moneys hereby guaranteed, as between the Guarantor and the Chargee, the Guarantor shall be considered as primarily liable therefor and it is hereby further expressly declared that no release or releases of any portion or portions of the land; no indulgence shown by the Chargee in respect of any default by the Chargor or any successor thereof which may arise under the Charge; no extension or extensions granted by the Chargee to the Chargor or any successor thereof for payment of the moneys hereby secured or for the doing, observing or performing of any covenant, agreement, term or condition herein contained to be done, observed or performed by the Chargor or any successor thereof; no variation in or departure from the provisions of the Charge; no release of the Chargor or any other thing whatsoever whereby the Guarantor as surety only would or might have been released shall in any way modify, alter, vary or in any way prejudice the Chargee or affect the liability of the Guarantor in any way under this covenant, which shall continue and be binding on the Guarantor, and as well after as before maturity of the Charge and both before and after default and judgment, until the said moneys are fully paid and satisfied.
 - Any payment by the Guarantor of any moneys under this guarantee shall not in any event be taken to affect

the liability of the Chargor for payment thereof but such liability shall remain unimpaired and enforceable by the Guarantor against the Chargor and the Guarantor shall, to the extent of any such payments made by him, in addition to all other remedies, be subrogated as against the Chargor to all the rights, privileges and powers to which the Chargee was entitled prior to payment by the Guarantor; provided, nevertheless, that the Guarantor shall not be entitled in any event to rank for payment against the lands in competition with the Chargee and shall not, unless and until the whole of the principal, interest and other moneys owing on the security of the Charge shall have been paid, be entitled to any rights or remedies whatsoever in subrogation to the Chargee.

- (d) All covenants, liabilities and obligations entered into or imposed hereunder upon the Guarantor shall be equally binding upon his successors. Where more than one party is named as a Guarantor all such covenants, liabilities and obligations shall be joint and several.
- (e) The Chargee may vary any agreement or arrangement with or release the Guarantor, or any one or more of the Guarantors if more than one party is named as Guarantor, and grant extensions of time or otherwise deal with the Guarantor and his successors without any consent on the part of the Chargor or any other Guarantor or any successor thereof.

Severability 25. It is agreed that in the event that at any time any provision of the Charge is illegal or invalid under or inconsistent with provisions of any applicable statute, regulation thereunder or other applicable law or would by reason of the provisions of any such statute, regulation or other applicable law render the Chargee unable to collect the amount of any loss sustained by it as a result of making the loan secured by the Charge which it would otherwise be able to collect under such statute, regulation or other applicable law then, such provision shall not apply and shall be construed so as not to apply to the extent that it is so illegal, invalid or inconsistent or would so render the Chargee unable to collect the amount of any such loss.

Interpretation 26. In construing these covenants the words "Charge", "Chargee", "Chargor", "land" and "successor" shall have the meanings assigned to them in Section 1 of the *Land Registration Reform Act* and the words "Chargor" and "Chargee" and the personal pronouns "he" and "his" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "Chargee" or "Chargees", and "he", "she", "they" or "it", "his", "her", "their" or "its", respectively, as the number and gender of the parties referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted. And that all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargor or Chargors, Chargee or Chargees, shall be equally secured to and exercisable by his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be. The word "successor" shall also include successors and assigns of corporations including amalgamated and continuing corporations. And that all covenants, liabilities and obligations entered into or imposed hereunder upon the Chargor or Chargors, Chargee or Chargees, shall be equally binding upon his, her, their or its heirs, executors, administrators and assigns, or successors and assigns, as the case may be, and that all such covenants and liabilities and obligations shall be joint and several.

Paragraph headings 27. The paragraph headings in these standard charge terms are inserted for convenience of reference only and are deemed not to form part of the Charge and are not to be considered in the construction or interpretation of the Charge or any part thereof.

Date of Charge 28. The Charge, unless otherwise specifically provided, shall be deemed to be dated as of the date of delivery for registration of the Charge.

Effect of Delivery of Charge 29. The delivery of the Charge for registration by direct electronic transfer shall have the same effect for all purposes as if such Charge were in written form, signed by the parties thereto and delivered to the Chargee. Each of the Chargor and, if applicable, the spouse of the Chargor and other party to the Charge agrees not to raise in any proceeding by the Chargee to enforce the Charge any want or lack of authority on the part of the person delivering the Charge for registration to do so.

DATED this day of , (year)

Appendix 36:
Renewal Letter

DIVERSIFIED

President, Asset Management
Capital Management Services
1243 Islington Ave Suite 701
Toronto, Ontario
Canada M9X1Y9
Tel: (416) 364-3396
Fax: (416) 364-9608

July 27, 2015

2221563 Ontario Limited
C/o Mr. Vince Petrozza
25 Brodie drive Unit 1
Richmond Hill
L4B3K7

Attn.: Mr. Petrozza

**Re: First Mortgage Financing - 230-240 Cameron Street, Keswick Ontario – The Crates
Vacant Waterfront Properties at Cameron Crescent – 2221563 Ontario Inc.**

We write, further to your enquiry and our discussion in respect of renewal of the above noted mortgage.

We confirm herein that notwithstanding anything to the contrary within the Commitment of October 2, 2014, the Loan pursuant to the Commitment shall automatically renew hereafter 30 days prior to the anniversary/maturity date of the initial term or any renewal term thereafter, on the same terms and conditions, contained within the above noted Commitment, provided the Borrower is then not in default any of the terms and conditions of the Loan. An extension fee of 3% of the principal amount of the Loan will be applicable for the first renewal term and 1.5% for each subsequent renewal term thereafter.

For greater clarity, the applicable extension fee will be calculated on the principal amount of the loan then outstanding on the anniversary date for any additional renewal term and shall be due and payable at that time, which if not paid shall be added to the Principal amount of the mortgage outstanding at that time and for any and all other successive renewal terms and payable upon the earlier of the expiry/maturity, non-renewal, pay out and or demand made under the loan. Such fee shall be secured by the security under the loan.

Sincerely,



Russ Giannotta

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

Court File No. CV-18-596204-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD OF
FAAN MORTGAGE ADMINISTRATORS
INC., in its capacity as Court-appointed
Trustee

(Motion Returnable September 20, 2022)

VOLUME 2 OF 2

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Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.