

**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**

FOURTEENTH REPORT OF THE TRUSTEE

JANUARY 23, 2020



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

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FOURTEENTH REPORT OF THE TRUSTEE

January 23rd, 2020

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 28, 2018, the Court issued the Braestone Settlement Approval Order, which approved, among other things, 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.
4. On December 20, 2018, the Court issued the Harlowe Settlement Approval Order, which approved, among other things, 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. A copy of the Harlowe Settlement Approval Order is attached as **Appendix “3”**.
5. The Trustee has, in total, delivered thirteen 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 November 22, 2019, the Trustee submitted its thirteenth report in these proceedings (the “**Thirteenth Report**”), which provided a comprehensive update on the Trustee’s activities and a status update for each project.

6. The Trustee indicated in its previous Reports that it continues to seek to maximize recoveries for Investors and to advance potential transactions related to various projects. In particular, given the status of the Peter Richmond Project (as defined and more particularly described below), the significant amount owing under the Peter Richmond Loans (as defined below), and the expressions of interest received with respect to the project, the Trustee conducted a focused solicitation process to determine if proceeding with a transaction in respect of the Peter Richmond Loans would be in the best interests of the Peter Richmond Individual Lenders (as defined below) in the circumstances. As a result of these efforts, the Trustee received an offer (“**Assignment Offer**”) from Carlyle Communities Inc. (“**Assignee**”), an entity that the Trustee understands is related to the Peter Richmond Borrower (as defined below), to take assignment of all of the right, title and interest in and to the indebtedness owed by Fortress Carlyle Peter St. Inc. (“**Peter Richmond Borrower**”) to BDMC pursuant to two separate loan facilities: (i) a loan agreement dated November 3, 2014 (“**PRLA Loan**”, and such agreement, as amended, restated and/or supplemented, the “**PRLA Loan Agreement**”) and (ii) a syndicated mortgage loan advanced to The Julian Cole Development Corporation pursuant to various loan agreements that have been assumed by the Peter Richmond Borrower (collectively, the “**LH2 Loan**”, and such agreements, as amended, restated and/or supplemented, the “**LH2 Loan Agreement**”). BDMC acts as agent in connection with the LH2 Loan pursuant to various agency and accession agreements entered into with the individual lenders under the LH2 Loan (collectively, the “**Agency Agreement**”).
7. The Assignment Offer also provides for the assignment to the Assignee of all security held in favour of BDMC that is related to the PRLA Loan and the LH2 Loan (collectively, the “**Peter Richmond Loans**”) including without limitation: (i) the charges registered in favour of BDMC on title to the real property situated at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario (“**Properties**”) in connection with the PRLA Loan (“**PRLA Charges**”), (ii) the charge in favour of BDMC registered on title to the real property situated at 122-124 Peter Street, Toronto, Ontario (“**122-124 Peter**”) in

connection with the LH2 Loan (“**LH2 Charge**”, and together with the PRLA Charges, the “**Charges**”), and (iii) any right BDMC has to a charge to be registered on title to the property situated at 120 Peter Street, Toronto, Ontario (“**120 Peter**”) in accordance with the terms of the PRLA Loan Agreement. The Assignment Offer provides for a cash payment to BDMC (“**Assignment Price**”) in exchange for the assignment of the Peter Richmond Loans and all related security.

8. Capitalized terms not otherwise defined in this Fourteenth Report (“**Fourteenth 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 balance of these proceedings and will be updating it as appropriate.

PURPOSE OF THE FOURTEENTH REPORT

9. The Trustee has brought this motion to attempt to ensure that the Peter Richmond Individual Lenders receive as much Realized Property as possible from their investments. Through the Solicitation Process (as defined below), the Trustee believes that it has negotiated a transaction that would maximize recoveries for the Peter Richmond Individual Lenders in the circumstances, which transaction is represented by the Assignment Offer. That transaction requires Court approval to be obtained by January 31, 2020, failing which the Assignee would not be bound to complete the proposed transaction, which would potentially result in a lost opportunity to generate meaningful recoveries. As such, the Trustee, with the support of Representative Counsel, has served a motion for approval of the Peter Richmond Assignment Agreement (as defined below).
10. Accordingly, the purpose of this Fourteenth Report is to provide the Court and stakeholders with an update with respect to the Peter Richmond Project and information in support of the Trustee’s motion, including consultations with Representative Counsel, to seek an Order (“**Peter Richmond Assignment Approval Order**”) that, among other things:
 - (a) (i) approves the Assignment Agreement dated as of December 17, 2019 (“**Peter Richmond Assignment Agreement**”) among the Assignee, Olympia Trust

Company (“**OTC**”) and the Trustee, including, without limitation, the late penalty provision contained therein, with such minor amendments as the Trustee and the other parties to the Peter Richmond Assignment Agreement may agree upon to permit the completion of the transaction contemplated thereby;

(ii) directs the Assignee to pay the Assignment Price, less any deposit, forthwith to the Trustee in accordance with the terms of the Peter Richmond Assignment Agreement (such funds, including the deposit, the “**Peter Richmond Realized Property**”); and

(iii) approves and ratifies the execution of the Peter Richmond Assignment Agreement by the Trustee and OTC and authorizes and directs the Trustee and OTC to comply with all of their obligations under the Peter Richmond Assignment Agreement;

- (b) transfers, conveys and assigns to the Assignee all of the right, title and interest of BDMC, OTC and the individual investors who advanced funds under the Peter Richmond Loans (collectively, the “**Peter Richmond Individual Lenders**”) in and to the indebtedness of the Peter Richmond Borrower under the Peter Richmond Loans, the Peter Richmond Loan Agreements, the Agency Agreement, the Charges and the BDMC Personal Property Security (as defined in the Peter Richmond Assignment Agreement) (collectively, “**Peter Richmond Loan Obligations**”) now owing, together with all monies that may hereafter become due or owing, in respect of the Peter Richmond Loan Obligations, including, without limitation, all rights to receive principal, interest, fees, expenses, damages, penalties and other amounts in respect of or in connection with the Peter Richmond Loan Obligations, upon the delivery of a Trustee’s certificate confirming, among other things, the Trustee’s receipt of the Assignment Price (“**Trustee’s Certificate**”); and
- (c) upon the delivery of the Trustee’s Certificate, releases all liability and obligation of BDMC, OTC, the Peter Richmond Individual Lenders and the Trustee under the Peter Richmond Loan Obligations.
11. Should the Peter Richmond Assignment Approval Order be granted by the Court and the transaction close, resulting in the receipt by the Trustee of the Assignment Price, the

Trustee intends to return to Court for approval of certain distributions to the Peter Richmond Individual Lenders in a total amount equal to 85% of the Peter Richmond Realized Property received by the Trustee, 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.

12. In support of the Trustee's request for the Peter Richmond Assignment Approval Order, this Fourteenth Report describes the following matters:
 - (a) An overview of the Peter Richmond Project;
 - (b) The details of the Peter Richmond Loans;
 - (c) Information with respect to the Solicitation Process and the offers received by the Trustee;
 - (d) A confidential appendix that provides information regarding the financial and certain other aspects of the offers received;
 - (e) The details of the Peter Richmond Assignment Agreement; and
 - (f) Information that supports the Trustee's recommendation that the Peter Richmond Assignment Agreement be approved.

SCOPE AND TERMS OF REFERENCE

13. In preparing this Fourteenth Report, the Trustee has relied upon unaudited financial and other information provided by, *inter alia*, BDMC, Fortress Real Developments Inc. ("**Fortress**"), Canadian Development Capital & Mortgage Services Inc. ("**CDCM**"), the Assignee, the Peter Richmond 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 Peter Richmond Project and the administration business of BDMC. While the Trustee reviewed various documents provided by BDMC, CDCM, and applicable borrowers (including, among other things, unaudited internal information, appraisals and financial projections), the Trustee's review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Assurance Standards ("**GAAS**"), Generally Accepted Accounting Principles ("**GAAP**"), or International Financial Reporting Standards ("**IFRS**"). Accordingly, the Trustee expresses no opinion or other

form of assurance pursuant to GAAS, GAAP or IFRS, or any other guidelines, with respect to such information.

14. Some of the information used and relied upon in preparing this Fourteenth 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 Fourteenth Report may vary from the projections and information used to prepare this Fourteenth 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 Fourteenth Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.
15. This Fourteenth Report has been prepared for the use of this Court and BDMC's stakeholders as general information relating to BDMC and the Peter Richmond Project and to assist the Court with respect to the Trustee's request for the proposed Peter Richmond Assignment Approval Order. Accordingly, the reader is cautioned that this Fourteenth Report may not be appropriate for any other purpose.
16. All references to dollars are in Canadian currency unless otherwise noted.

OVERVIEW OF PETER RICHMOND PROJECT

17. The Peter Richmond project is a 42-storey mixed use development to be constructed on the properties located at 120, 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario ("**Peter Richmond Project**"). The Peter Richmond Borrower separately acquired each of the parcels of land comprising the Peter Richmond Project, which are each required for the design of the development to proceed as currently proposed. The acquisition of 120 Peter was contemplated as part of the original project plans and as part of the design submitted for review by the Ontario Municipal Board in connection with the Peter Richmond Borrower's Zoning By-Law Amendment application. The acquisition of 120 Peter was delayed due to a legal challenge by the prior owner of 120 Peter ("**Prior 120 Owner**") with respect to the Peter Richmond Borrower's right to

acquire the property under the terms of an existing purchase and sale agreement (“**120 Purchase Agreement**”). On November 4, 2019, following extensive litigation with the Prior 120 Owner, the Court of Appeal of Ontario upheld the decision of Justice Perell of the Ontario Superior Court of Justice that, among other things, upheld the 120 Purchase Agreement between the Prior 120 Owner and the Peter Richmond Borrower. As a result, the Trustee understands that the Peter Richmond Borrower completed the purchase and acquisition of 120 Peter in accordance with the 120 Purchase Agreement on or around November 12, 2019.

18. In addition to the issues with respect to the acquisition of 120 Peter, the Peter Richmond Borrower is still awaiting certain development approvals for the Peter Richmond Project. In particular, the Peter Richmond Borrower is seeking a Zoning By-Law Amendment to permit the proposed development and has submitted an appeal of its Zoning By-Law application to the Local Planning Appeal Tribunal (“**LPAT**”). The LPAT hearing with respect to the Peter Richmond Project was held on January 7, 2020 and the Trustee understands the LPAT decision is expected to be released within 4-6 months. Should the Peter Richmond Borrower obtain the Zoning By-Law approval, it will seek site plan approval and commence pre-sales. Assuming a favourable decision from the LPAT, the Assignee, who is currently the project manager of the Peter Richmond Project, has informed the Trustee that it expects the Peter Richmond Project to take approximately five years to complete.
19. The challenges encountered by the Peter Richmond Borrower in acquiring 120 Peter, coupled with the delays in obtaining the required development approvals, have resulted in significant delays to the Peter Richmond Project.
20. The Trustee has provided information to the Peter Richmond Individual Lenders regarding such delays and other matters related to the Peter Richmond Project through previous Reports, by distributing notices to Investors and by responding to individual Investor calls and emails.

PETER RICHMOND LOAN ARRANGEMENTS

21. The Peter Richmond Borrower is indebted to BDMC under two separate loan facilities: (i) the PRLA Loan, and (ii) the LH2 Loan. As noted above, BDMC acts as agent in connection

with the LH2 Loan pursuant to various agency and accession agreements entered into with the individual lenders under the LH2 Loan.

PRLA Loan

22. The PRLA Loan was entered into in November 2014 and matured in January 2019. The amount owing to the Peter Richmond Individual Lenders that advanced funds to the Peter Richmond Borrower in respect of the PRLA Loan ("**PRLA SML Lenders**") is approximately \$32.9 million as at December 31, 2019 (comprised of approximately \$27.4 million of principal and approximately \$5.5 million of accrued interest). The Peter Richmond Borrower made interest payments of approximately \$2.9 million through to July 2017, after which interest began, and continues to, accrue¹. The Peter Richmond Borrower has advised that it does not intend to resume making interest payments to the PRLA SML Lenders.
23. There are currently two charges on title that comprise the PRLA Charges in respect of the obligations owed to BDMC under the PRLA Loan Agreement. The original charge was registered on title to 122-124, 126 & 128 Peter Street and 357 Richmond Street, as these properties were the only parcels owned by the Peter Richmond Borrower at the time that the charge was first registered.
24. The PRLA Loan Agreement provides that BDMC shall also be entitled to a mortgage on 120 Peter, 359 Richmond Street or any adjacent lands to the current or future parcels owned by the Peter Richmond Borrower. After 359 Richmond Street was acquired by the Peter Richmond Borrower and following a request from the Trustee, the Peter Richmond Borrower agreed to extend the existing charge to include 359 Richmond Street. In February 2019, the Peter Richmond Borrower registered a second charge in favour of BDMC on all of the Properties, including 359 Richmond Street, in respect of the obligations under the PRLA Loan Agreement. This charge was granted in connection with BDMC agreeing to postpone such charge to a charge in favour of PTI Developments Inc. ("**PTI**"), which the Trustee understands is an entity related to the Peter Richmond Borrower, for \$3.5 million. Additional details regarding the registration of the 359 Richmond Street charge and the postponement in favour of PTI are described in the notices sent to the PRLA SML Lenders and the LH2 Lenders (defined below) on April 12, 2019 (the "**April**

¹ Per diem interest of \$6,089.93 continues to accrue.

2019 Investor Notices”). Copies of the April 2019 Investor Notices are attached hereto as **Appendix “4”**. As a result of the postponement to PTI, the PRLA Charges currently have a third ranking priority on title to the Properties.

25. As noted above, the Peter Richmond Loan Agreement provides that BDMC shall be entitled to a mortgage on 120 Peter once it has been acquired by the Peter Richmond Borrower. To date, the Peter Richmond Borrower has not registered a charge in favour of BDMC on this property.

LH2 Loan

26. The LH2 Loan is comprised of multiple individual loan agreements for amounts that were originally advanced to The Julian Cole Development Corporation between 2010 and 2012 in respect of a proposed development on the property located at 122-124 Peter Street. On June 27, 2014, Wenvor Technologies Inc. (“**Wenvor**”), the existing first mortgagee on 122-124 Peter Street, sold those properties to the Peter Richmond Borrower pursuant to power of sale proceedings. As part of the transaction, on August 29, 2014, Wenvor was granted two vendor take-back mortgages (“**VTBs**”). One of the VTBs, being the LH2 Charge, was issued in the amount then outstanding under the LH2 Loan, being \$4,913,052. The LH2 Charge was then transferred to BDMC, B2B Trust, The Bank of Nova Scotia Trust Company, and OTC, in trust, for the LH2 Lenders.
27. Around the time of the acquisition of 122-124 Peter Street by the Peter Richmond Borrower, the LH2 Lenders were asked to enter into agency and accession agreements with Centro Mortgage Inc. (now BDMC) whereby BDMC was appointed as agent on behalf of the relevant LH2 Lenders and was granted the authority to exercise all rights and powers of such LH2 Lenders under the LH2 Loan Agreement and related documents (collectively, “**Agency Agreement**”). In connection with the entering into of these agreements, LH2 Lenders also consented to the removal and replacement of Mr. Sanjay Pahuja with BDMC as the trustee and administrator of the LH2 Loan Agreement. The Trustee understands that most, if not all, of the LH2 Lenders forming part of the LH2 Loan signed such agency and accession agreements and consents.
28. Pursuant to the terms of the LH2 Charge, the LH2 Loan matured on August 29, 2018. The Peter Richmond Individual Lenders who advanced funds under the LH2 Loan (“**LH2 Lenders**”) are owed, as at December 31, 2019, approximately \$5.5 million (comprised of

approximately \$4.5 million in principal and approximately \$1 million in accrued interest)². The Peter Richmond Borrower made interest payments on the LH2 Loan of approximately \$1.1 million through to May 2017, after which interest began, and continues to, accrue³. The LH2 Charge currently ranks in fourth position on title to 122-124 Peter Street and is subordinate to the PRLA Charges on title to 122-124 Peter Street.

29. As described in the April 2019 Investor Notice to the LH2 Lenders, the seven remaining LH2 Lenders represented by B2B Trust and The Bank of Nova Scotia Trust Company were paid out by the Peter Richmond Borrower and, on January 4, 2019, the LH2 Charge was transferred into the name of BDMC and OTC only.

STATUS OF PRIORITY MORTGAGES ON THE PROPERTIES

30. As noted above, the Peter Richmond Borrower separately acquired each of the parcels comprising the Peter Richmond Project. Accordingly, there are different senior lenders with first priority mortgage charges on each parcel of land comprising the Peter Richmond Project. In addition to the first priority mortgage charges, there is the second ranking charge registered on title against the Properties in favour of PTI. To the best of its knowledge, a summary of the amounts that the Trustee understands are owing in respect of the mortgages registered on title to the Properties in priority to the Peter Richmond Loans, as at January 31, 2020 is as follows:

Property	Mortgagee	Amount
122-124 Peter Street	Wenvor Technologies Inc.	\$5,754,392
126 Peter Street (“ 126 Peter ”)	Toopbin Management Ltd. (“ Toopbin ”)	\$2,143,530
128 Peter Street (“ 128 Peter ”)	Windsor Capital Corporation (“ Windsor ”)	\$5,150,369
357 Richmond Street	Shamir Jamal	\$2,113,645
359 Richmond Street	D. Lindsay and B. McIntosh	\$3,406,917
All Properties	PTI Developments Inc.	\$4,161,488
		<u>\$22,730,341</u>

² Based on further review of BDMC’s records, these figures have been updated from the amounts included in the notice distributed to Peter Richmond Individual Lenders on January 17, 2020.

³ Per diem interest of \$1,006.08 continues to accrue.

31. The first and second priority mortgages noted above are the only known indebtedness that rank in priority to the Peter Richmond Loans on title to the Properties. Each of the first mortgages appear to be in default.
32. Rathcliffe Properties Limited (“**Rathcliffe**”), the first ranking vendor take-back mortgagee on 128 Peter, issued a Notice of Sale Under Mortgage in July 2019 and took the position that, unless the full amount owing under its mortgage was repaid in full on or before August 9, 2019, it would be in a position to list 128 Peter for sale. The Trustee advised the Peter Richmond Individual Lenders of the actions taken by Rathcliffe through investor notices issued on July 19, 2019 to the PRLA SML Lenders and the LH2 Lenders, respectively (“**July 2019 Investor Notices**”). Copies of the July 2019 Investor Notices are attached hereto as **Appendix “5”**. In August 2019, the Peter Richmond Borrower secured replacement financing for 128 Peter from PTI. The Trustee understands that PTI took assignment of Rathcliffe’s first ranking mortgage on 128 Peter and subsequently transferred it to Windsor. The Trustee was notified on October 23, 2019 that the Rathcliffe power of sale proceedings had been discontinued.
33. In addition, on September 23, 2019, Toopbin, the first ranking vendor take-back mortgagee on 126 Peter, issued a demand letter to the Peter Richmond Borrower. The letter demanded payment of its mortgage, which had matured on March 1, 2019, and advised that failure to comply with the terms of its demand would result in steps being taken to enforce its remedies under its mortgage. The Trustee is not aware of any further steps having been taken by Toopbin at this time.

PETER RICHMOND SOLICITATION PROCESS

34. In light of the default of the first priority mortgages on the Properties, the significant amounts owing under the Peter Richmond Loans and the protracted timeframe for completion of the Peter Richmond Project, the Trustee determined that it was in the best interests of the Peter Richmond Individual Lenders to engage in discussions with the Peter Richmond Borrower and certain other interested parties regarding a potential transaction involving the Peter Richmond Loans.
35. On October 30, 2019, the Trustee commenced a focused solicitation process (“**Solicitation Process**”) and provided known parties who had previously expressed interest in entering into a potential transaction with respect to the Peter Richmond Loans

with copies of a letter calling for submissions of binding offers and setting out certain procedures with respect thereto (“**Process Letter**”). The Process Letter provided interested parties with details about the Solicitation Process being conducted and stated that participants should submit their highest and best binding offer. The Process Letter further stated that participants should not assume that they will be given an opportunity to make another offer, renegotiate or improve any terms of their offers. Binding offers were due on November 13, 2019, which deadline was subsequently extended by the Trustee to November 15, 2019 (“**Offer Deadline**”). The Trustee also drafted and circulated forms of offers to interested parties before the Offer Deadline to assist in comparing the proposed terms of potential transactions. A copy of the body of the Process Letter that was sent to parties who had previously expressed interest in entering into a potential transaction is attached hereto as **Appendix “6”**.

36. The Trustee received multiple offers on the Offer Deadline. As is customary in solicitation processes of this nature, the Trustee engaged in discussions with each party that submitted an offer to ensure that the offers received reflected the best possible offer from the interested party, including in respect of price and any stated conditions to closing. These discussions resulted in the Assignment Offer that the Trustee is presenting for approval by the Court.
37. Following a comprehensive review of the offers made, including consideration of the offer price, terms of the relevant offer documentation and ability of the offeror to close, the Trustee has determined, and Representative Counsel has agreed, that the Assignment Offer provides the best outcome for the Peter Richmond Individual Lenders in the circumstances.
38. After the completion of the Solicitation Process and after the dissemination of the January 2020 Investor Notice (as described below) to the Peter Richmond Individual Lenders, the Trustee received an unsolicited offer from one of the parties that participated in the Solicitation Process. Upon review of such offer, the Trustee, after consulting with Representative Counsel, has not changed its recommendation in favour of the Assignment Offer.
39. **Confidential Appendix “1”** contains an unredacted copy of the Assignment Offer and the Peter Richmond Assignment Agreement, other information from the Solicitation

Process and a summary of the financial aspects and other key terms of the offers received by the Trustee, including the level of recovery that each offer would provide the Peter Richmond Individual Lenders, and the amounts foregone by accepting each offer (“**Summary of Offers**”). Given the commercially sensitive information in the offers received, and the competitive nature of the Solicitation Process, the Trustee is concerned that public disclosure of the Summary of Offers, the unredacted copy of the Assignment Offer and the Peter Richmond Assignment Agreement; and the other information contained in Confidential Appendix “1”, prior to Court approval and the closing of a transaction, may jeopardize the proposed transaction and the recoveries to the Peter Richmond Individual Lenders. As such, the Trustee is requesting that Confidential Appendix “1” be sealed pending further Order of the Court.

40. The projected proceeds from the Assignment Offer would result in a very substantial recovery on the combined principal amounts owing to the Peter Richmond Individual Lenders in respect of the Peter Richmond Loans. The combined principal amount owing on the Peter Richmond Loans is approximately \$31.9 million (with approximately \$4 million having already been collectively received by the Peter Richmond Individual Lenders as paid interest). In addition, the following considerations were taken into account by the Trustee in completing its assessment of the Assignment Offer:
- (a) The Trustee consulted with a planning consultant who confirmed that the Peter Richmond Borrower’s timeline of 5 years to project completion was reasonable;
 - (b) The Assignment Offer provides certainty regarding the amount and time frame for recoveries to Peter Richmond Individual Lenders;
 - (c) There is approximately \$22.7 million owing in respect of the Properties that is registered on title in priority to the Peter Richmond Loans. In addition, the Trustee understands that there is a first priority mortgage registered on title to 120 Peter in favour of Windsor. Windsor’s charge is in the amount of \$8 million, however the Trustee understands that the principal amount advanced by Windsor to finance the purchase of 120 Peter was approximately \$5.2 million;
 - (d) Absent the acceptance of the Assignment Offer, one or more of the first mortgagees could list the individual parcels of land subject to their mortgages for

sale on a piecemeal basis, which the Trustee believes would result in lower recoveries; and

(e) Absent the acceptance of the Assignment Offer, and assuming the first mortgagees do not commence power of sale proceedings, the Trustee has been advised by the Peter Richmond Borrower that it would have difficulty obtaining interim replacement financing and construction financing to advance the Peter Richmond Project with any of the Charges remaining on title to the Properties.

41. In light of the above, the Trustee and Representative Counsel believe that the Assignment Offer provides the best executable transaction of the offers received pursuant to the Solicitation Process, and believe that proceeding with the Assignment Offer would maximize recoveries for the Peter Richmond Individual Lenders in the circumstances. The Assignment Offer also includes an acceptable level of disclosure and information with respect to the financing required and ability to complete the proposed transaction.
42. Accordingly, the Trustee has accepted the Assignment Offer and executed the Peter Richmond Assignment Agreement. The Peter Richmond Assignment Agreement requires the Trustee to use commercially reasonable efforts to seek the Peter Richmond Assignment Approval Order, however the remaining terms of the Peter Richmond Assignment Agreement are only binding on the Trustee, BDMC and OTC should the agreement be approved and ratified by the Court.

Investor Notice

43. On January 17, 2020, the Trustee sent a notice to the Peter Richmond Individual Lenders ("**January 2020 Investor Notice**") summarizing the current status of the Peter Richmond Project, the proposed Assignment Offer and the Trustee's intention to file motion materials with the Court in support of the approval of the Peter Richmond Assignment Agreement. While the January 2020 Investor Notice did not disclose any of the financial details of the offers received for the reasons set out herein, it advised the Peter Richmond Individual Lenders: (i) of the Trustee's view that the execution by the Trustee of the Assignment Offer is in the best interests of the Peter Richmond Individual Lenders; (ii) that the Trustee provided Representative Counsel with all relevant financial and other information with respect to the offers received; and (iii) that Representative Counsel agrees with the

Trustee that moving forward to seek Court approval of the Assignment Offer is in the best interests of the Peter Richmond Individual Lenders in the circumstances.

44. The January 2020 Investor Notice invited the Peter Richmond Individual Lenders to review the motion materials to be filed by the Trustee and to consult with independent legal counsel or with Representative Counsel regarding these matters. A further notice with respect to the filing of the motion materials is being sent to all Peter Richmond Individual Lenders. The motion materials will also be posted on the Trustee's Website forthwith following the filing of this report with the Court. A copy of the January 2020 Investor Notice is attached as **Appendix "7"**.
45. The key terms of the Peter Richmond Assignment Agreement are described below.

PETER RICHMOND ASSIGNMENT AGREEMENT

46. The Peter Richmond Assignment Agreement provides that, among other things, upon closing of the transactions contemplated therein, the Trustee, on behalf of BDMC and OTC will assign, transfer, and convey all of BDMC's and OTC's right, title and interest (both legal and equitable) in and to the Peter Richmond Loan Obligations to the Assignee.
47. The Peter Richmond Assignment Agreement provides for the payment of a deposit, which has been received by the Trustee, and further that, in the event that the Assignee fails to pay any portion of the Assignment Price within a period prescribed by the Peter Richmond Assignment Agreement, the Assignee is required to pay forthwith to the Trustee, on behalf of BDMC, a late payment fee in accordance with the terms therein ("**Late Penalty Fee**").
48. As noted above, the Trustee understands that the Assignee is a related party to the Peter Richmond Borrower and is the current project manager of the Peter Richmond Project. The Peter Richmond Borrower is a joint venture between Fortress Peter 2014 Inc. (a Fortress-related entity) and Berkley Carlyle (Peter Street) Inc. (an entity related to the Assignee). The Assignee has made certain representations and warranties and has provided certain covenants in the Peter Richmond Assignment Agreement that are intended to, among other things, prevent any consideration from being received by Fortress as a result of, or otherwise in connection with, the entering into by the Assignee of the Peter Richmond Assignment Agreement.

49. Following negotiations with the Trustee, the Peter Richmond Assignment Agreement was executed by the Assignee on December 17, 2019. If the Court issues the proposed Peter Richmond Assignment Approval Order, then the transactions set out therein will be effective upon the issuance by the Trustee of the Trustee's Certificate certifying that the conditions precedent set out in the Peter Richmond Assignment Agreement have been satisfied, including receipt of the Assignment Price and the Late Penalty Fee, if applicable, and the filing of the Trustee's Certificate with the Court.
50. Further, if the Peter Richmond Assignment Approval Order is granted, the Trustee intends to return to Court to determine the appropriate distributions to the Peter Richmond Individual Lenders of the Peter Richmond Realized Property, given, among other things, the complexities of both the documentation governing the PRLA Loan and the LH2 Loan and the title to the Properties.
51. A copy of the Assignment Offer and the form of Peter Richmond Assignment Agreement executed by the Trustee, redacted for confidential information (including the Assignment Price), is attached as **Appendix "8"**.

CONCLUSION AND RECOMMENDATION

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of January, 2020.

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**

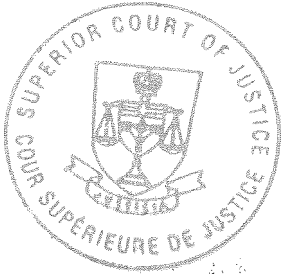
THE HONOURABLE MR.) FRIDAY, THE 20TH DAY
JUSTICE HAINEY) OF APRIL, 2018

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -



BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
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**

APPOINTMENT ORDER

THIS APPLICATION, made by The Superintendent of Financial Services (the "**Superintendent**"), for an Order, *inter alia*, pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the "**MBLAA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), appointing FAAN Mortgage Administrators Inc. ("**FAAN Mortgage**") as trustee (in such capacity, the "**Trustee**"), without security, of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the "**Respondent**"), was heard this day at 330 University Avenue, Toronto, Ontario;

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

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

SERVICE

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

APPOINTMENT

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

TRUSTEE'S POWERS

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

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

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

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE TRUSTEE

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

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

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

GH

or CDCM

GH

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

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

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

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

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

NO PROCEEDINGS AGAINST THE TRUSTEE

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

NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE TRUSTEE

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

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

CONTINUATION OF SERVICES

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

TRUSTEE TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

LIMITATION ON THE TRUSTEE’S LIABILITY

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

TRUSTEE’S ACCOUNTS

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

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

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

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

FUNDING OF THE APPOINTMENT

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

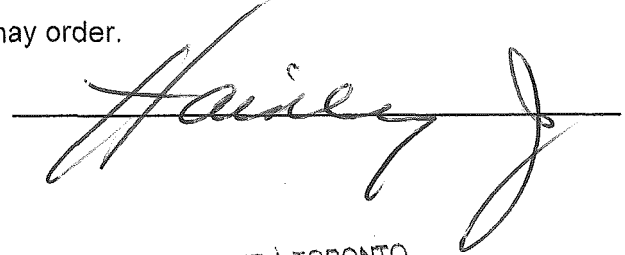
30. **THIS COURT ORDERS** that Confidential Exhibits (as defined in the Supporting Affidavit) be and are hereby sealed until further Order of this Court.

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

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

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

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



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

APR 20 2018

PER / PAR:



SCHEDULE "A"

TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and - BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

Appendix 2:
Realized Property Order dated October 30, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

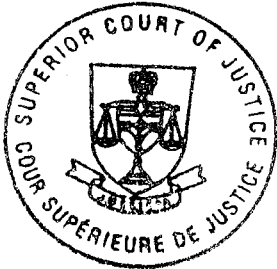
THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent



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

REALIZED PROPERTY ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the “**Respondent**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) requiring the Trustee to distribute certain Realized Property, as more fully set out herein; and (ii) authorizing the Trustee to utilize certain Realized Property to fund the Required Trustee Activities (as defined herein), was heard this day at 330 University Avenue, Toronto, Ontario;

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

SERVICE

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

DEFINITIONS

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

REALIZED PROPERTY

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

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

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

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

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

GENERAL

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

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

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

OCT 30 2018

PER / PAR:

W

Haines J

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

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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.

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:
April 2019 Investor Notices



April 12, 2019

Dear Lender:

Re: Syndicated Mortgage Loan to Fortress Carlyle Peter St. Inc. (“Borrower”) pursuant to the loan agreement dated November 3, 2014 (“Loan Agreement”) in respect of properties located at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario (“Properties” or “Peter Richmond Project”).

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

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan (“**BDMC Loan**”) made by you as a syndicated mortgage lender (“**SML**”) on the Peter Richmond Project pursuant to the Loan Agreement. A charge relating to the BDMC Loan was previously granted in favour of BDMC and Olympia Trust Company (“**Olympia**”), in trust for the SMLs, on each of the Properties, except 359 Richmond Street West, in the amount of \$35,000,000, as amended (“**BDMC Charge**”). As noted below, the BDMC Charge has now also been registered on 359 Richmond Street West.

The purpose of this notice is to advise the SMLs of the following:

- 1) the Borrower received a judgement allowing it to acquire the 120 Peter Street property, the acquisition of which is contemplated in the current design of the Peter Richmond Project. This decision remains subject to appeal;
- 2) the Trustee received a Statement of Claim from a vendor take-back mortgagee seeking foreclosure of the 128 Peter Street Property. The Borrower is attempting to prevent the enforcement proceeding on this parcel from continuing by seeking replacement financing; and
- 3) in February, the Trustee postponed to financing from PTI Developments Inc. (“**PTI**”) in the amount of a \$3.5 million, which funds were used to pay project costs. PTI now ranks in second position and the SMLs now rank in third position on the Properties.

There is no action required from the SMLs at this time.



Overview of Current Status of Peter Richmond Project

The Peter Richmond Project currently consists of five parcels of land. The proposed design contemplates the acquisition of a sixth, neighbouring parcel of land, at 120 Peter Street, Toronto, Ontario. The Borrower has had challenges related to the acquisition of 120 Peter Street; however, it recently received a favourable decision on a litigation matter involving the current owner of the 120 Peter Street property. This decision would allow the Borrower to acquire the 120 Peter Street property, which is contemplated in the proposed design of the Peter Richmond Project. However, the Borrower has advised that this decision is being appealed, which may further delay development of the Peter Richmond Project.

Development approvals are still needed on the subject lands. The Borrower is seeking a Zoning By-law Amendment to permit the proposed development and has submitted an appeal of its Zoning By-law application to the Local Planning Appeal Tribunal ("LPAT"), based on the City of Toronto not issuing a decision on the amendment application in the required time frame. A settlement was reached between the Borrower and the City to approve a 42 storey mixed use building, with the understanding that 120 Peter Street will be included in the development proposal and is owned by the Borrower. This settlement remains subject to ratification by the LPAT.

A pre-hearing is scheduled to be heard by the LPAT in May 2019 and a formal hearing is scheduled for August 2019. If the Borrower is able to present Minutes of Settlement or a favourable decision with respect to the 120 Peter Street litigation at the August 2019 hearing, the Trustee understands that the remaining development approvals may be granted at that time. If the Borrower is not able to present Minutes of Settlement or a favourable decision at such hearing, the LPAT is likely to take time to issue its decision with respect to development approvals. The Project cannot be advanced until it obtains all the required development approvals.

Status of First-Ranking Vendor Take-Back Mortgages

There are separate first-ranking vendor take-back mortgages on each of the five Properties. Each of these mortgages are either maturing in the near term or have already matured. The Borrower has advised the Trustee that it is in the process of negotiating potential bridge financing that would provide sufficient funds to pay out each of the first mortgagees and to allow the Peter Richmond Project to continue for up to six months while the Borrower seeks longer term replacement financing. The Borrower advised the Trustee that it had been continuing to keep the current first-ranking mortgagees apprised of its refinancing efforts, in an effort to prevent them from commencing enforcement proceedings while the bridge financing arrangements were being negotiated. However, on March 14, 2019, the Trustee received a Statement of Claim from one of the vendor take-back mortgagees, seeking foreclosure of the 128 Peter Street Property. The Trustee filed a statutory form to convert the foreclosure proceedings to a power of sale, which would provide an opportunity for a better outcome for the SMLs versus allowing the parcel to be foreclosed on, as a foreclosure guarantees no recovery for the SMLs from the parcel. A foreclosure or sale would jeopardize the Peter Richmond Project, as this parcel forms an integral part of the



land assembly that is the Peter Richmond Project. As described above, the Borrower is seeking replacement financing in an effort to prevent the disposition of the 128 Peter Street property.

PTI Postponement

In early June 2018, the Borrower asked Olympia and the Trustee to agree to postpone to a \$5 million charge in favour of PTI with respect to a \$5 million commitment to the Borrower made by PTI in October 2017. PTI is a related entity to the Borrower. The Trustee understands that at the time of the request, certain advances had already been made with respect to the commitment, and that additional funds were advanced during the second half of 2018 in good faith pending the outcome of the negotiations with respect to the proposed postponement.

The Trustee understands that the PTI funds were to be used to pay project costs. The Trustee negotiated the postponement to a charge in favour of PTI to a maximum of \$3.5 million (\$1.5 million less than the original commitment) and also negotiated a lower interest rate on the loan than originally requested by PTI.

Following its review of the relevant documentation, including the project budget, the Trustee agreed that it was in the best interests of the SMLs to postpone to the new PTI charge to allow the Peter Richmond Project to continue and to allow necessary project costs to be paid at a lower cost than would be offered by alternative third party financing sources. Further, PTI has funded and continues to fund project costs in excess of the \$3.5 million charge, in order to allow the project to continue and to attempt to stave off further enforcement proceedings by the first mortgagees.

There were a number of delays in finalizing the postponement with PTI, related in large part to certain matters pertaining to the subordinate mortgage on 122-124 Peter Street, originally in favour of B2B Trust, The Bank of Nova Scotia Trust Company, BDMC and Olympia (now in favour of BDMC and Olympia only). Those matters were ultimately resolved and the postponement to PTI in the amount of \$3.5 million was registered on title to the Property on February 1, 2019, and currently ranks in second position on title.

In consideration for allowing the registration of the PTI charge, the Trustee required and the Borrower agreed to register the BDMC Charge on 359 Richmond Street West as well (the parcel originally missing from the BDMC Charge). The BDMC Charge now ranks in third priority on all Properties.



Next Steps

We will provide additional updates as material developments arise regarding the Peter Richmond Project, including with respect to the foreclosure proceedings commenced on the 128 Peter Street Property.

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

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

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**



April 12, 2019

Dear Lender:

Re: Syndicated Mortgage Loan to The Julian Cole Development Corporation, subsequently acquired by Fortress Carlyle Peter Street Inc. (“Borrower”) pursuant to the loan agreement (“LH2 Loan”) in respect of the properties located at 122 and 124 Peter Street, Toronto, Ontario (the “Property”, and collectively with 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario, the “Peter Richmond Project”).

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

We are writing to you in our capacity as Trustee regarding the syndicated mortgage loan made by you as a syndicated mortgage lender (“**LH2 SMLs**”) on the Peter Richmond Project pursuant to the Loan Agreement between the applicable trustee, in trust for you as an LH2 SML, and the Borrower (“**LH2 Loan Agreement**”). A charge relating to the LH2 Loan was granted on the Property in favour of the following applicable trustees: Sanjay Pahuja, B2B Trust (“**B2B**”), The Bank of Nova Scotia Trust Company (“**Scotia**”), and Olympia Trust Company (“**Olympia**”), in trust for the LH2 SMLs (“**Original Charge**”).

The purpose of this notice is to advise the LH2 SMLs of the following:

- 1) the Borrower received a favourable judgement allowing it to acquire the 120 Peter Street property, the acquisition of which is contemplated in the current design of the Peter Richmond Project. This decision remains subject to appeal;
- 2) the Trustee received a Statement of Claim from a vendor take-back mortgagee seeking foreclosure of the 128 Peter Street Property. The Borrower is attempting to prevent the enforcement proceeding on this parcel from continuing by seeking replacement financing; and
- 3) in February, the Trustee postponed to financing from PTI Developments Inc. (“**PTI**”) in the amount of \$3.5 million, which funds were used to pay project costs. PTI ranks in second position on title and the LH2 SMLs now rank in fourth position on the Property.

There is no action required from the LH2 SMLs at this time.



Background

As you are aware, LH2 SMLs were asked to enter into an accession agreement to an agency agreement with Centro Mortgage Inc. (now BDMC) whereby BDMC was appointed as Agent on behalf of the relevant LH2 SMLs and was granted the authority to exercise all rights and powers of such LH2 SMLs under the LH2 Loan Agreement and related documents. In connection with entering into the accession agreement, LH2 SMLs also consented to the removal and replacement of Sanjay Pahuja with BDMC as the trustee and administrator under the LH2 Loan Agreement. The Trustee understands that most, if not all, of the LH2 SMLs forming part of the LH2 Loan signed such accession agreements and consents.

On June 27, 2014, Wenvor Technologies Inc. ("**Wenvor**"), the first mortgagee on the Property, sold the Property to the Borrower pursuant to power of sale proceedings. As part of the sale, on August 29, 2014, Wenvor was granted two vendor take-back mortgages. One of the vendor take-back mortgages was issued in the amount then outstanding under the LH2 Loan, being \$4,913,052. This mortgage was immediately transferred to B2B, Scotia, Olympia and BDMC, in trust for the LH2 SMLs ("**VTB Charge**"). The Original Charge was extinguished upon the closing of the sale transaction.

Overview of Current Status of Peter Richmond Project

The Peter Richmond Project currently consists of five parcels of land. The LH2 SMLs have a charge over one of the five parcels, being the 122-124 Peter Street Property. BDMC is also the trustee and administrator of another syndicated mortgage on the Peter Richmond Project in the amount of \$35,000,000, which mortgage has been granted over all five parcels and ranks in priority to the LH2 SMLs on its parcel of land ("**\$35M BDMC Mortgage**")¹. The proposed design contemplates the acquisition of a sixth, neighbouring parcel of land, at 120 Peter Street, Toronto, Ontario. The Borrower has had challenges related to the acquisition of 120 Peter Street; however, it recently received a favourable decision on a litigation matter involving the current owner of the 120 Peter Street property. This decision would allow the Borrower to acquire the 120 Peter Street property, which is contemplated in the proposed design of the Peter Richmond Project. However, the Borrower has advised that this decision is being appealed, which may further delay development of the Peter Richmond Project.

Development approvals are still needed for the Peter Richmond Project. The Borrower is seeking a Zoning By-law Amendment to permit the proposed development and has submitted an appeal of its Zoning By-law application to the Local Planning Appeal Tribunal ("**LPAT**"), based the City of Toronto not issuing a decision on the amendment application in the required time frame. A settlement was reached between the Borrower and the City to approve a 42 storey mixed use building, with the understanding that 120 Peter Street will be included in the development

¹ The \$35M BDMC Mortgage was granted over the 359 Richmond Street property on February 1, 2019 in connection with the execution of the PTI postponement discussed in this Notice. Prior to February 1, 2019, the \$35M BDMC Mortgage only had a charge on four of the five parcels comprising the Peter Richmond Project.



proposal and is owned by the Borrower. This settlement remains subject to ratification by the LPAT.

A pre-hearing is scheduled to be heard by the LPAT in May 2019 and a formal hearing is scheduled for August 2019. If the Borrower is able to present Minutes of Settlement or a favourable decision with respect to the 120 Peter Street litigation at the August 2019 hearing, the Trustee understands that the remaining development approvals may be granted at that time. If the Borrower is not able to present Minutes of Settlement or a favourable decision at such hearing, the LPAT is likely to take time to issue its decision with respect to development approvals. The Project cannot be advanced until it obtains all the required development approvals.

Status of First-Ranking Vendor Take-Back Mortgages

There are separate first-ranking vendor take-back mortgages on each of the five parcels of land comprising the Peter Richmond Project. Each of these mortgages are either maturing in the near term or have already matured. The Borrower has advised the Trustee that it is in the process of negotiating potential bridge financing that would provide sufficient funds to pay out each of the first mortgagees and to allow the Peter Richmond Project to continue for up to six months while the Borrower seeks longer term replacement financing. The Borrower advised the Trustee that it had been continuing to keep the current first-ranking mortgagees apprised of its refinancing efforts, in an effort to prevent them from commencing enforcement proceedings while the bridge financing arrangements were being negotiated. However, on March 14, 2019, the Trustee received a Statement of Claim from one of the vendor take-back mortgagees, seeking foreclosure of the 128 Peter Street property. The Trustee filed a statutory form to convert the foreclosure proceedings to a power of sale pursuant to its rights as a mortgagee under the \$35M BDMC Mortgage; however, in the event that this parcel is foreclosed on or sold it would jeopardize the Peter Richmond Project, and ultimately the LH2 SMLs' recoveries, as this parcel forms an integral part of the land assembly that is the Peter Richmond Project. As described above, the Borrower is seeking replacement financing in an effort to prevent the disposition of the 128 Peter Street property.

PTI Postponement

In early June 2018, the Borrower asked B2B, Scotia, Olympia, and the Trustee to agree to postpone to a \$5 million charge in favour of PTI with respect to a \$5 million commitment to the Borrower made by PTI in October 2017. PTI is a related entity to the Borrower. The Trustee understands that at the time of the request, certain advances had already been made with respect to the commitment, and that additional funds were advanced during the second half of 2018 in good faith pending the outcome of the negotiations with respect to the proposed postponement.

The Trustee understands that the PTI funds were to be used to pay project costs. The Trustee negotiated the postponement to a charge in favour of PTI to a maximum of \$3.5 million (\$1.5 million less than the original commitment) and also negotiated a lower interest rate on the loan than originally requested by PTI.

In its review of the proposed postponement, the Trustee asked for documentation evidencing the



survival of the LH2 Loan Agreement, agency agreements and other documentation following the extinguishment of the Original Charge and the issuance of the VTB Charge. The Trustee was not provided with sufficient documentation evidencing that such documents survived the 2014 transaction. Therefore, the Trustee proceeded on the basis that the VTB Charge terms governed the obligations to the LH2 SMLs.

Following its review of the relevant documentation, including the project budget, the Trustee agreed that it was in the best interest of the all syndicated mortgage lenders on the Peter Richmond Project, including the LH2 SMLs to postpone to the new PTI charge to allow the Peter Richmond Project to continue and to allow necessary project costs to be paid at a lower cost than would be offered by alternative third party financing sources. Further, PTI has funded and continues to fund project costs in excess of the \$3.5 million charge, in order to allow the project to continue and to attempt to stave off further enforcement proceedings by the first mortgagees. However, there were a number of delays in finalizing the postponement with PTI.

In late August 2018, Scotia and B2B, the applicable trustee for 7 LH2 SMLs on the Peter Richmond Project, informed the Borrower and the Trustee that they would not sign the postponement on behalf of their investors without explicit consent from each of the investors. After attempts by the Borrower to reach these investors and extended negotiations between the Borrower and the Trustee regarding potential alternative solutions, the Borrower proposed to pay out the amounts due to these 7 LH2 SMLs in order to allow the postponement to proceed for the benefit of the remaining SMLs. Based on the documentation available to the Trustee at the time, the Trustee agreed with the proposal to pay out these 7 LH2 SMLs. The Borrower paid these amounts in late December, 2018 and the rights under the VTB Charge were transferred into Olympia's and BDMC's names only.

In late December 2018, Olympia expressed that it could not sign the postponement without the express consent of 13 of its LH2 SMLs, as it did not have sufficient documentation on file to do so. At that time, following multiple requests by the Trustee to former representatives of BDMC, the Trustee was presented with documentation evidencing that the terms and conditions of the LH2 Loan Agreement and related documents ultimately did survive the extinguishment of the Original Charge and were extended to the VTB Charge, and that such documents provided sufficient authority for BDMC and Olympia to execute the requested postponement. This is contrary to the information originally provided to the Trustee in or around July, 2018. In addition, this document provided clarity that the term of the VTB Charge was for 3 years from the date of registration, plus the Borrower's option to extend for an additional 1 year. Therefore, although the LH2 Loan maturity date was extended as far as August 29, 2018, it has now matured.

The postponement to PTI in the amount of \$3.5 million was registered on title to the Property on February 1, 2019, and currently ranks in second position on title.



Next Steps

We will provide additional updates as material developments arise on this Property or otherwise affecting the Peter Richmond Project, including with respect to the foreclosure proceedings commenced on the 128 Peter Street Property.

Should you have any questions of the Trustee, our contact information is below (if you are contacting us by phone or email, please reference **Peter Richmond Project – LH2 Investors**).

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

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:
July 2019 Investor Notices



July 19, 2019

Dear Lender:

Re: Syndicated Mortgage Loan made to Fortress Carlyle Peter St. Inc. (“Borrower”) pursuant to the loan agreement dated November 3, 2014 in respect of properties located at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario, (“Peter Richmond Project”).

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. (“Trustee”) was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. under a court order issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*, as amended.

We are writing to you in our capacity as Trustee regarding the Peter Richmond Project and further to the update provided in the Trustee’s seventh report to court dated May 10, 2019.

As was previously advised, there are different senior lenders with priority mortgages on each of the five parcels of land which comprise the Peter Richmond Project. Two of the five priority mortgages have been extended, while the remaining three priority mortgages have matured. In March, 2019 Rathcliffe Properties Limited (“Rathcliffe”), the first ranking vendor take-back mortgagee on the 128 Peter Street property (“128 Peter”), issued a Statement of Claim seeking foreclosure on the property. In response to the Statement of Claim, the Trustee filed a statutory form requesting to convert the foreclosure proceedings to a sale proceeding in order to provide an opportunity for a better recovery for the lenders.

On July 3, 2019, Rathcliffe issued a Notice of Sale Under Mortgage (“Notice of Sale”). Rathcliffe has taken the position that the Borrower is in default under its mortgage and unless the full amount of the outstanding debt totaling \$4,873,075 (as at July 3, 2019) is paid in full on or before August 9, 2019, Rathcliffe will be in a position to list 128 Peter for sale. A copy of the Notice of Sale is attached to this notice.

Should a sale of 128 Peter be completed, and the proceeds of such sale be insufficient to pay all amounts owing by the Borrower to the priority lenders on this parcel, there is a risk that you may not recover the sums that you advanced to the Borrower.

A sale of 128 Peter would likely jeopardize the viability of the Peter Richmond Project, as the Borrower has advised that this parcel is an integral part of the land assembly. The Borrower further advised that without 128 Peter, the value of the land assembly may be significantly impaired. The Trustee is in discussions with the Borrower regarding its options on how to deal with the current situation including the Borrower’s efforts to find replacement financing or other potential solutions.



Next Steps

We will provide an update as additional information becomes available in respect of the Peter Richmond Project.

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

Email: Info@FAANMortgageAdmin.com

Toll-Free Telephone Number: **1-833-495-3338**

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**



July 19, 2019

Dear Lender:

Re: Syndicated Mortgage Loan made to The Julian Cole Development Corporation, subsequently acquired by Fortress Carlyle Peter Street Inc. ("Borrower") pursuant to the loan agreement ("LH2 Loan") in respect of the properties located at 122 and 124 Peter Street, Toronto Ontario (collectively with 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario, the "Peter Richmond Project").

As you are aware, on April 20, 2018, FAAN Mortgage Administrators Inc. ("**Trustee**") was appointed as trustee over the assets, property and undertakings of Building & Development Mortgages Canada Inc. under a court order issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*, as amended.

We are writing to you in our capacity as Trustee regarding the Peter Richmond Project and further to the update provided in the Trustee's seventh report to court dated May 10, 2019.

As was previously advised, there are different senior lenders with priority mortgages on each of the five parcels of land which comprise the Peter Richmond Project. Two of the five priority mortgages have been extended, while the remaining three priority mortgages have matured. In March, 2019 Rathcliffe Properties Limited ("**Rathcliffe**"), the first ranking vendor take-back mortgagee on the 128 Peter Street property ("**128 Peter**"), issued a Statement of Claim seeking foreclosure on the property. In response to the Statement of Claim, the Trustee filed a statutory form requesting to convert the foreclosure proceedings to a sale proceeding in order to provide an opportunity for a better recovery for the lenders.

On July 3, 2019, Rathcliffe issued a Notice of Sale Under Mortgage ("**Notice of Sale**"). Rathcliffe has taken the position that the Borrower is in default under its mortgage and unless the full amount of the outstanding debt totaling \$4,873,075 (as at July 3, 2019) is paid in full on or before August 9, 2019, Rathcliffe will be in a position to list 128 Peter for sale. A copy of the Notice of Sale is attached to this notice.

The Borrower has advised that 128 Peter is an integral part of the land assembly, and without this parcel, the value of the land assembly may be significantly impaired. Therefore, a sale of 128 Peter would likely jeopardize the viability of the Peter Richmond Project and, ultimately, the recoveries to you as a syndicated mortgage lender pursuant to the LH2 Loan. The Trustee is in discussions with the Borrower regarding its options on how to deal with the current situation including the Borrower's efforts to find replacement financing or other potential solutions.



Next Steps

We will provide an update as additional information becomes available in respect of the Peter Richmond Project.

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

Email: Info@FAANMortgageAdmin.com

Toll-Free Telephone Number: **1-833-495-3338**

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 6:
Peter Richmond Process Letter



October 30, 2019



Re: **Call for the Submission of Binding Offers for a Transaction involving the Peter Richmond Syndicated Mortgage Loans**

As you may know, on April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as trustee (the “**Trustee**”) over all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*. Subject to and in accordance with the terms of the Appointment Order, the Trustee is authorized to market, and to enter into one or more transactions to, among other things, sell, convey, transfer, assign, or settle, the Peter Richmond Syndicated Mortgage Loans (as defined on Schedule “A” attached hereto) (collectively, one or more of the aforementioned transactions, a “**Transaction**”).

Since its appointment, the Trustee has been engaged in discussions with numerous stakeholders regarding the marketing, conveyance, transfer, assignment, sale and/or settlement of BDMC’s interests in various real estate development projects, including discussions with interested parties regarding a possible Transaction for the Peter Richmond Syndicated Mortgage Loans. The Trustee is now writing to inform you that it is hereby requesting the submission of binding offers (each a “**Binding Offer**”) from those parties that have previously expressed an interest in entering into a Transaction in respect of the Peter Richmond Syndicated Mortgage Loans with the Trustee.

All Binding Offers must be received by the Trustee by **5:00 p.m. ET on November 13, 2019** (or such later date as advised by the Trustee in its sole discretion, the “**Offer Deadline**”) at one of the addresses listed below. **The submission of a Binding Offer by the Offer Deadline shall constitute a binding and irrevocable offer from you to enter into a Transaction with the Trustee in respect of the Peter Richmond Syndicated Mortgage Loans in accordance with the terms thereof.** Each Binding Offer should reflect your best and final offer and you should assume that you will not be given an opportunity to make another offer, or renegotiate, or improve any terms of your Binding Offer.

You may request additional information relating to the Peter Richmond Syndicated Mortgage Loans (including the documentation relating thereto) and the real estate development project in respect of which the Peter Richmond Syndicated Mortgage Loans were made prior to the Offer Deadline by making such a request to the Trustee at the contact information provided at the end



of this letter. The Trustee reserves the right to require that any party enter into a confidentiality and non-disclosure agreement with the Trustee prior to the Trustee disclosing any such information or documentation.

In order for a Binding Offer to be deemed a qualified offer (a “**Qualified Offer**”), it must:

1. **Price:** Identify the cash amount and any other consideration to be paid to the Trustee in connection with the Transaction and detail all material assumptions used in the calculation thereof.
2. **Financing:** Not be conditional upon obtaining financing and shall include evidence that you have secured adequate and irrevocable financing to complete the Transaction.
3. **Authorization:** Not be conditional upon the receipt of any internal approvals and shall include confirmation of all required organizational approvals and consents required to consummate a Transaction, including any approvals of senior officers, the board(s) of directors and/or any relevant investment or other committees.
4. **Form:** Be in the form of agreement provided by the Trustee. Forms of Transaction documentation acceptable to the Trustee will be made available by the Trustee upon request at the contact information provided at the end of this letter.

The Trustee shall evaluate all Binding Offers received by the Offer Deadline. As part of its evaluation, the Trustee may, in its sole discretion, elect to negotiate the terms of any such Binding Offer. Following such evaluation, the Trustee may, in its sole discretion, (i) deem any Binding Offer to be a Qualified Offer and, subject to any applicable investor feedback and to obtaining the approval of the Court, accept any such Qualified Offer, or (ii) reject all Binding Offers and Qualified Offers and terminate this Transaction solicitation process.

The Trustee will not have any liability or obligation whatsoever in connection with this Transaction solicitation process, including, but not limited to, as a result of the rejection of any or all of the Binding Offers or Qualified Offers or the acceptance of any Binding Offer or Qualified Offer. No party will be entitled, for any reason, to reimbursement for any costs or expenses incurred in reliance upon the terms set forth in this letter. The Trustee reserves the right to amend this letter and the terms of the Transaction solicitation process set forth herein at any time. The Trustee further reserves the right to amend any information or documentation which has been made available to any party in connection with this Transaction solicitation process, whether by way of addition, deletion, amendment or otherwise. In submitting a Binding Offer, you acknowledge that you are relying solely on your own investigation and evaluation of the Peter Richmond Syndicated Mortgage Loans and the related real properties and real estate development project. The Trustee expressly disclaims any and all liability for any representations, warranties or statements contained in this letter or in any other written materials furnished or information orally transmitted to any party, except only for those representations and warranties made in any definitive agreement executed by the Trustee to consummate a Transaction.



Please send all Binding Offers by email or personal delivery to one of the addresses provided below:

1. if by email: shelby@faanmortgageadmin.com, subject line **“Peter Richmond Transaction Process”**
2. if by mail, to the following address:

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc.
920-20 Adelaide Street East
Toronto, ON M5C 2T6

Attention: **“Shelby Draper - Peter Richmond Transaction Process”**

For additional information or to request forms of Transaction documentation, please contact the Trustee at:

Email: Info@FAANMortgageAdmin.com
Local Telephone Number: **416-606-3338**
Toll-Free Telephone Number: **1-833-495-3338**

Yours very truly,

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



SCHEDULE A

1. BDMC's right, title and interest in and to that certain loan agreement between Centro Mortgage Inc. (as predecessor to BDMC) and Fortress Carlyle Peter St. Inc. dated November 3, 2014, as amended (the "**BDMC Loan**") and any and all related security, including, without limitation, the charge granted on each of the following properties in the amount of \$35,000,000, as amended, in favour of BDMC and Olympia Trust Company, in trust, securing the BDMC Loan:
 - a. 122 - 124 Peter Street, Toronto, ON, M5V 2G7, PIN 21412-0139 (LT) ("**122 Peter**"),
 - b. 126 Peter Street, Toronto, ON, M5V 2G7, PIN 21412-0140 (LT),
 - c. 128 Peter Street, Toronto, ON, M5V 2G7, PIN 21412-0141(LT),
 - d. 357 Richmond Street W, Toronto, ON, M5V 2L7, PIN 21412-0142 (LT), and
 - e. 359 Richmond Street W, Toronto, ON, M5V 1X3, PIN 21412-0143 (LT),

and the right to future security against the property located at 120 Peter Street, Toronto, ON, M5V 2G7, PIN 21412-0138 (LT) as set forth in the BDMC Loan, and

2. the syndicated mortgage loan made pursuant to various loan agreements with The Julian Cole Development Corporation (the "**LH2 Loan**") and any and all related security, including, without limitation, the charge granted on 122 Peter in the amount of \$4,913,052 in favour of BDMC and Olympia Trust Company (as assigned), in trust, relating to LH2 Loan

(collectively, (1) and (2) above, the "**Peter Richmond Syndicated Mortgage Loans**").

Appendix 7:
January 2020 Investor Notice



January 17, 2020

Dear Lender:

Re: Syndicated Mortgage Loans made to Fortress Carlyle Peter St. Inc. (the “Borrower”) in respect of properties located at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario (“Properties”) and 120 Peter Street, Toronto, Ontario (collectively, the “Peter Richmond Project”)

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 issued pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006* and section 101 of the *Courts of Justice Act*. By order of the Ontario Superior Court of Justice (Commercial List) (“Court”) dated June 26, 2018, Chaitons LLP was appointed as representative counsel to persons who made loans through BDMC (“Representative Counsel”). Notices have previously been sent to you regarding the appointment of FAAN Mortgage as Trustee and of Chaitons LLP as Representative Counsel.

We are writing to you in our capacity as Trustee regarding the Peter Richmond Project and further to the notice issued July 19, 2019 (“July Notice”) and the update provided in the Trustee’s thirteenth report to court dated November 22, 2019 (“Thirteenth Report”).

The purpose of this notice is to advise you that, for the reasons set out herein, the Trustee intends to attend at Court on January 30, 2020 in order to seek Court approval of the assignment of the right, title and interest in and to the indebtedness owed by the Borrower to BDMC under the BDMC Loans (as defined and detailed below) and the related security documentation to Carlyle Communities Inc. (the “Assignee”) in exchange for a cash payment (“Assignment Offer”). The Trustee understands that the Assignee is related to Berkley Carlyle (Peter Street) Inc., a shareholder of the Borrower and the party that predominantly manages the Peter Richmond Project.

Background

The Borrower is indebted to BDMC pursuant to two separate loan facilities: (i) a loan agreement dated November 3, 2014 (the “PRLA Loan”) and (ii) a syndicated mortgage loan advanced to The Julian Cole Development Corporation pursuant to various loan agreements that have been assumed by the Borrower (collectively, the “LH2 Loan”). BDMC acts as agent in connection with the LH2 Loan pursuant to various agency agreements and accession agreements entered into with the individual lenders under the LH2 Loan.

The syndicated mortgage lenders that advanced funds to the Borrower in respect of the PRLA Loan (the “PRLA SMLs”) hold a charge registered on title in third position on the Properties and are owed, as at December 31, 2019, approximately \$32.9 million (comprised of approximately \$27.4 million in principal and approximately \$5.5 million in accrued interest).



The Borrower made interest payments on the PRLA Loan of approximately \$2.9 million through to July, 2017 (“**PRLA Paid Interest**”) after which interest began, and continues, to accrue¹.

The syndicated mortgage lenders that advanced funds in respect of the LH2 Loan (the “**LH2 SMLs**”) are owed, as at December 31, 2019, approximately \$5.8 million (comprised of approximately \$4.5 million in principal and approximately \$1.3 million in accrued interest). The Borrower made interest payments on the LH2 Loan of approximately \$1.1 million through to May, 2017 (“**LH2 Paid Interest**”) after which interest began, and continues, to accrue². It should be noted that: (i) the LH2 SMLs only have a charge registered on title against the properties located at 122-124 Peter Street (i.e. not against all of the Properties) and (ii) the charge registered on title to 122-124 Peter Street in favour of the LH2 SMLs ranks subordinate to the charge registered on title to those properties in favour of the PRLA SMLs.

The PRLA Loan and the LH2 Loan (collectively, the “**BDMC Loans**”) matured in January 2019 and August 2018, respectively, and are now due.

At the time of the Trustee’s appointment, the Peter Richmond Project included five parcels of land (i.e. only the Properties and not the parcel of land located at 120 Peter Street), each of which was acquired separately by the Borrower. As such, there are different senior lenders with first priority mortgages registered on title to each parcel. In addition to the first priority mortgages, there is a second ranking charge registered on title to the Properties in favour of PTI Developments Inc. (“**PTI**”), an entity that the Trustee understands is related to the Borrower. To the best of the Trustee’s knowledge, a summary of the amounts that appear to be owing in respect of the mortgages registered on title to the Properties in priority to the BDMC Loans as at January 31, 2020 is as follows:

Property	Mortgagee	Amount Owing
122-124 Peter Street	Wenvor Technologies Inc.	\$5,754,392
126 Peter Street (“ 126 Peter ”)	Toopbin Management Ltd. (“ Toopbin ”)	\$2,143,530
128 Peter Street (“ 128 Peter ”)	Windsor Capital Corporation (“ Windsor ”)	\$5,150,369
357 Richmond Street	Shamir Jamal	\$2,113,645
359 Richmond Street	D. Lindsay and B. McIntosh	\$3,406,917
All Properties	PTI Developments ³	\$4,161,488
		\$22,730,341

The first and second priority mortgages noted above are the only known indebtedness registered on title to the Properties that rank in priority to the BDMC Loans. Each of the first mortgages appear to be in default.

¹ Per diem interest of \$6,089.93 on the PRLA Loan continues to accrue.

² Per diem interest of \$1,006.08 on the LH2 Loan continues to accrue.

Overview of the Current Status of the Peter Richmond Project

120 Peter Street

As detailed in the Thirteenth Report, the proposed design of the Peter Richmond Project contemplated the acquisition of an additional and final neighbouring parcel of land located at 120 Peter Street (“**120 Peter**”). Following a decision in favour of the Borrower by the Court of Appeal of Ontario on November 4, 2019, after extensive litigation between the Borrower and the then owner of 120 Peter regarding the Borrower’s right to acquire that property, the Borrower completed the purchase of 120 Peter. The PRLA Loan provides that BDMC is entitled to a mortgage on 120 Peter in respect of such loan once it has been acquired by the Borrower.

Windsor, who provided the funding to the Borrower to close this transaction, holds a first priority mortgage registered on title to 120 Peter. Windsor’s charge is in the amount of \$8 million, however the Trustee understands that the principal amount advanced by Windsor to finance the purchase of 120 Peter was approximately \$5.2 million.

Status of Development Approvals

Development approvals are still required for the Peter Richmond Project. The Borrower is seeking a Zoning By-Law Amendment to permit the proposed development and has submitted an appeal of its Zoning By-Law application to the Local Planning Appeal Tribunal (“**LPAT**”) based on the City of Toronto (“**City**”) not issuing a decision on the amendment application in the required time frame. A settlement was reached between the Borrower and the City to approve a 42 storey mixed use building, with the understanding that 120 Peter will be included in the development and is owned by the Borrower. The settlement remains subject to ratification by the LPAT. The LPAT hearing was held on January 7, 2020 and the Trustee understands from the Borrower that a decision is expected to be released within 4-6 months.

Should the Borrower obtain the required Zoning By-Law approval, it will seek site plan approval. The Peter Richmond Project can only be advanced once the Borrower obtains all required development approvals.

Should the LPAT decision be favourable, the Assignee has provided a five-year timeline to completion of the Peter Richmond Project, as follows:

- Sales and Marketing to commence by late 2020;
- Site Plan approval to be achieved in the Summer of 2021;
- Site servicing to commence in the Winter of 2021;



- Construction to commence in the Winter of 2022 and continue through the end of 2024; and
- Condominium registration to take place in the Winter of 2025.

The challenges encountered by the Borrower in acquiring 120 Peter Street coupled with the delay in obtaining the required development approvals have resulted in significant delays to the Peter Richmond Project.

Status of Enforcement Actions

As was advised in the July Notice, Rathcliffe Properties Limited (“**Rathcliffe**”), the first ranking vendor take-back (“**VTB**”) mortgagee on 128 Peter, issued a Notice of Sale Under Mortgage and took the position that unless the full amount under its mortgage was repaid in full on or before August 2019, it would be in a position to list 128 Peter for sale. In August, 2019, the Borrower secured replacement financing for 128 Peter from PTI. The Trustee understands that PTI took assignment of Rathcliffe’s first ranking VTB mortgage on 128 Peter and subsequently transferred it to Windsor. The Trustee was notified on October 23, 2019 that the Rathcliffe power of sale proceeding was discontinued.

On September 23, 2019, Toopbin, the first ranking VTB mortgagee on 126 Peter, issued a demand letter to the Borrower. The letter demanded payment of its mortgage, which had matured on March 1, 2019, and advised that failure to comply with the terms of its demand would result in steps being taken to enforce its remedies under its mortgage. The Trustee is not aware of any further steps taken by Toopbin.

Solicitation Process and Offers Received

In light of the maturity of several of the priority mortgages, the significant amount owing under the BDMC Loans and the protracted timeframe for completion of the project, the Trustee has been engaged in discussions with the Borrower and other interested parties regarding a potential transaction involving the BDMC Loans. On October 30, 2019, the Trustee formalized a solicitation process in order to attempt to advance the best possible transaction in the circumstances for lenders under the BDMC Loans on the Peter Richmond Project (“**Solicitation Process**”). Notification of the Solicitation Process was sent to parties who had previously expressed interest to the Trustee in the Peter Richmond Project. Offers were due on November 13, 2019, which was subsequently extended by the Trustee to November 15, 2019 (“**Offer Deadline**”). In addition, the Trustee circulated forms of draft transaction documents to interested parties before the Offer Deadline.

The Trustee received multiple offers on the Offer Deadline. As is customary in these types of processes, the Trustee engaged in discussions with each party that submitted an offer. These discussions resulted in the Assignment Offer. The Trustee, in consultation with and with the support of Representative Counsel, has determined that, in the circumstances, the



Assignment Offer is the offer that maximizes recoveries under the BDMC Loans. In particular, the projected proceeds from the Assignment Offer result in a very substantial recovery on the combined principal owing to the syndicated mortgage lenders in respect of the BDMC Loans. As explained above, the principal amount owing on the BDMC Loans is approximately \$31.9 million and approximately \$4 million has already been received by the syndicated mortgage lenders in respect of the BDMC Loans in paid interest.

Next Steps

Given the commercially sensitive nature of the Assignment Offer, the competitive Solicitation Process and other considerations, it is the Trustee's and Representative Counsel's joint view that additional information (including the quantum of the Assignment Offer) should not be made public at this time. Given that the information currently provided to lenders is limited, the Trustee will not be seeking advance lender feedback regarding the Assignment Offer prior to attending Court to seek its approval.

Instead, the Trustee has provided Representative Counsel with all relevant financial and other information with respect to the offers received and Representative Counsel agrees with the Trustee that moving forward to seek Court approval of the Assignment Offer is in the best interests of the syndicated mortgage lenders in the circumstances.

The Trustee intends to file motion materials with the Court, including a comprehensive report regarding the Peter Richmond Project, in order to seek approval of the Assignment Offer on January 30, 2020 (the "**Approval Motion**"). Should the Approval Motion be successful, the Trustee would then seek Court approval of the allocation of the proceeds of the Assignment Offer amongst the PRLA SMLs and the LH2 SMLs at a separate distribution hearing to be held as soon as practicable after the closing of the transaction (i.e. after January 30, 2020) ("**Distribution Hearing**"). The relevant information relating to any such allocation of proceeds of the Assignment Offer amongst the PRLA SMLs and the LH2 SMLs will be set out in the motion materials filed by the Trustee with respect to the Distribution Hearing.

Once the Court materials in connection with the Approval Motion are filed, the Trustee will send you a further notice confirming same. The Court materials will be posted on the Trustee's website. At that time, you should review the Court materials, and, if desired, arrange to obtain independent legal advice regarding these matters. You can also consult with Chaitons LLP, in its capacity as Representative Counsel. Representative Counsel's contact information is below. Please note any acceptance by the Trustee of the Assignment Offer will not be binding on the Trustee, the PRLA SMLs or the LH2 SMLs until after Court approval.



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

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

Should you wish to contact Representative Counsel, their contact information is below (if you are contacting Representative Counsel by phone or email, please reference the **Peter Richmond 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 8:

Peter Richmond Offer and Peter Richmond Assignment Agreement

ASSIGNMENT OFFER

DATE: December 17th, 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

(collectively, the “Assignor”)

Carlyle Communities Inc. (the “Assignee”), hereby presents this offer (the “Offer”) to take assignment of the indebtedness (the “Indebtedness”) owed by Fortress Carlyle Peter St. Inc. (the “Borrower”) to Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust (“BDMC”) and Olympia Trust Company (“Olympia”), in trust for certain syndicated mortgage lenders, pursuant to (i) a loan agreement between the Borrower and BDMC dated as of November 3, 2014 (as amended, the “BDMC Loan Agreement”), (ii) the syndicated mortgage loan made to The Julian Cole Development Corporation pursuant to various loan agreements (collectively, the “LH2 Loan Agreement” and together with the BDMC Loan Agreement, the “Loan Agreements”), including those listed on Schedule “A” to the enclosed Assignment Agreement, which LH2 Loan Agreement and related security were assumed by the Borrower on August 29, 2014 pursuant to the terms of an agreement of purchase and sale whereby the Borrower acquired the relevant property and granted a charge to Wenvor Technologies Inc., which charge was assigned to the Assignor, and for which BDMC acts as agent in connection with such LH2 Loan Agreement pursuant to various Agency Agreements and Accession Agreements entered into with the individual lenders under the LH2 Loan Agreement, including those listed on Schedule “B” to the enclosed Assignment Agreement, and (iii) all related security documentation with respect to the BDMC Loan Agreement and the LH2 Loan Agreement (the “Security”), on the terms and conditions set forth in the Assignment Agreement enclosed herewith. BDMC entered into the BDMC Loan Agreement on behalf of a syndicate of individual lenders, and Olympia acts as trustee for a subset of such lenders who have self-directed accounts with Olympia.

The Assignee understands that FAAN Mortgage Administrators Inc. was appointed as trustee of BDMC (the “Trustee”) pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated April 20, 2018 (the “Appointment Order”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC, market any or all of the Property (in this instance, as defined in the Appointment Order) and, with the approval of the Court, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, including without limitation, the Indebtedness and related Security. Any actions involving BDMC with respect to this Offer shall be directed to and executed by the Trustee.

The Assignee further understands that, as this Offer represents a transfer, conveyance, assignment of all of BDMC’s and Olympia’s rights and a release of all of BDMC’s and Olympia’s obligations pursuant to the Loan Agreements and related Security at a discount, the Trustee and Olympia intend to reach out to the individual lenders forming the syndicate under each of the Loan Agreements, or their proxy, with respect to this Offer. As such, the Assignee acknowledges that

seeking feedback with respect to the Offer from the individual lenders forming the syndicate under each of the Loan Agreements, or their proxy, is a condition precedent to the ability of the Trustee to exercise its discretion to execute the Assignment Agreement enclosed herewith. Therefore, the Assignee hereby agrees that this Offer, and its signature on the Assignment Agreement enclosed herewith, shall be irrevocable by the Assignee and shall remain open for acceptance by the Trustee, on behalf of BDMC, and Olympia, by providing counter-signed copies of the Assignment Agreement enclosed herewith to the Assignee until 5:00 p.m. Toronto time on January 31st, 2020 (or such later date as may be agreed by the Assignee in writing). Failure to accept the Offer by each of the Trustee, on behalf of BDMC, and Olympia, by such date shall result in this Offer being deemed to be revoked. In the event that this Offer is rejected or revoked as outlined above, the Indebtedness, the Loan Agreements, and the related Security shall remain unaffected and shall continue in favour of BDMC and Olympia in accordance with their terms.

In connection with the offer submitted on November 15th, 2019, the Assignee provided a cash Deposit to the Trustee in the amount of C\$ [REDACTED] representing approximately [REDACTED]% of the Assignment Price (each as defined in the Assignment Agreement). The Assignee hereby agrees that the Deposit shall not be refundable under any circumstances other than as set out in Section 14 of the Assignment Agreement. Upon the occurrence of any circumstance set out in Section 14 of the Assignment Agreement or if the Assignment Agreement is not executed by the Trustee and Olympia on or before 5:00 pm on January 31, 2020 (or such later date as may be agreed by the Assignee in writing), the Deposit shall forthwith upon written demand by the Assignee or the Assignee's solicitor be refunded to the Assignee's solicitor, in trust, and this Offer and the transactions contemplated by the Assignment Agreement shall be deemed to be revoked and/or terminated, as applicable.


The Assignee has also provided written confirmation of financing evidencing that it has secured sufficient financing to pay the Assignment Price together with the submission of this Offer.

This Offer replaces and supersedes any and all previous offers submitted by the Assignee which are now null and void. In the event that this Offer is rejected or revoked as outlined above, the BDMC Loan Agreement and the LH2 Loan Agreement shall remain unaffected and shall continue and survive in full force and effect in accordance with its terms.

The Assignee looks forward to your response.

Carlyle Communities Inc.

By: _____


Name: Narayn Mansour
Title: President

ASSIGNMENT AGREEMENT

THIS AGREEMENT is made as of the 17th day of December, 2019

BETWEEN:

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

- and -

OLYMPIA TRUST COMPANY

(collectively, the “Assignor”)

- and -

CARLYLE COMMUNITIES INC.

(the “Assignee”)

RECITALS:

- A. Fortress Carlyle Peter St. Inc. (the “**Borrower**”) is indebted to Building & Development Mortgages Canada Inc. (formerly Centro Mortgage Inc.) (“**BDMC**”) in the total aggregate amount of principal and accrued interest of C\$37,917,799.59 as at the close of business on October 31, 2019, exclusive of allowable penalties, fees, expenses, costs and other charges in connection therewith (collectively, the “**Indebtedness**”) pursuant to (i) a loan agreement between the Borrower and BDMC dated as of November 3, 2014 (as amended, the “**BDMC Loan Agreement**”), and (ii) the syndicated mortgage loan made to The Julian Cole Development Corporation pursuant to various loan agreements (collectively, the “**LH2 Loan Agreement**” and together with the BDMC Loan Agreement, the “**Loan Agreements**”), including those listed on Schedule “A” hereto, which LH2 Loan Agreement and related security were assumed by the Borrower on August 29, 2014 pursuant to the terms of an agreement of purchase and sale whereby the Borrower acquired the relevant property and granted a charge to Wenvor Technologies Inc., which charge was assigned to the Assignor, and for which BDMC acts as agent for the applicable individual lenders in connection with such LH2 Loan Agreement pursuant to various Agency Agreements and Accession Agreements entered into with the individual lenders under the LH2 Loan Agreement, including those listed on Schedule “B” hereto (the “**Agency Agreement**”).
- B. 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 (Commercial List) (the “**Court**”) under section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, as amended, and section 101 of the *Courts of Justice Act*, as amended, to, among other things, administer the loans previously entered into by BDMC.

- C. The Indebtedness under the BDMC Loan Agreement was incurred by the Borrower in connection with a proposed 46-storey mixed use development to be constructed at properties located at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario, which lands, for greater certainty, are represented by the following PINs: 21412-0139 (LT), 21412-0140 (LT), 21412-0141 (LT), 21412-0142 (LT), and 21412-0143 (LT), respectively (collectively, the “**Property**”, and such development, the “**Project**”).
- D. In connection with the BDMC Loan Agreement, BDMC and Olympia were granted a charge on title to the Properties as evidenced by Charge No. AT5068868 registered on February 1, 2019 in the principal amount of \$35,000,000 and Charge No. AT3945104 registered on July 14, 2015 in the original principal amount of \$6,400,000 and most recently amended by Instrument No. AT4377721 registered on October 21, 2016 to increase the principal amount to \$35,000,000 and as more particularly set out on Schedule “C” hereto (collectively, the “**BDMC Charge**”).
- E. In connection with the BDMC Loan Agreement, the Borrower delivered certain other agreements, instruments, documents, and a General Security Agreement to BDMC and Olympia, and a related registration has been made pursuant to Ontario’s *Personal Property Security Act* (the “**PPSA**”) to evidence and secure payment of the obligations owing under the BDMC Loan Agreement, including, but not limited to, those items more particularly set out on Schedule “D” hereto (the “**BDMC Personal Property Security**”).
- F. In connection with the LH2 Loan Agreement, BDMC holds a charge on title (as transferee from Wenvor Technologies Inc.) to 122-124 Peter Street registered as Charge No. AT3677585 in the principal amount of \$4,913,052, which charge is more particularly set out on Schedule “E” hereto (the “**LH2 Charge**” and together with the BDMC Charge, the “**Charges**”).
- G. The Trustee commenced a process soliciting offers for one or more transactions relating to the BDMC Loan Agreement and the LH2 Loan Agreement, in response to which the Assignee has agreed to take assignment of the Assignor’s right, title and interest in and to the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security in exchange for a cash payment of [REDACTED] to the Trustee (the “**Assignment Price**”) in accordance with the terms and conditions of this Assignment Agreement.
- H. The Assignor has agreed to assign and transfer its right, title and interest in and to the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security upon payment of the Assignment Price by the Assignee to the Assignor and in accordance with the terms and conditions of this Assignment Agreement.

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

1. The Assignee hereby agrees to pay to the Trustee, on behalf of BDMC and Olympia, on

the Effective Date (as defined below), a lump-sum payment in the amount of the Assignment Price (less the Deposit (as defined below)), which payment shall be held in trust by the Trustee and shall not be released until the transaction contemplated by this Assignment Agreement has been completed on the Closing Date (as defined below). The Assignee agrees that it shall waive, and shall not assert, any right of set-off or any other defense to the payment of the Assignment Price and, if applicable, the Late Payment Fee (as defined below).

2. In the event that the Assignee fails to pay any portion of the Assignment Price within fourteen (14) calendar days after the Effective Date, the Assignee shall pay forthwith to the Trustee, on behalf of BDMC, a late payment fee equal to ten per cent (10%) of the unpaid portion of the Assignment Price (the “**Late Payment Fee**”).
3. On the Closing Date, the Assignor hereby sells, assigns, transfers, sets over, delivers and conveys to the Assignee all of the Assignor’s current and future right, title and interest (both legal and equitable), powers and privileges and other benefits of any nature whatsoever in and to the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security now owing, together with all monies that may hereafter become due or owing in respect of the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security, including, without limitation, all rights to receive principal, interest, fees, expenses, damages, penalties and other amounts in respect of or in connection with the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security; provided, however, that nothing set out herein shall affect the Turnover Obligation (as defined below).
4. The Assignee acknowledges and agrees that it is accepting the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security on an “as is, where is” basis, completely without recourse against the Assignor in the event of any deficiency therein, and that, except as expressly set forth in paragraph 5 below, no representations and warranties of any kind whatsoever have been made or may be implied with respect to the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security. The Assignee hereby acknowledges and agrees that it will in no way bring or advance any claim, suit, action, proceeding or demand whatsoever against the Assignor (or any individual lender who advanced funds under the Loan Agreements) for any claims, losses, expenses, costs, damages or otherwise suffered by the Assignee in connection with Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security or the transactions contemplated by this Assignment Agreement.
5. The Assignor represents and warrants to the Assignee that, as of the Court Approval Date (as defined below), to the best of its knowledge after reasonable inquiry and investigation:
 - (a) the recitals set out above are true and correct;
 - (b) subject to the making of the Order (as defined below), it has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Assignment Agreement, all of which have been duly authorized by all proper and necessary action and it has duly executed and delivered this Assignment

Agreement;

- (c) this Assignment Agreement is a legal, valid, and binding obligation of the Assignor, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by equitable principles;
 - (d) the amount of the Indebtedness is correct as of the date specified herein and is duly owed and payable by the Borrower to BDMC;
 - (e) there are no claims, suits, actions, proceedings or demands outstanding, unresolved, pending or contemplated whatsoever against the Assignor in respect of Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security that would prevent or otherwise affect the Assignor's ability to implement the transactions contemplated by this Assignment Agreement;
 - (f) the Charges have not been discharged, repaid or fully satisfied (and the Assignor has received no notice of any such pending event); and
 - (g) the Assignor has not received any notice of set-off, counterclaim or other similar right under the Charges.
6. The Assignor is aware that the amount of the Assignment Price being paid by the Assignee hereunder may differ from the amount ultimately received or distributed with respect to the Indebtedness pursuant to any insolvency or receivership proceedings involving the Borrower or pursuant to the Assignee's efforts to collect or enforce all or any part of the Indebtedness, Charges, or the BDMC Personal Property Security.
7. The Assignee represents and warrants to the Assignor that, as of the date of execution of this Assignment Agreement and the Court Approval Date (as defined below):
- (a) It is solvent, has the capacity, power and authority to enter into, execute, deliver, and carry out the terms of this Assignment Agreement, all of which have been duly authorized by all proper and necessary action and it has duly executed and delivered this Assignment Agreement.
 - (b) The execution of this Assignment Agreement will not violate or conflict with its organizational documents, any mortgage or other documentation it is party to relating to the Properties or the Project, or any law, regulation or order or require any consent or approval that has not been obtained.
 - (c) This Assignment Agreement is a legal, valid, and binding obligation of the Assignee, enforceable against it in accordance with its terms, except as such

enforceability may be limited by applicable bankruptcy, insolvency, arrangement, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally and by equitable principles.
 - (d) To the best of its knowledge, none of Fortress Real Developments Inc. or any of its

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

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

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

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

- (a) The Assignee shall take such commercially reasonable steps to support the granting of the Order (as defined herein) and the closing of the transactions as set out in this Assignment Agreement.
- (b) Neither the Assignee nor any of its affiliates, principals or agents will enter into negotiations or execute any documentation with Fortress or any Fortress

Representatives in respect of any potential transaction that would result in any consideration becoming payable in any way to Fortress or any Fortress Representative in connection with the Properties, the Project or the transactions contemplated by this Assignment Agreement, whether from the Assignee, the Borrower, any lender, broker, other assignee, other person or any of their respective affiliates, principals or agents, including without limitation any potential transaction involving a settlement of the Indebtedness or an assignment of all or any part of the Indebtedness or Security to Fortress or any Fortress Representative.

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

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

- (d) object to or appeal, or assist or support any other person in objecting or appealing, any motion for approval of the Order;
- (e) if a third-party appeal has been filed, support, facilitate or otherwise assist in such appellant's appeal of the Order;
- (f) use the name of the Assignor for any purpose in connection with the Indebtedness, the Agency Agreement, the Charges, or the BDMC Personal Property Security except only for the purpose of describing the Indebtedness or relating to the transfer, conveyance and assignment of the Charges or the BDMC Personal Property Security and any registration thereof in the Land Registry Office of Toronto or Ontario's personal property security registry (the "**PPRS**"); or
- (g) name or join the Assignor as a party defendant or third party to any action in respect of the Indebtedness, the Agency Agreement, the Charges, or the BDMC Personal Property Security, save and except if such naming or joinder is required procedurally to enforce the Order or the Assignee's rights under this Assignment Agreement and in such instance, for greater certainty, the Assignee continues to be bound by Section 4 herein.

10. The Assignee acknowledges and agrees that, upon the Closing Date, the Assignor shall be released from and shall have no further rights, interest, liability or obligation in respect of the Indebtedness, the Agency Agreement, the Loan Agreements, the Charges, or the BDMC Personal Property Security, and that any right, interest, liability or obligation claimed or asserted by the Borrower against BDMC shall be assumed by and assigned to, and shall therefore constitute, the right, interest, liability or obligation of the Assignee; provided, for greater certainty, that nothing set out herein shall affect the Turnover Obligation.
11. The Trustee shall use commercially reasonable efforts to seek approval of the Assignment Agreement by way of court order substantially in the form agreed between the Assignee, the Trustee and Olympia (which shall, for greater certainty, contain a transfer, conveyance and assignment of all right, title and interest, and a release of all liability and obligation of BDMC, Olympia and the Trustee under the Loan Agreements, the Indebtedness, the Agency Agreement, the Charges, and the BDMC Personal Property Security, save and except for the right to receive the Turnover Obligation) (the “**Order**”). The parties hereto agree that this Assignment Agreement shall not be binding on the Trustee or Olympia until the issuance of the Order. On the date of the issuance of the Order (the “**Court Approval Date**”), this Assignment Agreement shall be binding on all parties hereto.
12. The “Effective Date” of this Assignment Agreement shall be the date that is: (i) if no appeal has been filed within the applicable appeal periods in respect of the Order, 30 calendar days from the Court Approval Date, (ii) if an appeal has been filed within the applicable appeal periods in respect of the Order, the date that such appeal has been fully disposed of or withdrawn, or (iii) such other date as the Assignee and the Trustee may agree in writing (such date, the “**Effective Date**”). On the Effective Date, the Assignee shall be required to pay the Assignment Price (less the Deposit (as defined below)), which Assignment Price shall be held in trust by the Trustee and shall not be released until the transaction contemplated by this Assignment Agreement has been completed on the Closing Date.
13. The obligations of the Trustee, on behalf of BDMC, and Olympia contained in this Assignment Agreement (except for the obligation to seek Court approval pursuant to Section 10 hereto, which shall be effective as of the date that the Trustee and Olympia execute this Assignment Agreement) shall be subject to the issuance of a certificate to the Assignee by the Trustee in the form to be attached to the Order (the “**Trustee’s Certificate**”) and the filing of the Trustee’s Certificate with the Court following the satisfaction of the conditions precedent set out in Section 14 herein (the “**Closing Date**”).
14. The deposit of ████████ paid prior to the Effective Date by the Assignee to the Trustee, in trust, in respect of the Assignment Price (the “**Deposit**”) and, in respect of (ii) below, the Assignment Price (inclusive of the Deposit) paid to the Trustee, in trust, on the Effective Date, shall be refundable to the Assignee if: (i) the Court Approval Date has not occurred by January 31, 2020, or (ii) the Closing Date has not occurred by February 14, 2020, in each case due to no action or fault of the Assignee (as applicable, the “**Outside Date**”). Following the Outside Date, the Assignment Price (inclusive of the Deposit) paid to the Trustee, in trust, shall, upon written demand by the Assignee or its solicitors, be refunded to the Assignee, or as it may in writing direct, and, upon the refund of the Deposit, this Assignment Agreement shall be deemed terminated (in which case the Loan Agreements, the Indebtedness, the Agency Agreement, the Charges, and the BDMC Personal Property

Security and any obligation and liability thereunder shall remain unaffected and shall continue in favour of BDMC and Olympia in accordance with their terms). The return of the Deposit or the Assignment Price (inclusive of the Deposit), as applicable, shall be the Assignee's sole and exclusive remedy in respect of any termination of this Assignment Agreement. Upon the completion of the transaction contemplated in this Assignment Agreement on the Closing Date or if the transaction contemplated by this Assignment Agreement does not close due to any action by the Assignee as contemplated herein, the Deposit (and, if the transaction has been completed, the Assignment Price) shall become the property of the Trustee and Olympia and shall constitute Realized Property (as such term is defined in the Order of the Court dated June 26, 2018 in the BDMC proceedings, which definition may be amended from time to time in subsequent Orders of the Court).

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

For greater certainty, the rights and obligations of BDMC and Olympia as contained in the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security shall remain effective as against BDMC and Olympia until the Closing Date.

16. On the Closing Date, the Assignor shall deliver to the Assignee all originals of the Loan Agreements, the Charges, the Assignment Agreement and the BDMC Personal Property Security that the Assignor may have in its possession or under its control, if any.
17. On the Closing Date, the Assignor hereby authorizes the Assignee to file a financing change statement pursuant to the provisions of the PPSA to reflect the assignment of the BDMC Personal Property Security as contemplated herein.
18. On the Closing Date, the Assignor shall advise any insurance agent or broker of which the Assignor is aware holds any insurance policies with respect to the property, assets or undertaking of the Borrower in connection with the Loan Agreements, the Charges, and the BDMC Personal Property Security, that the Assignor no longer has an interest in any such policy and that all interest of the Assignor has been assigned to the Assignee.

19. On the Closing Date, the Assignor agrees that it shall, at the reasonable request and at the expense of the Assignee, do all such further acts and things and execute and deliver such further instruments, documents, security registrations, matters, papers and assurances as are reasonably necessary for effectuating the assignment of the interests of the Assignor in the Indebtedness, the Loan Agreements, the Agency Agreement, the Charges, and the BDMC Personal Property Security to the Assignee as contemplated in this Assignment Agreement, including, without limitation, such documents as may be required to register the transfer and assignment of the Charges in the Land Registry Office of Toronto (No. 66).
20. The parties agree that the terms of this Assignment Agreement may be disclosed to the individual lenders under the Loan Agreements and shall be included in the motion materials for approval of this Assignment Agreement by the Court, provided that such terms may be provided to the Court on a confidential basis and subject to a request for a sealing Order at the Trustee's discretion.
21. Time is and shall remain of the essence hereof.
22. This Agreement enures to the benefit of and is binding upon the parties hereto and their respective successors, heirs, attorneys, guardians, estate trustees, executors, trustees and permitted assigns.
23. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter thereof and supersedes all oral statements and prior writings with respect thereto.
24. This Agreement may not be amended or modified except in writing signed by each of the parties hereto. No delay or failure on the part of either party to this Agreement in the exercise of any of its right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by either party herein of any right, power or remedy preclude the further exercise thereof, or the exercise of any other right, power or remedy.
25. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario, and the parties hereto hereby attorn to the jurisdiction of the courts of the Province of Ontario.
26. This Agreement may be executed by the parties hereto in counterparts and may be executed and delivered by facsimile and all the counterparts and facsimiles together constitute one and the same agreement.

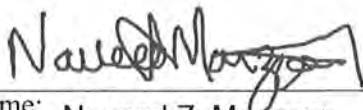
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IN WITNESS OF WHICH the Parties have duly executed this Agreement.


CARLYLE COMMUNITIES INC.


By: 
Name: Naram Mansour
Title: President

**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: Naveed Z. Manzoor
Title: President

OLYMPIA TRUST COMPANY

By: 
Name: Vibha Bhagat
Title: Manager


Johnny Luong
Team Lead

SCHEDULE "A"

LH2 Loan Agreement

The LH2 Loan Agreement is comprised of various individual loan agreements with the Julian Cole Development Corporation as borrower, including the following, in each case as they may have been amended, transferred, or otherwise modified from time to time:

1. Loan Agreement dated July 10, 2012, by Olympia Trust Company, in trust, as lender in the original principal amount of \$34,000.00;
2. Loan Agreement dated December 19, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$30,000.00;
3. Loan Agreement dated December 29, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$78,000.00;
4. Loan Agreement dated December 29, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$15,500.00;
5. Loan Agreement dated December 16, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$60,000.00;
6. Loan Agreement dated July 18, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$25,000.00;
7. Loan Agreement dated April 29, 2012, by Olympia Trust Company, in trust, as lender in the original principal amount of \$34,000.00;
8. Loan Agreement dated July 5, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$25,000.00;
9. Loan Agreement dated July 18, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$35,000.00;
10. Loan Agreement dated December 20, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$20,000.00;
11. Loan Agreement dated December 22, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$20,000.00;
12. Loan Agreement dated December 29, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$66,500.00
13. Loan Agreement dated January 9, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$90,000.00;
14. Loan Agreement dated December 28, 2011, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$200,000.00, as partially transferred pursuant to an undated Transfer Agreement for the transfer of a principal amount of \$23,000.00;
15. Loan Agreement dated December 21, 2011, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$50,000.00;
16. Loan Agreement dated December 20, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$25,000.00;

17. Loan Agreement dated December 19, 2011, by Olympia Trust Company, in trust, as lender in the original principal amount of \$24,600.00;
18. Loan Agreement dated December 8, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$23,500.00;
19. Loan Agreement dated November 25, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$113,000.00;
20. Loan Agreement dated December 6, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$20,000.00;
21. Loan Agreement dated December 6, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$226,000.00;
22. Loan Agreement dated November 25, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$65,000.00;
23. Loan Agreement dated November 25, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$35,700.00;
24. Loan Agreement dated December 16, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$52,000.00;
25. Loan Agreement dated December 6, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$25,000.00;
26. Loan Agreement dated December 20, 2010, by an individual lender in the original principal amount of \$50,000.00;
27. Loan Agreement dated December 23, 2010, by an individual lender in the original principal amount of \$150,000.00;
28. Loan Agreement dated December 8, 2010, by B2B Trust Company, in trust, as lender in the original principal amount of \$30,000.00;
29. Loan Agreement dated December 20, 2010, by an individual lender in the original principal amount of \$50,000.00;
30. Loan Agreement dated November 25, 2010, by an individual lender in the original principal amount of \$70,000.00;
31. Loan Agreement dated November 30, 2010, by an individual lender in the original principal amount of \$100,000.00;
32. Loan Agreement dated December 1, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$23,000.00;
33. Loan Agreement dated November 23, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$40,500.00;
34. Loan Agreement dated November 23, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$25,000.00;
35. Loan Agreement dated November 23, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$24,000.00;
36. Loan Agreement dated December 5, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$73,000.00;

37. Loan Agreement dated December 5, 2010, by The Bank of Nova Scotia Trust Company, in trust, as lender in the original principal amount of \$54,000.00;
38. Loan Agreement dated July 16, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$42,400.00;
39. Loan Agreement dated July 5, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$25,000.00;
40. Loan Agreement dated December 17, 2010, by B2B Trust, in trust, as lender in the original principal amount of \$59,000.00, as transferred pursuant to a transfer agreement;
41. Loan Agreement dated March 24, 2011, by an individual lender in the original principal amount of \$25,000.00, as transferred pursuant to a Transfer Agreement dated June 16, 2015, for the transfer of a principal amount of \$25,000.00;
42. Loan Agreement dated December 21, 2011, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$50,000.00;
43. Loan Agreement dated December 21, 2011, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$100,000.00;
44. Loan Agreement dated August 3, 2010, by Olympia Trust Company, in trust, as lender in the original principal amount of \$46,000.00;
45. Loan Agreement dated January 31, 2011, by B2B Trust Company, in trust, as lender in the original principal amount of \$41,000.00;
46. Loan Agreement dated March 1, 2011, by an individual lender in the original principal amount of \$50,000.00;
47. Loan Agreement dated February 22, 2011, by an individual lender in the original principal amount of \$25,000.00;
48. Loan Agreement dated February 1, 2011, by B2B Trust Company, in trust, as lender in the original principal amount of \$192,000.00;
49. Loan Agreement dated February 28, 2011, by an individual lender in the original principal amount of \$25,000.00;
50. Loan Agreement dated February 18, 2011, by an individual lender in the original principal amount of \$50,000.00;
51. Loan Agreement dated February 22, 2011, by an individual lender in the original principal amount of \$25,000.00;
52. Loan Agreement dated February 28, 2011, by an individual lender in the original principal amount of \$25,000.00;
53. Loan Agreement dated February 2, 2011, by B2B Trust Company, in trust, as lender in the original principal amount of \$54,500.00;
54. Loan Agreement dated November 25, 2010, by B2B Trust Company, in trust, as lender in the original principal amount of \$65,000.00;
55. Loan Agreement dated January 19, 2011, by B2B Trust Company, in trust, as lender in the original principal amount of \$49,400.00;

56. Loan Agreement dated December 6, 2010, by B2B Trust Company, in trust, as lender in the original principal amount of \$24,400.00;
57. Loan Agreement dated January 25, 2011, by B2B Trust Company, in trust, as lender in the original principal amount of \$20,000.00;
58. Loan Agreement dated January 27, 2011, by B2B Trust Company, in trust, as lender in the original principal amount of \$34,000.00;
59. Loan Agreement dated December 8, 2010, by an individual lender in the original principal amount of \$25,000.00;
60. Loan Agreement dated January 19, 2011, by an individual lender in the original principal amount of \$100,000.00;
61. Loan Agreement dated November 22, 2010, by an individual lender in the original principal amount of \$48,000.00;
62. Loan Agreement made by B2B Trust Company, in trust, as lender in the original principal amount of \$25,000.00; and
63. Loan Agreement dated January 3, 2012, by Sanjay Pahuja, in trust, as lender in the original principal amount of \$300,000.00, as partially transferred pursuant to a Transfer Agreement dated May 19, 2016, for the transfer of a principal amount of \$50,000.00, and a Transfer Agreement dated March 30, 2016, for the transfer of a principal amount of \$40,000.00, and a Transfer Agreement dated May 18, 2016, for the transfer of a principal amount of \$23,000.00, and a Transfer Agreement dated May 18, 2016, for the transfer of a principal amount of \$25,000.00, and a Transfer Agreement dated May 18, 2016, for the transfer of a principal amount of \$13,000.00.

SCHEDULE "B"

Agency and Accession Agreements

1. Agency Agreement and related Accession Agreement dated August 11, 2014 with respect to a Loan Agreement dated December 20, 2010 in the original principal amount of \$25,000;
2. Agency Agreement and related Accession Agreement dated February 6, 2014 with respect to a Loan Agreement dated February 16, 2011 in the original principal amount of \$61,500;
3. Agency Agreement and related Accession Agreement dated December 27, 2013 with respect to a Loan Agreement dated February 24, 2011 in the original principal amount of \$19,900;
4. Agency Agreement and related Accession Agreement dated December 20, 2013 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$50,000;
5. Agency Agreement and related Accession Agreement dated December 18, 2013 with respect to a Loan Agreement dated February 22, 2011 in the original principal amount of \$25,000;
6. Agency Agreement and related Accession Agreement dated December 20, 2013 with respect to a Loan Agreement dated February 1, 2011 in the original principal amount of \$192,000;
7. Agency Agreement and related Accession Agreement dated December 17, 2013 with respect to a Loan Agreement dated December 20, 2011 in the original principal amount of \$20,000;
8. Agency Agreement and related Accession Agreement dated August 14, 2014 with respect to a Loan Agreement with an undisclosed date in the original principal amount of \$59,000;
9. Agency Agreement and related Accession Agreement dated August 6, 2014 with respect to a Loan Agreement dated November 25, 2010 in the original principal amount of \$113,000;
10. Agency Agreement and related Accession Agreement dated August 18, 2014 with respect to a Loan Agreement with an undisclosed date in the original principal amount of \$300,000;
11. Agency Agreement and related Accession Agreement dated January 20, 2014 with respect to a Loan Agreement dated January 31, 2011 in the original principal amount of \$41,000;
12. Agency Agreement and related Accession Agreement dated January 7, 2014 with respect to a Loan Agreement dated February 16, 2011 in the original principal amount of \$54,000;
13. Agency Agreement and related Accession Agreement dated December 19, 2013 with respect to a Loan Agreement dated December 7, 2010 in the original principal amount of \$100,000;
14. Agency Agreement and related Accession Agreement dated December 19, 2013 with respect to a Loan Agreement dated December 6, 2010 in the original principal amount of \$20,000;
15. Agency Agreement and related Accession Agreement dated January 13, 2013 with respect to a Loan Agreement dated December 20, 2010 in the original principal amount of \$50,000;
16. Agency Agreement and related Accession Agreement dated December 23, 2013 with respect to a Loan Agreement dated July 5, 2012 in the original principal amount of \$25,000;
17. Agency Agreement and related Accession Agreement dated December 30, 2013 with respect to a Loan Agreement dated December 28, 2011 in the original principal amount of \$200,000;
18. Agency Agreement and related Accession Agreement dated December 14, 2013 with respect to a Loan Agreement dated February 2, 2011 in the original principal amount of \$54,500;

19. Agency Agreement and related Accession Agreement dated February 12, 2014 with respect to a Loan Agreement dated December 28, 2011 in the original principal amount of \$50,000;
20. Agency Agreement and related Accession Agreement dated January 30, 2014 with respect to a Loan Agreement dated July 10, 2012 in the original principal amount of \$34,000;
21. Agency Agreement and related Accession Agreement dated August 6, 2014 with respect to a Loan Agreement dated December 6, 2010 in the original principal amount of \$266,000;
22. Agency Agreement and related Accession Agreement dated December 18, 2013 with respect to a Loan Agreement dated December 21, 2011 in the original principal amount of \$50,000;
23. Agency Agreement and related Accession Agreement dated August 14, 2014 with respect to a Loan Agreement with an undisclosed date with respect to an undisclosed original principal amount;
24. Agency Agreement and related Accession Agreement dated January 12, 2014 with respect to a Loan Agreement dated November 25, 2010 in the original principal amount of \$65,000;
25. Agency Agreement and related Accession Agreement dated December 20, 2013 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$48,000;
26. Agency Agreement and related Accession Agreement dated December 20, 2013 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$43,000;
27. Agency Agreement and related Accession Agreement dated December 23, 2013 with respect to a Loan Agreement dated December 11, 2010 in the original principal amount of \$23,000;
28. Agency Agreement and related Accession Agreement dated December 18, 2013 with respect to a Loan Agreement dated January 19, 2011 in the original principal amount of \$49,400;
29. Agency Agreement and related Accession Agreement dated January 24, 2014 with respect to a Loan Agreement dated August 3, 2010 in the original principal amount of \$46,000;
30. Agency Agreement and related Accession Agreement dated January 1, 2014 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$40,500;
31. Agency Agreement and related Accession Agreement dated July 22, 2014 with respect to a Loan Agreement with an undisclosed date with respect to an undisclosed original principal amount;
32. Agency Agreement and related Accession Agreement dated December 19, 2013 with respect to a Loan Agreement dated December 23, 2010 in the original principal amount of \$150,000;
33. Agency Agreement dated as of December 2013 and related Accession Agreement with respect to a Loan Agreement with an undisclosed date with respect to an undisclosed original principal amount;
34. Agency Agreement and related Accession Agreement dated January 3, 2014 with respect to a Loan Agreement dated March 1, 2011 in the original principal amount of \$50,000;
35. Agency Agreement and related Accession Agreement dated December 20, 2013 with respect to a Loan Agreement dated January 25, 2011 in the original principal amount of \$20,000;
36. Agency Agreement and related Accession Agreement dated February 2, 2014 with respect to a Loan Agreement dated January 27, 2011 in the original principal amount of \$34,000;
37. Agency Agreement and related Accession Agreement dated December 27, 2013 with respect to a Loan Agreement dated December 8, 2010 in the original principal amount of \$30,000;

38. Agency Agreement and related Accession Agreement dated December 17, 2013 with respect to a Loan Agreement dated November 25, 2010 in the original principal amount of \$65,000;
39. Agency Agreement and related Accession Agreement dated August 14, 2014 with respect to a Loan Agreement with an undisclosed date in the original principal amount of \$24,000;
40. Agency Agreement and related Accession Agreement dated August 14, 2014 with respect to a Loan Agreement dated December 6, 2010 in the original principal amount of \$24,400;
41. Agency Agreement and related Accession Agreement dated January 8, 2014 with respect to a Loan Agreement dated February 23, 2011 in the original principal amount of \$24,400;
42. Agency Agreement and related Accession Agreement dated January 13, 2014 with respect to a Loan Agreement dated December 20, 2010 in the original principal amount of \$50,000;
43. Agency Agreement and related Accession Agreement dated January 1, 2014 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$25,000;
44. Agency Agreement and related Accession Agreement dated December 27, 2013 with respect to a Loan Agreement dated December 29, 2011 in the original principal amount of \$65,500;
45. Agency Agreement and related Accession Agreement dated December 16, 2013 with respect to a Loan Agreement dated December 29, 2010 in the original principal amount of \$25,000;
46. Agency Agreement and related Accession Agreement dated February 26, 2014 with respect to a Loan Agreement dated December 21, 2011 in the original principal amount of \$50,000;
47. Agency Agreement and related Accession Agreement dated August 14, 2014 with respect to a Loan Agreement dated February 18, 2011 in the original principal amount of \$50,000;
48. Agency Agreement and related Accession Agreement dated December 27, 2013 with respect to a Loan Agreement dated December 29, 2011 in the original principal amount of \$78,000;
49. Agency Agreement and related Accession Agreement dated December 27, 2013 with respect to a Loan Agreement dated December 29, 2011 in the original principal amount of \$15,500;
50. Agency Agreement and related Accession Agreement dated August 7, 2014 with respect to a Loan Agreement with an undisclosed date in the original principal amount of \$35,700;
51. Agency Agreement and related Accession Agreement dated August 7, 2014 with respect to a Loan Agreement dated November 25, 2010 in the original principal amount of \$70,000;
52. Agency Agreement and related Accession Agreement dated August 7, 2014 with respect to a Loan Agreement dated November 25, 2010 in the original principal amount of \$35,700;
53. Agency Agreement and related Accession Agreement dated December 20, 2013 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$34,000;
54. Agency Agreement and related Accession Agreement dated January 8, 2014 with respect to a Loan Agreement dated March 24, 2011 in the original principal amount of \$25,000;
55. Agency Agreement and related Accession Agreement dated August 11, 2014 with respect to a Loan Agreement dated December 8, 2010 in the original principal amount of \$23,500;
56. Agency Agreement and related Accession Agreement dated December 30, 2013 with respect to a Loan Agreement dated July 18, 2012 in the original principal amount of \$25,000;
57. Agency Agreement and related Accession Agreement dated January 8, 2014 with respect to a Loan Agreement dated February 22, 2011 in the original principal amount of \$25,000;

58. Agency Agreement and related Accession Agreement dated December 19, 2013 with respect to a Loan Agreement dated December 7, 2010 in the original principal amount of \$100,000;
59. Agency Agreement and related Accession Agreement dated January 9, 2014 with respect to a Loan Agreement dated July 5, 2012 in the original principal amount of \$25,000;
60. Agency Agreement and related Accession Agreement dated December 30, 2013 with respect to a Loan Agreement dated December 16, 2010 in the original principal amount of \$52,000;
61. Agency Agreement and related Accession Agreement dated January 3, 2014 with respect to a Loan Agreement dated December 21, 2011 in the original principal amount of \$100,000;
62. Agency Agreement and related Accession Agreement dated August 15, 2014 with respect to a Loan Agreement dated November 23, 2010 in the original principal amount of \$25,000;
63. Agency Agreement and related Accession Agreement dated December 29, 2013 with respect to a Loan Agreement dated December 6, 2010 in the original principal amount of \$25,000;
64. Agency Agreement and related Accession Agreement dated December 27, 2013 with respect to a Loan Agreement dated January 19, 2011 in the original principal amount of \$100,000;
65. Agency Agreement and related Accession Agreement dated February 20, 2014 with respect to a Loan Agreement dated February 15, 2011 in the original principal amount of \$29,000;
66. Agency Agreement and related Accession Agreement dated April 5, 2014 with respect to a Loan Agreement dated January 12, 2011 in the original principal amount of \$30,500;
67. Agency Agreement and related Accession Agreement dated April 5, 2014 with respect to a Loan Agreement dated January 12, 2011 in the original principal amount of \$30,500;
68. Agency Agreement and related Accession Agreement dated January 6, 2014 with respect to a Loan Agreement dated February 28, 2011 in the original principal amount of \$25,000;
69. Agency Agreement and related Accession Agreement dated January 21, 2014 with respect to a Loan Agreement dated February 22, 2011 in the original principal amount of \$23,500;
70. Agency Agreement and related Accession Agreement dated December 23, 2013 with respect to a Loan Agreement dated December 5, 2010 in the original principal amount of \$73,000;
71. Agency Agreement and related Accession Agreement dated December 23, 2013 with respect to a Loan Agreement dated December 5, 2010 in the original principal amount of \$54,000;
72. Agency Agreement and related Accession Agreement dated January 27, 2014 with respect to a Loan Agreement dated February 23, 2011 in the original principal amount of \$25,000;
73. Agency Agreement and related Accession Agreement dated January 14, 2014 with respect to a Loan Agreement dated December 8, 2010 in the original principal amount of \$25,000;
74. Agency Agreement and related Accession Agreement dated January 21, 2014 with respect to a Loan Agreement dated July 18, 2012 in the original principal amount of \$35,000;
75. Agency Agreement and related Accession Agreement dated December 11, 2013 with respect to a Loan Agreement with an undisclosed date with respect to an undisclosed original principal amount;
76. Agency Agreement and related Accession Agreement dated August 11, 2014 with respect to a Loan Agreement with an undisclosed date in the original principal amount of \$48,000;
77. Agency Agreement and related Accession Agreement dated August 11, 2014 with respect to a Loan Agreement with an undisclosed date in the original principal amount of \$25,000; and

78. Agency Agreement and related Accession Agreement dated August 11, 2014 with respect to a Loan Agreement dated December 20, 2010 in the original principal amount of \$50,000, in each case as they may have been amended, transferred, or otherwise modified from time to time.

SCHEDULE "C"

BDMC Charge and Related Registrations

With respect to the following Properties: (i) 122 & 124 Peter Street, Toronto (PIN 21412-0139 (LT)); (ii) 126 Peter Street, Toronto (PIN 21412-0140 (LT)); (iii) 128 Peter Street, Toronto (PIN 21412-0141 (LT)); and (iv) 357 Richmond Street, Toronto (PIN 21412-0142 (LT))

- Instrument No. AT3945104 registered July 14, 2015 being a Charge in favour of Centro Mortgage Inc. and Olympia Trust Company to secure the original principal amount of \$6,400,000.
- Centro Mortgage Inc. becomes Building & Development Mortgages Canada Inc. by Articles of Amendment filed on January 25, 2016 and reflected on title in Instrument No. AT4136473 registered February 3, 2016
- Instrument No. AT3945104 was amended by:
 - Instrument No. AT3953571 registered July 22, 2015,
 - Instrument No. AT4110878 registered January 7, 2016,
 - Instrument No. AT4234431 registered June 1, 2016,
 - Instrument No. AT4303985 registered August 9, 2016, and
 - Instrument No. AT4377721 registered October 21, 2016 to increase the principal amount to \$35,000,000.
- Instrument No. AT3945104 was postponed by Instrument No. AT5069052 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.
- Transfers of Charge related to Instrument No. AT3945104:
 - Instrument No. AT3953578 registered July 22, 2015
 - Instrument No. AT3964755 registered July 31, 2015
 - Instrument No. AT3972810 registered August 10, 2015
 - Instrument No. AT3993206 registered August 28, 2015
 - Instrument No. AT4030963 registered October 7, 2015
 - Instrument No. AT4050646 registered October 29, 2015
 - Instrument No. AT4083883 registered December 2, 2015
 - Instrument No. AT4110879 registered January 7, 2016
 - Instrument No. AT4139848 registered February 8, 2016
 - Instrument No. AT4152841 registered February 25, 2016
 - Instrument No. AT4182336 registered April 1, 2016
 - Instrument No. AT4196675 registered April 19, 2016
 - Instrument No. AT4215906 registered May 11, 2016
 - Instrument No. AT4249744 registered June 16, 2016
 - Instrument No. AT4266876 registered July 4, 2016
 - Instrument No. AT4313543 registered August 18, 2016
 - Instrument No. AT4377722 registered October 21, 2016
 - Instrument No. AT4400069 registered November 15, 2016
 - Instrument No. AT4449132 registered January 5, 2017
 - Instrument No. AT4463884 registered January 19, 2017

- Instrument No. AT4488730 registered February 16, 2017
 - Instrument No. AT4508371 registered March 10, 2017
 - Instrument No. AT4527611 registered April 3, 2017
 - Instrument No. AT4541255 registered April 20, 2017
 - Instrument No. AT4578133 registered May 26, 2017
 - Instrument No. AT4602600 registered June 20, 2017
 - Instrument No. AT4635855 registered July 25, 2017
 - Instrument No. AT4654573 registered August 15, 2017
- Instrument No. AT5068868 registered February 1, 2019 being a Charge in favour of Building & Development Mortgages Canada Inc. and Olympia Trust Company to secure the original principal amount of \$35,000,000.
 - Instrument No. AT5068868 was postponed by Instrument No. AT5069054 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.

With respect to the following Property: 359 Richmond Street, Toronto (PIN 21412-0143 (LT))

- Instrument No. AT5068868 registered February 1, 2019 being a Charge in favour of Building & Development Mortgages Canada Inc. and Olympia Trust Company to secure the original principal amount of \$35,000,000.

With respect to the following Property: 120 Peter Street, Toronto (PIN 21412-01438 (LT))

- BDMC holds the right to a future mortgage/charge against this property as set forth in, and subject to the terms of, the BDMC Loan Agreement.

SCHEDULE "D"

BDMC Personal Property Security

Security Agreements and Other Related Documents

- General Security Agreement executed by Fortress Carlyle Peter St Inc. in favour of Building & Development Mortgages Canada Inc., formerly Centro Mortgage Inc., in trust, dated as of February 4, 2015.
- Indemnity in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc, made by Fortress Carlyle Peter St Inc. dated as of February 4, 2015.
- Assignment of Insurance Interest by Fortress Carlyle Peter St Inc. in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, dated February 4, 2015.
- Non-Merger Acknowledgement by Fortress Carlyle Peter St Inc. in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, dated February 4, 2015.
- Beneficiary Authorization and Equitable Mortgage of Fortress Carlyle Peter St Inc in favour of Building & Development Mortgages Canada Inc., formerly known as Centro Mortgage Inc., in trust, dated February 4, 2015.

Personal Property Security Registration (Ontario)

Registration File Number	Reference File Number(s)	Collateral Classifications
702272592	20141211 0914 1590 5818 (initial registration) 20170320 1432 1590 9942 (amendment) 20170406 1440 1590 1260 (assignment) 20191112 1733 1590 0093 (renewal)	Inventory, Equipment, Accounts, Other

SCHEDULE "E"

LH2 Charge and Related Registrations

With respect to the following Property: 122 & 124 Peter Street, Toronto (PIN 21412-0139 (LT))

- Instrument No. AT3677585 registered August 29, 2014 in favour of Wenvor Technologies Inc. to secure the original principal amount of \$4,913,052.
- Instrument No. AT3677585 was transferred to B2B Trust, The Bank of Nova Scotia Trust Company, Olympia Trust Company and Centro Mortgage Inc. by Transfer of Charge registered as Instrument No. AT3677586 on August 29, 2014.
- Centro Mortgage Inc. becomes Building & Development Mortgages Canada Inc. by Articles of Amendment filed on January 25, 2016 and reflected on title in Instrument No. AT4136473 registered February 3, 2016
- Instrument No. AT3677585 was postponed by Instrument No. AT5069053 registered February 1, 2019 to Instrument No. AT5068883 registered February 1, 2019 being a Charge in favour of PTI Developments Inc. to secure the original principal amount of \$3,500,000.
- Transfers of Charge relating to Instrument No. AT3677585:
 - Instrument No. AT3677586 registered August 29, 2014.
 - Instrument No. AT4021630 registered September 29, 2015.
 - Instrument No. AT4143423 registered February 11, 2016.
 - Instrument No. AT4171906 registered March 21, 2016.
 - Instrument No. AT4285689 registered July 21, 2016.
 - Instrument No. AT4450512 registered January 6, 2017.
 - Instrument No. AT4456549 registered January 12, 2017.
 - Instrument No. AT4628846 registered July 17, 2017.
 - Instrument No. AT5046845 registered January 4, 2019.

**Confidential Appendix 1:
Peter Richmond Assignment Agreement (unredacted)
and Summary of Offers**

[This Confidential Appendix is subject to a request for a sealing Order]