

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

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

(PETER RICHMOND DISTRIBUTION MOTION)

October 2, 2020

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Development Mortgages Canada Inc.

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**SUPERIOR COURT OF JUSTICE
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TAB 1

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

**NOTICE OF MOTION
(Peter Richmond Distribution Motion)**

FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (“**Trustee**”) of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (“**MBLAA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) (“**Court**”) on October 15, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order (“**Peter Richmond Distribution Order**”) substantially in the form attached to the Motion Record, *inter alia*:

- (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - (b) authorizing the distribution by the Trustee of 85% of the Peter Richmond Realized Property (i) to the PRLA SML Lenders and the LH2 Lenders on a *pari passu* basis using the Pari Passu Approach (as described in the Twenty-First Report) with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology (as described in the Twenty-First Report) to 122-124 Peter Street, and (ii) solely to the PRLA SML Lenders with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology to the remainder of the Peter Richmond Land Assembly, all in accordance with the Realized Property Order, as amended; and
 - (c) approving the Twenty-First Report and the activities of the Trustee set out therein; and
2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to the Order of the Court in respect of BDMC dated April 20, 2018 (the “**Appointment Order**”), FAAN Mortgage Administrators Inc. was appointed as the Trustee, without security, of all of the assets, undertakings and properties of BDMC, including, without limitation, all of the assets in the possession or under the control of BDMC, its counsel, agents and/or assignees but held on behalf of any other party, including, but not limited to, Investors (as defined below), brokers, or borrowers, in each case whether or not such property is held in trust or is required to be held in trust;

2. The purpose of the Trustee’s appointment is to protect the interests of the members of the investing public who invested in syndicated mortgage loans made by BDMC in respect of certain real estate development projects secured by mortgages (typically third-ranking or lower priority charges) registered on title to the applicable real property (the “**Investors**”);

3. To date, the Trustee has delivered twenty reports to the Court, which describe the Trustee's activities in carrying out its mandate under the Appointment Order. In connection with this Motion, the Trustee is filing its Twenty-First Report to Court dated October 2, 2020 (the "**Twenty-First Report**"), which, among other things, describes the Trustee's proposed distribution methodology for the proceeds received from the PRLA Assignment Transaction in respect of the Peter Richmond Project. The circumstances leading to the PRLA Assignment Transaction are described in detail in the Fourteenth Report of the Trustee dated January 23, 2020, and the PRLA Assignment Transaction was approved by this Court pursuant to the Peter Richmond Assignment Agreement Approval Order on January 30, 2020. Capitalized terms used but not defined herein have the meanings given in the Twenty-First Report;

4. On October 30, 2018, this Court issued the Realized Property Order which, 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, 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;

5. On November 28, 2018, this Court issued the Braestone Settlement Approval Order, which, among other things, amended the Realized Property Order to require the Trustee to distribute (when aggregated with previous distributions) 80% of all Realized Property to Investors;

6. On December 20, 2018, this Court issued the Harlowe Settlement Approval Order which, among other things, further amended the Realized Property Order to require the Trustee to distribute (when aggregated with previous distributions) 85% of all Realized Property to Investors;

Overview of the Peter Richmond Project and the PRLA Assignment Transaction

7. The Peter Richmond Project is a proposed 42-storey mixed-use development to be constructed on the real property situated at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario (collectively, “**Peter Richmond Land Assembly**”)¹;

8. Prior to the consummation of the PRLA Assignment Transaction, Fortress Carlyle Peter St. Inc. (“**Peter Richmond Borrower**”) was indebted to BDMC pursuant to two separate loan facilities: (i) a syndicated mortgage loan advanced pursuant to 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 previously advanced to The Julian Cole Development Corporation (“**Julian Cole**”) 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**”). The amounts comprising the LH2 Loan were originally advanced to Julian Cole between 2010 and 2012 in respect of a proposed development on the property located at 122-124 Peter; these properties were ultimately sold to the Peter Richmond Borrower pursuant to power of sale proceedings in 2014 and the charge securing the LH2 Loan was ultimately replaced and transferred to BDMC, B2B Trust, The Bank of Nova Scotia Trust Company (“**Scotia Trust**”) and Olympia Trust Company (“**OTC**”), in trust, for those individual lenders who advanced funds under the LH2 Loan. Prior to the Trustee’s appointment, BDMC acted 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**”);

9. There were significant delays in the timing of the proposed development of the Peter Richmond Project. Given that the PRLA Loan and the LH2 Loan (collectively, the “**Peter**

¹ The Peter Richmond Land Assembly also currently includes the property located at 120 Peter Street, Toronto, Ontario. However, references to the Peter Richmond Land Assembly in the Twenty-First Report and in this Notice of Motion shall refer to the Peter Richmond Land Assembly exclusive of 120 Peter Street.

Richmond Loans”) had matured and significant amounts were owing to the Peter Richmond Investors, the fact that each of the first priority mortgages on title to the properties comprising the Peter Richmond Land Assembly were in default, and the protracted timeframe for completion of the Peter Richmond Project, the Trustee decided to commence a focused solicitation process regarding a potential transaction involving the Peter Richmond Loans in late 2019;

10. As a result of the solicitation process, the Trustee received an offer from Carlyle Communities Inc. (the “**Assignee**”) and determined that it was in the best interests of the Peter Richmond Investors to proceed with the transaction contemplated by the offer (the “**PRLA Assignment Transaction**”). The PRLA Assignment Transaction provided for a cash payment by the Assignee of \$26.25 million (the “**Assignment Price**”) in exchange for the assignment of all of BDMC’s and OTC’s right, title and interest in and to the indebtedness owed by the Peter Richmond Borrower to BDMC under the Peter Richmond Loans and all related security. Additional details regarding the solicitation process and the PRLA Assignment Transaction are included in the Fourteenth Report;

11. On January 30, 2020, this Court issued the Peter Richmond Assignment Agreement Approval Order which, among other things, approved and ratified the Assignment Agreement dated as of December 17, 2019, and the PRLA Assignment Transaction;

12. The PRLA Assignment Transaction closed on February 12, 2020 and the Trustee is in possession of the Assignment Price, which constitutes Realized Property. The Peter Richmond Assignment Agreement Approval Order did not deal with the method of distribution of such Realized Property to the Peter Richmond Investors, which is addressed in this motion. As a result of the PRLA Assignment Transaction, the Trustee, BDMC, OTC and the Peter Richmond Investors no longer have any interest in the Peter Richmond Project;

Loan Arrangements on the Peter Richmond Project

13. As described above, the Peter Richmond Borrower was indebted to BDMC pursuant to (i) the PRLA Loan, and (ii) the LH2 Loan. As at the closing of the PRLA Assignment Transaction, approximately \$33.1 million was owed to the Investors who invested in the PRLA Loan (the “**PRLA SML Lenders**”), and approximately \$5.5 million was owed to the Investors who invested in the LH2 Loan (the “**LH2 Lenders**”);

PRLA Loan

14. The PRLA Loan Agreement was entered into in November 2014 and originally provided for a loan in the aggregate amount of up to \$24 million. On June 22, 2016, BDMC requested that PRLA SML Lenders sign a Direction and Indemnity form that authorized an increase of the maximum mortgage amount to \$35 million. The PRLA Loan matured in January 2019;

15. Prior to the completion of the PRLA Assignment Transaction, there were two charges securing the obligations owed to BDMC under the PRLA Loan Agreement (the “**PRLA Charges**”). The PRLA Charges were transferred to the Assignee upon the closing of the PRLA Assignment Transaction;

LH2 Loan

16. The LH2 Loan is comprised of multiple individual loan agreements for amounts that were originally advanced to Julian Cole between 2010 and 2012 in respect of a proposed development on the property located at 122-124 Peter (one of the parcels that now forms part of the Peter Richmond Land Assembly). Julian Cole was the owner of 122-124 Peter during this time. The LH2 Loan was originally due on December 15, 2013 and the LH2 Loan Agreement stated that the LH2 Loan would be secured by a second ranking charge against title to 122-124 Peter, which would postpone to a first-ranking charge of up to \$22 million. In January 2011, a charge securing the LH2 Loan was registered on title to 122-124 Peter for \$3 million (which amount was subsequently increased to \$4.4 million) (the “**Existing LH2 Charge**”);

17. On August 29, 2014, the first-ranking mortgagee closed the sale of 122-124 Peter to the Peter Richmond Borrower pursuant to power of sale proceedings. As part of the purchase price, the first-ranking mortgagee was granted a vendor take-back mortgage for a principal amount equal to the amount owing under the Existing LH2 Charge, being \$4,913,052, which vendor take-back mortgage was immediately assigned to BDMC, B2B Trust, Scotia Trust and OTC, in trust for the LH2 Lenders (the “**New LH2 Charge**”). The New LH2 Charge replaced the Existing LH2 Charge, which was deleted from title on the closing of the transaction. The New LH2 Charge was transferred to the Assignee upon the closing of the PRLA Assignment Transaction;

18. On July 14, 2015, when the first PRLA Charge was registered, the New LH2 Charge was postponed to the original PRLA Charge on title to 122-124 Peter in accordance with an Interlender Agreement previously entered into between (i) BDMC and OTC, in connection with the PRLA Loan, and (ii) BDMC, Scotia Trust, B2B Trust and OTC, in connection with the LH2 Loan. It is unclear whether the LH2 Lenders or the PRLA SML Lenders were informed at the time that an Interlender Agreement postponing the New LH2 Charge to the original PRLA Charge would be executed on their behalf;

19. Pursuant to the terms of the New LH2 Charge, the LH2 Loan matured on August 29, 2018. At the time of the PRLA Assignment Transaction, the New LH2 Charge ranked in fourth position on title to 122-124 Peter and was subordinate to the PRLA Charges on title. The New LH2 Charge was not registered on title to any of the other properties comprising the Peter Richmond Land Assembly;

Need for the Peter Richmond Distribution Order

20. As described above, the Trustee intends to make a distribution of 85% of the Assignment Price received from the PRLA Assignment Transaction, which funds constitute Realized Property, in accordance with the terms of the Realized Property Order (as amended);

21. The proceeds from the PRLA Assignment Transaction provide a very substantial recovery on the combined principal amounts owing to the Peter Richmond Investors in respect of the Peter Richmond Loans. The amount received by the Trustee in respect of the Assignment Price was \$26.25 million (“**Peter Richmond Realized Property**”), and the combined principal amount owing on the Peter Richmond Loans was approximately \$31.9 million at the closing of the PRLA Assignment Transaction (with an additional approximately \$6.7 million owing as accrued interest, and approximately \$4 million having already been collectively received by the Peter Richmond Investors as paid interest);

22. In order to determine how to distribute the Peter Richmond Realized Property among the PRLA SML Lenders and the LH2 Lenders, the Trustee considered the following key issues: (i) the appropriate allocation of the Peter Richmond Realized Property among the different parcels of land in the Peter Richmond Land Assembly; (ii) whether the LH2 Lenders should receive any portion of the Peter Richmond Realized Property that is allocated to the parcels of land

for which the LH2 Lenders do not have the benefit of a charge registered on title, given that the PRLA Charges were registered on five parcels of land comprising the Peter Richmond Land Assembly and the New LH2 Charge was only registered on one parcel; and (iii) the appropriate distribution methodology for distributing the 122-124 Peter Proceeds (as defined below) among the PRLA SML Lenders and the LH2 Lenders;

Allocation Across Various Parcels

23. In determining the proposed distribution approach for the Peter Richmond Realized Property, the Trustee first considered how to allocate the Peter Richmond Realized Property across the parcels comprising the Peter Richmond Land Assembly;

24. The Trustee considered a number of allocation methodologies, and is of the view that the Square Footage Methodology is appropriate for allocating the Peter Richmond Realized Property across the parcels. The Trustee proposes that the Square Footage Methodology be applied in accordance with the proposed Peter Richmond Distribution Order;

25. Based on the Square Footage Methodology, a total of approximately \$12.9 million of the Peter Richmond Realized Property (“**122-124 Peter Proceeds**”) is allocable to 122-124 Peter and approximately \$13.35 million of the Peter Richmond Realized Property (“**Remaining Proceeds**”) is allocable to the remaining four parcels of land;

Entitlement of the LH2 Lenders to the Peter Richmond Realized Property

26. The Trustee next considered what entitlement, if any, the LH2 Lenders should have to the full quantum of the Peter Richmond Realized Property given that the LH2 Lenders only had a charge registered on title to one parcel, 122-124 Peter (one of the five parcels comprising the Peter Richmond Land Assembly);

27. Given that (i) the LH2 Loan Agreement only references a charge being granted on 122-124 Peter in respect of the LH2 Loan, (ii) the LH2 Loan Agreement does not appear to contemplate that the LH2 Lenders would be given a charge on any other property in the future; and (iii) the proceeds from the LH2 Loan were only used in connection with 122-124 Peter and did not contribute to any costs relating to other parcels comprising the Peter Richmond Land

Assembly, the Trustee is of the view that, based on the documentation, the LH2 Lenders did not appear to have an expectation that their mortgage would extend to the additional properties that now constitute the Peter Richmond Land Assembly, and did not contribute towards the development of such parcels. Therefore, the Trustee is of the view that the LH2 Lenders should only be entitled to make a claim on the portion of the Peter Richmond Realized Property that is specifically attributable to 122-124 Peter;

Allocation of 122-124 Peter Proceeds Among PRLA SML Lenders and LH2 Lenders

28. As a result of the foregoing, the final point for the Trustee to consider was the appropriate distribution methodology for distributing the 122-124 Peter Proceeds among the PRLA SML Lenders and the LH2 Lenders;

29. The Trustee considered two potential approaches: (i) applying the ranking of the mortgages as registered on title to 122-124 Peter, giving full effect to the postponement registered on title (“**Priorities Approach**”), which results in the PRLA Charges ranking ahead of the New LH2 Charge and no recoveries for the LH2 Lenders, or (ii) distributing the 122-124 Peter Proceeds on a *pari passu* basis to the PRLA SML Lenders and the LH2 Lenders (“**Pari Passu Approach**”);

Priorities Approach

30. The Priorities Approach would give effect to the priorities of the BDMC mortgages registered on title to 122-124 Peter immediately prior to the PRLA Assignment Transaction. This approach would also give effect to the postponement and Interlender Agreement among the PRLA SML Lenders and the LH2 Lenders and would result in the PRLA Loan being repaid in full prior to any repayment of the LH2 Loan;

31. The Priorities Approach provides that, even if the PRLA Loan indebtedness is allocated among the parcels of land using the Square Footage Methodology such that only the allocated amount is owed in priority to the LH2 Lenders, the PRLA SML Lenders would still suffer a shortfall on their loan. As a result, under the Priorities Approach, all of the Peter Richmond Realized Property would be used to repay the PRLA SML Lenders and no amounts would be distributable to the LH2 Lenders;

Pari Passu Approach

32. The Pari Passu Approach provides for a *pari passu* distribution of the 122-124 Peter Proceeds among the PRLA Loan and the LH2 Loan after applying the Square Footage Methodology to allocate the percentage of the PRLA Loan indebtedness attributable to 122-124 Peter. This approach does not give effect to the postponement and Interlender Agreement registered on title to 122-124 Peter and provides an equitable distribution of the 122-124 Peter Proceeds;

Analysis of Priorities Approach vs. Pari Passu Approach

33. The Trustee believes it would be unfair to rely on the postponement of the New LH2 Charge to the PRLA Charge and the accompanying Interlender Agreement in the circumstances because it appears to have been signed without express permission from either the PRLA SML Lenders or the LH2 Lenders. The Trustee is also not aware of any communications made to the Peter Richmond Investors regarding such postponement or its effect on the Peter Richmond Loans;

34. The Trustee understands that BDMC signed the Interlender Agreement on behalf of the LH2 Lenders using signing authority granted to it under the Agency Agreement. The Agency Agreement provides that, if the “exigencies of the situation so warrant”, BDMC may take actions on behalf of the LH2 Lenders without seeking their consent. There is no evidence available to the Trustee that this postponement, which materially affected the rights of the LH2 Lenders, needed to be signed without their prior consultation and consent;

35. The Trustee also notes that (i) it appears that the Interlender Agreement contemplated a further postponement of the LH2 Loan to the PRLA Loan of up to \$24 million, which was beyond the \$22 million maximum amount that the LH2 Lenders agreed to postpone to under the terms of the existing LH2 Loan documentation, and (ii) it is unclear how many LH2 Lenders signed accession agreements to the Agency Agreement;

36. Given these considerations, the Trustee believes that it would be inappropriate to rely on the postponement signed by BDMC on behalf of both sets of investors, particularly given that, to the best of the Trustee’s knowledge, the Interlender Agreement was signed to the detriment

of the LH2 Lenders without their knowledge or consent. The investors in each of the PRLA Loan and the LH2 Loan were innocent parties who appear not to have been provided with sufficient information regarding the postponement and its effect on their investments, or the opportunity to consent thereto. As a result, the Trustee believes that a *pari passu* distribution to all Peter Richmond Investors with respect to the 122-124 Peter Proceeds would be the most fair, equitable and appropriate distribution methodology in the circumstances;

Application of the Pari Passu Approach Using the Square Footage Methodology

37. The Trustee proposes to apply the Pari Passu Approach to the 122-124 Peter Proceeds using the total amount outstanding under the LH2 Loan and the portion of the amount outstanding under the PRLA Loan allocated to 122-124 Peter based on the Square Footage Methodology, after taking into account previously paid interest;

38. The approach described above would result in an allocation of approximately \$3 million to the LH2 Lenders and approximately \$9.9 million to the PRLA SML Lenders in respect of the 122-124 Peter Proceeds. In addition, the PRLA SML Lenders would receive the Remaining Proceeds of approximately \$13.3 million in respect of the other four parcels of land;

39. As a result, the Pari Passu Approach, after application of the Square Footage Methodology, would result in the total allocation of approximately \$23.24 million to the PRLA SML Lenders and approximately \$3 million to the LH2 Lenders, to be shared *pro rata* among such PRLA SML Lenders and LH2 Lenders, respectively;

40. The Pari Passu Approach provides for a 95% recovery on principal to the PRLA SML Lenders and an 88% recovery on principal to the LH2 Lenders after taking into account previously paid interest. The Trustee is of the view that this approach provides substantial recoveries and is fair to all Investors in the circumstances. The Trustee also notes that the Pari Passu Approach does not result in a significant diminution of recovery for the PRLA SML Lenders as compared to the Priorities Approach, while ensuring that the LH2 Lenders do not receive zero recovery as they would under the Priorities Approach;

41. Accordingly, the Trustee proposes to make a distribution of 85% of the Peter Richmond Realized Property (i) to the PRLA SML Lenders and the LH2 Lenders on a *pari passu*

basis using the Pari Passu Approach with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology to 122-124 Peter, and (ii) solely to the PRLA SML Lenders with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology to the remainder of the Peter Richmond Land Assembly;

42. The Trustee has shared its analysis and recommendations with Representative Counsel, and Representative Counsel has advised that it supports the Trustee's proposed distribution approach;

Approval of Report and Activities

43. As part of the Peter Richmond Distribution Order, the Trustee seeks the Court's approval of the Twenty-First Report and all of the actions, conduct and activities of the Trustee as set out therein;

General

44. The provisions of the MBLAA, including section 37 thereof;

45. The Appointment Order;

46. The Realized Property Order;

47. The Harlowe Settlement Approval Order;

48. The Peter Richmond Assignment Agreement Approval Order;

49. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 41 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

50. Sections 101 and 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;

51. The inherent and equitable jurisdiction of this Honourable Court; and

52. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Twenty-First Report of the Trustee and the appendices thereto; and
2. Such further and other evidence as counsel may advise and this Court may permit.

October 2, 2020

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in its capacity as Court-appointed Trustee of
Building & Development Mortgages Canada Inc.

TO: SERVICE LIST

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(Peter Richmond Distribution Order)**

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capacity as Court-appointed Trustee of Building &
Development Mortgages Canada Inc.

TAB 2

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

TWENTY-FIRST REPORT OF THE TRUSTEE

OCTOBER 2nd, 2020



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

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

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**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**

TWENTY-FIRST REPORT OF THE TRUSTEE

October 2nd, 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 twenty 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, which provided a comprehensive update on the Trustee's activities and a status update for each project. Moreover, on January 23, 2020, the Trustee submitted its fourteenth report in these proceedings ("**Fourteenth Report**"), which provided a summary of the status of the Peter Richmond Project (as defined below) and the Trustee's recommendation that the Court grant an Order approving the proposed assignment transaction in respect of the Peter Richmond Loans (as defined below) ("**PRLA Assignment Transaction**"). A copy of the Fourteenth Report (without appendices) is attached as **Appendix "4"**.

6. Capitalized terms not otherwise defined in this report ("**Twenty-First 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.

PURPOSE OF THE TWENTY-FIRST REPORT

7. The Trustee has filed this Twenty-First Report in support of the Trustee's request for an Order ("**Peter Richmond Distribution Order**") that, among other things:
- (a) authorizes the distribution by the Trustee of 85% of the Peter Richmond Realized Property (as defined below):
 - i. to the PRLA SML Lenders and the LH2 Lenders on a *pari passu* basis using the Pari Passu Approach with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology to 122-124 Peter (each as defined below); and
 - ii. solely to the PRLA SML Lenders with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology to the remainder of the Peter Richmond Land Assembly (as defined below); and
 - (b) approves the Twenty-First Report and the Trustee's activities described therein.
8. In support of the Trustee's request for the Peter Richmond Distribution Order, this Twenty-First Report includes the following:

- (a) An overview of the Peter Richmond Project and the PRLA Assignment Transaction previously approved by the Court;
- (b) Details of the Peter Richmond Loans;
- (c) Information that supports the Trustee’s recommendation that the Peter Richmond Realized Property should be distributed: (i) to the PRLA SML Lenders and the LH2 Lenders using the Pari Passu Approach with respect to the amount allocated through the Square Footage Methodology to 122-124 Peter, and (ii) solely to the PRLA SML Lenders with respect to the amount allocated through the Square Footage Methodology to the remaining parcels of land; and
- (d) A description of the Square Footage Methodology, the Pari Passu Approach, and the corresponding recoveries to the PRLA SML Lenders and the LH2 Lenders that result from the proposed distribution methodologies.

SCOPE AND TERMS OF REFERENCE

9. In preparing this Twenty-First 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 (as defined below) and the Peter Richmond Borrower. 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.
10. Some of the information used and relied upon in preparing this Twenty-First 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 Twenty-First Report may vary from the projections and information used to prepare this Twenty-First 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 Twenty-First Report did not constitute an audit or review of such information under GAAS, GAAP or IFRS or any other guidelines.

11. This Twenty-First 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 Distribution Order. Accordingly, the reader is cautioned that this Twenty-First Report may not be appropriate for any other purpose.
12. All references to dollars are in Canadian currency unless otherwise noted.

OVERVIEW OF THE PETER RICHMOND PROJECT AND THE PRLA ASSIGNMENT TRANSACTION

13. The Peter Richmond real estate development project ("**Peter Richmond Project**") is a 42-storey mixed-use development to be constructed on the real property situated at 122-124, 126 & 128 Peter Street and 357 & 359 Richmond Street West, Toronto, Ontario (collectively, the "**Peter Richmond Land Assembly**¹"). Fortress Carlyle Peter St. Inc. ("**Peter Richmond Borrower**"), the owner of the Peter Richmond Land Assembly, is a joint venture between Fortress Peter 2014 Inc. (a Fortress-related entity) and Berkley Carlyle (Peter Street) Inc. (an entity related to Carlyle Communities Inc. ("**Assignee**")).
14. Prior to the consummation of the PRLA Assignment Transaction, the Peter Richmond Borrower was indebted to BDMC pursuant to two separate loan facilities: (i) a syndicated mortgage loan advanced pursuant to 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 previously advanced to The

¹ As set out below, 120 Peter Street is now also part of the Peter Richmond Land Assembly. However, as a charge was not granted on 120 Peter Street to BDMC in respect of the PRLA Loan prior to the PRLA Assignment Transaction, references to the Peter Richmond Land Assembly in this Twenty-First Report shall refer to the Peter Richmond Land Assembly exclusive of 120 Peter.

Julian Cole Development Corporation (“**Julian Cole**”) 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**”). As more particularly described below, the amounts comprising the LH2 Loan were originally advanced to Julian Cole between 2010 and 2012 in respect of a proposed development on the property located at 122-124 Peter Street, Toronto, Ontario (“**122-124 Peter**”); these properties were ultimately sold to the Peter Richmond Borrower pursuant to power of sale proceedings in 2014, and the charge securing the LH2 Loan was ultimately replaced and transferred to BDMC, B2B Trust, The Bank of Nova Scotia Trust Company (“**Scotia Trust**”) and Olympia Trust Company (“**OTC**”), in trust, for those individual lenders who advanced funds under the LH2 Loan. Prior to the Trustee’s appointment, BDMC acted 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**”).

15. The Peter Richmond Borrower separately acquired each of the properties comprising the Peter Richmond Land Assembly, which are each required for the design of the development to proceed as planned. The acquisition of the property located at 120 Peter Street (“**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. Following extensive litigation, the Court of Appeal for Ontario upheld the decision of the Ontario Superior Court of Justice that, among other things, enforced the terms of an existing purchase and sale agreement between the prior owner of 120 Peter and the Peter Richmond Borrower. As a result, the Trustee understands that the Peter Richmond Borrower completed the acquisition of 120 Peter in accordance with the purchase and sale agreement on or around November 12, 2019.
16. In addition to the issues surrounding the acquisition of 120 Peter, there were significant challenges in obtaining the required development approvals for the Peter Richmond Project. These challenges resulted in significant delays to the development timeline for the Peter Richmond Project. Prior to the closing of the PRLA Assignment Transaction, the Assignee (the project manager of the Peter Richmond Project) informed the Trustee that

it expected the Peter Richmond Project to take approximately five additional years to complete, assuming it received a favourable decision from the Local Planning Appeal Tribunal.

17. Prior to the PRLA Assignment Transaction, there were also different senior lenders with first priority mortgage charges registered on title to each of the properties comprising the Peter Richmond Land Assembly. In addition to the first priority mortgage charges, there was a second ranking charge registered on title to each of the properties in favour of PTI Developments Inc. ("**PTI**"), which the Trustee understands is an entity related to the Peter Richmond Borrower. At the time of the PRLA Assignment Transaction, the Trustee understands that in aggregate, approximately \$22.7 million was owed to the first and second ranking mortgagees in priority to the Peter Richmond Loans, and each of the first priority mortgages appeared to be in default.
18. In late 2019, given the significant amounts owing under the PRLA Loan and the LH2 Loan (collectively, the "**Peter Richmond Loans**"), the protracted timeframe for completion of the Peter Richmond Project and the defaults under the first ranking mortgages, the Trustee determined that it was in the best interests of the individual investors who invested funds in the Peter Richmond Project (collectively, the "**Peter Richmond Individual Lenders**") to commence a focused solicitation process regarding a potential transaction involving the Peter Richmond Loans. The Fourteenth Report provides a summary of the solicitation process that was undertaken by the Trustee. As a result of this solicitation process, the Trustee received an offer from the Assignee and ultimately determined that it was in the best interests of the Peter Richmond Individual Lenders to proceed with and seek Court approval for the PRLA Assignment Transaction. Additional details regarding the PRLA Assignment Transaction are included in the Fourteenth Report.
19. Pursuant to the PRLA Assignment Transaction, the Assignee agreed to make a cash payment to BDMC in exchange for an assignment of all of the right, title and interest in and to the indebtedness owed by the Peter Richmond Borrower to BDMC under the Peter Richmond Loans. The PRLA Assignment Transaction also provided for the assignment to the Assignee of all security held in favour of BDMC and OTC in relation to the Peter Richmond Loans, including, without limitation: (i) the charges registered in favour of BDMC and OTC on title to the properties comprising the Peter Richmond Land Assembly in connection with the PRLA Loan ("**PRLA Charges**"); (ii) the charge in favour of BDMC and

OTC registered on title to 122-124 Peter in connection with the LH2 Loan (“**New LH2 Charge**”, and together with the PRLA Charges, the “**Charges**”); and (iii) any right BDMC had to a charge to be registered on title to 120 Peter in accordance with the terms of the PRLA Loan Agreement. The PRLA Assignment Transaction provided for a cash payment to BDMC in the amount of \$26.25 million (“**Assignment Price**”) in exchange for the assignment of the Peter Richmond Loans and all related security.

20. The Court granted the Peter Richmond Assignment Agreement Approval Order on January 30, 2020, which, among other things, approved and ratified the Assignment Agreement dated as of December 17, 2019 among the Assignee, the Trustee and OTC. The Trustee delivered the Trustee’s Certificate contemplated by the Peter Richmond Assignment Agreement Approval Order on February 12, 2020 and the PRLA Assignment Transaction closed on that date. In connection with the closing, the Trustee received the Assignment Price, and the Peter Richmond Loans, the Agency Agreement, the Charges and all other related security were assigned to the Assignee. The Peter Richmond Assignment Agreement Approval Order did not deal with the method of distribution of the \$26.25 million of Realized Property to the Peter Richmond Individual Lenders, which is being addressed in this motion. A copy of the Peter Richmond Assignment Agreement Approval Order is attached as **Appendix “5”**.
21. As a result of the PRLA Assignment Transaction, the Trustee, BDMC, OTC and the Peter Richmond Individual Lenders no longer have any interest in the Peter Richmond Project.

PETER RICHMOND LOAN ARRANGEMENTS

22. As noted above, the Peter Richmond Borrower was indebted to BDMC under two separate loan facilities: (i) the PRLA Loan, and (ii) the LH2 Loan.

PRLA Loan

23. The PRLA Loan was entered into in November 2014 and matured in January 2019. The PRLA Loan Agreement originally provided for a loan in the aggregate amount of up to \$24 million in order to provide funding for the acquisition and other pre-construction costs associated with the properties comprising the Peter Richmond Land Assembly. On June 22, 2016, BDMC requested that the investors in the PRLA Loan (“**PRLA SML Lenders**”) sign a Direction and Indemnity form that authorized an increase of the maximum mortgage amount to \$35 million. The Trustee understands that most, if not all, of the PRLA SML

Lenders signed such Direction and Indemnity forms. However, the notice sent by BDMC in 2016 to the PRLA SML Lenders included a statement specifying that, should the Direction and Indemnity form not be executed and returned within ten business days from the date of distribution, the Investor shall be deemed to have given consent as per section 3.5 of the Participation and Servicing Agreement executed by the Investor at the time of their original investment.

24. Prior to the completion of the PRLA Assignment Transaction, there were two charges on title that comprised the PRLA Charges in respect of the obligations owed to BDMC under the PRLA Loan Agreement. The original PRLA Charge was registered on title to 122-124, 126 & 128 Peter Street and 357 Richmond Street on July 14, 2015, as these properties were the only parcels owned by the Peter Richmond Borrower at that time. The original PRLA Charge was first registered in the principal amount of \$6.4 million, and subsequently increased multiple times to a maximum principal amount of \$35 million.
25. The PRLA Loan Agreement provided 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. Following the acquisition of 359 Richmond Street by the Peter Richmond Borrower and 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 comprising the Peter Richmond Land Assembly, 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 the charge in favour of PTI for \$3.5 million. As a result of the postponement to PTI, the PRLA Charges had a third ranking priority on title to the properties comprising the Peter Richmond Land Assembly at the time of the PRLA Assignment Transaction.
26. As noted above, the PRLA Loan Agreement provided that BDMC would be entitled to a mortgage on 120 Peter once acquired by the Peter Richmond Borrower. Despite having acquired the property, the Peter Richmond Borrower had not registered a charge in favour of BDMC on this property at the time of the PRLA Assignment Transaction.
27. As at the closing of the PRLA Assignment Transaction, the aggregate amount owing to the PRLA SML Lenders was approximately \$33.1 million (comprised of approximately

\$27.4 million of principal and approximately \$5.7 million of accrued interest). The Peter Richmond Borrower made interest payments of approximately \$2.9 million through to July 2017, after which interest began to accrue. There were 522 PRLA SML Lenders as of the date of the PRLA Assignment Transaction.

28. The Trustee notes that the Form 9D disclosure forms signed by PRLA SML Lenders that have been reviewed by the Trustee do not include disclosure of the LH2 Loan or the New LH2 Charge. As more particularly described below, it is unclear whether the PRLA SML Lenders were aware of the existence of another syndicated loan administered by BDMC on title to one of the properties comprising the Peter Richmond Land Assembly at the time of entering into the PRLA Loan.
29. A copy of the PRLA Loan Agreement, a sample Form 9D disclosure form, and a sample Participation and Servicing Agreement, with private information redacted, are collectively attached hereto as **Appendix “6”**. The PRLA Charges (without schedules) are attached hereto as **Appendix “7”**.

LH2 Loan

30. The LH2 Loan is comprised of multiple individual loan agreements for amounts that were originally advanced to Julian Cole between 2010 and 2012 in respect of a proposed development on the property located at 122-124 Peter. Julian Cole was the owner of 122-124 Peter during this time. The LH2 Loan was originally due on December 15, 2013, and the LH2 Loan Agreement stated that the LH2 Loan would be secured by a second ranking charge against title to 122-124 Peter in the principal amount of \$1.5 million (which amount would increase over time to a maximum of \$4 million). The LH2 Loan Agreement contained a provision that permitted a first ranking charge of up to \$22 million, but stated that “there shall be no other postponements or encumbrances which affect the position or security afforded by the second Charge/Mortgage contemplated herein”. A sample LH2 Loan Agreement, with private information redacted, is attached hereto as **Appendix “8”**.
31. The nature of the development project and purpose of the loan were described in different ways in the various documents signed by the Peter Richmond Individual Lenders who advanced funds under the LH2 Loan (“**LH2 Lenders**”), but the funds appear to have been advanced generally for pre-construction costs associated with planned high-rise residential condominiums. The loan documents do not appear to reference the acquisition

of other parcels of land by the project owner for the development of the condominium. As a result, it does not appear from the documentation that the LH2 Lenders had an expectation that 122-124 Peter would become part of the Peter Richmond Land Assembly, or that their mortgage would extend to the additional properties constituting such assembly.

32. The original mortgage granted in favour of the LH2 Lenders was registered on title to 122-124 Peter on January 12, 2011 in favour of Mr. Sanjay Pahuja and Scotia Trust to secure \$3,000,000 ("**Existing LH2 Charge**"). This charge was increased twice in 2012, first to \$4,000,000 and then to \$4,400,000. On June 14, 2012, a first ranking charge on title to 122-124 Peter was registered in favour of Wenvor Technologies Inc. ("**Wenvor**") in the principal amount of \$5,000,000, and the Existing LH2 Charge was postponed to the Wenvor charge.
33. In 2013 and 2014, the LH2 Lenders were asked to enter into accession agreements to the Agency Agreement, 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. 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 recitals to the Agency Agreement state that the LH2 Loan Agreement was in default as of the date of the Agency Agreement. The Trustee understands that most of the LH2 Lenders forming part of the LH2 Loan signed such agency and accession agreements and consents in 2013 and 2014. A copy of the Agency Agreement and a sample accession agreement, with private information redacted, is attached hereto as **Appendix "9"**.
34. The Agency Agreement provided, among other things, that the LH2 Lenders would agree that any actions to be taken under the LH2 Loan Agreement and related documents would be taken by BDMC, as agent (and not by any individual LH2 Lender) with the prior written agreement of the LH2 Lenders, provided that "notwithstanding the foregoing, in the absence of instructions from the [LH2 Lenders] and where in the sole opinion of [BDMC] the exigencies of the situation so warrant such action, [BDMC] may without notice to or consent of the [LH2 Lenders] take such action on behalf of the [LH2 Lenders] as it deems appropriate or desirable in the interest of the [LH2 Lenders]". The Agency Agreement also

provided that each LH2 Lender agreed to share all proceeds from the realization under the LH2 Loan Agreement ratably.

35. On June 27, 2014, Wenvor sold 122-124 Peter to the Peter Richmond Borrower pursuant to power of sale proceedings. The Agreement of Purchase and Sale dated June 27, 2014 in respect of the sale to the Peter Richmond Borrower ("**122-124 Peter APS**") provided, among other things, that a portion of the purchase price shall be satisfied by the Peter Richmond Borrower granting to Wenvor a vendor take-back mortgage for a principal amount equal to the amount of the Existing LH2 Charge, which vendor take-back mortgage would be granted on the same terms and conditions as the Existing LH2 Charge, including the terms and conditions of the loan agreements securing the Existing LH2 Charge, *mutatis mutandis*, except that the term of the New LH2 Charge would be for three years, plus an option to extend for an additional one year. On August 29, 2014, as contemplated in the 122-124 Peter APS, the transaction closed, the Existing LH2 Charge was deleted from title and the New LH2 Charge was issued to Wenvor in the amount then outstanding under the LH2 Loan, being \$4,913,052. The New LH2 Charge was immediately assigned and conveyed by Wenvor to BDMC, B2B Trust, Scotia Trust and OTC, in trust for the LH2 Lenders. A copy of the New LH2 Charge and the transfer of charge to BDMC, B2B Trust, Scotia Trust and OTC (each without schedules) is attached hereto as **Appendix "10"**. A copy of the notice prepared by BDMC and sent to the LH2 Lenders describing the 122-124 Peter APS is attached hereto as **Appendix "11"**.
36. As described above, on July 14, 2015, the Peter Richmond Borrower registered the original PRLA Charge in favour of the PRLA SML Lenders in the principal amount of \$6,400,000 (which amount was subsequently increased to \$35 million) on title to 122-124, 126 & 128 Peter Street and 357 Richmond Street. Upon such registration, the New LH2 Charge was postponed to the original PRLA Charge on title to 122-124 Peter in accordance with an Interlender Agreement previously entered into between (i) BDMC and OTC, in connection with the PRLA Loan; and (ii) BDMC, Scotia Trust, B2B Trust and OTC, in connection with the LH2 Loan, and the Peter Richmond Borrower dated June 23, 2015 ("**Interlender Agreement**"). A copy of the postponement and the accompanying Interlender Agreement is attached hereto as **Appendix "12"**. It is unclear whether the LH2 Lenders or the PRLA SML Lenders were informed at the time that an Interlender

Agreement postponing the New LH2 Charge to the original PRLA Charge would be executed on their behalf.

37. The Interlender Agreement provides, among other things, that: (i) the LH2 Loan and the New LH2 Charge shall be postponed and subordinated to the PRLA Loan and the PRLA Charge; (ii) BDMC, Scotia Trust, B2B Trust and OTC, in their capacities as holders of the New LH2 Charge, shall not be entitled to receive any payments in respect of amounts owed under the New LH2 Charge until all obligations relating to the PRLA Loan have been fully paid and performed; and (iii) BDMC (in its capacity as administrator under the PRLA Charge) and OTC shall have priority to, and the first right to receive, all proceeds or other amounts arising from 122-124 Peter until the obligations relating to the PRLA Loan have been fully paid and performed. The PRLA Loan referenced in the Interlender Agreement is the loan described in the PRLA Loan Agreement of up to a maximum principal amount of \$24 million.
38. Pursuant to the terms of the New LH2 Charge, the LH2 Loan matured on August 29, 2018. The LH2 Lenders were owed, as at the closing of the PRLA Assignment Transaction, approximately \$5.5 million (comprised of approximately \$4.5 million in principal and approximately \$1 million in accrued interest). The Peter Richmond Borrower made interest payments on the LH2 Loan of approximately \$1 million through to May 2017, after which interest began to accrue. At the time of the PRLA Assignment Transaction, the New LH2 Charge ranked in fourth position on title to 122-124 Peter and was subordinate to the PRLA Charges on title. The New LH2 Charge was not registered on title to any of the other properties comprising the Peter Richmond Land Assembly. There were 87 LH2 Lenders as of the date of the PRLA Assignment Transaction.

PROPOSED DISTRIBUTION OF PETER RICHMOND REALIZED PROPERTY

39. As described above, the Trustee intends to make a distribution of 85% of the Assignment Price received from the PRLA Assignment Transaction, which funds constitute Realized Property, in accordance with the terms of the Realized Property Order (as amended).
40. The proceeds from the PRLA Assignment Transaction provide a very substantial recovery on the combined principal amounts owing to the Peter Richmond Individual Lenders in respect of the Peter Richmond Loans. The amount received by the Trustee in respect of the Assignment Price was \$26.25 million ("**Peter Richmond Realized Property**"), and the

combined principal amount owing on the Peter Richmond Loans was approximately \$31.9 million at the closing of the PRLA Assignment Transaction (with an additional approximately \$6.7 million owing as accrued interest, and approximately \$3.9 million having already been collectively received by the Peter Richmond Individual Lenders as paid interest).

41. In order to determine how to distribute the Peter Richmond Realized Property among the PRLA SML Lenders and the LH2 Lenders, the Trustee considered the following key issues: (i) the appropriate allocation of the Peter Richmond Realized Property among the different parcels of land in the Peter Richmond Land Assembly; (ii) whether the LH2 Lenders should receive any portion of the Peter Richmond Realized Property that is allocated to the parcels of land for which the LH2 Lenders do not have the benefit of a charge registered on title, given that the PRLA Charges were registered on five parcels of land comprising the Peter Richmond Land Assembly and the New LH2 Charge was only registered on one parcel; and (iii) the appropriate distribution methodology for distributing the 122-124 Peter Proceeds (as defined below) among the PRLA SML Lenders and the LH2 Lenders.
42. For the reasons described below, in these particular circumstances the Trustee recommends that: (i) the Square Footage Methodology is the most appropriate method to allocate the Peter Richmond Realized Property across the various parcels of land comprising the Peter Richmond Land Assembly; (ii) the LH2 Lenders should only be entitled to make a claim on the portion of the Peter Richmond Realized Property that is specifically attributable to 122-124 Peter; and (iii) the Pari Passu Approach should be applied to the distribution in respect of the portion of the Peter Richmond Realized Property allocable to 122-124 Peter.
43. As a result of the application of the methodologies noted above:
 - (a) a total of approximately \$12.9 million of the Assignment Price is allocated to 122-124 Peter, which results in approximately \$3 million being allocated to the LH2 Lenders and approximately \$9.9 million being allocated to the PRLA SML Lenders; and

- (b) the remaining proceeds of approximately \$13.35 million are allocated solely to the PRLA SML Lenders on account of the PRLA Charges on the other parcels comprising the Peter Richmond Land Assembly.

Based on the above, the PRLA SML Lenders would be allocated in the aggregate approximately \$23.24 million of the Peter Richmond Realized Property, which results in a recovery equal to 85% of the principal balance of the PRLA Loan of approximately \$27.4 million, and the LH2 Lenders would be allocated approximately \$3 million of the Peter Richmond Realized Property, which results in a recovery equal to approximately 66% of the principal balance of the LH2 Loan of approximately \$4.5 million. When previously paid interest is taken into consideration, the PRLA SML Lenders would obtain a recovery equal to 95% of principal, and the LH2 Lenders would obtain a recovery equal to 88% of principal. As discussed above, the Trustee proposes to make a distribution of 85% of the Peter Richmond Realized Property in accordance with the Realized Property Order (as amended).

Approaches to Distribution

1. Allocation Across Various Parcels

44. In determining the proposed distribution approach for the Peter Richmond Realized Property, the Trustee first considered how to allocate the Peter Richmond Realized Property across the parcels comprising the Peter Richmond Land Assembly. The Trustee considered the following potential methodologies:
 - (a) The square footage of each parcel of land as compared to the total square footage of all the parcels of land comprising the Peter Richmond Land Assembly (“**Square Footage Methodology**”);
 - (b) The assessed value of each parcel of land, based on the 2020 Municipal Property Assessment Corporation (“**MPAC**”) report, as compared to the aggregate MPAC values for all the parcels of land comprising the Peter Richmond Land Assembly; and
 - (c) The purchase price paid by the Peter Richmond Borrower for each parcel of land when it first acquired such parcels as compared to the aggregate purchase price for all the parcels of land comprising the Peter Richmond Land Assembly.

45. The Trustee discussed each of the above approaches with its independent appraiser and planning consultant and was advised by both parties that the Square Footage Methodology is generally accepted as an allocation methodology. Furthermore, the Assignee independently advised the Trustee that it allocated the Assignment Price to the individual parcels of land comprising the Peter Richmond Land Assembly based on the Square Footage Methodology. Although the Trustee did consider the purchase price and MPAC options², given the foregoing, the Trustee is of the view that the Square Footage Methodology is appropriate in the circumstances. The Trustee also notes that utilizing either of the other two allocation methodologies does not result in a significant difference to the allocation among the parcels of land comprising the Peter Richmond Land Assembly.
46. The following table reflects the allocation of the Peter Richmond Realized Property to the parcels that comprise the Peter Richmond Land Assembly, based on the Square Footage Methodology:

Property	Square Footage	Percentage of Proceeds	Resulting Allocation of Peter Richmond Realized Property
122-124 Peter	7,500	49.2%	12,904,463
Remaining Parcels	7,756	50.8%	13,345,537
Total	15,256	100%	\$26,250,000

47. As reflected in the table above, based on the Square Footage Methodology, approximately \$12.9 million of the Peter Richmond Realized Property (“**122-124 Peter Proceeds**”) is allocable to 122-124 Peter and approximately \$13.35 million of the Peter Richmond Realized Property (“**Remaining Proceeds**”) is allocable to the remaining four parcels of land.

² The Trustee notes that (i) the MPAC methodology, which considers the current value of the land, resulted in an immaterial difference to the allocation under the Square Footage Methodology, and (ii) the purchase price methodology resulted in a slightly more material (but not significant) difference, which the Trustee attributes to the fact that the properties were purchased several years ago and at different points in time.

2. Entitlement of the LH2 Lenders to the Peter Richmond Realized Property

48. The Trustee next considered what entitlement, if any, the LH2 Lenders should have to the full quantum of the Peter Richmond Realized Property given that the LH2 Lenders only had a charge registered on title to one parcel, 122-124 Peter (one of the five parcels comprising the Peter Richmond Land Assembly).
49. Although the LH2 Lenders only had a charge registered on one of the five parcels, the Trustee considered whether the LH2 Lenders had a reasonable expectation that their charge would have been extended to the other parcels as such parcels were acquired. The Trustee reviewed the documents signed by LH2 Lenders at the time they made their investments and notes that: (i) the LH2 Loan Agreement only references a charge being granted on 122-124 Peter in respect of the LH2 Loan; (ii) the LH2 Loan Agreement does not appear to contemplate that the LH2 Lenders would be given a charge on any other property in the future, and (iii) the proceeds from the LH2 Loan were only used in connection with 122-124 Peter and did not contribute to any costs relating to other parcels comprising the Peter Richmond Land Assembly. Therefore, given that the LH2 Lenders did not appear to have a reasonable expectation that their mortgage would extend to the additional properties that now constitute the Peter Richmond Land Assembly, and did not contribute towards the development of such parcels, the Trustee is of the view that the LH2 Lenders should only be entitled to make a claim on the portion of the Peter Richmond Realized Property that is specifically attributable to 122-124 Peter (i.e., the LH2 Lenders should not be allocated any proceeds relating to the other four parcels of land comprising the Peter Richmond Land Assembly).

3. Allocation of 122-124 Peter Proceeds Among PRLA SML Lenders and LH2 Lenders

50. As a result of the foregoing, the final point for the Trustee to consider was the appropriate distribution methodology for distributing the 122-124 Peter Proceeds among the PRLA SML Lenders and the LH2 Lenders.
51. In its review, the Trustee analyzed the PRLA Loan and LH2 Loan arrangements described above, including the postponement and Interlender Agreement registered on title to 122-124 Peter whereby the New LH2 Charge was postponed in favour of the PRLA Charges.

The Trustee, as a Court Officer, also considered equitable considerations surrounding the circumstances of such postponement and its potential effect on the two groups of lenders.

52. The Trustee considered two potential approaches to the allocation of the 122-124 Peter Proceeds among the Peter Richmond Individual Lenders, as follows:

(a) applying the ranking of the mortgages as registered on title to 122-124 Peter, giving full effect to the postponement registered on title ("**Priorities Approach**"), which results in the PRLA Charges ranking ahead of the New LH2 Charge and no recoveries for the LH2 Lenders; or

(b) distributing the 122-124 Peter Proceeds on a *pari passu* basis to the PRLA SML Lenders and the LH2 Lenders ("**Pari Passu Approach**").

As described in greater detail below, both the Priorities Approach and the Pari Passu Approach contemplate an allocation of a percentage of the total PRLA Loan indebtedness to 122-124 Peter using the Square Footage Methodology.

53. For the reasons described below, the Trustee is of the view that the Pari Passu Approach is the most appropriate methodology for the distribution of the 122-124 Peter Proceeds in the circumstances.

Priorities Approach

54. The Priorities Approach considered by the Trustee reflects the priorities of the BDMC mortgages registered on title to 122-124 Peter immediately prior to the PRLA Assignment Transaction. This approach gives effect to the postponement and Interlender Agreement among the PRLA SML Lenders and the LH2 Lenders and provides that the PRLA Loan should be repaid in full prior to any repayment of the LH2 Loan.

55. Given that the amounts owing to the PRLA SML Lenders total approximately \$33.1 million and the Peter Richmond Realized Property in total is only \$26.25 million, the application of the Priorities Approach (regardless of any allocation of proceeds to 122-124 Peter using the Square Footage Methodology or otherwise) would provide that all of the Peter Richmond Realized Property would be distributed to the PRLA SML Lenders, leaving the LH2 Lenders with no recoveries.

56. However, the Trustee is of the view that it would be unreasonable to allocate the entire PRLA Loan to 122-124 Peter given that it was advanced in respect of all five parcels comprising the Peter Richmond Land Assembly. Accordingly, the Trustee is of the view that, in evaluating the Priorities Approach, it is necessary to apportion a fair and appropriate amount of the indebtedness owing under the PRLA Loan, which would be repaid in priority to the LH2 Loan from the proceeds allocable to 122-124 Peter. The Trustee proposes to do so using the Square Footage Methodology.
57. The Trustee considered the appropriate application of the Square Footage Methodology to the PRLA Loan indebtedness. In the particular circumstances of the PRLA SML Lenders and the LH2 Lenders, the Trustee believes it is fair and appropriate to account for the PRLA Loan and LH2 Loan indebtedness inclusive of accrued interest and net of previously paid interest for the following reasons:
- (a) The inclusion of accrued interest reflects the full balance of the indebtedness on the PRLA Loan and the LH2 Loan as at the closing of the PRLA Assignment Transaction;
 - (b) Paid interest in respect of each of the PRLA Loan and the LH2 Loan is material (approximately \$2.9 million and \$1 million, respectively);
 - (c) The amount of paid interest as a percentage of principal in respect of the LH2 Loan (22%) is significantly higher than paid interest as a percentage of principal in respect of the PRLA Loan (10.7%); and
 - (d) This accounting most appropriately factors in the totality of the recoveries for the Peter Richmond Individual Lenders in the Peter Richmond Project.
58. The table below summarizes the allocation of the PRLA Loan indebtedness and LH2 Loan indebtedness and the resulting recoveries to Peter Richmond Individual Lenders using the Priorities Approach:

	Square Footage	Percentage of Proceeds	Peter Richmond Realized Property	PRLA Indebtedness Inclusive of Accrued Interest and Net of Paid Interest	LH2 Indebtedness Inclusive of Accrued Interest and Net of Paid Interest
Principal Outstanding (A)				27,404,677	4,527,378
Accrued Interest				5,728,606	981,937
Paid Interest (B)				(2,921,281)	(997,258)
Total				\$30,212,002	\$4,512,057
122-124 Peter	7,500	49.16%	12,904,463	14,852,177	4,512,057
Remaining Parcels	7,756	50.84%	13,345,537	15,359,825	NIL
Total	15,256	100%	\$26,250,000	\$30,212,002	\$4,512,057
Allocation of 122-124 Peter Proceeds				12,904,463	NIL
Allocation of Remaining Proceeds				13,345,537	NIL
Allocation of Peter Richmond Realized Property (C)				\$26,250,000	NIL
Recovery on principal (C/A)				96%	NIL
Recovery on principal including paid interest ((C+B)/A)				106%	22%

59. As set out above, the Square Footage Methodology provides that approximately \$14.85 million of the PRLA Loan indebtedness (net of paid interest) is allocated to 122-124 Peter. However, the 122-124 Peter Proceeds allocated to 122-124 Peter using the Square Footage Methodology are only approximately \$12.9 million and accordingly are insufficient to fully repay the \$14.85 million to the PRLA SML Lenders. Therefore, under this application of the Priorities Approach, the PRLA SML Lenders would still suffer a shortfall of approximately \$1.95 million on 122-124 Peter and there would be no remaining funds for the LH2 Lenders.
60. In addition to the approximately \$12.9 million payable to the PRLA SML Lenders in respect of 122-124 Peter, the PRLA SML Lenders would also receive the approximately \$13.35 million of Remaining Proceeds in respect of the other four parcels of land. As a result, this adjusted Priorities Approach would still provide for the entire amount of the Peter Richmond Realized Property to be distributable to the PRLA SML Lenders, with no recoveries available to repay the LH2 Lenders.

Pari Passu Approach

61. The Pari Passu Approach provides for a *pari passu* distribution of the 122-124 Peter Proceeds among the PRLA Loan and the LH2 Loan after applying the Square Footage Methodology to allocate the percentage of the PRLA Loan indebtedness attributable to 122-124 Peter. This approach does not give effect to the postponement and Interlender Agreement registered on title to 122-124 Peter.
62. The Trustee is of the view that the Pari Passu Approach provides an equitable distribution of the 122-124 Peter Proceeds and is appropriate in these circumstances for the reasons described below. As part of its review, the Trustee has reviewed documentation relating to the PRLA Loan and the LH2 Loan, the circumstances under which such documentation was executed, and communications made by BDMC and Fortress to Peter Richmond Individual Lenders.
63. The Trustee believes it would be unfair to rely on the postponement of the New LH2 Charge to the PRLA Charge and the accompanying Interlender Agreement in the circumstances because it appears to have been signed without express permission from either the PRLA SML Lenders or the LH2 Lenders. The Trustee is also not aware of any communications made to the Peter Richmond Individual Lenders regarding such postponement or its effect on the Peter Richmond Loans.
64. The postponement was registered on title to 122-124 Peter on the same day that the original PRLA Charge was registered on title to the properties comprising the Peter Richmond Land Assembly. The Form 9D disclosure documentation accompanying the PRLA Loan Agreement does not appear to include any disclosure of the existence of the New LH2 Charge on title to 122-124 Peter, despite such documentation requiring the disclosure of all encumbrances registered on title to the charged properties. Therefore, the PRLA SML Lenders may not have even been aware that there were other syndicated mortgage investors involved in the Peter Richmond Project whose investments were also administered by BDMC.
65. The Trustee understands that BDMC signed the Interlender Agreement on behalf of the PRLA SML Lenders in accordance with the signing authority granted to it under the Participation and Servicing Agreement entered into by each PRLA SML Lender in connection with its investment. However, the Participation and Servicing Agreement

provides that BDMC shall not exercise rights to sign postponements or take other actions without the prior written consent of the individual investor (provided that, if BDMC requests consent to any such action and does not receive consent or denial thereof in writing within 10 business days of the request, the individual investor shall be deemed to have given its consent). The Trustee does not have any evidence in its records that such consent to sign the Interlender Agreement was sought or obtained prior to BDMC executing the agreement on behalf of the PRLA SML Lenders.

66. The Trustee understands that BDMC signed the Interlender Agreement on behalf of the LH2 Lenders in accordance with the signing authority granted to it under the Agency Agreement. As described above, the Agency Agreement provides that, if the “exigencies of the situation so warrant”, BDMC may take actions on behalf of the LH2 Lenders without seeking their consent. There is no evidence available to the Trustee that this postponement, which materially affected the rights of the LH2 Lenders, needed to be signed without prior consultation with, or consent from, the LH2 Lenders.
67. Further, the Agency Agreement only gave BDMC the authority to exercise rights in accordance with the terms of the LH2 Loan documentation. The LH2 Loan Agreement provided that the LH2 Lenders would be granted a second-ranking charge and would postpone to a maximum of \$22 million. As noted above, the LH2 Loan Agreement expressly stated that “there shall be no other postponements or encumbrances which affect the position or security afforded by the second Charge/Mortgage contemplated herein”. Accordingly, the Trustee has some concerns with respect to BDMC’s execution of the Interlender Agreement given that it contemplated a further postponement of the LH2 Loan to a PRLA Loan in the amount of up to \$24 million.
68. Finally, BDMC’s authority to bind all the LH2 Lenders to the Interlender Agreement assumes that all of the LH2 Lenders had signed or otherwise become bound by the accession agreements to the Agency Agreement. The Trustee understands that, at the time the Interlender Agreement was signed, BDMC had not received such signed documentation from all LH2 Lenders and, as a result, certain LH2 Lenders may not have been bound by the postponement contemplated in the Interlender Agreement. If the Trustee were to rely on the signatures obtained in its records, this would create inequities among LH2 Lenders (whereby some would have postponed to the PRLA Loan and others would not have). It would also create uncertainty to the PRLA SML Lenders (to the extent

they were aware of the postponement), as they would not have been informed of the portion of the LH2 Lenders who were not bound by the Interlender Agreement. In the circumstances, the Trustee believes that all LH2 Lenders should be treated equally, whether or not they signed the Agency Agreement.

69. Given these considerations, the Trustee believes that it would be inappropriate to rely on the postponement signed by BDMC on behalf of both sets of investors, particularly given that, to the best of the Trustee's knowledge, the Interlender Agreement was signed to the detriment of the LH2 Lenders without their knowledge or consent. The investors in each of the PRLA Loan and the LH2 Loan were innocent parties who appear not to have been provided with sufficient information regarding the postponement and its effect on their investments, or the opportunity to consent thereto. Moreover, the investors do not appear to have been sufficiently updated regarding the status of the development of the Peter Richmond Project, their investments and the effect of the delays and other actions on their expected recoveries. As a result, the Trustee believes that a *pari passu* distribution to all Peter Richmond Individual Lenders with respect to the 122-124 Peter Proceeds would be the most fair, equitable and appropriate distribution methodology in the circumstances.
70. The Trustee proposes to calculate the *pari passu* distributions of the 122-124 Peter Proceeds using the total amount outstanding under the LH2 Loan and the portion of the amount outstanding under the PRLA Loan allocated to 122-124 Peter based on the Square Footage Methodology, after taking into account previously paid interest.
71. The following table summarizes the recoveries to the Peter Richmond Individual Lenders in accordance with the Square Footage Methodology and under the Pari Passu Approach:

	PRLA SML Lenders	LH2 Lenders	Total
Indebtedness allocated to 122-124 Peter	14,852,177	4,512,057	19,364,234
Relative percentages of indebtedness to 122-124 Peter	77%	23%	100%
Allocation of 122-124 Peter Proceeds (A)	9,897,596	3,006,867	12,904,463
Relative percentages of 122-124 Peter Proceeds	77%	23%	100%
Principal outstanding (B)	27,404,677	4,527,378	31,932,055
Accrued Interest	5,728,606	981,937	6,710,543
Paid Interest (C)	(2,921,281)	(997,258)	(3,918,539)
Total	30,212,002	4,512,057	34,724,059
Allocation of 122-124 Peter Proceeds (A)	9,897,596	3,006,867	12,904,463
Allocation of Remaining Proceeds	13,345,537	-	13,345,537
Allocation of Peter Richmond Realized Property (D)	23,243,133	3,006,867	26,250,000
Recovery on principal (D/B)	85%	66%	82%
Recovery on principal including paid interest ((D+C)/B)	95%	88%	94%

72. The approach described above would result in an allocation of approximately \$3 million to the LH2 Lenders and approximately \$9.9 million to the PRLA SML Lenders in respect of the 122-124 Peter Proceeds. In addition, the PRLA SML Lenders would receive the Remaining Proceeds of approximately \$13.35 million in respect of the other four parcels of land.
73. Accordingly, the Pari Passu Approach, after application of the Square Footage Methodology, would result in the total allocation of approximately \$23.24 million to the PRLA SML Lenders and approximately \$3 million to the LH2 Lenders, to be shared *pro rata* among such PRLA SML Lenders and LH2 Lenders, respectively.
74. This approach would provide for an 88% recovery on principal to the LH2 Lenders and a 95% recovery on principal to the PRLA SML Lenders, when taking into account previously paid interest. The Trustee is of the view that this approach is fair to all investors in the circumstances and provides substantial recoveries to all Peter Richmond Individual Lenders. The Trustee therefore proposes that the Pari Passu Approach, after application of the Square Footage Methodology, should be applied to the distribution of the 122-124 Peter Proceeds. The Trustee also notes that this approach does not result in a significant

diminution of recovery for the PRLA SML Lenders as compared to the Priorities Approach, while ensuring that the LH2 Lenders do not receive zero recovery as they would under the Priorities Approach.

75. The Trustee has shared its analysis and recommendations with Representative Counsel, and Representative Counsel has advised that it supports the Trustee's proposed distribution approach as set out in the proposed Peter Richmond Distribution Order.

CONCLUSION AND RECOMMENDATION

76. For the reasons noted above, the Trustee recommends that the primary relief sought in the motion for the proposed Peter Richmond Distribution Order be granted by the Court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of October, 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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

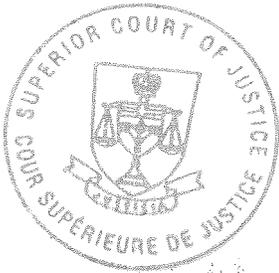
THE SUPERINTENDENT OF FINANCIAL SERVICES

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,

YH 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.

or
CDCM

YH
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.

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LE / DANS LE REGISTRE NO:

APR 20 2018

PER / PAR:

SCHEDULE "A"
TRUSTEE CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

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

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

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

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

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

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

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

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

DATED the _____ day of _____, 2018.

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

Per: _____
Name:
Title:

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPOINTMENT ORDER

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Lawyers for The Superintendent of Financial Services

Appendix 2:
Realized Property Order dated October 30, 2018

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN:

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent



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

REALIZED PROPERTY ORDER

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

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

SERVICE

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

DEFINITIONS

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

REALIZED PROPERTY

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

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

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

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

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

GENERAL

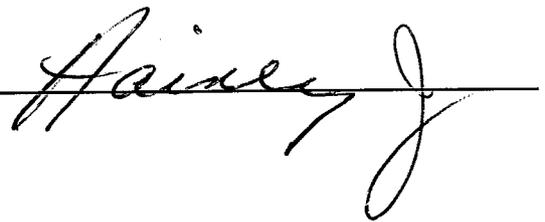
6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 30 2018

PER / PAR: *w*

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

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

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

Appendix 3:

Harlowe Settlement Approval Order dated December 20, 2018

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

**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

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

Schedule “D” – Release Agreement

[Date]

TO: FAAN Mortgage Administrators Inc. (the “Trustee”)

AND TO: Olympia Trust Company (“OTC”)

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

Dear Sirs/Mesdames

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

1. Harlowe hereby certifies that all of the representations and warranties contained in the Settlement Agreement are true and accurate as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. Harlowe has paid the Trustee \$15,562,896.38 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$15,562,896.38 in full and final satisfaction of Obligations payable to BDMC by Harlowe under the Loan Agreement in excess of \$20,779,460 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Harlowe (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the “**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
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Fax: (416) 862-6666

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

Appendix 4:
Fourteenth Report of the Trustee (without appendices)

**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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Appendix 8	Peter Richmond Offer and Peter Richmond Assignment Agreement
Confidential Appendix 1	Peter Richmond Assignment Agreement (unredacted) and Summary of Offers

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

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

BETWEEN

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

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

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 5:
Peter Richmond Assignment Agreement Approval Order

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 30 TH
)	
JUSTICE HAINEY)	DAY OF JANUARY, 2020

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***

PETER RICHMOND ASSIGNMENT AGREEMENT APPROVAL ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, 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 Assignment Agreement dated as of December

17, 2019 (the “**Peter Richmond Assignment Agreement**”) among Carlyle Communities Inc. (the “**Assignee**”), the Trustee and Olympia Trust Company (“**OTC**”); (ii) ordering the Assignee to pay the Assignment Price (less the Deposit) forthwith to the Trustee pursuant to the Peter Richmond Assignment Agreement; (iii) ordering the Assignee, the Trustee and OTC to comply with the Peter Richmond Assignment Agreement; and (iv) sealing Confidential Appendix 1 to the Fourteenth Report (as defined below) pending further Order of this Court, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Fourteenth Report of the Trustee dated January 23, 2020 (the “**Fourteenth Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel to the Assignee 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 January 24, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourteenth 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 Fourteenth Report and the Peter Richmond Assignment Agreement.

APPROVAL OF THE PETER RICHMOND ASSIGNMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Peter Richmond Assignment Agreement be and is hereby approved in its entirety, including without limitation the Late Payment Fee contemplated by section 2 thereof, if any, 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) the Assignee is hereby directed to pay the Assignment Price (less any Deposit previously received by the Trustee) forthwith to the Trustee in accordance with the terms of the Peter Richmond Assignment Agreement (such funds, including

the Deposit, being the “**Peter Richmond Realized Property**”); and (iii) the execution of the Peter Richmond Assignment 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 Peter Richmond Assignment Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee’s certificate to the Assignee substantially in the form attached as Schedule “A” hereto (the “**Trustee’s Certificate**”): (i) all of the right, title and interest (both legal and equitable), powers and privileges and other benefits of any nature whatsoever of BDMC, OTC, and the individual lenders (the “**Peter Richmond Individual Lenders**”) in and to the Indebtedness of Fortress Carlyle Peter St. Inc., the Loan Agreements, the Agency Agreement, the Charges and the BDMC Personal Property Security (each as defined in the Peter Richmond Assignment Agreement, and, collectively, the “**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, are hereby sold, assigned, transferred, set over, delivered and conveyed to the Assignee, and (ii) all rights and obligations of the Trustee, BDMC, OTC and the Peter Richmond Individual Lenders to any person or party in respect of the Peter Richmond Loan Obligations shall be released, extinguished, expunged, discharged and deleted; provided, however, that: (i) the Trustee, BDMC and OTC shall not be released from any obligations under the Peter Richmond Assignment Agreement, and (ii) nothing shall affect the Turnover Obligation (as defined in the Peter Richmond Assignment Agreement).

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee’s Certificate, the Peter Richmond Realized Property is and shall be deemed to be “Realized Property” as defined in the Order of this Court dated June 26, 2018, as amended (the “**Interim Stabilization Order**”) and that all of the Peter Richmond Individual Lenders’ rights and claims under the Peter Richmond Loan Obligations shall attach to the Peter Richmond Realized Property and shall have the same nature and priority as they had prior to the consummation of

the Peter Richmond Assignment 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 the City of Toronto (#66) of an Application to Register an 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 transfer from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Charges listed in Schedule "C" hereto, into the name of the Assignee.

7. **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.

SEALING

8. **THIS COURT ORDERS** that Confidential Appendix 1 to the Fourteenth Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

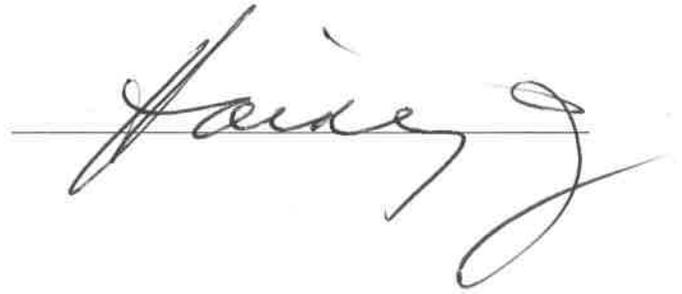
AID AND RECOGNITION OF FOREIGN COURTS

9. **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.

10. **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:
JAN 30 2020

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "Jainey".

PER / PAR: C.D.

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 Hainey 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 assets, undertakings, and properties of Building & Development Mortgages Canada Inc. (“**BDMC**”).

B. Pursuant to an Order of the Court made on January ●, 2020 (the “**Peter Richmond Assignment Agreement Approval Order**”), the Court approved and ratified the Assignment Agreement dated as of December 17, 2019 (the “**Peter Richmond Assignment Agreement**”) among Carlyle Communities Inc. (the “**Assignee**”), the Trustee and Olympia Trust Company (“**OTC**”) and ordered that, among other things: (i) all of the right, title and interest (both legal

and equitable), powers and privileges and other benefits of any nature whatsoever of BDMC, OTC, and the individual lenders (the “**Peter Richmond Individual Lenders**”) in and to the Indebtedness owing by Fortress Carlyle Peter St. Inc., the Loan Agreements, the Agency Agreement, the Charges and the BDMC Personal Property Security (each as defined in the Peter Richmond Assignment Agreement, and, collectively, the “**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, are hereby sold, assigned, transferred, set over, delivered and conveyed to the Assignee, and (ii) all rights and obligations of the Trustee, BDMC, OTC and the Peter Richmond Individual Lenders to any person or party in respect of the Peter Richmond Loan Obligations shall be released, extinguished, expunged, discharged and deleted; provided, however, that: (a) the Trustee, BDMC and OTC shall not be released from any obligations under the Peter Richmond Assignment Agreement, and (b) nothing shall affect the Turnover Obligation (as defined in the Peter Richmond Assignment Agreement); and provided that the assignment and release of the Peter Richmond Loan Obligations to the Assignee is to be effective upon the delivery by the Trustee to the Assignee of a certificate confirming, among other things, (x) the payment of the Assignment Price (as defined in the Peter Richmond Assignment Agreement) to the Trustee by the Assignee; (y) that the conditions precedent to the Peter Richmond Assignment Agreement as set out in Section 15 of the Peter Richmond Assignment Agreement have been satisfied or waived by the Trustee; and (z) the assignment 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 Peter Richmond Assignment Agreement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. The Assignee has paid and the Trustee has received the Assignment Price and the Late Payment Fee (each as defined in the Peter Richmond Assignment Agreement), if any, pursuant to the Peter Richmond Assignment Agreement;
2. The Assignee has certified that all of the representations and warranties contained in the Peter Richmond Assignment Agreement continue to be true as of the Closing Date;

3. The Assignee continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Peter Richmond Assignment Agreement;
4. The other conditions set out in the Peter Richmond Assignment Agreement have been satisfied or waived by the Trustee (except for the Turnover Obligation (as defined in the Peter Richmond Assignment Agreement), which, for greater certainty, shall remain an ongoing obligation of the Assignee); and
5. The assignment 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 assets, undertakings, and properties of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____
Name:
Title:

Schedule "B" – Real Property

- 122 & 124 Peter Street, Toronto (PIN 21412-0139 (LT))
- 126 Peter Street, Toronto (PIN 21412-0140 (LT))
- 128 Peter Street, Toronto (PIN 21412-0141 (LT))
- 357 Richmond Street, Toronto (PIN 21412-0142 (LT))
- 359 Richmond Street, Toronto (PIN 21412-0143 (LT))

Schedule “C” – Charges

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 becomes Building & Development Mortgages Canada Inc. by Articles of Amendment Instrument No. AT4136473 registered February 3, 2016.
 - 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.
 - 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:
 - 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 8, 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. to secure the original principal amount of \$35,000,000.
 - 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. to secure the original principal amount of \$35,000,000
 - 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.

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.
 - 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 becomes Building & Development Mortgages Canada Inc. by Articles of Amendment Instrument No. AT4136473 registered February 3, 2016.
 - 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:
 - 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.

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

PETER RICHMOND ASSIGNMENT
AGREEMENT APPROVAL ORDER

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

Appendix 6:
PRLA Loan Agreement, Form 9D and Participation and Servicing Agreement
(anonymized)

LOAN AGREEMENT

THIS AGREEMENT made as of the 3rd day of November, 2014,

B E T W E E N:

CENTRO MORTGAGE INC., IN TRUST

(called the "**Lender**")

- and -

FORTRESS CARLYLE PETER ST INC.

(called the "**Borrower**")

WHEREAS the Lender has agreed to advance the Loan to the Borrower on the basis set forth herein;

AND WHEREAS the Loan will be secured by a second-ranking mortgage against the Property;

AND WHEREAS the balance of the terms of the Loan are set out in this Agreement;

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Defined Terms**

Unless expressly stated otherwise, the following capitalized terms shall have the meanings indicated:

- (a) "**Agreement**" means this agreement and all amendments thereof;
- (b) "**Borrower**" means Fortress Carlyle Peter St Inc. and its successors and permitted assigns;
- (c) "**Bridge Lender**" shall have the meaning attributed thereto in Section 3(c);
- (d) "**Bridge Loan**" shall have the meaning attributed thereto in Section 3(c);
- (e) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (f) "**Conditions Precedent**" shall have the meaning attributed thereto in Section 12 hereof;

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- (g) “**Default**” means an event or condition, the occurrence of which would, with the lapse of time or the giving of notice, or both, become an Event of Default;
- (h) “**Development Consultant Agreement**” means the agreement between Fortress and the Borrower of even date relating to the provision of certain services to the Borrower for the Project;
- (i) “**Development Fees**” means any and all development management fees or construction management fees payable by the Borrower or any related parties in connection with the Project;
- (j) “**Event of Default**” shall have the meaning attributed thereto in Section 16 hereof;
- (k) “**First-Ranking Construction Loan**” means collectively, one or more secured Project construction loans, in favour of arm’s-length lender(s), in an aggregate principal amount not to exceed \$150,000,000 (plus a 10% contingency) ranking *pari passu* or with stated priority between them (in the case of multiple loans), with usual cost-to-complete advances and related security/documentation;
- (l) “**First-Ranking Construction Loan Security**” means the security to be provided to the Senior Lender to service the First-Ranking Construction Loan;
- (m) “**Fortress**” means Fortress Real Developments Inc.;
- (n) “**Hazardous Substances**” means all contaminants, pollutants, substances and materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances and/or materials are or shall become prohibited, controlled or regulated pursuant to environmental laws and shall include “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances”, all as defined in, referred to and/or contemplated in environmental laws, but exclude all cleaning and related products used in the usual operation and maintenance of property;
- (o) “**Interest Reserve**” means the amount of monies actually raised from investors and included in the Loan to cover interest payments on the Net Equity advanced under the Loan;
- (p) “**Lender**” means Centro Mortgage Inc., in trust, for and on behalf of certain persons/entities, and their respective successors and assigns;
- (q) “**Loan**” shall have the meaning attributed thereto in Section 3 hereof;
- (r) “**Loan Documents**” means this Agreement, the Security, all other documentation delivered in connection with the Loan and all amendments thereof;
- (s) “**Maturity Date**” shall have the meaning attributed thereto in Section 4 hereof;

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- (t) “**Net Equity**” means a portion of the principal amount of the Loan advanced to the Borrower, from time to time, excluding: (1) the Interest Reserve; (2) all other accrued interest; (3) the Deferred Lender Fee; and (4) the amounts raised and paid out on account of interest payments, all fees paid by the Borrower to Fortress under the Development Consultant Agreement as Development Consultant Fees / Costs, as defined therein;
- (u) “**Notice**” shall have the meaning attributed thereto in Subsection 18(b) hereof;
- (v) “**Permitted Encumbrances**” means the First-Ranking Construction Loan Security and, a mortgage to secure any insurer providing bonding to the Tarion Warranty Corporation or providing excess deposit insurance to purchasers of condo units and such non-financial encumbrances as shall be reasonable for a development such as the Project (including, without limitation, encumbrances pertaining to easements, rights-of-way, subdivision agreements, condominium development or related agreements, site plan control agreements, Development Consultant Agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants), and any other encumbrances agreed to by the Borrower and the Lender;
- (w) “**Project**” high rise residential condominium development to be constructed on the Property, comprised of the lands located at 122-128 Peter Street, Toronto, ON (Future Security may include 120 Peter Street, 357 & 359 Richmond Street West, Toronto, ON, OR any adjacent lands to the existing or future parcels;
- (x) “**Project Budget**” means the Project budget attached hereto as Schedule “B”;
- (y) “**Project Cost Consultant**” means an arm’s-length cost consultant approved by the Lender, acting reasonably;
- (z) “**Property**” means the lands municipally and legally described in Schedule “A” attached hereto, together with all personal, intellectual and other property and all contracts relating thereto or associated therewith;
- (aa) “**Security**” shall have the meaning attributed thereto in Section 10 hereof;
- (bb) “**Senior Lender(s)**” means the arm's length recognized financial institution providing the First-Ranking Construction Loan for the Project and receiving the First-Ranking Construction Loan Security, all as approved by the Lender, acting reasonably;
- (cc) “**Substantial Completion**” shall have the meaning attributed thereto pursuant to the *Construction Lien Act* (Ontario);
- (dd) “**Term**” shall have the meaning attributed thereto in Section 4 hereof; and

2. **Schedules**

The following are the schedules attached to and forming part of this Agreement:

- (a) Schedule "A" - Municipal and Legal Description of the Property
- (b) Schedule "B" - Project Budget

3. **Loan**

- (a) The Lender hereby establishes a non-revolving loan (the "**Loan**") in favour of the Borrower in an amount not exceeding \$24,000,000.00 to provide funding for the Borrower's costs related to the acquisition of the Property, as set out in Schedule "B" attached hereto (the "**Project Budget**") including, without limitation, funding to repay, if any, the Bridge Loan, other reasonable closing costs and reasonable soft costs incurred or to be incurred prior to construction financing and to provide for any shortfall in required equity (as determined by the Senior Lender in its sole, absolute and unfettered discretion) prior to the first advance of the First-Ranking Construction Loan, all as set out in the Project Budget, but specifically excluding Development Fees which must be funded by the Senior Lender;
- (b) If, for any reason whatsoever and notwithstanding any other provision hereof, the Lender is unable to fund the full Loan for the Project, as and when required, as per the Project Schedule as approved by the Lender, as amended from time to time, with consent of both the Lender and Borrower within ninety (90) days of being required to do so, then the security for the Loan funded shall be postponed and subordinated in favour of any and all security required by a lender providing the loan for the shortfall (the "**Replacement Lender**") and shall be postponed and subordinated in favour of the Security held by the Replacement Lender for advances to the Project. Either the Lender or the Borrower shall have the right to obtain a Replacement Lender on the best commercial terms available; and
- (c) Notwithstanding any other provision hereof, in the event that, for any reason whatsoever, less than the principal amount of the Loan is arranged for ultimate advance to the Borrower, as and when required as set out herein, then the Lender may, and with the consent of the Borrower agree to arrange a financing of the shortfall through an additional loan ("**Bridge Loan**") from a third party lender ("**Bridge Lender**"). The Bridge Loan shall rank in priority to the Loan and the Loan Documents and rank behind the First-Ranking Construction Loan Security (if applicable), and the Borrower and Lender agree to execute and deliver all reasonable documentation to provide required Security and related documents to the Bridge Lender as it may reasonably require to secure the Bridge Loan, and reflect such priority/ranking. Cost of funds would not be greater if otherwise advanced by the Lender.

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4. **Term**

- (a) 4 years, commencing on the date of first advance and ending on the final day of such period (the “**Maturity Date**”). At the Borrower’s option (to be exercised in writing not less than three (3) months prior to the Maturity Date), the Borrower may extend the Maturity Date for 12 additional months.

The first advance (the “**First Advance**”) shall be made within sixty (60) days following the execution of this Loan Agreement, delivery of the Security and satisfaction of all Conditions Precedent.

Failing the first advance being completed as aforesaid, the Lender at its option, may terminate this Agreement and be relieved of all liability hereunder.

5. **Interest Rate**

Eight Percent (8%) per annum.

Notwithstanding any other provision hereof, the aggregate fees, donations, interest, share of profits, penalties and all other payments pursuant to the Loan (in addition to the repayment of Loan principal) shall be deemed not to exceed an effective annual rate of interest of 59% (calculated in accordance with generally accepted actuarial practices and principles).

6. **Interest Payment**

Calculated annually and payable quarterly, not in advance, both before and after default, first payment thereof to be made on the 2nd day of the month next following the date of the first advance of the Loan. All interest during the Term shall be paid from the Interest Reserve raised by the Lender as part of the Loan, or failing same, it shall be accrued to the Maturity Date.

Additionally, in the extension year (the 5th year) interest will begin to accrue at Eight Percent (8%) per annum (calculated annually, not in advance) and the final year of accrued interest will be paid in full at the time of maturity.

7. **Method of Payment of Quarterly Interest Payment**

The Borrower shall subscribe to the “pre-authorized payment” system to allow quarterly instalments to be withdrawn automatically, to be advanced from the Interest Reserve to the extent raised by the Lender (or the Lender is directed to make necessary advances from the Interest Reserve to make the quarterly interest payments as and when due).

8. **Prepayment/Repayment of Principal**

- (a) The Borrower may prepay the Loan, in whole or in part, upon two (2) Business Days’ prior written notice to the Lender and without bonus, but the obligations to pay any payments to Fortress under the Development Consultant Agreement shall continue;

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- (b) The outstanding Loan principal together with accrued interest owing and all other amounts due and owing, if any, pursuant to the Loan Documents shall become wholly due and payable on the earlier of Maturity Date or the occurrence of an unremedied Event of Default;
- (c) In the event that the Senior Lender requires less equity that has already been advanced by the Lender, or to the extent the Project is refinanced, to the extent that such equity can be repatriated to the Borrower, with the consent of the Borrower/Lender same shall be paid to the Lender to pay down the Loan or, held in a separate trust account and pledged to the Lender to secure and be used to fund Interest Reserves and interest payments; and
- (d) Repayment of the Loan shall be subject to and in accordance with the provisions of the "Waterfall" in Section 5 of the Development Consultant Agreement.

9. **Project Completion Fee/Deferred Lender Fee**

In addition to the above and not later than ninety (90) days following completion of the condo registration , the Borrower shall pay to the Lender a Project completion fee/deferred lender fee ("**Deferred Lender Fee**") as set forth below and which fees shall be secured under the Security:

- a) in the event that the Project Profit is less than \$29,000,000.00 there will be no Deferred Lender Fee;
- b) in the event that the Project Profit exceeds \$29,000,000.01 and is less than \$31,000,000.00 the Deferred Lender Fee would be equal to 6% of the Loan principal;
- c) in the event that the Project Profit is greater than \$31,000,000.01 the Deferred Lender Fee shall be equal to 12% of the Loan principal.

10. **Security**

The security for the Loan (as amended, hereinafter the "**Security**") shall be as follows, subject only to the Permitted Encumbrances:

- (a) Property mortgage executed by the Borrower in the principal amount of \$24,000,000.00;
- (b) if the Property beneficial owner is not the Borrower, then a direction, acknowledgement and security agreement executed by the beneficial owner, Borrower and Lender, including confirmation of a second/third-ranking charge of the beneficial owner's interest in the Property and a direction by the beneficial owner to the Borrower to execute the Loan Documents to which the Borrower is a party, such direction to be duly acknowledged by the Borrower;
- (c) a general security agreement executed by the Borrower charging the personal property and undertaking of the Borrower, present and future, used in connection

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with the Property including, without limitation, all accounts, equipment, goods, inventory, chattel paper, documents of title, intangibles, securities and proceeds therefrom;

- (d) an indemnity from the Borrower indemnifying the Lender from and against all losses, demands, claims, liabilities, costs, actions, penalties, obligations and expenses imposed upon the Lender and arising in connection with the Lender being a lender hereunder in respect of the Property and all assets relating thereto, save and except in respect of matters arising and caused by the gross negligence of the Lender during any period in which the Lender shall be in exclusive possession of the Property and/or arising and caused after a completed foreclosure proceeding or sale proceeding pursuant to the Security and/or caused by the gross negligence of the Lender; such indemnity shall survive the full payment and discharge of the Loan including *inter alia*, an appropriate indemnity for all environmental matters;
- (e) a completion guarantee from the Borrower;
- (f) an undertaking by the Borrower to attempt to obtain construction financing from the Senior Lender for all approved Project costs as described in the Project Budget, save for the equity to be advanced by way of the Loan Amounts under this Loan Agreement, on commercially reasonable terms to be approved by the Lender, acting reasonably;
- (g) such further and/or other security relating to the Property as the Lender shall reasonably require.

11. **Deliveries to Lender**

The Borrower shall deliver, within five (5) Business Days following execution of this Agreement, a copy of each of the following:

- (a) the Property parcel pages, existing registered encumbrances and existing surveys thereof;
- (b) the appraisal and professional reports described in Section 12 hereof;
- (c) the financial statements and Project Budget described in Section 12 hereof;
- (d) the off-title search results and corporate/personalty search results described in Section 12 hereof;
- (e) evidence of liability insurance in satisfactory amounts, with the Lender included as a named insured;
- (f) all material Project contracts;
- (g) all Project plans and specifications and all periodic Project development reports issued to date;

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- (h) all architectural and engineering documents and any other consultant or internally generated developments reports with respect to the Project, together with the draft plan, zoning analysis, traffic study, sanitary study, water study, storm-water study, utility study and road study;
- (i) a copy of the Purchase Agreement and closing statement of adjustments; and
- (j) all other information and/or documentation in respect of the Project, the Property and/or the Borrower as the Lender may request, acting reasonably.

12. **Conditions Precedent to Advance**

Each advance pursuant to the Loan shall be conditional upon the Lender's receipt of the following (the "**Conditions Precedent**"), which Conditions Precedent are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part:

- (a) the Security, duly registered and perfected (as the case may be) together with all other documentation relating to the Loan, the Property, the Project and the Borrower required by the Lender, acting reasonably;
- (b) title insurance from a title insurance company approved by the Lender, acting reasonably;
- (c) an opinion from Borrower's counsel confirming the subsistence, power and authority of the Borrower, the due authorization, execution, delivery and enforceability (subject to customary assumptions and qualifications) of the Loan Documents and such other matters as the Lender shall reasonably require;
- (d) a mortgage statement from a Permitted Encumbrance mortgagee(s) confirming that the relevant mortgage loan is in good standing and the terms thereof;
- (e) certificate from the Borrower certifying no Event of Default or default, the truth of all representations and warranties, the satisfaction of all conditions and compliance with all covenants set out in the Loan Documents;
- (f) an appraisal indicating completed Project value of not less than \$28,500,000.00
- (g) satisfactory environmental report, geotechnical report, mechanical engineering report, structural engineering report and zoning report, prepared by the appropriate professionals (with reliance letters in favour of the Lender, it being understood that all zoning and development and building permits approvals for the Project are in place);
- (h) confirmation that realty taxes have been paid to the relevant date;
- (i) satisfactory financial statements in respect of the Borrower and a satisfactory summary of Borrower share ownership;
- (j) satisfactory Project Budget, duly approved by the Lender;

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- (k) satisfactory insurance coverage for the Project, duly approved by the Lender's insurance consultant (if any) and the Lender;
- (l) all relevant consents pursuant to the Loan Documents;
- (m) certificate from the Borrower certifying that there have been no material changes affecting the Property and/or the Borrower since the later of the date of execution of this Agreement and the immediately prior advance hereunder;
- (n) confirmation of investors' interest – the Borrower acknowledges that the Lender will be syndicating this loan to individual investors, either through cash investments or RRSP investments and that each investor will have an individual beneficial interest in the Loan Amount proportionate to the overall contributions. As part of the syndication process, the Borrower agrees to execute a confirmation of Lender's interest in the Lender's standard form with each of the investors to confirm their individual Loan Amounts;

13. **Reporting Mechanisms**

The Borrower hereby covenants and agrees to deliver and provide the following with respect to the Project on a monthly basis including:

- (a) copies of the Project Cost Consultant's reports with each advance, as well as any preliminary or supplementary reports including the last version issued by Altus Helyar;
- (b) a monthly report as to the status of all zoning and planning approvals;
- (c) a monthly status report as to revisions to the Budget, negotiations with Senior Lender, as well as updated plans and specifications for the Project. To the extent such plans and specifications materially change from those received and are approved by the Lender at the outset, same will require the approval of the Lender, acting reasonably;
- (d) financial reporting as to loan advances, sales reports, project expense reports and such other reasonable reporting requirements of the Lender and consistent with those to be provided to the Project Cost Consultant and the Senior Lender;
- (e) advice as to any material deviations to the Project Budget;
- (f) all preliminary and final plans for the design , layout , suite mix and proposed pricing of the Project and the units, any any other Project specifications required by the Lender,as amended from time to time, all to be approved by the Lender , acting reasonably;and
- (g) such other reasonable requirements of the Lender consistent with the terms of this Loan Agreement and industry practice for similar types of equity/loans.

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The Borrower acknowledges that Fortress will be delegated the responsibilities of monitoring the Project and receiving all reports from the Borrower as contemplated in the Loan Agreement including completing the due diligence with respect to the funding obligation of the Lender under the Loan Agreement and providing approvals where required for the Lender.

14. **Representations and Warranties**

The Borrower represents and warrants, to the best of its knowledge, as follows:

- (a) the Borrower is duly constituted and validly subsisting under the laws of the Province of Ontario, has all necessary power and authority to own its properties and assets and to carry on its business as now conducted and is duly licensed or registered or otherwise qualified in all jurisdictions wherein the nature of its assets or the business transacted by it makes such licensing, registration or qualification necessary;
- (b) the Borrower has full power and capacity to enter into, deliver and perform its obligations under the Loan Documents to which it is a party and all other instruments contemplated hereunder to which it is a party;
- (c) the execution and delivery and performance by the Borrower of the Loan Documents to which it is a party and all obligations contained herein and therein, and all other instruments contemplated hereunder to which it is a party and the consummation of the transactions contemplated hereby and thereby:
 - (i) have been duly authorized by all necessary action;
 - (ii) do not and will not conflict with, result in any breach or violation of, or constitute a default under any such party's constating documents or by-laws, or any applicable laws or judgment presently in effect and applicable to it, or of any material Project agreement to which any such party is bound;
 - (iii) do not (except for the Security) result in or require the creation of any security interest or encumbrance upon or with respect to which the Borrower is bound; and
 - (iv) do not require the consent or approval (other than those consents or approvals already obtained and copies of which have been delivered to the Lender and other than those consents which, if not obtained, would not adversely affect any material component of the Security, the value of the Property or the operation of the business of the Borrower at the Property) of, or registration or filing with (except as contemplated herein), any other person, including any public authority.
- (d) the Borrower has provided to the Lender accurate and complete copies of all material Project agreements;

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- (e) each Loan Document and all other instruments contemplated hereunder are, or when executed and delivered to the Lender will be, legal, valid and binding obligations enforceable against the Borrower in accordance with their respective terms, subject to the limitations with respect to enforcement imposed under law in connection with bankruptcy, insolvency, liquidation, reorganization and other laws affecting the enforcement of creditors' rights generally and subject to the availability of equitable remedies which are only available in the discretion of the court from which they are sought;
- (f) the Security granted by the Borrower constitutes an assignment, a fixed and specific mortgage and charge, a floating charge and security on its undertaking, property and assets purported to be assigned, mortgaged, charged or subjected to the Security thereby and ranks in priority to all other security interests upon such undertaking, property and assets other than Permitted Encumbrances;
- (g) subject to any limitations stated therein, all financial statements which were furnished to the Lender hereunder, fairly present the financial condition of the relevant party as at the date thereof, and no material adverse change has occurred since the date of such delivery;
- (h) no event has occurred and is continuing, and no circumstance exists which has not been waived, which:
 - (i) constitutes a default or Event of Default; or
 - (ii) constitutes a default or event of default under any Permitted Encumbrance which may materially adversely affect the value of the Property or impair the validity or enforceability of the Security.
- (i) the Borrower is not in violation of any terms of its constating documents or, in any material respect, of any applicable law (including, without limitation, all building, zoning, planning, development, construction, construction lien, environmental and occupation laws);
- (j) the Borrower owns all intellectual property used and/or to be used in connection with the Project, free from all encumbrances;
- (k) the Borrower is solvent and will not become insolvent after giving effect to the transactions contemplated in this Agreement;
- (l)
 - (i) each material Project agreement is in full force and effect and has not been modified or supplemented;
 - (ii) the Borrower is not in default under any material Project agreement, and to the knowledge of the Borrower, no other party to any such material Project agreement is in default of any material obligation thereunder; and in each such case, no event has occurred which, with the giving of notice or the lapse of time, or both, would constitute such a default; and

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- (iii) no notice or other written or oral communication has been provided by or to the Borrower to or from any party under any material Project agreement which alleges that, as of the date hereof, either a default exists or with the passage of time will exist under the provisions of such material Project agreement.
- (m) the Property has full and free legally enforceable access to and from public highways, which access is sufficient for the purposes of the normal operation of the Property and the Borrower has no knowledge of any fact or condition that would result in the interruption or termination of such access;
- (n) all public utilities required for the normal operation of the Property connect into the Property through adjoining public highways or if they pass through adjoining private land, do so in accordance with valid registered easements and are sufficient for the operation of the Property;
- (o) no legal action or other proceeding has been instituted or, to the best of its knowledge after making diligent enquiry, threatened against the Borrower; the Borrower has not received notice of any work orders, deficiency notices or notices of violation pertaining to the Property;
- (p) to the best of its knowledge, and save as otherwise disclosed to the Lender in the reports provided by the Borrower, including without limitation the potential presence of methane, the Property complies with all laws regarding environmental matters; the Property has never been used as a land fill site or to store Hazardous Substances either above or below ground, in storage tanks or otherwise; no Hazardous Substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Property; and there are no outstanding directions, writs, injunctions, orders or judgments issued pursuant to environmental laws in respect of the Property;
- (q) the Borrower has good, valid and marketable title to the Property, free from all encumbrances except the Permitted Encumbrances; and
- (r) the Borrower has filed or caused to be filed in a timely manner all tax returns, reports and declarations required to be filed under law; all information in such tax returns, reports and declarations is complete and accurate in all material respects; the Borrower has paid all taxes due and payable.

15. **Covenants**

The Borrower covenants and agrees, to the best of its abilities, as follows:

- (a) to defend its right, title and interest in the Property for the benefit of the Lender against all claims and demands whatsoever of all persons/entities, other than holders of Permitted Encumbrances;

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- (b) not to create or suffer to exist any encumbrance of any nature (whether prior to, *pari passu* with or subordinate to the Security) upon the Property or any part thereof other than Permitted Encumbrances;
- (c) to preserve, repair and keep in good order, condition and repair or cause to be preserved, repaired and kept in good order, condition and repair the Property and all appurtenances thereto and all properties and assets used in connection with the Property, to the standard of a prudent owner of similar property, and the Borrower shall carry on and conduct, or cause to be carried on and conducted, the operation of the Property in a prudent manner so as to preserve and protect the Property; the Borrower shall keep the Property in good condition and order, or shall cause the Property to be put and kept in good condition and order, and shall promptly make, or cause to be made, all needed repairs and replacements thereto, including such repairs and replacements to implement the recommendations which a prudent owner of a property similar to the Property would deem appropriate or necessary from time to time; the Borrower shall at any and all reasonable times, upon the prior written request of the Lender, permit the Lender to inspect the Property or any part thereof during normal business hours;
- (d) to carry on or cause to be carried on and conduct or cause to be conducted the operation of the Property in a prudent manner so as not to materially impair the value of the Property or the use of the Property for the purpose for which it is held;
- (e) to duly and punctually pay, or cause to be paid, to the Lender the principal of and interest accrued on the Loan, any premium of the Loan and all other amounts owing in respect of the Loan on the dates, at the places, in the monies, and in the manner mentioned herein and in the Loan, in strict conformity therewith, and shall faithfully observe and perform all the conditions, covenants and requirements of all Loan Documents;
- (f) to pay or cause to be paid, on or before the due date thereof, all taxes, rates, levies, duties and assessments, general and special, ordinary and extraordinary, of every nature and kind whatsoever, including local improvement taxes which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower or any other person on account thereof, and shall from time to time as the same are paid, at the written request of the Lender produce for inspection by the Lender, satisfactory evidence that all such taxes have been paid when due (together with such further supporting information or documentation reasonably required by the Lender);
- (g) the Lender shall be entitled to register or file or cause to be registered or filed the Security (or a notice or financing statement in respect hereof) without delay at every public office of record in the Province of Ontario and in any other jurisdiction where the Borrower is "located" for the purposes of perfecting a security interest pursuant to the *Personal Property Security Act* (Ontario), in each case, where the registration or filing thereof is, in the opinion of the Lender, required to preserve, perfect and/or protect the security hereby or thereby created;

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and the Lender shall be entitled to renew or cause to be renewed any such registrations or filings as may be necessary from time to time to so preserve, perfect and/or protect the security hereby or thereby created;

- (h) the Borrower shall fully and effectively maintain and keep the Security or cause the Security to be maintained and kept as valid and effective security at all times while the Loan is outstanding and shall not permit or suffer the registration of any lien whatsoever, whether of workmen, builders, contractors, engineers, architects or suppliers of material, upon or in respect of any of the Property, which would rank subsequent to, *pari passu* with or prior to the security of the Security other than Permitted Encumbrances;
- (i) the Borrower shall cooperate fully with the Lender with respect to any proceedings before any court, board or other public authority which may in any way materially and adversely affect the rights of the Lender hereunder or any rights obtained by it under any of the Loan Documents and, in connection therewith, shall keep the Lender fully advised of the status of all such proceedings and shall allow the Lender and its counsel at its election to attend meetings in respect of such proceedings; the Borrower shall cooperate with the Lender in obtaining for the Lender the benefits of any insurance proceeds lawfully or equitably payable in connection with the Property to the extent that the Lender is entitled to the same under the terms of the Loan Documents, and the Lender shall be reimbursed for any actual out-of-pocket (agreed upon and in advance of incurring costs) expenses incurred in connection therewith (including, without limitation, legal fees and disbursements, and the payment by the Borrower of the expense of an appraisal on behalf of the Lender in case of a fire or other casualty affecting the Property or any part thereof) out of such insurance proceeds;
- (j) the Borrower shall cause the Property to be used only for Project purposes and for no other purpose, and the Borrower will do, observe and perform or cause to be done, observed and performed, in all material respects, all of its obligations and all matters and things necessary or expedient to be done, observed or performed under or by virtue of all applicable laws;
- (k) the Borrower shall do, observe and perform, or cause to be done, observed and performed, in all material respects, all of the obligations and things necessary or expedient to be done, observed or performed by the Borrower under or by virtue of all Permitted Encumbrances and material Project agreements; for greater certainty, this covenant regarding Permitted Encumbrances applies to all prior-ranking financial encumbrances which are Permitted Encumbrances;
- (l) if the Borrower shall fail to perform any covenant on its part contained in this Agreement the Lender may, after giving concurrent notice to the Borrower, itself perform (but shall not be obliged to perform), any of such covenants provided no payment or expenditure of funds is required in connection therewith, or, if a default has occurred, and if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds, or with money borrowed by or advanced to it for such purpose; all sums so

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expended or advanced shall be payable by the Borrower together with interest thereon which shall accrue, until paid, at the interest rate applicable to the Loan from the date of such expenditure or advance until repayment but no such performance or payment shall be deemed to relieve the Borrower from any default hereunder;

- (m) the Borrower shall encumber or cause to be encumbered in favour of the Lender, as part of the Security, all additional improvements, licenses, easements and rights of way which, in any way or manner, it shall hereafter acquire in connection with the Property, and the Borrower shall make or cause to be made all requisite registrations required by this Agreement with respect thereto; any and all times the Borrower will do, execute, acknowledge and deliver or will cause to be done, executed, acknowledged and delivered all and every such further acts, deeds and assurances in law as the Lender shall reasonably require, for the purpose of giving the Lender a valid encumbrance of the nature herein specified upon all such property (subject only to Permitted Encumbrances) for the better encumbering unto the Lender all and singular the lands and premises, and property encumbered under the Security, or intended so to be or which the Borrower may hereafter become bound to encumber or cause to be encumbered in favour of the Lender;
- (n) so long as the Loan or any portion thereof remains outstanding the Borrower shall not cancel or materially amend any material Project agreements without the Lender's consent, except in the ordinary course of business;
- (o) the Borrower shall give prompt notice to the Lender upon the occurrence of any default or any Event of Default or any event, circumstance or matter which may reasonably be expected to have a material adverse effect on the financial condition of the Borrower and/or the Property; the Borrower shall not create, assume, incur or suffer to exist any security interest in or upon any of its undertakings, properties, rights or assets secured by the Security except for Permitted Encumbrances;
- (p) upon two (2) Business Days' prior written notice or at any time in an emergency as reasonably determined by the Lender, the Borrower shall permit the Lender to have reasonable access at all reasonable times and from time to time, to the Property and to all related records (including records pertaining to the Borrower), and shall permit the Lender, acting reasonably, to make copies of and abstracts from such records;
- (q) the Borrower shall give to the Lender prompt written notice of any material adverse change in the condition of the business, financial or otherwise, of the Borrower;
- (r) the Borrower shall give to the Lender prompt written notice of all actions, suits, litigation or other proceeding commenced or threatened against the Borrower and/or in respect of the Property;

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- (s) the Borrower shall obtain and maintain during the Term the following Property insurance coverage:
- (i) all risk builder's insurance with extended coverage for all other risks and perils in, representing an amount equal to 100% of the gross replacement cost of all buildings located on the Property, without deduction for foundations or footings; the proceeds payable under such policy shall be payable to the Lender as mortgage creditor, pursuant to a standard mortgage clause approved by the Insurance Bureau of Canada;
 - (ii) broad form boiler insurance with coverage on all electrical equipment, mechanical equipment and pressure vessels; such policy shall contain a standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters Association, or an equivalent clause, with proceeds payable thereunder to the Lender as mortgage creditor;
 - (iii) general liability insurance covering damages in an amount of not less than \$2,000,000.00 per occurrence;
 - (iv) environmental liability and remediation insurance covering damages in an amount of not less than \$2,000,000.00 per occurrence; such coverage shall include third party pollution liability claims and first party on-site remediation expenses; and
 - (v) such other insurance as shall be requested by the Lender, acting reasonably.
- (t) the Borrower shall deliver to the Lender, within one hundred and twenty (120) days following the Borrower's fiscal year, unaudited financial statements in respect of the Property and unaudited financial statements in respect of the Borrower, prepared internally by a qualified person in accordance with generally accepted accounting principles, consistent with prior years, and shall include all appropriate documents, explanatory notes and additional information; in addition to the above financial statements, the Borrower covenants to provide to the Lender, from time to time, upon request, any further financial information then still undisclosed and reasonably required, pertaining to the Property and/or the Borrower; the Lender reserves the right to disclose to third parties any financial information concerning the Property and/or the Borrower, provided that such third parties shall be limited to potential assignees of part or all of the Loan, the Lender's auditors, the Lender's solicitors, the Lender's bankers, the Lender's other advisors and persons to whom such information is ordinarily disclosed in a mortgage securitization or mortgage syndication;
- (u) the Borrower covenants to develop and construct and/or cause the development and construction of the Property in accordance with the delivered plans and specifications using only new materials and not Hazardous Substances, without defect in construction, installation and/or materials;

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- (v) the Borrower covenants not to materially amend the delivered plans and specifications or fail to construct in accordance with the delivered plans and specifications without the Lender's prior written consent, which consent shall not be unreasonably withheld, except in the ordinary course of business;
- (w) the Borrower shall pay, regardless of whether any part of the Loan shall be advanced, all reasonable third party costs, fees and expenses incurred by the Lender in connection with the transaction hereunder including, without limitation:
 - (i) all costs incurred in connection with a survey, an appraisal, an engineering review, an architectural review, an environmental review, other professional consultant review, a credit review, a lease review and an insurance review;
 - (ii) all legal fees and disbursements of the Lender's solicitors; and
 - (iii) all registration, recording and filing fees and transfer and mortgage taxes.
- (x) the Borrower shall not sell, transfer, license or otherwise convey an interest in the Property or any part thereof, save and except as contemplated for the staging and completion of the Project or to an entity approved by the Lender, in its sole, absolute and unfettered discretion.

16. **Events of Default**

Events of Default ("**Events of Default**") shall be as follows:

- (a) if the Borrower fails to pay interest, principal or other amount owing hereunder on a due date during the Term and such default remains outstanding for ninety (90) days; or
- (b) if the Borrower fails to pay all principal on the Maturity Date, subject to the Waterfall; or
- (c) if the Borrower fails to complete all obligations it may have under the Purchase Agreement; or
- (d) if the Borrower fails to pay, or cause to be paid, taxes, rates, levies, duties, public utility charges and assessments, general and special, ordinary and extraordinary, of any nature or kind whatsoever, including local improvement taxes, which shall be levied, assessed or imposed upon the Property or any part thereof, or upon the Borrower, on account thereof and any such default shall continue either for a period of five (5) Business Days after written notice to the Borrower from the Lender or for such shorter period as would, if continued, render the Property, or any part thereof, liable to forfeiture or sale; or
- (e) if the Borrower creates, permits or suffers to exist, any encumbrance against the Property or any part thereof, other than Permitted Encumbrances and, in the case of encumbrances which have not been created by the Borrower, the same continue

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to exist for a period of ten (10) days after written notice thereof has been given to the Borrower by the Lender or for such shorter period as would, if continued, render the Property or any part thereof, liable to forfeiture or sale; or

- (f) if any representation or warranty in any of the Loan Documents or any financial statements delivered pursuant thereto, is (or, at the time it was given or repeated, was) false or erroneous in any material respect and such false or erroneous condition shall continue for a period of ten (10) days following the Borrower's receipt of written notice thereof from the Lender; or
- (g) if the Borrower shall fail to comply with any covenant/agreement in any of the Loan Documents and such non-compliance shall continue for a period of ten (10) days following the Borrower's receipt of written notice thereof from the Lender, or such longer cure period as may be reasonable in the circumstances, provided the Borrower takes diligent and commercially reasonable steps to cure such default as soon as possible; or
- (h) if the cause of the Default is by the Borrower, and any material provision in the Loan Documents shall for any reason cease to be valid, binding and enforceable in accordance with its terms or the Borrower shall so assert in writing; or any security interest created under any of the Loan Documents shall cease to be a valid and perfected security interest having the priority in any of the collateral purported to be covered thereby; or
- (i) if the Borrower does, or fails to do, anything which would entitle an insurer to cancel or not renew a policy of insurance on the Property required hereunder which is not rectified within ninety (90) days following the Borrower becoming aware of such entitlement to cancel or not renew, and in any event not later than ten (10) days prior to the termination or expiry of such policy, or if any policy of insurance is cancelled, expires or terminates and is not replaced in accordance with the requirements of this Agreement; or
- (j)
- (k) if one or more final judgments for the payment of money (which is not covered by insurance) shall be rendered against the Borrower; or
- (l) if any writ, attachment, execution, enforcement, sequestration, extent, distress or any other similar process shall become enforceable against the Borrower, or if a distress or any analogous process is levied against any properties or assets of the Borrower; or
- (m) if the Borrower shall suspend or cease or threaten to suspend or cease its business; or
- (n) if the Borrower shall breach any law which results in a notice or control order or cancellation of any license or certificate or approval that results in any material disruption of the business at the Property or that could reasonably be expected to

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have a material adverse effect on the Security, the repayment of the Loan, the Lender's rights under the Loan Documents, the Property or the business operations, prospect or condition of the Borrower (financial or otherwise); or

- (o) if any environmental order is issued by any public authority against the Property and such environmental order has not been satisfied or discharged within the longer of time allowed for in such environmental order and within thirty (30) days after the date such environmental order was received by the Borrower; or
- (p) if the Borrower shall admit its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency or if an order shall be made or an effective resolution passed for the winding up of such entity or if such entity shall make an assignment for the benefit of its creditors or if a receiver or a liquidator or a trustee in bankruptcy of such entity shall be appointed or if such entity shall make a proposal to its creditors under a bankruptcy act including, without limitation, the *Companies' Creditors Arrangement Act* (Canada); or
- (q) if any proceeding is instituted for the winding up of the Borrower or a petition in bankruptcy be presented against such entity under a bankruptcy act and if in either case such proceeding or petition shall not have been dismissed or withdrawn within twenty (20) days of the commencement of the proceeding or petition; or
- (r) if ownership control of the Borrower shall be transferred without the Lender's approval, which approval may be withheld in the Lender's sole, absolute and unfettered discretion; or
- (s) if the Borrower shall sell, transfer, license or otherwise convey an interest in the Property or any part thereof in contravention of Subsection 15(x) hereof, or if the Borrower shall mortgage or otherwise encumber an interest in the Property or any part thereof in contravention of this Agreement, then the Lender may, in its sole, absolute and unfettered discretion, demand immediate repayment of the Loan principal in full together with all accrued interest and all other amounts due hereunder; or
- (t) if the Borrower is in default of any Permitted Encumbrance for more than fifteen (15) days after receiving written notice of such default.

17. **Postponement and Subordination and Partial Discharge**

The Lender covenants and agrees as follows:

- (a) to postpone and subordinate the Loan Documents in favour of First-Ranking Construction Loan Security and to enter into such standstill agreements as shall be reasonable in the circumstances;
- (b) to postpone and subordinate the Loan Documents in favour of each non-financial encumbrance, as well as any deposit insurer security, if applicable, which is reasonable for a development such as the Project and which individually does not

materially adversely affect the market value of the Property (including, without limitation, encumbrances pertaining to roads, sidewalks, easements, rights-of-way, subdivision agreements, site plan control agreements, development agreements, cost-sharing agreements, encroachment agreements, zoning/use laws, utility licences, utility easements, Crown patent reservations and restrictive covenants);

- (c) to discharge the Loan Documents in respect of any part of the Property which is not material to the Project and/or the market value of the Property or which is required by any governmental authority, without requirement for payment or prepayment of any part of the Loan;
- (d) if applicable, to provide partial discharges of the Loan Documents in respect of all Project unit sales to third parties and in respect of all Project sales to third parties, without compensation, provided that the full proceeds thereof shall be used immediately to first pay down the First-Ranking Construction Loan Security and then to pay down other Project trade creditors; and
- (e) if applicable, to enter into a non-disturbance agreement, upon request, with any Project; such non-disturbance agreement shall provide for the tenant's postponement and subordination of its lease in favour of the Loan Documents and the tenant's agreement to attorn to the Lender and its successors and assigns upon an Event of Default.

The investor hereby agrees that in the event there is an early prepayment of the Loan by the Borrower(excluding receipts from enforcement or sale of Project units)("Early Prepayment"), same shall be paid to investors in the Loan in the order of priority of advance by the applicable tranche in the original Loan, and the pari passu amongst the investors who had their share of the Loan funded within the same loan tranche.

18. General

- (a) If the Borrower shall be comprised of more than one person/entity, then such persons/entities shall be jointly and severally liable for all of the obligations of the Borrower pursuant to this Agreement.
- (b) All notices, directions, service, correspondence and communications ("**Notice**") between the parties hereunder shall be in writing and delivered, sent by prepaid registered mail or electronically communicated by telecopier or e-mail as set forth below; delivered Notices shall be deemed to have been delivered on the day of delivery, if delivered at or before 5:00 p.m. (Toronto time) on a Business Day, or on the next Business Day if delivered after that time; Notices sent by prepaid registered mail shall be deemed to have been received on the third (3rd) Business Day following the date of mailing (notwithstanding the date of actual receipt and

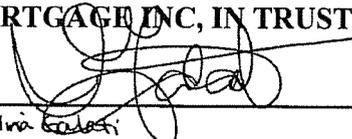
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- (g) This Agreement and the Loan Documents constitute the entire agreement between the parties hereto pertaining to the subject-matter hereof and supersede all prior agreements, negotiations, understandings and discussions, whether written or oral.
- (h) If any obligation contained in this Agreement or any other Loan Document or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement or such Loan Document and the application of such obligation to persons or circumstances other than those to whom/which it is held invalid or unenforceable, shall not be affected thereby and each obligation contained in this Agreement and each other Loan Document shall be separately valid and enforceable to the fullest extent permitted by law.
- (i) All amendments of this Agreement and any other Loan Document shall be in writing.
- (j) Time shall be of the essence of this Agreement and each other Loan Document.
- (k) This Agreement and each other Loan Document shall enure to the benefit of and be binding upon the successors and permitted assigns of the Borrower and the successors and assigns of the Lender.
- (l) Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender and words importing persons shall include firms and corporations, and vice versa. Similarly, all references to any party or parties herein shall be read with such changes in number as the context or reference may require. References to any statute herein includes such statute as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.
- (m) In the event that any day on which any action is required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the first Business Day thereafter.
- (n) Any legal action or proceeding with respect to this Agreement shall be brought in the courts of the Province of Ontario and such courts shall have exclusive jurisdiction to deal with all matters relating to the interpretation of, or enforcement of rights under all Loan Documents and each of the parties hereto hereby irrevocably attorns to the jurisdiction of such courts.
- (o) Unless specifically otherwise provided herein, all references to dollar amounts herein or other money amounts herein are expressed in terms of lawful money of Canada.
- (p) The Borrower shall, at all times during the Term and for a period of two (2) years thereafter, maintain as confidential this Agreement and all related matters, except as required under law and except as disclosed to advisors and/or employees (who shall be bound by the same obligation).

- (q) The failure of any party hereto to insist upon the strict performance of any provision of this Agreement or to exercise any right or remedy contained herein, shall not be construed as a waiver or relinquishment of such provision/right/remedy, which provision/right/remedy shall remain in full force and effect.
- (r) This Agreement may be executed in counterparts.

CENTRO MORTGAGE INC, IN TRUST

Per:



 Name: Ildina Gadea
 Title: President

Per:

 Name:
 Title:

I/We have the authority to bind the Corporation.

FORTRESS CARLYLE PETER ST INC.

Per:



 Name: Naram Mansour
 Title: President

Per:

 Name:
 Title:

I/We have the authority to bind the Corporation.

SCHEDULE "A" TO LOAN AGREEMENT**MUNICIPAL AND LEGAL DESCRIPTION OF THE PROPERTY**

122, 124, 126, 128 Peter, Toronto, Ontario

Legal Description: LT 6 PL 1B Toronto, ON; PT LT 7 PL 1B, Toronto, PT LT 8 PL 1B,
Toronto; CITY OF TORONTO;

(Future Security may include 120 Peter Street, 357 & 359 Richmond Street, Toronto, ON, OR
any adjacent lands to the current or future parcels)

SCHEDULE "B" TO LOAN AGREEMENT

PROJECT BUDGET

Investment Authority – Form 9D

To: **Centro Mortgage Inc.**
 25 Brodie Drive, Unit 8
 Richmond Hill, Ontario, L4B 3K7
Attention: Ildina Galati, Principal Mortgage Broker

I, [REDACTED] hereby instruct you to act on my behalf, on my mortgage investment of \$ [REDACTED] the details, conditions and disclosures of which are set below.

Details about the investment:

1. Name and Address of the Borrower: Fortress Carlyle Peter St. Inc.
 477 Richmond Street West, Suite 909
 Toronto, Ontario

2. Municipal Address and Legal
 Description of the real property (ies) 122, 124, 126, 128 Peter, Toronto, Ontario

 (Future Security 120 Peter Street, 357 & 359 Richmond Street West, Toronto, Ontario, OR any adjacent lands to the current or future parcels.)

 Legal Description: LT 6 PL 1B Toronto, ON; PT LT 7 PL 1B, Toronto, PT LT 8 PL 1B, Toronto; CITY OF TORONTO;

3. Type of property –**Residential Condo Construction**

4. Principal amount of mortgage/charge: **\$6,400,000.00**– (increasing to a Maximum of **\$24,000,000.00**), see paragraph 19.

5. Amount of loan to be advanced: \$ [REDACTED]

6. Rank of mortgage or charge: **A Second ranking Charge/Mortgage (The ranking of the mortgage can change at any time over the duration of the term) – subject to paragraph 19, see below.**

7. Encumbrances: **First ranking Charge/Mortgage will be registered in priority of this mortgage investment, see below:**

 1st Mortgage on 122-124 Peter Street: \$5,000,000.00 to Wenvor Technologies Inc.
 1st Mortgage on 128 Peter Street: \$4,500,000.00 Deuce Holdings Ltd.
 1st Mortgage on 126 Peter Street: \$2,250,000.00 to the First Mortgagee for land acquisition.

Please refer to paragraph 20, below for details on future postponements to construction financing and development agreements.

8. My investment of [REDACTED] represents [REDACTED] % of the total loan to the borrower.

9. I am satisfied that the approximate and current market value of the property against which my investment has been secured is **\$28,500,000.00**. The means taken to determine said value was an Opinion Of Value authored by Kevin Ferguson and Jeff Cheong of Legacy Global Mercantile Partners Ltd. dated November 14th, 2014 in combination with a Planning Opinion Authored by Paul Demczak, MCIP, RPP.
10. Including my investment and mortgage amount of \$ [REDACTED], the percentage of the value of the property including this mortgage and all prior ranking charges is currently: **64%**
11. 4 years, commencing on the date of advance (January 2nd, 2015) of the Loan and ending on the final day of such period (the "**Maturity Date**"). And at the Borrower's option (to be exercised in writing not less than three (3) months prior to the Maturity Date), the Borrower may extend the Maturity Date for twelve (12) additional months (the "**Extension**").

Additionally, in the extension year (5th year), interest will begin to accrue at Eight Percent (8%) per annum (calculated annually, not in advance) and the final year of accrued interest will be paid in full at the time of maturity.

12. The due date of the loan is **January 2nd 2019 (Extension dates January 2nd, 2020) THE LENDER ACKNOWLEDGES INTEREST CALCULATIONS AND PAYMENT DATES ARE TO BE BASED ON THE ACTUAL DATE OF THE FIRST ADVANCE OF FUNDS TO BORROWER UNLESS OTHERWISE PROVIDED IN ANY LOAN AGREEMENTS OR DOCUMENTS THERETO.**
13. The loan is amortized over **0 years**- the mortgage is an interest only mortgage.
14. The interest rate is **8.00%** calculated annually, not in advance.
15. Particulars and amounts of any bonus or holdback or any other special terms:

In addition to the above and not later than thirty (30) days following substantial completion of the Project, the Borrower shall pay to the Lender a Project completion fee/deferred lender fee ("**Deferred Lender Fee**") as set forth below and which fees shall be secured under the Security:

- a) in the event that the Project Profit is less than \$29,000,000.00 there will be no Deferred Lender Fee;
- b) in the event that the Project Profit exceeds \$29,000,000.01 and is less than \$31,000,000.00 the Deferred Lender Fee would be equal to 6% of the Loan principal;
- c) in the event that the Project Profit is greater than \$31,000,000.01 the Deferred Lender Fee shall be equal to 12% of the Loan principal.

16. Particulars of amounts and due dates (monthly, quarterly, etc.) of payments of interest only: Payments made Quarterly, in the amount of \$ [REDACTED], payments commenced on **April 2, 2015**, the initial payment being pro rata from the date of advance up to the date of the predetermined initial payment.
17. The mortgage is to be registered in the name of: "**Centro Mortgage Inc., in Trust**" FOR [REDACTED]
18. After completion of the mortgage transaction, a collection or administration fee of per instalment is payable by the borrower: N/A
19. I understand that the mortgage shall be initially registered indicating a face value of \$6,400,000.00, and that from time to time the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower. It is anticipated that the loan amount shall be amended during the term of the loan to a **MAXIMUM OF \$24,000,000.00**
20. I understand the Charge/Mortgage in which I have an interest is currently a second ranking Charge/Mortgage against the Property and the position of the mortgage can change over the duration of the term.

I understand that a first ranking Charge/Mortgages against the Properties in favour of 3 first mortgagees:

1st Mortgage on 122-124 Peter Street: \$5,000,000.00 to Wenvor Technologies Inc.

1st Mortgage on 128 Peter Street: \$4,500,000.00 Deuce Holdings Ltd.

1st Mortgage on 126 Peter Street: \$2,250,000.00 to the First Mortgagee for land acquisition;

The Second mortgagee will postpone its position to construction financing.

I understand that during the course of this investment the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority to the second Charge/Mortgage, changing its position to a greater ranking Charge/Mortgage.

I hereby understand, consent and agree that other charges/mortgages and/or development agreements may be registered in priority to the second charges/mortgages against the property during the term of my investment in the second charges/mortgages.

I hereby confirm that I understand and agree that the second charge/mortgage in which I have invested shall be required to postpone and standstill to prior charges/mortgages to a maximum of \$150,000,000.00 plus a 10% contingency if required, in priority financing. I understand that priority financing is expected to periodically increase over the term of this charge/mortgage and that such postponements shall be permitted and shall occur on the basis of cost consultant reports prepared on behalf of the borrower.

I understand that additional priority financing may be required if there is a shortfall pursuant to the terms of the charge/mortgage in which I am investing. In the event of a shortfall in the funding of this charge/mortgage I understand and agree that other charges/mortgages may be registered against the property to fund and secure any such shortfall.

I understand that the trustees of this charge/mortgage may requested to execute such documents as may be required to permit the registration of certain agreements for the purpose of facilitating the planned development of the property, examples of such agreements include, but are not limited to: site plans, development plans, planning act requirements, mezzanine financing, insurance on deposits, or condominium registration documents.

I hereby confirm that I am aware of and understand that I have provided the trustee of my charge/mortgage with my irrevocable consent to execute any required documents as a condition of my participation in this charge/mortgage.

I hereby re-confirm my consent and agreement to postpone and standstill to any required financing or development agreements, and to partially discharge my charge/mortgage, without payment, with respect to any lands secured by the charge/mortgage which may be required for public or quasi-public purposes.

I understand and agree to provide partial discharges of this security for sales of all condominium units or the office/retail/parking components, without charge, provided the proceeds of the sale are used to pay off the First-Ranking Construction Loan Security and/or trade creditors.

I understand that save and except as outlined herein, there shall be no other postponements or encumbrances which affect the position or security afforded by the current second charge/mortgage.

I agree to provide partial discharges of the Loan Documents in respect of all Project lot/unit sales to third parties and in respect of all Project office/retail/parking component sales to third parties, without compensation, provided that the full proceeds thereof shall be used immediately to first pay down the First-Ranking Construction Loan Security and then to pay down other Project trade creditors.

21. In the event that Centro & Olympia, in its sole discretion, acting as approved Lender and administrator, determines that the Borrower, as a result of an act of "*Force Majeure*" (shall mean any event or series of events beyond the control of the Borrower such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental

approvals, permits, rezoning or similar regulatory requirements, none of which is the fault of the Borrower.), will not be able to complete the Project so as to repay the Loan on or before the maturity date on the Loan under the Loan Agreement (as it may be extended under the terms thereof), it shall have the authority to extend the term of the Loan for such period of time, not exceeding **24** months so as to permit the Borrower to complete the Project and its sales, and thereby repay the Loan. Centro & Olympia shall have the right to do so on one or more occasions but for a period of time not exceeding 24 months as aforesaid, without the consent of the investor;

22. Partial Investor Discharges: Should the borrower, at any time, over the duration on the term choose to repay the loan in part, at any percentage, investors may be paid out based on the priority of registration.

The investor hereby agrees that in the event there is an early repayment of the Loan by the Borrower (excluding receipts from enforcement or sale of Project units) ("Early Repayment"), same shall be paid to investors in the Loan in the order of priority of advance by the applicable tranche in the original Loan, and the pari passu amongst the investors who had their share of the Loan funded within the same loan tranche.

Any portion of the mortgage repaid prior to the maturity will not be subject to any Deferred Lender Fee.

23. Net proceeds raised under this mortgage may be used to refinance portions of existing prior encumbrances and/or investors/lenders.
24. Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid by the borrower, are:

Admin/Legal Fees: \$100.00 per client per year's in the term plus HST (plus registration fees) plus HST (paid by Borrower)

Mortgage Broker Fee: \$3% payable to Centro Mortgage Inc.

Co- Broker Fee: \$7,500.00 payable to FDS Broker Services Inc.

1. *(Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause).*

The information which I require from you as my administrator before the administrator for the trustee completes the transaction and makes the advance is as follows:

- (a) If my investment will be in a position other than a first mortgage or charge, details, including amounts, of all existing encumbrances outstanding are disclosed below:

1st Mortgage on 122-124 Peter Street: \$5,000,000.00 to Wenvor Technologies Inc.

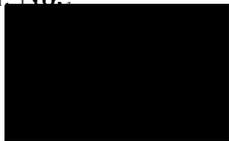
1st Mortgage on 128 Peter Street: \$4,500,000.00 Deuce Holdings Ltd.
1st Mortgage on 126 Peter Street: \$2,250,000.00 to the First Mortgagee for land acquisition.

These mortgages are up to date and in good standing; subject to future postponements as per paragraph 21, above.

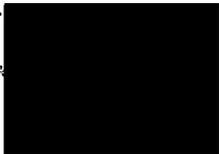
(b) If the mortgage or charge is a syndicated mortgage, and is prospectus exempt:

We have acknowledged and accept that you as my administrator express no opinion as to the necessity for a validity of a prospectus.

2. *(Instructions: Each investor to complete and initial clause (a) and, if clause (a) is answered in the affirmative, to complete (if necessary) and initial clause (b) and to initial clause (c)).*

(a) I instruct you to obtain a current and independent appraisal of the subject property and provide it to me before you complete this mortgage transaction. No. 

(b) The appraisal is to be paid by me. **Not Applicable.**

(c) I have been advised and accept that you as my administrator do not express an opinion as to the validity of the appraisal/valuation/letter of opinion. 

Disclosure:

1. I acknowledge being advised by you as the Lender's Independent Legal Advice (ILA), or as an independent lawyer to the transaction, that to the best of our knowledge the Independent Legal Advice Solicitor does not have any direct or indirect interest in the Borrower. *(Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect in the borrower or borrowers).*

No independent legal advice has a direct or indirect interest in the Borrower.



* Investor to insert current date here

(If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (Rule 2.06 of the Rules of Professional Conduct)).

WARNINGS:

1. You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with YOU the investor or investors at all times. The above-named lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's or investors' instructions. The lawyer is not permitted to personally guarantee the obligations of the Borrower or Borrowers nor the suitability of the Property as security for the mortgage investment.

2. Any loss you may suffer on this mortgage investment will not be insured under the lawyer's professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.

Investor's Signature: * 

I hereby acknowledge receipt of a copy of this form prior to the advance of funds to or on behalf of the Borrower. I further acknowledge having read and understood the above warnings.

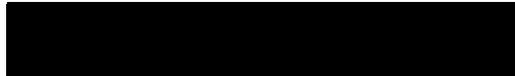
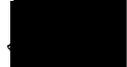


Name: 

Address: 

I,  , did witness

WITNESS NAME

 on the  day of 

INVESTOR NAME

(day)

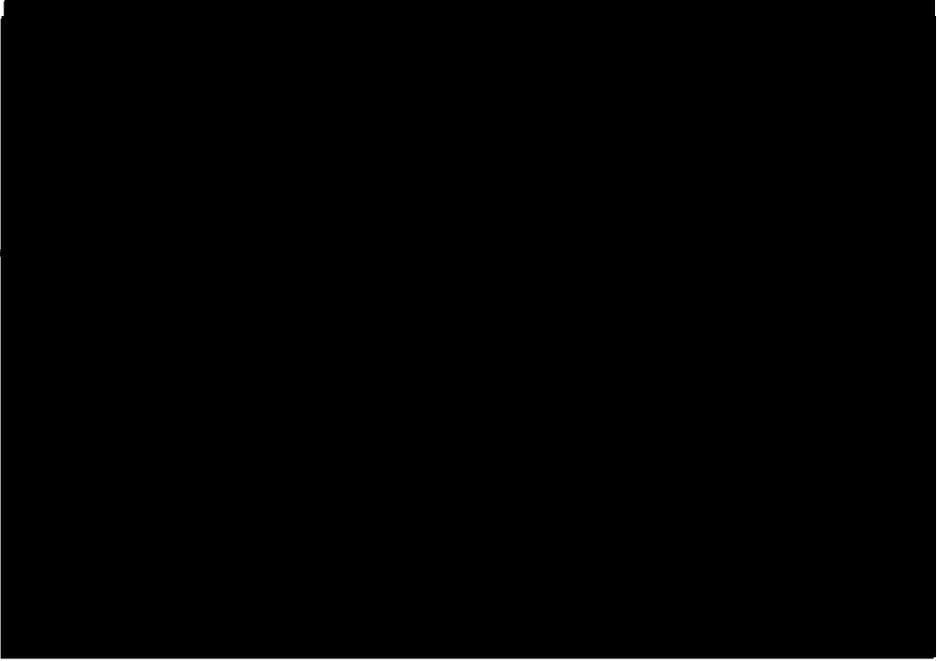
(month)

201  in the Town/City of , in the Province of 

(town/city)

(province)

sign the document entitled "Investment Authority – Form 9D".



robapp\2731788.4

PARTICIPATION AND SERVICING AGREEMENTTHIS AGREEMENT made as of the 3rd Day of November, 2014**B E T W E E N:**

[REDACTED]

(hereinafter called "**Investor**")

OF THE FIRST PART

- and -

CENTRO MORTGAGE INC.
(Mortgage Administration Licence No. 12304)(hereinafter called "**Centro**")

OF THE SECOND PART

WHEREAS:

1. pursuant to the Loan Agreement, Centro has agreed to provide the Borrower various loan facilities totalling Twenty-Four Million Dollars (\$24,000,000.00) Dollars (the "**Loan**") for the purposes of refinancing existing debt, and financing the development and the construction of residential condo's on the Lands, to be secured by the Security Documents;
2. Investor has agreed to participate in the Loan to the extent of \$ [REDACTED] upon the terms and subject to the conditions of the Lender Acknowledgement & Consent dated November 3rd, 2014 (the "**LAC**"); and
3. Investor has agreed that Centro will administer the Investment on behalf of Investor in accordance with the terms and subject to the conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of these presents and the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1.00 - INTERPRETATION

1.1 Defined Terms

The following words and phrases shall have the meanings attributed thereto when used in this Agreement:

"Borrower" means Fortress Carlyle Peter St. Inc.

"Force Majeure" shall mean any event or series of events beyond the control of the Borrower such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental approvals, permits, rezoning or similar regulatory requirements, none of which is the fault of the Borrower.

"Investment" means the investment in the Loan of the Investor as set out in the LAC and the 2nd recital hereof;

"Lands" means those lands more particularly described and charged pursuant to the Security Documents including without limitation all buildings, fixtures and

improvements now or hereafter situate thereon and all easements, rights-of-way and other similar rights appurtenant to or used in connection therewith;

“Loan” means the financing of the Project by Centro to the Borrower to assist in the construction, on the Lands, in the maximum principal amount of Twenty-Four Million Dollars, (\$24,000,000.00) on the terms and subject to the conditions set out in the Loan Agreement and includes without limitation all Principal, Interest, interest on overdue Interest, fees, expenses, charges and such other amounts owing by the Borrower from time to time to Centro pursuant to the Loan Agreement or any of the Security Documents in respect of Loan;

“Loan Agreement” means the Loan Agreement dated November 3rd, 2014, between Centro and the Borrower in respect of the Loan;

“Mortgaged Property” means:

- (a) the Lands;
- (b) all rights, privileges, advantages and benefits whatsoever arising pursuant to all agreements regarding the development of, and the construction of improvements on, the Lands;
- (c) all personal property presently or in the future owned or acquired by or on behalf of the Borrower and all proceeds and renewals thereof, accretions thereto and substitutions therefore which are used in connection with the Lands;
- (d) all other personal property of the Borrower securing the Facilities; and

“Participants” means Centro and the Investor and other investors acquiring interests in the Loan and "Participant" means any one of them;

“Person” means any individual, company, corporation, partnership, firm, trust, sole proprietorship, government, government agency, authority or entity however designated or constituted;

“Principal” means the principal amount of the Loan and all Interest, interest on overdue Interest, fees, expenses, charges and other amount owing by the Borrower to Centro from time to time which may be added thereto or become part thereof pursuant to the Loan Agreement or the Security Documents;

“Project” means the property located at 122-128 Peter Street, Toronto, ON,(Future Security to Include: 120 Peter Street, 357 & 359 Richmond Street West, Toronto, Ontario; OR any adjacent lands to the current or future parcels);

“Proportionate Share” means the proportionate share of each of the Participants in the Loan as stipulated in each LAC entered into with each Participant;

“Security Documents” means:

- (e) all mortgages, charges, security agreements, instruments and documents executed and delivered by the Borrower to Centro as security for the Facilities, from time to time, whether direct, indirect, primary or collateral, including without limitation any guarantees, charges, assignments and any other type of security agreement;
- (f) all policies of insurance relating to the Mortgaged Property as required under the Loan Agreement or under the Security Documents; and
- (g) all instruments and documents supplemental or ancillary to any of the foregoing.

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed to them in the Loan Agreement.

- 1.2 **Applicable Law** This Agreement shall be interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 1.3 **Headings, etc.** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.
- 1.4 **Singular, Plural and Gender** Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

ARTICLE 2.00 - LOAN ORIGATION AND PARTICIPATION

- 2.1 **Entering into of Loan** Centro shall be exclusively responsible for the implementation of the Loan in accordance with the provisions of the Loan Agreement and to obtain and administer the Security Documents and the processing of the Loan in accordance with the provisions of the Loan Agreement. In connection therewith, it shall perform and attend to all matters and things necessary to administer and service the Loan in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account including, without limitation, the following:
- (a) acquire, assemble, record and process all the necessary information, data, applications and other forms and reports in connection with the Loan;
 - (b) retain solicitors to perform and carry out all instructions and requirements necessary to complete the Loan including, without limitation, the requisite title searches, the preparation, execution and delivery of the Security Documents and the registration and filing of the Security Documents or notices thereof as may be required to ensure the priority of the Security Documents subject only to such encumbrances and other qualifications permitted by the Loan Agreement;
 - (c) ensure that the Borrower has made satisfactory arrangements for insurance as may be required by the Loan Agreement;
 - (d) make the Advances in accordance with normal mortgage practice out of funds to be provided by the Participants, the provisions of the Loan Agreement, the LAC and the Construction Lien Act.
- 2.2 **Endorsement of Security Documents** All Security Documents shall be taken by Centro in its name and such other trustees appointed by a Participant from time to time and shall hold the Investment as agent for the Participants according to their Proportionate Shares and upon and subject to the terms of this Agreement.

ARTICLE 3.00- SERVICING OF INVESTMENT

- 3.1 **Servicing Duties** Centro shall hold, administer and service the Loan for the Investor and other Participants in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account and shall perform, without limiting the generality of the foregoing, the following duties:
- (a) make reasonable efforts to collect all payments due under the Loan, including without limitation, all Principal, Interest and interest on overdue Interest, taxes (if applicable), and any other monies or payments required by the Loan Agreement or the Security Documents;
 - (b) perform all necessary services with respect to the settlement of any loss under insurance policies in the event of damage to or destruction of the Mortgaged Property;
 - (c) settle with the Borrower and any expropriating authority the amount and disposition of any compensation payable in connection with any

expropriation of any part of or any interest in the Mortgaged Property;

- (d) pay out of payments of Interest or other monies received for the borrower by Centro:
 - (i) when necessary, insurance premiums, taxes and any other amounts which Centro is authorized to pay on behalf of the Borrower under any of the Security Documents;
 - (ii) the reasonable fees and expenses of any experts retained by Centro pursuant to section 3.2;
 - (iii) any other reasonable expenses necessary to protect or preserve the Mortgaged Property approved by Investor; and
- (e) remit to Investor forthwith upon receipt, or as soon as is reasonably possible thereafter, the applicable pro rata portions of all payments on account of Principal received by Centro (except to the extent any amount thereof has been solely funded by Centro), together with a statement indicating the amount of each payment of Principal;
- (f) remit to Investor on or before the 15th Business Day of each month all payments of its Proportionate Share of Interest out of the Interest received by Centro from the Borrower during the previous month, less any payments authorized by paragraph 3.1(e), together with a statement indicating the amount of each payment received and the deductions therefrom. It is the intention of Centro that payments of Interest will be due on the fifteenth day of each month except as otherwise provided by the Loan Agreement and the Security Documents. If payments of Interest are received by Centro on any other day, the balances of such payments shall be remitted to Investor on or before the 15th Business Day following receipt of the payment;
- (g) maintain proper records and accounts showing all receipts and disbursements in respect of the Investment and permit Investor, its auditors and agents, on reasonable notice to Centro, to examine such records and accounts from time to time and provide such copies thereof as Investor may reasonably require at its expense relating to the Loan;
- (h) generally attend to the performance of such other things as a prudent lending institution would normally perform if the Loan was for its own account exclusively as per the Loan Agreement and the LAC including, inter alia, sign all postponements, standstill, subordination and partial discharges for any of the Security Documents as per the LAC and the Loan Agreement, or generally, as may arise from time to time in order to protect the interest of the Investor in the Loan;
- (i) in the event that Centro, in its sole discretion, acting as approved Lender and administrator, determines that the Borrower, as a result of an act of *Force Majeure*, will not be able to complete the Project so as to repay the Loan on or before the maturity date on the Loan under the Loan Agreement (as it may be extended under the terms thereof), it shall have the authority to extend the term of the Loan for such period of time, not exceeding **24** months so as to permit the Borrower to complete the Project and its sales, and thereby repay the Loan. Centro shall have the right to do so on one or more occasions but for a period of time not exceeding 24 months as aforesaid, without the consent of the investor;
- (j) give such notices to the Borrower and other Persons as Centro may consider necessary;
- (k) take all reasonable steps to enforce performance of the obligations of the Borrower under the Loan or the Security Documents or to protect or preserve the Mortgaged Property;

- (l) if Centro considers it necessary to accelerate repayment of the Loan and realize upon the Mortgaged Property including, inter alia, the appointment of a receiver, the exercise of powers of distress, the institution of foreclosure or power of sale proceedings and/or any other legal or equitable remedy. Centro shall not be required to consult with Investor prior to determining what action Centro should take to enforce its rights and exercise its remedies under the Security Documents or otherwise. Centro shall not be required to take any action (or refrain from taking any action) that would result in Centro being in default of any covenant, term, provision or condition of this Agreement, the Loan Agreement or the Security Documents or any obligation imposed on it by law including, without limitation, the obligation to act in a reasonable manner and in accordance with normal lending practice and with the same degree of care and skill as a prudent lending institution would exercise for its own account; and
- (m) to fulfill all obligations of the Investor under the Loan and any Loan arrangements including the LAC relating to the execution of all necessary postponements, discharges, standstill agreements and other documentation consistent with the foregoing.

- 3.2 **Experts** To assist in administering the Investment and carrying out its duties hereunder, Centro may retain at the expense of the Borrower, or failing same, the Participants to be shared based on their respective Proportionate Shares, such solicitors, notaries, counsel, auditors, appraisers and other experts as Centro may, acting reasonably.
- 3.3 **No Warranties or Representations** Centro has given no warranty or representation with respect to the Investment and shall not be responsible for the observance or performance of any of the obligations of the Borrower or the Covenantors pursuant to the Loan Agreement or the Security Documents. Investor acknowledges that it has made its own decision to participate in the Investment without any inducement from or reliance upon Centro with respect to the financial condition of the Borrower or the Covenantors or the sufficiency of the Mortgaged Property or the Security Documents.
- 3.4 **Duty of Care** Centro shall not be liable for any error of judgment or any action taken or omitted to be taken by it under or in connection with this Agreement if it acts upon or relies on any advice received from any expert retained by Centro pursuant to section 3.2 or otherwise acts in good faith.
- 3.5 **Consent of Investor** Saver as set out herein, Centro shall not, without the prior written consent of Investor, acting reasonably, agree to any renewal or any material amendment, modification or waiver of any of the terms of the Loan Agreement, the Security Documents or any agreement or document relating thereto, nor consent to any action or failure to act by the Borrower or any other party, or exercise any rights that Centro may have in respect thereof or any rights pursuant to Section 3.1(h) hereof.

If Centro should request Investor's written consent to any of the action described in this paragraph and shall not receive Investor's consent or denial thereof in writing within ten (10) Business Days of the making of such request, Investor shall be deemed to have given its consent.

- 3.6 **Indemnity** Investor shall indemnify and hold harmless Centro from its pro rata share of all claims, costs, losses, expenses and damages of every nature and kind with respect to the performance of Centro's obligations in this Agreement, the Loan Agreement and the Security Documents, as same relates to the Loan save and except any such claim, cost, loss, expense or damage which results from:
- (a) the failure of Centro to act as a prudent lending institution as required by Sections 2.1 and 3.1;

- (b) Centro's failure to comply with its obligations under this Agreement; or
- (c) Centro's negligence, fraud or any illegal act.

The obligations of Investor under this section shall survive the termination of this Agreement.

- 3.7 **Interest Accrual** Investor acknowledges that the Loan includes funds raised for an interest reserve to pay out regular Investor interest payments. In the event that such interest reserve is not fully funded to cover all interest payments to the Participants, interest payments may be delayed, reduced or be unpaid until maturity of the Loan. In such event, all such interest would continue to accrue and be recoverable as and when the interest reserves are replenished or the Loan matures and is fully repaid, assuming successful completion of the Project and full repayment of the Loan at that time.

It is anticipated that such interest reserves will be fully funded for the term of the Loan provided Centro has raised all required funds contemplated under the Loan.

ARTICLE 4.00- GENERAL

- 4.1 **Meetings** Subject to any other provisions to this Agreement, either party may at any time on three (3) Business Days notice call a meeting with the other party to consider any matter related to this Agreement and, if requested by Centro, to obtain the consent of Investor to any action proposed to be taken by Centro.
- 4.2 **Notices** All notices, consents, approvals or communications required or permitted hereunder shall be in writing and shall be delivered by courier or sent by facsimile transmission and, if intended for Centro, addressed as follows:

Centro Mortgage Inc.
25 Brodie Drive
Unit 8
Richmond Hill, ON L4B 3K7

Attention: Ildina Galati
Fax No. 905 508 3957

and, if intended for Investor, addressed as follows:

Attention:
Fax No.

Any such notice, consent, approval or communication delivered or sent as aforesaid shall be deemed to be received on the Business Day next following the day it is delivered or sent. Any party may change its address for the foregoing purposes within the Province of Ontario by giving the other party notice of such change of address as hereinbefore provided.

- 4.3 **Termination** Subject as hereafter provided, this Agreement shall remain in force until the earlier of the Loan having been paid in full and the Security Documents have been discharged or the Mortgaged Property has been realized and the proceeds of realization have been disbursed among the Participants in accordance with this Agreement. The indemnity provided in section 3.6 shall survive termination indefinitely.
- 4.4 **Effective Date of this Agreement** This Agreement shall not be effective until the date on which it is executed and delivered by Centro and Investor.
- 4.5 **Relationship** Neither the execution of this Agreement, nor the sharing of the Investment nor any agreement to share in profits or losses arising as a result of the Investment is intended to be nor shall it be construed to be the formation of a partnership or a joint venture among the Participants.
- 4.6 **Publications or Registration of Interest** Investor shall not register this Agreement or notice thereof in any manner on the title to the Lands or with respect to any of the other Mortgaged Property.

4.7 **Dealings with Borrower**

- (a) Investor shall not contact or deal either directly or indirectly with the Borrower or the Covenantors or any other Person with respect to the servicing of the Investment or the enforcement of the Security without the consent of Centro. Investor shall also not enter into any other agreement or take any other security with respect to this Agreement, the Investment or its Proportionate Share without the consent of Centro.
- (b) Investor shall not exercise any right of set-off, counter claim or any other claim it may have against the Borrower with respect to Contributory Advances or Contributory Payments to be made by it pursuant to this Agreement.

4.8 **Legal Capacity** Each Participant warrants and represents to the others that it has the legal capacity to enter into this Agreement and the Investment pursuant to its constating documents and any applicable legislation and that this Agreement constitutes a valid and binding obligation of such Participant enforceable in accordance with its terms.

4.9 **Entire Agreement** This Agreement constitutes the entire agreement between the Participants with respect to the Investment and supersedes all prior proposals and agreements, whether oral or written, with respect to the Investment.

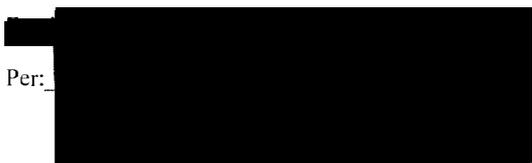
4.10 **Amendment** No term or provision of this Agreement may be amended, waived, discharged or terminated without the unanimous written consent of all of the parties.

4.11 **Binding, etc.** This Agreement shall enure to the benefit of and be binding upon the parties and their successors and permitted assigns.

4.12 **No Waiver** The failure of any party to insist upon the strict adherence to or performance of any of the covenants contained herein shall not be considered as a waiver of such covenant by that party. A waiver of any provision in this Agreement must be in writing and signed by the waiving party.

4.13 **Counterparts** This document may be executed in counterparts, each of which shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to be dated the date hereof.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first hereinabove written.

Per: 

Per: _____
 Name:
 Title:

CENTRO MORTGAGE INC.

 Per: _____
 Name:
 Title:

Per: _____
 Name:
 Title:

I/We have authority to bind the Corporation

Appendix 7:
PRLA Charges (without schedules)

Properties

<i>PIN</i>	21412 – 0139 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 6 PL 1B TORONTO; CITY OF TORONTO		
<i>Address</i>	122 PETER ST TORONTO		
<i>PIN</i>	21412 – 0140 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 7 PL 1B TORONTO AS IN CA277227; T/W CT131463; CITY OF TORONTO		
<i>Address</i>	126 PETER ST TORONTO		
<i>PIN</i>	21412 – 0141 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 7 PL 1B TORONTO AS IN CA514620; T/W & S/T CA514620; CITY OF TORONTO		
<i>Address</i>	128 PETER ST TORONTO		
<i>PIN</i>	21412 – 0142 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 7 PL 1B TORONTO PT 2 & 3 63R3567; S/T CT123180; CITY OF TORONTO		
<i>Address</i>	357 RICHMOND ST W TORONTO		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name FORTRESS CARLYLE PETER ST INC.
Address for Service 476 Richmond Street West
Suite 200
Toronto, Ontario
M5V 1Y2

I, Naram Mansour, A.S.O. and I, Vince Petrozza, A.S.O., have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)

	<i>Capacity</i>	<i>Share</i>
<i>Name</i>	CENTRO MORTGAGE INC.	55.78%
<i>Address for Service</i>	in Trust 25 Brodie Drive Unit 1A Richmond Hill, Ontario L4B 3K7	
<i>Name</i>	OLYMPIA TRUST COMPANY	44.22%
<i>Address for Service</i>	2200, 125 – 9th Avenue SE Calgary, Alberta T2G 0P6	

Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$6,400,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	quarterly, not in advance		
<i>Balance Due Date</i>	2019/01/02		
<i>Interest Rate</i>	8.00% per annum		
<i>Payments</i>			
<i>Interest Adjustment Date</i>	2015 01 02		
<i>Payment Date</i>	2nd day of each quarter		
<i>First Payment Date</i>	2015 04 02		
<i>Last Payment Date</i>	2019 01 02		

Provisions

Standard Charge Terms 200033
Insurance Amount full insurable value
Guarantor

Signed By

Lynn Pender 77 King Street West Suite 3000 PO acting for Chargor First 2015 07 14
Box 95 TD Centre (s) Signed
Toronto
M5K 1G8

Tel 416-864-9700

Fax 416-941-8852

Lynn Pender 77 King Street West Suite 3000 PO acting for Chargor Last 2015 07 14
Box 95 TD Centre (s) Signed
Toronto
M5K 1G8

Tel 416-864-9700

Fax 416-941-8852

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

Submitted By

FOGLER, RUBINOFF LLP 77 King Street West Suite 3000 PO 2015 07 14
Box 95 TD Centre
Toronto
M5K 1G8

Tel 416-864-9700

Fax 416-941-8852

Fees/Taxes/Payment

Statutory Registration Fee \$60.00
Total Paid \$60.00

Properties

<i>PIN</i>	21412 - 0139	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	LT 6 PL 1B TORONTO; CITY OF TORONTO			
<i>Address</i>	122 PETER ST TORONTO			
<i>PIN</i>	21412 - 0140	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 7 PL 1B TORONTO AS IN CA277227; T/W CT131463; CITY OF TORONTO			
<i>Address</i>	126 PETER ST TORONTO			
<i>PIN</i>	21412 - 0141	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 7 PL 1B TORONTO AS IN CA514620; T/W & S/T CA514620; CITY OF TORONTO			
<i>Address</i>	128 PETER ST TORONTO			
<i>PIN</i>	21412 - 0142	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 7 PL 1B TORONTO PT 2 & 3 63R3567; S/T CT123180; CITY OF TORONTO			
<i>Address</i>	357 RICHMOND ST W TORONTO			
<i>PIN</i>	21412 - 0143	LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PART LOT 7 PL 1B TORONTO PART 1 63R3567; CITY OF TORONTO			
<i>Address</i>	359 RICHMOND ST W TORONTO			

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name FORTRESS CARLYLE PETER ST INC.
Address for Service 476 Richmond Street West,
Suite 200,
Toronto, ON M5V 1Y2

I, Naram Mansour (President), have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)

	<i>Capacity</i>	<i>Share</i>
<i>Name</i>	BUILDING & DEVELOPMENT MORTGAGES CANADA INC.	62.75%
<i>Address for Service</i>	20 Adelaide Street East, Suite 920 Toronto, ON M5C 2T6	
<i>Name</i>	OLYMPIA TRUST COMPANY	37.25%
<i>Address for Service</i>	2200, 125-9th Avenue SE Calgary, AB T2G 0P6	

Statements

Schedule: See Schedules

Provisions

<i>Principal</i>	\$35,000,000.00	<i>Currency</i>	CDN
<i>Calculation Period</i>	See Schedule Attached		
<i>Balance Due Date</i>	See Schedule Attached		
<i>Interest Rate</i>	See Schedule Attached		
<i>Payments</i>			
<i>Interest Adjustment Date</i>			
<i>Payment Date</i>	See Schedule Attached		
<i>First Payment Date</i>			
<i>Last Payment Date</i>			
<i>Standard Charge Terms</i>	200033		
<i>Insurance Amount</i>	Full insurable value		
<i>Guarantor</i>			

Signed By

Zhe Ding 7501 Keele Street, Ste. 200 acting for Signed 2019 02 01
Concord
L4K 1Y2 Chargor(s)

Tel 905-760-2600

Fax 905-760-2900

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

Submitted By

BRATTYS LLP 7501 Keele Street, Ste. 200 2019 02 01
Concord
L4K 1Y2

Tel 905-760-2600

Fax 905-760-2900

Fees/Taxes/Payment

Statutory Registration Fee \$64.40

Total Paid \$64.40

File Number

Chargor Client File Number : 221817 (HL)

Chargee Client File Number : 1189997

Appendix 8:
Sample LH2 Loan Agreement (anonymized)

LOAN AGREEMENT

THIS AGREEMENT made as of the day of 23rd Novemeber , 2010.

B E T W E E N :

[REDACTED]

An individual resident in the Province of Ontario

(hereinafter referred to as the "Lender")

and

RHED "In Trust for a Company to be Formed", a
corporation incorporated under the laws of the
province of Ontario

(hereinafter referred to as the "Borrower")

WHEREAS the Lender has agreed to lend and the Borrower has agreed to borrow the sum of [REDACTED] (the "Principal Sum") in connection with the development and construction of certain residential real estate premises situated at 122-124 Peter Street, Toronto, ON. (the "Development");

AND WHEREAS the Borrower agrees to pay to the Lender interest on the Principal Sum at the rate of Eight Percent per annum (8.00% p.a.), calculated annually, during the term of this Agreement;

AND WHEREAS the Borrower has agreed to register a second mortgage/charge in favour of the Lender, or the Lender's nominee, as security for repayment of the said loan upon the properties described in Schedule "A" attached hereto;

AND WHEREAS the Borrower agrees to repay the Principal Sum to the Lender on or before December 15, 2013, together with interest as specified herein;

AND WHEREAS the Lender and the Borrower (collectively the "Parties" and individually a "Party") wish to evidence their agreement in respect of the said loan (herein referred to as the "Agreement" or the "Loan Agreement");

AND WHEREAS the Lender acknowledges that security under the Loan Agreement shall be granted, *inter alia*, in the form of a participating interest in a syndicated second charge/mortgage with other Lenders ("Charge/Mortgage") as more fully described herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the covenants, agreements, warranties and in consideration of the mutual premises set out herein and the payment of TEN DOLLARS (\$10.00) by each of the parties to the other (the receipt and sufficiency of which is hereby acknowledged by each of the parties), the Parties hereby respectively covenant and agree as follows:

ARTICLE 1.00 - RECITALS

1.01 The recitals above are true and accurate in all respects.

ARTICLE 2.00 - CURRENCY

2.01 All dollar amounts referred to in this Agreement and schedules annexed hereto are in Canadian funds and all sums of money required to be paid or advanced hereunder shall be paid or advanced in lawful money of Canada.

ARTICLE 3.00 - SCHEDULES

3.01 The following are the schedules attached to and incorporated in this Agreement by reference and deemed to be a part thereof:

- Schedule "A" – Lands to be Charged/Mortgaged
- Schedule "B" – Schedule of Interest Payments
- Schedule "C" – Permitted Encumbrances
- Schedule "D" – Deferred Lender Fee

ARTICLE 4.00 - AGREEMENT TO LEND

4.01 The Lender agrees to provide a loan to the Borrower for the Principal Sum. The loan amount so advanced is subject to a Lender's fee of Zero Dollars (\$.00), which shall be deducted from the Principal Sum and remitted to the Lender. The Borrower acknowledges itself indebted to the Lender in the amount of the Principal Sum plus interest as calculated and determined herein and the Borrower promises to pay to the Lender the Principal Sum plus interest pursuant to the terms and conditions enumerated herein.

4.02 For greater certainty, interest on the Principal Sum shall accrue at a rate Eight Percent (8.00%) per annum, calculated annually, from the date of advance by the Lender to the Borrower, until December 15 2013 (the "Due Date"). The Borrower shall remit interest payments to the Lender quarterly in accordance with a pre-determined schedule, attached hereto as Schedule "B". The initial interest payment from the Borrower to the Lender shall be pro rata on a per diem basis calculated from the date of the investment by the Borrower to the date of the first scheduled payment, March 15 2011.

ARTICLE 5.00 - SECURITY

5.01 As security for the Loan, the Borrower shall give to the Lender:

A second charge/mortgage on the lands described in Schedule "A" attached hereto for the sum of ONE MILLION FIVE HUNDRED DOLLARS (\$1,500,000.00);

The Lender and the Borrower acknowledge that the said second charge/mortgage registered against title to the Lands pursuant to the Loan Agreement shall initially be for the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00). The Lender and the Borrower further acknowledge and agree that upon the completion of certain development and construction milestones on the Property by the Borrower, it is anticipated that the said second charge shall from time to time be amended during the term of the Loan Agreement to a maximum of FOUR MILLION DOLLARS (\$4,000,000.00).

The Charge/Mortgage, as amended from time to time, shall be registered in the name of "Sanjay Pahuja" as trustee for all non-registered investors, and in the name of the The Bank of Nova Scotia Trust

Company for all registered investors. The interests of all registered and non-registered investors shall rank pari-passu as between Sanjay Pahuja and the The Bank of Nova Scotia Trust Company.

The Parties each acknowledge that the registered amount of the Charge/Mortgage may be amended from time to time in accordance with the terms of this Loan Agreement, and the Parties further hereby acknowledge, consent and direct that any actions which may from time to time be required to amend of the Charge/Mortgage in accordance with the foregoing terms are hereby permitted and authorized.

5.02 Reasonable legal fees and disbursements of the Lender shall be paid by the Borrower and may be deducted from each advance to the Borrower made pursuant to this Loan Agreement.

ARTICLE 6.00 – COVENANTS, REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Lender the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which are a continuing condition of the continued advances of the Loan by the Lender to the Borrower:

- (a) The Borrower has been duly incorporated and is validly subsisting as a corporation under the Business Corporations Act (Ontario), is duly qualified to carry on its business in each jurisdiction in which it carries on business, has the power and authority to enter into and perform its obligations under this Agreement, the Charge/Mortgage and all instruments and agreements delivered pursuant hereto and thereto, is the registered owner of the Property, is legally entitled to carry on its business as currently conducted or as currently contemplated, and has obtained all material licenses, permits and approvals from all governments, governmental commissions, boards and other agencies of jurisdictions in which it carries on (or contemplates carrying on) business which are required in respect connection with the development of the Property. The Borrower or its solicitor has delivered to the Lender, or its solicitor, copies of the constating documents of the Borrower and the Lender's solicitor has obtained a legal opinion from the Borrower's solicitor that the Borrower is authorized to enter into this Loan Agreement.
- (b) The execution, delivery and performance of this Loan Agreement, the Charge/Mortgage and every instrument or agreement delivered or to be delivered pursuant hereto and thereto has been duly authorized by all requisite action on the part of the Borrower; and this Agreement and all instruments and agreements delivered or to be delivered pursuant hereto and thereto have been, or will be, duly executed and delivered by the Borrower, and this Loan Agreement, the Charge/Mortgage, and each agreement and instrument delivered or to be delivered pursuant hereto and thereto constitutes, or when delivered will constitute, a valid and binding obligation of the Borrower enforceable in accordance with its terms, subject to the application of bankruptcy, insolvency and similar laws affecting the enforcement of creditors' rights generally and the fact that the right to obtain judicial orders requiring specific performance or other equitable remedies is in the discretion of the court.
- (c) There are no actions, suits or proceedings pending or to the best of the Borrower's knowledge threatened against or affecting the Borrower at law or in equity or before or by any governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before any arbitrator of any kind which, if determined adversely, would result in any adverse change in the Borrower's business, operations, the Property, assets or condition, financial or otherwise, or in the Borrower's ability to perform its obligations under this Agreement, the Charge/Mortgage or any agreement or instrument delivered or to be delivered pursuant hereto or thereto; and the Borrower is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which default(s), either separately or in the aggregate, would result in any such

adverse change.

- (d) The Borrower is not subject to any judgment, order, writ, injunction, decree or award or any rule or regulation having restricted application to the Borrower, which, in the opinion of the Lender acting reasonably, adversely affects, or in the future is likely to adversely affect, the Property, the Borrower, the Borrower's business, operations, or financial assets.
- (e) The Borrower is not in default beyond any period of grace in payment of any amount under any guarantee, bond, debenture, note or other instrument evidencing any indebtedness or under the terms of any instrument pursuant to which any of the foregoing has been issued or made and delivered.
- (f) The Borrower acknowledges that Sanjay Pahuja is listed as a the Chargee/Mortgagee of the Charge/Mortgage, in his capacity as trustee only, and that Sanjay Pahuja does not maintain any interest whatsoever in the Property or the Development, nor is Sanjay Pahuja advancing any funds towards the Loan. Sanjay Pahuja is listed as Chargee/Mortgagee for the sake of expediency and efficiency only.
- (g) The Borrower shall indemnify and hold harmless the Lender and Sanjay Pahuja from and against all losses, claims, damages, liabilities, and expenses, joint or several, to which any such person or entity may become subject arising out of or in connection with this Loan Agreement, the use of proceeds, or any related transaction or any claim, litigation, investigation or proceeding, relating to any of the foregoing, regardless of whether the Lender and/or Sanjay Pahuja is a party thereto, and to reimburse any and all of the Lender and/or Sanjay Pahuja, forthwith upon demand for any reasonable, legal or other expenses incurred in connection with investigating or defending any of the foregoing.
- (h) The Borrower has not withheld from the Lender or from the general public, information which adversely affects, or so far as it can now reasonably foresee, will adversely affect the Property or the Borrower's assets, liabilities, affairs, business, operations or conditions, financial or otherwise, or its ability to perform its obligations under this Loan Agreement, the Charge/Mortgage or any agreements or instruments delivered pursuant hereto or thereto.
- (i) The Borrower acknowledges that its execution and delivery of this Loan Agreement, the Charge/Mortgage or any agreements or instruments delivered pursuant hereto or thereto (hereinafter the "Loan Documents") and the consummation of the transactions herein contemplated, does not and will not conflict with, and does not and will not result in any breach of, any of the provisions of the constating documents of the Borrower or of any agreements or instruments to which the Borrower is a party or by which the Property or any of the Borrower's property and assets are bound.
- (j) The Borrower has good and marketable title to the Property and its assets free from all mortgages, security interests, liens, pledges, charges, encumbrances, title retention agreements, options or adverse claims, other than Permitted Encumbrances as identified in Schedule "C" – Permitted Encumbrances attached hereto.
- (k) The Borrower has filed or caused to be filed, in a timely manner all tax returns, reports and declarations, which are required to be filed by it. All information in such tax returns, reports and declarations is complete and accurate in all material respects. The Borrower has paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by it, except taxes the validity of which are being contested in good faith by appropriate proceedings diligently pursued and available to the Borrower and with respect to which adequate reserves have been set aside on its books. Adequate provision has been made for the payment of all accrued and unpaid federal, provincial, local, foreign and other taxes

- whether or not yet due and payable and whether or not disputed.
- (l) The Borrower is not in default in any material respect under, or in violation in any material respect of any of the terms of, any agreement, contract, instrument, lease or other commitment to which it is a party or by which it or any of its assets are bound and the Borrower is in compliance in all material respects with all applicable provisions of laws, rules, regulations, licenses, permit, approvals and orders of any foreign, federal, provincial, or local governmental authority.
 - (m) The Borrower is now in compliance with all environmental laws and regulations in respect of the Property and the Borrower undertakes to take all necessary action to obtain any and all environmental permits and/or regulatory approvals necessary for the Borrower to develop the Property in accordance with the laws and regulations of the province of Ontario and the appropriate local municipality.
 - (n) The Borrower has not caused or permitted and is not legally responsible for, nor does it have knowledge of, any release, discharge or disposal of any hazardous material on, from, to or under the Property or any other property or asset of the Borrower.
 - (o) The Borrower shall notify the Lender immediately if the Borrower in the event of a default in the payment of any indebtedness for borrowed money, pursuant to the Loan Documents, or pursuant to any other loan agreement to which the Borrower is a party, whether such indebtedness now exists or shall hereafter be created. The Borrower shall also notify the Lender immediately in the event of an event of default under any mortgage, indenture or instrument to which the Borrower is a Party.
 - (p) The Borrower has not received any written notice of nor does the Borrower have any knowledge of any claims, actions, charges, suits, permit revocations, remedial Orders or other current or pending proceedings ("Environmental Claims") relating to any breach of any applicable environmental laws or regulations involving the Property.
 - (q) All representations and warranties of the Borrower contained in this Loan Agreement or in any Loan Documents referenced herein shall survive the execution and delivery of this Loan Agreement and shall be deemed to have been made again to the Lender on the date of each advance pursuant to the Loan and shall be conclusively presumed to have been relied on by the Lender regardless of any investigation made or information possessed by the Lender. The representations and warranties set forth herein shall be cumulative and in addition to any other representations or warranties which the Borrower shall now or hereafter give, or cause to be given, to the Lender.
 - (r) The Borrower further acknowledges and agrees that the terms of this Loan Agreement shall override the terms of any previous loan agreements to which the Borrower and the Lender may be or may have been Parties.
 - (s) The Borrower acknowledges that each Lender named as a Party to this Loan Agreement shall deliver an executed copy of this Loan Agreement to the Borrower. The Borrower acknowledges that each of said Lenders may have executed a loan agreement that has been amended to accommodate that particular Lender. The Borrower agrees to abide by the specific terms of each of said loan agreements.

6.01 The Lender and Borrower mutually Acknowledge, Represent and Covenant as follows:

- (a) Any amounts advanced by the Lender to the Borrower pursuant to this Loan Agreement shall occur in tranches ("Instalments"):

- i) the initial face value of the Loan will be an initial Instalment of \$1,500,000.00;
 - ii) it is anticipated that the face value of the Loan shall periodically increase upon the completion of certain construction and development milestones over the duration of the term in the form of various additional Instalments, to an total amount which shall not exceed the sum of \$4,000,000.00;
 - iii) prior to the release of any funds by the solicitor for the Lender to the solicitor for the Borrower, each Party hereby irrevocably acknowledges and directs that their respective solicitors are authorized to and shall cause to be registered any such instruments on title to the Lands which in the sole discretion of the solicitor for the Lender may be required as evidence of any sums advanced to the Borrower on the security of the Charge/Mortgage. The Lender hereby waives any requirement to be notified of the registration of any subsequent Instalments under the Charge/Mortgage.
- (b) The Charge/Mortgage in which the Lender has an interest pursuant to this Loan Agreement is a **second** ranking charge against title to the Lands. The Parties further acknowledge that the Borrower has obtained construction financing for the Development of the Property which constitutes a first ranking charge ("First Charge") against title to the Lands. **THE LENDER HEREBY UNDERSTANDS, CONSENTS AND AGREES THAT THIS FIRST CHARGE SHALL PERIODICALLY INCREASE OVER THE TERM OF THIS SECOND CHARGE/MORTGAGE. THE LENDER HEREBY AGREES THAT ITS INTERESTS SHALL BE POSTPONED TO ANY INCREASE IN THE FIRST CHARGE, TO A MAXIMUM OF \$22,000,000.00** but that there shall be no other postponements or encumbrances which affect the position or security afforded by the second Charge/ Mortgage contemplated herein.

ARTICLE 7.00 - DEFAULT

On the happening of any of the following events of default the Lender may, at their option, require the unpaid balance of the Principal Sum together with all interest accrued to become immediately due and payable:

- (a) in the event that the Borrower fails to make the payments in the amounts and at the times specified in this Loan Agreement;
- (b) in the event that the Borrower should breach any agreement entered into between the Lender and the Borrower;
- (c) in the event that the Borrower should become bankrupt or insolvent or should the Borrower be subject to the provisions of the *Bankruptcy Act* or any other *Act* for the benefit of creditors, or should the Borrower go into liquidation either voluntarily or under an order of a court of competent jurisdiction or make a general assignment for the benefit of creditors or otherwise acknowledge its insolvency;
- (d) in the event that the Lender in good faith believes that the prospect of payment or performance by the Borrower or Guarantors of the obligations under this Loan Agreement is impaired or that any collateral provided to the Lender as security for payment of any obligations of the Borrower to the Lender is in danger of being impaired, lost, damaged or confiscated.
- (e) In the event of any default whatsoever with respect to any Charge/Mortgage registered against the Lands charged herein under this Charge/Mortgage, including without limitation, the commencement of power of sale proceedings under any Charge/Mortgage,

at the option of the Lender, all monies hereby secured together with accrued interest and all costs and fees thereon shall forthwith become due and payable by the Borrowers and/or Guarantors to the Lender.

On the happening of an event of default the Lender may require the Borrower and/or Guarantors to repay all principal and interest outstanding and due by the Borrower to the Lender pursuant to the Loan Documents, and the Lender may take any enforcement action it deems necessary or advisable to realize on its security without the requirement of any further demand or notice to the Borrower and/or Guarantors.

ARTICLE 8.00 – DEFERRED LENDER FEE

See Schedule “F”

ARTICLE 9.00 - GENERAL

9.01 This Agreement shall continue in force until the Borrower has no indebtedness or liability to the Lender.

9.02 The terms of this Agreement shall bind and extend to and enure to the benefit of the Parties hereto and their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

9.03 The failure of any of the Parties to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver of such a term, provision, option, right or remedy, but the same shall continue or remain in full force and effect. No waiver by any of the parties of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

9.04 This Agreement shall be governed by the laws of the Province of Ontario.

9.05 Time shall be of the essence hereof.

9.06 This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements and understandings between the Parties in writing hereto.

9.07 Any supplement, modification or amendment of any term, provision or condition of this Agreement shall not be binding or enforceable unless executed by the Parties in writing hereto.

9.08 Headings as used in this Agreement are solely for purposes of convenience and reference only and shall not be applied to explain, modify, limit or amplify the meaning, construction or interpretation of any of the provisions of this Agreement.

9.09 This Loan Agreement may be executed by the Parties herein in counterparts (which counterparts may be delivered by telecopier with the original forwarded immediately thereafter) each of which once executed and delivered shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such counterparts.

9.10 If any article, section or any portion of any section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid article, section or portion thereof shall be severed from the remainder of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written on the first page hereof.

Witness 

Lender 

REED " In Trust for a company to be Formed"
Per:Del Terrelonge

Del Terrelonge,
I have authority to bind the Corporation

Schedule "A" – THE LANDS

Municipal Address: 122-124 Peter Street, Toronto, ON

Legal Description: **Part Of Lot 6 On the West Side of Peter Street Plan 1 "B" City Of Toronto**

Schedule "B" – Schedule of Interest Payments

Interest payments shall be calculated at a annual interest rate of 8%, paid Quarterly in trust to Sanjay Pahuja or The Bank of Nova Scotia Trust Company, Commencing March 15, 2011. All funds advanced after Decemember 15, 2010 will receive a initial payment pro rated up to and including March 15, 2011 based on days invested.

Schedule "C" – Permitted Encumbrances

To be confirmed

SCHEDULE "D"**Deferred Lender Fee**

In addition to any other amounts owing by the Borrower to the Lender, it is agreed that in the event the Borrower achieves permission from the applicable governmental authorities to construct a building on the property having usable units in excess of 22 units as per the performance ("Excess Coverage") the Borrower shall pay the Lender a Deferred Lender Fee based on such excess units in the amount of 36 per cent of the total loan amount, such Deferred Lender Fee to be payable on the maturity date of the mortgage.

The Lender acknowledges that this Deferred Lender Fee is not payable unless and except such Excess Coverage is achieved.

The Lender and Borrower both further acknowledge that in no event will the Lender be called upon to advance any amount in excess of the Principal Sum as set out on the Loan Agreement relating to the transaction entered into between the Lender and the Borrower.

Appendix 9:
Agency Agreement and Sample Accession Agreement (anonymized)

AGENCY AGREEMENT

This agency agreement (the "**Agreement**") is made effective as of the 18 day of December, 2013 (the "**Effective Date**")

Between:

Each of the persons that has executed an accession to this agreement in the form attached hereto as Schedule "A"

(collectively, the "**Investors**")

OF THE FIRST PART

- and -

CENTRO MORTGAGE INC., a corporation incorporated under the laws of Ontario
(the "**Agent**")

OF THE SECOND PART

RECITALS:

A. The Investors each loaned funds (the "**Loan**") to The Julian Cole Development Corporation (the "**Borrower**") pursuant to a loan agreement between the applicable trustee, in trust for such Investor, and the Borrower, dated the date set out opposite the Investor's name in Exhibit "1" to the accession agreement executed by such Investor (collectively, the "**Loan Agreement**").

B. Pursuant to the loan agreement, the Borrower granted the Investors a second charge/mortgage of the lands described at Schedule "B" hereto (the "**Mortgage**").

C. The Borrower having missed two scheduled payments under the Loan Agreement is in default to the Investor.

D. The Investors wish to appoint the Agent to act as agent for the Investors under the Loan Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements between the parties to this Agreement and other good and valuable consideration and the sum of TWO (\$2.00) DOLLARS now paid by each party to the other (the receipt and sufficiency of which is hereby acknowledged), the parties hereby agree as follows:

1. Appointment of Agent

The Investors hereby irrevocably appoint and authorize Centro Mortgage Inc. to act as Agent on behalf of the Investors, with the ability to, inter alia, exercise all rights and powers of the Investors under such documents and instruments (including the Loan Agreement) and under all such other documents, instruments and security relating thereto (collectively the "**Loan Documents**").

2. Limitations

- (a) The Agent shall not be required to take any action which (i) exposes it to personal liability; (ii) is contrary to this Agreement, the Loan Documents or any applicable Law, rule, regulation, judgment or order; (iii) would require it to become registered to do business in any jurisdiction; (iv) would subject it to taxation; or (v) which it determines in its sole discretion is not a reasonable action to be taken.

- (b) The Agent has no duties or obligations other than as set out in this Agreement and there shall not be construed against the Agent any implied duties (including fiduciary duties), obligations or covenants. The Agent may execute or perform, and may delegate the execution and performance of, any of its powers, rights, discretions and duties under this Agreement through or to any persons designated by it. References in this Agreement to the Agent shall include references to any such persons.
- (c) The Agent is not obliged to (i) take or refrain from taking any action or exercise or refrain from exercising any right or discretion under the Loan Documents; or (ii) incur or subject itself to any cost in connection with the Loan Documents, unless it is first specifically indemnified or furnished with security by the Investors.

3. No Liability

Neither the Agent nor its directors, officers, Agents or employees shall be liable to any Investor for any action taken or omitted to be taken by it or them in connection with this Agreement and/or the Loan Documents. Without limiting the generality of the foregoing, the Agent (i) may consult with legal counsel, independent accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in accordance with their advice; (ii) makes no warranty or representation to any Investor and shall not be responsible to any Investor for the form, substance, accuracy or completeness of any Loan Document, or any other documents or information made available to the Investors; (iv) has no duty to inspect the property or assets (including books and records) of Borrower or any other person; (v) has no duty to ascertain or inquire as to the existence of a default or an event of default or the observance of any of the terms or conditions of the Loan Documents; (vi) is not responsible to any Investor for the execution, enforceability, genuineness, sufficiency or value of any of the Loan Documents; and (vii) shall incur no liability by acting upon any notice, certificate or other instrument believed by it to be genuine and signed or sent by the proper person.

4. Instructions

If the Agent shall request instructions from the Investors with respect to any act or action (including the failure to act) in connection with this Agreement or the other Loan Documents, the Agent shall be entitled to refrain from such act or taking such action unless and until the Agent shall have received written instructions from the Investors, as applicable, and the Agent shall not incur liability to any person by reason of so refraining. Without limiting the foregoing, no Investor shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under this Agreement and the other Loan Documents in accordance with the instructions of the Investors.

5. Relationship amongst Investors

- (a) No Investor may take any independent legal action to enforce any obligation of the Borrower under the Loan Documents. Each Investor hereby acknowledges that, to the extent permitted by applicable law, the Loan Documents and the remedies provided thereunder to the Investors are for the benefit of the Investors collectively and acting together and not severally, and further acknowledges that each Investor's rights hereunder and under the Loan Documents are to be exercised collectively, not severally, by the Agent upon the decision of the Investors. Accordingly, notwithstanding any of the provisions contained herein or in the Loan Documents, each of the Investors hereby covenants and agrees that it shall not be entitled to take any action under the Loan Documents, including any declaration of default under the Loan Documents, but that any such action shall be taken only by the Agent with the prior written agreement of the Investors, provided that, notwithstanding the foregoing, in the absence of instructions from the Investors and where in the sole opinion of the Agent the exigencies of the situation so warrant such action, the Agent may without notice to or consent of the Investors take such action on behalf of the Investors as it deems appropriate or desirable in the interest of the Investors. Each Investor hereby further covenants and agrees that

upon any such written consent being given by the other Investors, it shall co-operate fully with the Agent to the extent requested by the Agent, and each Investor further covenants and agrees that all proceeds from the realization of or under the Loan Documents, to the extent permitted by applicable law, are held for the benefit of all of the Investors and shall be shared among the Investors rateably. Each Investor covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, so as to fully carry out the intent and purpose of this Section and each Investor hereby covenants and agrees that it shall not seek, take, accept or receive any security for any of the obligations and liabilities of the Borrower under the Loan Documents, or any other document, instrument, writing or agreement ancillary thereto, other than such security as is provided under the loan Documents, and that it shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to the Loan, unless all of the Investors shall at the same time obtain the benefit of any such security or agreement, as the case may be.

- (b) If any Investors obtains any payment (whether voluntary, involuntary or through the exercise of any right of set off or realization of Mortgage) on account of amounts owing to it pursuant to the Loan Agreement in excess of its rateable share of payments obtained by all the Investors, the Investor shall account to and pay over to the other Investors.

6. Indemnification

Each Investor shall indemnify and save the Agent harmless (to the extent not reimbursed by Borrower) rateably (according to the amount of its investment) from any claim or loss suffered by, imposed upon or asserted against the Agent as a result of, or arising out of, this Agreement and/or the Loan Agreement or any action taken or omitted by the Agent under this Agreement and/or the Loan Agreement. The provisions contained in this Section 6 related to the indemnification of the Agent by the Investors, shall survive and continue in full force and effect, until liability of the Agent arising out of the transactions contemplated by this Agreement and the Loan Documents has been extinguished by operation of law.

7. Successor Agent

The Agent may resign at any time by giving written notice to the Investors such resignation to be effective upon the appointment of a successor Agent. Upon delivering notice of resignation to the Investors, the Agent has the right to appoint a successor Agent, on behalf of the Investors. If no successor Agent is appointed or has accepted the appointment within thirty days after the retiring Agent's notice of resignation, then the Investors may appoint a successor Agent. Upon the acceptance of any such appointment by a successor Agent, the successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation the provisions of this Agreement shall enure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

8. Term

This Agreement terminates on the earliest of:

- (a) written approval by the Agent and Investors; or
- (b) resignation of the Agent pursuant to section 7, where a successor Agent has not been appointed.

Termination of this Agreement will not affect or prejudice any rights or obligations that have accrued or arisen under this Agreement prior to the time of termination and these rights and obligations will survive the termination of this Agreement.

9. Further Assurances

Each of the parties to this Agreement shall, at any time or from time to time after the date hereof, at the request of the other party hereto, execute and deliver, or cause to be executed and delivered, such additional instruments, notices, releases, certificates, powers of attorney, assurances and other documents and take such further actions as may be required in order to effectively complete the assignment and assumption contemplated hereby.

10. Expenses

The Agent shall pay all costs and expenses incurred in acting as Agent for the Investors under the Loan Documents and this Agreement.

11. Assignment and Enurement

This Agreement enures to the benefit of and binds the parties hereto and their respective successors and permitted assigns

12. Counterparts and Electronic Transmission

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument. A party's electronic transmission of a copy of this Agreement duly executed by that party shall constitute effective delivery by that party of an executed copy of this Agreement to the party receiving the transmission. A party that has delivered this Agreement by electronic transmission shall forthwith deliver an originally executed copy to the other party.

13. Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

14. Headings

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and are not to affect the construction or interpretation of this Agreement.

15. Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by e-mail, with a read receipt, addressed in the case of the Investors to the address set out opposite each Investors name in Exhibit "1" to the Accession Agreement executed by such Investor hereto and in the case of the Agent, as follows:

Centro Mortgages Inc.

1-A, 25 Brodie Drive

Richmond Hill, Ontario

L4B 3K7, Canada

Attention: Vincent Petrozza, COO

E-mail: vpetrozza@centromortgage.ca

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted e-mail before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by e-mail after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

~ signature pages follow ~

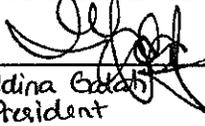
IN WITNESS WHEREOF the parties hereto have executed this Agreement with effect as of the date first written above.

CENTRO MORTGAGE INC.

Per:

Name:

Title:


Lidia Galan
President

I/We have authority to bind the Corporation

Schedule "A"
Form of Accession Agreement

ACCESSION AGREEMENT

To: Centro Mortgages Inc. (the "**Agent**")

Re: Agency Agreement appointing the Agent to act as Agent for the Investors under the Loan Agreement (the "**Agency Agreement**")

THIS INSTRUMENT of accession forms part of an Agency Agreement made as of the 18 day of December, 2013 among the Agent and the signatories thereto, which agreement permits execution by counterpart;

The undersigned Investor (the "**Acceding Investor**") hereby acknowledges having received a copy of the Agency Agreement and having read the Agency Agreement in its entirety;

All of the capitalized terms used herein have the meanings ascribed to them in the Agency Agreement;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby agrees that:

1. all of the provisions of the Agency Agreement shall be binding upon the Acceding Investor as if an original signatory to such Agency Agreement and such provisions shall enure to the benefit of and be binding upon the Acceding Investor's personal representatives, successors and permitted assigns; and
2. the Acceding Investor represents and warrants that he, she or it provided the Loan to the Borrower pursuant to a loan agreement between the trustee set out opposite the Acceding Investors name in Exhibit "1", in trust for such Acceding Investor, and the Borrower, dated the date set out opposite the Acceding Investor name in Exhibit "1" hereto .

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(Signature page follows)

DATED as of the day of , 20



Name:

Exhibit "1"

Investor name	Trustee	Amount of Loan	Date of Loan Agreement	Mailing Address	E-mail
[REDACTED]	Sanjay Pahuja in Trust	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Schedule "B"

The Lands

Municipal Address: 122-124 Peter Street, Toronto, ON

Legal Description: **Part Of Lot 6 On the West Side of Peter Street Plan 1 "B" City of Toronto**

CONSENT

TO: CENTRO MORTGAGE INC.

RE: Loan Agreement dated [REDACTED] [REDACTED] (as amended) by and between Sanjay Pahuja, in trust for [REDACTED] [REDACTED] [REDACTED], and the Julian Cole Development Corporation (the "Loan Agreement")

The undersigned hereby consents to the removal and replacement of Sanjay Pahuja with Centro Mortgage Inc., as the undersigned's trustee and administrator in respect of its rights under the Loan Agreement.

[Signature page follows]

DATED the [redacted] day of [redacted], 2013.

Per:



Name:

Title:

Appendix 10:
New LH2 Charge and Transfer of Charge
(without schedules)

Properties

PIN 21412 - 0139 LT *Interest/Estate* Fee Simple
Description LT 6 PL 1B TORONTO; CITY OF TORONTO
Address 122 PETER ST
TORONTO

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name FORTRESS CARLYLE PETER ST INC.
Address for Service 25 Brodie Drive, Suite #1
Richmond Hill, Ontario
L4B 3K7

I, Naram Mansour, President and Vincenzo Petrozza, Secretary, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name WENVOR TECHNOLOGIES INC.
Address for Service 147 Wyndham Street North, Suite 303
Guelph, Ontario
N1H 4E9

Statements

Schedule: See Schedules

Provisions

Principal \$4,913,051.73 *Currency* CDN
Calculation Period annually, not in advance
Balance Due Date 2015/08/29
Interest Rate 8.0% per annum
Payments \$98,281.03
Interest Adjustment Date 2014 08 29
Payment Date 29th day of each third month
First Payment Date 2014 11 29
Last Payment Date 2015 08 29
Standard Charge Terms 200033
Insurance Amount Full insurable value
Guarantor

Additional Provisions

The term of the Second VTB shall be for three (3) years, plus a Mortgagor's option to extend for an additional one (1) year.

Signed By

Ronald George Sansom S105 Silvercreek Parkway N., Ste. acting for Chargor Signed 2014 08 29
100, PO Box 1240 (s)
Guelph
N1H 6N6

Tel 519-821-0010

Fax 519-837-1617

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

Properties

PIN 21412 – 0139 LT
Description LT 6 PL 1B TORONTO; CITY OF TORONTO
Address 122 PETER ST
TORONTO

Source Instruments

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
AT3677585	2014 08 29	Charge/Mortgage

Transferor(s)

This transfer of charge affects all lands that the charge is against which are outstanding.

Name WENVOR TECHNOLOGIES INC.
Address for Service 147 Wyndham Street North, Suite 303
Guelph, Ontario
N1H 4E9

I, Robert S. Ireland, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Transferee(s)

<i>Name</i>	<i>Capacity</i>	<i>Share</i>
<i>Name</i> B2B TRUST <i>Address for Service</i> 130 Adelaide Street West Suite 200 Toronto, Ontario M5H 3P5	Trustee	35.06%
<i>Name</i> THE BANK OF NOVA SCOTIA TRUST COMPANY <i>Address for Service</i> 130 King Street West Suite 200 Toronto, Ontario M5H 3P5	Trustee	11.26%
<i>Name</i> OLYMPIA TRUST COMPANY <i>Address for Service</i> 2200 125 – 9th Avenue SE Calgary, Alberta T2G 0P6	Trustee	17.49%
<i>Name</i> CENTRO MORTGAGE INC. <i>Address for Service</i> 25 Brodie Drive Unit 8 Richmond Hill, Ontario L4B 3K7	Trustee	36.19%

Statements

The chargee transfers the selected charge for 2.00

Schedule: See Schedules

Signed By

Ronald George Sansom
S105 Silvercreek Parkway N., Ste. 100, PO Box 1240
Guelph
N1H 6N6
acting for Transferor(s)
Signed 2014 08 29

Tel 519-821-0010

Fax 519-837-1617

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

Elaine Levy
2600-120 Adelaide St. West
Toronto
M5H 1T1
acting for Transferee(s)
Signed 2014 08 29

Tel 416-868-1080

Signed By

Fax 416-868-0306

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

Submitted By

ROBINS APPLEBY LLP

2600-120 Adelaide St. West
Toronto
M5H 1T1

2014 08 29

Tel 416-868-1080

Fax 416-868-0306

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Transferor Client File Number : 55814-006

Appendix 11:
LH2 Investor Notice Regarding 122-124 Peter Sale
Transaction



September 12, 2014

Dear Investor:

Re: Syndicated Mortgage loan (the **Loan**) in the original principal amount of \$4,400,000.00 to The Julian Cole Development Corporation (the **Borrower**) on the security of a mortgage registered as Instrument No. AT2597273 (the **Investor Mortgage**) of 122 Peter Avenue, Toronto, Ontario (the **Project**)

We are writing to you to confirm the ongoing advice that has been provided to you in connection with the Project and to summarize the current status of matters in light of the recent sale of the Project by Wenvor Technologies Inc. (**Wenvor**) under the power of sale proceedings initiated by Wenvor under its first mortgage of the Project.

As you have been previously advised, Wenvor initiated power of sale under its first mortgage. As previously communicated to you, Fortress Real Developments Inc. (**Fortress**), the development consultant to the Project, was (and remains) of the view that there is currently intangible value in the Project that would not have been realized at this point had the Project been sold in a third party sale. In fact Fortress was of the view that had the Project been sold in a third party sale pursuant to the power of sale proceedings, there would likely have been little or no return to the investors in the Investor Mortgage.

As none of the investors in the Investor Mortgage had expressed an interest in redeeming the prior mortgage in favour of Wenvor (which would have been the only way to prevent Wenvor from proceeding with a third party sale), the most likely result, in the absence of an alternate plan, would have been the completion of a third party sale, extinguishing the mortgage interests of the investors in the Investor Mortgage with little or no return from the proceeds of the sale. Those proceeds would have been applied in satisfaction of the amounts outstanding on the Wenvor mortgage (the balance of which, at all relevant times, was approximately \$5,004,750.00).

Although it was not Fortress's obligation to protect your investment, as previously advised Fortress did in fact institute an alternate plan in light of its assessment of the current status of the Project, the intangible and anticipated future value of the Project, and the alternatives available in light of the Wenvor power of sale proceedings. Fortress took steps to essentially maintain the status quo of the mortgages on the Project on a cash neutral basis for the investors by having one of its affiliates (Fortress Carlyle Peter St Inc. (the **Fortress Purchaser**)) enter into an agreement to purchase the property from Wenvor under its power of sale proceedings in a transaction which closed on August 29, 2014 (the **Closing Date**).

Under the agreement with Wenvor, the purchase price for the property was an amount equal to the aggregate amounts owing on the prior Wenvor mortgage (\$5,004,750.00 as of the Closing Date) and the total amounts owing on the Investor Mortgage (\$4,913,051.73 as of the Closing Date).

The purchase price payable by the Fortress Purchaser on closing was payable by way of a first vendor take-back mortgage to Wenvor in a principal amount equal to the amounts owing to Wenvor on its existing first mortgage (the **First VTB Mortgage**) and a second vendor take-back mortgage (the **Second VTB Mortgage**) in a principal amount equal to the balance owing on the Investor Mortgage. The Second VTB Mortgage is on the same terms and conditions as the Investor Mortgage except the term of the Second VTB Mortgage is three years from the Closing Date with an option in favour of the mortgagor to extend the term for an additional one (1) year.

The purchase transaction closed on August 29, 2014 and as a consequence of the closing of the sale, the Investor Mortgage was extinguished through the power of sale proceedings. However, pursuant to the

purchase and sale agreement, Wenvor agreed to assign the Second VTB Mortgage to the investors in the Investor Mortgage (or the applicable trustees for the investors, as the case may be) in accordance with each investor's existing percentage interest in the Investor Mortgage.

Accordingly, on the completion of the purchase transaction:

- 1 The Fortress Purchaser became the new owner of the Project, replacing the Borrower, and the Fortress Purchaser has assumed responsibility for the continued development of the Project;
- 2 The existing financing for the Project will remain virtually unchanged with the First VTB Mortgage replacing the existing prior mortgage in favour of Wenvor; and the Second VTB Mortgage, as assigned to the investors, replacing the Investor Mortgage;
- 3 The existing position of the investors in the Project has been preserved and maintained without the requirement of advancing further funds.

The First VTB Mortgage and the Second VTB Mortgage represent the sale proceeds for the property realized by Wenvor under the power of sale proceedings. In the ordinary course of power of sale proceedings, a mortgagee selling a property under a power of sale has to account to subsequent encumbrancers for the sale proceeds, but only for the cash proceeds that it actually receives, when those proceeds are received.

In order to place that component of the sale proceeds represented by the Second VTB Mortgage in the hands of the investors immediately so that the investors would be entitled to the immediate benefit of the Second VTB Mortgage, the Second VTB Mortgage was assigned to the investors immediately on the completion of the sale. To achieve that result, a release to Wenvor with respect to its obligation to account for the sale proceeds to the existing investors as subsequent encumbrancers of the Project was provided on behalf of the registered plan investors by the trustees of the Investor Mortgage, and by Centro as agent on behalf of cash investors pursuant to the Agency Agreements previously executed by those investors in connection with the Project. In the absence of these arrangements, Wenvor would have been entitled to apply payments on both the First VTB Mortgage and the Second VTB Mortgage as proceeds of sale of the Project against the amounts owing on its prior mortgage, and only after that prior mortgage had been repaid in its entirety from the proceeds of sale, would the investors have received any remaining interest in the sale proceeds.

As a result of all of the foregoing, as of the date hereof, your interest in the Project is now represented by your interest in the proceeds of the sale by Wenvor, which is an interest in the Second VTB Mortgage.

We will continue to keep you apprised of Project developments and we would be pleased to provide you with further details or information as you may require.

Yours very truly,

Ildina Galati
 Principal Broker
 Broker Lic # M08003912 FSCO# 10102
 Saskatchewan # 316154 Alberta # RECA Nova Scotia # 1722906
 British Columbia # X300252 Manitoba - Restricted Mortgage Broker
igalati@centromortgage.ca
 Tel: 905-508-4828 ext. 228
 Fax: 905-508-3957

Appendix 12:
Registered Postponement and Interlender Agreement

Properties

PIN 21412 – 0139 LT
Description LT 6 PL 1B TORONTO; CITY OF TORONTO
Address 122 PETER ST
TORONTO

Source Instruments

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
AT3677585	2014 08 29	Charge/Mortgage
AT3677586	2014 08 29	Transfer Of Charge

Party From(s)

Name B2B TRUST
Address for Service 130 Adelaide Street West
Suite 200
Toronto, Ontario
M5H 3P5

I, Elizabeth Andaya, Administration Coordinator and I, Nadia Lising, Assistant Manager, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Name THE BANK OF NOVA SCOTIA TRUST COMPANY
Address for Service 130 King Street West
Suite 200
Toronto, Ontario
M5H 3P5

I, David MacBeth, Director and I, Jandy John, Senior Manager Estate and Trust Services, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Name OLYMPIA TRUST COMPANY
Address for Service 2200, 125 – 9th Avenue SE
Calgary, Alberta
T2G 0P6

I, Kelly Revol, Manager and I, Allison Cysouw, Team Lead, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Name CENTRO MORTGAGE INC.
Address for Service 25 Brodie Drive
Unit 1A
Richmond Hill, Ontario
L4B 3K7

I, Ildina Galati, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Party To(s)*Capacity**Share*

Name CENTRO MORTGAGE INC.
Address for Service in Trust
25 Brodie Drive
Unit 1A
Richmond Hill, Ontario
L4B 3K7

Name OLYMPIA TRUST COMPANY

Party To(s)	Capacity	Share
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Address for Service 2200, 125 – 9th Avenue SE
 Calgary, Alberta
 T2G 0P6

Statements

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number AT3945104 registered on 2015/07/14

Schedule: See Schedules

Signed By

Lynn Pender	77 King Street West Suite 3000 PO Box 95 TD Centre Toronto M5K 1G8	acting for Party From(s)	Signed	2015 07 14
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Tel 416-864-9700

Fax 416-941-8852

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

Submitted By

FOGLER, RUBINOFF LLP	77 King Street West Suite 3000 PO Box 95 TD Centre Toronto M5K 1G8	2015 07 14
----------------------	---	------------

Tel 416-864-9700

Fax 416-941-8852

Fees/Taxes/Payment

Statutory Registration Fee	\$60.00
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Total Paid	\$60.00
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INTERLENDER AGREEMENT

THIS AGREEMENT made as of the 23rd day of June, 2015.

AMONG :

**CENTRO MORTGAGE INC., IN TRUST and
OLYMPIA TRUST COMPANY**
(hereinafter collectively called the "Lender")

OF THE FIRST PART

- and -

FORTRESS CARLYLE PETER ST INC.
(hereinafter called the "Borrower")

OF THE SECOND PART

- and -

**B2B TRUST, THE BANK OF NOVA SCOTIA
TRUST COMPANY, OLYMPIA TRUST COMPANY
and CENTRO MORTGAGE INC.**
(hereinafter collectively called the "Subsequent Encumbrancer")

OF THE THIRD PART

WHEREAS the Borrower is the registered owner of the lands described in Schedule "A";

AND WHEREAS the Project is encumbered by the Lender Security and the Subsequent Encumbrancer Security;

AND WHEREAS the Subsequent Encumbrancer has agreed, among other things, to postpone the Subsequent Encumbrancer Security to the Lender Security;

NOW THEREFORE in consideration of the sum of Two Dollars (\$2.00) now paid by the Lender to the Subsequent Encumbrancer, the receipt and sufficiency whereof are hereby acknowledged, and other good and valuable consideration, it is hereby covenanted and agreed as follows:

SECTION 1 - DEFINITIONS

- (a) "Borrower" means Fortress Carlyle Peter St Inc. and its successors and assigns;

- (b) "Business Day" means a day other than a Saturday, Sunday or other day on which banks are authorized or obligated to close under the laws of the Province of Ontario or of Canada;
- (c) "Charged Property" means the Project, all leases pertaining thereto, all rents, revenues and personal property of the Borrower pertaining thereto or arising therefrom, and all associated rights, benefits and proceeds therefrom, as charged, assigned, pledged or in which a security interest has been created by the Lender Security;
- (d) "Lender" means Centro Mortgage Inc., in Trust and its successors and assigns;
- (e) "Lender Obligations" means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender to a maximum principal amount of \$24,000,000.00 under or pertaining to the loan agreement dated as of November 3, 2014, as now or hereafter amended or restated from time to time (the "Loan Agreement");
- (f) "Lender Security" means all mortgages, pledges, charges, debentures, assignments and security agreements of any nature now or hereafter executed or made by the Borrower or others in favour of the Lender to secure the Lender Obligations, as amended or supplemented from time to time, and includes, without limitation, the security documents described in the Loan Agreement.
- (g) "Project" means the lands described in Schedule "A" attached hereto, a residential condominium development to be constructed thereon, and all buildings, structures, improvements, parking facilities, walkways, expansions, reconfigurations, additions, fixtures, renovations and alterations thereon, thereof and thereto, from time to time.
- (h) "Subsequent Encumbrancer Obligations " means all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Subsequent Encumbrancer.
- (i) "Subsequent Encumbrancer Security" means all mortgages, pledges, charges, assignments and security agreements of any nature now or hereafter executed or made by the Borrower in favour of the Subsequent Encumbrancer to secure the Subsequent Encumbrancer Obligations, as amended or supplemented from time to time.
- (j) "Subsequent Encumbrancer" means, collectively, B2B Trust, The Bank of Nova Scotia Trust Company, Olympia Trust Company and Centro Mortgage Inc. and their respective successors and assigns.

SECTION 2 - REPRESENTATIONS AND WARRANTIES OF THE SUBSEQUENT ENCUMBRANCER

- (a) The Subsequent Encumbrancer hereby represents and warrants to the Lender that:
 - (i) the Subsequent Encumbrancer Security is in full force and effect and has not been amended, and as of the date hereof, there is no default thereunder by the Borrower;
 - (ii) it has received all necessary approvals, directions, authorizations and consents to enter into and perform its obligations under this Agreement;
 - (iii) there is currently outstanding under the Subsequent Encumbrancer Security the principal amount of \$4,913,051.73;
 - (iv) it has the legal right and the power and authority to execute and deliver this Agreement and perform and observe its obligations and agreements hereunder; and
 - (v) this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof.

SECTION 3 - SUBORDINATION AND POSTPONEMENT

- (a) The Subsequent Encumbrancer and the Lender hereby agree that:
 - (i) the Subsequent Encumbrancer Security and the mortgages, charges, pledges, assignments and security interests constituted by the Subsequent Encumbrancer Security, together with all of the rights, title, interest, benefits and advantages of the Subsequent Encumbrancer therein or derived thereunder; and
 - (ii) the Subsequent Encumbrancer Obligations,are hereby and shall hereafter be postponed and subordinated to:
 - (iii) the Lender Security and the mortgages, charges, pledges, assignments and security interests constituted by the Lender Security, together with all of the Lender's rights, title, interest, benefits and advantages therein or derived thereunder, and
 - (iv) the Lender Obligations;to the intent and purpose that the Lender Security, the mortgages, charges, pledges, assignments and security interests constituted by the

Lender Security and the Lender Obligations shall at all times hereafter rank prior and superior to the Subsequent Encumbrancer Security, the mortgages, charges, pledges, assignments and security interests constituted by the Subsequent Encumbrancer Security, and the Subsequent Encumbrancer Obligations to the extent of the principal secured thereby and the interest accrued thereon and all other amounts secured by the Lender Security. Without limiting the generality of the foregoing:

- (v) the Subsequent Encumbrancer shall not be entitled to receive any amounts owing under the Subsequent Encumbrancer Security, including, without limitation, any principal, interest or fees, until all of the Lender Obligations have been fully paid and performed; and
 - (vi) the Lender shall have priority to, and the first right to receive, all proceeds, rents, revenues and other amounts arising out of or pertaining to the Charged Property until all of the Lender Obligations have been fully paid and performed; and
- (b) for the purposes of paragraphs 3(a)(v) and (vi) hereof only, the Lender agrees that all of the Lender Obligations shall be deemed to have been fully paid and performed when the principal secured thereby and the interest accrued thereon and all other amounts secured by the Lender Security have been paid in full to the Lender and the Loan Agreement secured by the Lender Security shall have been cancelled or terminated.

SECTION 4 - EFFECT OF POSTPONEMENT

This Agreement shall be effective as between the Lender and the Subsequent Encumbrancer notwithstanding any past, present or future agreement, event, act or omission to act on the part of the Lender, the Subsequent Encumbrancer, the Borrower or any other person, including, without limitation, any one or more of the following :

- (a) the timing of execution, delivery, attachment, perfection, registration or enforcement of the Lender Security or the Subsequent Encumbrancer Security;
- (b) the failure of the Lender to register, maintain, renew or keep current any registration of or pertaining to any of the Lender Security;
- (c) the respective dates or timing of any advances or defaults under the Lender Obligations or the Subsequent Encumbrancer Obligations, and
- (d) any partial or complete repayment at any time and from time to time by the Borrower of any monies secured by the Lender Security.

SECTION 5 - APPLICATION OF PROCEEDS

The Subsequent Encumbrancer acknowledges that all and every part of the Lender Security is held by the Lender as security for all and every part of the Lender Obligations and agrees that the Lender may apply as a permanent reduction any monies received, whether from the enforcement of and realization upon any or all of the Lender Security, the sale or refinancing of all or any part of the Charged Property or otherwise, to any part of the Lender Obligations which the Lender, in its sole and unfettered discretion, may determine.

SECTION 6 - DELIVERY OF INFORMATION AND NOTICES

- (a) Within a reasonable time following the Lender's reasonable request (which includes, for example, the Lender not obtaining such information from the Borrower or not obtaining same in a timely fashion), the Subsequent Encumbrancer shall provide the Lender with all material information relating to the Subsequent Encumbrancer Security and any property charged thereby; and
- (b) The Borrower shall immediately provide the Lender with all material information relating to the Subsequent Encumbrancer Security and any property charged thereby.

SECTION 7 - AGREEMENTS OF THE SUBSEQUENT ENCUMBRANCER

The Subsequent Encumbrancer agrees with the Lender and the Borrower that:

- (a) notwithstanding the provisions of the Subsequent Encumbrancer Security, the Borrower shall be entitled to sell units in the Project to bona fide third party purchasers without the consent of the Subsequent Encumbrancer;
- (b) the Subsequent Encumbrancer shall forthwith execute partial discharges of the Subsequent Encumbrancer Security for each of the units as and when required upon request by the Lender or its solicitors, and shall provide such executed acknowledgments and directions with respect to such partial discharges to the solicitors for the Lender to be held by such solicitors in escrow until completion of the sale of each of the units, whereupon the partial discharge relating to such units may be registered by such solicitors without any further direction or consent from the Subsequent Encumbrancer and without any payment of principal, interest or any other amount being made to the Subsequent Encumbrancer; provided net proceeds from each sale are paid to the Lender to reduce the Lender Obligations. Upon the Lender Obligations being fully satisfied and upon the termination or cancellation of the Loan Agreement secured by the Lender Security, the Lender agrees to provide the partial discharges still in its or its solicitor's possession to the Subsequent Encumbrancer together with any other partial discharges of the Subsequent Encumbrancer Security held by the Lender;

- (c) it shall not increase the principal amount secured by the Subsequent Encumbrancer Security, the interest rate charged thereon, the calculation, timing and/or accrual of payment of such interest, amend the maturity date thereof, terminate the Subsequent Encumbrancer Security, nor consent to the doing of the same, without first receiving the Lender's prior written consent thereto;
- (d) it shall not transfer, assign or dispose of any interest in the Subsequent Encumbrancer Security, nor consent to the doing of the same, unless the transferee, assignee, etc. executes and delivers to the Lender contemporaneously with such transfer, assignment, etc. an agreement agreeing to be bound by all of the terms and the obligations of the Subsequent Encumbrancer under this Agreement;
- (e) if the Borrower defaults under the Subsequent Encumbrancer Security, then the Subsequent Encumbrancer shall forthwith give written notice to the Lender of such default, which notice shall specify the nature of such default;
- (f) the Subsequent Encumbrancer hereby covenants and agrees that it shall not take or authorize to be taken any action by way of suit, power of sale, foreclosure, summary proceedings, or otherwise, or exercise any rights or remedies under the Subsequent Encumbrancer Security or otherwise for the purpose, directly or indirectly, of realizing on any of the Charged Property, until the repayment in full of the Lender Obligations and until the termination or cancellation of the Loan Agreement secured by the Lender Security;
- (g) that the Borrower proposes to build a high rise residential condominium development on the lands described in Schedule "A" attached hereto and register one or more plan(s) of condominium thereon. The Subsequent Encumbrancer covenants and agrees to forthwith execute and deliver to the Lender such documentation (without charge, delay or requiring payment of any amount secured by the Subsequent Encumbrancer Security) as may be required to effect creation of such condominium units, including, without limitation, the registration of such plan(s) of condominium; and
- (h) The Subsequent Encumbrancer covenants and agrees to forthwith execute and deliver to the Lender or the applicable authority, as the case may be, such consents, postponements, authorizations, etc. (without charge, delay or requiring payment of any amount secured by the Subsequent Encumbrancer Security) as may be required from time to time in order to allow for the completion and registration of the Project.

SECTION 8 - FURTHER ASSURANCES

The Subsequent Encumbrancer and the Borrower shall forthwith, and from time to time, on the request of the Lender, execute and do all deeds, documents and things which the Lender requests in order to give full effect to the subordinations and postponements of the Subsequent Encumbrancer Security, the rights and remedies of the Subsequent Encumbrancer thereunder and the Subsequent Encumbrancer Obligations to the Lender Security, the rights and remedies of the Lender thereunder and the Lender Obligations in accordance with the intent of this Agreement.

SECTION 9 - SUCCESSORS AND ASSIGNS

Subject to subsection 7(d), above, this Agreement is binding upon and shall enure to the benefit of the Lender, the Borrower, and the Subsequent Encumbrancer and their respective successors and permitted assigns.

SECTION 10 - NOTICE

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand delivery as hereinafter provided. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the business day it was sent or, if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below to the individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. Notices and other communications shall be addressed as follows :

- (a) if to the Lender:

Centro Mortgage Inc., in Trust
25 Brodie Drive, Unit 1
Richmond Hill, Ontario, L4B 3K7

Attention: Ildina Galati, President
Facsimile Number:

Olympia Trust Company
2200, 125 – 9th Avenue SE
Calgary, Alberta, T2G 0P6

Attention:
Facsimile Number:

- (b) if to the Subsequent Encumbrancer:

B2B Trust
130 Adelaide Street West, Suite 200
Toronto, Ontario, M5H 3P5

Attention:
Facsimile number:

The Bank of Nova Scotia Trust Company
130 King Street West, suite 200
Toronto, Ontario, M5H 3P5

Attention:
Facsimile number:

Olympia Trust Company
2200 125 – 9th Avenue SE
Calgary, Alberta, T2G 0P6

Attention:
Facsimile number:

Centro Mortgage Inc.
25 Brodie Drive, Unit 1
Richmond Hill, Ontario, L4B 3K7

Attention: Ildina Galati, President
Facsimile number:

(c) if to the Borrower:

Fortress Carlyle Peter St Inc.
20 Rivermede Road, Suite 204
Concord, Ontario

Attention:
Facsimile number:

SECTION 11 - GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable herein.

SECTION 12 - HEADINGS

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

SECTION 13 - ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties.

SECTION 14 - ACKNOWLEDGEMENT OF BORROWER

The Borrower acknowledges and consents to this Agreement and agrees to perform its obligations and hold and deal with the Charged Property in accordance with the priorities set out in this Agreement.

SECTION 15 - EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

CENTRO MORTGAGE INC., IN TRUST

Per: [Signature]
Name: Idina Galati
Title: President

I have authority to bind the Bank.

OLYMPIA TRUST COMPANY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

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IN WITNESS WHEREOF the parties have executed this Agreement.

CENTRO MORTGAGE INC., IN TRUST

Per: _____
Name:
Title:

I have authority to bind the Bank.

OLYMPIA TRUST COMPANY

Per: _____
Name: Kelly Reul
Title: Manager

Per: _____
Name: Alison Cysouw
Title: Team Lead

I/We have authority to bind the Corporation

FORTRESS CARLYLE PETER ST INC.

Per: 
Name: Naram Mansour
Title: A.S.O.

Per: 
Name: Vince Petrozza
Title: A.S.O.

I/We have authority to bind the Corporation

B2B TRUST

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Trust

**THE BANK OF NOVA SCOTIA TRUST
COMPANY**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

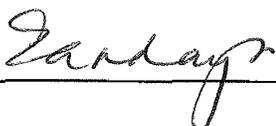
FORTRESS CARLYLE PETER ST INC.

Per: _____
Name: Naram Mansour
Title: A.S.O.

Per: _____
Name: Vince Petrozza
Title: A.S.O.

I/We have authority to bind the Corporation

B2B TRUST

Per: 
Name: _____
Title: _____

Elizabeth Andaya
Administration Coordinator
Self-Directed Mortgages

Per: 
Name: _____
Title: _____

Nadia Lising
Assistant Manager
Self-Directed Mortgages

I/We have authority to bind the Trust
RE: Mtg Registration # AT3677585

**THE BANK OF NOVA SCOTIA TRUST
COMPANY**

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation

FORTRESS CARLYLE PETER ST INC.

Per: _____
Name: Naram Mansour
Title: A.S.O.

Per: _____
Name: Vince Petrozza
Title: A.S.O.

I/We have authority to bind the Corporation

B2B TRUST

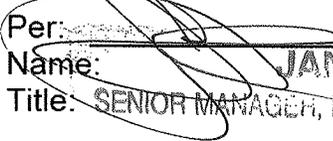
Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Trust

**THE BANK OF NOVA SCOTIA TRUST
COMPANY**

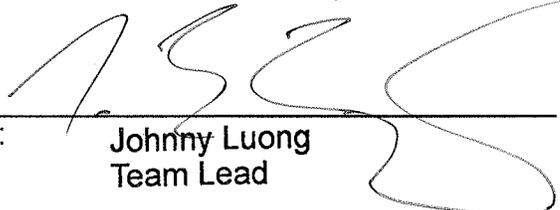
Per: 
Name: David MacBeth, Director
Title: The Bank of Nova Scotia Trust Company

Per: 
Name: JANDY JOHN
Title: SENIOR MANAGER, ESTATE AND TRUST SERVICES

I/We have authority to bind the Corporation

OLYMPIA TRUST COMPANY

Per: 
Name: **ANDREA GILLIS** Director
Title:

Per: 
Name: **Johnny Luong**
Title: **Team Lead**

I/We have authority to bind the Corporation

CENTRO MORTGAGE INC.

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

- 11 -

OLYMPIA TRUST COMPANY

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the Corporation

CENTRO MORTGAGE INC.

Per: 
Name: Ildina Fakshi
Title: President

I/We have authority to bind the Corporation

SCHEDULE "A"
LEGAL DESCRIPTION OF LANDS

Firstly:

PIN No. 21412-0139 (LT) – Lot 6, Plan 1B Toronto; City of Toronto

Secondly:

PIN No. 21412-0141 (LT) - Part Lot 7, Plan 1B Toronto as in CA514620; t/w & s/t CA514620; City of Toronto

Thirdly:

PIN No. 21412-0140 (LT) – Part Lot 7, Plan 1B as in CA277227; t/w CT131463, City of Toronto

Fourthly:

PIN No. 21412-0142 (LT) – Part Lot 7, Plan 1B Toronto, Parts 2 and 3, 63R-3567, s/t CT123180, City of Toronto

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 15TH
JUSTICE HAINEY) DAY OF OCTOBER, 2020

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**

PETER RICHMOND DISTRIBUTION ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc., in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) authorizing the distribution by the Trustee of 85% of the Peter Richmond Realized Property (a) to

Draft

the PRLA SML Lenders and the LH2 Lenders on a *pari passu* basis using the Pari Passu Approach (as described in the Twenty-First Report) with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology (as described in the Twenty-First Report) to 122-124 Peter Street, and (b) solely to the PRLA SML Lenders with respect to the portion of the Peter Richmond Realized Property allocated through the Square Footage Methodology to the remainder of the Peter Richmond Land Assembly, all in accordance with the Realized Property Order, as amended, and (ii) approving the Twenty-First Report and the activities of the Trustee set out therein, was heard this day by videoconference in Toronto, in accordance with the changes to the operations of the Commercial List in light of the COVID-19 pandemic;

ON READING the Twenty-First Report of the Trustee dated October 2, 2020 (the “**Twenty-First Report**”), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, 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 ● sworn ●, 2020, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, and the Twenty-First 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 Twenty-First Report.

PETER RICHMOND REALIZED PROPERTY

3. **THIS COURT ORDERS** that the Trustee shall make a distribution in an aggregate amount equal to 85% of the Peter Richmond Realized Property: (i) to PRLA SML Lenders and LH2 Lenders on a *pari passu* basis using the Pari Passu Approach with respect to the 122-124 Peter Proceeds (as calculated using the Square Footage Methodology), and (ii) solely to the PRLA SML Lenders with respect to the Remaining Proceeds (as calculated using the Square Footage Methodology), in accordance with paragraph 3(b) of the Order of this Court dated October 30, 2018, as amended by Orders of this Court dated November 28, 2018 and December 20, 2018.

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APPROVAL OF TWENTY-FIRST REPORT AND ACTIVITIES

4. **THIS COURT ORDERS** that the Twenty-First Report and the Trustee's activities described therein are hereby approved.

OTHER

5. **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.

Draft

Applicant

Respondent

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

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

Proceedings commenced at Toronto

PETER RICHMOND DISTRIBUTION 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)

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

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

Draft

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD OF
FAAN MORTGAGE ADMINISTRATORS INC.,
in its capacity as Court-appointed Trustee

(Peter Richmond Distribution Motion)

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)

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

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