

**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***

ELEVENTH REPORT OF THE TRUSTEE

OCTOBER 31, 2019



FAAN Mortgage Administrators Inc.
Court-Appointed Trustee of the Respondent

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ELEVENTH REPORT OF THE TRUSTEE

October 31, 2019

INTRODUCTION

1. On April 20, 2018, pursuant to an order (“**Appointment Order**”) of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (“**Court**”), FAAN Mortgage Administrators Inc. was appointed as trustee (“**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**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, lenders under syndicated mortgage loans (“**Investors**”), brokers, or borrowers, in each case whether or not such property was or is held in trust or was or is required to be held in trust. The Appointment Order was issued following an application made by the Superintendent of Financial Services pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* (Ontario), as amended, and section 101 of the *Courts of Justice Act* (Ontario), as amended. A copy of the Appointment Order is attached as **Appendix “1”**.

2. On October 30, 2018, this Court issued an Order (“**Realized Property Order**”) that, among other things,
 - (a) required the Trustee to distribute (when aggregated with previous distributions) 70% of (I) all funds held or received by the Trustee as a result of a repayment (in whole or in part) of principal on any loan or other indebtedness administered by BDMC on behalf of Investors (including funds originally obtained with respect to the Victoria Medical SML Loans), whether or not (i) secured by any Real Property Charges in the name of BDMC or an RRSP Trustee, (ii) received before or after the date of the Appointment Order, or (iii) paid or payable in trust, plus (II) all interest paid or payable to BDMC or the Trustee at the time such repayment (in whole or in part) of principal is made (collectively, “**Realized Property**”);
 - (b) required the Trustee to retain 30% of all Realized Property; and
 - (c) authorized the Trustee to use the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considered necessary or desirable for the administration of the estate, including in respect of those matters set out in paragraph 17 of the Interim Stabilization Order made in these proceedings on June 26, 2018.

A copy of the Realized Property Order is attached as **Appendix “2”**.

3. On November 19, 2018, the Trustee submitted its third report in these proceedings (“**Third Report**”). The Third Report provided the Court and the stakeholders with the Trustee’s recommendation in favor of a settlement agreement reached with Braestone Development Corporation (“**Braestone Borrower**”) that provided for an early payout of the Investors under the loan agreement dated December 1, 2012 between the Braestone Borrower and BDMC (“**Braestone Settlement Agreement**”). The Third Report also included information in support of a proposed Order of the Court (“**Braestone Settlement Approval Order**”) approving, among other things: (i) the Braestone Settlement Agreement and the transactions contemplated thereby; (ii) an amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 80% of all Realized Property to Investors following receipt of the payment from the Braestone

Borrower; and (iii) the approval of the Trustee's and its counsel's activities and fees. The Braestone Settlement Approval Order was issued on November 28, 2018.

4. On December 13, 2018, the Trustee submitted its fourth report in these proceedings ("**Fourth Report**"). The Fourth Report provided the Court and the stakeholders with the Trustee's recommendation in favor of a settlement agreement reached with The Harlowe Inc. ("**Harlowe Borrower**") that provided for a payout of the Investors under the loan agreement dated June 10, 2013 between the Harlowe Borrower and BDMC ("**Harlowe Settlement Agreement**"). The Fourth Report also included information in support of a proposed Order of the Court ("**Harlowe Settlement Approval Order**") approving, among other things: (i) the Harlowe Settlement Agreement and the transactions contemplated thereby, and (ii) a further amendment to the Realized Property Order that would require the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors following receipt of the payment from the Harlowe Borrower. A copy of the Harlowe Settlement Approval Order dated December 20, 2018 is attached as **Appendix "3"**.
5. The Trustee has, in total, delivered ten reports to Court (collectively, the "**Reports**") detailing, among other things, the Trustee's activities during these proceedings and providing updates to stakeholders on various projects. Notably, on May 10, 2019, the Trustee submitted its seventh report in these proceedings, which provided a comprehensive update on the Trustee's activities and a status update for each project. The Trustee intends to file a further comprehensive update in or about November 2019.
6. The Trustee indicated in its previous Reports that it continues to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. As a result of these efforts, the Trustee received an offer ("**Assignment Offer**") from 2716360 Ontario Limited ("**Assignee**") for the assignment of the right, title and interest in and to the indebtedness owed by the Nobleton North Holdings Inc. ("**Nobleton North Borrower**") to BDMC under a loan agreement effective as of December 13, 2013 and executed as of June 10, 2014 ("**Nobleton North Loan Agreement**") pursuant to which BDMC provided a syndicated mortgage loan ("**Nobleton North Loan**") to the Nobleton North Borrower together with related security, which Assignment Offer included a transfer of a charge on real property situated at 13735 Highway 27 in the Township of King, Ontario ("**Property**"), in exchange for a cash payment ("**Assignment Price**").

7. Capitalized terms not otherwise defined in this eleventh report (“**Eleventh Report**”) have the meanings ascribed to them in previous Reports filed by the Trustee. Materials filed with the Court with respect to these proceedings, including the Reports and the various Court orders issued in these proceedings, are accessible on the Trustee’s website at: www.faanmortgageadmin.com (“**Trustee’s Website**”). The Trustee intends to maintain the Trustee’s Website for the currency of these proceedings and will be updating it as appropriate.

PURPOSE OF THE ELEVENTH REPORT

8. The Trustee has brought this motion to ensure that the Nobleton North Individual Lenders (as defined below) receive as much Realized Property as possible from their investment. As set out below, notwithstanding that the Trustee has been engaged in discussions with the Nobleton North Borrower for several months, as matters currently stand, the Trustee is in possession of only one executable transaction for the benefit of the Investors, which is represented by the Assignment Offer. That transaction requires Court approval to be obtained by November 8, 2019, failing which the Assignee would not be bound to complete the proposed transaction and which would potentially result in a lost opportunity to generate meaningful recoveries. As such, the Trustee, with the support of Representative Counsel, has concluded that serving this motion for approval of the Nobleton North Assignment Agreement presents the best opportunity to maximize recoveries for Investors.
9. Accordingly, the purpose of this Eleventh Report is to provide the Court and stakeholders with an update with respect to the Nobleton North Project (as defined below) and information in support of the Trustee’s motion, including consultations with Representative Counsel, to seek an Order (“**Nobleton North Assignment Approval Order**”) that, among other things:
 - (a) (i) approves the Assignment Agreement dated as of October 4, 2019 (“**Nobleton North Assignment Agreement**”) among the Assignee, Olympia Trust Company (“**OTC**”) and the Trustee, with such minor amendments as the Trustee and the other parties to the Nobleton North Assignment Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) directs the Assignee to pay the Assignment Price forthwith to the Trustee in accordance with the terms of the Nobleton North Assignment Agreement (such funds, the

“Nobleton North Realized Property”); and (iii) approves and ratifies the execution of the Nobleton North Assignment Agreement by the Trustee and OTC and authorizes and directs the Trustee and OTC to comply with all of their obligations under the Nobleton North Assignment Agreement;

- (b) transfers, conveys and assigns to the Assignee all right, title and interest of BDMC and OTC in and to all of the Nobleton North Borrower’s obligations to BDMC, OTC, and the individual lenders under the Nobleton North Loan Agreement (**“Nobleton North Individual Lenders”**) and related security and other loan documents contemplated by the Nobleton North Loan Agreement (collectively, the **“Nobleton North Loan Obligations”**) and all security interests granted to BDMC, OTC or the Nobleton North Individual Lenders in and to the assets of the Nobleton North Borrower to secure the Nobleton North Loan Obligations (**“Loan Encumbrances”**) upon the delivery of a Trustee’s certificate confirming, among other things, the Trustee’s receipt of the Assignment Price (**“Trustee’s Certificate”**);
- (c) upon the delivery of the Trustee’s Certificate, releases all liability and obligation of BDMC, OTC, the Nobleton North Individual Lenders, and the Trustee under the Loan Agreement, the Nobleton North Loan Obligations, and the Loan Encumbrances; and
- (d) authorizes the Trustee to make a distribution to Nobleton North Individual Lenders following the filing of the Trustee’s Certificate with the Court certifying, among other things, the receipt by the Trustee of the Nobleton North Realized Property, in an amount equal to 85% of the Nobleton North Realized Property received by the Trustee, *pro rata* to the Nobleton North Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.

10. In support of the Trustee’s request for the Nobleton North Assignment Approval Order, this Eleventh Report describes the following matters:

- (a) An overview of the Nobleton North Project;
- (b) The details of the Nobleton North Loan Agreement;

- (c) Information with respect to the settlement and assignment offers received by the Trustee, including a chronology of events;
- (d) A confidential appendix that provides the financial aspects of the settlement and assignment offers;
- (e) The details of the Nobleton North Assignment Agreement; and
- (f) Information that supports the Trustee's recommendation that the Nobleton North Assignment Agreement be approved.

SCOPE AND TERMS OF REFERENCE

11. In preparing this Eleventh Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), the Assignee, the Nobleton North Borrower and certain other individual borrowers who have borrowed funds from BDMC under various syndicated mortgage loans administered by BDMC. However, the Trustee notes that it cannot be certain that it is in receipt of all applicable and relevant information with respect to the projects, including the Nobleton North Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM, and applicable borrowers (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Trustee expresses no opinion or other form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.
12. Some of the information used and relied upon in preparing this Eleventh Report consists of financial projections and other information received from various third parties, including appraisals and project cost information. The Trustee cautions that the projections and other information used and relied upon are generally based upon assumptions and estimates about future events and/or market conditions that are not ascertainable or that could change. As such, the information presented in this Eleventh Report may vary from the projections and information used to prepare this Eleventh Report and the actual results may differ both from the results projected therein and herein. Even if the assumptions

relied upon therein or herein materialize, the variations from the projections could be significant. The Trustee's review of the future oriented information used to prepare this Eleventh Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

13. This Eleventh Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and the Nobleton North Project and to assist the Court with respect to the Trustee's request for the proposed Nobleton North Assignment Approval Order. Accordingly, the reader is cautioned that this Eleventh Report may not be appropriate for any other purpose.
14. All references to dollars are in Canadian currency unless otherwise noted.

OVERVIEW OF NOBLETON NORTH PROJECT

15. The Nobleton North Borrower is proposing to develop a low-density residential development consisting of 150 single detached homes on the Property ("**Nobleton North Project**").
16. Development approvals are still required for the Nobleton North Project. The Nobleton North Borrower has not submitted Zoning By-Law Amendment and Draft Plan of Subdivision applications to the City of Nobleton as there are no municipal services for the Nobleton community at this time. To address the deficiency in municipal sanitary sewer services, an environmental assessment ("**Assessment**") for the community of Nobleton is being undertaken by the region. The Assessment is a prerequisite to the expansion of the existing pumping station. Once the Assessment is complete, construction to bring the required servicing into the area is expected to follow. The Nobleton North Borrower has estimated that the required servicing allocations and development approvals will not be in place for 6 to 8 years. Construction cannot begin until such approvals are obtained and pre-sales commence. Accordingly, the estimated timing to project completion is approximately 8 to 12 years (between 2027 and 2031).
17. The Nobleton North Borrower has also advised the Trustee that it has faced significant changes in the marketplace since the Nobleton North Project commenced in 2014. A first priority vendor takeback mortgage ("**VTB**") registered on title to the Property matured on December 4, 2018, and the Nobleton North Borrower has advised that the holder of the VTB is not willing to renew its loan. In addition, the Trustee has been advised by the

Nobleton North Borrower that it had been seeking replacement financing for several months but experienced significant difficulty securing proposals from lenders while any portion of the Nobleton North Loan remained on title.

18. The Trustee has provided information to Investors regarding certain matters related to the Nobleton North Project and Nobleton North Loan, primarily through previous Reports, responding to individual Investor calls and emails, and by distributing the Investor Notice (as described below).

NOBLETON NORTH LOAN ARRANGEMENTS

19. The Nobleton North Loan was made to the Borrower pursuant to the Nobleton North Loan Agreement in connection with the purchase of the Property, repayment of an interim bridge loan, and the payment of various contractual fees and reasonable soft costs associated with the Nobleton North Project. The Nobleton North Loan matured in May 2019 and is now due.
20. Pursuant to the Nobleton North Loan, the total amount owing to the Nobleton North Individual Lenders is approximately \$21.95 million, which reflects a principal balance of approximately \$18.56 million and outstanding accrued interest of approximately \$3.39 million, as at October 31, 2019. The Nobleton North Borrower made interest payments of approximately \$2.97 million through to August 1, 2017. The Nobleton North Borrower has advised that it does not intend to resume making interest payments to the Nobleton North Individual Lenders.
21. BDMC has a second ranking mortgage registered on title to the Property in respect of the Nobleton North Loan. The VTB is the only known registered indebtedness that ranks in priority to the Nobleton North Loan on title. The Trustee understands that the obligations owing by the Nobleton North Borrower pursuant to the VTB are in the amount of approximately \$3.225 million (inclusive of accrued interest to September 4, 2019).

OFFERS RECEIVED BY THE TRUSTEE

22. The Assignment Offer was made to the Trustee by the Assignee, an entity related to an experienced real estate developer, following ongoing negotiations between the Trustee and the Nobleton North Borrower with respect to a settlement transaction involving the Nobleton North Loan. The following sets out the chronology of the ongoing settlement

negotiations with the Nobleton North Borrower and the Assignment Offer received by the Trustee from the Assignee, as well as an overview of all offers received by the Trustee.

Original Settlement Offer

23. The Nobleton North Borrower advised the Trustee that notwithstanding the fact it had approached a number of potential lenders, only one lender provided the Nobleton North Borrower with an offer to finance the Property. Based on that offer, the Nobleton North Borrower provided a proposal to the Trustee to partially repay the Nobleton North Loan in exchange for a release of all amounts due or that may become due under the Nobleton North Loan Agreement (“**Original Settlement Offer**”).
24. As previously noted, the Trustee had been in discussions with the Nobleton North Borrower for several months. The amount of the proposed payment to the Nobleton North Individual Lenders pursuant to the Original Settlement Offer was substantially lower than what the Nobleton North Borrower originally proposed to the Trustee at the commencement of those discussions. The Nobleton North Borrower cited the requirement for the Assessment and the overall time delay in advancing the Nobleton North Project among the reasons for the reduction in the proposed payment.
25. During this period, the Trustee had continually expressed concerns to the Nobleton North Borrower regarding, among other things, the consideration provided for in the Original Settlement Offer for the Nobleton North Individual Lenders (including the reduction in consideration) and the level of disclosure that the Nobleton North Borrower provided to the Trustee with respect to the financing required to complete the transaction. As discussed further below, until learning that the Trustee was in receipt of the Assignment Offer, the Nobleton North Borrower continually advised the Trustee that the Original Settlement Offer would provide the best recovery to the Nobleton North Individual Lenders in the circumstances and that the Nobleton North Borrower had no ability to increase the amount of the consideration contained in the Original Settlement Offer.

Assignment Offer

26. During its review and negotiations in respect of the Original Settlement Offer, the Trustee became aware that the Assignee was interested in purchasing BDMC’s interest in the Nobleton North Loan Agreement and related security. The Trustee entered into discussions with the Assignee to determine if there was an alternative to the Original

Settlement Offer that would be more beneficial to the Nobleton North Individual Lenders. Following negotiations with the Trustee, the Assignee proposed to take assignment of the indebtedness owed by the Nobleton North Borrower to the Trustee under the Nobleton North Loan and the related security in exchange for the Assignment Price in full satisfaction of the Nobleton North Individual Lenders' rights and interests under the Nobleton North Loan. Notably, the consideration provided to the Nobleton North Individual Lenders in the Assignment Offer exceeds that of the Original Settlement Offer.

27. The Assignment Offer was executed by the Assignee on October 4, 2019 and the Trustee is in receipt of a deposit from the Assignee, which is being held in trust by the Trustee's legal counsel. The Assignment Offer is conditional upon receiving Court approval of the Assignment Offer by no later than November 8, 2019, failing which the offer will be deemed to be revoked, the Assignee would not be bound to complete the transaction, and the Trustee would have to return the deposit.

Revised Settlement Offer

28. On October 4, 2019, after receiving the Assignment Offer executed by the Assignee, the Trustee contacted the Nobleton North Borrower to advise that the Trustee intended to proceed with the process to recommend acceptance of the Assignment Offer, including advising the Nobleton North Individual Lenders of the Assignment Offer. The Nobleton North Borrower indicated that it was disappointed that the Trustee had not discussed the Assignment Offer with the Nobleton North Borrower and that the Trustee did not provide the Nobleton North Borrower with a further opportunity to increase its offer. The Trustee was clear in its previous communications with the Nobleton North Borrower regarding its position on the consideration offered pursuant to the Original Settlement Offer. Furthermore, the Nobleton North Borrower had previously continued to represent that it had no ability to, and would not, increase the Original Settlement Offer. The Trustee did not and has not provided the Nobleton North Borrower with any financial details in respect of the Assignment Offer.
29. On October 7, 2019, the Trustee and its legal counsel were contacted by the Nobleton North Borrower's legal counsel with respect to the Trustee's intention to move forward with the Assignment Offer. The Trustee's legal counsel also contacted Representative Counsel

to discuss the situation. The Trustee then advised the Nobleton North Borrower's legal counsel that the Trustee was intending on moving forward with the Assignment Offer.

30. On October 10, 2019, the Nobleton North Borrower's legal counsel presented the Trustee with an unsolicited offer to settle the amounts owing to the Nobleton North Individual Lenders for a cash payment materially in excess of the Assignment Price (the "**Revised Settlement Offer**"). The Trustee notes that it was only following the Trustee securing an accretive transaction for the Nobleton North Individual Lenders that the Nobleton North Borrower changed its position regarding its ability to offer consideration above the Original Settlement Offer.
31. The Trustee immediately provided Representative Counsel with a copy of the Revised Settlement Offer, and Representative Counsel engaged in discussions with the Nobleton North Borrower's legal counsel. The Trustee also advised the Assignee of the existence of the Revised Settlement Offer. While the Assignee was understanding of the inquiries being made by Representative Counsel with respect to the Revised Settlement Offer, the Assignee advised that it had incurred significant costs with respect to its proposed transaction and that it expected the Trustee to proceed with the process to seek court approval of the Assignment Offer, which, as previously noted, must occur by no later than November 8, 2019. The Trustee has not provided the Assignee with any financial information in respect of the Revised Settlement Offer (or the Original Settlement Offer).
32. Based on the diligence that it undertook with respect to the Revised Settlement Offer and its understanding of the totality of the negotiations between the Trustee and the Nobleton North Borrower, Representative Counsel advised the Trustee prior to the distribution of the Investor Notice (as defined below) of its view that although the potential consideration provided by the Revised Settlement Offer was materially higher than the Assignment Offer, it had serious concerns with respect to the ability of the Nobleton North Borrower to complete the proposed transaction, including the lack of any binding financing commitments. Representative Counsel advised the Trustee that it had communicated its concerns to counsel to the Nobleton North Borrower, who indicated that the Nobleton North Borrower was attempting to deal with these concerns on a timely basis.

33. As of the time of issuance of this Eleventh Report:

(a) The Trustee understands that Representative Counsel has continued to be in contact with legal counsel to the Nobleton North Borrower since the date of the Investor Notice;

(b) Representative Counsel has advised the Trustee that:

- i. since the date of the Investor Notice, although considerable progress has been made with respect to material issues relating to the Revised Settlement Offer, certain material issues are still being discussed;
- ii. the latest form of the Revised Settlement Offer was delivered to Representative Counsel by counsel to the Nobleton North Borrower on the evening of October 30, 2019, and has yet to fully address all of the material issues raised by Representative Counsel;
- iii. Representative Counsel has requested that the Nobleton North Borrower consent to the immediate distribution of the latest Revised Settlement Offer to the Trustee in order to permit a discussion to take place as to whether it can be presented to the Court for approval; and
- iv. the Nobleton North Borrower has yet to consent to the distribution of the latest Revised Settlement Offer to the Trustee;

(c) Given the above, the only transaction that is in the possession of the Trustee that is implementable at this time is the Assignment Offer and must be brought forward in order to prevent the loss of an opportunity to generate meaningful recoveries for the Nobleton North Individual Lenders; and

(d) As a result, Representative Counsel has advised the Trustee that it is supportive of the Trustee serving its material for a motion to seek Court approval of the Assignment Offer, although it continues to have discussions with counsel to the Nobleton North Borrower with respect to the status of the Revised Settlement Offer.

Summary of Offers

34. **Confidential Appendix “1”** contains an unredacted copy of the Nobleton North Assignment Agreement and a summary of the financial aspects of the above noted offers, the level of recovery that each offer would provide the Nobleton North Individual Lenders, and the amounts foregone by accepting each offer (“**Summary of Offers**”). Given the commercially sensitive nature of the financial aspects of the various offers, including the consideration offered, the Trustee is concerned that public disclosure of the Summary of Offers and the unredacted copy of the Nobleton North Assignment Agreement prior to Court approval and closing of a transaction with respect to the Nobleton North Loan may negatively affect the recovery for the Nobleton North Individual Lenders. As such, the Trustee is requesting that Confidential Appendix “1” be sealed pending further Order of the Court.
35. The Assignment Offer, while representing only partial payment of the outstanding principal balance owing under the Nobleton North Loan, would result in a payment to the Nobleton North Individual Lenders that is higher than that contemplated by the Original Settlement Offer. The Assignment Offer also includes an acceptable level of disclosure and information with respect to the financing required to complete the transaction.

Investor Notice

36. The Trustee sent a notice to the Nobleton North Individual Lenders on October 21, 2019 (“**Investor Notice**”) summarizing certain of the matters described in this Eleventh Report. While the Investor Notice did not disclose any of the financial details of the offers received, it advised the Nobleton North Individual Lenders of the Trustee’s intention to seek approval of the Assignment Offer and further advised that the Trustee provided Representative Counsel with all relevant financial and other information with respect to the offers received. The Investor Notice then invited the Nobleton North Individual Lenders to consult with Representative Counsel regarding the offers received by the Trustee and to review the materials filed in support of the Nobleton North Assignment Approval Order, which the Trustee intends to post on the Trustee’s Website forthwith following filing of this report with the Court. A copy of the Investor Notice is attached as **Appendix “4”**.

NOBLETON NORTH ASSIGNMENT AGREEMENT

37. The Nobleton North Assignment Agreement provides that, among other things, upon closing of the transactions contemplated therein, the Trustee, on behalf of BDMC, and OTC will assign, transfer, and convey all of their right, title and interest (both legal and equitable) in and to the Nobleton North Loan Agreement, the loan and other obligations owing thereunder, and the Security (as defined in the Nobleton North Loan Agreement) to the Assignee.
38. The Nobleton North Assignment Agreement provides further that, in the event that the Assignee fails to pay any portion of the Assignment Price within a period prescribed by the Nobleton North Assignment Agreement, the Assignee is required to pay forthwith to the Trustee, on behalf of BDMC, a late payment fee in accordance with the terms therein.
39. The Assignee has made certain representations and warranties in the Nobleton North Assignment Agreement. These representations and warranties include, among other things, that, to the best of the Assignee's knowledge, none of Fortress or any of its affiliates: (a) has or shall have any ongoing involvement in the Nobleton North Project; (b) is party to any agreement or other arrangement relating to the Nobleton North Project; or (c) is or will become entitled to receive any consideration from the Property ("**Fortress Consideration**"). Further, the Nobleton North Assignment Agreement contains a covenant in favour of the Trustee that, among other things, should the Assignee or any of its affiliates come into the possession or control of any Fortress Consideration during the six (6) month period following the Closing Date (as defined in the Nobleton North Assignment Agreement), such Fortress Consideration will be paid to the Trustee (until all amounts that would have otherwise been payable to BDMC under the Nobleton North Loan Agreement have been paid in full).
40. As noted above, the Nobleton North Assignment Agreement was executed by the Assignee on October 4, 2019. If the Court issues the proposed Nobleton North Assignment Approval Order, then the transactions set out therein will be effective upon the issuance by the Trustee of the Trustee's Certificate certifying that the conditions precedent set out in the Nobleton North Assignment Agreement have been satisfied and the filing of the Trustee's Certificate with the Court.

41. Further, if the Nobleton North Assignment Approval Order is granted, the Trustee intends to make a distribution to Nobleton North Individual Lenders following the filing of the Trustee's Certificate with the Court certifying, among other things, the receipt by the Trustee of the Nobleton North Realized Property, in an amount equal to 85% of the Nobleton North Realized Property, *pro rata* to the Nobleton North Individual Lenders entitled to such funds, in accordance with paragraph 3(b) of the Realized Property Order, as amended by the Braestone Settlement Approval Order and the Harlowe Settlement Approval Order.
42. A copy of the Assignment Offer redacted for confidential information, including the form of Nobleton North Assignment Agreement executed by the Trustee, is attached as **Appendix "5"**.

CONCLUSION AND RECOMMENDATION

43. For the reasons noted above, the Trustee and Representative Counsel are of the view that the execution of the Nobleton North Assignment Agreement by the Trustee and the bringing of this motion are in the best interests of the Nobleton North Individual Lenders. Accordingly, the Trustee recommends that the proposed Nobleton North Assignment Approval Order be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 31st day of October, 2019.

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.,
SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.,
AND NOT IN ITS PERSONAL OR ANY OTHER CAPACITY**

Appendix 1:
Appointment Order dated April 20, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
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29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

APPOINTMENT ORDER

THIS APPLICATION, made by The Superintendent of Financial Services (the "**Superintendent**"), for an Order, *inter alia*, 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**"), appointing FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**") as trustee (in such capacity, the "**Trustee**"), without security, of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the affidavit of Brendan Forbes sworn April 19, 2018 and the exhibits thereto (the "**Supporting Affidavit**") and the consent of FAAN Mortgage to act as the Trustee,

and on hearing the submissions of counsel for the Superintendent, counsel for FAAN Mortgage and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Miranda Spence sworn April 19, 2018, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 37 of the MBLAA and section 101 of the CJA, FAAN Mortgage is hereby appointed Trustee, without security, of all of the assets, undertakings and properties of the Respondent, including, without limitation, all of the assets in the possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**"), which Property, for greater certainty, includes any and all real property charges in favour of the Respondent (the "**Real Property Charges**"), including, without limitation, any and all monetary and non-monetary entitlements in respect to the assets and values thereunder, the period of which appointment shall run from 12:01 a.m. on the date hereof until such date that all assets under all syndicated mortgage loans have been realized and all Property has been distributed to those entitled to it.

TRUSTEE'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the holding of mortgage security in

trust on behalf of Investors, the administering of the mortgages, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Respondent, including, without limitation, the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Trustee's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent, including, without limitation, such security held on behalf of Investors;
- (g) to settle, extend or compromise any indebtedness owing to the Respondent;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Trustee's name or in the name and on behalf of the Respondent for any purpose pursuant to this Order, including, without limitation, any documents in connection with any registration, discharge, partial discharge, transfer, assignment or similar dealings in respect of any mortgage ("**Land Title Document**") and, for greater certainty, the applicable land registry office, registrar or other official under the *Land Registration Reform Act* (Ontario), the *Land Titles Act* (Alberta), or any other comparable legislation in any other jurisdiction be and is hereby directed, upon being presented with a certified

true copy of this Order and such Land Title Document, to register, discharge, partially discharge, transfer or otherwise deal with such mortgage in accordance with such Land Title Document without any obligation to inquire into the propriety of the execution or effect of such Land Title Document;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent, the Property or the Trustee, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Trustee in its discretion may deem appropriate;
- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) with the approval of this Court, to restructure the Property in a manner that the Trustee considers reasonable, including, without limitation, the conversion, in whole or in part, of the Property or any part or parts thereof, out of the ordinary course of business, into an alternative or different interest in the capital structure of the Property or any part or parts thereof, including, without limitation, an ownership interest therein;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Trustee deems appropriate on all matters relating to the Property and the

Trustee's mandate, and to share information, subject to such terms as to confidentiality as the Trustee deems advisable;

- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Trustee, in the name of the Respondent;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Trustee takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, without interference from any other Person and without regard to any arrangement in existence as of the date hereof between the Respondent and Investors as to how and when such actions or steps are to be taken. For greater certainty, the Trustee shall be and is empowered to take such actions or steps without seeking instructions from Investors where the Trustee determines, in its sole discretion, that it is necessary and appropriate to do so (having regard for the interests of Investors), and in all other cases, the Trustee is specifically authorized to continue to comply with the existing arrangements, including any deemed consent provisions contained therein.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

4. **THIS COURT ORDERS** that: (i) the Respondent; (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) all other individuals, firms, corporations,

Canadian Development Capital & Mortgage Services
Inc. ("CDCM")

governmental bodies or agencies, or other entities having notice of this Order, including, without limitation, Tsunami Technology Group Inc., Fortress Real Developments Inc. ("FRDI"), all of its direct or indirect affiliates, and any entity under common control with FRDI (collectively with FRDI, the "Fortress Entities"), any entity that is a joint venture among a Fortress Entity and another entity, and each director, officer, employee and agent of any Fortress Entity (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Trustee of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Trustee, and shall deliver all such Property to the Trustee upon the Trustee's request.

GH

or
CDCM

GH

5. **THIS COURT ORDERS** that, pursuant to and without limiting the generality of paragraph 4 of this Order, all Persons shall, unless otherwise instructed by the Trustee: (i) deliver to the Trustee (or, in the case of RRSP or other registered funds administered by Olympia Trust Company ("OTC") or Computershare Trust Company of Canada ("Computershare"), not release to any Person without further Order of this Court) any and all monies held in trust that are related to the Respondent or its business (collectively, the "Trust Funds"), which Trust Funds, for greater certainty, include any and all monies in any OTC or Computershare account that are purported to be held in trust for the Investors in or beneficiaries under any of the Real Property Charges, including, without limitation, all monies held by way of interest reserves to satisfy interest payments to such Investors or beneficiaries, which Trust Funds are to be held or used by the Trustee in accordance with the terms of this Order and any further Order of this Court; and (ii) upon the Trustee's request, provide an accounting of all funds received from or on behalf of the Respondent or its associated businesses.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Trustee of the existence of any books, emails, user accounts, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information, including copies of any previously performed electronic back ups (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Trustee or permit the Trustee to make, retain and take away copies thereof and grant to the Trustee unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or

provided to the Trustee due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Trustee for the purpose of allowing the Trustee to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Trustee in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Trustee. Further, for the purposes of this paragraph, all Persons shall provide the Trustee with all such assistance in gaining immediate access to the information in the Records as the Trustee may in its discretion require including providing the Trustee with instructions on the use of any computer or other system and providing the Trustee with any and all access codes, account names and account numbers that may be required to gain access to the information. Paragraphs 6 and 7 of this Order do not apply to any materials obtained by the Royal Canadian Mounted Police pursuant to any warrant issued under the *Criminal Code*, R.S.C. 1985, c. C-46.

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

10. **THIS COURT ORDERS** that, with the exception of the Suspension and Penalty Orders (as such term is defined in the Supporting Affidavit): (i) no Proceeding against or in respect of any of the Respondent, the Property or the Superintendent (in the last case, with respect to any matters arising from the Respondent or the Property) shall be commenced or continued except with the written consent of the Trustee or with leave of this Court; and (ii) any and all Proceedings currently under way against or in respect of any of the Respondent or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that, with the exception of the Suspension and Penalty Orders, all rights and remedies against the Respondent, the Trustee, or affecting the Property (including, without limitation, pursuant to any arrangement in existence as of the date hereof between the Respondent and Investors as to how and when the actions or steps contemplated by paragraph 3 of this Order are to be taken), are hereby stayed and suspended except with the written consent of the Trustee or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), and further provided that nothing in this paragraph shall: (i) empower the Trustee or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on; (ii) exempt the Trustee or the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; (iv) prevent the registration of a claim for lien; or (v) prevent the filing and service of a statement of claim solely to permit the perfection of a lien, provided that no further proceedings on such statement of claim shall be permitted other than pursuant to paragraph 10.

NO INTERFERENCE WITH THE TRUSTEE

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondent, without written consent of the Trustee or leave of this Court, including, for greater certainty, any licenses granted to the Respondent to act as an administrator of or lender under or administer syndicated mortgage loans under the MBLAA, *The Mortgage Brokers Act* (Manitoba), *The Mortgage Brokerages and Mortgage*

Administrators Act (Saskatchewan), the *Real Estate Act* (Alberta), the *Mortgage Brokers Act* (British Columbia) or any other comparable legislation in any other jurisdiction where the Respondent is currently licensed.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Respondent, or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services (including, for greater certainty, all goods and/or services provided by Tsunami Technology Group Inc. in respect of the Respondent), centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Trustee, and that the Trustee shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Trustee in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Trustee, or as may be ordered by this Court.

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Trustee shall not, as a result of this Order or anything done in pursuance of the Trustee’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE TRUSTEE’S LIABILITY

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

TRUSTEE’S ACCOUNTS

19. **THIS COURT ORDERS** that the Trustee and counsel to the Trustee shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, which fees and disbursements shall be added to the indebtedness secured by the Real Property Charges and that the Trustee and counsel to the Trustee shall be entitled to and are hereby granted a charge (the “**Trustee’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Trustee’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Trustee shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Trustee or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE APPOINTMENT

22. **THIS COURT ORDERS** that the Trustee be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Trustee by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Trustee's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Trustee's Charge and the charges as set out in subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in these proceedings, the service

of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "Rules"), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.faanmortgageadmin.com.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Respondent's creditors or other interested parties at their respective addresses as last shown on the records of the Respondent and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Trustee from acting as a trustee in bankruptcy of the Respondent.

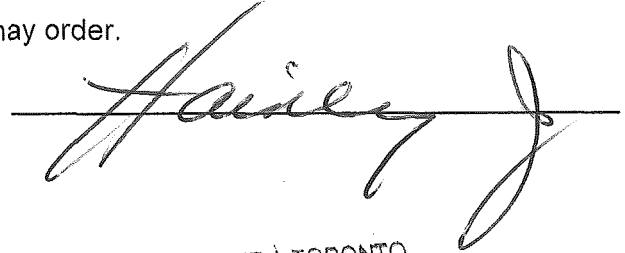
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of

this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

32. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that FAAN Mortgage Administrators Inc., the Trustee (in such capacity, the "**Trustee**") of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), including, without limitation, all of the assets in possession or under the control of the Respondent, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, lenders under any syndicate mortgage ("**Investors**"), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 20th day of April, 2018 (the "**Order**") made in an application having Court file number CV-18-596204-00CL, has received as such Trustee from the holder of this certificate (the "**Lender**") the principal sum of \$<*>, being part of the total principal sum of \$<*> which the Trustee is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

FAAN MORTGAGE ADMINISTRATORS INC.,
solely in its capacity as Trustee of the Property (as
defined in the Order), and not in its personal
capacity

Per: _____
Name:
Title:

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

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

Appendix 2:
Realized Property Order dated October 30, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

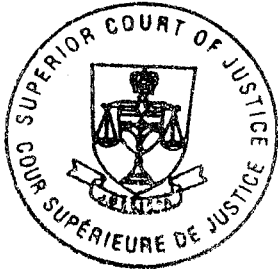
THE HONOURABLE MR.) TUESDAY, THE 30th DAY
JUSTICE HAINEY) OF OCTOBER, 2018

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**

REALIZED PROPERTY ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), 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. (the “**Respondent**”) 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, for an Order, *inter alia*, (i) requiring the Trustee to distribute certain Realized Property, as more fully set out herein; and (ii) authorizing the Trustee to utilize certain Realized Property to fund the Required Trustee Activities (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Second Report of the Trustee dated October 23, 2018 (the “**Second Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel for The Superintendent of Financial Services, and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Jacob Schmidt sworn October 24, 2018, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that any capitalized terms used but not defined herein shall have the meanings given in the Order of the Court in respect of the Respondent dated June 26, 2018 (the “**Interim Stabilization Order**”) or in the Second Report.

REALIZED PROPERTY

3. **THIS COURT ORDERS** that the Trustee shall:

- (a) distribute a further amount equal to 20% of the Realized Property obtained with respect to the Victoria Medical SML Loans *pro rata* to the Investors entitled to such funds, such that, when combined with the distribution made pursuant to the Interim Stabilization Order, 70% of such funds shall have been distributed on a *pro rata* basis; and
- (b) distribute 70% of all other Realized Property obtained *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

4. **THIS COURT ORDERS** that the Trustee is hereby authorized to use all or any portion of the retained Realized Property to aid the Trustee in complying with the Appointment Order and in carrying out its mandate, as the Trustee, in its sole discretion, considers necessary or desirable

for the administration of the estate, including those matters set out in paragraph 17 of the Interim Stabilization Order (collectively, the “**Required Trustee Activities**”).

5. **THIS COURT ORDERS** that the Trustee shall report to the Court by no later than April 30, 2019 regarding the Required Trustee Activities undertaken following the date of this Order.

GENERAL

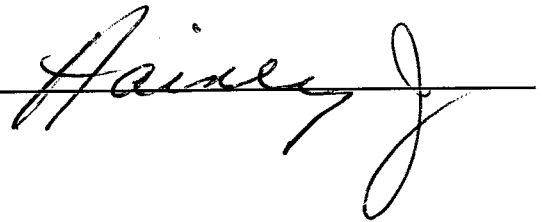
6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

OCT 30 2018

PER / PAR: 



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

REALIZED PROPERTY ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
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Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc., in its
capacity as Court-appointed Trustee

Appendix 3:

Harlowe Settlement Approval Order dated December 20, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 20TH

JUSTICE HAINEY

)

DAY OF DECEMBER, 2018

)

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**

HARLOWE SETTLEMENT APPROVAL ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), 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. (the “**Respondent**”) 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, for an Order, *inter alia*, (i) approving and

ratifying the Settlement Agreement dated as of November 6, 2018 (the “**Harlowe Settlement Agreement**”) among The Harlowe Inc. (“**Harlowe**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering Harlowe to pay \$15,562,896.38 to the Trustee pursuant to the Harlowe Settlement Agreement; (iii) ordering Harlowe, the Trustee and OTC to comply with the Harlowe Settlement Agreement; and (iv) authorizing the Trustee to, upon the delivery of the Trustee’s Certificate (as defined below), make a further distribution of Realized Property to Investors, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fourth Report of the Trustee dated December 13, 2018 (the “**Fourth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to Harlowe and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Justine Erickson sworn December 14, 2018, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Fourth Report and the Harlowe Settlement Agreement.

APPROVAL OF THE HARLOWE SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Harlowe Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the Harlowe Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) Harlowe is hereby directed to pay \$15,562,896.38 forthwith to the Trustee in accordance with the terms of the Harlowe Settlement Agreement (such funds the “**Harlowe Realized Property**”); and (iii) the execution of the Harlowe Settlement Agreement by the Trustee and OTC is hereby ratified and approved, and the Trustee and OTC are hereby

authorized and directed to comply with all of their obligations under the Harlowe Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to Harlowe substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of Harlowe's obligations to Building & Development Mortgages Canada Inc. ("**BDMC**"), OTC, and the individual lenders (the "**Harlowe Individual Lenders**") under the Loan Agreement dated as of June 10, 2013 between BDMC and Harlowe (the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Harlowe Loan Obligations**") and all security interests granted to BDMC, OTC or the Harlowe Individual Lenders in and to the assets of Harlowe to secure the Harlowe Loan Obligations and related registrations on title (the "**Loan Encumbrances**") are hereby released, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Harlowe Individual Lender shall have any claim against Harlowe in respect of the Harlowe Loan Obligations or the Loan Encumbrances; provided, however, that Harlowe shall not be released from any obligations under the Harlowe Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Harlowe Realized Property is and shall be deemed to be "**Realized Property**" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that all of the Harlowe Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the Harlowe Realized Property and shall have the same nature and priority as they had prior to the consummation of the Harlowe Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Registry Division of Toronto (#66) of an Application for Vesting Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Loan Encumbrances listed in Schedule "C" hereto.

7. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Harlowe Individual Lender who loaned funds through BDMC or OTC to Harlowe pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "**Releasees**") by Harlowe on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the "**Releasors**") shall be binding and effective on the Releasors in favour of the Releasees.

8. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, as soon as practicable after delivery thereof.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a further distribution to Investors in an amount equal to 5% of the Realized Property held on or received after the date of the Appointment Order, including the Realized Property obtained with respect to the Victoria Medical SML Loans, *pro rata* to the Investors entitled to such funds, such that, when combined with the distributions made pursuant to the Interim Stabilization Order, the Order of this Court dated October 30, 2018 ("**Realized Property Order**") and the Order of this Court dated November 28, 2018, 85% of such funds shall have been distributed on a *pro rata* basis to the Investors entitled to such funds.

10. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, paragraph 3(b) of the Realized Property Order is hereby further amended to provide that the Trustee shall distribute 85% of all other Realized Property obtained, including the Harlowe Realized Property, *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

AID AND RECOGNITION OF FOREIGN COURTS

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

A handwritten signature in cursive script, appearing to read "H. A. J.", written over a horizontal line.

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

DEC 20 2018

PER / PAR: Handwritten initials, possibly "RW", written in cursive.

Schedule “A” – Form of Trustee’s Certificate

Court File No.: CV-18-596204-00CL

**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***

TRUSTEE’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (the “**Trustee**”) of the undertaking, property and assets of Building & Development Mortgages Canada Inc. (“**BDMC**”).

B. Pursuant to an Order of the Court dated [DATE] (the “**Harlowe Settlement Approval Order**”), the Court approved and ratified the Settlement Agreement made as of November 6, 2018 (the “**Harlowe Settlement Agreement**”) among The Harlowe Inc. (“**Harlowe**”), the Trustee and Olympia Trust Company (“**OTC**”) and ordered that all of Harlowe’s obligations to BDMC, OTC, and the individual lenders (“**Harlowe Individual Lenders**”) under the Loan

Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the “**Harlowe Loan Obligations**”) and all security interests granted to BDMC, OTC or the Harlowe Individual Lenders in and to the assets of Harlowe to secure the Harlowe Loan Obligations (the “**Loan Encumbrances**”) are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Harlowe Individual Lender shall have any claim against Harlowe in respect of the Harlowe Loan Obligations or the Loan Encumbrances; provided, however, that Harlowe shall not be released from any obligations under the Harlowe Settlement Agreement; and that the release of the Harlowe Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to Harlowe of a certificate confirming (i) the payment of \$15,562,896.38 to the Trustee by Harlowe; (ii) that the conditions precedent to the Harlowe Settlement Agreement as set out in section 9 of the Harlowe Settlement Agreement have been satisfied or waived by the Trustee; and (iii) the settlement has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Harlowe Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. Harlowe has paid and the Trustee has received \$15,562,896.38 pursuant to the Harlowe Settlement Agreement;
2. Harlowe has provided the Release Agreement to the Releasees;
3. Harlowe has certified that all of the representations and warranties contained in this Harlowe Settlement Agreement continue to be true as of the Effective Date;
4. Harlowe continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Harlowe Settlement Agreement;
5. The other conditions set out in the Harlowe Settlement Agreement have been satisfied or waived by the Trustee; and
6. The settlement has been completed to the satisfaction of the Trustee.

This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**FAAN Mortgage Administrators Inc., solely
in its capacity as Court-appointed Trustee of
the undertaking, property and assets of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN 21239-0519 (LT)

PART OF LOTS 21 TO 26 PLAN D111, PARTS 1, 3, 4, 5, 6, 7 AND 8 PLAN 66R29958; SUBJECT TO AN EASEMENT AS IN AT3640549; SUBJECT TO AN EASEMENT IN FAVOUR OF LOT 8 PLAN D111 AS IN AT4127651; SUBJECT TO AN EASEMENT OVER PART 3 PLAN 66R29958 IN FAVOUR OF PART OF LOTS 21 TO 26 PLAN D111, PART 2 PLAN 66R29958 AS IN AT4939549; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 21 TO 26 PLAN D111, PART 2 PLAN 66R29958 AS IN AT4939549

Schedule "C" – Loan Encumbrances

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
AT3428381	October 10, 2013	Charge
AT3428575	October 10, 2013	Transfer of Charge
AT3436925	October 24, 2013	Transfer of Charge
AT3439420	October 28, 2013	Transfer of Charge
AT3485881	December 20, 2013	Transfer of Charge
AT3497057	January 13, 2014	Transfer of Charge
AT3530200	February 28, 2014	Notice of Amending Agreement
AT3530201	February 28, 2014	Transfer of Charge
AT3537271	March 13, 2014	Transfer of Charge
AT3561924	April 22, 2014	Transfer of Charge
AT3624957	July 4, 2014	Notice of Amending Agreement
AT3671510	August 26, 2014	Transfer of Charge
AT3706643	October 3, 2014	Transfer of Charge
AT3728529	October 31, 2014	Transfer of Charge
AT3738320	November 12, 2014	Transfer of Charge
AT3749625	November 26, 2014	Transfer of Charge
AT3763762	December 11, 2014	Transfer of Charge
AT3783153	January 9, 2015	Transfer of Charge
AT3811062	February 13, 2015	Notice of Amending Agreement
AT3812523	February 18, 2015	Transfer of Charge
AT3945778	July 14, 2015	Notice of Amending Agreement
AT3945995	July 14, 2015	Transfer of Charge
AT3974731	August 12, 2105	Transfer of Charge
AT4014833	September 21, 2015	Notice of Amending Agreement
AT4020009	September 28, 2015	Transfer of Charge
AT4095416	December 15, 2015	Transfer of Charge
AT4127132	January 26, 2016	Postponement
AT4138805	February 5, 2016	Postponement
AT4166503	March 14, 2016	Transfer of Charge
AT4197452	April 20, 2016	Transfer of Charge
AT4224419	May 24, 2016	Transfer of Charge
AT4233310	June 1, 2016	Transfer of Charge
AT4271518	July 7, 2016	Transfer of Charge
AT4282089	July 18, 2016	Transfer of Charge
AT4483560	February 9, 2017	Transfer of Charge
AT4486694	February 14, 2017	Transfer of Charge

Schedule "D" – Release Agreement

[Date]

TO: FAAN Mortgage Administrators Inc. (the "Trustee")

AND TO: Olympia Trust Company ("OTC")

Re: Release granted in connection with repayment and settlement of the Obligations pursuant to Harlowe Settlement Agreement

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of June 10, 2013 (the "**Loan Agreement**") between The Harlowe Inc. ("**Harlowe**") and Building & Development Mortgages Canada Inc. ("**BDMC**") and the related Security and Loan Documents. All capitalized terms used in this agreement (the "**Release Agreement**") shall, unless otherwise defined herein, have the same meanings given to them in the Loan Agreement or the Settlement Agreement dated as of November 6, 2018 among Harlowe, the Trustee and OTC (the "**Settlement Agreement**").

1. Harlowe hereby certifies that all of the representations and warranties contained in the Settlement Agreement are true and accurate as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. Harlowe has paid the Trustee \$15,562,896.38 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$15,562,896.38 in full and final satisfaction of Obligations payable to BDMC by Harlowe under the Loan Agreement in excess of \$20,779,460 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Harlowe (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the "**Releasers**") hereby releases, discharges and acquits the Trustee, BDMC, OTC, and each lender or investor who loaned funds through BDMC or OTC to Harlowe pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "**Releasees**") from any and all claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releaser, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the Loan Agreement, the Loan Documents, the proceedings initiated by the Order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018, or any transactions hereunder or thereunder.

This Release Agreement shall be effective immediately upon the delivery of the Trustee's Certificate and may be relied upon by any of the Releasees, whether or not such Releasee is a party to this Release Agreement or the Settlement Agreement.

This Release Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, and may be executed and delivered by facsimile or .pdf file transmitted by email, and all such counterparts, .pdf files and facsimiles when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same Release Agreement.

This Release Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

Yours truly,

THE HARLOWE INC.

By:

Name:

Title:

Accepted and agreed to by:

FAAN MORTGAGE

ADMINISTRATORS INC., solely in its capacity as Court-appointed Trustee of Building & Development Mortgages Canada Inc. and in no other capacity

By:

Name:

Title:

OLYMPIA TRUST COMPANY

By:

Name:

Title:

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

HARLOWE SETTLEMENT APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
Patrick Riesterer (LSUC# 60258G)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee

Appendix 4:
Investor Notice



October 21, 2019

Dear Lender:

Re: Syndicated Mortgage Loan (“Loan”) made to Nobleton North Holdings Inc. (the “Borrower”) pursuant to the loan agreement dated May 1, 2014 (“Loan Agreement”) regarding the property located at 13735 Highway 27, Township of King, ON (“Nobleton North Project” or “Property”)

Update regarding the Syndicated Mortgage Loan to Nobleton North Holdings Inc.

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (the “Trustee”) was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. (“BDMC”) under a court order (“Appointment Order”) issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*. By order of the Ontario Superior Court of Justice (Commercial List) (“Court”) dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“Representative Counsel”). Notices have previously been sent to you regarding the appointment of FAAN Mortgage as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you as a syndicated mortgage lender to the Borrower in respect of the Nobleton North Project (“Nobleton SMLs”) pursuant to the Loan Agreement between BDMC and the Borrower (“BDMC Loan”), and the various associated documents.

The purpose of this notice is to advise you that, for the reasons set out herein, the Trustee intends to seek Court approval on November 5, 2019 for the assignment of the right, title and interest in and to the indebtedness owed by the Borrower to BDMC under the BDMC Loan, the BDMC Loan and the related security documentation (“Security”) to 2716360 Ontario Limited (“Assignee”) in exchange for a cash payment (“Assignment Offer”). The Assignee is an entity related to an experienced real estate developer.

Background re: the BDMC Loan and Overview of the Current Status of the Nobleton North Project

Pursuant to the BDMC Loan, the total amount owing to the Nobleton SMLs is approximately \$21.6 million, which reflects a principal balance of approximately \$18.58 million and outstanding accrued interest of approximately \$3.14 million, as at August 31, 2019. The Borrower made interest payments of approximately \$2.98 million through to August 1, 2017 (“Paid Interest”). Interest has continued to accrue since that date. The Borrower has advised that it does not intend to resume making interest payments to the Nobleton SMLs.



The BDMC Loan was made to the Borrower pursuant to the Loan Agreement. The BDMC Loan matured in May 2019 and is now due. BDMC has a second ranking mortgage registered on title to the Property in respect of the BDMC Loan.

There is a first priority vendor take back mortgage (“**VTB**”) registered on title in priority to the BDMC Loan in the amount of approximately \$3.225 million (inclusive of accrued interest to September 4, 2019). The VTB is the only known registered indebtedness that ranks in priority to the BDMC Loan on title.

The Borrower is proposing to develop a low-density residential development consisting of 150 single detached homes on the Property. Development approvals are still required for the Nobleton North Project. The Borrower has not submitted Zoning By-Law Amendment and Draft Plan of Subdivision applications to the City of Nobleton as there are no municipal services for the Nobleton community at this time. To address the deficiency in municipal sanitary sewer services, an environmental assessment (“**Assessment**”) for the community of Nobleton is being undertaken by the region. The Assessment is a prerequisite to the expansion of the existing pumping station. Once the Assessment is complete, construction to bring the required servicing into the area is expected to follow. The Borrower has estimated that the required servicing allocations and development approvals will not be in place for 6 to 8 years. Construction cannot begin until such approvals are obtained and pre-sales commence. Accordingly, the estimated timing to project completion is approximately 8 to 12 years (between 2027 and 2031).

The Borrower has also advised that it has faced significant changes in the marketplace since the Nobleton North Project commenced. The VTB matured on December 4, 2018 and the Borrower has advised that the holder of the VTB is not willing to renew its loan. In addition, the Trustee has been advised by the Borrower that it had been seeking replacement financing for several months but experienced significant difficulty securing proposals from lenders while any portion of the BDMC Loan remained on title.

Offers Received by the Trustee

The Borrower advised the Trustee that notwithstanding the fact it had approached a number of potential lenders, only one lender (the “**New Potential Lender**”) provided the Borrower with an offer to finance the Property and based on that offer, the Borrower provided a proposal to the Trustee to partially repay the BDMC Loan in exchange for a release of all amounts due or that may become due under the Loan Agreement (“**Original Settlement Offer**”). It should be noted that the Trustee had been in discussions with the Borrower for several months and the amount of the proposed payment to the Nobleton SMLs pursuant to the Original Settlement Offer was substantially lower than what the Borrower originally proposed to the Trustee at the commencement of those discussions. The Borrower cited the requirement for the Assessment and the overall time delay in advancing the Nobleton North Project among the reasons for the reduction in the proposed payment.



For several months, the Trustee had continually expressed concerns to the Borrower regarding, among other things, the consideration provided for in the Original Settlement Offer for the Nobleton SMLs (including the reduction in consideration) and the level of disclosure that the Borrower provided to the Trustee with respect to the financing required to complete the transaction. As discussed further below, until learning that the Trustee was in receipt of the Assignment Offer, the Borrower advised the Trustee that the Original Settlement Offer would provide the best recovery to the Nobleton SMLs in the circumstances and that the Borrower had no ability to increase the amount of the cash payment contained in the Original Settlement Offer.

While completing its review of the Original Settlement Offer, the Trustee became aware that the Assignee was interested in purchasing BDMC's interest in the Loan Agreement and Security. The Trustee entered into discussions with the Assignee to determine if there was an alternative to the Original Settlement Offer that would be more beneficial to the Nobleton SMLs. Following negotiations with the Trustee, the Assignee proposed to take assignment of the indebtedness owed by the Borrower to the Trustee under the BDMC Loan, the BDMC Loan and the Security in exchange for a cash payment (the "**Assignment Price**") in full satisfaction of the Nobleton SML's rights and interests under the BDMC Loan. The Assignment Offer was finalized on October 4, 2019 and the Trustee is in receipt of a deposit from the Assignee, which is being held in trust by the Trustee's legal counsel. *The Assignment Offer is conditional upon receiving Court approval of the Assignment Offer by no later than November 8, 2019. Should Court approval not be received by that date, the Assignee would not be bound to complete the proposed transaction, the offer will be deemed to be revoked and the Trustee would have to return the deposit.*

The Assignment Offer (a) would result in a payment to the Nobleton SMLs that is higher than that included in the Original Settlement Offer, and (b) includes an acceptable level of disclosure and information with respect to the financing required to complete the transaction.

On October 4, 2019, after the Trustee was in receipt of the executed Assignment Offer, the Trustee contacted the Borrower to advise that the Trustee intended to proceed with the process to recommend acceptance of the Assignment Offer, including advising the Nobleton SMLs of the Assignment Offer. The Borrower indicated that it was disappointed that the Trustee had not discussed the Assignment Offer with the Borrower and that the Trustee did not provide the Borrower with a further opportunity to increase its offer. The Trustee was clear in its previous communications with the Borrower (as described above) regarding its position on the consideration offered pursuant to the Original Settlement Offer and the Trustee does not understand the Borrower's position, given the Borrower's previous continued representations that it had no ability to, and would not, increase the Original Settlement Offer. The Trustee did not provide the Borrower with any financial details in respect of the Assignment Offer.



On October 7, 2019, the Trustee and its legal counsel were contacted by the Borrower's legal counsel with respect to the Trustee's intention to move forward with the Assignment Offer. The Trustee's legal counsel also contacted Representative Counsel to discuss the situation. The Trustee then advised the Borrower's legal counsel that the Trustee was intending on moving forward with the Assignment Offer.

On October 10, 2019, the Borrower's legal counsel presented the Trustee with an unsolicited offer to settle the amounts owing to the Nobleton SMLs for a cash payment materially in excess of the Assignment Offer (the "**New Settlement Offer**"). As such, the Trustee immediately provided Representative Counsel with a copy of the New Settlement Offer and, Representative Counsel has been in discussions with the Borrower's legal counsel since that date. The Trustee has also advised the Assignee of the New Settlement Offer and while the Assignee has been understanding of the inquiries being made with respect to the New Settlement Offer, the Assignee has advised that it has incurred significant costs with respect to its proposed transaction and it expects the Trustee to proceed with the process to seek court approval of the Assignment Offer, which as previously noted, must occur by no later than November 8, 2019. The Trustee has not provided the Assignee with any financial information in respect of the New Settlement Offer (or the Original Settlement Offer).

Based on the diligence it has undertaken with respect to the New Settlement Offer to date and its understanding of the totality of the negotiations between the Trustee and the Borrower, Representative Counsel has advised the Trustee that it is of the view that although the potential cash component of the New Settlement Offer is materially higher than the Assignment Offer, it has serious concerns with respect to the ability of the Borrower to complete the proposed transaction given the lack of any binding financing commitments. Representative Counsel has advised the Trustee that it has communicated its concerns to counsel to the Borrower, who has indicated that the Borrower is attempting to deal with these concerns on a timely basis, but that to date, the issues conveyed by Representative Counsel have not been satisfactorily addressed. The Trustee understands that those discussions are ongoing. As such, in the current circumstances, Representative Counsel agrees with the Trustee's intention to seek Court approval of the Assignment Offer and the Trustee has secured a hearing date of November 5, 2019.

Next Steps

Given the commercially sensitive nature of the various offers, including the consideration offered, it is the Trustee's and Representative Counsel's joint view that additional information should not be made public at this time. Given that the information currently provided to you is limited, the Trustee will not be seeking advance investor feedback. Instead, the Trustee has provided Representative Counsel with all relevant financial and other information with respect to the offers received and Representative Counsel agrees with the Trustee moving forward with the Assignment Offer as being in the best interests of the investors in the circumstances. The Trustee therefore intends to file motion materials



with the Court, including a comprehensive report, in order to seek approval of the Assignment Offer on November 5, 2019. Once the Court materials are filed, the Trustee will send you a further notice advising of the filing of the Court materials which will be posted on the Trustee's website.

At that time, you should review the Court materials, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult with Chaitons LLP, in its capacity as Representative Counsel. Representative Counsel's contact information is below. Please note any acceptance by the Trustee of the Assignment Offer will not be binding on the Trustee or the Nobleton SMLs until after Court approval.

Should you have any questions of the Trustee, our contact information is below (if you are contacting us by phone or email, please reference the **Nobleton North Project**).

Email: Info@FAANMortgageAdmin.com
Toll-Free Telephone Number: **1-833-495-3338**

Should you wish to contact Representative Counsel, their contact information is below (if you are contacting Representative Counsel by phone or email, please reference the **Nobleton North Project**).

Email: BDMC@chaitons.com
Toll-Free Telephone Number: **1-888-203-0509**

Yours very truly,

Faan Mortgage Administrators Inc.

**FAAN MORTGAGE ADMINISTRATORS INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT MORTGAGES CANADA INC.
AND IN NO OTHER CAPACITY**

Appendix 5:

Nobleton North Offer and Nobleton North Assignment Agreement (redacted for certain financial information)

ASSIGNMENT OFFER

DATE: October 4, 2019

TO: FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED TRUSTEE OF BUILDING &
DEVELOPMENT MORTGAGES CANADA INC. AND IN NO OTHER
CAPACITY

- and -

OLYMPIA TRUST COMPANY

2716360 Ontario Limited (the “**Assignee**”), hereby presents this offer (the “**Offer**”) to take assignment of the indebtedness (the “**Indebtedness**”) owed by Nobleton North Holdings Inc. (the “**Borrower**”) to Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust (“**BDMC**”) and Olympia Trust Company (“**Olympia**”) pursuant to that certain Loan Agreement between the Borrower and BDMC effective as of December 13, 2013 and executed as of June 10, 2014 (the “**Loan Agreement**”) and related security documentation (the “**Security**”), on the terms and conditions set forth in the Assignment Agreement enclosed herewith.

BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia acts as trustee for a subset of such lenders who have self-directed accounts with Olympia.

The Assignee understands that FAAN Mortgage Administrators Inc. was appointed as trustee of BDMC (the “**Trustee**”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 20, 2018 (the “**Appointment Order**”) 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, to, among other things, administer the loans previously entered into by BDMC, market any or all of the Property (in this instance, as defined in the Appointment Order) and, with the approval of the Court, sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, including without limitation, the Indebtedness and related Security. Any actions involving BDMC with respect to this Offer shall be directed to and executed by the Trustee.

The Assignee further understands that, as this Offer represents a transfer, conveyance, assignment of all of BDMC’s and Olympia’s rights and a release of all of BDMC’s and Olympia’s obligations pursuant to the Loan Agreement and related Security at a discount, the Trustee and Olympia intend to reach out to the individual lenders forming the syndicate under the Loan Agreement with respect to this Offer. Therefore, the Assignee hereby agrees that this Offer, and its signature on the Assignment Agreement enclosed herewith, shall be irrevocable by the Assignee and shall remain open for acceptance by the Trustee, on behalf of BDMC, and Olympia, by providing counter-signed copies of the Assignment Agreement enclosed herewith to the Assignee until 5:00 p.m. Toronto time on November 8, 2019 (or such later date as may be agreed by the Assignee in writing). Failure to accept the Offer by each of the Trustee, on behalf of BDMC, and Olympia, by such date shall result in this Offer being deemed to be revoked. In the event that this Offer is rejected or revoked as outlined above, the Indebtedness, the Loan

In connection with this Offer, the Assignee will, within one (1) business day after the date of this Offer, provide to the Trustee's solicitor, in trust, a cash Deposit in the amount of [REDACTED], representing [REDACTED] of the Assignment Price (each as defined in the Assignment Agreement). The Assignee hereby agrees that the Deposit shall not be refundable under any circumstances other than as set out in Section 14 of the Assignment Agreement. Upon the occurrence of any circumstance set out in Section 14 of the Assignment Agreement or if the Assignment Agreement is not executed by the Trustee and Olympia on or before 5:00 pm on October 21, 2019 (or such later date as may be agreed by the Assignee in writing), the Deposit shall forthwith upon written demand by the Assignee or the Assignee's solicitor be refunded to the Assignee's solicitor, in trust, and this Offer and the transactions contemplated by the Assignment Agreement shall be deemed to be revoked and/or terminated, as applicable.

The Assignee also will provide written confirmation of financing evidencing that it has secured sufficient financing to pay the Assignment Price within one (1) business day after the date of this Offer.

The Assignee looks forward to your response.

2716360 ONTARIO LIMITED

By: _____

Name: Scott Cameron Corbett
Title: ASO

By: _____

Name:

Title:

I/We have authority to bind the corporation.

ASSIGNMENT AGREEMENT

THIS AGREEMENT is made as of the 4th day of October, 2019

BETWEEN:

FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS CAPACITY AS COURT-APPOINTED TRUSTEE OF BUILDING & DEVELOPMENT MORTGAGES CANADA INC. AND IN NO OTHER CAPACITY

- and -

OLYMPIA TRUST COMPANY

(collectively, the “Assignor”)

- and -

2716360 ONTARIO LIMITED

(the “Assignee”).

RECITALS:

- A. Nobleton North Holdings Inc. (the “**Borrower**”) is indebted to Building & Development Mortgages Canada Inc. (“**BDMC**”) in the total aggregate amount of principal and accrued interest of C\$21,757,680.44 as at the close of business on September 9, 2019, exclusive of allowable penalties, fees, expenses, costs and other charges in connection therewith (collectively, the “**Indebtedness**”). Interest per diem continues to accrue on the principal amount of the Indebtedness at \$4,129.38 from and after September 9, 2019.
- B. On April 20, 2018, FAAN Mortgage Administrators Inc. (the “**Trustee**”) was appointed as trustee of the assets, properties and undertakings of BDMC pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) 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, to, among other things, administer the loans previously entered into by BDMC.
- C. The Indebtedness was incurred by the Borrower in connection with the purchase of the real property described in Schedule “B” hereto, with a municipal address of 13735 Highway No. 27, Township of King, Ontario (the “**Property**”), repayment of an interim bridge loan, and to fund reasonable soft costs prior to the first advance of a construction loan, each with respect to the low-rise residential development to be constructed on the Property (the “**Project**”).
- D. The Assignor holds certain agreements, instruments, documents, and a Security Agreement (as that term is defined in the *Personal Property Security Act*, R.S.O. 1990, c.

P.10, as amended (the “PPSA”)), including, without limitation, those listed in Schedule “A” hereto (collectively, the “**Personal Property Security**”) and has registered a financing statement in respect of the Personal Property Security to evidence and secure payment of the Indebtedness, which financing statement is described in Schedule “A” hereto.

- E. In addition to the Personal Property Security, the Assignor holds a mortgage/charge on the Property as described in Schedule “B” hereto (the “**Mortgage**”), which Mortgage evidences and secures payment of the Indebtedness and other obligations of the Borrower under the Loan Agreement (the Mortgage and the Personal Property Security being, collectively, the “**Security**”).
- F. The Indebtedness is now due and owing by the Borrower to BDMC.
- G. The Assignee has agreed to take assignment of the Assignor’s right, title and interest in and to the Indebtedness, the Loan Agreement and the Security in exchange for a cash payment of [REDACTED] to the Trustee (the “**Assignment Price**”) in accordance with the terms and conditions of this Assignment Agreement.
- H. The Assignor has agreed to assign and transfer the Indebtedness, the Loan Agreement and the Security upon payment of the Assignment Price by the Assignee to the Assignor and in accordance with the terms and conditions of this Assignment Agreement.

THEREFORE, in consideration of the payment of the Assignment Price to be paid by the Assignee to the Trustee, the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Assignee hereby agrees to pay to the Trustee, on behalf of BDMC and Olympia, on the Effective Date (as defined below) of this Agreement, a lump-sum payment in the amount of the Assignment Price (less the Deposit (as defined below)), which payment shall be held in trust by the Trustee and shall not be released until the transaction contemplated by this Assignment Agreement has been completed on the Closing Date. The Assignee agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Assignment Price and, if applicable, the Late Payment Fee (as defined below).
2. In the event that the Assignee fails to pay any portion of the Assignment Price within [REDACTED] days after the Effective Date, the Assignee shall pay forthwith to the Trustee, on behalf of BDMC, a late payment fee equal to [REDACTED] (the “**Late Payment Fee**”).
3. On the Closing Date, the Assignor hereby sells, assigns, transfers, sets over, delivers and conveys to the Assignee all of the Assignor’s right, title and interest (both legal and equitable), powers and privileges and other benefits of any nature whatsoever in and to the Indebtedness, the Loan Agreement and the Security now owing, together with all monies that may hereafter become due or owing in respect of the Indebtedness, the Loan Agreement and the Security, including, without limitation, all rights to receive principal,

interest, fees, expenses, damages, penalties and other amounts in respect of or in connection with the Indebtedness, the Loan Agreement and the Security; provided, however, that nothing set out herein shall affect the Turnover Obligation (as defined below).

4. The Assignee acknowledges and agrees that it is accepting the Indebtedness, the Loan Agreement and the Security on an “as is, where is” basis, completely without recourse against the Assignor in the event of any deficiency therein, and that, except as expressly set forth in paragraph 5 below, no representations and warranties of any kind whatsoever have been made or may be implied with respect to the Indebtedness, the Loan Agreement or the Security. The Assignee hereby acknowledges and agrees that it will in no way bring or advance any claim, suit, action, proceeding or demand whatsoever against the Assignor (or any individual lender who advanced funds under the Loan Agreement) for any claims, losses, expenses, costs, damages or otherwise suffered by the Assignee in connection with the Indebtedness, the Loan Agreement or the Security or the transactions contemplated by this Assignment Agreement.
5. The Assignor represents and warrants to the Assignee that, as of the Court Approval Date (as defined below), to the best of its knowledge after reasonable inquiry and investigation:
 - (a) the recitals set out above are true and correct;
 - (b) it has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Assignment Agreement, all of which have been duly authorized by all proper and necessary action and it has duly executed and delivered this Assignment Agreement;
 - (c) this Assignment Agreement is a legal, valid, and binding obligation of the Assignor, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors’ rights generally and by equitable principles;
 - (d) other than the Loan Agreement and the Security set out in Schedule “A” and Schedule “B” hereto and any documents executed in connection therewith, there are no other material loan or security documents in respect of or in connection with the Indebtedness to the Borrower outstanding to which the Assignor or BDMC is a party;
 - (e) subject only to the subordination of the Mortgage to that certain mortgage/charge registered in the amount of \$5,000,000 as Instrument No. YR2074428 on December 13, 2013 in favour of Fors, Arne Ivar, Fors, Lorraine Mcalpine, and Fors, Stephen James Ivar as trustees for the Lorraine Fors Family Trust pursuant to which \$3,225,383.42 is owed as at September 4, 2019 (with per diem interest of \$26.301 accruing from September 4, 2019), the Mortgage has not been subordinated or postponed on title to or in favour of any third party, in whole or in part;

- (f) the amount of the Indebtedness is correct as of the date specified herein and is duly owed and payable by the Borrower to BDMC;
 - (g) there are no claims, suits, actions, proceedings or demands outstanding, unresolved, pending or contemplated whatsoever against the Assignor in respect of the Indebtedness, the Loan Agreement or the Security that would prevent or otherwise affect the Assignor's ability to implement the transactions contemplated by this Assignment Agreement;
 - (h) the Mortgage has not been discharged, repaid or fully satisfied (and the Assignor has received no notice of any such pending event); and
 - (i) the Assignor has not received any notice of set-off, counterclaim or other similar right under the Mortgage.
6. The Assignor is aware that the amount of the Assignment Price being paid by the Assignee hereunder may differ from the amount ultimately received or distributed with respect to the Indebtedness pursuant to any insolvency or receivership proceedings involving the Borrower or pursuant to the Assignee's efforts to collect or enforce all or any part of the Security or Indebtedness.
7. The Assignee represents and warrants to the Assignor that, as of the date of execution of this Assignment Agreement and the Court Approval Date (as defined below):
- (a) It is solvent, has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Assignment Agreement, all of which have been duly authorized by all proper and necessary action and it has duly executed and delivered this Assignment Agreement.
 - (b) The execution of this Assignment Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Property or the Project, or any law, regulation or order or require any consent or approval that has not been obtained.
 - (c) This Assignment Agreement is a legal, valid, and binding obligation of the Assignee, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by equitable principles.
 - (d) To the best of its knowledge, none of Fortress Real Developments Inc. or any of its affiliates (as such term is defined in the *Ontario Business Corporations Act*) or any other entity controlled by it (collectively, "**Fortress**") or their respective principals, agents or legal counsel (collectively, "**Fortress Representatives**"):
 - (i) currently has or shall have any ongoing involvement in the Project;

- (ii) after reasonable inquiry and investigation, is party to any agreement or other arrangement relating to the Project or the Property with the Assignee or any of its affiliates or their respective principals or agents, or
- (iii) after reasonable inquiry and investigation, is or will become entitled to receive any consideration whatsoever in respect of or in any way relating to or arising from (directly or indirectly) the Property or the Project, whether from the Borrower, any lender, broker, purchaser, other person or any of their respective affiliates, principals or agents, including, without limitation, consideration in the form of money, instruments, investment property, property, debt, securities, options, mortgages, charges, guarantees, assets or any other form,

and promptly upon the Assignee obtaining knowledge or otherwise becoming aware of any of the foregoing matters, whether before or after the Closing Date, it shall notify the Trustee of the nature and existence of such matters forthwith.

- (e) There are no arrangements between the Assignee or any of its affiliates, principals or agents involving Fortress or any Fortress Representatives whereby Fortress or any Fortress Representative would receive any consideration in respect of or in any way relating to or arising from the Property, the Project or the transactions contemplated by this Assignment Agreement, whether from the Assignee, the Borrower, any lender, broker, other assignee, other person or any of their respective affiliates, principals or agents.
- (f) Neither the Assignee nor any of its affiliates, principals or agents has been in contact with, had discussions with, or been in negotiations with Fortress or any Fortress Representatives in respect of a potential transaction that would result in any consideration becoming payable in any way to Fortress or any Fortress Representative in connection with the Property, the Project or the transactions contemplated by this Assignment Agreement, whether from the Assignee, the Borrower, any lender, broker, other assignee, other person or any of their respective affiliates, principals or agents, including without limitation any potential transaction involving a settlement of the Indebtedness or an assignment of all or any part of the Indebtedness or Security to Fortress or any Fortress Representative.

8. The Assignee covenants in favour of the Assignor as follows:

- (a) The Assignee shall take such commercially reasonable steps to support the granting of the Order and the closing of the transactions as set out in this Assignment Agreement;
- (b) For a period of six (6) months following the Court Approval Date, neither the Assignee nor any of its affiliates, principals or agents will enter into negotiations or execute any documentation with Fortress or any Fortress Representatives in respect of any potential transaction that would result in any consideration becoming payable in any way to Fortress or any Fortress Representative in connection with the Property, the Project or the transactions contemplated by this

Assignment Agreement, whether from the Assignee, the Borrower, any lender, broker, other assignee, other person or any of their respective affiliates, principals or agents, including without limitation any potential transaction involving a settlement of the Indebtedness or an assignment of all or any part of the Indebtedness or Security to Fortress or any Fortress Representative.

- (c) Should the Assignee or any of its affiliates or their respective principals or agents, within six (6) months from the Closing Date specified herein: (a) come into the possession or control of any such consideration described in Subsection 7(d)(iii) above that would otherwise be payable to Fortress or any Fortress Representative, (b) permit or acquiesce to any such consideration being received by Fortress or any Fortress Representative, or (c) breach Sections 7(f) or (a) above resulting in consideration being received or receivable by Fortress or any Fortress Representative, such consideration: (a) shall and shall be deemed to be held in trust, separate and apart from such person's other money, instruments, investment property, property or assets, for the benefit of the Trustee until the full amount of the Indebtedness that would have been payable to BDMC under the Loan Agreement as of the Closing Date of this Assignment Agreement has been paid to the Trustee in full, or (b) shall be deemed to become an amount that is owed by the Assignee to the Trustee, as applicable. In each such instance, such person shall immediately inform the Trustee of such fact and take such steps to promptly transfer such consideration to the Trustee and pay any and all such amounts to the Trustee within two (2) business days of receipt of same (the "**Turnover Obligation**"). For greater certainty, the Turnover Obligation shall survive the closing of the transactions contemplated by this Assignment Agreement.

9. The Assignee covenants in favour of the Assignor not to:

- (a) object to or appeal, or assist or support any other person in objecting or appealing, any motion for approval of the Order (as defined herein);
- (b) if a third party appeal has been filed, support, facilitate or otherwise assist in such appellant's appeal of the Order;
- (c) use the name of the Assignor for any purpose in connection with the Indebtedness or the Security, except only for the purpose of describing the Indebtedness or relating to the transfer, conveyance and assignment of the Security and any registration thereof in the Land Titles Division of York Region; or
- (d) name or join the Assignor as a party defendant or third party to any action in respect of the Indebtedness, the Loan Agreement or the Security, save and except if such naming or joinder is required procedurally to enforce the Order or the Assignee's rights under this Assignment Agreement and in such instance, for greater certainty, the Assignee continues to be bound by section 4 herein.

10. The Assignee acknowledges and agrees that, upon the Closing Date, the Assignor shall be released from and shall have no further rights, interest, liability or obligation in respect of the Indebtedness, the Loan Agreement or the Security, and that any right, interest, liability or obligation claimed or asserted by the Borrower against BDMC shall be

assumed by and assigned to, and shall therefore constitute, the right, interest, liability or obligation of the Assignee; provided, for greater certainty, that nothing set out herein shall affect the Turnover Obligation.

11. The Trustee shall use commercially reasonable efforts to seek approval of the Assignment Agreement by way of court order substantially in the form agreed between the Assignee, the Trustee and Olympia (which shall, for greater certainty, contain a transfer, conveyance and assignment of all right, title and interest, and a release of all liability and obligation of BDMC, Olympia and the Trustee under the Loan Agreement, the Indebtedness and the Security, save and except for the right to receive the Turnover Obligation) (the “**Order**”). The parties hereto agree that this Assignment Agreement shall not be binding on the Trustee or Olympia until the issuance of the Order. On the date of the issuance of the Order (the “**Court Approval Date**”), this Assignment Agreement shall be binding on all parties hereto.
12. The “**Effective Date**” of this Assignment Agreement shall be the date that is: (i) if no appeal has been filed within the applicable appeal periods in respect of the Order, 30 calendar days from the Court Approval Date, or (ii) if an appeal has been filed within the applicable appeal periods in respect of the Order, the date that such appeal has been fully disposed of or withdrawn (such date, the “**Effective Date**”). On the Effective Date, the Assignee shall be required to pay the Assignment Price (less the Deposit (as defined below)), which Assignment Price shall be held in trust by the Trustee and shall not be released until the transaction contemplated by this Assignment Agreement has been completed on the Closing Date.
13. The obligations of the Trustee, on behalf of BDMC, and Olympia contained in this Assignment Agreement (except for the obligation to seek Court approval pursuant to Section 11 hereto, which shall be effective as of the date that the Trustee and Olympia execute this Assignment Agreement) shall be subject to the issuance of a certificate to the Assignee by the Trustee in the form to be attached to the Order (the “**Trustee’s Certificate**”) and the filing of the Trustee’s Certificate with the Court following the satisfaction of the conditions precedent set out in Section 15 herein (the “**Closing Date**”).
14. The deposit of ██████ paid prior to the Effective Date by the Assignee to the Trustee, in trust, in respect of the Assignment Price (the “**Deposit**”) and in respect of (ii) below, the Assignment Price (inclusive of the Deposit) paid to the Trustee, in trust, on the Effective Date, shall be refundable to the Assignee if: (i) the Court Approval Date has not occurred by November 8, 2019, or (ii) the Closing Date has not occurred by December 13, 2019, in each case due to no action or fault of the Assignee (as applicable, the “**Outside Date**”). Following the Outside Date, the Assignment Price (inclusive of the Deposit) paid to the Trustee, in trust, shall, upon written demand by the Assignee or its solicitors, be refunded to the Assignee, or as it may in writing direct, and, upon the refund of the Deposit, this Assignment Agreement shall be deemed terminated (in which case the Indebtedness, the Loan Agreement and related Security and any obligation and liability thereunder shall remain unaffected and shall continue in favour of BDMC and Olympia in accordance with their terms). The return of the Deposit or the Assignment Price (inclusive of the Deposit), as applicable, shall be the Assignee’s sole and exclusive remedy in respect of any termination of this Assignment Agreement. Upon the

completion of the transaction contemplated in this Assignment Agreement on the Closing Date or if the transaction contemplated by this Assignment Agreement does not close due to any action by the Assignee as contemplated herein, the Deposit (and, if the transaction has been completed, the Assignment Price) shall become the property of the Trustee and Olympia and shall constitute Realized Property (as such term is defined in the Order of the Court dated June 26, 2018 in the BDMC proceedings, which definition may be amended from time to time in subsequent Orders of the Court).

15. The Trustee shall be required to issue the Trustee's Certificate to the Assignee and file the Trustee's Certificate with the Court promptly upon the satisfaction of the following conditions precedent (which conditions may be waived by the Trustee in its sole discretion):
 - (a) the Order has been granted by the Court and the appeal periods in respect of the Order have expired with no appeal being filed or, if an appeal has been filed, any such appeal or motion for leave to appeal has been fully disposed of or withdrawn;
 - (b) the Assignee has paid the Assignment Price and the Late Payment Fee, if any, to the Trustee;
 - (c) the Assignee has certified that all of the representations and warranties contained in this Assignment Agreement continue to be true as of the Closing Date; and
 - (d) the Assignee continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms, conditions and covenants contained in this Assignment Agreement.

For greater certainty, the rights and obligations of BDMC and Olympia as contained in the Loan Agreement and the Security (including without limitation the Mortgage) shall remain effective as against BDMC and Olympia until the Closing Date.

16. On the Closing Date, the Assignor shall deliver to the Assignee all originals of the Security, including without limitation, the Mortgage and the Loan Agreement, which the Assignor has in its possession or under its control, if any.
17. On the Closing Date, the Assignor hereby authorizes the Assignee to file a financing change statement pursuant to the provisions of the PPSA to reflect the assignment of the Personal Property Security as contemplated herein.
18. On the Closing Date, the Assignor shall advise any insurance agent or broker of which the Assignor is aware holds any insurance policies with respect to the property, assets or undertaking of the Borrower in connection with the Loan Agreement and the Security, that the Assignor no longer has an interest in any such policy and that all interest of the Assignor has been assigned to the Assignee.
19. On the Closing Date, the Assignor agrees that it shall, at the reasonable request and at the expense of the Assignee, do all such further acts and things and execute and deliver such further instruments, documents, security registrations, matters, papers and assurances as

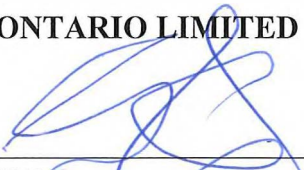
are reasonably necessary for effectuating the assignment of the interests of the Assignor in the Indebtedness, the Loan Agreement and the Security to the Assignee as contemplated in this Assignment Agreement, including, without limitation, such documents as may be required to register the transfer and assignment of the Mortgage in the Land Registry Office for the Land Titles Division of York Region (No. 65).

20. The parties agree that the terms of this Assignment Agreement shall be disclosed to the individual lenders under the Loan Agreement and shall be included in the motion materials for approval of this Assignment Agreement by the Court.
21. Time is and shall remain of the essence hereof.
22. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors, heirs, attorneys, guardians, estate trustees, executors, trustees and permitted assigns.
23. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter thereof and supersedes all oral statements and prior writings with respect thereto.
24. This Agreement may not be amended or modified except in writing signed by each of the parties hereto. No delay or failure on the part of either party to this Agreement in the exercise of any of its right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by either party herein of any right, power or remedy preclude the further exercise thereof, or the exercise of any other right, power or remedy.
25. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario, and the Parties hereto hereby attorn to the jurisdiction of the courts of the Province of Ontario.
26. This Agreement may be executed by the Parties in counterparts and may be executed and delivered by facsimile and all the counterparts and facsimiles together constitute one and the same agreement.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS OF WHICH the Parties have duly executed this Agreement.

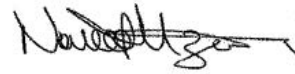
2716360 ONTARIO LIMITED

By: 
Name: Scott Cameron Corbett
Title: ASO

By: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

**FAAN MORTGAGE ADMINISTRATORS
INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF
BUILDING & DEVELOPMENT
MORTGAGES CANADA INC. AND IN NO
OTHER CAPACITY**

By: 
Name: _____
Title: _____

I/We have authority to bind the corporation.

OLYMPIA TRUST COMPANY

By: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

SCHEDULE "A"

PERSONAL PROPERTY SECURITY

Loan Agreement

1. Loan Agreement between Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust and Nobleton North Holdings Inc. effective as of December 13, 2013 and executed as of June 10, 2014

Security Agreements and Other Related Documents

1. General Security Agreement by Nobleton North Holdings Inc. in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, dated as of June 19, 2014
2. Beneficiary Authorization and Equitable Mortgage of Nobleton North Developments Inc. and Fortress Nobleton 2013 Inc. in favour of Nobleton North Holdings Inc. and Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, dated June 19, 2014
3. Indemnity in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, made by Nobleton North Holdings Inc., dated as of June 19, 2014
4. Assignment of Insurance Interest by Nobleton North Holdings Inc. in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, and Fogler, Rubinoff LLP, dated June 19, 2014
5. Non-Merger Acknowledgement by Nobleton North Holdings Inc. in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, and Fogler, Rubinoff LLP, dated June 19, 2014

Personal Property Security Registration (Ontario)

Registration File Number	Reference File Number(s)	Collateral Classifications
754682184	20190822 1328 1590 3668	Inventory, Equipment, Accounts, Other, Motor Vehicle Included

SCHEDULE "B"

REAL PROPERTY

Property

Land Registry Office #65

Municipal Address: 13735 Highway No.27 Township of King, Ontario

Legal Description: PT LT 10 CON 8 KING, PART 1 ON 65R36928; TOWNSHIP OF KING

PIN: 03358-1214 (LT)

Mortgage

Charge Instrument No. YR2144079 registered June 23, 2014 in the amount of \$6,000,000 (which charge was subsequently increased to \$20,750,000 by Instruments No. YR2224410 registered December 2, 2014, YR2287355 registered May 6, 2015, YR2436186 registered February 26, 2016, YR2468018 registered May 5, 2016 and YR2529134 registered August 23, 2016) and all transfers of charge and other instruments amending such charge

**Confidential Appendix 1:
Nobleton North Assignment Agreement (unredacted) and Summary of Offers
Received by the Trustee**

**THIS CONFIDENTIAL APPENDIX IS SUBJECT TO A REQUEST FOR
A SEALING ORDER**