

**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***

TWELFTH REPORT OF THE TRUSTEE

OCTOBER 31, 2019



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

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TWELFTH 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 eleven 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 report in or about November 2019.
6. The Trustee indicated in its previous Reports that it continues to engage in negotiations with certain borrowers regarding potential payouts of the applicable loans. As a result of these negotiations, the Trustee has reached, subject to Court approval, a settlement agreement, as amended, with respect to the obligations owing by Emerald Castle Developments Inc. ("**Castlemore Borrower**") to BDMC under a loan agreement dated August 25, 2014 ("**Castlemore Loan Agreement**") pursuant to which BDMC provided a syndicated mortgage loan ("**Castlemore Loan**") to the Castlemore Borrower, which is secured by a charge on real property situated at 10431 Gore Road, Brampton, Ontario ("**Property**").

7. Capitalized terms not otherwise defined in this twelfth report (“**Twelfth 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 duration of these proceedings and will be updating it as appropriate.

PURPOSE OF THE TWELFTH REPORT

8. The purpose of this Twelfth Report is to provide the Court and stakeholders with the Trustee’s recommendation regarding the Castlemore Project (as defined below) based on Investor feedback, and to support the Trustee’s request for an Order (“**Castlemore Settlement Approval Order**”) that, among other things:
- (a) (i) approves the Settlement Agreement dated as of October 21, 2019, as amended (“**Castlemore Settlement Agreement**”), including the late payment fee contemplated by Section 4 thereof, if any (the “**Late Payment Fee**”), among the Castlemore Borrower, Olympia Trust Company (“**OTC**”) and the Trustee, with such minor amendments as the Trustee and the other parties to the Castlemore Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) directs the Castlemore Borrower to pay \$10.45 million¹ forthwith to the Trustee in accordance with the terms of the Castlemore Settlement Agreement (such funds, the “**Castlemore Realized Property**”); and (iii) approves and ratifies the execution of the Castlemore Settlement Agreement by the Trustee and OTC and authorizes and directs the Trustee and OTC to comply with all of their obligations under the Castlemore Settlement Agreement;
 - (b) releases, extinguishes, expunges and discharges all of the Castlemore Borrower’s obligations to BDMC, OTC, and the individual lenders under the Castlemore Loan Agreement (“**Castlemore Individual Lenders**”) and related security and other loan documents contemplated by the Castlemore Loan Agreement (collectively, the “**Castlemore Loan Obligations**”) and all security interests granted to BDMC, OTC or the Castlemore Individual Lenders in and to the assets of the Castlemore

¹ The Deposit, as defined below, was received by the Trustee’s counsel on October 22, 2019.

Borrower to secure the Castlemore Loan Obligations (“**Loan Encumbrances**”) upon the delivery to the Castlemore Borrower and filing with the Court, a copy of the Trustee’s certificate confirming, among other things, the Trustee’s receipt of the \$10.45 million payment (“**Trustee’s Certificate**”), and ordering that none of the Trustee, BDMC, OTC or any Castlemore Individual Lenders have any claim against the Castlemore Borrower in respect of the Castlemore Loan Obligations or the Loan Encumbrances; provided, however, that the Castlemore Borrower is not released from any obligations under the Castlemore Settlement Agreement;

(c) declares that the release agreement (“**Release Agreement**”) to be given to the Trustee, BDMC, OTC, and each Castlemore Individual Lender who loaned funds through BDMC or OTC to the Castlemore Borrower pursuant to the Castlemore 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 the Castlemore Borrower 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**”) shall be binding and effective on the Releasers in favour of the Releasees upon the delivery of the Trustee’s Certificate to the Castlemore Borrower and the filing of a copy of the Trustee’s Certificate with the Court; and

(d) authorizes the Trustee to make a distribution to Castlemore Individual Lenders, upon the delivery of the Trustee’s certificate to the Castlemore Borrower and the filing of a copy of the Trustee’s Certificate with the Court, in an amount equal to 85% of the Castlemore Realized Property received by the Trustee, *pro rata* to the Castlemore 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.

9. In support of the Trustee’s request for the Castlemore Settlement Approval Order, this Twelfth Report describes the following matters:

- (a) An overview of the Castlemore Project;
- (b) The details of the Castlemore Loan Agreement;
- (c) The details of the settlement offer received by the Trustee;

- (d) The details of the Castlemore Settlement Agreement; and
- (e) Information that supports the Trustee's recommendation that the Castlemore Settlement Agreement be approved.

SCOPE AND TERMS OF REFERENCE

10. In preparing this Twelfth 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 Castlemore 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 Castlemore Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, Fortress, 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.
11. Some of the information used and relied upon in preparing this Twelfth 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 Twelfth Report may vary from the projections and information used to prepare this Twelfth 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 Twelfth Report did not constitute an audit or review of such information under GAAS, GAAP Twelfth IFRS or any other guidelines.

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

OVERVIEW OF THE CASTLEMORE LOAN

14. The total principal due to the Castlemore Individual Lenders is approximately \$21.25 million. Total accrued interest on the Castlemore Loan as at September 30, 2019 was approximately \$7.74 million. The Castlemore Loan was made to the Castlemore Borrower pursuant to the Castlemore Loan Agreement, which matures on November 24, 2019 ("**Maturity Date**"). The Castlemore Loan Agreement contains, at the option of the Castlemore Borrower, the ability to extend the term of the Castlemore Loan for up to 24 additional months. This option was to be exercised not less than 3 months prior to the Maturity Date. The Castlemore Borrower did not exercise this option and, accordingly, the Castlemore Loan will mature on November 24, 2019.
15. In addition to the Castlemore Loan, there is a first priority mortgage registered on the Property to Cameron Stephens Financial Corporation ("**Cameron Stephens**") in the amount of approximately \$10.5 million as at September, 2019. The Cameron Stephens indebtedness is the only known indebtedness on the Castlemore Project that ranks in priority on title to the Castlemore Loan.

BACKGROUND AND OVERVIEW OF THE CURRENT STATUS OF THE PROJECT

16. The real estate development situated on the Property consists of a low-density residential development consisting of both townhomes and single-family homes ("**Castlemore Project**"). The Trustee understands that development approvals are still required for the Castlemore Project.
17. The Trustee was advised that in September 2014, the City of Brampton Council ("**Council**") adopted Official Plan Amendment 105 ("**OPA**") to implement a new Secondary Plan for Area 47 in Brampton ("**Secondary Plan**"). Although the Secondary Plan was adopted by Council, the OPA was appealed to the Ontario Municipal Board. In April 2016, Council allowed a landowners group in which the Castlemore Borrower is a member

("Landowners Group") to make their Block Plan submissions notwithstanding that certain appeals to the Secondary Plan were pending.

18. In 2018, as the municipality was unwilling to issue a decision on the Block Plan submissions, the Landowners Group filed an appeal. A hearing regarding the Block Plan application has been scheduled for September 8 to October 9, 2020 and a pre-hearing conference has been scheduled for November 7, 2019. The Castlemore Borrower has advised that it is possible that a settlement could be reached with the municipality at the pre-hearing conference.
19. The Castlemore Borrower has provided a five-year timeline to completion of the Castlemore Project (assuming a settlement is reached on or about November 7, 2019) with unit closings to continue through 2025. Should Block Plan approval not be granted by the end of 2019, the Trustee anticipates that the timeline to completion will be extended beyond five years.
20. The Secondary Plan and Block Plan appeals have resulted in significant delays to the Castlemore Project and have contributed to a continued lack of certainty on the timing of development. In addition to these development delays, the Castlemore Borrower advised that the Property has been further impacted by, among other things: (i) significant increases in municipal and regional development charges; and (ii) a softening of the housing market in the City of Brampton and the Greater Toronto Area, generally.

OFFER AND FEEDBACK REQUEST

21. Given the development delays experienced by the Castlemore Project, the Castlemore Borrower has been unable to commence construction of the Castlemore Project. Accordingly, the Castlemore Borrower has engaged in negotiations with the Trustee regarding the payment of the amounts due to BDMC under the Castlemore Loan Agreement. The Trustee has provided information to Investors, in this regard, primarily through previous Reports and responding to individual Investor calls and emails.
22. As noted earlier, the Castlemore Loan matures on November 24, 2019. The Castlemore Loan Agreement contains a clause that addresses the rights of the Castlemore Individual Lenders in the event that the Castlemore Loan is not repaid by the Maturity Date ("**End of Term Event Clause**").

23. Among other things, the End of Term Event Clause precludes BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Castlemore Loan Agreement), provided that certain procedural steps are followed by the Castlemore Borrower. These steps include, among other things, obtaining updated appraisals for the Property ("**Updated Appraisals**"). After obtaining Updated Appraisals, the Castlemore Borrower then has the option of either: (i) paying out the Castlemore Individual Lenders in the manner and priority prescribed by the Loan Agreement ("**End of Term Process**") using the average value of the Updated Appraisals for distribution purposes, subject to certain deductions; or (ii) listing the Property for sale with a reputable commercial real estate agent and then distributing the proceeds from the sale in accordance with the End of Term Process.
24. The Castlemore Borrower requested that the Trustee consider its settlement offer, as discussed in detail below, as an alternative to a repayment of the Castlemore Loan in accordance with the End of Term Event Clause.
25. The Castlemore Borrower confirmed that in the event that the Castlemore Settlement Agreement is not implemented, it will trigger the End of Term Event Clause, thereby preventing BDMC from remaining in the Castlemore Project through to completion.
26. As part of the negotiations between the parties, the Castlemore Borrower presented the Trustee with an irrevocable offer to accept a payment of \$9.5 million in full satisfaction of the amounts due under the Castlemore Loan Agreement and incorporating other components negotiated by the Trustee ("**Castlemore Offer**"). The Castlemore Offer was open for acceptance until 5:00 p.m. on November 8, 2019.
27. The Castlemore Offer represents a payment of approximately 45%² of the outstanding principal balance owing under the Castlemore Loan, calculated as follows:

²The financial figures set out in paragraphs 27 and 32 reflect the impact on investor recoveries based on the original Castlemore Offer. As discussed further in paragraphs 42 and 43 below, the Castlemore Settlement Agreement includes an amendment to increase the consideration received by the Castlemore Individual Lenders by \$950,000. Paragraphs 42 and 43 detail the financial impact of the improved consideration as a result of the amended Castlemore Settlement Agreement.

Principal outstanding (A)	\$ 21,246,154
Total Payments ² (B)	\$ 9,500,000
Net loss on principal (A-B)	\$ <u>11,746,154</u>
Net recovery percentage ² (B/A)	45%

28. The Trustee is in receipt of a deposit of \$500,000 (“**Deposit**”) from the Castlemore Borrower that is being held in trust by the Trustee’s counsel pending the granting of the Castlemore Settlement Approval Order.
29. As noted above, the Castlemore Settlement Agreement includes the Late Payment Fee, which provides that, in the event the Castlemore Borrower fails to pay any portion of the Castlemore Offer within 14 calendar days from the date of the granting of the Castlemore Settlement Approval Order, the Castlemore Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 10% of the Castlemore Offer less the amount of the Deposit.
30. The Trustee consulted with Representative Counsel regarding the Castlemore Offer, and, following that consultation, presented the Castlemore Offer to the Castlemore Individual Lenders by delivering a notice to those lenders on October 21, 2019. This notice requested that such lenders consider the Castlemore Offer and provide their feedback, whether for or against the acceptance of the Castlemore Offer and provide any other general feedback (“**Castlemore Feedback Request**”). A copy of the Castlemore Feedback Request is attached as **Appendix “4”**.
31. As of the filing of this Twelfth Report, the Trustee had received 184 formal votes in response to the Castlemore Feedback Request, representing a response rate of approximately 40.6% in number and approximately 41.4% in value of the Castlemore Loan. 140 of the Castlemore Individual Lenders, representing approximately 76.1% in number and approximately 72.3% of the value of such loans voting, voted in favour of the Trustee accepting the Castlemore Offer.
32. Acceptance of the Castlemore Offer by the Trustee would result in the Castlemore Individual Lenders foregoing certain amounts that would otherwise become due pursuant to the Castlemore Loan Agreement. These amounts, as estimated by the Trustee, are as follows:

Shortfall on remaining principal ²	\$ 11,746,154
Accrued interest (November 2014 to September 30, 2019)	\$ 7,742,712
Total potential foregone recoveries ³	\$ <u>19,488,866</u>

33. As set out in the Castlemore Feedback Request, the following additional considerations were taken into account by the Trustee in completing its assessment of the Castlemore Offer:

- (a) The Trustee engaged an independent real estate appraiser to provide an “as is” appraisal of the Castlemore Project. The appraisal contemplates a four to eight-month marketing period for the Property. Based on the “as is” value for the Property set out in the appraisal, after repayment of the priority indebtedness, the Trustee estimates that the Castlemore Individual Lenders will receive a higher recovery from the Castlemore Offer than the recovery achieved through the End of Term Event Clause;
- (b) Absent the acceptance of the Castlemore Offer, the Castlemore Borrower has advised that it will exercise its rights under the End of Term Event Clause;
- (c) The Trustee consulted with a planning consultant who confirmed that the Castlemore Borrower’s timeline to completion of 2025 or later was reasonable;
- (d) The Castlemore Offer provides certainty regarding the amount and time frame for the repayment of the Castlemore Loan;
- (e) The Castlemore Borrower has provided the Deposit in trust pending the receipt of Castlemore Settlement Approval Order. If the settlement transaction does not close by November 29, 2019, the Outside Closing Date (as defined in the Castlemore Settlement Agreement) due to a failure of the Castlemore Borrower to comply with its obligations under the Castlemore Settlement Agreement, the Deposit will be retained by the Trustee, on behalf of BDMC;

³ Before additional accrued interest accruing at a per diem rate of \$4,656.69.

- (f) There is approximately \$10.5 million of debt that ranks in priority to the Castlemore Loan and that would need to be paid in advance of the Castlemore Loan; and
 - (g) The Castlemore Offer results in a return on the Castlemore Loan of approximately 45%.
34. Given the above considerations, including the protracted time frame to completion of the Castlemore Project and the Trustee's estimation that the Castlemore Offer would result in a higher recovery for the Castlemore Individual Lenders than the recovery achieved through the End of Term Event Clause, the Trustee is of the view that, although the Castlemore Offer does not provide a full principal repayment of the Castlemore Loan, there is value in the certainty provided by the Castlemore Offer and crystalizing the outcome of the Castlemore Loan at this time. Further, the timing of the payout is known and would occur shortly after Court approval and completion of the Castlemore Settlement Agreement.
35. The Trustee has therefore accepted the Castlemore Offer, as amended and described below, and executed the Castlemore Settlement Agreement. The Castlemore Settlement Agreement requires the Trustee to use commercially reasonable efforts to seek the Castlemore Settlement Approval Order, but the remaining terms of the Castlemore Settlement Agreement are only binding on the Trustee, BDMC and OTC should the agreement be approved and ratified by the Court.

CASTLEMORE SETTLEMENT AGREEMENT

36. The Castlemore Offer is conditional, among other things, upon the release and discharge of all Castlemore Loan Obligations and all Loan Encumbrances, and a Court order being obtained providing that none of the Trustee, BDMC, OTC or any Castlemore Individual Lenders have any claim against the Castlemore Borrower in respect of the Castlemore Loan Obligations or the Loan Encumbrances (though the Castlemore Borrower is not to be released from any obligations under the Castlemore Settlement Agreement) in consideration of the payment due under the Castlemore Settlement Agreement.
37. The Castlemore Settlement Agreement also provides that the Castlemore Borrower is to deliver a Release Agreement to the Trustee providing that the Castlemore Borrower, on behalf of itself and the other Releasers, releases all of the Releasees (namely, the Trustee, BDMC, OTC, and each Castlemore Individual Lender who loaned funds through BDMC

or OTC to the Castlemore Borrower pursuant to the Castlemore Loan Agreement and all related loan documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns) from all obligations under such loan documents.

38. The Castlemore Borrower has also made certain representations and warranties and has agreed to provide such further assurances as are necessary to effectuate the transaction set out in the Castlemore Offer. These representations and warranties include, among other things, that to the best of the Castlemore Borrower's knowledge, none of Fortress or any of its affiliates: (a) has or shall have any ongoing involvement in the Castlemore Project, save and except for a Development Consultant Agreement between Fortress and the Castlemore Borrower dated August 25, 2014 ("**DCA**"); (b) is party to any agreement or other arrangement relating to the Castlemore Project, save and except for the DCA; or (c) is or will become entitled to receive any consideration from the Property ("**Fortress Consideration**"). Further, the Castlemore Settlement Agreement contains a covenant in favour of the Trustee that, among other things, should the Castlemore Borrower or any of its affiliates come into the possession or control of any Fortress Consideration, such Fortress Consideration will be paid to the Trustee (until all amounts that would have otherwise been payable to BDMC under the Castlemore Loan Agreement have been paid in full).
39. If the Court issues the proposed Castlemore Settlement Approval Order, then the settlement set out therein will be effective upon the delivery to the Castlemore Borrower by the Trustee of the Trustee's Certificate certifying that the conditions precedent set out in the Castlemore Settlement Agreement are satisfied and the filing of the Trustee's Certificate with the Court. The Trustee therefore executed the Castlemore Settlement Agreement and has brought a motion seeking this Court's approval of the Castlemore Settlement Agreement and the issuance of the Castlemore Settlement Approval Order.
40. Further, if the Castlemore Settlement Approval Order is granted, the Trustee intends to make a distribution to Castlemore Individual Lenders in an amount equal to 85% of the Castlemore Realized Property, *pro rata* to the Castlemore 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, upon the delivery of the Trustee's certificate to the Borrower and the filing

of a copy of the Trustee's Certificate with the Court certifying, among other things, the receipt by the Trustee of the Castlemore Realized Property.

41. A copy of the Castlemore Offer, including the form of Castlemore Settlement Agreement, is attached as **Appendix "5"**.

AMENDMENTS TO THE CASTLEMORE OFFER

42. As set out above, the Castlemore Individual Lenders are generally in support of the Trustee accepting the Castlemore Offer as originally constituted. However, the Trustee also received significant Investor feedback expressing certain concerns with respect to the consideration contemplated by the Castlemore Offer, in particular from certain holders of a significant amount of the Castlemore Loan. As a result of the totality of the Investor feedback, the Trustee reengaged with the Castlemore Borrower and negotiated an amendment⁴ to the Castlemore Settlement Agreement that increased the consideration thereunder from \$9.5 million to \$10.45 million.
43. The effect of this amendment is to increase the net recovery percentage to Investors from 45% to 49%. Similarly, this amendment causes the total potential foregone recoveries to decrease from \$19,488,866 to \$18,538,866.
44. Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Castlemore Settlement Approval Order.

CONCLUSION AND RECOMMENDATION

45. The Trustee recommends that the proposed Castlemore Settlement Approval Order be granted by the Court. The Trustee obtained generally positive responses to the Castlemore Offer from affected Castlemore Individual Lenders as approximately 76.1% in number and approximately 72.3% in value voting favoured acceptance of the Castlemore Offer. The Castlemore Borrower's decision to increase the consideration has resulted in increased Investor recoveries. The Castlemore Settlement Agreement contemplates the payment of approximately 49% of the principal amount due under the Castlemore Loan. If implemented, the Castlemore Settlement Agreement will result in \$10.45 million of

⁴ The amendment was communicated by the Castlemore Borrower to the Trustee in an email sent on October 31, 2019, which the Trustee accepted and communicated to the Castlemore Borrower shortly thereafter by reply email. Accordingly, the agreement between the parties is represented by the terms of the Castlemore Settlement Agreement included in Appendix 5 modified to reflect a \$10.45 million settlement payment.

Castlemore Realized Property in the near term, which will permit the Trustee to make a distribution of Castlemore Realized Property pro rata to Castlemore Individual Lenders who are entitled to same. Further, Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Castlemore Settlement Approval Order. The Trustee is of the view that it is in the interest of the Castlemore Individual Lenders to obtain the Castlemore Realized Property now (net of the 15% administrative holdback required 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). Further, Representative Counsel has advised the Trustee that it supports the Trustee's motion seeking the Castlemore Settlement Approval Order.

46. The process followed for approval of the Castlemore Settlement Agreement is substantially similar to the process followed in respect of the Braestone Project, the Harlowe Project, a real estate development project situated at 235 Speers Road in Oakville, Ontario ("**Speers Project**"), a real estate development project situated at 452-458 Richmond Street West in Toronto, Ontario ("**James Project**"), a real estate project situated at 1640 Crestview Avenue in Mississauga, Ontario ("**Crestview Project**"), and a real estate project situated at 3 Halton Hills Drive in Halton Hills, Ontario ("**Humberstone Project**"), which led to the Court approving the Braestone Settlement Agreement, the Harlowe Settlement Agreement, a settlement agreement reached with Kingridge Development Corporation relating to the Speers Project, a settlement agreement reached with L Richmond Corp relating to the James Project, a settlement agreement reached with Carlyle Communities (Crestview) Inc. relating to the Crestview Project and a settlement agreement reached with Worthington Homes (Humberstone) Inc. relating to the Humberstone Project. The Trustee believes that this payout process provides certainty for Investors and borrowers, and the Trustee intends to continue to follow a similar approval process with respect to any other future settlement opportunities.

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**

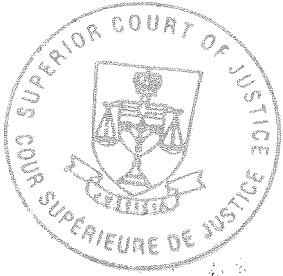
THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

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.

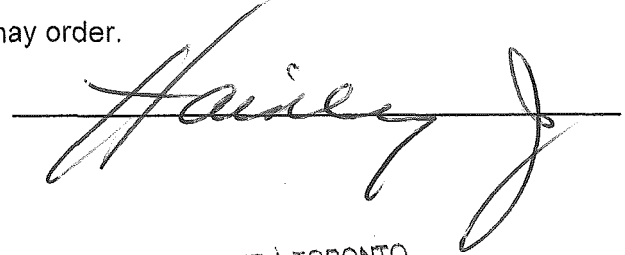
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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:

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**

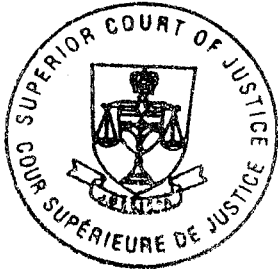
THE HONOURABLE MR.) TUESDAY, THE 30th DAY
JUSTICE HAINEY) OF OCTOBER, 2018

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

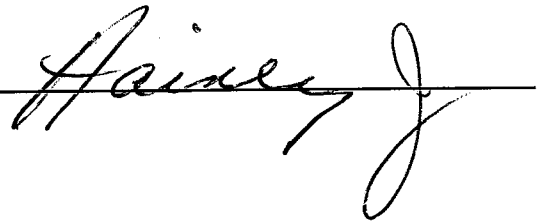
6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

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LE / DANS LE REGISTRE NO:

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PER / PAR: *w*

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

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)
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 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

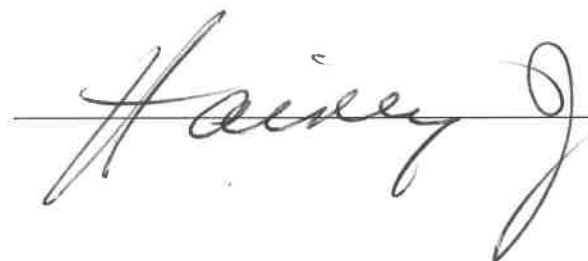
9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a further distribution to Investors in an amount equal to 5% of the Realized Property held on or received after the date of the Appointment Order, including the Realized Property obtained with respect 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.



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

DEC 20 2018

PER / PAR: 

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

Registration No.	Date	Type of Instrument
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 "Releasors") 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 Releasor, 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:

Castlemore Feedback Request dated October 21, 2019



October 21, 2019

Dear Lender:

Re: Syndicated Mortgage Loan made to Emerald Castle Developments Inc. (the “Borrower”) pursuant to the loan agreement dated August 25, 2014 (“Loan Agreement”) regarding the property located at 10431 Gore Road, Brampton, ON (“Property”)

Request for approval regarding the Syndicated Mortgage Loan to Emerald Castle Developments 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 Administrators Inc. 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 Castlemore Project (as defined below) pursuant to the Loan Agreement between BDMC (then known as Centro Mortgage Inc.) and the Borrower (“BDMC Loan”), and the various associated documents.

Overview of Current Status of the BDMC Loan and Offer

Pursuant to the BDMC Loan, the total amount owing to the syndicated mortgage lenders that advanced funds to BDMC for the Castlemore Project (“Castlemore SMLs”) is approximately \$28.99 million, which reflects a principal balance of approximately \$21.246 million and accrued interest as at September 30, 2019 of approximately \$7.74 million¹. BDMC has a second ranking mortgage registered against title to the Property in respect of the BDMC Loan.

As you are aware, the BDMC Loan was made to the Borrower pursuant to the Loan Agreement. The Loan Agreement, which matures on November 24, 2019 (“Maturity Date”), contains, at the option of the Borrower, the ability to extend the term of the BDMC Loan for up to 24 additional months. This option was to be exercised not less than 3 months prior to the Maturity Date. The Borrower has not exercised this option and, accordingly, the BDMC Loan

¹ Per diem interest since September 30, 2019 is \$4,656.69



will mature on November 24, 2019.

In addition to the BDMC Loan, there are obligations in the amount of approximately \$10.5 million (inclusive of accrued interest to September 2019) ("**Cameron Stephens Loan**") owing to Cameron Stephens Financial Corporation ("**Cameron Stephens**") secured by a first priority mortgage registered on title to the Property in favour of Cameron Stephens. The Cameron Stephens Loan is the only known indebtedness that ranks in priority to the BDMC Loan.

The Borrower has presented the Trustee with an offer to settle the BDMC Loan. For the reasons set out below, the Trustee recommends accepting the offer in full satisfaction of all amounts due or that may become owing to you under the Loan Agreement, and would like to request your feedback in advance of accepting the offer.

The offer provides for payment by the Borrower of \$9,500,000 ("**Offer**"), which reflects a recovery of approximately 45% of the outstanding principal balance of the BDMC Loan. The Offer is conditional upon Court approval and a release of all future obligations of the Borrower with respect to the Loan Agreement and the BDMC Loan. In the event that the Borrower fails to pay any portion of the Offer within two weeks of court approval of a definitive settlement agreement in respect of the Offer to be executed by the Trustee, Olympia Trust Company and the Borrower ("**Settlement Agreement**"), the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 10% of the Offer less the Deposit (discussed further herein).

The Offer also includes the extinguishment of all further rights and obligations of BDMC and the Castlemore SMLs under the Loan Agreement, related documents and the associated mortgage on the Property. If approved, payment is expected to be made by the Borrower to the Trustee shortly following Court approval.

A copy of the Offer is attached hereto as Schedule "A".

Overview of Current Status of the Castlemore Project

The Borrower is proposing to develop a low-density residential development on the Property consisting of both townhomes and single-family homes (the "**Castlemore Project**"). Development approvals are still required for the Castlemore Project.

In September 2014, the City of Brampton Council ("**Council**") adopted Official Plan Amendment 105 ("**OPA**") to implement a new Secondary Plan for Area 47 in Brampton (the "**Secondary Plan**"). Although the Secondary Plan was adopted by Council, the OPA was appealed to the Ontario Municipal Board. In April 2016, Council allowed a landowners group in which the Borrower is a member ("**Landowners Group**") to make their Block Plan submissions notwithstanding that certain appeals to the Secondary Plan were pending.

In 2018, as the municipality was unwilling to issue a decision on the Block Plan submissions, the Landowners Group filed an appeal. A hearing regarding the Block Plan application has



been scheduled for September 8 to October 9, 2020 and a pre-hearing conference has been scheduled for November 7, 2019. The Borrower has advised that it is possible that a settlement could be reached with the municipality at the pre-hearing date.

The Borrower has provided a five-year timeline to completion of the Castlemore Project (assuming a settlement is reached at the pre-hearing date), as follows:

- Block Plan approval granted by the end of 2019;
- Draft Plan approval to be achieved in 2021;
- Sales and Marketing to commence in 2022;
- Site servicing to commence in late 2023; and
- Construction to commence in 2024 with closings to continue through 2025.

Should Block Plan approval not be granted by the end of 2019, the above timeline will be further delayed.

The Secondary Plan and Block Plan appeals have resulted in significant delays to the Castlemore Project and have contributed to a continued lack of certainty on the timing of development. In addition to these development delays, the Borrower advised that the Property has been further impacted by, among other things: (i) significant increases in municipal and regional development charges; and (ii) a softening of the housing market in the City of Brampton and the Greater Toronto Area, generally. Accordingly, the Borrower is seeking to repay the debt owing to Castlemore SMLs under the Loan Agreement at a discount.

The Offer reflects a recovery on the principal amount as follows:

Principal outstanding (A)	21,246,154
Loan repayment (B)	9,500,000
Shortfall (A-B)	<u>11,746,154</u>
% recovery on principal outstanding (B/A)	<u>45%</u>

The amount distributed to the Castlemore SMLs from the Offer will be net of an administrative holdback of 15% (“**Holdback**”) to be retained by the Trustee in accordance with the Court orders issued in these proceedings. The Castlemore SMLs may receive a portion of the Holdback in the future; however, the timing and amount, if any, is unknown at this time.



Additional Loan Agreement Considerations

In addition to the challenges and delays encountered by the Borrower as described above, the Trustee considered the impact of a clause in the Loan Agreement that addresses the rights of the Castlemore SMLs in the event that the BDMC Loan is not repaid by the Maturity Date (the “**End of Term Event Clause**”).

Among other things, the End of Term Event Clause precludes BDMC, in its capacity as lender to the Castlemore Project, from exercising its rights under its Security (as defined in the Loan Agreement), provided that certain procedural steps are followed by the Borrower. These steps include obtaining updated appraisals for the Property (the “**Updated Appraisals**”). The Borrower then has the option of either: (i) paying out the Castlemore SMLs in the manner and priority prescribed by the Loan Agreement (the “**Waterfall**”) using the average value of the Updated Appraisals for distribution purposes, subject to certain deductions (“**Borrower’s Pay Out Option**”); or (ii) listing the Property for sale with a reputable commercial real estate agent and then distributing the proceeds from the sale in accordance with the Waterfall (“**Borrower’s Listing Option**”).

The Borrower requested that the Trustee consider its Offer as an alternative to a repayment of the BDMC Loan in accordance with the End of Term Event Clause. The Borrower advised the Trustee, however, that if the Offer is not accepted by the Castlemore SMLs, it will trigger the End of Term Event Clause on the Maturity Date.

Assessment of the Offer and Recommendation

The Borrower has been unable to commence construction as the Property still requires development approvals. The Borrower has advised that the Castlemore Project is estimated to be completed in 2025 or later, depending on the timing of development approvals.

Acceptance of the Offer by the Trustee would result in the Castlemore SMLs foregoing the remaining principal and accrued interest, which would otherwise be due on the BDMC Loan, as follows:

Remaining principal	\$11,746,154
Accrued interest (November, 2014 to September 30, 2019)	\$7,742,713
Total potential foregone recoveries	<u>\$19,488,867</u>

Since September 30, 2019, additional interest has continued to accrue at a per diem of \$4,656.69.

The following considerations were taken into account by the Trustee in completing its

assessment of the Offer:

- The Trustee engaged an independent real estate appraiser to provide a current “as is” appraisal of the Property. The appraisal contemplates a marketing period of four to eight months. Based on this “as is” value for the Property, after repayment of the Cameron Stephens Loan, the Trustee estimates that the recovery to the Castlemore SMLs from the Offer will be superior to the recovery achieved through the End of Term Clause (regardless of whether the Borrower exercises the Borrower’s Pay Out Option or the Borrower’s Listing Option);
- Absent the acceptance of the Offer by the Castlemore SMLs, the Borrower has advised that on the Maturity Date, it will exercise its rights under the End of Term Clause;
- The timeline to completion of the Castlemore Project is estimated to be 2025 or later. The Trustee consulted with a planning consultant who confirmed that the Borrower’s timeline to project completion was reasonable;
- The Offer provides certainty regarding the amount and time frame for the repayment of the BDMC Loan;
- The Borrower has provided a good faith deposit of \$500,000 to the Trustee’s counsel, to be held in trust (“**Deposit**”), pending the outcome of this voting request and obtaining Court approval of the Settlement Agreement. If the settlement transaction does not close by November 29, 2019 due to a failure of the Borrower to comply with its obligations under the Settlement Agreement, the Deposit shall be paid to and retained by the Trustee, on behalf of BDMC;
- There is debt of approximately \$10.5 million that ranks in priority to the BDMC Loan that must be paid in advance of the BDMC Loan; and
- The Offer results in a return on the BDMC Loan of approximately 45% of the principal balance.

Given the above considerations, including the protracted time frame to completion of the Castlemore Project and the Borrower’s intention to exercise its rights under the End of Term Event Clause if the Castlemore SMLs do not vote in favour of accepting the Offer, the Trustee is of the view that, although the Offer provides only a partial repayment to the Castlemore SMLs, there is value in the certainty provided by accepting the Offer and crystalizing the outcome of the BDMC Loan. Furthermore, the timing of the payout is known and will occur shortly after Court approval.

Options to Castlemore SMLs

The two options available to the Castlemore SMLs are as follows:



- 1) Accept the Offer made by the Borrower for the repayment of the BDMC Loan, which includes a release of BDMC, the Trustee and individual lenders with respect to all rights and obligations under the Loan Agreement and related documents; or
- 2) Not accept the Offer, in which case the Borrower has advised that it will exercise its rights under the End of Term Clause, which would result in a payout that the Trustee estimates will be less favourable than the Offer for the Castlemore SMLs.

Next Steps

At this time, you should review this notice and the Offer carefully and arrange to obtain independent legal advice regarding these matters. If desired, you can consult with Chaitons LLP, in its capacity as Representative Counsel. Representative Counsel's contact information is below.

Attached as Schedule "B" hereto is an instruction letter to the Trustee that gives you an opportunity to indicate whether you are in favour of or against the acceptance of the Offer in full satisfaction of your investment under the BDMC Loan.

Please complete and return the instruction letter to us within ten (10) days.

After ten (10) days, the Trustee, in consultation with Representative Counsel, will decide whether to accept the Offer by an exercise of the discretion granted to the Trustee under the Appointment Order. Any acceptance by the Trustee of the Offer would not be binding on the Trustee or the Castlemore SMLs until the Offer is approved by the Court. In the event that the Trustee accepts the Offer, copies of the Court materials will be served upon you prior to the proposed Court date.

A prompt response is required in the circumstances.

Should you have any questions of the Trustee, our contact information is below (if you are contacting us by phone or email, please reference **Castlemore 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 **Castlemore 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:
Castlemore Offer and Castlemore Settlement Agreement

OFFER TO SETTLE

DATE: OCTOBER 21, 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

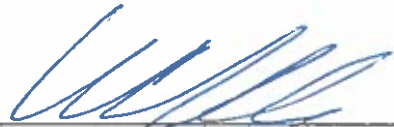
Emerald Castle Developments Inc. (the "Borrower"), hereby presents this offer to settle (the "Offer") on the terms and conditions set forth in the Settlement Agreement enclosed herewith, as full consideration for all obligations owing by the Borrower under that certain Loan Agreement dated August 25, 2014 (the "Loan Agreement") with Centro Mortgage Inc. (now Building & Development Mortgages Canada Inc.), in trust ("BDMC"), as lender. BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company ("Olympia") acts as trustee for a subset of such lenders who have self-directed accounts with Olympia.

The Borrower 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) dated April 20, 2018 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, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to BDMC, and any actions involving BDMC with respect to this Offer shall be directed to and executed by the Trustee.

The Borrower further understands that, as this Offer represents a compromise of debt and a release of all parties' obligations pursuant to the Loan Agreement and related documents (provided that such release shall not in any way affect the Borrower's obligations under this Offer and the Settlement Agreement enclosed herewith), 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 Borrower hereby agrees that this Offer, and its signature on the Settlement Agreement enclosed herewith, shall be irrevocable by the Borrower and shall remain open for acceptance by providing counter-signed copies of the Settlement Agreement enclosed herewith to the Borrower until 5:00 p.m. Toronto time on November 8, 2019 (or such other date as may be agreed by the Borrower 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 revoked. In the event that this Offer is rejected or revoked as outlined above, the Loan Agreement shall remain unaffected and shall continue and survive in full force and effect in accordance with its terms. This Offer is made on the understanding that the Trustee and Olympia will not consider any other offers while this Offer is open for acceptance by the Trustee.

The Borrower looks forward to your response.

**EMERALD CASTLE DEVELOPMENTS
INC.**

By: 
Name: DESI C. AUCIELLO
Title: ASO

**SETTLEMENT AGREEMENT
(dated as of October 21, 2019)
(the "Settlement Agreement")**

B E T W E E N:

EMERALD CASTLE DEVELOPMENTS INC.

- and -

**FAAN MORTGAGE ADMINISTRATORS INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED TRUSTEE OF BUILDING & DEVELOPMENT MORTGAGES
CANADA INC.**

- and -

OLYMPIA TRUST COMPANY

WHEREAS Emerald Castle Developments Inc. (the "**Borrower**") is the borrower under a Loan Agreement dated August 25, 2014 (the "**Loan Agreement**") with Centro Mortgage Inc. (now Building & Development Mortgages Canada Inc.), in trust ("**BDMC**"), as lender, whereby BDMC issued a loan in an amount up to and including the principal sum of \$21,246,153.85 to the Borrower;

AND WHEREAS the principal sum of \$21,246,153.85 (the "**Loan**") was actually funded by BDMC pursuant to the Loan Agreement;

AND WHEREAS BDMC entered into the Loan Agreement on behalf of a syndicate of individual lenders, and Olympia Trust Company ("**Olympia**") acts as trustee for a subset of such lenders who have self-directed accounts with Olympia;

AND WHEREAS on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee of the assets, properties and undertakings of BDMC (in such capacity, the "**Trustee**") pursuant to an order of the Ontario Superior Court of Justice (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, and in connection therewith the Trustee was empowered and authorized to settle, extend or compromise any indebtedness owing to BDMC;

AND WHEREAS the Borrower, BDMC and Olympia entered into the Loan Agreement to assist in the development of a low-density residential project consisting of both townhomes and single-family homes to be constructed at 10431 Gore Road, Brampton, Ontario, legally described in Schedule "A" hereto (the "**Property**", and such development, the "**Project**");

AND WHEREAS in connection with and as security for payment of the Loan and performance of other obligations set out in the Loan Agreement, BDMC and Olympia were granted a charge on title to the Property, which is described in Schedule "B" hereto, in the initial principal amount of \$10,000,000, which charge was subsequently increased to \$22,000,000 (the "**Charge**");

AND WHEREAS there is currently \$21,246,153.85 in principal outstanding under the Loan;

AND WHEREAS as of September 30, 2019, there was approximately \$7,742,712.79 of accrued interest payable to BDMC under the Loan, which continued to accrue at a per diem amount of \$4,656.69 since September 30, 2019;

AND WHEREAS the maturity date under the Loan Agreement is November 24, 2019 (the “**Maturity Date**”) as the Borrower did not exercise its option to extend the term of the Loan for up to 24 additional months in accordance with the terms thereof;

AND WHEREAS construction on the Project has not yet commenced, and the Borrower has advised that the Project is not estimated to be completed until 2025, or later;

AND WHEREAS the Borrower has further advised that, absent a settlement on the terms hereof with respect to, among other things, the Obligations (as defined below), on the Maturity Date, it will exercise its rights under Section 14 of the Loan Agreement to initiate certain “end of term” procedures, which may preclude the Trustee from exercising BDMC’s rights under the Security (as defined in the Loan Agreement);

AND WHEREAS, on or about October 21, 2019, the Borrower provided a good faith deposit of \$500,000 to the Trustee’s law firm (the “**Deposit**”), to be held in trust and released in accordance with the terms hereof, as evidence of its financial ability to make the Settlement Payment (as defined herein);

AND WHEREAS the Trustee consulted with individual lenders with respect to the proposed Settlement Agreement and, following such consultation, determined that it is in the best interests of the individual lenders to enter into this Settlement Agreement;

AND WHEREAS the parties hereto wish to enter into this Settlement Agreement in full satisfaction of the Obligations owing by the Borrower to BDMC under the Loan Agreement and the Charge and all other security granted by the Borrower with respect to the Obligations;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Each party represents and warrants to the others that to the best of its knowledge, the recitals to this Settlement Agreement are accurate.
2. The parties hereto represent and warrant that the total amount that would be payable to BDMC and Olympia under the Loan Agreement, the Charge and any other security granted by the Borrower to BDMC and/or Olympia, as applicable, as at September 30, 2019 is \$28,988,866.62 (the “**Obligations**”), consisting of the following amounts, and that such amounts represent all of the monetary obligations owed by the Borrower to BDMC and Olympia under the Loan Agreement, the Charge and any other security granted to BDMC and/or Olympia by the Borrower in connection with the Loan (“**Other Security**”):
 - (a) Principal owing in the amount of \$21,246,153.85, payable on the Maturity Date; and
 - (b) Interest owing in the amount of \$7,742,712.79 as of September 30, 2019, plus any

additional interest that would be accrued from such date until the date the Loan is repaid.

3. The Borrower hereby agrees to pay to the Trustee, on behalf of BDMC and Olympia, on the Effective Date (as defined below) an amount equal to \$9,500,000 (the "Settlement Payment"), which shall be satisfied by (a) a lump-sum payment in the amount of \$9,000,000, and (b) the release and crediting of the Deposit against the Settlement Payment. The Borrower agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Settlement Payment and, if applicable, the Late Payment Fee (as defined below) save and except as provided in Section 11, below.

4. In the event that the Borrower fails to pay any portion of the Settlement Payment within fourteen calendar days from the date of the Order (as defined below), the Borrower shall pay a late payment fee to the Trustee, on behalf of BDMC, of 10% of the Settlement Payment less the Deposit (the "Late Payment Fee").

5. The Borrower shall, on the Effective Date, execute and deliver a full and final release in favour of the Trustee, BDMC, Olympia and their related entities (including the individual lenders) (collectively, the "Releasees") in respect of, *inter alia*, any and all Obligations under the Loan Agreement and all other documents between the Borrower and BDMC, in a form customarily provided to secured lenders and in the form reasonably agreed to by the Releasees (the "Release"). The Release shall not be effective until the Closing Date (as defined below); provided that such Release shall not in any way affect the Trustee's obligations under this Settlement Agreement.

6. The Borrower hereby represents and warrants to the other parties hereto that, as of the date hereof:

- (a) It has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Settlement Agreement, all of which have been duly authorized by all proper and necessary corporate action and it has duly executed and delivered this Settlement Agreement.
- (b) The execution of this Settlement Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Project or the Property, or any law, regulation or order or require any consent or approval that has not been obtained.
- (c) This Settlement Agreement is a legal, valid, and binding obligation of the Borrower, 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* (Ontario)) 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, save and except for a Development Consultant Agreement between Fortress and the Borrower dated August 25, 2014 (the "DCA");
 - (ii) after reasonable inquiry and investigation, is party to any agreement or other arrangement relating to the Project or the Property with the Borrower or any of its affiliates or their respective principals or agents, save and except for the DCA between Fortress and the Borrower; 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, debt, securities, options, mortgages, charges, guarantees, assets or any other form, and promptly upon the Borrower 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 Borrower 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 Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents.
- (f) Neither the Borrower 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 Settlement Agreement, whether from the Borrower, any lender, broker, assignee, other person or any of their respective affiliates, principals or agents, including without limitation any potential transaction involving a settlement of the Obligations or an assignment of all or any part of the Obligations or the Charge to Fortress or any Fortress Representative.

7. The Borrower covenants in favour of the Trustee that should the Borrower or any of its affiliates or their respective principals or agents: (a) come into the possession or control of any such consideration described in Subsection 6(d)(iii), above, that would otherwise be payable to Fortress or any Fortress Representative, or (b) permit or acquiesce to any such consideration being received by Fortress or any Fortress Representative, such consideration: (y) 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 Obligations that would have been payable to BDMC under the Loan Agreement as of the Effective

Date of this Settlement Agreement has been paid to the Trustee in full, or (z) shall be deemed to become an amount that is owed by the Borrower 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 Settlement Agreement and shall not be affected by the releases contemplated by Section 9 hereof.

8. The Trustee, on behalf of BDMC, acknowledges that the Settlement Payment represents \$19,488,866.62 less than the full amount of the principal and interest owing as at September 30, 2019 (excluding additional accrued interest to the ultimate date of repayment) and any amount that could potentially become owing under the Loan Agreement, the Charge and any Other Security. The Trustee, on behalf of BDMC, and Olympia hereby agree that, as of the Closing Date (as defined herein), they shall be deemed to accept the Settlement Payment and, if applicable, the Late Payment Fee in full satisfaction of the Obligations, and the performance of any obligations under the Loan Agreement, the Charge and any other security and shall waive any rights, to any further payments that may become payable to BDMC and/or Olympia under the Loan Agreement, the Charge and any Other Security, provided that such agreement and waiver shall not in any way affect the Turnover Obligations under this Settlement Agreement.

9. The Trustee shall use commercially reasonable efforts to seek approval of the Settlement Agreement by way of court order substantially in the form agreed between the Borrower, the Trustee, and Olympia (which shall, for greater certainty, contain a full release and discharge of all Obligations of the Borrower under the Loan Agreement, the Charge and Other Security provided that such release shall not be effective until the Closing Date as provided in Sections 10, 11 and 12 hereof and shall not in any way affect the Borrower's obligations hereunder) (the "**Order**") issued by the Court. The parties hereto agree that, except for the immediately preceding sentence and Section 11 hereof, this Settlement Agreement shall not be binding on any party until the issuance of the Order. Following the date of the issuance of the Order (the "**Effective Date**"), the Borrower shall be required to issue the Release as contemplated in Sections 3, 4 and 5 herein and pay the Settlement Payment and, if applicable, the Late Payment Fee, to the law firm representing the Trustee, to be held by such law firm in trust and not to be released until the Closing Date or, if applicable, returned to the Borrower in accordance with Section 11, below.

10. The obligations of the Trustee, on behalf of BDMC, and Olympia contained in this Settlement Agreement (except for the obligation to seek Court approval pursuant to Section 9 hereto, which shall be effective as of the date that the Trustee and Olympia execute this Settlement Agreement) shall be subject to the issuance of a certificate to the Borrower 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 12 herein (the "**Closing Date**").

11. Notwithstanding anything to the contrary herein, if the Closing Date does not occur by November 29, 2019 (the "**Outside Closing Date**") by reason of a breach by the Borrower of its obligations under this Settlement Agreement then the full amount of the Deposit shall become the property of and be retained by the Trustee, on behalf of BDMC, to compensate it for time, fees and expenses incurred in connection with the transactions contemplated by this Settlement

Agreement. Conversely, if all of the conditions precedent set out in section 12 herein have been satisfied and the Closing Date does not occur on or before the Outside Closing Date solely because of the failure of the Trustee to issue the Trustee's Certificate to the Borrower and file the Trustee's Certificate with the Court, then the Deposit, and if applicable, any amounts in excess of the Deposit received by the Trustee (or its counsel, in trust) in respect of the Settlement Payment shall be returned to the Borrower upon written demand by the Borrower or its solicitors, without set-off or any deduction whatsoever and the Settlement Agreement shall be deemed terminated (in which case the Loan, the Obligations, the Loan Agreement, the Charge and the Other 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 and, if applicable, any amounts in excess of the Deposit received by the Trustee (or its counsel, in trust) in respect of the Settlement Payment, shall be the Borrower's sole and exclusive remedy in respect of any termination of this Settlement Agreement. The Trustee may, in its sole discretion, extend the Outside Closing Date to a date acceptable to the Borrower.

12. The Trustee shall be required to issue the Trustee's Certificate to the Borrower 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 no material objections (in the sole opinion of the Trustee) were raised by individual lenders or by any other party at the motion for approval of the Order, or, if any material objection is raised, 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 with no further right of appeal or leave to appeal;
- (b) the Borrower has paid the Settlement Payment and, if applicable, the Late Payment Fee to the Trustee's law firm, in trust;
- (c) the Borrower has provided the Release to the Releasees;
- (d) the Borrower has certified that all of the representations and warranties contained in this Settlement Agreement continue to be true as of the Closing Date; and
- (e) the Borrower continues to be, in compliance with all of the terms of this Settlement Agreement.

For greater certainty, the rights and obligations of each party as contained in the Loan Agreement and the security granted to BDMC and Olympia (including without limitation the Charge) shall remain effective until the Closing Date.

13. As of the Closing Date: (i) the Borrower, the Trustee, on behalf of BDMC, Olympia and all individual lenders acknowledge and agree that they shall have no further rights or obligations in connection with the Obligations, the Loan Agreement, the Charge and Other Security and the Loan Agreement shall automatically be terminated with no further force or effect; (ii) the Borrower shall be permitted to cause any and all security held by BDMC and/or Olympia to secure the Obligations to be discharged, including the discharge of the Charge from title to the Property; (iii) the Borrower shall be permitted to release any interest the Trustee, on behalf of BDMC, and Olympia may have in any insurance policy(ies) relating to the Property; and (iv) the individual

lenders shall be deemed to have released the Borrower from all obligations and security provided in connection with the Loan Agreement; provided, however, that the releases, discharges, and other matters described in this paragraph 13 shall not in any way affect the Borrower's obligations hereunder.

14. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

15. The parties agree that the terms of this Settlement Agreement shall be disclosed to the individual lenders under the Loan and shall be included in the motion materials for approval of the Settlement Agreement.

16. Each party confirms it has received independent legal advice relating to this Settlement Agreement, and that it has voluntarily entered into this Settlement Agreement with the benefit of such advice for the purpose of making a full and final settlement of amounts outstanding under the Loan through this Settlement Agreement.

17. This Settlement Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings, representations and understandings between the parties. This Settlement Agreement shall further enure to the benefit of and be binding upon the parties and their respective successors, representatives and assigns.

18. This Settlement Agreement may be executed by the parties in counterparts, and may be executed and delivered by facsimile, PDF or e-mail and all the counterparts and facsimiles shall together constitute one and the same agreement.

19. This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada therein, and any dispute arising from this Agreement must be adjudicated before the Ontario Superior Court of Justice.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the parties have duly executed this Agreement as of the date indicated above.

**EMERALD CASTLE DEVELOPMENTS
INC.**

By: _____

Name: DESIC. FUCIELLO

Title: ASO

**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:

SCHEDULE "A"

Legal Description of Property

PT LT 13, CON 10 ND TORONTO GORE DES PT 1, PL 43R14071 SAVE
AND EXCEPT PT 1, PL 43R35377; CITY OF BRAMPTON

PIN 14214-0172 (LT)

SCHEDULE "B"

Charge

Registration No. PR2635749 against PIN 14214-0172 (LT), as amended by notices registered as Instrument Nos. PR2668022, PR2679352, and PR2725417